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Titles 58 through 77

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REVISED CODE OF WASHINGTON

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Containing all laws of a general and permanent nature through the 1989 2nd extraordinary session, which adjourned sine die May 20, 1989.

REVISED CODE OF WASHINGTON
1989 Edition

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CERTIFICATE

The 1989 edition of the Revised Code of Washington, published officially by the Statute Law Committee, is, in accordance with RCW 1.08.037, certified to comply with the current specifications of the committee.



RAYMOND W. HAMAN, Chairman,
STATUTE LAW COMMITTEE

PREFACE

Numbering system: The number of each section of this code is made up of three parts, in sequence as follows: Number of title; number of chapter within the title; number of section within the chapter. Thus RCW 1.04.020 is Title 1, chapter 4, section 20. The section part of the number (.020) is initially made up of three digits, constitutes a true decimal, and provides a facility for numbering new sections to be inserted between old sections already consecutively numbered, merely by adding one or more digits at the end of the number. In most chapters of the code, sections have been numbered by tens (.010, .020, .030, .040, etc.), leaving nine vacant numbers between original sections so that for a time new sections may be inserted without extension of the section number beyond three digits.

Citation to the Revised Code of Washington: The code should be cited as RCW; see RCW 1.04-.040. An RCW title should be cited Title 7 RCW. An RCW chapter should be cited chapter 7.24 RCW. An RCW section should be cited RCW 7.24.010. Through references should be made as RCW 7.24.010 through 7.24.100. Series of sections should be cited as RCW 7.24.010, 7.24.020, and 7.24.030.

History of the Revised Code of Washington; Source notes. The Revised Code of Washington was adopted by the legislature in 1950; see chapter 1.04 RCW. The original publication (1951) contained material variances from the language and organization of the session laws from which it was derived, including a variety of divisions and combinations of the session law sections. During 1953 through 1959, the Statute Law Committee, in exercise of the powers contained in chapter 1.08 RCW, completed a comprehensive study of these variances and, by means of a series of administrative orders or reenactment bills, restored each title of the code to reflect its session law source, but retaining the general codification scheme originally adopted. An audit trail of this activity has been preserved in the concluding segments of the source note of each section of the code so affected. The legislative source of each section is enclosed in brackets [] at the end of the section. Reference to session laws is abbreviated; thus "1891 c 23 § 1; 1854 p 99 § 135" refers to section 1, chapter 23, Laws of 1891 and section 135, page 99, Laws of 1854. "Prior" indicates a break in the statutory chain, usually a repeal and reenactment. "RRS or Rem. Supp.—" indicates the parallel citation in Remington's Revised Code, last published in 1949.

Where, before restoration, a section of this code constituted a consolidation of two or more sections of the session laws, or of sections separately numbered in Remington's, the line of derivation is shown for each component section, with each line of derivation being set off from the others by use of small Roman numerals, "(i)," "(ii)," etc.

Where, before restoration, only a part of a session law section was reflected in a particular RCW section the history note reference is followed by the word "part."

"Formerly" and its correlative form "FORMER PART OF SECTION" followed by an RCW citation preserves the record of original codification.

Double amendments: Some double or other multiple amendments to a section made without reference to each other are set out in the code in smaller (8–point) type. See RCW 1.12.025.

Index: Titles 1 through 91 are indexed in the RCW General Index. Separate indexes are provided for the Rules of Court and the State Constitution.

Sections repealed or decodified; Disposition table: Memorials to RCW sections repealed or decodified are no longer carried in place. They are now tabulated in numerical order in the table entitled "Disposition of former RCW sections."

Codification tables: To convert a session law citation to its RCW number (for Laws of 1951 or later) consult the codification tables. A similar table is included to relate the disposition in RCW of sections of Remington's Revised Statutes.

Errors or omissions: (1) Where an obvious clerical error has been made in the law during the legislative process, the code reviser adds a corrected word, phrase, or punctuation mark in [brackets] for clarity. Such additions do not constitute any part of the law.

(2) Although considerable care has been used in the production of this code, within the limits of available time and facilities it is inevitable that in so large a work that there will be errors, both mechanical and of judgment. As such errors are detected or are believed to exist in particular sections, by those who use this code, it is requested that a note citing the section involved and the nature of the error be mailed to: Code Reviser, Legislative Building, Olympia, WA 98504, so that correction may be made in a subsequent publication.

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Title 58

BOUNDARIES AND PLATS

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Chapter 58.04 BOUNDARIES

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58.04.010 Corners and lines may be established—Procedure—Expense. Whenever a majority of the resident owners of any section or part or parts of any section of land in this state, after having given at least ten days' notice to all other persons, or to their agents, holding land in the same section or part or parts of the section, as the case may be, who reside in the township, shall desire to have their corners and lines, or any of them, established, relocated or perpetuated, such surveyor shall proceed to make the required surveys, and the expense thereof shall be borne by all the persons benefited in proportion to the amount of work done for each, to be determined by the surveyor; and if any person thus benefited, whether a nonresident or otherwise, shall refuse or neglect to pay his share of such expense, such surveyor shall certify the same, and to whom due, to the county assessor, who shall assess it upon the land

of such person, to be collected in the same manner as other taxes, and held subject to the order of the person named in the surveyor's certificate as being entitled to the same. [1895 c 77 § 9; RRS § 4154.]

Reviser's note: The office of county surveyor was created by 1855 pp 26–28 (see also 1863 pp 554–556, Code 1881 §§ 2758–2765); 1907 c 160 provided that thereafter the county surveyor would be designated as county engineer; 1925 ex.s. c 167 abolished the office of county engineer except in class A and first class counties, the powers and duties being transferred to the county commissioners of the respective counties affected; 1937 c 187 § 4 abolished the office of county engineer in all counties, transferred the powers of that office to the county commissioners, and provided for the employment of "county road engineers".

Former acts on subject: 1854 pp 26–28; 1862 pp 554–556; Code 1881 §§ 2758–2765; 1886 p 104 § 1.

58.04.020 Suit to establish lost or uncertain boundaries. Whenever the boundaries of lands between two or more adjoining proprietors shall have been lost, or by time, accident or any other cause, shall have become obscure, or uncertain, and the adjoining proprietors cannot agree to establish the same, one or more of said adjoining proprietors may bring his civil action in equity, in the superior court, for the county in which such lands, or part of them are situated, and such superior court, as a court of equity, may upon such complaint, order such lost or uncertain boundaries to be erected and established and properly marked. [1886 p 104 § 1; RRS § 947.]

58.04.030 Commissioners—Survey and report. Said court may, in its discretion, appoint commissioners, not exceeding three competent and disinterested persons, one or more of whom shall be practical surveyors, residents of the state, which commissioners shall be, before entering upon their duties, duly sworn to perform their said duties faithfully, and the said commissioners shall thereupon, survey, erect, establish and properly mark said boundaries, and return to the court a plat of said survey, and the field notes thereof, together with their report. Said report shall be advisory and either party may except thereto, in the same manner as to a report of referees. [1886 p 105 § 2; RRS § 948.]

58.04.040 Proceedings, conduct of—Costs. The proceedings shall be conducted as other civil actions, and the court, on final decree, shall apportion the costs of the proceedings equitably, and the cost so apportioned, shall be a lien upon the said lands, severally, as against any transfer or incumbrance made of, or attaching to said lands, from the time of the filing of the complaint: *Provided*, A notice of lis pendens, is filed in the auditor's office of the proper county, in accordance with law. [1886 p 105 § 3; RRS § 949.]

Chapter 58.08

PLATS—RECORDING

Sections

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Cities and towns—Recording of ordinance and plat on effective date of reduction: RCW 35.16.050.

Record of platted tide and shore lands: RCW 79.94.040.

58.08.010 Town plat to be recorded—Requisites. Any person or persons, who may hereafter lay off any town within this state, shall, previous to the sale of any lots within such town, cause to be recorded in the recorder's office of the county wherein the same may lie, a plat of said town, with the public grounds, (if any there be,) streets, lanes and alleys, with their respective widths properly marked, and the lots regularly numbered, and the size stated on said plat. [Code 1881 § 2328; 1862 p 431 § 1; 1857 p 25 § 1; RRS § 9288.]

58.08.015 Effect of donation marked on plat. Every donation or grant to the public, or to any individual or individuals, religious society or societies, or to any corporation or body politic, marked or noted as such on the plat of the town, or wherein such donation or grant may have been made, shall be considered, to all intents and purposes, as a quitclaim deed to the said donee or donees, grantee or grantees, for his, her or their use, for the purposes intended by the donor or donors, grantor or grantors, as aforesaid. [Code 1881 § 2329; 1862 p 431 § 2; 1857 p 26 § 2; RRS § 9310. Formerly RCW 58.08.060.]

58.08.020 Additions. Every person hereinafter laying off any lots in addition to any town, shall, previous to the sale of such lots, have the same recorded under the like regulations as are provided for recording the original plat of said town, and thereafter the same shall be considered an addition thereto. [Code 1881 § 2330; 1862 p 431 § 3; 1857 p 26 § 3; RRS § 9289.]

58.08.030 Plats to be acknowledged—Certificate that taxes and assessments are paid. Every person whose duty it may be to comply with the foregoing regulations shall at or before the time of offering such plat for record, acknowledge the same before the auditor of the proper county, or any other officer who is authorized by law to take acknowledgment of deeds, a certificate of which acknowledgment shall be indorsed on or annexed to such plat and recorded therewith. In all cases where any person or persons, corporation or corporations shall desire to file a plat, map, subdivision or replat of any property or shall desire to vacate the whole or any portion of any existing plat, map, subdivision or replat, such person or persons, corporation or corporations must, at the time of filing the same for record or of filing a petition for vacation thereof, file therewith a certificate from the proper officer or officers who may be in charge of the collection of taxes for which the property affected may be liable at that date, that all taxes which have

been levied and become chargeable against such property at such date have been duly paid, satisfied and discharged and must file therewith a certificate from the proper officer or officers, who may be in charge of the collections, that all delinquent assessments for which the property affected may be liable at that date and that all special assessments assessed against said property, which, under the plat filed, become streets, alleys and other public places, have been paid. [1927 c 188 § 1; 1893 c 129 § 1; Code 1881 § 2331; 1862 p 431 § 4; 1857 p 26 § 4; RRS § 9290.]

Acknowledgments: Chapter 64.08 RCW.

Taxes collected by treasurer—Dates of delinquency: RCW 84.56.020.

58.08.035 Platted streets, public highways—Lack of compliance, penalty. All streets, lanes and alleys, laid off and recorded in accordance with *the foregoing provisions, shall be considered, to all intents and purposes, public highways, and any person who may lay off any town or any addition to any town in this state, and neglect or refuse to comply with the requisitions aforesaid, shall forfeit and pay for the use of said town, for every month he may delay a compliance with the provisions of this chapter, a sum not exceeding one hundred dollars, nor less than five dollars, to be recovered by civil action, in the name of the treasurer of the county. [Code 1881 § 2332; 1862 p 431 § 5; 1857 p 26 § 5; no RRS.]

***Reviser's note:** "the foregoing provisions" refer to earlier sections of chapter 178, Code of 1881 codified (as amended) in RCW 58.08.010-58.08.030.

Platted streets as public highways: RCW 58.08.050.

Regulation of surveys and plats: RCW 58.10.040.

58.08.040 Deposit to cover anticipated taxes. Any person filing a plat, replat, altered plat, binding site plan, or condominium plan subsequent to May 31st in any year and prior to the date of the collection of taxes, shall deposit with the county treasurer a sum equal to the product of the county assessor's latest valuation on the unimproved property in such subdivision multiplied by the current year's dollar rate increased by twenty-five percent on the property platted. The treasurer's receipt for said amount shall be taken by the auditor as evidence of the payment of the tax. The treasurer shall appropriate so much of said deposit as will pay the taxes on the said property when the tax rolls are placed in his hands for collection, and in case the sum deposited is in excess of the amount necessary for the payment of the said taxes, the treasurer shall return, to the party depositing, the amount of said excess, taking his receipt therefor, which receipt shall be accepted for its face value on the treasurer's quarterly settlement with the county auditor. [1989 c 378 § 2; 1973 1st ex.s. c 195 § 74; 1969 ex.s. c 271 § 34; 1963 c 66 § 1; 1909 c 200 § 1; 1907 c 44 § 1; 1893 c 129 § 2; RRS § 9291.]

Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195: See notes following RCW 84.52.043.

Severability—1969 ex.s. c 271: See RCW 58.17.910.

Assessment date: RCW 84.40.020.

Property taxes—Collection of taxes: Chapter 84.56 RCW.

58.08.050 Official plat—Platted streets as public highways. Whenever any city or town has been surveyed and platted and a plat thereof showing the roads, streets and alleys has been filed in the office of the auditor of the county in which such city or town is located, such plat shall be deemed the official plat of such city, or town, and all roads, streets and alleys in such city or town as shown by such plat, be and the same are declared public highways: *Providing*, That nothing herein shall apply to any part of a city or town that has been vacated according to law. [Code 1881 § 3049; 1877 p 314 § 1; RRS § 9292.]

Platted streets, public highways—Lack of compliance, penalty: RCW 58.08.035.

Streets and alleys over first class tidelands—Control of: RCW 35.21.250.

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Chapter 58.09

SURVEYS—RECORDING

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58.09.900	Severability—1973 c 50.

58.09.010 Purpose—Short title. The purpose of this chapter is to provide a method for preserving evidence of land surveys by establishing standards and procedures for monumenting and for recording a public record of the surveys. Its provisions shall be deemed supplementary to existing laws relating to surveys, subdivisions, platting, and boundaries.

This chapter shall be known and may be cited as the "Survey Recording Act". [1973 c 50 § 1.]

58.09.020 Definitions. As used in this chapter:

(1) "Land surveyor" shall mean every person authorized to practice the profession of land surveying under the provisions of chapter 18.43 RCW, as now or hereafter amended.

(2) "Washington coordinate system" shall mean that system of plane coordinates as established and designated by chapter 58.20 RCW.

(3) "Survey" shall mean the locating and monumenting in accordance with sound principles of land surveying by or under the supervision of a licensed land surveyor, of points or lines which define the exterior

boundary or boundaries common to two or more ownerships or which reestablish or restore general land office corners. [1973 c 50 § 2.]

58.09.030 Compliance with chapter required. Any land surveyor engaged in the practice of land surveying may prepare maps, plats, reports, descriptions, or other documentary evidence in connection therewith.

Every map, plat, report, description, or other document issued by a licensed land surveyor shall comply with the provisions of this chapter whenever such map, plat, report, description, or other document is filed as a public record.

It shall be unlawful for any person to sign, stamp, or seal any map, report, plat, description, or other document for filing under this chapter unless he be a land surveyor. [1973 c 50 § 3.]

58.09.040 Records of survey—Contents—Filing—Replacing corner, filing record. After making a survey in conformity with sound principles of land surveying, a land surveyor may file a record of survey with the county auditor in the county or counties wherein the lands surveyed are situated.

(1) It shall be mandatory, within ninety days after the establishment, reestablishment or restoration of a corner on the boundary of two or more ownerships or general land office corner by survey that a land surveyor shall file with the county auditor in the county or counties wherein the lands surveyed are situated a record of such survey, in such form as to meet the requirements of this chapter, which through accepted survey procedures, shall disclose:

(a) The establishment of a corner which materially varies from the description of record;

(b) The establishment of one or more property corners not previously existing;

(c) Evidence that reasonable analysis might result in alternate positions of lines or points as a result of an ambiguity in the description;

(d) The reestablishment of lost government land office corners.

(2) When a licensed land surveyor, while conducting work of a preliminary nature or other activity that does not constitute a survey required by law to be recorded, replaces or restores an existing or obliterated general land office corner, it is mandatory that, within ninety days thereafter, he shall file with the county auditor in the county in which said corner is located a record of the monuments and accessories found or placed at the corner location, in such form as to meet the requirements of this chapter. [1973 c 50 § 4.]

58.09.050 Records of survey—Processing. The records of survey to be filed under authority of this chapter shall be processed as follows:

(1) Surveys which qualify under RCW 58.09.040(1) shall be a map, legibly drawn, printed or reproduced by a process guaranteeing a permanent record in black on tracing cloth, or equivalent, eighteen by twenty-four

inches, or of a size as required by the county auditor. If ink is used on polyester base film, the ink shall be coated with a suitable substance to assure permanent legibility. A two inch margin shall be provided on the left edge and a one-half inch margin shall be provided at the other edges of the map.

(2) Information required by RCW 58.09.040(2) shall be recorded on a standard form eight and one-half inches by fourteen inches which shall be designed and prescribed by the bureau of surveys and maps.

(3) Two legible prints of each record of survey and records of monuments and accessories as required under the provisions of this chapter shall be furnished to the county auditor in the county in which the survey is to be recorded. The auditor shall keep one copy for his records and shall send the second to the bureau of surveys and maps at Olympia, Washington, with the auditor's record number thereon. [1973 c 50 § 5.]

58.09.060 Records of survey, contents—Record of corner, information. (1) The record of survey as required by RCW 58.09.040(1) shall show:

(a) All monuments found, set, reset, replaced, or removed, describing their kind, size, and location and giving other data relating thereto;

(b) Bearing trees, corner accessories or witness monuments, basis of bearings, bearing and length of lines, scale of map, and north arrow;

(c) Name and legal description of tract in which the survey is located and ties to adjoining surveys of record;

(d) Certificates required by RCW 58.09.080;

(e) Any other data necessary for the intelligent interpretation of the various items and locations of the points, lines and areas shown.

(2) The record of corner information as required by RCW 58.09.040(2) shall be on a standard form showing:

(a) An accurate description and location, in reference to the corner position, of all monuments and accessories found at the corner;

(b) An accurate description and location, in reference to the corner position, of all monuments and accessories placed or replaced at the corner;

(c) Basis of bearings used to describe or locate such monuments or accessories;

(d) Corollary information that may be helpful to relocate or identify the corner position;

(e) Certificate required by RCW 58.09.080. [1973 c 50 § 6.]

58.09.070 Coordinates—Map showing control scheme required. When coordinates in the Washington coordinate system are shown for points on a record of survey map, the map may not be recorded unless it also shows, or is accompanied by a map showing, the control scheme through which the coordinates were determined from points of known coordinates. [1973 c 50 § 7.]

58.09.080 Certificates—Required—Forms. Certificates shall appear on the record of survey map as follows:

SURVEYOR'S CERTIFICATE

This map correctly represents a survey made by me or under my direction in conformance with the requirements of the Survey Recording Act at the request of _____ in _____, 19__.

Name of Person
(Signed and Sealed) _____
Certificate No. _____

AUDITOR'S CERTIFICATE

Filed for record this _____ day of _____, 19__ at _____ M. in book _____ of _____ at page _____ at the request of _____.

(Signed) _____
County Auditor

[1973 c 50 § 8.]

58.09.090 When record of survey not required. (1) A record of survey is not required of any survey:

(a) When it has been made by a public officer in his official capacity and a reproducible copy thereof has been filed with the county engineer of the county in which the land is located. A map so filed shall be indexed and kept available for public inspection. A record of survey shall not be required of a survey made by the United States bureau of land management. A state agency conducting surveys to carry out the program of the agency shall not be required to use a land surveyor as defined by this chapter;

(b) When it is of a preliminary nature;

(c) When a map is in preparation for recording or shall have been recorded in the county under any local subdivision or platting law or ordinance.

(2) Surveys exempted by foregoing subsections of this section shall require filing of a record of corner information pursuant to RCW 58.09.040(2). [1973 c 50 § 9.]

58.09.100 Filing fee. The charge for filing any record of survey and/or record of corner information shall be fixed by the board of county commissioners. [1973 c 50 § 10.]

58.09.110 Duties of county auditor. The record of survey and/or record of corner information filed with the county auditor of any county shall be securely fastened by him into suitable books provided for that purpose.

He shall keep proper indexes of such record of survey by the name of owner and by section, township, and range, with reference to other legal subdivisions.

He shall keep proper indexes of the record of corner information by section, township and range.

The original survey map shall be stored for safekeeping in a reproducible condition. It shall be proper for the auditor to maintain for public reference a set of counter maps that are prints of the original maps. The original maps shall be produced for comparison upon demand. [1973 c 50 § 11.]

58.09.120 Monuments—Requirements. Any monument set by a land surveyor to mark or reference a point on a property or land line shall be permanently marked or tagged with the certificate number of the land surveyor setting it. If the monument is set by a public officer it shall be marked by an appropriate official designation.

Monuments set by a land surveyor shall be sufficient in number and durability and shall be efficiently placed so as not to be readily disturbed in order to assure, together with monuments already existing, the perpetuation or reestablishment of any point or line of a survey. [1973 c 50 § 12.]

58.09.130 Monuments disturbed by construction activities—Procedure—Requirements. When adequate records exist as to the location of subdivision, tract, street, or highway monuments, such monuments shall be located and referenced by or under the direction of a land surveyor at the time when streets or highways are reconstructed or relocated, or when other construction or activity affects their perpetuation. Whenever practical a suitable monument shall be reset in the surface of the new construction. In all other cases permanent witness monuments shall be set to perpetuate the location of preexisting monuments. Additionally, sufficient controlling monuments shall be retained or replaced in their original positions to enable land lines, property corners, elevations and tract boundaries to be reestablished without requiring surveys originating from monuments other than the ones disturbed by the current construction or activity.

It shall be the responsibility of the governmental agency or others performing construction work or other activity to provide for the monumentation required by this section. It shall be the duty of every land surveyor to cooperate with such governmental agency or other person in matters of maps, field notes, and other pertinent records. Monuments set to mark the limiting lines of highways, roads, or streets shall not be deemed adequate for this purpose unless specifically noted on the records of the improvement works with direct ties in bearing or azimuth and distance between those and other monuments of record. [1973 c 50 § 13.]

58.09.140 Noncompliance grounds for revocation of land surveyor's license. Noncompliance with any provision of this chapter, as it now exists or may hereafter be amended, shall constitute grounds for revocation of a land surveyor's authorization to practice the profession of land surveying and as further set forth under RCW 18.43.105 and 18.43.110. [1973 c 50 § 14.]

58.09.900 Severability—1973 c 50. If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1973 c 50 § 15.]

Chapter 58.10
DEFECTIVE PLATS LEGALIZED

Sections
 58.10.010 Defective plats legalized—1881 Code.
 58.10.020 Certified copy of plat as evidence.
 58.10.030 Resurvey and corrected plat—Corrected plat as evidence.
 58.10.040 Regulation of surveys and plats.

58.10.010 Defective plats legalized—1881 Code. All city or town plats or any addition or additions thereto, heretofore made and recorded in the county auditor's office of any county in Washington state, showing lots, blocks, streets, alleys or public grounds, shall be conclusive evidence of the location and size of the lots, blocks and public grounds and the location and width of each and every street or alley marked, laid down or appearing on such plat, and that all the right, title, interest or estate which the person or persons making or recording such plat, or causing the same to be made, or recorded, had at the time of making or recording such plat in or to such streets, alleys or public grounds was thereby dedicated to public use, whether the same was made, executed or acknowledged in accordance with the provisions of the laws of this state in force at the time of making the same or not. [Code 1881 § 2338; RRS § 9306. Formerly RCW 58.08.080.]

58.10.020 Certified copy of plat as evidence. A copy of any city or town plat or addition thereto recorded in the manner provided for in RCW 58.10.010, certified by the county auditor of the county in which the same is recorded to be a true copy of such record and the whole thereof, shall be received in evidence in all the courts of this state, with like effect as the original. [Code 1881 § 2339; RRS § 9307. Formerly RCW 58.08.070.]

Rules of court: ER 803(a)(14).
Certified copies of instruments, or transcripts of county commissioners' proceedings: RCW 5.44.070.
of recorded instruments as evidence: RCW 5.44.060.
Instruments to be recorded or filed: RCW 65.04.030.
Photographic copies of business and public records as evidence: RCW 5.46.010.
Photostatic or photographic copies of public or business records admissible in evidence: RCW 40.20.030.

58.10.030 Resurvey and corrected plat—Corrected plat as evidence. Whenever the recorded plat of any city or addition thereto does not definitely show the location or size of lots or blocks, or the location or width of any street or alley in such city or addition, the city council of the city in which the land so platted is located, is hereby authorized and empowered by ordinance and the action of its proper officers, to cause a new and correct survey and plat of such city or addition to be made, and recorded in the office of the county auditor of the county in which such city or addition is located, which corrected plat shall follow the plan of the original survey and plat, so far as the same can be ascertained and followed, and a certificate of the officer or surveyor making the same shall be endorsed thereon, referring to the original plat

corrected thereby, and the deficit existing therein, and corrected by such new survey and plat; and the ordinance authorizing the making of such plat shall be recorded in the office of the county auditor of said county and said certificate shall show where said ordinance is recorded, and such plat when so made and recorded, or a copy thereof certified as provided in RCW 58.10.020 shall be admissible in evidence in all the courts in this state. [Code 1881 § 2340; RRS § 9308. Formerly RCW 58.12.130.]

58.10.040 Regulation of surveys and plats. All incorporated cities in the state of Washington are hereby authorized and empowered to regulate and prescribe the manner and form of making any future survey or plat of lands within their respective limits and enforce such regulations by a fine of not exceeding one hundred dollars, to be recovered by and in the name of such city, or imprisonment not exceeding twenty days for each violation of any ordinance regulating such survey and platting: *Provided*, That nothing in this chapter shall be construed so as to apply to additions to towns in which no lots have been sold. [Code 1881 § 2341; RRS § 9309. Formerly RCW 58.12.140.]

Platted streets, public highways—Lack of compliance, penalty: RCW 58.08.035.

Chapter 58.17
PLATS—SUBDIVISIONS—DEDICATIONS

Sections
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Fees for filing subdivision plats and short plats: RCW 58.24.070.

58.17.010 Purpose. The legislature finds that the process by which land is divided is a matter of state concern and should be administered in a uniform manner by cities, towns, and counties throughout the state. The purpose of this chapter is to regulate the subdivision of land and to promote the public health, safety and general welfare in accordance with standards established by the state to prevent the overcrowding of land; to lessen congestion in the streets and highways; to promote effective use of land; to promote safe and convenient travel by the public on streets and highways; to provide for adequate light and air; to facilitate adequate provision for water, sewerage, parks and recreation areas, sites for schools and schoolgrounds and other public requirements; to provide for proper ingress and egress; to provide for the expeditious review and approval of proposed subdivisions which conform to zoning standards and local plans and policies; to adequately provide for the housing and commercial needs of the citizens of the

state; and to require uniform monumenting of land subdivisions and conveyancing by accurate legal description. [1981 c 293 § 1; 1969 ex.s. c 271 § 1.]

Reviser's note: Throughout this chapter, the phrase "this act" has been changed to "this chapter." "This act" [1969 ex.s. c 271] also consists of amendments to RCW 58.08.040 and 58.24.040 and the repeal of RCW 58.16.010 through 58.16.110.

Severability—1981 c 293: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1981 c 293 § 16.]

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

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

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

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

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

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

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

(7) "Binding site plan" means a drawing to a scale specified by local ordinance which: (a) Identifies and shows the areas and locations of all streets, roads, improvements, utilities, open spaces, and any other matters specified by local regulations; (b) contains inscriptions or attachments setting forth such appropriate limitations and conditions for the use of the land as are established

by the local government body having authority to approve the site plan; and (c) contains provisions making any development be in conformity with the site plan.

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

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

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

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

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

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

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

(15) "County commissioner" shall be as defined in chapter 36.32 RCW or the body assigned such duties under a county charter. [1983 c 121 § 1. Prior: 1981 c 293 § 2; 1981 c 292 § 1; 1969 ex.s. c 271 § 2.]

Severability—1981 c 293: See note following RCW 58.17.010.

Camping resort contracts—*Nonapplicability of certain laws to—Resort not subdivision except under city, county powers: RCW 19.105.510.*

58.17.030 Subdivisions to comply with chapter, local regulations. Every subdivision shall comply with the provisions of this chapter. Every short subdivision as defined in this chapter shall comply with the provisions of any local regulation adopted pursuant to RCW 58.17.060. [1974 ex.s. c 134 § 1; 1969 ex.s. c 271 § 3.]

58.17.033 Proposed division of land—Consideration of application for preliminary plat or short plat approval—Requirements defined by local ordinance. (1) A proposed division of land, as defined in RCW 58.17.020, shall be considered under the subdivision or short subdivision ordinance, and zoning or other land use control ordinances, in effect on the land at the time a fully completed application for preliminary plat approval of the subdivision, or short plat approval of the short subdivision, has been submitted to the appropriate county, city, or town official.

(2) The requirements for a fully completed application shall be defined by local ordinance.

(3) The limitations imposed by this section shall not restrict conditions imposed under chapter 43.21C RCW. [1987 c 104 § 2.]

58.17.035 Alternative method of land division—Binding site plans. A city, town, or county may adopt by ordinance procedures for the divisions of land by use of a

binding site plan as an alternative to the procedures required by this chapter. The ordinance shall be limited and only apply to one or more of the following: (1) The use of a binding site plan to divisions for sale or lease of commercially or industrially zoned property as provided in RCW 58.17.040(4); (2) divisions of property for lease as provided for in RCW 58.17.040(5); and (3) divisions of property as provided for in RCW 58.17.040(7). Such ordinance may apply the same or different requirements and procedures to each of the three types of divisions and shall provide for the alteration or vacation of the binding site plan, and may provide for the administrative approval of the binding site plan.

The ordinance shall provide that after approval of the general binding site plan for industrial or commercial divisions subject to a binding site plan, the approval for improvements and finalization of specific individual commercial or industrial lots shall be done by administrative approval.

The binding site plan, after approval, and/or when specific lots are administratively approved, shall be filed with the county auditor with a record of survey. Lots, parcels, or tracts created through the binding site plan procedure shall be legal lots of record. The number of lots, tracts, parcels, sites, or divisions shall not exceed the number of lots allowed by the local zoning ordinances.

All provisions, conditions, and requirements of the binding site plan shall be legally enforceable on the purchaser or any other person acquiring a lease or other ownership interest of any lot, parcel, or tract created pursuant to the binding site plan.

Any sale, transfer, or lease of any lot, tract, or parcel created pursuant to the binding site plan, that does not conform to the requirements of the binding site plan or without binding site plan approval, shall be considered a violation of chapter 58.17 RCW and shall be restrained by injunctive action and be illegal as provided in chapter 58.17 RCW. [1987 c 354 § 2.]

58.17.040 Chapter inapplicable, when. (Effective until July 1, 1990.) The provisions of this chapter shall not apply to:

(1) Cemeteries and other burial plots while used for that purpose;

(2) Divisions of land into lots or tracts each of which is one-hundred twenty-eighth of a section of land or larger, or five acres or larger if the land is not capable of description as a fraction of a section of land, unless the governing authority of the city, town, or county in which the land is situated shall have adopted a subdivision ordinance requiring plat approval of such divisions: *Provided*, That for purposes of computing the size of any lot under this item which borders on a street or road, the lot size shall be expanded to include that area which would be bounded by the center line of the road or street and the side lot lines of the lot running perpendicular to such center line;

(3) Divisions made by testamentary provisions, or the laws of descent;

(4) Divisions of land into lots or tracts classified for industrial or commercial use when the city, town, or county has approved a binding site plan for the use of the land in accordance with local regulations;

(5) A division for the purpose of lease when no residential structure other than mobile homes or travel trailers are permitted to be placed upon the land when the city, town, or county has approved a binding site plan for the use of the land in accordance with local regulations;

(6) A division made for the purpose of alteration by adjusting boundary lines, between platted or unplatted lots or both, which does not create any additional lot, tract, parcel, site, or division nor create any lot, tract, parcel, site, or division which contains insufficient area and dimension to meet minimum requirements for width and area for a building site; and

(7) A division which is made by subjecting a portion of a parcel or tract of land to chapter 64.32 RCW if a city, town, or county has approved a binding site plan for all of such land. [1987 c 354 § 1; 1987 c 108 § 1; 1983 c 121 § 2. Prior: 1981 c 293 § 3; 1981 c 292 § 2; 1974 ex.s. c 134 § 2; 1969 ex.s. c 271 § 4.]

Reviser's note: This section was amended by 1987 c 108 § 1 and by 1987 c 354 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Severability—1981 c 293: See note following RCW 58.17.010.

58.17.040 Chapter inapplicable, when. (Effective July 1, 1990.) The provisions of this chapter shall not apply to:

(1) Cemeteries and other burial plots while used for that purpose;

(2) Divisions of land into lots or tracts each of which is one–one hundred twenty–eighth of a section of land or larger, or five acres or larger if the land is not capable of description as a fraction of a section of land, unless the governing authority of the city, town, or county in which the land is situated shall have adopted a subdivision ordinance requiring plat approval of such divisions: *Provided*, That for purposes of computing the size of any lot under this item which borders on a street or road, the lot size shall be expanded to include that area which would be bounded by the center line of the road or street and the side lot lines of the lot running perpendicular to such center line;

(3) Divisions made by testamentary provisions, or the laws of descent;

(4) Divisions of land into lots or tracts classified for industrial or commercial use when the city, town, or county has approved a binding site plan for the use of the land in accordance with local regulations;

(5) A division for the purpose of lease when no residential structure other than mobile homes or travel trailers are permitted to be placed upon the land when the city, town, or county has approved a binding site plan for the use of the land in accordance with local regulations;

(6) A division made for the purpose of alteration by adjusting boundary lines, between platted or unplatted

lots or both, which does not create any additional lot, tract, parcel, site, or division nor create any lot, tract, parcel, site, or division which contains insufficient area and dimension to meet minimum requirements for width and area for a building site; and

(7) Divisions of land into lots or tracts if: (a) The improvements constructed or to be constructed thereon will be included in one or more condominiums or owned by an association or other legal entity in which the owners of units therein or their owners' associations have a membership or other legal or beneficial interest; (b) a city, town, or county has approved a binding site plan for all such land; and (c) the binding site plan contains thereon the following statement: "All development of the land described herein shall be in accordance with the binding site plan, as it may be amended. Upon completion, the improvements on the land shall be included in one or more condominiums or owned by an association or other legal entity in which the owners of units therein or their owners' associations have a membership or other legal or beneficial interest." [1989 c 43 § 4–123. Prior: 1987 c 354 § 1; 1987 c 108 § 1; 1983 c 121 § 2; prior: 1981 c 293 § 3; 1981 c 292 § 2; 1974 ex.s. c 134 § 2; 1969 ex.s. c 271 § 4.]

Severability—Effective date—1989 c 43: See RCW 64.34.920 and 64.34.930.

Severability—1981 c 293: See note following RCW 58.17.010.

58.17.050 Assessors plat—Compliance. An assessors plat made in accordance with RCW 58.18.010 need not comply with any of the requirements of this chapter except RCW 58.17.240 and 58.17.250. [1969 ex.s. c 271 § 5.]

58.17.060 Short plats and short subdivisions—Summary approval—Regulations—Requirements.

(1) The legislative body of a city, town, or county shall adopt regulations and procedures, and appoint administrative personnel for the summary approval of short plats and short subdivisions or alteration or vacation thereof. When an alteration or vacation involves a public dedication, the alteration or vacation shall be processed as provided in RCW 58.17.212 or 58.17.215. Such regulations shall be adopted by ordinance and may contain wholly different requirements than those governing the approval of preliminary and final plats of subdivisions and may require surveys and monumentations and shall require filing of a short plat, or alteration or vacation thereof, for record in the office of the county auditor: *Provided*, That such regulations must contain a requirement that land in short subdivisions may not be further divided in any manner within a period of five years without the filing of a final plat, except that when the short plat contains fewer than four parcels, nothing in this section shall prevent the owner who filed the short plat from filing an alteration within the five–year period to create up to a total of four lots within the original short plat boundaries: *Provided further*, That such regulations are not required to contain a penalty clause as provided in RCW 36.32.120 and may provide for wholly injunctive relief.

An ordinance requiring a survey shall require that the survey be completed and filed with the application for approval of the short subdivision.

(2) Cities, towns, and counties shall include in their short plat regulations and procedures pursuant to subsection (1) of this section provisions for considering sidewalks and other planning features that assure safe walking conditions for students who walk to and from school. [1989 c 330 § 2; 1987 c 354 § 5; 1987 c 92 § 1; 1974 ex.s. c 134 § 3; 1969 ex.s. c 271 § 6.]

58.17.065 Short plats and short subdivisions—Filing. Each short plat and short subdivision granted pursuant to local regulations after July 1, 1974, shall be filed with the county auditor and shall not be deemed "approved" until so filed. [1974 ex.s. c 134 § 12.]

58.17.070 Preliminary plat of subdivisions and dedications—Submission for approval—Procedure. A preliminary plat of proposed subdivisions and dedications of land shall be submitted for approval to the legislative body of the city, town, or county within which the plat is situated.

Unless an applicant for preliminary plat approval requests otherwise, a preliminary plat shall be processed simultaneously with applications for rezones, variances, planned unit developments, site plan approvals, and similar quasi-judicial or administrative actions to the extent that procedural requirements applicable to these actions permit simultaneous processing. [1981 c 293 § 4; 1969 ex.s. c 271 § 7.]

Severability—1981 c 293: See note following RCW 58.17.010.

58.17.080 Filing of preliminary plat—Notice. Notice of the filing of a preliminary plat of a proposed subdivision adjacent to or within one mile of the municipal boundaries of a city or town, or which contemplates the use of any city or town utilities shall be given to the appropriate city or town authorities. Any notice required by this chapter shall include the hour and location of the hearing and a description of the property to be platted. Notice of the filing of a preliminary plat of a proposed subdivision located in a city or town and adjoining the municipal boundaries thereof shall be given to appropriate county officials. Notice of the filing of a preliminary plat of a proposed subdivision located adjacent to the right-of-way of a state highway or within two miles of the boundary of a state or municipal airport shall be given to the secretary of transportation. In the case of notification to the secretary of transportation, the secretary shall respond to the notifying authority within fifteen days of such notice as to the effect that the proposed subdivision will have on the state highway or the state or municipal airport. [1982 c 23 § 1; 1969 ex.s. c 271 § 8.]

58.17.090 Notice of public hearing. Upon receipt of an application for preliminary plat approval the administrative officer charged by ordinance with responsibility for administration of regulations pertaining to platting and subdivisions shall set a date for a public hearing. At

a minimum, notice of the hearing shall be given in the following manner: (1) Notice shall be published not less than ten days prior to the hearing in a newspaper of general circulation within the county and a newspaper of general circulation in the area where the real property which is proposed to be subdivided is located; (2) special notice of the hearing shall be given to adjacent landowners by any other reasonable method local authorities deem necessary. Adjacent landowners are the owners of real property, as shown by the records of the county assessor, located within three hundred feet of any portion of the boundary of the proposed subdivision. If the owner of the real property which is proposed to be subdivided owns another parcel or parcels of real property which lie adjacent to the real property proposed to be subdivided, notice under this subsection shall be given to owners of real property located within three hundred feet of any portion of the boundaries of such adjacently located parcels of real property owned by the owner of the real property proposed to be subdivided. All hearings shall be public. All hearing notices shall include a description of the location of the proposed subdivision. The description may be in the form of either a vicinity location sketch or a written description other than a legal description. [1981 c 293 § 5; 1974 ex.s. c 134 § 4; 1969 ex.s. c 271 § 9.]

Severability—1981 c 293: See note following RCW 58.17.010.

58.17.092 Public notice—Identification of affected property. Any notice made under chapter 58.17 RCW that identifies affected property may identify this affected property without using a legal description of the property including, but not limited to, identification by an address, written description, vicinity sketch, or other reasonable means. [1988 c 168 § 12.]

58.17.095 Ordinance may authorize administrative review of preliminary plat without public hearing. A county, city, or town may adopt an ordinance providing for the administrative review of a preliminary plat without a public hearing by adopting an ordinance providing for such administrative review. The ordinance may specify a threshold number of lots in a subdivision above which a public hearing must be held, and may specify other factors which necessitate the holding of a public hearing. The administrative review process shall include the following minimum conditions:

(1) The notice requirements of RCW 58.17.090 shall be followed, except that the publication shall be made within ten days of the filing of the application. Additionally, at least ten days after the filing of the application notice both shall be: (a) Posted on or around the land proposed to be subdivided in at least five conspicuous places designed to attract public awareness of the proposal; and (b) mailed to the owner of each lot or parcel of property located within at least three hundred feet of the site. The applicant shall provide the county, city, or town with a list of such property owners and their addresses. The notice shall include notification that no public hearing will be held on the application, except as provided by this section. The notice shall set out the

procedures and time limitations for persons to require a public hearing and make comments.

(2) Any person shall have a period of twenty days from the date of the notice to comment upon the proposed preliminary plat. All comments received shall be provided to the applicant. The applicant has seven days from receipt of the comments to respond thereto.

(3) A public hearing on the proposed subdivision shall be held if any person files a request for a hearing with the county, city, or town within twenty-one days of the publishing of such notice. If such a hearing is requested, notice requirements for the public hearing shall be in conformance with RCW 58.17.090, and the ninety-day period for approval or disapproval of the proposed subdivision provided for in RCW 58.17.140 shall commence with the date of the filing of the request for a public hearing. Any hearing ordered under this subsection shall be conducted by the planning commission or hearings officer as required by county or city ordinance.

(4) On its own initiative within twenty-one days of the filing of the request for approval of the subdivision, the governing body, or a designated employee or official, of the county, city, or town, shall be authorized to cause a public hearing to be held on the proposed subdivision within ninety days of the filing of the request for the subdivision.

(5) If the public hearing is waived as provided in this section, the planning commission or planning agency shall complete the review of the proposed preliminary plat and transmit its recommendation to the legislative body as provided in RCW 58.17.100. [1986 c 233 § 1.]

Applicability—1986 c 233: "This act does not affect the provisions of RCW 82.02.020." [1986 c 233 § 3.]

58.17.100 Review of preliminary plats by planning commission or agency—Recommendation—Change by legislative body—Procedure—Approval. If a city, town or county has established a planning commission or planning agency in accordance with state law or local charter, such commission or agency shall review all preliminary plats and make recommendations thereon to the city, town or county legislative body to assure conformance of the proposed subdivision to the general purposes of the comprehensive plan and to planning standards and specifications as adopted by the city, town or county. Reports of the planning commission or agency shall be advisory only: *Provided*, That the legislative body of the city, town or county may, by ordinance, assign to such commission or agency, or any department official or group of officials, such administrative functions, powers and duties as may be appropriate, including the holding of hearings, and recommendations for approval or disapproval of preliminary plats of proposed subdivisions.

Such recommendation shall be submitted to the legislative body not later than fourteen days following action by the hearing body. Upon receipt of the recommendation on any preliminary plat the legislative body shall at its next public meeting set the date for the public meeting where it may adopt or reject the recommendations of

such hearing body. If, after considering the matter at a public meeting, the legislative body deems a change in the planning commission's or planning agency's recommendation approving or disapproving any preliminary plat is necessary, the change of the recommendation shall not be made until the legislative body shall conduct a public hearing and thereupon adopt its own recommendations and approve or disapprove the preliminary plat. Such public hearing may be held before a committee constituting a majority of the legislative body. If the hearing is before a committee, the committee shall report its recommendations on the matter to the legislative body for final action.

Every decision or recommendation made under this section shall be in writing and shall include findings of fact and conclusions to support the decision or recommendation.

A record of all public meetings and public hearings shall be kept by the appropriate city, town or county authority and shall be open to public inspection.

Sole authority to approve final plats, and to adopt or amend platting ordinances shall reside in the legislative bodies. [1981 c 293 § 6; 1969 ex.s. c 271 § 10.]

Severability—1981 c 293: See note following RCW 58.17.010.

58.17.110 Approval or disapproval of subdivision and dedication—Factors to be considered—Finding—Release from damages. The city, town, or county legislative body shall inquire into the public use and interest proposed to be served by the establishment of the subdivision and dedication. It shall determine if appropriate provisions are made for, but not limited to, the public health, safety, and general welfare, for open spaces, drainage ways, streets, alleys, other public ways, water supplies, sanitary wastes, parks, playgrounds, sites for schools and schoolgrounds, and shall consider all other relevant facts, including sidewalks and other planning features that assure safe walking conditions for students who walk to and from school, and determine whether the public interest will be served by the subdivision and dedication. If it finds that the proposed plat makes appropriate provisions for the public health, safety, and general welfare and for such open spaces, drainage ways, streets, alleys, other public ways, water supplies, sanitary wastes, parks, playgrounds, sites for schools and schoolgrounds and all other relevant facts, including sidewalks and other planning features that assure safe walking conditions for students who walk to and from school, and that the public use and interest will be served by the platting of such subdivision, then it shall be approved. If it finds that the proposed plat does not make such appropriate provisions or that the public use and interest will not be served, then the legislative body may disapprove the proposed plat. Dedication of land to any public body, may be required as a condition of subdivision approval and shall be clearly shown on the final plat. The legislative body shall not as a condition to the approval of any plat require a release from damages to be procured from other property owners. [1989 c 330 § 3; 1974 ex.s. c 134 § 5; 1969 ex.s. c 271 § 11.]

58.17.120 Disapproval due to flood, inundation or swamp conditions—Improvements—Approval conditions. The city, town, or county legislative body shall consider the physical characteristics of a proposed subdivision site and may disapprove a proposed plat because of flood, inundation, or swamp conditions. Construction of protective improvements may be required as a condition of approval, and such improvements shall be noted on the final plat.

No plat shall be approved by any city, town, or county legislative authority covering any land situated in a flood control zone as provided in chapter 86.16 RCW without the prior written approval of the department of ecology of the state of Washington. [1974 ex.s. c 134 § 6; 1969 ex.s. c 271 § 12.]

58.17.130 Bond in lieu of actual construction of improvements prior to approval of final plat—Bond or security to assure successful operation of improvements. Local regulations shall provide that in lieu of the completion of the actual construction of any required improvements prior to the approval of a final plat, the city, town, or county legislative body may accept a bond, in an amount and with surety and conditions satisfactory to it, or other secure method, providing for and securing to the municipality the actual construction and installation of such improvements within a period specified by the city, town, or county legislative body and expressed in the bonds. In addition, local regulations may provide for methods of security, including the posting of a bond securing to the municipality the successful operation of improvements for an appropriate period of time up to two years after final approval. The municipality is hereby granted the power to enforce bonds authorized under this section by all appropriate legal and equitable remedies. Such local regulations may provide that the improvements such as structures, sewers, and water systems shall be designed and certified by or under the supervision of a registered civil engineer prior to the acceptance of such improvements. [1974 ex.s. c 134 § 7; 1969 ex.s. c 271 § 13.]

58.17.140 Time limitation for approval or disapproval of plats—Extensions. Preliminary plats of any proposed subdivision and dedication shall be approved, disapproved, or returned to the applicant for modification or correction within ninety days from date of filing thereof unless the applicant consents to an extension of such time period or the ninety day limitation is extended to include up to twenty-one days as specified under RCW 58.17.095(3): *Provided*, That if an environmental impact statement is required as provided in RCW 43.21C.030, the ninety day period shall not include the time spent preparing and circulating the environmental impact statement by the local government agency. Final plats and short plats shall be approved, disapproved, or returned to the applicant within thirty days from the date of filing thereof, unless the applicant consents to an extension of such time period. A final plat meeting all requirements of this chapter shall be submitted to the legislative body of the city, town, or county for approval

within three years of the date of preliminary plat approval: *Provided*, That this three-year time period shall retroactively apply to any preliminary plat pending before a city, town, or county as of July 24, 1983, where the authority to proceed with the filing of a final plat has not lapsed under an applicable city, town, or county ordinance containing a shorter time period that was in effect when the preliminary plat was approved. An applicant who files a written request with the legislative body of the city, town, or county at least thirty days before the expiration of this three-year period shall be granted one one-year extension upon a showing that the applicant has attempted in good faith to submit the final plat within the three-year period. Nothing contained in this section shall act to prevent any city, town, or county from adopting by ordinance procedures which would allow other extensions of time that may or may not contain additional or altered conditions and requirements. [1986 c 233 § 2; 1983 c 121 § 3; 1981 c 293 § 7; 1974 ex.s. c 134 § 8; 1969 ex.s. c 271 § 14.]

Applicability—1986 c 233: See note following RCW 58.17.095.

Severability—1981 c 293: See note following RCW 58.17.010.

58.17.150 Recommendations of certain agencies to accompany plats submitted for final approval. Each preliminary plat submitted for final approval of the legislative body shall be accompanied by the following agencies' recommendations for approval or disapproval:

(1) Local health department or other agency furnishing sewage disposal and supplying water as to the adequacy of the proposed means of sewage disposal and water supply;

(2) Local planning agency or commission, charged with the responsibility of reviewing plats and subdivisions, as to compliance with all terms of the preliminary approval of the proposed plat subdivision or dedication;

(3) City, town or county engineer.

Except as provided in RCW 58.17.140, an agency or person issuing a recommendation for subsequent approval under subsections (1) and (3) of this section shall not modify the terms of its recommendations without the consent of the applicant. [1983 c 121 § 4; 1981 c 293 § 8; 1969 ex.s. c 271 § 15.]

Severability—1981 c 293: See note following RCW 58.17.010.

58.17.155 Short subdivision adjacent to state highway—Notice to department of transportation. Whenever a city, town, or county receives an application for the approval of a short plat of a short subdivision that is located adjacent to the right of way of a state highway, the responsible administrator shall give written notice of the application, including a legal description of the short subdivision and a location map, to the department of transportation. The department shall, within fourteen days after receiving the notice, submit to the responsible administrator who furnished the notice a statement with any information that the department deems to be relevant about the effect of the proposed short subdivision upon the legal access to the state highway, the traffic carrying capacity of the state highway and the safety of the users of the state highway. [1984 c 47 § 1.]

58.17.160 Requirements for each plat or replat filed for record. Each and every plat, or replat, of any property filed for record shall:

(1) Contain a statement of approval from the city, town or county licensed road engineer or by a licensed engineer acting on behalf of the city, town or county as to the layout of streets, alleys and other rights of way, design of bridges, sewage and water systems, and other structures;

(2) Be accompanied by a complete survey of the section or sections in which the plat or replat is located made to surveying standards adopted by the division of engineering services of the department of natural resources pursuant to RCW 58.24.040.

(3) Be acknowledged by the person filing the plat before the auditor of the county in which the land is located, or any other officer who is authorized by law to take acknowledgment of deeds, and a certificate of said acknowledgment shall be enclosed or annexed to such plat and recorded therewith.

(4) Contain a certification from the proper officer or officers in charge of tax collections that all taxes and delinquent assessments for which the property may be liable as of the date of certification have been duly paid, satisfied or discharged.

No engineer who is connected in any way with the subdividing and platting of the land for which subdivision approval is sought, shall examine and approve such plats on behalf of any city, town or county. [1985 c 99 § 1; 1969 ex.s. c 271 § 16.]

58.17.165 Certificate giving description and statement of owners must accompany final plat—Dedication, certificate requirements if plat contains—Waiver. Every final plat or short plat of a subdivision or short subdivision filed for record must contain a certificate giving a full and correct description of the lands divided as they appear on the plat or short plat, including a statement that the subdivision or short subdivision has been made with the free consent and in accordance with the desires of the owner or owners.

If the plat or short plat is subject to a dedication, the certificate or a separate written instrument shall contain the dedication of all streets and other areas to the public, and individual or individuals, religious society or societies or to any corporation, public or private as shown on the plat or short plat and a waiver of all claims for damages against any governmental authority which may be occasioned to the adjacent land by the established construction, drainage and maintenance of said road. Said certificate or instrument of dedication shall be signed and acknowledged before a notary public by all parties having any ownership interest in the lands subdivided and recorded as part of the final plat.

Every plat and short plat containing a dedication filed for record must be accompanied by a title report confirming that the title of the lands as described and shown on said plat is in the name of the owners signing the certificate or instrument of dedication.

An offer of dedication may include a waiver of right of direct access to any street from any property, and if

the dedication is accepted, any such waiver is effective. Such waiver may be required by local authorities as a condition of approval. Roads not dedicated to the public must be clearly marked on the face of the plat. Any dedication, donation or grant as shown on the face of the plat shall be considered to all intents and purposes, as a quitclaim deed to the said donee or donees, grantee or grantees for his, her or their use for the purpose intended by the donors or grantors as aforesaid. [1981 c 293 § 9; 1969 ex.s. c 271 § 30.]

Severability—1981 c 293: See note following RCW 58.17.010.

58.17.170 Written approval of subdivision—Original of final plat to be filed—Copies. When the legislative body of the city, town or county finds that the subdivision proposed for final plat approval conforms to all terms of the preliminary plat approval, and that said subdivision meets the requirements of this chapter, other applicable state laws, and any local ordinances adopted under this chapter which were in effect at the time of preliminary plat approval, it shall suitably inscribe and execute its written approval on the face of the plat. The original of said final plat shall be filed for record with the county auditor. One reproducible copy shall be furnished to the city, town or county engineer. One paper copy shall be filed with the county assessor. Paper copies shall be provided to such other agencies as may be required by ordinance. Any lots in a final plat filed for record shall be a valid land use notwithstanding any change in zoning laws for a period of five years from the date of filing. A subdivision shall be governed by the terms of approval of the final plat, and the statutes, ordinances, and regulations in effect at the time of approval under RCW 58.17.150 (1) and (3) for a period of five years after final plat approval unless the legislative body finds that a change in conditions creates a serious threat to the public health or safety in the subdivision. [1981 c 293 § 10; 1969 ex.s. c 271 § 17.]

Severability—1981 c 293: See note following RCW 58.17.010.

58.17.180 Review of decision. Any decision approving or disapproving any plat shall be reviewable for unlawful, arbitrary, capricious or corrupt action or nonaction by writ of review before the superior court of the county in which such matter is pending. Standing to bring the action is limited to the following parties:

(1) The applicant or owner of the property on which the subdivision is proposed;

(2) Any property owner entitled to special notice under RCW 58.17.090;

(3) Any property owner who deems himself aggrieved thereby and who will suffer direct and substantial impacts from the proposed subdivision.

Application for a writ of review shall be made to the court within thirty days from any decision so to be reviewed. The cost of transcription of all records ordered certified by the court for such review shall be borne by the appellant. [1983 c 121 § 5; 1969 ex.s. c 271 § 18.]

58.17.190 Approval of plat required before filing—Procedure when unapproved plat filed. The county auditor shall refuse to accept any plat for filing until approval of the plat has been given by the appropriate legislative body. Should a plat or dedication be filed without such approval, the prosecuting attorney of the county in which the plat is filed shall apply for a writ of mandate in the name of and on behalf of the legislative body required to approve same, directing the auditor and assessor to remove from their files or records the unapproved plat, or dedication of record. [1969 ex.s. c 271 § 19.]

58.17.195 Approval of plat or short plat—Written finding of conformity with applicable land use controls. No plat or short plat may be approved unless the city, town, or county makes a formal written finding of fact that the proposed subdivision or proposed short subdivision is in conformity with any applicable zoning ordinance or other land use controls which may exist. [1981 c 293 § 14.]

Severability—1981 c 293: See note following RCW 58.17.010.

58.17.200 Injunctive action to restrain subdivision, sale, transfer of land where final plat not filed. Whenever any parcel of land is divided into five or more lots, tracts, or parcels of land and any person, firm or corporation or any agent of any of them sells or transfers, or offers or advertises for sale or transfer, any such lot, tract, or parcel without having a final plat of such subdivision filed for record, the prosecuting attorney shall commence an action to restrain and enjoin further subdivisions or sales, or transfers, or offers of sale or transfer and compel compliance with all provisions of this chapter. The costs of such action shall be taxed against the person, firm, corporation or agent selling or transferring the property. [1969 ex.s. c 271 § 20.]

58.17.205 Agreements to transfer land conditioned on final plat approval—Authorized. If performance of an offer or agreement to sell, lease, or otherwise transfer a lot, tract, or parcel of land following preliminary plat approval is expressly conditioned on the recording of the final plat containing the lot, tract, or parcel under this chapter, the offer or agreement is not subject to RCW 58.17.200 or 58.17.300 and does not violate any provision of this chapter. All payments on account of an offer or agreement conditioned as provided in this section shall be deposited in an escrow or other regulated trust account and no disbursement to sellers shall be permitted until the final plat is recorded. [1981 c 293 § 12.]

Severability—1981 c 293: See note following RCW 58.17.010.

58.17.210 Building, septic tank or other development permits not to be issued for land divided in violation of chapter or regulations—Exceptions—Damages—Rescission by purchaser. No building permit, septic tank permit, or other development permit, shall be issued for any lot, tract, or parcel of land divided in violation of this chapter or local regulations adopted pursuant thereto unless the authority authorized to issue such

permit finds that the public interest will not be adversely affected thereby. The prohibition contained in this section shall not apply to an innocent purchaser for value without actual notice. All purchasers' or transferees' property shall comply with provisions of this chapter and each purchaser or transferee may recover his damages from any person, firm, corporation, or agent selling or transferring land in violation of this chapter or local regulations adopted pursuant thereto, including any amount reasonably spent as a result of inability to obtain any development permit and spent to conform to the requirements of this chapter as well as cost of investigation, suit, and reasonable attorneys' fees occasioned thereby. Such purchaser or transferee may as an alternative to conforming his property to these requirements, rescind the sale or transfer and recover costs of investigation, suit, and reasonable attorneys' fees occasioned thereby. [1974 ex.s. c 134 § 10; 1969 ex.s. c 271 § 21.]

58.17.212 Vacation of subdivision—Procedure. Whenever any person is interested in the vacation of any subdivision or portion thereof, or any area designated or dedicated for public use, that person shall file an application for vacation with the legislative authority of the city, town, or county in which the subdivision is located. The application shall set forth the reasons for vacation and shall contain signatures of all parties having an ownership interest in that portion of the subdivision subject to vacation. If the subdivision is subject to restrictive covenants which were filed at the time of the approval of the subdivision, and the application for vacation would result in the violation of a covenant, the application shall contain an agreement signed by all parties subject to the covenants providing that the parties agree to terminate or alter the relevant covenants to accomplish the purpose of the vacation of the subdivision or portion thereof.

When the vacation application is specifically for a county road or city or town street, the procedures for road vacation or street vacation in chapter 36.87 or 35.79 RCW shall be utilized for the road or street vacation. When the application is for the vacation of the plat together with the roads and/or streets, the procedure for vacation in this section shall be used, but vacations of streets may not be made that are prohibited under *RCW 35.79.030, and vacations of roads may not be made that are prohibited under RCW 36.87.130.

The legislative authority of the city, town, or county shall give notice as provided in RCW 58.17.080 and 58.17.090 and shall conduct a public hearing on the application for a vacation and may approve or deny the application for vacation of the subdivision after determining the public use and interest to be served by the vacation of the subdivision. If any portion of the land contained in the subdivision was dedicated to the public for public use or benefit, such land, if not deeded to the city, town, or county, shall be deeded to the city, town, or county unless the legislative authority shall set forth findings that the public use would not be served in retaining title to those lands.

Title to the vacated property shall vest with the rightful owner as shown in the county records. If the vacated

land is land that was dedicated to the public, for public use other than a road or street, and the legislative authority has found that retaining title to the land is not in the public interest, title thereto shall vest with the person or persons owning the property on each side thereof, as determined by the legislative authority. When the road or street that is to be vacated was contained wholly within the subdivision and is part of the boundary of the subdivision, title to the vacated road or street shall vest with the owner or owners of property contained within the vacated subdivision.

This section shall not be construed as applying to the vacation of any plat of state-granted tide or shore lands. [1987 c 354 § 3.]

***Reviser's note:** After amendment by 1987 c 228 § 1, RCW 35.79-.030 no longer prohibited vacations of streets. Limitations on vacations of streets abutting bodies of water are now found in RCW 35.79.035.

58.17.215 Alteration of subdivision—Procedure. When any person is interested in the alteration of any subdivision or the altering of any portion thereof, except as provided in RCW 58.17.040(6), that person shall submit an application to request the alteration to the legislative authority of the city, town, or county where the subdivision is located. The application shall contain the signatures of the majority of those persons having an ownership interest of lots, tracts, parcels, sites, or divisions in the subject subdivision or portion to be altered. If the subdivision is subject to restrictive covenants which were filed at the time of the approval of the subdivision, and the application for alteration would result in the violation of a covenant, the application shall contain an agreement signed by all parties subject to the covenants providing that the parties agree to terminate or alter the relevant covenants to accomplish the purpose of the alteration of the subdivision or portion thereof.

Upon receipt of an application for alteration, the legislative body shall provide notice of the application to all owners of property within the subdivision, and as provided for in RCW 58.17.080 and 58.17.090. The notice shall either establish a date for a public hearing or provide that a hearing may be requested by a person receiving notice within fourteen days of receipt of the notice.

The legislative body shall determine the public use and interest in the proposed alteration and may deny or approve the application for alteration. If any land within the alteration is part of an assessment district, any outstanding assessments shall be equitably divided and levied against the remaining lots, parcels, or tracts, or be levied equitably on the lots resulting from the alteration. If any land within the alteration contains a dedication to the general use of persons residing within the subdivision, such land may be altered and divided equitably between the adjacent properties.

After approval of the alteration, the legislative body shall order the applicant to produce a revised drawing of the approved alteration of the final plat or short plat, which after signature of the legislative authority, shall be filed with the county auditor to become the lawful plat of the property.

This section shall not be construed as applying to the alteration or replatting of any plat of state-granted tide or shore lands. [1987 c 354 § 4.]

58.17.217 Alteration or vacation of subdivision—Conduct of hearing. Any hearing required by RCW 58.17.212, 58.17.215, or 58.17.060 may be administered by a hearings examiner as provided in RCW 58.17.330. [1987 c 354 § 7.]

58.17.220 Violation of court order or injunction—Penalty. Any person who violates any court order or injunction issued pursuant to this chapter shall be subject to a fine of not more than five thousand dollars or imprisonment for not more than ninety days or both. [1969 ex.s. c 271 § 22.]

58.17.230 Assurance of discontinuance of violations. In the enforcement of this chapter, the prosecuting attorney may accept an assurance of discontinuance of any act or practice deemed in violation of this chapter from any person engaging in, or who has engaged in such act or practice. Any such assurance shall be in writing and be filed with and subject to the approval of the superior court of the county in which the alleged violation occurs. A violation of such assurance shall constitute prima facie proof of a violation of this chapter. [1969 ex.s. c 271 § 23.]

58.17.240 Permanent control monuments. Except for subdivisions excluded under the provisions of RCW 58.17.040, as now or hereafter amended, permanent control monuments shall be established at each and every controlling corner on the boundaries of the parcel of land being subdivided. The local authority shall determine the number and location of permanent control monuments within the plat, if any. [1974 ex.s. c 134 § 11; 1969 ex.s. c 271 § 24.]

58.17.250 Survey of subdivision and preparation of plat. The survey of the proposed subdivision and preparation of the plat shall be made by or under the supervision of a registered land surveyor who shall certify on the plat that it is a true and correct representation of the lands actually surveyed. [1969 ex.s. c 271 § 26.]

58.17.255 Survey discrepancy—Disclosure. Whenever a survey of a proposed subdivision or short subdivision reveals a discrepancy, the discrepancy shall be noted on the face of the final plat or short plat. Any discrepancy shall be disclosed in a title report prepared by a title insurer and issued after the filing of the final plat or short plat. As used in this section, "discrepancy" means: (1) A boundary hiatus; (2) an overlapping boundary; or (3) a physical appurtenance, which indicates encroachment, lines of possession, or conflict of title. [1987 c 354 § 6.]

58.17.260 Joint committee—Members—Recommendations for surveys, monumentation and plat drawings. In order that there be a degree of uniformity of survey monumentation throughout the cities, towns

and counties of the state of Washington, there is hereby created a joint committee composed of six members to be appointed as follows: The Washington state association of counties shall appoint two county road engineers; the association of Washington cities shall appoint two city engineers; the land surveyors association of Washington shall appoint one member; and the consulting engineers association of Washington shall appoint one member. The joint committee is directed to cooperate with the department of natural resources to establish recommendations pertaining to requirements of survey, monumentation and plat drawings for subdivisions and dedications throughout the state of Washington. The department of natural resources shall publish such recommendation. [1971 ex.s. c 85 § 9; 1969 ex.s. c 271 § 27.]

58.17.275 Proposals to adopt, amend, or repeal local ordinances—Advance notice. All cities, towns, and counties shall establish procedures to provide reasonable advance notice of proposals to adopt, amend, or repeal local ordinances adopted in accordance with this chapter. These procedures shall include but not be limited to advance notice to individuals or organizations which have submitted requests for notice. Reasonable fees may be charged to defray the costs of providing notice. [1981 c 293 § 13.]

Severability—1981 c 293: See note following RCW 58.17.010.

58.17.280 Naming and numbering of subdivisions, streets, lots and blocks. Any city, town or county may, by ordinance, regulate the procedure whereby subdivisions, streets, lots and blocks are named and numbered. [1969 ex.s. c 271 § 29.]

58.17.290 Copy of plat as evidence. A copy of any plat recorded in the manner provided in this chapter and certified by the county auditor of the county in which the same is recorded to be a true copy of such record and the whole thereof, shall be received in evidence in all the courts of this state, with like effect as the original. [1969 ex.s. c 271 § 31.]

58.17.300 Violations—Penalties. Any person, firm, corporation, or association or any agent of any person, firm, corporation, or association who violates any provision of this chapter or any local regulations adopted pursuant thereto relating to the sale, offer for sale, lease, or transfer of any lot, tract or parcel of land, shall be guilty of a gross misdemeanor and each sale, offer for sale, lease or transfer of each separate lot, tract, or parcel of land in violation of any provision of this chapter or any local regulation adopted pursuant thereto, shall be deemed a separate and distinct offense. [1969 ex.s. c 271 § 32.]

58.17.310 Approval of plat within irrigation district without provision for irrigation prohibited. In addition to any other requirements imposed by the provisions of this chapter, the legislative authority of any city, town, or county shall not approve a short plat or final plat, as defined in RCW 58.17.020, for any subdivision, short

subdivision, lot, tract, parcel, or site which lies in whole or in part in an irrigation district organized pursuant to chapter 87.03 RCW unless there has been provided an irrigation water right of way for each parcel of land in such district. In addition, if the subdivision, short subdivision, lot, tract, parcel, or site lies within land within the district classified as irrigable, completed irrigation water distribution facilities for such land may be required by the irrigation district by resolution, bylaw, or rule of general applicability as a condition for approval of the short plat or final plat by the legislative authority of the city, town, or county. Rights of way shall be evidenced by the respective plats submitted for final approval to the appropriate legislative authority. Compliance with the requirements of this section together with all other applicable provisions of this chapter shall be a prerequisite, within the expressed purpose of this chapter, to any sale, lease, or development of land in this state. [1986 c 39 § 1; 1985 c 160 § 1; 1973 c 150 § 2.]

58.17.320 Compliance with chapter and local regulations—Enforcement. Whenever land within a subdivision granted final approval is used in a manner or for a purpose which violates any provision of this chapter, any provision of the local subdivision regulations, or any term or condition of plat approval prescribed for the plat by the local government, then the prosecuting attorney, or the attorney general if the prosecuting attorney shall fail to act, may commence an action to restrain and enjoin such use and compel compliance with the provisions of this chapter or the local regulations, or with such terms or conditions. The costs of such action may be taxed against the violator. [1974 ex.s. c 134 § 13.]

58.17.330 Hearing examiner system—Adoption authorized—Procedures—Decisions. As an alternative to those provisions of this chapter requiring a planning commission to hear and issue recommendations for plat approval, the county or city legislative body may adopt a hearing examiner system and shall specify by ordinance the legal effect of the decisions made by the examiner. The legal effect of such decisions shall include one of the following:

- (1) The decision may be given the effect of a recommendation to the legislative body;
- (2) The decision may be given the effect of an administrative decision appealable within a specified time limit to the legislative body.

The legislative authority shall prescribe procedures to be followed by a hearing examiner.

Each final decision of a hearing examiner shall be in writing and shall include findings and conclusions, based on the record, to support the decision. Each final decision of a hearing examiner, unless a longer period is mutually agreed to by the applicant and the hearing examiner, shall be rendered within ten working days following conclusion of all testimony and hearings. [1977 ex.s. c 213 § 4.]

Severability—1977 ex.s. c 213: See note following RCW 35.63.130.

58.17.900 Validation of existing ordinances and resolutions. All ordinances and resolutions enacted at a time prior to the passage of this chapter by the legislative bodies of cities, towns, and counties and which are in substantial compliance with the provisions of this chapter, shall be construed as valid and may be further amended to include new provisions and standards as are authorized in general law. [1969 ex.s. c 271 § 33.]

58.17.910 Severability—1969 ex.s. c 271. If any provision of this chapter, or its application to any person or circumstance is held invalid, the remainder of this chapter, or the application of the provision to other persons or circumstances is not affected. [1969 ex.s. c 271 § 35.]

58.17.920 Effective date and application of 1974 ex.s. c 134. (1) The provisions of *this 1974 amendatory act shall become effective July 1, 1974.

(2) The provisions of *this 1974 amendatory act shall not apply to any plat which has been granted preliminary approval prior to July 1, 1974, but shall apply to any proposed plat granted preliminary approval on or after July 1, 1974. [1974 ex.s. c 134 § 14.]

***Reviser's note:** For codification of "this 1974 amendatory act" [1974 ex.s. c 134], see Codification Tables, Volume 0.

**Chapter 58.18
ASSESSOR'S PLATS**

Sections
58.18.010 Assessor's plat—Requisites, filing, index, etc.—When official plat.

58.18.010 Assessor's plat—Requisites, filing, index, etc.—When official plat. In any county where an assessor has and maintains an adequate set of maps drawn from surveys at a scale of not less than two hundred feet to the inch, the assessor may with the permission of the county commissioners, file an assessor's plat of the area, which when filed shall become the official plat for all legal purposes, provided:

(1) The plat is filed in the offices of the county auditor and the county assessor, together with a list of the existing legal descriptions and a list of the new legal descriptions as assigned by the county assessor;

(2) The recorded plat is drawn in such a manner that a ready reference can be made to the legal description in existence prior to the time of the filing of the assessor's plat and in conformance with existing statutes;

(3) The first year the tax roll and tax statement shall contain the prior legal description and the new legal description as assigned and shown on the assessor's plat with a notation that this legal description shall be used for all purposes;

(4) The county assessor shall maintain an index for reference to the prior and the existing legal descriptions of the parcels contained in the assessor's plats;

(5) Each dedicated plat after June 7, 1961, shall be submitted to the county assessor of the county wherein

the plat is located, for the sole purpose of assignment of parcel, tract, block and or lot numbers and the county auditor shall not accept any such plat for filing unless the said plat carries a signed affidavit from the assessor to this effect, and a statement to the effect that the name of the plat shall be number ----- in the county of ----- [1961 c 262 § 1.]

**Chapter 58.19
LAND DEVELOPMENT ACT**

Sections
58.19.010 Purpose.
58.19.020 Definitions.
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58.19.010 Purpose. The legislature finds and declares that the sale and offering for sale of land or of interests in associations which provide for the use or occupancy of land touches and affects a great number of

the citizens of this state and that full and complete disclosure to prospective purchasers of pertinent information concerning land developments, including any encumbrances or liens which might attach to the land and the physical characteristics of the development as well as the surrounding land, is essential. The legislature further finds and declares that a program of state registration and of publication and delivery to prospective purchasers of a complete and accurate public offering statement is necessary in order to adequately protect both the economic and physical welfare of the citizens of this state. It is the purpose of this chapter to provide for a reasonable program of state registration and regulation of the sale and offering for sale of any interest in significant land developments within or without the state of Washington, so that the prospective purchasers of such interests might be provided with full, complete, and accurate information of all pertinent circumstances affecting their purchase. [1973 1st ex.s. c 12 § 1.]

58.19.020 Definitions. When used in this chapter, unless the context otherwise requires:

(1) "Blanket encumbrance" shall mean a trust deed, mortgage, mechanic's lien, or any other lien or encumbrance, securing or evidencing the payment of money and affecting the land to be developed or affecting more than one lot or parcel of developed land, or an agreement affecting more than one such lot or parcel by which the developer holds said development under option, contract, sale, or trust agreement. The term shall not include taxes and assessments levied by a public authority.

(2) "Director" means the director of licensing or his authorized designee.

(3) "Developer" means any owner of a development who offers it for disposition, or the principal agent of an inactive owner.

(4) "Development" or "developed lands" means land which is divided or is proposed to be divided for the purpose of disposition into ten or more lots, parcels, or units (excluding interests in *camping clubs regulated under chapter 19.105 RCW) and any other land whether contiguous or not, if ten or more lots, parcels, units, or interests are offered as a part of a common promotional plan of advertising and sale.

(5) "Disposition" includes any sale, lease, assignment, or exchange of any interest in any real property which is a part of or included within a development, and also includes the offering of property as a prize or gift when a monetary charge or consideration for whatever purpose is required in conjunction therewith, and any other transaction concerning a development if undertaken for gain or profit.

(6) "Offer" includes every inducement, solicitation, or media advertisement which has as a principal aim to encourage a person to acquire an interest in land.

(7) "Hazard" means all existing or proposed unusual conditions relating to the location of the development, noise, safety, or other nuisance which affect or might affect the development.

(8) "Person" means an individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership, unincorporated association, two or more of any of the foregoing having a joint or common interest, or any other legal or commercial entity.

(9) "Purchaser" means a person who acquires or attempts to acquire or succeeds to any interest in land.

(10) "Residential buildings" shall mean premises that are actually intended or used as permanent residences of the purchasers and that are not devoted exclusively to any other purpose. [1979 c 158 § 208; 1973 1st ex.s. c 12 § 2.]

*Reviser's note: The term "camping clubs" was changed to "camping resorts" by 1988 c 159.

58.19.030 Exemptions from chapter. (1) Unless the method of disposition is adopted for the purpose of evasion of this chapter, the provisions of this chapter shall not apply to land and offers or dispositions:

(a) By a purchaser of developed lands for his own account in a single or isolated transaction;

(b) If fewer than ten separate lots, parcels, units, or interests in developed lands are offered by a person in a period of twelve months;

(c) If each lot offered in the development is five acres or more;

(d) On which there is a residential, commercial, or industrial building, or as to which there is a legal obligation on the part of the seller to construct such a building within two years from date of disposition;

(e) To any person who acquires such lot, parcel, unit or interest therein for the purpose of engaging in the business of constructing residential, commercial, or industrial buildings or for the purpose of resale or lease or other disposition of such lots to persons engaged in such business or businesses;

(f) Any lot, parcel, unit or interest if the development is located within an area incorporated prior to January 1, 1974;

(g) Pursuant to court order; or

(h) As cemetery lots or interests.

(2) Unless the method of disposition is adopted for the purpose of evasion of this chapter, the provisions of this chapter shall not apply to:

(a) Offers or dispositions of evidence of indebtedness secured by a mortgage or deed of trust of real estate;

(b) Offers or dispositions of securities or units of interest issued by a real estate investment trust regulated under any state or federal statute;

(c) A development as to which the director has waived the provisions of this chapter as provided in RCW 58.19.040;

(d) Offers or dispositions of securities currently registered with the business and professions administration in the department of licensing;

(e) Offers or dispositions of any interest in oil, gas, or other minerals or any royalty interest therein if the offers or dispositions of such interests are regulated as securities by the United States or by the business and

professions administration in the department of licensing. [1979 c 158 § 209; 1973 1st ex.s. c 12 § 3.]

58.19.040 Waiver. The director may waive the provisions of this chapter for a development of twenty-five or fewer lots, parcels, units, or interests if he determines that the plan of promotion and disposition is primarily directed to persons in the local community in which the development is situated. [1973 1st ex.s. c 12 § 4.]

58.19.050 Registration required—Revocation of purchase contract. Unless the development or the transaction is exempt by RCW 58.19.030:

(1) No person may offer or dispose of any interest in a development located in this state, nor offer or dispose of in this state any interest in a development located without this state prior to the time the development is registered in accordance with this chapter.

(2) Any contract or agreement for the purchase of an interest in a development, where the current public offering statement has not been given to the purchaser in advance or at the time of his signing, shall be voidable at the option of the purchaser. A purchaser may revoke such contract or agreement within forty-eight hours, where he has received the public offering statement less than forty-eight hours before he signed the contract or agreement, and the contract or agreement shall so provide. Notice of revocation shall be made by written notice delivered to the seller or his agent. The time period of forty-eight hours shall not include all or any portion of a Saturday, Sunday, or legal holiday. [1973 1st ex.s. c 12 § 5.]

58.19.060 Application for registration—Contents. An application for registration of a development shall be filed as prescribed by rules and regulations adopted by the director and shall contain the following documents and information:

(1) An irrevocable appointment of the director to receive service of any lawful process in any noncriminal proceeding arising under this chapter against the applicant or his personal representative;

(2) A legal description of the development offered for registration, together with a map showing the division proposed or made, and the dimensions of the lots, parcels, units, or interests, and the relation of the development to existing streets, roads, and other off-site improvements;

(3) The states or jurisdictions in which an application for registration or similar document has been filed, and any adverse order, judgment, or decree entered in connection with the development by the regulator authorities in each jurisdiction or by any court;

(4) The name and address of each person having an ownership interest of five percent or more in the development together with the names, principal occupations, and addresses of every officer, director, partner, or trustee of the developer;

(5) A statement of the existing provisions for access, sewage disposal, potable water, and other public utilities in the development; a statement of the improvements to

be installed, how they are going to be financed, the schedule for their completion; and a statement as to the provision for improvement maintenance. The statements required in this subsection shall include certificates from the appropriate governmental authorities certifying that the applicant has complied with all local health and planning and state and local subdivision requirements;

(6) A statement, in a form acceptable to the director, of the condition of the title to the development including easements of record, encumbrances, liens of record, blanket encumbrances, and the existence of partial release clauses, if any, as of a specified date within twenty days of the date of application, by title opinion of a title insurance company or licensed attorney, not a salaried employee, officer, or director of the applicant or owner, or by other evidence of title acceptable to the agency;

(7) Copies of the instruments which will be delivered to a purchaser to evidence his interest in the development and of the contracts and other agreements which a purchaser will be required to agree to or sign;

(8) A statement, where the development is encumbered by a blanket encumbrance which does not contain an unconditional release clause, as to which alternative condition provided for in RCW 58.19.180 the developer shall adopt;

(9) Copies of instruments creating easements, restrictions, or other encumbrances affecting the development;

(10) A statement of the zoning and other governmental regulations affecting the use of the development and also of any existing or proposed special taxes or assessments which affect the development;

(11) A narrative description of the promotional plan for the disposition of the development, together with copies of all advertising material which has been prepared for public distribution by any means of communication;

(12) A statement of any hazard on or around the development;

(13) The proposed public offering statement;

(14) Any other information, including any current financial statement, which the director by its rules and regulations requires for the protection of purchasers. [1973 1st ex.s. c 12 § 6.]

58.19.070 Public offering statement—Contents. The proposed public offering statement, required to be submitted as part of the application for registration, shall be on a form prescribed by rules and regulations adopted by the director and shall include the following:

(1) The name and principal address of the developer;

(2) A general description of the development stating the total number of lots, parcels, units, or interests in the offering;

(3) The significant terms of any encumbrances, easements, liens, and restrictions, including zoning and other regulations affecting the development and each unit or lot, and a statement of all existing taxes and existing or proposed special taxes or assessments which affect the development;

(4) A statement of the use for which the property is offered;

(5) Information concerning improvements, including streets, potable water supply, levees, drainage control systems, irrigation systems, sewage disposal facilities, customary utilities, and recreational facilities, and the estimated cost, means of financing, date of completion, and responsibility for construction and maintenance of existing and proposed improvements which are referred to in connection with the offering or disposition of any interest in a development;

(6) A statement of any hazard on or around the development;

(7) Additional information required by the director to assure full and fair disclosure to prospective purchasers. [1973 1st ex.s. c 12 § 7.]

58.19.080 Requirements enumerated—Examination. Upon receipt of an application for registration in proper form, the director shall immediately initiate an examination to determine that the following requirements are satisfied:

(1) The developer can convey or cause to be conveyed the interest in a development offered for disposition if the purchaser complies with the terms of the offer, and when appropriate, that release clauses, conveyances in trust, or other safeguards have been provided;

(2) The developer has complied with all local health and planning, and state and local subdivision requirements;

(3) The advertising material and the general promotional plan are not false, misleading, or deceptive, afford full and fair disclosure, and comply with the standards prescribed by the director in its rules and regulations;

(4) The developer has not, or if a corporation, its officers, directors, and principals have not, been convicted of a crime involving land dispositions or any aspect of the land sales business in this state, the United States, or any other state or foreign country within the past ten years and has or have not been subject to any injunction or administrative order or judgment entered under the provisions of RCW 19.86.080 or 19.86.090 involving a violation or violations of the provisions of RCW 19.86.020 within the past ten years restraining a false or misleading promotional plan involving land dispositions;

(5) The public offering statement requirements of this chapter have been satisfied. [1973 1st ex.s. c 12 § 8.]

58.19.090 Registration or rejection—Order—Procedure. (1) Upon receipt of the application for registration in proper form, the director shall issue a notice of filing to the applicant. Within thirty days from the date of notice of filing for an in-state development or sixty days for an out-of-state development, the director shall enter an order registering the development or rejecting the registration. If no order of rejection is entered within thirty days from the date of notice of filing for an in-state development or sixty days for an out-of-state development, the land shall be deemed registered unless the applicant has consented in writing to a delay.

(2) If the director affirmatively determines, upon inquiry and examination that the requirements of RCW

58.19.080 have been met, he shall enter an order registering the development and shall designate the form of the public offering statement.

(3) If the director determines upon inquiry and examination that any of the requirements of RCW 58.19.080 have not been met, the director shall notify the applicant that the application for registration must be corrected in the deficiencies specified. If the requirements for correction are not met, the director shall enter an order rejecting the registration which shall include the findings of fact upon which the order is based. The order rejecting the registration shall not become effective for twenty days during which time the applicant may petition for reconsideration and shall be entitled to a hearing. [1973 1st ex.s. c 12 § 9.]

58.19.100 Registration under federal act. (1) Any development registered under the Interstate Land Sales Full Disclosure Act (82 Stat. 590–599; 15 U.S.C. Sec. 1701–1720) shall, at the developer's request, be registered under this chapter if the developer:

(a) Files with the director a copy of his federal statement of record and property report and copies of all papers, documents, exhibits, and certificates he has filed with or received from the federal government in regard to his federal registration; and

(b) Complies with the provisions of RCW 58.19.180, dealing with blanket encumbrances.

Where a developer satisfies items (a) and (b) above, the federal property report for the development shall qualify and be accepted as the public offering statement under this chapter.

(2) State registration under this section shall only be valid and current so long as:

(a) The developer's federal registration is valid and current; and

(b) The director is promptly advised of any change in the developer's federal registration and is promptly provided with copies of all papers, documents, exhibits and certificates relating to the development which the developer has filed with or received from the federal government subsequent to the date on which his federal registration was granted.

(3) Except as provided otherwise in this subsection, the provisions of this chapter shall apply to developments registered under this section. RCW 58.19.060 through 58.19.090 and 58.19.110 through 58.19.130 shall not apply to developments having a valid and current registration under this section. [1973 1st ex.s. c 12 § 10.]

58.19.110 Consolidation of registrations. If the developer registers an additional development to be offered for disposition, he may consolidate the subsequent registration with any earlier registration offering a development for disposition under the same promotional plan. [1973 1st ex.s. c 12 § 11.]

58.19.120 Report of changes required—Amendments. The developer shall immediately report to the director any material changes in the information contained

in his application for registration. No change in the substance of the promotional plan or plan of disposition or completion of the development may be made after registration without notifying the director and without making appropriate amendment of the public offering statement. A public offering statement is not current unless it incorporates all amendments. [1973 1st ex.s. c 12 § 12.]

58.19.130 Public offering statement form—Type and style restriction. No portion of the public offering statement form may be underscored, italicized, or printed in larger or heavier or different color type than the remainder of the statement unless the director so requires. [1973 1st ex.s. c 12 § 13.]

58.19.140 Public offering statement—Promotional use, distribution restriction—Holding out that state or employees, etc., approve development prohibited. The public offering statement shall not be used for any promotional purposes. It may not be distributed to prospective purchasers before registration of the development and may be distributed afterwards only when it is used in its entirety. No person may advertise or represent that the state of Washington or the director, the department, or any employee thereof approves or recommends the development or disposition thereof. [1973 1st ex.s. c 12 § 14.]

58.19.150 Public offering statement—False, misleading or deceptive—Suspension—Procedure. (1) If it appears to the director at any time that a public offering statement currently in effect includes any statement that is false, misleading, or deceptive, the director may, after notice and after opportunity for hearing (at a time fixed by the director) within fifteen days after such notice, issue an order suspending the public offering statement. When such statement has been amended in accordance with such order, the director shall so declare and thereupon the order of suspension shall cease to be effective.

(2) The director is hereby empowered to make an examination in any case to determine whether an order should issue under subsection (1) of this section. In making such examination, the director or anyone designated by the director shall have access to, and may demand the production of any books and papers of, and may administer oaths and affirmations to, and may examine, the developer, any agents, or any other person, in respect to any matter relevant to the examination. If the developer or any agents shall fail to cooperate, or shall obstruct or refuse to permit the making of an examination, such conduct shall be proper ground for the issuance of an order suspending the developer's public offering statement. [1973 1st ex.s. c 12 § 15.]

58.19.160 Public offering statement—Copies available to public. A copy of the public offering statement issued on land within a development covered by this chapter shall be given by the director, upon oral or

written request, to any member of the public. [1973 1st ex.s. c 12 § 16.]

58.19.170 Public offering statement—Copies to be given prospective purchasers. A copy of the public offering statement issued on land within a development covered by this chapter shall be given by the developer or his agents or salesmen, upon oral or written request, to every adult or head of a family who visits the site of a development as a prospective purchaser. [1973 1st ex.s. c 12 § 17.]

58.19.180 Unlawful to sell lots or parcels subject to blanket encumbrance which does not provide purchaser can obtain clear title—Alternatives. It shall be unlawful for the developer to make a sale of lots or parcels within a development which is subject to a blanket encumbrance which does not contain, within its terms or by supplementary agreement, a provision which shall unconditionally provide that the purchaser of a lot or parcel encumbered thereby can obtain the legal title, or other interest contracted for, free and clear of the lien of such blanket encumbrance upon compliance with the terms and conditions of the purchase, unless the developer shall elect and comply with one of the following alternative conditions:

(1) The developer shall deposit in an escrow depository acceptable to the director: In cases where the blanket encumbrance does not provide for partial release, all or such portions of the money paid or advanced by the purchaser on any such lot or parcel within said development as the director shall determine to be sufficient to protect the interest of the purchaser; or in cases where the blanket encumbrance provides for partial releases thereof which are not unconditional, the developer shall deposit, at such time as the balance due to the developer from such purchasers is equal to the sum necessary to procure a release of such lots or parcels contracted for from the lien of such blanket encumbrance, all of the sums thereafter received from such purchasers until either:

(a) A proper release is obtained from such blanket encumbrance;

(b) Either the developer or the purchaser defaults under the sales contract and there is a forfeiture of the interest of the purchaser or there is a determination as to the disposition of such moneys, as the case may be; or

(c) The developer orders a return of such moneys to such purchaser.

(2) The title to the development is held in trust under an agreement of trust acceptable to the director until the proper release of such blanket encumbrance is obtained.

(3) A bond to the state of Washington or such other proof of financial responsibility is furnished to the director for the benefit and protection of purchasers of such lots or parcels in such an amount and subject to such terms, as may be approved by the director, which shall provide for the return of moneys paid or advanced by any purchaser on account of a sale of any such lot or parcel if a proper release from such blanket encumbrance is not obtained: *Provided*, That if it should be

determined that such purchaser, by reason of default, or otherwise, is not entitled to the return of such moneys or any portion thereof, such bond or other proof of financial responsibility shall be exonerated to the extent and in the amount thereof. The amount of the bond or other proof of financial responsibility may be increased or decreased or a bond may be waived from time to time as the director shall determine. [1973 1st ex.s. c 12 § 18.]

58.19.185 Requiring purchaser to pay additional sum to construct, complete or maintain development. It shall be unlawful for the developer to sell a lot or parcel within a development if the terms of the sale require that the purchaser pay any sum in addition to the purchase price for constructing, completing, or maintaining improvements to the development unless the sums are to be paid directly to:

- (1) A governmental agency;
- (2) A person who is not affiliated with the developer, in trust, and on terms acceptable to the director; or
- (3) An association comprised solely of persons who have purchased lots in the development, or their assignees.

The terms which require the payment of any additional sum shall be set forth in the public offering statement. [1977 ex.s. c 252 § 1.]

58.19.190 False advertising—Finding—Notice—Order—Hearing. No person shall publish in this state any advertisement concerning a development subject to the registration requirements of this chapter after the director finds that the advertisement contains any statements that are false, misleading, or deceptive and so notifies the person in writing. Such notification may be given summarily without notice or hearing. At any time after the issuance of a notification under this section the person desiring to use the advertisement may in writing request the order be rescinded. Upon receipt of such a written request, the matter shall be set down for hearing to commence within fourteen days after such receipt unless the person making the request consents to a later date. After such hearing, which shall be conducted in accordance with the provisions of the Administrative Procedure Act, chapter 34.05 RCW, the director shall determine whether to affirm and to continue or to rescind such order and shall have all powers granted under such act. [1973 1st ex.s. c 12 § 19.]

58.19.200 Investigations of violations—Procedure.

(1) The director may:

- (a) Make necessary public or private investigations within or outside of this state to determine whether any person has violated or is about to violate this chapter or any rule, regulation, or order hereunder, or to aid in the enforcement of this chapter or in the prescribing of rules and forms hereunder;
- (b) Require or permit any person to file a statement in writing, under oath or otherwise as the director determines, as to all facts and circumstances concerning the matter to be investigated.

(2) For the purpose of any investigation or proceeding under this chapter, the director or any officer designated by rule may administer oaths or affirmations, and upon his own motion or upon request of any party may subpoena witnesses, compel their attendance, take evidence, and require the production of any matter which is relevant to the investigation, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge or relevant facts, or any other matter reasonably calculated to lead to the discovery of material evidence.

(3) Upon failure to obey a subpoena or to answer questions propounded by the investigating officer and upon reasonable notice to all persons affected thereby, the director may apply to the superior court for an order compelling compliance.

(4) Except as otherwise provided in this chapter, all proceedings under this chapter shall be in accordance with the Administrative Procedure Act, chapter 34.05 RCW. [1973 1st ex.s. c 12 § 20.]

58.19.210 Violations—Cease and desist orders—Injunctions. (1) If the director determines after notice and hearing that a person has:

- (a) Violated any provision of this chapter;
- (b) Directly or through an agent or employee engaged in any false, deceptive, or misleading advertising, promotional, or sales methods to offer or dispose of an interest in developed lands;
- (c) Made any substantial change in the plan of disposition and completion of the development subsequent to the order of registration without obtaining prior written approval from the director;
- (d) Disposed of any interest in a development required to be registered under this chapter which has not been so registered with the director;
- (e) Violated any lawful order, rule or regulation of the director; he may issue an order requiring the person to cease and desist from the unlawful practice and to take such affirmative action as in the judgment of the director will carry out the purposes of this chapter.

(2) If the director makes a finding of fact in writing that the public interest will be irreparably harmed by delay in issuing an order, he may issue a temporary cease and desist order. Prior to issuing the temporary cease and desist order, the director whenever possible by telephone or otherwise shall give notice of the proposal to issue a temporary cease and desist order to the person. Every temporary cease and desist order shall include in its terms a provision that upon request a hearing will be held to determine whether or not the order becomes permanent.

(3) If it appears that a person has engaged or is about to engage in an act or practice constituting a violation of a provision of this chapter, or a rule or order hereunder, the director, with or without prior administrative proceedings, may bring an action in the superior court to enjoin the acts or practices and to enforce compliance

with this chapter or any rule, regulation, or order hereunder. Upon proper showing, injunctive relief or temporary restraining orders shall be granted, and a receiver or conservator may be appointed. The director shall not be required to post a bond in any court proceedings. [1973 1st ex.s. c 12 § 21.]

58.19.220 Revocation of registration—Grounds—Cease and desist order as alternative. (1) A registration may be revoked after notice and hearing upon a written finding of fact that the developer has:

(a) Failed to comply with the terms of a cease and desist order;

(b) Been convicted in any court subsequent to the filing of the application for registration for a crime involving fraud, deception, false pretense, misrepresentation, false advertising, or dishonest dealing in real estate transactions;

(c) Disposed of, concealed, or diverted any funds or assets of any person so as to defeat the rights of development purchasers;

(d) Repeatedly failed to perform any stipulation or agreement made with the director as an inducement to grant any registration, to reinstate any registration, or to approve any promotional plan or public offering statement;

(e) Made intentional misrepresentations or concealed material facts in an application for registration.

Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings.

(2) If the director finds after notice and hearing that the developer has been guilty of a violation for which revocation could be ordered, he may issue a cease and desist order instead of ordering revocation. [1973 1st ex.s. c 12 § 22.]

58.19.230 Suits by or against developer—Notice to director. In any suit by or against a developer involving his development, the developer promptly shall furnish the director notice of the suit and copies of all pleadings. This section shall not apply where the director is a party to the suit. [1973 1st ex.s. c 12 § 23.]

58.19.240 Judicial review. Proceedings for judicial review shall be in accordance with the provisions of the Administrative Procedure Act, chapter 34.05 RCW. [1973 1st ex.s. c 12 § 24.]

58.19.250 Rules and regulations. The director shall prescribe reasonable rules and regulations in order to implement this chapter and such rules and regulations shall be adopted, amended, or repealed in compliance with the Administrative Procedure Act, chapter 34.05 RCW. [1973 1st ex.s. c 12 § 25.]

58.19.260 Additional powers and duties of director. In addition to the powers granted the director under other sections of this chapter, the director may:

(1) Intervene in a suit involving a development registered under this chapter;

(2) Accept information contained in registrations filed in other states;

(3) Contract with similar agencies in this state, any other state, or with the federal government to perform investigative functions;

(4) Accept grants in aid from any source;

(5) Cooperate with similar agencies in other states and with the federal government to establish, insofar as practical, uniform filing procedures and forms, uniform public offering statements, advertising standards and rules, and common administrative practices. [1973 1st ex.s. c 12 § 26.]

58.19.270 Violations deemed unfair practice subject to chapter 19.86 RCW. (1) The commission by any person of an act or practice prohibited by this chapter is hereby declared to be an unfair act or practice or unfair method of competition in the conduct of trade or commerce for the purpose of the application of the Consumer Protection Act, chapter 19.86 RCW, as now or hereafter amended.

(2) The director may refer such evidence as may be available to him concerning violations of this chapter or of any rule or regulation adopted hereunder to the attorney general or the prosecuting attorney of the county wherein the alleged violation arose, who may, in their discretion, with or without such a reference, in addition to any other action they might commence, bring an action in the name of the state against any person to restrain and prevent the doing of any act or practice prohibited by this chapter: *Provided*, That this chapter shall be considered in conjunction with chapters 9.04 and 19.86 RCW, as now or hereafter amended, and the powers and duties of the attorney general and the prosecuting attorney as they may appear in the aforementioned chapters, shall apply against all persons subject to this chapter. [1973 1st ex.s. c 12 § 27.]

58.19.280 Jurisdiction of superior courts. Dispositions of an interest in a development are subject to this chapter, and the superior courts of this state have jurisdiction in claims or causes of action arising under this chapter, if:

(1) The interest in a development offered for disposition is located in this state;

(2) The developer maintains an office in this state; or

(3) Any offer or disposition of an interest in a development is made in this state, whether or not the offeror or offeree is then present in this state, if the offer originates within this state or is directed by the offeror to a person or place in this state and received by the person or at the place to which it is directed. [1973 1st ex.s. c 12 § 28.]

58.19.290 Application fees. The fees for applications required under this chapter shall be as prescribed under this section.

(1) Except as provided in subsection (3) of this section, the fee which shall accompany each application for registration shall be computed according to the number

of units (meaning lots, parcels, or interests) in the development as provided in the following schedule:

1-50.....	\$ 250
51-100.....	300
101-150.....	350
151-200.....	400
201-250.....	450
251-300.....	500
301-350.....	550
351-400.....	600
401-450.....	650
451-500.....	700
501-550.....	750
551-600.....	800
601-650.....	850
651-700.....	900
701-750.....	950
751-800.....	1,000
801-850.....	1,025
851-900.....	1,050
901-950.....	1,075
951-1,000.....	1,100
1,001-1,050.....	1,125
1,051-1,100.....	1,150
1,101-1,150.....	1,175
1,151-1,200.....	1,200
1,201-1,250.....	1,225
1,251-1,300.....	1,250
1,301-1,350.....	1,275
1,351-1,400.....	1,300
1,401-1,450.....	1,325
1,451-1,500.....	1,350
1,501-1,550.....	1,375
1,551-1,600.....	1,400
1,601-1,650.....	1,425
1,651-1,700.....	1,450
1,701-1,750.....	1,475
1,751-or more.....	1,500

(2) The fee which shall accompany each application for a waiver of the provisions of this chapter shall be fifty dollars.

(3) The fee which shall accompany each application for registration of a development already registered under the federal Interstate Land Sales Full Disclosure Act (82 Stat. 590-599; 15 U.S.C. Sec. 1701-1720) shall be two hundred and fifty dollars. [1973 1st ex.s. c 12 § 29.]

58.19.300 Hazardous conditions—Notice. If, after disposition of all or any portion of a development which is covered by this chapter, a condition constituting a hazard is discovered on or around the development, the developer or government agency discovering such condition shall notify the director immediately. After receiving such notice, the director shall forthwith take all steps necessary to notify the owners of the affected lands either by transmitting notice through the appropriate county assessor's office or such other steps as might reasonably give actual notice to the owners. [1973 1st ex.s. c 12 § 30.]

58.19.900 Persons selling land on effective date—Grace period for compliance. Any person selling land or other interests in a development prior to January 1, 1974, and who intends to continue selling such land or interests, shall have until March 1, 1974, to perfect his registration under this chapter. During the period from January 1, 1974 to March 1, 1974, he may continue selling such land or other interest in the development without having procured registration under this chapter. [1973 1st ex.s. c 12 § 31.]

58.19.910 Prior developments—Exemptions. The provisions of RCW 58.19.180 shall not apply to any development where either:

(1) Each lot contained in the development is included in a final plat approved prior to January 1, 1974, pursuant to chapter 58.17 RCW or any platting and subdivision ordinance of any Washington county, city, or town; or

(2) The development is registered with the federal government pursuant to the Interstate Land Sales Full Disclosure Act (82 Stat. 590-599; 15 U.S.C. Sec. 1701-1720) and such registration was granted prior to January 1, 1974. [1973 1st ex.s. c 12 § 32.]

58.19.920 Liberal construction. The provisions of this chapter shall be construed liberally so as to give effect to the purposes stated in RCW 58.19.010. [1973 1st ex.s. c 12 § 33.]

58.19.930 Effective date—1973 1st ex.s. c 12. This chapter shall become effective January 1, 1974: *Provided*, That prior to January 1, 1974, the director is authorized and empowered to undertake and perform duties and conduct activities necessary for the implementation of this chapter upon its becoming effective. [1973 1st ex.s. c 12 § 34.]

58.19.940 Short title. This chapter may be cited as the Land Development Act of 1973. [1973 1st ex.s. c 12 § 35.]

58.19.950 Severability—1973 1st ex.s. c 12. If any provision of this 1973 act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provisions or application, and to this end the provisions of this 1973 act are severable. [1973 1st ex.s. c 12 § 36.]

**Chapter 58.20
WASHINGTON COORDINATE SYSTEM**

Sections	
58.20.010	United States plane coordinate adopted—Zones.
58.20.020	Designation of system by zones.
58.20.030	X and Y coordinates.
58.20.040	Tract in both zones, how described.
58.20.050	Zones defined.
58.20.060	Recording coordinates—Conditions.
58.20.070	Use of term limited.
58.20.080	United States survey to prevail.

58.20.090	Construction of chapter.
58.20.110	Definitions.
58.20.120	System designation—Permitted uses.
58.20.130	Plane coordinates adopted—Zones.
58.20.140	Designation of system—Zones.
58.20.150	Designation of coordinates—"N" and "E".
58.20.160	Tract in both zones—Description.
58.20.170	Zones—Technical definitions.
58.20.180	Recording coordinates—Control stations.
58.20.190	Conversion of coordinates—Metric.
58.20.200	Term—Limited use.
58.20.210	United States survey prevails—Conflict.
58.20.220	Real estate transactions—Exemption.
58.20.900	Severability—1945 c 168.
58.20.901	Severability—1989 c 54.

58.20.010 United States plane coordinate adopted—Zones. (Effective until July 1, 1990.) The system of plane coordinates which has been established by the United States coast and geodetic survey for defining and stating the positions or locations of points on the surface of the earth within the state of Washington is hereafter to be known and designated as the "Washington coordinate system of 1927".

For the purpose of the use of this system the state is divided into a "north zone" and a "south zone".

The area now included in the following counties shall constitute the north zone: Chelan, Clallam, Douglas, Ferry, Island, Jefferson, King, Kitsap, Lincoln, Okanogan, Pend Oreille, San Juan, Skagit, Snohomish, Spokane, Stevens, Whatcom, and that part of Grant lying north of parallel 47° 30' north latitude.

The area now included in the following counties shall constitute the south zone: Adams, Asotin, Benton, Clark, Columbia, Cowlitz, Franklin, Garfield, that part of Grant lying south of parallel 47° 30' north latitude, Grays Harbor, Kittitas, Klickitat, Lewis, Mason, Pacific, Pierce, Skamania, Thurston, Wahkiakum, Walla Walla, Whitman and Yakima. [1989 c 54 § 1; 1945 c 168 § 1; Rem. Supp. 1945 § 10726a.]

58.20.020 Designation of system by zones. (Effective until July 1, 1990.) As established for use in the north zone, the Washington coordinate system of 1927 shall be named, and in any land description in which it is used it shall be designated, the "Washington coordinate system of 1927, north zone".

As established for use in the south zone, the Washington coordinate system of 1927 shall be named, and in any land description in which it is used it shall be designated, the "Washington coordinate system of 1927, south zone". [1989 c 54 § 2; 1945 c 168 § 2; Rem. Supp. 1945 § 10726b.]

58.20.030 X and Y coordinates. (Effective until July 1, 1990.) The plane coordinates of a point on the earth's surface, to be used in expressing the position or location of such point in the appropriate zone of this system, shall consist of two distances, expressed in feet and decimals of a foot. One of these distances, to be known as the "x-coordinate", shall give the position in an east-and-west direction; the other, to be known as the "y-coordinate", shall give the position in a north-and-south direction. These coordinates shall be made to depend

upon and conform to the coordinates, on the Washington coordinate system of 1927, of the triangulation and traverse stations of the United States coast and geodetic survey within the state of Washington, as those coordinates have been determined by the said survey. [1989 c 54 § 3; 1945 c 168 § 3; Rem. Supp. 1945 § 10726c.]

58.20.040 Tract in both zones, how described. (Effective until July 1, 1990.) When any tract of land to be defined by a single description extends from one into the other of the above coordinate zones, the positions of all points on its boundaries may be referred to either of said zones, the zone which is used being specifically named in the description. [1945 c 168 § 4; Rem. Supp. 1945 § 10726d.]

58.20.050 Zones defined. (Effective until July 1, 1990.) For purposes of more precisely defining the Washington coordinate system of 1927, the following definition by the United States coast and geodetic survey is adopted:

The Washington coordinate system of 1927, north zone, is a Lambert conformal projection of the Clarke spheroid of 1866, having standard parallels at north latitudes 47° 30' and 48° 44', along which parallels the scale shall be exact. The origin of coordinates is at the intersection of the meridian 120° 50' west of Greenwich and the parallel 47° 00' north latitude. This origin is given the coordinates: x = 2,000,000 feet and y = 0 feet.

The Washington coordinate system of 1927, south zone, is a Lambert conformal projection of the Clarke spheroid of 1866, having standard parallels at north latitudes 45° 50' and 47° 20', along which parallels the scale shall be exact. The origin of coordinates is at the intersection of the meridian 120° 30' west of Greenwich and the parallel 45° 20' north latitude. This origin is given the coordinates: x = 2,000,000 feet and y = 0 feet.

The position of the Washington coordinate system of 1927 shall be as marked on the ground by triangulation or traverse stations established in conformity with the standards adopted by the United States coast and geodetic survey for first-order and second-order work, whose geodetic positions have been rigidly adjusted on the North American datum of 1927, and whose coordinates have been computed on the system herein defined. Any such station may be used to establish a survey connection with the Washington coordinate system of 1927. [1989 c 54 § 4; 1945 c 168 § 5; Rem. Supp. 1945 § 10726e.]

58.20.060 Recording coordinates—Conditions. (Effective until July 1, 1990.) No coordinates based on the Washington coordinate system of 1927, purporting to define the position of a point on a land boundary, shall be presented to be recorded in any public land records or deed records unless such point is within one-half mile of a triangulation or traverse station established in conformity with the standards prescribed in RCW 58.20.050: *Provided*, That said one-half mile limitation may be modified by a duly authorized state

agency to meet local conditions. [1989 c 54 § 5; 1945 c 168 § 6; Rem. Supp. 1945 § 10726f.]

58.20.070 Use of term limited. (Effective until July 1, 1990.) The use of the term "Washington coordinate system of 1927" on any map, report of survey, or other document, shall be limited to coordinates based on the Washington coordinate system of 1927 as defined in this chapter. [1989 c 54 § 6; 1945 c 168 § 7; Rem. Supp. 1945 § 10726g.]

58.20.080 United States survey to prevail. (Effective until July 1, 1990.) Whenever coordinates based on the Washington coordinate system of 1927 are used to describe any tract of land which in the same document is also described by reference to any subdivision, line or corner of the United States public land surveys, the description by coordinates shall be construed as supplemental to the basic description of such subdivision, line, or corner contained in the official plats and field notes filed of record, and in the event of any conflict the description by reference to the subdivision, line, or corner of the United States public land surveys shall prevail over the description by coordinates. [1989 c 54 § 7; 1945 c 168 § 8; Rem. Supp. 1945 § 10726h.]

58.20.090 Construction of chapter. (Effective until July 1, 1990.) Nothing contained in this chapter shall require any purchaser or mortgagee to rely on a description, any part of which depends exclusively upon the Washington coordinate system of 1927. [1989 c 54 § 8; 1945 c 168 § 9; Rem. Supp. 1945 § 10726i.]

58.20.110 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout RCW 58.20.110 through 58.20.220 and 58.20.901:

- (1) "Committee" means the interagency federal geodetic control committee or its successor;
- (2) "GRS 80" means the geodetic reference system of 1980 as adopted in 1979 by the international union of geodesy and geophysics defined on an equipotential ellipsoid;
- (3) "National geodetic survey" means the national ocean service's national geodetic survey of the national oceanic and atmospheric administration, United States department of commerce, or its successor;
- (4) "Washington coordinate system of 1927" means the system of plane coordinates in effect under this chapter until July 1, 1990, which is based on the North American datum of 1927 as determined by the national geodetic survey of the United States department of commerce;
- (5) "Washington coordinate system of 1983" means the system of plane coordinates under this chapter based on the North American datum of 1983 as determined by the national geodetic survey of the United States department of commerce. [1989 c 54 § 9.]

58.20.120 System designation—Permitted uses. Until July 1, 1990, the Washington coordinate system of

1927, or its successor, the Washington coordinate system of 1983, may be used in Washington for expressing positions or locations of points on the surface of the earth. On and after that date, the Washington coordinate system of 1983 shall be the designated coordinate system in Washington. The Washington coordinate system of 1927 may be used only for purposes of reference after June 30, 1990. [1989 c 54 § 10.]

58.20.130 Plane coordinates adopted—Zones. The system of plane coordinates which has been established by the national geodetic survey for defining and stating the positions or locations of points on the surface of the earth within the state of Washington is designated as the "Washington coordinate system of 1983."

For the purposes of this system the state is divided into a "north zone" and a "south zone."

The area now included in the following counties shall constitute the north zone: Chelan, Clallam, Douglas, Ferry, Island, Jefferson, King, Kitsap, Lincoln, Okanogan, Pend Oreille, San Juan, Skagit, Snohomish, Spokane, Stevens, Whatcom, and that part of Grant lying north of parallel 47° 30' north latitude.

The area now included in the following counties shall constitute the south zone: Adams, Asotin, Benton, Clark, Columbia, Cowlitz, Franklin, Garfield, that part of Grant lying south of parallel 47° 30' north latitude, Grays Harbor, Kittitas, Klickitat, Lewis, Mason, Pacific, Pierce, Skamania, Thurston, Wahkiakum, Walla Walla, Whitman and Yakima. [1989 c 54 § 11.]

58.20.140 Designation of system—Zones. As established for use in the north zone, the Washington coordinate system of 1983 shall be named, and in any land description in which it is used it shall be designated, the "Washington coordinate system of 1983, north zone."

As established for use in the south zone, the Washington coordinate system of 1983 shall be named, and in any land description in which it is used it shall be designated, the "Washington coordinate system of 1983, south zone." [1989 c 54 § 12.]

58.20.150 Designation of coordinates—"N" and "E". "N" and "E" shall be used in labeling coordinates of a point on the earth's surface and in expressing the position or location of such point relative to the origin of the appropriate zone of this system, expressed in meters and decimals of a meter. These coordinates shall be made to depend upon and conform to the coordinates, on the Washington coordinate system of 1983, of the horizontal control stations of the national geodetic survey within the state of Washington, as those coordinates have been determined, accepted, or adjusted by the survey. [1989 c 54 § 13.]

58.20.160 Tract in both zones—Description. When any tract of land to be defined by a single description extends from one into the other of the coordinate zones under RCW 58.20.130, the positions of all points on its boundaries may be referred to either of the

zones, the zone which is used being specifically named in the description. [1989 c 54 § 14.]

58.20.170 Zones—Technical definitions. For purposes of more precisely defining the Washington coordinate system of 1983, the following definition by the national geodetic survey is adopted:

The Washington coordinate system of 1983, north zone, is a Lambert conformal conic projection of the GRS 80 spheroid, having standard parallels at north latitudes 47° 30' and 48° 44', along which parallels the scale shall be exact. The origin of coordinates is at the intersection of the meridian 120° 50' west of Greenwich and the parallel 47° 00' north latitude. This origin is given the coordinates: E = 500,000 meters and N = 0 meters.

The Washington coordinate system of 1983, south zone, is a Lambert conformal conic projection of the GRS 80 spheroid, having standard parallels at north latitudes 45° 50' and 47° 20', along which parallels the scale shall be exact. The origin of coordinates is at the intersection of the meridian 120° 30' west of Greenwich and the parallel 45° 20' north latitude. This origin is given the coordinates: E = 500,000 meters and N = 0 meters. [1989 c 54 § 15.]

58.20.180 Recording coordinates—Control stations. Coordinates based on the Washington coordinate system of 1983, purporting to define the position of a point on a land boundary, may be presented to be recorded in any public land records or deed records if the survey method used for the determination of these coordinates is established in conformity with standards and specifications prescribed by the interagency federal geodetic control committee, or its successor. These surveys shall be connected to monumented control stations that are adjusted to and published in the national network of geodetic control by the national geodetic survey and such connected horizontal control stations shall be described in the land or deed record. Standards and specifications of the committee in force on the date of the survey shall apply. In all instances where reference has been made to such coordinates in land surveys or deeds, the scale and sea level factors shall be stated for the survey lines used in computing ground distances and areas.

The position of the Washington coordinate system of 1983 shall be marked on the ground by horizontal geodetic control stations which have been established in conformity with the survey standards adopted by the committee and whose geodetic positions have been rigorously adjusted on the North American datum of 1983, and whose coordinates have been computed and published on the system defined in RCW 58.20.110 through 58.20.220 and 58.20.901. Any such control station may be used to establish a survey connection with the Washington coordinate system of 1983. [1989 c 54 § 16.]

58.20.190 Conversion of coordinates—Metric. Any conversion of coordinates between the meter and

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the United States survey foot shall be based upon the length of the meter being equal to exactly 39.37 inches. [1989 c 54 § 17.]

58.20.200 Term—Limited use. The use of the term "Washington coordinate system of 1983" on any map, report of survey, or other document, shall be limited to coordinates based on the Washington coordinate system of 1983 as defined in this chapter. [1989 c 54 § 18.]

58.20.210 United States survey prevails—Conflict. Whenever coordinates based on the Washington coordinate system of 1983 are used to describe any tract of land which in the same document is also described by reference to any subdivision, line or corner of the United States public land surveys, the description by coordinates shall be construed as supplemental to the basic description of such subdivision, line, or corner contained in the official plats and field notes filed of record, and in the event of any conflict the description by reference to the subdivision, line, or corner of the United States public land surveys shall prevail over the description by coordinates. [1989 c 54 § 19.]

58.20.220 Real estate transactions—Exemption. Nothing contained in this chapter shall require any purchaser or mortgagee to rely on a description, any part of which depends exclusively upon the Washington coordinate system of 1927 or 1983. [1989 c 54 § 20.]

58.20.900 Severability—1945 c 168. (Effective until July 1, 1990.) If any provision of this chapter shall be declared invalid, such invalidity shall not affect any other portion of this chapter which can be given effect without the invalid provision, and to this end the provisions of this chapter are declared to be severable. [1945 c 168 § 10; no RRS.]

58.20.901 Severability—1989 c 54. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1989 c 54 § 21.]

Chapter 58.22

STATE BASE MAPPING SYSTEM

Sections	
58.22.010	Legislative intent.
58.22.020	Establishment and maintenance—Standards.
58.22.030	United States geological survey quadrangle map separates—Acquisition by state agencies.
58.22.040	United States geological survey quadrangle map separates—State depository.
58.22.050	Availability of map separates—Powers and duties of department.

Surveys and maps account established for purposes of chapter 58.22 RCW: RCW 58.24.060.

58.22.010 Legislative intent. It is the intent of the legislature to establish a coordinated system of state

base maps to assist all levels of government to more effectively provide the information to meet their responsibilities for resource planning and management.

It is further the legislature's intent to eliminate duplication, to insure compatibility, and to create coordination through a uniform base which all agencies will use.

It is in the interest of all citizens in the state of Washington that a state base mapping system be established to make essential base maps available at cost to all users, both public and private. [1973 1st ex.s. c 159 § 1.]

58.22.020 Establishment and maintenance—Standards. The department of natural resources shall establish and maintain a state base mapping system. The standards for the state base mapping system shall be:

(1) A series of fifteen minute United States geological survey quadrangle map separates at a scale of one to 48,000 (one inch equals 4,000 feet) covering the entire state;

(2) A series of seven and one-half minute United States geological survey quadrangle map separates at a scale of one to 24,000 (one inch equals 2,000 feet) for urban areas; including but not limited to those identified as urban by the state department of transportation for the United States department of transportation.

All features and symbols added to the quadrangle separates shall meet as nearly as is practical national map accuracy standards and specifications as defined by the United States geological survey for their fifteen minute and seven and one-half minute quadrangle map separates.

Each quadrangle shall be revised by the department of natural resources as necessary to reflect current conditions. [1984 c 7 § 367; 1973 1st ex.s. c 159 § 2.]

Severability—1984 c 7: See note following RCW 47.01.141.

58.22.030 United States geological survey quadrangle map separates—Acquisition by state agencies. Any state agency purchasing or acquiring United States geological survey quadrangle map separates shall do so through the department of natural resources. [1973 1st ex.s. c 159 § 3.]

58.22.040 United States geological survey quadrangle map separates—State depository. The department of natural resources shall be the primary depository of all United States geological survey quadrangle map separates for state agencies: *Provided*, That any state agency may maintain duplicate copies. [1973 1st ex.s. c 159 § 4.]

58.22.050 Availability of map separates—Powers and duties of department. (1) All United States geological survey quadrangle map separates shall be available at cost to all state agencies, local agencies, the federal government, and any private individual or company through duplication and purchase.

The department shall coordinate all requests for the use of United States geological survey quadrangle map

separates and shall provide advice on how to best use the system.

(2) The department shall maintain a catalogue showing all United States geological survey quadrangle map separates available. The department shall also catalogue information describing additional separates or products created by users. Copies of maps made for any state or local agency shall be available to any other state or local agency. [1973 1st ex.s. c 159 § 5.]

Chapter 58.24

STATE AGENCY FOR SURVEYS AND MAPS—FEES

Sections

58.24.010	Declaration of necessity.
58.24.020	Official agency designated—Advisory board.
58.24.030	Official agency designated—Powers—Cooperate and advise—Purposes.
58.24.040	Official agency designated—Powers—Standards, maps, records, report, temporary removal of boundary marks or monuments.
58.24.050	Employees—Licensed engineers or surveyors.
58.24.060	Surveys and maps account—Purposes—Earnings.
58.24.070	Fees for filing and recording surveys, plats, or maps—Deposit and use of fees.

Cemetery property—Surveys and maps, plats, etc.: Chapter 68.24 RCW.

Coal mining code—Surveys and maps: Chapter 78.40 RCW.

Counties—Land surveys, record of surveys: RCW 36.32.370, 36.32.380.

Geological survey: Chapter 43.27A RCW.

Irrigation districts—Map of district: RCW 87.03.775.

Public lands—Maps and plats—Record and index—Public inspection: RCW 79.01.708.

Reclamation districts—Surveys, etc.: Chapter 89.30 RCW.

Regulation of public ground waters—Designating or modifying boundaries of areas—Notice of hearing—Findings—Order: RCW 90.44.130.

Restoration of United States survey markers: RCW 47.36.010.

State highways and toll bridges

copy of map, plans, etc.—Fee: RCW 47.28.060.

maps, plans, etc.—Filing: RCW 47.28.040.

58.24.010 Declaration of necessity. It is the responsibility of the state to provide a means for the identification and preservation of survey points for the description of common land boundaries in the interest of the people of the state. There is a necessity for the adoption and maintenance of a system of permanent reference as to boundary monuments. The department of natural resources shall be the recognized agency for the establishment of this system. [1987 c 466 § 4; 1982 c 165 § 1; 1951 c 224 § 2.]

Severability—1951 c 224: "If any provision of this act shall be declared invalid, such invalidity shall not affect any other portion of this act which can be given effect without the invalid provision, and to this end the provisions of this act are declared to be severable." [1951 c 224 § 7.]

58.24.020 Official agency designated—Advisory board. The department of natural resources is designated as the official agency for surveys and maps. The commissioner of public lands shall appoint an advisory board

of five members, the majority of whom shall be registered professional engineers or land surveyors, who shall serve at the pleasure of the commissioner. Members of the board shall serve without salary but are to receive travel expenses in accordance with RCW 43.03.050 and 43.03.060 as now existing or hereafter amended while actively engaged in the discharge of their duties. [1987 c 466 § 5; 1982 c 165 § 2; 1975-'76 2nd ex.s. c 34 § 152; 1951 c 224 § 3.]

Effective date—Severability—1975-'76 2nd ex.s. c 34: See notes following RCW 2.08.115.

Severability—1951 c 224: See note following RCW 58.24.010.

Department of natural resources to exercise powers and duties of commissioner of public lands: RCW 43.30.130.

58.24.030 Official agency designated—Powers—Cooperate and advise—Purposes. The commissioner of public lands, the department of natural resources, and the advisory board are authorized to cooperate and advise with various departments and subdivisions of the state, counties, municipalities, and registered engineers or land surveyors of the state for the following purposes:

(1) The recovery of section corners or other land boundary marks;

(2) The monumentation of accepted section corners, and other boundary and reference marks; said monumentation shall be adequately connected to adjusted United States coast and geodetic survey triangulation stations and the coordinates of the monuments computed to conform with the Washington coordinate system in accordance with the provisions of chapter 58.20 RCW, as derived from chapter 168, Laws of 1945;

(3) For facilitation and encouragement of the use of the Washington state coordinate system; and

(4) For promotion of the use of the level net as established by the United States coast and geodetic survey. [1987 c 466 § 6; 1982 c 165 § 3; 1951 c 224 § 4.]

Severability—1951 c 224: See note following RCW 58.24.010.

58.24.040 Official agency designated—Powers—Standards, maps, records, report, temporary removal of boundary marks or monuments. The agency designated by RCW 58.24.020 is further authorized to:

(1) Set up standards of accuracy and methods of procedure;

(2) Compile and publish maps and records from surveys performed under the provisions of this chapter, and to maintain suitable indexes of surveys to prevent duplication of effort and to cooperate with all agencies of local, state, and federal government to this end;

(3) Compile and maintain records of all surveys performed under the provisions of this chapter, and assemble and maintain records of all reliable survey monuments and bench marks within the state;

(4) Collect and preserve information obtained from surveys locating and establishing land monuments and land boundaries;

(5) Supervise the sale and distribution of cadastral and geodetic survey data, and such related survey maps and publications as may come into the possession of the

department of natural resources. Revenue derived from the sale thereof shall be deposited in the surveys and maps account in the general fund;

(6) Supervise the sale and distribution of maps, map data, photographs, and such publications as may come into the possession of the department of natural resources.

(7) Submit, as part of the biennial report of the commissioner of public lands, a report of the accomplishments of the agency;

(8) Permit the temporary removal or destruction of any section corner or any other land boundary mark or monument by any person, corporation, association, department, or subdivision of the state, county, or municipality as may be necessary or desirable to accommodate construction, mining, and other development of any land: *Provided*, That such section corner or other land boundary mark or monument shall be referenced to the Washington Coordinate System by a registered professional engineer or land surveyor prior to such removal or destruction, and shall be replaced or a suitable reference monument established by a registered professional engineer or land surveyor within a reasonable time after completion of such construction, mining, or other development: *And provided further*, That the department of natural resources shall adopt and promulgate reasonable rules and regulations under which the agency shall authorize such temporary removal or destruction and require the replacement of such section corner or other land boundary marks or monuments. [1987 c 466 § 7; 1982 c 165 § 4; 1969 ex.s. c 271 § 25; 1951 c 224 § 6.]

Severability—1969 ex.s. c 271: See RCW 58.17.910.

Severability—1951 c 224: See note following RCW 58.24.010.

58.24.050 Employees—Licensed engineers or surveyors. All employees who are in responsible charge of work under the provisions of this chapter shall be licensed professional engineers or land surveyors. [1982 c 165 § 5; 1951 c 224 § 5.]

Severability—1951 c 224: See note following RCW 58.24.010.

58.24.060 Surveys and maps account—Purposes—Earnings. There is created in the state treasury the surveys and maps account which shall be a separate account consisting of funds received or collected under chapters 58.22 and 58.24 RCW, moneys appropriated to it by law. This account shall be used exclusively by the department of natural resources for carrying out the purposes and provisions of chapters 58.22 and 58.24 RCW. Appropriations from the account shall be expended for no other purposes. All earnings of investments of balances in the surveys and maps account shall be credited to the general fund. [1987 c 466 § 8; 1985 c 57 § 65; 1983 c 272 § 1; 1982 c 165 § 6.]

Effective date—1985 c 57: See note following RCW 15.52.320.

58.24.070 Fees for filing and recording surveys, plats, or maps—Deposit and use of fees. A fee set by the board of natural resources shall be charged by each county auditor, in addition to any other fees required by

law, as a condition precedent to the filing and recording of any surveys, subdivision plats, short plats, and condominium surveys, plats, or maps. Such funds shall be forwarded monthly to the state treasurer to be deposited in the surveys and maps account in the general fund. The fees shall be verified in the same manner as other fees collected by the county auditor. Fees collected under this section shall be expended by the department only for the activities prescribed in this chapter. [1987 c 466 § 9; 1983 c 272 § 2; 1982 c 165 § 7.]

Condominium surveys and maps: RCW 64.32.100.

Plats and subdivisions: Chapter 58.17 RCW.

Chapter 58.28

TOWNSITES ON UNITED STATES LAND— ACQUISITION OF LAND BY INHABITANTS THEREOF

Sections

INCORPORATED TOWNS ON UNITED STATES LAND

- 58.28.010 Councils' duties when townsites on United States land.
- 58.28.020 Councils' duties when townsites on United States land—Survey and plat.
- 58.28.030 Councils' duties when townsites on United States land—Plats—Filing.
- 58.28.040 Councils' duties when townsites on United States land—Survey, notice of—Bids for—Franchises continued.
- 58.28.050 Contents of plat.
- 58.28.060 Monuments—Location, placement requisites.
- 58.28.070 Monuments—Markings—Surveyor's certificate on plat.
- 58.28.080 Plats filed—Auditor's fee.
- 58.28.090 Assessments.
- 58.28.100 Notice of possession filed—Assessment and fee—Certificate—Council record.
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- 58.28.410 Disposition of excess money—Special fund.
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INCORPORATED TOWNS ON UNITED STATES LAND

58.28.010 Councils' duties when townsites on United States land. It is the duty of the city or town council of any city or town in this state situate upon public lands of the United States or lands, the legal and equitable title to which is in the United States of America, to enter at the proper land office of the United States such quantity of land as the inhabitants of any incorporated city or town may be entitled to claim, in the aggregate, according to their population, in the manner required by the laws of the United States and the regulations prescribed by the secretary of the interior of the United States, and by order entered upon their minutes and proceedings, at a regular meeting, to authorize and direct the mayor and clerk of such council, attested by the corporate seal, to make and sign all necessary declaratory statements, certificates, and affidavits, or other instruments requisite to carry into effect the intentions of this chapter and the intentions of the act of congress of the United States entitled "An act for the relief of the inhabitants of cities and towns upon the public lands," approved March 2, 1867, and all acts of congress amendatory thereof and supplemental thereto, including section sixteen of an act of congress entitled "An act to repeal timber culture laws and for other purposes," approved March 3, 1891, and to make proof, when required, of the facts necessary to establish the claim of such inhabitants to the lands so granted by said acts of congress, and file in the proper United States land office a proper application in writing describing the tracts of land on which such city or town is situate, and make proof and payment for such tracts of land in the manner required by law. [1909 c 231 § 1; RRS § 11485. Prior: 1888 c 124 pp 216–220.]

58.28.020 Councils' duties when townsites on United States land—Survey and plat. Said council must cause a survey to be made by some competent person, of the lands which the inhabitants of said city or town may be

entitled to claim under the said act of congress, located according to the legal subdivisions of the sections and by the section lines of the United States, and the same must be distinctly marked by suitable monuments; such survey must further particularly designate all streets, roads, lanes and alleys, public squares, churches, school lots, cemeteries, commons and levees as the same exist and have been heretofore dedicated in any manner to public use, and by measurement the precise boundaries and area of each, and every lot or parcel of land and premises claimed by any person, corporations or associations within said city or townsite must, as far as known by the surveyor, be designated on the plat, showing the name or names of the possessor or occupants and claimants, and in case of any disputed claim as to lots, lands, premises or boundaries the said surveyor, if the same be demanded by any person, shall designate the lines in different color from the body of the plat of such part of any premises so disputed or claimed adversely. [1909 c 231 § 2; RRS § 11486. Prior: 1888 c 124 pp 216–220.]

58.28.030 Councils' duties when townsites on United States land—Plats—Filing. A plat thereof must be made in triplicate, on a scale of not less than eighty feet to one inch, which must be duly certified under oath by the surveyor, one of which must be filed with the county auditor of the county wherein the city or town is situated, one must be deposited in the proper United States land office, and one with the city or town clerk. These plats shall be considered public records, and each must be accompanied with a copy of the field notes, and the county auditor must make a record of such plat in a book to be kept by him for that purpose, and such county auditor must file a copy of said field notes in his office. The said surveyor must number the blocks as divided by the roads, highways and streets opened and generally used, and for which a public necessity exists at the time of making such survey, and must number the several lots consecutively in each block, and all other parcels of land within said town or city surveyed as herein provided, which said numbers must be a sufficient description of any parcel of land in said plats. Said survey and plat thereof shall conform as near as may be to the existing rights, interests and claims of the occupants thereof, but no lot in the central or business portion of such city or town shall exceed in area four thousand, two hundred square feet, and no suburban lot in such city or town shall exceed two acres in area. [1909 c 231 § 3; RRS § 11487. Prior: 1888 c 124 pp 216–220.]

58.28.040 Councils' duties when townsites on United States land—Survey, notice of—Bids for—Franchises continued. Before proceeding to make such survey, at least ten days' notice thereof must be given, by posting within the limits of such city or townsite, not less than five written or printed notices of the time when such survey shall commence, or by publication thereof in a newspaper published in the city or town, if one there be. The survey of said city or town lands must be made to the best advantage and at the least expense to the

holders, claimants and occupants thereof; and the council is hereby authorized and directed to receive bids for such surveying, and to let the same by contract to the lowest competent bidder: *Provided*, That the possessors, owners and claimants of water works, electric light, telegraph, telephone, pipe or power lines, sewers and like or similar property located in such roads, streets, alleys and other public places in such cities and towns shall be maintained and protected in the same, as the same shall exist at the time of the entry in the United States land office of the land embracing such city or town, and the right to continue to use such property for the purposes for which said property was intended, is hereby acknowledged and confirmed. [1909 c 231 § 4; RRS § 11488. Prior: 1888 c 124 pp 216–220.]

58.28.050 Contents of plat. Such plat must show as follows:

(1) All streets, alleys, avenues, roads and highways, and the width thereof.

(2) All parks, squares and all other grounds reserved for public uses, with the boundaries and dimensions thereof.

(3) All lots and blocks, with their boundaries, designating such lots and blocks by numbers, and giving the dimensions of every lot.

(4) The angles of intersection of all boundary lines of the lots and block, whenever the angle of intersection is not a right angle.

(5) The location of all stone or iron monuments set to establish street lines.

(6) The exterior boundaries of the piece of land so platted, giving such boundaries by true courses and distances.

(7) The location of all section corners, quarter section or meander corners of sections within the limits of said plat.

(8) In case no such section or quarter section or meander corners are within the limits of the plat, it must show a connection line to some corner or initial point of the government surveys, or a government mineral monument, if there be any within one mile of such townsite. All distances marked on the plat must be in feet and decimals of a foot. [1909 c 231 § 5; RRS § 11489. Prior: 1888 c 124 pp 216–220.]

58.28.060 Monuments—Location, placement requisites. Such surveyor must mark all corners of blocks or lots shown on the plat by substantial stakes or monuments, and must set stone or iron monuments at the points of intersection of the center lines of all the streets, where practicable, or as near as possible to such points, and their location must be shown by marking on the plat the distances to the block corners adjacent thereto. The top of such monument must be placed one foot below the surface of the ground, and in size must be at least six inches by six inches by six inches, and be placed in the ground to the depth of one foot. [1909 c 231 § 6; RRS § 11490. Prior: 1888 c 124 pp 216–220.]

58.28.070 Monuments—Markings—Surveyor's certificate on plat. If a stone is used as a monument, it must have a cross cut in the top at the point of intersection of the center lines of streets, or a hole may be drilled in the stone to mark such point. If an iron monument is used it must be at least two inches in diameter by two and one-half feet in length, and may be either solid iron or pipe. The dimensions of the monuments must be marked on the plat, and reference thereto made in the field notes, and establish permanently the lines of all the streets. The surveyor must make and subscribe on the plat a certificate that such survey was made in accordance with the provisions of this chapter, stating the date of survey, and verify the same by his oath. [1909 c 231 § 7; RRS § 11491. Prior: 1888 c 124 pp 216–220.]

58.28.080 Plats filed—Auditor's fee. All such plats must be made on mounted drawing paper, and filed and recorded in the office of the county auditor, and he must keep the original plat for public inspection. The fee of such county auditor for filing and recording each of such plats and the field notes accompanying the same shall be the sum of ten dollars. [1909 c 231 § 8; RRS § 11492. Prior: 1888 c 124 pp 216–220.]

58.28.090 Assessments. Each lot or parcel of said lands having thereon valuable improvements or buildings ordinarily used as dwellings or for business purposes, not exceeding one-tenth of one acre in area, shall be rated and assessed by the said corporate authorities at the sum of one dollar; each lot or parcel of such lands exceeding one-tenth and not exceeding one-eighth of one acre in area, shall be rated and assessed at the sum of one dollar and fifty cents; each lot or parcel of such lands exceeding in area one-eighth of one acre and not exceeding one-quarter of an acre in area, shall be rated and assessed at the sum of two dollars; and each lot or parcel of such lands exceeding one-quarter of an acre and not exceeding one-half of one acre in area, shall be rated and assessed at the sum of two dollars and fifty cents; and each lot or parcel of land so improved exceeding one-half acre in area shall be assessed at the rate of two dollars and fifty cents for each half an acre or fractional part over half an acre; and every lot or parcel of land enclosed, which may not otherwise be improved, claimed by any person, corporation, or association, shall be rated and assessed at the rate of two dollars per acre or fractional part over an acre; and where upon one parcel of land there shall be two or more separate buildings occupied or used ordinarily as dwellings or for business purposes each such building, for the purposes of this section, shall be considered as standing on a separate lot of land; but the whole of such premises may be conveyed in one deed; which moneys so assessed must be received by the clerk and be paid by him into the city or town treasury. [1909 c 231 § 9; RRS § 11493. Prior: 1888 c 124 pp 216–220.]

58.28.100 Notice of possession filed—Assessment and fee—Certificate—Council record. Every person, company, corporation or association claimant of any city

or town lot or parcel of land within the limits of such city or townsite, must present to the council, by filing the same with the clerk thereof, within three months after the patent (or certified copy thereof) from the United States has been filed in the office of the county auditor, his, her, its or their affidavit, (or by guardian or next friend where the claimant is under disability), verified in person or by duly authorized agent, attorney, guardian or next friend, in which must be concisely stated the facts constituting the possession or right of possession of the claimant, and that the claimant is entitled to the possession thereof and to a deed therefor as against all other persons, to the best of his knowledge and belief, and stating who was an occupant of such lot or parcel of land at the time of the entry of such townsite at the United States land office, to which must be attached a copy of so much of the plat of said city or townsite as will fully exhibit the particular lot or parcel of land so claimed, and every such claimant, at the time of filing such affidavit, must pay to such clerk such sum of money as said clerk shall certify to be due for the assessment mentioned in RCW 58.28.090, together with the further sum of four dollars, to be appropriated to the payment of expenses incurred in carrying out the provisions of this chapter, and the said clerk must thereupon give to such claimant a certificate, attested by the corporate seal, containing a description of the lot or parcel of land claimed, and setting forth the amounts paid thereon by such claimant. The council of every such city or town must procure a bound book, wherein the clerk must make proper entries of the substantial matters contained in every such certificate issued by him, numbering the same in consecutive order, setting forth the name of the claimant or claimants in full, date of issue, and description of lot or lands claimed. [1909 c 231 § 10; RRS § 11494. Prior: 1888 c 124 pp 216–220.]

58.28.110 Deficiency assessment—When payable. If it is found that the amounts hereinbefore specified as assessments and fees for costs and expenses prove to be insufficient to cover and defray all the necessary expenses, the council must estimate the deficiency and assess such deficiency pro rata upon all the lots and parcels of land in such city or town, and declare the same upon the basis set down in RCW 58.28.090, which additional amount, if any, may be paid by the claimant at the time when the certificate hereinafter [hereinbefore] mentioned, or at the time when the deed of conveyance hereinbefore [hereinafter] provided for, is issued. [1909 c 231 § 11; RRS § 11495. Prior: 1888 c 124 pp 216–220.]

58.28.120 Deed to claimants—Actions contesting title, limitations on. At the expiration of six months after the time of filing of such patent, or a certified copy thereof in the office of the county auditor, if there has been no adverse claim filed in the meantime, the council must execute and deliver to such claimant, his or her, its or their heirs, executors, administrators, grantees, successors or assigns a good and sufficient deed of the premises described in the application of the claimant

originally filed, if proper proof shall have been made, which said deed must be signed and acknowledged by the mayor or other presiding officer of the council, and attested by the corporate seal of such city or town. No conveyance of any such lands made as in this chapter provided, concludes the rights of third persons; but such third persons may have their action in the premises, to determine their alleged interest in such lands and their right to the legal title thereto against such grantee, his, her, its or their heirs, successors or assigns, to which they may deem themselves entitled either in law or equity; but no action for the recovery or possession of such premises, or any portion thereof, or to establish the right to the legal title thereto, must be maintained in any court against the grantee named therein, or against his, her, its or their legal representatives or assigns, unless such action shall be commenced within six months after such deed shall have been filed for record in the office of the county auditor of the county where such lands are situate; nothing herein shall be construed to extend the time of limitation prescribed by law for the commencement of actions upon the possessory claim or title to real estate, when such action is barred by law at the time of the passage of this chapter. [1909 c 231 § 12; RRS § 11496. Prior: 1888 c 124 pp 216–220.]

58.28.130 Entries on mineral lands—Rights of claimants. Townsite entries may be made by incorporated towns or cities on the mineral lands of the United States, but no title shall be acquired by such towns or cities to any vein of gold, silver, cinnabar, copper or lead, or to any valid mining claim or possession held under existing law. When mineral veins are possessed within the limits of an incorporated town or city, and such possession is recognized by local authority or by the laws of the United States, the title to town lots shall be subject to such recognized possession and the necessary use thereof and when entry has been made or patent issued for such townsites to such incorporated town or city, the possessor of such mineral vein may enter and receive patent for such mineral vein, and the surface ground appertaining thereto: *Provided*, That no entry shall be made by such mineral vein claimant for surface ground where the owner or occupier of the surface ground shall have had possession of the same before the inception of the title of the mineral vein applicant. [1909 c 231 § 13; RRS § 11497. Prior: 1888 c 124 pp 216–220.]

58.28.140 Conflicting claims—Procedure. In all cases of adverse claims or disputes arising out of conflicting claims to lands or concerning boundary lines, the adverse claimants may submit the decision thereof to the council of such city or town by an agreement in writing specifying particularly the subject matter in dispute, and may agree that their decision shall be final. The council must hear the proofs, and shall order a deed to be executed or denied in accordance with the facts; but in all other cases of adverse claims, the party out of possession shall commence his action in a court of competent jurisdiction within six months after the time of filing of the

patent from the United States (or a certified copy thereof), in the office of the county auditor. In case such action be commenced, the plaintiff must serve a notice of *lis pendens* upon the mayor, who must thereupon stay all proceedings in the matter of granting any deed to the land in dispute until the final decision in such suit; and upon presentation of a certified copy of the final judgment of such court in such action, the council must cause to be executed and delivered a deed of such premises, in accordance with the judgment, adjudging the claimant to have been an occupant of any particular lot or lots at the time of the entry of such townsite in the United States land office, or to be the successor in interest of such occupant. If in any action brought under this chapter, or under said acts of congress, the right to the ground in controversy shall not be established by either party, the court or jury shall so find and judgment shall be entered accordingly. In such case costs shall not be allowed to either party, and neither party shall be entitled to a deed to the ground in controversy, and in such action it shall be incumbent upon each claimant to establish that he, she or it was an occupant of the ground in controversy within the meaning of the said acts of congress at the time of the entry of said townsite in the United States land office, or is the successor in interest of such occupant. [1909 c 231 § 14; RRS § 11498. Prior: 1888 c 124 pp 216–220.]

Proof of right—Costs upon failure of both conflicting parties: RCW 58.28.360.

58.28.150 Notice of filing patent—Abandonment of claim. The said council must give public notice by advertising for four weeks in a newspaper published in said city or town, or, if there be no newspaper published in said city or town, then by publication in some newspaper having general circulation in such city or town, and not less than five written or printed notices must be posted in public places within the limits of such city or townsite; such notice must state that patent for said townsite (or certified copy thereof) has been filed in the county auditor's office. If any person, company, association or any other claimant of lands in such city or town fails, neglects or refuses to make application to the council for a deed of conveyance to the lands so claimed, and to pay the sums of money specified in this chapter, within three months after filing of such patent, or a certified copy thereof, in the office of the county auditor, shall be deemed to have abandoned the same and to have forfeited all right, title and interest therein or thereto both in law and in equity as against the trustee of said townsite, and such abandoned or forfeited lot or lots shall be sold as unoccupied lands, and the proceeds thereof placed in the special fund in this chapter mentioned. [1909 c 231 § 15; RRS § 11499. Prior: 1888 c 124 pp 216–220.]

58.28.160 Sale of unoccupied lots—Notice—Minimum price. All lots in such city or townsite which were unoccupied at the time of the entry of said townsite in the United States land office shall be sold by the corporate authorities of such city or town, or under their

direction, at public auction to the highest bidder for cash, each lot to be sold separately, and notice of such sale or sales shall be given by posting five written or printed notices in public places within said townsite, giving the time and particular place of sale, which notices must be posted for at least thirty days prior to the date of said sale, and by publishing a like notice for four consecutive weeks prior to such sale in a newspaper published in such city or town, or, if no such newspaper be published in such city or town, then in some newspaper having general circulation in such city or town, and deeds shall be given therefor to the several purchasers: *Provided*, That no such unoccupied lot shall be sold for less than five dollars in addition to an assessment equivalent to assessment provided in RCW 58.28.090, and all moneys arising from such sale, after deducting the costs and expenses of such sale or sales, shall be placed in the treasury of such city or town. [1909 c 231 § 16; RRS § 11500. Prior: 1888 c 124 pp 216–220.]

58.28.170 Lands for school and municipal purposes—Funds. All school lots or parcels of land, reserved or occupied for school purposes, must be conveyed to the school district in which such city or town is situated, without cost or charge of any kind whatever. All lots or parcels of land reserved or occupied for municipal purposes must be conveyed to such city or town without cost or charge of any kind whatever. All expenses necessarily incurred or contracted by the carrying into effect of the provisions of this chapter are a charge against the city or town on behalf of which the work was done, and such expenses necessarily incurred, either before or after the incorporation thereof, shall be paid out of the treasury of such city or town upon the order of the council thereof; and all moneys paid for lands or to defray the expenses of carrying into effect the provisions of this chapter shall be paid into the city or town treasury by the officer or officers receiving the same, and shall constitute a special fund, from which shall be paid all expenses, and the surplus, if any there be, shall be expended under the direction of the city or town council for public improvements in such city or town. [1909 c 231 § 17; RRS § 11501. Prior: 1888 c 124 pp 216–220.]

58.28.180 Effect of informalities—Certificate or deed as prima facie evidence. No mere informality, failure or omission on the part of any of the persons or officers named in this chapter invalidates the acts of such person or officer; but every certificate or deed granted to any person pursuant to the provisions of this chapter is prima facie evidence that all preliminary proceedings in relation thereto have been correctly taken and performed, and that the recitals therein are true and correct. [1909 c 231 § 18; RRS § 11502. Prior: 1888 c 124 pp 216–220.]

58.28.190 Corporate authorities to act promptly. Such corporate authorities shall promptly execute and perform all duties imposed upon them by the provisions

of this chapter. [1909 c 231 § 19; RRS § 11503. Prior: 1888 c 124 pp 216–220.]

58.28.200 Proof requisite to delivery of deed. No deed to any lot or parcel of land in such townsite entry shall be made or delivered to any alleged occupant thereof before proof shall have been made under oath showing such claimant to have been an occupant of such lot or parcel of land within the meaning of said laws of congress at the time of the entry of such townsite at the proper United States land office, but the grantees, heirs, successors in interest or assigns of such occupant of any lot, as such, may receive such deed. [1909 c 231 § 20; RRS § 11504. Prior: 1888 c 124 pp 216–220.]

58.28.201 Title to vacated lots by occupancy and improvements. See RCW 58.28.510.

58.28.202 Controversies, by whom settled—Review. See RCW 58.28.520.

58.28.203 Platted lands declared dedicated to public use. See RCW 58.28.440.

58.28.204 Appeals—Procedure. See RCW 58.28.490.

UNINCORPORATED TOWNS ON UNITED STATES LAND

58.28.210 Unincorporated towns on United States land—Superior court judge to file claim. It is the duty of the judge of the superior court of any county in this state to enter at the proper land office of the United States such quantity of land as the inhabitants of any unincorporated town, situate upon lands the legal and equitable title to which is in the United States of America, or situate upon public lands of the United States within the county wherein such superior court is held, may be entitled to claim in the aggregate, according to their population, in the manner required by the laws of the United States, and valid regulations prescribed by the secretary of the interior of the United States, and to make and sign all necessary declaratory statements, certificates and affidavits, or other instruments requisite to carry into effect the intentions of this chapter, and the intention of the act of congress of the United States entitled "An act for the relief of the inhabitants of cities and towns upon the public lands," approved March 2, 1867, and all acts of congress amendatory thereof and supplemental thereto, and to file in the proper United States land office a proper application in writing, describing the tracts of land on which such unincorporated town is situated, and all lands entitled to be embraced in such government townsite entry, and make proof and payment for such tracts of land in the manner required by law. [1909 c 231 § 21; RRS § 11505. Prior: 1888 c 124 pp 216–220.]

58.28.220 Petition to superior court judge—Contents—Procedure. The judge of the superior court of

any county in this state, whenever he is so requested by a petition signed by not less than five residents, householders in any such unincorporated town, whose names appear upon the assessment roll for the year preceding such application in the county wherein such unincorporated town is situated—which petition shall set forth the existence, name and locality of such town, whether such town is situated on surveyed or unsurveyed lands, and if on surveyed lands an accurate description according to the government survey of the legal subdivisions sought to be entered as a government townsite must be stated; the estimated number of its inhabitants; the approximate number of separate lots or parcels of land within such townsite, and the amount of land to which they are entitled under such acts of congress—must estimate the cost of entering such land, and of the survey, platting and recording of the same, and must endorse such estimate upon such petition, and upon receiving from any of the parties interested the amount of money mentioned in such estimate, the said judge may cause an enumeration of the inhabitants of such town to be made by some competent person, exhibiting therein the names of all persons residing in said proposed townsite and the names of occupants of lots, lands, or premises within such townsite, alphabetically arranged, verified by his oath, and cause such enumeration to be presented to such judge. [1909 c 231 § 22; RRS § 11506. Prior: 1888 c 124 pp 216–220.]

58.28.230 Survey and plat—Boundaries—Monuments. Such judge must thereupon cause a survey to be made by some competent person, of the lands which the inhabitants of said town may be entitled to claim under said acts of congress, located according to the legal subdivisions of the sections according to the government survey thereof, and the same must be distinctly marked by suitable monuments; such survey must further particularly designate all streets, roads, lanes, and alleys, public squares, churches, school lots, cemeteries, commons, and levees, as the same exist and have been heretofore dedicated, in any manner to public use, and by measurement the precise boundaries and area of each and every lot or parcel of land and premises claimed by any person, corporation, or association within said townsite must, as far as known by the surveyor, be designated on the plat, showing the name or names of the possessor, occupant or claimant; and in case of any disputed claim as to lots, lands, premises or boundaries, the said surveyor, if the same be demanded by any person, shall designate the lines in different color from the body of the plat of such part of any premises so disputed or claimed adversely; said surveyor shall survey, lay out and plat all of said lands, whether occupied or not, into lots, blocks, streets and alleys. [1909 c 231 § 23; RRS § 11507. Prior: 1888 c 124 pp 216–220.]

58.28.240 Plats—Filing. The plat thereof must be made in triplicate on a scale of not less than eighty feet to an inch, which must be duly certified under oath by the surveyor, one of which must be filed with the county auditor of the county wherein such unincorporated town

is situated, one must be deposited in the proper United States land office, and one with such judge. These plats shall constitute public records, and must each be accompanied by a copy of the field notes, and the county auditor must make a record of such plat in a book to be kept by him for that purpose, and such county auditor must file such copy of said field notes in his office. The said surveyor must number and survey the blocks as divided by the roads, and streets opened and generally used and for which a public necessity exists, at the time of making such survey, and must number the several lots consecutively in each block, and all other parcels of land within said unincorporated town as herein provided, which said numbers must be a sufficient description of any parcel of land represented on said plats. Said survey and plat thereof shall conform as nearly as may be to the existing rights, interest, and claims of the occupants thereof, but no lot in the center or business portion of said unincorporated town shall exceed in area four thousand two hundred feet, and no suburban lot in such unincorporated town shall exceed two acres in area. [1909 c 231 § 24; RRS § 11508. Prior: 1888 c 124 pp 216–220.]

58.28.250 Survey, notice of—Bids for—Franchises continued. Before proceeding to make such survey, at least ten days' notice thereof must be given, by posting within the limits of such townsite, not less than five written or printed notices of the time when such survey shall commence, or by publication thereof in a newspaper published in said town, if one there be. The survey of said townsite must be made to the best advantage and at the least expense to the holders, claimants, possessors and occupants thereof. The said judge is hereby authorized and directed to receive bids for such surveying, platting and furnishing copies of the field notes, and to let the same by contract to the lowest competent bidder: *Provided*, That the possessors, owners, or claimants of water works, electric light, telegraph, telephone, pipe or power lines, sewers, irrigating ditches, drainage ditches, and like or similar property located in such townsites or in the roads, streets, alleys or highways therein or in other public places in such townsite, shall be maintained and protected in the same as the same shall exist at the time of the entry in the United States land office of the land embraced in such government townsite, and the right to continue to use such property, for the purposes for which said property was intended, is hereby acknowledged and confirmed. [1909 c 231 § 25; RRS § 11509. Prior: 1888 c 124 pp 216–220.]

58.28.260 Contents of plat. Such plat must show as follows:

(1) All streets, alleys, avenues, roads and highways, and the width thereof.

(2) All parks, squares and all other ground reserved for public uses, with the boundaries and dimensions thereof.

(3) All lots and blocks, with their boundaries, designating such lots and blocks by numbers, and giving the dimensions of every lot.

(4) The angles of intersection of all boundary lines of the lots and block, whenever the angle of intersection is not a right angle.

(5) The location of all stone or iron monuments set to establish street lines.

(6) The exterior boundaries of the piece of land so platted, giving such boundaries by true courses and distances.

(7) The location of all section corners, or legal subdivision corners of sections within the limits of said plat.

(8) In case no such section or subdivision corners are within the limits of the plat, it must show a connection line to some corner or initial point of the government surveys, or a government mineral monument, if there be any within one mile of such townsite. All distances marked on the plat must be in feet and decimals of a foot. [1909 c 231 § 26; RRS § 11510. Prior: 1888 c 124 pp 216–220.]

58.28.270 Monuments—Location, placement requirements. Such surveyor must mark all corners of blocks or lots shown on the plat by substantial stakes or monuments, and must set stone or iron monuments at the points of intersection of the center lines of all the streets, where practicable, or as near as possible to such points, and their location must be shown by marking on the plat the distances to the block corners adjacent thereto. The top of such monument must be placed one foot below the surface of the ground, and in size must be at least six inches by six inches by six inches, and be placed in the ground to the depth of one foot. [1909 c 231 § 27; RRS § 11511. Prior: 1888 c 124 pp 216–220.]

58.28.280 Monuments—Markings—Surveyor's certificate on plat. If a stone is used as a monument it must have a cross cut in the top at the point of intersection of center lines of streets, or a hole may be drilled in the stone to mark such point. If an iron monument is used it must be at least two inches in diameter by two and one-half feet in length, and may be either solid iron or pipe. The dimensions of the monuments must be marked on the plat, and reference thereto made in the field notes, and establish permanently the lines of all the streets. The surveyor must make and subscribe on the plat a certificate that such survey was made in accordance with the provisions of this chapter, stating the date of survey, and verify the same by his oath. [1909 c 231 § 28; RRS § 11512. Prior: 1888 c 124 pp 216–220.]

58.28.290 Plats filed—Auditor's fee. All such plats must be made on mounted drawing paper, and filed and recorded in the office of the county auditor, and he must keep the original plat for public inspection. The fee of such county auditor for filing and recording each of such plats, and the field notes accompanying the same shall be the sum of ten dollars. [1909 c 231 § 29; RRS § 11513. Prior: 1888 c 124 pp 216–220.]

58.28.300 Assessments—Disposition—Employment of attorney authorized. Each lot or parcel of said lands having thereon valuable improvements or

buildings ordinarily used as dwellings or for business purposes, not exceeding one-tenth of one acre in area, shall be rated and assessed by the said judge at the sum of one dollar; each lot or parcel of such lands exceeding one-tenth, and not exceeding one-eighth of one acre in area, shall be rated and assessed at the sum of one dollar and five [fifty] cents; each lot or parcel of such lands exceeding in area one-eighth of one acre and not exceeding one-quarter of an acre in area, shall be rated and assessed at the sum of two dollars; and each lot or parcel of such lands exceeding one-quarter of an acre and not exceeding one-half of one acre in area, shall be rated and assessed at the sum of two dollars and fifty cents; and each lot or parcel of land so improved, exceeding one-half acre in area, shall be assessed at the rate of two dollars and fifty cents for each half an acre or fractional part over half an acre; and every lot or parcel of land enclosed, which may not otherwise be improved, claimed by any person, corporation, or association, shall be rated and assessed at the rate of two dollars per acre or fractional part over an acre; and where upon one parcel of land there shall be two or more separate buildings occupied or used ordinarily as dwellings or for business purposes, each such building, for the purposes of this section, shall be considered as standing on a separate lot of land; but the whole of such premises may be conveyed in one deed; which moneys so assessed must constitute a fund from which must be reimbursed or paid the moneys necessary to pay the government of the United States for said townsite lands, and interest thereon, if such moneys have been loaned or advanced for the purpose and expenses of their location, entry and purchase, and cost and expenses attendant upon the making of such survey, plats, publishing and recording, including a reasonable attorney's fee for legal services necessarily performed, and the persons or occupants in such townsite procuring said townsite entry to be made, may employ an attorney to assist them in so doing and to assist such judge in the execution of his trust, and he shall be allowed by such judge out of said fund a reasonable compensation for his services. [1909 c 231 § 30; RRS § 11514. Prior: 1888 c 124 pp 216–200.]

58.28.310 Notice of possession filed—Assessment and fee—Certificate—Judge's record. Every person, company, corporation, or association, claimant of any town lot or parcel of land, within the limits of such townsite, must present to such judge within three months after the patent (or a certified copy thereof), from the United States has been filed in the office of the county auditor, his, her, its or their affidavit, (or by guardian or next friend where the claimant is under disability), verified in person, or by duly authorized agent or attorney, guardian or next friend, in which must be concisely stated the facts constituting the possession or right of possession of the claimant and that the claimant is entitled to the possession thereof and to a deed therefor as against all other persons or claimants, to the best of his knowledge and belief, and in which must be stated who was an occupant of such lot or parcel of land at the time of the entry of such townsite at the United States land

office, to which must be attached a copy of so much of the plat of said townsite as will fully exhibit the particular lots or parcels of land so claimed; and every such claimant, at the time of presenting and filing such affidavit with said judge, must pay to such judge such sum of money as said judge shall certify to be due for the assessment mentioned in RCW 58.28.300, together with the further sum of four dollars, to be appropriated to the payment of cost and expenses incurred in carrying out the provisions of this chapter, and the said judge must thereupon give to such claimant a certificate, signed by him and attested by the seal of the superior court, containing a description of the lot or parcel of land claimed, and setting forth the amounts paid thereon by such claimant. Such judge must procure a bound book for each unincorporated government townsite in his county wherein he must make proper entries of the substantial matters contained in such certificate issued by him, numbering the same in consecutive order, setting forth the name of the claimant or claimants in full, date of issue, and description of the lot or lands claimed. [1909 c 231 § 31; RRS § 11515. Prior: 1888 c 124 pp 216–220.]

58.28.320 Deficiency assessment—When payable.

If it is found that the amounts hereinbefore specified as assessments and fees for costs and expenses, prove to be insufficient to cover and defray all the necessary expenses, the said judge must estimate the deficiency and assess such deficiency pro rata upon all the lots and parcels of land in such government townsite, and declare the same upon the basis set down in RCW 58.28.300; which additional amount, if any, may be paid by the claimant at the time when the certificate hereinbefore mentioned, or at the time when the deed of conveyance hereinafter provided for, is issued. [1909 c 231 § 32; RRS § 11516. Prior: 1888 c 124 pp 216–220.]

58.28.330 Deed to claimants—Actions contesting title, limitations on. At the expiration of six months after the time of filing such patent, or certified copy thereof, in the office of the county auditor, if there has been no adverse claim filed in the meantime, said judge must execute and deliver to such claimant or to his, her, its or their heirs, executor, administrator, grantee, successor or assigns a good and sufficient deed of the premises described in the application of the claimant originally filed, if proper proof shall have been made, which said deed must be signed and acknowledged by such judge as trustee, and attested by the seal of the superior court. No conveyance of any such lands made as in this chapter provided, concludes the rights of third persons; but such third persons may have their action in the premises, to determine their alleged interest in such lands, and their right to the legal title thereto, against such grantee, his, her, its or their heirs, executors, administrators, successors or assigns, to which they may deem themselves entitled, either in law or in equity; but no action for the recovery or possession of such premises, or any portion thereof, or to establish the right to the legal title thereto, must be maintained in any court against the grantee

named therein, or against his, her, its or their heirs, executors, administrators, successors or assigns, unless such action shall be commenced within six months after such deed shall have been filed for record in the office of the county auditor of the county where such lands are situated; nothing herein shall be construed to extend the time of limitation prescribed by law for the commencement of actions upon a possessory claim or title to real estate, when such action is barred by law at the time of the taking effect of this chapter. [1909 c 231 § 33; RRS § 11517. Prior: 1888 c 124 pp 216–220.]

58.28.340 Entries on mineral lands—Rights of claimants. Townsite entries may be made by such judge on mineral lands of the United States, but no title shall be acquired by such judge to any vein of gold, silver, cinnabar, copper or lead, or to any valid mining claim or possession held under existing laws. When mineral veins are possessed within the limits of an unincorporated town, and such possession is recognized by local authority, or by the laws of the United States, the title to town lots shall be subject to such recognized possession and the necessary use thereof, and when entry has been made or patent issued for such townsite to such judge, the possessor of such mineral vein may enter and receive patent for such mineral vein, and the surface ground appertaining thereto: *Provided*, That no entry shall be made by such mineral vein claimant for surface ground where the owner or occupier of the surface ground shall have had possession of the same before the inception of the title of the mineral vein applicant. [1909 c 231 § 34; RRS § 11518. Prior: 1888 c 124 pp 216–220.]

58.28.350 Conflicting claims—Procedure. In all cases of adverse claims or disputes arising out of conflicting claims to land or concerning boundary lines, the adverse claimants may submit the decision thereof to said judge by an agreement in writing specifying particularly the subject matter in dispute and may agree that his decision shall be final. The said judge must hear the proofs, and shall execute a deed or deny the execution of a deed in accordance with the facts; but in all other cases of adverse claims the party out of possession shall commence his action in a court of competent jurisdiction within six months after the filing of the patent (or a certified copy thereof) from the United States, in the office of the county auditor. In case such action be commenced within the time herein limited, the plaintiff must serve notice of *lis pendens* upon such judge, who must thereupon stay all proceedings in the matter of granting or executing any deed to the land in dispute until the final decision in such suit; upon presentation of a certified copy of the final judgment in such action, such judge must execute and deliver a deed of the premises, in accordance with the judgment, adjudging the claimant to have been an occupant of any particular lot or lots at the time of the entry of such townsite in the United States land office, or to be the successor in interest of such occupant. [1909 c 231 § 35; RRS § 11519. Prior: 1888 c 124 pp 216–220.]

58.28.360 Proof of right—Costs upon failure of both conflicting parties. If in any action brought under this chapter, or under said acts of congress, the right to the ground in controversy shall not be established by either party, the court or jury shall so find and judgment shall be entered accordingly. In such case costs shall not be allowed to either party, and neither party shall be entitled to a deed to the ground in controversy, and in such action it shall be incumbent upon each claimant or claimants to establish that he, she, it or they, was or were, an occupant of the ground in controversy within the meaning of said acts of congress at the time of the entry of said townsite in the United States land office, or is or are the successor, or successors in interest of such occupant. [1909 c 231 § 36; RRS § 11520. Prior: 1888 c 124 pp 216–220.]

Conflicting claims—Procedure: RCW 58.28.140.

58.28.370 Notice of filing patent. Said judge must promptly give public notice by advertising for four weeks in any newspaper published in such town, or if there be no newspaper published in such town, then by publication in some newspaper having general circulation in such town, and not less than five written or printed notices must be posted in public places within the limits of such townsite; such notice must state that the patent for said townsite (or a certified copy thereof) has been filed in the county auditor's office. [1909 c 231 § 37; RRS § 11521. Prior: 1888 c 124 pp 216–220.]

58.28.380 Abandonment of claim. If any person, company, association, or any other claimant of lands in such townsite fails, neglects or refuses to make application to said judge for a deed of conveyance to said land so claimed, and pay the sums of money specified in this chapter, within three months after the filing of such patent, or a certified copy thereof, in the office of the county auditor, shall be deemed to have abandoned the claim to such land and to have forfeited all right, title, claim and interest therein or thereto both in law and in equity as against the trustee of said townsite, and such abandoned or forfeited lot or lots may be sold by such trustee as unoccupied lands, and the proceeds thereof placed in the fund heretofore mentioned in this chapter. [1909 c 231 § 38; RRS § 11522. Prior: 1888 c 124 pp 216–220.]

58.28.390 Sale of unoccupied lots—Notice—Minimum price. All lots in such townsite which were unoccupied within the meaning of the said acts of congress at the time of the entry of said townsite in the United States land office shall be sold by such judge or under his direction, at public auction to the highest bidder for cash, each lot to be sold separately, and notice of such sale, or sales, shall be given by posting five written or printed notices in public places within said townsite, giving the time and particular place of sale, which notices must be posted at least thirty days prior to the date of any such sale, and by publishing a like notice for four consecutive weeks prior to any such sale in a newspaper published in such town, or if no newspaper be published

in such town, then in some newspaper having general circulation in such town. And deed shall be given therefor to the several purchasers: *Provided*, That no such unoccupied lot shall be sold for less than five dollars in addition to an assessment equivalent to assessment provided for in RCW 58.28.300, and all moneys arising from such sale or sales after deducting the cost and expenses of such sale or sales shall be placed in the fund hereinbefore mentioned. [1909 c 231 § 39; RRS § 11523. Prior: 1888 c 124 pp 216–220.]

58.28.400 Lands for school and public purposes—Expenses as charge against fund. All school lots or parcels of land reserved or occupied for school purposes, must be conveyed to the school district in which such town is situated without cost or charge of any kind whatever. All lots or parcels of land reserved or occupied for public purposes must be set apart and dedicated to such public purposes without cost or charge of any kind whatever. All expenses necessarily incurred or contracted by the carrying into effect of the provisions of this chapter or said acts of congress are a charge against the fund herein provided for. [1909 c 231 § 40; RRS § 11524. Prior: 1888 c 124 pp 216–220.]

58.28.410 Disposition of excess money—Special fund. Any sum of money remaining in said fund after defraying all necessary expenses of location, entry, surveying, platting, advertising, filing and recording, reimbursement of moneys loaned or advanced and paying the cost and expenses herein authorized and provided for must be deposited in the county treasury by such judge to the credit of a special fund of each particular town, and kept separate by the county treasurer to be paid out by him only upon the written order of such judge in payment for making public improvements, or for public purposes, in such town. [1909 c 231 § 41; RRS § 11525. Prior: 1888 c 124 pp 216–220.]

58.28.420 Effect of informalities—Certificate or deed as prima facie evidence. No mere informality, failure, or omission on the part of any persons or officers named in this chapter invalidates the acts of such person or officers; but every certificate or deed granted to any person pursuant to the provisions of this chapter is prima facie evidence that all preliminary proceedings in relation thereto have been taken and performed and that the recitals therein are true and correct. [1909 c 231 § 42; RRS § 11526. Prior: 1888 c 124 pp 216–220.]

58.28.430 Proof requisite to delivery of deed. No deed to any lot in such unincorporated town or unincorporated government townsite entry shall be made or delivered to any alleged occupant thereof before proof shall have been made under oath, showing such claimant to have been an occupant of such lot or parcel of land within the meaning of said laws of congress at the time of the entry of such townsite at the proper United States land office, but the grantees, heirs, executors, administrators, successors in interest or assigns of such occupant

of any lot, as such, may receive such deed. [1909 c 231 § 43; RRS § 11527. Prior: 1888 c 124 pp 216–220.]

58.28.440 Platted lands declared dedicated to public use. All streets, roads, lanes and alleys, public squares, cemeteries, parks, levees, school lots, and commons, surveyed, marked and platted, on the map of any townsite, as prescribed and directed by the provisions of this chapter, are hereby declared to be dedicated to public use, by the filing of such town plat in the office of the county auditor, and are inalienable, unless by special order of the board of commissioners of the county, so long as such town shall remain unincorporated; and if such town at any time thereafter becomes incorporated, the same becomes the property of such town or city, and must be under the care and subject to the control of the council or other municipal authority of such town or city. [1909 c 231 § 44; RRS § 11528. Prior: 1888 c 124 pp 216–220.]

58.28.450 Clerk's duties when judge trustee. All clerical work under this chapter where a judge of the superior court is trustee must be performed by the clerk of the superior court. [1909 c 231 § 45; RRS § 11529. Prior: 1888 c 124 pp 216–220.]

58.28.460 Accounting and depositing money—Promptness. Such judge when fulfilling the duties imposed upon him by said acts of congress, and by this chapter, must keep a correct account of all moneys received and paid out by him. He must deposit all surplus money with the treasurer of the proper county, and he must promptly settle up all the affairs relating to his trust pertaining to such town. [1909 c 231 § 46; RRS § 11530. Prior: 1888 c 124 pp 216–220.]

58.28.470 Records filed with county clerk. Whenever the affairs pertaining to such trust shall be finally settled and disposed of by such judge, he shall deposit all books and papers relating thereto in the office of the county clerk of the proper county to be thereafter kept in the custody of such county clerk as public records, and the county clerk's fee, for the use of his county therefor, shall be the sum of ten dollars. [1909 c 231 § 47; RRS § 11531. Prior: 1888 c 124 pp 216–220.]

58.28.480 Judge, a trustee for purposes herein. Every such judge when fulfilling the duties imposed upon him by said acts of congress, and by this chapter, shall be deemed and held to be acting as a trustee for the purposes of fulfilling the purposes of said acts and not as a superior court, and such judge shall be deemed to be disqualified to sit as judge of such superior court in any action or proceeding wherein is involved the execution of such trust or rights involved therein. [1909 c 231 § 48; RRS § 11532. Prior: 1888 c 124 pp 216–220.]

58.28.490 Appellate review—Procedure. Appellate review of the judgment or orders of the superior court in all cases arising under this chapter or said acts of congress may be sought as in other civil cases. [1988 c 202

§ 54; 1971 c 81 § 127; 1909 c 231 § 49; RRS § 11533. Prior: 1888 c 124 pp 216–220.]

Severability—1988 c 202: See note following RCW 2.24.050.

58.28.500 Succession of trust. The successors in office of such superior court judge shall be his successors as trustee of such trust. [1909 c 231 § 51; RRS § 11534. Prior: 1888 c 124 pp 216–220.]

58.28.510 Title to vacated lots by occupancy and improvements. The judge of the superior court of any county is hereby declared to be the successor as trustee of any territorial probate judge in such county who was trustee under any such acts of congress, and may as such succeeding trustee perform any unperformed duties of his predecessor in office as such trustee, agreeably to the provisions of this chapter as nearly as may be. And when entry was made by any such probate judge under any of said acts of congress and subsequent to such entry, the city or town situated upon such townsite entry has been incorporated according to law, and the corporate authorities thereof have or have attempted to vacate any common, plaza, public square, public park or the like, in such government townsite, and where thereafter, any person, or corporation, has placed permanent improvements on such land so vacated or attempted to be vacated, exceeding in value the sum of five thousand dollars, with the knowledge, consent, or acquiescence of the corporate authorities of such city or town and with the general consent and approval of the inhabitants of said city or town and such improvements have been made for more than five years and such person or corporation making such improvements has been in the open, notorious and peaceable possession of such lands and premises for a period of more than five years, such superior court judge, as trustee, of such government townsite, and successor as trustee to such judge of probate, trustee of such government townsite, shall have the power and authority to make and deliver to such person or corporation, or to his or its heirs, executors, administrators, successors or assigns, a deed for such lands and premises, conveying a fee simple title to such lands and premises upon such terms and for such price as he shall deem just and reasonable under all the facts and surrounding circumstances of the case, and the consideration paid for such deed, one dollar or more, shall be placed in the city or town treasury of such city or town, in the general fund. [1909 c 231 § 52; RRS § 11535. Prior: 1888 c 124 pp 216–220.]

58.28.520 Controversies, by whom settled—Review. Except as hereinbefore specially provided, the city or town council in incorporated cities and towns, and the judge of the superior court, as trustee, in cases of unincorporated government townsites, are hereby expressly given power and jurisdiction to hear and determine all questions arising under this chapter and under said acts of congress and the right to ascertain who were the occupants of lots in such government townsites at the time of the entry thereof in the United States land office, and to determine from sworn testimony who are and who are

not entitled to deeds of conveyance to specific lots in such government townsite, subject to review by courts of competent jurisdiction. [1909 c 231 § 53; RRS § 11536. Prior: 1888 c 124 pp 216–220.]

Title 59

LANDLORD AND TENANT

Chapters

- 59.04** Tenancies.
- 59.08** Default in rent of forty dollars or less.
- 59.12** Forcible entry and forcible and unlawful detainer.
- 59.16** Unlawful entry and detainer.
- 59.18** Residential Landlord–Tenant Act.
- 59.20** Mobile Home Landlord–Tenant Act.
- 59.21** Mobile home relocation assistance.
- 59.22** Office of mobile home affairs—Resident-owned mobile home parks.
- 59.24** Rental security deposit guarantee program.
- 59.28** Federally assisted housing.

Acknowledgments: Chapter 64.08 RCW.
Action to recover real property, jury trial: RCW 4.40.060.
Adverse possession: Chapter 7.28 RCW.
Boundaries and plats: Title 58 RCW.
County property, sales, leases, etc.: Chapter 36.34 RCW.
Ejectment and quieting title: Chapter 7.28 RCW.
Executions, sale of short term leasehold absolute: RCW 6.21.080.
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Housing authorities law: Chapter 35.82 RCW.
Landlord's lien
 for rent: Chapter 60.72 RCW.
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Mining leases: Chapter 79.01 RCW.
Mortgages and trust receipts: Title 61 RCW.
Nuisances: Chapter 7.48 RCW.
Oil and gas leases: Chapter 79.14 RCW.
Private seals abolished: RCW 64.04.090.
Probate
 generally: Title 11 RCW.
 performance of decedent's contracts: Chapter 11.60 RCW.
Property insurance, insurable interest: RCW 48.18.040.
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Waste and trespass: Chapter 64.12 RCW.

Chapter 59.04 TENANCIES

Sections

- 59.04.010 Tenancies from year to year abolished except under written contract.
- 59.04.020 Tenancy from month to month—Termination.
- 59.04.030 Tenancy for specified time—Termination.
- 59.04.040 Ten day notice to pay rent or quit premises.
- 59.04.050 Tenancy by sufferance—Termination.
- 59.04.900 Chapter inapplicable to rental agreements under landlord–tenant act.

59.04.010 Tenancies from year to year abolished except under written contract. Tenancies from year to year are hereby abolished except when the same are created by express written contract. Leases may be in writing or print, or partly in writing and partly in print, and shall be legal and valid for any term or period not exceeding one year, without acknowledgment, witnesses or seals. [Code 1881 § 2053; 1867 p 101 § 1; RRS § 10619.]

59.04.020 Tenancy from month to month—Termination. When premises are rented for an indefinite time, with monthly or other periodic rent reserved, such tenancy shall be construed to be a tenancy from month to month, or from period to period on which rent is payable, and shall be terminated by written notice of thirty days or more, preceding the end of any of said months or periods, given by either party to the other. [Code 1881 § 2054; 1867 p 101 § 2; RRS § 10619. Prior: 1866 p 78 § 1.]

Unlawful detainer, notice requirement: RCW 59.12.030(2).

59.04.030 Tenancy for specified time—Termination. In all cases where premises are rented for a specified time, by express or implied contract, the tenancy shall be deemed terminated at the end of such specified time. [Code 1881 § 2055; 1867 p 101 § 3; RRS § 10620.]

59.04.040 Ten day notice to pay rent or quit premises. When a tenant fails to pay rent when the same is due, and the landlord notifies him to pay said rent or quit the premises within ten days, unless the rent is paid within said ten days, the tenancy shall be forfeited at the end of said ten days. [Code 1881 § 2056; 1867 p 101 § 4; no RRS.]

59.04.050 Tenancy by sufferance—Termination. Whenever any person obtains possession of premises without the consent of the owner or other person having the right to give said possession, he shall be deemed a tenant by sufferance merely, and shall be liable to pay reasonable rent for the actual time he occupied the premises, and shall forthwith on demand surrender his said possession to the owner or person who had the right of possession before said entry, and all his right to possession of said premises shall terminate immediately upon said demand. [Code 1881 § 2057; 1867 p 101 § 5; RRS § 10621.]

59.04.900 Chapter inapplicable to rental agreements under landlord–tenant act. This chapter does not apply to any rental agreement included under the provisions of chapter 59.18 RCW. [1973 1st ex.s. c 207 § 45.]

Chapter 59.08

DEFAULT IN RENT OF FORTY DOLLARS OR LESS

Sections	
59.08.010	Summons and complaint as notice—Acceptance of rent after default.
59.08.020	Venue.
59.08.030	Complaint.
59.08.040	Order for hearing—Notice.
59.08.050	Continuance.
59.08.060	Hearing—Writ of restitution.
59.08.070	Recall of writ—Bond.
59.08.080	Complaint as notice to quit.
59.08.090	Sheriff's fee.
59.08.100	Indemnity bond not required—Liability for damages.
59.08.900	Chapter inapplicable to rental agreements under landlord-tenant act.

59.08.010 Summons and complaint as notice—Acceptance of rent after default. In cases of default in the payment of rent for real property where the stipulated rent or rental value does not exceed forty dollars per month, no notice to quit or pay rent, other than filing and serving a summons and complaint, as hereinafter provided, shall be required to render the holding of such tenant thereafter unlawful. If the landlord shall, after such default in the payment of rent, accept payment thereof, such acceptance of payment shall operate to reinstate the right of the tenant to possession for the full period fixed by the terms of any agreement relating to the right of possession. [1941 c 188 § 1; Rem. Supp. 1941 § 814-1.]

59.08.020 Venue. The superior court of the county in which the real property or some part thereof is situated shall have jurisdiction of proceedings for the recovery of possession of said real property alleged to be wrongfully detained. [1941 c 188 § 2; Rem. Supp. 1941 § 814-2.]

59.08.030 Complaint. Such proceedings shall be commenced by the filing of a complaint executed under oath by the owner or landlord or his authorized agent. It shall be sufficient to state in such complaint a description of the property with reasonable certainty, that the defendant is in possession thereof and wrongfully holds the same by reason of failure to pay the agreed rental due, or the monthly rental value of the premises. [1941 c 188 § 3; Rem. Supp. 1941 § 814-3.]

59.08.040 Order for hearing—Notice. Upon the filing of such complaint it may be presented to the judge, and by order he shall forthwith fix a place and time for the trial of said cause, not more than ten days after the date of making the order. A copy of the complaint, together with a copy of the summons specifying the time and place for trial, shall be served on the defendant not less than five days prior to the time fixed for hearing in the manner provided for the service of notice to quit in RCW 59.12.040. [1941 c 188 § 4; Rem. Supp. 1941 § 814-4.]

59.08.050 Continuance. No continuance shall be granted for a longer period than two days unless the defendant applying therefor shall give good and sufficient security, to be approved by the court, conditioned upon the payment of rent accrued and to accrue, if judgment be rendered against the defendant. [1941 c 188 § 5; Rem. Supp. 1941 § 814-5.]

59.08.060 Hearing—Writ of restitution. At the time and place fixed for the hearing, the court shall proceed to examine the parties orally to ascertain the merits of the complaint, and if it shall appear that there is no reasonable doubt of the right of the plaintiff to be restored to the possession of said property, the court shall enter an order directing the issuance of a writ of restitution, which shall thereupon be served by the sheriff upon the defendant. After the expiration of three days from date of service, if the defendant has not surrendered possession or filed a bond as hereinafter provided, the writ shall be executed by the sheriff. If it appears to the court that there is reasonable doubt of the right of the plaintiff to be restored to the possession of said property, the court shall enter an order requiring the parties to proceed on the complaint filed in the usual form of action. [1941 c 188 § 6; Rem. Supp. 1941 § 814-6.]

59.08.070 Recall of writ—Bond. If the defendant feels aggrieved at an order of restitution, he may within three days after the entry of the order file a bond to be approved by the court in double the amount of the rent found to be due, plus two hundred dollars, conditioned for the payment and performance of any judgment rendered against him, and the court shall thereupon enter an order for the parties to proceed in the usual form of action, and recall the writ of restitution. [1941 c 188 § 7; Rem. Supp. 1941 § 814-7.]

59.08.080 Complaint as notice to quit. The filing and service of a complaint under this chapter shall be equivalent to the notice required to pay rent or surrender possession under RCW 59.12.030. [1941 c 188 § 8; Rem. Supp. 1941 § 814-8.]

59.08.090 Sheriff's fee. The sheriff's fee shall be the same as in other civil actions. [1961 c 304 § 7; 1941 c 188 § 9; Rem. Supp. 1941 § 814-9.]

County clerk's fees: RCW 36.18.020.

Sheriff's fees: RCW 36.18.040.

59.08.100 Indemnity bond not required—Liability for damages. The plaintiff shall not be required to give bond to the defendant or the sheriff for the issuance or execution of the writ of restitution, and the sheriff shall not be liable for damages to the defendant for the execution of the writ of restitution hereunder, but any such damage to which the defendant may be entitled shall be recoverable against the plaintiff only. [1941 c 188 § 10; Rem. Supp. 1941 § 814-10.]

59.08.900 Chapter inapplicable to rental agreements under landlord-tenant act. This chapter does not apply to any rental agreement included under the provisions of chapter 59.18 RCW. [1973 1st ex.s. c 207 § 46.]

Chapter 59.12

FORCIBLE ENTRY AND FORCIBLE AND UNLAWFUL DETAINER

Sections

59.12.010	Forcible entry defined.
59.12.020	Forcible detainer defined.
59.12.030	Unlawful detainer defined.
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Joint tenancies: Chapter 64.28 RCW.

Tenant's violation of duty under landlord-tenant act grounds for unlawful detainer action: RCW 59.18.180.

59.12.010 Forcible entry defined. Every person is guilty of a forcible entry who either—(1) By breaking open windows, doors or other parts of a house, or by fraud, intimidation or stealth, or by any kind of violence or circumstance of terror, enters upon or into any real property; or—(2) Who, after entering peaceably upon real property, turns out by force, threats or menacing conduct the party in actual possession. [1891 c 96 § 1; RRS § 810. Prior: 1890 p 73 § 1.]

59.12.020 Forcible detainer defined. Every person is guilty of a forcible detainer who either—(1) By force, or by menaces and threats of violence, unlawfully holds and keeps the possession of any real property, whether the same was acquired peaceably or otherwise; or—(2) Who in the nighttime, or during the absence of the occupant of any real property, enters thereon, and who, after demand made for the surrender thereof, refuses for the period of three days to surrender the same to such former occupant. The occupant of real property within the meaning of this subdivision is one who for the five days next preceding such unlawful entry was in the peaceable and undisturbed possession of such real property. [1891 c 96 § 2; RRS § 811. Prior: 1890 p 73 § 2.]

59.12.030 Unlawful detainer defined. A tenant of real property for a term less than life is guilty of unlawful detainer either:

(1) When he holds over or continues in possession, in person or by subtenant, of the property or any part thereof after the expiration of the term for which it is let to him. When real property is leased for a specified term or period by express or implied contract, whether written or oral, the tenancy shall be terminated without notice at the expiration of the specified term or period;

(2) When he, having leased property for an indefinite time with monthly or other periodic rent reserved, continues in possession thereof, in person or by subtenant, after the end of any such month or period, when the landlord, more than twenty days prior to the end of such month or period, has served notice (in manner in RCW 59.12.040 provided) requiring him to quit the premises at the expiration of such month or period;

(3) When he continues in possession in person or by subtenant after a default in the payment of rent, and after notice in writing requiring in the alternative the payment of the rent or the surrender of the detained premises, served (in manner in RCW 59.12.040 provided) in behalf of the person entitled to the rent upon the person owing it, has remained uncomplied with for the period of three days after service thereof. The notice may be served at any time after the rent becomes due;

(4) When he continues in possession in person or by subtenant after a neglect or failure to keep or perform any other condition or covenant of the lease or agreement under which the property is held, including any covenant not to assign or sublet, than one for the payment of rent, and after notice in writing requiring in the alternative the performance of such condition or covenant or the surrender of the property, served (in manner in RCW 59.12.040 provided) upon him, and if there is a subtenant in actual possession of the premises, also upon such subtenant, shall remain uncomplied with for ten days after service thereof. Within ten days after the service of such notice the tenant, or any subtenant in actual occupation of the premises, or any mortgagee of the term, or other person interested in its continuance, may perform such condition or covenant and thereby save the lease from such forfeiture;

(5) When he commits or permits waste upon the demised premises, or when he sets up or carries on thereon any unlawful business, or when he erects, suffers, permits, or maintains on or about the premises any nuisance, and remains in possession after the service (in manner in RCW 59.12.040 provided) upon him of three days' notice to quit; or

(6) A person who, without the permission of the owner and without having color of title thereto, enters upon land of another and who fails or refuses to remove therefrom after three days' notice, in writing and served upon him in the manner provided in RCW 59.12.040. Such person may also be subject to the criminal provisions of chapter 9A.52 RCW. [1983 c 264 § 1; 1953 c 106 § 1. Prior: 1905 c 86 § 1; 1891 c 96 § 3; 1890 p 73 § 3; RRS § 812.]

Termination of month to month tenancy: RCW 59.04.020, 59.18.200.

Unlawful detainer defined: RCW 59.16.010.

59.12.035 Holding over on agricultural land, effect of. In all cases of tenancy upon agricultural lands, where the tenant has held over and retained possession for more than sixty days after the expiration of his term without any demand or notice to quit by his landlord or the successor in estate of his landlord, if any there be, he shall be deemed to be holding by permission of his landlord or the successor in estate of his landlord, if any there be, and shall be entitled to hold under the terms of the lease for another full year, and shall not be guilty of an unlawful detainer during said year, and such holding over for the period aforesaid shall be taken and construed as a consent on the part of a tenant to hold for another year. [1891 c 96 § 4; RRS § 813. Formerly RCW 59.04.060.]

59.12.040 Service of notice—Proof of service. Any notice provided for in this chapter shall be served either (1) by delivering a copy personally to the person entitled thereto; or (2) if he be absent from the premises unlawfully held, by leaving there a copy, with some person of suitable age and discretion, and sending a copy through the mail addressed to the person entitled thereto at his place of residence; or (3) if the person to be notified be a tenant, or an unlawful holder of premises, and his place of residence is not known, or if a person of suitable age and discretion there cannot be found then by affixing a copy of the notice in a conspicuous place on the premises unlawfully held, and also delivering a copy to a person there residing, if such a person can be found, and also sending a copy through the mail addressed to the tenant, or unlawful occupant, at the place where the premises unlawfully held are situated. Service upon a subtenant may be made in the same manner: *Provided*, That in cases where the tenant or unlawful occupant, shall be conducting a hotel, inn, lodging house, boarding house, or shall be renting rooms while still retaining control of the premises as a whole, that the guests, lodgers, boarders or persons renting such rooms shall not be considered as subtenants within the meaning of this chapter, but all such persons may be served by affixing a copy of the notice to be served in two conspicuous places upon the premises unlawfully held; and such persons shall not be necessary parties defendant in an action to recover possession of said premises. Service of any notice provided for in this chapter may be had upon a corporation by delivering a copy thereof to any officer, agent or person having charge of the business of such corporation, at the premises unlawfully held, and in case no such officer, agent or person can be found upon such premises, then service may be had by affixing a copy of such notice in a conspicuous place upon said premises and by sending a copy through the mail addressed to such corporation at the place where said premises are situated. Proof of any service under this section may be made by the affidavit of the person making the same in like manner and with like effect as the proof of service of summons in civil actions. When a copy of notice is sent through the mail,

as provided in this section, service shall be deemed complete when such copy is deposited in the United States mail in the county in which the property is situated properly addressed with postage prepaid: *Provided, however*, That when service is made by mail one additional day shall be allowed before the commencement of an action based upon such notice. RCW 59.18.375 may also apply to notice given under this chapter. [1983 c 264 § 2; 1911 c 26 § 1; 1905 c 86 § 2; 1891 c 96 § 5; RRS § 814. Prior: 1890 p 75 § 4.]

59.12.050 Jurisdiction of proceedings. The superior court of the county in which the property or some part of it is situated shall have jurisdiction of proceedings under this chapter. [1891 c 96 § 6; RRS § 815. Prior: 1890 p 75 § 5.]

Venue and jurisdiction, generally: RCW 2.08.010 and chapter 4.12 RCW.

59.12.060 Parties defendant. No person other than the tenant of the premises, and subtenant, if there be one, in the actual occupation of the premises when the complaint is filed, need be made parties defendant in any proceeding under this chapter, nor shall any proceeding abate, nor the plaintiff be nonsuited, for the nonjoinder of any person who might have been made party defendant; but when it appears that any of the parties served with process, or appearing in the proceeding, are guilty of the offense charged, judgment must be rendered against him. In case a person has become a subtenant of the premises in controversy after the service of any notice in this chapter provided for, the fact that such notice was not served on such subtenant shall constitute no defense to the action. All persons who enter the premises under the tenant, after the commencement of the action hereunder, shall be bound by the judgment the same as if they had been made parties to the action. [1891 c 96 § 7; RRS § 816. Prior: 1890 p 75 § 6.]

59.12.070 Complaint—Summons. The plaintiff in his complaint, which shall be in writing, must set forth the facts on which he seeks to recover, and describe the premises with reasonable certainty, and may set forth therein any circumstances of fraud, force or violence, which may have accompanied the said forcible entry or forcible or unlawful detainer, and claim damages therefor, or compensation for the occupation of the premises, or both; in case the unlawful detainer charged be after default in the payment of rent, the complaint must state the amount of such rent. A summons must be issued as in other cases, returnable at a day designated therein, which shall not be less than six nor more than twelve days from the date of service, except in cases where the publication of summons is necessary, in which case the court or judge thereof may order that the summons be made returnable at such time as may be deemed proper, and the summons shall specify the return day so fixed. [1927 c 123 § 1; 1891 c 96 § 8; RRS § 817. Prior: 1890 p 75 § 7.]

59.12.080 Summons—Contents—Service. The summons must state the names of the parties to the proceeding, the court in which the same is brought, the nature of the action, in concise terms, and the relief sought, and also the return day; and must notify the defendant to appear and answer within the time designated or that the relief sought will be taken against him. The summons must be directed to the defendant, and in case of summons by publication, be served at least five days before the return day designated therein. The summons must be served and returned in the same manner as summons in other actions is served and returned. [1927 c 123 § 2; 1891 c 96 § 9; RRS § 818. Prior: 1890 p 76 § 8.]

Summons, generally: RCW 4.28.080 through 4.28.110.

59.12.090 Writ of restitution—Bond. The plaintiff at the time of commencing an action of forcible entry or detainer or unlawful detainer, or at any time afterwards, may apply to the judge of the court in which the action is pending for a writ of restitution restoring to the plaintiff the property in the complaint described, and the judge shall order a writ of restitution to issue. The writ shall be issued by the clerk of the superior court in which the action is pending, and be returnable in twenty days after its date; but before any writ shall issue prior to judgment the plaintiff shall execute to the defendant and file in court a bond in such sum as the court or judge may order, with sufficient surety to be approved by the clerk, conditioned that the plaintiff will prosecute his action without delay, and will pay all costs that may be adjudged to the defendant, and all damages which he may sustain by reason of the writ of restitution having been issued, should the same be wrongfully sued out. [1927 c 123 § 3; 1891 c 96 § 10; RRS § 819. Prior: 1890 p 77 § 9.]

59.12.091 Writ of restitution under landlord-tenant act—RCW 59.12.090, 59.12.100, 59.12.121 and 59.12.170 inapplicable. See RCW 59.18.420.

59.12.100 Service of writ—Bond to stay writ. The sheriff shall, upon receiving the writ of restitution, forthwith serve a copy thereof upon the defendant, his agent or attorney, or a person in possession of the premises, and shall not execute the same for three days thereafter, nor until after the defendant has been served with summons in the action as hereinabove provided, and the defendant, or person in possession of the premises within three days after the service of the writ of restitution may execute to the plaintiff a bond to be filed with and approved by the clerk of the court in such sum as may be fixed by the judge, with sufficient surety to be approved by the clerk of said court, conditioned that they will pay to the plaintiff such sum as the plaintiff may recover for the use and occupation of the said premises, or any rent found due, together with all damages the plaintiff may sustain by reason of the defendant occupying or keeping possession of said premises, and also all the costs of the action. The plaintiff, his agent or attorneys, shall have notice of the time and place where

the court or judge thereof shall fix the amount of the defendant's bond, and shall have notice and a reasonable opportunity to examine into the qualification and sufficiency of the sureties upon said bond before said bond shall be approved by the clerk. The writ may be served by the sheriff, in the event he shall be unable to find the defendant, an agent or attorney, or a person in possession of the premises, by affixing a copy of said writ in a conspicuous place upon the premises. [1927 c 123 § 4; 1905 c 86 § 3; 1891 c 96 § 11; RRS § 820. Prior: 1890 p 77 § 10.]

59.12.110 Modification of bond. The plaintiff or defendant at any time, upon two days' notice to the adverse party, may apply to the court or any judge thereof for an order raising or lowering the amount of any bond in this chapter provided for. Either party may, upon like notice, apply to the court or any judge thereof for an order requiring additional or other surety or sureties upon any such bond. Upon the hearing or any application made under the provisions of this section evidence may be given. The judge after hearing any such application shall make such an order as shall be just in the premises. The bondsmen may be required to be present at such hearing if so required in the notice thereof, and shall answer under oath all questions that may be asked them touching their qualifications as bondsmen, and in the event the bondsmen shall fail or refuse to appear at such hearing and so answer such questions the bond shall be stricken. In the event the court shall order a new or additional bond to be furnished by defendant, and the same shall not be given within twenty-four hours, the court shall order the sheriff to forthwith execute the writ. In the event the defendant shall file a second or additional bond and it shall also be found insufficient after hearing, as above provided, the right to retain the premises by bond shall be lost and the sheriff shall forthwith put the plaintiff in possession of the premises. [1905 c 86 § 4; 1891 c 96 § 12; RRS § 821. Prior: 1890 p 78 § 11.]

59.12.120 Judgment by default. If on the date appointed in the summons the defendant does not appear or answer, the court shall render judgment in favor of the plaintiff as prayed for in the complaint. [1989 c 342 § 2; 1891 c 96 § 13; RRS § 822. FORMER PART OF SECTION: 1891 c 96 § 14 now codified as RCW 59.12.121.]

Severability—Effective date—1989 c 342: See RCW 59.18.910 and 59.18.911.

59.12.121 Pleading by defendant. On or before the day fixed for his appearance the defendant may appear and answer or demur. [1891 c 96 § 14; RRS § 823. Formerly RCW 59.12.120, part.]

59.12.130 Jury—Actions given preference. Whenever an issue of fact is presented by the pleadings it must be tried by a jury, unless such a jury be waived as in other cases. The jury shall be formed in the same manner as other trial juries in the court in which the action

is pending; and in all cases actions under this chapter shall take precedence of all other civil actions. [1891 c 96 § 15; RRS § 824. Prior: 1890 p 79 § 15.]

59.12.140 Proof in forcible entry and detainer. On the trial of any proceeding for any forcible entry or forcible detainer the plaintiff shall only be required to show, in addition to a forcible entry complained of, that he was peaceably in the actual possession at the time of the forcible entry; or, in addition to a forcible detainer complained of, that he was entitled to the possession at the time of the forcible detainer. [1891 c 96 § 16; RRS § 825. Prior: 1890 p 79 § 16.]

59.12.150 Amendment to conform to proof. When upon the trial of any proceeding under this chapter it appears from the evidence that the defendant has been guilty of either a forcible entry or a forcible or unlawful detainer, in respect of the premises described in the complaint, and other than the offense charged in the complaint, the judge must order that such complaint be forthwith amended to conform to such proofs; such amendment must be made without any imposition of terms. No continuance shall be permitted on account of such amendment unless the defendant shows to the satisfaction of the court good cause therefor. [1891 c 96 § 17; RRS § 826. Prior: 1890 p 79 § 17.]

59.12.160 Amendments. Amendments may be allowed by the court at any time before final judgment, upon such terms as to the court may appear just, in the same cases and manner and to the same extent as in civil actions. [1891 c 96 § 19; RRS § 828. Prior: 1890 p 80 § 20.]

59.12.170 Judgment—Execution. If upon the trial the verdict of the jury or, if the case be tried without a jury, the finding of the court be in favor of the plaintiff and against the defendant, judgment shall be entered for the restitution of the premises; and if the proceeding be for unlawful detainer after neglect or failure to perform any condition or covenant of a lease or agreement under which the property is held, or after default in the payment of rent, the judgment shall also declare the forfeiture of the lease, agreement or tenancy. The jury, or the court, if the proceedings be tried without a jury, shall also assess the damages occasioned to the plaintiff by any forcible entry, or by any forcible or unlawful detainer, alleged in the complaint and proved on the trial, and, if the alleged unlawful detainer be after default in the payment of rent, find the amount of any rent due, and the judgment shall be rendered against the defendant guilty of the forcible entry, forcible detainer or unlawful detainer for twice the amount of damages thus assessed and of the rent, if any, found due. When the proceeding is for an unlawful detainer after default in the payment of rent, and the lease or agreement under which the rent is payable has not by its terms expired, execution upon the judgment shall not be issued until the expiration of five days after the entry of the judgment, within which time the tenant or any subtenant, or

any mortgagee of the term, or other party interested in its continuance, may pay into court for the landlord the amount of the judgment and costs, and thereupon the judgment shall be satisfied and the tenant restored to his estate; but if payment, as herein provided, be not made within five days the judgment may be enforced for its full amount and for the possession of the premises. In all other cases the judgment may be enforced immediately. If writ of restitution shall have been executed prior to judgment no further writ or execution for the premises shall be required. [1891 c 96 § 18; RRS § 827. Prior: 1890 p 80 § 18.]

59.12.180 Rules of practice. Except as otherwise provided in this chapter, the provisions of the laws of this state with reference to practice in civil actions are applicable to, and constitute the rules of practice in the proceedings mentioned in this chapter; and the provisions of such laws relative to new trials and appeals, except so far as they are inconsistent with the provisions of this chapter, shall be held to apply to the proceedings mentioned in this chapter. [1891 c 96 § 20; RRS § 829. Prior: 1890 p 80 § 21.]

59.12.190 Relief against forfeiture. The court may relieve a tenant against a forfeiture of a lease and restore him to his former estate, as in other cases provided by law, where application for such relief is made within thirty days after the forfeiture is declared by the judgment of the court, as provided in this chapter. The application may be made by a tenant or subtenant, or a mortgagee of the term, or any person interested in the continuance of the term. It must be made upon petition, setting forth the facts upon which the relief is sought, and be verified by the applicant. Notice of the application, with a copy of the petition, must be served on the plaintiff in the judgment, who may appear and contest the application. In no case shall the application be granted except on condition that full payment of rent due, or full performance of conditions of covenants stipulated, so far as the same is practicable, be first made. [1891 c 96 § 21; RRS § 830. Prior: 1890 p 80 § 22.]

59.12.200 Appellate review—Stay bond. A party aggrieved by the judgment may seek appellate review of the judgment as in other civil actions: *Provided*, That if the defendant appealing desires a stay of proceedings pending review, the defendant shall execute and file a bond, with two or more sufficient sureties to be approved by the judge, conditioned to abide the order of the court, and to pay all rents and other damages justly accruing to the plaintiff during the pendency of the proceeding. [1988 c 202 § 55; 1971 c 81 § 128; 1891 c 96 § 22; RRS § 831. Prior: 1890 p 80 § 23.]

Severability—1988 c 202: See note following RCW 2.24.050.

59.12.210 Effect of stay bond. When the defendant shall appeal, and shall file a bond as provided in RCW 59.12.200, all further proceedings in the case shall be stayed until the determination of said appeal and the

same has been remanded to the superior court for further proceedings therein. [1891 c 96 § 23; RRS § 832. Prior: 1890 p 80 § 24.]

59.12.220 Writ of restitution suspended pending appeal. If a writ of restitution has been issued previous to the taking of an appeal by the defendant, and said defendant shall execute and file a bond as provided in this chapter, the clerk of the court, under the direction of the judge, shall forthwith give the appellant a certificate of the allowance of such appeal; and upon the service of such certificate upon the officer having such writ of restitution the said officer shall forthwith cease all further proceedings by virtue of such writ; and if such writ has been completely executed the defendant shall be restored to the possession of the premises, and shall remain in possession thereof until the appeal is determined. [1891 c 96 § 24; RRS § 833. Prior: 1890 p 81 § 25.]

59.12.230 Forcible entry and detainer—Penalty. Every person who shall unlawfully use, or encourage or assist another in unlawfully using, any force or violence in entering upon or detaining any lands or other possessions of another; and every person who, having removed or been removed therefrom pursuant to the order or direction of any court, tribunal or officer, shall afterwards return to settle or reside unlawfully upon, or take possession of, such lands or possessions, shall be guilty of a misdemeanor. [1909 c 249 § 306; RRS § 2558. Prior: Code 1881 § 858; 1873 p 195 § 66; 1854 p 86 § 60.]

Chapter 59.16

UNLAWFUL ENTRY AND DETAINER

Sections

59.16.010	Unlawful detainer defined.
59.16.020	Pleadings, requirements.
59.16.030	Issues—Trial.
59.16.040	Parties defendant—Trial of separate issues.

59.16.010 Unlawful detainer defined. That any person who shall, without the permission of the owner and without having any color of title thereto, enter upon the lands of another, and shall refuse to remove therefrom after three days' notice, shall be deemed guilty of unlawful detainer and may be removed from such lands. [1891 c 115 § 1; RRS § 834.]

Unlawful detainer defined: RCW 59.12.030.

59.16.020 Pleadings, requirements. The complaint in all cases under the provisions of this chapter shall be upon oath, and then [there] shall be embodied therein or amended thereto an abstract of the plaintiff's title, and the defendant shall, in his answer, state whether he makes any claim of title to the lands described in the complaint, and if he makes no claim to the legal title but does claim a right to the possession of such lands, he shall state upon what grounds he claims a right to such possession. [1891 c 115 § 2; RRS § 835.]

59.16.030 Issues—Trial. It shall not be necessary for the plaintiff, in proceedings under this chapter, to allege or prove that the said lands were, at any time, actually occupied prior to the defendant's entry thereupon, but it shall be sufficient to allege that he is the legal owner and entitled to the immediate possession thereof: *Provided*, That if the defendant shall, by his answer, deny such ownership and shall state facts showing that he has a lawful claim to the possession thereof, the cause shall thereupon be entered for trial upon the docket of the court in all respects as if the action were brought under the provisions of *chapter XLVI of the code of eighteen hundred and eighty-one. [1891 c 115 § 3; RRS § 836.]

***Reviser's note:** "chapter XLVI of the code of eighteen hundred and eighty-one" is codified as RCW 7.28.010, 7.28.110 through 7.28.150 and 7.28.190 through 7.28.270.

59.16.040 Parties defendant—Trial of separate issues. All persons in actual possession of any portion of the several subdivisions of any section of land, according to the government surveys thereof, may be made defendants in one action: *Provided*, That they may, in their discretion, make separate answers to the complaint, and if separate issues are joined thereupon, the same shall nevertheless be tried as one action, but the verdict, if tried by jury, shall find separately upon the issues so joined, and judgment shall be rendered according thereto. [1891 c 115 § 4; RRS § 837.]

Chapter 59.18

RESIDENTIAL LANDLORD-TENANT ACT

Sections

59.18.010	Short title.
59.18.020	Rights and remedies—Obligation of good faith imposed.
59.18.030	Definitions.
59.18.040	Living arrangements exempted from chapter.
59.18.050	Jurisdiction of district and superior courts.
59.18.055	Notice—Alternative procedure—Court's jurisdiction limited.
59.18.060	Landlord—Duties.
59.18.070	Landlord—Failure to perform duties—Notice from tenant—Contents—Time limits for landlord's remedial action.
59.18.075	Seizure of illegal drugs—Notification of landlord.
59.18.080	Payment of rent condition to exercising remedies—Exceptions.
59.18.085	Rental of condemned or unlawful dwelling—Tenant's remedies.
59.18.090	Landlord's failure to remedy defective condition—Tenant's choice of actions.
59.18.100	Landlord's failure to carry out duties—Repairs effected by tenant—Procedure—Deduction of cost from rent—Limitations.
59.18.110	Failure of landlord to carry out duties—Determination by court or arbitrator—Judgment against landlord for diminished rental value and repair costs—Enforcement of judgment—Reduction in rent under certain conditions.
59.18.115	Substandard and dangerous conditions—Notice to landlord—Government certification—Escrow account.
59.18.120	Defective condition—Unfeasible to remedy defect—Termination of tenancy.
59.18.130	Duties of tenant.

59.18.140 Reasonable obligations or restrictions—Tenant's duty to conform.

59.18.150 Landlord's right of entry—Purposes—Conditions.

59.18.160 Landlord's remedies if tenant fails to remedy defective condition.

59.18.170 Landlord to give notice if tenant fails to carry out duties.

59.18.180 Tenant's failure to comply with statutory duties—Landlord to give tenant written notice of noncompliance—Landlord's remedies.

59.18.190 Notice to tenant to remedy nonconformance.

59.18.200 Tenancy from month to month or for rental period—Termination—Exclusion of children or conversion to condominium—Notice.

59.18.210 Tenancies from year to year except under written contract.

59.18.220 Termination of tenancy for a specified time.

59.18.230 Waiver of chapter provisions prohibited—Provisions prohibited from rental agreement—Distress for rent abolished—Detention of personal property for rent—Remedies.

59.18.240 Reprisals or retaliatory actions by landlord—Prohibited.

59.18.250 Reprisals or retaliatory actions by landlord—Presumptions—Rebuttal—Costs.

59.18.260 Moneys paid as deposit or security for performance by tenant—Written rental agreement to specify terms and conditions for retention by landlord—Written checklist required.

59.18.270 Moneys paid as deposit or security for performance by tenant—Deposit by landlord in trust account—Receipt—Claims.

59.18.280 Moneys paid as deposit or security for performance by tenant—Statement and notice of basis for retention—Remedies for landlord's failure to make refund.

59.18.285 Nonrefundable fees not to be designated as deposit—Written rental agreement required.

59.18.290 Removal or exclusion of tenant from premises—Holding over or excluding landlord from premises after termination date.

59.18.300 Termination of tenant's utility services—Tenant causing loss of landlord provided utility services.

59.18.310 Default in rent—Abandonment—Liability of tenant—Landlord's remedies—Sale of tenant's property by landlord.

59.18.315 Mediation of disputes by independent third party.

59.18.320 Arbitration—Authorized—Exceptions—Notice—Procedure.

59.18.330 Arbitration—Application—Hearings—Decisions.

59.18.340 Arbitration—Fee.

59.18.350 Arbitration—Completion of arbitration after giving notice.

59.18.360 Exemptions.

59.18.365 Unlawful detainer action—Summons—Form.

59.18.370 Forcible entry or detainer or unlawful detainer actions—Writ of restitution—Application—Order—Hearing.

59.18.375 Forcible entry or detainer or unlawful detainer actions—Payment of rent into court registry—Writ of restitution—Notice.

59.18.380 Forcible entry or detainer or unlawful detainer actions—Writ of restitution—Answer—Order—Stay—Bond.

59.18.390 Forcible entry or detainer or unlawful detainer actions—Writ of restitution—Service—Defendant's bond.

59.18.400 Forcible entry or detainer or unlawful detainer actions—Writ of restitution—Answer of defendant.

59.18.410 Forcible entry or detainer or unlawful detainer actions—Writ of restitution—Judgment—Execution.

59.18.415 Applicability to certain single family dwelling leases.

59.18.420 RCW 59.12.090, 59.12.100, 59.12.121 and 59.12.170 inapplicable.

59.18.430 Applicability to prior, existing or future leases.

59.18.900 Severability—1973 1st ex.s. c 207.

59.18.910 Severability—1989 c 342.

59.18.911 Effective date—1989 c 342.

Reviser's note: This chapter was revised pursuant to *Washington ass'n. of apartment ass'ns., inc. vs. Evans*, 88 Wn. 2d 563 (1977) which declared invalid the fourteen item and section vetoes to 1973 Engrossed Substitute Senate Bill No. 2226 (1973 1st ex. sess., chapter 207).

Smoke detection devices in dwelling units required: RCW 48.48.140.

59.18.010 Short title. RCW 59.18.010 through 59.18.420 and 59.18.900 shall be known and may be cited as the "Residential Landlord-Tenant Act of 1973", and shall constitute a new chapter in Title 59 RCW. [1973 1st ex.s. c 207 § 1.]

59.18.020 Rights and remedies—Obligation of good faith imposed. Every duty under this chapter and every act which must be performed as a condition precedent to the exercise of a right or remedy under this chapter imposes an obligation of good faith in its performance or enforcement. [1973 1st ex.s. c 207 § 2.]

59.18.030 Definitions. As used in this chapter:

(1) "Dwelling unit" is a structure or that part of a structure which is used as a home, residence, or sleeping place by one person or by two or more persons maintaining a common household, including but not limited to single family residences and units of multiplexes, apartment buildings, and mobile homes.

(2) "Landlord" means the owner, lessor, or sublessor of the dwelling unit or the property of which it is a part, and in addition means any person designated as representative of the landlord.

(3) "Person" means an individual, group of individuals, corporation, government, or governmental agency, business trust, estate, trust, partnership, or association, two or more persons having a joint or common interest, or any other legal or commercial entity.

(4) "Owner" means one or more persons, jointly or severally, in whom is vested:

(a) All or any part of the legal title to property; or

(b) All or part of the beneficial ownership, and a right to present use and enjoyment of the property.

(5) "Premises" means a dwelling unit, appurtenances thereto, grounds, and facilities held out for the use of tenants generally and any other area or facility which is held out for use by the tenant.

(6) "Rental agreement" means all agreements which establish or modify the terms, conditions, rules, regulations, or any other provisions concerning the use and occupancy of a dwelling unit.

(7) A "single family residence" is a structure maintained and used as a single dwelling unit. Notwithstanding that a dwelling unit shares one or more walls with another dwelling unit, it shall be deemed a single family residence if it has direct access to a street and shares neither heating facilities nor hot water equipment, nor any other essential facility or service, with any other dwelling unit.

(8) A "tenant" is any person who is entitled to occupy a dwelling unit primarily for living or dwelling purposes under a rental agreement.

(9) "Reasonable attorney's fees", where authorized in this chapter, means an amount to be determined including the following factors: The time and labor required, the novelty and difficulty of the questions involved, the skill requisite to perform the legal service properly, the fee customarily charged in the locality for similar legal services, the amount involved and the results obtained, and the experience, reputation and ability of the lawyer or lawyers performing the services. [1973 1st ex.s. c 207 § 3.]

59.18.040 Living arrangements exempted from chapter. The following living arrangements are not intended to be governed by the provisions of this chapter, unless established primarily to avoid its application, in which event the provisions of this chapter shall control:

(1) Residence at an institution, whether public or private, where residence is merely incidental to detention or the provision of medical, religious, educational, recreational, or similar services, including but not limited to correctional facilities, licensed nursing homes, monasteries and convents, and hospitals;

(2) Occupancy under a bona fide earnest money agreement to purchase or contract of sale of the dwelling unit or the property of which it is a part, where the tenant is, or stands in the place of, the purchaser;

(3) Residence in a hotel, motel, or other transient lodging whose operation is defined in RCW 19.48.010;

(4) Rental agreements entered into pursuant to the provisions of chapter 47.12 RCW where occupancy is by an owner-condemnee and where such agreement does not violate the public policy of this state of ensuring decent, safe, and sanitary housing and is so certified by the consumer protection division of the attorney general's office;

(5) Rental agreements for the use of any single family residence which are incidental to leases or rentals entered into in connection with a lease of land to be used primarily for agricultural purposes;

(6) Rental agreements providing housing for seasonal agricultural employees while provided in conjunction with such employment;

(7) Rental agreements with the state of Washington, department of natural resources, on public lands governed by Title 79 RCW;

(8) Occupancy by an employee of a landlord whose right to occupy is conditioned upon employment in or about the premises. [1989 c 342 § 3; 1973 1st ex.s. c 207 § 4.]

59.18.050 Jurisdiction of district and superior courts. The district or superior courts of this state may exercise jurisdiction over any landlord or tenant with respect to any conduct in this state governed by this chapter or with respect to any claim arising from a transaction subject to this chapter within the respective jurisdictions of the district or superior courts as provided in Article IV, section 6 of the Constitution of the state of Washington. [1973 1st ex.s. c 207 § 5.]

59.18.055 Notice—Alternative procedure—Court's jurisdiction limited. When the plaintiff, after the exercise of due diligence, is unable to personally serve the summons on the defendant, the court may authorize the alternative means of service described herein. Upon filing of an affidavit from the person or persons attempting service describing those attempts, and the filing of an affidavit from the plaintiff, plaintiff's agent, or plaintiff's attorney stating the belief that the defendant cannot be found, the court may enter an order authorizing service of the summons as follows:

(1) The summons and complaint shall be posted in a conspicuous place on the premises unlawfully held, not less than nine days from the return date stated in the summons; and

(2) Copies of the summons and complaint [complaint] shall be deposited in the mail, postage prepaid, by both regular mail and certified mail directed to the defendant's or defendants' last known address not less than nine days from the return date stated in the summons.

When service on the defendant or defendants is accomplished by this alternative procedure, the court's jurisdiction is limited to restoring possession of the premises to the plaintiff and no money judgment may be entered against the defendant or defendants until such time as jurisdiction over the defendant or defendants is obtained. [1989 c 342 § 14.]

59.18.060 Landlord—Duties. The landlord will at all times during the tenancy keep the premises fit for human habitation, and shall in particular:

(1) Maintain the premises to substantially comply with any applicable code, statute, ordinance, or regulation governing their maintenance or operation, which the legislative body enacting the applicable code, statute, ordinance or regulation could enforce as to the premises rented if such condition substantially endangers or impairs the health or safety of the tenant;

(2) Maintain the roofs, floors, walls, chimneys, fireplaces, foundations, and all other structural components in reasonably good repair so as to be usable and capable of resisting any and all normal forces and loads to which they may be subjected;

(3) Keep any shared or common areas reasonably clean, sanitary, and safe from defects increasing the hazards of fire or accident;

(4) Provide a reasonable program for the control of infestation by insects, rodents, and other pests at the initiation of the tenancy and, except in the case of a single family residence, control infestation during tenancy except where such infestation is caused by the tenant;

(5) Except where the condition is attributable to normal wear and tear, make repairs and arrangements necessary to put and keep the premises in as good condition as it by law or rental agreement should have been, at the commencement of the tenancy;

(6) Provide reasonably adequate locks and furnish keys to the tenant;

(7) Maintain all electrical, plumbing, heating, and other facilities and appliances supplied by him in reasonably good working order;

(8) Maintain the dwelling unit in reasonably weather-tight condition;

(9) Except in the case of a single family residence, provide and maintain appropriate receptacles in common areas for the removal of ashes, rubbish, and garbage, incidental to the occupancy and arrange for the reasonable and regular removal of such waste;

(10) Except where the building is not equipped for the purpose, provide facilities adequate to supply heat and water and hot water as reasonably required by the tenant;

(11) Designate to the tenant the name and address of the person who is the landlord by a statement on the rental agreement or by a notice conspicuously posted on the premises. The tenant shall be notified immediately of any changes by certified mail or by an updated posting. If the person designated in this section does not reside in the state where the premises are located, there shall also be designated a person who resides in the county who is authorized to act as an agent for the purposes of service of notices and process, and if no designation is made of a person to act as agent, then the person to whom rental payments are to be made shall be considered such agent.

No duty shall devolve upon the landlord to repair a defective condition under this section, nor shall any defense or remedy be available to the tenant under this chapter, where the defective condition complained of was caused by the conduct of such tenant, his family, invitee, or other person acting under his control, or where a tenant unreasonably fails to allow the landlord access to the property for purposes of repair. When the duty imposed by subsection (1) of this section is incompatible with and greater than the duty imposed by any other provisions of this section, the landlord's duty shall be determined pursuant to subsection (1) of this section. [1973 1st ex.s. c 207 § 6.]

59.18.070 Landlord—Failure to perform duties—Notice from tenant—Contents—Time limits for landlord's remedial action. If at any time during the tenancy the landlord fails to carry out the duties required by RCW 59.18.060 or by the rental agreement, the tenant may, in addition to pursuit of remedies otherwise provided him by law, deliver written notice to the person designated in RCW 59.18.060(11), or to the person who collects the rent, which notice shall specify the premises involved, the name of the owner, if known, and the nature of the defective condition. The landlord shall commence remedial action after receipt of such notice by the tenant as soon as possible but not later than the following time periods, except where circumstances are beyond the landlord's control:

(1) Not more than twenty-four hours, where the defective condition deprives the tenant of hot or cold water, heat, or electricity, or is imminently hazardous to life;

(2) Not more than seventy-two hours, where the defective condition deprives the tenant of the use of a refrigerator, range and oven, or a major plumbing fixture supplied by the landlord; and

(3) Not more than ten days in all other cases.

In each instance the burden shall be on the landlord to see that remedial work under this section is completed promptly. If completion is delayed due to circumstances beyond the landlord's control, including the unavailability of financing, the landlord shall remedy the defective condition as soon as possible. [1989 c 342 § 4; 1973 1st ex.s. c 207 § 7.]

59.18.075 Seizure of illegal drugs—Notification of landlord. Any law enforcement agency which seizes a legend drug pursuant to a violation of chapter 69.41 RCW, a controlled substance pursuant to a violation of chapter 69.50 RCW, or an imitation controlled substance pursuant to a violation of chapter 69.52 RCW, shall make a reasonable attempt to discover the identity of the landlord and shall notify the landlord in writing, at the last address listed in the property tax records and at any other address known to the law enforcement agency, of the seizure and the location of the seizure of the illegal drugs or substances. [1988 c 150 § 11.]

Legislative findings—Severability—1988 c 150: See notes following RCW 59.18.130.

59.18.080 Payment of rent condition to exercising remedies—Exceptions. The tenant shall be current in the payment of rent including all utilities which the tenant has agreed in the rental agreement to pay before exercising any of the remedies accorded him under the provisions of this chapter: *Provided*, That this section shall not be construed as limiting the tenant's civil remedies for negligent or intentional damages: *Provided further*, That this section shall not be construed as limiting the tenant's right in an unlawful detainer proceeding to raise the defense that there is no rent due and owing. [1973 1st ex.s. c 207 § 8.]

59.18.085 Rental of condemned or unlawful dwelling—Tenant's remedies. (1) If a governmental agency responsible for the enforcement of a building, housing, or other appropriate code has notified the landlord that a dwelling is condemned or unlawful to occupy due to the existence of conditions that violate applicable codes, statutes, ordinances, or regulations, a landlord shall not enter into a rental agreement for the dwelling unit until the conditions are corrected.

(2) If a landlord knowingly violates subsection (1) of this section, the tenant shall recover either three months' periodic rent or up to treble the actual damages sustained as a result of the violation, whichever is greater, costs of suit, or arbitration and reasonable attorneys' fees. If the tenant elects to terminate the tenancy as a result of the conditions leading to the posting, or if the appropriate governmental agency requires that the tenant vacate the premises, the tenant also shall recover:

(a) The entire amount of any deposit prepaid by the tenant; and

(b) All prepaid rent. [1989 c 342 § 13.]

59.18.090 Landlord's failure to remedy defective condition—Tenant's choice of actions. If, after receipt of written notice, and expiration of the applicable period

of time, as provided in RCW 59.18.070, the landlord fails to remedy the defective condition within a reasonable time the tenant may:

(1) Terminate the rental agreement and quit the premises upon written notice to the landlord without further obligation under the rental agreement, in which case he shall be discharged from payment of rent for any period following the quitting date, and shall be entitled to a pro rata refund of any prepaid rent, and shall receive a full and specific statement of the basis for retaining any of the deposit together with any refund due in accordance with RCW 59.18.280;

(2) Bring an action in an appropriate court, or at arbitration if so agreed, for any remedy provided under this chapter or otherwise provided by law; or

(3) Pursue other remedies available under this chapter. [1973 1st ex.s. c 207 § 9.]

59.18.100 Landlord's failure to carry out duties—Repairs effected by tenant—Procedure—Deduction of cost from rent—Limitations. (1) If at any time during the tenancy, the landlord fails to carry out any of the duties imposed by RCW 59.18.060, and notice of the defect is given to the landlord pursuant to RCW 59.18.070, the tenant may submit to the landlord or his designated agent by certified mail or in person a good faith estimate by the tenant of the cost to perform the repairs necessary to correct the defective condition if the repair is to be done by licensed or registered persons, or if no licensing or registration requirement applies to the type of work to be performed, the cost if the repair is to be done by responsible persons capable of performing such repairs. Such estimate may be submitted to the landlord at the same time as notice is given pursuant to RCW 59.18.070: *Provided*, That the remedy provided in this section shall not be available for a landlord's failure to carry out the duties in RCW 59.18.060 (9), and (11): *Provided further*, That if the tenant utilizes this section for repairs pursuant to RCW 59.18.060(6), the tenant shall promptly provide the landlord with a key to any new or replaced locks. The amount the tenant may deduct from the rent may vary from the estimate, but cannot exceed the one-month limit as described in subsection (2) of this section.

(2) If the landlord fails to commence remedial action of the defective condition within the applicable time period after receipt of notice and the estimate from the tenant, the tenant may contract with a licensed or registered person, or with a responsible person capable of performing the repair if no license or registration is required, to make the repair, and upon the completion of the repair and an opportunity for inspection by the landlord or his designated agent, the tenant may deduct the cost of repair from the rent in an amount not to exceed the sum expressed in dollars representing one month's rental of the tenant's unit per repair: *Provided*, That when the landlord must commence to remedy the defective condition within ten days as provided in RCW 59.18.070(3), the tenant cannot contract for repairs for ten days after notice or five days after the landlord receives the estimate, whichever is later: *Provided further*,

That the total costs of repairs deducted in any twelve-month period under this subsection shall not exceed the sum expressed in dollars representing two month's rental of the tenant's unit.

(3) If the landlord fails to carry out the duties imposed by RCW 59.18.060 within the applicable time period, and if the cost of repair does not exceed one-half month's rent, including the cost of materials and labor, which shall be computed at the prevailing rate in the community for the performance of such work, and if repair of the condition need not by law be performed only by licensed or registered persons, and if the tenant has given notice under RCW 59.18.070, although no estimate shall be necessary under this subsection, the tenant may repair the defective condition in a workmanlike manner and upon completion of the repair and an opportunity for inspection, the tenant may deduct the cost of repair from the rent: *Provided*, That repairs under this subsection are limited to defects within the leased premises: *Provided further*, That the cost per repair shall not exceed one-half month's rent of the unit and that the total costs of repairs deducted in any twelve-month period under this subsection shall not exceed one month's rent of the unit.

(4) The provisions of this section shall not:

(a) Create a relationship of employer and employee between landlord and tenant; or

(b) Create liability under the workers' compensation act; or

(c) Constitute the tenant as an agent of the landlord for the purposes of RCW 60.04.010 and 60.04.040.

(5) Any repair work performed under the provisions of this section shall comply with the requirements imposed by any applicable code, statute, ordinance, or regulation. A landlord whose property is damaged because of repairs performed in a negligent manner may recover the actual damages in an action against the tenant.

(6) Nothing in this section shall prevent the tenant from agreeing with the landlord to undertake the repairs himself in return for cash payment or a reasonable reduction in rent, the agreement thereof to be agreed upon between the parties, and such agreement does not alter the landlord's obligations under this chapter. [1989 c 342 § 5; 1987 c 185 § 35; 1973 1st ex.s. c 207 § 10.]

Intent—Severability—1987 c 185: See notes following RCW 51.12.130.

59.18.110 Failure of landlord to carry out duties—Determination by court or arbitrator—Judgment against landlord for diminished rental value and repair costs—Enforcement of judgment—Reduction in rent under certain conditions. (1) If a court or an arbitrator determines that:

(a) A landlord has failed to carry out a duty or duties imposed by RCW 59.18.060; and

(b) A reasonable time has passed for the landlord to remedy the defective condition following notice to the landlord in accordance with RCW 59.18.070 or such other time as may be allotted by the court or arbitrator; the court or arbitrator may determine the diminution in

rental value of the premises due to the defective condition and shall render judgment against the landlord for the rent paid in excess of such diminished rental value from the time of notice of such defect to the time of decision and any costs of repair done pursuant to RCW 59.18.100 for which no deduction has been previously made. Such decisions may be enforced as other judgments at law and shall be available to the tenant as a set-off against any existing or subsequent claims of the landlord.

The court or arbitrator may also authorize the tenant to make or contract to make further corrective repairs: *Provided*, That the court specifies a time period in which the landlord may make such repairs before the tenant may commence or contract for such repairs: *Provided further*, That such repairs shall not exceed the sum expressed in dollars representing one month's rental of the tenant's unit in any one calendar year.

(2) The tenant shall not be obligated to pay rent in excess of the diminished rental value of the premises until such defect or defects are corrected by the landlord or until the court or arbitrator determines otherwise. [1973 1st ex.s. c 207 § 11.]

59.18.115 Substandard and dangerous conditions—Notice to landlord—Government certification—Escrow account. (1) The legislature finds that some tenants live in residences that are substandard and dangerous to their health and safety and that the repair and deduct remedies of RCW 59.18.100 may not be adequate to remedy substandard and dangerous conditions. Therefore, an extraordinary remedy is necessary if the conditions substantially endanger or impair the health and safety of the tenant.

(2)(a) If a landlord fails to fulfill any substantial obligation imposed by RCW 59.18.060 that substantially endangers or impairs the health or safety of a tenant, including (i) structural members that are of insufficient size or strength to carry imposed loads with safety, (ii) exposure of the occupants to the weather, (iii) plumbing and sanitation defects that directly expose the occupants to the risk of illness or injury, (iv) lack of water, including hot water, (v) heating or ventilation systems that are not functional or are hazardous, (vi) defective, hazardous, or missing electrical wiring or electrical service, (vii) defective or inadequate exits that increase the risk of injury to occupants, and (viii) conditions that increase the risk of fire, the tenant shall give notice in writing to the landlord, specifying the conditions, acts, omissions, or violations. Such notice shall be sent to the landlord or to the person or place where rent is normally paid.

(b) If after receipt of the notice described in (a) of this subsection the landlord fails to remedy the condition or conditions within a reasonable amount of time under RCW 59.18.070, the tenant may request that the local government provide for an inspection of the premises with regard to the specific condition or conditions that exist as provided in (a) of this subsection. The local government shall have the appropriate government official, or may designate a public or disinterested private person or company capable of conducting the inspection

and making the certification, conduct an inspection of the specific condition or conditions listed by the tenant, and shall not inspect nor be liable for any other condition or conditions of the premises. The purpose of this inspection is to verify, to the best of the inspector's ability, whether the tenant's listed condition or conditions exist and substantially endanger the tenant's health or safety under (a) of this subsection; the inspection is for the purposes of this private civil remedy, and therefore shall not be related to any other governmental function such as enforcement of any code, ordinance, or state law.

(c) The local government or its designee, after receiving the request from the tenant to conduct an inspection under this section, shall conduct the inspection and make any certification within a reasonable amount of time not more than five days from the date of receipt of the request. The local government or its designee may enter the premises at any reasonable time to do the inspection, provided that he or she first shall display proper credentials and request entry. The local government or its designee shall whenever practicable, taking into consideration the imminence of any threat to the tenant's health or safety, give the landlord at least twenty-four hours notice of the date and time of inspection and provide the landlord with an opportunity to be present at the time of the inspection. The landlord shall have no power or authority to prohibit entry for the inspection.

(d) The local government or its designee shall certify whether the condition or the conditions specified by the tenant do exist and do make the premises substantially unfit for human habitation or can be a substantial risk to the health and safety of the tenant as described in (a) of this subsection. The certification shall be provided to the tenant, and a copy shall be included by the tenant with the notice sent to the landlord under subsection (3) of this section. The certification may be appealed to the local board of appeals, but the appeal shall not delay or preclude the tenant from proceeding with the escrow under this section.

(e) The tenant shall not be entitled to deposit rent in escrow pursuant to this section unless the tenant first makes a good faith determination that he or she is unable to repair the conditions described in the certification issued pursuant to subsection (2)(d) of this section through use of the repair remedies authorized by RCW 59.18.100[.]

(f) If the local government or its designee certifies that the condition or conditions specified by the tenant exist, the tenant shall then either pay the periodic rent due to the landlord or deposit all periodic rent then called for in the rental agreement and all rent thereafter called for in the rental agreement into an escrow account maintained by a person authorized by law to set up and maintain escrow accounts, including escrow companies under chapter 18.44 RCW, financial institutions, or attorneys, or with the clerk of the court of the district or superior court where the property is located. These depositories are hereinafter referred to as "escrow." The tenant shall notify the landlord in writing of the deposit by mailing the notice postage prepaid by first class mail

or by delivering the notice to the landlord promptly but not more than twenty-four hours after the deposit.

(g) This section, when elected as a remedy by the tenant by sending the notice under subsection (3) of this section, shall be the exclusive remedy available to the tenant regarding defects described in the certification under subsection (2)(d) of this section: *Provided*, That the tenant may simultaneously commence or pursue an action in an appropriate court, or at arbitration if so agreed, to determine past, present, or future diminution in rental value of the premises due to any defective conditions.

(3) The notice to the landlord of the rent escrow under this section shall be a sworn statement by the tenant in substantially the following form:

NOTICE TO LANDLORD OF RENT ESCROW

Name of tenant:

Name of landlord:

Name and address of escrow:

Date of deposit of rent into escrow:

Amount of rent deposited into escrow:

The following condition has been certified by a local building official to substantially endanger, impair, or affect the health or safety of a tenant:

That written notice of the conditions needing repair was provided to the landlord on ---, and --- days have elapsed and the repairs have not been made.

(Sworn Signature)

(4) The escrow shall place all rent deposited in a separate rent escrow account in the name of the escrow in a bank or savings and loan association domiciled in this state. The escrow shall keep in a separate docket an account of each deposit, with the name and address of the tenant, and the name and address of the landlord and of the agent, if any.

(5)(a) A landlord who receives notice that the rent due has been deposited with an escrow pursuant to subsection (2) of this section may:

(i) Apply to the escrow for release of the funds after the local government certifies that the repairs to the conditions listed in the notice under subsection (3) of this section have been properly repaired. The escrow shall release the funds to the landlord less any escrow costs for which the tenant is entitled to reimbursement pursuant to this section, immediately upon written receipt of the local government certification that the repairs to the conditions listed in the notice under subsection (3) of this section have been properly completed.

(ii) File an action with the court and apply to the court for release of the rent on the grounds that the tenant did not comply with the notice requirement of subsection (2) or (3) of this section. Proceedings under this subsection shall be governed by the time, service, and filing requirements of RCW 59.18.370 regarding show cause hearings.

(iii) File an action with the court and apply to the court for release of the rent on the grounds that there

was no violation of any obligation imposed upon the landlord or that the condition has been remedied.

(iv) This action may be filed in any court having jurisdiction, including small claims court. If the tenant has vacated the premises or if the landlord has failed to commence an action with the court for release of the funds within sixty days after rent is deposited in escrow, the tenant may file an action to determine how and when any rent deposited in escrow shall be released or disbursed. The landlord shall not commence an unlawful detainer action for nonpayment of rent by serving or filing a summons and complaint if the tenant initially pays the rent called for in the rental agreement that is due into escrow as provided for under this section on or before the date rent is due or on or before the expiration of a three-day notice to pay rent or vacate and continues to pay the rent into escrow as the rent becomes due or prior to the expiration of a three-day notice to pay rent or vacate; provided that the landlord shall not be barred from commencing an unlawful detainer action for nonpayment of rent if the amount of rent that is paid into escrow is less than the amount of rent agreed upon in the rental agreement between the parties.

(b) The tenant shall be named as a party to any action filed by the landlord under this section, and shall have the right to file an answer and counterclaim, although any counterclaim shall be dismissed without prejudice if the court or arbitrator determines that the tenant failed to follow the notice requirements contained in this section. Any counterclaim can only claim diminished rental value related to conditions specified by the tenant in the notice required under subsection (3) of this section. This limitation on the tenant's right to counterclaim shall not affect the tenant's right to bring his or her own separate action. A trial shall be held within sixty days of the date of filing of the landlord's or tenant's complaint.

(c) The tenant shall be entitled to reimbursement for any escrow costs or fees incurred for setting up or maintaining an escrow account pursuant to this section, unless the tenant did not comply with the notice requirements of subsection (2) or (3) of this section. Any escrow fees that are incurred for which the tenant is entitled to reimbursement shall be deducted from the rent deposited in escrow and remitted to the tenant at such time as any rent is released to the landlord. The prevailing party in any court action or arbitration brought under this section may also be awarded its costs and reasonable attorneys' fees.

(d) If a court determines a diminished rental value of the premises, the tenant may pay the rent due based on the diminished value of the premises into escrow until the landlord makes the necessary repairs.

(6)(a) If a landlord brings an action for the release of rent deposited, the court may, upon application of the landlord, release part of the rent on deposit for payment of the debt service on the premises, the insurance premiums for the premises, utility services, and repairs to the rental unit.

(b) In determining whether to release rent for the payments described in (a) of this subsection, the court

shall consider the amount of rent the landlord receives from other rental units in the buildings of which the residential premises are a part, the cost of operating those units, and the costs which may be required to remedy the condition contained in the notice. The court shall also consider whether the expenses are due or have already been paid, whether the landlord has other financial resources, or whether the landlord or tenant will suffer irreparable damage. The court may request the landlord to provide additional security, such as a bond, prior to authorizing release of any of the funds in escrow. [1989 c 342 § 16.]

59.18.120 Defective condition—Unfeasible to remedy defect—Termination of tenancy. If a court or arbitrator determines a defective condition as described in RCW 59.18.060 to be so substantial that it is unfeasible for the landlord to remedy the defect within the time allotted by RCW 59.18.070, and that the tenant should not remain in the dwelling unit in its defective condition, the court or arbitrator may authorize the termination of the tenancy: *Provided*, That the court or arbitrator shall set a reasonable time for the tenant to vacate the premises. [1973 1st ex.s. c 207 § 12.]

59.18.130 Duties of tenant. Each tenant shall pay the rental amount at such times and in such amounts as provided for in the rental agreement or as otherwise provided by law and comply with all obligations imposed upon tenants by applicable provisions of all municipal, county, and state codes, statutes, ordinances, and regulations, and in addition shall:

(1) Keep that part of the premises which he occupies and uses as clean and sanitary as the conditions of the premises permit;

(2) Properly dispose from his dwelling unit all rubbish, garbage, and other organic or flammable waste, in a clean and sanitary manner at reasonable and regular intervals, and assume all costs of extermination and fumigation for infestation caused by the tenant;

(3) Properly use and operate all electrical, gas, heating, plumbing and other fixtures and appliances supplied by the landlord;

(4) Not intentionally or negligently destroy, deface, damage, impair, or remove any part of the structure or dwelling, with the appurtenances thereto, including the facilities, equipment, furniture, furnishings, and appliances, or permit any member of his family, invitee, licensee, or any person acting under his control to do so. Violations may be prosecuted under chapter 9A.48 RCW if the destruction is intentional and malicious;

(5) Not permit a nuisance or common waste;

(6) Not engage in drug-related activity at the rental premises, or allow a subtenant, sublessee, resident, or anyone else to engage in drug-related activity at the rental premises with the knowledge or consent of the tenant. "Drug-related activity" means that activity which constitutes a violation of chapter 69.41, 69.50, or 69.52 RCW; and

(7) Upon termination and vacation, restore the premises to their initial condition except for reasonable wear

and tear or conditions caused by failure of the landlord to comply with his obligations under this chapter: *Provided*, That the tenant shall not be charged for normal cleaning if he has paid a nonrefundable cleaning fee. [1988 c 150 § 2; 1983 c 264 § 3; 1973 1st ex.s. c 207 § 13.]

Legislative findings—1988 c 150: "The legislature finds that the illegal use, sale, and manufacture of drugs and other drug-related activities is a state-wide problem. Innocent persons, especially children, who come into contact with illegal drug-related activity within their own neighborhoods are seriously and adversely affected. Rental property is damaged and devalued by drug activities. The legislature further finds that a rapid and efficient response is necessary to: (1) Lessen the occurrence of drug-related enterprises; (2) reduce the drug use and trafficking problems within this state; and (3) reduce the damage caused to persons and property by drug activity. The legislature finds that it is beneficial to rental property owners and to the public to permit landlords to quickly and efficiently evict persons who engage in drug-related activities at rented premises." [1988 c 150 § 1.]

Severability—1988 c 150: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1988 c 150 § 15.]

59.18.140 Reasonable obligations or restrictions—Tenant's duty to conform. The tenant shall conform to all reasonable obligations or restrictions, whether denominated by the landlord as rules, rental agreement, rent, or otherwise, concerning the use, occupation, and maintenance of his dwelling unit, appurtenances thereto, and the property of which the dwelling unit is a part if such obligations and restrictions are not in violation of any of the terms of this chapter and are not otherwise contrary to law, and if such obligations and restrictions are brought to the attention of the tenant at the time of his initial occupancy of the dwelling unit and thus become part of the rental agreement. Except for termination of tenancy, after thirty days written notice to each affected tenant, a new rule of tenancy including a change in the amount of rent may become effective upon completion of the term of the rental agreement or sooner upon mutual consent. [1989 c 342 § 6; 1973 1st ex.s. c 207 § 14.]

59.18.150 Landlord's right of entry—Purposes—Conditions. (1) The tenant shall not unreasonably withhold consent to the landlord to enter into the dwelling unit in order to inspect the premises, make necessary or agreed repairs, alterations, or improvements, supply necessary or agreed services, or exhibit the dwelling unit to prospective or actual purchasers, mortgagees, tenants, workers, or contractors.

(2) The landlord may enter the dwelling unit without consent of the tenant in case of emergency or abandonment.

(3) The landlord shall not abuse the right of access or use it to harass the tenant. Except in the case of emergency or if it is impracticable to do so, the landlord shall give the tenant at least two days' notice of his or her intent to enter and shall enter only at reasonable times. The tenant shall not unreasonably withhold consent to the landlord to enter the dwelling unit at a specified time where the landlord has given at least one day's notice of intent to enter to exhibit the dwelling unit to

prospective or actual purchasers or tenants. A landlord shall not unreasonably interfere with a tenant's enjoyment of the rented dwelling unit by excessively exhibiting the dwelling unit.

(4) The landlord has no other right of access except by court order, arbitrator or by consent of the tenant.

(5) A landlord or tenant who continues to violate this section after being served with one written notification alleging in good faith violations of this section listing the date and time of the violation shall be liable for up to one hundred dollars for each violation after receipt of the notice. The prevailing party may recover costs of the suit or arbitration under this section, and may also recover reasonable attorneys' fees. [1989 c 342 § 7; 1989 c 12 § 18; 1973 1st ex.s. c 207 § 15.]

Reviser's note: This section was amended by 1989 c 12 § 18 and by 1989 c 342 § 7, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

59.18.160 Landlord's remedies if tenant fails to remedy defective condition. If, after receipt of written notice, as provided in RCW 59.18.170, the tenant fails to remedy the defective condition within a reasonable time, the landlord may:

(1) Bring an action in an appropriate court, or at arbitration if so agreed for any remedy provided under this chapter or otherwise provided by law; or

(2) Pursue other remedies available under this chapter. [1973 1st ex.s. c 207 § 16.]

59.18.170 Landlord to give notice if tenant fails to carry out duties. If at any time during the tenancy the tenant fails to carry out the duties required by RCW 59.18.130 or 59.18.140, the landlord may, in addition to pursuit of remedies otherwise provided by law, give written notice to the tenant of said failure, which notice shall specify the nature of the failure. [1973 1st ex.s. c 207 § 17.]

59.18.180 Tenant's failure to comply with statutory duties—Landlord to give tenant written notice of noncompliance—Landlord's remedies. If the tenant fails to comply with any portion of RCW 59.18.130 or 59.18.140, and such noncompliance can substantially affect the health and safety of the tenant or other tenants, or substantially increase the hazards of fire or accident that can be remedied by repair, replacement of a damaged item, or cleaning, the tenant shall comply within thirty days after written notice by the landlord specifying the noncompliance, or, in the case of emergency as promptly as conditions require. If the tenant fails to remedy the noncompliance within that period the landlord may enter the dwelling unit and cause the work to be done and submit an itemized bill of the actual and reasonable cost of repair, to be payable on the next date when periodic rent is due, or on terms mutually agreed to by the landlord and tenant, or immediately if the rental agreement has terminated. Any substantial noncompliance by the tenant of RCW 59.18.130 or 59.18.140 shall constitute a ground for commencing an action in unlawful detainer in accordance with the provisions of chapter 59.12

RCW, and a landlord may commence such action at any time after written notice pursuant to such chapter. The tenant shall have a defense to an unlawful detainer action filed solely on this ground if it is determined at the hearing authorized under the provisions of chapter 59.12 RCW that the tenant is in substantial compliance with the provisions of this section, or if the tenant remedies the noncomplying condition within the thirty day period provided for above or any shorter period determined at the hearing to have been required because of an emergency: *Provided*, That if the defective condition is remedied after the commencement of an unlawful detainer action, the tenant may be liable to the landlord for statutory costs and reasonable attorney's fees.

If drug-related activity is alleged to be a basis for termination of tenancy under RCW 59.18.130(6), 59.12.030(5), or 59.20.140(5), the compliance provisions of this section do not apply and the landlord may proceed directly to an unlawful detainer action. [1988 c 150 § 7; 1973 1st ex.s. c 207 § 18.]

Legislative findings—Severability—1988 c 150: See notes following RCW 59.18.130.

59.18.190 Notice to tenant to remedy nonconformance. Whenever the landlord learns of a breach of RCW 59.18.130 or has accepted performance by the tenant which is at variance with the terms of the rental agreement or rules enforceable after the commencement of the tenancy, he may immediately give notice to the tenant to remedy the nonconformance. Said notice shall expire after sixty days unless the landlord pursues any remedy under this chapter. [1973 1st ex.s. c 207 § 19.]

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

(2) Whenever a landlord plans to change any apartment or apartments to a condominium form of ownership or plans to change to a policy of excluding children, the landlord shall give a written notice to a tenant at least ninety days before termination of the tenancy to effectuate such change in policy. Such ninety-day notice shall be in lieu of the notice required by subsection (1) of this section: *Provided*, That if after giving the ninety-day notice the change in policy is delayed, the notice requirements of subsection (1) of this section shall apply unless waived by the tenant. [1979 ex.s. c 70 § 1; 1973 1st ex.s. c 207 § 20.]

Unlawful detainer, notice requirement: RCW 59.12.030(2).

59.18.210 Tenancies from year to year except under written contract. Tenancies from year to year are hereby abolished except when the same are created by express written contract. Leases may be in writing or print, or

partly in writing and partly in print, and shall be legal and valid for any term or period not exceeding one year, without acknowledgment, witnesses or seals. [1973 1st ex.s. c 207 § 21.]

59.18.220 Termination of tenancy for a specified time. In all cases where premises are rented for a specified time, by express or implied contract, the tenancy shall be deemed terminated at the end of such specified time. [1973 1st ex.s. c 207 § 22.]

59.18.230 Waiver of chapter provisions prohibited—Provisions prohibited from rental agreement—Distress for rent abolished—Detention of personal property for rent—Remedies. (1) Any provision of a lease or other agreement, whether oral or written, whereby any section or subsection of this chapter is waived except as provided in RCW 59.18.360 and shall be deemed against public policy and shall be unenforceable. Such unenforceability shall not affect other provisions of the agreement which can be given effect without them.

(2) No rental agreement may provide that the tenant:

(a) Agrees to waive or to forego rights or remedies under this chapter; or

(b) Authorizes any person to confess judgment on a claim arising out of the rental agreement; or

(c) Agrees to pay the landlord's attorney's fees, except as authorized in this chapter; or

(d) Agrees to the exculpation or limitation of any liability of the landlord arising under law or to indemnify the landlord for that liability or the costs connected therewith; or

(e) And landlord have agreed to a particular arbitrator at the time the rental agreement is entered into.

(3) A provision prohibited by subsection (2) of this section included in a rental agreement is unenforceable. If a landlord deliberately uses a rental agreement containing provisions known by him to be prohibited, the tenant may recover actual damages sustained by him and reasonable attorney's fees.

(4) The common law right of the landlord of distress for rent is hereby abolished for property covered by this chapter. Any provision in a rental agreement creating a lien upon the personal property of the tenant or authorizing a distress for rent is null and void and of no force and effect. Any landlord who takes or detains the personal property of a tenant without the specific written consent of the tenant to such incident of taking or detention, and who, after written demand by the tenant for the return of his personal property, refuses to return the same promptly shall be liable to the tenant for the value of the property retained, actual damages, and if the refusal is intentional, may also be liable for damages of up to one hundred dollars per day but not to exceed one thousand dollars, for each day or part of a day that the tenant is deprived of his property. The prevailing party may recover his costs of suit and a reasonable attorney's fee.

In any action, including actions pursuant to chapters 7.64 or 12.28 RCW, brought by a tenant or other person

to recover possession of his personal property taken or detained by a landlord in violation of this section, the court, upon motion and after notice to the opposing parties, may waive or reduce any bond requirements where it appears to be to the satisfaction of the court that the moving party is proceeding in good faith and has, prima facie, a meritorious claim for immediate delivery or redelivery of said property. [1989 c 342 § 8; 1983 c 264 § 4; 1973 1st ex.s. c 207 § 23.]

59.18.240 Reprisals or retaliatory actions by landlord—Prohibited. So long as the tenant is in compliance with this chapter, the landlord shall not take or threaten to take reprisals or retaliatory action against the tenant because of any good faith and lawful:

(1) Complaints or reports by the tenant to a governmental authority concerning the failure of the landlord to substantially comply with any code, statute, ordinance, or regulation governing the maintenance or operation of the premises, if such condition may endanger or impair the health or safety of the tenant; or

(2) Assertions or enforcement by the tenant of his rights and remedies under this chapter.

"Reprisal or retaliatory action" shall mean and include but not be limited to any of the following actions by the landlord when such actions are intended primarily to retaliate against a tenant because of the tenant's good faith and lawful act:

(a) Eviction of the tenant;

(b) Increasing the rent required of the tenant;

(c) Reduction of services to the tenant; and

(d) Increasing the obligations of the tenant. [1983 c 264 § 9; 1973 1st ex.s. c 207 § 24.]

59.18.250 Reprisals or retaliatory actions by landlord—Presumptions—Rebuttal—Costs. Initiation by the landlord of any action listed in RCW 59.18.240 within ninety days after a good faith and lawful act by the tenant as enumerated in RCW 59.18.240, or within ninety days after any inspection or proceeding of a governmental agency resulting from such act, shall create a rebuttable presumption affecting the burden of proof, that the action is a reprisal or retaliatory action against the tenant: *Provided*, That if at the time the landlord gives notice of termination of tenancy pursuant to chapter 59.12 RCW the tenant is in arrears in rent or in breach of any other lease or rental obligation, there is a rebuttable presumption affecting the burden of proof that the landlord's action is neither a reprisal nor retaliatory action against the tenant: *Provided further*, That if the court finds that the tenant made a complaint or report to a governmental authority within ninety days after notice of a proposed increase in rent or other action in good faith by the landlord, there is a rebuttable presumption that the complaint or report was not made in good faith: *Provided further*, That no presumption against the landlord shall arise under this section, with respect to an increase in rent, if the landlord, in a notice to the tenant of increase in rent, specifies reasonable grounds for said increase, which grounds may include a

substantial increase in market value due to remedial action under this chapter: *Provided further*, That the presumption of retaliation, with respect to an eviction, may be rebutted by evidence that it is not practical to make necessary repairs while the tenant remains in occupancy. In any action or eviction proceeding where the tenant prevails upon his claim or defense that the landlord has violated this section, the tenant shall be entitled to recover his costs of suit or arbitration, including a reasonable attorney's fee, and where the landlord prevails upon his claim he shall be entitled to recover his costs of suit or arbitration, including a reasonable attorney's fee: *Provided further*, That neither party may recover attorney's fees to the extent that their legal services are provided at no cost to them. [1983 c 264 § 10; 1973 1st ex.s. c 207 § 25.]

59.18.260 Moneys paid as deposit or security for performance by tenant—Written rental agreement to specify terms and conditions for retention by landlord—Written checklist required. If any moneys are paid to the landlord by the tenant as a deposit or as security for performance of the tenant's obligations in a lease or rental agreement, the lease or rental agreement shall be in writing and shall include the terms and conditions under which the deposit or portion thereof may be withheld by the landlord upon termination of the lease or rental agreement. If all or part of the deposit may be withheld to indemnify the landlord for damages to the premises for which the tenant is responsible, the rental agreement shall be in writing and shall so specify. No deposit may be collected by a landlord unless the rental agreement is in writing and a written checklist or statement specifically describing the condition and cleanliness of or existing damages to the premises and furnishings, including, but not limited to, walls, floors, countertops, carpets, drapes, furniture, and appliances, is provided by the landlord to the tenant at the commencement of the tenancy. The checklist or statement shall be signed and dated by the landlord and the tenant, and the tenant shall be provided with a copy of the signed checklist or statement. No such deposit shall be withheld on account of normal wear and tear resulting from ordinary use of the premises. [1983 c 264 § 6; 1973 1st ex.s. c 207 § 26.]

59.18.270 Moneys paid as deposit or security for performance by tenant—Deposit by landlord in trust account—Receipt—Claims. All moneys paid to the landlord by the tenant as a deposit as security for performance of the tenant's obligations in a lease or rental agreement shall promptly be deposited by the landlord in a trust account, maintained by the landlord for the purpose of holding such security deposits for tenants of the landlord, in a bank, savings and loan association, mutual savings bank, or licensed escrow agent located in Washington. Unless otherwise agreed in writing, the landlord shall be entitled to receipt of interest paid on such trust account deposits. The landlord shall provide the tenant with a written receipt for the deposit and

shall provide written notice of the name and address and location of the depository and any subsequent change thereof. If during a tenancy the status of landlord is transferred to another, any sums in the deposit trust account affected by such transfer shall simultaneously be transferred to an equivalent trust account of the successor landlord, and the successor landlord shall promptly notify the tenant of the transfer and of the name, address and location of the new depository. The tenant's claim to any moneys paid under this section shall be prior to that of any creditor of the landlord, including a trustee in bankruptcy or receiver, even if such moneys are commingled. [1975 1st ex.s. c 233 § 1; 1973 1st ex.s. c 207 § 27.]

59.18.280 Moneys paid as deposit or security for performance by tenant—Statement and notice of basis for retention—Remedies for landlord's failure to make refund. Within fourteen days after the termination of the rental agreement and vacation of the premises or, if the tenant abandons the premises as defined in RCW 59.18-.310, within fourteen days after the landlord learns of the abandonment, the landlord shall give a full and specific statement of the basis for retaining any of the deposit together with the payment of any refund due the tenant under the terms and conditions of the rental agreement. No portion of any deposit shall be withheld on account of wear resulting from ordinary use of the premises. The landlord complies with this section if the required statement or payment, or both, are deposited in the United States mail properly addressed with first class postage prepaid within the fourteen days.

The notice shall be delivered to the tenant personally or by mail to his last known address. If the landlord fails to give such statement together with any refund due the tenant within the time limits specified above he shall be liable to the tenant for the full amount of the deposit. The landlord is also barred in any action brought by the tenant to recover the deposit from asserting any claim or raising any defense for retaining any of the deposit unless the landlord shows that circumstances beyond the landlord's control prevented the landlord from providing the statement within the fourteen days or that the tenant abandoned the premises as defined in RCW 59.18.310. The court may in its discretion award up to two times the amount of the deposit for the intentional refusal of the landlord to give the statement or refund due. In any action brought by the tenant to recover the deposit, the prevailing party shall additionally be entitled to the cost of suit or arbitration including a reasonable attorney's fee.

Nothing in this chapter shall preclude the landlord from proceeding against, and the landlord shall have the right to proceed against a tenant to recover sums exceeding the amount of the tenant's damage or security deposit for damage to the property for which the tenant is responsible together with reasonable attorney's fees. [1989 c 342 § 9; 1983 c 264 § 7; 1973 1st ex.s. c 207 § 28.]

59.18.285 Nonrefundable fees not to be designated as deposit—Written rental agreement required. No moneys paid to the landlord which are nonrefundable may be designated as a deposit or as part of any deposit. If any moneys are paid to the landlord as a nonrefundable fee, the rental agreement shall be in writing and shall clearly specify that the fee is nonrefundable. [1983 c 264 § 5.]

59.18.290 Removal or exclusion of tenant from premises—Holding over or excluding landlord from premises after termination date. (1) It shall be unlawful for the landlord to remove or exclude from the premises the tenant thereof except under a court order so authorizing. Any tenant so removed or excluded in violation of this section may recover possession of the property or terminate the rental agreement and, in either case, may recover the actual damages sustained. The prevailing party may recover the costs of suit or arbitration and reasonable attorney's fees.

(2) It shall be unlawful for the tenant to hold over in the premises or exclude the landlord therefrom after the termination of the rental agreement except under a valid court order so authorizing. Any landlord so deprived of possession of premises in violation of this section may recover possession of the property and damages sustained by him, and the prevailing party may recover his costs of suit or arbitration and reasonable attorney's fees. [1973 1st ex.s. c 207 § 29.]

59.18.300 Termination of tenant's utility services—Tenant causing loss of landlord provided utility services. It shall be unlawful for a landlord to intentionally cause termination of any of his tenant's utility services, including water, heat, electricity, or gas, except for an interruption of utility services for a reasonable time in order to make necessary repairs. Any landlord who violates this section may be liable to such tenant for his actual damages sustained by him, and up to one hundred dollars for each day or part thereof the tenant is thereby deprived of any utility service, and the prevailing party may recover his costs of suit or arbitration and a reasonable attorney's fee. It shall be unlawful for a tenant to intentionally cause the loss of utility services provided by the landlord, including water, heat, electricity or gas, excepting as resulting from the normal occupancy of the premises. [1973 1st ex.s. c 207 § 30.]

59.18.310 Default in rent—Abandonment—Liability of tenant—Landlord's remedies—Sale of tenant's property by landlord. If the tenant defaults in the payment of rent and reasonably indicates by words or actions the intention not to resume tenancy, the tenant shall be liable for the following for such abandonment: *Provided*, That upon learning of such abandonment of the premises the landlord shall make a reasonable effort to mitigate the damages resulting from such abandonment:

(1) When the tenancy is month-to-month, the tenant shall be liable for the rent for the thirty days following either the date the landlord learns of the abandonment,

or the date the next regular rental payment would have become due, whichever first occurs.

(2) When the tenancy is for a term greater than month-to-month, the tenant shall be liable for the lesser of the following:

(a) The entire rent due for the remainder of the term; or

(b) All rent accrued during the period reasonably necessary to rerent the premises at a fair rental, plus the difference between such fair rental and the rent agreed to in the prior agreement, plus actual costs incurred by the landlord in rerenting the premises together with statutory court costs and reasonable attorney's fees.

In the event of such abandonment of tenancy and an accompanying default in the payment of rent by the tenant, the landlord may immediately enter and take possession of any property of the tenant found on the premises and may store the same in any reasonably secure place. A landlord shall make reasonable efforts to provide the tenant with a notice containing the name and address of the landlord and the place where the property is stored and informing the tenant that a sale or disposition of the property shall take place pursuant to this section, and the date of the sale or disposal, and further informing the tenant of the right under RCW 59.18.230 to have the property returned prior to its sale or disposal. The landlord's efforts at notice under this subsection shall be satisfied by the mailing by first class mail, postage prepaid, of such notice to the tenant's last known address and to any other address provided in writing by the tenant or actually known to the landlord where the tenant might receive the notice. After forty-five days from the date the notice of such sale or disposal is mailed or personally delivered to the tenant, the landlord may sell such property, including personal papers, family pictures, and keepsakes. The landlord may apply any income derived therefrom against moneys due the landlord, including actual reasonable costs of drayage and storage of the property. If the property has a cumulative value of fifty dollars or less, the landlord may sell or dispose of the property in the manner provided in this section, except for personal papers, family pictures, and keepsakes, after seven days from the date the notice of sale or disposal is mailed or personally delivered to the tenant: *Provided*, That the landlord shall make reasonable efforts, as defined in this section, to notify the tenant. Any excess income derived from the sale of such property under this section shall be held by the landlord for the benefit of the tenant for a period of one year from the date of sale, and if no claim is made or action commenced by the tenant for the recovery thereof prior to the expiration of that period of time, the balance shall be the property of the landlord, including any interest paid on the income. [1989 c 342 § 10; 1983 c 264 § 8; 1973 1st ex.s. c 207 § 31.]

59.18.315 Mediation of disputes by independent third party. The landlord and tenant may agree in writing to submit any dispute arising under the provisions of this chapter or under the terms, conditions, or performance of the rental agreement, to mediation by an independent

third party. The parties may agree to submit any dispute to mediation before exercising their right to arbitration under RCW 59.18.320. [1983 c 264 § 11.]

59.18.320 Arbitration—Authorized—Exceptions—Notice—Procedure. (1) The landlord and tenant may agree, in writing, except as provided in RCW 59.18.230(2)(e), to submit to arbitration, in conformity with the provisions of this section, any controversy arising under the provisions of this chapter, except the following:

(a) Controversies regarding the existence of defects covered in subsections (1) and (2) of RCW 59.18.070: *Provided*, That this exception shall apply only before the implementation of any remedy by the tenant;

(b) Any situation where court action has been started by either landlord or tenant to enforce rights under this chapter; when the court action substantially affects the controversy, including but not limited to:

(i) Court action pursuant to subsections (2) and (3) of RCW 59.18.090 and subsections (1) and (2) of RCW 59.18.160; and

(ii) Any unlawful detainer action filed by the landlord pursuant to chapter 59.12 RCW.

(2) The party initiating arbitration under subsection (1) of this section shall give reasonable notice to the other party or parties.

(3) Except as otherwise provided in this section, the arbitration process shall be administered by any arbitrator agreed upon by the parties at the time the dispute arises: *Provided*, That the procedures shall comply with the requirements of chapter 7.04 RCW (relating to arbitration) and of this chapter. [1973 1st ex.s. c 207 § 32.]

59.18.330 Arbitration—Application—Hearings—Decisions. (1) Unless otherwise mutually agreed to, in the event a controversy arises under RCW 59.18.320 the landlord or tenant, or both, shall complete an application for arbitration and deliver it to the selected arbitrator.

(2) The arbitrator so designated shall schedule a hearing to be held no later than ten days following receipt of notice of the controversy, except as provided in RCW 59.18.350.

(3) The arbitrator shall conduct public or private hearings. Reasonable notice of such hearings shall be given to the parties, who shall appear and be heard either in person or by counsel or other representative. Hearings shall be informal and the rules of evidence prevailing in judicial proceedings shall not be binding. A recording of the proceedings may be taken. Any oral or documentary evidence and other data deemed relevant by the arbitrator may be received in evidence. The arbitrator shall have the power to administer oaths, to issue subpoenas, to require the attendance of witnesses and the production of such books, papers, contracts, agreements, and documents as may be deemed by the arbitrator material to a just determination of the issues in dispute. If any person refuses to obey such subpoena or

refuses to be sworn to testify, or any witness, party, or attorney is guilty of any contempt while in attendance at any hearing held hereunder, the arbitrator may invoke the jurisdiction of any superior court, and such court shall have jurisdiction to issue an appropriate order. A failure to obey such order may be punished by the court as a contempt thereof.

(4) Within five days after conclusion of the hearing, the arbitrator shall make a written decision upon the issues presented, a copy of which shall be mailed by certified mail or otherwise delivered to the parties or their designated representatives. The determination of the dispute made by the arbitrator shall be final and binding upon both parties.

(5) If a defective condition exists which affects more than one dwelling unit in a similar manner, the arbitrator may consolidate the issues of fact common to those dwelling units in a single proceeding.

(6) Decisions of the arbitrator shall be enforced or appealed according to the provisions of chapter 7.04 RCW. [1973 1st ex.s. c 207 § 33.]

59.18.340 Arbitration—Fee. The administrative fee for this arbitration procedure shall be established by agreement of the parties and the arbitrator and, unless otherwise allocated by the arbitrator, shall be shared equally by the parties: *Provided*, That upon either party signing an affidavit to the effect that he is unable to pay his share of the fee, that portion of the fee may be waived or deferred. [1983 c 264 § 12; 1973 1st ex.s. c 207 § 34.]

59.18.350 Arbitration—Completion of arbitration after giving notice. When a party gives notice pursuant to subsection (2) of RCW 59.18.320, he must, at the same time, arrange for arbitration of the grievance in the manner provided for in this chapter. The arbitration shall be completed before the rental due date next occurring after the giving of notice pursuant to RCW 59.18.320: *Provided*, That in no event shall the arbitrator have less than ten days to complete the arbitration process. [1973 1st ex.s. c 207 § 35.]

59.18.360 Exemptions. A landlord and tenant may agree, in writing, to exempt themselves from the provisions of RCW 59.18.060, 59.18.100, 59.18.110, 59.18.120, 59.18.130, and 59.18.190 if the following conditions have been met:

(1) The agreement may not appear in a standard form lease or rental agreement;

(2) There is no substantial inequality in the bargaining position of the two parties;

(3) The exemption does not violate the public policy of this state in favor of the ensuring safe, and sanitary housing; and

(4) Either the local county prosecutor's office or the consumer protection division of the attorney general's office or the attorney for the tenant has approved in writing the application for exemption as complying with subsections (1) through (3) of this section. [1973 1st ex.s. c 207 § 36.]

59.18.365 Unlawful detainer action—Summons—Form. The summons for unlawful detainer actions for tenancies covered by this chapter shall be substantially in the following form. In unlawful detainer actions based on nonpayment of rent, the summons may contain the provisions authorized by RCW 59.18.375.

IN THE SUPERIOR COURT OF THE STATE OF
WASHINGTON
IN AND FOR ----- COUNTY

Plaintiff, NO.
vs. EVICTION SUMMONS
Defendant. (Residential)

THIS IS NOTICE OF A LAWSUIT TO EVICT
YOU.
PLEASE READ IT CAREFULLY.
THE DEADLINE FOR YOUR WRITTEN
RESPONSE IS:

5:00 p.m., on -----

TO: ----- (Name)
----- (Address)

This is notice of a lawsuit to evict you from the property which you are renting. Your landlord is asking the court to terminate your tenancy, direct the sheriff to remove you and your belongings from the property, enter a money judgment against you for unpaid rent and/or damages for your use of the property, and for court costs and attorneys' fees.

If you want to defend yourself in this lawsuit, you must respond to the eviction complaint in writing on or before the deadline stated above. You must respond in writing even if no case number has been assigned by the court yet.

You can respond to the complaint in writing by delivering a copy of a notice of appearance or answer to your landlord's attorney (or your landlord if there is no attorney) to be received no later than the deadline stated above.

The notice of appearance or answer must include the name of this case (plaintiff(s) and defendant(s)), your name, the street address where further legal papers may be sent, your telephone number (if any), and your signature.

If there is a number on the upper right side of the eviction summons and complaint, you must also file your original notice of appearance or answer with the court clerk by the deadline for your written response.

You may demand that the plaintiff file this lawsuit with the court. If you do so, the demand must be in writing and must be served upon the person signing the summons. Within fourteen days after you serve the demand, the plaintiff must file this lawsuit with the court, or the service on you of this summons and complaint will be void.

If you wish to seek the advice of an attorney in this matter, you should do so promptly so that your written response, if any, may be served on time.

You may also be instructed in a separate order to appear for a court hearing on your eviction. If you receive an order to show cause you must personally appear at the hearing on the date indicated in the order to show cause in addition to delivering and filing your notice of appearance or answer by the deadline stated above.

IF YOU DO NOT RESPOND TO THE COMPLAINT IN WRITING BY THE DEADLINE STATED ABOVE YOU WILL LOSE BY DEFAULT. YOUR LANDLORD MAY PROCEED WITH THE LAWSUIT, EVEN IF YOU HAVE MOVED OUT OF THE PROPERTY.

The notice of appearance or answer must be delivered to:

Name

Address

Telephone Number

[1989 c 342 § 15.]

59.18.370 Forcible entry or detainer or unlawful detainer actions—Writ of restitution—Application—Order—Hearing. The plaintiff, at the time of commencing an action of forcible entry or detainer or unlawful detainer, or at any time afterwards, upon filing the complaint, may apply to the superior court in which the action is pending for an order directing the defendant to appear and show cause, if any he has, why a writ of restitution should not issue restoring to the plaintiff possession of the property in the complaint described, and the judge shall by order fix a time and place for a hearing of said motion, which shall not be less than six nor more than twelve days from the date of service of said order upon defendant. A copy of said order, together with a copy of the summons and complaint if not previously served upon the defendant, shall be served upon the defendant. Said order shall notify the defendant that if he fails to appear and show cause at the time and place specified by the order the court may order the sheriff to restore possession of the property to the plaintiff and may grant such other relief as may be prayed for in the complaint and provided by this chapter. [1973 1st ex.s. c 207 § 38.]

59.18.375 Forcible entry or detainer or unlawful detainer actions—Payment of rent into court registry—Writ of restitution—Notice. (1) The remedies provided by this section are in addition to other remedies provided by this chapter.

(2) In an action of forcible entry, detainer, or unlawful detainer, commenced under this chapter which is based upon nonpayment of rent as provided in RCW 59.12.030(3), the defendant shall pay into the court registry the amount alleged due in the complaint and continue to pay into the court registry the monthly rent as it becomes due under the terms of the rental agreement while the action is pending. If the defendant submits to the court a written statement signed and sworn under

penalty of perjury denying that the rent alleged due in the complaint is owing based upon a legal or equitable defense or set-off arising out of the tenancy, such payment shall not be required.

(3) A defendant must comply with subsection (2) of this section within seven days after completed service of a filed summons and complaint or, in the case of service of an unfiled summons and complaint, seven days after delivering written notice to the defendant, in the manner provided in RCW 59.12.040, advising the defendant of the date of filing, the cause number for the action, and the date by which the defendant must comply with this section to avoid the immediate issuance of a writ of restitution. Failure of the defendant to comply with this section shall be grounds for the immediate issuance of a writ of restitution without bond directing the sheriff to deliver possession of the premises to the plaintiff. Issuance of a writ of restitution under this section shall not affect the defendant's right to a hearing to contest the amount of rent alleged to be due.

(4) The defendant shall send written notice that the rent has been paid into the court registry or send a copy of the sworn statement referred to in subsection (2) of this section to the address of the person whose name is signed on the unlawful detainer summons.

(5) Before applying to the court for a writ of restitution under this section, the plaintiff must check with the clerk of the court to determine if the defendant has complied with subsection (2) of this section.

(6) If the plaintiff intends to use the procedures in this section, the summons must contain notice to the defendant of the payment requirements of this section and be substantially in the following form:

NOTICE

This unlawful detainer action is based upon nonpayment of rent in an amount alleged to be \$..... The plaintiff is entitled to an order from the court directing the sheriff to evict you without a hearing unless you pay into the court registry the amount of delinquent rent alleged to be due in the complaint and continue paying into the court registry the monthly rent as it becomes due while this lawsuit is pending. If you deny that you owe the rent claimed to be due and you do not want to be evicted immediately without a hearing, you must file with the clerk of the court a written statement signed and sworn under penalty of perjury setting forth why you do not owe the amount claimed in the complaint to be due. The sworn statement must be filed IN ADDITION TO your written answer to the complaint.

Payment or the sworn statement must be submitted to the clerk of the superior court within seven days after you have been served with this summons or, if the summons has not yet been filed, within seven days after service of written notice that the lawsuit has been filed.

This complaint:

() is filed with the superior court;

() is not filed. The plaintiff must notify you in writing when it is filed.

IMPORTANT

If you intend to contest this action, you must also file a written answer as indicated above on this summons. [1983 c 264 § 13.]

59.18.380 Forcible entry or detainer or unlawful detainer actions—Writ of restitution—Answer—Order—Stay—Bond. At the time and place fixed for the hearing of plaintiff's motion for a writ of restitution, the defendant, or any person in possession or claiming possession of the property, may answer, orally or in writing, and assert any legal or equitable defense or set-off arising out of the tenancy. If the answer is oral the substance thereof shall be endorsed on the complaint by the court. The court shall examine the parties and witnesses orally to ascertain the merits of the complaint and answer, and if it shall appear that the plaintiff has the right to be restored to possession of the property, the court shall enter an order directing the issuance of a writ of restitution, returnable ten days after its date, restoring to the plaintiff possession of the property and if it shall appear to the court that there is no substantial issue of material fact of the right of the plaintiff to be granted other relief as prayed for in the complaint and provided for in this chapter, the court may enter an order and judgment granting so much of such relief as may be sustained by the proof, and the court may grant such other relief as may be prayed for in the plaintiff's complaint and provided for in this chapter, then the court shall enter an order denying any relief sought by the plaintiff for which the court has determined that the plaintiff has no right as a matter of law: *Provided*, That within three days after the service of the writ of restitution the defendant, or person in possession of the property, may, in any action for the recovery of possession of the property for failure to pay rent, stay the execution of the writ pending final judgment by paying into court or to the plaintiff, as the court directs, all rent found to be due and all the costs of the action, and in addition by paying, on a monthly basis pending final judgment, an amount equal to the monthly rent called for by the lease or rental agreement at the time the complaint was filed: *Provided further*, That before any writ shall issue prior to final judgment the plaintiff shall execute to the defendant and file in the court a bond in such sum as the court may order, with sufficient surety to be approved by the clerk, conditioned that the plaintiff will prosecute his action without delay, and will pay all costs that may be adjudged to the defendant, and all damages which he may sustain by reason of the writ of restitution having been issued, should the same be wrongfully sued out. The court shall also enter an order directing the parties to proceed to trial on the complaint and answer in the usual manner.

If it appears to the court that the plaintiff should not be restored to possession of the property, the court shall deny plaintiff's motion for a writ of restitution and enter an order directing the parties to proceed to trial within thirty days on the complaint and answer. If it appears to the court that there is a substantial issue of material fact

as to whether or not the plaintiff is entitled to other relief as is prayed for in plaintiff's complaint and provided for in this chapter, or that there is a genuine issue of a material fact pertaining to a legal or equitable defense or set-off raised in the defendant's answer, the court shall grant or deny so much of plaintiff's other relief sought and so much of defendant's defenses or set-off claimed, as may be proper. [1973 1st ex.s. c 207 § 39.]

59.18.390 Forcible entry or detainer or unlawful detainer actions—Writ of restitution—Service—Defendant's bond. The sheriff shall, upon receiving the writ of restitution, forthwith serve a copy thereof upon the defendant, his agent, or attorney, or a person in possession of the premises, and shall not execute the same for three days thereafter, and the defendant, or person in possession of the premises within three days after the service of the writ of restitution may execute to the plaintiff a bond to be filed with and approved by the clerk of the court in such sum as may be fixed by the judge, with sufficient surety to be approved by the clerk of said court, conditioned that they will pay to the plaintiff such sum as the plaintiff may recover for the use and occupation of the said premises, or any rent found due, together with all damages the plaintiff may sustain by reason of the defendant occupying or keeping possession of said premises, together with all damages which the court theretofore has awarded to the plaintiff as provided in this chapter, and also all the costs of the action. The plaintiff, his agent or attorneys, shall have notice of the time and place where the court or judge thereof shall fix the amount of the defendant's bond, and shall have notice and a reasonable opportunity to examine into the qualification and sufficiency of the sureties upon said bond before said bond shall be approved by the clerk. If the writ of restitution has been based upon a finding by the court that the tenant, subtenant, sublessee, or a person residing at the rental premises has engaged in drug-related activity or has allowed any other person to engage in drug-related activity at those premises with his or her knowledge or approval, neither the tenant, the defendant, nor a person in possession of the premises shall be entitled to post a bond in order to retain possession of the premises. The writ may be served by the sheriff, in the event he shall be unable to find the defendant, an agent or attorney, or a person in possession of the premises, by affixing a copy of said writ in a conspicuous place upon the premises: *Provided*, That the sheriff shall not require any bond for the service or execution of the writ. The sheriff shall be immune from all civil liability for serving and enforcing writs of restitution unless the sheriff is grossly negligent in carrying out his or her duty. [1989 c 342 § 11; 1988 c 150 § 3; 1973 1st ex.s. c 207 § 40.]

Legislative findings—Severability—1988 c 150: See notes following RCW 59.18.130.

59.18.400 Forcible entry or detainer or unlawful detainer actions—Writ of restitution—Answer of defendant. On or before the day fixed for his appearance the defendant may appear and answer. The defendant in

his answer may assert any legal or equitable defense or set-off arising out of the tenancy. If the complaint alleges that the tenancy should be terminated because the defendant tenant, subtenant, sublessee, or resident engaged in drug-related activity, or allowed any other person to engage in drug-related activity at the rental premises with his or her knowledge or consent, no set-off shall be allowed as a defense to the complaint. [1988 c 150 § 4; 1973 1st ex.s. c 207 § 41.]

Legislative findings—Severability—1988 c 150: See notes following RCW 59.18.130.

59.18.410 Forcible entry or detainer or unlawful detainer actions—Writ of restitution—Judgment—Execution. If upon the trial the verdict of the jury or, if the case be tried without a jury, the finding of the court be in favor of the plaintiff and against the defendant, judgment shall be entered for the restitution of the premises; and if the proceeding be for unlawful detainer after neglect or failure to perform any condition or covenant of a lease or agreement under which the property is held, or after default in the payment of rent, the judgment shall also declare the forfeiture of the lease, agreement or tenancy. The jury, or the court, if the proceedings be tried without a jury, shall also assess the damages arising out of the tenancy occasioned to the plaintiff by any forcible entry, or by any forcible or unlawful detainer, alleged in the complaint and proved on the trial, and, if the alleged unlawful detainer be after default in the payment of rent, find the amount of any rent due, and the judgment shall be rendered against the defendant guilty of the forcible entry, forcible detainer or unlawful detainer for the amount of damages thus assessed and for the rent, if any, found due, and the court may award statutory costs and reasonable attorney's fees. When the proceeding is for an unlawful detainer after default in the payment of rent, and the lease or agreement under which the rent is payable has not by its terms expired, execution upon the judgment shall not be issued until the expiration of five days after the entry of the judgment, within which time the tenant or any subtenant, or any mortgagee of the term, or other party interested in the continuance of the tenancy, may pay into court for the landlord the amount of the judgment and costs, and thereupon the judgment shall be satisfied and the tenant restored to his tenancy; but if payment, as herein provided, be not made within five days the judgment may be enforced for its full amount and for the possession of the premises. In all other cases the judgment may be enforced immediately. If writ of restitution shall have been executed prior to judgment no further writ or execution for the premises shall be required. [1973 1st ex.s. c 207 § 42.]

59.18.415 Applicability to certain single family dwelling leases. The provisions of this chapter shall not apply to any lease of a single family dwelling for a period of a year or more or to any lease of a single family dwelling containing a bona fide option to purchase by the tenant: *Provided*, That an attorney for the tenant

must approve on the face of the agreement any lease exempted from the provisions of this chapter as provided for in this section. [1989 c 342 § 12; 1973 1st ex.s. c 207 § 43.]

59.18.420 RCW 59.12.090, 59.12.100, 59.12.121 and 59.12.170 inapplicable. The provisions of RCW 59.12.090, 59.12.100, 59.12.121, and 59.12.170 shall not apply to any rental agreement included under the provisions of chapter 59.18 RCW. [1973 1st ex.s. c 207 § 44.]

59.18.430 Applicability to prior, existing or future leases. RCW 59.18.010 through 59.18.360 and 59.18.900 shall not apply to any lease entered into prior to July 16, 1973. All provisions of this chapter shall apply to any lease or periodic tenancy entered into on or subsequent to July 16, 1973. [1973 1st ex.s. c 207 § 47.]

59.18.900 Severability—1973 1st ex.s. c 207. If any provision of this chapter, or its application to any person or circumstance is held invalid, the remainder of the act, or its application to other persons or circumstances, is not affected. [1973 1st ex.s. c 207 § 37.]

59.18.910 Severability—1989 c 342. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1989 c 342 § 18.]

59.18.911 Effective date—1989 c 342. This act shall take effect on August 1, 1989, and shall apply to landlord-tenant relationships existing on or entered into after the effective date of this act. [1989 c 342 § 19.]

Chapter 59.20

MOBILE HOME LANDLORD-TENANT ACT

Sections

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 59.20.900 Severability—1977 ex.s. c 279.

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Smoke detection devices required in dwelling units: RCW 48.48.140.

59.20.010 Short title. This chapter shall be known and may be cited as the "Mobile Home Landlord-Tenant Act". [1977 ex.s. c 279 § 1.]

59.20.020 Rights and remedies—Obligation of good faith required. Every duty under this chapter and every act which must be performed as a condition precedent to the exercise of a right or remedy under this chapter imposes an obligation of good faith in its performance or enforcement. [1977 ex.s. c 279 § 2.]

59.20.030 Definitions. For purposes of this chapter:

- (1) "Abandoned" as it relates to a mobile home owned by a tenant in a mobile home park, mobile home park cooperative, or mobile home park subdivision or tenancy in a mobile home lot means the tenant has defaulted in rent and by absence and by words or actions reasonably indicates the intention not to continue tenancy;
- (2) "Landlord" means the owner of a mobile home park and includes the agents of a landlord;
- (3) "Mobile home lot" means a portion of a mobile home park designated as the location of one mobile home and its accessory buildings, and intended for the exclusive use as a primary residence by the occupants of that mobile home;
- (4) "Mobile home park" means any real property which is rented or held out for rent to others for the placement of two or more mobile homes for the primary purpose of production of income, except where such real

property is rented or held out for rent for seasonal recreational purpose only and is not intended for year-round occupancy;

(5) "Mobile home park cooperative" means real property consisting of common areas and two or more lots held out for placement of mobile homes in which both the individual lots and the common areas are owned by an association of shareholders which leases or otherwise extends the right to occupy individual lots to its own members;

(6) "Mobile home park subdivision" means real property, whether it is called a subdivision, condominium, or planned unit development, consisting of common areas and two or more lots held for placement of mobile homes in which there is private ownership of the individual lots and common, undivided ownership of the common areas by owners of the individual lots;

(7) "Tenant" means any person, except a transient, who rents a mobile home lot; and

(8) "Transient" means a person who rents a mobile home lot for a period of less than one month for purposes other than as a primary residence. [1981 c 304 § 4; 1980 c 152 § 3; 1979 ex.s. c 186 § 1; 1977 ex.s. c 279 § 3.]

Severability—1981 c 304: See note following RCW 26.16.030.

Severability—1979 ex.s. c 186: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1979 ex.s. c 186 § 30.]

59.20.040 Chapter applies to rental agreements regarding mobile home lots, cooperatives, or subdivisions—Applicability of and construction with provisions of chapter 59.12 RCW and chapter 59.18 RCW. This chapter shall regulate and determine legal rights, remedies, and obligations arising from any rental agreement between a landlord and a tenant regarding a mobile home lot and including specified amenities within the mobile home park, mobile home park cooperative, or mobile home park subdivision, where the tenant has no ownership interest in the property or in the association which owns the property, whose uses are referred to as a part of the rent structure paid by the tenant. All such rental agreements shall be unenforceable to the extent of any conflict with any provision of this chapter. Chapter 59.12 RCW shall be applicable only in implementation of the provisions of this chapter and not as an alternative remedy to this chapter which shall be exclusive where applicable: *Provided*, That the provision of RCW 59.12.090, 59.12.100, and 59.12.170 shall not apply to any rental agreement included under the provisions of this chapter. RCW 59.18.370 through 59.18.410 shall be applicable to any action of forcible entry or detainer or unlawful detainer arising from a tenancy under the provisions of this chapter, except when a mobile home or a tenancy in a mobile home lot is abandoned. Rentals of mobile homes themselves are governed by the Residential Landlord-Tenant Act, chapter 59.18 RCW. [1981 c 304 § 5; 1979 ex.s. c 186 § 2; 1977 ex.s. c 279 § 4.]

Severability—1981 c 304: See note following RCW 26.16.030.

Severability—1979 ex.s. c 186: See note following RCW 59.20.030.

59.20.050 Written rental agreement for term of one year or more required—Waiver—Exceptions—Application of section. (1) No landlord may offer a mobile home lot for rent to anyone without offering a written rental agreement for a term of one year or more. No landlord may offer to anyone any rental agreement for a term of one year or more for which the monthly rental is greater, or the terms of payment or other material conditions more burdensome to the tenant, than any month-to-month rental agreement also offered to such tenant or prospective tenant. Anyone who desires to occupy a mobile home lot for other than a term of one year or more may have the option to be on a month-to-month basis but must waive, in writing, the right to such one year or more term: *Provided*, That annually, at any anniversary date of the tenancy the tenant may require that the landlord provide a written rental agreement for a term of one year. No landlord shall allow a mobile home to be moved into a mobile home park in this state until a written rental agreement has been signed by and is in the possession of the parties: *Provided*, That if the landlord allows the tenant to move a mobile home into a mobile home park without obtaining a written rental agreement for a term of one year or more, or a written waiver of the right to a one-year term or more, the term of the tenancy shall be deemed to be for one year from the date of occupancy of the mobile home lot;

(2) The requirements of subsection (1) of this section shall not apply if:

(a) The mobile home park or part thereof has been acquired or is under imminent threat of condemnation for a public works project, or

(b) An employer-employee relationship exists between a landlord and tenant;

(3) The provisions of this section shall apply to any tenancy upon expiration of the term of any oral or written rental agreement governing such tenancy. [1981 c 304 § 37; 1980 c 152 § 4; 1979 ex.s. c 186 § 3; 1977 ex.s. c 279 § 5.]

Severability—1981 c 304: See note following RCW 26.16.030.

Severability—1979 ex.s. c 186: See note following RCW 59.20.030.

59.20.060 Rental agreements—Required contents—Exclusions. (1) Any mobile home space tenancy regardless of the term, shall be based upon a written rental agreement, signed by the parties, which shall contain:

(a) The terms for the payment of rent, including time and place, and any additional charges to be paid by the tenant. Additional charges that occur less frequently than monthly shall be itemized in a billing to the tenant;

(b) Reasonable rules for guest parking which shall be clearly stated;

(c) The rules and regulations of the park;

(d) The name and address of the person who is the landlord, and if such person does not reside in the state there shall also be designated by name and address a

person who resides in the county where the mobile home park is located who is authorized to act as agent for the purposes of service of notices and process. If no designation is made of a person to act as agent, then the person to whom rental payments are to be made shall be considered the agent;

(e) (i) A covenant by the landlord that, except for acts or events beyond the control of the landlord, the mobile home park will not be converted to a land use that will prevent the space that is the subject of the lease from continuing to be used for its intended use for a period of three years after the beginning of the term of the rental agreement;

(ii) A rental agreement may, in the alternative, contain a statement that the park may be sold or otherwise transferred at any time with the result that subsequent owners may close the mobile home park, or that the landlord may close the park at any time after the required notice. The covenant or statement required by this subsection must appear in print that is larger than the other text of the lease and must be set off by means of a box, blank space, or comparable visual device;

The requirements of this subsection shall apply to tenancies initiated after April 28, 1989.

(f) The terms and conditions under which any deposit or portion thereof may be withheld by the landlord upon termination of the rental agreement if any moneys are paid to the landlord by the tenant as a deposit or as security for performance of the tenant's obligations in a rental agreement;

(g) A listing of the utilities, services, and facilities which will be available to the tenant during the tenancy and the nature of the fees, if any, to be charged;

(h) A description of the boundaries of a mobile home space sufficient to inform the tenant of the exact location of his space in relation to other tenants' spaces; and

(i) A statement of the current zoning of the land on which the mobile home park is located.

(2) Any rental agreement executed between the landlord and tenant shall not contain any provision:

(a) Which allows the landlord to charge a fee for guest parking unless a violation of the rules for guest parking occurs: *Provided*, That a fee may be charged for guest parking which covers an extended period of time as defined in the rental agreement;

(b) Which authorizes the towing or impounding of a vehicle except upon notice to the owner thereof or the tenant whose guest is the owner of said vehicle;

(c) Which allows the landlord to alter the due date for rent payment or increase the rent: (i) During the term of the rental agreement if the term is less than one year, or (ii) more frequently than annually if the term is for one year or more: *Provided*, That a rental agreement may include an escalation clause for a pro rata share of any increase in the mobile home park's real property taxes or utility assessments or charges, over the base taxes or utility assessments or charges of the year in which the rental agreement took effect, if the clause also provides for a pro rata reduction in rent or other charges in the

event of a reduction in real property taxes or utility assessments or charges, below the base year: *Provided further*, That a rental agreement for a term exceeding one year may provide for annual increases in rent in specified amounts or by a formula specified in such agreement;

(d) By which the tenant agrees to waive or forego rights or remedies under this chapter;

(e) Allowing the landlord to charge an "entrance fee" or an "exit fee";

(f) Which allows the landlord to charge a fee for guests: *Provided*, That a landlord may establish rules charging for guests who remain on the premises for more than fifteen days in any sixty-day period;

(g) By which the tenant agrees to waive or forego homestead rights provided by chapter 6.13 RCW. This subsection shall not prohibit such waiver after a default in rent so long as such waiver is in writing signed by the husband and wife or by an unmarried claimant and in consideration of the landlord's agreement not to terminate the tenancy for a period of time specified in the waiver if the landlord would be otherwise entitled to terminate the tenancy under this chapter; or

(h) By which, at the time the rental agreement is entered into, the landlord and tenant agree to the selection of a particular arbitrator. [1989 c 201 § 9; 1984 c 58 § 1; 1981 c 304 § 18; 1979 ex.s. c 186 § 4; 1977 ex.s. c 279 § 6.]

Severability—1989 c 201: See RCW 59.21.900.

Severability—1984 c 58: See note following RCW 59.20.200.

Severability—1981 c 304: See note following RCW 26.16.030.

Severability—1979 ex.s. c 186: See note following RCW 59.20.030.

59.20.070 Prohibited acts by landlord. A landlord shall not:

(1) Deny any tenant the right to sell such tenant's mobile home within a park or require the removal of the mobile home from the park because of the sale thereof. Requirements for the transfer of the rental agreement are in RCW 59.20.073;

(2) Restrict the tenant's freedom of choice in purchasing goods or services but may reserve the right to approve or disapprove any exterior structural improvements on a mobile home space: *Provided*, That door-to-door solicitation in the mobile home park may be restricted in the rental agreement;

(3) Prohibit meetings by tenants of the mobile home park to discuss mobile home living and affairs, conducted at reasonable times and in an orderly manner on the premises, nor penalize any tenant for participation in such activities;

(4) Evict a tenant, terminate a rental agreement, decline to renew a rental agreement, increase rental or other tenant obligations, decrease services, or modify park rules in retaliation for any of the following actions on the part of a tenant taken in good faith:

(a) Filing a complaint with any state, county, or municipal governmental authority relating to any alleged violation by the landlord of an applicable statute, regulation, or ordinance;

(b) Requesting the landlord to comply with the provision of this chapter or other applicable statute, regulation, or ordinance of the state, county, or municipality;

(c) Filing suit against the landlord for any reason;

(d) Participation or membership in any homeowners association or group;

(5) Charge to any tenant a utility fee in excess of actual utility costs or intentionally cause termination or interruption of any tenant's utility services, including water, heat, electricity, or gas, except when an interruption of a reasonable duration is required to make necessary repairs;

(6) Remove or exclude a tenant from the premises unless this chapter is complied with or the exclusion or removal is under an appropriate court order; or

(7) Prevent the entry or require the removal of a mobile home for the sole reason that the mobile home has reached a certain age. Nothing in this subsection shall limit a landlords' right to exclude or expel a mobile home for any other reason provided such action conforms to chapter 59.20 RCW or any other statutory provision. [1987 c 253 § 1; 1984 c 58 § 2; 1981 c 304 § 19; 1980 c 152 § 5; 1979 ex.s. c 186 § 5; 1977 ex.s. c 279 § 7.]

Severability—1984 c 58: See note following RCW 59.20.200.

Severability—1981 c 304: See note following RCW 26.16.030.

Severability—1979 ex.s. c 186: See note following RCW 59.20.030.

59.20.073 Transfer of rental agreements. (1) Any rental agreement shall be assignable by the tenant to any person to whom he sells or transfers title to the mobile home.

(2) A tenant who sells a mobile home within a park shall notify the landlord of the intended sale and transfer of the rental agreement at least fifteen days in advance of such intended transfer and shall notify the buyer of the provisions of this section.

(3) The landlord shall notify the selling tenant of a refusal to permit transfer of the rental agreement at least seven days in advance of such intended transfer.

(4) The landlord shall approve or disapprove of the assignment of a rental agreement on the same basis that the landlord approves or disapproves of any new tenant, and any disapproval shall be in writing. Consent to an assignment shall not be unreasonably withheld.

(5) Failure to notify the landlord of the intended sale and transfer of the rental agreement or failure of the new tenant to make a good faith attempt to arrange an interview with the landlord to discuss assignment of the rental agreement shall be grounds for disapproval of such transfer. [1981 c 304 § 20.]

Severability—1981 c 304: See note following RCW 26.16.030.

59.20.074 Rent—Liability of secured party taking possession of mobile home. A secured party who has a security interest in a mobile home that is located within a mobile home park and takes possession of the mobile home under RCW 62A.9–503, shall be liable to the landlord for rent for occupancy of the mobile home space under the same terms the tenant was paying prior

to repossession, until disposition of the mobile home under RCW 62A.9–504.

(2) This section shall not affect the availability of a landlord's lien as provided in chapter 60.72 RCW.

(3) As used in this section, "security interest" shall have the same meaning as this term is defined in RCW 62A.1–201, and "secured party" shall have the same meaning as this term is defined in RCW 62A.9–105. [1985 c 78 § 1.]

59.20.075 Presumption of reprisal or retaliatory action. Initiation by the landlord of any action listed in RCW 59.20.070(4) within one hundred twenty days after a good faith and lawful act by the tenant or within one hundred twenty days after any inspection or proceeding of a governmental agency resulting from such act, shall create a rebuttable presumption affecting the burden of proof, that the action is a reprisal or retaliatory action against the tenant: *Provided*, That if the court finds that the tenant made a complaint or report to a governmental authority within one hundred twenty days after notice of a proposed increase in rent or other action in good faith by the landlord, there is a rebuttable presumption that the complaint or report was not made in good faith: *Provided further*, That no presumption against the landlord shall arise under this section, with respect to an increase in rent, if the landlord, in a notice to the tenant of increase in rent, specifies reasonable grounds for said increase, which grounds may include a substantial increase in market value due to remedial action under this chapter. [1984 c 58 § 3; 1980 c 152 § 6.]

Severability—1984 c 58: See note following RCW 59.20.200.

59.20.080 Grounds for termination of tenancy—Notice—Mediation. (1) Except as provided in subsection (2) of this section, the landlord shall not terminate a tenancy, of whatever duration except for one or more of the following reasons:

(a) Substantial violation, or repeated or periodic violations of the rules of the mobile home park as established by the landlord at the inception of the tenancy or as assumed subsequently with the consent of the tenant or for violation of the tenant's duties as provided in RCW 59.20.140. The tenant shall be given written notice to cease the rule violation immediately. The notice shall state that failure to cease the violation of the rule or any subsequent violation of that or any other rule shall result in termination of the tenancy, and that the tenant shall vacate the premises within fifteen days: *Provided*, That for a periodic violation the notice shall also specify that repetition of the same violation shall result in termination: *Provided further*, That in the case of a violation of a "material change" in park rules with respect to pets, tenants with minor children living with them, or recreational facilities, the tenant shall be given written notice under this chapter of a six month period in which to comply or vacate;

(b) Nonpayment of rent or other charges specified in the rental agreement, upon five days written notice to pay rent and/or other charges or to vacate;

(c) Conviction of the tenant of a crime, commission of which threatens the health, safety, or welfare of the other mobile home park tenants. The tenant shall be given written notice of a fifteen day period in which to vacate;

(d) Failure of the tenant to comply with local ordinances and state laws and regulations relating to mobile homes or mobile home living within a reasonable time after the tenant's receipt of notice of such noncompliance from the appropriate governmental agency;

(e) Change of land use of the mobile home park including, but not limited to, conversion to a use other than for mobile homes or conversion of the mobile home park to a mobile home park cooperative or mobile home park subdivision: *Provided*, That the landlord shall give the tenants twelve months' notice in advance of the effective date of such change, except that for the period of six months following April 28, 1989, the landlord shall give the tenants eighteen months' notice in advance of the proposed effective date of such change;

(f) Engaging in "drug-related activity." "Drug-related activity" means that activity which constitutes a violation of chapter 69.41, 69.50, or 69.52 RCW.

(2) A landlord may terminate any tenancy without cause. Such termination shall be effective twelve months from the date the landlord serves notice of termination upon the tenant or at the end of the current tenancy, whichever is later: *Provided*, That a landlord shall not terminate a tenancy for any reason or basis which is prohibited under RCW 59.20.070 (3) or (4) or is intended to circumvent the provisions of (1)(e) of this section.

(3) Within five days of a notice of eviction as required by subsection (1)(a) or (2) of this section, the landlord and tenant shall submit any dispute, including the decision to terminate the tenancy without cause, to mediation. The parties may agree in writing to mediation by an independent third party or through industry mediation procedures. If the parties cannot agree, then mediation shall be through industry mediation procedures. A duty is imposed upon both parties to participate in the mediation process in good faith for a period of ten days for an eviction under subsection (1)(a) of this section, or for a period of thirty days for an eviction under subsection (2) of this section. It is a defense to an eviction under subsection (1)(a) or (2) of this section that a landlord did not participate in the mediation process in good faith. [1989 c 201 § 12; 1988 c 150 § 5; 1984 c 58 § 4; 1981 c 304 § 21; 1979 ex.s. c 186 § 6; 1977 ex.s. c 279 § 8.]

Severability—1989 c 201: See RCW 59.21.900.

Legislative findings—**Severability**—1988 c 150: See notes following RCW 59.18.130.

Severability—1984 c 58: See note following RCW 59.20.200.

Severability—1981 c 304: See note following RCW 26.16.030.

Severability—1979 ex.s. c 186: See note following RCW 59.20.030.

59.20.090 Term of rental agreements—Renewal—Nonrenewal—Termination—Notices. (1) Unless otherwise agreed rental agreements shall be for a

term of one year. Any rental agreement of whatever duration shall be automatically renewed for the term of the original rental agreement, unless:

(a) A different specified term is agreed upon; or

(b) The landlord serves notice of termination without cause upon the tenant prior to the expiration of the rental agreement: *Provided*, That under such circumstances, at the expiration of the prior rental agreement the tenant shall be considered a month-to-month tenant upon the same terms as in the prior rental agreement until the tenancy is terminated.

(2) A landlord seeking to increase the rent upon expiration of the term of a rental agreement of any duration shall notify the tenant in writing three months prior to the effective date of any increase in rent: *Provided*, That if a landlord serves a tenant with notice of a rental increase at the same time or subsequent to serving the tenant with notice of termination without cause, such rental increase shall not become effective until the date the tenant is required to vacate the leased premises pursuant to the notice of termination or three months from the date notice of rental increase is served, whichever is later.

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

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

(b) Any tenant who is a member of the armed forces may terminate a rental agreement with less than thirty days notice if he receives reassignment orders which do not allow greater notice. [1980 c 152 § 2; 1979 ex.s. c 186 § 7; 1977 ex.s. c 279 § 9.]

Severability—1979 ex.s. c 186: See note following RCW 59.20.030.

59.20.100 Improvements. Improvements, except a natural lawn, purchased and installed by a tenant on a mobile home lot shall remain the property of the tenant even though affixed to or in the ground and may be removed or disposed of by the tenant prior to the termination of the tenancy: *Provided*, That a tenant shall leave the mobile home lot in substantially the same or better condition than upon taking possession. [1977 ex.s. c 279 § 10.]

59.20.110 Attorney's fees and costs. In any action arising out of this chapter, the prevailing party shall be entitled to reasonable attorney's fees and costs. [1977 ex.s. c 279 § 11.]

59.20.120 Venue. Venue for any action arising under this chapter shall be in the district or superior court of

the county in which the mobile home lot is located. [1977 ex.s. c 279 § 12.]

59.20.130 Duties of landlord. It shall be the duty of the landlord to:

(1) Comply with codes, statutes, ordinances, and administrative rules applicable to the mobile home park;

(2) Maintain the common premises and prevent the accumulation of stagnant water and to prevent the detrimental effects of moving water when such condition is not the fault of the tenant;

(3) Keep any shared or common premises reasonably clean, sanitary, and safe from defects to reduce the hazards of fire or accident;

(4) Keep all common premises of the mobile home park, not in the possession of tenants, free of weeds or plant growth noxious and detrimental to the health of the tenants and free from potentially injurious or unsightly objects and condition;

(5) Exterminate or make a reasonable effort to exterminate rodents, vermin, or other pests dangerous to the health and safety of the tenant whenever infestation exists on the common premises or whenever infestation occurs in the interior of a mobile home as a result of infestation existing on the common premises;

(6) Maintain and protect all utilities provided to the mobile home in good working condition. Maintenance responsibility shall be determined at that point where the normal mobile home utilities "hook-ups" connect to those provided by the landlord or utility company;

(7) Respect the privacy of the tenants and shall have no right of entry to a mobile home without the prior written consent of the occupant, except in case of emergency or when the occupant has abandoned the mobile home. Such consent may be revoked in writing by the occupant at any time. The ownership or management shall have a right of entry upon the land upon which a mobile home is situated for maintenance of utilities and protection of the mobile home park at any reasonable time or in an emergency, but not in a manner or at a time which would interfere with the occupant's quiet enjoyment;

(8) Allow tenants freedom of choice in the purchase of goods and services, and not unreasonably restrict access to the mobile home park for such purposes;

(9) Maintain roads within the mobile home park in good condition; and

(10) Notify each tenant within five days after a petition has been filed by the landlord for a change in the zoning of the land where the mobile home park is located and make a description of the change available to the tenant.

A landlord shall not have a duty to repair a defective condition under this section, nor shall any defense or remedy be available to the tenant under this chapter, if the defective condition complained of was caused by the conduct of the tenant, the tenant's family, invitee, or other person acting under the tenant's control, or if a tenant unreasonably fails to allow the landlord access to the property for purposes of repair. [1984 c 58 § 5; 1979 ex.s. c 186 § 8.]

Severability—1984 c 58: See note following RCW 59.20.200.

Severability—1979 ex.s. c 186: See note following RCW 59.20.030.

Smoke detection devices required in dwelling units: RCW 48.48.140.

59.20.140 Duties of tenant. It shall be the duty of the tenant to pay the rental amount at such times and in such amounts as provided for in the rental agreement or as otherwise provided by law and comply with all obligations imposed upon tenants by applicable provisions of all municipal, county, and state codes, statutes, ordinances and regulations, and in addition the tenant shall:

(1) Keep the mobile home lot which he occupies and uses as clean and sanitary as the conditions of the premises permit;

(2) Properly dispose of all rubbish, garbage, and other organic or flammable waste, in a clean and sanitary manner at reasonable and regular intervals, and assume all costs of extermination and fumigation for infestation caused by the tenant on the tenant's leased premises;

(3) Not intentionally or negligently destroy, deface, damage, impair, or remove any facilities, equipment, furniture, furnishings, fixtures or appliances provided by the landlord, or permit any member of his family, invitee, or licensee, or any person acting under his control to do so;

(4) Not permit a nuisance or common waste; and

(5) Not engage in drug-related activities as defined in RCW 59.20.080. [1988 c 150 § 6; 1979 ex.s. c 186 § 9.]

Legislative findings—Severability—1988 c 150: See notes following RCW 59.18.130.

Severability—1979 ex.s. c 186: See note following RCW 59.20.030.

59.20.150 Service of notice on landlord or tenant. (1) Any notice required by this chapter to be given to a tenant shall be served on behalf of the landlord: (a) By delivering a copy personally to the tenant; or (b) if the tenant is absent from the mobile home, by leaving a copy at the mobile home with some person of suitable age and discretion and by sending a copy through the mail addressed to the tenant's place of residence; or (c) if the tenant is absent from the mobile home and a person of suitable age and discretion cannot be found to leave a copy with, then by affixing a copy of the notice in a conspicuous place on the mobile home and also sending a copy through the mail addressed to the tenant at the tenant's last known address.

(2) Any notice required by this chapter to be given to the landlord shall be served by the tenant in the same manner as provided for in subsection (1) of this section, or by mail to the landlord at such place as shall be expressly provided in the rental agreement.

(3) The landlord shall state in any notice of eviction required by RCW 59.20.080(1) as now or hereafter amended the specific reason for eviction in a clear and concise manner. [1979 ex.s. c 186 § 10.]

Severability—1979 ex.s. c 186: See note following RCW 59.20.030.

59.20.155 Seizure of illegal drugs—Notification of landlord. Any law enforcement agency which seizes a

legend drug pursuant to a violation of chapter 69.41 RCW, a controlled substance pursuant to a violation of chapter 69.50 RCW, or an imitation controlled substance pursuant to a violation of chapter 69.52 RCW, shall make a reasonable attempt to discover the identity of the landlord and shall notify the landlord in writing, at the last address listed in the property tax records and at any other address known to the law enforcement agency, of the seizure and the location of the seizure of the illegal drugs or substances. [1988 c 150 § 12.]

Legislative findings—Severability—1988 c 150: See notes following RCW 59.18.130.

59.20.160 Moneys paid as deposit or security for performance by tenant—Written rental agreement to specify terms and conditions for retention by landlord. If any moneys are paid to the landlord by the tenant as a deposit or as security for performance of the tenant's obligations in a written rental agreement, such rental agreement shall include the terms and conditions under which the deposit or portion thereof may be withheld by the landlord upon termination of the rental agreement. If all or part of the deposit may be withheld to indemnify the landlord for damages to the mobile home space for which the tenant is responsible, the rental agreement shall so specify. It is unlawful to charge or collect a deposit or security for performance if the parties have not entered into a written rental agreement. [1984 c 58 § 17; 1979 ex.s. c 186 § 11.]

Severability—1984 c 58: See note following RCW 59.20.200.

Severability—1979 ex.s. c 186: See note following RCW 59.20.030.

59.20.170 Moneys paid as deposit or security for performance by tenant—Deposit by landlord in trust account—Receipt—Claims. All moneys paid to the landlord by the tenant as a deposit as security for performance of the tenant's obligations in a rental agreement shall promptly be deposited by the landlord in a trust account, maintained by the landlord for the purpose of holding such security deposits for tenants of the landlord, in a bank, savings and loan association, mutual savings bank, or licensed escrow agent located in Washington. Unless otherwise agreed in writing, the landlord shall be entitled to receipt of interest paid on such trust account deposits. The landlord shall provide the tenant with a written receipt for the deposit and shall provide written notice of the name and address and location of the depository and any subsequent change thereof. If during a tenancy the status of landlord is transferred to another, any sums in the deposit trust account affected by such transfer shall simultaneously be transferred to an equivalent trust account of the successor landlord, and the successor landlord shall promptly notify the tenant of the transfer and of the name, address and location of the new depository. The tenant's claim to any moneys paid under this section shall be prior to that of any creditor of the landlord, including a trustee in bankruptcy or receiver, even if such moneys are commingled. [1979 ex.s. c 186 § 12.]

Severability—1979 ex.s. c 186: See note following RCW 59.20.030.

59.20.180 Moneys paid as deposit or security for performance by tenant—Statement and notice of basis for retention. Within fourteen days after the termination of the rental agreement and vacation of the mobile home space, the landlord shall give a full and specific statement of the basis for retaining any of the deposit together with the payment of any refund due the tenant under the terms and conditions of the rental agreement. No portion of any deposit shall be withheld on account of wear resulting from ordinary use of the mobile home space.

The statement shall be delivered to the tenant personally or by mail to the last known address. If the landlord fails to give such statement together with any refund due the tenant within the time limits specified above such landlord shall be liable to the tenant for the full amount of the refund due.

Nothing in this chapter shall preclude the landlord from proceeding against, and the landlord shall have the right to proceed against a tenant to recover sums exceeding the amount of the tenant's damage or security deposit for damage to the property for which the tenant is responsible. [1984 c 58 § 11; 1979 ex.s. c 186 § 13.]

Severability—1984 c 58: See note following RCW 59.20.200.

Severability—1979 ex.s. c 186: See note following RCW 59.20.030.

59.20.190 Health and sanitation standards—Penalties. The state board of health shall adopt rules on or before January 1, 1982, setting health and sanitation standards for mobile home parks. Such rules shall be enforced by the city, county, city-county, or district health officer of the jurisdiction in which the mobile home park is located, upon notice of a violation to such health officer. Failure to remedy the violation after enforcement efforts are made may result in a fine being imposed on the park owner, or tenant as may be applicable, by the enforcing governmental body of up to one hundred dollars per day, depending on the degree of risk of injury or illness to persons in or around the park. [1988 c 126 § 1; 1981 c 304 § 22.]

Severability—1981 c 304: See note following RCW 26.16.030.

59.20.200 Landlord—Failure to carry out duties—Notice from tenant—Time limits for landlord's remedial action. If at any time during the tenancy the landlord fails to carry out the duties required by RCW 59.20.130, the tenant may, in addition to pursuit of remedies otherwise provided the tenant by law, deliver written notice to the landlord, which notice shall specify the property involved, the name of the owner, if known, and the nature of the defective condition. For the purposes of this chapter, a reasonable time for the landlord to commence remedial action after receipt of such notice by the tenant shall be, except where circumstances are beyond the landlord's control;

(1) Not more than twenty-four hours, where the defective condition is imminently hazardous to life;

(2) Not more than forty-eight hours, where the landlord fails to provide water or heat;

(3) Subject to the provisions of subsections (1) and (2) of this section, not more than seven days in the case of a repair under RCW 59.20.130(3);

(4) Not more than thirty days in all other cases.

In each instance the burden shall be on the landlord to see that remedial work under this section is completed with reasonable promptness.

Where circumstances beyond the landlord's control, including the availability of financing, prevent the landlord from complying with the time limitations set forth in this section, the landlord shall endeavor to remedy the defective condition with all reasonable speed. [1984 c 58 § 6.]

Severability—1984 c 58: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1984 c 58 § 18.]

59.20.210 Landlord—Failure to carry out duties—Repairs effected by tenant—Bids—Notice—Deduction of cost from rent—Limitations. (1) If at any time during the tenancy, the landlord fails to carry out any of the duties imposed by RCW 59.20.130, and notice of the defect is given to the landlord pursuant to RCW 59.20.200, the tenant may submit to the landlord or the landlord's designated agent by certified mail or in person at least two bids to perform the repairs necessary to correct the defective condition from licensed or registered persons, or if no licensing or registration requirement applies to the type of work to be performed, from responsible persons capable of performing such repairs. Such bids may be submitted to the landlord at the same time as notice is given pursuant to RCW 59.20.200.

(2) If the landlord fails to commence repair of the defective condition within a reasonable time after receipt of notice from the tenant, the tenant may contract with the person submitting the lowest bid to make the repair, and upon the completion of the repair and an opportunity for inspection by the landlord or the landlord's designated agent, the tenant may deduct the cost of repair from the rent in an amount not to exceed the sum expressed in dollars representing one month's rental of the tenant's mobile home space in any calendar year. When, however, the landlord is required to begin remedying the defective condition within thirty days under RCW 59.20.200, the tenant cannot contract for repairs for at least fifteen days following receipt of bids by the landlord. The total costs of repairs deducted by the tenant in any calendar year under this subsection shall not exceed the sum expressed in dollars representing one month's rental of the tenant's mobile home space.

(3) Two or more tenants shall not collectively initiate remedies under this section. Remedial action under this section shall not be initiated for conditions in the design or construction existing in a mobile home park before June 7, 1984.

(4) The provisions of this section shall not:

(a) Create a relationship of employer and employee between landlord and tenant; or

(b) Create liability under the worker's compensation act; or

(c) Constitute the tenant as an agent of the landlord for the purposes of RCW 60.04.010 and 60.04.040.

(5) Any repair work performed under this section shall comply with the requirements imposed by any applicable code, statute, ordinance, or rule. A landlord whose property is damaged because of repairs performed in a negligent manner may recover the actual damages in an action against the tenant.

(6) Nothing in this section shall prevent the tenant from agreeing with the landlord to undertake the repairs in return for cash payment or a reasonable reduction in rent, the agreement to be between the parties, and this agreement does not alter the landlord's obligations under this chapter. [1984 c 58 § 8.]

Severability—1984 c 58: See note following RCW 59.20.200.

59.20.220 Landlord—Failure to carry out duties—Judgment by court or arbitrator for diminished rental value and repair costs—Enforcement of judgment—Reduction in rent. (1) If a court or an arbitrator determines that:

(a) A landlord has failed to carry out a duty or duties imposed by RCW 59.20.130; and

(b) A reasonable time has passed for the landlord to remedy the defective condition following notice to the landlord under RCW 59.20.200 or such other time as may be allotted by the court or arbitrator; the court or arbitrator may determine the diminution in rental value of the property due to the defective condition and shall render judgment against the landlord for the rent paid in excess of such diminished rental value from the time of notice of such defect to the time of decision and any costs of repair done pursuant to *section 4 of this act for which no deduction has been previously made. Such decisions may be enforced as other judgments at law and shall be available to the tenant as a set-off against any existing or subsequent claims of the landlord.

The court or arbitrator may also authorize the tenant to contract to make further corrective repairs. The court or arbitrator shall specify a time period in which the landlord may make such repairs before the tenant may contract for such repairs. Such repairs shall not exceed the sum expressed in dollars representing one month's rental of the tenant's mobile home space in any one calendar year.

(2) The tenant shall not be obligated to pay rent in excess of the diminished rental value of the mobile home space until such defect or defects are corrected by the landlord or until the court or arbitrator determines otherwise. [1984 c 58 § 9.]

***Reviser's note:** The reference to "section 4 of this act" (RCW 59.20.080) appears to be erroneous. Section 8 of this act, codified as RCW 59.20.210, was apparently intended.

Severability—1984 c 58: See note following RCW 59.20.200.

59.20.230 Defective condition—Unfeasible to remedy defect—Termination of tenancy. If a court or arbitrator determines a defective condition as described in RCW 59.20.130 to be so substantial that it is unfeasible for the landlord to remedy the defect within the time allotted by RCW 59.20.200, and that the tenant should not remain on the mobile home space in its defective condition, the court or arbitrator may authorize the termination of the tenancy. The court or arbitrator shall set a reasonable time for the tenant to vacate the premises. [1984 c 58 § 10.]

Severability—1984 c 58: See note following RCW 59.20.200.

59.20.240 Payment of rent condition to exercising remedies. The tenant shall be current in the payment of rent including all utilities which the tenant has agreed in the rental agreement to pay before exercising any of the remedies accorded the tenant under the provisions of this chapter: *Provided*, That this section shall not be construed as limiting the tenant's civil remedies for negligent or intentional damages: *Provided further*, That this section shall not be construed as limiting the tenant's right in an unlawful detainer proceeding to raise the defense that there is no rent due and owing. [1984 c 58 § 7.]

Severability—1984 c 58: See note following RCW 59.20.200.

59.20.250 Mediation of disputes by independent third party. The landlord and tenant may agree in writing to submit any dispute arising under this chapter or under the terms, conditions, or performance of the rental agreement to mediation by an independent third party or to settle the dispute through industry mediation procedures. The parties may agree to submit any dispute to mediation before exercising their right to arbitration under RCW 59.20.260. [1984 c 58 § 12.]

Severability—1984 c 58: See note following RCW 59.20.200.

59.20.260 Arbitration—Authorized—Selection of arbitrator—Procedure. (1) The landlord and tenant may agree in writing to submit a controversy arising under this chapter to arbitration. The agreement shall contain the name of the arbitrator agreed upon by the parties or the process for selecting the arbitrator.

(2) The arbitration shall be administered under this chapter and chapter 7.04 RCW. [1984 c 58 § 13.]

Severability—1984 c 58: See note following RCW 59.20.200.

59.20.270 Arbitration—Application—Hearings—Decisions. (1) If the landlord and tenant agree to submit the matter to arbitration, the parties shall complete an application for arbitration and deliver it to the selected arbitrator.

(2) The arbitrator shall schedule a hearing to be held no later than ten days following receipt of the application.

(3) Reasonable notice of the hearings shall be given to the parties, who shall appear and be heard either in person, by counsel, or by other representative. Hearings

shall be informal and the rules of evidence prevailing in judicial proceedings shall not be binding. Hearings may be public or private. The proceedings may be recorded. Any oral or documentary evidence and other data deemed relevant by the arbitrator may be received in evidence. The arbitrator may administer oaths, issue subpoenas, and require the attendance of witnesses and the production of books, papers, contracts, agreements, and documents deemed by the arbitrator to be material to a just determination of the issues in dispute. If a person refuses to obey a subpoena or refuses to be sworn to testify, or any witness, party, or attorney is guilty of any contempt while in attendance at any hearing held under this section, the arbitrator may invoke the jurisdiction of any district or superior court, and the court shall have jurisdiction to issue an appropriate order. Failure to obey the order may be punished by the court as contempt.

(4) Within five days after the hearing, the arbitrator shall make a written decision upon the issues presented. A copy of the decision shall be mailed by certified mail or otherwise delivered to the parties or their designated representatives. The decision of the arbitrator shall be final and binding upon all parties.

(5) If a dispute exists affecting more than one tenant in a similar manner, the arbitrator may with the consent of the parties consolidate the cases into a single proceeding.

(6) Decisions of the arbitrator shall be enforced or appealed under chapter 7.04 RCW. [1984 c 58 § 14.]

Severability—1984 c 58: See note following RCW 59.20.200.

59.20.280 Arbitration—Fee. The administrative fee for this arbitration procedure shall be established by agreement of the parties and the arbitrator and, unless otherwise allocated by the arbitrator, shall be shared equally by the parties. However, upon either party signing an affidavit to the effect that the party is unable to pay the share of the fee, that portion of the fee may be waived or deferred. [1984 c 58 § 15.]

Severability—1984 c 58: See note following RCW 59.20.200.

59.20.290 Arbitration—Completion of arbitration after giving notice. When a party gives notice of intent to arbitrate by giving reasonable notice to the other party, that party shall, at the same time, arrange for arbitration of the grievance in the manner provided for in this chapter. The arbitration shall be completed before the rental due date next occurring after the giving of notice under this section, but in no event shall the arbitrator have less than ten days to complete the arbitration process. [1984 c 58 § 16.]

Severability—1984 c 58: See note following RCW 59.20.200.

59.20.900 Severability—1977 ex.s. c 279. If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1977 ex.s. c 279 § 13.]

Chapter 59.21

MOBILE HOME RELOCATION ASSISTANCE

Sections

59.21.010	Definitions.
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59.21.010 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Director" means the director of the department of community development.

(2) "Department" means the department of community development.

(3) "Fund" means the mobile home park relocation fund established under RCW 59.21.050 consisting of tenant and landlord contributions.

(4) "Low-income" means at or below eighty percent of median income as defined by the United States department of housing and urban development, for the county or standard metropolitan statistical area where the park is located.

(5) "Mobile home park" or "park" means real property that is rented or held out for rent to others for the placement of two or more mobile homes for the primary purpose of production of income, except where the real property is rented or held out for rent for seasonal recreational purpose only and is not intended for year-round occupancy.

(6) "Landlord" or "park-owner" means the owner of the mobile home park that is being closed at the time relocation assistance is provided.

(7) "Relocate" means to remove the mobile home from the mobile home park being closed.

(8) "Relocation assistance" means the monetary assistance provided under RCW 59.21.020. [1989 c 201 § 1.]

59.21.020 Relocation assistance—Eligibility—Notice—Amounts. (1) If a mobile home park is closed or converted to another use, all affected park tenants are entitled to relocation assistance from the park-owner or the fund at the time the tenant relocates as follows: (a) For a single-wide mobile home, four thousand five hundred dollars; and (b) for a double-wide or larger mobile home, seven thousand five hundred dollars.

(2) When a tenant is forced to relocate before July 1, 1991, the payment of relocation assistance as provided by this section shall be paid by the park-owner. However, if the tenant has been given notice to vacate prior

to April 1, 1989, and the tenant has not yet relocated as of April 28, 1989, the payment of relocation assistance by the park-owner shall be required only if the tenant is low income.

(3) When a tenant is forced to relocate after June 30, 1991, the payment of relocation assistance as provided in this section shall be shared as follows: The landlord or park-owner shall provide one-third and the fund shall provide two-thirds.

(4) After July 1, 1992, (a) if twenty-four months' notice of closure is given, the landlord or park-owner shall provide five hundred dollars for a single-wide home or one thousand dollars for a double-wide or larger home and the fund shall provide the balance of the relocation assistance; (b) if the park-owner gives less than twenty-four months' notice the park-owner shall provide one-third and the fund shall provide two-thirds of the relocation assistance.

(5) The parkowner shall make any payment required by this chapter when demanded by the department; however, the department shall not demand such payment earlier than thirty days prior to the expected relocation date of the tenant. If the landlord does not pay his or her portion of the relocation assistance to the department when required by this chapter, the department shall have a lien on the real property on which the park is located. Such lien shall be collected as delinquent general property taxes and shall be forwarded to the department by the county treasurer.

(6) The director or his or her designee shall approve all expenditures from the fund.

(7) Relocation assistance contributions required from landlords or park-owners by this section shall be reduced by the amount paid or required to be paid under any other law for the same mobile home park tenant for the same relocation. [1989 c 201 § 2.]

59.21.030 Notice—Requirements. Notice required by RCW 59.20.080 before park closure or conversion of the park, whether twelve months or longer, shall be given to the director and all tenants in writing, and posted at all park entrances. Notice must also include the tenant's right to relocation assistance, if applicable. This section shall apply to all park closures even though notice may have been given prior to April 28, 1989. [1989 c 201 § 3.]

59.21.040 Relocation assistance—Exemptions. A tenant is not entitled to relocation assistance under RCW 59.21.020 if (1) the tenant has given notice to the landlord of his or her intent to vacate the park and terminate the tenancy before any notice of termination required by the landlord under this chapter has been given, or (2) a person purchases a mobile home already situated in the park or moves a mobile home into the park after a closure or change of use notice has been given and the person has received actual prior notice of the change or closure. [1989 c 201 § 4.]

59.21.050 Relocation fund—Creation—Administration—Tenant's application. (1) The mobile home

park relocation fund is created in the custody of the state treasurer. All legislative appropriations for mobile home relocation assistance, receipts from assessments collected under RCW 59.21.060, and amounts required to be paid by park-owners shall be deposited into the fund. Expenditures from the fund may be used only for administration of the fund, relocation assistance under RCW 59.21.020, or transfer to the mobile home park purchase fund under subsection (2) of this section. Only the director of community development or the director's designee may authorize expenditures from the fund. All relocation payments, including those due from the park-owner shall be made from the fund. The fund is subject to allotment procedures under chapter 43.88 RCW, but no appropriation is required for expenditures.

(2) The state treasurer shall maintain the fund and shall invest the fund moneys. Moneys earned on these investments shall be deposited in the fund and shall be used for the same purposes as other fund moneys. Unexpended and unencumbered moneys that remain in the fund at the end of the fiscal year do not revert to the state general fund but remain in the fund, separately accounted for, as a contingency reserve, or if the director determines at the end of any fiscal year beginning after December 31, 1991, that the fund contains a surplus over the projected amount needed for relocation during the upcoming year(s), any surplus may be transferred to the mobile home park purchase fund created by chapter 59.22 RCW. However, the director may cause any uncommitted funds in the mobile home park purchase fund which were transferred from the mobile home park relocation fund to be transferred back to the mobile home park relocation fund if that fund cannot otherwise meet its current obligations.

(3) A tenant who is entitled to relocation assistance under this chapter is entitled to payment only after submitting an application which includes: (a) A copy of the notice from the parkowner that the tenancy is terminated due to closure of the park; (b) a copy of the rental agreement currently in force; and (c) a copy of the contract entered into for the purpose of relocating the mobile home, which includes the date of relocation.

(4) The director may adopt rules for the administration of the fund.

(5) The department may use money from the fund to offset the necessary costs of administering the fund. Administrative cost reimbursement shall not exceed fifty thousand dollars or five percent of the revenue to the fund for any given fiscal year, whichever is greater, to offset expenses incurred during that year. [1989 c 201 § 5.]

59.21.060 Relocation fund—Annual assessment—Tenants' list—Revenue allocation. (1) There is hereby placed on all mobile homes located in mobile home parks an annual assessment of eleven dollars per mobile home beginning on January 1, 1990. The assessment shall be collected by the county treasurer or treasurers within the county or counties where the mobile home or the mobile home park is located. Notice of the assessment created under this section may be included

on the notice of property taxes due, or may be sent separately from the notice of property taxes due. The assessment created under this section shall be due at the same time property taxes are due and shall constitute a lien on the mobile home upon which the assessment is imposed. Delinquent assessments created under this section shall be foreclosed in the same manner, and subject to the same time schedules, interest, and penalties as delinquent property taxes. County treasurers may impose a fee for collecting the assessment created in this section not to exceed five percent of the dollar value of the collection of assessments created under this section. The county treasurer may collect the assessment for 1990 at the same time the county treasurer collects the assessment for 1991 if the county treasurer would experience undue hardship in collecting the 1990 assessment in that year.

(2) Upon the request of the treasurer of the county or counties where the mobile home park is located, each park-owner shall provide the county treasurer with a list of all tenants residing in the park on January 1, 1989. This list shall be mailed by August 1, 1989, to the treasurer or treasurers of the county or counties where the mobile home park is located. The list shall include the name and address of each tenant, and the mobile home tax number of each tenant if available. Upon the request of the treasurer of the county or counties where the mobile home park is located, the park-owners shall update the list of tenants residing in the park.

(3) The assessments collected under subsection (1) of this section shall be forwarded to the state treasurer, less any administration fee collected by the county treasurer under this section. The state treasurer shall deposit one dollar of the assessment collected per mobile home in the mobile home affairs account created by RCW 59.22-.070; the remainder of the assessment forwarded to the state treasurer under this subsection shall be deposited in the mobile home park relocation fund created under RCW 59.21.050.

(4) The department of revenue, the state treasurer, and the county treasurers may enact any rules necessary to carry out this section. [1989 c 201 § 6.]

59.21.070 Rental agreement—Covenants. If the rental agreement includes a covenant by the landlord as described in RCW 59.20.060(1)(e)(i), the covenant runs with the land and is binding upon the purchasers, successors, and assigns of the landlord. [1989 c 201 § 10.]

59.21.080 Relocation fund—Park-owner contribution—Park closing. Before a mobile home park-owner may close a mobile home park or convert it to another use, the owner shall pay amounts owed for relocation assistance under RCW 59.21.020 to the state treasurer for deposit into the fund. A park-owner may give notice as required by RCW 59.20.080 and this chapter before payment of these amounts. [1989 c 201 § 11.]

59.21.090 Relocation fund—Insufficient moneys—Loans. Any unit of local government may, with the director's approval, give or loan moneys to the fund

if insufficient moneys are available to pay the fund's share of relocation assistance under RCW 59.21.020. When sufficient moneys exist in the fund, the director shall approve the repayment of the loaned moneys to the local government. [1989 c 201 § 13.]

59.21.100 Tenants—Waiver of rights—Attorney approval. A tenant may, with the written approval of his or her attorney at law, waive or compromise their right to relocation assistance under this chapter. [1989 c 201 § 14.]

59.21.110 Violations—Penalty. Any person who intentionally violates, intentionally attempts to evade, or intentionally evades the provisions of *this act is guilty of a misdemeanor. [1989 c 201 § 15.]

***Reviser's note:** For codification of "this act" [1989 c 201], see Codification Tables, Volume 0.

59.21.900 Severability—1989 c 201. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1989 c 201 § 17.]

Chapter 59.22

OFFICE OF MOBILE HOME AFFAIRS— RESIDENT-OWNED MOBILE HOME PARKS

Sections

59.22.010	Legislative findings.
59.22.020	Definitions.
59.22.030	Mobile home park purchase fund.
59.22.050	Office of mobile home affairs—Task force— Duties.
59.22.060	Landlord and tenant fees to be paid to department of revenue.
59.22.070	Mobile home affairs account.
59.22.900	Repeal of chapter.

Mobile home landlord-tenant act: Chapter 59.20 RCW.

59.22.010 Legislative findings. (1) The legislature finds:

(a) That manufactured housing and mobile home parks provide a source of low-cost housing to the low income, elderly, poor and infirmed, without which they could not afford private housing; but rising costs of mobile home park development and operation, as well as turnover in ownership, has resulted in mobile home park living becoming unaffordable to the low income, elderly, poor and infirmed, resulting in increased numbers of homeless persons, and persons who must look to public housing and public programs, increasing the burden on the state to meet the housing needs of its residents;

(b) That state government can play a vital role in addressing the problems confronted by mobile home park residents by providing assistance which makes it possible for mobile home park residents to acquire the mobile home parks in which they reside and convert them to resident ownership; and

(c) That to accomplish this purpose, information and technical support shall be made available through the department of community development.

(2) Therefore, it is the intent of the legislature, in order to maintain low-cost housing in mobile home parks to benefit the low income, elderly, poor and infirmed, to encourage and facilitate the conversion of mobile home parks to resident ownership, to protect low-income mobile home park residents from both physical and economic displacement, to obtain a high level of private financing for mobile home park conversions, and to help establish acceptance for resident-owned mobile home parks in the private market. [1987 c 482 § 1.]

59.22.020 Definitions. The following definitions shall apply throughout this chapter unless the context clearly requires otherwise:

(1) "Affordable" means that, where feasible, low-income residents should not pay more than thirty percent of their monthly income for housing costs.

(2) "Conversion costs" includes the cost of acquiring the mobile home park, the costs of planning and processing the conversion, the costs of any needed repairs or rehabilitation, and any expenditures required by a government agency or lender for the project.

(3) "Department" means the department of community development.

(4) "Fund" means the mobile home park purchase fund created pursuant to RCW 59.22.030.

(5) "Housing costs" means the total cost of owning, occupying, and maintaining a mobile home and a lot or space in a mobile home park.

(6) "Individual interest in a mobile home park" means any interest which is fee ownership or a lesser interest which entitles the holder to occupy a lot or space in a mobile home park for a period of not less than either fifteen years or the life of the holder. Individual interests in a mobile home park include, but are not limited to, the following:

(a) Ownership of a lot or space in a mobile home park or subdivision;

(b) A membership or shares in a stock cooperative, or a limited equity housing cooperative; or

(c) Membership in a nonprofit mutual benefit corporation which owns, operates, or owns and operates the mobile home park.

(7) "Low-income resident" means an individual or household who resided in the mobile home park prior to application for a loan pursuant to this chapter and with an annual income at or below eighty percent of the median income for the county of standard metropolitan statistical area of residence. Net worth shall be considered in the calculation of income with the exception of the resident's mobile/manufactured home which is used as their primary residence.

(8) "Low-income spaces" means those spaces in a mobile home park operated by a resident organization which are occupied by low-income residents.

(9) "Mobile home park" means a mobile home park, as defined in RCW 59.20.030(4), or a manufactured home park subdivision as defined by RCW 59.20.030(6)

created by the conversion to resident ownership of a mobile home park.

(10) "Resident organization" means a group of mobile home park residents who have formed a nonprofit corporation, cooperative corporation, or other entity or organization for the purpose of acquiring the mobile home park in which they reside and converting the mobile home park to resident ownership. The membership of a resident organization shall include at least two-thirds of the households residing in the mobile home park at the time of application for assistance from the department.

(11) "Resident ownership" means, depending on the context, either the ownership, by a resident organization, as defined in this section, of an interest in a mobile home park which entitles the resident organization to control the operations of the mobile home park for a term of no less than fifteen years, or the ownership of individual interests in a mobile home park, or both.

(12) "Landlord" shall have the same meaning as it does in RCW 59.20.030.

(13) "Manufactured housing" means residences constructed on one or more chassis for transportation, and which bear an insignia issued by a state or federal regulatory agency indicating compliance with all applicable construction standards of the United States department of housing and urban development.

(14) "Mobile home" shall have the same meaning as it does in RCW 46.04.302.

(15) "Mobile home lot" shall have the same meaning as it does in RCW 59.20.030.

(16) "Tenant" means a person who rents a mobile home lot for a term of one month or longer, and owns the mobile home on the lot. [1988 c 280 § 3; 1987 c 482 § 2.]

59.22.030 Mobile home park purchase fund. The mobile home park purchase fund is hereby created and shall be maintained in the office of the treasurer. The purpose of this fund is to provide loans according to the provisions of this chapter and for related administrative costs of the department. The fund shall include appropriations, loan repayments, interest, and any other money from private sources made available to the state for the purposes of this chapter. Owners of mobile home parks shall not be assessed for the purposes of this fund. [1987 c 482 § 4.]

Reviser's note: Substantial portions of 1987 c 482, authorizing loans from the mobile home park purchase fund, were vetoed by the governor.

59.22.050 Office of mobile home affairs—Task force—Duties. (1) In order to provide general assistance to mobile home resident organizations, park owners, and landlords and tenants, the department shall establish an office of mobile home affairs which will serve as the coordinating office within state government for matters relating to mobile homes or manufactured housing.

This office will provide an ombudsman service to mobile home park owners and mobile home tenants with respect to problems and disputes between park owners

and park residents and to provide technical assistance to resident organizations or persons in the process of forming a resident organization pursuant to chapter 59.22 RCW. The office will keep records of its activities in this area.

(2) In addition, the office shall work with the mobile home space availability and affordability task force to develop recommendations to (a) increase the availability of mobile home park spaces, (b) stabilize rent levels through traditional market forces of supply and demand and through incentives such as current use valuation of mobile home parks, but not through artificial controls on rent, and (c) allow senior citizens on fixed incomes to continue living in their mobile homes, including the possibility of direct subsidies.

The mobile home space availability and affordability task force shall be comprised of four legislators, one from each caucus in the house of representatives appointed by the speaker of the house and one from each caucus in the senate appointed by the president of the senate, two representatives of park-owners, two representatives of tenants, and two representatives of local governments. All nonlegislative members shall be appointed by the director of the department of community development. Staffing for the task force shall be supplied by the department of community development, the house of representatives housing committee, and the senate economic development and labor committee.

(3) In developing these recommendations the office and the task force shall:

(a) Review the ordinances of local government to assess their impact on the availability of mobile home rental spaces;

(b) Consult with federal, state, and local agencies, senior citizen organizations, the real estate industry, and other groups as it considers necessary;

(c) Use, to the fullest extent possible, the services, facilities, information, and advice of public and private agencies, organizations, and individuals in order to avoid duplication of effort and expense; and

(d) Hold public hearings to allow public input and involvement. [1989 c 294 § 1; 1988 c 280 § 2.]

59.22.060 Landlord and tenant fees to be paid to department of revenue. (1) Every landlord shall register by October 1, 1988, with the department of revenue under such rules as that department shall prescribe.

(2) Every landlord shall pay a fee of one dollar per lot per year, except for unoccupied lots. This fee shall be remitted by the landlord to the department of revenue under such rules as the department shall prescribe. The department of revenue shall forward the one-dollar fee per lot paid by the landlord to the mobile home affairs account created by RCW 59.22.070.

(3) This section shall take effect on January 1, 1990. [1989 c 201 § 7; 1988 c 280 § 4.]

Severability—1989 c 201: See RCW 59.21.900.

59.22.070 Mobile home affairs account. There is created in the custody of the state treasurer a special account known as the mobile home affairs account.

Disbursements from this special account shall be as follows:

(1) For the two-year period beginning July 1, 1988, forty thousand dollars, or so much thereof as may be necessary for costs incurred in registering landlords and collecting fees, and thereafter five thousand dollars per year for that purpose.

(2) All remaining amounts shall be remitted to the department of community development for the purpose of implementing RCW 59.22.050 and 59.22.060. [1989 c 201 § 8; 1988 c 280 § 5.]

Severability—1989 c 201: See RCW 59.21.900.

59.22.900 Repeal of chapter. This chapter shall remain in effect until July 1, 1991, and as of that date is repealed, unless that date is extended. [1987 c 482 § 12.]

Chapter 59.24

RENTAL SECURITY DEPOSIT GUARANTEE PROGRAM

Sections

59.24.010	Legislative findings.
59.24.020	Program established—Grants—Eligible participants.
59.24.030	Contracts required—Terms.
59.24.040	Authority of grant recipients.
59.24.050	Rules.
59.24.060	Sources of funds.
59.24.900	Severability—1988 c 237.

59.24.010 Legislative findings. The legislature finds that one of the most difficult problems that temporarily homeless persons or families face in seeking permanent housing is the necessity of paying a security deposit in addition to paying the first month's rent. The security deposit requirement is often impossible for the temporarily homeless person or family to meet because their savings are depleted due, for example, to purchasing temporary shelter in a motel when space at an emergency shelter was not available. A program to guarantee the security deposit for the temporarily homeless person or family will help the poor in this state achieve adequate permanent shelter. [1988 c 237 § 1.]

59.24.020 Program established—Grants—Eligible participants. (1) The department of community development shall establish the rental security deposit guarantee program. Through this program the department of community development shall provide grants and technical assistance to local governments or nonprofit corporations, including local housing authorities as defined in RCW 35.82.030, who operate emergency housing shelters or transitional housing programs. The grants are to be used for the payment of residential rental security deposits under this chapter. The technical assistance is to help the local government or nonprofit corporation apply for grants and carry out the program. In order to be eligible for grants under this program, the recipient local government or nonprofit corporation shall

provide fifteen percent of the total amount needed for the security deposit. The security deposit may include last month's rent where such rent is required as a normal practice by the landlord.

(2) The grants and matching funds shall be placed by the recipient local government or nonprofit corporation in a revolving loan fund and deposited in a bank or savings institution in an account that is separate from all other funds of the recipient. The funds and interest earned on these funds shall be utilized only as collateral to guarantee the payment of a security deposit required by a residential rental property owner as a condition for entering into a rental agreement with a prospective tenant.

(3) Prospective tenants who are eligible to participate in the rental security deposit guarantee program shall be limited to homeless persons or families who are residing in an emergency shelter or transitional housing operated by a local government or a nonprofit corporation, or to families who are temporarily residing in a park, car, or are otherwise without adequate shelter. The local government or nonprofit corporation shall make a determination regarding the person's or family's eligibility to participate in this program and a determination that a local rental unit is available for occupation. A determination of eligibility shall include, but is not limited to: (a) A determination that the person or family is homeless or is in transitional housing; (b) a verification of income and that the person or family can reasonably make the monthly rental payment; and (c) a determination that the person or family does not have the financial resources to make the rental security deposit. [1988 c 237 § 2.]

59.24.030 Contracts required—Terms. (1) A three-party contract shall be required of persons participating in the rental deposit guarantee program. The parties to the contract shall be the local government or nonprofit corporation operating a shelter for homeless persons or transitional housing, the tenant, and the rental property owner. The terms of the contract shall include, but are not limited to, all of the following:

(a) The owner of the rental property shall agree to allow the security deposit to be paid by the tenant over a specified number of months as an addition to the regular rental payment, rather than as a lump-sum payment.

(b) Upon execution of the agreement, the local government or nonprofit corporation shall encumber or reserve funds in a special fund created under RCW 59.24.020, as a guarantee of the contract, an amount no less than eighty percent of the outstanding balance of the security deposit owed by the tenant to the landlord.

(c) The tenant shall agree to a payment schedule of a specified number of months in which time the total amount of the required deposit shall be paid to the property owner.

(d) At any time during the operation of the guarantee, the property owner shall make all claims first against amounts of the security deposit actually paid by the tenant and secondly against the guarantee. At no time during or after the tenancy may the property owner

make claims against the guarantee in excess of that amount agreed to as the guarantee.

(e) If a deduction from the guarantee fund is required, it may be accomplished only to the extent permitted by the contract and in the manner provided by law, including notice to the legal agency or organization. The tenant shall have no direct use of guarantee funds, including funds which may be referred to as "last month's rent."

(2) The department shall make available to local governments and nonprofit corporations receiving grants under this chapter the forms deemed necessary for the contracts and the determination of eligibility. Local governments and nonprofit corporations may develop and use their own forms as long as the forms meet the requirements specified in this chapter. [1988 c 237 § 3.]

59.24.040 Authority of grant recipients. A local government or nonprofit corporation receiving a grant under this chapter may utilize a portion of the allocation for costs of administering and operating its rental security deposit guarantee program. The department shall approve the amount so utilized prior to expenditure, and the amount may not exceed five percent of the allocation. The staff of the grant recipient shall be responsible for soliciting housing opportunities for low-income homeless persons, coordinating with local low-income rental property owners, making determinations regarding the eligibility of prospective tenants for the program, and providing information to prospective tenants on the tenant-property owner relationship, appropriate treatment of property, and the importance of timely rental payments. The staff of the grant recipient assigned to administer the program shall be reasonably available to property owners and tenants to answer questions or complaints about the program. [1988 c 237 § 4.]

59.24.050 Rules. The department of community development may adopt rules to implement this chapter, including but not limited to: (1) The eligibility of and the application process for local governments and nonprofit corporations; (2) the criteria by which grants and technical assistance shall be provided to local governments and nonprofit corporations; and (3) the criteria local governments and nonprofit corporations shall use in entering into contracts with tenants and rental property owners. [1988 c 237 § 5.]

59.24.060 Sources of funds. The department may receive such gifts, grants, or endowments from public or private sources, as may be made from time to time, in trust or otherwise, to be used by the department for its programs, including the rental security deposit guarantee program. Funds from the housing trust fund, chapter 43.185 RCW, up to one hundred thousand dollars, may be used for the rental security deposit guarantee program by the department of community development, local governments, and nonprofit organizations, provided all the requirements of this chapter and chapter 43.185 RCW are met. [1988 c 237 § 6.]

59.24.900 Severability—1988 c 237. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1988 c 237 § 8.]

Chapter 59.28

FEDERALLY ASSISTED HOUSING

Sections	
59.28.010	Legislative findings—Purpose.
59.28.020	Definitions.
59.28.030	Contracts—Expiration or termination—Applicability.
59.28.040	Notice of expiration or prepayment—Owner's duty.
59.28.050	Owner's rights—Public regulatory powers—Applicability.
59.28.060	Notice of expiration or prepayment—Contents.
59.28.070	Removal of tenants—Notice of expiration or prepayment—Timing.
59.28.080	Rent increase—Notice of expiration or prepayment—Timing.
59.28.090	Modification of rental agreement—Notice of expiration or prepayment—Timing.
59.28.100	Violations—Civil actions—Parties.
59.28.110	Annual report—Contents—Distribution.
59.28.900	Severability—1989 c 188.

59.28.010 Legislative findings—Purpose. The legislature finds that:

(1) There is a severe shortage of federally assisted housing within the state of Washington. Over one hundred seventy thousand low and moderate-income households are eligible for federally assisted housing but are unable to locate vacant units.

(2) Within the next twenty years, more than twenty-six thousand existing low-income housing units may be lost as a result of the prepayment of mortgages or loans by the owners, or as a result of the expiration of rental assistance contracts. Over three thousand units of federally assisted housing have already been lost and an additional nine thousand units may be lost within the next two and one-half years.

(3) Recent reductions in federal housing assistance and tax benefits related to low-income housing make it uncertain whether additional units of federally assisted housing will be built or that those lost will be replaced.

(4) The loss of federally assisted housing will adversely affect current tenants and lead to their displacement. It will also drastically reduce the supply of affordable housing in our communities.

It is the purpose of this chapter to preserve federally assisted housing in the state of Washington and to minimize the involuntary displacement of tenants currently residing in such housing. [1989 c 188 § 1.]

59.28.020 Definitions. (1) "Federally assisted housing" means any multifamily housing that is insured, financed, assisted, or held by the secretary of housing and urban development or the secretary of agriculture under:

(a) Section 8 of the United States housing act of 1937, as amended (42 U.S.C. Sec. 1437f);

(b) Section 101 of the housing and urban development act of 1965, as amended (12 U.S.C. Sec. 1701s);

(c) The following sections of the national housing act:

- (i) Section 202 (12 U.S.C. Sec. 1701q);
- (ii) Section 213 (12 U.S.C. Sec. 1715e);
- (iii) Section 221 (d) (3) and (4) (12 U.S.C. Sec. 17151(d) (3) and (4));
- (iv) Section 223(f) (12 U.S.C. Sec. 1715n(f));
- (v) Section 231 (12 U.S.C. Sec. 1715v); or
- (vi) Section 236 (12 U.S.C. Sec. 1715z-1); and

(d) The following sections of the housing act of 1949, as amended:

- (i) Section 514 (42 U.S.C. Sec. 1484);
- (ii) Section 515 (42 U.S.C. Sec. 1485);
- (iii) Section 516 (42 U.S.C. Sec. 1486);
- (iv) Section 521(a)(1)(B) (42 U.S.C. Sec. 1490a(a)(1)); or
- (v) Section 521(a)(2) (42 U.S.C. Sec. 1490a(a)(2)).

(2) "Rental agreement" means any agreement that establishes or modifies the terms, conditions, rules, regulations, or any other provision concerning the use and occupancy of a federally assisted housing unit.

(3) "Owner" means the current or subsequent owner or owners of federally assisted housing. [1989 c 188 § 2.]

59.28.030 Contracts—Expiration or termination—Applicability. This chapter shall not apply to the expiration or termination of a housing assistance contract between a public housing agency and an owner of existing housing participating in either the section 8 certificate or voucher program (42 U.S.C. Sec. 1437f). [1989 c 188 § 3.]

59.28.040 Notice of expiration or prepayment—Owner's duty. All owners of federally assisted housing shall, at least twelve months before the expiration of the rental assistance contract or prepayment of a mortgage or loan, serve a written notice of the anticipated expiration or prepayment date on each tenant household residing in the housing, on the clerk of the city, or county if in an unincorporated area, in which the property is located, and on the state department of community development, by regular and certified mail. [1989 c 188 § 4.]

59.28.050 Owner's rights—Public regulatory powers—Applicability. This chapter shall not in any way prohibit an owner of federally assisted housing from terminating a rental assistance contract or prepaying a mortgage or loan. The requirement in this chapter for notice shall not be construed as conferring any new or additional regulatory power upon the city or county clerk or upon the state department of community development. [1989 c 188 § 5.]

59.28.060 Notice of expiration or prepayment—Contents. The notice to tenants required by RCW 59.28.040 shall state the date of expiration or prepayment and the effect, if any, that the expiration or prepayment will have upon the tenants' rent and other terms of their rental agreement.

The notice to the city or county clerk and to the state department of community development required by

RCW 59.28.040 shall state: (1) The name, location, and project number of the federally assisted housing and the type of assistance received from the federal government; (2) the number and size of units; (3) the age, race, family size, and estimated incomes of the tenants who will be affected by the prepayment of the loan or mortgage or expiration of the federal assistance contract; (4) the projected rent increases for each affected tenant; and (5) the anticipated date of prepayment of the loan or mortgage or expiration of the federal assistance contract. [1989 c 188 § 6.]

59.28.070 Removal of tenants—Notice of expiration or prepayment—Timing. From the date of service of the notice under RCW 59.28.040 until either twelve months have elapsed or expiration or prepayment of the rental assistance contract or mortgage or loan, whichever is later, no owner of federally assisted housing may evict a tenant or demand possession of any federally assisted housing unit, except as authorized by the federal assistance program applicable to the project, prior to expiration or prepayment of the rental assistance contract or mortgage or loan. [1989 c 188 § 7.]

59.28.080 Rent increase—Notice of expiration or prepayment—Timing. From the date of service of the notice under RCW 59.28.040 until either twelve months have elapsed or expiration or prepayment of the rental assistance contract, mortgage, or loan, whichever is later, no owner of federally assisted housing may increase the rent of a federally assisted housing unit above the amount authorized by the federal assistance program applicable to the project prior to expiration or prepayment of the rental assistance contract or mortgage or loan. [1989 c 188 § 8.]

59.28.090 Modification of rental agreement—Notice of expiration or prepayment—Timing. From the date of service of the notice under RCW 59.28.040 until either twelve months have elapsed or expiration or prepayment of the rental assistance contract, mortgage, or loan, whichever is later, no owner of federally assisted housing may change the terms of the rental agreement, except as permitted under the existing rental agreement, prior to expiration or prepayment of the rental assistance contract or mortgage or loan. [1989 c 188 § 9.]

59.28.100 Violations—Civil actions—Parties. Any party who is entitled to receive notice under this chapter may bring a civil action to enjoin or recover damages for any violation of this chapter, together with the costs of the suit including reasonable attorneys' fees. [1989 c 188 § 10.]

59.28.110 Annual report—Contents—Distribution. The director of the department of community development shall prepare an annual report on the preservation and loss of federally assisted housing in the state of Washington. The director shall include in this report recommendations for preserving federally assisted

housing and for minimizing the involuntary displacement of tenants residing in such housing. The director shall provide a copy of this report to the house of representatives committee on housing and the senate committee on economic development and labor. [1989 c 188 § 11.]

59.28.900 Severability—1989 c 188. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1989 c 188 § 12.]

Title 60

LIENS

Chapters

- 60.04** Mechanics' and materialmen's liens.
- 60.08** Chattel liens.
- 60.10** Personal property liens—Summary foreclosure.
- 60.11** Crop liens.
- 60.13** Processor and preparer liens for agricultural products.
- 60.16** Labor liens on orchards and orchard lands.
- 60.20** Labor and material liens for improving property with nursery stock.
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Chapter 60.04

MECHANICS' AND MATERIALMEN'S LIENS

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60.04.010 Lien authorized—Bond by railroad company. Every person performing labor upon, furnishing material, or renting, leasing or otherwise supplying equipment, to be used in the construction, alteration or repair of any mining claim, building, wharf, bridge,

ditch, dyke, flume, tunnel, well, fence, machinery, railroad, street railway, wagon road, aqueduct to create hydraulic power or any other structure or who performs labor in any mine or mining claim or stone quarry, or trustees of any type of employee benefit plan, has a lien upon the same for the labor performed, contributions owed to the employee benefit plan on account of such labor performed, material furnished, or equipment supplied by each, respectively, whether performed, furnished, or supplied at the instance of the owner of the property subject to the lien or his agent; and every registered or licensed contractor, registered or licensed subcontractor, architect, or person having charge, of the construction, alteration or repair of any property subject to the lien as aforesaid, shall be held to be the agent of the owner for the purposes of the establishment of the lien created by this chapter: *Provided*, That whenever any railroad company shall contract with any person for the construction of its road, or any part thereof, such railroad company shall take from the person with whom such contract is made a good and sufficient bond, conditioned that such person shall pay all laborers, mechanics, materialmen, and equipment suppliers, and persons who supply such contractors with provisions, all just dues to such person or to any person to whom any part of such work is given, incurred in carrying on such work, which bond shall be filed by such railroad company in the office of the county auditor in each county in which any part of such work is situated. And if any such railroad company shall fail to take such bond, such railroad company shall be liable to the persons herein mentioned to the full extent of all such debts so contracted by such contractor. Contractors or subcontractors required to be registered under chapter 18.27 RCW or licensed under chapter 19.28 RCW shall be deemed the agents of the owner for the purposes of establishing the lien created by this chapter only if so registered or licensed. Persons dealing with contractors or subcontractors may rely, for the purposes of this section, upon a certificate of registration issued pursuant to chapter 18.27 RCW or license issued pursuant to chapter 19.28 RCW covering the period when the work or material shall be furnished, and lien rights shall not be lost by suspension or revocation of registration or license without their knowledge. [1975 c 34 § 3; 1971 ex.s. c 94 § 2; 1959 c 279 § 1; 1905 c 116 § 1; 1893 c 24 § 1; RRS § 1129. Prior: Code 1881 § 1957; 1877 p 219 § 19; 1873 p 441 § 2; 1863 p 419 § 1; 1860 p 286 § 1; 1854 p 392 § 1.]

Effective date—1971 ex.s. c 94: See note following RCW 60.04.060.

Construction—1893 c 24: "The provisions of law relating to liens created by this act, and all proceedings thereunder, shall be liberally construed with a view to effect their objects." [1893 c 24 § 18.]

Repeal and saving—1893 c 24: "All rights acquired under any existing law of this state are hereby preserved, and all actions now pending shall be proceeded with under the law as it exists at the time this act shall take effect. All acts or parts of acts in conflict with this act are hereby repealed." [1893 c 24 § 19.]

The two foregoing annotations apply to RCW 60.04.010, 60.04.030 through 60.04.180.

60.04.020 Notice that materialmen's lien may be claimed. Every person, firm or corporation furnishing

materials or supplies or renting, leasing or otherwise supplying equipment, to be used in the construction, alteration or repair of any mining claim, building, wharf, bridge, ditch, dyke, flume, tunnel, well, fence, machinery, railroad, street railway, wagon road, aqueduct to create hydraulic power, or any other building, or any other structure, or mining claim or stone quarry, shall give to the owner or reputed owner of the property on, upon or about which such materials or supplies or equipment is and/or were used, a notice in writing, which notice shall cover the material, supplies or equipment furnished or leased during the sixty days preceding the giving of such notice as well as all subsequent materials, supplies or equipment furnished or leased, stating in substance and effect that such person, firm or corporation is and/or has furnished materials and supplies, or equipment for use thereon, with the name of the contractor or agent ordering the same, and that a lien may be claimed for all materials and supplies, or equipment furnished by such person, firm or corporation for use thereon, which notice shall be given to the owner or reputed owner by (1) mailing the same by registered or certified mail in an envelope addressed to the owner or reputed owner at his place of residence or reputed residence, or (2) by serving the same personally upon the owner or reputed owner and obtaining evidence of such service in the form of a receipt or other acknowledgment signed by such owner or reputed owner, and (3) if the prime contractor complies with RCW 60.04.230, the notice shall also be given to the prime contractor as defined in RCW 60.04.200(6) by (a) any form of mail requiring a return receipt or (b) by serving the notice personally upon the prime contractor or the prime contractor's representative and obtaining evidence of such service in the form of a receipt or other acknowledgment signed by the prime contractor or the prime contractor's representative: *Provided, however,* That with respect to materials or supplies or equipment used in construction, alteration or repair of any single family residence or garage such notice must be given not later than ten days after the date of the first delivery of such materials or supplies or equipment. No materialmen's lien shall be enforced unless the provisions of this section have been complied with: *Provided,* That in the event the notice required by this section is not given within the time specified by this section, any lien or claim of lien shall be enforceable only for materials and supplies or equipment delivered subsequent to such notice being given to the owner or reputed owner, and such lien or claim of lien shall be secondary to any lien or claim of lien established where such notice was given within the time limits prescribed by this section. [1984 c 202 § 4; 1977 ex.s. c 57 § 1; 1969 ex.s. c 84 § 1; 1965 c 98 § 1; 1959 c 279 § 2; 1959 c 278 § 1; 1957 c 214 § 1; 1911 c 77 § 1; 1909 c 45 § 1; RRS § 1133.]

Effective date—1977 ex.s. c 57: "This 1977 amendatory act shall take effect January 1, 1978." [1977 ex.s. c 57 § 2.]

60.04.030 Property subject to lien. The lot, tract or parcel of land upon which the improvement is made or the property is situated, subject to the lien created by

RCW 60.04.010, or so much thereof as may be necessary to satisfy the lien and the judgment thereon, to be determined by the court on rendering judgment in a foreclosure of the lien, is also subject to the lien to the extent of the interest of the person or company, who in his or its own behalf, or who, through any of the persons designated in RCW 60.04.010 to be agent of the owner or owners caused the performance of the labor, or the construction, alteration or repair of the property. [1905 c 116 § 2; 1893 c 24 § 2; RRS § 1130. Prior: Code 1881 § 1959; 1877 p 220 § 21.]

60.04.040 Lien for improving real property. Any person who, at the request of the owner of any real property, or his agent, clears, grades, fills in or otherwise improves the same, or any street or road in front of, or adjoining the same, and every person who, at the request of the owner of any real property, or his agents, rents, leases, or otherwise supplies equipment, or furnishes materials, including blasting powder, dynamite, caps and fuses, for clearing, grading, filling in, or otherwise improving any real property or any street or road in front of or adjoining the same, and every trustee of any type of employee benefit plan, has a lien upon such real property for the labor performed, contributions owed to the employee benefit plan on account of the labor performed, the materials furnished, or the equipment supplied for such purposes. [1975 c 34 § 4; 1971 ex.s. c 94 § 3; 1959 c 279 § 3; 1929 c 230 § 1; 1893 c 24 § 3; RRS § 1131. Prior: Code 1881 § 1958; 1877 p 220 § 20.]

Effective date—1971 ex.s. c 94: See note following RCW 60.04.060.

60.04.045 Lien on real property for labor or services on timber and lumber. The lot tract, parcel of land, or any other type of real property or real property improvements upon which the type of activities listed in RCW 60.24.020, 60.24.030, or 60.24.035 are to be performed, or so much property thereof as may be necessary to satisfy the lien and the judgment thereon, to be determined by the court on rendering judgment in a foreclosure of lien, shall also be subject to the lien to the extent of its interest of the persons who in their own behalf, or through any of their agents, caused any of the types of activities listed in RCW 60.24.020, 60.24.030, or 60.24.035. [1986 c 179 § 1.]

60.04.050 Priority of lien. The liens created by this chapter are preferred to any lien, mortgage or other incumbrance which may attach subsequently to the time of the commencement of the performance of the labor, the obligation to pay contributions to any type of employee benefit plan, the furnishing of the materials, or the supplying of the equipment for which the right of lien is given by this chapter, and are also preferred to any lien, mortgage or other incumbrance which may have attached previously to that time, and which was not filed or recorded so as to create constructive notice of the same prior to that time, and of which the lien claimant had no notice. [1975 c 34 § 5; 1959 c 279 § 4; 1893

c 24 § 4; RRS § 1132. Prior: Code 1881 § 1960; 1877 p 220 § 22.]

60.04.060 Claim—Contents—Form—Filing—Joinder. No lien created by this chapter shall exist, and no action to enforce the same shall be maintained, unless within ninety days from the date the contributions to any type of employee benefit plan are due, of the cessation of the performance of such labor, the furnishing of such materials, or the supplying of such equipment, a claim for such lien shall be filed for record as hereinafter provided, in the office of the county auditor of the county in which the property, or some part thereof to be affected thereby, is situated. Such claim shall state, as nearly as may be, the date contributions to any type of employee benefit plan became due, the time of the commencement and cessation of performing the labor, furnishing the material, or supplying the equipment, the names of the trustees of the employee benefit plan, the name of the person who performed the labor, furnished the material, or supplied the equipment, the name of the person by whom the laborer was employed (if known), the name of the person required by agreement or otherwise to pay contributions to any type of employee benefit plan, or to whom the material was furnished, or equipment supplied, a description of the property to be charged with the lien sufficient for identification, the name of the owner, or reputed owner if known, and if not known, that fact shall be mentioned, the amount for which the lien is claimed, and shall be signed by the claimant, or by some person in his behalf, and be verified by the oath of the claimant, or some person in his behalf, to the effect that the affiant believes the claim to be just; in case the claim shall have been assigned the name of the assignee shall be stated; and such claim of lien may be amended in case of action brought to foreclose the same, by order of the court, as pleadings may be, insofar as the interests of third parties shall not be affected by such amendment. A claim of lien shall also state the address of the claimant. A claim of lien by trustees of any type of employee benefit plan shall state, as nearly as is known to the trustees, the names of all employees on whose behalf contributions are claimed. A claim for lien substantially in the following form shall be sufficient:

-----, claimant, vs. -----

Notice is hereby given that on the ----- day (date of commencement of performing labor or contributions to any type of employee benefit plan became due or furnishing material or supplying equipment) ----- at the request of ----- commenced to perform labor (or to furnish material or supply equipment to be used) upon ----- (here describe property subject to the lien) of which property the owner, or reputed owner, is ----- (or if the owner or reputed owner is not known, insert the word "unknown"), the performance of which labor (or the furnishing of which material or supply of which equipment) ceased on the ----- day of -----; that said labor performed (the amount

of contributions owed or material furnished or equipment supplied) was of the value of ----- dollars, for which labor (or contributions) (or material) (or equipment) the undersigned claims a lien upon the property herein described for the sum of ----- dollars. (In case the claim has been assigned, add the words "and ----- is assignee of said claim", or claims, if several are united.)

-----, Claimant.

(Address, city, and state of claimant)

STATE OF WASHINGTON, COUNTY OF -----, ss.

-----, being sworn, says: I am the claimant (or attorney of the claimant, or administrator, representative or agent of trustees of an employee benefit plan) above named; I have heard the foregoing claim read and know the contents thereof, and believe the same to be just.

Subscribed and sworn to before me this ----- day of -----

Any number of claimants may join in the same claim for the purpose of filing the same and enforcing their liens, but in such case the amount claimed by each original lienor, respectively, shall be stated: *Provided*, It shall not be necessary to insert in the notice of claim of lien provided for by this chapter any itemized statement or bill of particulars of such claim. [1975 c 34 § 6; 1971 ex.s. c 94 § 1; 1959 c 279 § 5; 1949 c 217 § 1(5a); 1893 c 24 § 5; Rem. Supp. 1949 § 1134. FORMER PARTS OF SECTION: (i) 1949 c 217 § 1(5b) now codified as RCW 60.04.064. (ii) 1949 c 217 § 1(5c) now codified as RCW 60.04.067.]

Effective date—1971 ex.s. c 94: "This 1971 amendatory act shall take effect on January 1, 1972." [1971 ex.s. c 94 § 4.]

60.04.064 Owner may record notice to lien claimants.

The owner may within ten days after there has been a cessation of the performance of such labor, the furnishing of such material, or the supplying of such equipment thereon for a period of thirty days, file for record in the office of the county auditor, in the county where the property is situated, a notice setting forth the date on which cessation of the performance of such labor, the furnishing of such materials, or the supplying of such equipment occurred together with his name, address and the nature of his title, a legal description of the property and a statement that a copy of this notice was delivered or mailed to the general contractor, if any. The notice must be verified by the owner or by some person in his behalf. Where the ownership of the property is in several persons any one or more of the several owners may execute and file such notice, but the notice must state the names, addresses and nature of title of all of such owners. Such notice shall be conclusive evidence of the cessation of the performance of such labor, the furnishing of such materials, or the supplying of such equipment on

or before the date of cessation as stated in said notice, unless controverted by claimant's claim of lien which must be recorded within sixty days from the date of recording of such notice by the owner. This provision shall not extend the time for filing lien claims as provided by RCW 60.04.060. [1959 c 279 § 6; 1949 c 217 § 1(5b); Rem. Supp. 1949 § 1134-1. Formerly RCW 60.04.060, part.]

60.04.067 Separate residential units—When time for filing lien claims commences to run—Definition. Where such labor is performed, such contributions owed to any type of employee benefit plan, such materials are furnished, or such equipment is supplied in the construction of two or more separate residential units the time for filing claims of lien against each separate residential unit shall commence to run upon the cessation of the performance of such labor, the date contributions to any type of employee benefit plan became due, the furnishing of such materials, or the supplying of such equipment on each such residential unit as provided in this chapter. A separate residential unit is defined as consisting of one residential structure together with any garages or other outbuildings appurtenant thereto. [1975 c 34 § 7; 1959 c 279 § 7; 1949 c 217 § 1(5c); Rem. Supp. 1949 § 1134-2. Formerly RCW 60.04.060, part.]

Separate properties, claim: RCW 60.04.090.

60.04.070 Recording—Fees. The county auditor must record the claims and notices mentioned in this chapter in a book to be kept by him for that purpose, which record must be indexed as deeds and other conveyances are required by law to be indexed, and for which the auditor shall receive the same fees as are required by law for recording and indexing deeds and other conveyances. [1985 c 44 § 10; 1949 c 217 § 2; 1893 c 24 § 6; RRS § 1135. Prior: Code 1881 § 1963; 1877 p 21 § 25.]

60.04.080 Assignability. Any lien or right of lien created by law and the right of action to recover therefor, shall be assignable so as to vest in the assignee all rights and remedies of the assignor, subject to all defenses thereto that might be made if such assignment had not been made. [1893 c 24 § 7; RRS § 1136.]

60.04.090 Claims must designate amount due on property charged. In every case in which one claim is filed against two or more separate pieces of property owned by the same person, or owned by two or more persons who jointly contracted for the labor, material, or equipment for which the lien is claimed, the person filing such claim must designate in the claim the amount due him on each piece of property, otherwise the lien of such claim is postponed to other liens. The lien of such claim does not extend beyond the amount designated as against other creditors having liens upon either of such pieces of property. [1959 c 279 § 8; 1893 c 24 § 8; RRS § 1137. Prior: Code 1881 § 1962; 1877 p 221 § 24.]

Filing claim against separate residential units: RCW 60.04.067.

60.04.100 Duration of lien—Limitation of action—When action commenced. No lien created by this chapter binds the property subject to the lien for a longer period than eight calendar months after the claim has been filed unless an action be commenced in the proper court within that time to enforce such lien; or, if credit be given and the terms thereof be stated in the claim of lien, then eight calendar months after the expiration of such credit; and in case such action be not prosecuted to judgment within two years after the commencement thereof, the court, in its discretion, may dismiss the same for want of prosecution, and the dismissal of such action or a judgment rendered therein, that no lien exists, shall constitute a cancellation of the lien: *Provided*, That, for the purposes of this chapter, an action to enforce such lien shall not be timely commenced unless the filing of summons and complaint in a court of competent jurisdiction shall be made prior to the expiration of the eight month period, and service of the summons and complaint shall be made upon all necessary parties personally, or by commencement of service by publication, not later than ninety days after the filing of the summons and complaint. [1975 1st ex.s. c 231 § 1; 1943 c 209 § 1; 1893 c 24 § 9; RRS § 1138. Prior: 1881 § 1964; 1877 p 221 § 26; 1873 p 443 § 6; 1863 p 410 § 4; 1860 p 286 § 4; 1854 p 392 § 4.]

60.04.110 Extent of contractor's right to recover—Settlements—Rights of owner. The contractor shall be entitled to recover upon the claim filed by him only such amount as may be due him according to the terms of his contract, after deducting all claims of other parties for labor performed, for contributions owed to any type of employee benefit plan, materials furnished, and equipment supplied; and in all cases where a claim shall be filed under this chapter for labor performed, contributions owed to any type of employee benefit plan, materials furnished, or equipment supplied to any contractor, he shall defend any action brought thereupon at his own expense; and during the pendency of such action, the owner may withhold from the contractor the amount of money for which the claim is filed; and in case of judgment against the owner or his property, upon the lien, the owner shall be entitled to deduct from any amount due or to become due by him to the contractor, the amount of the judgment and costs, and if the amount of such judgment and costs shall exceed the amount due by him to the contractor or if the owner shall have settled with the contractors in full, he shall be entitled to recover back from the contractor the amount, including costs for which the lien is established in excess of any sum that may remain due from him to the contractor. [1975 c 34 § 8; 1959 c 279 § 9; 1893 c 24 § 10; RRS § 1139. Prior: Code 1881 § 1966 ; 1877 p 221 § 28.]

60.04.115 Action to enforce recorded claim of lien—Bond in lieu of claim. Any owner of real property subject to a recorded claim of lien under RCW 60.04.060, or the contractor or subcontractor who disputes the correctness or validity of the claim of lien may

record, either before or after the commencement of an action to enforce the claim of lien, in the office of the county recorder or auditor in the county where the claim of lien was recorded, a bond issued by an insurance company authorized to issue surety bonds in the state, that is acceptable to the lien claimant and contains a description of the claim of lien and real property involved, and in an amount equal to the greater of five thousand dollars or two and one-half times the amount of the claim of lien if it is twenty thousand dollars or less, and in an amount equal to the greater of thirty thousand dollars or two times the amount of claim of lien if it is in excess of twenty thousand dollars. If the claim of lien affects more than one parcel of real property and is segregated to each parcel, the bond may be segregated the same as in the claim of lien. A separate bond shall be required for each claim of lien. The condition of the bond shall be to guarantee the payment of the judgment entered in any action to recover the amount claimed in a claim of lien, or on the claim asserted in the claim of lien. The effect of recording a bond shall be to release the real property described in the claim of lien from the lien and any action brought to recover the amount claimed. Unless otherwise prohibited by law, if no action is filed to recover on a claim of lien within the time specified in RCW 60.04.100 the surety shall be discharged from liability under the bond. If such an action is timely filed, then on payment of any judgment entered in the action or on payment of the full amount of the bond to the holder of the judgment, whichever is less, the surety shall be discharged from liability under the bond. [1986 c 314 § 4.]

60.04.120 Foreclosure—Parties. The liens provided by this chapter, for which claims have been filed, may be foreclosed and enforced by a civil action in the court having jurisdiction; in any action brought to foreclose a lien, all persons who, prior to the commencement of such action, have legally filed claims of liens against the same property, or any part thereof shall be joined as parties, either plaintiff or defendant; and no person shall begin an action to foreclose a lien upon any property while a prior action begun to foreclose another lien on the same property is pending, but if not made a party plaintiff or defendant to such prior action, he may apply to the court to be joined as a party thereto, and his lien may be foreclosed in such action; and no action to foreclose a lien shall be dismissed at the instance of a plaintiff therein to the prejudice of another party to the suit who claims a lien. [1893 c 24 § 11; RRS § 1140. Prior: Code 1881 § 1968; 1877 p 222 § 30; 1873 p 443 §§ 6, 7; 1863 pp 410, 411 §§ 4, 5; 1863 p 286 §§ 4, 5; 1854 pp 392, 393 §§ 4, 5.]

60.04.130 Rank of lien—Application of proceeds—Attorney's fees. In every case in which different liens are claimed against the same property, the court, in the judgment, must declare the rank of such lien or class of liens, which shall be in the following order:

- (1) All persons performing labor.

- (2) Contributions owed to employee benefit plans.

- (3) All persons furnishing material or supplying equipment.

- (4) The subcontractors.

- (5) The original contractors.

The proceeds of the sale of the property must be applied to each lien or class of liens in the order of its rank; and personal judgment may be rendered in an action brought to foreclose a lien, against any party personally liable for any debt for which the lien is claimed, and if the lien be established, the judgment shall provide for the enforcement thereof upon the property liable as in case of foreclosure of mortgages; and the amount realized by such enforcement of the lien shall be credited upon the proper personal judgment, and the deficiency, if any remaining unsatisfied, shall stand as a personal judgment, and may be collected by execution against the party liable therefor. The court may allow to the prevailing party in the action, whether plaintiff or defendant, as part of the costs of the action, the moneys paid for filing or recording the claim, and a reasonable attorney's fee in the superior court, court of appeals, and supreme court. [1975 c 34 § 9; 1971 c 81 § 129; 1969 c 38 § 1; 1959 c 279 § 10; 1893 c 24 § 12; RRS § 1141. Prior: Code 1881 § 1967; 1877 p 222 § 29; 1873 p 443 § 8; 1863 p 420 § 6; 1860 p 287 § 6; 1854 p 393 § 6.]

60.04.140 Lien not discharged by taking note. The taking of a promissory note or other evidence of indebtedness for any labor performed, material furnished, or equipment supplied for which lien is created by law, shall not discharge the lien therefor, unless expressly received as payment and so specified therein. [1959 c 279 § 11; 1893 c 24 § 14; RRS § 1143.]

60.04.150 Material exempt from process—Exception. Whenever material shall have been furnished for use in the construction, alteration or repair of property subject to a lien created by this chapter, such material shall not be subject to attachment, execution, or other legal process, to enforce any debt due by the purchaser of such material, except a debt due for the purchase money thereof, so long as in good faith the said material is about to be applied in the construction, alteration or repair of such property. [1893 c 24 § 15; RRS § 1144. Prior: Code 1881 § 1969; 1877 p 222 § 31.]

60.04.160 Effect of filing claim on community interest. The claim of lien, when filed as required by this chapter, shall be notice to the husband or wife of the person who appears of record to be the owner of the property sought to be charged with the lien, and shall subject all the community interest of both husband and wife to said lien. [1893 c 24 § 16; RRS § 1145.]

60.04.170 When land not subject to lien—Power of court to order removal and sale of property. When, for any reason the title or interest in the land, upon which the property subject to the lien is situated cannot be subjected to the lien, the court may order the sale and

removal from the land of the property subject to the lien to satisfy the lien. [1893 c 24 § 17; RRS § 1146.]

60.04.180 Personal action preserved. Nothing contained in this chapter shall be construed to impair or affect the right of any person to whom any debt may be due for labor performed, material furnished, or equipment supplied to maintain a personal action to recover such debt against the person liable therefor. [1959 c 279 § 12; 1893 c 24 § 13; RRS § 1142. Prior: Code 1881 § 1970; 1877 p 223 § 32.]

60.04.190 Destruction or concealment of property—Removal from premises—Penalty. See RCW 61.12.030, 9.45.060.

60.04.200 Interim or construction financing—Definitions. As used in this chapter, the following meanings shall apply:

(1) "Lender" means any person or entity regularly providing interim or construction financing.

(2) "Interim or construction financing" means that portion of money secured by mortgage, deed of trust, or other encumbrance to finance construction of improvements on, or development of, real property, but does not include:

- (a) Funds to acquire real property;
- (b) Funds to pay interest, insurance premiums, lease deposits, taxes, assessments, or prior encumbrances;
- (c) Funds to pay loan, commitment, title, legal, closing, recording or appraisal fees;
- (d) Funds to pay other customary fees; which pursuant to agreement with the owner or borrower are to be paid by the lender from time to time;
- (e) Funds to acquire personal property for which the potential lien claimant may not claim a lien pursuant to chapter 60.04 RCW.

(3) "Owner" means the record holder of the legal or beneficial title to the real property to be improved or developed.

(4) "Potential lien claimant" means any person or entity entitled to assert lien rights pursuant to this chapter and has otherwise complied with the provisions of this chapter and the requirements of chapter 18.27 RCW if required by the provisions thereof.

(5) "Draws" means periodic disbursements of interim or construction financing by a lender.

(6) "Prime contractor" includes all contractors, general contractors, and specialty contractors as defined in RCW 18.27.010 who contract to perform for a property owner and includes property owners or their authorized representatives who are contractors, general contractors, or specialty contractors as defined in RCW 18.27.010 who offer to sell their property without occupying or using the structures, projects, developments, or improvements for more than one year.

(7) "Construction project" means construction work contracted for by a property owner or the owner's authorized representative with a prime contractor on real property controlled by the owner. [1984 c 202 § 1; 1973 1st ex.s. c 47 § 1.]

Severability—1973 1st ex.s. c 47: "If any provision of this 1973 act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1973 1st ex.s. c 47 § 4.]

60.04.210 Interim or construction financing—Notice of lien—Duty of lender to withhold from disbursements—Liabilities of lender and lien claimant. Any lender providing interim or construction financing where there is not a payment bond of at least fifty percent of the amount of construction financing shall observe the following procedures:

(1) Draws against construction financing shall be made only after certification of job progress by the general contractor and the owner or his agent in such form as may be prescribed by the lender.

(2) Any potential lien claimant who has not received a payment within five days after the date required by his contract, employee benefit plan agreement, or purchase order may within twenty days thereafter file a notice as provided herein of the sums due and to become due, for which a potential lien claimant may claim a lien under chapter 60.04 RCW.

(3) The notice must be filed in writing with the lender at the office administering the interim or construction financing, with a copy furnished to the owner and appropriate general contractor. The notice shall state in substance and effect that such person, firm, trustee, or corporation is entitled to receive contributions to any type of employee benefit plan, has furnished labor, materials and supplies, or supplied equipment for which right of lien is given by this chapter, with the name of the general contractor, agent or person ordering the same, a common or street address of the real property being improved or developed, or if there be none the legal description of said real property, description of the labor, or material furnished, or equipment leased, or a brief statement describing the nature of the contributions owed to any type of employee benefit plan, the name, business address and telephone number of said lien claimant which notice shall be given by mailing the same by registered or certified mail, return receipt requested.

(4) After the receipt of such notice, the lender shall withhold from the next and subsequent draws such percentage thereof as is equal to that percentage of completion as certified in subsection (1) of this section, which is attributable to the potential lien claimant as of the date of the certification of job progress for the draw in question less contracted retainage. The percentage of completion attributable to the lien claimant shall be calculated from said certification of job progress, and shall be reduced to reflect any sums paid to or withheld for the potential lien claimant. Alternatively, the lender may obtain from the general contractor or borrower a payment bond for the benefit of the potential lien claimant in such sum.

(5) Sums so withheld shall not be disbursed by the lender except by the written agreement of the potential lien claimant, owner and general contractor in such form as may be prescribed by the lender, or the order of a court of competent jurisdiction.

(6) In the event a lender fails to abide by the provisions of subsections (4) or (5) of this section, then the mortgage, deed of trust or other encumbrance securing the lender will be subordinated to the lien of the potential lien claimant to the extent of the interim or construction financing wrongfully disbursed, but in no event in an amount greater than the sums ultimately determined to be due the potential lien claimant by a court of competent jurisdiction, or more than the sum stated in the notice, whichever is less.

(7) Any potential lien claimant shall be liable for any loss, cost or expense, including reasonable attorney fees, to the party injured thereby arising out of any unjust, excessive or premature notice of claim under this section. For purposes of this subsection, "notice of claim" does not include notice given by a potential lien claimant of the right to claim liens under this chapter where no actual claim is made. [1984 c 202 § 2; 1975 c 34 § 10; 1973 1st ex.s. c 47 § 2.]

Severability—1973 1st ex.s. c 47: See note following RCW 60.04.200.

60.04.220 Interim or construction financing—Priorities. Except as provided in RCW 60.04.050 or in RCW 60.04.200 through 60.04.220 any mortgage or deed of trust shall be prior to all liens, mortgages, deeds of trust and other encumbrances which have not been recorded prior to the recording of such mortgage or deed of trust to the extent of all sums secured by such mortgage or deed of trust regardless of when the same are disbursed or whether such disbursements are obligatory. [1973 1st ex.s. c 47 § 3.]

Severability—1973 1st ex.s. c 47: See note following RCW 60.04.200.

60.04.230 Construction projects—Notice to be posted by prime contractor—Penalty. (1) For any construction project costing more than five thousand dollars where the primary use of the improvements on the real property is for one or more residences the prime contractor shall post in plain view for the duration of the construction project a legible notice at the construction job site containing the following:

(a) The legal description, the street address if available, and any other identification of the construction site by the prime contractor;

(b) The property owner's name, address, and phone number;

(c) The prime contractor's business name, address, phone number, current state contractor registration number and identification; and

(d) Either:

(i) The name, address, and phone number of the office of the lender administering the interim construction financing; or

(ii) The name and address of the firm that has issued a payment bond on behalf of the prime contractor for the protection of the owner if the bond is for an amount

not less than fifty percent of the total amount of the construction project.

(2) For any construction project not subject to subsection (1) of this section costing more than five thousand dollars, the prime contractor shall post in plain view for the duration of the construction project a legible notice at the construction job site containing the following:

(a) The legal description or the street address and any other identification of the construction site by the prime contractor;

(b) The property owner's name, address, and phone number;

(c) The prime contractor's business name, address, phone number, current state contractor registration number and identification.

(3) Failure to comply with this section is a gross misdemeanor. [1984 c 202 § 3.]

60.04.250 Informational materials on construction lien laws—Master document. The department of labor and industries shall prepare a master document that provides informational material about construction lien laws and available safeguards against real property lien claims. The material shall include methods of protection against lien claims, including obtaining lien release documents, performance bonds, joint payee checks, the opportunity to require contractor disclosure of all potential lien claimants as a condition of payment, and lender supervision under RCW 60.04.200 and 60.04.210. The material shall also include sources of further information, including the department of labor and industries and the office of the attorney general. [1988 c 270 § 1.]

Effective date—1988 c 270: "This act shall take effect July 1, 1989." [1988 c 270 § 4.]

60.04.255 Informational materials on construction lien laws—Copies—Liability. (1) Every real property lender shall provide a copy of the informational material described in RCW 60.04.250 to all persons obtaining loans, the proceeds of which are to be used for residential construction or residential repair or remodeling.

(2) Every contractor shall provide a copy of the informational material described in RCW 60.04.250 to customers required to receive contractor disclosure notice under RCW 18.27.114.

(3) No cause of action may lie against the state, a real property lender, or a contractor arising from the provisions of RCW 60.04.250 and this section.

(4) For the purpose of this section, "real property lender" means a bank, savings bank, savings and loan association, credit union, mortgage company, or other corporation, association, partnership, or individual that makes loans secured by real property in this state. [1988 c 270 § 2.]

Effective date—1988 c 270: See note following RCW 60.04.250.

Chapter 60.08
CHATTEL LIENS

Sections
60.08.010 Lien authorized.
60.08.020 Notice of lien—Contents—Form.
60.08.030 Priority of lien.
60.08.040 Enforcement of lien—Limitation of action.
60.08.050 Rank of lien—Personal judgment—Deficiency—Costs.
60.08.060 Filing notice of liens.

60.08.010 Lien authorized. Every person, firm or corporation who shall have performed labor or furnished material in the construction or repair of any chattel at the request of its owner, shall have a lien upon such chattel for such labor performed or material furnished, notwithstanding the fact that such chattel be surrendered to the owner thereof: Provided, however, That no such lien shall continue, after the delivery of such chattel to its owner, as against the rights of third persons who, prior to the filing of the lien notice as hereinafter provided for, may have acquired the title to such chattel in good faith, for value and without actual notice of the lien. [1917 c 68 § 1; 1909 c 166 § 1; 1905 c 72 § 1; RRS § 1154.]

60.08.020 Notice of lien—Contents—Form. In order to make such lien effectual the lien claimant shall, within ninety days from the date of delivery of such chattel to the owner, file in the office of the auditor of the county in which such chattel is kept, a lien notice, which notice shall state the name of the claimant, the name of the owner, a description of the chattel upon which the claimant has performed labor or furnished material, the amount for which a lien is claimed and the date upon which such expenditure of labor or material was completed, which notice shall be signed by the claimant or someone on his behalf, and may be in substantially the following form:

CHATTEL LIEN NOTICE.

----- Claimant,
against
----- Owner.

Notice is hereby given that ----- has and claims a lien upon (here insert description of chattel), owned by ----- for the sum of ----- dollars, for and on account of labor, skill and material expended upon said ----- which was completed upon the ----- day of -----, 19--

Claimant.

[1983 c 33 § 1; 1917 c 68 § 2; 1905 c 72 § 2; RRS § 1155.]

60.08.030 Priority of lien. The liens created by this chapter are preferred to any lien, mortgage or other encumbrance which may attach subsequently to the time of the commencement of the performance of the labor,

or the furnishing of the materials for which the right of lien is given by this chapter, and are also preferred to any lien, mortgage or other encumbrance which may have attached previously to that time, and which was not filed or recorded so as to create constructive notice of the same prior to that time, and of which the lien claimant has no notice. [1917 c 68 § 3; 1905 c 72 § 3; RRS § 1156.]

60.08.040 Enforcement of lien—Limitation of action. The lien herein provided for may be enforced against all persons having a junior or subsequent interest in any such chattel, by judicial procedure or by summary procedure as set forth in chapter 60.10 RCW and RCW 61.12.162 within nine months after the filing of such lien notice, and if no such action shall be commenced within such time such lien shall cease. [1969 c 82 § 11; 1917 c 68 § 4; 1905 c 72 § 4; RRS § 1157.]

Secured transactions: Article 62A.9 RCW.

60.08.050 Rank of lien—Personal judgment—Deficiency—Costs. In every case originating in or removed to a court of competent jurisdiction, in which different liens are claimed against the same property, the court, in the judgment, must declare the rank of such lien or class of liens, which shall be in the following order:

- (1) All persons performing labor;
(2) All persons furnishing material;

And the proceeds of the sale of the property must be applied to each lien or class of liens in the order of its rank; and personal judgment may be rendered in an action brought to foreclose a lien, against any party personally liable for any debt for which the lien is claimed, and if the lien be established, the judgment shall provide for the enforcement thereof upon the property liable as in case of foreclosure of mortgages; and the amount realized by such enforcement of the lien shall be credited upon the proper personal judgment, and the deficiency, if any, remaining unsatisfied, shall stand as a personal judgment, and may be collected by execution against the party liable therefor. The court may allow, as part of the costs of the action, the moneys paid for filing or recording the claim, and a reasonable attorney's fee in the action. [1917 c 68 § 5; RRS § 1157a.]

60.08.060 Filing notice of liens. Upon presentation of such lien notice to the auditor of any county, he shall file the same, and endorse thereon the time of the reception, the number thereof, and shall enter the same in a suitable book or file (but need not record the same). Such book or file shall have herewith an alphabetic index, in which the county auditor shall index such notice by noting the name of the owner, name of lien claimant, description of property, date of lien (which shall be the date upon which such expenditure of labor, skill or material was completed), date of filing and when released, the date of release. [1983 c 33 § 2; 1905 c 72 § 5; RRS § 1158.]

Chapter 60.10

PERSONAL PROPERTY LIENS—SUMMARY
FORECLOSURE

Sections	
60.10.010	Definitions.
60.10.020	Methods of foreclosure.
60.10.030	Notice and sale—Priorities—Sale procedure— Surplus—Deficiency.
60.10.040	Rights and interest of purchaser for value.
60.10.050	Redemption.
60.10.060	Noncompliance with chapter—Rights of lien debtor.
60.10.070	"Commercially reasonable."

60.10.010 Definitions. As used in this chapter:

(1) The term "lien debtor" means the person who is obligated, owes payment or other performance. Where the lien debtor and the owner of the collateral are not the same person, the term "lien debtor" means the owner of the collateral.

(2) "Collateral" means the property subject to a statutory lien.

(3) "Lien holder" means a person who, by statute, has acquired a lien on the property of the lien debtor, or such person's successor in interest.

(4) "Secured party" has the same meaning as used in Article 9 of the Uniform Commercial Code (Title 62A RCW). [1969 c 82 § 2.]

Judicial foreclosure of personal property liens: RCW 61.12.162.

60.10.020 Methods of foreclosure. Any lien upon personal property, excluded by RCW 62A.9–104 from the provisions of the Uniform Commercial Code (Title 62A RCW), may be foreclosed by an action in the superior court having jurisdiction in the county in which the property is situated in accordance with RCW 61.12.162, or it may be foreclosed by summary procedure as provided in this chapter. [1969 c 82 § 3.]

60.10.030 Notice and sale—Priorities—Sale procedure—Surplus—Deficiency. (1) A lien foreclosure authorized by RCW 60.10.020 may be summarily foreclosed by notice and sale as provided herein. The lien holder may sell, or otherwise dispose of the collateral in its then condition or following any commercially reasonable preparation or processing. The proceeds of disposition shall be applied in the order following to

(a) the reasonable expenses of retaking, holding, preparing for sale, selling and the like and, to the extent provided for in the agreement and not prohibited by law, the reasonable attorneys' fees and legal expenses incurred by the secured party;

(b) the satisfaction of indebtedness secured by the lien under which the disposition is made;

(c) the satisfaction of indebtedness secured by any subordinate security interest in the collateral if written notification of demand therefor is received before distribution of the proceeds is completed. If requested by the lien holder, the holder of a subordinate security interest must seasonably furnish reasonable proof of his interest, and unless he does so, the lien holder need not comply with his demand.

(2) The lien holder must account to the lien debtor for any surplus, and, unless otherwise agreed, the lien debtor is not liable for any deficiency.

(3) Disposition of the collateral may be by public or private proceedings and may be made by way of one or more contracts. Sale or other disposition may be as a unit or in parcels and at any time and place and on any terms but every aspect of the disposition including the method, manner, time, place and terms must be commercially reasonable which shall be construed as provided in RCW 60.10.070. Unless collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, reasonable notification of the time and place of any public sale or reasonable notification of the time after which any private sale or other intended disposition is to be made shall be sent by the lien holder to the lien debtor, and except in the case of consumer goods to any other person who has a security interest in the collateral and who has duly filed a financing statement indexed in the name of the lien debtor in this state or who is known by the lien holder to have a security interest in the collateral. The lien holder may buy at any public sale and if the collateral is of a type customarily sold in a recognized market or is of a type which is the subject of widely distributed standard price quotations he may buy at private sale. [1969 c 82 § 4.]

60.10.040 Rights and interest of purchaser for value. When a lien is foreclosed in accordance with the provisions of RCW 61.12.162 and this chapter, the disposition transfers to a purchaser for value all of the lien debtor's rights therein, discharges the lien under which it is made and any security interest or lien subordinate thereto. The purchaser takes free of all such rights and interests even though the lien holder fails to comply with the requirements of this chapter or of any judicial proceedings under RCW 61.12.162:

(1) In the case of a public sale, if the purchaser has no knowledge of any defects in the sale and if he does not buy in collusion with the lien holder, other bidders or the person conducting the sale; or

(2) In any other case, if the purchaser acts in good faith. [1969 c 82 § 5.]

60.10.050 Redemption. At any time before the lien holder has disposed of collateral or entered into a contract for its disposition under RCW 61.12.162 and this chapter, the lien debtor or any other secured party may redeem the collateral by tendering fulfillment of all obligations secured by the collateral as well as the expenses reasonably incurred by the lien holder, holding and preparing the collateral for disposition, in arranging for the sale, and his reasonable attorneys' fees and legal expenses. [1969 c 82 § 6.]

60.10.060 Noncompliance with chapter—Rights of lien debtor. If it is established that the lien holder is not proceeding in accordance with the provisions of this

chapter disposition may be ordered or restrained on appropriate terms and conditions. If the disposition has occurred the lien debtor or any person entitled to notification or whose security interest has been made known to the lien holder prior to the disposition has a right to recover from the lien holder any loss caused by a failure to comply with the provisions of this chapter. The lien debtor has a right to recover in any event an amount not less than ten percent of the original lien claimed. [1969 c 82 § 7.]

60.10.070 "Commercially reasonable." As used in this chapter, "commercially reasonable" shall be construed in a manner consistent with the following:

The fact that a better price could have been obtained by a sale at a different time or in a different method from that selected by the lien holder is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. If the lien holder either sells the collateral in the usual manner in any recognized market therefor or if he sells at the price current in such market at the time of his sale or if he has otherwise sold in conformity with reasonable commercial practices among dealers in the type of property sold he has sold in a commercially reasonable manner. A disposition which has been approved in any judicial proceeding or by any bona fide creditors' committee or representative of creditors shall conclusively be deemed to be commercially reasonable, but this sentence does not indicate that any such approval must be obtained in any case nor does it indicate that any disposition not so approved is not commercially reasonable. [1969 c 82 § 8.]

Chapter 60.11 CROP LIENS

Sections

60.11.010	Definitions.
60.11.020	Persons entitled to crop liens—Property subject to lien.
60.11.030	Attachment of liens—Attachment of proceeds.
60.11.040	Claim of lien—Filing—Contents—Duration.
60.11.050	Priorities of liens and security interests.
60.11.060	Foreclosure of crop lien.
60.11.070	Judicial foreclosure.
60.11.080	Summary foreclosure.
60.11.090	Rights and interest of purchaser for value.
60.11.100	Redemption.
60.11.110	Noncompliance with chapter—Rights of lien debtor.
60.11.120	"Commercially reasonable."
60.11.130	Limitation of action to foreclose—Costs.
60.11.140	Lien termination statement.
60.11.900	Savings—Liens created under prior law.
60.11.901	Section captions.
60.11.902	Severability—1986 c 242.
60.11.903	Effective date—1986 c 242.

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

(1) "Crop" means all products of the soil either growing or cropped, cut, or gathered which require annual planting, harvesting, or cultivating. A crop does not include vegetation produced by the powers of nature alone,

nursery stock, or vegetation intended as a permanent enhancement of the land itself.

(2) "Landlord" means a person who leases or sub-leases to a tenant real property upon which crops are growing or will be grown.

(3) "Secured party" and "security interest" have the same meaning as used in the Uniform Commercial Code, Title 62A RCW.

(4) "Supplier" includes, but is not limited to, a person who furnishes seed, furnishes and/or applies commercial fertilizer, pesticide, fungicide, weed killer, or herbicide, including spraying and dusting, upon the land of the grower or landowner, or furnishes any work or labor upon the land of the grower or landowner including tilling, preparing for the growing of crops, sowing, planting, cultivating, cutting, digging, picking, pulling, or otherwise harvesting any crop grown thereon, or in gathering, securing, or housing any crop grown thereon, or in threshing any grain or hauling to any warehouse any crop or grain grown thereon.

(5) "Lien debtor" means the person who is obligated or owes payment or other performance. If the lien debtor and the owner of the collateral are not the same person, "lien debtor" means the owner of the collateral.

(6) "Lien holder" means a person who, by statute, has acquired a lien on the property of the lien debtor, or such person's successor in interest. [1986 c 242 § 1.]

60.11.020 Persons entitled to crop liens—Property subject to lien. (1) A landlord whose lease or other agreement with the tenant provides for cash rental payment shall have a lien upon all crops grown upon the demised land in which the landlord has an interest for no more than one year's rent due or to become due within six months following harvest. A landlord with a crop share agreement has an interest in the growing crop which shall not be encumbered by crop liens except as provided in subsection (2) of this section.

(2) A supplier shall have a lien upon all crops for which the supplies are used or applied to secure payment of the purchase price of the supplies and/or services performed: *Provided*, That the landlord's interest in the crop shall only be subject to the lien for the amount obligated to be paid by the landlord if prior written consent of the landlord is obtained or if the landlord has agreed in writing with the tenant to pay or be responsible for a portion of the supplies and/or services provided by the lien holder. [1986 c 242 § 2.]

60.11.030 Attachment of liens—Attachment of proceeds. Upon filing, the liens described in RCW 60.11.020 shall attach to the crop for all sums then and thereafter due and owing the lien holder and shall continue in all identifiable cash proceeds of the crop. [1986 c 242 § 3.]

60.11.040 Claim of lien—Filing—Contents—Duration. (1) Except as provided in subsection (4) of this section with respect to the lien of a landlord, any lien holder must after the commencement of delivery of such supplies and/or of provision of such services, but

before the completion of the harvest of the crops for which the lien is claimed, or in the case of a lien for furnishing work or labor within twenty days after the cessation of the work or labor for which the lien is claimed: (a) File a statement evidencing the lien with the department of licensing; and (b) if the lien holder is to be allowed costs, disbursements, and attorneys' fees, mail a copy of such statement to the last known address of the debtor by certified mail, return receipt requested, within ten days.

(2) The statement shall be in writing, signed by the claimant, and shall contain in substance the following information:

- (a) The name and address of the claimant;
- (b) The name and address of the debtor;
- (c) The date of commencement of performance for which the lien is claimed;
- (d) A description of the labor services, materials, or supplies furnished;
- (e) A description of the crop and its location to be charged with the lien sufficient for identification; and
- (f) The signature of the claimant.

(3) The department of licensing may by rule prescribe standard filing forms, fees, and uniform procedures for filing with, and obtaining information from, filing officers, including provisions for filing crop liens together with financing statements filed pursuant to RCW 62A.9-401 so that one request will reveal all filed crop liens and security interests.

(4) Any landlord claiming a lien under this chapter for rent shall file a statement evidencing the lien with the department of licensing. A lien for rent claimed by a landlord pursuant to this chapter shall be effective during the term of the lease for a period of up to five years. A landlord lien covering a lease term longer than five years may be refiled in accordance with RCW 60.11.050(4). A landlord who has a right to a share of the crop may place suppliers on notice by filing evidence of such interest in the same manner as provided for filing a landlord's lien. [1989 c 229 § 1; 1986 c 242 § 4.]

Severability—1989 c 229: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1989 c 229 § 2.]

60.11.050 Priorities of liens and security interests.

(1) Except as provided in subsections (2), (3), and (4) of this section, conflicting liens and security interests shall rank in accordance with the time of filing.

(2) The lien created in RCW 60.11.020(2) in favor of any person who furnishes any work or labor upon the land of the grower or landowner shall be preferred and prior to any other lien or security interest upon the crops to which they attach including the liens described in subsections (3) and (4) of this section.

(3) A lien or security interest in crops otherwise entitled to priority pursuant to subsection (1) of this section shall be subordinate to a later filed lien or security interest to the extent that obligations secured by such earlier filed security interest or lien were not incurred to produce such crops.

(4) A lien or security interest in crops otherwise entitled to priority pursuant to subsection (1) of this section shall be subordinate to a properly filed landlord's lien. A landlord's lien shall retain its priority if refiled within six months prior to its expiration. [1986 c 242 § 5.]

60.11.060 Foreclosure of crop lien. Any lien subject to this chapter, excluded by RCW 62A.9-104 from the provisions of the Uniform Commercial Code, Title 62A RCW, may be foreclosed by an action in the superior court having jurisdiction in the county in which the real property on which the crop in question was grown is situated in accordance with RCW 60.11.070 or it may be foreclosed by summary procedure as provided in RCW 60.11.080. [1986 c 242 § 6.]

60.11.070 Judicial foreclosure. The lien holder may proceed upon his or her lien; and if there is a separate obligation in writing to pay the same, secured by the lien, he or she may bring suit upon such separate promise. When he or she proceeds on the promise, if there is a specific agreement therein contained, for the payment of a certain sum or there is a separate obligation for the sum in addition to a decree of sale of lien property, judgment shall be rendered for the amount due upon the promise or other instrument, the payment of which is thereby secured; the decree shall direct the sale of the lien property and if the proceeds of the sale are insufficient under the execution, the sheriff is authorized to levy upon and sell other property of the lien debtor, not exempt from execution, for the sum remaining unsatisfied. [1986 c 242 § 7.]

60.11.080 Summary foreclosure. (1) A lien may be summarily foreclosed by notice and sale as provided in this section. The lien holder may sell or otherwise dispose of the collateral in its existing condition or following any commercially reasonable preparation or processing. The proceeds of disposition shall be applied in the order following to:

(a) The reasonable expenses of retaking, holding, preparing for sale, selling and the like, and to the extent provided for in the agreement and not prohibited by law, the reasonable attorneys' fees and legal expenses incurred by the secured party;

(b) The satisfaction of indebtedness secured by the lien under which the disposition is made;

(c) The satisfaction of indebtedness secured by any subordinate security interest in the collateral if written notification of demand therefor is received before distribution of the proceeds is completed. If requested by the lien holder, the holder of a subordinate security interest must seasonably furnish reasonable proof of his or her interest, and unless he or she does so, the lien holder need not comply with the demand.

(2) The lien holder shall account to the lien debtor for any surplus, and, unless otherwise agreed, the lien debtor is not liable for any deficiency.

(3) Disposition of the collateral may be by public or private proceedings and may be made by way of one or more contracts. Sale or other disposition may be as a

unit or in parcels and at any time and place and on any terms but every aspect of the disposition including the method, manner, time, place, and terms must be commercially reasonable. Unless collateral is perishable or threatens to decline quickly in value or is of a type customarily sold on a recognized market, reasonable notification of the time after which any private sale or other intended disposition is to be made shall be sent by the lien holder to the lien debtor, and to any other person who has a duly filed crop lien, or who has a security interest in the collateral and has duly filed a financing statement indexed in the name of the lien debtor in this state, or who is known by the lien holder to have a security interest or crop lien in the collateral. The lien holder may buy at any public sale, and if the collateral is of a type customarily sold in a recognized market or is of a type which is the subject of widely distributed standard price quotations the lien holder may buy at private sale. [1986 c 242 § 8.]

60.11.090 Rights and interest of purchaser for value.

When a lien is foreclosed in accordance with RCW 60.11.060, the disposition transfers to a purchaser for value all of the lien debtor's right therein and discharges the lien under which it is made and any security interest or lien subordinate thereto. The purchaser takes free of all such rights and interest even though the lien holder fails to comply with the requirements of this chapter or of any judicial proceedings under RCW 60.11.070:

(1) In the case of a public sale, if the purchaser has no knowledge of any defects in the sale and if he or she does not buy in collusion with the lien holder, other bidders, or the person conducting the sale; or

(2) In any other case, if the purchaser acts in good faith. [1986 c 242 § 9.]

60.11.100 Redemption. At any time before the lien holder has disposed of collateral or entered into a contract for its disposition under RCW 60.11.060, the lien debtor or any other secured party may redeem the collateral by tendering fulfillment of all obligations secured by the collateral as well as the expenses reasonably incurred by the lien holder in holding and preparing the collateral for disposition and in arranging for the sale and his or her reasonable attorneys' fees and legal expenses. [1986 c 242 § 10.]

60.11.110 Noncompliance with chapter—Rights of lien debtor. If the lien holder is not proceeding in accordance with the provisions of this chapter, disposition may be ordered or restrained on appropriate terms and conditions. If the disposition has occurred the lien debtor or any person entitled to notification or whose security interest has been made known to the lien holder prior to the disposition has a right to recover from the lien holder any loss caused by a failure to comply with the provisions of this chapter. [1986 c 242 § 11.]

60.11.120 "Commercially reasonable." The fact that a better price could have been obtained by a sale at a

different time or in a different method from that selected by the lien holder is not in itself sufficient to establish that the sale was not made in a commercially reasonable manner. If the lien holder either sells the collateral in the usual manner in any recognized market therefor or if he or she sells at the price current in such market at the time of the sale or if he or she has otherwise sold in conformity with reasonable commercial practices among dealers in the type of property sold he or she has sold in a commercially reasonable manner. A disposition which has been approved in any judicial proceeding or by any bona fide creditors' committee or representative of creditors shall conclusively be deemed to be commercially reasonable, but this does not mean that approval must be obtained in any case nor does it mean that any disposition not so approved is not commercially reasonable.

For purposes of this chapter, "commercially reasonable" shall be construed in a manner consistent with this section. [1986 c 242 § 12.]

60.11.130 Limitation of action to foreclose—

Costs. Judicial foreclosure or summary procedure as provided in RCW 60.11.060 shall be brought within twenty-four calendar months after filing the claim for lien, except in the case of a landlord lien which shall be twenty-four calendar months from the date of default on the lease, and upon expiration of such time, the claimed lien shall expire. In a judicial foreclosure, the court shall allow reasonable attorneys' fees and disbursement for establishing a lien. [1986 c 242 § 13.]

60.11.140 Lien termination statement. (1) Whenever the total amount of the lien has been fully paid, the lien holder shall, within fifteen days following receipt of full payment, file its lien termination statement with the department of licensing. Failure to file a lien termination statement by the lien holder or the assignee of the lien holder shall cause the lien holder or its assignee to be liable to the debtor for the attorneys' fees and costs incurred by the debtor to have the lien terminated together with damages incurred by the debtor due to the failure of the lien holder to terminate the lien.

(2) There shall be no charge by the department of licensing for entering the lien termination statement and indexing the same and returning a copy of the lien termination statement stamped as "filed" with the filing date thereon.

(3) The department of licensing may enter the lien termination statement on microfilm or other photographic record and destroy all originals of the lien and lien satisfaction filed with him or her. [1986 c 242 § 14.]

60.11.900 Savings—Liens created under prior law.

Liens created prior to January 1, 1987, which are based on statutes repealed by *this act, shall remain in effect for the duration provided by the law in effect before January 1, 1987. The department of licensing shall notify persons requesting information for crop liens that, for this transition period, records of crop liens may exist

at a county auditor's office as well as at the department of licensing. [1986 c 242 § 15.]

*Reviser's note: "this act" [1986 c 242] repealed chapters 60.12, 60.14, and 60.22 RCW.

60.11.901 Section captions. As used in this chapter, section captions constitute no part of the law. [1986 c 242 § 18.]

60.11.902 Severability—1986 c 242. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1986 c 242 § 19.]

60.11.903 Effective date—1986 c 242. This act shall take effect January 1, 1987. [1986 c 242 § 21.]

Chapter 60.13

PROCESSOR AND PREPARER LIENS FOR AGRICULTURAL PRODUCTS

Sections

60.13.010	Definitions.
60.13.020	Processor lien.
60.13.030	Preparer lien for grain, hay, or straw.
60.13.035	Notice of preparer lien for dairy products—Proof of lien.
60.13.040	Filing of statement evidencing lien—Contents—Standard filing forms, fees, and procedures.
60.13.050	Priority of lien.
60.13.060	Duration of lien—Statement of discharge.
60.13.070	Foreclosure and enforcement of lien—Costs.

60.13.010 Definitions. As used in this chapter, the terms defined in this section have the meanings indicated unless the context clearly requires otherwise.

(1) "Agricultural product," "conditioner," "consignor," "person," "processor," and "producer" have the meanings defined in RCW 20.01.010.

(2) "Preparer" means a person engaged in the business of feeding livestock or preparing livestock products for market.

(3) "Commercial fisherman" means a person licensed to fish commercially for or to take food fish or shellfish or steelhead legally caught pursuant to executive order, treaty right, or federal statute.

(4) "Fish" means food fish or shellfish or steelhead legally caught pursuant to executive order, treaty right, or federal statute. [1987 c 148 § 1; 1985 c 412 § 1.]

60.13.020 Processor lien. Starting on the date a producer delivers any agricultural product to a processor or conditioner, the producer has a first priority statutory lien, referred to as a "processor lien." A commercial fisherman who delivers fish to a processor also has a first priority statutory "processor lien" starting on the date the fisherman delivers fish to the processor. This processor lien shall continue until twenty days after payment for the product is due and remains unpaid, without filing any notice of lien, for the contract price, if any, or the

fair market value of the products delivered. The processor lien attaches to the agricultural products or fish delivered, to the processor's or conditioner's inventory, and to the processor's or conditioner's accounts receivable. However, no processor lien may attach to agricultural products or fish delivered by a producer or commercial fisherman, or on the producer's or fisherman's behalf, to a processor which is organized and operated on a cooperative basis and of which the producer or fisherman is a member, nor may such lien attach to such processor's inventory or accounts receivable. [1987 c 148 § 2; 1985 c 412 § 2.]

60.13.030 Preparer lien for grain, hay, or straw. Starting on the date a producer delivers grain, hay, or straw to a preparer, the producer has a first priority statutory lien, referred to as a "preparer lien." This preparer lien shall continue twenty days after payment for the product is due and remains unpaid, without filing any notice of lien, for the contract price, if any, or the fair market value of the products delivered. The preparer lien attaches to the agricultural products delivered by the producer to the preparer, and to the preparer's accounts receivable. [1985 c 412 § 3.]

60.13.035 Notice of preparer lien for dairy products—Proof of lien. A person who controls or possesses amounts payable to the preparer of dairy products or the preparer's assigns, if the preparer or preparer's assigns is not a producer-handler, which are properly encumbered by a preparer's lien upon an account receivable shall not be obligated to pay a producer amounts to which the producer's preparer lien has attached until that person receives written notice of such lien, nor shall that person be liable to the producer for any amounts paid out prior to receipt of said notice. The notice required herein shall contain the information described in RCW 60.13.040(2). If requested by the person responsible for payment of such amounts, the producer must seasonably furnish reasonable proof that the preparer lien continues to exist and unless such proof is so furnished, that person has no obligation to pay the producer. A preparer of dairy products shall provide the name of the purchaser or marketing agent of the products to the producer upon request.

Failure to furnish the written notice as provided in this section shall not affect the status of the lien established under this chapter in regard to the relationship with other creditors. [1986 c 178 § 15.]

60.13.040 Filing of statement evidencing lien—Contents—Standard filing forms, fees, and procedures. (1) A producer or commercial fisherman claiming a processor or preparer lien may file a statement evidencing the lien with the department of licensing after payment from the processor, conditioner, or preparer to the producer or fisherman is due and remains unpaid. For purposes of this subsection and RCW 60.13.050, payment is due on the date specified in the contract, or if not specified, then within thirty days from time of delivery.

(2) The statement shall be in writing, verified by the producer or fisherman, and shall contain in substance the following information:

(a) A true statement of the amount demanded after deducting all credits and offsets;

(b) The name of the processor, conditioner, or preparer who received the agricultural product or fish to be charged with the lien;

(c) A description sufficient to identify the agricultural product or fish to be charged with the lien;

(d) A statement that the amount claimed is a true and bona fide existing debt as of the date of the filing of the notice evidencing the lien;

(e) The date on which payment was due for the agricultural product or fish to be charged with the lien; and

(f) The department of licensing may by rule prescribe standard filing forms, fees, and uniform procedures for filing with, and obtaining information from, filing officers. [1987 c 189 § 7; 1987 c 148 § 3; 1985 c 412 § 4.]

Reviser's note: This section was amended by 1987 c 148 § 3 and by 1987 c 189 § 7, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

60.13.050 Priority of lien. (1) (a) If a statement is filed pursuant to RCW 60.13.040 within twenty days of the date upon which payment from the processor, conditioner, or preparer to the producer or commercial fisherman is due and remains unpaid, the processor or preparer lien evidenced by the statement continues its priority over all other liens or security interests upon agricultural products or fish, inventory, and accounts receivable, except as provided in (b) of this subsection. Such priority is without regard to whether the other liens or security interests attached before or after the date on which the processor or preparer lien attached.

(b) The processor or preparer lien shall be subordinate to liens for taxes or labor perfected before filing of the processor or preparer lien.

(2) If the statement provided for in RCW 60.13.040 is not filed within twenty days of the date payment is due and remains unpaid, the processor or preparer lien shall thereupon become subordinate to:

(a) A lien that has attached to the agricultural product or fish, inventory, or accounts receivable before the date on which the processor or preparer lien attaches; and

(b) A perfected security interest in the agricultural product or fish, inventory, or accounts receivable. [1987 c 148 § 4; 1985 c 412 § 5.]

Priority of preparer and processor liens: RCW 62A.9-310.

60.13.060 Duration of lien—Statement of discharge. (1) The processor lien shall terminate six months after, and the preparer lien shall terminate fifty days after, the later of the date of attachment or filing, unless a suit to foreclose the lien has been filed before that time as provided in RCW 60.13.070.

(2) If a statement has been filed as provided in RCW 60.13.040 and the producer or commercial fisherman has received payment for the obligation secured by the

lien, the producer or fisherman shall promptly file with the department of licensing a statement declaring that full payment has been received and that the lien is discharged. If, after payment, the producer or fisherman fails to file such statement of discharge within ten days following a request to do so, the producer or fisherman shall be liable to the processor, conditioner, or preparer in the sum of one hundred dollars plus actual damages caused by the failure. [1987 c 148 § 5; 1985 c 412 § 6.]

60.13.070 Foreclosure and enforcement of lien—Costs. (1) The processor or preparer liens may be foreclosed and enforced by civil action in superior court.

(2) In all suits to enforce processor or preparer liens, the court shall, upon entering judgment, allow to the prevailing party as a part of the costs, all moneys paid for the filing and recording of the lien and reasonable attorney fees. [1985 c 412 § 7.]

Chapter 60.16

LABOR LIENS ON ORCHARDS AND ORCHARD LANDS

Sections

60.16.010	Liens authorized.
60.16.020	Notice of lien—Filing—Contents—Foreclosure.
60.16.030	Limitation of action to foreclose—Costs.

60.16.010 Liens authorized. Any person or corporation who shall do or cause to be done any labor upon any orchard or orchard lands, in pruning, spraying, cultivating and caring for the same, at the request of the owner thereof, or his agent, shall have a lien upon such orchard and orchard lands for such work and labor so performed. [1917 c 110 § 1; RRS § 1131-1.]

60.16.020 Notice of lien—Filing—Contents—Foreclosure. Any person or corporation claiming the benefit of this chapter, must within forty days after the close of such work or labor for each season during which such work and labor is done, file for record with the county auditor of the county in which said work and labor was performed and in which said land or part thereof is situated, a claim of lien which shall be in substance in accordance with the provisions of RCW 60.04-.060, so far as the same is applicable, which said claim of lien shall be verified as in said section provided, and such lien may be enforced in a civil action in the same manner as near as may be, as provided in RCW 60.04-.120. [1917 c 110 § 2; RRS § 1131-2.]

60.16.030 Limitation of action to foreclose—Costs. Any action to foreclose such claim of lien shall be brought within eight calendar months after the filing of such claim for lien as provided in RCW 60.16.020 and in any such action brought to enforce such lien, the court shall allow as part of the costs the money paid for making, filing and recording such claim of lien and a reasonable attorney's fee. [1917 c 110 § 3; RRS § 1131-3.]

Chapter 60.20

LABOR AND MATERIAL LIENS FOR IMPROVING
PROPERTY WITH NURSERY STOCK

Sections

60.20.010	Liens authorized.
60.20.020	Priority over encumbrances.
60.20.030	Claim of lien—Contents—Joint claims.
60.20.040	Recording and indexing liens.
60.20.050	Rank and priority of liens.
60.20.060	Foreclosure—Costs.

60.20.010 Liens authorized. Every person who, at the request of the owner of any real property, or at the request of the duly authorized agent of such owner, performs any labor or furnishes any material, or both, in the planting of trees, vines, shrubs, plants, hedges or lawns for the improvement of such real property, shall have a lien for the agreed price thereof, or if no agreed price, then for the reasonable value of such work and materials, upon the real property upon which such improvements are placed, and such further amount of land belonging to such owner as is necessary to the convenient use and enjoyment of such improvement. [1943 c 18 § 1; Rem. Supp. 1943 § 1148-1.]

60.20.020 Priority over encumbrances. The lien created by this chapter shall be preferred to any lien, mortgage or other encumbrance which may attach subsequently to the time of commencement of the performance of the labor, or the furnishing of the materials for which such lien is given, and are also preferred to any lien, mortgage or other encumbrance which may have attached previously to that time, and which was not filed or recorded so as to create constructive notice of the same prior to that time, and of which the lien claimant had no notice. [1943 c 18 § 2; Rem. Supp. 1943 § 1148-2.]

60.20.030 Claim of lien—Contents—Joint claims. The person or corporation claiming a lien shall, within ninety days after the completion of the labor or the furnishing of the materials, file for record with the auditor of the county in which the property is situated, a claim of lien, stating as nearly as may be the time of the commencement and cessation of performing the labor or furnishing the materials; the name of the claimant; the name of the person by whom the laborer was employed or to whom the material was furnished; the legal description of the property to be charged with the lien; the name of the owner, or reputed owner of the property; and the amount for which the lien is claimed, and shall be signed and verified by the claimant, or by some person in his behalf, to the effect that the affiant believes it to be just. If the claim has been assigned, the claim shall state the name of the assignee. In foreclosure suits, such claims of lien may be amended by order of the court, insofar as the interests of third parties shall not be affected thereby. Any number of claimants may join in the same claim for the purpose of filing and enforcing their liens, by stating the amount claimed by each lienor.

[1955 c 239 § 1; 1943 c 18 § 3; Rem. Supp. 1943 § 1148-3.]

60.20.040 Recording and indexing liens. The county auditor of each county shall record all lien claims filed as provided in this chapter, in a book to be kept by him for that purpose, which record must be indexed as deeds and other conveyances are required by law to be indexed. [1943 c 18 § 4; Rem. Supp. 1943 § 1148-4.]

60.20.050 Rank and priority of liens. Liens provided for by this chapter shall have the same priority and rank, the one with the other, and as between such lien and other encumbrances, as in the case of mechanics' and materialmen's liens. [1943 c 18 § 5; Rem. Supp. 1943 § 1148-5.]

Priority and rank of mechanics' and materialmen's liens: RCW 60.04-.050, 60.04.130.

60.20.060 Foreclosure—Costs. The liens provided for by this chapter for which claims have been filed may be foreclosed and enforced by a civil action in the court having jurisdiction, in the same manner as mechanics' and materialmen's liens are now foreclosed and enforced. Any such foreclosure action shall be brought within eight calendar months after the filing of such claim of lien as provided herein, and in any such action, the court shall allow as part of the costs therein the money paid for making, filing and recording such claim of lien and a reasonable attorney's fee. [1943 c 18 § 6; Rem. Supp. 1943 § 1148-6.]

Foreclosure of mechanics' and materialmen's liens: RCW 60.04.120.

Chapter 60.24

LIEN FOR LABOR AND SERVICES ON TIMBER
AND LUMBER

Sections

60.24.020	Liens on saw logs, spars, piles, cord wood, shingle bolts or other timber.
60.24.030	Lien on lumber—"Lumber" defined.
60.24.035	Lien for stumpage.
60.24.038	Priority of lien.
60.24.040	Period covered by labor liens.
60.24.070	Period covered by stumpage lien.
60.24.075	Claims—Contents—Form.
60.24.080	Filing claim for stumpage lien.
60.24.100	Recording claims—Fees.
60.24.110	Limitation of action.
60.24.120	Venue—Procedure.
60.24.130	Sheriff as receiver—Deposit to recover possession—Costs.
60.24.140	Pleadings by defendant—Amendments—Hearing.
60.24.150	Enforcement against all or part of property.
60.24.160	Errors in claim, effect of.
60.24.170	Purchase of property subject to lien—Presumption of notice.
60.24.180	Joinder—Costs.
60.24.190	Judgment—Sale—Disposition of proceeds.
60.24.195	Sale of property subject to lien—When.
60.24.200	Damages for eloigning, injuring, destroying or removing marks, etc.—Recovery.

Lien under this chapter extends to real property on which labor and services are performed: RCW 60.04.045.

60.24.020 Liens on saw logs, spars, piles, cord wood, shingle bolts or other timber. Every person performing labor upon or who shall assist in obtaining or securing saw logs, spars, piles, cord wood, shingle bolts or other timber, and the owner or owners of any tugboat or towboat, which shall tow or assist in towing, from one place to another within this state, any saw logs, spars, piles, cord wood, shingle bolts or other timber, and the owner or owners of any team or any logging engine, which shall haul or assist in hauling from one place to another within this state, any saw logs, spars, piles, cord wood, shingle bolts or other timber, and the owner or owners of any logging or other railroad over which saw logs, spars, piles, cord wood, shingle bolts, or other timber shall be transported and delivered, shall have a lien upon the same for the work or labor done upon, or in obtaining or securing, or for services rendered in towing, transporting, hauling, or driving, the particular saw logs, spars, cord wood, shingle bolts, or other timber in said claim of lien described whether such work, labor or services was done, rendered or performed at the instance of the owner of the same or his agent. Scalers, and bull cooks, and cooks, flunkeys and waiters in lumber camps, shall be regarded as persons who assist in obtaining or securing the timber herein mentioned. [1923 c 10 § 1; 1907 c 9 § 1; 1895 c 88 § 1; 1893 c 132 § 1; RRS § 1162. Prior: Code 1881 § 1941; 1879 p 100 § 2; 1877 p 217 § 3; 1860 p 340 § 1.]

60.24.030 Lien on lumber—"Lumber" defined. Every person performing work or labor or assisting in manufacturing saw logs and other timber into lumber and shingles, has a lien upon such lumber while the same remains at the mill where it was manufactured, or in the possession or under the control of the manufacturer, whether such work or labor was done at the instance of the owner of such logs or his agent or any contractor or subcontractor of such owner. The term lumber, as used in this chapter, shall be held and be construed to mean all logs or other timber sawed or split for use, including beams, joists, planks, boards, shingles, laths, staves, hoops, and every article of whatsoever nature or description manufactured from saw logs or other timber. [1893 c 132 § 2; 1893 c 10 § 1; RRS § 1163. Prior: Code 1881 § 1942; 1877 p 217 § 4. Formerly RCW 60.24.010, part.]

60.24.035 Lien for stumpsage. Any person who shall permit another to go upon his timber land and cut thereon saw logs, spars, piles or other timber, has a lien upon the same for the price agreed to be paid for such privilege, or for the price such privilege would be reasonably worth in case there was no express agreement fixing the price. [1893 c 132 § 3; RRS § 1164. Prior: Code 1881 § 1943; 1877 p 217 § 5. Formerly RCW 60.24.060.]

60.24.038 Priority of lien. The liens provided for in this chapter are preferred liens and are prior to any other liens, and no sale or transfer of any saw logs, spars, piles or other timber or manufactured lumber or

shingles shall divest the lien thereon as herein provided, and as between liens provided for in this chapter those for work and labor shall be preferred: *Provided*, That as between liens for work and labor claimed by several laborers on the same logs or lot of logs the claim or claims for work or labor done or performed on the identical logs proceeded against to the extent that said logs can be identified, shall be preferred as against the general claim of lien for work and labor recognized and provided for in this chapter. [1893 c 132 § 4; RRS § 1165. Prior: Code 1881 § 1944; 1877 p 217 § 6. Formerly RCW 60.24.090.]

60.24.040 Period covered by labor liens. The person rendering the service of [or] doing the work or labor named in RCW 60.24.020 and 60.24.030 is only entitled to the liens as provided herein for services, work or labor for the period of eight calendar months, or any part thereof next preceding the filing of the claim, as provided in *section 8 of this act. [1893 c 132 § 5; RRS § 1166. Prior: Code 1881 § 1945; 1877 p 217 § 7.]

***Reviser's note:** "section 8 of this act" is codified as RCW 60.24.080. Section 7 (codified as RCW 60.24.075) was probably intended.

60.24.070 Period covered by stumpage lien. The person granting the privilege mentioned in RCW 60.24.035 is only entitled to the lien as provided therein for saw logs, spars, piles and other timber cut during the eight months next preceding the filing of the claim, as herein provided in RCW 60.24.075. [1893 c 132 § 6; RRS § 1167. Prior: Code 1881 § 1946; 1877 p 217 § 8.]

60.24.075 Claims—Contents—Form. Every person, within sixty days after the close of the rendition of the services, or after the close of the work or labor mentioned in the preceding sections, claiming the benefit hereof, must file for record with the county auditor of the county in which such saw logs, spars, piles, and other timber were cut, or in which such lumber or shingles were manufactured, a claim containing a statement of his demand and the amount thereof, after deducting as nearly as possible all just credits and offsets, with the name of the person by whom he was employed, with a statement of the terms and conditions of his contract, if any, and in case there is no express contract, the claim shall state what such service, work, or labor is reasonably worth; and it shall also contain a description of the property to be charged with the lien sufficient for identification with reasonable certainty, which claim must be verified by the oath of himself or some other person to the effect that the affiant believes the same to be true, which claim shall be substantially in the following form:

----- Claimant, vs. -----

Notice is hereby given that ----- of ----- county, state of Washington, claims a lien upon a ----- of -----, being about ----- in quantity, which were cut or manufactured in ----- county, state of Washington, are marked thus -----, and are now lying in

-----, for labor performed upon and assistance rendered in ----- said -----; that the name of the owner or reputed owner is -----; that ----- employed said ----- to perform such labor and render such assistance upon the following terms and conditions, to wit:

The said ----- agreed to pay the said ----- for such labor and assistance -----; that said contract has been faithfully performed and fully complied with on the part of said -----, who performed labor upon and assisted in ----- said ----- for the period of -----; that said labor and assistance were so performed and rendered upon said ----- between the ----- day of ----- and the ----- day of -----; and the rendition of said service was closed on the ----- day of -----, and sixty days have not elapsed since that time; that the amount of claimant's demand for said service is -----; that no part thereof has been paid except -----, and there is now due and remaining unpaid thereon, after deducting all just credits and offsets, the sum of -----, in which amount he claims a lien upon said ----- The said ----- also claims a lien on all said ----- now owned by said ----- of said county to secure payment for the work and labor performed in obtaining or securing the said logs, spars, piles, or other timber, lumber, or shingles herein described.

State of Washington, county of ----- ss.
----- being first duly sworn, on oath says that he is ----- named in the foregoing claim, has heard the same read, knows the contents thereof, and believes the same to be true.

Subscribed and sworn to before me this ----- day of -----

[1986 c 179 § 2; 1893 c 132 § 7; RRS § 1168. Prior: Code 1881 § 1947; 1879 p 100 § 4; 1877 p 217 § 9. Formerly RCW 60.24.050.]

60.24.080 Filing claim for stumpage lien. Every person mentioned in RCW 60.24.035 claiming the benefit thereof must file for record with the county auditor of the county in which such saw logs, spars, piles or other timber were cut, a claim in substance the same as provided in RCW 60.24.075, and verified as therein provided. [1893 c 132 § 8; RRS § 1169. Prior: Code 1881 § 1948; 1877 p 218 § 10.]

60.24.100 Recording claims—Fees. The county auditor must record any claim filed under this chapter in a book kept by him for that purpose, which record must be indexed, as deeds and other conveyances are required by law to be indexed, and for which he may receive the same fees as are allowed by law for recording deeds and other instruments. [1893 c 132 § 9; RRS § 1170. Prior: Code 1881 § 1949; 1877 p 218 § 11.]

60.24.110 Limitation of action. No lien provided for in this chapter binds any saw logs, spars, piles or other timber, or lumber and shingles, for a longer period than eight calendar months after the claim as herein provided has been filed, unless a civil action be commenced in a proper court, within that time, to enforce the same: *Provided, however,* That in case such civil action so commenced should for any cause other than the merits, be nonsuited or dismissed, then the lien shall continue for the term of one calendar month, if the said eight months have expired, to permit the commencement of another action thereon, which shall be as effective in prolonging the lien as if it had been entered during the term of eight months hereinbefore stated. [1893 c 132 § 10; RRS § 1171. Prior: Code 1881 § 1950; 1879 p 100 § 5; 1877 p 218 § 12.]

60.24.120 Venue—Procedure. The liens provided for in this chapter shall be enforced by a civil action in the superior court of the county wherein the lien was filed, and shall be governed by the laws regulating the proceedings in civil actions touching the mode and manner of trial, and the proceedings and laws to secure property so as to hold it for the satisfaction of any lien that be against it; except as hereinafter otherwise provided. [1893 c 132 § 11; RRS § 1172. Prior: Code 1881 § 1951; 1877 p 218 § 13.]

60.24.130 Sheriff as receiver—Deposit to recover possession—Costs. The sheriff of the county wherein the lien is filed shall be the receiver when one is appointed, and the superior court upon a showing made shall appoint such receiver without notice, who shall be allowed such fees as may seem just to the court, which fees shall be accounted for by such sheriff as other fees collected by him in his official capacity: *Provided,* That at any time when any property is in the custody of such sheriff under the provisions of this chapter, and any person claiming any interest therein, may deposit with the clerk of the court in which such action is pending, a sum of money in an amount equal to the claim sued upon, together with one hundred dollars, to cover costs and interest, (unless the court shall make an order fixing a different amount to cover such costs and interest, then such an amount as the court shall fix to secure such costs and interest, which such action is being prosecuted) and shall have the right to demand and receive forthwith from such sheriff the possession and custody of such property: *Provided,* That in no action brought under the provisions of this chapter shall costs be allowed to lien holders unless a demand has been made for payment of his lien claim before commencement of suit, unless the court shall find the claimants at time of bringing action had reasonable ground to believe that the owner or the person having control of the property upon which such lien is claimed was attempting to defraud such claimant, or prevent the collection of such lien. [1899 c 90 § 1; 1893 c 132 § 12; RRS § 1173.]

60.24.140 Pleadings by defendant—Amendments—Hearing. If the defendant or defendants appear in a suit to enforce any lien provided by this chapter he or they shall make their answer on the merits of the complaint, and any motion or demurrer against the said complaint must be filed with the answer; and no motion shall be allowed to make complaint more definite and certain, if it appear to the court that the defendant or defendants have or should have knowledge of the facts, or that it can be made more certain and definite by facts which will appear necessarily in the testimony; but the case, unless the court sustains the demurrer to the complaint, shall be heard on the merits as speedily as possible, and amendments of the pleadings, if necessary, shall be liberally allowed. [1893 c 132 § 13; RRS § 1174.]

60.24.150 Enforcement against all or part of property. Any person who shall bring a civil action to enforce the lien herein provided for, or any person having a lien as herein provided for, who shall be made a party to any such civil action, has the right to demand that such lien be enforced against the whole or any part of the saw logs, spars, piles or other timber or manufactured lumber or shingles upon which he has performed labor or which he has assisted in securing or obtaining, or which he has cut on his timber land during the eight months next preceding the filing of his lien, for all his labor upon or for all his assistance in obtaining or securing said logs, spars, piles or other timber, or in manufacturing said lumber or shingles during the whole or any part of the eight months mentioned in *section seven (7) of this act, or for timber cut during the whole or any part of the eight months above mentioned. And where proceedings are commenced against any lot of saw logs, spars, piles or other timber or lumber or shingles as herein provided, and some of the lienors claim liens against the specific logs, spars, piles or other timber or lumber or shingles proceeded against, and others against the same generally, to secure their claims for work and labor, the priority of the liens shall be determined as hereinbefore provided. [1893 c 132 § 14; RRS § 1175. Prior: Code 1881 § 1952; 1877 p 218 § 14.]

*Reviser's note: "section seven (7) of this act" is codified as RCW 60.24.075. Section 5 (codified as RCW 60.24.040) was probably intended.

60.24.160 Errors in claim, effect of. No mistake or error in the statement of the demand, or of the amount of credits and offsets allowed, or of the balance asserted to be due to claimant, nor in the description of the property against which the claim is filed, shall invalidate the lien, unless the court finds that such mistake or error in the statement of the demand, credits and offsets or of the balance due was made with intent to defraud, or the court shall find that an innocent third party without notice, direct or constructive, has, since the claim was filed, become the bona fide owner of the property liened upon, and that the notice of claim was so deficient that it did not put the party upon further inquiry, in any manner. [1893 c 132 § 15; RRS § 1176.]

60.24.170 Purchase of property subject to lien—Presumption of notice. It shall be conclusively presumed by the court that a party purchasing the property liened upon within thirty days given herein to claimants wherein to file their liens, is not an innocent third party, nor that he has become a bona fide owner of the property liened upon, unless it shall appear that he has paid full value for the said property, and has seen that the purchase money of the said property has been applied to the payment of such bona fide claims as are entitled to liens upon the said property under the provisions of this chapter, according to the priorities herein established. [1893 c 132 § 16; RRS § 1177.]

60.24.180 Joinder—Costs. Any number of persons claiming liens under this chapter may join in the affidavit in RCW 60.24.075 provided, and may join in the same action, and when separate actions are commenced the court may consolidate them. The court shall also allow as part of the costs the moneys paid for filing, making and recording the claim, and a reasonable attorney's fee for each person claiming a lien. [1901 c 23 § 1; 1893 c 132 § 17; RRS § 1178. Prior: Code 1881 § 1691; 1877 p 219 § 15.]

60.24.190 Judgment—Sale—Disposition of proceeds. In each civil action judgment must be rendered in favor of each person having a lien for the amount due to him, and the court or judge thereof shall order any property subject to the lien herein provided for to be sold by the sheriff of the proper county in the same manner that personal property is sold on execution, and the court or judge shall apportion the proceeds of such sale to the payment of each judgment, according to the priorities established in this chapter pro rata in its class according to the amount of such judgment. [1893 c 132 § 18; RRS § 1179. Prior: Code 1881 § 1954; 1877 p 219 § 16. FORMER PART OF SECTION: 1893 c 132 § 19; RRS § 1180 now codified as RCW 60.24.195.]

Sale of property on execution: Chapter 6.21 RCW.

60.24.195 Sale of property subject to lien—When. The court or judge may order any property subject to a lien as in this chapter provided to be sold by the sheriff as personal property is sold on execution either before or at the time judgment is rendered, as provided in RCW 60.24.190, and the proceeds of such sale must be paid into court to be applied as in RCW 60.24.190 directed. [1893 c 132 § 19; RRS § 1180. Prior: Code 1881 § 1955; 1877 p 219 § 17. Formerly RCW 60.24.190, part.]

Sale of property on execution: Chapter 6.21 RCW.

60.24.200 Damages for eloigning, injuring, destroying or removing marks, etc.—Recovery. Any person who shall eloign, injure or destroy, or who shall render difficult, uncertain or impossible of identification any saw logs, spars, piles, shingles or other timber upon which there is a lien as herein provided, without the express consent of the person entitled to such lien, shall be liable to the lien holder for the damages to the amount secured by his lien, and it being shown to the court in

the civil action to enforce said lien, it shall be the duty of the court to enter a personal judgment for the amount in such action against the said person, provided he be a party to such action, or the damages may be recovered by a civil action against such person. [1893 c 132 § 20; RRS § 1181. Prior: Code 1881 § 1956; 1877 p 219 § 18.]

Chapter 60.28

LIEN FOR LABOR, MATERIALS, TAXES ON PUBLIC WORKS

Sections

- 60.28.010 Retained percentage—Labor and material lien created—Bond in lieu of retained funds—Termination before completion—Chapter deemed exclusive—Release of ferry contract payments—Projects of farmers home administration.
- 60.28.015 Recovery from retained percentage—Written notice to contractor of materials furnished.
- 60.28.020 Excess over lien claims to contractor.
- 60.28.030 Foreclosure of lien—Limitation of action—Release of funds.
- 60.28.040 Tax liens—Priority of liens.
- 60.28.050 Duties of disbursing officer upon final acceptance of contract.
- 60.28.060 Duties of disbursing officer upon final acceptance of contract—Payments to department of revenue.
- 60.28.080 Delay due to litigation—Change order or force account directive—Costs—Arbitration—Termination.
- 60.28.900 Severability—1955 c 236.

Contractor's bond for payment of mechanics, laborers, materialmen, etc., on public works: Chapter 39.08 RCW.

60.28.010 Retained percentage—Labor and material lien created—Bond in lieu of retained funds—Termination before completion—Chapter deemed exclusive—Release of ferry contract payments—Projects of farmers home administration. (1) Contracts for public improvements or work, other than for professional services, by the state, or any county, city, town, district, board, or other public body, herein referred to as "public body", shall provide, and there shall be reserved by the public body from the moneys earned by the contractor on estimates during the progress of the improvement or work, a sum not to exceed five percent, said sum to be retained by the state, county, city, town, district, board, or other public body, as a trust fund for the protection and payment of any person or persons, mechanic, subcontractor or materialman who shall perform any labor upon such contract or the doing of said work, and all persons who shall supply such person or persons or subcontractors with provisions and supplies for the carrying on of such work, and the state with respect to taxes imposed pursuant to Title 82 RCW which may be due from such contractor. Every person performing labor or furnishing supplies toward the completion of said improvement or work shall have a lien upon said moneys so reserved: *Provided*, That such notice of the lien of such claimant shall be given in the manner and within the time provided in RCW 39.08.030 as now existing and in accordance with any amendments that may hereafter be made thereto: *Provided further*, That the board, council,

commission, trustees, officer or body acting for the state, county or municipality or other public body; (a) at any time after fifty percent of the original contract work has been completed, if it finds that satisfactory progress is being made, may make any of the partial payments which would otherwise be subsequently made in full; but in no event shall the amount to be retained be reduced to less than five percent of the amount of the moneys earned by the contractor: *Provided*, That the contractor may request that retainage be reduced to one hundred percent of the value of the work remaining on the project; and (b) thirty days after completion and acceptance of all contract work other than landscaping, may release and pay in full the amounts retained during the performance of the contract (other than continuing retention of five percent of the moneys earned for landscaping) subject to the provisions of RCW 60.28.020.

(2) The moneys reserved under the provisions of subsection (1) of this section, at the option of the contractor, shall be:

(a) Retained in a fund by the public body until thirty days following the final acceptance of said improvement or work as completed;

(b) Deposited by the public body in an interest bearing account in a bank, mutual savings bank, or savings and loan association, not subject to withdrawal until after the final acceptance of said improvement or work as completed, or until agreed to by both parties: *Provided*, That interest on such account shall be paid to the contractor;

(c) Placed in escrow with a bank or trust company by the public body until thirty days following the final acceptance of said improvement or work as completed. When the moneys reserved are to be placed in escrow, the public body shall issue a check representing the sum of the moneys reserved payable to the bank or trust company and the contractor jointly. Such check shall be converted into bonds and securities chosen by the contractor and approved by the public body and such bonds and securities shall be held in escrow. Interest on such bonds and securities shall be paid to the contractor as the said interest accrues.

(3) The contractor or subcontractor may withhold payment of not more than five percent from the moneys earned by any subcontractor or sub-subcontractor or supplier contracted with by the contractor to provide labor, materials, or equipment to the public project. Whenever the contractor or subcontractor reserves funds earned by a subcontractor or sub-subcontractor or supplier, the contractor or subcontractor shall pay interest to the subcontractor or sub-subcontractor or supplier at a rate equal to that received by the contractor or subcontractor from reserved funds.

(4) With the consent of the public body the contractor may submit a bond for all or any portion of the amount of funds retained by the public body in a form acceptable to the public body. Such bond and any proceeds therefrom shall be made subject to all claims and liens and in the same manner and priority as set forth for retained percentages in this chapter. The public body shall release the bonded portion of the retained funds to the

contractor within thirty days of accepting the bond from the contractor. Whenever a public body accepts a bond in lieu of retained funds from a contractor, the contractor shall accept like bonds from any subcontractors or suppliers from which the contractor has retained funds. The contractor shall then release the funds retained from the subcontractor or supplier to the subcontractor or supplier within thirty days of accepting the bond from the subcontractor or supplier.

(5) If the public body administering a contract, after a substantial portion of the work has been completed, finds that an unreasonable delay will occur in the completion of the remaining portion of the contract for any reason not the result of a breach thereof, it may, if the contractor agrees, delete from the contract the remaining work and accept as final the improvement at the stage of completion then attained and make payment in proportion to the amount of the work accomplished and in such case any amounts retained and accumulated under this section shall be held for a period of thirty days following such acceptance. In the event that the work shall have been terminated before final completion as provided in this section, the public body may thereafter enter into a new contract with the same contractor to perform the remaining work or improvement for an amount equal to or less than the cost of the remaining work as was provided for in the original contract without advertisement or bid. The provisions of this chapter 60.28 RCW shall be deemed exclusive and shall supersede all provisions and regulations in conflict herewith.

(6) Whenever the department of transportation has contracted for the construction of two or more ferry vessels, thirty days after completion and final acceptance of each ferry vessel, the department may release and pay in full the amounts retained in connection with the construction of such vessel subject to the provisions of RCW 60.28.020: *Provided*, That the department of transportation may at its discretion condition the release of funds retained in connection with the completed ferry upon the contractor delivering a good and sufficient bond with two or more sureties, or with a surety company, in the amount of the retained funds to be released to the contractor, conditioned that no taxes shall be certified or claims filed for work on such ferry after a period of thirty days following final acceptance of such ferry; and if such taxes are certified or claims filed, recovery may be had on such bond by the department of revenue and the materialmen and laborers filing claims.

(7) Contracts on projects funded in whole or in part by farmers home administration and subject to farmers home administration regulations shall not be subject to subsections (1) through (6) of this section. [1986 c 181 § 6; 1984 c 146 § 1; 1982 c 170 § 1; 1981 c 260 § 14. Prior: 1977 ex.s. c 205 § 1; 1977 ex.s. c 166 § 5; 1975 1st ex.s. c 104 § 1; 1970 ex.s. c 38 § 1; 1969 ex.s. c 151 § 1; 1963 c 238 § 1; 1955 c 236 § 1; 1921 c 166 § 1; RRS § 10320.]

Severability—1977 ex.s. c 166: See note following RCW 39.08.030.

(1989 Ed.)

60.28.015 Recovery from retained percentage—**Written notice to contractor of materials furnished.** Every person, firm, or corporation furnishing materials, supplies, or equipment to be used in the construction, performance, carrying on, prosecution, or doing of any work for the state, or any county, city, town, district, municipality, or other public body, shall give to the contractor of the work a notice in writing, which notice shall cover the material, supplies, or equipment furnished or leased during the sixty days preceding the giving of such notice as well as all subsequent materials, supplies, or equipment furnished or leased, stating in substance and effect that such person, firm, or corporation is and/or has furnished materials and supplies, or equipment for use thereon, with the name of the subcontractor ordering the same, and that a lien against the retained percentage may be claimed for all materials and supplies, or equipment furnished by such person, firm, or corporation for use thereon, which notice shall be given by (1) mailing the same by registered or certified mail in an envelope addressed to the contractor, or (2) by serving the same personally upon the contractor or the contractor's representative and obtaining evidence of such service in the form of a receipt or other acknowledgement signed by the contractor or the contractor's representative, and no suit or action shall be maintained in any court against the retained percentage to recover for such material, supplies, or equipment or any part thereof unless the provisions of this section have been complied with. [1986 c 314 § 5.]

60.28.020 Excess over lien claims to contractor. After the expiration of the thirty day period, and after receipt of the department of revenue's certificate, and the public body is satisfied that the taxes certified as due or to become due by the department of revenue are discharged, and the claims of materialmen and laborers who have filed their claims, together with a sum sufficient to defray the cost of foreclosing the liens of such claims, and to pay attorneys' fees, have been paid, the public body shall pay to the contractor the fund retained by it or release to the contractor the securities and bonds held in escrow.

If such taxes have not been discharged or the claims, expenses, and fees have not been paid, the public body shall either retain in its fund, or in an interest bearing account, or retain in escrow, at the option of the contractor, an amount equal to such unpaid taxes and unpaid claims together with a sum sufficient to defray the costs and attorney fees incurred in foreclosing the lien of such claims, and shall pay, or release from escrow, the remainder to the contractor. [1975 1st ex.s. c 104 § 2; 1970 ex.s. c 38 § 2; 1967 ex.s. c 26 § 23; 1955 c 236 § 2; 1921 c 166 § 2; RRS § 10321.]

Effective date—1967 ex.s. c 26: See note following RCW 82.01.050.

60.28.030 Foreclosure of lien—**Limitation of action**—**Release of funds.** Any person, firm, or corporation filing a claim against the reserve fund shall have four months from the time of the filing thereof in which

to bring an action to foreclose the lien. The lien shall be enforced by action in the superior court of the county where filed, and shall be governed by the laws regulating the proceedings in civil actions touching the mode and manner of trial and the proceedings and laws to secure property so as to hold it for the satisfaction of any lien against it: *Provided*, That the public body shall not be required to make any detailed answer to any complaint or other pleading but need only certify to the court the name of the contractor; the work contracted to be done; the date of the contract; the date of completion and final acceptance of the work; the amount retained; the amount of taxes certified due or to become due to the state; and all claims filed with it showing respectively the dates of filing, the names of claimants, and amounts claimed. Such certification shall operate to arrest payment of so much of the funds retained as is required to discharge the taxes certified due or to become due and the claims filed in accordance with this chapter. In any action brought to enforce the lien, the claimant, if he prevails, is entitled to recover, in addition to all other costs, attorney fees in such sum as the court finds reasonable. If a claimant fails to bring action to foreclose his lien within the four months period, the reserve fund shall be discharged from the lien of his claim and the funds shall be paid to the contractor. The four months limitation shall not, however, be construed as a limitation upon the right to sue the contractor or his surety where no right of foreclosure is sought against the fund. [1979 ex.s. c 38 § 1; 1955 c 236 § 3; 1927 c 241 § 1; 1921 c 166 § 3; RRS § 10322.]

60.28.040 Tax liens—Priority of liens. The amount of all taxes, increases and penalties due or to become due under Title 82 RCW, from a contractor or the contractor's successors or assignees with respect to a public improvement contract wherein the contract price is twenty thousand dollars or more shall be a lien prior to all other liens upon the amount of the retained percentage withheld by the disbursing officer under such contract, except that the employees of a contractor or the contractor's successors or assignees who have not been paid the prevailing wage under such a public improvement contract shall have a first priority lien against the bond or retainage prior to all other liens. The amount of all other taxes, increases and penalties due and owing from the contractor shall be a lien upon the balance of such retained percentage remaining in the possession of the disbursing officer after all other statutory lien claims have been paid. [1985 c 80 § 1; 1971 ex.s. c 299 § 1; 1955 c 236 § 4. Prior: 1949 c 228 § 27, part; Rem. Supp. 1949 § 8370-204a, part; RCW 82.32-.250, part.]

Severability—Effective dates—1971 ex.s. c 299: See notes following RCW 82.04.050.

60.28.050 Duties of disbursing officer upon final acceptance of contract. Upon final acceptance of a contract, the state, county or other municipal officer charged with the duty of disbursing or authorizing disbursement or payment of such contracts shall forthwith

notify the department of revenue of the completion of contracts over twenty thousand dollars. Such officer shall not make any payment from the retained percentage fund or release any retained percentage escrow account to any person, until he has received from the department of revenue a certificate that all taxes, increases and penalties due from the contractor, and all taxes due and to become due with respect to such contract have been paid in full or that they are, in the department's opinion, readily collectible without recourse to the state's lien on the retained percentage. [1982 c 170 § 2; 1970 ex.s. c 38 § 3; 1967 ex.s. c 26 § 24; 1955 c 236 § 5. Prior: 1949 c 228 § 27, part; Rem. Supp. 1949 § 8370-204a, part; RCW 82.32.250, part.]

Effective date—1967 ex.s. c 26: See note following RCW 82.01.050.

60.28.060 Duties of disbursing officer upon final acceptance of contract—Payments to department of revenue. If within thirty days after receipt of notice by the department of revenue of the completion of the contract, the amount of all taxes, increases and penalties due from the contractor or any of his successors or assignees or to become due with respect to such contract have not been paid, the department of revenue may certify to the disbursing officer the amount of all taxes, increases and penalties due from the contractor, together with the amount of all taxes due and to become due with respect to the contract and may request payment thereof to the department of revenue in accordance with the priority provided by this chapter. The disbursing officer shall within ten days after receipt of such certificate and request pay to the department of revenue the amount of all taxes, increases and penalties certified to be due or to become due with respect to the particular contract, and, after payment of all claims which by statute are a lien upon the retained percentage withheld by the disbursing officer, shall pay to the department of revenue the balance, if any, or so much thereof as shall be necessary to satisfy the claim of the department of revenue for the balance of all taxes, increases or penalties shown to be due by the certificate of the department of revenue. If the contractor owes no taxes imposed pursuant to Title 82 RCW, the department of revenue shall so certify to the disbursing officer. [1967 ex.s. c 26 § 25; 1955 c 236 § 6. Prior: 1949 c 228 § 27, part; Rem. Supp. 1949 § 8370-204a, part; RCW 82.32.250, part.]

Effective date—1967 ex.s. c 26: See note following RCW 82.01.050.

60.28.080 Delay due to litigation—Change order or force account directive—Costs—Arbitration—Termination. (1) If any delay in issuance of notice to proceed or in construction following an award of any public construction contract is primarily caused by acts or omissions of persons or agencies other than the contractor and a preliminary, special or permanent restraining order of a court of competent jurisdiction is issued pursuant to litigation and the appropriate public contracting body does not elect to delete the completion of the contract as provided by *RCW 60.28.010(3), the

appropriate contracting body will issue a change order or force account directive to cover reasonable costs incurred by the contractor as a result of such delay. These costs shall include but not be limited to contractor's costs for wages, labor costs other than wages, wage taxes, materials, equipment rentals, insurance, bonds, professional fees, and subcontracts, attributable to such delay plus a reasonable sum for overhead and profit.

In the event of a dispute between the contracting body and the contractor, arbitration procedures may be commenced under the applicable terms of the construction contract, or, if the contract contains no such provision for arbitration, under the then obtaining rules of the American Arbitration Association.

If the delay caused by litigation exceeds six months, the contractor may then elect to terminate the contract and to delete the completion of the contract and receive payment in proportion to the amount of the work completed plus the cost of the delay. Amounts retained and accumulated under RCW 60.28.010 shall be held for a period of thirty days following the election of the contractor to terminate. Election not to terminate the contract by the contractor shall not affect the accumulation of costs incurred as a result of the delay provided above.

(2) This section shall not apply to any contract awarded pursuant to an invitation for bid issued on or before July 16, 1973. [1982 c 170 § 3; 1973 1st ex.s. c 62 § 3.]

***Reviser's note:** "RCW 60.28.010(3)" was renumbered as RCW 60.28.010(5) by 1982 c 170 § 1.

Severability—1973 1st ex.s. c 62: See note following RCW 39.04.120.

Pollution and preservation of natural resources laws to be included in bid invitations, change orders, costs: RCW 39.04.120.

60.28.900 Severability—1955 c 236. If any section, provision or part of this chapter shall be adjudged to be invalid or unconstitutional, such adjudication shall not affect the validity of this chapter as a whole or any section, provision or part hereof not adjudged invalid or unconstitutional. [1955 c 236 § 8.]

Chapter 60.32

LABOR LIENS ON FRANCHISES, EARNINGS, AND PROPERTY OF CERTAIN COMPANIES

Sections	
60.32.010	Liens authorized.
60.32.020	Notice of lien—Contents—Filing and serving.
60.32.030	Manner of serving notice.
60.32.040	Manner of enforcing liens.
60.32.050	Receiver or assignee to pay claims first.

60.32.010 Liens authorized. Every person performing labor for any person, company or corporation, in the operation of any railway, canal or transportation company, or any water, mining or manufacturing company, sawmill, lumber or timber company, shall have a prior lien on the franchise, earnings, and on all the real and personal property of said person, company or corporation, which is used in the operation of its business, to the extent of the moneys due him from such person, company

or corporation, operating said franchise or business, for labor performed within six months next preceding the filing of his claim therefor, as hereinafter provided; and no mortgage, deed of trust or conveyance shall defeat or take precedence over said lien. [1897 c 43 § 1; RRS § 1149.]

60.32.020 Notice of lien—Contents—Filing and serving. No person shall be entitled to the lien given by RCW 60.32.010, unless he shall, within ninety days after he has ceased to perform labor for such person, company or corporation, filed for record with the county auditor of the county in which said labor was performed, or in which is located the principal office of such person, company or corporation in this state, a notice of claim, containing a statement of his demand, after deducting all just credits and offsets, the name of the person, company or corporation, and the name of the person or persons employing claimant, if known, with the statement of the terms and conditions of his contract, if any, and the time he commenced the employment, and the date of his last service, and shall serve a copy thereof on said person, company or corporation within thirty days after the same is so filed for record.

Any number of claimants may join in the same notice for the purpose of filing and enforcing their liens, but the amount claimed by each claimant shall be separately stated. [1977 ex.s. c 176 § 1; 1897 c 43 § 2; RRS § 1150.]

60.32.030 Manner of serving notice. Service of notice, as herein required, may be made in the same manner as summons in civil actions. [1897 c 43 § 3; RRS § 1151.]

Service of summons in civil actions: RCW 4.28.080.

60.32.040 Manner of enforcing liens. Any such lien may be enforced within the same time and in the same manner as mechanics' liens are foreclosed. [1897 c 43 § 4; RRS § 1152.]

Foreclosure of mechanics' liens: RCW 60.04.120.

60.32.050 Receiver or assignee to pay claims first. Whenever a receiver or assignee is appointed for any person, company or corporation, the court shall require such receiver or assignee to pay all claims for which a lien could be filed under this chapter, before the payment of any other debts or claims, other than operating expenses. [1897 c 43 § 5; RRS § 1153.]

Chapter 60.34

LIEN OF RESTAURANT, HOTEL, TAVERN, ETC., EMPLOYEES

Sections	
60.34.010	Liens authorized.
60.34.020	Notice of lien—Contents—Filing and serving.
60.34.030	Manner of serving notice.
60.34.040	Manner of enforcing liens—Costs.
60.34.050	Priority of lien.

60.34.010 Liens authorized. Every person performing labor in the operation of any restaurant, hotel, tavern, or other place of business engaged in the selling of prepared foods or drinks, or any hotel service employee, shall have a lien on the earnings and on all the property of his employer used in the operation of said business to the extent of the moneys due him for labor performed within three months next preceding the filing of his claim therefor. [1953 c 205 § 1.]

60.34.020 Notice of lien—Contents—Filing and serving. The lien claimant shall within thirty days after he has ceased to perform such labor, file for record with the auditor of the county in which the labor was performed a notice of claim, containing a statement of his demand, the name of the employer and the name of the person employing him, if known, with a statement of the terms and conditions of his contract, if any, and the time he commenced the employment, and the date of his last service, and shall serve or mail a copy thereof to said employer within said period. [1953 c 205 § 2.]

60.34.030 Manner of serving notice. Service of the notice of claim may be made in the same manner as summons in civil actions. [1953 c 205 § 3.]

Service of summons in civil actions: RCW 4.28.080.

60.34.040 Manner of enforcing liens—Costs. The lien may be enforced within the same time and in the same manner as mechanics' liens are foreclosed, when said lien is upon real property, or in the same manner as provided in chapter 60.10 RCW and RCW 61.12.162 when the lien is upon personal property. The court may allow as part of the costs of the action the money paid for filing or recording the claim and a reasonable attorney fee. [1969 c 82 § 12; 1959 c 173 § 1; 1953 c 205 § 4.]

Foreclosure of mechanics' liens: RCW 60.04.120.

60.34.050 Priority of lien. The lien created herein shall be preferred to any encumbrance which may attach after the commencement of the labor and is also preferred to any encumbrance which may have attached previously to that time, but which was not filed or recorded so as to create constructive notice thereof prior to that time, and of which the lien claimant had no notice. [1953 c 205 § 5.]

Chapter 60.36

LIEN ON VESSELS AND EQUIPMENT FOR LABOR, MATERIAL, DAMAGES, AND HANDLING CARGO

Sections

60.36.010	Liens created.
60.36.020	Actions to enforce liens.
60.36.030	Liens for handling cargo.
60.36.040	Liens for handling cargo—Priority.
60.36.050	Liens for handling cargo—Foreclosure.
60.36.060	Lien for breach of contract for towing, dunnaging, stevedoring, etc.

60.36.010 Liens created. All steamers, vessels and boats, their tackle, apparel and furniture, are liable—

(1) For service rendered on board at the request of, or under contract with their respective owners, charterers, masters, agents or consignees.

(2) For work done or material furnished in this state for their construction, repair or equipment at the request of their respective owners, charterers, masters, agents, consignees, contractors, subcontractors, or other person or persons having charge in whole or in part of their construction, alteration, repair or equipment; and every contractor, builder or person having charge, either in whole or in part, of the construction, alteration, repair or equipment of any steamer, vessel or boat, shall be held to be the agent of the owner for the purposes of RCW 60.36.010 and 60.36.020, and for supplies furnished in this state for their use, at the request of their respective owners, charterers, masters, agents or consignees, and any person having charge, either in whole or in part, of the purchasing of supplies for the use of any such steamer, vessel or boat, shall be held to be the agent of the owner for the purposes of RCW 60.36.010 and 60.36.020.

(3) For their wharfage and anchorage within this state.

(4) For nonperformance or malperformance of any contract for the transportation of persons or property between places within this state, or to or from places within this state, made by their respective owners, masters, agents or consignees.

(5) For injuries committed by them to persons or property within this state, or while transporting such persons or property to or from this state. Demands for these several causes constitute liens upon all steamers, vessels and boats, and their tackle, apparel and furniture, and have priority in the order of the subdivisions hereinbefore enumerated, and have preference over all other demands; but such liens continue in force only for a period of three years from the time the cause of action accrued. [1901 c 24 § 1; Code 1881 § 1939; 1877 p 216 § 1; RRS § 1182. Prior: 1858 p 29 § 1.]

Lien of pilot for pilotage compensation: RCW 88.16.140.

60.36.020 Actions to enforce liens. Such liens may be enforced, in all cases of maritime contracts or service, by a suit in admiralty, in rem, and the law regulating proceedings in admiralty shall govern in all such suits; and in all cases of contracts or service not maritime, by a civil action in any superior court of this state as provided in RCW 61.12.162. [1969 c 82 § 19; Code 1881 § 1940; 1877 p 216 § 2; RRS § 1183.]

60.36.030 Liens for handling cargo. All steamers, vessels and boats, their tackle, apparel and furniture shall be held liable at all ports and places within this state or within the jurisdiction of the courts of this state or within the jurisdiction of the courts of the United States in said state for services rendered by stevedores, longshoremen or others engaged in the loading, unloading, stowing or dunnaging of cargo in or from any steamer, vessel or boat in any harbor or at any other

place within said state, or within the jurisdiction of the courts thereof as above stated, and said steamers, vessels and boats shall further be liable as per their contracts for all services performed upon wharfs or landing places by stevedores, longshoremen or others: *Provided*, That such services must have been so performed in and about and be connected with the loading, unloading, dunnaging or stowing of said cargo. [1901 c 75 § 1; RRS § 1184.]

60.36.040 Liens for handling cargo—Priority. Demands for wages and all sums due under contracts or otherwise for the performance of all or any of the services mentioned in RCW 60.36.030 shall constitute liens upon all steamers, vessels and boats, their tackle, apparel and furniture, and shall have priority over all other demands save and excepting the demands mentioned in RCW 60.36.010(1), (2) and (3), to which said demands the lien hereby provided shall be subordinate: *Provided*, That such liens shall only continue in force for the period of three years from the date when such work was done or the last services performed by such stevedores, longshoremen or others. [1901 c 75 § 2; RRS § 1185.]

60.36.050 Liens for handling cargo—Foreclosure. The liens hereby created may be foreclosed as provided in RCW 61.12.162. [1969 c 82 § 13; 1901 c 75 § 3; RRS § 1186.]

60.36.060 Lien for breach of contract for towing, dunnaging, stevedoring, etc. Whenever the owner, charterer, or any person or corporation operating, managing or controlling any steamship, vessel or boat shall wilfully fail, neglect or refuse to carry out or perform any express contract or portion thereof for the towing, loading, unloading, dunnaging or stevedoring of such steamship, vessel or boat, any person or persons, firm or corporation sustaining thereby any loss or damage which is capable of definite ascertainment shall have a lien upon such steamship, vessel or boat for said loss or damage. The rank and priority of the lien hereby created and the manner of its enforcement shall be fixed, controlled and regulated by the provisions of the existing law pertaining to liens for similar services already performed. [1903 c 149 § 1; RRS § 1187.]

Chapter 60.40

LIEN FOR ATTORNEY'S FEES

Sections

- 60.40.010 Lien created.
- 60.40.020 Proceedings to compel delivery of money or papers.
- 60.40.030 Procedure when lien is claimed.

Rules of court: *Return of files of disbarred or suspended attorney—RLD 8.1.*

60.40.010 Lien created. An attorney has a lien for his compensation, whether specially agreed upon or implied, as hereinafter provided: (1) Upon the papers of his

client, which have come into his possession in the course of his professional employment; (2) upon money in his hands belonging to his client; (3) upon money in the hands of the adverse party in an action or proceeding, in which the attorney was employed, from the time of giving notice of the lien to that party; (4) upon a judgment to the extent of the value of any services performed by him in the action, or if the services were rendered under a special agreement, for the sum due under such agreement, from the time of filing notice of such lien or claim with the clerk of the court in which such judgment is entered, which notice must be filed with the papers in the action in which such judgment was rendered, and an entry made in the execution docket, showing name of claimant, amount claimed and date of filing notice. [Code 1881 § 3286; 1863 p 406 § 12; RRS § 136.]

60.40.020 Proceedings to compel delivery of money or papers. When an attorney refuses to deliver over money or papers, to a person from or for whom he has received them in the course of professional employment, whether in an action or not, he may be required by an order of the court in which an action, if any, was prosecuted, or if no action was prosecuted, then by order of any judge of a court of record, to do so within a specified time, or show cause why he should not be punished for a contempt. [Code 1881 § 3287; 1863 p 406 § 13; RRS § 137.]

60.40.030 Procedure when lien is claimed. If, however, the attorney claim a lien, upon the money or papers, under the provisions of *this chapter, the court or judge may: (1) Impose as a condition of making the order, that the client give security in a form and amount to be directed, to satisfy the lien, when determined in an action; (2) summarily to inquire into the facts on which the claim of a lien is founded, and determine the same; or (3) to refer it, and upon the report, determine the same as in other cases. [Code 1881 § 3288; 1863 p 406 § 14; RRS § 138.]

***Reviser's note:** "this chapter" appeared in section 3288, chapter 250 of the Code of 1881, the lien sections of which are codified as chapter 60.40 RCW.

Chapter 60.44

LIEN OF DOCTORS, NURSES, HOSPITALS, AMBULANCE SERVICES

Sections

- 60.44.010 Liens authorized.
- 60.44.020 Notice of lien—Contents—Filing.
- 60.44.030 Record of claims.
- 60.44.040 Taking note—Effect on lien.
- 60.44.050 Settlement of damages—Effect on lien.
- 60.44.060 Enforcement of lien—Payment as evidence.

Lien of department of social and health services for medical care of injured recipient, payment of tort feisor or insurer does not discharge lien: RCW 74.09.180 through 74.09.186.

Lien on funds withheld by employer from employee's pay: RCW 49.52.030 and 49.52.040.

60.44.010 Liens authorized. Every operator, whether private or public, of an ambulance service or of a hospital, and every duly licensed nurse, practitioner, physician, and surgeon rendering service, or transportation and care, for any person who has received a traumatic injury and which is rendered by reason thereof shall have a lien upon any claim, right of action, and/or money to which such person is entitled against any tortfeasor and/or insurer of such tortfeasor for the value of such service, together with costs and such reasonable attorney's fees as the court may allow, incurred in enforcing such lien: *Provided, however,* That nothing in this chapter shall apply to any claim, right of action, or money accruing under the workers' compensation act of the state of Washington, and: *Provided, further,* That all the said liens for service rendered to any one person as a result of any one accident or event shall not exceed twenty-five percent of the amount of an award, verdict, report, decision, decree, judgment, or settlement. [1987 c 185 § 36; 1975 1st ex.s. c 250 § 1; 1937 c 69 § 1; RRS § 1209-1.]

Intent—Severability—1987 c 185: See notes following RCW 51.12.130.

60.44.020 Notice of lien—Contents—Filing. No person shall be entitled to the lien given by RCW 60.44.010 unless such person shall, within twenty days after the date of such injury or receipt of transportation or care, or, if settlement has not been accomplished and payment made to such injured person, then at any time before such settlement and payment, file for record with the county auditor of the county in which said service was performed, a notice of claim stating the name and address of the person claiming the lien and whether such person claims as a practitioner, physician, nurse, ambulance service, or hospital, the name and address of the patient and place of domicile or residence, the time when and place where the alleged fault or negligence of the tortfeasor occurred, and the nature of the injury if any, the name and address of the tortfeasor, if same or any thereof are known, which claim shall be subscribed by the claimant and verified before a person authorized to administer oaths. [1975 1st ex.s. c 250 § 2; 1937 c 69 § 2; RRS § 1209-2.]

60.44.030 Record of claims. The county auditor shall record the claims mentioned in this chapter in a book to be kept by him for that purpose, which record must be indexed as deeds and other conveyances are required by law to be indexed. [1937 c 69 § 3; RRS § 1209-4.]

60.44.040 Taking note—Effect on lien. The taking of a promissory note or other evidence of indebtedness for any services performed, as provided in this chapter, shall not discharge the lien therefor unless expressly received as a payment for such services and so specified therein. [1937 c 69 § 4; RRS § 1209-4.]

60.44.050 Settlement of damages—Effect on lien. No settlement made by and between the patient and tortfeasor and/or insurer shall discharge the lien against any

money due or owing by such tortfeasor or insurer to the patient or relieve the tortfeasor and/or insurer from liability by reason of such lien unless such settlement also provides for the payment and discharge of such lien or unless a written release or waiver of any such claim of lien, signed by the claimant, be filed in the court where any action has been commenced on such claim, or in case no action has been commenced against the tortfeasor and/or insurer, then such written release or waiver shall be delivered to the tortfeasor and/or insurer. [1937 c 69 § 5; RRS § 1209-5.]

60.44.060 Enforcement of lien—Payment as evidence. Such lien may be enforced by a suit at law brought by the claimant or his assignee within one year after the filing of such lien against the said tortfeasor and/or insurer. In the event that such tortfeasor and/or insurer shall have made payment or settlement on account of such injury, the fact of such payment shall only for the purpose of such suit be prima facie evidence of the negligence of the tortfeasor and of the liability of the payer to compensate for such negligence. [1937 c 69 § 6; RRS § 1209-6.]

Chapter 60.45

LIEN OF DEPARTMENT OF SOCIAL AND HEALTH SERVICES FOR MEDICAL CARE FURNISHED INJURED RECIPIENT

Sections

60.45.010 Medical care to injured recipient—Recovery of cost against tortfeasor or insurer—Lien created, filing—Payment to recipient does not discharge lien.

60.45.010 Medical care to injured recipient—Recovery of cost against tortfeasor or insurer—Lien created, filing—Payment to recipient does not discharge lien. See RCW 74.09.180 through 74.09.186.

Chapter 60.48

LIEN FOR ENGINEERING SERVICES

Sections

60.48.010 Lien authorized.
60.48.020 Notice of lien—Foreclosure.

60.48.010 Lien authorized. Any person who at the request of the owner of any real property, or his duly authorized agent, surveys, establishes or marks the boundaries of, or prepares maps, plans or specifications for the improvement of such real property, or does any other engineering work upon such real property, shall have a lien upon such real property for the agreed price or reasonable value of such work so performed. [1931 c 107 § 1; RRS § 1131-4.]

60.48.020 Notice of lien—Foreclosure. The liens created by this chapter shall be established by notice filed and shall be foreclosed in the manner as is now provided by law for the establishment and foreclosure of

liens upon real estate for clearing, grading or otherwise improving the same. [1931 c 107 § 2; RRS § 1131-5.]

Liens for improving real property: RCW 60.04.040.

Chapter 60.52
LIEN FOR SERVICES OF SIRES

Sections

- 60.52.010 Liens authorized—Filing statement.
- 60.52.020 Auditor's certificate—Contents—Posting.
- 60.52.030 Statement of lien—Filing—Duration of lien.
- 60.52.040 Foreclosure of lien.
- 60.52.050 Auditor's fees.

60.52.010 Liens authorized—Filing statement. In order to secure to the owner or owners of sires payment for service, the following provisions are enacted: That every owner of a sire having a service fee, in order to have a lien upon the female served, and upon the get of any such sire, under the provisions of this chapter, for such service, shall file for record with the county auditor of the county where said sire is kept for service a statement, verified by oath or affirmation, to the best of his knowledge and belief, giving the name, age, description and pedigree, as well as the terms and conditions upon which such sire is advertised for service: *Provided*, That owners of sires who are not in possession of pedigrees for such sires shall not be debarred from the benefits of this chapter. [1890 p 451 § 1; RRS § 3056.]

60.52.020 Auditor's certificate—Contents—Posting. The county auditor, upon the receipt of the statement as specified in RCW 60.52.010, duly verified by affidavit, shall issue a certificate to the owner or owners of said sire, which shall be posted by the owner in a conspicuous place where said sire may be stationed, which certificate shall state the name, age, description, pedigree and ownership of such sire, the terms and conditions upon which the said sire is advertised for service, and that the provisions of this chapter, so far as relates to the filing of the statement aforesaid, has been complied with. [1890 p 451 § 2; RRS § 3057.]

60.52.030 Statement of lien—Filing—Duration of lien. The owner or owners of any such sire receiving such certificate, by complying with RCW 60.52.010 and 60.52.020, shall obtain and have a lien upon the female served for the period of one year from the date of service, or upon the get of any such sire for the period of one year from the date of birth of such get: *Provided*, Said owner or owners shall file for record a statement of account, verified by affidavit, with the county auditor of the county wherein the service has been rendered, of the amount due such owner or owners for said service, together with a description of the female served, within ten months from the date of service or date of birth, as the case may be: *Provided further*, That the lien upon the get of any such sire shall be a preferred lien: *And provided further*, That no sale or transfer of any female animal served shall defeat the right of such lien holder. [1913 c 53 § 1; 1890 p 451 § 3; RRS § 3058.]

60.52.040 Foreclosure of lien. Liens under this chapter may be foreclosed as provided in chapter 60.10 RCW and RCW 61.12.162. [1969 c 82 § 14; 1890 p 452 § 4; RRS § 3059.]

60.52.050 Auditor's fees. For filing certificate, making copy of such affidavit, and the certificate of date of such filing, the clerk of record shall be entitled to the same fees as are provided by law for similar service in regard to chattel mortgages. [1890 p 452 § 5; RRS § 3059 1/2.]

Fees for filing chattel mortgages: RCW 62A.9-403(4), (5).

Chapter 60.56
AGISTER AND TRAINER LIENS

Sections

- 60.56.010 Liens created.
- 60.56.015 Liens perfected.
- 60.56.025 Lien created for care of animal seized by law enforcement officer.
- 60.56.035 Expiration of lien.
- 60.56.050 Enforcement of lien.

60.56.010 Liens created. Any farmer, ranchman, herder of cattle, livery and boarding stable keeper, veterinarian, or any other person, to whom any horses, mules, cattle or sheep shall be entrusted for the purpose of feeding, herding, pasturing, and training, caring for or ranching, shall have a lien upon said horses, mules, cattle or sheep, and upon the proceeds or accounts receivable from such animals, for such amount that may be due for said feeding, herding, pasturing, training, caring for, and ranching, and shall be authorized to retain possession of said horses, mules or cattle or sheep, until said amount is paid or the lien expires, whichever first occurs. The lien attaches on the date such amounts are due and payable but are unpaid. [1989 c 67 § 1; 1987 c 233 § 1; 1909 c 176 § 1; RRS § 1197.]

60.56.015 Liens perfected. If a person who holds a lien under RCW 60.56.010 provides, prior to the purchase or sale, written notice of the lien to buyers, or to persons selling on a commission basis for the animals' owners then the lien holder has perfected the lien. The lien holder is entitled to collect from the buyer, the seller, or the person selling on a commission basis if there is a failure to make payment to the perfected lien holder. [1989 c 67 § 2.]

60.56.025 Lien created for care of animal seized by law enforcement officer. If a law enforcement officer authorizes removal of an animal pursuant to chapter 16.52 RCW, the person or entity receiving the animal and aiding in its care or restoration to health shall have a lien upon the animal for the cost of feeding, pasturing, and caring otherwise for the animal. The lien attaches on the date such costs are due and payable but are unpaid. Any such person is authorized to retain possession of the animal until such costs are paid or the lien expires, whichever first occurs. [1987 c 233 § 2.]

60.56.035 Expiration of lien. Any lien created by this chapter shall expire sixty days after it attaches, unless, within that period, an action to enforce the lien is filed pursuant to RCW 60.56.050. [1987 c 233 § 3.]

60.56.050 Enforcement of lien. Any person having a lien under the provisions of this chapter may enforce the same by an action in any court of competent jurisdiction; and said property may be sold on execution for the purpose of satisfying the amount of such judgment and costs of sale, together with the proper costs of keeping the same up to the time of said sale. [1987 c 233 § 4; 1891 c 80 § 2; RRS § 1198. Formerly RCW 60.56.020, part.]

Chapter 60.60

LIEN FOR TRANSPORTATION, STORAGE, ADVANCEMENTS, ETC.

Sections

60.60.010	Liens created.
60.60.020	Livestock and perishable property—Sale of.
60.60.030	Sale of other property.
60.60.040	Application of proceeds.
60.60.050	Special contract not affected.
60.60.060	Notice, how given.

60.60.010 Liens created. Every person, firm or corporation who, as a commission merchant, carrier, wharfinger or storage warehouseman, shall make advances for freight, transportation, wharfage or storage upon the personal property of another, or shall carry or store such personal property, shall have a lien thereon, so long as the same remains in his possession, for the charges for advances, freight, transportation, wharfage or storage, and it shall be lawful for such person, firm or corporation to cause such property to be sold as is herein in this chapter provided. [1927 c 144 § 1; Code 1881 § 1980; 1863 p 421 § 11; 1860 p 288 § 11; RRS § 1191.]

60.60.020 Livestock and perishable property—Sale of. If said property consists of livestock, the maintenance of which at the place where kept is wasteful and expensive in proportion to the value of the animals, or consists of perishable property liable, if kept, to destruction, waste or great depreciation, the person, firm or corporation having such lien may sell the same upon giving ten days' notice. [1927 c 144 § 2; Code 1881 § 1981; 1863 p 421 § 13; 1860 p 288 § 13; RRS § 1192.]

60.60.030 Sale of other property. All other property upon which such charges may be unpaid, due, and a lien after the same shall have remained in store uncalled for, for a period of thirty days after such charges shall have become due, may be sold by the person or persons having a lien for the payment of such charges upon giving ten days' notice: *Provided*, That where the property can be conveniently divided into separate lots or parcels, no more lots or parcels shall be sold than shall be sufficient to pay the charges due on the day of sale, and the expenses of the sale. [Code 1881 § 1982; 1863 p 421 § 12; 1860 p 288 § 12; RRS § 1193.]

60.60.040 Application of proceeds. The moneys arising from sales made under the provisions of this chapter shall first be applied to the payment of the costs and expenses of the sale, and then to the payment of the lawful charges of the person or persons having a lien thereon for advances, freight, transportation, wharfage or storage, for whose benefit the sale shall [have] been made; the surplus, if any, shall be retained subject to the future lawful charge of the person or persons for whose benefit the sale was made, upon the property of the same owner still remaining in store uncalled for, if any there be, and to the demand of the owner of the property, who shall have paid such charges or otherwise satisfied such lien, and all moneys remaining uncalled for, for the period of three months, shall be paid to the county treasurer, and shall remain in his hands a special fund for the benefit of the lawful claimant thereof. [Code 1881 § 1983; 1863 p 421 § 14; 1860 p 288 § 14; RRS § 1194.]

60.60.050 Special contract not affected. Nothing in this chapter contained shall be so construed as to alter or affect the terms of any special contract in writing, made by the parties as to the advances, affreightment, wharfage or storage; but when any such special contract shall have been made, its terms shall govern irrespective of this chapter. [Code 1881 § 1984; RRS § 1195.]

60.60.060 Notice, how given. All notices required under this chapter shall be given as is or may be by law provided in cases of sales of personal property upon execution. [Code 1881 § 1985; 1863 p 421 § 15; 1860 p 288 § 15; RRS § 1196.]

Sale of property on execution: Chapter 6.21 RCW.

Chapter 60.64

LIEN OF HOTELS, LODGING AND BOARDING HOUSES—1915 ACT

Sections

60.64.003	"Hotel" defined.
60.64.005	Record of guests—Hotels and trailer camps.
60.64.007	Liability for loss of valuables, baggage and other property.
60.64.010	Lien on property of guest—"Guest" defined.
60.64.040	Sale—Notice—Disposition of funds.
60.64.050	Obtaining accommodations by fraud—Penalty.

Lien of hotels, lodging and boarding houses—1890 act: Chapter 60.66 RCW.

60.64.003 "Hotel" defined. See RCW 19.48.010.

60.64.005 Record of guests—Hotels and trailer camps. See RCW 19.48.020.

60.64.007 Liability for loss of valuables, baggage and other property. See RCW 19.48.030 and 19.48.070.

60.64.010 Lien on property of guest—"Guest" defined. The keeper of any hotel, boarding house or lodging house, whether individual, partnership or corporation, has a lien upon, and may retain, all baggage, sample cases, and other property, lawfully in the

possession of a guest, boarder, or lodger, brought upon the premises by such guest, boarder, or lodger, for the proper charges due from him or her, on account of his or her food, board, room rent, lodging and accommodation, and for such extras as are furnished at his or her request, and for all money and credit paid for or advanced to him or her; and for the costs of enforcing such lien; and said hotel keeper, inn keeper, lodging house keeper or boarding house keeper, shall have the right to retain and hold possession of such baggage, sample cases and other property until the amount of such charges and moneys be fully paid, and to sell such baggage, sample cases, or other property for the payment of such lien, charges and moneys in the manner provided in RCW 60.64.040; and such baggage, sample cases and property shall not be subject to attachment or execution until such lien and storage charges and the cost of satisfying such lien are fully satisfied: *Provided, however,* That if any baggage, sample cases, or property becoming subject to the lien herein provided for does not belong to the guest, boarder or lodger who incurred the charges or indebtedness secured thereby at the time when such charges or indebtedness shall be incurred, and if the hotel, inn, boarding house or lodging house keeper entitled to such lien receives actual notice of such fact at any time before the sale of such baggage, sample cases or property hereunder, then and in that event such baggage, sample cases and property which are subject to said lien and do not belong to said guest, boarder or lodger at the time when such charges or indebtedness shall be incurred, shall not be subject to sale in the manner herein provided, but the same may be sold in the manner provided by law for the sale of property under a writ of execution to satisfy a judgment obtained in any action brought to recover the said charges or indebtedness. A guest, within the meaning of this chapter and chapter 19.48 RCW, includes each and every person who is a member of the family of, or dependent upon, a guest, boarder or lodger, in such hotel, inn, boarding house or lodging house, and for whose support such tenant, guest, boarder or lodger is legally liable. [1929 c 216 § 4; 1915 c 190 § 5; RRS § 6864. Formerly RCW 60.64.010 through 60.64.030.]

Severability—1929 c 216: See RCW 19.48.900.

60.64.040 Sale—Notice—Disposition of funds.

If such lien and all such charges and moneys are not fully paid and satisfied within sixty days from the time when such charges and moneys, respectively, become due, the keeper of such hotel, inn, boarding house or lodging house, may then proceed to sell such baggage, sample cases and other property, or any part thereof, at public auction, after giving ten days notice of the time and place of sale by posting said notice in three public places in the city or town wherein such hotel, inn, boarding house or lodging house is located, and by mailing a notice of the time and place of sale to such guest[,] boarder or lodger at the place of residence, if any, registered by him or her on the register, if any, of said hotel, inn, boarding house or lodging house; and after satisfying the lien and paying all legal charges due from such

guest, boarder or lodger, including proper charges for storage of the said baggage, sample cases or property, and any expense of selling the same that may accrue, any residue remaining shall, on demand, within one year after such sale, be paid to such guest, boarder or lodger, or his or her legal representatives: *Provided, however,* That should such guest, boarder or lodger fail or refuse to register from any particular town or city, or not register at all, the notice herein required to be mailed shall be addressed to the name of such guest, boarder or lodger at the city or town wherein such hotel, inn, boarding house or lodging house is located; and such sale shall be a perpetual bar to any action against said hotel, inn, boarding house or lodging house keeper for the recovery of such baggage, sample cases, or property, or of the value thereof, or for any damage arising from the failure of such guest, boarder or lodger to receive such baggage, sample cases, or property. [1929 c 216 § 5; 1915 c 190 § 6; RRS § 6865.]

60.64.050 Obtaining accommodations by fraud—Penalty. See RCW 19.48.110.

Chapter 60.66

LIEN OF HOTELS, LODGING AND BOARDING HOUSES—1890 ACT

Sections

60.66.010 Lien on property of guest.
60.66.020 Sale to satisfy lien—Notice.

Lien of hotels, lodging and boarding houses—1915 act: Chapter 60-.64 RCW.

60.66.010 Lien on property of guest. Hereafter all hotel keepers, inn keepers, lodging house keepers and boarding house keepers in this state shall have a lien upon the baggage, property, or other valuables of their guests, lodgers or boarders, brought into such hotel, inn, lodging house or boarding house by such guests, lodgers or boarders, for the proper charges due from such guests, lodgers or boarders for their accommodation, board or lodging and such other extras as are furnished at their request, and shall have the right to retain in their possession such baggage, property or other valuables until such charges are fully paid, and to sell such baggage, property or other valuables for the payment of such charges in the manner provided in RCW 60.66.020. [1890 p 96 § 1; RRS § 1201.]

60.66.020 Sale to satisfy lien—Notice. Whenever any baggage, property or other valuables which have been retained by any hotel keeper, inn keeper, lodging house keeper or boarding house keeper, in his possession by virtue of the provision of RCW 60.66.010, shall remain unredeemed for the period of three months after the same shall have been so retained, then it shall be lawful for such hotel keeper, inn keeper, lodging house keeper or boarding house keeper to sell such baggage, property or other valuables at public auction, after giving the owner thereof ten days' notice of the time and

place of such sale, through the post office, or by advertising in some newspaper published in the county where such sale is made, or by posting notices in three conspicuous places in such county, and out of the proceeds of such sale to pay all legal charges due from the owner of such baggage, property or valuables, including proper charges for storage of the same, and the overplus, if any, shall be paid to the owner upon demand. [1890 p 96 § 2; RRS § 1202.]

Chapter 60.68

UNIFORM FEDERAL LIEN REGISTRATION ACT (Formerly: Lien for internal revenue taxes)

Sections

60.68.005	Application of chapter.
60.68.015	Notice of federal liens.
60.68.025	Certification of federal liens.
60.68.035	Fees for recording or filing federal liens.
60.68.045	Tax lien index—Duties of county auditor.
60.68.900	Uniform application of chapter.
60.68.901	Short title.
60.68.902	Effective date—1988 c 73.

60.68.005 Application of chapter. This chapter applies only to federal tax liens and to other federal liens, notices of which under any act of congress or any regulation adopted pursuant thereto are required or permitted to be recorded in the same manner as notices of federal tax liens. [1988 c 73 § 1.]

60.68.015 Notice of federal liens. (1) Notices of liens, certificates, and other notices affecting federal tax liens or other federal liens must be recorded for record in accordance with this chapter.

(2) Notices of liens upon real property for obligations payable to the United States and certificates and notices affecting the liens shall be recorded in the office of the recorder of the county in which the real property subject to the liens is situated.

(3) Notices of federal liens upon personal property, whether tangible or intangible, for obligations payable to the United States and certificates and notices affecting the liens shall be recorded or filed as follows:

(a) With the department of licensing if the person against whose interest the lien applies is a corporation or a partnership, as defined under federal internal revenue laws, whose principal executive office is in Washington;

(b) In all other cases, with the recorder of the county where the person against whose interest the lien applies resides at the time of recording of the notice of lien. [1988 c 73 § 2.]

60.68.025 Certification of federal liens. Certification of notices of liens, certificates, or other notices affecting federal liens by the United States secretary of the treasury or the secretary's delegate, or by an official or entity of the United States responsible for recording or certifying of notice of any other lien, entitles those liens to be recorded and no other attestation, certification, or acknowledgement is necessary. [1988 c 73 § 3.]

60.68.035 Fees for recording or filing federal liens. (1) The fee for recording a lien on personal property or real estate with the county auditor shall be as set forth in RCW 36.18.010.

(2) The fee for filing liens of personal property with the department of licensing of the state of Washington shall be as determined by the department.

(3) The recording officer shall bill the district directors of the internal revenue service or other appropriate federal officials on a monthly basis for fees for documents filed for record by them. [1988 c 73 § 4.]

60.68.045 Tax lien index—Duties of county auditor. When a notice of such tax lien is recorded, the county auditor shall forthwith enter it in an alphabetical tax lien index to be provided by the board of county commissioners showing on one line the name and residence of the taxpayer named in the notice, the collector's serial number of the notice, the date and hour of recording, and the amount of tax and penalty assessed. [1988 c 73 § 5.]

60.68.900 Uniform application of chapter. This chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it. [1988 c 73 § 6.]

60.68.901 Short title. This chapter may be known and cited as the uniform federal lien registration act. [1988 c 73 § 7.]

60.68.902 Effective date—1988 c 73. This chapter shall take effect July 1, 1988. [1988 c 73 § 10.]

Chapter 60.70

LIMITATIONS ON NONCONSENSUAL COMMON LAW LIENS

Sections

60.70.010	Intent—Definitions.
60.70.020	Real property common law liens unenforceable— Personal property common law liens limited.
60.70.030	No duty to accept filing of common law lien.
60.70.040	No duty to disclose record of common law lien.
60.70.050	Immunity from liability for failure to accept filing or disclose common law lien.

60.70.010 Intent—Definitions. (1) It is the intent of this chapter to limit the circumstances in which non-consensual common law liens shall be recognized in this state.

(2) For the purposes of this chapter:

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

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

(i) Is recognized now or hereafter under the common law of this state;

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

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

- (3) Nothing in this chapter is intended to affect:
- (a) Any lien provided for by statute;
 - (b) Any consensual liens now or hereafter recognized under the common law of this state; or
 - (c) The ability of courts to impose equitable or constructive liens. [1986 c 181 § 1.]

60.70.020 Real property common law liens unenforceable—Personal property common law liens limited. Nonconsensual common law liens against real property shall not be recognized or enforceable. Nonconsensual common law liens claimed against any personal property shall not be recognized or enforceable if, at any time the lien is claimed, the claimant fails to retain actual lawfully acquired possession or exclusive control of the property. [1986 c 181 § 2.]

60.70.030 No duty to accept filing of common law lien. No person has a duty to accept for filing or recording any claim of lien unless the lien is authorized by statute or imposed by a court having jurisdiction over property affected by the lien, nor does any person have a duty to reject for filing or recording any claim of lien. [1986 c 181 § 3.]

60.70.040 No duty to disclose record of common law lien. No person has a duty to disclose an instrument of record or file that attempts to give notice of a common law lien. This section does not relieve any person of any duty which otherwise may exist to disclose a claim of lien authorized by statute or imposed by order of a court having jurisdiction over property affected by the lien. [1986 c 181 § 4.]

60.70.050 Immunity from liability for failure to accept filing or disclose common law lien. A person is not liable for damages arising from a refusal to record or file or a failure to disclose any claim of a common law lien of record. [1986 c 181 § 5.]

Chapter 60.72

LANDLORD'S LIEN FOR RENT

Sections	
60.72.010	Liens created—Priority—Extent—Exceptions.
60.72.040	Foreclosure of lien.

60.72.010 Liens created—Priority—Extent—Exceptions. Any person to whom rent may be due, his executors, administrators, or assigns, shall have a lien for such rent upon personal property which has been used or kept on the rented premises by the tenant, except property of third persons delivered to or left with the tenant for storage, repair, manufacture, or sale, or under conditional bills of sale duly filed, and such property as is exempt from execution by law. Such liens for rent shall be paramount to, and have preference over, all other liens except liens for taxes, general and special liens of labor, and liens of mortgages duly recorded prior to the tenancy. Such liens shall not be for more than two months' rent due or to become due, nor for any rent or

any installment thereof which has been due for more than two months at the time of the commencement of an action to foreclose such liens; no writing or recording shall be necessary to create such lien; and if such property be removed from the rented premises and not returned to the owner, agent, executor, administrator, or assign, said lien shall continue and be a superior lien on the property so removed for ten days from the date of its removal, and said lien may be enforced against the property wherever found. In the event the property contained in the rented premises be destroyed by fire or other elements, the lien shall extend to any money that may be received by the tenant as indemnity for the destruction of said property, nor shall the lien be lost by the sale of the said property, except merchandise sold in the usual course of trade or to purchasers without notice of the tenancy. The provisions of this chapter shall not apply to, nor shall it be enforced against, the property of tenants in dwelling houses or apartments or any other place that is used exclusively as a home or residence of the tenant and his family. [1927 c 108 § 1; 1917 c 165 § 1; RRS § 1203-1. Formerly RCW 60.72.010, 60.72.020, 60.72.030.]

60.72.040 Foreclosure of lien. Said lien may be foreclosed as provided in chapter 60.10 RCW and RCW 61.12.162. [1969 c 82 § 15; 1917 c 165 § 2; RRS § 1203-2.]

Foreclosure of chattel mortgages: Article 62A.9 RCW.

Chapter 60.76

LIEN OF EMPLOYEES FOR CONTRIBUTIONS TO BENEFIT PLANS

Sections	
60.76.010	Lien authorized.
60.76.020	Notice of lien—Contents—Filing and serving.
60.76.030	Manner of serving notice.
60.76.040	Manner of enforcing lien—Costs.
60.76.050	Priority of lien.

60.76.010 Lien authorized. Every employer who is required to pay contributions, by agreement or otherwise, into a fund of any employee benefit plan in order that his employee may participate therein, shall pay such contributions in the required amounts and at the stipulated time or each employee affected thereby shall have a lien on the earnings and on all property used in the operation of said employer's business to the extent of the moneys, plus any penalties, due to be paid by or on his behalf in order to qualify him for participation therein, and for any moneys expended or obligations incurred for medical, hospital, or other expenses to which he would have been entitled had such required contributions been paid. [1961 c 86 § 1.]

60.76.020 Notice of lien—Contents—Filing and serving. The lien claimant, or his representative on his behalf, or the trustee of the fund on the claimant's behalf, within sixty days after such payment becomes due shall file for record with the auditor of the county

wherein the claimant is or was employed by such employer a notice of claim, containing a statement of the demand, the name of the employer and the name of the person employing the claimant, if known, with a statement of the pertinent terms and conditions of the employee benefit plan and the time when such contributions are due and were to have been paid, and shall serve or mail a copy thereof to said employer within such time. [1961 c 86 § 2.]

60.76.030 Manner of serving notice. Service of the notice of claim may be made in the same manner as summons in civil actions. [1961 c 86 § 3.]

60.76.040 Manner of enforcing lien—Costs. The lien may be enforced within the same time and in the same manner as mechanics' liens are foreclosed when said lien is upon real property, or within the same time and in the same manner as chattel liens are enforced when the lien is upon personal property. The court may allow, as part of the costs of the action, the moneys paid for filing or recording the claim, a reasonable attorney's fee in the superior court, court of appeals, and supreme court, and court costs. [1971 c 81 § 130; 1961 c 86 § 4.]

60.76.050 Priority of lien. The lien created herein shall be preferred to any encumbrance which may attach after the contribution payments became due and is also preferred to any encumbrance which may have attached previous to that time, but which was not filed or recorded so as to create constructive notice thereof prior to that time, and of which the lien claimant had no notice. [1961 c 86 § 5.]

Title 61

MORTGAGES, DEEDS OF TRUST, AND REAL ESTATE CONTRACTS

Chapters

- 61.12 Foreclosure of real estate mortgages and personal property liens.**
 - 61.16 Assignment and satisfaction of real estate and chattel mortgages.**
 - 61.24 Deeds of trust.**
 - 61.30 Real estate contract forfeitures.**
 - 61.34 Equity skimming.**
- Banks, real estate holdings: RCW 30.04.210.*
Consumer finance act: Chapter 31.08 RCW.
Corporate powers of banks and trust companies: RCW 30.08.140, 30.08.150.
Credit unions: Chapter 31.12 RCW.
Crop credit associations: Chapter 31.16 RCW.
Excise tax on real estate sales: Chapter 82.45 RCW.
Frauds and swindles—Encumbered, leased or rented personal property: RCW 9.45.060.
Fraudulent conveyances: Chapter 19.40 RCW.
Insurance companies, investments: Chapter 48.13 RCW.
Interest, usury: Chapter 19.52 RCW.
Joint tenancies: Chapter 64.28 RCW.
Liens: Title 60 RCW.
Motor vehicles, certificates of ownership: Chapter 46.12 RCW.
Mutual savings banks
investments: Chapter 32.20 RCW.
powers and duties: Chapters 32.08, 32.12, 32.16 RCW.
Negotiable instruments: Title 62A RCW.
Possession of real property to collect mortgaged, pledged or assigned rents and profits: RCW 7.28.230.
Property taxes: Title 84 RCW.
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Real property and conveyances: Title 64 RCW.
Recording master form instruments and mortgages or deeds of trust incorporating master form provisions: RCW 65.08.160.
Recording mortgages: Title 65 RCW.
Retail installment sales of goods and services: Chapter 63.14 RCW.
Savings and loan associations: Title 33 RCW.
Statute of frauds: Chapter 19.36 RCW.

Chapter 61.12

FORECLOSURE OF REAL ESTATE MORTGAGES AND PERSONAL PROPERTY LIENS

Sections

- 61.12.010 Encumbrances shall be by deed.
- 61.12.020 Mortgage—Form—Contents—Effect.
- 61.12.030 Removal of property from mortgaged premises.
- 61.12.031 Removal of property from mortgaged premises—Penalty.
- 61.12.040 Foreclosure—Venue.
- 61.12.050 When remedy confined to mortgaged property.
- 61.12.060 Judgment—Order of sale—Satisfaction—Upset price.
- 61.12.061 Exception as to mortgages held by the United States.

- 61.12.070 Decree to direct deficiency—Waiver in complaint.
 - 61.12.080 Deficiency judgment—How enforced.
 - 61.12.090 Execution on decree—Procedure.
 - 61.12.093 Abandoned improved real estate—Purchaser takes free of redemption rights.
 - 61.12.094 Abandoned improved real estate—Deficiency judgment precluded—Complaint, requisites, service.
 - 61.12.095 Abandoned improved real estate—Not applicable to property used primarily for agricultural purposes.
 - 61.12.100 Levy for deficiency under same execution.
 - 61.12.110 Notice of sale on deficiency.
 - 61.12.120 Concurrent actions prohibited.
 - 61.12.130 Payment of sums due—Stay of proceedings.
 - 61.12.140 Sale in parcels to pay installments due.
 - 61.12.150 Sale of whole property—Disposition of proceeds.
 - 61.12.162 Judicial foreclosure of personal property liens.
 - 61.12.164 Judicial foreclosure of personal property liens—Redemption rights.
 - 61.12.165 Judicial foreclosure of personal property liens—Rights and interest of purchaser for value.
 - 61.12.170 Recording.
- Community realty, encumbering: RCW 26.16.040.*
Corporate seals, effect of absence from instrument: RCW 64.04.105.
Decedent's estate, liability for mortgage lien: RCW 11.04.270.
Foreclosure by organizations not admitted to transact business in state: Chapter 23B.18 RCW.
Mortgagee cannot maintain action for possession: RCW 7.28.230.
Mortgaging of decedents' estates: Chapter 11.56 RCW.
Notice and sale summary foreclosure of personal property liens: Chapter 60.10 RCW.
Partition, sales on credit: RCW 7.52.290, 7.52.420.
Possession of real estate to collect mortgaged rents and profits: RCW 7.28.230.
Receiver may be appointed to protect mortgagee's interest: RCW 7.60.020.
Sales under execution and redemption: Chapter 6.21 RCW.

61.12.010 Encumbrances shall be by deed. See RCW 64.04.010.

61.12.020 Mortgage—Form—Contents—Effect. Mortgages of land may be made in substantially the following form: The mortgagor (here insert name or names) mortgages to (here insert name or names) to secure the payment of (here insert the nature and amount of indebtedness, showing when due, rate of interest, and whether evidenced by note, bond or other instrument or not) the following described real estate (here insert description) situated in the county of _____, state of Washington.

Dated this _____ day of _____, 19__.

Every such mortgage, when otherwise properly executed, shall be deemed and held a good and sufficient conveyance and mortgage to secure the payment of the money therein specified. The parties may insert in such mortgage any lawful agreement or condition. [1929 c 33 § 12; RRS § 10555. Prior: 1888 c 26 § 1; 1886 p 179 § 6.]

61.12.030 Removal of property from mortgaged premises. (Effective until March 1, 1990.) When any real estate in this state is subject to, or is security for, any mortgage, mortgages, lien or liens, other than general liens arising under personal judgments, it shall be unlawful for any person who is the owner, mortgagor, lessee, or occupant of such real estate to destroy or remove or to cause to be destroyed or removed from said real estate any fixtures, buildings, or permanent improvements, not including crops growing thereon, without having first obtained from the owners or holders of each and all of such mortgages or other liens his or their written consent for such removal or destruction. [1899 c 75 § 1; RRS § 2709, part. FORMER PART OF SECTION: 1899 c 75 § 2 now codified as RCW 61.12.031.]

61.12.030 Removal of property from mortgaged premises. (Effective March 1, 1990.) When any real estate in this state is subject to, or is security for, any mortgage, mortgages, lien or liens, other than general liens arising under personal judgments, it shall be unlawful for any person who is the owner, mortgagor, lessee, or occupant of such real estate to destroy or remove or to cause to be destroyed or removed from said real estate any fixtures, buildings, or permanent improvements including a manufactured home whose title has been eliminated under chapter 65.20 RCW, not including crops growing thereon, without having first obtained from the owners or holders of each and all of such mortgages or other liens his or their written consent for such removal or destruction. [1989 c 343 § 21; 1899 c 75 § 1; RRS § 2709, part. FORMER PART OF SECTION: 1899 c 75 § 2 now codified as RCW 61.12.031.]

Severability—Effective date—1989 c 343: See RCW 65.20.940 and 65.20.950.

61.12.031 Removal of property from mortgaged premises—Penalty. Any person wilfully violating the provisions of RCW 61.12.030 shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by imprisonment in the county jail for a period not to exceed six months, or by a fine of not more than five hundred dollars, or by both such fine and imprisonment. [1899 c 75 § 2; RRS § 2709, part. Formerly RCW 61.12.030, part.]

61.12.040 Foreclosure—Venue. When default is made in the performance of any condition contained in a mortgage, the mortgagee or his assigns may proceed in the superior court of the county where the land, or some part thereof, lies, to foreclose the equity of redemption contained in the mortgage. [Code 1881 § 609; 1877 p 127 § 614; 1869 p 145 § 563; 1854 p 207 § 408; RRS § 1116.]

Real property, actions concerning to be brought where property is located: RCW 4.12.010.

61.12.050 When remedy confined to mortgaged property. When there is no express agreement in the mortgage nor any separate instrument given for the

payment of the sum secured thereby, the remedy of the mortgagee shall be confined to the property mortgaged. [Code 1881 § 610; 1877 p 127 § 615; 1869 p 146 § 564; 1854 p 207 § 409; RRS § 1117.]

61.12.060 Judgment—Order of sale—Satisfaction—Upset price. In rendering judgment of foreclosure, the court shall order the mortgaged premises, or so much thereof as may be necessary, to be sold to satisfy the mortgage and costs of the action. The payment of the mortgage debt, with interest and costs, at any time before sale, shall satisfy the judgment. The court, in ordering the sale, may in its discretion, take judicial notice of economic conditions, and after a proper hearing, fix a minimum or upset price to which the mortgaged premises must be bid or sold before confirmation of the sale.

The court may, upon application for the confirmation of a sale, if it has not theretofore fixed an upset price, conduct a hearing, establish the value of the property, and, as a condition to confirmation, require that the fair value of the property be credited upon the foreclosure judgment. If an upset price has been established, the plaintiff may be required to credit this amount upon the judgment as a condition to confirmation. If the fair value as found by the court, when applied to the mortgage debt, discharges it, no deficiency judgment shall be granted. [1935 c 125 § 1; Code 1881 § 611; 1877 p 127 § 616; 1869 p 146 § 565; 1854 p 207 § 410; RRS § 1118. FORMER PART OF SECTION: 1935 c 125 § 1 1/2 now codified as RCW 61.12.061.]

Confirmation of sale of land: RCW 6.21.110.

61.12.061 Exception as to mortgages held by the United States. The provisions of *this act shall not apply to any mortgage while such mortgage is held by the United States or by any agency, department, bureau, board or commission thereof as security or pledge of the maker, its successors or assigns. [1935 c 125 § 1 1/2; RRS § 1118–1. Formerly RCW 61.12.060, part.]

***Reviser's note:** "this act" appears in 1935 c 125 § 1 1/2; section 1 of the 1935 act amends Code 1881 § 611; the 1935 act is codified as RCW 61.12.060 and 61.12.061.

61.12.070 Decree to direct deficiency—Waiver in complaint. When there is an express agreement for the payment of the sum of money secured contained in the mortgage or any separate instrument, the court shall direct in the decree of foreclosure that the balance due on the mortgage, and costs which may remain unsatisfied after the sale of the mortgaged premises, shall be satisfied from any property of the mortgage debtor: *Provided, however,* That in all cases where the mortgagee or other owner of such mortgage has expressly waived any right to a deficiency judgment in the complaint, as provided by RCW 6.23.020, there shall be no such judgment for deficiency, and the remedy of the mortgagee or other owner of the mortgage shall be confined to the sale of the property mortgaged. [1961 c 196 § 4; Code 1881 § 612; 1877 p 127 § 617; 1869 p 146 § 566; 1854 p 208 § 411; RRS § 1119.]

61.12.080 Deficiency judgment—How enforced. Judgments over for any deficiency remaining unsatisfied after application of the proceeds of sale of mortgaged property, either real or personal, shall be similar in all respects to other judgments for the recovery of money, and may be made a lien upon the property of a judgment debtor as other judgments, and the collections thereof enforced in the same manner. [Code 1881 § 622; 1877 p 129 § 625; 1869 p 148 § 575; RRS § 1120.]

Enforcement of judgments: Title 6 RCW.

61.12.090 Execution on decree—Procedure. A decree of foreclosure of mortgage or other lien may be enforced by execution as an ordinary judgment or decree for the payment of money. The execution shall contain a description of the property described in the decree. The sheriff shall endorse upon the execution the time when he receives it, and he shall thereupon forthwith proceed to sell such property, or so much thereof as may be necessary to satisfy the judgment, interest and costs upon giving the notice prescribed in RCW 6.21.030. [1988 c 231 § 36; 1899 c 53 § 1; RRS § 1121. Cf. Code 1881 § 613; 1869 p 146 § 567; 1854 p 208 § 412.]

Severability—1988 c 231: See note following RCW 6.01.050.
Property exempt from execution and attachment: RCW 6.15.010.

61.12.093 Abandoned improved real estate—Purchaser takes free of redemption rights. In actions to foreclose mortgages on real property improved by structure or structures, if the court finds that the mortgagor or his successor in interest has abandoned said property for six months or more, the purchaser at the sheriff's sale shall take title in and to such property free from all redemption rights as provided for in RCW 6.23.010 et seq. upon confirmation of the sheriff's sale by the court. Lack of occupancy by, or by authority of, the mortgagor or his successor in interest for a continuous period of six months or more prior to the date of the decree of foreclosure, coupled with failure to make payment upon the mortgage obligation within the said six month period, will be prima facie evidence of abandonment. [1965 c 80 § 1; 1963 c 34 § 1.]

Deed to issue upon request immediately after confirmation of sale: RCW 6.21.120.

61.12.094 Abandoned improved real estate—Deficiency judgment precluded—Complaint, requisites, service. When proceeding under RCW 61.12.093 through 61.12.095 no deficiency judgment shall be allowed. No mortgagee shall deprive any mortgagor, his successors in interest, or any redemptioner of redemption rights by default decree without alleging such intention in the complaint: *Provided, however,* That such complaint need not be served upon any person who acquired the status of such successor in interest or redemptioner after the recording of lis pendens in such foreclosure action. [1965 c 80 § 2; 1963 c 34 § 2.]

61.12.095 Abandoned improved real estate—Not applicable to property used primarily for agricultural purposes. RCW 61.12.093 and 61.12.094 shall not apply

to property used primarily for agricultural purposes. [1965 c 80 § 3; 1963 c 34 § 3.]

61.12.100 Levy for deficiency under same execution. In all actions of foreclosure where there is a decree for the sale of the mortgaged premises or property, and a judgment over for any deficiency remaining unsatisfied after applying the proceeds of the sale of mortgaged property, further levy and sales upon other property of the judgment debtor may be made under the same execution. In such sales it shall only be necessary to advertise notice for two weeks in a newspaper published in the county where the said property is located, and if there be no newspaper published therein, then in the most convenient newspaper having a circulation in such county. [Code 1881 § 620; 1877 p 129 § 623; 1873 p 151 § 571; 1869 p 148 § 573; RRS § 1123.]

61.12.110 Notice of sale on deficiency. When sales of other property not embraced in the mortgage or decree of sale are made under the execution to satisfy any deficiency remaining due upon judgment, two weeks' publication of notice of such sale shall be sufficient. Such notice shall be published in a newspaper printed in the county where the property is situated, and if there be no newspaper published therein, then in the most convenient newspaper having a circulation in said county. [Code 1881 § 621; 1877 p 129 § 624; 1869 p 148 § 574; RRS § 1124.]

Notice of sales under execution: RCW 6.21.020.

61.12.120 Concurrent actions prohibited. The plaintiff shall not proceed to foreclose his mortgage while he is prosecuting any other action for the same debt or matter which is secured by the mortgage, or while he is seeking to obtain execution of any judgment in such other action; nor shall he prosecute any other action for the same matter while he is foreclosing his mortgage or prosecuting a judgment of foreclosure. [Code 1881 § 614; 1877 p 128 § 619; 1869 p 146 § 568; 1854 p 208 § 413; RRS § 1125.]

61.12.130 Payment of sums due—Stay of proceedings. Whenever a complaint is filed for the foreclosure of a mortgage upon which there shall be due any interest or installment of the principal, and there are other installments not due, if the defendant pay into the court the principal and interest due, with costs, at any time before the final judgment, proceedings thereon shall be stayed, subject to be enforced upon a subsequent default in the payment of any installment of the principal or interest thereafter becoming due. In the final judgment, the court shall direct at what time and upon what default any subsequent execution shall issue. [Code 1881 § 615; 1877 p 128 § 620; 1869 p 147 § 569; 1854 p 208 § 414; RRS § 1126.]

61.12.140 Sale in parcels to pay installments due. In such cases, after final judgment, the court shall ascertain whether the property can be sold in parcels, and if it can be done without injury to the interests of the parties, the

court shall direct so much only of the premises to be sold, as will be sufficient to pay the amount then due on the mortgage with costs, and the judgment shall remain and be enforced upon any subsequent default, unless the amount due shall be paid before execution of the judgment is perfected. [Code 1881 § 616; 1877 p 128 § 620 (2d of 2 sections with same number); 1869 p 147 § 570; 1854 p 208 § 415; RRS § 1127.]

61.12.150 Sale of whole property—Disposition of proceeds. If the mortgaged premises cannot be sold in parcels, the court shall order the whole to be sold, and the proceeds of the sale shall be applied first to the payment of the principal due, interest and costs, and then to the residue secured by the mortgage and not due; and if the residue does not bear interest, a deduction shall be made therefrom by discounting the legal interest; and in all cases where the proceeds of the sale shall be more than sufficient to pay the amount due and costs, the surplus shall be paid to the mortgage debtor, his heirs and assigns. [Code 1881 § 617; 1877 p 128 § 621; 1869 p 147 § 571; 1854 p 208 § 416; RRS § 1128.]

61.12.162 Judicial foreclosure of personal property liens. The provisions of chapter 61.12 RCW, as now or hereafter amended, so far as the same shall be applicable, shall govern in actions for the judicial foreclosure of liens on personal property excluded by RCW 62A.9–104 from the provision of the Uniform Commercial Code, Title 62A RCW. The lien holder may proceed upon his lien; and if there be a separate obligation in writing to pay the same, secured by said lien, he may bring suit upon such separate promise. When he proceeds on the promise, if there be a specific agreement therein contained, for the payment of a certain sum, or there is a separate obligation for the said sum in addition to a decree of sale of lien property, judgment shall be rendered for the amount due upon said promise or other instrument, the payment of which is thereby secured; the decree shall direct the sale of the lien property and if the proceeds of said sale be insufficient under the execution, the sheriff is authorized to levy upon and sell other property of the lien debtor, not exempt from execution, for the sum remaining unsatisfied. [1969 c 82 § 1.]

Notice and sale summary procedure for foreclosure of personal property liens: Chapter 60.10 RCW.

61.12.164 Judicial foreclosure of personal property liens—Redemption rights. See RCW 60.10.050.

61.12.165 Judicial foreclosure of personal property liens—Rights and interest of purchaser for value. See RCW 60.10.040.

61.12.170 Recording. See chapter 65.08 RCW.

Chapter 61.16

ASSIGNMENT AND SATISFACTION OF REAL ESTATE AND CHATTEL MORTGAGES

Sections

61.16.010	Assignments, how made—Satisfaction by assignee.
61.16.020	Mortgages, how satisfied of record.
61.16.030	Failure to satisfy—Damages—Order.
61.16.060	Chattel mortgages and conditional sales contracts—Agent may satisfy.

Effect of recording assignment of mortgage: RCW 65.08.120.

61.16.010 Assignments, how made—Satisfaction by assignee. Any person to whom any real estate or chattel mortgage is given, or the assignee of any such mortgage, may, by an instrument in writing, by him signed and acknowledged in the manner provided by law entitling mortgages to be recorded, assign the same to the person therein named as assignee, and any person to whom any such mortgage has been so assigned, may, after the assignment has been recorded in the office of the auditor of the county wherein such mortgage is of record, acknowledge satisfaction of the mortgage, and discharge the same of record. [1897 c 23 § 1; RRS § 10616.]

Validating—1897 c 23: "All satisfactions of mortgages heretofore made by the assignees thereof, where the assignment was in writing, signed by the mortgagee or assignee, and where the same was recorded in the office of the auditor of the county wherein the mortgage was recorded, are hereby validated, and such satisfactions of mortgages so made shall have the same effect as if made by the mortgagees in such mortgages." [1897 c 23 § 2.]

61.16.020 Mortgages, how satisfied of record. Whenever the amount due on any mortgage is paid, the mortgagee, his legal representatives or assigns, shall, at the request of any person interested in the property mortgaged, execute an instrument in writing referring to the mortgage by the volume and page of the record or otherwise sufficiently describing it and acknowledging satisfaction in full thereof. Said instrument shall be duly acknowledged, and upon request shall be recorded in the county wherein the mortgaged property is situated. Every instrument of writing heretofore recorded and purporting to be a satisfaction of mortgage, which sufficiently describes the mortgage which it purports to satisfy so that the same may be readily identified, and which has been duly acknowledged before an officer authorized by law to take acknowledgments or oaths, is hereby declared legal and valid, and a certified copy of the record thereof is hereby constituted prima facie evidence of such satisfaction. [1985 c 44 § 13; 1901 c 52 § 1; 1886 p 116 § 1; RRS § 10614.]

61.16.030 Failure to satisfy—Damages—Order. If the mortgagee fails to acknowledge satisfaction of the mortgage as provided in RCW 61.16.020 sixty days from the date of such request or demand, he shall forfeit and pay to the mortgagor damages and a reasonable attorneys' fee, to be recovered in any court having competent jurisdiction, and said court, when convinced that

said mortgage has been fully satisfied, shall issue an order in writing, directing the auditor to cancel said mortgage, and the auditor shall immediately record the order and cancel the mortgage as directed by the court, upon the margin of the page upon which the mortgage is recorded, making reference thereupon to the order of the court and to the page where the order is recorded. [1984 c 14 § 1; 1886 p 117 § 2; RRS § 10615.]

61.16.060 Chattel mortgages and conditional sales contracts—Agent may satisfy. A mortgagee, vendor, or assignee or his personal representative of record may, by written instrument duly acknowledged, designate an agent to satisfy or release any mortgage or contract of conditional sale; and upon the filing of such instrument with the county auditor, such auditor shall be authorized to treat a satisfaction or release by such named agent as valid. Revocation of the power of an agent to satisfy or release may be accomplished by written instrument in a like manner. [1937 c 133 § 2 (adding to 1899 c 98 a new section, § 10); RRS § 3787-2.]

Chapter 61.24 DEEDS OF TRUST

Sections	
61.24.010	"Record", "recorded" defined—Trustee, qualifications—Successor trustee.
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61.24.130	Restraint of sale by trustee—Conditions—Notice.

Possession of real property by trustee of deed of trust to collect rents and profits: RCW 7.28.230.

61.24.010 "Record", "recorded" defined—Trustee, qualifications—Successor trustee. (1) The terms "record" and "recorded" as used in this chapter, shall include the appropriate registration proceedings, in the instance of registered land.

(2) The trustee of a deed of trust under this chapter shall be:

(a) Any domestic corporation incorporated under *Title 23A, 30, 31, 32, or 33 RCW; or

(b) Any title insurance company authorized to insure title to real property under the laws of this state, or its agents; or

(c) Any attorney who is an active member of the Washington state bar association at the time he is named trustee; or

(d) Any professional corporation incorporated under chapter 18.100 RCW, all of whose shareholders are licensed attorneys; or

(e) Any agency or instrumentality of the United States government; or

(f) Any national bank, savings bank, or savings and loan association chartered under the laws of the United States.

(3) The trustee shall resign at the request of the beneficiary and may resign at its own election. Upon the resignation, incapacity, disability, or death of the trustee, the beneficiary shall nominate in writing a successor trustee. Upon recording in the mortgage records of the county or counties in which the trust deed is recorded, of the appointment of a successor trustee, the successor trustee shall be vested with all powers of the original trustee. [1987 c 352 § 1; 1981 c 161 § 1; 1975 1st ex.s. c 129 § 1; 1965 c 74 § 1.]

***Reviser's note:** Title 23A RCW, the Washington business corporation act, was repealed by 1989 c 165 and codified in Title 23B RCW, effective July 1, 1990.

61.24.020 Deeds subject to all mortgage laws—Foreclosure—Recording and indexing—Trustee and beneficiary, separate entities, exception. Except as provided in this chapter, a deed of trust is subject to all laws relating to mortgages on real property. A deed conveying real property to a trustee in trust to secure the performance of an obligation of the grantor or another to the beneficiary may be foreclosed as in this chapter provided. The county auditor shall record such deed as a mortgage and shall index the name of the grantor as mortgagor and the names of the trustee and beneficiary as mortgagee. No person, corporation or association may be both trustee and beneficiary under the same deed of trust: *Provided*, That any agency of the United States government may be both trustee and beneficiary under the same deed of trust. [1985 c 193 § 2; 1975 1st ex.s. c 129 § 2; 1965 c 74 § 2.]

Application—1985 c 193: "This act shall apply to foreclosures commenced, by the giving of a notice of default pursuant to RCW 61.24.030(6), after July 28, 1985." [1985 c 193 § 5.]

61.24.030 Requisites to foreclosure. It shall be requisite, to foreclosure under this chapter:

(1) That the deed of trust contains a power of sale;

(2) That the deed of trust provides in its terms that the real property conveyed is not used principally for agricultural or farming purposes;

(3) That a default has occurred in the obligation secured or a covenant of the grantor, which by the terms of the deed of trust makes operative the power to sell;

(4) That no action commenced by the beneficiary of the deed of trust or the beneficiary's successor is now pending to seek satisfaction of an obligation secured by the deed of trust in any court by reason of the grantor's default on the obligation secured: *Provided*, That (a) the

seeking of the appointment of a receiver shall not constitute an action for purposes of this chapter; and (b) if a receiver is appointed, the grantor shall be entitled to any rents or profits derived from property subject to a homestead as defined in *RCW 6.12.010;

(5) That the deed of trust has been recorded in each county in which the land or some part thereof is situated; and

(6) That at least thirty days before notice of sale shall be recorded, transmitted or served, written notice of default shall be transmitted by the beneficiary or trustee to the grantor or any successor in interest at his last known address by both first class and either registered or certified mail, return receipt requested, and the beneficiary or trustee shall cause to be posted in a conspicuous place on said premises, a copy of said notice, or personally served on the grantor or his successor in interest. This notice shall contain the following information:

(a) A description of the property which is then subject to the deed of trust;

(b) The book and the page of the book of records wherein the deed of trust is recorded;

(c) That the beneficiary has declared the grantor or any successor in interest to be in default, and a concise statement of the default alleged;

(d) An itemized account of the amount or amounts in arrears if the default alleged is failure to make payments;

(e) An itemized account of all other specific charges, costs or fees that the grantor is or may be obliged to pay to reinstate the deed of trust before the recording of the notice of sale;

(f) The total of subparagraphs (d) and (e) of this subsection, designated clearly and conspicuously as the amount necessary to reinstate the note and deed of trust before the recording of the notice of sale;

(g) That failure to cure said alleged default within thirty days of the date of mailing of the notice, or if personally served, within thirty days of the date of personal service thereof, may lead to recordation, transmittal and publication of a notice of sale, and that the property described in subparagraph (a) of this subsection may be sold at public auction at a date no less than one hundred twenty days in the future;

(h) That the effect of the recordation, transmittal and publication of a notice of sale will be to (i) increase the costs and fees and (ii) publicize the default and advertise the grantor's property for sale;

(i) That the effect of the sale of the grantor's property by the trustee will be to deprive the grantor or his successor in interest and all those who hold by, through or under him of all their interest in the property described in subsection (a);

(j) That the grantor or any successor in interest has recourse to the courts pursuant to RCW 61.24.130 to contest the alleged default on any proper ground. [1987 c 352 § 2; 1985 c 193 § 3; 1975 1st ex.s. c 129 § 3; 1965 c 74 § 3.]

*Reviser's note: RCW 6.12.010 was recodified as RCW 6.13.010 pursuant to 1987 c 442 § 1121.

Application—1985 c 193: See note following RCW 61.24.020.

61.24.040 Foreclosure and sale—Notice of sale. A deed of trust foreclosed under this chapter shall be foreclosed as follows:

(1) At least ninety days before the sale, the trustee shall:

(a) Record a notice in the form described in RCW 61.24.040(1)(f) in the office of the auditor in each county in which the deed of trust is recorded;

(b) If their addresses are stated in a recorded instrument evidencing their interest, lien, or claim of lien, or an amendment thereto, or are otherwise known to the trustee, cause a copy of the notice of sale described in RCW 61.24.040(1)(f) to be transmitted by both first class and either certified or registered mail, return receipt requested, to the following persons or their legal representatives, if any, at such address:

(i) The grantor or the grantor's successor in interest;

(ii) The beneficiary of any deed of trust or mortgagee of any mortgage, or any person who has a lien or claim of lien against the property, that was recorded subsequent to the recordation of the deed of trust being foreclosed and before the recordation of the notice of sale;

(iii) The vendee in any real estate contract, the lessee in any lease or the holder of any conveyances of any interest or estate in any portion or all of the property described in such notice, if that contract, lease, or conveyance of such interest or estate, or a memorandum or other notice thereof, was recorded after the recordation of the deed of trust being foreclosed and before the recordation of the notice of sale;

(iv) The last holder of record of any other lien against or interest in the property that is subject to a subordination to the deed of trust being foreclosed that was recorded before the recordation of the notice of sale; and

(v) The last holder of record of the lien of any judgment subordinate to the deed of trust being foreclosed;

(c) Cause a copy of the notice of sale described in RCW 61.24.040(1)(f) to be transmitted by both first class and either certified or registered mail, return receipt requested, to the plaintiff or the plaintiff's attorney of record, in any court action to foreclose a lien or other encumbrance on all or any part of the property, provided a court action is pending and a lis pendens in connection therewith is recorded in the office of the auditor of any county in which all or part of the property is located on the date the notice is recorded;

(d) Cause a copy of the notice of sale described in RCW 61.24.040(1)(f) to be transmitted by both first class and either certified or registered mail, return receipt requested, to any person who has recorded a request for notice in accordance with RCW 61.24.045, at the address specified in such person's most recently recorded request for notice;

(e) Cause a copy of the notice of sale described in RCW 61.24.040(1)(f) to be posted in a conspicuous place on the property, or in lieu of posting, cause a copy of said notice to be served upon any occupant of the property;

(f) The notice shall be in substantially the following form:

NOTICE OF TRUSTEE'S SALE

I.

NOTICE IS HEREBY GIVEN that the undersigned Trustee will on the _____ day of _____, 19--, at the hour of _____ o'clock _____ M. at _____ [street address and location if inside a building] in the City of _____, State of Washington, sell at public auction to the highest and best bidder, payable at the time of sale, the following described real property, situated in the County(ies) of _____, State of Washington, to-wit:

which is subject to that certain Deed of Trust dated _____, 19--, recorded _____, 19--, under Auditor's File No. _____, records of _____ County, Washington, from _____, as Grantor, to _____, as Trustee, to secure an obligation in favor of _____, as Beneficiary, the beneficial interest in which was assigned by _____, under an Assignment recorded under Auditor's File No. _____ [Include recording information for all counties if the Deed of Trust is recorded in more than one county.]

II.

No action commenced by the Beneficiary of the Deed of Trust or the Beneficiary's successor is now pending to seek satisfaction of the obligation in any Court by reason of the Grantor's default on the obligation secured by the Deed of Trust.

III.

The default(s) for which this foreclosure is made is/are as follows:

[If default is for other than payment of money, set forth the particulars]

Failure to pay when due the following amounts which are now in arrears:

IV.

The sum owing on the obligation secured by the Deed of Trust is: Principal \$ _____, together with interest as provided in the note or other instrument secured from the _____ day of _____, 19--, and such other costs and fees as are due under the note or other instrument secured, and as are provided by statute.

V.

The above-described real property will be sold to satisfy the expense of sale and the obligation secured by the Deed of Trust as provided by statute. The sale will be made without warranty, express or implied, regarding title, possession, or encumbrances on the _____ day of _____, 19--. The default(s) referred to in paragraph III must be cured by the _____ day of _____, 19-- (11 days before the sale date), to cause a discontinuance of the sale. The sale will be discontinued and terminated if at any time on or before the _____ day of _____, 19--, (11 days before the sale date), the default(s) as set forth in paragraph III is/are cured and the Trustee's fees and costs are paid. The sale may be terminated any time after the _____ day of _____, 19-- (11 days before the sale date), and before the sale by the Grantor or the Grantor's successor in interest or the holder of any recorded junior lien or encumbrance paying the entire principal and interest secured by the Deed of Trust, plus costs, fees, and advances, if any, made pursuant to the terms of the obligation and/or Deed of Trust, and curing all other defaults.

VI.

A written notice of default was transmitted by the Beneficiary or Trustee to the Grantor or the Grantor's successor in interest at the following address:

by both first class and certified mail on the _____ day of _____, 19--, proof of which is in the possession of the Trustee; and the Grantor or the Grantor's successor in interest was personally served on the _____ day of _____, 19--, with said written notice of default or the written notice of default was posted in a conspicuous place on the real property described in paragraph I above, and the Trustee has possession of proof of such service or posting.

VII.

The Trustee whose name and address are set forth below will provide in writing to anyone requesting it, a statement of all costs and fees due at any time prior to the sale.

VIII.

The effect of the sale will be to deprive the Grantor and all those who hold by, through or under the Grantor of all their interest in the above-described property.

IX.

Anyone having any objection to the sale on any grounds whatsoever will be afforded an opportunity to be heard as to those objections if they bring a lawsuit to restrain the sale pursuant to RCW 61.24.130. Failure to bring such a lawsuit may result in a waiver of any proper grounds for invalidating the Trustee's sale.

 -----, Trustee
 ----- }
 ----- } Address
 ----- }
 ----- } Phone

[Individual or corporate acknowledgment]

(2) In addition to providing the grantor or the grantor's successor in interest the notice of sale described in RCW 61.24.040(1)(f), the trustee shall include with the copy of the notice which is mailed to the grantor or the grantor's successor in interest, a statement to the grantor or the grantor's successor in interest in substantially the following form:

NOTICE OF FORECLOSURE
Pursuant to the Revised Code of Washington,
Chapter 61.24 RCW

The attached Notice of Trustee's Sale is a consequence of default(s) in the obligation to -----, the Beneficiary of your Deed of Trust and owner of the obligation secured thereby. Unless the default(s) is/are cured, your property will be sold at auction on the ----- day of -----, 19--.

To cure the default(s), you must bring the payments current, cure any other defaults, and pay accrued late charges and other costs, advances, and attorneys' fees as set forth below by the ----- day of -----, 19-- (11 days before the sale date). To date, these arrears and costs are as follows:

	Currently due to reinstate on _____	Estimated amount that will be due to reinstate on _____ (11 days before the date set for sale)	
Delinquent payments from -----, 19--., in the amount of \$----- /mo.:	\$-----	\$-----	
Late charges in the total amount of:	\$-----	\$-----	
Attorneys' fees:	\$-----	Estimated Amounts \$-----	
Trustee's fee:	\$-----	\$-----	
Trustee's expenses: (Itemization)			
Title report	\$-----	\$-----	
Recording fees	\$-----	\$-----	
Service/Posting of Notices	\$-----	\$-----	

Postage/Copying expense	\$-----	\$-----
Publication	\$-----	\$-----
Telephone charges	\$-----	\$-----
Inspection fees	\$-----	\$-----
-----	\$-----	\$-----
-----	\$-----	\$-----
TOTALS	\$-----	\$-----

As to the defaults which do not involve payment of money to the Beneficiary of your Deed of Trust, you must cure each such default. Listed below are the defaults which do not involve payment of money to the Beneficiary of your Deed of Trust. Opposite each such listed default is a brief description of the action necessary to cure the default and a description of the documentation necessary to show that the default has been cured.

Default	Description of Action Required to Cure and Documentation Necessary to Show Cure
_____	_____
_____	_____
_____	_____
_____	_____

You may reinstate your Deed of Trust and the obligation secured thereby at any time up to and including the ----- day of -----, 19-- (11 days before the sale date), by paying the amount set forth or estimated above and by curing any other defaults described above. Of course, as time passes other payments may become due, and any further payments coming due and any additional late charges must be added to your reinstating payment. Any new defaults not involving payment of money that occur after the date of this notice must also be cured in order to effect reinstatement. In addition, because some of the charges can only be estimated at this time, and because the amount necessary to reinstate may include presently unknown expenditures required to preserve the property or to comply with state or local law, it will be necessary for you to contact the Trustee before the time you tender reinstatement so that you may be advised of the exact amount you will be required to pay. Tender of payment or performance must be made to: -----, whose address is -----, telephone () ----- AFTER THE ----- DAY OF -----, 19--., YOU MAY NOT REINSTATE YOUR DEED OF TRUST BY PAYING THE BACK PAYMENTS AND COSTS AND FEES AND CURING THE OTHER DEFAULTS AS OUTLINED ABOVE. In such a case, you will only be able to stop the sale by paying, before the sale, the total principal balance (\$-----) plus accrued interest, costs and advances, if any, made pursuant to the terms of the documents and by curing the other defaults as outlined above.

You may contest this default by initiating court action in the Superior Court of the county in which the sale is

to be held. In such action, you may raise any legitimate defenses you have to this default. A copy of your Deed of Trust and documents evidencing the obligation secured thereby are enclosed. You may wish to consult a lawyer. Legal action on your part may prevent or restrain the sale, but only if you persuade the court of the merits of your defense.

If you do not reinstate the secured obligation and your Deed of Trust in the manner set forth above, or if you do not succeed in restraining the sale by court action, your property will be sold to satisfy the obligations secured by your Deed of Trust. The effect of such sale will be to deprive you and all those who hold by, through or under you of all interest in the property;

(3) In addition, the trustee shall cause a copy of the notice of sale described in RCW 61.24.040(1)(f) (excluding the acknowledgment) to be published in a legal newspaper in each county in which the property or any part thereof is situated, once on or between the thirty-second and twenty-eighth day before the date of sale, and once on or between the eleventh and seventh day before the date of sale;

(4) On the date and at the time designated in the notice of sale, the trustee or its authorized agent shall sell the property at public auction to the highest bidder. The trustee may sell the property in gross or in parcels as the trustee shall deem most advantageous;

(5) The place of sale shall be at any designated public place within the county where the property is located and if the property is in more than one county, the sale may be in any of the counties where the property is located. The sale shall be on Friday, or if Friday is a legal holiday on the following Monday, and during the hours set by statute for the conduct of sales of real estate at execution;

(6) The trustee may for any cause the trustee deems advantageous, continue the sale for a period or periods not exceeding a total of one hundred twenty days by a public proclamation at the time and place fixed for sale in the notice of sale or, alternatively, by giving notice of the time and place of the postponed sale in the manner and to the persons specified in RCW 61.24.040(1) (b), (c), (d), and (e) and publishing a copy of such notice once in the newspaper(s) described in RCW 61.24.040(3), more than seven days before the date fixed for sale in the notice of sale. No other notice of the postponed sale need be given;

(7) The purchaser shall forthwith pay the price bid and on payment the trustee shall execute to the purchaser its deed; the deed shall recite the facts showing that the sale was conducted in compliance with all of the requirements of this chapter and of the deed of trust, which recital shall be prima facie evidence of such compliance and conclusive evidence thereof in favor of bona fide purchasers and encumbrancers for value, except that these recitals shall not affect the lien or interest of any person entitled to notice under RCW 61.24.040(1), if the trustee fails to give the required notice to such person. In such case, the lien or interest of such omitted person shall not be affected by the sale and such omitted person shall be treated as if such person was the holder

of the same lien or interest and was omitted as a party defendant in a judicial foreclosure proceeding;

(8) The sale as authorized under this chapter shall not take place less than one hundred ninety days from the date of default in any of the obligations secured. [1989 c 361 § 1; 1987 c 352 § 3; 1985 c 193 § 4; 1981 c 161 § 3; 1975 1st ex.s. c 129 § 4; 1967 c 30 § 1; 1965 c 74 § 4.]

Application—1985 c 193: See note following RCW 61.24.020.

61.24.045 Requests for notice of sale. Any person desiring a copy of any notice of sale described in RCW 61.24.040(1)(f) under any deed of trust, other than a person entitled to receive such a notice under RCW 61.24.040(1) (b) or (c), must, after the recordation of such deed of trust and before the recordation of the notice of sale, cause to be filed for record, in the office of the auditor of any county in which the deed of trust is recorded, a duly acknowledged request for a copy of any notice of sale. The request shall be signed and acknowledged by the person to be notified or such person's agent, attorney, or representative; shall set forth the name, mailing address, and telephone number, if any, of the person or persons to be notified; shall identify the deed of trust by stating the names of the parties thereto, the date the deed of trust was recorded, the legal description of the property encumbered by the deed of trust, and the auditor's file number under which the deed of trust is recorded; and shall be in substantially the following form:

REQUEST FOR NOTICE

Request is hereby made that a copy of any notice of sale described in RCW 61.24.040(1)(f) under that certain Deed of Trust dated _____, 19__, recorded on _____, 19__, under auditor's file No. _____, records of _____ County, Washington, from _____, as Grantor, to _____, as Trustee, to secure an obligation in favor of _____, as Beneficiary, and affecting the following described real property:

(Legal Description)

be sent by both first class and either registered or certified mail, return receipt requested, to _____ at _____

Dated this _____ day of _____, 19__

Signature

(Acknowledgment)

A request for notice under this section shall not affect title to, or be deemed notice to any person that any person has any right, title, interest in, lien or charge upon, the property described in the request for notice. [1985 c 193 § 1.]

Application—1985 c 193: See note following RCW 61.24.020.

61.24.050 Interest conveyed by trustee's deed—Redemption precluded after sale. The deed of the trustee, executed to the purchaser, shall convey the interest in the property which the grantor had or had the power to convey at the time of the execution by him of the deed

of trust, and such as he may have thereafter acquired. After sale, as in this chapter provided, no person shall have any right by statute or otherwise to redeem from the deed of trust or from the sale. [1965 c 74 § 5.]

61.24.060 Rights and remedies of trustee's sale purchaser. The purchaser at the trustee's sale shall be entitled to possession of the property on the twentieth day following the sale, as against the grantor under the deed of trust or anyone claiming through him, and shall have a right to the summary proceedings to obtain possession of real property provided in chapter 59.12 RCW. [1967 c 30 § 2; 1965 c 74 § 6.]

61.24.070 Trustee's sale, who may bid at. The trustee may not bid at the trustee's sale. Any other person including the beneficiary under the deed of trust may bid at the trustee's sale. [1965 c 74 § 7.]

61.24.080 Disposition of proceeds of sale. The trustee shall apply the proceeds of the sale as follows:

(1) To the expense of sale, including a reasonable charge by the trustee and by his attorney: *Provided*, That the aggregate of the charges by the trustee and his attorney, for their services in the sale, shall not exceed the amount which would, by the superior court of the county in which the trustee's sale occurred, have been deemed a reasonable attorney fee, had the trust deed been foreclosed as a mortgage in a noncontested action in the said court;

(2) To the obligation secured by the deed of trust; and

(3) The surplus, if any, less the clerk's filing fee shall be deposited together with a copy of the recorded notice of sale with the clerk of the superior court of the county in which the sale took place. The clerk shall index such funds under the name of the grantor as set out in the recorded notice. Upon depositing such surplus, the trustee shall be discharged from all further responsibilities therefor. Interests in, or liens or claims of liens against the property eliminated by sale under this section shall attach to such surplus in the order of priority that it had attached to the property. The clerk shall not disburse such surplus except upon order of the superior court of such county. [1981 c 161 § 5; 1967 c 30 § 3; 1965 c 74 § 8.]

61.24.090 Curing defaults before sale—Discontinuance of proceedings—Notice of discontinuance—Execution and acknowledgment. (1) At any time prior to the eleventh day before the date set by the trustee for the sale in the recorded notice of sale, or in the event the trustee continues the sale pursuant to RCW 61.24.040(6), at any time prior to the eleventh day before the actual sale, the grantor or his successor in interest, any beneficiary under a subordinate deed of trust or any person having a subordinate lien or encumbrance of record on the trust property or any part thereof, shall be entitled to cause a discontinuance of the sale proceedings by curing the default or defaults set forth in the notice, which in the case of a default by failure to pay, shall be by paying to the trustee:

(a) The entire amount then due under the terms of the deed of trust and the obligation secured thereby, other than such portion of the principal as would not then be due had no default occurred, and

(b) The expenses actually incurred by the trustee enforcing the terms of the note and deed of trust, including a reasonable trustee's fee, together with the trustee's reasonable attorney's fees, together with costs of recording the notice of discontinuance of notice of trustee's sale.

(2) Any person entitled to cause a discontinuance of the sale proceedings shall have the right, before or after reinstatement, to request any court, excluding a small claims court, for disputes within the jurisdictional limits of that court, to determine the reasonableness of any fees demanded or paid as a condition to reinstatement. The court shall make such determination as it deems appropriate, which may include an award to the prevailing party of its costs and reasonable attorneys' fees, and render judgment accordingly. An action to determine fees shall not forestall any sale or affect its validity.

(3) Upon receipt of such payment the proceedings shall be discontinued, the deed of trust shall be reinstated and the obligation shall remain as though no acceleration had taken place.

(4) In the case of a default which is occasioned by other than failure to make payments, the person or persons causing the said default shall pay the expenses incurred by the trustee and the trustee's fees as set forth in subsection (1)(b) of this section.

(5) Any person having a subordinate lien of record on the trust property and who has cured the default or defaults pursuant to this section shall thereafter have included in his lien all payments made to cure any defaults, including interest thereon at eight percent per annum, payments made for trustees' costs and fees incurred as authorized herein, and his reasonable attorney's fees and costs incurred resulting from any judicial action commenced to enforce his rights to advances under this section.

(6) If the default is cured and the obligation and the deed of trust reinstated in the manner hereinabove provided, the trustee shall properly execute, acknowledge and cause to be recorded a notice of discontinuance of trustee's sale under such deed of trust. A notice of discontinuance of trustee's sale when so executed and acknowledged is entitled to be recorded and shall be sufficient if it sets forth a record of the deed of trust and the auditor's file number under which the deed of trust is recorded, and a reference to the notice of sale and the auditor's file number under which the notice of sale is recorded, and a notice that such sale is discontinued. [1987 c 352 § 4; 1981 c 161 § 6; 1975 1st ex.s. c 129 § 5; 1967 c 30 § 4; 1965 c 74 § 9.]

61.24.100 Deficiency decree precluded in foreclosure under this chapter—Enforcement of security and obligation where foreclosure not made under this chapter. Foreclosure, as in this chapter provided, shall satisfy the obligation secured by the deed of trust foreclosed, regardless of the sale price or fair value, and no deficiency

decree or other judgment shall thereafter be obtained on such obligation. Where foreclosure is not made under this chapter, the beneficiary shall not be precluded from enforcing the security as a mortgage nor from enforcing the obligation by any means provided by law. [1965 c 74 § 10.]

61.24.110 Reconveyance by trustee. The trustee shall reconvey all or any part of the property covered by the deed of trust to the person entitled thereto on written request of the beneficiary, or upon satisfaction of the obligation secured and written request for reconveyance made by the beneficiary or the person entitled thereto. [1981 c 161 § 7; 1965 c 74 § 11.]

61.24.120 Other foreclosure provisions preserved. This chapter shall not supersede nor repeal any other provision now made by law for the foreclosure of security interests in real property. [1965 c 74 § 12.]

61.24.130 Restraint of sale by trustee—Conditions—Notice. (1) Nothing contained in this chapter shall prejudice the right of the grantor, the grantor's successor in interest, or any person who has an interest in, lien, or claim of lien against the property or some part thereof, to restrain, on any proper ground, a trustee's sale. The court shall require as a condition of granting the restraining order or injunction that the applicant pay to the clerk of the court the sums that would be due on the obligation secured by the deed of trust if the deed of trust was not being foreclosed:

(a) In the case of default in making the periodic payment of principal, interest, and reserves, such sums shall be the periodic payment of principal, interest, and reserves paid to the clerk of the court every thirty days.

(b) In the case of default in making payment of an obligation then fully payable by its terms, such sums shall be the amount of interest accruing monthly on said obligation at the nondefault rate, paid to the clerk of the court every thirty days.

In the case of default in performance of any nonmonetary obligation secured by the deed of trust, the court shall impose such conditions as it deems just.

In addition, the court may condition granting the restraining order or injunction upon the giving of security by the applicant, in such form and amount as the court deems proper, for the payment of such costs and damages, including attorneys' fees, as may be later found by the court to have been incurred or suffered by any party by reason of the restraining order or injunction. The court may consider, upon proper showing, the grantor's equity in the property in determining the amount of said security.

(2) No court may grant a restraining order or injunction to restrain a trustee's sale unless the person seeking the restraint gives five days notice to the trustee and the beneficiary of the time when, place where, and the judge before whom the application for the restraining order or injunction is to be made. No judge may act upon such application unless it is accompanied by proof, evidenced by return of a sheriff, the sheriff's deputy, or by any

person eighteen years of age or over who is competent to be a witness, that the notice has been served on the trustee.

(3) If the restraining order or injunction is dissolved after the date of the trustee's sale set forth in the notice as provided in RCW 61.24.040(1)(f) and after the period for continuing sale as allowed by RCW 61.24.040(6), the court granting such restraining order or injunction, or before whom the order or injunction is returnable, has the right to set a new sale date which shall be not less than forty-five days from the date of the order dissolving the restraining order. At least thirty days before the new sale date, the trustee shall:

(a) Comply with the requirements of RCW 61.24.040(1)(a) through (f); and

(b) Cause a copy of the notice of trustee's sale as provided in RCW 61.24.040(1)(f) to be published once weekly during the three weeks preceding the time of sale in a legal newspaper in each county in which the property or any part thereof is situated.

(4) If a trustee's sale has been stayed as a result of the filing of a petition in federal bankruptcy court and, after the period for continuing sale as allowed by RCW 61.24.040(6), an order is entered in federal bankruptcy court granting relief from the stay or closing or dismissing the case, or discharging the debtor with the effect of removing the stay, the trustee may set a new sale date which shall not be less than forty-five days after the date of the bankruptcy court's order. The trustee shall:

(a) Comply with the requirements of RCW 61.24.040(1)(a) through (f) at least thirty days before the new sale date; and

(b) Cause a copy of the notice as provided in RCW 61.24.040(1)(f) to be published in a legal newspaper in each county in which the property or any part thereof is situated, once between the thirty-second and twenty-eighth day before the sale and once between the eleventh and seventh day before the sale. [1987 c 352 § 5; 1981 c 161 § 8; 1975 1st ex.s. c 129 § 6; 1965 c 74 § 13.]

Chapter 61.30

REAL ESTATE CONTRACT FORFEITURES

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61.30.010 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Contract" or "real estate contract" means any written agreement for the sale of real property in which legal title to the property is retained by the seller as security for payment of the purchase price. "Contract" or "real estate contract" does not include earnest money agreements and options to purchase.

(2) "Cure the default" or "cure" means to perform the obligations under the contract which are described in the notice of intent to forfeit and which are in default, to pay the costs and attorneys' fees prescribed in the contract, and, subject to RCW 61.30.090(1), to make all payments of money required of the purchaser by the contract which first become due after the notice of intent to forfeit is given and are due when cure is tendered.

(3) "Declaration of forfeiture" means the notice described in RCW 61.30.070(2).

(4) "Forfeit" or "forfeiture" means to cancel the purchaser's rights under a real estate contract and to terminate all right, title, and interest in the property of the purchaser and of persons claiming by or through the purchaser, all to the extent provided in this chapter, because of a breach of one or more of the purchaser's obligations under the contract. A judicial foreclosure of a real estate contract as a mortgage shall not be considered a forfeiture under this chapter.

(5) "Notice of intent to forfeit" means the notice described in RCW 61.30.070(1).

(6) "Property" means that portion of the real property which is the subject of a real estate contract, legal title to which has not been conveyed to the purchaser.

(7) "Purchaser" means the person denominated in a real estate contract as the purchaser of the property or an interest therein or, if applicable, the purchaser's successors or assigns in interest to all or any part of the property, whether by voluntary or involuntary transfer or transfer by operation of law. If the purchaser's interest in the property is subject to a proceeding in probate, a receivership, a guardianship, or a proceeding under the federal bankruptcy laws, "purchaser" means the personal representative, the receiver, the guardian, the trustee in bankruptcy, or the debtor in possession, as applicable. However, "purchaser" does not include an assignee or any other person whose only interest or claim is in the nature of a lien or other security interest.

(8) "Required notices" means the notice of intent to forfeit and the declaration of forfeiture.

(9) "Seller" means the person denominated in a real estate contract as the seller of the property or an interest therein or, if applicable, the seller's successors or assigns

in interest to all or any part of the property or the contract, whether by voluntary or involuntary transfer or transfer by operation of law. If the seller's interest in the property is subject to a proceeding in probate, a receivership, a guardianship, or a proceeding under the federal bankruptcy laws, "seller" means the personal representative, the receiver, the guardian, the trustee in bankruptcy, or the debtor in possession, as applicable. However, "seller" does not include an assignee or any other person whose only interest or claim is in the nature of a lien or other security interest and does not include an assignee who has not been conveyed legal title to any portion of the property.

(10) "Time for cure" means the time provided in RCW 61.30.070(1)(e) as it may be extended as provided in this chapter or any longer period agreed to by the seller. [1988 c 86 § 1; 1985 c 237 § 1.]

61.30.020 Forfeiture or foreclosure—Notices—Other remedies not limited. (1) A purchaser's rights under a real estate contract shall not be forfeited except as provided in this chapter. Forfeiture shall be accomplished by giving and recording the required notices as specified in this chapter. This chapter shall not be construed as prohibiting or limiting any remedy which is not governed or restricted by this chapter and which is otherwise available to the seller or the purchaser. At the seller's option, a real estate contract may be foreclosed in the manner and subject to the law applicable to the foreclosure of a mortgage in this state.

(2) The seller's commencement of an action to foreclose the contract as a mortgage shall not constitute an election of remedies so as to bar the seller from forfeiting the contract under this chapter for the same or different breach. Similarly, the seller's commencement of a forfeiture under this chapter shall not constitute an election of remedies so as to bar the seller from foreclosing the contract as a mortgage. However, the seller shall not maintain concurrently an action to foreclose the contract and a forfeiture under this chapter whether for the same or different breaches. If, after giving or recording a notice of intent to forfeit, the seller elects to foreclose the contract as a mortgage, the seller shall record a notice cancelling the notice of intent to forfeit which refers to the notice of intent by its recording number. Not later than ten days after the notice of cancellation is recorded, the seller shall mail or serve copies of the notice of cancellation to each person who was mailed or served the notice of intent to forfeit, and shall post it in a conspicuous place on the property if the notice of intent was posted. The seller need not publish the notice of cancellation. [1988 c 86 § 2; 1985 c 237 § 2.]

61.30.030 Conditions to forfeiture. It shall be a condition to forfeiture of a real estate contract that:

(1) The contract being forfeited, or a memorandum thereof, is recorded in each county in which any of the property is located;

(2) A breach has occurred in one or more of the purchaser's obligations under the contract and the contract

provides that as a result of such breach the seller is entitled to forfeit the contract; and

(3) Except for petitions for the appointment of a receiver, no arbitration or judicial action is pending on a claim made by the seller against the purchaser on any obligation secured by the contract. [1988 c 86 § 3; 1985 c 237 § 3.]

61.30.040 Notices—Persons required to be notified—Recording. (1) The required notices shall be given to each purchaser last known to the seller or the seller's agent or attorney giving the notice and to each person who, at the time the notice of intent to forfeit is recorded, is the last holder of record of a purchaser's interest. Failure to comply with this subsection in any material respect shall render any purported forfeiture based upon the required notices void.

(2) The required notices shall also be given to each of the following persons whose interest the seller desires to forfeit if the default is not cured:

(a) The holders and claimants of record at the time the notice of intent to forfeit is recorded of any interests in or liens upon all or any portion of the property derived through the purchaser or which are otherwise subordinate to the seller's interest in the property; and

(b) All persons occupying the property at the time the notice of intent to forfeit is recorded and whose identities are reasonably discoverable by the seller.

Any forfeiture based upon the required notices shall be void as to each person described in this subsection (2) to whom the notices are not given in accordance with this chapter in any material respect.

(3) The required notices shall also be given to each person who at the time the notice of intent to forfeit is recorded has recorded in each county in which any of the property is located a request to receive the required notices, which request (a) identifies the contract being forfeited by reference to its date, the original parties thereto, and a legal description of the property; (b) contains the name and address for notice of the person making the request; and (c) is executed and acknowledged by the requesting person.

(4) Except as otherwise provided in the contract or other agreement with the seller and except as otherwise provided in this section, the seller shall not be required to give any required notice to any person whose interest in the property is not of record or if such interest is first acquired after the time the notice of intent to forfeit is recorded. Subject to subsection (5) of this section, all such persons hold their interest subject to the potential forfeiture described in the recorded notice of intent to forfeit and shall be bound by any forfeiture made pursuant thereto as permitted in this chapter as if the required notices were given to them.

(5) Before the commencement of the time for cure, the notice of intent to forfeit shall be recorded in each county in which any of the property is located. The notice of intent to forfeit shall become ineffective for all purposes one year after the expiration of the time for cure stated in such notice or in any recorded extension

thereof executed by the seller or the seller's agent or attorney unless, prior to the end of that year, the declaration of forfeiture based on such notice or a lis pendens incident to an action under this chapter is recorded. The time for cure may not be extended in increments of more than one year each, and extensions stated to be for more than one year or for an unstated or indefinite period shall be deemed to be for one year for the purposes of this subsection. Recording a lis pendens when a notice of intent to forfeit is effective shall cause such notice to continue in effect until the later of one year after the expiration of the time for cure or thirty days after final disposition of the action evidenced by the lis pendens.

(6) The declaration of forfeiture shall be recorded in each county in which any of the property is located after the time for cure has expired without the default having been cured. [1988 c 86 § 4; 1985 c 237 § 4.]

61.30.050 Notices—Form—Method of service.

(1) The required notices shall be given in writing. The notice of intent to forfeit shall be signed by the seller or by the seller's agent or attorney. The declaration of forfeiture shall be signed and sworn to by the seller. The seller may execute the declaration of forfeiture through an agent under a power of attorney which is of record at the time the declaration of forfeiture is recorded, but in so doing the seller shall be subject to liability under RCW 61.30.150 to the same extent as if the seller had personally signed and sworn to the declaration.

(2) The required notices shall be given:

(a) In any manner provided in the contract or other agreement with the seller; and

(b) By either personal service in the manner required for civil actions in any county in which any of the property is located or by mailing a copy to the person for whom it is intended, postage prepaid, by certified or registered mail with return receipt requested and by regular first class mail, addressed to the person at the person's address last known to the seller or the seller's agent or attorney giving the notice. For the purposes of this subsection, the seller or the seller's agent or attorney giving the notice may rely upon the address stated in any recorded document which entitles a person to receive the required notices unless the seller or the seller's agent or attorney giving the notice knows such address to be incorrect.

If the address or identity of a person for whom the required notices are intended is not known to or reasonably discoverable at the time the notice is given by the seller or the seller's agent or attorney giving the notice, the required notices shall be given to such person by posting a copy in a conspicuous place on the property and publishing a copy thereof. The notice shall be directed to the attention of all persons for whom the notice is intended, including the names of the persons, if so known or reasonably discoverable. The publication shall be made in a newspaper approved pursuant to RCW 65-.16.040 and published in each county in which any of the property is located or, if no approved newspaper is published in the county, in an adjoining county, and if

no approved newspaper is published in the county or adjoining county, then in an approved newspaper published in the capital of the state. The notice of intent to forfeit shall be published once a week for two consecutive weeks. The declaration of forfeiture shall be published once. [1988 c 86 § 5; 1985 c 237 § 5.]

61.30.060 Notice of intent to forfeit—Declaration of forfeiture—Time limitations. The notice of intent to forfeit shall be given not later than ten days after it is recorded. The declaration of forfeiture shall be given not later than three days after it is recorded. Either required notice may be given before it is recorded, but the declaration of forfeiture may not be given before the time for cure has expired. Notices which are served or mailed are given for the purposes of this section when served or mailed. Notices which must be posted and published as provided in RCW 61.30.050(2)(b) are given for the purposes of this section when both posted and first published. [1988 c 86 § 6; 1985 c 237 § 6.]

61.30.070 Notice of intent to forfeit—Declaration of forfeiture—Contents. (1) The notice of intent to forfeit shall contain the following:

(a) The name, address, and telephone number of the seller and, if any, the seller's agent or attorney giving the notice;

(b) A description of the contract, including the names of the original parties to the contract, the date of the contract, and the recording number of the contract or memorandum thereof;

(c) A legal description of the property;

(d) A description of each default under the contract on which the notice is based;

(e) A statement that the contract will be forfeited if all defaults are not cured by a date stated in the notice which is not less than ninety days after the notice of intent to forfeit is recorded or any longer period specified in the contract or other agreement with the seller;

(f) A statement of the effect of forfeiture, including, to the extent applicable that: (i) All right, title, and interest in the property of the purchaser and, to the extent elected by the seller, of all persons claiming through the purchaser or whose interests are otherwise subordinate to the seller's interest in the property shall be terminated; (ii) the purchaser's rights under the contract shall be canceled; (iii) all sums previously paid under the contract shall belong to and be retained by the seller or other person to whom paid and entitled thereto; (iv) all of the purchaser's rights in all improvements made to the property and in unharvested crops and timber thereon shall belong to the seller; and (v) the purchaser and all other persons occupying the property whose interests are forfeited shall be required to surrender possession of the property, improvements, and unharvested crops and timber to the seller ten days after the declaration of forfeiture is recorded;

(g) An itemized statement or, to the extent not known at the time the notice of intent to forfeit is given or recorded, a reasonable estimate of all payments of money in default and, for defaults not involving the failure to

pay money, a statement of the action required to cure the default;

(h) An itemized statement of all other payments, charges, fees, and costs, if any, or, to the extent not known at the time the notice of intent is given or recorded, a reasonable estimate thereof, that are or may be required to cure the defaults;

(i) A statement that the person to whom the notice is given may have the right to contest the forfeiture, or to seek an extension of time to cure the default if the default does not involve a failure to pay money, or both, by commencing a court action by filing and serving the summons and complaint before the declaration of forfeiture is recorded;

(j) A statement that the person to whom the notice is given may have the right to request a court to order a public sale of the property; that such public sale will be ordered only if the court finds that the fair market value of the property substantially exceeds the debt owed under the contract and any other liens having priority over the seller's interest in the property; that the excess, if any, of the highest bid at the sale over the debt owed under the contract will be applied to the liens eliminated by the sale and the balance, if any, paid to the purchaser; that the court will require the person who requests the sale to deposit the anticipated sale costs with the clerk of the court; and that any action to obtain an order for public sale must be commenced by filing and serving the summons and complaint before the declaration of forfeiture is recorded;

(k) A statement that the seller is not required to give any person any other notice of default before the declaration which completes the forfeiture is given, or, if the contract or other agreement requires such notice, the identification of such notice and a statement of to whom, when, and how it is required to be given; and

(l) Any additional information required by the contract or other agreement with the seller.

(2) If the default is not cured before the time for cure has expired, the seller may forfeit the contract by giving and recording a declaration of forfeiture which contains the following:

(a) The name, address, and telephone number of the seller;

(b) A description of the contract, including the names of the original parties to the contract, the date of the contract, and the recording number of the contract or memorandum thereof;

(c) A legal description of the property;

(d) To the extent applicable, a statement that all the purchaser's rights under the contract are canceled and all right, title, and interest in the property of the purchaser and of all persons claiming an interest in all or any portion of the property through the purchaser or which is otherwise subordinate to the seller's interest in the property are terminated except to the extent otherwise stated in the declaration of forfeiture as to persons or claims named, identified, or described;

(e) To the extent applicable, a statement that all persons whose rights in the property have been terminated and who are in or come into possession of any portion of

the property (including improvements and unharvested crops and timber) are required to surrender such possession to the seller not later than a specified date, which shall not be less than ten days after the declaration of forfeiture is recorded or such longer period provided in the contract or other agreement with the seller;

(f) A statement that the forfeiture was conducted in compliance with all requirements of this chapter in all material respects and applicable provisions of the contract;

(g) A statement that the purchaser and any person claiming any interest in the purchaser's rights under the contract or in the property who are given the notice of intent to forfeit and the declaration of forfeiture have the right to commence a court action to set the forfeiture aside by filing and serving the summons and complaint within sixty days after the date the declaration of forfeiture is recorded if the seller did not have the right to forfeit the contract or fails to comply with this chapter in any material respect; and

(h) Any additional information required by the contract or other agreement with the seller.

(3) The seller may include in either or both required notices any additional information the seller elects to include which is consistent with this chapter and with the contract or other agreement with the seller. [1988 c 86 § 7; 1985 c 237 § 7.]

61.30.080 Failure to give required notices. (1) If the seller fails to give any required notice within the time required by this chapter, the seller may record and give a subsequent notice of intent to forfeit or declaration of forfeiture, as applicable. Any such subsequent notice shall (a) include revised dates and information to the extent necessary to conform to this chapter as if the superseded notice had not been given or recorded; (b) state that it supersedes the notice being replaced; and (c) render void the previous notice which it replaces.

(2) If the seller fails to give the notice of intent to forfeit to all persons whose interests the seller desires to forfeit or to record such notice as required by this chapter, and if the declaration of forfeiture has not been given or recorded, the seller may give and record a new set of notices as required by this chapter. However, the new notices shall contain a statement that they supersede and replace the earlier notices and shall provide a new time for cure.

(3) If the seller fails to give any required notice to all persons whose interests the seller desires to forfeit or to record such notice as required by this chapter, and if the declaration of forfeiture has been given or recorded, the seller may apply for a court order setting aside the forfeiture previously made, and to the extent such order is entered, the seller may proceed as if no forfeiture had been commenced. However, no such order may be obtained without joinder and service upon the persons who were given the required notices and all other persons whose interests the seller desires to forfeit. [1988 c 86 § 8; 1985 c 237 § 8.]

61.30.090 Acceleration of payments—Cure of default. (1) Even if the contract contains a provision allowing the seller, because of a default in the purchaser's obligations under the contract, to accelerate the due date of some or all payments to be made or other obligations to be performed by the purchaser under the contract, the seller may not require payment of the accelerated payments or performance of the accelerated obligations as a condition to curing the default in order to avoid forfeiture except to the extent the payments or performance would be due without the acceleration. This subsection shall not apply to an acceleration because of a transfer, encumbrance, or conveyance of any or all of the purchaser's interest in any portion or all of the property if the contract being forfeited contains a provision accelerating the unpaid balance because of such transfer, encumbrance, or conveyance and such provision is enforceable under applicable law.

(2) All persons described in RCW 61.30.040 (1) and (2), regardless of whether given the notice of intent to forfeit, and any guarantor of or any surety for the purchaser's performance may cure the default. These persons may cure the default at any time before expiration of the time for cure and may act alone or in any combination. Any person having a lien of record against the property which would be eliminated in whole or in part by the forfeiture and who cures the purchaser's default pursuant to this section shall have included in its lien all payments made to effect such cure, including interest thereon at the rate specified in or otherwise applicable to the obligations secured by such lien.

(3) The seller may, but shall not be required to, accept tender of cure after the expiration of the time for cure and before the declaration of forfeiture is recorded. The seller may accept a partial cure. If the tender of such partial cure to the seller or the seller's agent or attorney is not accompanied by a written statement of the person making the tender acknowledging that such payment or other action does not fully cure the default, the seller shall notify such person in writing of the insufficiency and the amount or character thereof, which notice shall include an offer to refund any partial tender of money paid to the seller or the seller's agent or attorney upon written request. The notice of insufficiency may state that, by statute, such request must be made by a specified date, which date may not be less than ninety days after the notice of insufficiency is served or mailed. The request must be made in writing and delivered or mailed to the seller or the person who gave the notice of insufficiency or the notice of intent to forfeit and, if the notice of insufficiency properly specifies a date by which such request must be made, by the date so specified. The seller shall refund such amount promptly following receipt of such written request, if timely made, and the seller shall be liable to the person to whom such amount is due for that person's reasonable attorneys' fees and other costs incurred in an action brought to recover such amount in which such refund or any portion thereof is found to have been improperly withheld. If the seller's written notice of insufficiency is not given to the person making the tender at least ten days before the expiration

of the time for cure, then regardless of whether the tender is accepted the time for cure shall be extended for ten days from the date the seller's written notice of insufficiency is given. The seller shall not be required to extend the time for cure more than once even though more than one insufficient tender is made.

(4) Except as provided in this subsection, a timely tender of cure shall reinstate the contract. If a default that entitles the seller to forfeit the contract is not described in a notice of intent to forfeit previously given and the seller gives a notice of intent to forfeit concerning that default, timely cure of a default described in a previous notice of intent to forfeit shall not limit the effect of the subsequent notice.

(5) If the default is cured and a fulfillment deed is not given to the purchaser, the seller or the seller's agent or attorney shall sign, acknowledge, record, and deliver or mail to the purchaser and, if different, the person who made the tender a written statement that the contract is no longer subject to forfeiture under the notice of intent to forfeit previously given, referring to the notice of intent to forfeit by its recording number. A seller who fails within thirty days of written demand to give and record the statement required by this subsection, if such demand specifies the penalties in this subsection, is liable to the person who cured the default for the greater of five hundred dollars or actual damages, if any, and for reasonable attorneys' fees and other costs incurred in an action to recover such amount or damages.

(6) Any person curing or intending to cure any default shall have the right to request any court of competent jurisdiction to determine the reasonableness of any attorneys' fees which are included in the amount required to cure, and in making such determination the court may award the prevailing party its reasonable attorneys' fees and other costs incurred in the action. An action under this subsection shall not forestall any forfeiture or affect its validity. [1988 c 86 § 9; 1985 c 237 § 9.]

61.30.100 Effect of forfeiture. (1) The recorded and sworn declaration of forfeiture shall be prima facie evidence of the extent of the forfeiture and compliance with this chapter and, except as otherwise provided in RCW 61.30.040 (1) and (2), conclusive evidence thereof in favor of bona fide purchasers and encumbrancers for value.

(2) Except as otherwise provided in this chapter or the contract or other agreement with the seller, forfeiture of a contract under this chapter shall have the following effects:

(a) The purchaser, and all persons claiming through the purchaser or whose interests are otherwise subordinate to the seller's interest in the property who were given the required notices pursuant to this chapter, shall have no further rights in the contract or the property and no person shall have any right, by statute or otherwise, to redeem the property;

(b) All sums previously paid under the contract by or on behalf of the purchaser shall belong to and be retained by the seller or other person to whom paid; and

(c) All of the purchaser's rights in all improvements made to the property and in unharvested crops and timber thereon at the time the declaration of forfeiture is recorded shall be forfeited to the seller.

(3) The seller shall be entitled to possession of the property ten days after the declaration of forfeiture is recorded or any longer period provided in the contract or any other agreement with the seller. The seller may proceed under chapter 59.12 RCW to obtain such possession. Any person in possession who fails to surrender possession when required shall be liable to the seller for actual damages caused by such failure and for reasonable attorneys' fees and costs of the action.

(4) After the declaration of forfeiture is recorded, the seller shall have no claim against and the purchaser shall not be liable to the seller for any portion of the purchase price unpaid or for any other breach of the purchaser's obligations under the contract, except for damages caused by waste to the property to the extent such waste results in the fair market value of the property on the date the declaration of forfeiture is recorded being less than the unpaid monetary obligations under the contract and all liens or contracts having priority over the seller's interest in the property. [1988 c 86 § 10; 1985 c 237 § 10.]

61.30.110 Forfeiture may be restrained or enjoined.

(1) The forfeiture may be restrained or enjoined or the time for cure may be extended by court order only as provided in this section. A certified copy of any restraining order or injunction may be recorded in each county in which any part of the property is located.

(2) Any person entitled to cure the default may bring or join in an action under this section. No other person may bring such an action without leave of court first given for good cause shown. Any such action shall be commenced by filing and serving the summons and complaint before the declaration of forfeiture is recorded. Service shall be made upon the seller or the seller's agent or attorney, if any, who gave the notice of intent to forfeit. Concurrently with commencement of the action, the person bringing the action shall record a lis pendens in each county in which any part of the property is located. A court may preliminarily enjoin the giving and recording of the declaration of forfeiture upon a prima facie showing of the grounds set forth in this section for a permanent injunction. If the court issues an order restraining or enjoining the forfeiture then until such order expires or is vacated or the court otherwise permits the seller to proceed with the forfeiture, the declaration of forfeiture shall not be given or recorded. However, the commencement of the action shall not of itself extend the time for cure.

(3) The forfeiture may be permanently enjoined only when the person bringing the action proves that there is no default as claimed in the notice of intent to forfeit or that the purchaser has a claim against the seller which releases, discharges, or excuses the default claimed in the notice of intent to forfeit, including by offset, or that there exists any material noncompliance with this chapter. The time for cure may be extended only when the

default alleged is other than the failure to pay money, the nature of the default is such that it cannot practically be cured within the time stated in the notice of intent to forfeit, action has been taken and is diligently being pursued which would cure the default, and any person entitled to cure is ready, willing, and able to timely perform all of the purchaser's other contract obligations. [1988 c 86 § 11; 1985 c 237 § 11.]

61.30.120 Sale of property in lieu of forfeiture. (1) Except for a sale ordered incident to foreclosure of the contract as a mortgage, a public sale of the property in lieu of the forfeiture may be ordered by the court only as provided in this section. Any person entitled to cure the default may bring or join in an action seeking an order of public sale in lieu of forfeiture. No other person may bring such an action without leave of court first given for good cause shown.

(2) An action under this section shall be commenced by filing and serving the summons and complaint before the declaration of forfeiture is recorded. Service shall be made upon the seller or the seller's agent or attorney, if any, who gave the notice of intent to forfeit. Concurrently with commencement of the action, the person bringing the action shall record a lis pendens in each county in which any part of the property is located. After the commencement of an action under this section and before its dismissal, the denial of a request for a public sale, or the vacation or expiration of an order for a public sale, the declaration of forfeiture shall not be given or recorded. However, commencement of the action shall not of itself extend the time for cure.

(3) If the court finds the then fair market value of the property substantially exceeds the unpaid and unperformed obligations secured by the contract and any other liens having priority over the seller's interest in the property, the court may require the property to be sold after the expiration of the time for cure in whole or in parcels to pay the costs of the sale and satisfy the amount the seller is entitled to be paid from the sale proceeds. Such sale shall be for cash to the highest bidder at a public sale by the sheriff at a courthouse of the county in which the property or any contiguous or non-contiguous portion thereof is located. The order requiring a public sale of the property shall specify the amount which the seller is entitled to be paid from the sale proceeds, which shall include all sums unpaid under the contract, irrespective of the due dates thereof, and such other costs and expenses to which the seller is entitled as a result of the purchaser's default under the contract, subject to any offsets or damages to which the purchaser is entitled. The order shall require any person requesting the sale to deposit with the clerk of the court, or such other person as the court may direct, the amount the court finds will be necessary to pay all of the costs and expenses of advertising and conducting the sale, including the notices to be given under subsections (4) and (5) of this section. The court shall require such deposit to be made within seven days, and if not so made the court

shall vacate its order of sale. Except as provided in subsections (6) and (8) of this section, the sale shall eliminate the interests of the persons given the notice of intent to forfeit to the same extent that such interests would have been eliminated had the seller's forfeiture been effected pursuant to such notice.

(4) The sheriff shall endorse upon the order the time and date when the sheriff receives it and shall forthwith post and publish the notice of sale specified in this subsection and sell the property, or so much thereof as may be necessary to discharge the amount the seller is entitled to be paid as specified in the court's order of sale. The notice of sale shall be printed or typed and contain the following information:

(a) A statement that the court has directed the sheriff to sell the property described in the notice of sale and the amount the seller is entitled to be paid from the sale proceeds as specified in the court's order;

(b) The caption, cause number, and court in which the order was entered;

(c) A legal description of the property to be sold, including the street address if any;

(d) The date and recording number of the contract;

(e) The scheduled date, time, and place of the sale;

(f) If the time for cure has not expired, the date it will expire and that the purchaser and other persons authorized to cure have the right to avoid the sale ordered by the court by curing the defaults specified in the notice of intent to forfeit before the time for cure expires;

(g) The right of the purchaser to avoid the sale ordered by the court by paying to the sheriff, at any time before the sale, in cash, the amount which the seller would be entitled to be paid from the proceeds of the sale, as specified in the court's order; and

(h) A statement that unless otherwise provided in the contract between seller and purchaser or other agreement with the seller, no person shall have any right to redeem the property sold at the sale.

The notice of sale shall be given by posting a copy thereof for a period of not less than four weeks prior to the date of sale in three public places in each county in which the property or any portion thereof is located, one of which shall be at the front door of the courthouse for the superior court of each such county, and one of which shall be placed in a conspicuous place on the property. Additionally, the notice of sale shall be published once a week for two consecutive weeks in the newspaper or newspapers prescribed for published notices in RCW 61.30.050(2)(b). The sale shall be scheduled to be held not more than seven days after the expiration of (i) the periods during which the notice of sale is required to be posted and published or (ii) the time for cure, whichever is later; however, the seller may, but shall not be required to, permit the sale to be scheduled for a later date. Upon the completion of the sale, the sheriff shall deliver a sheriff's deed to the property sold to the successful bidder.

(5) Within seven days following the date the notice of sale is posted on the property, the seller shall, by the means described in RCW 61.30.050(2), give a copy of

the notice of sale to all persons who were given the notice of intent to forfeit, except the seller need not post or publish the notice of sale.

(6) Any person may bid at the sale. If the purchaser is the successful bidder, the sale shall not affect any interest in the property which is subordinate to the contract. If the seller is the successful bidder, the seller may offset against the price bid the amount the seller is entitled to be paid as specified in the court's order. Proceeds of such sale shall be first applied to any costs and expenses of the deposit referred to in subsection (3) of this section, and next to the amount the seller is entitled to be paid as specified in the court's order. Any proceeds in excess of the amount necessary to pay such costs, expenses and amount, less the clerk's filing fee, shall be deposited with the clerk of the superior court of the county in which the sale took place, unless such surplus is less than the clerk's filing fee, in which event such excess shall be paid to the purchaser. The clerk shall index such funds under the name of the purchaser. Interests in or liens or claims of liens against the property eliminated by the sale shall attach to such surplus in the order of priority that they had attached to the property. The clerk shall not disburse the surplus except upon order of the superior court of such county, which order shall not be entered less than ten days following the deposit of the funds with the clerk.

(7) In addition to the right to cure the default within the time for cure, the purchaser shall have the right to satisfy its obligations under the contract and avoid any public sale ordered by the court by paying to the sheriff, at any time before the sale, in cash, the amount which the seller would be entitled to be paid from the proceeds of the sale as specified in the court's order plus the amount of any costs and expenses of the sale incurred by the sheriff and the seller in excess of the deposit referred to in subsection (3) of this section. If the purchaser satisfies its obligations as provided in this subsection, the seller shall deliver its fulfillment deed to the purchaser.

(8) Unless otherwise provided in the contract or other agreement with the seller, after the public sale provided in this section no person shall have any right, by statute or otherwise, to redeem the property and, subject to the rights of persons unaffected by the sale, the purchaser at the public sale shall be entitled to possession of the property ten days after the date of the sale and may proceed under chapter 59.12 RCW to obtain such possession.

(9) A public sale effected under this section shall satisfy the obligations secured by the contract, regardless of the sale price or fair value, and no deficiency decree or other judgment may thereafter be obtained on such obligations. [1988 c 86 § 12; 1985 c 237 § 12.]

61.30.130 Forfeiture may proceed upon expiration of judicial order—Court may award attorneys' fees or impose conditions—Venue. (1) If an order restraining or enjoining the forfeiture or an order of sale under RCW 61.30.120 expires or is dissolved or vacated at least ten days before expiration of the time for cure, the

seller may proceed with the forfeiture under this chapter if the default is not cured at the end of the time for cure. If any such order expires or is dissolved or vacated or such other final disposition is made at any time later than stated in the first sentence of this subsection, the seller may proceed with the forfeiture under this chapter if the default is not cured, except the time for cure shall be extended for ten days after the final disposition or the expiration of, or entry of the order dissolving or vacating, the order.

(2) In actions under RCW 61.30.110 and 61.30.120, the court may award reasonable attorneys' fees and costs of the action to the prevailing party, except for such fees and costs incurred by a person requesting a public sale of the property.

(3) In actions under RCW 61.30.110 and 61.30.120, on the seller's motion the court may (a) require the person commencing the action to provide a bond or other security against all or a portion of the seller's damages and (b) impose other conditions, the failure of which may be cause for entry of an order dismissing the action and dissolving or vacating any restraining order, injunction, or other order previously entered.

(4) Actions under RCW 61.30.110, 61.30.120, or 61.30.140 shall be brought in the superior court of the county where the property is located or, if the property is located in more than one county, then in any of such counties, regardless of whether the property is contiguous or noncontiguous. [1988 c 86 § 13; 1985 c 237 § 13.]

61.30.140 Action to set aside forfeiture. (1) An action to set aside a forfeiture not otherwise void under RCW 61.30.040(1) may be commenced only after the declaration of forfeiture has been recorded and only as provided in this section, and regardless of whether an action was previously commenced under RCW 61.30.110.

(2) An action to set aside the forfeiture permitted by this section may be commenced only by a person entitled to be given the required notices under RCW 61.30.040 (1) and (2). For all persons given the required notices in accordance with this chapter, such an action shall be commenced by filing and serving the summons and complaint not later than sixty days after the declaration of forfeiture is recorded. Service shall be made upon the seller or the seller's attorney in fact, if any, who signed the declaration of forfeiture. Concurrently with commencement of the action, the person bringing the action shall record a *lis pendens* in each county in which any part of the property is located.

(3) The court may require that all payments specified in the notice of intent shall be paid to the clerk of the court as a condition to maintaining an action to set aside the forfeiture. All payments falling due during the pendency of the action shall be paid to the clerk of the court when due. These payments shall be calculated without regard to any acceleration provision in the contract (except an acceleration because of a transfer, encumbrance, or conveyance of the purchaser's interest in the property when otherwise enforceable) and without regard to the

seller's contention the contract has been duly forfeited and shall not include the seller's costs and fees of the forfeiture. The court may make orders regarding the investment or disbursement of these funds and may authorize payments to third parties instead of the clerk of the court.

(4) The forfeiture shall not be set aside unless (a) the rights of bona fide purchasers for value and of bona fide encumbrancers for value of the property would not thereby be adversely affected and (b) the person bringing the action establishes that the seller was not entitled to forfeit the contract at the time the seller purported to do so or that the seller did not materially comply with the requirements of this chapter.

(5) If the purchaser or other person commencing the action establishes a right to set aside the forfeiture, the court shall award the purchaser or other person commencing the action actual damages, if any, and may award the purchaser or other person its reasonable attorneys' fees and costs of the action. If the court finds that the forfeiture was conducted in compliance with this chapter, the court shall award the seller actual damages, if any, and may award the seller its reasonable attorneys' fees and costs of the action.

(6) The seller is entitled to possession of the property and to the rents, issues, and profits thereof during the pendency of an action to set aside the forfeiture: *Provided*, That the court may provide that possession of the property be delivered to or retained by the purchaser or some other person and may make other provisions for the rents, issues, and profits. [1988 c 86 § 14; 1985 c 237 § 14.]

61.30.150 False swearing—Penalty—Failure to comply with chapter—Liability. (1) Whoever knowingly swears falsely to any statement required by this chapter to be sworn is guilty of perjury and shall be liable for the statutory penalties therefor.

(2) A seller who records a declaration of forfeiture with actual knowledge or reason to know of a material failure to comply with any requirement of this chapter is liable to any person whose interest in the property or the contract, or both, has been forfeited without material compliance with this chapter for actual damages and actual attorneys' fees and costs of the action and, in the court's discretion, exemplary damages. [1988 c 86 § 15; 1985 c 237 § 15.]

61.30.160 Priority of actions under chapter. An action brought under RCW 61.30.110, 61.30.120, or 61.30.140 shall take precedence over all other civil actions except those described in RCW 59.12.130. [1985 c 237 § 16.]

61.30.900 Short title. This chapter may be known and cited as the real estate contract forfeiture act. [1985 c 237 § 17.]

61.30.905 Severability—1985 c 237. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or

the application of the provision to other persons or circumstances is not affected. [1985 c 237 § 19.]

61.30.910 Effective date—Application—1985 c 237. This act shall take effect January 1, 1986, and shall apply to all real estate contract forfeitures initiated on or after that date, regardless of when the real estate contract was made. [1985 c 237 § 21.]

61.30.911 Application—1988 c 86. This act applies to all real estate contract forfeitures initiated on or after June 9, 1988, regardless of when the real estate contract was made. [1988 c 86 § 16.]

Chapter 61.34 EQUITY SKIMMING

Sections

61.34.010	Legislative findings.
61.34.020	Definitions.
61.34.030	Criminal penalty.
61.34.040	Application of consumer protection act.
61.34.900	Severability—1988 c 33.

61.34.010 Legislative findings. The legislature finds that persons are engaging in patterns of conduct which defraud innocent homeowners of their equity interest or other value in residential dwellings under the guise of a purchase of the owner's residence but which is in fact a device to convert the owner's equity interest or other value in the residence to an equity skimmer, who fails to make payments, diverts the equity or other value to the skimmer's benefit, and leaves the innocent homeowner with a resulting financial loss or debt.

The legislature further finds this activity of equity skimming to be contrary to the public policy of this state and therefore establishes the crime of equity skimming to address this form of real estate fraud and abuse. [1988 c 33 § 1.]

61.34.020 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Pattern of equity skimming" means engaging in a least three acts of equity skimming within any three-year period, with at least one of the acts occurring after June 9, 1988.

(2) "Dwelling" means a single, duplex, triplex, or four-unit family residential building.

(3) "Person" includes any natural person, corporation, joint stock association, or unincorporated association.

(4) An "act of equity skimming" occurs when:

(a)(i) A person purchases a dwelling with the representation that the purchaser will pay for the dwelling by assuming the obligation to make payments on existing mortgages, deeds of trust, or real estate contracts secured by and pertaining to the dwelling, or by representing that such obligation will be assumed; and

(ii) The person fails to make payments on such mortgages, deeds of trust, or real estate contracts as the payments become due, within two years subsequent to the purchase; and

(iii) The person diverts value from the dwelling by either (A) applying or authorizing the application of rents from the dwelling for the person's own benefit or use, or (B) obtaining anything of value from the sale or lease with option to purchase of the dwelling for the person's own benefit or use, or (C) removing or obtaining appliances, fixtures, furnishings, or parts of such dwellings or appurtenances for the person's own benefit or use without replacing the removed items with items of equal or greater value; or

(b)(i) The person purchases a dwelling in a transaction in which all or part of the purchase price is financed by the seller and is (A) secured by a lien which is inferior in priority or subordinated to a lien placed on the dwelling by the purchaser, or (B) secured by a lien on other real or personal property, or (C) without any security; and

(ii) The person obtains a superior priority loan which either (A) is secured by a lien on the dwelling which is superior in priority to the lien of the seller, but not including a bona fide assumption by the purchaser of a loan existing prior to the time of purchase, or (B) creating any lien or encumbrance on the dwelling when the seller does not hold a lien on the dwelling; and

(iii) The person fails to make payments or defaults on the superior priority loan within two years subsequent to the purchase; and

(iv) The person diverts value from the dwelling by applying or authorizing any part of the proceeds from such superior priority loan for the person's own benefit or use. [1988 c 33 § 4.]

61.34.030 Criminal penalty. Any person who wilfully engages in a pattern of equity skimming is guilty of a class B felony under RCW 9A.20.021. Equity skimming shall be classified as a level II offense under chapter 9.94A RCW, and each act of equity skimming found beyond a reasonable doubt or admitted by the defendant upon a plea of guilty to be included in the pattern of equity skimming, shall be a separate current offense for the purpose of determining the sentence range for each current offense pursuant to RCW 9.94A.400(1)(a). [1988 c 33 § 2.]

61.34.040 Application of consumer protection act. In addition to the criminal penalties provided in RCW 61.34.030, the legislature finds and declares that equity skimming substantially affects the public interest. The commission by any person of an act of equity skimming or a pattern of equity skimming is an unfair or deceptive act or practice and unfair method of competition in the conduct of trade or commerce in violation of RCW 19.86.020. [1988 c 33 § 3.]

61.34.900 Severability—1988 c 33. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or

the application of the provision to other persons or circumstances is not affected. [1988 c 33 § 6.]

Title 62

NEGOTIABLE INSTRUMENTS

Reviser's note: Repealed and superseded by Title 62A RCW Uniform Commercial Code. A comparative table may be found in the Table of Disposition of Former RCW Sections.

Title 62A

UNIFORM COMMERCIAL CODE

Articles

- 1** **General provisions.**
- 2** **Sales.**
- 3** **Commercial paper.**
- 4** **Bank deposits and collections.**
- 5** **Letters of credit.**
- 6** **Bulk transfers.**
- 7** **Warehouse receipts, bills of lading and other documents of title.**
- 8** **Investment securities.**
- 9** **Secured transactions; sales of accounts, contract rights and chattel paper.**
- 10** **Effective date and repealer.**
- 11** **Effective date and transition provisions.**

Reviser's note: The Uniform Commercial Code was enacted by 1965 ex.s. c 157 and became effective at midnight on June 30, 1967. The 1972 amendments to the Uniform Commercial Code recommended by the National Conference of Commissioners on Uniform State Laws were enacted by 1981 c 41 and become effective at midnight on June 30, 1982.

The style of the numbers assigned in the Commercial Code differs from the standard RCW numbering system. The purpose of this variance is to enable ready comparison with the laws and annotations of other states which have adopted the Uniform Commercial Code and to conform to the recommendations of the National Conference of Commissioners on Uniform State Laws.

As enacted and amended by the Washington Legislature, the Uniform Commercial Code is divided into eleven Articles, which are subdivided into a number of Parts. The first section in Article 1, Part 1 of the Commercial Code is numbered 1-101, the second section in Article 1, Part 1 is numbered 1-102, the first section in Article 1, Part 2 is numbered 1-201, the first section in Article 2, Part 1 is numbered 2-101, etc.

We have assigned Title 62A RCW for the Uniform Commercial Code but have retained its uniform numbering; thus in this title, section 1-101 of the Commercial Code becomes RCW 62A.1-101; section 1-102 becomes RCW 62A.1-102; section 1-201 becomes RCW 62A.1-201; section 2-101 becomes RCW 62A.2-101, and so on.

Cashing checks, drafts, and state warrants for state officers and employees—Discretionary—Conditions—Procedure upon dishonor: RCW 43.08.180.

Immunity from implied warranties and civil liability relating to blood, plasma, and blood derivative—Scope—Effective date: RCW 70.54.120.

Materials specifically authorized to be printed and distributed by secretary of state: RCW 43.07.140.

Motor vehicle

certificate of ownership, transfer, perfection of security interest, etc.: Chapter 46.12 RCW.

express warranties: Chapter 19.118 RCW.

Uniform legislation commission: Chapter 43.56 RCW.

ARTICLE 1

GENERAL PROVISIONS

Sections

PART 1

SHORT TITLE, CONSTRUCTION, APPLICATION AND SUBJECT MATTER OF THE TITLE

- 62A.1-101 Short title.
- 62A.1-102 Purposes; rules of construction; variation by agreement.
- 62A.1-103 Supplementary general principles of law applicable.
- 62A.1-104 Construction against implicit repeal.
- 62A.1-105 Territorial application of the title; parties' power to choose applicable law.
- 62A.1-106 Remedies to be liberally administered.
- 62A.1-107 Waiver or renunciation of claim or right after breach.
- 62A.1-108 Severability.
- 62A.1-109 Section captions.
- 62A.1-110 Art dealers and artists—Contracts—Duties, etc.

PART 2

GENERAL DEFINITIONS AND PRINCIPLES OF INTERPRETATION

- 62A.1-201 General definitions.
- 62A.1-202 Prima facie evidence by third party documents.
- 62A.1-203 Obligation of good faith.
- 62A.1-204 Time; reasonable time; "seasonably".
- 62A.1-205 Course of dealing and usage of trade.
- 62A.1-206 Statute of frauds for kinds of personal property not otherwise covered.
- 62A.1-207 Performance or acceptance under reservation of rights.
- 62A.1-208 Option to accelerate at will.

PART 1

SHORT TITLE, CONSTRUCTION, APPLICATION AND SUBJECT MATTER OF THE TITLE

62A.1-101 Short title. This Title shall be known and may be cited as Uniform Commercial Code. [1965 ex.s. c 157 § 1-101.]

62A.1-102 Purposes; rules of construction; variation by agreement. (1) This Title shall be liberally construed and applied to promote its underlying purposes and policies.

(2) Underlying purposes and policies of this Title are

(a) to simplify, clarify and modernize the law governing commercial transactions;

(b) to permit the continued expansion of commercial practices through custom, usage and agreement of the parties;

(c) to make uniform the law among the various jurisdictions.

(3) The effect of provisions of this Title may be varied by agreement, except as otherwise provided in this Title and except that the obligations of good faith, diligence, reasonableness and care prescribed by this Title may not be disclaimed by agreement but the parties may by

agreement determine the standards by which the performance of such obligations is to be measured if such standards are not manifestly unreasonable.

(4) The presence in certain provisions of this Title of the words "unless otherwise agreed" or words of similar import does not imply that the effect of other provisions may not be varied by agreement under subsection (3).

(5) In this Title unless the context otherwise requires

(a) words in the singular number include the plural, and in the plural include the singular;

(b) words of the masculine gender include the feminine and the neuter, and when the sense so indicates words of the neuter gender may refer to any gender. [1965 ex.s. c 157 § 1-102. Cf. former RCW sections: (i) RCW 22.04.580; 1913 c 99 § 57; RRS § 3643. (ii) RCW 23.80.190; 1939 c 100 § 19; RRS § 3803-119. (iii) RCW 63.04.745; 1925 ex.s. c 142 § 74; RRS § 5836-74; formerly RCW 63.04.770. (iv) RCW 81.32-.521; 1961 c 14 § 81.32.521; prior: 1915 c 159 § 52; RRS § 3698; formerly RCW 81.32.610.]

Code to be liberally construed: RCW 1.12.010.

Number and gender—Interpretation: RCW 1.12.050.

62A.1-103 Supplementary general principles of law applicable. Unless displaced by the particular provisions of this Title, the principles of law and equity, including the law merchant and the law relative to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, or other validating or invalidating cause shall supplement its provisions. [1965 ex.s. c 157 § 1-103. Cf. former RCW sections: (i) RCW 22.04.570; 1913 c 99 § 56; RRS § 3642. (ii) RCW 23.80.180; 1939 c 100 § 18; RRS § 3803-118; formerly RCW 23.20.190. (iii) RCW 62.01.196; 1955 c 35 § 196; RRS § 3586. (iv) RCW 63.04.030; 1925 ex.s. c 142 § 2; RRS § 5836-2. (v) RCW 81.32.511; 1961 c 14 § 81.32.511; prior: 1915 c 159 § 51; RRS § 3697; formerly RCW 81.32.600.]

Application of common law: RCW 4.04.010.

62A.1-104 Construction against implicit repeal. This Title being a general act intended as a unified coverage of its subject matter, no part of it shall be deemed to be impliedly repealed by subsequent legislation if such construction can reasonably be avoided. [1965 ex.s. c 157 § 1-104.]

62A.1-105 Territorial application of the title; parties' power to choose applicable law. (1) Except as provided hereafter in this section, when a transaction bears a reasonable relation to this state and also to another state or nation the parties may agree that the law either of this state or of such other state or nation shall govern their rights and duties. Failing such agreement this Title applies to transactions bearing an appropriate relation to this state.

(2) Where one of the following provisions of this Title specifies the applicable law, that provision governs and a contrary agreement is effective only to the extent permitted by the law (including the conflict of laws rules) so specified:

Rights of creditors against sold goods. RCW 62A.2-402.

Applicability of the Article on Bank Deposits and Collections. RCW 62A.4-102.

Bulk transfers subject to the Article on Bulk Transfers. RCW 62A.6-102.

Applicability of the Article on Investment Securities. RCW 62A.8-106.

Perfection provisions of the Article on Secured Transactions. RCW 62A.9-103. [1981 c 41 § 1; 1965 ex.s. c 157 § 1-105.]

Effective date—1981 c 41: See RCW 62A.11-101.

62A.1-106 Remedies to be liberally administered. (1) The remedies provided by this Title shall be liberally administered to the end that the aggrieved party may be put in as good a position as if the other party had fully performed but neither consequential or special nor penal damages may be had except as specifically provided in this Title or by other rule of law.

(2) Any right or obligation declared by this Title is enforceable by action unless the provision declaring it specifies a different and limited effect. [1965 ex.s. c 157 § 1-106. Cf. former: RCW 63.04.730; 1925 ex.s. c 142 § 72; RRS § 5836-72.]

62A.1-107 Waiver or renunciation of claim or right after breach. Any claim or right arising out of an alleged breach can be discharged in whole or in part without consideration by a written waiver or renunciation signed and delivered by the aggrieved party. [1965 ex.s. c 157 § 1-107. Cf. former RCW sections: (i) RCW 62.01.119(3); 1955 c 35 § 62.01.119; prior: 1899 c 149 § 119; RRS § 3509. (ii) RCW 62.01.120(2); 1955 c 35 § 62.01.120; prior: 1899 c 149 § 120; RRS § 3510. (iii) RCW 62.01.122; 1955 c 35 § 62.01.122; prior: 1899 c 149 § 122; RRS § 3512.]

62A.1-108 Severability. If any provision or clause of this Title or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the Title which can be given effect without the invalid provision or application, and to this end the provisions of this Title are declared to be severable. [1965 ex.s. c 157 § 1-108. Cf. former RCW 62.98.030; 1955 c 35 § 62.98.030.]

62A.1-109 Section captions. Section captions are parts of this Title. [1965 ex.s. c 157 § 1-109. Cf. former RCW 62.98.020; 1955 c 35 § 62.98.020.]

Reviser's note: Sections in this title that were amended or added after the original enactment of this title by chapter 157, Laws of 1965 ex. sess. may have section captions supplied by the code reviser as authorized under RCW 1.08.015(2)(1).

62A.1-110 Art dealers and artists—Contracts—Duties, etc. Chapter 18.110 RCW shall control over any conflicting provision of this title. [1981 c 33 § 7.]

PART 2
GENERAL DEFINITIONS AND PRINCIPLES OF
INTERPRETATION

62A.1-201 General definitions. Subject to additional definitions contained in the subsequent Articles of this Title which are applicable to specific Articles or Parts thereof, and unless the context otherwise requires, in this Title:

(1) "Action" in the sense of a judicial proceeding includes recoupment, counterclaim, set-off, suit in equity and any other proceedings in which rights are determined.

(2) "Aggrieved party" means a party entitled to resort to a remedy.

(3) "Agreement" means the bargain of the parties in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance as provided in this Title (RCW 62A.1-205 and RCW 62A.2-208). Whether an agreement has legal consequences is determined by the provisions of this Title, if applicable; otherwise by the law of contracts (RCW 62A.1-103). (Compare "Contract".)

(4) "Bank" means any person engaged in the business of banking.

(5) "Bearer" means the person in possession of an instrument, document of title, or certificated security payable to bearer or indorsed in blank.

(6) "Bill of lading" means a document evidencing the receipt of goods for shipment issued by a person engaged in the business of transporting or forwarding goods, and includes an airbill. "Airbill" means a document serving for air transportation as a bill of lading does for marine or rail transportation, and includes an air consignment note or air waybill.

(7) "Branch" includes a separately incorporated foreign branch of a bank.

(8) "Burden of establishing" a fact means the burden of persuading the triers of fact that the existence of the fact is more probable than its non-existence.

(9) "Buyer in ordinary course of business" means a person who in good faith and without knowledge that the sale to him is in violation of the ownership rights or security interest of a third party in the goods buys in ordinary course from a person in the business of selling goods of that kind but does not include a pawnbroker. All persons who sell minerals or the like (including oil and gas) at wellhead or minehead shall be deemed to be persons in the business of selling goods of that kind. "Buying" may be for cash or by exchange of other property or on secured or unsecured credit and includes receiving goods or documents of title under a pre-existing contract for sale but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(10) "Conspicuous": A term or clause is conspicuous when it is so written that a reasonable person against whom it is to operate ought to have noticed it. A printed heading in capitals (as: NON-NEGOTIABLE BILL OF LADING) is conspicuous. Language in the body of

a form is "conspicuous" if it is in larger or other contrasting type or color. But in a telegram any stated term is "conspicuous". Whether a term or clause is "conspicuous" or not is for decision by the court.

(11) "Contract" means the total legal obligation which results from the parties' agreement as affected by this Title and any other applicable rules of law. (Compare "Agreement".)

(12) "Creditor" includes a general creditor, a secured creditor, a lien creditor and any representative of creditors, including an assignee for the benefit of creditors, a trustee in bankruptcy, a receiver in equity and an executor or administrator of an insolvent debtor's or assignor's estate.

(13) "Defendant" includes a person in the position of defendant in a cross-action or counterclaim.

(14) "Delivery" with respect to instruments, documents of title, chattel paper, or certificated securities means voluntary transfer of possession.

(15) "Document of title" includes bill of lading, dock warrant, dock receipt, warehouse receipt or order for the delivery of goods, and also any other document which in the regular course of business or financing is treated as adequately evidencing that the person in possession of it is entitled to receive, hold and dispose of the document and the goods it covers. To be a document of title a document must purport to be issued by or addressed to a bailee and purport to cover goods in the bailee's possession which are either identified or are fungible portions of an identified mass.

(16) "Fault" means wrongful act, omission or breach.

(17) "Fungible" with respect to goods or securities means goods or securities of which any unit is, by nature or usage of trade, the equivalent of any other like unit. Goods which are not fungible shall be deemed fungible for the purposes of this Title to the extent that under a particular agreement or document unlike units are treated as equivalents.

(18) "Genuine" means free of forgery or counterfeiting.

(19) "Good faith" means honesty in fact in the conduct or transaction concerned.

(20) "Holder" means a person who is in possession of a document of title or an instrument or a certificated investment security drawn, issued, or indorsed to him or to his order or to bearer or in blank.

(21) To "honor" is to pay or to accept and pay, or where a credit so engages to purchase or discount a draft complying with the terms of the credit.

(22) "Insolvency proceedings" includes any assignment for the benefit of creditors or other proceedings intended to liquidate or rehabilitate the estate of the person involved.

(23) A person is "insolvent" who either has ceased to pay his debts in the ordinary course of business or cannot pay his debts as they become due or is insolvent within the meaning of the federal bankruptcy law.

(24) "Money" means a medium of exchange authorized or adopted by a domestic or foreign government as a part of its currency.

(25) A person has "notice" of a fact when (a) he has actual knowledge of it; or

(b) he has received a notice or notification of it; or

(c) from all the facts and circumstances known to him at the time in question he has reason to know that it exists.

A person "knows" or has "knowledge" of a fact when he has actual knowledge of it. "Discover" or "learn" or a word or phrase of similar import refers to knowledge rather than to reason to know. The time and circumstances under which a notice or notification may cease to be effective are not determined by this Title.

(26) A person "notifies" or "gives" a notice or notification to another by taking such steps as may be reasonably required to inform the other in ordinary course whether or not such other actually comes to know of it. A person "receives" a notice or notification when

(a) it comes to his attention; or

(b) it is duly delivered at the place of business through which the contract was made or at any other place held out by him as the place for receipt of such communications.

(27) Notice, knowledge or a notice or notification received by an organization is effective for a particular transaction from the time when it is brought to the attention of the individual conducting that transaction, and in any event from the time when it would have been brought to his attention if the organization had exercised due diligence. An organization exercises due diligence if it maintains reasonable routines for communicating significant information to the person conducting the transaction and there is reasonable compliance with the routines. Due diligence does not require an individual acting for the organization to communicate information unless such communication is part of his regular duties or unless he has reason to know of the transaction and that the transaction would be materially affected by the information.

(28) "Organization" includes a corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, or any other legal or commercial entity.

(29) "Party", as distinct from "third party", means a person who has engaged in a transaction or made an agreement within this Title.

(30) "Person" includes an individual or an organization (See RCW 62A.1-102).

(31) "Presumption" or "presumed" means that the trier of fact must find the existence of the fact presumed unless and until evidence is introduced which would support a finding of its nonexistence.

(32) "Purchase" includes taking by sale, discount, negotiation, mortgage, pledge, lien, issue or re-issue, gift or any other voluntary transaction creating an interest in property.

(33) "Purchaser" means a person who takes by purchase.

(34) "Remedy" means any remedial right to which an aggrieved party is entitled with or without resort to a tribunal.

(35) "Representative" includes an agent, an officer of a corporation or association, and a trustee, executor or administrator of an estate, or any other person empowered to act for another.

(36) "Rights" includes remedies.

(37) "Security interest" means an interest in personal property or fixtures which secures payment or performance of an obligation. The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer (RCW 62A.2-401) is limited in effect to a reservation of a "security interest". The term also includes any interest of a buyer of accounts or chattel paper which is subject to Article 9. The special property interest of a buyer of goods on identification of such goods to a contract for sale under RCW 62A.2-401 is not a "security interest", but a buyer may also acquire a "security interest" by complying with Article 9. Unless a lease or consignment is intended as security, reservation of title thereunder is not a "security interest" but a consignment is in any event subject to the provisions on consignment sales (RCW 62A.2-326). Whether a lease is intended as security is to be determined by the facts of each case; however, (a) the inclusion of an option to purchase does not of itself make the lease one intended for security, and (b) an agreement that upon compliance with the terms of the lease the lessee shall become or has the option to become the owner of the property for no additional consideration or for a nominal consideration does make the lease one intended for security.

(38) "Send" in connection with any writing or notice means to deposit in the mail or deliver for transmission by any other usual means of communication with postage or cost of transmission provided for and properly addressed and in the case of an instrument to an address specified thereon or otherwise agreed, or if there be none to any address reasonable under the circumstances. The receipt of any writing or notice within the time at which it would have arrived if properly sent has the effect of a proper sending.

(39) "Signed" includes any symbol executed or adopted by a party with present intention to authenticate a writing.

(40) "Surety" includes guarantor.

(41) "Telegram" includes a message transmitted by radio, teletype, cable, any mechanical method of transmission, or the like.

(42) "Term" means that portion of an agreement which relates to a particular matter.

(43) "Unauthorized" signature or indorsement means one made without actual, implied or apparent authority and includes a forgery.

(44) "Value". Except as otherwise provided with respect to negotiable instruments and bank collections (RCW 62A.3-303, RCW 62A.4-208 and RCW 62A.4-209) a person gives "value" for rights if he acquires them

(a) in return for a binding commitment to extend credit or for the extension of immediately available credit whether or not drawn upon and whether or not a charge-back is provided for in the event of difficulties in collection; or

(b) as security for or in total or partial satisfaction of a preexisting claim; or

(c) by accepting delivery pursuant to a pre-existing contract for purchase; or

(d) generally, in return for any consideration sufficient to support a simple contract.

(45) "Warehouse receipt" means a receipt issued by a person engaged in the business of storing goods for hire.

(46) "Written" or "writing" includes printing, type-writing or any other intentional reduction to tangible form. [1986 c 35 § 53; 1981 c 41 § 2; 1965 ex.s. c 157 § 1-201.]

Reviser's note: This table indicates the latest comparable former Washington sources of the material contained in the various subsections of RCW 62A.1-201. Complete histories of the former sections are carried in the Revised Code of Washington Disposition Tables.

<i>Herein Subd.</i>	<i>Compare Former</i>
(1)	RCW:(i) 22.04.585(1) (ii) 62.01.191 (iii) 63.04.755(1) (iv) 81.32.531(1)
(2)	None
(3)	None
(4)	RCW:(i) 30.52.010 (ii) 62.01.191
(5)	RCW 62.01.191
(6)	RCW 81.32.011 ¹
(7)	None
(8)	None
(9)	RCW 61.20.010
(10)	None
(11)	RCW:(i) 63.04.040 (ii) 63.04.720
(12)	None
(13)	RCW 63.04.755(1)
(14)	RCW:(i) 22.04.585(1) (ii) 62.01.191 (iii) 63.04.755(1) (iv) 81.32.531(1)
(15)	RCW 63.04.755(1)
(16)	RCW 63.04.755(1)
(17)	RCW:(i) 22.04.585(1) (ii) 63.04.060 (iii) 63.04.070 (iv) 63.04.755(1)
(18)	None
(19)	RCW:(i) 22.04.585(2) (ii) 23.80.220(2) (iii) 63.04.755(2) (iv) 81.32.531(2)
(20)	RCW:(i) 22.04.585(1) (ii) 62.01.191 (iii) 81.32.531(1)
(21)	None
(22)	None
(23)	RCW 63.04.755(3)
(24)	RCW 62.01.006(5)
(25)	RCW 62.01.056
(26)	None
(27)	None
(28)	RCW:(i) 22.04.585(1) (ii) 23.80.220(1) (iii) 61.20.010 (iv) 62.01.191 (v) 63.04.755(1) (vi) 81.32.531(1)
(29)	None
(30)	RCW:(i) 22.04.585(1) (ii) 23.80.220(1)

<i>Herein Subd.</i>	<i>Compare Former</i>
	(iii) 61.20.010 (iv) 62.01.191 (v) 63.04.755(1) (vi) 81.32.531(1)
(31)	None
(32)	RCW:(i)22.04.585(1) (ii) 23.80.220(1) (iii) 61.20.010 (iv) 63.04.755(1) (v) 81.32.531(1)
(33)	RCW:(i) 22.04.585(1) (ii) 23.80.220(1) (iii) 61.20.010 (iv) 63.04.755(1) (v) 81.32.531(1)
(34)	None
(35)	None
(36)	None
(37)	RCW 61.20.010
(38)	None
(39)	None
(40)	None
(41)	None
(42)	None
(43)	None
(44)	RCW:(i) 22.04.585(1) (ii) 23.80.220(1) (iii) 61.20.010 (iv) 62.01.025 (v) 62.01.026 (vi) 62.01.027 (vii) 62.01.191 (viii) 63.04.755(1) (ix) 81.32.531(1)
(45)	RCW:(i) 22.04.020 (ii) 63.04.755(1)
(46)	RCW 62.01.191

¹The repeal of RCW sections 81.32.010 through 81.32.561 ". . . shall not affect the validity of sections 81.29.010 through 81.29.050, chapter 14, Laws of 1961 (RCW 81.29.010 through 81.29.050)." Section 10-102(a)(xvii), chapter 157, Laws of 1965 ex. sess.

Effective date—1981 c 41: See RCW 62A.11-101.

Definitions—Uniform Act for Simplification of Fiduciary Security Transfer: RCW 21.17.010.

62A.1-202 Prima facie evidence by third party documents. A document in due form purporting to be a bill of lading, policy or certificate of insurance, official weigher's or inspector's certificate, consular invoice, or any other document authorized or required by the contract to be issued by a third party shall be prima facie evidence of its own authenticity and genuineness and of the facts stated in the document by the third party. [1965 ex.s. c 157 § 1-202.]

Official documents as evidence: RCW 5.40.020, 5.40.030, 5.40.040.

Uniform Business Records as Evidence Act: Chapter 5.45 RCW.

62A.1-203 Obligation of good faith. Every contract or duty within this Title imposes an obligation of good faith in its performance or enforcement. [1965 ex.s. c 157 § 1-203.]

62A.1-204 Time; reasonable time; "seasonably." (1) Whenever this Title requires any action to be taken within a reasonable time, any time which is not manifestly unreasonable may be fixed by agreement.

(2) What is a reasonable time for taking any action depends on the nature, purpose and circumstances of such action.

(3) An action is taken "seasonably" when it is taken at or within the time agreed or if no time is agreed at or within a reasonable time. [1965 ex.s. c 157 § 1-204.]

62A.1-205 Course of dealing and usage of trade. (1) A course of dealing is a sequence of previous conduct between the parties to a particular transaction which is fairly to be regarded as establishing a common basis of understanding for interpreting their expressions and other conduct.

(2) A usage of trade is any practice or method of dealing having such regularity of observance in a place, vocation or trade as to justify an expectation that it will be observed with respect to the transaction in question. The existence and scope of such a usage are to be proved as facts. If it is established that such a usage is embodied in a written trade code or similar writing the interpretation of the writing is for the court.

(3) A course of dealing between parties and any usage of trade in the vocation or trade in which they are engaged or of which they are or should be aware give particular meaning to and supplement or qualify terms of an agreement.

(4) The express terms of an agreement and an applicable course of dealing or usage of trade shall be construed wherever reasonable as consistent with each other; but when such construction is unreasonable express terms control both course of dealing and usage of trade and course of dealing controls usage of trade.

(5) An applicable usage of trade in the place where any part of performance is to occur shall be used in interpreting the agreement as to that part of the performance.

(6) Evidence of a relevant usage of trade offered by one party is not admissible unless and until he has given the other party such notice as the court finds sufficient to prevent unfair surprise to the latter. [1965 ex.s. c 157 § 1-205. Cf. former RCW sections: (i) RCW 63.04.100(1); 1925 ex.s. c 142 § 9; RRS § 5836-9. (ii) RCW 63.04.160(5); 1925 ex.s. c 142 § 15; RRS § 5836-15. (iii) RCW 63.04.190(2); 1925 ex.s. c 142 § 18; RRS § 5836-18. (iv) RCW 63.04.720; 1925 ex.s. c 142 § 71; RRS § 5836-71.]

62A.1-206 Statute of frauds for kinds of personal property not otherwise covered. (1) Except in the cases described in subsection (2) of this section a contract for the sale of personal property is not enforceable by way of action or defense beyond five thousand dollars in amount or value of remedy unless there is some writing which indicates that a contract for sale has been made between the parties at a defined or stated price, reasonably identifies the subject matter, and is signed by the party against whom enforcement is sought or by his authorized agent.

(2) Subsection (1) of this section does not apply to contracts for the sale of goods (RCW 62A.2-201) nor of securities (RCW 62A.8-319) nor to security agreements

(RCW 62A.9-203). [1965 ex.s. c 157 § 1-206. Cf. former RCW 63.04.050; 1925 ex.s. c 142 § 4; RRS § 5836-4; prior: Code 1881 § 2326.]

Statute of frauds: Chapter 19.36 RCW.

62A.1-207 Performance or acceptance under reservation of rights. A party who with explicit reservation of rights performs or promises performance or assents to performance in a manner demanded or offered by the other party does not thereby prejudice the rights reserved. Such words as "without prejudice", "under protest" or the like are sufficient. [1965 ex.s. c 157 § 1-207.]

62A.1-208 Option to accelerate at will. A term providing that one party or his successor in interest may accelerate payment or performance or require collateral or additional collateral "at will" or "when he deems himself insecure" or in words of similar import shall be construed to mean that he shall have power to do so only if he in good faith believes that the prospect of payment or performance is impaired. [1965 ex.s. c 157 § 1-208. Cf. former RCW 61.08.080; Code 1881 § 1998; 1879 p 106 § 13; RRS § 1111.]

ARTICLE 2 SALES

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PART 1

SHORT TITLE, GENERAL CONSTRUCTION AND SUBJECT MATTER

62A.2-101 Short title. This Article shall be known and may be cited as Uniform Commercial Code—Sales. [1965 ex.s. c 157 § 2-101.]

62A.2-102 Scope; certain security and other transactions excluded from this Article. Unless the context otherwise requires, this Article applies to transactions in goods; it does not apply to any transaction which although in the form of an unconditional contract to sell or present sale is intended to operate only as a security transaction nor does this Article impair or repeal any statute regulating sales to consumers, farmers or other specified classes of buyers. [1965 ex.s. c 157 § 2-102. Cf. former RCW 63.04.750; 1925 ex.s. c 142 § 75; RRS § 5836-75.]

62A.2-103 Definitions and index of definitions. (1) In this Article unless the context otherwise requires

(a) "Buyer" means a person who buys or contracts to buy goods.

(b) "Good faith" in the case of a merchant means honesty in fact and the observance of reasonable commercial standards of fair dealing in the trade.

(c) "Receipt" of goods means taking physical possession of them.

(d) "Seller" means a person who sells or contracts to sell goods.

(2) Other definitions applying to this Article or to specified Parts thereof, and the sections in which they appear are:

- "Acceptance." RCW 62A.2-606.
- "Banker's credit." RCW 62A.2-325.
- "Between merchants." RCW 62A.2-104.
- "Cancellation." RCW 62A.2-106(4).
- "Commercial unit." RCW 62A.2-105.
- "Confirmed credit." RCW 62A.2-325.
- "Conforming to contract." RCW 62A.2-106.
- "Contract for sale." RCW 62A.2-106.
- "Cover." RCW 62A.2-712.
- "Entrusting." RCW 62A.2-403.
- "Financing agency." RCW 62A.2-104.
- "Future goods." RCW 62A.2-105.
- "Goods." RCW 62A.2-105.
- "Identification." RCW 62A.2-501.
- "Installment contract." RCW 62A.2-612.
- "Letter of credit." RCW 62A.2-325.
- "Lot." RCW 62A.2-105.
- "Merchant." RCW 62A.2-104.
- "Overseas." RCW 62A.2-323.
- "Person in position of seller." RCW 62A.2-707.
- "Present sale." RCW 62A.2-106.
- "Sale." RCW 62A.2-106.
- "Sale on approval." RCW 62A.2-326.
- "Sale or return." RCW 62A.2-326.
- "Termination." RCW 62A.2-106.

(3) The following definitions in other Articles apply to this Article:

- "Check." RCW 62A.3-104.
- "Consignee." RCW 62A.7-102.
- "Consignor." RCW 62A.7-102.
- "Consumer goods." RCW 62A.9-109.
- "Dishonor." RCW 62A.3-507.
- "Draft." RCW 62A.3-104.

(4) In addition Article 1 contains general definitions and principles of construction and interpretation applicable throughout this Article. [1965 ex.s. c 157 § 2-103. Cf. former RCW 63.04.755(1); 1925 ex.s. c 142 § 76; RRS § 5836-76; formerly RCW 63.04.010.]

62A.2-104 Definitions: "Merchant"; "between merchants"; "financing agency". (1) "Merchant" means a person who deals in goods of the kind or otherwise by his occupation holds himself out as having knowledge or skill peculiar to the practices or goods involved in the transaction or to whom such knowledge or skill may be attributed by his employment of an agent or broker or other intermediary who by his occupation holds himself out as having such knowledge or skill.

(2) "Financing agency" means a bank, finance company or other person who in the ordinary course of business makes advances against goods or documents of title or who by arrangement with either the seller or the buyer intervenes in ordinary course to make or collect payment due or claimed under the contract for sale, as by purchasing or paying the seller's draft or making advances against it or by merely taking it for collection whether or not documents of title accompany the draft. "Financing agency" includes also a bank or other person

who similarly intervenes between persons who are in the position of seller and buyer in respect to the goods (RCW 62A.2-707).

(3) "Between merchants" means in any transaction with respect to which both parties are chargeable with the knowledge or skill of merchants. [1965 ex.s. c 157 § 2-104. Cf. former RCW sections: (i) RCW 63.04.160(2), (5); 1925 ex.s. c 142 § 15; RRS § 5836-15. (ii) RCW 63.04.170(c); 1925 ex.s. c 142 § 16; RRS § 5836-16. (iii) RCW 63.04.460(2); 1925 ex.s. c 142 § 45; RRS § 5836-45. (iv) RCW 63.04.720; 1925 ex.s. c 142 § 71; RRS § 5836-71. (v) RCW 81.32.351; 1961 c 14 § 81.32.351; prior: 1915 c 159 § 35; RRS § 3681; formerly RCW 81.32.440. (vi) RCW 81.32.371; 1961 c 14 § 81.32.371; prior: 1915 c 159 § 37; RRS § 3683; formerly RCW 81.32.460.]

62A.2-105 Definitions: Transferability; "goods"; "future" goods; "lot"; "commercial unit". (1) "Goods" means all things (including specially manufactured goods) which are movable at the time of identification to the contract for sale other than the money in which the price is to be paid, investment securities (Article 8) and things in action. "Goods" also includes the unborn young of animals and growing crops and other identified things attached to realty as described in the section on goods to be severed from realty (RCW 62A.2-107).

(2) Goods must be both existing and identified before any interest in them can pass. Goods which are not both existing and identified are "future" goods. A purported present sale of future goods or of any interest therein operates as a contract to sell.

(3) There may be a sale of a part interest in existing identified goods.

(4) An undivided share in an identified bulk of fungible goods is sufficiently identified to be sold although the quantity of the bulk is not determined. Any agreed proportion of such a bulk or any quantity thereof agreed upon by number, weight or other measure may to the extent of the seller's interest in the bulk be sold to the buyer who then becomes an owner in common.

(5) "Lot" means a parcel or a single article which is the subject matter of a separate sale or delivery, whether or not it is sufficient to perform the contract.

(6) "Commercial unit" means such a unit of goods as by commercial usage is a single whole for purposes of sale and division of which materially impairs its character or value on the market or in use. A commercial unit may be a single article (as a machine) or a set of articles (as a suite of furniture or an assortment of sizes) or a quantity (as a bale, gross, or carload) or any other unit treated in use or in the relevant market as a single whole. [1965 ex.s. c 157 § 2-105. Subds. (1), (2), (3), (4), cf. former RCW sections: (i) RCW 63.04.060; 1925 ex.s. c 142 § 5; RRS § 5836-5. (ii) RCW 63.04.070; 1925 ex.s. c 142 § 6; RRS § 5836-6. (iii) RCW 63.04-.755; 1925 ex.s. c 142 § 76; RRS § 5836-76; formerly RCW 63.04.010.]

62A.2-106 Definitions: "Contract"; "agreement"; "contract for sale"; "sale"; "present sale"; "conforming"

to contract; "termination"; "cancellation". (1) In this Article unless the context otherwise requires "contract" and "agreement" are limited to those relating to the present or future sale of goods. "Contract for sale" includes both a present sale of goods and a contract to sell goods at a future time. A "sale" consists in the passing of title from the seller to the buyer for a price (RCW 62A.2-401). A "present sale" means a sale which is accomplished by the making of the contract.

(2) Goods or conduct including any part of a performance are "conforming" or conform to the contract when they are in accordance with the obligations under the contract.

(3) "Termination" occurs when either party pursuant to a power created by agreement or law puts an end to the contract otherwise than for its breach. On "termination" all obligations which are still executory on both sides are discharged but any right based on prior breach or performance survives.

(4) "Cancellation" occurs when either party puts an end to the contract for breach by the other and its effect is the same as that of "termination" except that the cancelling party also retains any remedy for breach of the whole contract or any unperformed balance. [1965 ex.s. c 157 § 2-106. Subd. (1) cf. former RCW 63.04-020; 1925 ex.s. c 142 § 1; RRS § 5836-1. Subd. (2) cf. former RCW sections: (i) RCW 63.04.120; 1925 ex.s. c 142 § 11; RRS § 5836-11. (ii) RCW 63.04.450; 1925 ex.s. c 142 § 44; RRS § 5836-44. (iii) RCW 63.04.700; 1925 ex.s. c 142 § 69; RRS § 5836-69.]

62A.2-107 Goods to be severed from realty: Recording. (1) A contract for the sale of minerals or the like including oil and gas or a structure or its materials to be removed from realty is a contract for the sale of goods within this Article if they are to be severed by the seller but until severance a purported present sale thereof which is not effective as a transfer of an interest in land is effective only as a contract to sell.

(2) A contract for the sale apart from the land of growing crops or other things attached to realty and capable of severance without material harm thereto but not described in subsection (1) or of timber to be cut is a contract for the sale of goods within this Article whether the subject matter is to be severed by the buyer or by the seller even though it forms part of the realty at the time of contracting, and the parties can by identification effect a present sale before severance.

(3) The provisions of this section are subject to any third party rights provided by the law relating to realty records, and the contract for sale may be executed and recorded as a document transferring an interest in land and shall then constitute notice to third parties of the buyer's rights under the contract for sale. [1981 c 41 § 3; 1965 ex.s. c 157 § 2-107. Cf. former RCW sections: (i) RCW 63.04.755(1); 1925 ex.s. c 142 § 76; RRS § 5836-76; formerly RCW 63.04.010. (ii) RCW 65.08-040; Code 1881 § 2327; 1863 p 413 § 4; 1854 p 404 § 4; RRS § 5827.]

Effective date—1981 c 41: See RCW 62A.11-101.

PART 2 FORM, FORMATION AND READJUSTMENT OF CONTRACT

62A.2-201 Formal requirements; statute of frauds.

(1) Except as otherwise provided in this section a contract for the sale of goods for the price of five hundred dollars or more is not enforceable by way of action or defense unless there is some writing sufficient to indicate that a contract for sale has been made between the parties and signed by the party against whom enforcement is sought or by his authorized agent or broker. A writing is not insufficient because it omits or incorrectly states a term agreed upon but the contract is not enforceable under this paragraph beyond the quantity of goods shown in such writing.

(2) Between merchants if within a reasonable time a writing in confirmation of the contract and sufficient against the sender is received and the party receiving it has reason to know its contents, it satisfies the requirements of subsection (1) against such party unless written notice of objection to its contents is given within ten days after it is received.

(3) A contract which does not satisfy the requirements of subsection (1) but which is valid in other respects is enforceable

(a) if the goods are to be specially manufactured for the buyer and are not suitable for sale to others in the ordinary course of the seller's business and the seller, before notice of repudiation is received and under circumstances which reasonably indicate that the goods are for the buyer, has made either a substantial beginning of their manufacture or commitments for their procurement; or

(b) if the party against whom enforcement is sought admits in his pleading, testimony or otherwise in court that a contract for sale was made, but the contract is not enforceable under this provision beyond the quantity of goods admitted; or

(c) with respect to goods for which payment has been made and accepted or which have been received and accepted (RCW 62A.2-606). [1965 ex.s. c 157 § 2-201. Cf. former RCW 63.04.050; 1925 ex.s. c 142 § 4; RRS § 5836-4; prior: Code 1881 § 2326.]

Statute of frauds: RCW 19.36.010.

62A.2-202 Final written expression: Parol or extrinsic evidence. Terms with respect to which the confirmatory memoranda of the parties agree or which are otherwise set forth in a writing intended by the parties as a final expression of their agreement with respect to such terms as are included therein may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement but may be explained or supplemented

(a) by course of dealing or usage of trade (RCW 62A.1-205) or by course of performance (RCW 62A.2-208); and

(b) by evidence of consistent additional terms unless the court finds the writing to have been intended also as

a complete and exclusive statement of the terms of the agreement. [1965 ex.s. c 157 § 2-202.]

62A.2-203 Seals inoperative. The affixing of a seal to a writing evidencing a contract for sale or an offer to buy or sell goods does not constitute the writing a sealed instrument and the law with respect to sealed instruments does not apply to such contract or offer. [1965 ex.s. c 157 § 2-203. Cf. former RCW 63.04.040; 1925 ex.s. c 142 § 3; RRS § 5836-3.]

Corporate seals—Effect of absence from instrument: RCW 64.04.105.

62A.2-204 Formation in general. (1) A contract for sale of goods may be made in any manner sufficient to show agreement, including conduct by both parties which recognizes the existence of such a contract.

(2) An agreement sufficient to constitute a contract for sale may be found even though the moment of its making is undetermined.

(3) Even though one or more terms are left open a contract for sale does not fail for indefiniteness if the parties have intended to make a contract and there is a reasonably certain basis for giving an appropriate remedy. [1965 ex.s. c 157 § 2-204. Cf. former RCW sections: (i) RCW 63.04.020; 1925 ex.s. c 142 § 1; RRS § 5836-1. (ii) RCW 63.04.040; 1925 ex.s. c 142 § 3; RRS § 5836-3.]

62A.2-205 Firm offers. An offer by a merchant to buy or sell goods in a signed writing which by its terms gives assurance that it will be held open is not revocable, for lack of consideration, during the time stated or if no time is stated for a reasonable time, but in no event may such period of irrevocability exceed three months; but any such term of assurance on a form supplied by the offeree must be separately signed by the offeror. [1965 ex.s. c 157 § 2-205. Cf. former RCW sections: (i) RCW 63.04.020; 1925 ex.s. c 142 § 1; RRS § 5836-1. (ii) RCW 63.04.040; 1925 ex.s. c 142 § 3; RRS § 5836-3.]

62A.2-206 Offer and acceptance in formation of contract. (1) Unless otherwise unambiguously indicated by the language or circumstances

(a) an offer to make a contract shall be construed as inviting acceptance in any manner and by any medium reasonable in the circumstances;

(b) an order or other offer to buy goods for prompt or current shipment shall be construed as inviting acceptance either by a prompt promise to ship or by the prompt or current shipment of conforming or non-conforming goods, but such a shipment of non-conforming goods does not constitute an acceptance if the seller seasonably notifies the buyer that the shipment is offered only as an accommodation to the buyer.

(2) Where the beginning of a requested performance is a reasonable mode of acceptance an offeror who is not notified of acceptance within a reasonable time may treat the offer as having lapsed before acceptance. [1965 ex.s. c 157 § 2-206. Cf. former RCW sections: (i) RCW

63.04.020; 1925 ex.s. c 142 § 1; RRS § 5836-1. (ii) RCW 63.04.040; 1925 ex.s. c 142 § 3; RRS § 5836-3.]

62A.2-207 Additional terms in acceptance or confirmation. (1) A definite and seasonable expression of acceptance or a written confirmation which is sent within a reasonable time operates as an acceptance even though it states terms additional to or different from those offered or agreed upon, unless acceptance is expressly made conditional on assent to the additional or different terms.

(2) The additional terms are to be construed as proposals for addition to the contract. Between merchants such terms become part of the contract unless:

(a) the offer expressly limits acceptance to the terms of the offer;

(b) they materially alter it; or

(c) notification of objection to them has already been given or is given within a reasonable time after notice of them is received.

(3) Conduct by both parties which recognizes the existence of a contract is sufficient to establish a contract for sale although the writings of the parties do not otherwise establish a contract. In such case the terms of the particular contract consist of those terms on which the writings of the parties agree, together with any supplementary terms incorporated under any other provisions of this Title. [1965 ex.s. c 157 § 2-207. Cf. former RCW sections: (i) RCW 63.04.020; 1925 ex.s. c 142 § 1; RRS § 5836-1. (ii) RCW 63.04.040; 1925 ex.s. c 142 § 3; RRS § 5836-3.]

62A.2-208 Course of performance or practical construction. (1) Where the contract for sale involves repeated occasions for performance by either party with knowledge of the nature of the performance and opportunity for objection to it by the other, any course of performance accepted or acquiesced in without objection shall be relevant to determine the meaning of the agreement.

(2) The express terms of the agreement and any such course of performance, as well as any course of dealing and usage of trade, shall be construed whenever reasonable as consistent with each other; but when such construction is unreasonable, express terms shall control course of performance and course of performance shall control both course of dealing and usage of trade (RCW 62A.1-205).

(3) Subject to the provisions of the next section on modification and waiver, such course of performance shall be relevant to show a waiver or modification of any term inconsistent with such course of performance. [1965 ex.s. c 157 § 2-208.]

62A.2-209 Modification, rescission and waiver. (1) An agreement modifying a contract within this Article needs no consideration to be binding.

(2) A signed agreement which excludes modification or rescission except by a signed writing cannot be otherwise modified or rescinded, but except as between merchants such a requirement on a form supplied by the merchant must be separately signed by the other party.

(3) The requirements of the statute of frauds section of this Article (RCW 62A.2-201) must be satisfied if the contract as modified is within its provisions.

(4) Although an attempt at modification or rescission does not satisfy the requirements of subsection (2) or (3) it can operate as a waiver.

(5) A party who has made a waiver affecting an executory portion of the contract may retract the waiver by reasonable notification received by the other party that strict performance will be required of any term waived, unless the retraction would be unjust in view of a material change of position in reliance on the waiver. [1965 ex.s. c 157 § 2-209.]

62A.2-210 Delegation of performance; assignment of rights. (1) A party may perform his duty through a delegate unless otherwise agreed or unless the other party has a substantial interest in having his original promisor perform or control the acts required by the contract. No delegation of performance relieves the party delegating of any duty to perform or any liability for breach.

(2) Unless otherwise agreed all rights of either seller or buyer can be assigned except where the assignment would materially change the duty of the other party, or increase materially the burden or risk imposed on him by his contract, or impair materially his chance of obtaining return performance. A right to damages for breach of the whole contract or a right arising out of the assignor's due performance of his entire obligation can be assigned despite agreement otherwise.

(3) Unless the circumstances indicate the contrary a prohibition of assignment of "the contract" is to be construed as barring only the delegation to the assignee of the assignor's performance.

(4) An assignment of "the contract" or of "all my rights under the contract" or an assignment in similar general terms is an assignment of rights and unless the language or the circumstances (as in an assignment for security) indicate the contrary, it is a delegation of performance of the duties of the assignor and its acceptance by the assignee constitutes a promise by him to perform those duties. This promise is enforceable by either the assignor or the other party to the original contract.

(5) The other party may treat any assignment which delegates performance as creating reasonable grounds for insecurity and may without prejudice to his rights against the assignor demand assurances from the assignee (RCW 62A.2-609). [1965 ex.s. c 157 § 2-210.]

PART 3 GENERAL OBLIGATION AND CONSTRUCTION OF CONTRACT

62A.2-301 General obligations of parties. The obligation of the seller is to transfer and deliver and that of the buyer is to accept and pay in accordance with the contract. [1965 ex.s. c 157 § 2-301. Cf. former RCW sections: (i) RCW 63.04.120; 1925 ex.s. c 142 § 11; RRS § 5836-11. (ii) RCW 63.04.420; 1925 ex.s. c 142 § 41; RRS § 5836-41.]

62A.2-302 Unconscionable contract or clause. (1) If the court as a matter of law finds the contract or any clause of the contract to have been unconscionable at the time it was made the court may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result.

(2) When it is claimed or appears to the court that the contract or any clause thereof may be unconscionable the parties shall be afforded a reasonable opportunity to present evidence as to its commercial setting, purpose and effect to aid the court in making the determination. [1965 ex.s. c 157 § 2-302.]

62A.2-303 Allocation or division of risks. Where this Article allocates a risk or a burden as between the parties "unless otherwise agreed", the agreement may not only shift the allocation but may also divide the risk or burden. [1965 ex.s. c 157 § 2-303.]

62A.2-304 Price payable in money, goods, realty, or otherwise. (1) The price can be made payable in money or otherwise. If it is payable in whole or in part in goods each party is a seller of the goods which he is to transfer.

(2) Even though all or part of the price is payable in an interest in realty the transfer of the goods and the seller's obligations with reference to them are subject to this Article, but not the transfer of the interest in realty or the transferor's obligations in connection therewith. [1965 ex.s. c 157 § 2-304. Cf. former RCW 63.04.100(2), (3); 1925 ex.s. c 142 § 9; RRS § 5836-9.]

62A.2-305 Open price term. (1) The parties if they so intend can conclude a contract for sale even though the price is not settled. In such a case the price is a reasonable price at the time for delivery if

- (a) nothing is said as to price; or
- (b) the price is left to be agreed by the parties and they fail to agree; or
- (c) the price is to be fixed in terms of some agreed market or other standard as set or recorded by a third person or agency and it is not so set or recorded.

(2) A price to be fixed by the seller or by the buyer means a price for him to fix in good faith.

(3) When a price left to be fixed otherwise than by agreement of the parties fails to be fixed through fault of one party the other may at his option treat the contract as cancelled or himself fix a reasonable price.

(4) Where, however, the parties intend not to be bound unless the price be fixed or agreed and it is not fixed or agreed there is no contract. In such a case the buyer must return any goods already received or if unable so to do must pay their reasonable value at the time of delivery and the seller must return any portion of the price paid on account. [1965 ex.s. c 157 § 2-305. Cf. former RCW sections: (i) RCW 63.04.100; 1925 ex.s. c 142 § 9; RRS § 5836-9. (ii) RCW 63.04.110; 1925 ex.s. c 142 § 10; RRS § 5836-10. Subd. (3) cf. former RCW 63.04.120(2); 1925 ex.s. c 142 § 11; RRS § 5836-11.]

62A.2-306 Output, requirements and exclusive dealings. (1) A term which measures the quantity by the output of the seller or the requirements of the buyer means such actual output or requirements as may occur in good faith, except that no quantity unreasonably disproportionate to any stated estimate or in the absence of a stated estimate to any normal or otherwise comparable prior output or requirements may be tendered or demanded.

(2) A lawful agreement by either the seller or the buyer for exclusive dealing in the kind of goods concerned imposes unless otherwise agreed an obligation by the seller to use best efforts to supply the goods and by the buyer to use best efforts to promote their sale. [1965 ex.s. c 157 § 2-306.]

62A.2-307 Delivery in single lot or several lots. Unless otherwise agreed all goods called for by a contract for sale must be tendered in a single delivery and payment is due only on such tender but where the circumstances give either party the right to make or demand delivery in lots the price if it can be apportioned may be demanded for each lot. [1965 ex.s. c 157 § 2-307. Cf. former RCW 63.04.460(1); 1925 ex.s. c 142 § 45; RRS § 5836-45.]

62A.2-308 Absence of specified place for delivery. Unless otherwise agreed

(a) the place for delivery of goods is the seller's place of business or if he has none his residence; but

(b) in a contract for sale of identified goods which to the knowledge of the parties at the time of contracting are in some other place, that place is the place for their delivery; and

(c) documents of title may be delivered through customary banking channels. [1965 ex.s. c 157 § 2-308. Subd. (a), (b) cf. former RCW 63.04.440(1); 1925 ex.s. c 142 § 43; RRS § 5836-43.]

62A.2-309 Absence of specific time provisions; notice of termination. (1) The time for shipment or delivery or any other action under a contract if not provided in this Article or agreed upon shall be a reasonable time.

(2) Where the contract provides for successive performances but is indefinite in duration it is valid for a reasonable time but unless otherwise agreed may be terminated at any time by either party.

(3) Termination of a contract by one party except on the happening of an agreed event requires that reasonable notification be received by the other party and an agreement dispensing with notification is invalid if its operation would be unconscionable. [1965 ex.s. c 157 § 2-309. Cf. former RCW sections: (i) RCW 63.04.440(2); 1925 ex.s. c 142 § 43; RRS § 5836-43. (ii) RCW 63.04.460(2); 1925 ex.s. c 142 § 45; RRS § 5836-45. (iii) RCW 63.04.480(1); 1925 ex.s. c 142 § 47; RRS § 5836-47. (iv) RCW 63.04.490; 1925 ex.s. c 142 § 48; RRS § 5836-48.]

62A.2-310 Open time for payment or running of credit; authority to ship under reservation. Unless otherwise agreed

(a) payment is due at the time and place at which the buyer is to receive the goods even though the place of shipment is the place of delivery; and

(b) if the seller is authorized to send the goods he may ship them under reservation, and may tender the documents of title, but the buyer may inspect the goods after their arrival before payment is due unless such inspection is inconsistent with the terms of the contract (RCW 62A.2-513); and

(c) if delivery is authorized and made by way of documents of title otherwise than by subsection (b) then payment is due at the time and place at which the buyer is to receive the documents regardless of where the goods are to be received; and

(d) where the seller is required or authorized to ship the goods on credit the credit period runs from the time of shipment but post-dating the invoice or delaying its dispatch will correspondingly delay the starting of the credit period. [1965 ex.s. c 157 § 2-310. Cf. former RCW sections: (i) RCW 63.04.430; 1925 ex.s. c 142 § 42; RRS § 5836-42. (ii) RCW 63.04.470(1); 1925 ex.s. c 142 § 46; RRS § 5836-46. (iii) RCW 63.04.480(2); 1925 ex.s. c 142 § 47; RRS § 5836-47.]

62A.2-311 Options and cooperation respecting performance. (1) An agreement for sale which is otherwise sufficiently definite (subsection (3) of RCW 62A.2-204) to be a contract is not made invalid by the fact that it leaves particulars of performance to be specified by one of the parties. Any such specification must be made in good faith and within limits set by commercial reasonableness.

(2) Unless otherwise agreed specifications relating to assortment of the goods are at the buyer's option and except as otherwise provided in subsections (1)(c) and (3) of RCW 62A.2-319 specifications or arrangements relating to shipment are at the seller's option.

(3) Where such specification would materially affect the other party's performance but is not seasonably made or where one party's cooperation is necessary to the agreed performance of the other but is not seasonably forthcoming, the other party in addition to all other remedies

(a) is excused for any resulting delay in his own performance; and

(b) may also either proceed to perform in any reasonable manner or after the time for a material part of his own performance treat the failure to specify or to cooperate as a breach by failure to deliver or accept the goods. [1965 ex.s. c 157 § 2-311.]

62A.2-312 Warranty of title and against infringement; buyer's obligation against infringement. (1) Subject to subsection (2) there is in a contract for sale a warranty by the seller that

(a) the title conveyed shall be good, and its transfer rightful; and

(b) the goods shall be delivered free from any security interest or other lien or encumbrance of which the buyer at the time of contracting has no knowledge.

(2) A warranty under subsection (1) will be excluded or modified only by specific language or by circumstances which give the buyer reason to know that the person selling does not claim title in himself or that he is purporting to sell only such right or title as he or a third person may have.

(3) Unless otherwise agreed a seller who is a merchant regularly dealing in goods of the kind warrants that the goods shall be delivered free of the rightful claim of any third person by way of infringement or the like but a buyer who furnishes specifications to the seller must hold the seller harmless against any such claim which arises out of compliance with the specifications. [1965 ex.s. c 157 § 2-312. Cf. former RCW 63.04.140; 1925 ex.s. c 142 § 13; RRS § 5836-13.]

62A.2-313 Express warranties by affirmation, promise, description, sample. (1) Express warranties by the seller are created as follows:

(a) Any affirmation of fact or promise made by the seller to the buyer which relates to the goods and becomes part of the basis of the bargain creates an express warranty that the goods shall conform to the affirmation or promise.

(b) Any description of the goods which is made part of the basis of the bargain creates an express warranty that the goods shall conform to the description.

(c) Any sample or model which is made part of the basis of the bargain creates an express warranty that the whole of the goods shall conform to the sample or model.

(2) It is not necessary to the creation of an express warranty that the seller use formal words such as "warrant" or "guarantee" or that he have a specific intention to make a warranty, but an affirmation merely of the value of the goods or a statement purporting to be merely the seller's opinion or commendation of the goods does not create a warranty. [1965 ex.s. c 157 § 2-313. Cf. former RCW sections: (i) RCW 63.04.130; 1925 ex.s. c 142 § 12; RRS § 5836-12. (ii) RCW 63.04.150; 1925 ex.s. c 142 § 14; RRS § 5836-14. (iii) RCW 63.04.170; 1925 ex.s. c 142 § 16; RRS § 5836-16.]

Motor vehicle express warranties: Chapter 19.118 RCW.

62A.2-314 Implied warranty: Merchantability; usage of trade. (1) Unless excluded or modified (RCW 62A.2-316), a warranty that the goods shall be merchantable is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind. Under this section the serving for value of food or drink to be consumed either on the premises or elsewhere is a sale.

(2) Goods to be merchantable must be at least such as

(a) pass without objection in the trade under the contract description; and

(b) in the case of fungible goods, are of fair average quality within the description; and

(c) are fit for the ordinary purposes for which such goods are used; and

(d) run, within the variations permitted by the agreement, of even kind, quality and quantity within each unit and among all units involved; and

(e) are adequately contained, packaged, and labeled as the agreement may require; and

(f) conform to the promises or affirmations of fact made on the container or label if any.

(3) Unless excluded or modified (RCW 62A.2-316) other implied warranties may arise from course of dealing or usage of trade. [1965 ex.s. c 157 § 2-314. Cf. former RCW 63.04.160(2); 1925 ex.s. c 142 § 15; RRS § 5836-15.]

62A.2-315 Implied warranty: Fitness for particular purpose. Where the seller at the time of contracting has reason to know any particular purpose for which the goods are required and that the buyer is relying on the seller's skill or judgment to select or furnish suitable goods, there is unless excluded or modified under the next section an implied warranty that the goods shall be fit for such purpose. [1965 ex.s. c 157 § 2-315. Cf. former RCW 63.04.160(1), (4), (5); 1925 ex.s. c 142 § 15; RRS § 5836-15.]

62A.2-316 Exclusion or modification of warranties. (1) Words or conduct relevant to the creation of an express warranty and words or conduct tending to negate or limit warranty shall be construed wherever reasonable as consistent with each other; but subject to the provisions of this Article on parol or extrinsic evidence (RCW 62A.2-202) negation or limitation is inoperative to the extent that such construction is unreasonable.

(2) Subject to subsection (3), to exclude or modify the implied warranty of merchantability or any part of it the language must mention merchantability and in case of a writing must be conspicuous, and to exclude or modify any implied warranty of fitness the exclusion must be by a writing and conspicuous. Language to exclude all implied warranties of fitness is sufficient if it states, for example, that "There are no warranties which extend beyond the description on the face hereof."

(3) Notwithstanding subsection (2)

(a) unless the circumstances indicate otherwise, all implied warranties are excluded by expressions like "as is", "with all faults" or other language which in common understanding calls the buyer's attention to the exclusion of warranties and makes plain that there is no implied warranty; and

(b) when the buyer before entering into the contract has examined the goods or the sample or model as fully as he desired or has refused to examine the goods there is no implied warranty with regard to defects which an examination ought in the circumstances to have revealed to him;

(c) an implied warranty can also be excluded or modified by course of dealing or course of performance or usage of trade; and

(d) in sales of livestock, including but not limited to, horses, mules, cattle, sheep, swine, goats, poultry, and

rabbits, there are no implied warranties as defined in this article that the livestock are free from sickness or disease: *Provided*, That the seller has complied with all state and federal laws and regulations that apply to animal health and disease, and the seller is not guilty of fraud, deceit or misrepresentation.

(4) Notwithstanding the provisions of subsections (2) and (3) of this section and the provisions of RCW 62A.2-719, as now or hereafter amended, in any case where goods are purchased primarily for personal, family or household use and not for commercial or business use, disclaimers of the warranty of merchantability or fitness for particular purpose shall not be effective to limit the liability of merchant sellers except insofar as the disclaimer sets forth with particularity the qualities and characteristics which are not being warranted. Remedies for breach of warranty can be limited in accordance with the provisions of this Article on liquidation or limitation of damages and on contractual modification of remedy (RCW 62A.2-718 and RCW 62A.2-719). [1982 c 199 § 1; 1974 ex.s. c 180 § 1; 1974 ex.s. c 78 § 1; 1965 ex.s. c 157 § 2-316. Subd. (3)(b) cf. former RCW 63.04.160(3); 1925 ex.s. c 142 § 15; RRS § 5836-15. Subd. (3)(c) cf. former RCW 63.04.720; 1925 ex.s. c 142 § 71; RRS § 5836-71.]

Lease or rental of personal property—Disclaimer of warranty of merchantability or fitness: RCW 63.18.010.

62A.2-317 Cumulation and conflict of warranties express or implied. Warranties whether express or implied shall be construed as consistent with each other and as cumulative, but if such construction is unreasonable the intention of the parties shall determine which warranty is dominant. In ascertaining that intention the following rules apply:

(a) Exact or technical specifications displace an inconsistent sample or model or general language of description.

(b) A sample from an existing bulk displaces inconsistent general language of description.

(c) Express warranties displace inconsistent implied warranties other than an implied warranty of fitness for a particular purpose. [1965 ex.s. c 157 § 2-317. Cf. former RCW sections: RCW 63.04.150 through 63.04.170; 1925 ex.s. c 142 §§ 14 through 16; RRS §§ 5836-14 through 5836-16.]

62A.2-318 Third party beneficiaries of warranties express or implied. A seller's warranty whether express or implied extends to any natural person who is in the family or household of his buyer or who is a guest in his home if it is reasonable to expect that such person may use, consume or be affected by the goods and who is injured in person by breach of the warranty. A seller may not exclude or limit the operation of this section. [1965 ex.s. c 157 § 2-318.]

62A.2-319 F.O.B. and F.A.S. terms. (1) Unless otherwise agreed the term F.O.B. (which means "free on board") at a named place, even though used only in

connection with the stated price, is a delivery term under which

(a) when the term is F.O.B. the place of shipment, the seller must at that place ship the goods in the manner provided in this Article (RCW 62A.2-504) and bear the expense and risk of putting them into the possession of the carrier; or

(b) when the term is F.O.B. the place of destination, the seller must at his own expense and risk transport the goods to that place and there tender delivery of them in the manner provided in this Article (RCW 62A.2-503);

(c) when under either (a) or (b) the term is also F.O.B. vessel, car or other vehicle, the seller must in addition at his own expense and risk load the goods on board. If the term is F.O.B. vessel the buyer must name the vessel and in an appropriate case the seller must comply with the provisions of this Article on the form of bill of lading (RCW 62A.2-323).

(2) Unless otherwise agreed the term F.A.S. vessel (which means "free alongside") at a named port, even though used only in connection with the stated price, is a delivery term under which the seller must

(a) at his own expense and risk deliver the goods alongside the vessel in the manner usual in that port or on a dock designated and provided by the buyer; and

(b) obtain and tender a receipt for the goods in exchange for which the carrier is under a duty to issue a bill of lading.

(3) Unless otherwise agreed in any case falling within subsection (1)(a) or (c) or subsection (2) the buyer must seasonably give any needed instructions for making delivery, including when the term is F.A.S. or F.O.B. the loading berth of the vessel and in an appropriate case its name and sailing date. The seller may treat the failure of needed instructions as a failure of cooperation under this Article (RCW 62A.2-311). He may also at his option move the goods in any reasonable manner preparatory to delivery or shipment.

(4) Under the term F.O.B. vessel or F.A.S. unless otherwise agreed the buyer must make payment against tender of the required documents and the seller may not tender nor the buyer demand delivery of the goods in substitution for the documents. [1965 ex.s. c 157 § 2-319.]

62A.2-320 C.I.F. and C.&F. terms. (1) The term C.I.F. means that the price includes in a lump sum the cost of the goods and the insurance and freight to the named destination. The term C.&F. or C.F. means that the price so includes cost and freight to the named destination.

(2) Unless otherwise agreed and even though used only in connection with the stated price and destination, the term C.I.F. destination or its equivalent requires the seller at his own expense and risk to

(a) put the goods into the possession of a carrier at the port for shipment and obtain a negotiable bill or bills of lading covering the entire transportation to the named destination; and

(b) load the goods and obtain a receipt from the carrier (which may be contained in the bill of lading)

showing that the freight has been paid or provided for; and

(c) obtain a policy or certificate of insurance, including any war risk insurance, of a kind and on terms then current at the port of shipment in the usual amount, in the currency of the contract, shown to cover the same goods covered by the bill of lading and providing for payment of loss to the order of the buyer or for the account of whom it may concern; but the seller may add to the price the amount of the premium for any such war risk insurance; and

(d) prepare an invoice of the goods and procure any other documents required to effect shipment or to comply with the contract; and

(e) forward and tender with commercial promptness all the documents in due form and with any indorsement necessary to perfect the buyer's rights.

(3) Unless otherwise agreed the term C.&F. or its equivalent has the same effect and imposes upon the seller the same obligations and risks as a C.I.F. term except the obligation as to insurance.

(4) Under the term C.I.F. or C.&F. unless otherwise agreed the buyer must make payment against tender of the required documents and the seller may not tender nor the buyer demand delivery of the goods in substitution for the documents. [1965 ex.s. c 157 § 2-320.]

62A.2-321 C.I.F. or C.&F.: "Net landed weights"; "payment on arrival"; warranty of condition on arrival. Under a contract containing a term C.I.F. or C.&F.

(1) Where the price is based on or is to be adjusted according to "net landed weights", "delivered weights", "out turn" quantity or quality or the like, unless otherwise agreed the seller must reasonably estimate the price. The payment due on tender of the documents called for by the contract is the amount so estimated, but after final adjustment of the price a settlement must be made with commercial promptness.

(2) An agreement described in subsection (1) or any warranty of quality or condition of the goods on arrival places upon the seller the risk of ordinary deterioration, shrinkage and the like in transportation but has no effect on the place or time of identification to the contract for sale or delivery or on the passing of the risk of loss.

(3) Unless otherwise agreed where the contract provides for payment on or after arrival of the goods the seller must before payment allow such preliminary inspection as is feasible; but if the goods are lost delivery of the documents and payment are due when the goods should have arrived. [1965 ex.s. c 157 § 2-321.]

62A.2-322 Delivery "ex-ship". (1) Unless otherwise agreed a term for delivery of goods "ex-ship" (which means from the carrying vessel) or in equivalent language is not restricted to a particular ship and requires delivery from a ship which has reached a place at the named port of destination where goods of the kind are usually discharged.

(2) Under such a term unless otherwise agreed

(a) the seller must discharge all liens arising out of the carriage and furnish the buyer with a direction

which puts the carrier under a duty to deliver the goods; and

(b) the risk of loss does not pass to the buyer until the goods leave the ship's tackle or are otherwise properly unloaded. [1965 ex.s. c 157 § 2-322.]

62A.2-323 Form of bill of lading required in overseas shipment; "overseas". (1) Where the contract contemplates overseas shipment and contains a term C.I.F. or C.&F. or F.O.B. vessel, the seller unless otherwise agreed must obtain a negotiable bill of lading stating that the goods have been loaded on board or, in the case of a term C.I.F. or C.&F., received for shipment.

(2) Where in a case within subsection (1) a bill of lading has been issued in a set of parts, unless otherwise agreed if the documents are not to be sent from abroad the buyer may demand tender of the full set; otherwise only one part of the bill of lading need be tendered. Even if the agreement expressly requires a full set

(a) due tender of a single part is acceptable within the provisions of this Article on cure of improper delivery (subsection (1) of RCW 62A.2-508); and

(b) even though the full set is demanded, if the documents are sent from abroad the person tendering an incomplete set may nevertheless require payment upon furnishing an indemnity which the buyer in good faith deems adequate.

(3) A shipment by water or by air or a contract contemplating such shipment is "overseas" insofar as by usage of trade or agreement it is subject to the commercial, financing or shipping practices characteristic of international deep water commerce. [1965 ex.s. c 157 § 2-323.]

62A.2-324 "No arrival, no sale" term. Under a term "no arrival, no sale" or terms of like meaning, unless otherwise agreed,

(a) the seller must properly ship conforming goods and if they arrive by any means he must tender them on arrival but he assumes no obligation that the goods will arrive unless he has caused the non-arrival; and

(b) where without fault of the seller the goods are in part lost or have so deteriorated as no longer to conform to the contract or arrive after the contract time, the buyer may proceed as if there had been casualty to identified goods (RCW 62A.2-613). [1965 ex.s. c 157 § 2-324.]

62A.2-325 "Letter of credit" term; "confirmed credit". (1) Failure of the buyer seasonably to furnish an agreed letter of credit is a breach of the contract for sale.

(2) The delivery to seller of a proper letter of credit suspends the buyer's obligation to pay. If the letter of credit is dishonored, the seller may on seasonable notification to the buyer require payment directly from him.

(3) Unless otherwise agreed the term "letter of credit" or "banker's credit" in a contract for sale means an irrevocable credit issued by a financing agency of good repute and, where the shipment is overseas, of good international repute. The term "confirmed credit" means

that the credit must also carry the direct obligation of such an agency which does business in the seller's financial market. [1965 ex.s. c 157 § 2-325.]

62A.2-326 Sale on approval and sale or return; consignment sales and rights of creditors. (1) Unless otherwise agreed, if delivered goods may be returned by the buyer even though they conform to the contract, the transaction is

(a) a "sale on approval" if the goods are delivered primarily for use, and

(b) a "sale or return" if the goods are delivered primarily for resale.

(2) Except as provided in subsection (3), goods held on approval are not subject to the claims of the buyer's creditors until acceptance; goods held on sale or return are subject to such claims while in the buyer's possession.

(3) Where goods are delivered to a person for sale and such person maintains a place of business at which he deals in goods of the kind involved, under a name other than the name of the person making delivery, then with respect to claims of creditors of the person conducting the business the goods are deemed to be on sale or return. The provisions of this subsection are applicable even though an agreement purports to reserve title to the person making delivery until payment or resale or uses such words as "on consignment" or "on memorandum". However, this subsection is not applicable if the person making delivery

(a) complies with an applicable law providing for a consignor's interest or the like to be evidenced by a sign, or

(b) establishes that the person conducting the business is generally known by his creditors to be substantially engaged in selling the goods of others, or

(c) complies with the filing provisions of the Article on Secured Transactions (Article 9).

(4) Any "or return" term of a contract for sale is to be treated as a separate contract for sale within the statute of frauds section of this Article (RCW 62A.2-201) and as contradicting the sale aspect of the contract within the provisions of this Article on parol or extrinsic evidence (RCW 62A.2-202). [1965 ex.s. c 157 § 2-326. Cf. former RCW 63.04.200(3); 1925 ex.s. c 142 § 19; RRS § 5836-19.]

62A.2-327 Special incidents of sale on approval and sale or return. (1) Under a sale on approval unless otherwise agreed

(a) although the goods are identified to the contract the risk of loss and the title do not pass to the buyer until acceptance; and

(b) use of the goods consistent with the purpose of trial is not acceptance but failure seasonably to notify the seller of election to return the goods is acceptance, and if the goods conform to the contract acceptance of any part is acceptance of the whole; and

(c) after due notification of election to return, the return is at the seller's risk and expense but a merchant buyer must follow any reasonable instructions.

(2) Under a sale or return unless otherwise agreed

(a) the option to return extends to the whole or any commercial unit of the goods while in substantially their original condition, but must be exercised seasonably; and

(b) the return is at the buyer's risk and expense. [1965 ex.s. c 157 § 2-327. Cf. former RCW 63.04.200(3); 1925 ex.s. c 142 § 19; RRS § 5836-19.]

62A.2-328 Sale by auction. (1) In a sale by auction if goods are put up in lots each lot is the subject of a separate sale.

(2) A sale by auction is complete when the auctioneer so announces by the fall of the hammer or in other customary manner. Where a bid is made while the hammer is falling in acceptance of a prior bid the auctioneer may in his discretion reopen the bidding or declare the goods sold under the bid on which the hammer was falling.

(3) Such a sale is with reserve unless the goods are in explicit terms put up without reserve. In an auction with reserve the auctioneer may withdraw the goods at any time until he announces completion of the sale. In an auction without reserve, after the auctioneer calls for bids on an article or lot, that article or lot cannot be withdrawn unless no bid is made within a reasonable time. In either case a bidder may retract his bid until the auctioneer's announcement of completion of the sale, but a bidder's retraction does not revive any previous bid.

(4) If the auctioneer knowingly receives a bid on the seller's behalf or the seller makes or procures such a bid, and notice has not been given that liberty for such bidding is reserved, the buyer may at his option avoid the sale or take the goods at the price of the last good faith bid prior to the completion of the sale. This subsection shall not apply to any bid at a forced sale. [1965 ex.s. c 157 § 2-328. Cf. former RCW 63.04.220; 1925 ex.s. c 142 § 21; RRS § 5836-21.]

PART 4

TITLE, CREDITORS AND GOOD FAITH PURCHASERS

62A.2-401 Passing of title; reservation for security; limited application of this section. Each provision of this Article with regard to the rights, obligations and remedies of the seller, the buyer, purchasers or other third parties applies irrespective of title to the goods except where the provision refers to such title. Insofar as situations are not covered by the other provisions of this Article and matters concerning title become material the following rules apply:

(1) Title to goods cannot pass under a contract for sale prior to their identification to the contract (RCW 62A.2-501), and unless otherwise explicitly agreed the buyer acquires by their identification a special property as limited by this Title. Any retention or reservation by the seller of the title (property) in goods shipped or delivered to the buyer is limited in effect to a reservation of a security interest. Subject to these provisions and to the provisions of the Article on Secured Transactions (Article 9), title to goods passes from the seller to the

buyer in any manner and on any conditions explicitly agreed on by the parties.

(2) Unless otherwise explicitly agreed title passes to the buyer at the time and place at which the seller completes his performance with reference to the physical delivery of the goods, despite any reservation of a security interest and even though a document of title is to be delivered at a different time or place; and in particular and despite any reservation of a security interest by the bill of lading

(a) if the contract requires or authorizes the seller to send the goods to the buyer but does not require him to deliver them at destination, title passes to the buyer at the time and place of shipment; but

(b) if the contract requires delivery at destination, title passes on tender there.

(3) Unless otherwise explicitly agreed where delivery is to be made without moving the goods,

(a) if the seller is to deliver a document of title, title passes at the time when and the place where he delivers such documents; or

(b) if the goods are at the time of contracting already identified and no documents are to be delivered, title passes at the time and place of contracting.

(4) A rejection or other refusal by the buyer to receive or retain the goods, whether or not justified, or a justified revocation of acceptance revests title to the goods in the seller. Such revesting occurs by operation of law and is not a "sale". [1965 ex.s. c 157 § 2-401. Cf. former RCW sections: RCW 63.04.180 through 63.04.210; 1925 ex.s. c 142 §§ 17 through 20; RRS § 5836-17 through 5836-20.]

62A.2-402 Rights of seller's creditors against sold goods. (1) Except as provided in subsections (2) and (3), rights of unsecured creditors of the seller with respect to goods which have been identified to a contract for sale are subject to the buyer's rights to recover the goods under this Article (RCW 62A.2-502 and RCW 62A.2-716).

(2) A creditor of the seller may treat a sale or an identification of goods to a contract for sale as void if as against him a retention of possession by the seller is fraudulent under any rule of law of the state where the goods are situated, except that retention of possession in good faith and current course of trade by a merchant-seller for a commercially reasonable time after a sale or identification is not fraudulent.

(3) Nothing in this Article shall be deemed to impair the rights of creditors of the seller

(a) under the provisions of the Article on Secured Transactions (Article 9); or

(b) where identification to the contract or delivery is made not in current course of trade but in satisfaction of or as security for a pre-existing claim for money, security or the like and is made under circumstances which under any rule of law of the state where the goods are situated would apart from this Article constitute the transaction a fraudulent transfer or voidable preference. [1965 ex.s. c 157 § 2-402. Subd. (2) cf. former RCW sections: (i) RCW 63.04.270; 1925 ex.s. c 142 § 26;

RRS § 5836-26. (ii) RCW 63.08.040; 1953 c 247 § 3; 1943 c 98 § 1, part; 1939 c 122 § 1, part; 1925 ex.s. c 135 § 2, part; Rem. Supp. 1943 § 5832, part; prior: 1901 c 109 § 1, part.]

62A.2-403 Power to transfer; good faith purchase of goods; "entrusting". (1) A purchaser of goods acquires all title which his transferor had or had power to transfer except that a purchaser of a limited interest acquires rights only to the extent of the interest purchased. A person with voidable title has power to transfer a good title to a good faith purchaser for value. When goods have been delivered under a transaction of purchase the purchaser has such power even though

(a) the transferor was deceived as to the identity of the purchaser, or

(b) the delivery was in exchange for a check which is later dishonored, or

(c) it was agreed that the transaction was to be a "cash sale".

(2) Any entrusting of possession of goods to a merchant who deals in goods of that kind gives him power to transfer all rights of the entruster to a buyer in ordinary course of business.

(3) "Entrusting" includes any delivery and any acquiescence in retention of possession regardless of any condition expressed between the parties to the delivery or acquiescence and regardless of whether the procurement of the entrusting or the possessor's disposition of the goods have been such as to be larcenous under the criminal law.

(4) The rights of other purchasers of goods and of lien creditors are governed by the Articles on Secured Transactions (Article 9), Bulk Transfers (Article 6) and Documents of Title (Article 7). [1967 c 114 § 8; 1965 ex.s. c 157 § 2-403. Cf. former RCW sections: (i) RCW 61.20.090; 1943 c 71 § 9; Rem. Supp. 1943 § 11548-38. (ii) RCW 63.04.210(4); 1925 ex.s. c 142 § 20; RRS § 5836-20. (iii) RCW 63.04.240; 1925 ex.s. c 142 § 23; RRS § 5836-23. (iv) RCW 63.04.250; 1925 ex.s. c 142 § 24; RRS § 5836-24. (v) RCW 63.04.260; 1925 ex.s. c 142 § 25; RRS § 5836-25. (vi) RCW 65.08.040; Code 1881 § 2327; 1863 p 413 § 4; 1854 p 404 § 4; RRS § 5827.]

Emergency—Effective date—1967 c 114: See note following RCW 62A.4-406.

Restoration of stolen property: RCW 10.79.050.

PART 5 PERFORMANCE

62A.2-501 Insurable interest in goods; manner of identification of goods. (1) The buyer obtains a special property and an insurable interest in goods by identification of existing goods as goods to which the contract refers even though the goods so identified are non-conforming and he has an option to return or reject them. Such identification can be made at any time and in any manner explicitly agreed to by the parties. In the absence of explicit agreement identification occurs

(a) when the contract is made if it is for the sale of goods already existing and identified;

(b) if the contract is for the sale of future goods other than those described in paragraph (c), when goods are shipped, marked or otherwise designated by the seller as goods to which the contract refers;

(c) when the crops are planted or otherwise become growing crops or the young are conceived if the contract is for the sale of unborn young to be born within twelve months after contracting or for the sale of crops to be harvested within twelve months or the next normal harvest season after contracting whichever is longer.

(2) The seller retains an insurable interest in goods so long as title to or any security interest in the goods remains in him and where the identification is by the seller alone he may until default or insolvency or notification to the buyer that the identification is final substitute other goods for those identified.

(3) Nothing in this section impairs any insurable interest recognized under any other statute or rule of law. [1965 ex.s. c 157 § 2-501. Cf. former RCW sections: (i) RCW 63.04.180; 1925 ex.s. c 142 § 17; RRS § 5836-17. (ii) RCW 63.04.200; 1925 ex.s. c 142 § 19; RRS § 5836-19.]

62A.2-502 Buyer's right to goods on seller's insolvency. (1) Subject to subsection (2) and even though the goods have not been shipped a buyer who has paid a part or all of the price of goods in which he has a special property under the provisions of the immediately preceding section may on making and keeping good a tender of any unpaid portion of their price recover them from the seller if the seller becomes insolvent within ten days after receipt of the first installment on their price.

(2) If the identification creating his special property has been made by the buyer he acquires the right to recover the goods only if they conform to the contract for sale. [1965 ex.s. c 157 § 2-502. Cf. former RCW sections: RCW 63.04.180 through 63.04.200; 1925 ex.s. c 142 §§ 17 through 19; RRS §§ 5836-17 through 5836-19.]

62A.2-503 Manner of seller's tender of delivery. (1) Tender of delivery requires that the seller put and hold conforming goods at the buyer's disposition and give the buyer any notification reasonably necessary to enable him to take delivery. The manner, time and place for tender are determined by the agreement and this Article, and in particular

(a) tender must be at a reasonable hour, and if it is of goods they must be kept available for the period reasonably necessary to enable the buyer to take possession; but

(b) unless otherwise agreed the buyer must furnish facilities reasonably suited to the receipt of the goods.

(2) Where the case is within the next section respecting shipment tender requires that the seller comply with its provisions.

(3) Where the seller is required to deliver at a particular destination tender requires that he comply with subsection (1) and also in any appropriate case tender

documents as described in subsections (4) and (5) of this section.

(4) Where goods are in the possession of a bailee and are to be delivered without being moved

(a) tender requires that the seller either tender a negotiable document of title covering such goods or procure acknowledgment by the bailee of the buyer's right to possession of the goods; but

(b) tender to the buyer of a non-negotiable document of title or of a written direction to the bailee to deliver is sufficient tender unless the buyer seasonably objects, and receipt by the bailee of notification of the buyer's rights fixes those rights as against the bailee and all third persons; but risk of loss of the goods and of any failure by the bailee to honor the non-negotiable document of title or to obey the direction remains on the seller until the buyer has had a reasonable time to present the document or direction, and a refusal by the bailee to honor the document or to obey the direction defeats the tender.

(5) Where the contract requires the seller to deliver documents

(a) he must tender all such documents in correct form, except as provided in this Article with respect to bills of lading in a set (subsection (2) of RCW 62A.2-323); and

(b) tender through customary banking channels is sufficient and dishonor of a draft accompanying the documents constitutes non-acceptance or rejection. [1965 ex.s. c 157 § 2-503. Cf. former RCW sections: RCW 63.04.120, 63.04.200, 63.04.210, 63.04.440, 63.04.470, and 63.04.520; 1925 ex.s. c 142 §§ 11, 19, 20, 43, 46, and 51; RRS §§ 5836-11, 5836-19, 5836-20, 5836-43, 5836-46, and 5836-51.]

62A.2-504 Shipment by seller. Where the seller is required or authorized to send the goods to the buyer and the contract does not require him to deliver them at a particular destination, then unless otherwise agreed he must

(a) put the goods in the possession of such a carrier and make such a contract for their transportation as may be reasonable having regard to the nature of the goods and other circumstances of the case; and

(b) obtain and promptly deliver or tender in due form any document necessary to enable the buyer to obtain possession of the goods or otherwise required by the agreement or by usage of trade; and

(c) promptly notify the buyer of the shipment. Failure to notify the buyer under paragraph (c) or to make a proper contract under paragraph (a) is a ground for rejection only if material delay or loss ensues. [1965 ex.s. c 157 § 2-504. Cf. former RCW 63.04.470; 1925 ex.s. c 142 § 46; RRS § 5836-46.]

62A.2-505 Seller's shipment under reservation. (1) Where the seller has identified goods to the contract by or before shipment:

(a) his procurement of a negotiable bill of lading to his own order or otherwise reserves in him a security interest in the goods. His procurement of the bill to the

order of a financing agency or of the buyer indicates in addition only the seller's expectation of transferring that interest to the person named.

(b) a non-negotiable bill of lading to himself or his nominee reserves possession of the goods as security but except in a case of conditional delivery (subsection (2) of RCW 62A.2-507) a non-negotiable bill of lading naming the buyer as consignee reserves no security interest even though the seller retains possession of the bill of lading.

(2) When shipment by the seller with reservation of a security interest is in violation of the contract for sale it constitutes an improper contract for transportation within the preceding section but impairs neither the rights given to the buyer by shipment and identification of the goods to the contract nor the seller's powers as a holder of a negotiable document. [1965 ex.s. c 157 § 2-505. Cf. former RCW 63.04.210 (2), (3), (4); 1925 ex.s. c 142 § 20; RRS § 5836-20.]

62A.2-506 Rights of financing agency. (1) A financing agency by paying or purchasing for value a draft which relates to a shipment of goods acquires to the extent of the payment or purchase and in addition to its own rights under the draft and any document of title securing it any rights of the shipper in the goods including the right to stop delivery and the shipper's right to have the draft honored by the buyer.

(2) The right to reimbursement of a financing agency which has in good faith honored or purchased the draft under commitment to or authority from the buyer is not impaired by subsequent discovery of defects with reference to any relevant document which was apparently regular on its face. [1965 ex.s. c 157 § 2-506.]

62A.2-507 Effect of seller's tender; delivery on condition. (1) Tender of delivery is a condition to the buyer's duty to accept the goods and, unless otherwise agreed, to his duty to pay for them. Tender entitles the seller to acceptance of the goods and to payment according to the contract.

(2) Where payment is due and demanded on the delivery to the buyer of goods or documents of title, his right as against the seller to retain or dispose of them is conditional upon his making the payment due. [1965 ex.s. c 157 § 2-507. Cf. former RCW sections: (i) RCW 63.04.120; 1925 ex.s. c 142 § 11; RRS § 5836-11. (ii) RCW 63.04.420; 1925 ex.s. c 142 § 41; RRS § 5836-41. (iii) RCW 63.04.430; 1925 ex.s. c 142 § 42; RRS § 5836-42. (iv) RCW 63.04.700; 1925 ex.s. c 142 § 69; RRS § 5836-69.]

62A.2-508 Cure by seller of improper tender or delivery; replacement. (1) Where any tender or delivery by the seller is rejected because non-conforming and the time for performance has not yet expired, the seller may seasonably notify the buyer of his intention to cure and may then within the contract time make a conforming delivery.

(2) Where the buyer rejects a non-conforming tender which the seller had reasonable grounds to believe would

be acceptable with or without money allowance the seller may if he seasonably notifies the buyer have a further reasonable time to substitute a conforming tender. [1965 ex.s. c 157 § 2-508.]

62A.2-509 Risk of loss in the absence of breach. (1) Where the contract requires or authorizes the seller to ship the goods by carrier

(a) if it does not require him to deliver them at a particular destination, the risk of loss passes to the buyer when the goods are duly delivered to the carrier even though the shipment is under reservation (RCW 62A.2-505); but

(b) if it does require him to deliver them at a particular destination and the goods are there duly tendered while in the possession of the carrier, the risk of loss passes to the buyer when the goods are there duly so tendered as to enable the buyer to take delivery.

(2) Where the goods are held by a bailee to be delivered without being moved, the risk of loss passes to the buyer

(a) on his receipt of a negotiable document of title covering the goods; or

(b) on acknowledgment by the bailee of the buyer's right to possession of the goods; or

(c) after his receipt of a non-negotiable document of title or other written direction to deliver, as provided in subsection (4)(b) of RCW 62A.2-503.

(3) In any case not within subsection (1) or (2), the risk of loss passes to the buyer on his receipt of the goods if the seller is a merchant; otherwise the risk passes to the buyer on tender of delivery.

(4) The provisions of this section are subject to contrary agreement of the parties and to the provisions of this Article on sale on approval (RCW 62A.2-327) and on effect of breach on risk of loss (RCW 62A.2-510). [1965 ex.s. c 157 § 2-509. Cf. former RCW sections: (i) RCW 63.04.200; 1925 ex.s. c 142 § 19; RRS § 5836-19. (ii) RCW 63.04.230; 1925 ex.s. c 142 § 22; RRS § 5836-22.]

62A.2-510 Effect of breach on risk of loss. (1) Where a tender or delivery of goods so fails to conform to the contract as to give a right of rejection the risk of their loss remains on the seller until cure or acceptance.

(2) Where the buyer rightfully revokes acceptance he may to the extent of any deficiency in his effective insurance coverage treat the risk of loss as having rested on the seller from the beginning.

(3) Where the buyer as to conforming goods already identified to the contract for sale repudiates or is otherwise in breach before risk of their loss has passed to him, the seller may to the extent of any deficiency in his effective insurance coverage treat the risk of loss as resting on the buyer for a commercially reasonable time. [1965 ex.s. c 157 § 2-510.]

62A.2-511 Tender of payment by buyer; payment by check. (1) Unless otherwise agreed tender of payment is a condition to the seller's duty to tender and complete any delivery.

(2) Tender of payment is sufficient when made by any means or in any manner current in the ordinary course of business unless the seller demands payment in legal tender and gives any extension of time reasonably necessary to procure it.

(3) Subject to the provisions of this Title on the effect of an instrument on an obligation (RCW 62A.3-802), payment by check is conditional and is defeated as between the parties by dishonor of the check on due presentment. [1965 ex.s. c 157 § 2-511. Cf. former RCW 63.04.430; 1925 ex.s. c 142 § 42; RRS § 5836-42.]

62A.2-512 Payment by buyer before inspection. (1) Where the contract requires payment before inspection non-conformity of the goods does not excuse the buyer from so making payment unless

(a) the non-conformity appears without inspection; or
 (b) despite tender of the required documents the circumstances would justify injunction against honor under the provisions of this Title (RCW 62A.5-114).

(2) Payment pursuant to subsection (1) does not constitute an acceptance of goods or impair the buyer's right to inspect or any of his remedies. [1965 ex.s. c 157 § 2-512. Cf. former RCW sections: (i) RCW 63.04.480; 1925 ex.s. c 142 § 47; RRS § 5836-47. (ii) RCW 63.04.500; 1925 ex.s. c 142 § 49; RRS § 5836-49.]

62A.2-513 Buyer's right to inspection of goods. (1) Unless otherwise agreed and subject to subsection (3), where goods are tendered or delivered or identified to the contract for sale, the buyer has a right before payment or acceptance to inspect them at any reasonable place and time and in any reasonable manner. When the seller is required or authorized to send the goods to the buyer, the inspection may be after their arrival.

(2) Expenses of inspection must be borne by the buyer but may be recovered from the seller if the goods do not conform and are rejected.

(3) Unless otherwise agreed and subject to the provisions of this Article on C.I.F. contracts (subsection (3) of RCW 62A.2-321), the buyer is not entitled to inspect the goods before payment of the price when the contract provides

(a) for delivery "C.O.D." or on other like terms; or
 (b) for payment against documents of title, except where such payment is due only after the goods are to become available for inspection.

(4) A place or method of inspection fixed by the parties is presumed to be exclusive but unless otherwise expressly agreed it does not postpone identification or shift the place for delivery or for passing the risk of loss. If compliance becomes impossible, inspection shall be as provided in this section unless the place or method fixed was clearly intended as an indispensable condition failure of which avoids the contract. [1965 ex.s. c 157 § 2-513. Cf. former RCW 63.04.480 (2), (3); 1925 ex.s. c 142 § 47; RRS § 5836-47.]

62A.2-514 When documents deliverable on acceptance; when on payment. Unless otherwise agreed documents against which a draft is drawn are to be delivered

to the drawee on acceptance of the draft if it is payable more than three days after presentment; otherwise, only on payment. [1965 ex.s. c 157 § 2-514. Cf. former RCW 81.32.411; 1961 c 14 § 81.32.411; prior: 1915 c 159 § 41; RRS § 3687; formerly RCW 81.32.500.]

62A.2-515 Preserving evidence of goods in dispute. In furtherance of the adjustment of any claim or dispute

(a) either party on reasonable notification to the other and for the purpose of ascertaining the facts and preserving evidence has the right to inspect, test and sample the goods including such of them as may be in the possession or control of the other; and

(b) the parties may agree to a third party inspection or survey to determine the conformity or condition of the goods and may agree that the findings shall be binding upon them in any subsequent litigation or adjustment. [1965 ex.s. c 157 § 2-515.]

PART 6

BREACH, REPUDIATION AND EXCUSE

62A.2-601 Buyer's rights on improper delivery. Subject to the provisions of this Article on breach in installment contracts (RCW 62A.2-612) and unless otherwise agreed under the sections on contractual limitations of remedy (RCW 62A.2-718 and RCW 62A.2-719), if the goods or the tender of delivery fail in any respect to conform to the contract, the buyer may

(a) reject the whole; or
 (b) accept the whole; or
 (c) accept any commercial unit or units and reject the rest. [1965 ex.s. c 157 § 2-601. Cf. former RCW sections: (i) RCW 63.04.120; 1925 ex.s. c 142 § 11; RRS § 5836-11. (ii) RCW 63.04.480; 1925 ex.s. c 142 § 47; RRS § 5836-47. (iii) RCW 63.04.700(1); 1925 ex.s. c 142 § 69; RRS § 5836-69.]

62A.2-602 Manner and effect of rightful rejection. (1) Rejection of goods must be within a reasonable time after their delivery or tender. It is ineffective unless the buyer seasonably notifies the seller.

(2) Subject to the provisions of the two following sections on rejected goods (RCW 62A.2-603 and RCW 62A.2-604),

(a) after rejection any exercise of ownership by the buyer with respect to any commercial unit is wrongful as against the seller; and

(b) if the buyer has before rejection taken physical possession of goods in which he does not have a security interest under the provisions of this Article (subsection (3) of RCW 62A.2-711), he is under a duty after rejection to hold them with reasonable care at the seller's disposition for a time sufficient to permit the seller to remove them; but

(c) the buyer has no further obligations with regard to goods rightfully rejected.

(3) The seller's rights with respect to goods wrongfully rejected are governed by the provisions of this Article on seller's remedies in general (RCW 62A.2-703). [1965 ex.s. c 157 § 2-602. Cf. former RCW sections: (i)

RCW 63.04.090; 1925 ex.s. c 142 § 8; RRS § 5836-8. (ii) RCW 63.04.510; 1925 ex.s. c 142 § 50; RRS § 5836-50.]

62A.2-603 Merchant buyer's duties as to rightfully rejected goods. (1) Subject to any security interest in the buyer (subsection (3) of RCW 62A.2-711), when the seller has no agent or place of business at the market of rejection a merchant buyer is under a duty after rejection of goods in his possession or control to follow any reasonable instructions received from the seller with respect to the goods and in the absence of such instructions to make reasonable efforts to sell them for the seller's account if they are perishable or threaten to decline in value speedily. Instructions are not reasonable if on demand indemnity for expenses is not forthcoming.

(2) When the buyer sells goods under subsection (1), he is entitled to reimbursement from the seller or out of the proceeds for reasonable expenses of caring for and selling them, and if the expenses include no selling commission then to such commission as is usual in the trade or if there is none to a reasonable sum not exceeding ten per cent on the gross proceeds.

(3) In complying with this section the buyer is held only to good faith and good faith conduct hereunder is neither acceptance nor conversion nor the basis of an action for damages. [1965 ex.s. c 157 § 2-603.]

62A.2-604 Buyer's options as to salvage of rightfully rejected goods. Subject to the provisions of the immediately preceding section on perishables if the seller gives no instructions within a reasonable time after notification of rejection the buyer may store the rejected goods for the seller's account or reship them to him or resell them for the seller's account with reimbursement as provided in the preceding section. Such action is not acceptance or conversion. [1965 ex.s. c 157 § 2-604.]

62A.2-605 Waiver of buyer's objections by failure to particularize. (1) The buyer's failure to state in connection with rejection a particular defect which is ascertainable by reasonable inspection precludes him from relying on the unstated defect to justify rejection or to establish breach

(a) where the seller could have cured it if stated seasonably; or

(b) between merchants when the seller has after rejection made a request in writing for a full and final written statement of all defects on which the buyer proposes to rely.

(2) Payment against documents made without reservation of rights precludes recovery of the payment for defects apparent on the face of the documents. [1965 ex.s. c 157 § 2-605.]

62A.2-606 What constitutes acceptance of goods.

(1) Acceptance of goods occurs when the buyer

(a) after a reasonable opportunity to inspect the goods signifies to the seller that the goods are conforming or that he will take or retain them in spite of their non-conformity; or

(b) fails to make an effective rejection (subsection (1) of RCW 62A.2-602), but such acceptance does not occur until the buyer has had a reasonable opportunity to inspect them; or

(c) does any act inconsistent with the seller's ownership; but if such act is wrongful as against the seller it is an acceptance only if ratified by him.

(2) Acceptance of a part of any commercial unit is acceptance of that entire unit. [1965 ex.s. c 157 § 2-606. Cf. former RCW sections: (i) RCW 63.04.480(1); 1925 ex.s. c 142 § 47; RRS § 5836-47. (ii) RCW 63.04.490; 1925 ex.s. c 142 § 48; RRS § 5836-48.]

62A.2-607 Effect of acceptance; notice of breach; burden of establishing breach after acceptance; notice of claim or litigation to person answerable over. (1) The buyer must pay at the contract rate for any goods accepted.

(2) Acceptance of goods by the buyer precludes rejection of the goods accepted and if made with knowledge of a non-conformity cannot be revoked because of it unless the acceptance was on the reasonable assumption that the non-conformity would be seasonably cured but acceptance does not of itself impair any other remedy provided by this Article for non-conformity.

(3) Where a tender has been accepted

(a) the buyer must within a reasonable time after he discovers or should have discovered any breach notify the seller of breach or be barred from any remedy; and

(b) if the claim is one for infringement or the like (subsection (3) of RCW 62A.2-312) and the buyer is sued as a result of such a breach he must so notify the seller within a reasonable time after he receives notice of the litigation or be barred from any remedy over for liability established by the litigation.

(4) The burden is on the buyer to establish any breach with respect to the goods accepted.

(5) Where the buyer is sued for breach of a warranty or other obligation for which his seller is answerable over

(a) he may give his seller written notice of the litigation. If the notice states that the seller may come in and defend and that if the seller does not do so he will be bound in any action against him by his buyer by any determination of fact common to the two litigations, then unless the seller after seasonable receipt of the notice does come in and defend he is so bound.

(b) if the claim is one for infringement or the like (subsection (3) of RCW 62A.2-312) the original seller may demand in writing that his buyer turn over to him control of the litigation including settlement or else be barred from any remedy over and if he also agrees to bear all expense and to satisfy any adverse judgment, then unless the buyer after seasonable receipt of the demand does turn over control the buyer is so barred.

(6) The provisions of subsections (3), (4) and (5) apply to any obligation of a buyer to hold the seller harmless against infringement or the like (subsection (3) of RCW 62A.2-312). [1965 ex.s. c 157 § 2-607. Subd. (1) cf. former RCW 63.04.420; 1925 ex.s. c 142 § 41; RRS § 5836-41. Subd. (2), (3) cf. former RCW sections: (i)

RCW 63.04.500; 1925 ex.s. c 142 § 49; RRS § 5836-49. (ii) RCW 63.04.700; 1925 ex.s. c 142 § 69; RRS § 5836-69.]

62A.2-608 Revocation of acceptance in whole or in part. (1) The buyer may revoke his acceptance of a lot or commercial unit whose non-conformity substantially impairs its value to him if he has accepted it

(a) on the reasonable assumption that its non-conformity would be cured and it has not been seasonably cured; or

(b) without discovery of such non-conformity if his acceptance was reasonably induced either by the difficulty of discovery before acceptance or by the seller's assurances.

(2) Revocation of acceptance must occur within a reasonable time after the buyer discovers or should have discovered the ground for it and before any substantial change in condition of the goods which is not caused by their own defects. It is not effective until the buyer notifies the seller of it.

(3) A buyer who so revokes has the same rights and duties with regard to the goods involved as if he had rejected them. [1965 ex.s. c 157 § 2-608. Cf. former RCW 63.04.700 (1)(d), (3), (4), (5); 1925 ex.s. c 142 § 69; RRS § 5836-69.]

62A.2-609 Right to adequate assurance of performance. (1) A contract for sale imposes an obligation on each party that the other's expectation of receiving due performance will not be impaired. When reasonable grounds for insecurity arise with respect to the performance of either party the other may in writing demand adequate assurance of due performance and until he receives such assurance may if commercially reasonable suspend any performance for which he has not already received the agreed return.

(2) Between merchants the reasonableness of grounds for insecurity and the adequacy of any assurance offered shall be determined according to commercial standards.

(3) Acceptance of any improper delivery or payment does not prejudice the aggrieved party's right to demand adequate assurance of future performance.

(4) After receipt of a justified demand failure to provide within a reasonable time not exceeding thirty days such assurance of due performance as is adequate under the circumstances of the particular case is a repudiation of the contract. [1965 ex.s. c 157 § 2-609. Cf. former RCW sections: (i) RCW 63.04.540; 1925 ex.s. c 142 § 53; RRS § 5836-53. (ii) RCW 63.04.550(1)(b); 1925 ex.s. c 142 § 54; RRS § 5836-54. (iii) RCW 63.04.560; 1925 ex.s. c 142 § 55; RRS § 5836-55. (iv) RCW 63.04.640(2); 1925 ex.s. c 142 § 63; RRS § 5836-63.]

62A.2-610 Anticipatory repudiation. When either party repudiates the contract with respect to a performance not yet due the loss of which will substantially impair the value of the contract to the other, the aggrieved party may

(a) for a commercially reasonable time await performance by the repudiating party; or

(b) resort to any remedy for breach (RCW 62A.2-703 or RCW 62A.2-711), even though he has notified the repudiating party that he would await the latter's performance and has urged retraction; and

(c) in either case suspend his own performance or proceed in accordance with the provisions of this Article on the seller's right to identify goods to the contract notwithstanding breach or to salvage unfinished goods (RCW 62A.2-704). [1965 ex.s. c 157 § 2-610. Cf. former RCW section: (i) RCW 63.04.640(2); 1925 ex.s. c 142 § 63; RRS § 5836-63. (ii) RCW 63.04.660; 1925 ex.s. c 142 § 65; RRS § 5836-65.]

62A.2-611 Retraction of anticipatory repudiation.

(1) Until the repudiating party's next performance is due he can retract his repudiation unless the aggrieved party has since the repudiation cancelled or materially changed his position or otherwise indicated that he considers the repudiation final.

(2) Retraction may be by any method which clearly indicates to the aggrieved party that the repudiating party intends to perform, but must include any assurance justifiably demanded under the provisions of this Article (RCW 62A.2-609).

(3) Retraction reinstates the repudiating party's rights under the contract with due excuse and allowance to the aggrieved party for any delay occasioned by the repudiation. [1965 ex.s. c 157 § 2-611.]

62A.2-612 "Installment contract"; breach. (1) An "installment contract" is one which requires or authorizes the delivery of goods in separate lots to be separately accepted, even though the contract contains a clause "each delivery is a separate contract" or its equivalent.

(2) The buyer may reject any installment which is non-conforming if the non-conformity substantially impairs the value of that installment and cannot be cured or if the non-conformity is a defect in the required documents; but if the non-conformity does not fall within subsection (3) and the seller gives adequate assurance of its cure the buyer must accept that installment.

(3) Whenever non-conformity or default with respect to one or more installments substantially impairs the value of the whole contract there is a breach of the whole. But the aggrieved party reinstates the contract if he accepts a non-conforming installment without seasonably notifying of cancellation or if he brings an action with respect only to past installments or demands performance as to future installments. [1965 ex.s. c 157 § 2-612. Cf. former RCW 63.04.460(2); 1925 ex.s. c 142 § 45; RRS § 5836-45.]

62A.2-613 Casualty to identified goods. Where the contract requires for its performance goods identified when the contract is made, and the goods suffer casualty without fault of either party before the risk of loss passes to the buyer, or in a proper case under a "no arrival, no sale" term (RCW 62A.2-324) then

(a) if the loss is total the contract is avoided; and

(b) if the loss is partial or the goods have so deteriorated as no longer to conform to the contract the buyer may nevertheless demand inspection and at his option either treat the contract as avoided or accept the goods with due allowance from the contract price for the deterioration or the deficiency in quantity but without further right against the seller. [1965 ex.s. c 157 § 2-613. Cf. former RCW sections: (i) RCW 63.04.080; 1925 ex.s. c 142 § 7; RRS § 5836-7. (ii) RCW 63.04.090; 1925 ex.s. c 142 § 8; RRS § 5836-8.]

62A.2-614 Substituted performance. (1) Where without fault of either party the agreed berthing, loading, or unloading facilities fail or an agreed type of carrier becomes unavailable or the agreed manner of delivery otherwise becomes commercially impracticable but a commercially reasonable substitute is available, such substitute performance must be tendered and accepted.

(2) If the agreed means or manner of payment fails because of domestic or foreign governmental regulation, the seller may withhold or stop delivery unless the buyer provides a means or manner of payment which is commercially a substantial equivalent. If delivery has already been taken, payment by the means or in the manner provided by the regulation discharges the buyer's obligation unless the regulation is discriminatory, oppressive or predatory. [1965 ex.s. c 157 § 2-614.]

62A.2-615 Excuse by failure of presupposed conditions. Except so far as a seller may have assumed a greater obligation and subject to the preceding section on substituted performance:

(a) Delay in delivery or non-delivery in whole or in part by a seller who complies with paragraphs (b) and (c) is not a breach of his duty under a contract for sale if performance as agreed has been made impracticable by the occurrence of a contingency the non-occurrence of which was a basic assumption on which the contract was made or by compliance in good faith with any applicable foreign or domestic governmental regulation or order whether or not it later proves to be invalid.

(b) Where the causes mentioned in paragraph (a) affect only a part of the seller's capacity to perform, he must allocate production and deliveries among his customers but may at his option include regular customers not then under contract as well as his own requirements for further manufacture. He may so allocate in any manner which is fair and reasonable.

(c) The seller must notify the buyer seasonably that there will be delay or non-delivery and, when allocation is required under paragraph (b), of the estimated quota thus made available for the buyer. [1965 ex.s. c 157 § 2-615.]

62A.2-616 Procedure on notice claiming excuse. (1) Where the buyer receives notification of a material or indefinite delay or an allocation justified under the preceding section he may by written notification to the seller as to any delivery concerned, and where the prospective deficiency substantially impairs the value of the

whole contract under the provisions of this Article relating to breach of installment contracts (RCW 62A.2-612), then also as to the whole,

(a) terminate and thereby discharge any unexecuted portion of the contract; or

(b) modify the contract by agreeing to take his available quota in substitution.

(2) If after receipt of such notification from the seller the buyer fails so to modify the contract within a reasonable time not exceeding thirty days the contract lapses with respect to any deliveries affected. [1965 ex.s. c 157 § 2-616.]

PART 7 REMEDIES

62A.2-701 Remedies for breach of collateral contracts not impaired. Remedies for breach of any obligation or promise collateral or ancillary to a contract for sale are not impaired by the provisions of this Article. [1965 ex.s. c 157 § 2-701.]

62A.2-702 Seller's remedies on discovery of buyer's insolvency. (1) Where the seller discovers the buyer to be insolvent he may refuse delivery except for cash including payment for all goods theretofore delivered under the contract, and stop delivery under this Article (RCW 62A.2-705).

(2) Where the seller discovers that the buyer has received goods on credit while insolvent he may reclaim the goods upon demand made within ten days after the receipt, but if misrepresentation of solvency has been made to the particular seller in writing within three months before delivery the ten day limitation does not apply. Except as provided in this subsection the seller may not base a right to reclaim goods on the buyer's fraudulent or innocent misrepresentation of solvency or of intent to pay.

(3) The seller's right to reclaim under subsection (2) is subject to the rights of a buyer in ordinary course or other good faith purchaser under this Article (RCW 62A.2-403). Successful reclamation of goods excludes all other remedies with respect to them. [1981 c 41 § 4; 1965 ex.s. c 157 § 2-702. Subd. (1) cf. former RCW sections: (i) RCW 63.04.540(1) (b); 1925 ex.s. c 142 § 53; RRS § 5836-53. (ii) RCW 63.04.550(1)(c); 1925 ex.s. c 142 § 54; RRS § 5836-54. (iii) RCW 63.04.560; 1925 ex.s. c 142 § 55; RRS § 5836-55. (iv) RCW 63.04.580; 1925 ex.s. c 142 § 57; RRS § 5836-57. Subd. (3) cf. former RCW 63.04.755(3); 1925 ex.s. c 142 § 76; RRS § 5836-76; formerly RCW 63.04.010.]

Effective date—1981 c 41: See RCW 62A.11-101.

62A.2-703 Seller's remedies in general. Where the buyer wrongfully rejects or revokes acceptance of goods or fails to make a payment due on or before delivery or repudiates with respect to a part or the whole, then with respect to any goods directly affected and, if the breach is of the whole contract (RCW 62A.2-612), then also with respect to the whole undelivered balance, the aggrieved seller may

- (a) withhold delivery of such goods;
- (b) stop delivery by any bailee as hereafter provided (RCW 62A.2-705);
- (c) proceed under the next section respecting goods still unidentified to the contract;
- (d) resell and recover damages as hereafter provided (RCW 62A.2-706);
- (e) recover damages for non-acceptance (RCW 62A.2-708) or in a proper case the price (RCW 62A.2-709);
- (f) cancel. [1965 ex.s. c 157 § 2-703. Cf. former RCW sections: (i) RCW 63.04.540; 1925 ex.s. c 142 § 53; RRS § 5836-53. (ii) RCW 63.04.620(1); 1925 ex.s. c 142 § 61; RRS § 5836-61.]

62A.2-704 Seller's right to identify goods to the contract notwithstanding breach or to salvage unfinished goods. (1) An aggrieved seller under the preceding section may

- (a) identify to the contract conforming goods not already identified if at the time he learned of the breach they are in his possession or control;
- (b) treat as the subject of resale goods which have demonstrably been intended for the particular contract even though those goods are unfinished.

(2) Where the goods are unfinished an aggrieved seller may in the exercise of reasonable commercial judgment for the purposes of avoiding loss and of effective realization either complete the manufacture and wholly identify the goods to the contract or cease manufacture and resell for scrap or salvage value or proceed in any other reasonable manner. [1965 ex.s. c 157 § 2-704. Cf. former RCW sections: (i) RCW 63.04.640(3); 1925 ex.s. c 142 § 63; RRS § 5836-63. (ii) RCW 63.04.650(4); 1925 ex.s. c 142 § 64; RRS § 5836-64.]

62A.2-705 Seller's stoppage of delivery in transit or otherwise. (1) The seller may stop delivery of goods in the possession of a carrier or other bailee when he discovers the buyer to be insolvent (RCW 62A.2-702) and may stop delivery of carload, truckload, planeload or larger shipments of express or freight when the buyer repudiates or fails to make a payment due before delivery or if for any other reason the seller has a right to withhold or reclaim the goods.

(2) As against such buyer the seller may stop delivery until

- (a) receipt of the goods by the buyer; or
- (b) acknowledgment to the buyer by any bailee of the goods except a carrier that the bailee holds the goods for the buyer; or
- (c) such acknowledgment to the buyer by a carrier by reshipment or as warehouseman; or
- (d) negotiation to the buyer of any negotiable document of title covering the goods.

(3) (a) To stop delivery the seller must so notify as to enable the bailee by reasonable diligence to prevent delivery of the goods.

(b) After such notification the bailee must hold and deliver the goods according to the directions of the seller

but the seller is liable to the bailee for any ensuing charges or damages.

(c) If a negotiable document of title has been issued for goods the bailee is not obliged to obey a notification to stop until surrender of the document.

(d) A carrier who has issued a non-negotiable bill of lading is not obliged to obey a notification to stop received from a person other than the consignor. [1965 ex.s. c 157 § 2-705. Cf. former RCW sections: (i) RCW 22.04.100; 1913 c 99 § 9; RRS § 3595; prior: 1891 c 134 § 7. (ii) RCW 22.04.120; 1913 c 99 § 11; RRS § 3597; prior: 1886 p 121 § 7. (iii) RCW 22.04.500; 1913 c 99 § 49; RRS § 3635. (iv) RCW 63.04.580 through 63.04.600; 1925 ex.s. c 142 §§ 57 through 59; RRS §§ 5836-57 through 5836-59. (v) RCW 81.32.121, 81.32-141, and 81.32.421; 1961 c 14 §§ 81.32.121, 81.32.141, and 81.32.421; prior: 1915 c 159 §§ 12, 14, and 42; RRS §§ 3658, 3660, and 3688; formerly RCW 81.32.130, 81-32.160 and 81.32.510.]

62A.2-706 Seller's resale including contract for resale. (1) Under the conditions stated in RCW 62A.2-703 on seller's remedies, the seller may resell the goods concerned or the undelivered balance thereof. Where the resale is made in good faith and in a commercially reasonable manner the seller may recover the difference between the resale price and the contract price together with any incidental damages allowed under the provisions of this Article (RCW 62A.2-710), but less expenses saved in consequence of the buyer's breach.

(2) Except as otherwise provided in subsection (3) or unless otherwise agreed resale may be at public or private sale including sale by way of one or more contracts to sell or of identification to an existing contract of the seller. Sale may be as a unit or in parcels and at any time and place and on any terms but every aspect of the sale including the method, manner, time, place and terms must be commercially reasonable. The resale must be reasonably identified as referring to the broken contract, but it is not necessary that the goods be in existence or that any or all of them have been identified to the contract before the breach.

(3) Where the resale is at private sale the seller must give the buyer reasonable notification of his intention to resell.

(4) Where the resale is at public sale

(a) only identified goods can be sold except where there is a recognized market for a public sale of futures in goods of the kind; and

(b) it must be made at a usual place or market for public sale if one is reasonably available and except in the case of goods which are perishable or threaten to decline in value speedily the seller must give the buyer reasonable notice of the time and place of the resale; and

(c) if the goods are not to be within the view of those attending the sale the notification of sale must state the place where the goods are located and provide for their reasonable inspection by prospective bidders; and

(d) the seller may buy.

(5) A purchaser who buys in good faith at a resale takes the goods free of any rights of the original buyer

even though the seller fails to comply with one or more of the requirements of this section.

(6) The seller is not accountable to the buyer for any profit made on any resale. A person in the position of a seller (RCW 62A.2-707) or a buyer who has rightfully rejected or justifiably revoked acceptance must account for any excess over the amount of his security interest, as hereinafter defined (subsection (3) of RCW 62A.2-711). [1967 c 114 § 13; 1965 ex.s. c 157 § 2-706. Cf. former RCW 63.04.610; 1925 ex.s. c 142 § 60; RRS § 5836-60.]

Emergency—Effective date—1967 c 114: See note following RCW 62A.4-406.

62A.2-707 "Person in the position of a seller". (1) A "person in the position of a seller" includes as against a principal an agent who has paid or become responsible for the price of goods on behalf of his principal or anyone who otherwise holds a security interest or other right in goods similar to that of a seller.

(2) A person in the position of a seller may as provided in this Article withhold or stop delivery (RCW 62A.2-705) and resell (RCW 62A.2-706) and recover incidental damages (RCW 62A.2-710). [1965 ex.s. c 157 § 2-707. Cf. former RCW 63.04.530(2); 1925 ex.s. c 142 § 52; RRS § 5836-52.]

62A.2-708 Seller's damages for non-acceptance or repudiation. (1) Subject to subsection (2) and to the provisions of this Article with respect to proof of market price (RCW 62A.2-723), the measure of damages for non-acceptance or repudiation by the buyer is the difference between the market price at the time and place for tender and the unpaid contract price together with any incidental damages provided in this Article (RCW 62A.2-710), but less expenses saved in consequence of the buyer's breach.

(2) If the measure of damages provided in subsection (1) is inadequate to put the seller in as good a position as performance would have done then the measure of damages is the profit (including reasonable overhead) which the seller would have made from full performance by the buyer, together with any incidental damages provided in this Article (RCW 62A.2-710), due allowance for costs reasonably incurred and due credit for payments or proceeds of resale. [1965 ex.s. c 157 § 2-708. Cf. former RCW 63.04.650; 1925 ex.s. c 142 § 64; RRS § 5836-64.]

62A.2-709 Action for the price. (1) When the buyer fails to pay the price as it becomes due the seller may recover, together with any incidental damages under the next section, the price

(a) of goods accepted or of conforming goods lost or damaged within a commercially reasonable time after risk of their loss has passed to the buyer; and

(b) of goods identified to the contract if the seller is unable after reasonable effort to resell them at a reasonable price or the circumstances reasonably indicate that such effort will be unavailing.

(2) Where the seller sues for the price he must hold for the buyer any goods which have been identified to the contract and are still in his control except that if resale becomes possible he may resell them at any time prior to the collection of the judgment. The net proceeds of any such resale must be credited to the buyer and payment of the judgment entitles him to any goods not resold.

(3) After the buyer has wrongfully rejected or revoked acceptance of the goods or has failed to make a payment due or has repudiated (RCW 62A.2-610), a seller who is held not entitled to the price under this section shall nevertheless be awarded damages for non-acceptance under the preceding section. [1965 ex.s. c 157 § 2-709. Cf. former RCW 63.04.640; 1925 ex.s. c 142 § 63; RRS § 5836-63.]

62A.2-710 Seller's incidental damages. Incidental damages to an aggrieved seller include any commercially reasonable charges, expenses or commissions incurred in stopping delivery, in the transportation, care and custody of goods after the buyer's breach, in connection with return or resale of the goods or otherwise resulting from the breach. [1965 ex.s. c 157 § 2-710. Cf. former RCW sections: (i) RCW 63.04.650; 1925 ex.s. c 142 § 64; RRS § 5836-64. (ii) RCW 63.04.710; 1925 ex.s. c 142 § 70; RRS § 5836-70.]

62A.2-711 Buyer's remedies in general; buyer's security interest in rejected goods. (1) Where the seller fails to make delivery or repudiates or the buyer rightfully rejects or justifiably revokes acceptance then with respect to any goods involved, and with respect to the whole if the breach goes to the whole contract (RCW 62A.2-612), the buyer may cancel and whether or not he has done so may in addition to recovering so much of the price as has been paid

(a) "cover" and have damages under the next section as to all the goods affected whether or not they have been identified to the contract; or

(b) recover damages for non-delivery as provided in this Article (RCW 62A.2-713).

(2) Where the seller fails to deliver or repudiates the buyer may also

(a) if the goods have been identified recover them as provided in this Article (RCW 62A.2-502); or

(b) in a proper case obtain specific performance or replevy the goods as provided in this Article (RCW 62A.2-716).

(3) On rightful rejection or justifiable revocation of acceptance a buyer has a security interest in goods in his possession or control for any payments made on their price and any expenses reasonably incurred in their inspection, receipt, transportation, care and custody and may hold such goods and resell them in like manner as an aggrieved seller (RCW 62A.2-706). [1965 ex.s. c 157 § 2-711. Subd. (3) cf. former RCW 63.04.700(5); 1925 ex.s. c 142 § 69; RRS § 5836-69.]

62A.2-712 "Cover"; buyer's procurement of substitute goods. (1) After a breach within the preceding section the buyer may "cover" by making in good faith and without unreasonable delay any reasonable purchase of or contract to purchase goods in substitution for those due from the seller.

(2) The buyer may recover from the seller as damages the difference between the cost of cover and the contract price together with any incidental or consequential damages as hereinafter defined (RCW 62A.2-715), but less expenses saved in consequence of the seller's breach.

(3) Failure of the buyer to effect cover within this section does not bar him from any other remedy. [1965 ex.s. c 157 § 2-712.]

62A.2-713 Buyer's damages for non-delivery or repudiation. (1) Subject to the provisions of this Article with respect to proof of market price (RCW 62A.2-723), the measure of damages for nondelivery or repudiation by the seller is the difference between the market price at the time when the buyer learned of the breach and the contract price together with any incidental and consequential damages provided in this Article (RCW 62A.2-715), but less expenses saved in consequence of the seller's breach.

(2) Market price is to be determined as of the place for tender or, in cases of rejection after arrival or revocation of acceptance, as of the place of arrival. [1965 ex.s. c 157 § 2-713. Cf. former RCW 63.04.680(3); 1925 ex.s. c 142 § 67; RRS § 5836-67.]

62A.2-714 Buyer's damages for breach in regard to accepted goods. (1) Where the buyer has accepted goods and given notification (subsection (3) of RCW 62A.2-607) he may recover as damages for any non-conformity of tender the loss resulting in the ordinary course of events from the seller's breach as determined in any manner which is reasonable.

(2) The measure of damages for breach of warranty is the difference at the time and place of acceptance between the value of the goods accepted and the value they would have had if they had been as warranted, unless special circumstances show proximate damages of a different amount.

(3) In a proper case any incidental and consequential damages under the next section may also be recovered. [1965 ex.s. c 157 § 2-714. Cf. former RCW 63.04.700 (6), (7); 1925 ex.s. c 142 § 69; RRS § 5836-69.]

62A.2-715 Buyer's incidental and consequential damages. (1) Incidental damages resulting from the seller's breach include expenses reasonably incurred in inspection, receipt, transportation and care and custody of goods rightfully rejected, any commercially reasonable charges, expenses or commissions in connection with effecting cover and any other reasonable expense incident to the delay or other breach.

(2) Consequential damages resulting from the seller's breach include

(a) any loss resulting from general or particular requirements and needs of which the seller at the time of

contracting had reason to know and which could not reasonably be prevented by cover or otherwise; and

(b) injury to person or property proximately resulting from any breach of warranty. [1965 ex.s. c 157 § 2-715. Subd. (2) cf. former RCW sections: (i) RCW 63.04.700(7); 1925 ex.s. c 142 § 69; RRS § 5836-69. (ii) RCW 63.04.710; 1925 ex.s. c 142 § 70; RRS § 5836-70.]

62A.2-716 Buyer's right to specific performance or replevin. (1) Specific performance may be decreed where the goods are unique or in other proper circumstances.

(2) The decree for specific performance may include such terms and conditions as to payment of the price, damages, or other relief as the court may deem just.

(3) The buyer has a right of replevin for goods identified to the contract if after reasonable effort he is unable to effect cover for such goods or the circumstances reasonably indicate that such effort will be unavailing or if the goods have been shipped under reservation and satisfaction of the security interest in them has been made or tendered. [1965 ex.s. c 157 § 2-716. Cf. former RCW 63.04.690; 1925 ex.s. c 142 § 68; RRS § 5836-68.]

Replevin: Chapter 7.64 RCW.

62A.2-717 Deduction of damages from the price. The buyer on notifying the seller of his intention to do so may deduct all or any part of the damages resulting from any breach of the contract from any part of the price still due under the same contract. [1965 ex.s. c 157 § 2-717. Cf. former RCW 63.04.700(1)(a); 1925 ex.s. c 142 § 69; RRS § 5836-69.]

62A.2-718 Liquidation or limitation of damages; deposits. (1) Damages for breach by either party may be liquidated in the agreement but only at an amount which is reasonable in the light of the anticipated or actual harm caused by the breach, the difficulties of proof of loss, and the inconvenience or nonfeasibility of otherwise obtaining an adequate remedy. A term fixing unreasonably large liquidated damages is void as a penalty.

(2) Where the seller justifiably withholds delivery of goods because of the buyer's breach, the buyer is entitled to restitution of any amount by which the sum of his payments exceeds

(a) the amount to which the seller is entitled by virtue of terms liquidating the seller's damages in accordance with subsection (1), or

(b) in the absence of such terms, twenty per cent of the value of the total performance for which the buyer is obligated under the contract or five hundred dollars, whichever is smaller.

(3) The buyer's right to restitution under subsection (2) is subject to offset to the extent that the seller establishes

(a) a right to recover damages under the provisions of this Article other than subsection (1), and

(b) the amount or value of any benefits received by the buyer directly or indirectly by reason of the contract.

(4) Where a seller has received payment in goods their reasonable value or the proceeds of their resale

shall be treated as payments for the purposes of subsection (2); but if the seller has notice of the buyer's breach before reselling goods received in part performance, his resale is subject to the conditions laid down in this Article on resale by an aggrieved seller (RCW 62A.2-706). [1965 ex.s. c 157 § 2-718.]

62A.2-719 Contractual modification or limitation of remedy. (1) Subject to the provisions of subsections (2) and (3) of this section and of the preceding section on liquidation and limitation of damages,

(a) the agreement may provide for remedies in addition to or in substitution for those provided in this Article and may limit or alter the measure of damages recoverable under this Article, as by limiting the buyer's remedies to return of the goods and repayment of the price or to repair and replacement of non-conforming goods or parts; and

(b) resort to a remedy as provided is optional unless the remedy is expressly agreed to be exclusive, in which case it is the sole remedy.

(2) Where circumstances cause an exclusive or limited remedy to fail of its essential purpose, remedy may be had as provided in this Title.

(3) Limitation of consequential damages for injury to the person in the case of goods purchased primarily for personal, family or household use or of any services related thereto is invalid unless it is proved that the limitation is not unconscionable. Limitation of remedy to repair or replacement of defective parts or non-conforming goods is invalid in sales of goods primarily for personal, family or household use unless the manufacturer or seller maintains or provides within this state facilities adequate to provide reasonable and expeditious performance of repair or replacement obligations.

Limitation of other consequential damages is valid unless it is established that the limitation is unconscionable. [1974 ex.s. c 180 § 2; 1974 ex.s. c 78 § 2; 1965 ex.s. c 157 § 2-719. Subd. (1)(a) cf. former RCW 63.04.720; 1925 ex.s. c 142 § 71; RRS § 5836-71.]

Lease or rental of personal property—Disclaimer of warranty of merchantability or fitness: RCW 63.18.010.

62A.2-720 Effect of "cancellation" or "rescission" on claims for antecedent breach. Unless the contrary intention clearly appears, expressions of "cancellation" or "rescission" of the contract or the like shall not be construed as a renunciation or discharge of any claim in damages for an antecedent breach. [1965 ex.s. c 157 § 2-720.]

62A.2-721 Remedies for fraud. Remedies for material misrepresentation or fraud include all remedies available under this Article for non-fraudulent breach. Neither rescission or a claim for rescission of the contract for sale nor rejection or return of the goods shall bar or be deemed inconsistent with a claim for damages or other remedy. [1965 ex.s. c 157 § 2-721.]

62A.2-722 Who can sue third parties for injury to goods. Where a third party so deals with goods which

have been identified to a contract for sale as to cause actionable injury to a party to that contract

(a) a right of action against the third party is in either party to the contract for sale who has title to or a security interest or a special property or an insurable interest in the goods; and if the goods have been destroyed or converted a right of action is also in the party who either bore the risk of loss under the contract for sale or has since the injury assumed that risk as against the other;

(b) if at the time of the injury the party plaintiff did not bear the risk of loss as against the other party to the contract for sale and there is no arrangement between them for disposition of the recovery, his suit or settlement is, subject to his own interest, as a fiduciary for the other party to the contract;

(c) either party may with the consent of the other sue for the benefit of whom it may concern. [1965 ex.s. c 157 § 2-722.]

62A.2-723 Proof of market price: Time and place.

(1) If an action based on anticipatory repudiation comes to trial before the time for performance with respect to some or all of the goods, any damages based on market price (RCW 62A.2-708 or RCW 62A.2-713) shall be determined according to the price of such goods prevailing at the time when the aggrieved party learned of the repudiation.

(2) If evidence of a price prevailing at the times or places described in this Article is not readily available the price prevailing within any reasonable time before or after the time described or at any other place which in commercial judgment or under usage of trade would serve as a reasonable substitute for the one described may be used, making any proper allowance for the cost of transporting the goods to or from such other place.

(3) Evidence of a relevant price prevailing at a time or place other than the one described in this Article offered by one party is not admissible unless and until he has given the other party such notice as the court finds sufficient to prevent unfair surprise. [1965 ex.s. c 157 § 2-723.]

62A.2-724 Admissibility of market quotations.

Whenever the prevailing price or value of any goods regularly bought and sold in any established commodity market is in issue, reports in official publications or trade journals or in newspapers or periodicals of general circulation published as the reports of such market shall be admissible in evidence. The circumstances of the preparation of such a report may be shown to affect its weight but not its admissibility. [1965 ex.s. c 157 § 2-724.]

62A.2-725 Statute of limitations in contracts for sale.

(1) An action for breach of any contract for sale must be commenced within four years after the cause of action has accrued. By the original agreement the parties may reduce the period of limitation to not less than one year but may not extend it.

(2) A cause of action accrues when the breach occurs, regardless of the aggrieved party's lack of knowledge of

the breach. A breach of warranty occurs when tender of delivery is made, except that where a warranty explicitly extends to future performance of the goods and discovery of the breach must await the time of such performance the cause of action accrues when the breach is or should have been discovered.

(3) Where an action commenced within the time limited by subsection (1) is so terminated as to leave available a remedy by another action for the same breach such other action may be commenced after the expiration of the time limited and within six months after the termination of the first action unless the termination resulted from voluntary discontinuance or from dismissal for failure or neglect to prosecute.

(4) This section does not alter the law on tolling of the statute of limitations nor does it apply to causes of action which have accrued before this Title becomes effective. [1965 ex.s. c 157 § 2-725.]

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PART 1
SHORT TITLE, FORM AND INTERPRETATION

62A.3-101 Short title. This Article shall be known and may be cited as Uniform Commercial Code—Commercial Paper. [1965 ex.s. c 157 § 3-101.]

62A.3-102 Definitions and index of definitions. (1) In this Article unless the context otherwise requires

(a) "Issue" means the first delivery of an instrument to a holder or a remitter.

(b) An "order" is a direction to pay and must be more than an authorization or request. It must identify the person to pay with reasonable certainty. It may be addressed to one or more such persons jointly or in the alternative but not in succession.

(c) A "promise" is an undertaking to pay and must be more than an acknowledgment of an obligation.

(d) "Secondary party" means a drawer or endorser.

(e) "Instrument" means a negotiable instrument.

(2) Other definitions applying to this Article and the sections in which they appear are:

"Acceptance." RCW 62A.3-410.

"Accommodation party." RCW 62A.3-415.

"Alteration." RCW 62A.3-407.

"Certificate of deposit." RCW 62A.3-104.

"Certification." RCW 62A.3-411.

"Check." RCW 62A.3-104.

"Definite time." RCW 62A.3-109.

"Dishonor." RCW 62A.3-507.

"Draft." RCW 62A.3-104.

"Holder in due course." RCW 62A.3-302.

"Negotiation." RCW 62A.3-202.

"Note." RCW 62A.3-104.

"Notice of dishonor." RCW 62A.3-508.

"On demand." RCW 62A.3-108.

"Presentment." RCW 62A.3-504.

"Protest." RCW 62A.3-509.

"Restrictive indorsement." RCW 62A.3-205.

"Signature." RCW 62A.3-401.

(3) The following definitions in other Articles apply to this Article:

"Account." RCW 62A.4-104.

"Banking day." RCW 62A.4-104.

"Clearing house." RCW 62A.4-104.

"Collecting bank." RCW 62A.4-105.

"Customer." RCW 62A.4-104.

"Depository bank." RCW 62A.4-105.

"Documentary draft." RCW 62A.4-104.

"Intermediary bank." RCW 62A.4-105.

"Item." RCW 62A.4-104.

"Midnight deadline." RCW 62A.4-104.

"Payor bank." RCW 62A.4-105.

(4) In addition Article 1 contains general definitions and principles of construction and interpretation applicable throughout this Article. [1965 ex.s. c 157 § 3-102. Cf. former RCW sections: (i) RCW 62.01.001(5); 1955 c 35 § 62.01.001; prior: 1899 c 149 § 1; RRS § 3392. (ii) RCW 62.01.128; 1955 c 35 § 62.01.128; prior: 1899 c 149 § 128; RRS § 3518. (iii) RCW 62.01.191; 1955 c 35 § 62.01.191; prior: 1899 c 149 § 191; RRS § 3581.]

62A.3-103 Limitations on scope of Article. (1) This Article does not apply to money, documents of title or investment securities.

(2) The provisions of this Article are subject to the provisions of the Article on Bank Deposits and Collections (Article 4) and Secured Transactions (Article 9). [1965 ex.s. c 157 § 3-103.]

62A.3-104 Form of negotiable instruments; "draft"; "check"; "certificate of deposit"; "note". (1) Any writing to be a negotiable instrument within this Article must

(a) be signed by the maker or drawer; and

(b) contain an unconditional promise or order to pay a sum certain in money and no other promise, order, obligation or power given by the maker or drawer except as authorized by this Article; and

(c) be payable on demand or at a definite time; and

(d) be payable to order or to bearer.

(2) A writing which complies with the requirements of this section is

(a) a "draft" ("bill of exchange") if it is an order;

(b) a "check" if it is a draft drawn on a bank and payable on demand;

(c) a "certificate of deposit" if it is an acknowledgment by a bank of receipt of money with an engagement to repay it;

(d) a "note" if it is a promise other than a certificate of deposit.

(3) As used in other Articles of this Title, and as the context may require, the terms "draft", "check", "certificate of deposit" and "note" may refer to instruments which are not negotiable within this Article as well as to instruments which are so negotiable. [1965 ex.s. c 157 § 3-104. Cf. former RCW sections: RCW 62.01.001, 62.01.005, 62.01.010, 62.01.126, 62.01.184, and 62.01.185; 1955 c 35 §§ 62.01.001, 62.01.005, 62.01.010, 62.01.126, 62.01.184, and 62.01.185; prior: 1899 c 149 §§ 1, 5, 10, 126, 184, and 185; RRS §§ 3392, 3396, 3401, 3516, 3574, and 3575.]

62A.3-105 When promise or order unconditional. (1) A promise or order otherwise unconditional is not made conditional by the fact that the instrument

(a) is subject to implied or constructive conditions; or

(b) states its consideration, whether performed or promised, or the transaction which gave rise to the instrument, or that the promise or order is made or the instrument matures in accordance with or "as per" such transaction; or

(c) refers to or states that it arises out of a separate agreement or refers to a separate agreement for rights as to prepayment or acceleration; or

(d) states that it is drawn under a letter of credit; or

(e) states that it is secured, whether by mortgage, reservation of title or otherwise; or

(f) indicates a particular account to be debited or any other fund or source from which reimbursement is expected; or

(g) is limited to payment out of a particular fund or the proceeds of a particular source, if the instrument is

issued by a government or governmental agency or unit; or

(h) is limited to payment out of the entire assets of a partnership, unincorporated association, trust or estate by or on behalf of which the instrument is issued.

(2) A promise or order is not unconditional if the instrument

(a) states that it is subject to or governed by any other agreement; or

(b) states that it is to be paid only out of a particular fund or source except as provided in this section. [1965 ex.s. c 157 § 3-105. Cf. former RCW 62.01.003; 1955 c 35 § 62.01.003; prior: 1899 c 149 § 3; RRS § 3394.]

62A.3-106 Sum certain—Definitions. (1) The sum payable is a sum certain even though it is to be paid

(a) with stated interest or by stated installments; or

(b) with stated different rates of interest before and after default or a specified date; or

(c) with a stated discount or addition if paid before or after the date fixed for payment; or

(d) with exchange or less exchange, whether at a fixed rate or at the current rate; or

(e) with costs of collection or an attorney's fee or both upon default.

(2) A rate of interest that cannot be calculated by looking only to the instrument is a stated rate of interest in subsection (1) of this section if the rate during any period is readily ascertainable by a reference in the instrument to a published statute, regulation, rule of court, generally accepted commercial or financial index, compendium of interest rates, or announced or established rate of one or more named financial institutions.

(3) Graduated, variable, annuity or price-level adjusted payments are stated installments in subsection (1) of this section if such payments are provided for in the instrument.

(4) Nothing in this section shall validate any term which is otherwise illegal. [1989 c 13 § 1; 1965 ex.s. c 157 § 3-106. Cf. former RCW sections: (i) RCW 62.01.002; 1955 c 35 § 62.01.002; prior: 1899 c 149 § 2; RRS § 3393. (ii) RCW 62.01.006(5); 1955 c 35 § 62.01.006; prior: 1899 c 149 § 6; RRS § 3397.]

62A.3-107 Money. (1) An instrument is payable in money if the medium of exchange in which it is payable is money at the time the instrument is made. An instrument payable in "currency" or "current funds" is payable in money.

(2) A promise or order to pay a sum stated in a foreign currency is for a sum certain in money and, unless a different medium of payment is specified in the instrument, may be satisfied by payment of that number of dollars which the stated foreign currency will purchase at the buying sight rate for that currency on the day on which the instrument is payable or, if payable on demand, on the day of demand. If such an instrument specifies a foreign currency as the medium of payment the instrument is payable in that currency. [1965 ex.s. c 157 § 3-107. Cf. former RCW 62.01.006(5); 1955 c 35 § 62.01.006; prior: 1899 c 149 § 6; RRS § 3397.]

62A.3-108 Payable on demand. Instruments payable on demand include those payable at sight or on presentation and those in which no time for payment is stated. [1965 ex.s. c 157 § 3-108. Cf. former RCW 62.01.007; 1955 c 35 § 62.01.007; prior: 1899 c 149 § 7; RRS § 3398.]

62A.3-109 Definite time. (1) An instrument is payable at a definite time if by its terms it is payable

(a) on or before a stated date or at a fixed period after a stated date; or

(b) at a fixed period after sight; or

(c) at a definite time subject to any acceleration; or

(d) at a definite time subject to extension at the option of the holder, or to extension to a further definite time at the option of the maker or acceptor or automatically upon or after a specified act or event; or

(e) by variable, graduated, annuity or price-level adjusted payments.

(2) An instrument which by its terms is otherwise payable only upon an act or event uncertain as to time of occurrence is not payable at a definite time even though the act or event has occurred. [1989 c 13 § 2; 1965 ex.s. c 157 § 3-109. Cf. former RCW sections: (i) RCW 62.01.002(3); 1955 c 35 § 62.01.002; prior: 1899 c 149 § 2; RRS § 3393. (ii) RCW 62.01.004; 1955 c 35 § 62.01.004; prior: 1899 c 149 § 4; RRS § 3395. (iii) RCW 62.01.017(3); 1955 c 35 § 62.01.017; prior: 1899 c 149 § 17; RRS § 3408.]

62A.3-110 Payable to order. (1) An instrument is payable to order when by its terms it is payable to the order or assigns of any person therein specified with reasonable certainty, or to him or his order, or when it is conspicuously designated on its face as "exchange" or the like and names a payee. It may be payable to the order of

(a) the maker or drawer; or

(b) the drawee; or

(c) a payee who is not maker, drawer or drawee; or

(d) two or more payees together or in the alternative; or

(e) an estate, trust or fund, in which case it is payable to the order of the representative of such estate, trust or fund or his successors; or

(f) an office, or an officer by his title as such in which case it is payable to the principal but the incumbent of the office or his successors may act as if he or they were the holder; or

(g) a partnership or unincorporated association, in which case it is payable to the partnership or association and may be indorsed or transferred by any person thereto authorized.

(2) An instrument not payable to order is not made so payable by such words as "payable upon return of this instrument properly indorsed."

(3) An instrument made payable both to order and to bearer is payable to order unless the bearer words are handwritten or typewritten. [1965 ex.s. c 157 § 3-110. Cf. former RCW 62.01.008; 1955 c 35 § 62.01.008; prior: 1899 c 149 § 8; RRS § 3399.]

62A.3-111 Payable to bearer. An instrument is payable to bearer when by its terms it is payable to

- (a) bearer or the order of bearer; or
- (b) a specified person or bearer; or
- (c) "cash" or the order of "cash", or any other indication which does not purport to designate a specific payee. [1965 ex.s. c 157 § 3-111. Cf. former RCW 62.01.009; 1955 c 35 § 62.01.009; prior: 1899 c 149 § 9; RRS § 3400.]

62A.3-112 Terms and omissions not affecting negotiability. (1) The negotiability of an instrument is not affected by

- (a) the omission of a statement of any consideration or of the place where the instrument is drawn or payable; or
- (b) a statement that collateral has been given to secure obligations either on the instrument or otherwise of an obligor on the instrument or that in case of default on those obligations the holder may realize on or dispose of the collateral; or
- (c) a promise or power to maintain or protect collateral or to give additional collateral; or
- (d) a term authorizing a confession of judgment on the instrument if it is not paid when due; or
- (e) a term purporting to waive the benefit of any law intended for the advantage or protection of any obligor; or
- (f) a term in a draft providing that the payee by indorsing or cashing it acknowledges full satisfaction of an obligation of the drawer; or
- (g) a statement in a draft drawn in a set of parts (RCW 62A.3-801) to the effect that the order is effective only if no other part has been honored.

(2) Nothing in this section shall validate any term which is otherwise illegal. [1965 ex.s. c 157 § 3-112. Cf. former RCW sections: (i) 62.01.005; 1955 c 35 § 62.01.005; prior: 1899 c 149 § 5; RRS § 3396. (ii) RCW 62.01.006; 1955 c 35 § 62.01.006; prior: 1899 c 149 § 6; RRS § 3397.]

62A.3-113 Seal. An instrument otherwise negotiable is within this Article even though it is under a seal. [1965 ex.s. c 157 § 3-113. Cf. former RCW 62.01.006(4); 1955 c 35 § 62.01.006; prior: 1899 c 149 § 6; RRS § 3397.]

62A.3-114 Date, antedating, postdating. (1) The negotiability of an instrument is not affected by the fact that it is undated, antedated or postdated.

(2) Where an instrument is antedated or postdated the time when it is payable is determined by the stated date if the instrument is payable on demand or at a fixed period after date.

(3) Where the instrument or any signature thereon is dated, the date is presumed to be correct. [1965 ex.s. c 157 § 3-114. Cf. former RCW sections: (i) RCW 62.01.006(1); 1955 c 35 § 62.01.006; prior: 1899 c 149 § 6; RRS § 3397. (ii) RCW 62.01.011; 1955 c 35 § 62.01.011; prior: 1899 c 149 § 11; RRS § 3402. (iii) RCW

62.01.012; 1955 c 35 § 62.01.012; prior: 1899 c 149 § 12; RRS § 3403. (iv) RCW 62.01.017(3); 1955 c 35 § 62.01.017; prior: 1899 c 149 § 17; RRS § 3408.]

62A.3-115 Incomplete instruments. (1) When a paper whose contents at the time of signing show that it is intended to become an instrument is signed while still incomplete in any necessary respect it cannot be enforced until completed, but when it is completed in accordance with authority given it is effective as completed.

(2) If the completion is unauthorized the rules as to material alteration apply (RCW 62A.3-407), even though the paper was not delivered by the maker or drawer; but the burden of establishing that any completion is unauthorized is on the party so asserting. [1965 ex.s. c 157 § 3-115. Cf. former RCW sections: (i) RCW 62.01.013; 1955 c 35 § 62.01.013; prior: 1899 c 149 § 13; RRS § 3404. (ii) RCW 62.01.014; 1955 c 35 § 62.01.014; prior: 1899 c 149 § 14; RRS § 3405. (iii) RCW 62.01.015; 1955 c 35 § 62.01.015; prior: 1899 c 149 § 15; RRS § 3406.]

62A.3-116 Instruments payable to two or more persons. An instrument payable to the order of two or more persons

- (a) if in the alternative is payable to any one of them and may be negotiated, discharged or enforced by any of them who has possession of it;
- (b) if not in the alternative is payable to all of them and may be negotiated, discharged or enforced only by all of them. [1965 ex.s. c 157 § 3-116. Cf. former RCW 62.01.041; 1955 c 35 § 62.01.041; prior: 1899 c 149 § 41; RRS § 3432.]

62A.3-117 Instruments payable with words of description. An instrument made payable to a named person with the addition of words describing him

- (a) as agent or officer of a specified person is payable to his principal but the agent or officer may act as if he were the holder;
- (b) as any other fiduciary for a specified person or purpose is payable to the payee and may be negotiated, discharged or enforced by him;
- (c) in any other manner is payable to the payee unconditionally and the additional words are without effect on subsequent parties. [1965 ex.s. c 157 § 3-117. Cf. former RCW 62.01.042; 1955 c 35 § 62.01.042; prior: 1899 c 149 § 42; RRS § 3433.]

62A.3-118 Ambiguous terms and rules of construction. The following rules apply to every instrument:

- (a) Where there is doubt whether the instrument is a draft or a note the holder may treat it as either. A draft drawn on the drawer is effective as a note.
- (b) Handwritten terms control typewritten and printed terms, and typewritten control printed.
- (c) Words control figures except that if the words are ambiguous figures control.

(d) Unless otherwise specified a provision for interest means interest at the judgment rate at the place of payment from the date of the instrument, or if it is undated from the date of issue.

(e) Unless the instrument otherwise specifies two or more persons who sign as maker, acceptor or drawer or indorser and as a part of the same transaction are jointly and severally liable even though the instrument contains such words as "I promise to pay."

(f) Unless otherwise specified consent to extension authorizes a single extension for not longer than the original period. A consent to extension, expressed in the instrument, is binding on secondary parties and accommodation makers. A holder may not exercise his option to extend an instrument over the objection of a maker or acceptor or other party who in accordance with RCW 62A.3-604 tenders full payment when the instrument is due. [1965 ex.s. c 157 § 3-118. Cf. former RCW sections: (i) RCW 62.01.017; 1955 c 35 § 62.01.017; prior: 1899 c 149 § 17; RRS § 3408. (ii) RCW 62.01.068; 1955 c 35 § 62.01.068; prior: 1899 c 149 § 68; RRS § 3459. (iii) RCW 62.01.130; 1955 c 35 § 62.01.130; prior: 1899 c 149 § 130; RRS § 3520.]

62A.3-119 Other writings affecting instrument. (1) As between the obligor and his immediate obligee or any transferee the terms of an instrument may be modified or affected by any other written agreement executed as a part of the same transaction, except that a holder in due course is not affected by any limitation of his rights arising out of the separate written agreement if he had no notice of the limitation when he took the instrument.

(2) A separate agreement does not affect the negotiability of an instrument. [1965 ex.s. c 157 § 3-119.]

62A.3-120 Instruments "payable through" bank. An instrument which states that it is "payable through" a bank or the like designates that bank as a collecting bank to make presentment but does not of itself authorize the bank to pay the instrument. [1965 ex.s. c 157 § 3-120.]

62A.3-121 Instruments payable at bank. A note or acceptance which states that it is payable at a bank is not of itself an order or authorization to the bank to pay it. [1965 ex.s. c 157 § 3-121. Cf. former RCW 62.01-.087; 1955 c 35 § 62.01.087; prior: 1899 c 149 § 87; RRS § 3477.]

62A.3-122 Accrual of cause of action. (1) A cause of action against a maker or an acceptor accrues

(a) in the case of a time instrument on the day after maturity;

(b) in the case of a demand instrument upon its date or, if no date is stated, on the date of issue.

(2) A cause of action against the obligor of a demand or time certificate of deposit accrues upon demand, but demand on a time certificate may not be made until on or after the date of maturity.

(3) A cause of action against a drawer of a draft or an indorser of any instrument accrues upon demand following dishonor of the instrument. Notice of dishonor is a demand.

(4) Unless an instrument provides otherwise, interest runs at the rate provided by law for a judgment

(a) in the case of a maker, acceptor or other primary obligor of a demand instrument, from the date of demand;

(b) in all other cases from the date of accrual of the cause of action. [1965 ex.s. c 157 § 3-122.]

PART 2

TRANSFER AND NEGOTIATION

62A.3-201 Transfer: Right to indorsement. (1) Transfer of an instrument vests in the transferee such rights as the transferor has therein, except that a transferee who has himself been a party to any fraud or illegality affecting the instrument or who as a prior holder had notice of a defense or claim against it cannot improve his position by taking from a later holder in due course.

(2) A transfer of a security interest in an instrument vests the foregoing rights in the transferee to the extent of the interest transferred.

(3) Unless otherwise agreed any transfer for value of an instrument not then payable to bearer gives the transferee the specifically enforceable right to have the unqualified indorsement of the transferor. Negotiation takes effect only when the indorsement is made and until that time there is no presumption that the transferee is the owner. [1965 ex.s. c 157 § 3-201. Cf. former RCW sections: (i) RCW 62.01.027; 1955 c 35 § 62.01.027; prior: 1899 c 149 § 27; RRS § 3418. (ii) RCW 62.01-.049; 1955 c 35 § 62.01.049; prior: 1899 c 149 § 49; RRS § 3440. (iii) RCW 62.01.058; 1955 c 35 § 62.01-.058; prior: 1899 c 149 § 58; RRS § 3449.]

62A.3-202 Negotiation. (1) Negotiation is the transfer of an instrument in such form that the transferee becomes a holder. If the instrument is payable to order it is negotiated by delivery with any necessary indorsement; if payable to bearer it is negotiated by delivery.

(2) An indorsement must be written by or on behalf of the holder and on the instrument or on a paper so firmly affixed thereto as to become a part thereof.

(3) An indorsement is effective for negotiation only when it conveys the entire instrument or any unpaid residue. If it purports to be of less it operates only as a partial assignment.

(4) Words of assignment, condition, waiver, guaranty, limitation or disclaimer of liability and the like accompanying an indorsement do not affect its character as an indorsement. [1965 ex.s. c 157 § 3-202. Cf. former RCW sections: (i) RCW 62.01.030; 1955 c 35 § 62.01-.030; prior: 1899 c 149 § 30; RRS § 3421. (ii) RCW 62.01.031; 1955 c 35 § 62.01.031; prior: 1899 c 149 § 31; RRS § 3422. (iii) RCW 62.01.032; 1955 c 35 § 62-.01.032; prior: 1899 c 149 § 32; RRS § 3423.]

62A.3-203 Wrong or misspelled name. Where an instrument is made payable to a person under a misspelled name or one other than his own he may indorse in that name or his own or both; but signature in both names may be required by a person paying or giving value for the instrument. [1965 ex.s. c 157 § 3-203. Cf. former RCW 62.01.043; 1955 c 35 § 62.01.043; prior: 1899 c 149 § 43; RRS § 3434.]

62A.3-204 Special indorsement; blank indorsement. (1) A special indorsement specifies the person to whom or to whose order it makes the instrument payable. Any instrument specially indorsed becomes payable to the order of the special indorsee and may be further negotiated only by his indorsement.

(2) An indorsement in blank specifies no particular indorsee and may consist of a mere signature. An instrument payable to order and indorsed in blank becomes payable to bearer and may be negotiated by delivery alone until specially indorsed.

(3) The holder may convert a blank indorsement into a special indorsement by writing over the signature of the indorser in blank any contract consistent with the character of the indorsement. [1965 ex.s. c 157 § 3-204. Cf. former RCW sections: (i) RCW 62.01.009(5); 1955 c 35 § 62.01.009; prior: 1899 c 149 § 9; RRS § 3400. (ii) RCW 62.01.033 through 62.01.036; 1955 c 35 §§ 62.01.033 through 62.01.036; prior: 1899 c 149 §§ 33 through 36; RRS §§ 3424 through 3427. (iii) RCW 62.01.040; 1955 c 35 § 62.01.040; prior: 1899 c 149 § 40; RRS § 3431.]

62A.3-205 Restrictive indorsements. An indorsement is restrictive which either

- (a) is conditional; or
- (b) purports to prohibit further transfer of the instrument; or
- (c) includes the words "for collection", "for deposit", "pay any bank", or like terms signifying a purpose of deposit or collection; or
- (d) otherwise states that it is for the benefit or use of the indorser or of another person. [1965 ex.s. c 157 § 3-205. Cf. former RCW sections: (i) RCW 62.01.036; 1955 c 35 § 62.01.036; prior: 1899 c 149 § 36; RRS § 3427. (ii) RCW 62.01.039; 1955 c 35 § 62.01.039; prior: 1899 c 149 § 39; RRS § 3430.]

62A.3-206 Effect of restrictive indorsement. (1) No restrictive indorsement prevents further transfer or negotiation of the instrument.

(2) An intermediary bank, or a payor bank which is not the depository bank, is neither given notice nor otherwise affected by a restrictive indorsement of any person except the bank's immediate transferor or the person presenting for payment.

(3) Except for an intermediary bank, any transferee under an indorsement which is conditional or includes the words "for collection", "for deposit", "pay any bank", or like terms (subparagraphs (a) and (c) of RCW 62A.3-205) must pay or apply any value given by him for or on the security of the instrument consistently

with the indorsement and to the extent that he does so he becomes a holder for value. In addition such transferee is a holder in due course if he otherwise complies with the requirements of RCW 62A.3-302 on what constitutes a holder in due course.

(4) The first taker under an indorsement for the benefit of the indorser or another person (subparagraph (d) of RCW 62A.3-205) must pay or apply any value given by him for or on the security of the instrument consistently with the indorsement and to the extent that he does so he becomes a holder for value. In addition such taker is a holder in due course if he otherwise complies with the requirements of RCW 62A.3-302 on what constitutes a holder in due course. A later holder for value is neither given notice nor otherwise affected by such restrictive indorsement unless he has knowledge that a fiduciary or other person has negotiated the instrument in any transaction for his own benefit or otherwise in breach of duty (subsection (2) of RCW 62A.3-304). [1965 ex.s. c 157 § 3-206. Cf. former RCW sections: (i) RCW 62.01.036; 1955 c 35 § 62.01.036; prior: 1899 c 149 § 36; RRS § 3427. (ii) RCW 62.01.037; 1955 c 35 § 62.01.037; prior: 1899 c 149 § 37; RRS § 3428. (iii) RCW 62.01.039; 1955 c 35 § 62.01.039; prior: 1899 c 149 § 39; RRS § 3430. (iv) RCW 62.01.047; 1955 c 35 § 62.01.047; prior: 1899 c 149 § 47; RRS § 3438.]

62A.3-207 Negotiation effective although it may be rescinded. (1) Negotiation is effective to transfer the instrument although the negotiation is

- (a) made by an infant, a corporation exceeding its powers, or any other person without capacity; or
- (b) obtained by fraud, duress or mistake of any kind; or
- or
- (c) part of an illegal transaction; or
- (d) made in breach of duty.

(2) Except as against a subsequent holder in due course such negotiation is in an appropriate case subject to rescission, the declaration of a constructive trust or any other remedy permitted by law. [1965 ex.s. c 157 § 3-207. Cf. former RCW sections: (i) RCW 62.01.022; 1955 c 35 § 62.01.022; prior: 1899 c 149 § 22; RRS § 3413. (ii) RCW 62.01.058; 1955 c 35 § 62.01.058; prior: 1899 c 149 § 58; RRS § 3449. (iii) RCW 62.01.059; 1955 c 35 § 62.01.059; prior: 1899 c 149 § 59; RRS § 3450.]

62A.3-208 Reacquisition. Where an instrument is returned to or reacquired by a prior party he may cancel any indorsement which is not necessary to his title and reissue or further negotiate the instrument, but any intervening party is discharged as against the reacquiring party and subsequent holders not in due course and if his indorsement has been cancelled is discharged as against subsequent holders in due course as well. [1965 ex.s. c 157 § 3-208. Cf. former RCW sections: (i) RCW 62.01.048; 1955 c 35 § 62.01.048; prior: 1899 c 149 § 48; RRS § 3439. (ii) RCW 62.01.050; 1955 c 35 § 62.01.050; prior: 1899 c 149 § 50; RRS § 3441. (iii) RCW 62.01.121; 1955 c 35 § 62.01.121; prior: 1899 c 149 § 121; RRS § 3511.]

PART 3
RIGHTS OF A HOLDER

62A.3-301 Rights of a holder. The holder of an instrument whether or not he is the owner may transfer or negotiate it and, except as otherwise provided in RCW 62A.3-603 on payment or satisfaction, discharge it or enforce payment in his own name. [1965 ex.s. c 157 § 3-301. Cf. former RCW 62.01.051; 1955 c 35 § 62.01-.051; prior: 1899 c 149 § 51; RRS § 3442.]

62A.3-302 Holder in due course. (1) A holder in due course is a holder who takes the instrument

(a) for value; and

(b) in good faith; and

(c) without notice that it is overdue or has been dishonored or of any defense against or claim to it on the part of any person.

(2) A payee may be a holder in due course.

(3) A holder does not become a holder in due course of an instrument:

(a) by purchase of it at judicial sale or by taking it under legal process; or

(b) by acquiring it in taking over an estate; or

(c) by purchasing it as part of a bulk transaction not in regular course of business of the transferor.

(4) A purchaser of a limited interest can be a holder in due course only to the extent of the interest purchased. [1965 ex.s. c 157 § 3-302. Cf. former RCW sections: (i) RCW 62.01.027; 1955 c 35 § 62.01.027; prior: 1899 c 149 § 27; RRS § 3418. (ii) RCW 62.01-.052; 1955 c 35 § 62.01.052; prior: 1899 c 149 § 52; RRS § 3443.]

62A.3-303 Taking for value. A holder takes the instrument for value

(a) to the extent that the agreed consideration has been performed or that he acquires a security interest in or a lien on the instrument otherwise than by legal process; or

(b) when he takes the instrument in payment of or as security for an antecedent claim against any person whether or not the claim is due; or

(c) when he gives a negotiable instrument for it or makes an irrevocable commitment to a third person. [1965 ex.s. c 157 § 3-303. Cf. former RCW sections: (i) RCW 62.01.025 through 62.01.027; 1955 c 35 §§ 62.01.025 through 62.01.027; prior: 1899 c 149 §§ 25 through 27; RRS §§ 3416 through 3418. (ii) RCW 62.01.054; 1955 c 35 § 62.01.054; prior: 1899 c 149 § 54; RRS § 3445.]

62A.3-304 Notice to purchaser. (1) The purchaser has notice of a claim or defense if

(a) the instrument is so incomplete, bears such visible evidence of forgery or alteration, or is otherwise so irregular as to call into question its validity, terms or ownership or to create an ambiguity as to the party to pay; or

(b) the purchaser has notice that the obligation of any party is voidable in whole or in part, or that all parties have been discharged.

(2) The purchaser has notice of a claim against the instrument when he has knowledge that a fiduciary has negotiated the instrument in payment of or as security for his own debt or in any transaction for his own benefit or otherwise in breach of duty.

(3) The purchaser has notice that an instrument is overdue if he has reason to know

(a) that any part of the principal amount is overdue or that there is an uncured default in payment of another instrument of the same series; or

(b) that acceleration of the instrument has been made; or

(c) that he is taking a demand instrument after demand has been made or more than a reasonable length of time after its issue. A reasonable time for a check drawn and payable within the states and territories of the United States and the District of Columbia is presumed to be thirty days.

(4) Knowledge of the following facts does not of itself give the purchaser notice of a defense or claim

(a) that the instrument is antedated or postdated;

(b) that it was issued or negotiated in return for an executory promise or accompanied by a separate agreement, unless the purchaser has notice that a defense or claim has arisen from the terms thereof;

(c) that any party has signed for accommodation;

(d) that an incomplete instrument has been completed, unless the purchaser has notice of any improper completion;

(e) that any person negotiating the instrument is or was a fiduciary;

(f) that there has been default in payment of interest on the instrument or in payment of any other instrument, except one of the same series.

(5) The filing or recording of a document does not of itself constitute notice within the provisions of this Article to a person who would otherwise be a holder in due course.

(6) To be effective notice must be received at such time and in such manner as to give a reasonable opportunity to act on it. [1965 ex.s. c 157 § 3-304. Cf. former RCW sections: (i) RCW 62.01.045, 62.01.052, 62.01-.053, 62.01.055, and 62.01.056; 1955 c 35 §§ 62.01.045, 62.01.052, 62.01.053, 62.01.055, and 62.01.056; prior: 1899 c 149 §§ 45, 52, 53, 55, and 56; RRS §§ 3436, 3443, 3444, 3446, and 3447. (ii) RCW 62.01.0195; 1955 c 35 § 62.01.0195; prior: 1927 c 296 § 1; 1925 ex.s. c 54 § 1; RRS § 3410-1.]

62A.3-305 Rights of a holder in due course. To the extent that a holder is a holder in due course he takes the instrument free from

(1) all claims to it on the part of any person; and

(2) all defenses of any party to the instrument with whom the holder has not dealt except

(a) infancy, to the extent that it is a defense to a simple contract; and

(b) such other incapacity, or duress, or illegality of the transaction, as renders the obligation of the party a nullity; and

(c) such misrepresentation as has induced the party to sign the instrument with neither knowledge nor reasonable opportunity to obtain knowledge of its character or its essential terms; and

(d) discharge in insolvency proceedings; and

(e) any other discharge of which the holder has notice when he takes the instrument. [1965 ex.s. c 157 § 3-305. Cf. former RCW sections: (i) RCW 62.01.015; 1955 c 35 § 62.01.015; prior: 1899 c 149 § 15; RRS § 3406. (ii) RCW 62.01.016; 1955 c 35 § 62.01.016; prior: 1899 c 149 § 16; RRS § 3407. (iii) RCW 62.01.057; 1955 c 35 § 62.01.057; prior: 1899 c 149 § 57; RRS § 3448.]

62A.3-306 Rights of one not holder in due course. Unless he has the rights of a holder in due course any person takes the instrument subject to

(a) all valid claims to it on the part of any person; and

(b) all defenses of any party which would be available in an action on a simple contract; and

(c) the defenses of want or failure of consideration, non-performance of any condition precedent, non-delivery, or delivery for a special purpose (RCW 62A.3-408); and

(d) the defense that he or a person through whom he holds the instrument acquired it by theft, or that payment or satisfaction to such holder would be inconsistent with the terms of a restrictive indorsement. The claim of any third person to the instrument is not otherwise available as a defense to any party liable thereon unless the third person himself defends the action for such party. [1965 ex.s. c 157 § 3-306. Cf. former RCW sections: (i) RCW 62.01.016; 1955 c 35 § 62.01.016; prior: 1899 c 149 § 16; RRS § 3407. (ii) RCW 62.01.028; 1955 c 35 § 62.01.028; prior: 1899 c 149 § 28; RRS § 3419. (iii) RCW 62.01.058; 1955 c 35 § 62.01.058; prior: 1899 c 149 § 58; RRS § 3449. (iv) RCW 62.01.059; 1955 c 35 § 62.01.059; prior: 1899 c 149 § 59; RRS § 3450.]

62A.3-307 Burden of establishing signatures, defenses and due course. (1) Unless specifically denied in the pleadings each signature on an instrument is admitted. When the effectiveness of a signature is put in issue

(a) the burden of establishing it is on the party claiming under the signature; but

(b) the signature is presumed to be genuine or authorized except where the action is to enforce the obligation of a purported signer who has died or become incompetent before proof is required.

(2) When signatures are admitted or established, production of the instrument entitles a holder to recover on it unless the defendant establishes a defense.

(3) After it is shown that a defense exists a person claiming the rights of a holder in due course has the burden of establishing that he or some person under whom he claims is in all respects a holder in due course. [1965 ex.s. c 157 § 3-307. Cf. former RCW 62.01.059;

1955 c 35 § 62.01.059; prior: 1899 c 149 § 59; RRS § 3450.]

PART 4 LIABILITY OF PARTIES

62A.3-401 Signature. (1) No person is liable on an instrument unless his signature appears thereon.

(2) A signature is made by use of any name, including any trade or assumed name, upon an instrument, or by any word or mark used in lieu of a written signature. [1965 ex.s. c 157 § 3-401. Cf. former RCW 62.01.018; 1955 c 35 § 62.01.018; prior: 1899 c 149 § 18; RRS § 3409.]

62A.3-402 Signature in ambiguous capacity. Unless the instrument clearly indicates that a signature is made in some other capacity it is an indorsement. [1965 ex.s. c 157 § 3-402. Cf. former RCW sections: (i) RCW 62.01.017(6); 1955 c 149 § 62.01.017; prior: 1899 c 149 § 17; RRS § 3408. (ii) RCW 62.01.063; 1955 c 149 § 62.01.063; prior: 1899 c 149 § 63; RRS 3454.]

62A.3-403 Signature by authorized representative. (1) A signature may be made by an agent or other representative, and his authority to make it may be established as in other cases of representation. No particular form of appointment is necessary to establish such authority.

(2) An authorized representative who signs his own name to an instrument

(a) is personally obligated if the instrument neither names the person represented nor shows that the representative signed in a representative capacity;

(b) except as otherwise established between the immediate parties, is personally obligated if the instrument names the person represented but does not show that the representative signed in a representative capacity, or if the instrument does not name the person represented but does show that the representative signed in a representative capacity.

(3) Except as otherwise established the name of an organization preceded or followed by the name and office of an authorized individual is a signature made in a representative capacity. [1965 ex.s. c 157 § 3-403. Cf. former RCW sections: RCW 62.01.019 through 62.01.021; 1955 c 35 §§ 62.01.019 through 62.01.021; prior: 1899 c 149 §§ 19 through 21; RRS §§ 3410 through 3412.]

62A.3-404 Unauthorized signatures. (1) Any unauthorized signature is wholly inoperative as that of the person whose name is signed unless he ratifies it or is precluded from denying it; but it operates as the signature of the unauthorized signer in favor of any person who in good faith pays the instrument or takes it for value.

(2) Any unauthorized signature may be ratified for all purposes of this Article. Such ratification does not of itself affect any rights of the person ratifying against the actual signer. [1965 ex.s. c 157 § 3-404. Cf. former

RCW 62.01.023; 1955 c 35 § 62.01.023; prior: 1899 c 149 § 23; RRS § 3414.]

62A.3-405 Impostors; signature in name of payee.

(1) An indorsement by any person in the name of a named payee is effective if

(a) an impostor by use of the mails or otherwise has induced the maker or drawer to issue the instrument to him or his confederate in the name of the payee; or

(b) a person signing as or on behalf of a maker or drawer intends the payee to have no interest in the instrument; or

(c) an agent or employee of the maker or drawer has supplied him with the name of the payee intending the latter to have no such interest.

(2) Nothing in this section shall affect the criminal or civil liability of the person so indorsing. [1965 ex.s. c 157 § 3-405. Cf. former RCW 62.01.009(3); 1955 c 35 § 62.01.009; prior: 1899 c 149 § 9; RRS § 3400.]

62A.3-406 Negligence contributing to alteration or unauthorized signature. Any person who by his negligence substantially contributes to a material alteration of the instrument or to the making of an unauthorized signature is precluded from asserting the alteration or lack of authority against a holder in due course or against a drawee or other payor who pays the instrument in good faith and in accordance with the reasonable commercial standards of the drawee's or payor's business. [1965 ex.s. c 157 § 3-406.]

62A.3-407 Alteration. (1) Any alteration of an instrument is material which changes the contract of any party thereto in any respect, including any such change in

(a) the number or relations of the parties; or

(b) an incomplete instrument, by completing it otherwise than as authorized; or

(c) the writing as signed, by adding to it or by removing any part of it.

(2) As against any person other than a subsequent holder in due course

(a) alteration by the holder which is both fraudulent and material discharges any party whose contract is thereby changed unless that party assents or is precluded from asserting the defense;

(b) no other alteration discharges any party and the instrument may be enforced according to its original tenor, or as to incomplete instruments according to the authority given.

(3) A subsequent holder in due course may in all cases enforce the instrument according to its original tenor, and when an incomplete instrument has been completed, he may enforce it as completed. [1965 ex.s. c 157 § 3-407. Cf. former RCW sections: (i) RCW 62.01.014; 1955 c 35 § 62.01.014; prior: 1899 c 149 § 14; RRS § 3405. (ii) RCW 62.01.015; 1955 c 35 § 62.01.015; prior: 1899 c 149 § 15; RRS § 3406. (iii) RCW 62.01.124; 1955 c 35 § 62.01.124; prior: 1899 c 149 § 124; RRS § 3514. (iv) RCW 62.01.125; 1955 c 35 § 62.01.125; prior: 1899 c 149 § 125; RRS § 3515.]

62A.3-408 Consideration. Want or failure of consideration is a defense as against any person not having the rights of a holder in due course (RCW 62A.3-305), except that no consideration is necessary for an instrument or obligation thereon given in payment of or as security for an antecedent obligation of any kind. Nothing in this section shall be taken to displace any statute outside this Title under which a promise is enforceable notwithstanding lack or failure of consideration. Partial failure of consideration is a defense pro tanto whether or not the failure is in an ascertained or liquidated amount. [1965 ex.s. c 157 § 3-408. Cf. former RCW sections: (i) RCW 62.01.024; 1955 c 35 § 62.01.024; prior: 1899 c 149 § 24; RRS § 3415. (ii) RCW 62.01.025; 1955 c 35 § 62.01.025; prior: 1899 c 149 § 25; RRS § 3416. (iii) RCW 62.01.028; 1955 c 35 § 62.01.028; prior: 1899 c 149 § 28; RRS § 3419.]

62A.3-409 Draft not an assignment. (1) A check or other draft does not of itself operate as an assignment of any funds in the hands of the drawee available for its payment, and the drawee is not liable on the instrument until he accepts it.

(2) Nothing in this section shall affect any liability in contract, tort or otherwise arising from any letter of credit or other obligation or representation which is not an acceptance. [1965 ex.s. c 157 § 3-409. Cf. former RCW sections: (i) RCW 62.01.127; 1955 c 35 § 62.01.127; prior: 1899 c 149 § 127; RRS § 3517. (ii) RCW 62.01.189; 1955 c 35 § 62.01.189; prior: 1899 c 149 § 189; RRS § 3579.]

62A.3-410 Definition and operation of acceptance.

(1) Acceptance is the drawee's signed engagement to honor the draft as presented. It must be written on the draft, and may consist of his signature alone. It becomes operative when completed by delivery or notification.

(2) A draft may be accepted although it has not been signed by the drawer or is otherwise incomplete or is overdue or has been dishonored.

(3) Where the draft is payable at a fixed period after sight and the acceptor fails to date his acceptance the holder may complete it by supplying a date in good faith. [1965 ex.s. c 157 § 3-410. Cf. former RCW sections: (i) RCW 62.01.013; 1955 c 35 § 62.01.013; prior: 1899 c 149 § 13; RRS § 3404. (ii) RCW 62.01.132 through 62.01.138; 1955 c 35 §§ 62.01.132 through 62.01.138; prior: 1899 c 149 §§ 132 through 138; RRS §§ 3522 through 3528. (iii) RCW 62.01.161 through 62.01.170; 1955 c 35 §§ 62.01.161 through 62.01.170; prior: 1899 c 149 §§ 161 through 170; RRS §§ 3551 through 3560. (iv) RCW 62.01.191; 1955 c 35 § 62.01.191; prior: 1899 c 149 § 191; RRS § 3581.]

62A.3-411 Certification of a check. (1) Certification of a check is acceptance. Where a holder procures certification the drawer and all prior indorsers are discharged.

(2) Unless otherwise agreed a bank has no obligation to certify a check.

(3) A bank may certify a check before returning it for lack of proper indorsement. If it does so the drawer is discharged. [1965 ex.s. c 157 § 3-411. Cf. former RCW sections: (i) RCW 62.01.187; 1955 c 35 § 62.01.187; prior: 1899 c 149 § 187; RRS § 3577. (ii) RCW 62.01.188; 1955 c 35 § 62.01.188; prior: 1899 c 149 § 188; RRS § 3578.]

62A.3-412 Acceptance varying draft. (1) Where the drawee's proffered acceptance in any manner varies the draft as presented the holder may refuse the acceptance and treat the draft as dishonored in which case the drawee is entitled to have his acceptance cancelled.

(2) The terms of the draft are not varied by an acceptance to pay at any particular bank or place in the United States, unless the acceptance states that the draft is to be paid only at such bank or place.

(3) Where the holder assents to an acceptance varying the terms of the draft each drawer and indorser who does not affirmatively assent is discharged. [1965 ex.s. c 157 § 3-412. Cf. former RCW sections: RCW 62.01.139 through 62.01.142; 1955 c 35 §§ 62.01.139 through 62.01.142; prior: 1899 c 149 §§ 139 through 142; RRS §§ 3529 through 3532.]

62A.3-413 Contract of maker, drawer and acceptor.

(1) The maker or acceptor engages that he will pay the instrument according to its tenor at the time of his engagement or as completed pursuant to RCW 62A.3-115 on incomplete instruments.

(2) The drawer engages that upon dishonor of the draft and any necessary notice of dishonor or protest he will pay the amount of the draft to the holder or to any indorser who takes it up. The drawer may disclaim this liability by drawing without recourse.

(3) By making, drawing or accepting the party admits as against all subsequent parties including the drawee the existence of the payee and his then capacity to indorse. [1965 ex.s. c 157 § 3-413. Cf. former RCW sections: RCW 62.01.060 through 62.01.062; 1955 c 35 §§ 62.01.060 through 62.01.062; prior: 1899 c 149 §§ 60 through 62; RRS §§ 3451 through 3453.]

62A.3-414 Contract of indorser; order of liability.

(1) Unless the indorsement otherwise specifies (as by such words as "without recourse") every indorser engages that upon dishonor and any necessary notice of dishonor and protest he will pay the instrument according to its tenor at the time of his indorsement to the holder or to any subsequent indorser who takes it up, even though the indorser who takes it up was not obligated to do so.

(2) Unless they otherwise agree indorsers are liable to one another in the order in which they indorse, which is presumed to be the order in which their signatures appear on the instrument. [1965 ex.s. c 157 § 3-414. Cf. former RCW sections: (i) RCW 62.01.038; 1955 c 35 § 62.01.038; prior: 1899 c 149 § 38; RRS § 3429. (ii) RCW 62.01.044; 1955 c 35 § 62.01.044; prior: 1899 c 149 § 44; RRS § 3435. (iii) RCW 62.01.066 through 62.01.068; 1955 c 35 §§ 62.01.066 through 62.01.068;

prior: 1899 c 149 §§ 66 through 68; RRS §§ 3457 through 3459.]

62A.3-415 Contract of accommodation party. (1)

An accommodation party is one who signs the instrument in any capacity for the purpose of lending his name to another party to it.

(2) When the instrument has been taken for value before it is due the accommodation party is liable in the capacity in which he has signed even though the taker knows of the accommodation.

(3) As against a holder in due course and without notice of the accommodation oral proof of the accommodation is not admissible to give the accommodation party the benefit of discharges dependent on his character as such. In other cases the accommodation character may be shown by oral proof.

(4) An indorsement which shows that it is not in the chain of title is notice of its accommodation character.

(5) An accommodation party is not liable to the party accommodated, and if he pays the instrument has a right of recourse on the instrument against such party. [1965 ex.s. c 157 § 3-415. Cf. former RCW sections: (i) RCW 62.01.028; 1955 c 35 § 62.01.028; prior: 1899 c 149 § 28; RRS § 3419. (ii) RCW 62.01.029; 1955 c 35 § 62.01.029; prior: 1899 c 149 § 29; RRS § 3420. (iii) RCW 62.01.064; 1955 c 35 § 62.01.064; prior: 1899 c 149 § 64; RRS § 3455.]

62A.3-416 Contract of guarantor. (1) "Payment

guaranteed" or equivalent words added to a signature mean that the signer engages that if the instrument is not paid when due he will pay it according to its tenor without resort by the holder to any other party.

(2) "Collection guaranteed" or equivalent words added to a signature mean that the signer engages that if the instrument is not paid when due he will pay it according to its tenor, but only after the holder has reduced his claim against the maker or acceptor to judgment and execution has been returned unsatisfied, or after the maker or acceptor has become insolvent or it is otherwise apparent that it is useless to proceed against him.

(3) Words of guaranty which do not otherwise specify guarantee payment.

(4) No words of guaranty added to the signature of a sole maker or acceptor affect his liability on the instrument. Such words added to the signature of one of two or more makers or acceptors create a presumption that the signature is for the accommodation of the others.

(5) When words of guaranty are used presentment, notice of dishonor and protest are not necessary to charge the user.

(6) Any guaranty written on the instrument is enforceable notwithstanding any statute of frauds. [1965 ex.s. c 157 § 3-416.]

62A.3-417 Warranties on presentment and transfer.

(1) Any person who obtains payment or acceptance and any prior transferor warrants to a person who in good faith pays or accepts that

(a) he has a good title to the instrument or is authorized to obtain payment or acceptance on behalf of one who has a good title; and

(b) he has no knowledge that the signature of the maker or drawer is unauthorized, except that this warranty is not given by a holder in due course acting in good faith

(i) to a maker with respect to the maker's own signature; or

(ii) to a drawer with respect to the drawer's own signature, whether or not the drawer is also the drawee; or

(iii) to an acceptor of a draft if the holder in due course took the draft after the acceptance or obtained the acceptance without knowledge that the drawer's signature was unauthorized; and

(c) the instrument has not been materially altered, except that this warranty is not given by a holder in due course acting in good faith

(i) to the maker of a note; or

(ii) to the drawer of a draft whether or not the drawer is also the drawee; or

(iii) to the acceptor of a draft with respect to an alteration made prior to the acceptance if the holder in due course took the draft after the acceptance, even though the acceptance provided "payable as originally drawn" or equivalent terms; or

(iv) to the acceptor of a draft with respect to an alteration made after the acceptance.

(2) Any person who transfers an instrument and receives consideration warrants to his transferee and if the transfer is by indorsement to any subsequent holder who takes the instrument in good faith that

(a) he has a good title to the instrument or is authorized to obtain payment or acceptance on behalf of one who has a good title and the transfer is otherwise rightful; and

(b) all signatures are genuine or authorized; and

(c) the instrument has not been materially altered; and

(d) no defense of any party is good against him; and

(e) he has no knowledge of any insolvency proceeding instituted with respect to the maker or acceptor or the drawer of an unaccepted instrument.

(3) By transferring "without recourse" the transferor limits the obligation stated in subsection (2)(d) to a warranty that he has no knowledge of such a defense.

(4) A selling agent or broker who does not disclose the fact that he is acting only as such gives the warranties provided in this section, but if he makes such disclosure warrants only his good faith and authority. [1965 ex.s. c 157 § 3-417. Cf. former RCW sections: (i) RCW 62.01.065; 1955 c 35 § 62.01.065; prior: 1899 c 149 § 65; RRS § 3456. (ii) RCW 62.01.066; 1955 c 35 § 62.01.066; prior: 1899 c 149 § 66; RRS § 3457. (iii) RCW 62.01.069; 1955 c 35 § 62.01.069; prior: 1899 c 149 § 69; RRS § 3460.]

62A.3-418 Finality of payment or acceptance. Except for recovery of bank payments as provided in the Article on Bank Deposits and Collections (Article 4) and

except for liability for breach of warranty on presentment under the preceding section, payment or acceptance of any instrument is final in favor of a holder in due course, or a person who has in good faith changed his position in reliance on the payment. [1965 ex.s. c 157 § 3-418. Cf. former RCW 62.01.062; 1955 c 35 § 62.01.062; prior: 1899 c 149 § 62; RRS § 3453.]

62A.3-419 Conversion of instrument; innocent representative. (1) An instrument is converted when

(a) a drawee to whom it is delivered for acceptance refuses to return it on demand; or

(b) any person to whom it is delivered for payment refuses on demand either to pay or to return it; or

(c) it is paid on a forged indorsement.

(2) In an action against a drawee under subsection (1) the measure of the drawee's liability is the face amount of the instrument. In any other action under subsection (1) the measure of liability is presumed to be the face amount of the instrument.

(3) Subject to the provisions of this Title concerning restrictive indorsements a representative, including a depository or collecting bank, who has in good faith and in accordance with the reasonable commercial standards applicable to the business of such representative dealt with an instrument or its proceeds on behalf of one who was not the true owner is not liable in conversion or otherwise to the true owner beyond the amount of any proceeds remaining in his hands.

(4) An intermediary bank or payor bank which is not a depository bank is not liable in conversion solely by reason of the fact that proceeds of an item indorsed restrictively (RCW 62A.3-205 and RCW 62A.3-206) are not paid or applied consistently with the restrictive indorsement of an indorser other than its immediate transferor. [1965 ex.s. c 157 § 3-419. Cf. former RCW 62.01.137; 1955 c 35 § 62.01.137; prior: 1899 c 149 § 137; RRS § 3527.]

PART 5 PRESENTMENT, NOTICE OF DISHONOR AND PROTEST

62A.3-501 When presentment, notice of dishonor, and protest necessary or permissible. (1) Unless excused (RCW 62A.3-511) presentment is necessary to charge secondary parties as follows:

(a) presentment for acceptance is necessary to charge the drawer and indorsers of a draft where the draft so provides, or is payable elsewhere than at the residence or place of business of the drawee, or its date of payment depends upon such presentment. The holder may at his option present for acceptance any other draft payable at a stated date;

(b) presentment for payment is necessary to charge any indorser;

(c) in the case of any drawer, the acceptor of a draft payable at a bank or the maker of a note payable at a bank, presentment for payment is necessary, but failure to make presentment discharges such drawer, acceptor or maker only as stated in RCW 62A.3-502(1)(b).

(2) Unless excused (RCW 62A.3-511)

(a) notice of any dishonor is necessary to charge any indorser;

(b) in the case of any drawer, the acceptor of a draft payable at a bank or the maker of a note payable at a bank, notice of any dishonor is necessary, but failure to give such notice discharges such drawer, acceptor or maker only as stated in RCW 62A.3-502(1)(b).

(3) Unless excused (RCW 62A.3-511) protest of any dishonor is necessary to charge the drawer and indorsers of any draft which on its face appears to be drawn or payable outside of the states and territories of the United States and the District of Columbia. The holder may at his option make protest of any dishonor of any other instrument and in the case of a foreign draft may on insolvency of the acceptor before maturity make protest for better security.

(4) Notwithstanding any provision of this section, neither presentment nor notice of dishonor nor protest is necessary to charge an indorser who has indorsed an instrument after maturity. [1965 ex.s. c 157 § 3-501. Cf. former RCW sections: RCW 62.01.070, 62.01.089, 62.01.118, 62.01.129, 62.01.143, 62.01.144, 62.01.150, 62.01.151, 62.01.152, 62.01.157, 62.01.158, and 62.01.186; 1955 c 35 §§ 62.01.070, 62.01.089, 62.01.118, 62.01.129, 62.01.143, 62.01.144, 62.01.150, 62.01.151, 62.01.152, 62.01.157, 62.01.158, and 62.01.186; prior: 1899 c 149 §§ 70, 89, 118, 129, 143, 144, 150, 151, 152, 157, 158, and 186; RRS §§ 3461, 3479, 3508, 3519, 3533, 3534, 3540, 3541, 3542, 3547, 3548, and 3576.]

62A.3-502 Unexcused delay; discharge. (1) Where without excuse any necessary presentment or notice of dishonor is delayed beyond the time when it is due

(a) any indorser is discharged; and

(b) any drawer or the acceptor of a draft payable at a bank or the maker of a note payable at a bank who because the drawee or payor bank becomes insolvent during the delay is deprived of funds maintained with the drawee or payor bank to cover the instrument may discharge his liability by written assignment to the holder of his rights against the drawee or payor bank in respect of such funds, but such drawer, acceptor or maker is not otherwise discharged.

(2) Where without excuse a necessary protest is delayed beyond the time when it is due any drawer or indorser is discharged. [1965 ex.s. c 157 § 3-502. Cf. former RCW sections: RCW 62.01.007, 62.01.070, 62.01.089, 62.01.144, 62.01.150, 62.01.152, and 62.01.186; 1955 c 35 §§ 62.01.007, 62.01.070, 62.01.089, 62.01.144, 62.01.150, 62.01.152, and 62.01.186; prior: 1899 c 149 §§ 7, 70, 89, 144, 150, 152, and 186; RRS §§ 3398, 3461, 3479, 3534, 3540, 3542, and 3576.]

62A.3-503 Time of presentment. (1) Unless a different time is expressed in the instrument the time for any presentment is determined as follows:

(a) where an instrument is payable at or a fixed period after a stated date any presentment for acceptance must be made on or before the date it is payable;

(b) where an instrument is payable after sight it must either be presented for acceptance or negotiated within a reasonable time after date or issue whichever is later;

(c) where an instrument shows the date on which it is payable presentment for payment is due on that date;

(d) where an instrument is accelerated presentment for payment is due within a reasonable time after the acceleration;

(e) with respect to the liability of any secondary party presentment for acceptance or payment of any other instrument is due within a reasonable time after such party becomes liable thereon.

(2) A reasonable time for presentment is determined by the nature of the instrument, any usage of banking or trade and the facts of the particular case. In the case of an uncertified check which is drawn and payable within the United States and which is not a draft drawn by a bank the following are presumed to be reasonable periods within which to present for payment or to initiate bank collection:

(a) with respect to the liability of the drawer, thirty days after date or issue whichever is later; and

(b) with respect to the liability of an endorser, seven days after his indorsement.

(3) Where any presentment is due on a day which is not a full business day for either the person making presentment or the party to pay or accept, presentment is due on the next following day which is a full business day for both parties.

(4) Presentment to be sufficient must be made at a reasonable hour, and if at a bank during its banking day. [1965 ex.s. c 157 § 3-503. Cf. former RCW sections: (i) RCW 62.01.071, 62.01.072, 62.01.075, 62.01.086, 62.01.144, 62.01.145, 62.01.146, 62.01.186, and 62.01.193; 1955 c 35 §§ 62.01.071, 62.01.072, 62.01.075, 62.01.086, 62.01.144, 62.01.145, 62.01.146, 62.01.186, and 62.01.193; prior: 1899 c 149 §§ 71, 72, 75, 86, 144, 145, 146, 186, and 193; RRS §§ 3462, 3463, 3466, 3476, 3534, 3535, 3536, 3576, and 3583. (ii) RCW 62.01.085; 1955 c 35 § 62.01.085; prior: 1915 c 173 § 1; 1899 c 149 § 85; RRS § 3475 1/2.]

62A.3-504 How presentment made. (1) Presentment is a demand for acceptance or payment made upon the maker, acceptor, drawee or other payor by or on behalf of the holder.

(2) Presentment may be made

(a) by mail, in which event the time of presentment is determined by the time of receipt of the mail; or

(b) through a clearing house; or

(c) at the place of acceptance or payment specified in the instrument or if there be none at the place of business or residence of the party to accept or pay. If neither the party to accept or pay nor anyone authorized to act for him is present or accessible at such place presentment is excused.

(3) It may be made

(a) to any one of two or more makers, acceptors, drawees or other payors; or

(b) to any person who has authority to make or refuse the acceptance or payment.

(4) A draft accepted or a note made payable at a bank in the United States must be presented at such bank.

(5) In the cases described in RCW 62A.4-210 presentment may be made in the manner and with the result stated in that section. [1965 ex.s. c 157 § 3-504. Cf. former RCW sections: RCW 62.01.072, 62.01.073, 62.01.077, 62.01.078, and 62.01.145; 1955 c 35 §§ 62.01.072, 62.01.073, 62.01.077, 62.01.078, and 62.01.145; prior: 1899 c 149 §§ 72, 73, 77, 78, and 145; RRS §§ 3463, 3464, 3468, 3469, and 3535.]

62A.3-505 Rights of party to whom presentment is made. (1) The party to whom presentment is made may without dishonor require

- (a) exhibition of the instrument; and
- (b) reasonable identification of the person making presentment and evidence of his authority to make it if made for another; and
- (c) that the instrument be produced for acceptance or payment at a place specified in it, or if there be none at any place reasonable in the circumstances; and
- (d) a signed receipt on the instrument for any partial or full payment and its surrender upon full payment.

(2) Failure to comply with any such requirement invalidates the presentment but the person presenting has a reasonable time in which to comply and the time for acceptance or payment runs from the time of compliance. [1965 ex.s. c 157 § 3-505. Cf. former RCW sections: (i) RCW 62.01.072(3); 1955 c 35 § 62.01.072; prior: 1899 c 149 § 72; RRS § 3463. (ii) RCW 62.01.074; 1955 c 35 § 62.01.074; prior: 1899 c 149 § 74; RRS § 3465. (iii) RCW 62.01.133; 1955 c 35 § 62.01.133; prior: 1899 c 149 § 133; RRS § 3523.]

62A.3-506 Time allowed for acceptance or payment.

(1) Acceptance may be deferred without dishonor until the close of the next business day following presentment. The holder may also in a good faith effort to obtain acceptance and without either dishonor of the instrument or discharge of secondary parties allow postponement of acceptance for an additional business day.

(2) Except as a longer time is allowed in the case of documentary drafts drawn under a letter of credit, and unless an earlier time is agreed to by the party to pay, payment of an instrument may be deferred without dishonor pending reasonable examination to determine whether it is properly payable, but payment must be made in any event before the close of business on the day of presentment. [1965 ex.s. c 157 § 3-506. Cf. former RCW 62.01.136; 1955 c 35 § 62.01.136; prior: 1899 c 149 § 136; RRS § 3526.]

62A.3-507 Dishonor; holder's right of recourse; term allowing re-presentment. (1) An instrument is dishonored when

(a) a necessary or optional presentment is duly made and due acceptance or payment is refused or cannot be obtained within the prescribed time or in case of bank collections the instrument is seasonably returned by the midnight deadline (RCW 62A.4-301); or

(b) presentment is excused and the instrument is not duly accepted or paid.

(2) Subject to any necessary notice of dishonor and protest, the holder has upon dishonor an immediate right of recourse against the drawers and indorsers.

(3) Return of an instrument for lack of proper indorsement is not dishonor.

(4) A term in a draft or an indorsement thereof allowing a stated time for re-presentment in the event of any dishonor of the draft by nonacceptance if a time draft or by nonpayment if a sight draft gives the holder as against any secondary party bound by the term an option to waive the dishonor without affecting the liability of the secondary party and he may present again up to the end of the stated time. [1965 ex.s. c 157 § 3-507. Cf. former RCW sections: RCW 62.01.083, 62.01.084, 62.01.149, and 62.01.151; 1955 c 35 §§ 62.01.083, 62.01.084, 62.01.149, and 62.01.151; prior: 1899 c 149 §§ 83, 84, 149, and 151; RRS §§ 3474, 3475, 3539, and 3541.]

62A.3-508 Notice of dishonor. (1) Notice of dishonor may be given to any person who may be liable on the instrument by or on behalf of the holder or any party who has himself received notice, or any other party who can be compelled to pay the instrument. In addition an agent or bank in whose hands the instrument is dishonored may give notice to his principal or customer or to another agent or bank from which the instrument was received.

(2) Any necessary notice must be given by a bank before its midnight deadline and by any other person before midnight of the third business day after dishonor or receipt of notice of dishonor.

(3) Notice may be given in any reasonable manner. It may be oral or written and in any terms which identify the instrument and state that it has been dishonored. A misdescription which does not mislead the party notified does not vitiate the notice. Sending the instrument bearing a stamp, ticket or writing stating that acceptance or payment has been refused or sending a notice of debit with respect to the instrument is sufficient.

(4) Written notice is given when sent although it is not received.

(5) Notice to one partner is notice to each although the firm has been dissolved.

(6) When any party is in insolvency proceedings instituted after the issue of the instrument notice may be given either to the party or to the representative of his estate.

(7) When any party is dead or incompetent notice may be sent to his last known address or given to his personal representative.

(8) Notice operates for the benefit of all parties who have rights on the instrument against the party notified. [1965 ex.s. c 157 § 3-508. Cf. former RCW sections: RCW 62.01.090 through 62.01.108; 1955 c 35 §§ 62.01.090 through 62.01.108; prior: 1899 c 149 §§ 90 through 108; RRS §§ 3480 through 3498.]

62A.3-509 Protest; noting for protest. (1) A protest is a certificate of dishonor made under the hand and seal of a United States consul or vice consul or a notary public or other person authorized to certify dishonor by the law of the place where dishonor occurs. It may be made upon information satisfactory to such person.

(2) The protest must identify the instrument and certify either that due presentment has been made or the reason why it is excused and that the instrument has been dishonored by nonacceptance or nonpayment.

(3) The protest may also certify that notice of dishonor has been given to all parties or to specified parties.

(4) Subject to subsection (5) any necessary protest is due by the time that notice of dishonor is due.

(5) If, before protest is due, an instrument has been noted for protest by the officer to make protest, the protest may be made at any time thereafter as of the date of the noting. [1965 ex.s. c 157 § 3-509. Cf. former RCW sections: (i) RCW 62.01.153 through 62.01.156; 1955 c 35 §§ 62.01.153 through 62.01.156; prior: 1899 c 149 §§ 153 through 156; RRS §§ 3543 through 3546. (ii) RCW 62.01.158; 1955 c 35 § 62.01.158; prior: 1899 c 149 § 158; RRS § 3548. (iii) RCW 62.01.160; 1955 c 35 § 62.01.160; prior: 1899 c 149 § 160; RRS § 3550.]

62A.3-510 Evidence of dishonor and notice of dishonor. The following are admissible as evidence and create a presumption of dishonor and of any notice of dishonor therein shown:

(a) a document regular in form as provided in the preceding section which purports to be a protest;

(b) the purported stamp or writing of the drawee, payor bank or presenting bank on the instrument or accompanying it stating that acceptance or payment has been refused for reasons consistent with dishonor;

(c) any book or record of the drawee, payor bank, or any collecting bank kept in the usual course of business which shows dishonor, even though there is no evidence of who made the entry. [1965 ex.s. c 157 § 3-510.]

62A.3-511 Waived or excused presentment, protest or notice of dishonor or delay therein. (1) Delay in presentment, protest or notice of dishonor is excused when the party is without notice that it is due or when the delay is caused by circumstances beyond his control and he exercises reasonable diligence after the cause of the delay ceases to operate.

(2) Presentment or notice or protest as the case may be is entirely excused when

(a) the party to be charged has waived it expressly or by implication either before or after it is due; or

(b) such party has himself dishonored the instrument or has countermanded payment or otherwise has no reason to expect or right to require that the instrument be accepted or paid; or

(c) by reasonable diligence the presentment or protest cannot be made or the notice given.

(3) Presentment is also entirely excused when

(a) the maker, acceptor or drawee of any instrument except a documentary draft is dead or in insolvency proceedings instituted after the issue of the instrument; or

(b) acceptance or payment is refused but not for want of proper presentment.

(4) Where a draft has been dishonored by nonacceptance a later presentment for payment and any notice of dishonor and protest for nonpayment are excused unless in the meantime the instrument has been accepted.

(5) A waiver of protest is also a waiver of presentment and of notice of dishonor even though protest is not required.

(6) Where a waiver of presentment or notice or protest is embodied in the instrument itself it is binding upon all parties; but where it is written above the signature of an indorser it binds him only. [1965 ex.s. c 157 § 3-511. Cf. former RCW sections: (i) RCW 62.01.076; 1955 c 35 § 62.01.076; prior: 1899 c 149 § 76; RRS § 3467. (ii) RCW 62.01.079 through 62.01.082; 1955 c 35 §§ 62.01.079 through 62.01.082; prior: 1899 c 149 §§ 79 through 82; RRS §§ 3470 through 3473. (iii) RCW 62.01.109 through 62.01.116; 1955 c 35 §§ 62.01.109 through 62.01.116; prior: 1899 c 149 §§ 109 through 116; RRS §§ 3499 through 3506. (iv) RCW 62.01.130, 62.01.147, 62.01.148, 62.01.150, 62.01.151, and 62.01.159; 1955 c 35 §§ 62.01.130, 62.01.147, 62.01.148, 62.01.150, 62.01.151, and 62.01.159; prior: 1899 c 149 §§ 130, 147, 148, 150, 151, and 159; RRS §§ 3520, 3537, 3538, 3540, 3541, and 3549.]

62A.3-515 Checks dishonored by nonacceptance or nonpayment; liability for interest; rate; collection costs and attorneys fees; satisfaction of claim. (1) Whenever a check as defined in RCW 62A.3-104 has been dishonored by nonacceptance or nonpayment the payee or holder of the check is entitled to collect a reasonable handling fee for each such instrument. When such check has not been paid within fifteen days and after the holder of such check sends such notice of dishonor as provided by RCW 62A.3-520 to the drawer at his last known address, then if the instrument does not provide for the payment of interest, or collection costs and attorneys fees, the drawer of such instrument shall also be liable for payment of interest at the rate of twelve percent per annum from the date of dishonor and cost of collection not to exceed forty dollars or the face amount of the check, whichever is the lesser. In addition, in the event of court action on the check the court, after such notice and the expiration of said fifteen days, shall award a reasonable attorneys fee, and three times the face amount of the check or one hundred dollars, whichever is less, as part of the damages payable to the holder of the check. This section shall not apply to any instrument which has been dishonored by reason of any justifiable stop payment order.

(2)(a) Subsequent to the commencement of the action but prior to the hearing, the defendant may tender to the plaintiff as satisfaction of the claim, an amount of money equal to the sum of the amount of the check, a reasonable handling fee, accrued interest, collection costs equal to the face amount of the check not to exceed forty dollars, and the incurred court and service costs.

(b) Nothing in this section precludes the right to commence action in any court under chapter 12.40

RCW for small claims. [1986 c 128 § 1; 1981 c 254 § 1; 1969 c 62 § 1; 1967 ex.s. c 23 § 1.]

Savings—Severability—1967 ex.s. c 23: See notes following RCW 19.52.005.

62A.3-520 Statutory form for notice of dishonor. The notice of dishonor shall be sent by mail to the drawer at his or her last known address, and said notice shall be substantially in the following form:

NOTICE OF DISHONOR OF CHECK

A check drawn by you and made payable by you to _____ in the amount of _____ has not been accepted for payment by _____, which is the drawee bank designated on your check. This check is dated _____, and it is numbered, No. _____.

You are CAUTIONED that unless you pay the amount of this check within fifteen days after the date this letter is postmarked, you may very well have to pay the following additional amounts:

- (1) Costs of collecting the amount of the check, including an attorney's fee which will be set by the court;
(2) Interest on the amount of the check which shall accrue at the rate of twelve percent per annum from the date of dishonor; and
(3) One hundred dollars or three times the face amount of the check, whichever is less, by award of the court.

You are advised to make your payment to _____ at the following address: _____

[1986 c 128 § 2; 1981 c 254 § 2; 1969 c 62 § 2.]

62A.3-522 Notice of dishonor—Affidavit of service by mail. In addition to sending notice of dishonor to the drawer of the check under RCW 62A.3-520, the holder of the check shall execute an affidavit certifying service of the notice by mail. The affidavit of service by mail shall be attached to a copy of the notice of dishonor and shall be substantially in the following form:

AFFIDAVIT OF SERVICE BY MAIL

I, _____, hereby certify that on the _____ day of _____, 19___, a copy of the foregoing Notice was served on _____ by mailing via the United States Postal Service, postage prepaid, at _____, Washington.

Dated: _____ (Signature)

The affidavit shall be retained with the check but a copy of the affidavit shall be filed with the clerk of the court in which an action on the check is commenced. [1981 c 254 § 3.]

62A.3-525 Consequences for failing to comply with requirements. No interest, collection costs and attorneys' fees, except handling fees, shall be recovered on any dishonored check under the provisions of RCW 62A.3-515 where the holder of such check or any agent, employee or assign of the holder has demanded:

- (1) interest or collection costs in excess of that provided by RCW 62A.3-515; or
(2) interest or collection costs prior to the expiration of fifteen days after the mailing of notice of dishonor, as provided by RCW 62A.3-515 and 62A.3-520; or
(3) attorneys' fees either without having such fees set by the court, or prior to the expiration of fifteen days after the mailing of notice of dishonor, as provided by RCW 62A.3-515 and 62A.3-520. [1981 c 254 § 4; 1969 c 62 § 3.]

PART 6 DISCHARGE

62A.3-601 Discharge of parties. (1) The extent of the discharge of any party from liability on an instrument is governed by the sections on

- (a) payment or satisfaction (RCW 62A.3-603); or
(b) tender of payment (RCW 62A.3-604); or
(c) cancellation or renunciation (RCW 62A.3-605); or
(d) impairment of right of recourse or of collateral (RCW 62A.3-606); or
(e) reacquisition of the instrument by a prior party (RCW 62A.3-208); or
(f) fraudulent and material alteration (RCW 62A.3-407); or
(g) certification of a check (RCW 62A.3-411); or
(h) acceptance varying a draft (RCW 62A.3-412); or
(i) unexcused delay in presentment or notice of dishonor or protest (RCW 62A.3-502).

(2) Any party is also discharged from his liability on an instrument to another party by any other act or agreement with such party which would discharge his simple contract for the payment of money.

(3) The liability of all parties is discharged when any party who has himself no right of action or recourse on the instrument

- (a) reacquires the instrument in his own right; or
(b) is discharged under any provision of this Article, except as otherwise provided with respect to discharge for impairment of recourse or of collateral (RCW 62A.3-606). [1965 ex.s. c 157 § 3-601. Cf. former RCW sections: RCW 62.01.119 through 62.01.121; 1955 c 35 §§ 62.01.119 through 62.01.121; prior: 1899 c 149 §§ 119 through 121; RRS §§ 3509 through 3511.]

62A.3-602 Effect of discharge against holder in due course. No discharge of any party provided by this Article is effective against a subsequent holder in due course unless he has notice thereof when he takes the instrument. [1965 ex.s. c 157 3-602. Cf. former RCW 62.01.122; 1955 c 35 § 62.01.122; prior: 1899 c 149 § 122; RRS § 3512.]

62A.3-603 Payment or satisfaction. (1) The liability of any party is discharged to the extent of his payment or satisfaction to the holder even though it is made with knowledge of a claim of another person to the instrument unless prior to such payment or satisfaction the person making the claim either supplies indemnity

deemed adequate by the party seeking the discharge or enjoins payment or satisfaction by order of a court of competent jurisdiction in an action in which the adverse claimant and the holder are parties. This subsection does not, however, result in the discharge of the liability

(a) of a party who in bad faith pays or satisfies a holder who acquired the instrument by theft or who (unless having the rights of a holder in due course) holds through one who so acquired it; or

(b) of a party (other than an intermediary bank or a payor bank which is not a depository bank) who pays or satisfies the holder of an instrument which has been restrictively indorsed in a manner not consistent with the terms of such restrictive indorsement.

(2) Payment or satisfaction may be made with the consent of the holder by any person including a stranger to the instrument. Surrender of the instrument to such a person gives him the rights of a transferee (RCW 62A.3-201). [1965 ex.s. c 157 § 3-603. Cf. former RCW sections: (i) RCW 62.01.051, 62.01.088, 62.01-.119, and 62.01.121; 1955 c 35 §§ 62.01.051, 62.01.088, 62.01.119, and 62.01.121; prior: 1899 c 149 §§ 51, 88, 119, and 121; RRS §§ 3442, 3478, 3509, and 3511. (ii) RCW 62.01.171 through 62.01.177; 1955 c 35 §§ 62-.01.171 through 62.01.177; prior: 1899 c 149 §§ 171 through 177; RRS §§ 3561 through 3567. (iii) Subd. (3) cf. former RCW 30.20.090; 1961 c 280 § 4.]

62A.3-604 Tender of payment. (1) Any party making tender of full payment to a holder when or after it is due is discharged to the extent of all subsequent liability for interest, costs and attorney's fees.

(2) The holder's refusal of such tender wholly discharges any party who has a right of recourse against the party making the tender.

(3) Where the maker or acceptor of an instrument payable otherwise than on demand is able and ready to pay at every place of payment specified in the instrument when it is due, it is equivalent to tender. [1965 ex.s. c 157 § 3-604. Cf. former RCW sections: (i) RCW 62.01.070; 1955 c 35 § 62.01.070; prior: 1899 c 149 § 70; RRS § 3461. (ii) RCW 62.01.120; 1955 c 35 § 62-.01.120; prior: 1899 c 149 § 120; RRS § 3510.]

62A.3-605 Cancellation and renunciation. (1) The holder of an instrument may even without consideration discharge any party

(a) in any manner apparent on the face of the instrument or the indorsement, as by intentionally cancelling the instrument or the party's signature by destruction or mutilation, or by striking out the party's signature; or

(b) by renouncing his rights by a writing signed and delivered or by surrender of the instrument to the party to be discharged.

(2) Neither cancellation nor renunciation without surrender of the instrument affects the title thereto. [1965 ex.s. c 157 § 3-605. Cf. former RCW sections: RCW 62.01.048, 62.01.119(3), 62.01.120(2), 62.01.122, and 62.01.123; 1955 c 35 §§ 62.01.048, 62.01.119, 62.01-.120, 62.01.122, and 62.01.123; prior: 1899 c 149 § 48,

119, 120, 122, and 123; RRS §§ 3439, 3509, 3510, 3512, and 3513.]

62A.3-606 Impairment of recourse or of collateral.

(1) The holder discharges any party to the instrument to the extent that without such party's consent the holder

(a) without express reservation of rights releases or agrees not to sue any person against whom the party has to the knowledge of the holder a right of recourse or agrees to suspend the right to enforce against such person the instrument or collateral or otherwise discharges such person, except that failure or delay in effecting any required presentment, protest or notice of dishonor with respect to any such person does not discharge any party as to whom presentment, protest or notice of dishonor is effective or unnecessary; or

(b) unjustifiably impairs any collateral for the instrument given by or on behalf of the party or any person against whom he has a right of recourse.

(2) By express reservation of rights against a party with a right of recourse the holder preserves

(a) all his rights against such party as of the time when the instrument was originally due; and

(b) the right of the party to pay the instrument as of that time; and

(c) all rights of such party to recourse against others. [1965 ex.s. c 157 § 3-606. Cf. former RCW sections: (i) RCW 62.01.119; 1955 c 35 § 62.01.119; prior: 1899 c 149 § 119; RRS § 3509. (ii) RCW 62.01.120; 1955 c 35 § 62.01.120; prior: 1899 c 149 § 120; RRS § 3510.]

PART 7

ADVICE OF INTERNATIONAL SIGHT DRAFT

62A.3-701 Letter of advice of international sight draft. (1) A "letter of advice" is a drawer's communication to the drawee that a described draft has been drawn.

(2) Unless otherwise agreed when a bank receives from another bank a letter of advice of an international sight draft the drawee bank may immediately debit the drawer's account and stop the running of interest pro tanto. Such a debit and any resulting credit to any account covering outstanding drafts leaves in the drawer full power to stop payment or otherwise dispose of the amount and creates no trust or interest in favor of the holder.

(3) Unless otherwise agreed and except where a draft is drawn under a credit issued by the drawee, the drawee of an international sight draft owes the drawer no duty to pay an unadvised draft but if it does so and the draft is genuine, may appropriately debit the drawer's account. [1965 ex.s. c 157 § 3-701.]

PART 8

MISCELLANEOUS

62A.3-801 Drafts in a set. (1) Where a draft is drawn in a set of parts, each of which is numbered and expressed to be an order only if no other part has been honored, the whole of the parts constitutes one draft but

a taker of any part may become a holder in due course of the draft.

(2) Any person who negotiates, indorses or accepts a single part of a draft drawn in a set thereby becomes liable to any holder in due course of that part as if it were the whole set, but as between different holders in due course to whom different parts have been negotiated the holder whose title first accrues has all rights to the draft and its proceeds.

(3) As against the drawee the first presented part of a draft drawn in a set is the part entitled to payment, or if a time draft to acceptance and payment. Acceptance of any subsequently presented part renders the drawee liable thereon under subsection (2). With respect both to a holder and to the drawer payment of a subsequently presented part of a draft payable at sight has the same effect as payment of a check notwithstanding an effective stop order (RCW 62A.4-407).

(4) Except as otherwise provided in this section, where any part of a draft in a set is discharged by payment or otherwise the whole draft is discharged. [1965 ex.s. c 157 § 3-801. Cf. former RCW sections: RCW 62.01.178 through 62.01.183; 1955 c 35 §§ 62.01.178 through 62.01.183; prior: 1899 c 149 §§ 178 through 183; RRS §§ 3568 through 3573.]

62A.3-802 Effect of instrument on obligation for which it is given. (1) Unless otherwise agreed where an instrument is taken for an underlying obligation

(a) the obligation is pro tanto discharged if a bank is drawer, maker or acceptor of the instrument and there is no recourse on the instrument against the underlying obligor; and

(b) in any other case the obligation is suspended pro tanto until the instrument is due or if it is payable on demand until its presentment. If the instrument is dishonored action may be maintained on either the instrument or the obligation; discharge of the underlying obligor on the instrument also discharges him on the obligation.

(2) The taking in good faith of a check which is not postdated does not of itself so extend the time on the original obligation as to discharge a surety. [1965 ex.s. c 157 § 3-802.]

62A.3-803 Notice to third party. Where a defendant is sued for breach of an obligation for which a third person is answerable over under this Article he may give the third person written notice of the litigation, and the person notified may then give similar notice to any other person who is answerable over to him under this Article. If the notice states that the person notified may come in and defend and that if the person notified does not do so he will in any action against him by the person giving the notice be bound by any determination of fact common to the two litigations, then unless after reasonable receipt of the notice the person notified does come in and defend he is so bound. [1965 ex.s. c 157 § 3-803.]

62A.3-804 Lost, destroyed or stolen instruments. The owner of an instrument which is lost, whether by

destruction, theft or otherwise, may maintain an action in his own name and recover from any party liable thereon upon due proof of his ownership, the facts which prevent his production of the instrument and its terms. The court may require security indemnifying the defendant against loss by reason of further claims on the instrument. [1965 ex.s. c 157 § 3-804.]

62A.3-805 Instruments not payable to order or to bearer. This Article applies to any instrument whose terms do not preclude transfer and which is otherwise negotiable within this Article but which is not payable to order or to bearer, except that there can be no holder in due course of such an instrument. [1965 ex.s. c 157 § 3-805.]

ARTICLE 4

BANK DEPOSITS AND COLLECTIONS

Sections

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- 62A.4-102 Applicability.
- 62A.4-103 Variation by agreement; measure of damages; certain action constituting ordinary care.
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PART 2 COLLECTION OF ITEMS: DEPOSITORY AND COLLECTING BANKS

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PART 4
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PART 5
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- 62A.4-501 Handling of documentary drafts; duty to send for presentment and to notify customer of dishonor.
62A.4-502 Presentment of "on arrival" drafts.
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62A.4-504 Privilege of presenting bank to deal with goods; security interest for expenses.

PART 1
GENERAL PROVISIONS AND DEFINITIONS

62A.4-101 Short title. This Article shall be known and may be cited as Uniform Commercial Code—Bank Deposits and Collections. [1965 ex.s. c 157 § 4-101.]

62A.4-102 Applicability. (1) To the extent that items within this Article are also within the scope of Articles 3 and 8, they are subject to the provisions of those Articles. In the event of conflict the provisions of this Article govern those of Article 3 but the provisions of Article 8 govern those of this Article.

(2) The liability of a bank for action or non-action with respect to any item handled by it for purposes of presentment, payment or collection is governed by the law of the place where the bank is located. In the case of action or non-action by or at a branch or separate office of a bank, its liability is governed by the law of the place where the branch or separate office is located. [1965 ex.s. c 157 § 4-102.]

62A.4-103 Variation by agreement; measure of damages; certain action constituting ordinary care. (1) The effect of the provisions of this Article may be varied by agreement except that no agreement can disclaim a bank's responsibility for its own lack of good faith or failure to exercise ordinary care or can limit the measure of damages for such lack or failure; but the parties may by agreement determine the standards by which such responsibility is to be measured if such standards are not manifestly unreasonable.

(2) Federal Reserve regulations and operating letters, clearing house rules, and the like, have the effect of agreements under subsection (1), whether or not specifically assented to by all parties interested in items handled.

(3) Action or non-action approved by this Article or pursuant to Federal Reserve regulations or operating letters constitutes the exercise of ordinary care and, in the absence of special instructions, action or non-action consistent with clearing house rules and the like or with a general banking usage not disapproved by this Article, prima facie constitutes the exercise of ordinary care.

(4) The specification or approval of certain procedures by this Article does not constitute disapproval of other procedures which may be reasonable under the circumstances.

(5) The measure of damages for failure to exercise ordinary care in handling an item is the amount of the item reduced by an amount which could not have been realized by the use of ordinary care, and where there is bad faith it includes other damages, if any, suffered by the party as a proximate consequence. [1965 ex.s. c 157 § 4-103. Cf. former RCW sections: (i) RCW 30.52.050; 1955 c 33 § 30.52.050; prior: 1931 c 10 § 1; 1929 c 203 § 5; RRS § 3292-5. (ii) RCW 30.52.060; 1955 c 33 § 30.52.060; prior: 1929 c 203 § 6; RRS § 3292-6.]

62A.4-104 Definitions and index of definitions. (1) In this Article unless the context otherwise requires

(a) "Account" means any account with a bank and includes a checking, time, interest or savings account;

(b) "Afternoon" means the period of a day between noon and midnight;

(c) "Banking day" means that part of any day on which a bank is open to the public for carrying on substantially all of its banking functions, except that it shall not include a Saturday, Sunday, or legal holiday;

(d) "Clearing house" means any association of banks or other payors regularly clearing items;

(e) "Customer" means any person having an account with a bank or for whom a bank has agreed to collect items and includes a bank carrying an account with another bank;

(f) "Documentary draft" means any negotiable or non-negotiable draft with accompanying documents, securities or other papers to be delivered against honor of the draft;

(g) "Item" means any instrument for the payment of money even though it is not negotiable but does not include money;

(h) "Midnight deadline" with respect to a bank is midnight on its next banking day following the banking day on which it receives the relevant item or notice or from which the time for taking action commences to run, whichever is later;

(i) "Properly payable" includes the availability of funds for payment at the time of decision to pay or dishonor;

(j) "Settle" means to pay in cash, by clearing house settlement, in a charge or credit or by remittance, or otherwise as instructed. A settlement may be either provisional or final;

(k) "Suspends payments" with respect to a bank means that it has been closed by order of the supervisory authorities, that a public officer has been appointed to

take it over or that it ceases or refuses to make payments in the ordinary course of business.

(2) Other definitions applying to this Article and the sections in which they appear are:

"Collecting bank" RCW 62A.4-105.

"Depository bank" RCW 62A.4-105.

"Intermediary bank" RCW 62A.4-105.

"Payor bank" RCW 62A.4-105.

"Presenting bank" RCW 62A.4-105.

"Remitting bank" RCW 62A.4-105.

(3) The following definitions in other Articles apply to this Article:

"Acceptance" RCW 62A.3-410.

"Certificate of deposit" RCW 62A.3-104.

"Certification" RCW 62A.3-411.

"Check" RCW 62A.3-104.

"Draft" RCW 62A.3-104.

"Holder in due course" RCW 62A.3-302.

"Notice of dishonor" RCW 62A.3-508.

"Presentment" RCW 62A.3-504.

"Protest" RCW 62A.3-509.

"Secondary party" RCW 62A.3-102.

(4) In addition Article 1 contains general definitions and principles of construction and interpretation applicable throughout this Article. [1981 c 122 § 1; 1965 ex.s. c 157 § 4-104. Cf. former RCW 30.52.010; 1955 c 33 § 30.52.010; prior: 1929 c 203 § 1; RRS § 3292-1.]

Construction—1981 c 122: "Nothing in this 1981 amendatory act shall be construed to preclude any bank from being open to the public for carrying on its banking functions on Saturdays or Sundays." [1981 c 122 § 2.] "this 1981 amendatory act" consists of the 1981 amendment to RCW 62A.4-104.

62A.4-105 "Depository bank"; "intermediary bank"; "collecting bank"; "payor bank"; "presenting bank"; "remitting bank". In this Article unless the context otherwise requires:

(a) "Depository bank" means the first bank to which an item is transferred for collection even though it is also the payor bank;

(b) "Payor bank" means a bank by which an item is payable as drawn or accepted;

(c) "Intermediary bank" means any bank to which an item is transferred in course of collection except the depository or payor bank;

(d) "Collecting bank" means any bank handling the item for collection except the payor bank;

(e) "Presenting bank" means any bank presenting an item except a payor bank;

(f) "Remitting bank" means any payor or intermediary bank remitting for an item. [1965 ex.s. c 157 § 4-105. Cf. former RCW 30.52.010; 1955 c 33 § 30.52.010; prior: 1929 c 203 § 1.]

62A.4-106 Separate office of a bank. A branch or separate office of a bank is a separate bank for the purpose of computing the time within which and determining the place at or to which action may be taken or notices or orders shall be given under this Article and under Article 3. [1965 ex.s. c 157 § 4-106. Cf. former RCW sections: (i) RCW 30.52.010; 1955 c 33 § 30.52.010; prior: 1929 c 203 § 1; RRS § 3292-1. (ii) RCW

30.40.030 through 30.40.050; 1955 c 33 §§ 30.40.030 through 30.40.050; prior: 1939 c 59 §§ 1 through 3; RRS §§ 3252-6 through 3252-8.]

62A.4-107 Time of receipt of items. (1) For the purpose of allowing time to process items, prove balances and make the necessary entries on its books to determine its position for the day, a bank may fix an afternoon hour of two P.M. or later as a cut-off hour for the handling of money and items and the making of entries on its books.

(2) Any item or deposit of money received on any day after a cut-off hour so fixed or after the close of the banking day may be treated as being received at the opening of the next banking day. [1965 ex.s. c 157 § 4-107.]

62A.4-108 Delays. (1) Unless otherwise instructed, a collecting bank in a good faith effort to secure payment may, in the case of specific items and with or without the approval of any person involved, waive, modify or extend time limits imposed or permitted by this Title for a period not in excess of an additional banking day without discharge of secondary parties and without liability to its transferor or any prior party.

(2) Delay by a collecting bank or payor bank beyond time limits prescribed or permitted by this Title or by instructions is excused if caused by interruption of communication facilities, suspension of payments by another bank, war, emergency conditions or other circumstances beyond the control of the bank provided it exercises such diligence as the circumstances require. [1965 ex.s. c 157 § 4-108.]

62A.4-109 Process of posting. The "process of posting" means the usual procedure followed by a payor bank in determining to pay an item and in recording the payment including one or more of the following or other steps as determined by the bank:

(a) verification of any signature;

(b) ascertaining that sufficient funds are available;

(c) affixing a "paid" or other stamp;

(d) entering a charge or entry to a customer's account;

(e) correcting or reversing an entry or erroneous action with respect to the item. [1965 ex.s. c 157 § 4-109.]

PART 2

COLLECTION OF ITEMS: DEPOSITORY AND COLLECTING BANKS

62A.4-201 Presumption and duration of agency status of collecting banks and provisional status of credits; applicability of Article; item indorsed "pay any bank". (1) Unless a contrary intent clearly appears and prior to the time that a settlement given by a collecting bank for an item is or becomes final (subsection (3) of RCW 62A.4-211 and RCW 62A.4-212 and RCW 62A.4-213) the bank is an agent or sub-agent of the owner of the item and any settlement given for the item is provisional. This provision applies regardless of the

form of indorsement or lack of indorsement and even though credit given for the item is subject to immediate withdrawal as of right or is in fact withdrawn; but the continuance of ownership of an item by its owner and any rights of the owner to proceeds of the item are subject to rights of a collecting bank such as those resulting from outstanding advances on the item and valid rights of setoff. When an item is handled by banks for purposes of presentment, payment and collection, the relevant provisions of this Article apply even though action of parties clearly establishes that a particular bank has purchased the item and is the owner of it.

(2) After an item has been indorsed with the words "pay any bank" or the like, only a bank may acquire the rights of a holder

(a) until the item has been returned to the customer initiating collection; or

(b) until the item has been specially indorsed by a bank to a person who is not a bank. [1965 ex.s. c 157 § 4-201. Cf. former RCW sections: (i) RCW 30.52.020; 1955 c 33 § 30.52.020; prior: 1929 c 203 § 2; RRS § 3292-2. (ii) RCW 30.52.040; 1955 c 33 § 30.52.040; prior: 1931 c 10 § 1; 1929 c 203 § 4; RRS § 3292-4.]

62A.4-202 Responsibility for collection; when action seasonable. (1) A collecting bank must use ordinary care in

(a) presenting an item or sending it for presentment; and

(b) sending notice of dishonor or non-payment or returning an item other than a documentary draft to the bank's transferor or directly to the depositary bank under subsection (2) of RCW 62A.4-212 after learning that the item has not been paid or accepted, as the case may be; and

(c) settling for an item when the bank receives final settlement; and

(d) making or providing for any necessary protest; and

(e) notifying its transferor of any loss or delay in transit within a reasonable time after discovery thereof.

(2) A collecting bank taking proper action before its midnight deadline following receipt of an item, notice or payment acts seasonably; taking proper action within a reasonably longer time may be seasonable but the bank has the burden of so establishing.

(3) Subject to subsection (1)(a), a bank is not liable for the insolvency, neglect, misconduct, mistake or default of another bank or person or for loss or destruction of an item in transit or in the possession of others. [1965 ex.s. c 157 § 4-202. Cf. former RCW sections: (i) RCW 30.52.050; 1955 c 33 § 30.52.050; prior: 1929 c 203 § 5; RRS § 3292-5. (ii) RCW 30.52.060; 1955 c 33 § 30.52.060; prior: 1929 c 203 § 6; RRS § 3292-6.]

62A.4-203 Effect of instructions. Subject to the provisions of Article 3 concerning conversion of instruments (RCW 62A.3-419) and the provisions of both Article 3 and this Article concerning restrictive indorsements only a collecting bank's transferor can give instructions which affect the bank or constitute notice to it and a collecting bank is not liable to prior parties for any action taken

pursuant to such instructions or in accordance with any agreement with its transferor. [1965 ex.s. c 157 § 4-203. Cf. former RCW 30.52.020; 1955 c 33 § 30.52.020; prior: 1929 c 203 § 2; RRS § 3292-2.]

62A.4-204 Methods of sending and presenting; sending direct to payor bank. (1) A collecting bank must send items by reasonably prompt method taking into consideration any relevant instructions, the nature of the item, the number of such items on hand, and the cost of collection involved and the method generally used by it or others to present such items.

(2) A collecting bank may send

(a) any item direct to the payor bank;

(b) any item to any non-bank payor if authorized by its transferor; and

(c) any item other than documentary drafts to any non-bank payor, if authorized by Federal Reserve regulation or operating letter, clearing house rule or the like.

(3) Presentment may be made by a presenting bank at a place where the payor bank has requested that presentment be made. [1965 ex.s. c 157 § 4-204. Cf. former RCW 30.52.060; 1955 c 33 § 30.52.060; prior: 1929 c 203 § 6; RRS § 3292-6.]

62A.4-205 Supplying missing indorsement; no notice from prior indorsement. (1) A depositary bank which has taken an item for collection may supply any indorsement of the customer which is necessary to title unless the item contains the words "payee's indorsement required" or the like. In the absence of such a requirement a statement placed on the item by the depositary bank to the effect that the item was deposited by a customer or credited to his account is effective as the customer's indorsement.

(2) An intermediary bank, or payor bank which is not a depositary bank, is neither given notice nor otherwise affected by a restrictive indorsement of any person except the bank's immediate transferor. [1965 ex.s. c 157 § 4-205.]

62A.4-206 Transfer between banks. Any agreed method which identifies the transferor bank is sufficient for the item's further transfer to another bank. [1965 ex.s. c 157 § 4-206.]

62A.4-207 Warranties of customer and collecting bank on transfer or presentment of items; time for claims. (1) Each customer or collecting bank who obtains payment or acceptance of an item and each prior customer and collecting bank warrants to the payor bank or other payor who in good faith pays or accepts the item that

(a) he has a good title to the item or is authorized to obtain payment or acceptance on behalf of one who has a good title; and

(b) he has no knowledge that the signature of the maker or drawer is unauthorized, except that this warranty is not given by any customer or collecting bank that is a holder in due course and acts in good faith

(i) to a maker with respect to the maker's own signature; or

(ii) to a drawer with respect to the drawer's own signature, whether or not the drawer is also the drawee; or

(iii) to an acceptor of an item if the holder in due course took the item after the acceptance or obtained the acceptance without knowledge that the drawer's signature was unauthorized; and

(c) the item has not been materially altered, except that this warranty is not given by any customer or collecting bank that is a holder in due course and acts in good faith

(i) to the maker of a note; or

(ii) to the drawer of a draft whether or not the drawer is also the drawee; or

(iii) to the acceptor of an item with respect to an alteration made prior to the acceptance if the holder in due course took the item after the acceptance, even though the acceptance provided "payable as originally drawn" or equivalent terms; or

(iv) to the acceptor of an item with respect to an alteration made after the acceptance.

(2) Each customer and collecting bank who transfers an item and receives a settlement or other consideration for it warrants to his transferee and to any subsequent collecting bank who takes the item in good faith that

(a) he has a good title to the item or is authorized to obtain payment or acceptance on behalf of one who has a good title and the transfer is otherwise rightful; and

(b) all signatures are genuine or authorized; and

(c) the item has not been materially altered; and

(d) no defense of any party is good against him; and

(e) he has no knowledge of any insolvency proceeding instituted with respect to the maker or acceptor or the drawer of an unaccepted item.

In addition each customer and collecting bank so transferring an item and receiving a settlement or other consideration engages that upon dishonor and any necessary notice of dishonor and protest he will take up the item.

(3) The warranties and the engagement to honor set forth in the two preceding subsections arise notwithstanding the absence of indorsement or words of guaranty or warranty in the transfer or presentment and a collecting bank remains liable for their breach despite remittance to its transferor. Damages for breach of such warranties or engagement to honor shall not exceed the consideration received by the customer or collecting bank responsible plus finance charges and expenses related to the item, if any.

(4) Unless a claim for breach of warranty under this section is made within a reasonable time after the person claiming learns of the breach, the person liable is discharged to the extent of any loss caused by the delay in making claim. [1965 ex.s. c 157 § 4-207. Cf. former RCW 30.52.040; 1955 c 33 § 30.52.040; prior: 1931 c 10 § 1; 1929 c 203 § 4; RRS § 3292-4.]

62A.4-208 Security interest of collecting bank in items, accompanying documents and proceeds. (1) A bank has a security interest in an item and any accompanying documents or the proceeds of either

(a) in case of an item deposited in an account to the extent to which credit given for the item has been withdrawn or applied;

(b) in case of an item for which it has given credit available for withdrawal as of right, to the extent of the credit given whether or not the credit is drawn upon and whether or not there is a right of charge-back; or

(c) if it makes an advance on or against the item.

(2) When credit which has been given for several items received at one time or pursuant to a single agreement is withdrawn or applied in part the security interest remains upon all the items, any accompanying documents or the proceeds of either. For the purpose of this section, credits first given are first withdrawn.

(3) Receipt by a collecting bank of a final settlement for an item is a realization on its security interest in the item, accompanying documents and proceeds. To the extent and so long as the bank does not receive final settlement for the item or give up possession of the item or accompanying documents for purposes other than collection, the security interest continues and is subject to the provisions of Article 9 except that

(a) no security agreement is necessary to make the security interest enforceable (subsection (1)(b) of RCW 62A.9-203); and

(b) no filing is required to perfect the security interest; and

(c) the security interest has priority over conflicting perfected security interests in the item, accompanying documents or proceeds. [1965 ex.s. c 157 § 4-208. Cf. former RCW 30.52.020; 1955 c 33 § 30.52.020; prior: 1929 c 203 § 2; RRS § 3292-2.]

62A.4-209 When bank gives value for purposes of holder in due course. For purposes of determining its status as a holder in due course, the bank has given value to the extent that it has a security interest in an item provided that the bank otherwise complies with the requirements of RCW 62A.3-302 on what constitutes a holder in due course. [1965 ex.s. c 157 § 4-209. Cf. former RCW 62.01.027; 1955 c 35 § 62.01.027; prior: 1899 c 149 § 27; RRS § 3418.]

62A.4-210 Presentment by notice of item not payable by, through or at a bank; liability of secondary parties. (1) Unless otherwise instructed, a collecting bank may present an item not payable by, through or at a bank by sending to the party to accept or pay a written notice that the bank holds the item for acceptance or payment. The notice must be sent in time to be received on or before the day when presentment is due and the bank must meet any requirement of the party to accept or pay under RCW 62A.3-505 by the close of the bank's next banking day after it knows of the requirement.

(2) Where presentment is made by notice and neither honor nor request for compliance with a requirement under RCW 62A.3-505 is received by the close of business on the day after maturity or in the case of demand items by the close of business on the third banking day after notice was sent, the presenting bank may treat the item as dishonored and charge any secondary party by

sending him notice of the facts. [1965 ex.s. c 157 § 4-210.]

62A.4-211 Media of remittance; provisional and final settlement in remittance cases. (1) A collecting bank may take in settlement of an item

(a) a check of the remitting bank or of another bank on any bank except the remitting bank; or

(b) a cashier's check or similar primary obligation of a remitting bank which is a member of or clears through a member of the same clearing house or group as the collecting bank; or

(c) appropriate authority to charge an account of the remitting bank or of another bank with the collecting bank; or

(d) if the item is drawn upon or payable by a person other than a bank, a cashier's check, certified check or other bank check or obligation.

(2) If before its midnight deadline the collecting bank properly dishonors a remittance check or authorization to charge on itself or presents or forwards for collection a remittance instrument of or on another bank which is of a kind approved by subsection (1) or has not been authorized by it, the collecting bank is not liable to prior parties in the event of the dishonor of such check, instrument or authorization.

(3) A settlement for an item by means of a remittance instrument or authorization to charge is or becomes a final settlement as to both the person making and the person receiving the settlement

(a) if the remittance instrument or authorization to charge is of a kind approved by subsection (1) or has not been authorized by the person receiving the settlement and in either case the person receiving the settlement acts seasonably before its midnight deadline in presenting, forwarding for collection or paying the instrument or authorization,—at the time the remittance instrument or authorization is finally paid by the payor by which it is payable;

(b) if the person receiving the settlement has authorized remittance by a non-bank check or obligation or by a cashier's check or similar primary obligation of or a check upon the payor or other remitting bank which is not of a kind approved by subsection (1)(b),—at the time of the receipt of such remittance check or obligation; or

(c) if in a case not covered by sub-paragraphs (a) or (b) the person receiving the settlement fails to seasonably present, forward for collection, pay or return a remittance instrument or authorization to it to charge before its midnight deadline,—at such midnight deadline. [1965 ex.s. c 157 § 4-211. Cf. former RCW sections: (i) RCW 30.52.090; 1955 c 33 § 30.52.090; prior: 1929 c 203 § 9; RRS § 3292-9. (ii) RCW 30.52.100; 1955 c 33 § 30.52.100; prior: 1929 c 203 § 10; RRS § 3292-10.]

62A.4-212 Right of charge-back or refund. (1) If a collecting bank has made provisional settlement with its customer for an item and itself fails by reason of dishonor, suspension of payments by a bank or otherwise to

receive a settlement for the item which is or becomes final, the bank may revoke the settlement given by it, charge back the amount of any credit given for the item to its customer's account or obtain refund from its customer whether or not it is able to return the items if by its midnight deadline or within a longer reasonable time after it learns the facts it returns the item or sends notification of the facts. These rights to revoke, charge-back and obtain refund terminate if and when a settlement for the item received by the bank is or becomes final (subsection (3) of RCW 62A.4-211 and subsections (2) and (3) of RCW 62A.4-213).

(2) Within the time and manner prescribed by this section and RCW 62A.4-301, an intermediary or payor bank, as the case may be, may return an unpaid item directly to the depository bank and may send for collection a draft on the depository bank and obtain reimbursement. In such case, if the depository bank has received provisional settlement for the item, it must reimburse the bank drawing the draft and any provisional credits for the item between banks shall become and remain final.

(3) A depository bank which is also the payor may charge-back the amount of an item to its customer's account or obtain refund in accordance with the section governing return of an item received by a payor bank for credit on its books (RCW 62A.4-301)

(4) The right to charge-back is not affected by

(a) prior use of the credit given for the item; or

(b) failure by any bank to exercise ordinary care with respect to the item but any bank so failing remains liable.

(5) A failure to charge-back or claim refund does not affect other rights of the bank against the customer or any other party.

(6) If credit is given in dollars as the equivalent of the value of an item payable in a foreign currency the dollar amount of any charge-back or refund shall be calculated on the basis of the buying sight rate for the foreign currency prevailing on the day when the person entitled to the charge-back or refund learns that it will not receive payment in ordinary course. [1965 ex.s. c 157 § 4-212. Cf. former RCW sections: (i) RCW 30.52.020; 1955 c 33 § 30.52.020; prior: 1929 c 203 § 2; RRS § 3292-2. (ii) RCW 30.52.110; 1955 c 33 § 30.52.110; prior: 1929 c 203 § 11; RRS § 3292-11.]

62A.4-213 Final payment of item by payor bank; when provisional debits and credits become final; when certain credits become available for withdrawal. (1) An item is finally paid by a payor bank when the bank has done any of the following, whichever happens first:

(a) paid the item in cash; or

(b) settled for the item without reserving a right to revoke the settlement and without having such right under statute, clearing house rule or agreement; or

(c) completed the process of posting the item to the indicated account of the drawer, maker or other person to be charged therewith; or

(d) made a provisional settlement for the item and failed to revoke the settlement in the time and manner

permitted by statute, clearing house rule or agreement. Upon a final payment under subparagraphs (b), (c) or (d) the payor bank shall be accountable for the amount of the item.

(2) If provisional settlement for an item between the presenting and payor banks is made through a clearing house or by debits or credits in an account between them, then to the extent that provisional debits or credits for the item are entered in accounts between the presenting and payor banks or between the presenting and successive prior collecting banks seriatim, they become final upon final payment of the item by the payor bank.

(3) If a collecting bank receives a settlement for an item which is or becomes final (subsection (3) of RCW 62A.4-211, subsection (2) of RCW 62A.4-213) the bank is accountable to its customer for the amount of the item and any provisional credit given for the item in an account with its customer becomes final.

(4) Subject to any right of the bank to apply the credit to an obligation of the customer, credit given by a bank for an item in an account with its customer becomes available for withdrawal as of right

(a) in any case where the bank has received a provisional settlement for the item,——when such settlement becomes final and the bank has had a reasonable time to learn that the settlement is final;

(b) in any case where the bank is both a depository bank and a payor bank and the item is finally paid,——at the opening of the bank's second banking day following receipt of the item.

(5) A deposit of money in a bank is final when made but, subject to any right of the bank to apply the deposit to an obligation of the customer, the deposit becomes available for withdrawal as of right at the opening of the bank's next banking day following receipt of the deposit. [1965 ex.s. c 157 § 4-213. Cf. former RCW 30.52.110; 1955 c 33 § 30.52.110; prior: 1929 c 203 § 11; RRS § 3292-11.]

62A.4-214 Insolvency and preference. (1) Any item in or coming into the possession of a payor or collecting bank which suspends payment and which item is not finally paid shall be returned by the receiver, trustee or agent in charge of the closed bank to the presenting bank or the closed bank's customer.

(2) If a payor bank finally pays an item and suspends payments without making a settlement for the item with its customer or the presenting bank which settlement is or becomes final, the owner of the item has a preferred claim against the payor bank.

(3) If a payor bank gives or a collecting bank gives or receives a provisional settlement for an item and thereafter suspends payments, the suspension does not prevent or interfere with the settlement becoming final if such finality occurs automatically upon the lapse of certain time or the happening of certain events (subsection (3) of RCW 62A.4-211, subsections (1)(d), (2) and (3) of RCW 62A.4-213).

(4) If a collecting bank receives from subsequent parties settlement for an item which settlement is or becomes final and suspends payments without making a

settlement for the item with its customer which is or becomes final, the owner of the item has a preferred claim against such collecting bank. [1965 ex.s. c 157 § 4-214. Cf. former RCW 30.52.130; 1955 c 33 § 30.52.130; prior: 1929 c 203 § 13; RRS § 3292-13.]

Insolvency—Preferences prohibited: RCW 30.44.110.

PART 3

COLLECTION OF ITEMS: PAYOR BANKS

62A.4-301 Deferred posting; recovery of payment by return of items; time of dishonor. (1) Where an authorized settlement for a demand item (other than a documentary draft) received by a payor bank otherwise than for immediate payment over the counter has been made before midnight of the banking day of receipt the payor bank may revoke the settlement and recover any payment if before it has made final payment (subsection (1) of RCW 62A.4-213) and before its midnight deadline it

(a) returns the item; or

(b) sends written notice of dishonor or nonpayment if the item is held for protest or is otherwise unavailable for return.

(2) If a demand item is received by a payor bank for credit on its books it may return such item or send notice of dishonor and may revoke any credit given or recover the amount thereof withdrawn by its customer, if it acts within the time limit and in the manner specified in the preceding subsection.

(3) Unless previous notice of dishonor has been sent an item is dishonored at the time when for purposes of dishonor it is returned or notice sent in accordance with this section.

(4) An item is returned:

(a) as to an item received through a clearing house, when it is delivered to the presenting or last collecting bank or to the clearing house or is sent or delivered in accordance with its rules; or

(b) in all other cases, when it is sent or delivered to the bank's customer or transferor or pursuant to his instructions. [1965 ex.s. c 157 § 4-301. Cf. former RCW 30.52.030; 1955 c 33 § 30.52.030; prior: 1929 c 203 § 3; RRS § 3292-3.]

62A.4-302 Payor bank's responsibility for late return of item. In the absence of a valid defense such as breach of a presentment warranty (subsection (1) of RCW 62A.4-207), settlement effected or the like, if an item is presented on and received by a payor bank the bank is accountable for the amount of

(a) a demand item other than a documentary draft whether properly payable or not if the bank, in any case where it is not also the depository bank, retains the item beyond midnight of the banking day of receipt without settling for it or, regardless of whether it is also the depository bank, does not pay or return the item or send notice of dishonor until after its midnight deadline; or

(b) any other properly payable item unless within the time allowed for acceptance or payment of that item the bank either accepts or pays the item or returns it and

accompanying documents. [1965 ex.s. c 157 § 4-302. Cf. former RCW 30.52.030; 1955 c 33 § 30.52.030; prior: 1929 c 203 § 3; RRS § 3292-3.]

62A.4-303 When items subject to notice, stop-order, legal process or setoff; order in which items may be charged or certified. (1) Any knowledge, notice or stop-order received by, legal process served upon or setoff exercised by a payor bank, whether or not effective under other rules of law to terminate, suspend or modify the bank's right or duty to pay an item or to charge its customer's account for the item, comes too late to so terminate, suspend or modify such right or duty if the knowledge, notice, stop-order or legal process is received or served and a reasonable time for the bank to act thereon expires or the setoff is exercised after the bank has done any of the following:

(a) accepted or certified the item;
 (b) paid the item in cash;
 (c) settled for the item without reserving a right to revoke the settlement and without having such right under statute, clearing house rule or agreement;
 (d) completed the process of posting the item to the indicated account of the drawer, maker or other person to be charged therewith or otherwise has evidenced by examination of such indicated account and by action its decision to pay the item; or

(e) become accountable for the amount of the item under subsection (1)(d) of RCW 62A.4-213 and RCW 62A.4-302 dealing with the payor bank's responsibility for late return of items.

(2) Subject to the provisions of subsection (1) items may be accepted, paid, certified or charged to the indicated account of its customer in any order convenient to the bank. [1965 ex.s. c 157 § 4-303.]

PART 4 RELATIONSHIP BETWEEN PAYOR BANK AND ITS CUSTOMER

62A.4-401 When bank may charge customer's account. (1) As against its customer, a bank may charge against his account any item which is otherwise properly payable from that account even though the charge creates an overdraft.

(2) A bank which in good faith makes payment to a holder may charge the indicated account of its customer according to

(a) the original tenor of his altered item; or
 (b) the tenor of his completed item, even though the bank knows the item has been completed unless the bank has notice that the completion was improper. [1965 ex.s. c 157 § 4-401.]

62A.4-402 Bank's liability to customer for wrongful dishonor. A payor bank is liable to its customer for damages proximately caused by the wrongful dishonor of an item. When the dishonor occurs through mistake liability is limited to actual damages proved. If so proximately caused and proved damages may include damages for an arrest or prosecution of the customer or

other consequential damages. Whether any consequential damages are proximately caused by the wrongful dishonor is a question of fact to be determined in each case. [1965 ex.s. c 157 § 4-402.]

62A.4-403 Customer's right to stop payment; burden of proof of loss. (1) A customer may by order to his bank stop payment of any item payable for his account but the order must be received at such time and in such manner as to afford the bank a reasonable opportunity to act on it prior to any action by the bank with respect to the item described in RCW 62A.4-303.

(2) An oral order is binding upon the bank only for fourteen calendar days unless confirmed in writing within that period. A written order is effective for only six months unless renewed in writing.

(3) The burden of establishing the fact and amount of loss resulting from the payment of an item contrary to a binding stop payment order is on the customer. [1965 ex.s. c 157 § 4-403. Cf. former RCW sections: (i) RCW 30.16.030; 1959 c 106 § 4; 1955 c 33 § 30.16.030; prior: 1923 c 114 §§ 1, part, and 2; RRS §§ 3252-1, part, and 3252-2. (ii) RCW 30.16.040; 1955 c 33 § 30.16.040; prior: 1923 c 114 §§ 1, part, and 3; RRS §§ 3252-1, part, and 3252-3.]

62A.4-404 Bank not obligated to pay check more than six months old. A bank is under no obligation to a customer having a checking account to pay a check, other than a certified check, which is presented more than six months after its date, but it may charge its customer's account for a payment made thereafter in good faith. [1965 ex.s. c 157 § 4-404. Cf. former RCW 30.16.050; 1955 c 33 § 30.16.050; prior: 1923 c 114 §§ 1, part, and 5; RRS §§ 3252-1, part, and 3252-5.]

62A.4-405 Death or incompetence of customer. (1) A payor or collecting bank's authority to accept, pay or collect an item or to account for proceeds of its collection if otherwise effective is not rendered ineffective by incompetence of a customer of either bank existing at the time the item is issued or its collection is undertaken if the bank does not know of an adjudication of incompetence. Neither death nor incompetence of a customer revokes such authority to accept, pay, collect or account until the bank knows of the fact of death or of an adjudication of incompetence and has reasonable opportunity to act on it.

(2) Even with knowledge a bank may for ten days after the date of death pay or certify checks drawn on or prior to that date unless ordered to stop payment by a person claiming an interest in the account. [1965 ex.s. c 157 § 4-405. Cf. former RCW 30.20.030; 1955 c 33 § 30.20.030; prior: 1917 c 80 § 43; RRS § 3250.]

62A.4-406 Customer's duty to discover and report unauthorized signature or alteration. (1) When a bank sends to its customer a statement of account accompanied by items paid in good faith in support of the debit entries or holds the statement and items pursuant to a request or instructions of its customer or otherwise in a

reasonable manner makes the statement and items available to the customer, the customer must exercise reasonable care and promptness to examine the statement and items to discover his unauthorized signature or any alteration on an item and must notify the bank promptly after discovery thereof.

(2) If the bank establishes that the customer failed with respect to an item to comply with the duties imposed on the customer by subsection (1) the customer is precluded from asserting against the bank

(a) his unauthorized signature or any alteration on the item if the bank also establishes that it suffered a loss by reason of such failure; and

(b) an unauthorized signature or alteration by the same wrong-doer on any other item paid in good faith by the bank after the first item and statement was available to the customer for a reasonable period and before the bank receives notification from the customer of any such unauthorized signature or alteration.

(3) The preclusion under subsection (2) does not apply if the customer establishes lack of ordinary care on the part of the bank in paying the item(s).

(4) Without regard to care or lack of care of either the customer or the bank a customer who does not within sixty days from the time the statement and items are made available to the customer (subsection (1)) discover and report his unauthorized signature or any alteration on the face or back of the item or does not within three years from that time discover and report any unauthorized indorsement is precluded from asserting against the bank such unauthorized signature or indorsement or such alteration.

(5) If under this section a payor bank has a valid defense against a claim of a customer upon or resulting from payment of an item and waives or fails upon request to assert the defense the bank may not assert against any collecting bank or other prior party presenting or transferring the item a claim based upon the unauthorized signature or alteration giving rise to the customer's claim. [1967 c 114 § 1; 1965 ex.s. c 157 § 4-406. Cf. former RCW 30.16.020; 1955 c 33 § 30.16.020; prior: 1917 c 80 § 45; RRS § 3252.]

Emergency—Effective date—1967 c 114. "This 1967 amendatory act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and sections 1 through 11 and 13 through 16 shall take effect on June 30, 1967, and section 12 shall take effect immediately." [1967 c 114 § 17.]

Reviser's note: Sections 1 through 11 and 13 through 16 are codified as RCW 15.48.270, 15.48.280, 15.48.290, 62A.2-403, 62A.2-706, 62A.4-406, 62A.6-102, 62A.6-109, 62A.9-302, 62A.9-403, 62A.9-404, 62A.9-405, 62A.9-406, 62A.9-407 and 62A.9-408. Section 12 is codified as RCW 62A.9-409.

62A.4-407 Payor bank's right to subrogation on improper payment. If a payor bank has paid an item over the stop payment order of the drawer or maker or otherwise under circumstances giving a basis for objection by the drawer or maker, to prevent unjust enrichment and only to the extent necessary to prevent loss to the bank by reason of its payment of the item, the payor bank shall be subrogated to the rights

(a) of any holder in due course on the item against the drawer or maker; and

(b) of the payee or any other holder of the item against the drawer or maker either on the item or under the transaction out of which the item arose; and

(c) of the drawer or maker against the payee or any other holder of the item with respect to the transaction out of which the item arose. [1965 ex.s. c 157 § 4-407.]

PART 5

COLLECTION OF DOCUMENTARY DRAFTS

62A.4-501 Handling of documentary drafts; duty to send for presentment and to notify customer of dishonor. A bank which takes a documentary draft for collection must present or send the draft and accompanying documents for presentment and upon learning that the draft has not been paid or accepted in due course must seasonably notify its customer of such fact even though it may have discounted or bought the draft or extended credit available for withdrawal as of right. [1965 ex.s. c 157 § 4-501.]

62A.4-502 Presentment of "on arrival" drafts. When a draft or the relevant instructions require presentment "on arrival", "when goods arrive" or the like, the collecting bank need not present until in its judgment a reasonable time for arrival of the goods has expired. Refusal to pay or accept because the goods have not arrived is not dishonor; the bank must notify its transferor of such refusal but need not present the draft again until it is instructed to do so or learns of the arrival of the goods. [1965 ex.s. c 157 § 4-502.]

62A.4-503 Responsibility of presenting bank for documents and goods; report of reasons for dishonor; referee in case of need. Unless otherwise instructed and except as provided in Article 5 a bank presenting a documentary draft

(a) must deliver the documents to the drawee on acceptance of the draft if it is payable more than three days after presentment; otherwise, only on payment; and

(b) upon dishonor, either in the case of presentment for acceptance or presentment for payment, may seek and follow instructions from any referee in case of need designated in the draft or if the presenting bank does not choose to utilize his services it must use diligence and good faith to ascertain the reason for dishonor, must notify its transferor of the dishonor and of the results of its effort to ascertain the reasons therefor and must request instructions.

But the presenting bank is under no obligation with respect to goods represented by the documents except to follow any reasonable instructions seasonably received; it has a right to reimbursement for any expense incurred in following instructions and to prepayment of or indemnity for such expenses. [1965 ex.s. c 157 § 4-503. Cf. former RCW 62.01.131(3); 1955 c 35 § 62.01.131; prior: 1899 c 149 § 131; RRS § 3521.]

62A.4-504 Privilege of presenting bank to deal with goods; security interest for expenses. (1) A presenting bank which, following the dishonor of a documentary draft, has seasonably requested instructions but does not receive them within a reasonable time may store, sell, or otherwise deal with the goods in any reasonable manner.

(2) For its reasonable expenses incurred by action under subsection (1) the presenting bank has a lien upon the goods or their proceeds, which may be foreclosed in the same manner as an unpaid seller's lien. [1965 ex.s. c 157 § 4-504.]

ARTICLE 5 LETTERS OF CREDIT

Sections

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62A.5-103	Definitions.
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62A.5-108	"Notation credit"; exhaustion of credit.
62A.5-109	Issuer's obligation to its customer.
62A.5-110	Availability of credit in portions; presenter's reservation of lien or claim.
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62A.5-115	Remedy for improper dishonor or anticipatory repudiation.
62A.5-116	Transfer and assignment.
62A.5-117	Insolvency of bank holding funds for documentary credit.

62A.5-101 Short title. This Article shall be known and may be cited as Uniform Commercial Code—Letters of Credit. [1965 ex.s. c 157 § 5-101.]

62A.5-102 Scope. (1) This Article applies

(a) to a credit issued by a bank if the credit requires a documentary draft or a documentary demand for payment; and

(b) to a credit issued by a person other than a bank if the credit requires that the draft or demand for payment be accompanied by a document of title; and

(c) to a credit issued by a bank or other person if the credit is not within subparagraphs (a) or (b) but conspicuously states that it is a letter of credit or is conspicuously so entitled.

(2) Unless the engagement meets the requirements of subsection (1), this Article does not apply to engagements to make advances or to honor drafts or demands for payment, to authorities to pay or purchase, to guarantees or to general agreements.

(3) This Article deals with some but not all of the rules and concepts of letters of credit as such rules or concepts have developed prior to this act or may hereafter develop. The fact that this Article states a rule does

not by itself require, imply or negate application of the same or a converse rule to a situation not provided for or to a person not specified by this Article. [1965 ex.s. c 157 § 5-102.]

62A.5-103 Definitions. (1) In this Article unless the context otherwise requires

(a) "Credit" or "letter of credit" means an engagement by a bank or other person made at the request of a customer and of a kind within the scope of this Article (RCW 62A.5-102) that the issuer will honor drafts or other demands for payment upon compliance with the conditions specified in the credit. A credit may be either revocable or irrevocable. The engagement may be either an agreement to honor or a statement that the bank or other person is authorized to honor.

(b) A "documentary draft" or a "documentary demand for payment" is one honor of which is conditioned upon the presentation of a document or documents. "Document" means any paper including document of title, security, invoice, certificate, notice of default and the like.

(c) An "issuer" is a bank or other person issuing a credit.

(d) A "beneficiary" of a credit is a person who is entitled under its terms to draw or demand payment.

(e) An "advising bank" is a bank which gives notification of the issuance of a credit by another bank.

(f) A "confirming bank" is a bank which engages either that it will itself honor a credit already issued by another bank or that such a credit will be honored by the issuer or a third bank.

(g) A "customer" is a buyer or other person who causes an issuer to issue a credit. The term also includes a bank which procures issuance or confirmation on behalf of that bank's customer.

(2) Other definitions applying to this Article and the sections in which they appear are:

"Notation of credit". RCW 62A.5-108.

"Presenter". RCW 62A.5-112(3).

(3) Definitions in other Articles applying to this Article and the sections in which they appear are:

"Accept" or "Acceptance". RCW 62A.3-410.

"Contract for sale". RCW 62A.2-106.

"Draft". RCW 62A.3-104.

"Holder in due course". RCW 62A.3-302.

"Midnight deadline". RCW 62A.4-104.

"Security". RCW 62A.8-102.

(4) In addition, Article 1 contains general definitions and principles of construction and interpretation applicable throughout this Article. [1965 ex.s. c 157 § 5-103.]

62A.5-104 Formal requirements; signing. (1) Except as otherwise required in subsection (1)(c) of RCW 62A.5-102 on scope, no particular form of phrasing is required for a credit. A credit must be in writing and signed by the issuer and a confirmation must be in writing and signed by the confirming bank. A modification of the terms of a credit or confirmation must be signed by the issuer or confirming bank.

(2) A telegram may be a sufficient signed writing if it identifies its sender by an authorized authentication. The authentication may be in code and the authorized naming of the issuer in an advice of credit is a sufficient signing. [1965 ex.s. c 157 § 5-104.]

62A.5-105 Consideration. No consideration is necessary to establish a credit or to enlarge or otherwise modify its terms. [1965 ex.s. c 157 § 5-105.]

62A.5-106 Time and effect of establishment of credit. (1) Unless otherwise agreed a credit is established:

(a) as regards the customer as soon as a letter of credit is sent to him or the letter of credit or an authorized written advice of its issuance is sent to the beneficiary; and

(b) as regards the beneficiary when he receives a letter of credit or an authorized written advice of its issuance.

(2) Unless otherwise agreed once an irrevocable credit is established as regards the customer it can be modified or revoked only with the consent of the customer and once it is established as regards the beneficiary it can be modified or revoked only with his consent.

(3) Unless otherwise agreed after a revocable credit is established it may be modified or revoked by the issuer without notice to or consent from the customer or beneficiary.

(4) Notwithstanding any modification or revocation of a revocable credit any person authorized to honor or negotiate under the terms of the original credit is entitled to reimbursement for or honor of any draft or demand for payment duly honored or negotiated before receipt of notice of the modification or revocation and the issuer in turn is entitled to reimbursement from its customer. [1965 ex.s. c 157 § 5-106.]

62A.5-107 Advice of credit; confirmation; error in statement of terms. (1) Unless otherwise specified an advising bank by advising a credit issued by another bank does not assume any obligation to honor drafts drawn or demands for payment made under the credit but it does assume obligation for the accuracy of its own statement.

(2) A confirming bank by confirming a credit becomes directly obligated on the credit to the extent of its confirmation as though it were its issuer and acquires the rights of an issuer.

(3) Even though an advising bank incorrectly advises the terms of a credit it has been authorized to advise the credit is established as against the issuer to the extent of its original terms.

(4) Unless otherwise specified the customer bears as against the issuer all risks of transmission and reasonable translation or interpretation of any message relating to a credit. [1965 ex.s. c 157 § 5-107.]

62A.5-108 "Notation credit"; exhaustion of credit.

(1) A credit which specifies that any person purchasing or paying drafts drawn or demands for payment made

under it must note the amount of the draft or demand on the letter or advice of credit is a "notation credit".

(2) Under a notation credit

(a) a person paying the beneficiary or purchasing a draft or demand for payment from him acquires a right to honor only if the appropriate notation is made and by transferring or forwarding for honor the documents under the credit such a person warrants to the issuer that the notation has been made; and

(b) unless the credit or a signed statement that an appropriate notation has been made accompanies the draft or demand for payment the issuer may delay honor until evidence of notation has been procured which is satisfactory to it but its obligation and that of its customer continue for a reasonable time not exceeding thirty days to obtain such evidence.

(3) If the credit is not a notation credit

(a) the issuer may honor complying drafts or demands for payment presented to it in the order in which they are presented and is discharged pro tanto by honor of any such draft or demand;

(b) as between competing good faith purchasers of complying drafts or demands the person first purchasing has priority over a subsequent purchaser even though the later purchased draft or demand has been first honored. [1965 ex.s. c 157 § 5-108.]

62A.5-109 Issuer's obligation to its customer. (1) An issuer's obligation to its customer includes good faith and observance of any general banking usage but unless otherwise agreed does not include liability or responsibility

(a) for performance of the underlying contract for sale or other transaction between the customer and the beneficiary; or

(b) for any act or omission of any person other than itself or its own branch or for loss or destruction of a draft, demand or document in transit or in the possession of others; or

(c) based on knowledge or lack of knowledge of any usage of any particular trade.

(2) An issuer must examine documents with care so as to ascertain that on their face they appear to comply with the terms of the credit but unless otherwise agreed assumes no liability or responsibility for the genuineness, falsification or effect of any document which appears on such examination to be regular on its face.

(3) A non-bank issuer is not bound by any banking usage of which it has no knowledge. [1965 ex.s. c 157 § 5-109.]

62A.5-110 Availability of credit in portions; presenter's reservation of lien or claim. (1) Unless otherwise specified a credit may be used in portions in the discretion of the beneficiary.

(2) Unless otherwise specified a person by presenting a documentary draft or demand for payment under a credit relinquishes upon its honor all claims to the documents and a person by transferring such draft or demand or causing such presentment authorizes such relinquishment. An explicit reservation of claim makes

the draft or demand non-complying. [1965 ex.s. c 157 § 5-110.]

62A.5-111 Warranties on transfer and presentment.

(1) Unless otherwise agreed the beneficiary by transferring or presenting a documentary draft or demand for payment warrants to all interested parties that the necessary conditions of the credit have been complied with. This is in addition to any warranties arising under Articles 3, 4, 7 and 8.

(2) Unless otherwise agreed a negotiating, advising, confirming, collecting or issuing bank presenting or transferring a draft or demand for payment under a credit warrants only the matters warranted by a collecting bank under Article 4 and any such bank transferring a document warrants only the matters warranted by an intermediary under Articles 7 and 8. [1965 ex.s. c 157 § 5-111.]

62A.5-112 Time allowed for honor or rejection; withholding honor or rejection by consent; "presenter".

(1) A bank to which a documentary draft or demand for payment is presented under a credit may without dishonor of the draft, demand or credit

(a) defer honor until the close of the third banking day following receipt of the documents; and

(b) further defer honor if the presenter has expressly or impliedly consented thereto.

Failure to honor within the time here specified constitutes dishonor of the draft or demand and of the credit except as otherwise provided in subsection (4) of RCW 62A.5-114 on conditional payment.

(2) Upon dishonor the bank may unless otherwise instructed fulfill its duty to return the draft or demand and the documents by holding them at the disposal of the presenter and sending him an advice to that effect.

(3) "Presenter" means any person presenting a draft or demand for payment for honor under a credit even though that person is a confirming bank or other correspondent which is acting under an issuer's authorization. [1965 ex.s. c 157 § 5-112. Cf. former RCW sections: (i) RCW 62.01.136; 1955 c 35 § 62.01.136; prior: 1899 c 149 § 136; RRS § 3526. (ii) RCW 62.01.137; 1955 c 35 § 62.01.137; prior: 1899 c 149 § 137; RRS § 3527. (iii) RCW 62.01.150; 1955 c 35 § 62.01.150; prior: 1899 c 149 § 150; RRS § 3540.]

62A.5-113 Indemnities. (1) A bank seeking to obtain (whether for itself or another) honor, negotiation or reimbursement under a credit may give an indemnity to induce such honor, negotiation or reimbursement.

(2) An indemnity agreement inducing honor, negotiation or reimbursement

(a) unless otherwise explicitly agreed applies to defects in the documents but not in the goods; and

(b) unless a longer time is explicitly agreed expires at the end of ten business days following receipt of the documents by the ultimate customer unless notice of objection is sent before such expiration date. The ultimate customer may send notice of objection to the person

from whom he received the documents and any bank receiving such notice is under a duty to send notice to its transferor before its midnight deadline. [1965 ex.s. c 157 § 5-113.]

62A.5-114 Issuer's duty and privilege to honor; right to reimbursement.

(1) An issuer must honor a draft or demand for payment which complies with the terms of the relevant credit regardless of whether the goods or documents conform to the underlying contract for sale or other contract between the customer and the beneficiary. The issuer is not excused from honor of such a draft or demand by reason of an additional general term that all documents must be satisfactory to the issuer, but an issuer may require that specified documents must be satisfactory to it.

(2) Unless otherwise agreed when documents appear on their face to comply with the terms of a credit but a required document does not in fact conform to the warranties made on negotiation or transfer of a document of title (RCW 62A.7-507) or of a certificated security (RCW 62A.8-306) or is forged or fraudulent or there is fraud in the transaction:

(a) the issuer must honor the draft or demand for payment if honor is demanded by a negotiating bank or other holder of the draft or demand which has taken the draft or demand under the credit and under circumstances which would make it a holder in due course (RCW 62A.3-302) and in an appropriate case would make it a person to whom a document of title has been duly negotiated (RCW 62A.7-502) or a bona fide purchaser of a certificated security (RCW 62A.8-302); and

(b) in all other cases as against its customer, an issuer acting in good faith may honor the draft or demand for payment despite notification from the customer of fraud, forgery or other defect not apparent on the face of the documents but a court of appropriate jurisdiction may enjoin such honor.

(3) Unless otherwise agreed an issuer which has duly honored a draft or demand for payment is entitled to immediate reimbursement of any payment made under the credit and to be put in effectively available funds not later than the day before maturity of any acceptance made under the credit.

(4) When a credit provides for payment by the issuer on receipt of notice that the required documents are in the possession of a correspondent or other agent of the issuer

(a) any payment made on receipt of such notice is conditional; and

(b) the issuer may reject documents which do not comply with the credit if it does so within three banking days following its receipt of the documents; and

(c) in the event of such rejection, the issuer is entitled by charge back or otherwise to return of the payment made.

(5) In the case covered by subsection (4) failure to reject documents within the time specified in subparagraph (b) constitutes acceptance of the documents and makes the payment final in favor of the beneficiary. [1986 c 35 § 54; 1965 ex.s. c 157 § 5-114.]

62A.5-115 Remedy for improper dishonor or anticipatory repudiation. (1) When an issuer wrongfully dishonors a draft or demand for payment presented under a credit the person entitled to honor has with respect to any documents the rights of a person in the position of a seller (RCW 62A.2-707) and may recover from the issuer the face amount of the draft or demand together with incidental damages under RCW 62A.2-710 on seller's incidental damages and interest but less any amount realized by resale or other use or disposition of the subject matter of the transaction. In the event no resale or other utilization is made the documents, goods or other subject matter involved in the transaction must be turned over to the issuer on payment of judgment.

(2) When an issuer wrongfully cancels or otherwise repudiates a credit before presentment of a draft or demand for payment drawn under it the beneficiary has the rights of a seller after anticipatory repudiation by the buyer under RCW 62A.2-610 if he learns of the repudiation in time reasonably to avoid procurement of the required documents. Otherwise the beneficiary has an immediate right of action for wrongful dishonor. [1965 ex.s. c 157 § 5-115.]

62A.5-116 Transfer and assignment. (1) The right to draw under a credit can be transferred or assigned only when the credit is expressly designated as transferable or assignable.

(2) Even though the credit specifically states that it is nontransferable or nonassignable the beneficiary may before performance of the conditions of the credit assign his right to proceeds. Such an assignment is an assignment of an account under Article 9 on Secured Transactions and is governed by that Article except that

(a) the assignment is ineffective until the letter of credit or advice of credit is delivered to the assignee which delivery constitutes perfection of the security interest under Article 9; and

(b) the issuer may honor drafts or demands for payment drawn under the credit until it receives a notification of the assignment signed by the beneficiary which reasonably identifies the credit involved in the assignment and contains a request to pay the assignee; and

(c) after what reasonably appears to be such a notification has been received the issuer may without dishonor refuse to accept or pay even to a person otherwise entitled to honor until the letter of credit or advice of credit is exhibited to the issuer.

(3) Except where the beneficiary has effectively assigned his right to draw or his right to proceeds, nothing in this section limits his right to transfer or negotiate drafts or demands drawn under the credit. [1981 c 41 § 5; 1965 ex.s. c 157 § 5-116. Subd. (2)(b) cf. former RCW 63.16.020; 1947 c 8 § 2; Rem. Supp. 1947 § 2721-2.]

Effective date—1981 c 41: See RCW 62A.11-101.

62A.5-117 Insolvency of bank holding funds for documentary credit. (1) Where an issuer or an advising or confirming bank or a bank which has for a customer procured issuance of a credit by another bank becomes

insolvent before final payment under the credit and the credit is one to which this Article is made applicable by paragraphs (a) or (b) of RCW 62A.5-102(1) on scope, the receipt or allocation of funds or collateral to secure or meet obligations under the credit shall have the following results:

(a) to the extent of any funds or collateral turned over after or before the insolvency as indemnity against or specifically for the purpose of payment of drafts or demands for payment drawn under the designated credit, the drafts or demands are entitled to payment in preference over depositors or other general creditors of the issuer or bank; and

(b) on expiration of the credit or surrender of the beneficiary's rights under it unused any person who has given such funds or collateral is similarly entitled to return thereof; and

(c) a charge to a general or current account with a bank if specifically consented to for the purpose of indemnity against or payment of drafts or demands for payment drawn under the designated credit falls under the same rules as if the funds had been drawn out in cash and then turned over with specific instructions.

(2) After honor or reimbursement under this section the customer or other person for whose account the insolvent bank has acted is entitled to receive the documents involved. [1965 ex.s. c 157 § 5-117.]

ARTICLE 6 BULK TRANSFERS

Sections

62A.6-101	Short title.
62A.6-102	"Bulk transfer"; transfers of equipment; enterprises subject to this Article; bulk transfers subject to this Article.
62A.6-103	Transfers excepted from this Article.
62A.6-104	Schedule of property, list of creditors.
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62A.6-108	Auction sales; "auctioneer".
62A.6-109	What creditors protected; credit for payment to particular creditors.
62A.6-110	Subsequent transfers.
62A.6-111	Limitation of actions and levies.

62A.6-101 Short title. This Article shall be known and may be cited as Uniform Commercial Code—Bulk Transfers. [1965 ex.s. c 157 § 6-101.]

62A.6-102 "Bulk transfer"; transfers of equipment; enterprises subject to this Article; bulk transfers subject to this Article. (1) A "bulk transfer" is any transfer in bulk and not in the ordinary course of the transferor's business of a major part of the materials, supplies, merchandise or other inventory (RCW 62A.9-109) of an enterprise subject to this Article.

(2) A transfer of all or substantially all of the equipment (RCW 62A.9-109) of such an enterprise is a bulk transfer whether or not made in connection with a bulk transfer of inventory, merchandise, materials or supplies.

(3) The enterprises subject to this Article are all those of a vendor engaged in the business of buying and selling and dealing in goods, wares or merchandise, of any kind or description, or in the business of operating a restaurant, cafe, beer parlor, tavern, hotel, club or gasoline service station.

(4) Except as limited by the following section all bulk transfers of goods located within this state are subject to this Article. [1967 c 114 § 2; 1965 ex.s. c 157 § 6-102. Cf. former RCW 63.08.010; 1939 c 122 § 4; 1925 ex.s. c 135 § 1; RRS § 5835; prior: 1913 c 175 § 4; 1901 c 109 §§ 4, 5.]

Emergency—Effective date—1967 c 114: See note following RCW 62A.4-406.

62A.6-103 Transfers excepted from this Article. The following transfers are not subject to this Article:

(1) Those made to give security for the performance of an obligation;

(2) General assignments for the benefit of all the creditors of the transferor, and subsequent transfers by the assignee thereunder;

(3) Transfers in settlement or realization of a lien or other security interests;

(4) Sales by executors, administrators, receivers, trustees in bankruptcy, or any public officer under judicial process;

(5) Sales made in the course of judicial or administrative proceedings for the dissolution or reorganization of a corporation and of which notice is sent to the creditors of the corporation pursuant to order of the court or administrative agency;

(6) Transfers to a person maintaining a known place of business in this state who becomes bound to pay the debts of the transferor in full and gives public notice of that fact, and who is solvent after becoming so bound;

(7) A transfer to a new business enterprise organized to take over and continue the business, if public notice of the transaction is given and the new enterprise assumes the debts of the transferor and he receives nothing from the transaction except an interest in the new enterprise junior to the claims of creditors;

(8) Transfers of property which is exempt from execution;

(9) Any sale subject to public auction on lien foreclosures.

Public notice under subsection (6) or subsection (7) may be given by publishing once a week for two consecutive weeks in a newspaper of general circulation where the transferor had its principal place of business in this state an advertisement including the names and addresses of the transferor and transferee and the effective date of the transfer. [1965 ex.s. c 157 § 6-103. Cf. former RCW 63.08.010; 1939 c 122 § 4; 1925 ex.s. c 135 § 1; RRS § 5835; prior: 1913 c 175 § 4; 1901 c 109 §§ 4, 5.]

62A.6-104 Schedule of property, list of creditors. (1) Except as provided with respect to auction sales (RCW 62A.6-108), a bulk transfer subject to this Article is ineffective against any creditor of the transferor unless:

(a) The transferee requires the transferor to furnish a list of his existing creditors prepared as stated in this section; and

(b) The parties prepare a schedule of the property transferred sufficient to identify it; and

(c) The transferee preserves the list and schedule for six months next following the transfer and permits inspection of either or both and copying therefrom at all reasonable hours by any creditor of the transferor, and files the list and schedule in the office of the county auditor of the county in which the property transferred is located and serves it upon the office of the state department of revenue; the list and schedule shall be indexed as chattel mortgages are indexed, the name of the vendor being indexed as mortgagor and the name of the intending purchaser as mortgagee.

(2) The list of creditors and the schedule must be signed and sworn to by the transferor or his agent. It must contain the names and business addresses of all creditors of the transferor, with the amounts when known, and also the names of all persons who are known to the transferor to assert claims against him even though such claims are disputed. If the transferor is the obligor of an outstanding issue of bonds, debentures or the like as to which there is an indenture trustee, the list of creditors need include only the name and address of the indenture trustee and the aggregate outstanding principal amount of the issue.

(3) Responsibility for the completeness and accuracy of the list of creditors rests on the transferor, and the transfer is not rendered ineffective by errors or omissions therein unless the transferee is shown to have had knowledge. [1975 1st ex.s. c 278 § 33; 1965 ex.s. c 157 § 6-104. Cf. former RCW sections: (i) RCW 63.08.020; 1953 c 247 § 1; 1943 c 98 § 1, part; 1939 c 122 § 1, part; 1925 ex.s. c 135 § 2, part; Rem. Supp. 1943 § 5832, part; prior: 1901 c 109 § 1, part. (ii) RCW 63.08.040; 1953 c 247 § 3; 1943 c 98 § 1, part; 1939 c 122 § 1, part; 1925 ex.s. c 135 § 2, part; Rem. Supp. 1943 § 5832, part; prior: 1901 c 109 § 1, part. (iii) RCW 63.08.050; 1953 c 247 § 4; 1939 c 122 § 2; 1925 ex.s. c 135 § 3; RRS § 5833; prior: 1901 c 109 § 2. (iv) RCW 63.08.060; 1939 c 122 § 3; 1925 ex.s. c 135 § 4; RRS § 5834; prior: 1901 c 109 § 3.]

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

62A.6-105 Notice to creditors—Exceptions. In addition to the requirements of the preceding section, any bulk transfer subject to this Article except:

(1) One made by auction sale (RCW 62A.6-108), or

(2) If the sale proceeds are impounded in gross in the hands of a bank or licensed escrow agent or attorney, to be held until directed by the transferee for application under RCW 62A.6-106, and in any event so to be held in escrow for not less than thirty days following the date of giving of notice under RCW 62A.6-107, is ineffective against any creditor of the transferor unless at least ten days before he takes possession of the goods or pays for them, whichever happens first, the transferee gives notice of the transfer in the manner and to the

persons hereafter provided (RCW 62A.6-107). [1971 c 23 § 1; 1965 ex.s. c 157 § 6-105. Cf. former RCW 63.08.040; 1953 c 247 § 3; 1943 c 98 § 1, part; 1939 c 122 § 1, part; 1925 ex.s. c 135 § 2, part; Rem. Supp. 1943 § 5832, part; prior: 1901 c 109 § 1, part.]

62A.6-106 Application of the proceeds. In addition to the requirements of the two preceding sections:

(1) Upon every bulk transfer subject to this Article for which new consideration becomes payable except those made by sale at auction it is the duty of the transferee to assure that such consideration is applied so far as necessary to pay those debts of the transferor which are either shown on the list furnished by the transferor (RCW 62A.6-104) or filed in writing in the place stated in the notice (RCW 62A.6-107) within thirty days after the mailing of such notice. This duty of the transferee runs to all the holders of such debts, and may be enforced by any of them for the benefit of all.

(2) If any of said debts are in dispute the necessary sum may be withheld from distribution until the dispute is settled or adjudicated.

(3) If the consideration payable is not enough to pay all of the said debts in full distribution shall be made pro rata.

(4) The transferee may within ten days after he takes possession of the goods pay the consideration into the superior court in the county where the transferor had its principal place of business in this state and thereafter may discharge his duty under this section by giving notice by registered or certified mail to all the persons to whom the duty runs that the consideration has been paid into that court and that they should file their claims there. On motion of any interested party, the court may order the distribution of the consideration to the persons entitled to it. [1965 ex.s. c 157 § 6-106. Cf. former RCW 63.08.050; 1953 c 247 § 4; 1939 c 122 § 2; 1925 ex.s. c 135 § 3; RRS § 5833; prior: 1901 c 109 § 2.]

62A.6-107 The notice. (1) The notice to creditors (RCW 62A.6-105) shall state:

- (a) that a bulk transfer is about to be made; and
- (b) the names and business addresses of the transferor and transferee, and all other business names and addresses used by the transferor within three years last past so far as known to the transferee; and
- (c) whether or not all the debts of the transferor are to be paid in full as they fall due as a result of the transaction, and if so, the address to which creditors should send their bills.

(2) If the debts of the transferor are not to be paid in full as they fall due or if the transferee is in doubt on that point then the notice shall state further:

- (a) the location and general description of the property to be transferred and the estimated total of the transferor's debts;
- (b) the address where the schedule of property and list of creditors (RCW 62A.6-104) may be inspected;
- (c) whether the transfer is to pay existing debts and if so the amount of such debts and to whom owing;

(d) whether the transfer is for new consideration and if so the amount of such consideration and the time and place of payment; and

(e) if for new consideration the time and place where creditors of the transferor are to file their claims.

(3) The notice in any case shall be delivered personally or sent by registered or certified mail to all the persons shown on the list of creditors furnished by the transferor (RCW 62A.6-104), to all other persons who are known to the transferee to hold or assert claims against the transferor, and to the office of the state department of revenue. A copy of the notice shall be filed in the office of the county auditor of the county in which the property transferred is located and indexed as chattel mortgages are indexed, the name of the vendor being indexed as mortgagor and the name of the intending purchaser as mortgagee. [1975 1st ex.s. c 278 § 34; 1965 ex.s. c 157 § 6-107. Cf. former RCW 63.08.040; 1953 c 247 § 3; 1943 c 98 § 1, part; 1939 c 122 § 1, part; 1925 ex.s. c 135 § 2, part; Rem. Supp. 1943 § 5832, part; prior: 1901 c 109 § 1, part.]

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

62A.6-108 Auction sales; "auctioneer". (1) A bulk transfer is subject to this Article even though it is by sale at auction, but only in the manner and with the results stated in this section.

(2) The transferor shall furnish a list of his creditors and assist in the preparation of a schedule of the property to be sold, both prepared as before stated (RCW 62A.6-104).

(3) The person or persons other than the transferor who direct, control or are responsible for the auction are collectively called the "auctioneer". The auctioneer shall:

(a) receive and retain the list of creditors and prepare and retain the schedule of property for the period stated in this Article (RCW 62A.6-104);

(b) give notice of the auction personally or by registered or certified mail at least ten days before it occurs to all persons shown on the list of creditors and to all other persons who are known to him to hold or assert claims against the transferor; and

(c) assure that the net proceeds of the auction are applied as provided in this Article (RCW 62A.6-106).

(4) Failure of the auctioneer to perform any of these duties does not affect the validity of the sale or the title of the purchasers, but if the auctioneer knows that the auction constitutes a bulk transfer such failure renders the auctioneer liable to the creditors of the transferor as a class for the sums owing to them from the transferor up to but not exceeding the net proceeds of the auction. If the auctioneer consists of several persons their liability is joint and several. [1965 ex.s. c 157 § 6-108.]

Auctioneers: Chapter 18.11 RCW.

62A.6-109 What creditors protected; credit for payment to particular creditors. (1) The creditors of the transferor (or claimants against the transferor) mentioned in this Article are those to whom the transferor is indebted for or on account of services, commodities,

goods, wares, or merchandise, or fixtures and equipment, used in or furnished to the business of the transferor, or for or on account of money borrowed to carry on the business of the transferor or for or on account of labor employed in the course of the business of the transferor, of which the goods, wares and merchandise, or fixtures and equipment, bargained for or purchased are a part. Creditors who become such after notice to creditors is given (RCW 62A.6-105 and RCW 62A.6-107) are not entitled to notice.

(2) Against the aggregate obligation imposed by the provisions of this Article concerning the application of the proceeds (RCW 62A.6-106 and subsection (3)(c) of RCW 62A.6-108) the transferee or auctioneer is entitled to credit for sums paid to particular creditors of the transferor, not exceeding the sums believed in good faith at the time of the payment to be properly payable to such creditors. [1967 c 114 § 3; 1965 ex.s. c 157 § 6-109. Cf. former RCW sections: (i) RCW 63.08.020; 1953 c 247 § 1; 1943 c 98 § 1, part; 1939 c 122 § 1, part; 1925 ex.s. c 135 § 2, part; Rem. Supp. 1943 § 5832, part; prior: 1901 c 109 § 1, part; (ii) RCW 63.08-.050; 1953 c 247 § 4; 1939 c 122 § 2; 1925 ex.s. c 135 § 3; RRS § 5833; prior: 1901 c 109 § 2.]

Emergency—Effective date—1967 c 114: See note following RCW 62A.4-406.

62A.6-110 Subsequent transfers. When the title of a transferee to property is subject to a defect by reason of his non-compliance with the requirements of this Article, then:

(1) a purchaser of any of such property from such transferee who pays no value or who takes with notice of such non-compliance takes subject to such defect, but

(2) a purchaser for value in good faith and without such notice takes free of such defect. [1965 ex.s. c 157 § 6-110.]

62A.6-111 Limitation of actions and levies. No action under this Article shall be brought nor levy made more than six months after the date on which the transferee took possession of the goods unless the transfer has been concealed. If the transfer has been concealed, actions may be brought or levies made within six months after its discovery. [1965 ex.s. c 157 § 6-111.]

ARTICLE 7

WAREHOUSE RECEIPTS, BILLS OF LADING AND OTHER DOCUMENTS OF TITLE

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62A.7-103	Relation of Article to treaty, statute, tariff, classification or regulation.
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62A.7-105	Construction against negative implication.

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WAREHOUSE RECEIPTS: SPECIAL PROVISIONS

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62A.7-401	Irregularities in issue of receipt or bill or conduct of issuer.
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PART 5

WAREHOUSE RECEIPTS AND BILLS OF LADING: NEGOTIATION AND TRANSFER

62A.7-501	Form of negotiation and requirements of "due negotiation".
62A.7-502	Rights acquired by due negotiation.
62A.7-503	Document of title to goods defeated in certain cases.
62A.7-504	Rights acquired in the absence of due negotiation; effect of diversion; seller's stoppage of delivery.
62A.7-505	Indorser not a guarantor for other parties.
62A.7-506	Delivery without indorsement: Right to compel indorsement.
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62A.7-508	Warranties of collecting bank as to documents.
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PART 6

WAREHOUSE RECEIPTS AND BILLS OF LADING: MISCELLANEOUS PROVISIONS

62A.7-601	Lost and missing documents.
62A.7-602	Attachment of goods covered by a negotiable document.
62A.7-603	Conflicting claims; interpleader.

PART 1 GENERAL

62A.7-101 Short title. This Article shall be known and may be cited as Uniform Commercial Code—Documents of Title. [1965 ex.s. c 157 § 7-101.]

62A.7-102 Definitions and index of definitions. (1) In this Article, unless the context otherwise requires:

[Title 62A RCW—p 59]

(a) "Bailee" means the person who by a warehouse receipt, bill of lading or other document of title acknowledges possession of goods and contracts to deliver them.

(b) "Consignee" means the person named in a bill to whom or to whose order the bill promises delivery.

(c) "Consignor" means the person named in a bill as the person from whom the goods have been received for shipment.

(d) "Delivery order" means a written order to deliver goods directed to a warehouseman, carrier or other person who in the ordinary course of business issues warehouse receipts or bills of lading.

(e) "Document" means document of title as defined in the general definitions in Article 1 (RCW 62A.1-201).

(f) "Goods" means all things which are treated as movable for the purposes of a contract of storage or transportation.

(g) "Issuer" means a bailee who issues a document except that in relation to an unaccepted delivery order it means the person who orders the possessor of goods to deliver. Issuer includes any person for whom an agent or employee purports to act in issuing a document if the agent or employee has real or apparent authority to issue documents, notwithstanding that the issuer received no goods or that the goods were misdescribed or that in any other respect the agent or employee violated his instructions.

(h) "Warehouseman" is a person engaged in the business of storing goods for hire.

(2) Other definitions applying to this Article or to specified Parts thereof, and the sections in which they appear are:

"Duly negotiate". RCW 62A.7-501.

"Person entitled under the document". RCW 62A.7-403(4).

(3) Definitions in other Articles applying to this Article and the sections in which they appear are:

"Contract for sale". RCW 62A.2-106.

"Overseas". RCW 62A.2-323.

"Receipt" of goods. RCW 62A.2-103.

(4) In addition Article 1 contains general definitions and principles of construction and interpretation applicable throughout this Article. [1965 ex.s. c 157 § 7-102. Cf. former RCW sections: (i) RCW 22.04.585(1); 1913 c 99 § 58; RRS § 3644; formerly RCW 22.04.010. (ii) RCW 63.04.755(1); 1925 ex.s. c 142 § 76; RRS § 5836-76; formerly RCW 63.04.010. (iii) RCW 81.32-.011; 1961 c 14 § 81.32.011; prior: 1915 c 159 § 1; RRS § 3647; formerly RCW 81.32.020. (iv) RCW 81.32.531(1); 1961 c 14 § 81.32.531; prior: 1915 c 159 § 53; RRS § 3699; formerly RCW 81.32.010, part.]

62A.7-103 Relation of Article to treaty, statute, tariff, classification or regulation. To the extent that any treaty or statute of the United States, regulatory statute of this state or tariff, classification or regulation filed or issued pursuant thereto is applicable, the provisions of this Article are subject thereto. [1965 ex.s. c 157 § 7-103.]

62A.7-104 Negotiable and non-negotiable warehouse receipt, bill of lading or other document of title. (1) A warehouse receipt, bill of lading or other document of title is negotiable

(a) if by its terms the goods are to be delivered to bearer or to the order of a named person; or

(b) where recognized in overseas trade, if it runs to a named person or assigns.

(2) Any other document is non-negotiable. A bill of lading in which it is stated that the goods are consigned to a named person is not made negotiable by a provision that the goods are to be delivered only against a written order signed by the same or another named person. [1965 ex.s. c 157 § 7-104. Cf. former RCW sections: (i) RCW 22.04.030, 22.04.050, and 22.04.060; 1913 c 99 §§ 2, 4, and 5; RRS §§ 3588, 3590, and 3591; prior: 1891 c 134 §§ 5 and 8. (ii) RCW 22.04.040 and 22.04-.080; 1913 c 99 §§ 3, 7; RRS §§ 3589, 3593. (iii) RCW 63.04.280 and 63.04.310; 1925 ex.s. c 142 §§ 27 and 30; RRS §§ 5836-27 and 5836-30. (iv) RCW 63.04.755(1); 1925 ex.s. c 142 § 76; RRS § 5836-76; formerly RCW 63.04.010. (v) RCW 81.32.021 through 81.32.051, and 81.32.081; 1961 c 14 §§ 81.32.021 through 81.32.051, and 81.32.081; prior: 1915 c 159 §§ 2 through 5, and 8; RRS §§ 3648 through 3651, and 3654; formerly RCW 81.32.030 through 81.32.060, and 81.32.090. (vi) RCW 81.32.531; 1961 c 14 § 81.32.531; prior: 1915 c 159 § 53; RRS § 3699; formerly RCW 81.32.010, part.]

62A.7-105 Construction against negative implication. The omission from either Part 2 or Part 3 of this Article of a provision corresponding to a provision made in the other Part does not imply that a corresponding rule of law is not applicable. [1965 ex.s. c 157 § 7-105.]

PART 2

WAREHOUSE RECEIPTS: SPECIAL PROVISIONS

62A.7-201 Who may issue a warehouse receipt; storage under government bond. (1) A warehouse receipt may be issued by any warehouseman.

(2) Where goods including distilled spirits and agricultural commodities are stored under a statute requiring a bond against withdrawal or a license for the issuance of receipts in the nature of warehouse receipts, a receipt issued for the goods has like effect as a warehouse receipt even though issued by a person who is the owner of the goods and is not a warehouseman. [1965 ex.s. c 157 § 7-201. Cf. former RCW 22.04.020; 1913 c 99 § 1; RRS § 3587; prior: 1891 c 134 § 1.]

62A.7-202 Form of warehouse receipt; essential terms; optional terms. (1) A warehouse receipt need not be in any particular form.

(2) Unless a warehouse receipt embodies within its written or printed terms each of the following, the warehouseman is liable for damages caused by the omission to a person injured thereby:

(a) the location of the warehouse where the goods are stored;

(b) the date of issue of the receipt;

- (c) the consecutive number of the receipt;
- (d) a statement whether the goods received will be delivered to the bearer, to a specified person, or to a specified person or his order;
- (e) the rate of storage and handling charges, except that where goods are stored under a field warehousing arrangement a statement of that fact is sufficient on a non-negotiable receipt;
- (f) a description of the goods or of the packages containing them;
- (g) the signature of the warehouseman, which may be made by his authorized agent;
- (h) if the receipt is issued for goods of which the warehouseman is owner, either solely or jointly or in common with others, the fact of such ownership; and
- (i) a statement of the amount of advances made and of liabilities incurred for which the warehouseman claims a lien or security interest (RCW 62A.7-209). If the precise amount of such advances made or of such liabilities incurred is, at the time of the issue of the receipt, unknown to the warehouseman or to his agent who issues it, a statement of the fact that advances have been made or liabilities incurred and the purpose thereof is sufficient.

(3) A warehouseman may insert in his receipt any other terms which are not contrary to the provisions of this Title and do not impair his obligation of delivery (RCW 62A.7-403) or his duty of care (RCW 62A.7-204). Any contrary provisions shall be ineffective. [1965 ex.s. c 157 § 7-202. Cf. former RCW sections: (i) RCW 22.04.030; 1913 c 99 § 2; RRS § 3588; prior: 1891 c 134 § 8. (ii) RCW 22.04.040; 1913 c 99 § 3; RRS § 3589.]

62A.7-203 Liability for non-receipt or misdescription. A party to or purchaser for value in good faith of a document of title other than a bill of lading relying in either case upon the description therein of the goods may recover from the issuer damages caused by the non-receipt or misdescription of the goods, except to the extent that the document conspicuously indicates that the issuer does not know whether any part or all of the goods in fact were received or conform to the description, as where the description is in terms of marks or labels or kind, quantity or condition, or the receipt or description is qualified by "contents, condition and quality unknown", "said to contain" or the like, if such indication be true, or the party or purchaser otherwise has notice. [1965 ex.s. c 157 § 7-203. Cf. former RCW 22.04.210; 1913 c 99 § 20; RRS § 3606.]

62A.7-204 Duty of care; contractual limitation of warehouseman's liability. (1) A warehouseman is liable for damages for loss of or injury to the goods caused by his failure to exercise such care in regard to them as a reasonably careful man would exercise under like circumstances but unless otherwise agreed he is not liable for damages which could not have been avoided by the exercise of such care.

(2) Damages may be limited by a term in the warehouse receipt or storage agreement limiting the amount

of liability in case of loss or damage, and setting forth a specific liability per article or item, or value per unit of weight, beyond which the warehouseman shall not be liable; provided, however, that such liability may on written request of the bailor at the time of signing such storage agreement or within a reasonable time after receipt of the warehouse receipt be increased on part or all of the goods thereunder, in which event increased rates may be charged based on such increased valuation, but that no such increase shall be permitted contrary to a lawful limitation of liability contained in the warehouseman's tariff, if any. No such limitation is effective with respect to the warehouseman's liability for conversion to his own use.

(3) Reasonable provisions as to the time and manner of presenting claims and instituting actions based on the bailment may be included in the warehouse receipt or tariff.

(4) This section does not impair or repeal the duties of care or liabilities or penalties for breach thereof as provided in chapters 22.09 and 22.32 RCW. [1981 c 13 § 1; 1965 ex.s. c 157 § 7-204. Cf. former RCW sections: (i) RCW 22.04.040; 1913 c 99 § 3; RRS § 3589. (ii) RCW 22.04.220; 1913 c 99 § 21; RRS § 3607.]

62A.7-205 Title under warehouse receipt defeated in certain cases. A buyer in the ordinary course of business of fungible goods sold and delivered by a warehouseman who is also in the business of buying and selling such goods takes free of any claim under a warehouse receipt even though it has been duly negotiated. [1965 ex.s. c 157 § 7-205.]

62A.7-206 Termination of storage at warehouseman's option. (1) A warehouseman may on notifying the person on whose account the goods are held and any other person known to claim an interest in the goods require payment of any charges and removal of the goods from the warehouse at the termination of the period of storage fixed by the document, or, if no period is fixed, within a stated period not less than thirty days after the notification. If the goods are not removed before the date specified in the notification, the warehouseman may sell them in accordance with the provisions of the section on enforcement of a warehouseman's lien (RCW 62A.7-210).

(2) If a warehouseman in good faith believes that the goods are about to deteriorate or decline in value to less than the amount of his lien within the time prescribed in subsection (1) for notification, advertisement and sale, the warehouseman may specify in the notification any reasonable shorter time for removal of the goods and in case the goods are not removed, may sell them at public sale held not less than one week after a single advertisement or posting.

(3) If as a result of a quality or condition of the goods of which the warehouseman had no notice at the time of deposit the goods are a hazard to other property or to the warehouse or to persons, the warehouseman may sell the goods at public or private sale without advertisement on reasonable notification to all persons known to claim

an interest in the goods. If the warehouseman after a reasonable effort is unable to sell the goods he may dispose of them in any lawful manner and shall incur no liability by reason of such disposition.

(4) The warehouseman must deliver the goods to any person entitled to them under this Article upon due demand made at any time prior to sale or other disposition under this section.

(5) The warehouseman may satisfy his lien from the proceeds of any sale or disposition under this section but must hold the balance for delivery on the demand of any person to whom he would have been bound to deliver the goods. [1965 ex.s. c 157 § 7-206. Cf. former RCW 22.04.350; 1913 c 99 § 34; RRS § 3620.]

62A.7-207 Goods must be kept separate; fungible goods. (1) Unless the warehouse receipt otherwise provides, a warehouseman must keep separate the goods covered by each receipt so as to permit at all times identification and delivery of those goods except that different lots of fungible goods may be commingled.

(2) Fungible goods so commingled are owned in common by the persons entitled thereto and the warehouseman is severally liable to each owner for that owner's share. Where because of over-issue a mass of fungible goods is insufficient to meet all the receipts which the warehouseman has issued against it, the persons entitled include all holders to whom overissued receipts have been duly negotiated. [1965 ex.s. c 157 § 7-207. Cf. former RCW sections: (i) RCW 22.04.230; 1913 c 99 § 22; RRS § 3608; prior: 1891 c 134 § 3. (ii) RCW 22.04.240; 1913 c 99 § 23; RRS § 3609.]

62A.7-208 Altered warehouse receipts. Where a blank in a negotiable warehouse receipt has been filled in without authority, a purchaser for value and without notice of the want of authority may treat the insertion as authorized. Any other unauthorized alteration leaves any receipt enforceable against the issuer according to its original tenor. [1965 ex.s. c 157 § 7-208. Cf. former RCW 22.04.140; 1913 c 99 § 13; RRS § 3599.]

62A.7-209 Lien of warehouseman. (1) A warehouseman has a lien against the bailor on the goods covered by a warehouse receipt or on the proceeds thereof in his possession for charges for storage or transportation (including demurrage and terminal charges), insurance, labor, or charges present or future in relation to the goods, and for expenses necessary for preservation of the goods or reasonably incurred in their sale pursuant to law. If the person on whose account the goods are held is liable for like charges or expenses in relation to other goods whenever deposited and it is stated in the receipt that a lien is claimed for charges and expenses in relation to other goods, the warehouseman also has a lien against him for such charges and expenses whether or not the other goods have been delivered by the warehouseman. But against a person to whom a negotiable warehouse receipt is duly negotiated a warehouseman's lien is limited to charges in an amount or at a rate specified on the

receipt or if no charges are so specified then to a reasonable charge for storage of the goods covered by the receipt subsequent to the date of the receipt. A warehouseman's lien as provided in this chapter takes priority over all other liens and perfected or unperfected security interests.

(2) The warehouseman may also reserve a security interest against the bailor for a maximum amount specified on the receipt for charges other than those specified in subsection (1), such as for money advanced and interest. Such a security interest is governed by the Article on Secured Transactions (Article 9).

(3) A warehouseman's lien for charges and expenses under subsection (1) or a security interest under subsection (2) is also effective against any person who so entrusted the bailor with possession of the goods that a pledge of them by him to a good faith purchaser for value would have been valid but is not effective against a person as to whom the document confers no right in the goods covered by it under RCW 62A.7-503.

(4) A warehouseman loses his lien on any goods which he voluntarily delivers or which he unjustifiably refuses to deliver. [1987 c 395 § 1; 1965 ex.s. c 157 § 7-209. Cf. former RCW sections: RCW 22.04.280 through 22.04.330; 1913 c 99 §§ 27 through 32; RRS §§ 3613 through 3618.]

62A.7-210 Enforcement of warehouseman's lien. (1) Except as provided in subsection (2), a warehouseman's lien may be enforced by public or private sale of the goods in bloc or in parcels, at any time or place and on any terms which are commercially reasonable, after notifying all persons known to claim an interest in the goods. Such notification must include a statement of the amount due, the nature of the proposed sale and the time and place of any public sale. The fact that a better price could have been obtained by a sale at a different time or in a different method from that selected by the warehouseman is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. If the warehouseman either sells the goods in the usual manner in any recognized market therefor, or if he sells at the price current in such market at the time of his sale, or if he has otherwise sold in conformity with commercially reasonable practices among dealers in the type of goods sold, he has sold in a commercially reasonable manner. A sale of more goods than apparently necessary to be offered to insure satisfaction of the obligation is not commercially reasonable except in cases covered by the preceding sentence.

(2) A warehouseman's lien on goods other than goods stored by a merchant in the course of his business may be enforced only as follows:

(a) All persons known to claim an interest in the goods must be notified.

(b) The notification must be delivered in person or sent by registered or certified letter to the last known address of any person to be notified.

(c) The notification must include an itemized statement of the claim, a description of the goods subject to the lien, a demand for payment within a specified time

not less than ten days after receipt of the notification, and a conspicuous statement that unless the claim is paid within that time the goods will be advertised for sale and sold by auction at a specified time and place.

(d) The sale must conform to the terms of the notification.

(e) The sale must be held at the nearest suitable place to that where the goods are held or stored.

(f) After the expiration of the time given in the notification, an advertisement of the sale must be published once a week for two weeks consecutively in a newspaper of general circulation where the sale is to be held. The advertisement must include a description of the goods, the name of the person on whose account they are being held, and the time and place of the sale. The sale must take place at least fifteen days after the first publication. If there is no newspaper of general circulation where the sale is to be held, the advertisement must be posted at least ten days before the sale in not less than six conspicuous places in the neighborhood of the proposed sale.

(3) Before any sale pursuant to this section any person claiming a right in the goods may pay the amount necessary to satisfy the lien and the reasonable expenses incurred under this section. In that event the goods must not be sold, but must be retained by the warehouseman subject to the terms of the receipt and this Article.

(4) The warehouseman may buy at any public sale pursuant to this section.

(5) A purchaser in good faith of goods sold to enforce a warehouseman's lien takes the goods free of any rights of persons against whom the lien was valid, despite non-compliance by the warehouseman with the requirements of this section.

(6) The warehouseman may satisfy his lien from the proceeds of any sale pursuant to this section but must hold the balance, if any, for delivery on demand to any person to whom he would have been bound to deliver the goods.

(7) The rights provided by this section shall be in addition to all other rights allowed by law to a creditor against his debtor.

(8) Where a lien is on goods stored by a merchant in the course of his business the lien may be enforced in accordance with either subsection (1) or (2).

(9) The warehouseman is liable for damages caused by failure to comply with the requirements for sale under this section and in case of willful violation is liable for conversion. [1965 ex.s. c 157 § 7-210. Cf. former RCW sections: RCW 22.04.340, 22.04.360, and 22.04-.370; 1913 c 99 §§ 33, 35, and 36; RRS §§ 3619, 3621, and 3622.]

PART 3

BILLS OF LADING: SPECIAL PROVISIONS

62A.7-301 Liability for non-receipt or misdescription; "said to contain"; "shipper's load and count"; improper handling. (1) A consignee of a non-negotiable bill who has given value in good faith or a holder to whom a negotiable bill has been duly negotiated relying in either

case upon the description therein of the goods, or upon the date therein shown, may recover from the issuer damages caused by the misdating of the bill or the non-receipt or misdescription of the goods, except to the extent that the document indicates that the issuer does not know whether any part or all of the goods in fact were received or conform to the description, as where the description is in terms of marks or labels or kind, quantity, or condition or the receipt or description is qualified by "contents or condition of contents of packages unknown", "said to contain", "shipper's weight, load and count" or the like, if such indication be true.

(2) When goods are loaded by an issuer who is a common carrier, the issuer must count the packages of goods if package freight and ascertain the kind and quantity if bulk freight. In such cases "shipper's weight, load and count" or other words indicating that the description was made by the shipper are ineffective except as to freight concealed by packages.

(3) When bulk freight is loaded by a shipper who makes available to the issuer adequate facilities for weighing such freight, an issuer who is a common carrier must ascertain the kind and quantity within a reasonable time after receiving the written request of the shipper to do so. In such cases "shipper's weight" or other words of like purport are ineffective.

(4) The issuer may by inserting in the bill the words "shipper's weight, load and count" or other words of like purport indicate that the goods were loaded by the shipper; and if such statement be true the issuer shall not be liable for damages caused by the improper loading. But their omission does not imply liability for such damages.

(5) The shipper shall be deemed to have guaranteed to the issuer the accuracy at the time of shipment of the description, marks, labels, number, kind, quantity, condition and weight, as furnished by him; and the shipper shall indemnify the issuer against damage caused by inaccuracies in such particulars. The right of the issuer to such indemnity shall in no way limit his responsibility and liability under the contract of carriage to any person other than the shipper. [1965 ex.s. c 157 § 7-301. Cf. former RCW 81.32.231; 1961 c 14 § 81.32.231; prior: 1915 c 159 § 23; RRS § 3669; formerly RCW 81.32.240.]

62A.7-302 Through bills of lading and similar documents. (1) The issuer of a through bill of lading or other document embodying an undertaking to be performed in part by persons acting as its agents or by connecting carriers is liable to anyone entitled to recover on the document for any breach by such other persons or by a connecting carrier of its obligation under the document but to the extent that the bill covers an undertaking to be performed overseas or in territory not contiguous to the continental United States or an undertaking including matters other than transportation this liability may be varied by agreement of the parties.

(2) Where goods covered by a through bill of lading or other document embodying an undertaking to be performed in part by persons other than the issuer are received by any such person, he is subject with respect to

his own performance while the goods are in his possession to the obligation of the issuer. His obligation is discharged by delivery of the goods to another such person pursuant to the document, and does not include liability for breach by any other such persons or by the issuer.

(3) The issuer of such through bill of lading or other document shall be entitled to recover from the connecting carrier or such other person in possession of the goods when the breach of the obligation under the document occurred, the amount it may be required to pay to anyone entitled to recover on the document therefor, as may be evidenced by any receipt, judgment, or transcript thereof, and the amount of any expense reasonably incurred by it in defending any action brought by anyone entitled to recover on the document therefor. [1965 ex.s. c 157 § 7-302.]

62A.7-303 Diversion; reconsignment; change of instructions. (1) Unless the bill of lading otherwise provides, the carrier may deliver the goods to a person or destination other than that stated in the bill or may otherwise dispose of the goods on instructions from

(a) the holder of a negotiable bill; or

(b) the consignor on a non-negotiable bill notwithstanding contrary instructions from the consignee; or

(c) the consignee on a non-negotiable bill in the absence of contrary instructions from the consignor, if the goods have arrived at the billed destination or if the consignee is in possession of the bill; or

(d) the consignee on a non-negotiable bill if he is entitled as against the consignor to dispose of them.

(2) Unless such instructions are noted on a negotiable bill of lading, a person to whom the bill is duly negotiated can hold the bailee according to the original terms. [1965 ex.s. c 157 § 7-303.]

62A.7-304 Bills of lading in a set. (1) Except where customary in overseas transportation, a bill of lading must not be issued in a set of parts. The issuer is liable for damages caused by violation of this subsection.

(2) Where a bill of lading is lawfully drawn in a set of parts, each of which is numbered and expressed to be valid only if the goods have not been delivered against any other part, the whole of the parts constitute one bill.

(3) Where a bill of lading is lawfully issued in a set of parts and different parts are negotiated to different persons, the title of the holder to whom the first due negotiation is made prevails as to both the document and the goods even though any later holder may have received the goods from the carrier in good faith and discharged the carrier's obligation by surrender of his part.

(4) Any person who negotiates or transfers a single part of a bill of lading drawn in a set is liable to holders of that part as if it were the whole set.

(5) The bailee is obliged to deliver in accordance with Part 4 of this Article against the first presented part of a bill of lading lawfully drawn in a set. Such delivery discharges the bailee's obligation on the whole bill. [1965 ex.s. c 157 § 7-304. Cf. former RCW 81.32.061; 1961 c 14 § 81.32.061; prior: 1915 c 159 § 6; RRS § 3652; formerly RCW 81.32.070.]

62A.7-305 Destination bills. (1) Instead of issuing a bill of lading to the consignor at the place of shipment a carrier may at the request of the consignor procure the bill to be issued at destination or at any other place designated in the request.

(2) Upon request of anyone entitled as against the carrier to control the goods while in transit and on surrender of any outstanding bill of lading or other receipt covering such goods, the issuer may procure a substitute bill to be issued at any place designated in the request. [1965 ex.s. c 157 § 7-305.]

62A.7-306 Altered bills of lading. An unauthorized alteration or filling in of a blank in a bill of lading leaves the bill enforceable according to its original tenor. [1965 ex.s. c 157 § 7-306. Cf. former RCW 81.32.161; 1961 c 14 § 81.32.161; prior: 1915 c 159 § 16; RRS § 3662; formerly RCW 81.32.170.]

62A.7-307 Lien of carrier. (1) A carrier has a lien on the goods covered by a bill of lading for charges subsequent to the date of its receipt of the goods for storage or transportation (including demurrage and terminal charges) and for expenses necessary for preservation of the goods incident to their transportation or reasonably incurred in their sale pursuant to law. But against a purchaser for value of a negotiable bill of lading a carrier's lien is limited to charges stated in the bill or the applicable tariffs, or if no charges are stated then to a reasonable charge.

(2) A lien for charges and expenses under subsection (1) on goods which the carrier was required by law to receive for transportation is effective against the consignor or any person entitled to the goods unless the carrier had notice that the consignor lacked authority to subject the goods to such charges and expenses. Any other lien under subsection (1) is effective against the consignor and any person who permitted the bailor to have control or possession of the goods unless the carrier had notice that the bailor lacked such authority.

(3) A carrier loses his lien on any goods which he voluntarily delivers or which he unjustifiably refuses to deliver. [1965 ex.s. c 157 § 7-307. Cf. former RCW sections: RCW 22.04.280 through 22.04.330; 1913 c 99 §§ 27 through 32; RRS §§ 3613 through 3618.]

62A.7-308 Enforcement of carrier's lien. (1) A carrier's lien may be enforced by public or private sale of the goods, in bloc or in parcels, at any time or place and on any terms which are commercially reasonable, after notifying all persons known to claim an interest in the goods. Such notification must include a statement of the amount due, the nature of the proposed sale and the time and place of any public sale. The fact that a better price could have been obtained by a sale at a different time or in a different method from that selected by the carrier is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. If the carrier either sells the goods in the usual manner in any recognized market therefor or if he sells at the price current in such market at the time of his sale or if he

has otherwise sold in conformity with commercially reasonable practices among dealers in the type of goods sold he has sold in a commercially reasonable manner. A sale of more goods than apparently necessary to be offered to ensure satisfaction of the obligation is not commercially reasonable except in cases covered by the preceding sentence.

(2) Before any sale pursuant to this section any person claiming a right in the goods may pay the amount necessary to satisfy the lien and the reasonable expenses incurred under this section. In that event the goods must not be sold, but must be retained by the carrier subject to the terms of the bill and this Article.

(3) The carrier may buy at any public sale pursuant to this section.

(4) A purchaser in good faith of goods sold to enforce a carrier's lien takes the goods free of any rights of persons against whom the lien was valid, despite noncompliance by the carrier with the requirements of this section.

(5) The carrier may satisfy his lien from the proceeds of any sale pursuant to this section but must hold the balance, if any, for delivery on demand to any person to whom he would have been bound to deliver the goods.

(6) The rights provided by this section shall be in addition to all other rights allowed by law to a creditor against his debtor.

(7) A carrier's lien may be enforced in accordance with either subsection (1) or the procedure set forth in subsection (2) of RCW 62A.7-210.

(8) The carrier is liable for damages caused by failure to comply with the requirements for sale under this section and in case of willful violation is liable for conversion. [1965 ex.s. c 157 § 7-308. Cf. former RCW 22.04.340; 1913 c 99 § 33; RRS § 3619.]

62A.7-309 Duty of care; contractual limitation of carrier's liability. Save as otherwise provided in RCW 81.29.010 and 81.29.020

(1) A carrier who issues a bill of lading whether negotiable or non-negotiable must exercise the degree of care in relation to the goods which a reasonably careful man would exercise under like circumstances.

(2) Damages may be limited by a provision that the carrier's liability shall not exceed a value stated in the document if the carrier's rates are dependent upon value and the consignor by the carrier's tariff is afforded an opportunity to declare a higher value or a value as lawfully provided in the tariff, or where no tariff is filed he is otherwise advised of such opportunity; but no such limitation is effective with respect to the carrier's liability for conversion to its own use.

(3) Reasonable provisions as to the time and manner of presenting claims and instituting actions based on the shipment may be included in a bill of lading or tariff. [1965 ex.s. c 157 § 7-309. Cf. former RCW 81.32.031; 1961 c 14 § 81.32.031; prior: 1915 c 159 § 3; RRS § 3649; formerly RCW 81.32.040.]

Common carriers—Limitation on liability: Chapter 81.29 RCW.

(1989 Ed.)

PART 4 WAREHOUSE RECEIPTS AND BILLS OF LADING: GENERAL OBLIGATIONS

62A.7-401 Irregularities in issue of receipt or bill or conduct of issuer. The obligations imposed by this Article on an issuer apply to a document of title regardless of the fact that

(a) the document may not comply with the requirements of this Article or of any other law or regulation regarding its issue, form or content; or

(b) the issuer may have violated laws regulating the conduct of his business; or

(c) the goods covered by the document were owned by the bailee at the time the document was issued; or

(d) the person issuing the document does not come within the definition of warehouseman if it purports to be a warehouse receipt. [1965 ex.s. c 157 § 7-401. Cf. former RCW sections: (i) RCW 22.04.210; 1913 c 99 § 20; RRS § 3606. (ii) RCW 81.32.231; 1961 c 14 § 81-32.231; prior: 1915 c 159 § 23; RRS § 3669; formerly RCW 81.32.240.]

62A.7-402 Duplicate receipt or bill; overissue. Neither a duplicate nor any other document of title purporting to cover goods already represented by an outstanding document of the same issuer confers any right in the goods, except as provided in the case of bills in a set, overissue of documents for fungible goods and substitutes for lost, stolen or destroyed documents. But the issuer is liable for damages caused by his overissue or failure to identify a duplicate document as such by conspicuous notation on its face. [1965 ex.s. c 157 § 7-402. Cf. former RCW sections: (i) RCW 22.04.070; 1913 c 99 § 6; RRS § 3592; prior: 1886 p 121 § 5. (ii) RCW 81.32.071; 1961 c 14 § 81.32.071; prior: 1915 c 159 § 7; RRS § 3653; formerly RCW 81.32.080.]

62A.7-403 Obligation of warehouseman or carrier to deliver; excuse. (1) The bailee must deliver the goods to a person entitled under the document who complies with subsections (2) and (3), unless and to the extent that the bailee establishes any of the following:

(a) delivery of the goods to a person whose receipt was rightful as against the claimant;

(b) damage to or delay, loss or destruction of the goods for which the bailee is not liable;

(c) previous sale or other disposition of the goods in lawful enforcement of a lien or on warehouseman's lawful termination of storage;

(d) the exercise by a seller of his right to stop delivery pursuant to the provisions of the Article on Sales (RCW 62A.2-705);

(e) a diversion, reconsignment or other disposition pursuant to the provisions of this Article (RCW 62A.7-303) or tariff regulating such right;

(f) release, satisfaction or any other fact affording a personal defense against the claimant;

(g) any other lawful excuse.

(2) A person claiming goods covered by a document of title must satisfy the bailee's lien where the bailee so

requests or where the bailee is prohibited by law from delivering the goods until the charges are paid.

(3) Unless the person claiming is one against whom the document confers no right under RCW 62A.7-503(1), he must surrender for cancellation or notation of partial deliveries any outstanding negotiable document covering the goods, and the bailee must cancel the document or conspicuously note the partial delivery thereon or be liable to any person to whom the document is duly negotiated.

(4) "Person entitled under the document" means holder in the case of a negotiable document, or the person to whom delivery is to be made by the terms of or pursuant to written instructions under a non-negotiable document. [1965 ex.s. c 157 § 7-403. Cf. former RCW sections: (i) RCW 22.04.090, and 22.04.100; 1913 c 99 §§ 8 and 9; RRS §§ 3594, and 3595; prior: 1891 c 134 §§ 6, and 7. (ii) RCW 22.04.110, 22.04.130, 22.04.170, and 22.04.200; 1913 c 99 §§ 10, 12, 16, and 19; RRS §§ 3596, 3598, 3602, and 3605. (iii) RCW 22.04.120; 1913 c 99 § 11; RRS § 3597; prior: 1886 p 121 § 7. (iv) RCW 81.32.111 through 81.32.151, 81.32.191, and 81.32.221; 1961 c 14 §§ 81.32.111 through 81.32.151, 81.32.191, and 81.32.221; 1915 c 159 §§ 11 through 15, 19, and 22; RRS §§ 3657 through 3661, 3665, and 3668; formerly RCW 81.32.120 through 81.32.160, 81.32.200, and 81.32.230.]

62A.7-404 No liability for good faith delivery pursuant to receipt or bill. A bailee who in good faith including observance of reasonable commercial standards has received goods and delivered or otherwise disposed of them according to the terms of the document of title or pursuant to this Article is not liable therefor. This rule applies even though the person from whom he received the goods had no authority to procure the document or to dispose of the goods and even though the person to whom he delivered the goods had no authority to receive them. [1965 ex.s. c 157 § 7-404. Cf. former RCW sections: (i) RCW 22.04.110; 1913 c 99 § 10; RRS § 3596. (ii) RCW 81.32.131; 1961 c 14 § 81.32.131; prior: 1915 c 159 § 13; RRS § 3659; formerly RCW 81.32.140.]

PART 5

WAREHOUSE RECEIPTS AND BILLS OF LADING: NEGOTIATION AND TRANSFER

62A.7-501 Form of negotiation and requirements of "due negotiation". (1) A negotiable document of title running to the order of a named person is negotiated by his indorsement and delivery. After his indorsement in blank or to bearer any person can negotiate it by delivery alone.

(2) (a) A negotiable document of title is also negotiated by delivery alone when by its original terms it runs to bearer;

(b) when a document running to the order of a named person is delivered to him the effect is the same as if the document had been negotiated.

(3) Negotiation of a negotiable document of title after it has been indorsed to a specified person requires indorsement by the special indorsee as well as delivery.

(4) A negotiable document of title is "duly negotiated" when it is negotiated in the manner stated in this section to a holder who purchases it in good faith without notice of any defense against or claim to it on the part of any person and for value, unless it is established that the negotiation is not in the regular course of business or financing or involves receiving the document in settlement or payment of a money obligation.

(5) Indorsement of a non-negotiable document neither makes it negotiable nor adds to the transferee's rights.

(6) The naming in a negotiable bill of a person to be notified of the arrival of the goods does not limit the negotiability of the bill nor constitute notice to a purchaser thereof of any interest of such person in the goods. [1965 ex.s. c 157 § 7-501. Cf. former RCW sections: (i) RCW 22.04.380 through 22.04.410, and 22.04.480; 1913 c 99 §§ 37 through 40, and 47; RRS §§ 3623 through 3626, and 3633. (ii) RCW 63.04.290, 63.04.300, 63.04.320, 63.04.330, and 63.04.390; 1925 ex.s. c 142 §§ 28, 29, 31, 32, and 38; RRS §§ 5836-28, 5836-29, 5836-31, 5836-32 and 5836-38. (iii) RCW 81.32.281 through 81.32.311, and 81.32.381; 1961 c 14 §§ 81.32.281 through 81.32.311, and 81.32.381; prior: 1915 c 159 §§ 28 through 31, and 38; RRS §§ 3674 through 3677, and 3684; formerly RCW 81.32.370 through 81.32.400, and 81.32.470.]

62A.7-502 Rights acquired by due negotiation. (1) Subject to the following section and to the provisions of RCW 62A.7-205 on fungible goods, a holder to whom a negotiable document of title has been duly negotiated acquires thereby:

(a) title to the document;

(b) title to the goods;

(c) all rights accruing under the law of agency or estoppel, including rights to goods delivered to the bailee after the document was issued; and

(d) the direct obligation of the issuer to hold or deliver the goods according to the terms of the document free of any defense or claim by him except those arising under the terms of the document or under this Article. In the case of a delivery order the bailee's obligation accrues only upon acceptance and the obligation acquired by the holder is that the issuer and any indorser will procure the acceptance of the bailee.

(2) Subject to the following section, title and rights so acquired are not defeated by any stoppage of the goods represented by the document or by surrender of such goods by the bailee, and are not impaired even though the negotiation or any prior negotiation constituted a breach of duty or even though any person has been deprived of possession of the document by misrepresentation, fraud, accident, mistake, duress, loss, theft or conversion, or even though a previous sale or other transfer of the goods or document has been made to a third person. [1965 ex.s. c 157 § 7-502. Cf. former RCW sections: (i) RCW 22.04.420, and 22.04.480

through 22.04.500; 1913 c 99 §§ 41, and 47 through 49; RRS §§ 3627, and 3633 through 3635. (ii) RCW 63.04.210(4), 63.04.260, 63.04.340, 63.04.390, and 63.04.630; 1925 ex.s. c 142 §§ 20, 25, 33, 38, and 62; RRS §§ 5836-20, 5836-25, 5836-33, 5836-38, and 5836-62. (iii) RCW 81.32.321, 81.32.381, 81.32.391, 81.32.401, and 81.32.421; 1961 c 14 §§ 81.32.321, 81.32.381, 81.32.391, 81.32.401, and 81.32.421; prior: 1915 c 159 §§ 32, 38, 39, 40, and 42; RRS §§ 3678, 3684, 3685, 3686, and 3688; formerly RCW 81.32.410, 81.32.470, 81.32.480, 81.32.490, and 81.32.510.]

62A.7-503 Document of title to goods defeated in certain cases. (1) A document of title confers no right in goods against a person who before issuance of the document had a legal interest or a perfected security interest in them and who neither

(a) delivered or entrusted them or any document of title covering them to the bailor or his nominee with actual or apparent authority to ship, store or sell or with power to obtain delivery under this Article (RCW 62A.7-403) or with power of disposition under this Title (RCW 62A.2-403 and RCW 62A.9-307) or other statute or rule of law; nor

(b) acquiesced in the procurement by the bailor or his nominee of any document of title.

(2) Title to goods based upon an unaccepted delivery order is subject to the rights of anyone to whom a negotiable warehouse receipt or bill of lading covering the goods has been duly negotiated. Such a title may be defeated under the next section to the same extent as the rights of the issuer or a transferee from the issuer.

(3) Title to goods based upon a bill of lading issued to a freight forwarder is subject to the rights of anyone to whom a bill issued by the freight forwarder is duly negotiated; but delivery by the carrier in accordance with Part 4 of this Article pursuant to its own bill of lading discharges the carrier's obligation to deliver. [1965 ex.s. c 157 § 7-503. Cf. former RCW sections: (i) RCW 22.04.420; 1913 c 99 § 41; RRS § 3627. (ii) RCW 63.04.340; 1925 ex.s. c 142 § 33; RRS § 5836-33. (iii) RCW 81.32.321; 1961 c 14 § 81.32.321; prior: 1915 c 159 § 32; RRS § 3678; formerly RCW 81.32.410.]

62A.7-504 Rights acquired in the absence of due negotiation; effect of diversion; seller's stoppage of delivery.

(1) A transferee of a document, whether negotiable or non-negotiable, to whom the document has been delivered but not duly negotiated, acquires the title and rights which his transferor had or had actual authority to convey.

(2) In the case of a non-negotiable document, until but not after the bailee receives notification of the transfer, the rights of the transferee may be defeated

(a) by those creditors of the transferor who could treat the sale as void under RCW 62A.7-402; or

(b) by a buyer from the transferor in ordinary course of business if the bailee has delivered the goods to the buyer or received notification of his rights; or

(c) as against the bailee by good faith dealings of the bailee with the transferor.

(3) A diversion or other change of shipping instructions by the consignor in a non-negotiable bill of lading which causes the bailee not to deliver to the consignee defeats the consignee's title to the goods if they have been delivered to a buyer in ordinary course of business and in any event defeats the consignee's rights against the bailee.

(4) Delivery pursuant to a non-negotiable document may be stopped by a seller under RCW 62A.2-705, and subject to the requirement of due notification there provided. A bailee honoring the seller's instructions is entitled to be indemnified by the seller against any resulting loss or expense. [1965 ex.s. c 157 § 7-504. Cf. former RCW sections: (i) RCW 22.04.420(2) and 22.04.430; 1913 c 99 §§ 41, and 42; RRS §§ 3627, and 3628. (ii) RCW 63.04.350; 1925 ex.s. c 142 § 34; RRS § 5834-34. (iii) RCW 81.32.321(2) and 81.32.331; 1961 c 14 §§ 81.32.321 and 81.32.331; prior: 1915 c 159 §§ 32 and 33; RRS §§ 3678 and 3679; formerly RCW 81.32.410 and 81.32.420.]

62A.7-505 Indorser not a guarantor for other parties. The indorsement of a document of title issued by a bailee does not make the indorser liable for any default by the bailee or by previous indorsers. [1965 ex.s. c 157 § 7-505. Cf. former RCW sections: (i) RCW 22.04.460; 1913 c 99 § 45; RRS § 3631. (ii) RCW 63.04.380; 1925 ex.s. c 142 § 37; RRS § 5836-37. (iii) RCW 81.32.361; 1961 c 14 § 81.32.361; prior: 1915 c 159 § 36; RRS § 3682; formerly RCW 81.32.450.]

62A.7-506 Delivery without indorsement: Right to compel indorsement. The transferee of a negotiable document of title has a specifically enforceable right to have his transferor supply any necessary indorsement but the transfer becomes a negotiation only as of the time the indorsement is supplied. [1965 ex.s. c 157 § 7-506. Cf. former RCW sections: (i) RCW 22.04.440; 1913 c 99 § 43; RRS § 3629. (ii) RCW 63.04.360; 1925 ex.s. c 142 § 35; RRS § 5836-35. (iii) RCW 81.32.341; 1961 c 14 § 81.32.341; prior: 1915 c 159 § 34; RRS § 3680; formerly RCW 81.32.430.]

62A.7-507 Warranties on negotiation or transfer of receipt or bill. Where a person negotiates or transfers a document of title for value otherwise than as a mere intermediary under the next following section, then unless otherwise agreed he warrants to his immediate purchaser only in addition to any warranty made in selling the goods

(a) that the document is genuine; and

(b) that he has no knowledge of any fact which would impair its validity or worth; and

(c) that his negotiation or transfer is rightful and fully effective with respect to the title to the document and the goods it represents. [1965 ex.s. c 157 § 7-507. Cf. former RCW sections: (i) RCW 22.04.450; 1913 c 99 § 44; RRS § 3630. (ii) RCW 63.04.370; 1925 ex.s. c 142 § 36; RRS § 5836-36. (iii) RCW 81.32.351; 1961 c 14 § 81.32.351; prior: 1915 c 159 § 35; RRS § 3681; formerly RCW 81.32.440.]

62A.7-508 Warranties of collecting bank as to documents. A collecting bank or other intermediary known to be entrusted with documents on behalf of another or with collection of a draft or other claim against delivery of documents warrants by such delivery of the documents only its own good faith and authority. This rule applies even though the intermediary has purchased or made advances against the claim or draft to be collected. [1965 ex.s. c 157 § 7-508. Cf. former RCW sections: (i) RCW 22.04.470; 1913 c 99 § 46; RRS § 3632. (ii) RCW 81.32.371; 1961 c 14 § 81.32.371; prior: 1915 c 159 § 37; RRS § 3683; formerly RCW 81.32.460.]

62A.7-509 Receipt or bill: When adequate compliance with commercial contract. The question whether a document is adequate to fulfill the obligations of a contract for sale or the conditions of a credit is governed by the Articles on Sales (Article 2) and on Letters of Credit (Article 5). [1965 ex.s. c 157 § 7-509.]

PART 6

WAREHOUSE RECEIPTS AND BILLS OF LADING: MISCELLANEOUS PROVISIONS

62A.7-601 Lost and missing documents. (1) If a document has been lost, stolen or destroyed, a court may order delivery of the goods or issuance of a substitute document and the bailee may without liability to any person comply with such order. If the document was negotiable the claimant must post security approved by the court to indemnify any person who may suffer loss as a result of non-surrender of the document. If the document was not negotiable, such security may be required at the discretion of the court. The court may also in its discretion order payment of the bailee's reasonable costs and counsel fees.

(2) A bailee who without court order delivers goods to a person claiming under a missing negotiable document is liable to any person injured thereby, and if the delivery is not in good faith becomes liable for conversion. Delivery in good faith is not conversion if made in accordance with a filed classification or tariff or, where no classification or tariff is filed, if the claimant posts security with the bailee in an amount at least double the value of the goods at the time of posting to indemnify any person injured by the delivery who files a notice of claim within one year after the delivery. [1965 ex.s. c 157 § 7-601. Cf. former RCW sections: (i) RCW 22.04.150; 1913 c 99 § 14; RRS § 3600. (ii) RCW 81.32.171; 1961 c 14 § 81.32.171; prior: 1915 c 159 § 17; RRS § 3663; formerly RCW 81.32.180.]

62A.7-602 Attachment of goods covered by a negotiable document. Except where the document was originally issued upon delivery of the goods by a person who had no power to dispose of them, no lien attaches by virtue of any judicial process to goods in the possession of a bailee for which a negotiable document of title is outstanding unless the document be first surrendered to the bailee or its negotiation enjoined, and the bailee shall

not be compelled to deliver the goods pursuant to process until the document is surrendered to him or impounded by the court. One who purchases the document for value without notice of the process or injunction takes free of the lien imposed by judicial process. [1965 ex.s. c 157 § 7-602. Cf. former RCW sections: (i) RCW 22.04.260; 1913 c 99 § 25; RRS § 3611. (ii) RCW 81.32.241; 1961 c 14 § 81.32.241; prior: 1915 c 159 § 24; RRS § 3670; formerly RCW 81.32.250.]

62A.7-603 Conflicting claims; interpleader. If more than one person claims title or possession of the goods, the bailee is excused from delivery until he has had a reasonable time to ascertain the validity of the adverse claims or to bring an action to compel all claimants to interplead and may compel such interpleader, either in defending an action for non-delivery of the goods, or by original action, whichever is appropriate. [1965 ex.s. c 157 § 7-603. Cf. former RCW sections: (i) RCW 22.04.170 and 22.04.180; 1913 c 99 §§ 16 and 17; RRS §§ 3602 and 3603. (ii) RCW 81.32.201 and 81.32.211; 1961 c 14 §§ 81.32.201 and 81.32.211; prior: 1915 c 159 §§ 20 and 21; RRS §§ 3666 and 3667; formerly RCW 81.32.210 and 81.32.220.]

ARTICLE 8

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PART 4
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62A.8-401	Duty of issuer to register transfer, pledge, or release.
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PART 1
SHORT TITLE AND GENERAL MATTERS

62A.8-101 Short title. This Article shall be known and may be cited as Uniform Commercial Code—Investment Securities. [1965 ex.s. c 157 § 8-101.]

62A.8-102 Definitions and index of definitions. (1) In this Article, unless the context otherwise requires:

(a) A "certificated security" is a share, participation, or other interest in property of or an enterprise of the issuer or an obligation of the issuer which is

(i) represented by an instrument issued in bearer or registered form;

(ii) of a type commonly dealt in on securities exchanges or markets or commonly recognized in any area in which it is issued or dealt in as a medium for investment; and

(iii) either one of a class or series or by its terms divisible into a class or series of shares, participations, interests, or obligations.

(b) An "uncertificated security" is a share, participation, or other interest in property or an enterprise of the issuer or an obligation of the issuer which is

(i) not represented by an instrument and the transfer of which is registered upon books maintained for that purpose by or on behalf of the issuer;

(ii) of a type commonly dealt in on securities exchanges or markets; and

(iii) either one of a class or series or by its terms divisible into a class or series of shares, participations, interests, or obligations.

(c) A "security" is either a certificated or an uncertificated security. If a security is certificated, the terms "security" and "certificated security" may mean either the intangible interest, the instrument representing that interest, or both, as the context requires. A writing that is a certificated security is governed by this Article and not by Article 3, even though it also meets the requirements of that Article. This Article does not apply to money. If a certificated security has been retained by or surrendered to the issuer or its transfer agent for reasons other than registration of transfer, other temporary purpose, payment, exchange, or acquisition by the issuer, that security shall be treated as an uncertificated security for purposes of this Article.

(d) A certificated security is in "registered form" if

(i) it specifies a person entitled to the security or the rights it represents, and

(ii) its transfer may be registered upon books maintained for that purpose by or on behalf of the issuer, or the security so states.

(e) A certificated security is in "bearer form" if it runs to bearer according to its terms and not by reason of any indorsement.

(2) A "subsequent purchaser" is a person who takes other than by original issue.

(3) A "clearing corporation" is a corporation registered as a "clearing agency" under the federal securities laws or a corporation:

(a) At least 90 percent of whose capital stock is held by or for one or more organizations, none of which, other than a national securities exchange or association, holds in excess of 20 percent of the capital stock of the corporation, and each of which is

(i) subject to supervision or regulation pursuant to the provisions of federal or state banking laws or state insurance laws,

(ii) a broker or dealer or investment company registered under the federal securities laws, or

(iii) a national securities exchange or association registered under the federal securities laws; and

(b) Any remaining capital stock of which is held by individuals who have purchased it at or prior to the time of their taking office as directors of the corporation and who have purchased only so much of the capital stock as is necessary to permit them to qualify as directors.

(4) A "custodian bank" is a bank or trust company that is supervised and examined by state or federal authority having supervision over banks and is acting as custodian for a clearing corporation.

(5) Other definitions applying to this Article or to specified Parts thereof and the sections in which they appear are:

"Adverse claim". RCW 62A.8-302.

"Bona fide purchaser". RCW 62A.8-302.

"Broker". RCW 62A.8-303.

"Debtor". RCW 62A.9-105.

"Financial intermediary". RCW 62A.8-313.

"Guarantee of the signature". RCW 62A.8-402.

"Initial transaction statement". RCW 62A.8-408.

"Instruction". RCW 62A.8-308.

"Intermediary bank". RCW 62A.4-105.

"Issuer". RCW 62A.8-201.

"Overissue". RCW 62A.8-104.

"Secured party". RCW 62A.9-105.

"Security agreement". RCW 62A.9-105.

(6) In addition Article 1 contains general definitions and principles of construction and interpretation applicable throughout this Article. [1986 c 35 § 1; 1973 c 98 § 1; 1965 ex.s. c 157 § 8-102. Cf. former RCW 62.01.001; 1955 c 35 § 62.01.001; prior: 1899 c 149 § 1; RRS § 3392.]

62A.8-103 Issuer's lien. A lien upon a security in favor of an issuer thereof is valid against a purchaser only if:

(a) the security is certificated and the right of the issuer to the lien is noted conspicuously thereon; or

(b) the security is uncertificated and a notation of the right of the issuer to the lien is contained in the initial transaction statement sent to the purchaser or, if his interest is transferred to him other than by registration of transfer, pledge, or release, the initial transaction statement sent to the registered owner or the registered pledgee. [1986 c 35 § 2; 1965 ex.s. c 157 § 8-103. Cf. former RCW 23.80.150; 1939 c 100 § 15; RRS § 3803-115; formerly RCW 23.20.140.]

62A.8-104 Effect of overissue; "overissue". (1) The provisions of this Article which validate a security or compel its issue or reissue do not apply to the extent that validation, issue, or reissue would result in overissue; but if:

(a) an identical security which does not constitute an overissue is reasonably available for purchase, the person entitled to issue or validation may compel the issuer to purchase the security for him and either to deliver a certificated security or to register the transfer of an uncertificated security to him, against surrender of any certificated security he holds; or

(b) a security is not so available for purchase, the person entitled to issue or validation may recover from the issuer the price he or the last purchaser for value paid for it with interest from the date of his demand.

(2) "Overissue" means the issue of securities in excess of the amount the issuer has corporate power to issue. [1986 c 35 § 3; 1965 ex.s. c 157 § 8-104.]

Corporations—Purchase of own shares: RCW 23B.06.030 and 23B.06.310.

62A.8-105 Certificated securities negotiable; statements and instructions not negotiable; presumptions. (1) Certificated securities governed by this Article are negotiable instruments.

(2) Statements (RCW 62A.8-408), notices, or the like, sent by the issuer of uncertificated securities and instructions (RCW 62A.8-308) are neither negotiable instruments nor certificated securities.

(3) In any action on a security:

(a) unless specifically denied in the pleadings, each signature on a certificated security, in a necessary indorsement, on an initial transaction statement, or on an instruction, is admitted;

(b) if the effectiveness of a signature is put in issue, the burden of establishing it is on the party claiming under the signature, but the signature is presumed to be genuine or authorized;

(c) if signatures on a certificated security are admitted or established, production of the security entitles a holder to recover on it unless the defendant establishes a defense or a defect going to the validity of the security;

(d) if signatures on an initial transaction statement are admitted or established, the facts stated in the statement are presumed to be true as of the time of its issuance; and

(e) after it is shown that a defense or defect exists, the plaintiff has the burden of establishing that he or some person under whom he claims is a person against whom the defense or defect is ineffective (RCW 62A.8-202). [1986 c 35 § 4; 1965 ex.s. c 157 § 8-105. Cf. former RCW 62.01.001; 1955 c 35 § 62.01.001; prior: 1899 c 149 § 1; RRS § 3392.]

62A.8-106 Applicability. The law (including the conflict of laws rules) of the jurisdiction of organization of the issuer governs the validity of a security, the effectiveness of registration by the issuer, and the rights and duties of the issuer with respect to:

(a) registration of transfer of a certificated security;

(b) registration of transfer, pledge, or release of an uncertificated security; and

(c) sending of statements of uncertificated securities. [1986 c 35 § 5; 1965 ex.s. c 157 § 8-106.]

Territorial application of Uniform Act for Simplification of Fiduciary Security Transfers: RCW 21.17.080.

62A.8-107 Securities transferable; action for price.

(1) Unless otherwise agreed and subject to any applicable law or regulation respecting short sales, a person obligated to transfer securities may transfer any certificated security of the specified issue in bearer form or registered in the name of the transferee, or indorsed to him or in blank, or he may transfer an equivalent uncertificated security to the transferee or a person designated by the transferee.

(2) If the buyer fails to pay the price as it comes due under a contract of sale, the seller may recover the price of:

(a) certificated securities accepted by the buyer;

(b) uncertificated securities that have been transferred to the buyer or a person designated by the buyer; and

(c) other securities if efforts at their resale would be unduly burdensome or if there is no readily available market for their resale. [1986 c 35 § 6; 1965 ex.s. c 157 § 8-107.]

62A.8-108 Registration of pledge and release of uncertificated securities. A security interest in an uncertificated security may be evidenced by the registration of pledge to the secured party or a person designated by him. There can be no more than one registered pledge of an uncertificated security at any time. The registered owner of an uncertificated security is the person in

whose name the security is registered, even if the security is subject to a registered pledge. The rights of a registered pledgee of an uncertificated security under this Article are terminated by the registration of release. [1986 c 35 § 7.]

PART 2
ISSUE—ISSUER

62A.8-201 "Issuer". (1) With respect to obligations on or defenses to a security, "issuer" includes a person who:

(a) places or authorizes the placing of his name on a certificated security (otherwise than as authenticating trustee, registrar, transfer agent, or the like) to evidence that it represents a share, participation, or other interest in his property or in an enterprise, or to evidence his duty to perform an obligation represented by the certificated security;

(b) creates shares, participations or other interests in his property or in an enterprise or undertakes obligations, which shares, participations, interests, or obligations are uncertificated securities;

(c) directly or indirectly creates fractional interests in his rights or property, which fractional interests are represented by certificated securities; or

(d) becomes responsible for or in place of any other person described as an issuer in this section.

(2) With respect to obligations on or defenses to a security, a guarantor is an issuer to the extent of his guaranty, whether or not his obligation is noted on a certificated security or on statements of uncertificated securities sent pursuant to RCW 62A.8-408.

(3) With respect to registration of transfer, pledge, or release (Part 4 of this Article), "issuer" means a person on whose behalf transfer books are maintained. [1986 c 35 § 8; 1965 ex.s. c 157 § 8-201. Cf. former RCW sections: RCW 62.01.029, and 62.01.060 through 62.01.062; 1955 c 35 §§ 62.01.029, and 62.01.060 through 62.01.062; prior: 1899 c 149 §§ 29, and 60 through 62; RRS §§ 3420, and 3451 through 3453.]

Corporations, effect of merger or consolidation: RCW 23B.11.060.

Securities Act, issuer: RCW 21.20.005(7).

62A.8-202 Issuer's responsibility and defenses; notice of defect or defense. (1) Even against a purchaser for value and without notice, the terms of a security include:

(a) if the security is certificated, those stated on the security;

(b) if the security is uncertificated, those contained in the initial transaction statement sent to such purchaser, or if his interest is transferred to him other than by registration of transfer, pledge, or release, the initial transaction statement sent to the registered owner or registered pledgee; and

(c) those made part of the security by reference, on the certificated security or in the initial transaction statement, to another instrument, indenture, or document or to a constitution, statute, ordinance, rule, regulation, order or the like, to the extent that the terms

referred to do not conflict with the terms stated on the certificated security or contained in the statement. A reference under this paragraph does not of itself charge a purchaser for value with notice of a defect going to the validity of the security, even though the certificated security or statement expressly states that a person accepting it admits notice.

(2) A certificated security in the hands of a purchaser for value or an uncertificated security as to which an initial transaction statement has been sent to a purchaser for value, other than a security issued by a government or governmental agency or unit, even though issued with a defect going to its validity, is valid with respect to the purchaser if he is without notice of the particular defect unless the defect involves a violation of constitutional provisions, in which case the security is valid with respect to a subsequent purchaser for value and without notice of the defect.

This subsection applies to an issuer that is a government or governmental agency or unit only if either there has been substantial compliance with the legal requirements governing the issue or the issuer has received a substantial consideration for the issue as a whole or for the particular security and a stated purpose of the issue is one for which the issuer has power to borrow money or issue the security.

(3) Except as provided in the case of certain unauthorized signatures (RCW 62A.8-205), lack of genuineness of a certificated security or an initial transaction statement is a complete defense, even against a purchaser for value and without notice.

(4) All other defenses of the issuer of a certificated or uncertificated security, including nondelivery and conditional delivery of a certificated security, are ineffective against a purchaser for value who has taken without notice of the particular defense.

(5) Nothing in this section shall be construed to affect the right of a party to a "when, as and if issued" or a "when distributed" contract to cancel the contract in the event of a material change in the character of the security that is the subject of the contract or in the plan or arrangement pursuant to which the security is to be issued or distributed. [1986 c 35 § 9; 1965 ex.s. c 157 § 8-202. Cf. former RCW sections: RCW 62.01.016, 62.01.023, 62.01.028, 62.01.056, 62.01.057, and 62.01.060 through 62.01.062; 1955 c 35 §§ 62.01.016, 62.01.023, 62.01.028, 62.01.056, 62.01.057, and 62.01.060 through 62.01.062; prior: 1899 c 149 §§ 16, 23, 28, 56, 57, and 60 through 62; RRS §§ 3407, 3414, 3419, 3447, 3448, and 3451 through 3453.]

62A.8-203 Staleness as notice of defects or defenses.

(1) After an act or event creating a right to immediate performance of the principal obligation represented by a certificated security or that sets a date on or after which the security is to be presented or surrendered for redemption or exchange, a purchaser is charged with notice of any defect in its issue or defense of the issuer if:

(a) the act or event is one requiring the payment of money, the delivery of certificated securities, the registration of transfer of uncertificated securities, or any of

these on presentation or surrender of the certificated security, the funds or securities are available on the date set for payment or exchange, and he takes the security more than one year after that date; and

(b) the act or event is not covered by paragraph (a) and he takes the security more than 2 years after the date set for surrender or presentation or the date on which performance became due.

(2) A call that has been revoked is not within subsection (1). [1986 c 35 § 10; 1965 ex.s. c 157 § 8-203. Cf. former RCW sections: RCW 62.01.052(2) and 62.01.053; 1955 c 35 §§ 62.01.052 and 62.01.053; prior: 1899 c 149 §§ 52 and 53; RRS §§ 3443 and 3444.]

62A.8-204 Effect of issuer's restrictions on transfer.

A restriction on transfer of a security imposed by the issuer, even though otherwise lawful, is ineffective against any person without actual knowledge of it unless:

(a) the security is certificated and the restriction is noted conspicuously thereon; or

(b) the security is uncertificated and a notation of the restriction is contained in the initial transaction statement sent to the person or, if his interest is transferred to him other than by registration of transfer, pledge, or release, the initial transaction statement sent to the registered owner or the registered pledgee. [1986 c 35 § 11; 1965 ex.s. c 157 § 8-204. Cf. former RCW 23.80.150; 1939 c 100 § 15; RRS § 3803-115; formerly RCW 23.20.160.]

Corporations—Stock certificates—Limitations: RCW 23B.06.250.

62A.8-205 Effect of unauthorized signature on certificated security or initial transaction statement.

An unauthorized signature placed on a certificated security prior to or in the course of issue or placed on an initial transaction statement is ineffective, but the signature is effective in favor of a purchaser for value of the certificated security or a purchaser for value of an uncertificated security to whom such initial transaction statement has been sent, if the purchaser is without notice of the lack of authority and the signing has been done by:

(a) an authenticating trustee, registrar, transfer agent, or other person entrusted by the issuer with the signing of the security, of similar securities, or of initial transaction statements or the immediate preparation for signing of any of them; or

(b) an employee of the issuer, or of any of the foregoing, entrusted with responsible handling of the security or initial transaction statement. [1986 c 35 § 12; 1965 ex.s. c 157 § 8-205. Cf. former RCW 62.01.023; 1955 c 35 § 62.01.023; prior: 1899 c 149 § 23; RRS § 3414.]

62A.8-206 Completion or alteration of certificated security or initial transaction statement.

(1) If a certificated security contains the signatures necessary to its issue or transfer but is incomplete in any other respect:

(a) any person may complete it by filling in the blanks as authorized; and

(b) even though the blanks are incorrectly filled in, the security as completed is enforceable by a purchaser who took it for value and without notice of the incorrectness.

(2) A complete certificated security that has been improperly altered, even though fraudulently, remains enforceable, but only according to its original terms.

(3) If an initial transaction statement contains the signatures necessary to its validity, but is incomplete in any other respect:

(a) any person may complete it by filling in the blanks as authorized; and

(b) even though the blanks are incorrectly filled in, the statement as completed is effective in favor of the person to whom it is sent if he purchased the security referred to therein for value and without notice of the incorrectness.

(4) A complete initial transaction statement that has been improperly altered, even though fraudulently, is effective in favor of a purchaser to whom it has been sent, but only according to its original terms. [1986 c 35 § 13; 1965 ex.s. c 157 § 8-206. Cf. former RCW sections: (i) RCW 23.80.160; 1939 c 100 § 16; RRS § 3803-116; formerly RCW 23.20.170. (ii) RCW 62.01.014, 62.01.015, and 62.01.124; 1955 c 35 §§ 62.01.014, 62.01.015, and 62.01.124; prior: 1899 c 149 §§ 14, 15, and 124; RRS §§ 3405, 3406, and 3514.]

62A.8-207 Rights and duties of issuer with respect to registered owners and registered pledgees.

(1) Prior to due presentment for registration of transfer of a certificated security in registered form, the issuer or indenture trustee may treat the registered owner as the person exclusively entitled to vote, to receive notifications, and otherwise to exercise all the rights and powers of an owner.

(2) Subject to the provisions of subsections (3), (4), and (6), the issuer or indenture trustee may treat the registered owner of an uncertificated security as the person exclusively entitled to vote, to receive notifications, and otherwise to exercise all the rights and powers of an owner.

(3) The registered owner of an uncertificated security that is subject to a registered pledge is not entitled to registration of transfer prior to the due presentment to the issuer of a release instruction. The exercise of conversion rights with respect to a convertible uncertificated security is a transfer within the meaning of this section.

(4) Upon due presentment of a transfer instruction from the registered pledgee of an uncertificated security, the issuer shall:

(a) register the transfer of the security to the new owner free of pledge, if the instruction specifies a new owner (who may be the registered pledgee) and does not specify a pledgee;

(b) register the transfer of the security to the new owner subject to the interest of the existing pledgee, if the instruction specifies a new owner and the existing pledgee; or

(c) register the release of the security from the existing pledge and register the pledge of the security to the

other pledgee, if the instruction specifies the existing owner and another pledgee.

(5) Continuity of perfection of a security interest is not broken by registration of transfer under subsection (4)(b) or by registration of release and pledge under subsection (4)(c), if the security interest is assigned.

(6) If an uncertificated security is subject to a registered pledge:

(a) any uncertificated securities issued in exchange for or distributed with respect to the pledged security shall be registered subject to the pledge;

(b) any certificated securities issued in exchange for or distributed with respect to the pledged security shall be delivered to the registered pledgee; and

(c) any money paid in exchange for or in redemption of part or all of the security shall be paid to the registered pledgee.

(7) Nothing in this Article shall be construed to affect the liability of the registered owner of a security for calls, assessments, or the like. [1986 c 35 § 14; 1965 ex.s. c 157 § 8-207. Cf. former RCW 23.80.020 and 23.80.030; 1939 c 100 §§ 2 and 3; RRS §§ 3803-102, and 3803-103; formerly RCW 23.20.030 and 23.20.040.]

62A.8-208 Effect of signature of authenticating trustee, registrar, or transfer agent. (1) A person placing his signature upon a certificated security or an initial transaction statement as authenticating trustee, registrar, transfer agent, or the like, warrants to a purchaser for value of the certificated security or a purchaser for value of an uncertificated security to whom the initial transaction statement has been sent, if the purchaser is without notice of the particular defect, that:

(a) the certificated security or initial transaction statement is genuine;

(b) his own participation in the issue or registration of the transfer, pledge, or release of the security is within his capacity and within the scope of the authority received by him from the issuer; and

(c) he has reasonable grounds to believe that the security is in the form and within the amount the issuer is authorized to issue.

(2) Unless otherwise agreed, a person by so placing his signature does not assume responsibility for the validity of the security in other respects. [1986 c 35 § 15; 1965 ex.s. c 157 § 8-208.]

PART 3 PURCHASE

62A.8-301 Rights acquired by purchaser or transferee. (1) Upon transfer of a security to a purchaser (RCW 62A.8-313), the purchaser acquires the rights in the security which his transferor had or had actual authority to convey unless the purchaser's rights are limited by RCW 62A.8-302(4).

(2) A transferee of a limited interest acquires rights only to the extent of the interest transferred. The creation or release of a security interest in a security is the transfer of a limited interest in that security. [1986 c 35

§ 16; 1965 ex.s. c 157 § 8-301. Cf. former RCW sections: (i) RCW 23.80.070; 1939 c 100 § 7; RRS § 3803-107; formerly RCW 23.20.080. (ii) RCW 62.01-.052; 1955 c 35 § 62.01.052; prior: 1899 c 149 § 52; RRS § 3443. (iii) RCW 62.01.057 through 62.01.059; 1955 c 35 §§ 62.01.057 through 62.01.059; prior: 1899 c 149 §§ 57 through 59; RRS §§ 3448 through 3450.]

62A.8-302 "Bona fide purchaser"; "adverse claim"; title acquired by bona fide purchaser. (1) A "bona fide purchaser" is a purchaser for value in good faith and without notice of any adverse claim:

(a) who takes delivery of a certificated security in bearer form or in registered form, issued or indorsed to him or in blank;

(b) to whom the transfer, pledge or release of an uncertificated security is registered on the books of the issuer; or

(c) to whom a security is transferred under the provisions of paragraph (c), (d)(i), or (g) of RCW 62A.8-313(1).

(2) "Adverse claim" includes a claim that a transfer was or would be wrongful or that a particular adverse person is the owner of or has an interest in the security.

(3) A bona fide purchaser in addition to acquiring the rights of a purchaser (RCW 62A.8-301) also acquires his interest in the security free of any adverse claim.

(4) Notwithstanding RCW 62A.8-301(1), the transferee of a particular certificated security who has been a party to any fraud or illegality affecting the security, or who as a prior holder of that certificated security had notice of an adverse claim, cannot improve his position by taking from a bona fide purchaser. [1986 c 35 § 17; 1965 ex.s. c 157 § 8-302. Cf. former RCW sections: (i) RCW 23.80.230(2); 1939 c 100 § 23; RRS § 3803-123. (ii) RCW 62.01.052; 1955 c 35 § 62.01.052; prior: 1899 c 149 § 52; RRS § 3443.]

62A.8-303 "Broker". "Broker" means a person engaged for all or part of his time in the business of buying and selling securities, who in the transaction concerned acts for, buys a security from, or sells a security to, a customer. Nothing in this Article determines the capacity in which a person acts for purposes of any other statute or rule to which the person is subject. [1986 c 35 § 18; 1965 ex.s. c 157 § 8-303.]

62A.8-304 Notice to purchaser of adverse claims. (1) A purchaser (including a broker for the seller or buyer, but excluding an intermediary bank) of a certificated security is charged with notice of adverse claims if:

(a) the security, whether in bearer or registered form, has been indorsed "for collection" or "for surrender" or for some other purpose not involving transfer; or

(b) the security is in bearer form and has on it an unambiguous statement that it is the property of a person other than the transferor. The mere writing of a name on a security is not such a statement.

(2) A purchaser (including a broker for the seller or buyer, but excluding an intermediary bank) to whom the transfer, pledge, or release of an uncertificated security

is registered is charged with notice of adverse claims as to which the issuer has a duty under RCW 62A.8-403(4) at the time of registration and which are noted in the initial transaction statement sent to the purchaser or, if his interest is transferred to him other than by registration of transfer, pledge, or release, the initial transaction statement sent to the registered owner or the registered pledgee.

(3) The fact that the purchaser (including a broker for the seller or buyer) of a certificated or uncertificated security has notice that the security is held for a third person or is registered in the name of or indorsed by a fiduciary does not create a duty of inquiry into the rightfulness of the transfer or constitute constructive notice of adverse claims. However, if the purchaser (excluding an intermediary bank) has knowledge that the proceeds are being used or the transaction is for the individual benefit of the fiduciary or otherwise in breach of duty, the purchaser is charged with notice of adverse claims. [1986 c 35 § 19; 1965 ex.s. c 157 § 8-304. Cf. former RCW sections: RCW 62.01.037 and 62.01.056; 1955 c 35 §§ 62.01.037 and 62.01.056; prior: 1899 c 149 §§ 37 and 56; RRS §§ 3428 and 3447.]

Security transfers—Nonliability of third persons: RCW 21.17.070(1).

62A.8-305 Staleness as notice of adverse claims. An act or event that creates a right to immediate performance of the principal obligation represented by a certificated security or sets a date on or after which a certificated security is to be presented or surrendered for redemption or exchange does not itself constitute any notice of adverse claims except in the case of a transfer:

(a) after one year from any date set for presentment or surrender for redemption or exchange; or

(b) after 6 months from any date set for payment of money against presentation or surrender of the security if funds are available for payment on that date. [1986 c 35 § 20; 1965 ex.s. c 157 § 8-305. Cf. former RCW sections: RCW 62.01.052(2) and 62.01.053; 1955 c 35 §§ 62.01.052 and 62.01.053; prior: 1899 c 149 §§ 52 and 53; RRS §§ 3443 and 3444.]

62A.8-306 Warranties on presentment and transfer of certificated securities; warranties of originators of instructions. (1) A person who presents a certificated security for registration of transfer or for payment or exchange warrants to the issuer that he is entitled to the registration, payment, or exchange. But, a purchaser for value and without notice of adverse claims who receives a new, reissued, or re-registered certificated security on registration of transfer or receives an initial transaction statement confirming the registration of transfer of an equivalent uncertificated security to him warrants only that he has no knowledge of any unauthorized signature (RCW 62A.8-311) in a necessary indorsement.

(2) A person by transferring a certificated security to a purchaser for value warrants only that:

(a) his transfer is effective and rightful;

(b) the security is genuine and has not been materially altered; and

(c) he knows of no fact which might impair the validity of the security.

(3) If a certificated security is delivered by an intermediary known to be entrusted with delivery of the security on behalf of another or with collection of a draft or other claim against delivery, the intermediary by delivery warrants only his own good faith and authority, even though he has purchased or made advances against the claim to be collected against the delivery.

(4) A pledgee or other holder for security who redelivers a certificated security received, or after payment and on order of the debtor delivers that security to a third person, makes only the warranties of an intermediary under subsection (3).

(5) A person who originates an instruction warrants to the issuer that:

(a) he is an appropriate person to originate the instruction; and

(b) at the time the instruction is presented to the issuer he will be entitled to the registration of transfer, pledge, or release.

(6) A person who originates an instruction warrants to any person specially guaranteeing his signature (RCW 62A.8-312(3)) that:

(a) he is an appropriate person to originate the instruction; and

(b) at the time the instruction is presented to the issuer

(i) he will be entitled to the registration of transfer, pledge, or release; and

(ii) the transfer, pledge, or release requested in the instruction will be registered by the issuer free from all liens, security interests, restrictions, and claims other than those specified in the instruction.

(7) A person who originates an instruction warrants to a purchaser for value and to any person guaranteeing the instruction (RCW 62A.8-312(6)) that:

(a) he is an appropriate person to originate the instruction;

(b) the uncertificated security referred to therein is valid; and

(c) at the time the instruction is presented to the issuer

(i) the transferor will be entitled to the registration of transfer, pledge, or release;

(ii) the transfer, pledge, or release requested in the instruction will be registered by the issuer free from all liens, security interests, restrictions, and claims other than those specified in the instruction; and

(iii) the requested transfer, pledge, or release will be rightful.

(8) If a secured party is the registered pledgee or the registered owner of an uncertificated security, a person who originates an instruction of release or transfer to the debtor or, after payment and on order of the debtor, a transfer instruction to a third person, warrants to the debtor or the third person only that he is an appropriate person to originate the instruction and at the time the instruction is presented to the issuer, the transferor will be entitled to the registration of release or transfer. If a transfer instruction to a third person who is a purchaser

for value is originated on order of the debtor, the debtor makes to the purchaser the warranties of paragraphs (b), (c)(ii) and (c)(iii) of subsection (7).

(9) A person who transfers an uncertificated security to a purchaser for value and does not originate an instruction in connection with the transfer warrants only that:

- (a) his transfer is effective and rightful; and
- (b) the uncertificated security is valid.

(10) A broker gives to his customer and to the issuer and a purchaser the applicable warranties provided in this section and has the rights and privileges of a purchaser under this section. The warranties of and in favor of the broker acting as an agent are in addition to applicable warranties given by and in favor of his customer. [1986 c 35 § 21; 1965 ex.s. c 157 § 8-306. Cf. former RCW sections: (i) RCW 23.80.110 and 23.80.120; 1939 c 100 §§ 11 and 12; RRS §§ 3803-111 and 3803-112; formerly RCW 23.20.120 and 23.20.130. (ii) RCW 62.01.065 through 62.01.067, and 62.01.069; 1955 c 35 §§ 62.01.065 through 62.01.067, and 62.01.069; prior: 1899 c 149 §§ 65 through 67, and 69; RRS §§ 3456 through 3458, and 3460.]

62A.8-307 Effect of delivery without indorsement; right to compel indorsement. If a certificated security in registered form has been delivered to a purchaser without a necessary indorsement he may become a bona fide purchaser only as of the time the indorsement is supplied; but against the transferor, the transfer is complete upon delivery and the purchaser has a specifically enforceable right to have any necessary indorsement supplied. [1986 c 35 § 22; 1965 ex.s. c 157 § 8-307. Cf. former RCW sections: (i) RCW 23.80.090; 1939 c 100 § 9; RRS § 3803-109; formerly RCW 23.20.100. (ii) RCW 62.01.049; 1955 c 35 § 62.01.049; prior: 1899 c 149 § 49; RRS § 3440.]

62A.8-308 Indorsements; instructions. (1) An indorsement of a certificated security in registered form is made when an appropriate person signs on it or on a separate document an assignment or transfer of the security or a power to assign or transfer it or his signature is written without more upon the back of the security.

(2) An indorsement may be in blank or special. An indorsement in blank includes an indorsement to bearer. A special indorsement specifies to whom the security is to be transferred, or who has power to transfer it. A holder may convert a blank indorsement into a special indorsement.

(3) An indorsement purporting to be only of part of a certificated security representing units intended by the issuer to be separately transferable is effective to the extent of the indorsement.

(4) An "instruction" is an order to the issuer of an uncertificated security requesting that the transfer, pledge, or release from pledge of the uncertificated security specified therein be registered.

(5) An instruction originated by an appropriate person is:

- (a) a writing signed by an appropriate person; or

(b) a communication to the issuer in any form agreed upon in a writing signed by the issuer and an appropriate person.

If an instruction has been originated by an appropriate person but is incomplete in any other respect, any person may complete it as authorized and the issuer may rely on it as completed even though it has been completed incorrectly.

(6) "An appropriate person" in subsection (1) means the person specified by the certificated security or by special indorsement to be entitled to the security.

(7) "An appropriate person" in subsection (5) means:

(a) for an instruction to transfer or pledge an uncertificated security which is then not subject to a registered pledge, the registered owner; or

(b) for an instruction to transfer or release an uncertificated security which is then subject to a registered pledge, the registered pledgee.

(8) In addition to the persons designated in subsections (6) and (7), "an appropriate person" in subsections (1) and (5) includes:

(a) if the person designated is described as a fiduciary but is no longer serving in the described capacity, either that person or his successor;

(b) if the persons designated are described as more than one person as fiduciaries and one or more are no longer serving in the described capacity, the remaining fiduciary or fiduciaries, whether or not a successor has been appointed or qualified;

(c) if the person designated is an individual and is without capacity to act by virtue of death, incompetence, infancy, or otherwise, his executor, administrator, guardian, or like fiduciary;

(d) if the persons designated are described as more than one person as tenants by the entirety or with right of survivorship and by reason of death all cannot sign, the survivor or survivors;

(e) a person having power to sign under applicable law or controlling instrument; and

(f) to the extent that the person designated or any of the foregoing persons may act through an agent, his authorized agent.

(9) Unless otherwise agreed, the indorser of a certificated security by his indorsement or the originator of an instruction by his origination assumes no obligation that the security will be honored by the issuer but only the obligations provided in RCW 62A.8-306.

(10) Whether the person signing is appropriate is determined as of the date of signing and an indorsement made by or an instruction originated by him does not become unauthorized for the purposes of this Article by virtue of any subsequent change of circumstances.

(11) Failure of a fiduciary to comply with a controlling instrument or with the law of the state having jurisdiction of the fiduciary relationship, including any law requiring the fiduciary to obtain court approval of the transfer, pledge, or release, does not render his indorsement or an instruction originated by him unauthorized for the purposes of this Article. [1986 c 35 § 23; 1965 ex.s. c 157 § 8-308. Cf. former RCW sections: (i) RCW 23.80.200; 1939 c 100 § 20; RRS § 3803-120; formerly

RCW 23.20.200. (ii) RCW 62.01.031 through 62.01.037; 1955 c 35 §§ 62.01.031 through 62.01.037; prior: 1899 c 149 §§ 31 through 37; RRS §§ 3422 through 3428. (iii) RCW 62.01.064 through 62.01.069; 1955 c 35 §§ 62.01.064 through 62.01.069; prior: 1899 c 149 §§ 64 through 69; RRS §§ 3455 through 3460.]

62A.8-309 Effect of indorsement without delivery.

An indorsement of a certificated security, whether special or in blank, does not constitute a transfer until delivery of the certificated security on which it appears or, if the indorsement is on a separate document, until delivery of both the document and the certificated security. [1986 c 35 § 24; 1965 ex.s. c 157 § 8-309. Cf. former RCW sections: (i) RCW 23.80.010; 1939 c 100 § 1; RRS § 3803-101; prior: 1927 c 206 § 1; Code 1881 § 2429; 1873 p 401 § 9; 1869 p 333 § 9; 1866 p 59 § 9; formerly RCW 23.20.020. (ii) RCW 23.80.100; 1939 c 100 § 10; RRS § 3803-110; formerly RCW 23.20.110. (iii) RCW 62.01.030; 1955 c 35 § 62.01.030; prior: 1899 c 149 § 30; RRS § 3421.]

62A.8-310 Indorsement of certificated security in bearer form. An indorsement of a certificated security in bearer form may give notice of adverse claims (RCW 62A.8-304) but does not otherwise affect any right to registration the holder possesses. [1986 c 35 § 25; 1965 ex.s. c 157 § 8-310. Cf. former RCW 62.01.040; 1955 c 35 § 62.01.040; prior: 1899 c 149 § 40; RRS § 3431.]

62A.8-311 Effect of unauthorized indorsement or instruction. Unless the owner or pledgee has ratified an unauthorized indorsement or instruction or is otherwise precluded from asserting its ineffectiveness:

(a) he may assert its ineffectiveness against the issuer or any purchaser, other than a purchaser for value and without notice of adverse claims, who has in good faith received a new, reissued, or re-registered certificated security on registration of transfer or received an initial transaction statement confirming the registration of transfer, pledge, or release of an equivalent uncertificated security to him; and

(b) an issuer who registers the transfer of a certificated security upon the unauthorized indorsement or who registers the transfer, pledge, or release of an uncertificated security upon the unauthorized instruction is subject to liability for improper registration (RCW 62A.8-404). [1986 c 35 § 26; 1965 ex.s. c 157 § 8-311. Cf. former RCW 62.01.023; 1955 c 35 § 62.01.023; prior: 1899 c 149 § 23; RRS § 3414.]

62A.8-312 Effect of guaranteeing signature, indorsement, or instruction. (1) Any person guaranteeing a signature of an indorser of a certificated security warrants that at the time of signing:

- (a) the signature was genuine;
- (b) the signer was an appropriate person to indorse (RCW 62A.8-308); and
- (c) the signer had legal capacity to sign.

(2) Any person guaranteeing a signature of the originator of an instruction warrants that at the time of signing:

- (a) the signature was genuine;
- (b) the signer was an appropriate person to originate the instruction (RCW 62A.8-308) if the person specified in the instruction as the registered owner or registered pledgee of the uncertificated security was, in fact, the registered owner or registered pledgee of such security, as to which fact the signature guarantor makes no warranty;
- (c) the signer had legal capacity to sign; and
- (d) the taxpayer identification number, if any, appearing on the instruction as that of the registered owner or registered pledgee was the taxpayer identification number of the signer or of the owner or pledgee for whom the signer was acting.

(3) Any person specially guaranteeing the signature of the originator of an instruction makes not only the warranties of a signature guarantor (subsection (2)) but also warrants that at the time the instruction is presented to the issuer:

- (a) the person specified in the instruction as the registered owner or registered pledgee of the uncertificated security will be the registered owner or registered pledgee; and
- (b) the transfer, pledge, or release of the uncertificated security requested in the instruction will be registered by the issuer free from all liens, security interests, restrictions, and claims other than those specified in the instruction.

(4) The guarantor under subsections (1) and (2) or the special guarantor under subsection (3) does not otherwise warrant the rightfulness of the particular transfer, pledge, or release.

(5) Any person guaranteeing an indorsement of a certificated security makes not only the warranties of a signature guarantor under subsection (1) but also warrants the rightfulness of the particular transfer in all respects.

(6) Any person guaranteeing an instruction requesting the transfer, pledge, or release of an uncertificated security makes not only the warranties of a special signature guarantor under subsection (3) but also warrants the rightfulness of the particular transfer, pledge, or release in all respects.

(7) No issuer may require a special guarantee of signature (subsection (3)), a guarantee of indorsement (subsection (5)), or a guarantee of instruction (subsection (6)) as a condition to registration of transfer, pledge, or release.

(8) The foregoing warranties are made to any person taking or dealing with the security in reliance on the guarantee, and the guarantor is liable to the person for any loss resulting from breach of the warranties. [1986 c 35 § 27; 1965 ex.s. c 157 § 8-312.]

62A.8-313 When transfer to purchaser occurs; financial intermediary as bona fide purchaser; "financial intermediary". (1) Transfer of a security or a limited interest (including a security interest) therein to a purchaser occurs only:

(a) at the time he or a person designated by him acquires possession of a certificated security;

(b) at the time the transfer, pledge, or release of an uncertificated security is registered to him or a person designated by him;

(c) at the time his financial intermediary acquires possession of a certificated security specially indorsed to or issued in the name of the purchaser;

(d) at the time a financial intermediary, not a clearing corporation, sends him confirmation of the purchase and also by book entry or otherwise identifies as belonging to the purchaser

(i) a specific certificated security in the financial intermediary's possession;

(ii) a quantity of securities that constitute or are part of a fungible bulk of certificated securities in the financial intermediary's possession or of uncertificated securities registered in the name of the financial intermediary; or

(iii) a quantity of securities that constitute or are part of a fungible bulk of securities shown on the account of the financial intermediary on the books of another financial intermediary;

(e) with respect to an identified certificated security to be delivered while still in the possession of a third person, not a financial intermediary, at the time that person acknowledges that he holds for the purchaser;

(f) with respect to a specific uncertificated security the pledge or transfer of which has been registered to a third person, not a financial intermediary, at the time that person acknowledges that he holds for the purchaser;

(g) at the time appropriate entries to the account of the purchaser or a person designated by him on the books of a clearing corporation are made under RCW 62A.8-320;

(h) with respect to the transfer of a security interest where the debtor has signed a security agreement containing a description of the security, at the time a written notification, which, in the case of the creation of the security interest, is signed by the debtor (which may be a copy of the security agreement) or which, in the case of the release or assignment of the security interest created pursuant to this paragraph, is signed by the secured party, is received by

(i) a financial intermediary on whose books the interest of the transferor in the security appears;

(ii) a third person, not a financial intermediary, in possession of the security, if it is certificated;

(iii) a third person, not a financial intermediary, who is the registered owner of the security, if it is uncertificated and not subject to a registered pledge; or

(iv) a third person, not a financial intermediary, who is the registered pledgee of the security, if it is uncertificated and subject to a registered pledge;

(i) with respect to the transfer of a security interest where the transferor has signed a security agreement containing a description of the security, at the time new value is given by the secured party; or

(j) with respect to the transfer of a security interest where the secured party is a financial intermediary and

the security has already been transferred to the financial intermediary under paragraphs (a), (b), (c), (d), or (g), at the time the transferor has signed a security agreement containing a description of the security and value is given by the secured party.

(2) The purchaser is the owner of a security held for him by a financial intermediary, but cannot be a bona fide purchaser of a security so held except in the circumstances specified in paragraphs (c), (d)(i), and (g) of subsection (1). If a security so held is part of a fungible bulk, as in the circumstances specified in paragraphs (d)(ii) and (d)(iii) of subsection (1), the purchaser is the owner of a proportionate property interest in the fungible bulk.

(3) Notice of an adverse claim received by the financial intermediary or by the purchaser after the financial intermediary takes delivery of a certificated security as a holder for value or after the transfer, pledge, or release of an uncertificated security has been registered free of the claim to a financial intermediary who has given value is not effective either as to the financial intermediary or as to the purchaser. However, as between the financial intermediary and the purchaser the purchaser may demand transfer of an equivalent security as to which no notice of adverse claim has been received.

(4) A "financial intermediary" is a bank, broker, clearing corporation or other person (or the nominee of any of them) which in the ordinary course of its business maintains security accounts for its customers and is acting in that capacity. A financial intermediary may have a security interest in securities held in account for its customer. [1986 c 35 § 28; 1965 ex.s. c 157 § 8-313. Cf. former RCW sections: (i) RCW 23.80.220; 1939 c 100 § 22; RRS § 3803-122; formerly RCW 23.20.010, part. (ii) RCW 62.01.191; 1955 c 35 § 62.01.191; prior: 1899 c 149 § 191; RRS § 3581.]

62A.8-314 Duty to transfer, when completed. (1) Unless otherwise agreed, if a sale of a security is made on an exchange or otherwise through brokers:

(a) the selling customer fulfills his duty to transfer at the time he:

(i) places a certificated security in the possession of the selling broker or of a person designated by the broker;

(ii) causes an uncertificated security to be registered in the name of the selling broker or a person designated by the broker;

(iii) if requested, causes an acknowledgment to be made to the selling broker that a certificated or uncertificated security is held for the broker; or

(iv) places in the possession of the selling broker or of a person designated by the broker a transfer instruction for an uncertificated security, providing the issuer does not refuse to register the requested transfer if the instruction is presented to the issuer for registration within 30 days thereafter; and

(b) the selling broker, including a correspondent broker acting for a selling customer, fulfills his duty to transfer at the time he:

(i) places a certificated security in the possession of the buying broker or a person designated by the buying broker;

(ii) causes an uncertificated security to be registered in the name of the buying broker or a person designated by the buying broker;

(iii) places in the possession of the buying broker or of a person designated by the buying broker a transfer instruction for an uncertificated security, providing the issuer does not refuse to register the requested transfer if the instruction is presented to the issuer for registration within 30 days thereafter; or

(iv) effects clearance of the sale in accordance with the rules of the exchange on which the transaction took place.

(2) Except as provided in this section and unless otherwise agreed, a transferor's duty to transfer a security under a contract of purchase is not fulfilled until he:

(a) places a certificated security in form to be negotiated by the purchaser in the possession of the purchaser or of a person designated by the purchaser;

(b) causes an uncertificated security to be registered in the name of the purchaser or a person designated by the purchaser; or

(c) if the purchaser requests, causes an acknowledgment to be made to the purchaser that a certificated or uncertificated security is held for the purchaser.

(3) Unless made on an exchange, a sale to a broker purchasing for his own account is within subsection (2) and not within subsection (1). [1986 c 35 § 29; 1965 ex.s. c 157 § 8-314.]

62A.8-315 Action against transferee based upon wrongful transfer. (1) Any person against whom the transfer of a security is wrongful for any reason, including his incapacity, as against anyone except a bona fide purchaser, may:

(a) reclaim possession of the certificated security wrongfully transferred;

(b) obtain possession of any new certificated security representing all or part of the same rights;

(c) compel the origination of an instruction to transfer to him or a person designated by him an uncertificated security constituting all or part of the same rights; or

(d) have damages.

(2) If the transfer is wrongful because of an unauthorized indorsement of a certificated security, the owner may also reclaim or obtain possession of the security or a new certificated security, even from a bona fide purchaser, if the ineffectiveness of the purported indorsement can be asserted against him under the provisions of this Article on unauthorized indorsements (RCW 62A.8-311).

(3) The right to obtain or reclaim possession of a certificated security or to compel the origination of a transfer instruction may be specifically enforced and the transfer of a certificated or uncertificated security enjoined and a certificated security impounded pending the litigation. [1986 c 35 § 30; 1965 ex.s. c 157 § 8-315. Cf. former RCW 23.80.070; 1939 c 100 § 7; RRS § 3803-107; formerly RCW 23.20.080.]

62A.8-316 Purchaser's right to requisites for registration of transfer, pledge, or release on books. Unless otherwise agreed, the transferor of a certificated security or the transferor, pledgor, or pledgee of an uncertificated security on due demand must supply his purchaser with any proof of his authority to transfer, pledge, or release or with any other requisite necessary to obtain registration of the transfer, pledge, or release of the security; but if the transfer, pledge, or release is not for value, a transferor, pledgor, or pledgee need not do so unless the purchaser furnishes the necessary expenses. Failure within a reasonable time to comply with a demand made gives the purchaser the right to reject or rescind the transfer, pledge, or release. [1986 c 35 § 31; 1965 ex.s. c 157 § 8-316.]

62A.8-317 Creditors' rights. (1) Subject to the exceptions in subsections (3) and (4), no attachment or levy upon a certificated security or any share or other interest represented thereby which is outstanding is valid until the security is actually seized by the officer making the attachment or levy, but a certificated security which has been surrendered to the issuer may be reached by a creditor by legal process at the issuer's chief executive office in the United States.

(2) An uncertificated security registered in the name of the debtor may not be reached by a creditor except by legal process at the issuer's chief executive office in the United States.

(3) The interest of a debtor in a certificated security that is in the possession of a secured party not a financial intermediary or in an uncertificated security registered in the name of a secured party not a financial intermediary (or in the name of a nominee of the secured party) may be reached by a creditor by legal process upon the secured party.

(4) The interest of a debtor in a certificated security that is in the possession of or registered in the name of a financial intermediary or in an uncertificated security registered in the name of a financial intermediary may be reached by a creditor by legal process upon the financial intermediary on whose books the interest of the debtor appears.

(5) Unless otherwise provided by law, a creditor's lien upon the interest of a debtor in a security obtained pursuant to subsection (3) or (4) is not a restraint on the transfer of the security, free of the lien, to a third party for new value; but in the event of a transfer, the lien applies to the proceeds of the transfer in the hands of the secured party or financial intermediary, subject to any claims having priority.

(6) A creditor whose debtor is the owner of a security is entitled to aid from courts of appropriate jurisdiction, by injunction or otherwise, in reaching the security or in satisfying the claim by means allowed at law or in equity in regard to property that cannot readily be reached by ordinary legal process. [1986 c 35 § 32; 1965 ex.s. c 157 § 8-317. Cf. former RCW sections: RCW 23.80.130 and 23.80.140; 1939 c 100 §§ 13 and 14; RRS §§ 3803-113 and 3803-114; formerly RCW 23.20.140 and 23.20.150.]

62A.8-318 No conversion by good faith conduct. An agent or bailee who in good faith (including observance of reasonable commercial standards if he is in the business of buying, selling, or otherwise dealing with securities) has received certificated securities and sold, pledged, or delivered them or has sold or caused the transfer or pledge of uncertificated securities over which he had control according to the instructions of his principal, is not liable for conversion or for participation in breach of fiduciary duty although the principal had no right so to deal with the securities. [1986 c 35 § 33; 1965 ex.s. c 157 § 8-318.]

Security transfers—Nonliability of third persons: RCW 21.17.070(1).

62A.8-319 Statute of frauds. A contract for the sale of securities is not enforceable by way of action or defense unless:

(a) there is some writing signed by the party against whom enforcement is sought or by his authorized agent or broker, sufficient to indicate that a contract has been made for sale of a stated quantity of described securities at a defined or stated price;

(b) delivery of a certificated security or transfer instruction has been accepted, or transfer of an uncertificated security has been registered and the transferee has failed to send written objection to the issuer within 10 days after receipt of the initial transaction statement confirming the registration, or payment has been made, but the contract is enforceable under this provision only to the extent of the delivery, registration, or payment;

(c) within a reasonable time a writing in confirmation of the sale or purchase and sufficient against the sender under paragraph (a) has been received by the party against whom enforcement is sought and he has failed to send written objection to its contents within 10 days after its receipt; or

(d) the party against whom enforcement is sought admits in his pleading, testimony, or otherwise in court that a contract was made for the sale of a stated quantity of described securities at a defined or stated price. [1986 c 35 § 34; 1965 ex.s. c 157 § 8-319. Cf. former RCW 63.04.050; 1925 ex.s. c 142 § 4; RRS § 5836-4.]

62A.8-320 Transfer, pledge, or release within central depository system. (1) In addition to other methods, a transfer, pledge, or release of a security or any interest therein may be effected by the making of appropriate entries on the books of a clearing corporation reducing the account of the transferor, pledgor, or pledgee and increasing the account of the transferee, pledgee, or pledgor by the amount of the obligation, or the number of shares or rights transferred, pledged, or released, if the security is shown on the account of a transferor, pledgor, or pledgee on the books of the clearing corporation; is subject to the control of the clearing corporation; and

(a) if certificated,

(i) is in the custody of the clearing corporation, another clearing corporation, a custodian bank or a nominee of any of them; and

(ii) is in bearer form or indorsed in blank by an appropriate person or registered in the name of the clearing corporation, a custodian bank, or a nominee of any of them; or

(b) if uncertificated, is registered in the name of the clearing corporation, another clearing corporation, a custodian bank, or a nominee of any of them.

(2) Under this section entries may be made with respect to like securities or interests therein as a part of a fungible bulk and may refer merely to a quantity of a particular security without reference to the name of the registered owner, certificate or bond number, or the like, and, in appropriate cases, may be on a net basis taking into account other transfers, pledges, or releases of the same security.

(3) A transfer under this section is effective (RCW 62A.8-313) and the purchaser acquires the rights of the transferor (RCW 62A.8-301). A pledge or release under this section is the transfer of a limited interest. If a pledge or the creation of a security interest is intended, the security interest is perfected at the time when both value is given by the pledgee and the appropriate entries are made (RCW 62A.8-321). A transferee or pledgee under this section may be a bona fide purchaser (RCW 62A.8-302).

(4) A transfer or pledge under this section is not a registration of transfer under Part 4.

(5) That entries made on the books of the clearing corporation as provided in subsection (1) are not appropriate does not affect the validity or effect of the entries or the liabilities or obligations of the clearing corporation to any person adversely affected thereby. [1986 c 35 § 35; 1965 ex.s. c 157 § 8-320.]

62A.8-321 Enforceability, attachment, perfection, and termination of security interests. (1) A security interest in a security is enforceable and can attach only if it is transferred to the secured party or a person designated by him pursuant to a provision of RCW 62A.8-313(1).

(2) A security interest so transferred pursuant to agreement by a transferor who has rights in the security to a transferee who has given value is a perfected security interest, but a security interest that has been transferred solely under paragraph (i) of RCW 62A.8-313(1) becomes unperfected after 21 days unless, within that time, the requirements for transfer under any other provision of RCW 62A.8-313(1) are satisfied.

(3) A security interest in a security is subject to the provisions of Article 9, but:

(a) no filing is required to perfect the security interest; and

(b) no written security agreement signed by the debtor is necessary to make the security interest enforceable, except as otherwise provided in paragraph (h), (i), or (j) of RCW 62A.8-313(1).

The secured party has the rights and duties provided under RCW 62A.9-207, to the extent they are applicable, whether or not the security is certificated, and, if certificated, whether or not it is in his possession.

(4) Unless otherwise agreed, a security interest in a security is terminated by transfer to the debtor or a person designated by him pursuant to a provision of RCW 62A.8-313(1). If a security is thus transferred, the security interest, if not terminated, becomes unperfected unless the security is certificated and is delivered to the debtor for the purpose of ultimate sale or exchange or presentation, collection, renewal, or registration of transfer. In that case, the security interest becomes unperfected after 21 days unless, within that time, the security (or securities for which it has been exchanged) is transferred to the secured party or a person designated by him pursuant to a provision of RCW 62A.8-313(1). [1986 c 35 § 36.]

PART 4 REGISTRATION

62A.8-401 Duty of issuer to register transfer, pledge, or release. (1) If a certificated security in registered form is presented to the issuer with a request to register transfer or an instruction is presented to the issuer with a request to register transfer, pledge, or release, the issuer shall register the transfer, pledge, or release as requested if:

(a) the security is indorsed or the instruction was originated by the appropriate person or persons (RCW 62A.8-308);

(b) reasonable assurance is given that those indorsements or instructions are genuine and effective (RCW 62A.8-402);

(c) the issuer has no duty as to adverse claims or has discharged the duty (RCW 62A.8-403);

(d) any applicable law relating to the collection of taxes has been complied with; and

(e) the transfer, pledge, or release is in fact rightful or is to a bona fide purchaser.

(2) If an issuer is under a duty to register a transfer, pledge, or release of a security, the issuer is also liable to the person presenting a certificated security or an instruction for registration or his principal for loss resulting from any unreasonable delay in registration or from failure or refusal to register the transfer, pledge, or release. [1986 c 35 § 37; 1965 ex.s. c 157 § 8-401.]

62A.8-402 Assurance that indorsements and instructions are effective. (1) The issuer may require the following assurance that each necessary indorsement of a certificated security or each instruction (RCW 62A.8-308) is genuine and effective:

(a) in all cases, a guarantee of the signature (RCW 62A.8-312 (1) or (2)) of the person indorsing a certificated security or originating an instruction including, in the case of an instruction, a warranty of the taxpayer identification number or, in the absence thereof, other reasonable assurance of identity;

(b) if the indorsement is made or the instruction is originated by an agent, appropriate assurance of authority to sign;

(c) if the indorsement is made or the instruction is originated by a fiduciary, appropriate evidence of appointment or incumbency;

(d) if there is more than one fiduciary, reasonable assurance that all who are required to sign have done so; and

(e) if the indorsement is made or the instruction is originated by a person not covered by any of the foregoing, assurance appropriate to the case corresponding as nearly as may be to the foregoing.

(2) A "guarantee of the signature" in subsection (1) means a guarantee signed by or on behalf of a person reasonably believed by the issuer to be responsible. The issuer may adopt standards with respect to responsibility if they are not manifestly unreasonable.

(3) "Appropriate evidence of appointment or incumbency" in subsection (1) means:

(a) in the case of a fiduciary appointed or qualified by a court, a certificate issued by or under the direction or supervision of that court or an officer thereof and dated within 60 days before the date of presentation for transfer, pledge, or release; or

(b) in any other case, a copy of a document showing the appointment or a certificate issued by or on behalf of a person reasonably believed by the issuer to be responsible or, in the absence of that document or certificate, other evidence reasonably deemed by the issuer to be appropriate. The issuer may adopt standards with respect to the evidence if they are not manifestly unreasonable. The issuer is not charged with notice of the contents of any document obtained pursuant to this paragraph (b) except to the extent that the contents relate directly to the appointment or incumbency.

(4) The issuer may elect to require reasonable assurance beyond that specified in this section, but if it does so and, for a purpose other than that specified in subsection (3)(b), both requires and obtains a copy of a will, trust, indenture, articles of co-partnership, bylaws, or other controlling instrument, it is charged with notice of all matters contained therein affecting the transfer, pledge, or release. [1986 c 35 § 38; 1965 ex.s. c 157 § 8-402.]

Fiduciary security transfers—Evidence of appointment or incumbency: RCW 21.17.040.

62A.8-403 Issuer's duty as to adverse claims. (1) An issuer to whom a certificated security is presented for registration shall inquire into adverse claims if:

(a) a written notification of an adverse claim is received at a time and in a manner affording the issuer a reasonable opportunity to act on it prior to the issuance of a new, reissued, or re-registered certificated security, and the notification identifies the claimant, the registered owner, and the issue of which the security is a part, and provides an address for communications directed to the claimant; or

(b) the issuer is charged with notice of an adverse claim from a controlling instrument it has elected to require under RCW 62A.8-402(4).

(2) The issuer may discharge any duty of inquiry by any reasonable means, including notifying an adverse

claimant by registered or certified mail at the address furnished by him or, if there be no such address, at his residence or regular place of business that the certificated security has been presented for registration of transfer by a named person, and that the transfer will be registered unless within 30 days from the date of mailing the notification, either:

(a) an appropriate restraining order, injunction, or other process issues from a court of competent jurisdiction; or

(b) there is filed with the issuer an indemnity bond, sufficient in the issuer's judgment to protect the issuer and any transfer agent, registrar, or other agent of the issuer involved from any loss it or they may suffer by complying with the adverse claim.

(3) Unless an issuer is charged with notice of an adverse claim from a controlling instrument which it has elected to require under RCW 62A.8-402(4) or receives notification of an adverse claim under subsection (1), if a certificated security presented for registration is indorsed by the appropriate person or persons the issuer is under no duty to inquire into adverse claims. In particular:

(a) an issuer registering a certificated security in the name of a person who is a fiduciary or who is described as a fiduciary is not bound to inquire into the existence, extent, or correct description of the fiduciary relationship; and thereafter the issuer may assume without inquiry that the newly registered owner continues to be the fiduciary until the issuer receives written notice that the fiduciary is no longer acting as such with respect to the particular security;

(b) an issuer registering transfer on an indorsement by a fiduciary is not bound to inquire whether the transfer is made in compliance with a controlling instrument or with the law of the state having jurisdiction of the fiduciary relationship, including any law requiring the fiduciary to obtain court approval of the transfer; and

(c) the issuer is not charged with notice of the contents of any court record or file or other recorded or unrecorded document even though the document is in its possession and even though the transfer is made on the indorsement of a fiduciary to the fiduciary himself or to his nominee.

(4) An issuer is under no duty as to adverse claims with respect to an uncertificated security except:

(a) claims embodied in a restraining order, injunction, or other legal process served upon the issuer if the process was served at a time and in a manner affording the issuer a reasonable opportunity to act on it in accordance with the requirements of subsection (5);

(b) claims of which the issuer has received a written notification from the registered owner or the registered pledgee if the notification was received at a time and in a manner affording the issuer a reasonable opportunity to act on it in accordance with the requirements of subsection (5);

(c) claims (including restrictions on transfer not imposed by the issuer) to which the registration of transfer to the present registered owner was subject and were so

noted in the initial transaction statement sent to him; and

(d) claims as to which an issuer is charged with notice from a controlling instrument it has elected to require under RCW 62A.8-402(4).

(5) If the issuer of an uncertificated security is under a duty as to an adverse claim, he discharges that duty by:

(a) including a notation of the claim in any statements sent with respect to the security under RCW 62A.8-408 (3), (6), and (7); and

(b) refusing to register the transfer or pledge of the security unless the nature of the claim does not preclude transfer or pledge subject thereto.

(6) If the transfer or pledge of the security is registered subject to an adverse claim, a notation of the claim must be included in the initial transaction statement and all subsequent statements sent to the transferee and pledgee under RCW 62A.8-408.

(7) Notwithstanding subsections (4) and (5), if an uncertificated security was subject to a registered pledge at the time the issuer first came under a duty as to a particular adverse claim, the issuer has no duty as to that claim if transfer of the security is requested by the registered pledgee or an appropriate person acting for the registered pledgee unless:

(a) the claim was embodied in legal process which expressly provides otherwise;

(b) the claim was asserted in a written notification from the registered pledgee;

(c) the claim was one as to which the issuer was charged with notice from a controlling instrument it required under RCW 62A.8-402(4) in connection with the pledgee's request for transfer; or

(d) the transfer requested is to the registered owner. [1986 c 35 § 39; 1965 ex.s. c 157 § 8-403.]

Fiduciary security transfers: Chapter 21.17 RCW.

62A.8-404 Liability and non-liability for registration. (1) Except as provided in any law relating to the collection of taxes, the issuer is not liable to the owner, pledgee, or any other person suffering loss as a result of the registration of a transfer, pledge, or release of a security if:

(a) there were on or with a certificated security the necessary indorsements or the issuer had received an instruction originated by an appropriate person (RCW 62A.8-308); and

(b) the issuer had no duty as to adverse claims or has discharged the duty (RCW 62A.8-403).

(2) If an issuer has registered a transfer of a certificated security to a person not entitled to it, the issuer on demand shall deliver a like security to the true owner unless:

(a) the registration was pursuant to subsection (1);

(b) the owner is precluded from asserting any claim for registering the transfer under RCW 62A.8-405(1); or

(c) the delivery would result in overissue, in which case the issuer's liability is governed by RCW 62A.8-104.

(3) If an issuer has improperly registered a transfer, pledge, or release of an uncertificated security, the issuer on demand from the injured party shall restore the records as to the injured party to the condition that would have obtained if the improper registration had not been made unless:

- (a) the registration was pursuant to subsection (1); or
- (b) the registration would result in overissue, in which case the issuer's liability is governed by RCW 62A.8-104. [1986 c 35 § 40; 1965 ex.s. c 157 § 8-404.]

62A.8-405 Lost, destroyed, and stolen certificated securities. (1) If a certificated security has been lost, apparently destroyed, or wrongfully taken, and the owner fails to notify the issuer of that fact within a reasonable time after he has notice of it and the issuer registers a transfer of the security before receiving notification, the owner is precluded from asserting against the issuer any claim for registering the transfer under RCW 62A.8-404 or any claim to a new security under this section.

(2) If the owner of a certificated security claims that the security has been lost, destroyed, or wrongfully taken, the issuer shall issue a new certificated security or, at the option of the issuer, an equivalent uncertificated security in place of the original security if the owner:

- (a) so requests before the issuer has notice that the security has been acquired by a bona fide purchaser;
- (b) files with the issuer a sufficient indemnity bond; and
- (c) satisfies any other reasonable requirements imposed by the issuer.

(3) If, after the issue of a new certificated or uncertificated security, a bona fide purchaser of the original certificated security presents it for registration of transfer, the issuer shall register the transfer unless registration would result in overissue, in which event the issuer's liability is governed by RCW 62A.8-104. In addition to any rights on the indemnity bond, the issuer may recover the new certificated security from the person to whom it was issued or any person taking under him except a bona fide purchaser or may cancel the uncertificated security unless a bona fide purchaser or any person taking under a bona fide purchaser is then the registered owner or registered pledgee thereof. [1986 c 35 § 41; 1965 ex.s. c 157 § 8-405. Cf. former RCW 23.80.170; 1939 c 100 § 17; RRS § 3803-117; formerly RCW 23.20.180.]

62A.8-406 Duty of authenticating trustee, transfer agent, or registrar. (1) If a person acts as authenticating trustee, transfer agent, registrar, or other agent for an issuer in the registration of transfers of its certificated securities or in the registration of transfers, pledges, and releases of its uncertificated securities, in the issue of new securities, or in the cancellation of surrendered securities:

- (a) he is under a duty to the issuer to exercise good faith and due diligence in performing his functions; and
- (b) with regard to the particular functions he performs, he has the same obligation to the holder or owner

of a certificated security or to the owner or pledgee of an uncertificated security and has the same rights and privileges as the issuer has in regard to those functions.

(2) Notice to an authenticating trustee, transfer agent, registrar or other agent is notice to the issuer with respect to the functions performed by the agent. [1986 c 35 § 42; 1965 ex.s. c 157 § 8-406.]

62A.8-407 Exchangeability of securities. (1) No issuer is subject to the requirements of this section unless it regularly maintains a system for issuing the class of securities involved under which both certificated and uncertificated securities are regularly issued to the category of owners, which includes the person in whose name the new security is to be registered.

(2) Upon surrender of a certificated security with all necessary indorsements and presentation of a written request by the person surrendering the security, the issuer, if he has no duty as to adverse claims or has discharged the duty (RCW 62A.8-403), shall issue to the person or a person designated by him an equivalent uncertificated security subject to all liens, restrictions, and claims that were noted on the certificated security.

(3) Upon receipt of a transfer instruction originated by an appropriate person who so requests, the issuer of an uncertificated security shall cancel the uncertificated security and issue an equivalent certificated security on which must be noted conspicuously any liens and restrictions of the issuer and any adverse claims (as to which the issuer has a duty under RCW 62A.8-403(4)) to which the uncertificated security was subject. The certificated security shall be registered in the name of and delivered to:

- (a) the registered owner, if the uncertificated security was not subject to a registered pledge; or
- (b) the registered pledgee, if the uncertificated security was subject to a registered pledge. [1986 c 35 § 43.]

62A.8-408 Statements of uncertificated securities. (1) Within 2 business days after the transfer of an uncertificated security has been registered, the issuer shall send to the new registered owner and, if the security has been transferred subject to a registered pledge, to the registered pledgee a written statement containing:

- (a) a description of the issue of which the uncertificated security is a part;
- (b) the number of shares or units transferred;
- (c) the name and address and any taxpayer identification number of the new registered owner and, if the security has been transferred subject to a registered pledge, the name and address and any taxpayer identification number of the registered pledgee;
- (d) a notation of any liens and restrictions of the issuer and any adverse claims (as to which the issuer has a duty under RCW 62A.8-403(4)) to which the uncertificated security is or may be subject at the time of registration or a statement that there are none of those liens, restrictions, or adverse claims; and
- (e) the date the transfer was registered.

(2) Within 2 business days after the pledge of an uncertificated security has been registered, the issuer shall

send to the registered owner and the registered pledgee a written statement containing:

(a) a description of the issue of which the uncertificated security is a part;

(b) the number of shares or units pledged;

(c) the name and address and any taxpayer identification number of the registered owner and the registered pledgee;

(d) a notation of any liens and restrictions of the issuer and any adverse claims (as to which the issuer has a duty under RCW 62A.8-403(4)) to which the uncertificated security is or may be subject at the time of registration or a statement that there are none of those liens, restrictions, or adverse claims; and

(e) the date the pledge was registered.

(3) Within 2 business days after the release from pledge of an uncertificated security has been registered, the issuer shall send to the registered owner and the pledgee whose interest was released a written statement containing:

(a) a description of the issue of which the uncertificated security is a part;

(b) the number of shares or units released from pledge;

(c) the name and address and any taxpayer identification number of the registered owner and the pledgee whose interest was released;

(d) a notation of any liens and restrictions of the issuer and any adverse claims (as to which the issuer has a duty under RCW 62A.8-403(4)) to which the uncertificated security is or may be subject at the time of registration or a statement that there are none of those liens, restrictions or adverse claims; and

(e) the date the release was registered.

(4) An "initial transaction statement" is the statement sent to:

(a) the new registered owner and, if applicable, to the registered pledgee pursuant to subsection (1);

(b) the registered pledgee pursuant to subsection (2); or

(c) the registered owner pursuant to subsection (3).

Each initial transaction statement shall be signed by or on behalf of the issuer and must be identified as "Initial Transaction Statement".

(5) Within 2 business days after the transfer of an uncertificated security has been registered, the issuer shall send to the former registered owner and the former registered pledgee, if any, a written statement containing:

(a) a description of the issue of which the uncertificated security is a part;

(b) the number of shares or units transferred;

(c) the name and address and any taxpayer identification number of the former registered owner and of any former registered pledgee; and

(d) the date the transfer was registered.

(6) At periodic intervals no less frequent than annually and at any time upon the reasonable written request of the registered owner, the issuer shall send to the registered owner of each uncertificated security a dated written statement containing:

(a) a description of the issue of which the uncertificated security is a part;

(b) the name and address and any taxpayer identification number of the registered owner;

(c) the number of shares or units of the uncertificated security registered in the name of the registered owner on the date of the statement;

(d) the name and address and any taxpayer identification number of any registered pledgee and the number of shares or units subject to the pledge; and

(e) a notation of any liens and restrictions of the issuer and any adverse claims (as to which the issuer has a duty under RCW 62A.8-403(4)) to which the uncertificated security is or may be subject or a statement that there are none of those liens, restrictions, or adverse claims.

(7) At periodic intervals no less frequent than annually and at any time upon the reasonable written request of the registered pledgee, the issuer shall send to the registered pledgee of each uncertificated security a dated written statement containing:

(a) a description of the issue of which the uncertificated security is a part;

(b) the name and address and any taxpayer identification number of the registered owner;

(c) the name and address and any taxpayer identification number of the registered pledgee;

(d) the number of shares or units subject to the pledge; and

(e) a notation of any liens and restrictions of the issuer and any adverse claims (as to which the issuer has a duty under RCW 62A.8-403(4)) to which the uncertificated security is or may be subject or a statement that there are none of those liens, restrictions, or adverse claims.

(8) If the issuer sends the statements described in subsections (6) and (7) at periodic intervals no less frequent than quarterly, the issuer is not obliged to send additional statements upon request unless the owner or pledgee requesting them pays to the issuer the reasonable cost of furnishing them.

(9) Each statement sent pursuant to this section must bear a conspicuous legend reading substantially as follows: "This statement is merely a record of the rights of the addressee as of the time of its issuance. Delivery of this statement, of itself, confers no rights on the recipient. This statement is neither a negotiable instrument nor a security." [1986 c 35 § 44.]

ARTICLE 9

SECURED TRANSACTIONS; SALES OF ACCOUNTS, CONTRACT RIGHTS AND CHATTEL PAPER

Sections

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62A.9-102	Policy and subject matter of Article.
62A.9-103	Perfection of security interests in multiple state transactions.

- 62A.9-104 Transactions excluded from Article.
 62A.9-105 Definitions and index of definitions.
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PART 1

SHORT TITLE, APPLICABILITY AND DEFINITIONS

62A.9-101 Short title. This Article shall be known and may be cited as Uniform Commercial Code—Secured Transactions. [1965 ex.s. c 157 § 9-101.]

62A.9-102 Policy and subject matter of Article. (1) Except as otherwise provided in RCW 62A.9-104 on excluded transactions, this Article applies

(a) to any transaction (regardless of its form) which is intended to create a security interest in personal property or fixtures including goods, documents, instruments, general intangibles, chattel paper or accounts; and also

(b) to any sale of accounts or chattel paper.

(2) This Article applies to security interests created by contract including pledge, assignment, chattel mortgage, chattel trust, trust deed, factor's lien, equipment trust, conditional sale, trust receipt, other lien or title retention contract and lease or consignment intended as security. This Article does not apply to statutory liens except as provided in RCW 62A.9-310.

(3) The application of this Article to a security interest in a secured obligation is not affected by the fact that the obligation is itself secured by a transaction or interest to which this Article does not apply. [1981 c 41 § 6; 1965 ex.s. c 157 § 9-102. Cf. former RCW 63.16-.010; 1947 c 8 § 1; Rem. Supp. 1947 § 2721-1.]

Effective date—1981 c 41: See RCW 62A.11-101.

62A.9-103 Perfection of security interests in multiple state transactions. (1) Documents, instruments and ordinary goods.

(a) This subsection applies to documents and instruments and to goods other than those covered by a certificate of title described in subsection (2), mobile goods described in subsection (3), and minerals described in subsection (5).

(b) Except as otherwise provided in this subsection, perfection and the effect of perfection or nonperfection

of a security interest in collateral are governed by the law of the jurisdiction where the collateral is when the last event occurs on which is based the assertion that the security interest is perfected or unperfected.

(c) If the parties to a transaction creating a purchase money security interest in goods in one jurisdiction understand at the time that the security interest attaches that the goods will be kept in another jurisdiction, then the law of the other jurisdiction governs the perfection and the effect of perfection or nonperfection of the security interest from the time it attaches until thirty days after the debtor receives possession of the goods and thereafter if the goods are taken to the other jurisdiction before the end of the thirty-day period.

(d) When collateral is brought into and kept in this state while subject to a security interest perfected under the law of the jurisdiction from which the collateral was removed, the security interest remains perfected, but if action is required by Part 3 of this Article to perfect the security interest,

(i) if the action is not taken before the expiration of the period of perfection in the other jurisdiction or the end of four months after the collateral is brought into this state, whichever period first expires, the security interest becomes unperfected at the end of that period and is thereafter deemed to have been unperfected as against a person who became a purchaser after removal;

(ii) if the action is taken before the expiration of the period specified in subparagraph (i), the security interest continues perfected thereafter;

(iii) for the purpose of priority over a buyer of consumer goods (subsection (2) of RCW 62A.9-307), the period of the effectiveness of a filing in the jurisdiction from which the collateral is removed is governed by the rules with respect to perfection in subparagraphs (i) and (ii).

(2) Certificate of title.

(a) This subsection applies to goods covered by a certificate of title issued under a statute of this state or of another jurisdiction under the law of which indication of a security interest on the certificate is required as a condition of perfection.

(b) Except as otherwise provided in this subsection, perfection and the effect of perfection or nonperfection of the security interest are governed by the law (including the conflict of laws rules) of the jurisdiction issuing the certificate until four months after the goods are removed from that jurisdiction and thereafter until the goods are registered in another jurisdiction, but in any event not beyond surrender of the certificate. After the expiration of that period, the goods are not covered by the certificate of title within the meaning of this section.

(c) Except with respect to the rights of a buyer described in the next paragraph, a security interest, perfected in another jurisdiction otherwise than by notation on a certificate of title, in goods brought into this state and thereafter covered by a certificate of title issued by this state is subject to the rules stated in paragraph (d) of subsection (1).

(d) If goods are brought into this state while a security interest therein is perfected in any manner under the

law of the jurisdiction from which the goods are removed and a certificate of title is issued by this state and the certificate does not show that the goods are subject to the security interest or that they may be subject to security interests not shown on the certificate, the security interest is subordinate to the rights of a buyer of the goods who is not in the business of selling goods of that kind to the extent that he gives value and receives delivery of the goods after issuance of the certificate and without knowledge of the security interest.

(3) Accounts, general intangibles and mobile goods.

(a) This subsection applies to accounts (other than an account described in subsection (5) on minerals) and general intangibles (other than uncertificated securities) and to goods which are mobile and which are of a type normally used in more than one jurisdiction, such as motor vehicles, trailers, rolling stock, airplanes, shipping containers, road building and construction machinery and commercial harvesting machinery and the like, if the goods are equipment or are inventory leased or held for lease by the debtor to others, and are not covered by a certificate of title described in subsection (2).

(b) The law (including the conflict of laws rules) of the jurisdiction in which the debtor is located governs the perfection and the effect of perfection or nonperfection of the security interest.

(c) If, however, the debtor is located in a jurisdiction which is not a part of the United States, and which does not provide for perfection of the security interest by filing or recording in that jurisdiction, the law of the jurisdiction in the United States in which the debtor has its major executive office in the United States governs the perfection and the effect of perfection or nonperfection of the security interest through filing. In the alternative, if the debtor is located in a jurisdiction which is not a part of the United States or Canada and the collateral is accounts or general intangibles for money due or to become due, the security interest may be perfected by notification to the account debtor. As used in this paragraph, "United States" includes its territories and possessions and the Commonwealth of Puerto Rico.

(d) A debtor shall be deemed located at his place of business if he has one, at his chief executive office if he has more than one place of business, otherwise at his residence. If, however, the debtor is a foreign air carrier under the Federal Aviation Act of 1958, as amended, it shall be deemed located at the designated office of the agent upon whom service of process may be made on behalf of the foreign air carrier.

(e) A security interest perfected under the law of the jurisdiction of the location of the debtor is perfected until the expiration of four months after a change of the debtor's location to another jurisdiction, or until perfection would have ceased by the law of the first jurisdiction, whichever period first expires. Unless perfected in the new jurisdiction before the end of that period, it becomes unperfected thereafter and is deemed to have been unperfected as against a person who became a purchaser after the change.

(4) Chattel paper.

The rules stated for goods in subsection (1) apply to a possessory security interest in chattel paper. The rules stated for accounts in subsection (3) apply to a nonpossessory security interest in chattel paper, but the security interest may not be perfected by notification to the account debtor.

(5) Minerals.

Perfection and the effect of perfection or nonperfection of a security interest which is created by a debtor who has an interest in minerals or the like (including oil and gas) before extraction and which attaches thereto as extracted, or which attaches to an account resulting from the sale thereof at the wellhead or minehead are governed by the law (including the conflict of laws rules) of the jurisdiction wherein the wellhead or minehead is located.

(6) Uncertificated securities.

The law (including the conflict of laws rules) of the jurisdiction of organization of the issuer governs the perfection and the effect of perfection or non-perfection of a security interest in uncertificated securities. [1986 c 35 § 45; 1981 c 41 § 7; 1965 ex.s. c 157 § 9-103.]

Effective date—1981 c 41: See RCW 62A.11-101.

62A.9-104 Transactions excluded from Article. This Article does not apply

(a) to a security interest subject to any statute of the United States to the extent that such statute governs the rights of parties to and third parties affected by transactions in particular types of property; or

(b) to a landlord's lien; or

(c) to a lien given by statute or other rule of law for services or materials or to a lien created under chapter 60.13 or 22.09 RCW except as provided in RCW 62A.9-310 on priority of such liens; or

(d) to a transfer of a claim for wages, salary or other compensation of an employee; or

(e) to a transfer by a government or governmental subdivision or agency; or

(f) to a sale of accounts or chattel paper as part of a sale of the business out of which they arose, or an assignment of accounts or chattel paper which is for the purpose of collection only, or a transfer of a right to payment under a contract to an assignee who is also to do the performance under the contract or a transfer of a single account to an assignee in whole or partial satisfaction of a preexisting indebtedness; or

(g) to a transfer of an interest or claim in or under any policy of insurance, except as provided with respect to proceeds (RCW 62A.9-306) and priorities in proceeds (RCW 62A.9-312); or

(h) to a right represented by a judgment (other than a judgment taken on a right to payment which was collateral); or

(i) to any right of set-off; or

(j) except to the extent that provision is made for fixtures in RCW 62A.9-313, to the creation or transfer of an interest in or lien on real estate, including a lease or rents thereunder; or

(k) to a transfer in whole or in part of any claim arising out of tort; or

(l) to a transfer of an interest in any deposit account (subsection (1) of RCW 62A.9-105), except as provided with respect to proceeds (RCW 62A.9-306) and priorities in proceeds (RCW 62A.9-312). [1985 c 412 § 11; 1983 c 305 § 75; 1981 c 41 § 8; 1965 ex.s. c 157 § 9-104. Cf. former RCW sections: (i) RCW 61.20.010 and 61.20.140; 1943 c 71 §§ 1 and 14; Rem. Supp. 1943 §§ 11548-30 and 11548-43. (ii) RCW 61.20.020; 1957 c 249 § 1; 1943 c 71 § 2; Rem. Supp. 1943 § 11548-31. (iii) RCW 63.16.010 and 63.16.110(2); 1947 c 8 §§ 1 and 11; Rem. Supp. 1947 §§ 2721-1 and 2721-11.]

Severability—1983 c 305: See note following RCW 20.01.010.

Effective date—1981 c 41: See RCW 62A.11-101.

62A.9-105 Definitions and index of definitions. (1) In this Article unless the context otherwise requires:

(a) "Account debtor" means the person who is obligated on an account, chattel paper or general intangible;

(b) "Chattel paper" means a writing or writings which evidence both a monetary obligation and a security interest in or a lease of specific goods, but a charter or other contract involving the use or hire of a vessel is not chattel paper. When a transaction is evidenced both by such a security agreement or a lease and by an instrument or a series of instruments, the group of writings taken together constitutes chattel paper;

(c) "Collateral" means the property subject to a security interest, and includes accounts and chattel paper which have been sold;

(d) "Debtor" means the person who owes payment or other performance of the obligation secured, whether or not he owns or has rights in the collateral, and includes the seller of accounts or chattel paper. Where the debtor and the owner of the collateral are not the same person, the term "debtor" means the owner of the collateral in any provision of the Article dealing with the collateral, the obligor in any provision dealing with the obligation, and may include both where the context so requires;

(e) "Deposit account" means a demand, time, savings, passbook or like account maintained with a bank, savings and loan association, credit union or like organization, other than an account evidenced by a certificate of deposit;

(f) "Document" means document of title as defined in the general definitions of Article 1 (RCW 62A.1-201), and a receipt of the kind described in subsection (2) of RCW 62A.7-201;

(g) "Encumbrance" includes real estate mortgages and other liens on real estate and all other rights in real estate that are not ownership interests;

(h) "Goods" includes all things which are movable at the time the security interest attaches or which are fixtures (RCW 62A.9-313), but does not include money, documents, instruments, accounts, chattel paper, general intangibles, or minerals or the like (including oil and gas) before extraction. "Goods" also includes standing timber which is to be cut and removed under a conveyance or contract for sale, the unborn young of animals and growing crops;

(i) "Instrument" means a negotiable instrument (defined in RCW 62A.3-104), or a certificated security

(defined in RCW 62A.8-102) or any other writing which evidences a right to the payment of money and is not itself a security agreement or lease and is of a type which is in ordinary course of business transferred by delivery with any necessary indorsement or assignment;

(j) "Mortgage" means a consensual interest created by a real estate mortgage, a trust deed on real estate, or the like;

(k) An advance is made "pursuant to commitment" if the secured party has bound himself to make it, whether or not a subsequent event of default or other event not within his control has relieved or may relieve him from his obligation;

(l) "Security agreement" means an agreement which creates or provides for a security interest;

(m) "Secured party" means a lender, seller or other person in whose favor there is a security interest, including a person to whom accounts or chattel paper have been sold. When the holders of obligations issued under an indenture of trust, equipment trust agreement or the like are represented by a trustee or other person, the representative is the secured party;

(n) "Transmitting utility" means any person primarily engaged in the railroad, street railway or trolley bus business, the electric or electronics communications transmission business, the transmission of goods by pipeline, or the transmission or the production and transmission of electricity, steam, gas or water, or the provision of sewer service.

(2) Other definitions applying to this Article and the sections in which they appear are:

"Account". RCW 62A.9-106.

"Attach". RCW 62A.9-203.

"Construction mortgage". RCW 62A.9-313(1).

"Consumer goods". RCW 62A.9-109(1).

"Equipment". RCW 62A.9-109(2).

"Farm products". RCW 62A.9-109(3).

"Fixture". RCW 62A.9-313.

"Fixture filing". RCW 62A.9-313.

"General intangibles". RCW 62A.9-106.

"Inventory". RCW 62A.9-109(4).

"Lien creditor". RCW 62A.9-301(3).

"Proceeds". RCW 62A.9-306(1).

"Purchase money security interest". RCW 62A.9-107.

"United States". RCW 62A.9-103.

(3) The following definitions in other Articles apply to this Article:

"Check". RCW 62A.3-104.

"Contract for sale". RCW 62A.2-106.

"Holder in due course". RCW 62A.3-302.

"Note". RCW 62A.3-104.

"Sale". RCW 62A.2-106.

(4) In addition Article 1 contains general definitions and principles of construction and interpretation applicable throughout this Article. [1986 c 35 § 46; 1981 c 41 § 9; 1965 ex.s. c 157 § 9-105. Cf. former RCW sections: (i) RCW 61.20.010; 1943 c 71 § 1; Rem. Supp. 1943 § 11548-30. (ii) RCW 63.16.010; 1947 c 8 § 1; Rem. Supp. 1947 § 2721-1.]

Effective date—1981 c 41: See RCW 62A.11-101.

62A.9-106 Definitions: "Account"; "general intangibles". "Account" means any right to payment for goods sold or leased or for services rendered which is not evidenced by an instrument or chattel paper, whether or not it has been earned by performance. "General intangibles" means any personal property (including things in action) other than goods, accounts, chattel paper, documents, instruments and money. All rights to payment earned or unearned under a charter or other contract involving the use or hire of a vessel and all rights incident to the charter or contract are accounts. [1981 c 41 § 10; 1965 ex.s. c 157 § 9-106. Cf. former RCW 63.16-010; 1947 c 8 § 1; Rem. Supp. 1947 § 2721-1.]

Effective date—1981 c 41: See RCW 62A.11-101.

62A.9-107 Definitions: "Purchase money security interest". A security interest is a "purchase money security interest" to the extent that it is

(a) taken or retained by the seller of the collateral to secure all or part of its price; or

(b) taken by a person who by making advances or incurring an obligation gives value to enable the debtor to acquire rights in or the use of collateral if such value is in fact so used. [1965 ex.s. c 157 § 9-107.]

62A.9-108 When after-acquired collateral not security for antecedent debt. Where a secured party makes an advance, incurs an obligation, releases a perfected security interest, or otherwise gives new value which is to be secured in whole or in part by after-acquired property his security interest in the after-acquired collateral shall be deemed to be taken for new value and not as security for an antecedent debt if the debtor acquires his rights in such collateral either in the ordinary course of his business or under a contract of purchase made pursuant to the security agreement within a reasonable time after new value is given. [1965 ex.s. c 157 § 9-108.]

62A.9-109 Classification of goods; "consumer goods"; "equipment"; "farm products"; "inventory". Goods are

(1) "consumer goods" if they are used or bought for use primarily for personal, family or household purposes;

(2) "equipment" if they are used or bought for use primarily in business (including farming or a profession) or by a debtor who is a non-profit organization or a governmental subdivision or agency or if the goods are not included in the definitions of inventory, farm products or consumer goods;

(3) "farm products" if they are crops or livestock or supplies used or produced in farming operations or if they are products of crops or livestock in their unmanufactured states (such as ginned cotton, wool-clip, maple syrup, milk and eggs), and if they are in the possession of a debtor engaged in raising, fattening, grazing or other farming operations. If goods are farm products they are neither equipment nor inventory;

(4) "inventory" if they are held by a person who holds them for sale or lease or to be furnished under contracts of service or if he has so furnished them, or if they are

raw materials, work in process or materials used or consumed in a business. Inventory of a person is not to be classified as his equipment. [1965 ex.s. c 157 § 9-109.]

62A.9-110 Sufficiency of description. For the purposes of this Article any description of personal property or real estate is sufficient whether or not it is specific if it reasonably identifies what is described. [1965 ex.s. c 157 § 9-110. Cf. former RCW sections: (i) RCW 61-.04.040; 1943 c 76 § 1; 1899 c 98 § 3; Rem. Supp. 1943 § 3782. (ii) RCW 63.12.010; 1963 c 236 § 22; 1961 c 196 § 1; 1933 c 129 § 1; 1915 c 95 § 1; 1903 c 6 § 1; 1893 c 106 § 1; RRS § 3790.]

62A.9-111 Applicability of bulk transfer laws. The creation of a security interest is not a bulk transfer under Article 6 (RCW 62A.6-103). [1965 ex.s. c 157 § 9-111.]

62A.9-112 Where collateral is not owned by debtor. Unless otherwise agreed, when a secured party knows that collateral is owned by a person who is not the debtor, the owner of the collateral is entitled to receive from the secured party any surplus under RCW 62A.9-502(2) or under RCW 62A.9-504(1), and is not liable for the debt or for any deficiency after resale, and he has the same right as the debtor

- (a) to receive statements under RCW 62A.9-208;
- (b) to receive notice of and to object to a secured party's proposal to retain the collateral in satisfaction of the indebtedness under RCW 62A.9-505;
- (c) to redeem the collateral under RCW 62A.9-506;
- (d) to obtain injunctive or other relief under RCW 62A.9-507(1); and
- (e) to recover losses caused to him under RCW 62A.9-208(2). [1965 ex.s. c 157 § 9-112.]

62A.9-113 Security interests arising under Article on sales. A security interest arising solely under the Article on Sales (Article 2) is subject to the provisions of this Article except that to the extent that and so long as the debtor does not have or does not lawfully obtain possession of the goods

- (a) no security agreement is necessary to make the security interest enforceable; and
- (b) no filing is required to perfect the security interest; and
- (c) the rights of the secured party on default by the debtor are governed by the Article on Sales (Article 2). [1965 ex.s. c 157 § 9-113.]

62A.9-114 Consignment. (1) A person who delivers goods under a consignment which is not a security interest and who would be required to file under this Article by paragraph (3)(c) of RCW 62A.2-326 has priority over a secured party who is or becomes a creditor of the consignee and who would have a perfected security interest in the goods if they were the property of the consignee, and also has priority with respect to identifiable cash proceeds received on or before delivery of the goods to a buyer, if

(a) the consignor complies with the filing provision of the Article on Sales with respect to consignments (paragraph (3)(c) of RCW 62A.2-326) before the consignee receives possession of the goods; and

(b) the consignor gives notification in writing to the holder of the security interest if the holder has filed a financing statement covering the same types of goods before the date of the filing made by the consignor; and

(c) the holder of the security interest receives the notification within five years before the consignee receives possession of the goods; and

(d) the notification states that the consignor expects to deliver goods on consignment to the consignee, describing the goods by item or type.

(2) In the case of a consignment which is not a security interest and in which the requirements of the preceding subsection have not been met, a person who delivers goods to another is subordinate to a person who would have a perfected security interest in the goods if they were the property of the debtor. [1981 c 41 § 11.]

Effective date—1981 c 41: See RCW 62A.11-101.

PART 2 VALIDITY OF SECURITY AGREEMENT AND RIGHTS OF PARTIES THERETO

62A.9-201 General validity of security agreement. Except as otherwise provided by this Title a security agreement is effective according to its terms between the parties, against purchasers of the collateral and against creditors. Nothing in this Article validates any charge or practice illegal under any statute or regulation thereunder governing usury, small loans, retail installment sales, or the like, or extends the application of any such statute or regulation to any transaction not otherwise subject thereto. [1965 ex.s. c 157 § 9-201. Cf. former RCW sections: (i) RCW 61.20.030 and 61.20.050; 1943 c 71 §§ 3 and 5; Rem. Supp. 1943 §§ 11548-32 and 11548-34. (ii) RCW 63.16.110(1); 1947 c 8 § 11; Rem. Supp. 1947 § 2721-11.]

Consumer finance businesses—Prohibited acts: RCW 31.08.150.

Crop credit associations—Loans and security: RCW 31.16.130.

Industrial loan companies—Prohibited acts: RCW 31.04.100.

Interest—Usury: Chapter 19.52 RCW.

62A.9-202 Title to collateral immaterial. Each provision of this Article with regard to rights, obligations and remedies applies whether title to collateral is in the secured party or in the debtor. [1965 ex.s. c 157 § 9-202. Cf. former RCW 61.20.010; 1943 c 71 § 1; Rem. Supp. 1943 § 11548-30.]

62A.9-203 Attachment and enforceability of security interest; proceeds, formal requisites. (1) Subject to the provisions of RCW 62A.4-208 on the security interest of a collecting bank, RCW 62A.8-321 on security interests in securities and RCW 62A.9-113 on a security interest arising under the Article on Sales, a security interest is not enforceable against the debtor or third parties with respect to the collateral and does not attach unless:

(a) the collateral is in the possession of the secured party pursuant to agreement, or the debtor has signed a security agreement which contains a description of the collateral and in addition, when the security interest covers crops growing or to be grown or timber to be cut, a description of the land concerned;

(b) value has been given; and

(c) the debtor has rights in the collateral.

(2) A security interest attaches when it becomes enforceable against the debtor with respect to the collateral. Attachment occurs as soon as all of the events specified in subsection (1) have taken place unless explicit agreement postpones the time of attaching.

(3) Unless otherwise agreed a security agreement gives the secured party the rights to proceeds provided by RCW 62A.9-306.

(4) A transaction, although subject to this Article, is also subject to chapters 31.04, 31.08, 31.12, 31.16, 31.20, and 31.24 RCW, and in the case of conflict between the provisions of this Article and any such statute, the provisions of such statute control. Failure to comply with any applicable statute has only the effect which is specified therein. [1986 c 35 § 47; 1985 c 412 § 12; 1982 c 186 § 1; 1981 c 41 § 12; 1965 ex.s. c 157 § 9-203. Cf. former RCW sections: (i) RCW 61.04.010; 1929 c 156 § 1; 1899 c 98 § 1; RRS § 3779; cf. 1881 § 1986; 1879 p 104 § 1; 1877 p 286 § 1; 1875 p 43 § 1. (ii) RCW 61.20.020; 1957 c 249 § 1; 1943 c 71 § 2; Rem. Supp. 1943 § 11548-31. (iii) RCW 61.20.040; 1943 c 71 § 4; Rem. Supp. 1943 § 11548-33. (iv) RCW 63.12.010; 1963 c 236 § 22; 1961 c 196 § 1; 1933 c 129 § 1; 1915 c 95 § 1; 1903 c 6 § 1; 1893 c 106 § 1; RRS § 3790. (v) RCW 63.16.020 and 63.16.030; 1947 c 8 §§ 2 and 3; Rem. Supp. 1947 §§ 2721-2 and 2721-3.]

Effective date—1982 c 186: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect midnight June 30, 1982." [1982 c 186 § 12.]

Effective date—1981 c 41: See RCW 62A.11-101.

62A.9-204 After-acquired property; future advances; livestock or meat products. (1) Except as provided in subsection (2), a security agreement may provide that any or all obligations covered by the security agreement are to be secured by after-acquired collateral.

(2) No security interest attaches under an after-acquired property clause to consumer goods other than accessions (RCW 62A.9-314) when given as additional security unless the debtor acquires rights in them within ten days after the secured party gives value.

(3) Obligations covered by a security agreement may include future advances or other value whether or not the advances or value are given pursuant to commitment (subsection (1) of RCW 62A.9-105).

(4) A security interest cannot attach to livestock or to meat or meat products made from such livestock, where: (a) The livestock was sold to the commission merchant or dealer in livestock as defined in chapter 20.01 RCW or to a commercial feedlot by another party, (b) this other party has been paid by draft or check, and (c) the draft or check remains outstanding: *Provided*, That a

security interest may attach when the draft or check has been outstanding more than ten days. [1986 c 178 § 16; 1981 c 41 § 13; 1974 ex.s. c 102 § 1; 1965 ex.s. c 157 § 9-204. Cf. former RCW sections: (i) RCW 61.04.010; 1929 c 156 § 1; 1899 c 98 § 1; RRS § 3779; cf. 1881 § 1986; 1879 p 104 § 1; 1877 p 286 § 1; 1875 p 43 § 1. (ii) RCW 61.20.020; 1957 c 249 § 1; 1943 c 71 § 2; Rem. Supp. 1943 § 11548-31. (iii) RCW 61.20.040 and 61.20.140; 1943 c 71 §§ 4 and 14; Rem. Supp. 1943 §§ 11548-33 and 11548-43.]

Effective date—1981 c 41: See RCW 62A.11-101.

62A.9-205 Use or disposition of collateral without accounting permissible. A security interest is not invalid or fraudulent against creditors by reason of liberty in the debtor to use, commingle or dispose of all or part of the collateral (including returned or repossessed goods) or to collect or compromise accounts or chattel paper, or to accept the return of goods or make repossessions, or to use, commingle or dispose of proceeds, or by reason of the failure of the secured party to require the debtor to account for proceeds or replace collateral. This section does not relax the requirements of possession where perfection of a security interest depends upon possession of the collateral by the secured party or by a bailee. [1981 c 41 § 14; 1965 ex.s. c 157 § 9-205. Cf. former RCW sections: (i) RCW 63.12.030; 1937 c 196 § 2; 1925 ex.s. c 120 § 1; RRS § 3791-1. (ii) RCW 63.16.080; 1947 c 8 § 8; Rem. Supp. 1947 § 2721-8.]

Effective date—1981 c 41: See RCW 62A.11-101.

62A.9-206 Agreement not to assert defenses against assignee; modification of sales warranties where security agreement exists. (1) Subject to any statute or decision which establishes a different rule for buyers or lessees of consumer goods, an agreement by a buyer or lessee that he will not assert against an assignee any claim or defense which he may have against the seller or lessor is enforceable by an assignee who takes his assignment for value, in good faith and without notice of a claim or defense, except as to defenses of a type which may be asserted against a holder in due course of a negotiable instrument under the Article on Commercial Paper (Article 3).

(2) When a seller retains a purchase money security interest in goods the Article on Sales (Article 2) governs the sale and any disclaimer, limitation or modification of the seller's warranties. [1965 ex.s. c 157 § 9-206.]

62A.9-207 Rights and duties when collateral is in secured party's possession. (1) A secured party must use reasonable care in the custody and preservation of collateral in his possession. In the case of an instrument or chattel paper reasonable care includes taking necessary steps to preserve rights against prior parties unless otherwise agreed.

(2) Unless otherwise agreed, when collateral is in the secured party's possession

(a) reasonable expenses (including the cost of any insurance and payment of taxes or other charges) incurred

in the custody, preservation, use or operation of the collateral are chargeable to the debtor and are secured by the collateral;

(b) the risk of accidental loss or damage is on the debtor to the extent of any deficiency in any effective insurance coverage;

(c) the secured party may hold as additional security any increase or profits (except money) received from the collateral, but money so received, unless remitted to the debtor, shall be applied in reduction of the secured obligation;

(d) the secured party must keep the collateral identifiable but fungible collateral may be commingled;

(e) the secured party may repledge the collateral upon terms which do not impair the debtor's right to redeem it.

(3) A secured party is liable for any loss caused by his failure to meet any obligation imposed by the preceding subsections but does not lose his security interest.

(4) A secured party may use or operate the collateral (a) for the purpose of preserving the collateral or its value or (b) pursuant to the order of a court of appropriate jurisdiction or, (c) except in the case of consumer goods, in the manner and to the extent provided in the security agreement. [1965 ex.s. c 157 § 9-207.]

62A.9-208 Request for statement of account or list of collateral. (1) A debtor may sign a statement indicating what he believes to be the aggregate amount of unpaid indebtedness as of a specified date and may send it to the secured party with a request that the statement be approved or corrected and returned to the debtor, or any other person whom he designates in writing to the secured party. When the security agreement or any other record kept by the secured party identifies the collateral a debtor may similarly request the secured party to approve or correct a list of the collateral.

(2) The secured party must comply with such a request within two weeks after receipt by sending a written correction or approval. If the secured party claims a security interest in all of a particular type of collateral owned by the debtor he may indicate that fact in his reply and need not approve or correct an itemized list of such collateral. If the secured party without reasonable excuse fails to comply he is liable for any loss caused to the debtor or such other person as the debtor has designated as the recipient of such information thereby; and if the debtor has properly included in his request a good faith statement of the obligation or a list of the collateral or both the secured party may claim a security interest only as shown in the statement against persons misled by his failure to comply. If he no longer has an interest in the obligation or collateral at the time the request is received he must disclose the name and address of any successor in interest known to him and he is liable for any loss caused to the debtor or designated recipient of the information as a result of failure to disclose. A successor in interest is not subject to this section until a request is received by him.

(3) A debtor is entitled to such a statement once every six months without charge. The secured party may require payment of a charge not exceeding ten dollars for each additional statement furnished. [1965 ex.s. c 157 § 9-208. Cf. former RCW 63.16.100; 1947 c 8 § 10; Rem. Supp. 1947 § 2721-10.]

PART 3 RIGHTS OF THIRD PARTIES; PERFECTED AND UNPERFECTED SECURITY INTERESTS; RULES OF PRIORITY

Mortgaged, pledged or assigned rents and profits of realty excluded from Article 62A.9 RCW: RCW 7.28.230.

62A.9-301 Persons who take priority over unperfected security interests; right of "lien creditor". (1) Except as otherwise provided in subsection (2), an unperfected security interest is subordinate to the rights of

(a) persons entitled to priority under RCW 62A.9-312;

(b) a person who becomes a lien creditor before the security interest is perfected;

(c) in the case of goods, instruments, documents, and chattel paper, a person who is not a secured party and who is a transferee in bulk or other buyer not in ordinary course of business, or is a buyer of farm products in ordinary course of business, to the extent that he gives value and receives delivery of the collateral without knowledge of the security interest and before it is perfected;

(d) in the case of accounts and general intangibles, a person who is not a secured party and who is a transferee to the extent that he gives value without knowledge of the security interest and before it is perfected.

(2) If the secured party files with respect to a purchase money security interest before or within twenty days after the debtor receives possession of the collateral, he takes priority over the rights of a transferee in bulk or of a lien creditor which arise between the time the security interest attaches and the time of filing.

(3) A "lien creditor" means a creditor who has acquired a lien on the property involved by attachment, levy or the like and includes an assignee for benefit of creditors from the time of assignment, and a trustee in bankruptcy from the date of the filing of the petition or a receiver in equity from the time of appointment.

(4) A person who becomes a lien creditor while a security interest is perfected takes subject to the security interest only to the extent that it secures advances made before he becomes a lien creditor or within forty-five days thereafter or made without knowledge of the lien or pursuant to a commitment entered into without knowledge of the lien. [1982 c 186 § 2; 1981 c 41 § 15; 1965 ex.s. c 157 § 9-301. Cf. former RCW sections: (i) RCW 61.04.010; 1929 c 156 § 1; 1899 c 98 § 1; RRS § 3779; cf. 1881 § 1986; 1879 p 104 § 1; 1877 p 286 § 1; 1875 p 43 § 1. (ii) RCW 61.04.020; 1943 c 284 § 1; 1915 c 96 § 1; Code 1881 § 1987; Rem. Supp. 1943 § 3780; prior: 1879 p 105 § 2; 1877 p 286 § 3; 1875 p 44 § 3; 1863 p 426 § 1. (iii) RCW 61.20.010 and 61.20.090(2); 1943 c

71 §§ 1 and 9; Rem. Supp. 1943 §§ 11548-30 and 11548-38. (iv) RCW 61.20.080(1), (2), (3); 1957 c 249 § 2; 1943 c 71 § 8; Rem. Supp. 1943 § 11548-37. (v) RCW 63.12.010; 1963 c 236 § 22; 1961 c 196 § 1; 1933 c 129 § 1; 1915 c 95 § 1; 1903 c 6 § 1; 1893 c 106 § 1; RRS § 3790. (vi) RCW 63.16.020 and 63.16.030; 1947 c 8 §§ 2 and 3; Rem. Supp. 1947 §§ 2721-2 and 2721-3.]

Effective date—1982 c 186: See note following RCW 62A.9-203.

Effective date—1981 c 41: See RCW 62A.11-101.

62A.9-302 When filing is required to perfect security interest; security interests to which filing provisions of this Article do not apply. (1) A financing statement must be filed to perfect all security interests except the following:

(a) a security interest in collateral in possession of the secured party under RCW 62A.9-305;

(b) a security interest temporarily perfected in instruments or documents without delivery under RCW 62A.9-304 or in proceeds for a ten day period under RCW 62A.9-306;

(c) a security interest created by an assignment of a beneficial interest in a trust or a decedent's estate;

(d) a purchase money security interest in consumer goods; but filing is required for a motor vehicle required to be registered and other property subject to subsection (3) of this section; and fixture filing is required for priority over conflicting interests in fixtures to the extent provided in RCW 62A.9-313;

(e) a security interest of a collecting bank (RCW 62A.4-208) or in securities (RCW 62A.8-321) or arising under the Article on Sales (RCW 62A.9-113) or covered in subsection (3) of this section;

(f) an assignment for the benefit of all the creditors of the transferor, and subsequent transfers by the assignee thereunder.

(2) If a secured party assigns a perfected security interest, no filing under this Article is required in order to continue the perfected status of the security interest against creditors of and transferees from the original debtor.

(3) The filing of a financing statement otherwise required by this Article is not necessary or effective to perfect a security interest in property subject to

(a) a statute or treaty of the United States which provides for a national or international registration or a national or international certificate of title or which specifies a place of filing different from that specified in this Article for filing of the security interest; or

(b) the following statute of this state: RCW 46.12.095 or 88.02.070; but during any period in which collateral is inventory held for sale by a person who is in the business of selling goods of that kind, the filing provisions of this Article (Part 4) apply to a security interest in that collateral created by him as debtor; or

(c) a certificate of title statute of another jurisdiction under the law of which indication of a security interest on the certificate is required as a condition of perfection (subsection (2) of RCW 62A.9-103).

(4) Compliance with a statute or treaty described in subsection (3) is equivalent to the filing of a financing statement under this Article, and a security interest in property subject to the statute or treaty can be perfected only by compliance therewith except as provided in RCW 62A.9-103 on multiple state transactions. Duration and renewal of perfection of a security interest perfected by compliance with the statute or treaty are governed by the provisions of the statute or treaty; in other respects the security interest is subject to this Article.

(5) Part 4 of this Article does not apply to a security interest in property of any description created by a deed of trust or mortgage made by any corporation primarily engaged in the railroad or street railway business, the furnishing of telephone or telegraph service, the transmission of oil, gas or petroleum products by pipe line, or the production, transmission or distribution of electricity, steam, gas or water, but such security interest may be perfected under this Article by filing such deed of trust or mortgage with the department of licensing. When so filed, such instrument shall remain effective until terminated, without the need for filing a continuation statement. Assignments and releases of such instruments may also be filed with the department of licensing. The director of licensing shall be a filing officer for the foregoing purposes. [1987 c 189 § 1; 1986 c 35 § 48; 1985 c 258 § 3; 1981 c 41 § 16; 1979 c 158 § 210; 1977 ex.s. c 117 § 6; 1967 c 114 § 4; 1965 ex.s. c 157 § 9-302. Cf. former RCW sections: (i) RCW 61.04.020; 1943 c 284 § 1; 1915 c 96 § 1; Code 1881 § 1987; Rem. Supp. 1943 § 3780; prior: 1879 p 105 § 2; 1877 p 286 § 3; 1875 p 44 § 3; 1863 p 426 § 1. (ii) RCW 61.20.030 and 61.20.090; 1943 c 71 §§ 3 and 9; Rem. Supp. 1943 §§ 11548-32 and 11548-38. (iii) RCW 61.20.080; 1957 c 249 § 2; 1943 c 71 § 8; Rem. Supp. 1943 § 11548-37. (iv) RCW 63.12.010; 1963 c 236 § 22; 1961 c 196 § 1; 1933 c 129 § 1; 1915 c 95 § 1; 1903 c 6 § 1; 1893 c 106 § 1; RRS § 3790. (v) RCW 63.16.030; 1947 c 8 § 3; Rem. Supp. 1947 § 2721-3.]

Reviser's note: This section was amended by 1986 c 35 § 48 and by 1987 c 189 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—1985 c 258: See note following RCW 88.02.070.

Effective date—1981 c 41: See RCW 62A.11-101.

Severability—**Effective date**—1977 ex.s. c 117: See notes following RCW 43.07.150.

Emergency—**Effective date**—1967 c 114: See note following RCW 62A.4-406.

Motor vehicles—*Certificate of ownership and registration:* RCW 46.12.010.

Seed bailment contracts: Filing, recording or notice of contract not required to establish validity of contract or title in bailor: RCW 15.48.270 through 15.48.290.

62A.9-303 When security interest is perfected; continuity of perfection. (1) A security interest is perfected when it has attached and when all of the applicable steps required for perfection have been taken. Such steps are specified in RCW 62A.9-302, RCW 62A.9-304, RCW 62A.9-305 and RCW 62A.9-306. If such steps are

taken before the security interest attaches, it is perfected at the time when it attaches.

(2) If a security interest is originally perfected in any way permitted under this Article and is subsequently perfected in some other way under this Article, without an intermediate period when it was unperfected, the security interest shall be deemed to be perfected continuously for the purposes of this Article. [1965 ex.s. c 157 § 9-303.]

62A.9-304 Perfection of security interest in instruments, documents, and goods covered by documents; perfection by permissive filing; temporary perfection without filing or transfer of possession. (1) A security interest in chattel paper or negotiable documents may be perfected by filing. A security interest in money or instruments (other than certificated securities or instruments which constitute part of chattel paper) can be perfected only by the secured party's taking possession, except as provided in subsections (4) and (5) of this section and subsections (2) and (3) of RCW 62A.9-306 on proceeds.

(2) During the period that goods are in the possession of the issuer of a negotiable document therefor, a security interest in the goods is perfected by perfecting a security interest in the document, and any security interest in the goods otherwise perfected during such period is subject thereto.

(3) A security interest in goods in the possession of a bailee other than one who has issued a negotiable document therefor is perfected by issuance of a document in the name of the secured party or by the bailee's receipt of notification of the secured party's interest or by filing as to the goods.

(4) A security interest in instruments (other than certificated securities) or negotiable documents is perfected without filing or the taking of possession for a period of twenty-one days from the time it attaches to the extent that it arises for new value given under a written security agreement.

(5) A security interest remains perfected for a period of twenty-one days without filing where a secured party having a perfected security interest in an instrument (other than a certificated security), a negotiable document or goods in possession of a bailee other than one who has issued a negotiable document therefor

(a) makes available to the debtor the goods or documents representing the goods for the purpose of ultimate sale or exchange or for the purpose of loading, unloading, storing, shipping, transshipping, manufacturing, processing or otherwise dealing with them in a manner preliminary to their sale or exchange but priority between conflicting security interests in the goods is subject to subsection (3) of RCW 62A.9-312; or

(b) delivers the instrument to the debtor for the purpose of ultimate sale or exchange or of presentation, collection, renewal, or registration of transfer.

(6) After the twenty-one day period in subsections (4) and (5) perfection depends upon compliance with applicable provisions of this Article. [1986 c 35 § 49; 1981 c 41 § 17; 1965 ex.s. c 157 § 9-304. Cf. former RCW sections: (i) RCW 61.20.030 and 61.20.090; 1943 c 71

§§ 3 and 9; Rem. Supp. 1943 §§ 11548-32 and 11548-38. (ii) RCW 61.20.080; 1957 c 249 § 2; 1943 c 71 § 8; Rem. Supp. 1943 § 11548-37. (iii) RCW 63.16-.010; 1947 c 8 § 1; Rem. Supp. 1947 § 2721-1.]

Effective date—1981 c 41: See RCW 62A.11-101.

62A.9-305 When possession by secured party perfects security interest without filing. A security interest in letters of credit and advices of credit (subsection (2)(a) of RCW 62A.5-116), goods, instruments (other than certificated securities), money, negotiable documents, or chattel paper may be perfected by the secured party's taking possession of the collateral. If such collateral other than goods covered by a negotiable document is held by a bailee, the secured party is deemed to have possession from the time the bailee receives notification of the secured party's interest. A security interest is perfected by possession from the time possession is taken without relation back and continues only so long as possession is retained, unless otherwise specified in this Article. The security interest may be otherwise perfected as provided in this Article before or after the period of possession by the secured party. [1986 c 35 § 50; 1981 c 41 § 18; 1965 ex.s. c 157 § 9-305.]

Effective date—1981 c 41: See RCW 62A.11-101.

62A.9-306 "Proceeds"; secured party's rights on disposition of collateral. (1) "Proceeds" includes whatever is received upon the sale, exchange, collection or other disposition of collateral or proceeds. Insurance payable by reason of loss or damage to the collateral is proceeds, except to the extent that it is payable to a person other than a party to the security agreement. Money, checks, deposit accounts, and the like are "cash proceeds". All other proceeds are "non-cash proceeds".

(2) Except where this Article otherwise provides, a security interest continues in collateral notwithstanding sale, exchange or other disposition thereof unless the disposition was authorized by the secured party in the security agreement or otherwise, and also continues in any identifiable proceeds including collections received by the debtor.

(3) The security interest in proceeds is a continuously perfected security interest if the interest in the original collateral was perfected but it ceases to be a perfected security interest and becomes unperfected ten days after receipt of the proceeds by the debtor unless

(a) a filed financing statement covers the original collateral and the proceeds are collateral in which a security interest may be perfected by filing in the office or offices where the financing statement has been filed and, if the proceeds are acquired with cash proceeds, the description of collateral in the financing statement indicates the types of property constituting the proceeds; or

(b) a filed financing statement covers the original collateral and the proceeds are identifiable cash proceeds or instruments; or

(c) the security interest in the proceeds is perfected before the expiration of the ten day period.

Except as provided in this section, a security interest in

proceeds can be perfected only by the methods or under the circumstances permitted in this Article for original collateral of the same type.

(4) In the event of insolvency proceedings instituted by or against a debtor, a secured party with a perfected security interest in proceeds has a perfected security interest only in the following proceeds:

(a) in identifiable non-cash proceeds and in separate deposit accounts containing only proceeds;

(b) in identifiable cash proceeds in the form of money which is neither commingled with other money nor deposited in a deposit account prior to the insolvency proceedings;

(c) in identifiable cash proceeds in the form of checks and the like which are not deposited in a deposit account prior to the insolvency proceedings; and

(d) in all cash and deposit accounts of the debtor in which proceeds have been commingled with other funds, but the perfected security interest under this paragraph (d) is

(i) subject to any right of set-off; and

(ii) limited to an amount not greater than the amount of any cash proceeds received by the debtor within ten days before the institution of the insolvency proceedings less the sum of (I) the payments to the secured party on account of cash proceeds received by the debtor during such period and (II) the cash proceeds received by the debtor during such period to which the secured party is entitled under paragraphs (a) through (c) of this subsection (4).

(5) If a sale of goods results in an account or chattel paper which is transferred by the seller to a secured party, and if the goods are returned to or are repossessed by the seller or the secured party, the following rules determine priorities:

(a) If the goods were collateral at the time of sale for an indebtedness of the seller which is still unpaid, the original security interest attaches again to the goods and continues as a perfected security interest if it was perfected at the time when the goods were sold. If the security interest was originally perfected by a filing which is still effective, nothing further is required to continue the perfected status; in any other case, the secured party must take possession of the returned or repossessed goods or must file.

(b) An unpaid transferee of the chattel paper has a security interest in the goods against the transferor. Such security interest is prior to a security interest asserted under paragraph (a) to the extent that the transferee of the chattel paper was entitled to priority under RCW 62A.9-308.

(c) An unpaid transferee of the account has a security interest in the goods against the transferor. Such security interest is subordinate to a security interest asserted under paragraph (a).

(d) A security interest of an unpaid transferee asserted under paragraph (b) or (c) must be perfected for protection against creditors of the transferor and purchasers of the returned or repossessed goods. [1981 c 41 § 19; 1965 ex.s. c 157 § 9-306. Cf. former RCW sections: (i) RCW 61.20.090 and 61.20.100; 1943 c 71 §§ 9

and 10; Rem. Supp. 1943 §§ 11548-38 and 11548-39. (ii) RCW 63.12.030; 1937 c 196 § 2; 1925 ex.s. c 120 § 1; RRS § 3791-1. (iii) RCW 63.16.080; 1947 c 8 § 8; Rem. Supp. 1947 § 2721-8.]

Effective date—1981 c 41: See RCW 62A.11-101.

62A.9-307 Protection of buyers of goods. (1) A buyer in ordinary course of business (subsection (9) of RCW 62A.1-201) other than a person buying farm products from a person engaged in farming operations takes free of a security interest created by his seller even though the security interest is perfected and even though the buyer knows of its existence.

(2) In the case of consumer goods, a buyer takes free of a security interest even though perfected if he buys without knowledge of the security interest, for value and for his own personal, family or household purposes unless prior to the purchase the secured party has filed a financing statement covering such goods.

(3) A buyer other than a buyer in ordinary course of business (subsection (1) of this section) takes free of a security interest to the extent that it secures future advances made after the secured party acquires knowledge of the purchase, unless made pursuant to a commitment entered into without knowledge of the purchase. [1987 c 393 § 15; 1985 c 412 § 13; 1981 c 41 § 20; 1965 ex.s. c 157 § 9-307. Cf. former RCW 61.20.090; 1943 c 71 § 9; Rem. Supp. 1943 § 11548-38.]

Effective date—1981 c 41: See RCW 62A.11-101.

62A.9-308 Purchase of chattel paper and instruments. A purchaser of chattel paper or an instrument who gives new value and takes possession of it in the ordinary course of his business has priority over a security interest in the chattel paper or instrument

(a) which is perfected under RCW 62A.9-304 (permissive filing and temporary perfection) or under RCW 62A.9-306 (perfection as to proceeds) if he acts without knowledge that the specific paper or instrument is subject to a security interest; or

(b) which is claimed merely as proceeds of inventory subject to a security interest (RCW 62A.9-306) even though he knows that the specific paper or instrument is subject to the security interest. [1981 c 41 § 21; 1965 ex.s. c 157 § 9-308. Cf. former RCW sections: RCW 61.20.090 and 61.20.100; 1943 c 71 §§ 9 and 10; Rem. Supp. 1943 §§ 11548-38 and 11548-39.]

Effective date—1981 c 41: See RCW 62A.11-101.

62A.9-309 Protection of purchasers of instruments, documents, and securities. Nothing in this Article limits the rights of a holder in due course of a negotiable instrument (RCW 62A.3-302) or a holder to whom a negotiable document of title has been duly negotiated (RCW 62A.7-501) or a bona fide purchaser of a security (RCW 62A.8-302) and such holders or purchasers take priority over an earlier security interest even though perfected. Filing under this Article does not constitute notice of the security interest to such holders or purchasers. [1986 c 35 § 51; 1965 ex.s. c 157 § 9-309. Cf.

former RCW 61.20.090(1); 1943 c 71 § 9; Rem. Supp. 1943 § 11548-38.]

62A.9-310 Priority of certain liens arising by operation of law. (1) When a person in the ordinary course of his business furnishes services or materials with respect to goods subject to a security interest, a lien upon goods in the possession of such person given by statute or rule of law for such materials or services takes priority over a perfected security interest only if the lien is statutory and the statute expressly provides for such priority.

(2) A preparer lien or processor lien properly created pursuant to chapter 60.13 RCW or a depositor's lien created pursuant to chapter 22.09 RCW takes priority over any perfected or unperfected security interest.

(3) Conflicting priorities between nonpossessory crop liens created under chapter 60.11 RCW and security interests shall be governed by chapter 60.11 RCW. [1986 c 242 § 16; 1985 c 412 § 10; 1983 c 305 § 76; 1965 ex.s. c 157 § 9-310. Cf. former RCW 61.20.110; 1943 c 71 § 11; Rem. Supp. 1943 § 11548-40.]

Severability—Effective date—1986 c 242: See RCW 60.11.902 and 60.11.903.

Severability—1983 c 305: See note following RCW 20.01.010.

62A.9-311 Alienability of debtor's rights: Judicial process. The debtor's rights in collateral may be voluntarily or involuntarily transferred (by way of sale, creation of a security interest, attachment, levy, garnishment or other judicial process) notwithstanding a provision in the security agreement prohibiting any transfer or making the transfer constitute a default. [1965 ex.s. c 157 § 9-311. Cf. former RCW 61.08.120; Code 1881 § 1990; 1879 p 105 § 5; RRS § 1115.]

62A.9-312 Priorities among conflicting security interests in the same collateral. (1) The rules of priority stated in other sections of this Part and in the following sections shall govern when applicable: RCW 62A.4-208 with respect to the security interests of collecting banks in items being collected, accompanying documents and proceeds; RCW 62A.9-103 on security interests related to other jurisdictions; RCW 62A.9-114 on consignments.

(2) Conflicting priorities between security interests in crops shall be governed by chapter 60.11 RCW.

(3) A perfected purchase money security interest in inventory has priority over a conflicting security interest in the same inventory and also has priority in identifiable cash proceeds received on or before the delivery of the inventory to a buyer if

(a) the purchase money security interest is perfected at the time the debtor receives possession of the inventory; and

(b) the purchase money secured party gives notification in writing to the holder of the conflicting security interest if the holder had filed a financing statement covering the same types of inventory (i) before the date of the filing made by the purchase money secured party, or (ii) before the beginning of the twenty-one day period

where the purchase money security interest is temporarily perfected without filing or possession (subsection (5) of RCW 62A.9-304); and

(c) the holder of the conflicting security interest receives the notification within five years before the debtor receives possession of the inventory; and

(d) the notification states that the person giving the notice has or expects to acquire a purchase money security interest in inventory of the debtor, describing such inventory by item or type.

(4) A purchase money security interest in collateral other than inventory has priority over a conflicting security interest in the same collateral or its proceeds if the purchase money security interest is perfected at the time the debtor receives possession of the collateral or within twenty days thereafter.

(5) In all cases not governed by other rules stated in this section (including cases of purchase money security interests which do not qualify for the special priorities set forth in subsections (3) and (4) of this section), priority between conflicting security interests in the same collateral shall be determined according to the following rules:

(a) Conflicting security interests rank according to priority in time of filing or perfection. Priority dates from the time a filing is first made covering the collateral or the time the security interest is first perfected, whichever is earlier, provided that there is no period thereafter when there is neither filing nor perfection.

(b) So long as conflicting security interests are unperfected, the first to attach has priority.

(6) For the purposes of subsection (5) a date of filing or perfection as to collateral is also a date of filing or perfection as to proceeds.

(7) If future advances are made while a security interest is perfected by filing, the taking of possession, or under RCW 62A.8-321 on securities, the security interest has the same priority for the purposes of subsection (5) with respect to the future advances as it does with respect to the first advance. If a commitment is made before or while the security interest is so perfected, the security interest has the same priority with respect to advances made pursuant thereto. In other cases a perfected security interest has priority from the date the advance is made. [1989 c 251 § 1; 1986 c 35 § 52; 1982 c 186 § 3; 1981 c 41 § 22; 1965 ex.s. c 157 § 9-312. Cf. former RCW sections: (i) RCW 61.04.020; 1943 c 284 § 1; 1915 c 96 § 1; Code 1881 § 1987; Rem. Supp. 1943 § 3780; prior: 1879 p 105 § 2; 1877 p 286 § 3; 1875 p 44 § 3; 1863 p 426 § 1. (ii) RCW 61.20.010 and 61.20.090; 1943 c 71 §§ 1 and 9; Rem. Supp. 1943 §§ 11548-30 and 11548-38. (iii) RCW 63.12.010; 1963 c 236 § 22; 1961 c 196 § 1; 1933 c 129 § 1; 1915 c 95 § 1; 1903 c 6 § 1; 1893 c 106 § 1; RRS § 3790. (iv) RCW 63.16.030 and 63.16.090; 1947 c 8 §§ 3 and 9; Rem. Supp. 1947 §§ 2721-3 and 2721-9.]

Effective date—1982 c 186: See note following RCW 62A.9-203.

Effective date—1981 c 41: See RCW 62A.11-101.

62A.9-313 Priority of security interests in fixtures. (1) In this section and in the provisions of Part 4 of this

Article referring to fixture filing, unless the context otherwise requires

(a) goods are "fixtures" when they become so related to particular real estate that an interest in them arises under real estate law;

(b) a "fixture filing" is the filing in the office where a mortgage on the real estate would be filed or recorded of a financing statement covering goods which are or are to become fixtures and conforming to the requirements of subsection (5) of RCW 62A.9-402;

(c) a mortgage is a "construction mortgage" to the extent that it secures an obligation incurred for the construction of an improvement on land including the acquisition cost of the land, if the recorded writing so indicates.

(2) A security interest under this Article may be created in goods which are fixtures or may continue in goods which become fixtures, but no security interest exists under this Article in ordinary building materials incorporated into an improvement on land.

(3) This Article does not prevent creation of an encumbrance upon fixtures pursuant to real estate law.

(4) A perfected security interest in fixtures has priority over the conflicting interest of an encumbrancer or owner of the real estate where

(a) the security interest is a purchase money security interest, the interest of the encumbrancer or owner arises before the goods become fixtures, the security interest is perfected by a fixture filing before the goods become fixtures or within twenty days thereafter, and the debtor has an interest of record in the real estate or is in possession of the real estate; or

(b) the security interest is perfected by a fixture filing before the interest of the encumbrancer or owner is of record, the security interest has priority over any conflicting interest of a predecessor in title of the encumbrancer or owner, and the debtor has an interest of record in the real estate or is in possession of the real estate; or

(c) the fixtures are readily removable factory or office machines or readily removable replacements of domestic appliances which are consumer goods, and before the goods become fixtures the security interest is perfected by any method permitted by this Article; or

(d) the conflicting interest is a lien on the real estate obtained by legal or equitable proceedings after the security interest was perfected by any method permitted by this Article.

(5) A security interest in fixtures, whether or not perfected, has priority over the conflicting interest of an encumbrancer or owner of the real estate where

(a) the encumbrancer or owner has consented in writing to the security interest or has disclaimed an interest in the goods as fixtures; or

(b) the debtor has a right to remove the goods as against the encumbrancer or owner. If the debtor's right terminates, the priority of the security interest continues for a reasonable time.

(6) Notwithstanding paragraph (a) of subsection (4) but otherwise subject to subsections (4) and (5), a security interest in fixtures is subordinate to a construction

mortgage recorded before the goods become fixtures if the goods become fixtures before the completion of the construction. To the extent that it is given to refinance a construction mortgage, a mortgage has this priority to the same extent as the construction mortgage.

(7) In cases not within the preceding subsections, a security interest in fixtures is subordinate to the conflicting interest of an encumbrancer or owner of the related real estate who is not the debtor.

(8) When the secured party has priority over all owners and encumbrancers of the real estate, he may, on default, subject to the provisions of Part 5, remove his collateral from the real estate but he must reimburse any encumbrancer or owner of the real estate who is not the debtor and who has not otherwise agreed for the cost of repair of any physical injury, but not for any diminution in value of the real estate caused by the absence of the goods removed or by any necessity for replacing them. A person entitled to reimbursement may refuse permission to remove until the secured party gives adequate security for the performance of this obligation. [1982 c 186 § 4; 1981 c 41 § 23; 1965 ex.s. c 157 § 9-313. Cf. former RCW sections: (i) RCW 61.04.040; 1943 c 76 § 1; 1899 c 98 § 3; Rem. Supp. 1943 § 3782. (ii) RCW 63.12.020; 1933 c 129 § 2; 1903 c 6 § 2; 1893 c 106 § 2; RRS § 3791.]

Effective date—1982 c 186: See note following RCW 62A.9-203.

Effective date—1981 c 41: See RCW 62A.11-101.

62A.9-314 Accessions. (1) A security interest in goods which attaches before they are installed in or affixed to other goods takes priority as to the goods installed or affixed (called in this section "accessions") over the claims of all persons to the whole except as stated in subsection (3) and subject to RCW 62A.9-315(1).

(2) A security interest which attaches to goods after they become part of a whole is valid against all persons subsequently acquiring interests in the whole except as stated in subsection (3) but is invalid against any person with an interest in the whole at the time the security interest attaches to the goods who has not in writing consented to the security interest or disclaimed an interest in the goods as part of the whole.

(3) The security interests described in subsections (1) and (2) do not take priority over

(a) a subsequent purchaser for value of any interest in the whole; or

(b) a creditor with a lien on the whole subsequently obtained by judicial proceedings; or

(c) a creditor with a prior perfected security interest in the whole to the extent that he makes subsequent advances

if the subsequent purchase is made, the lien by judicial proceedings obtained or the subsequent advance under the prior perfected security interest is made or contracted for without knowledge of the security interest and before it is perfected. A purchaser of the whole at a foreclosure sale other than the holder of a perfected security interest purchasing at his own foreclosure sale is a subsequent purchaser within this section.

(4) When under subsections (1) or (2) and (3) a secured party has an interest in accessions which has priority over the claims of all persons who have interests in the whole, he may on default subject to the provisions of Part 5 remove his collateral from the whole but he must reimburse any encumbrancer or owner of the whole who is not the debtor and who has not otherwise agreed for the cost of repair of any physical injury but not for any diminution in value of the whole caused by the absence of the goods removed or by any necessity for replacing them. A person entitled to reimbursement may refuse permission to remove until the secured party gives adequate security for the performance of this obligation. [1965 ex.s. c 157 § 9-314.]

62A.9-315 Priority when goods are commingled or processed. (1) If a security interest in goods was perfected and subsequently the goods or a part thereof have become part of a product or mass, the security interest continues in the product or mass if

(a) the goods are so manufactured, processed, assembled or commingled that their identity is lost in the product or mass; or

(b) a financing statement covering the original goods also covers the product into which the goods have been manufactured, processed or assembled.

In a case to which paragraph (b) applies, no separate security interest in that part of the original goods which has been manufactured, processed or assembled into the product may be claimed under RCW 62A.9-314.

(2) When under subsection (1) more than one security interest attaches to the product or mass, they rank equally according to the ratio that the cost of the goods to which each interest originally attached bears to the cost of the total product or mass. [1965 ex.s. c 157 § 9-315.]

62A.9-316 Priority subject to subordination. Nothing in this Article prevents subordination by agreement by any person entitled to priority. [1965 ex.s. c 157 § 9-316.]

62A.9-317 Secured party not obligated on contract of debtor. The mere existence of a security interest or authority given to the debtor to dispose of or use collateral does not impose contract or tort liability upon the secured party for the debtor's acts or omissions. [1965 ex.s. c 157 § 9-317. Cf. former RCW 61.20.120; 1943 c 71 § 12; Rem. Supp. 1943 § 11548-41.]

62A.9-318 Defenses against assignee; modification of contract after notification of assignment; term prohibiting assignment ineffective; identification and proof of assignment. (1) Unless an account debtor has made an enforceable agreement not to assert defenses or claims arising out of a sale as provided in RCW 62A.9-206 the rights of an assignee are subject to

(a) all the terms of the contract between the account debtor and assignor and any defense or claim arising therefrom; and

(b) any other defense or claim of the account debtor against the assignor which accrues before the account debtor receives notification of the assignment.

(2) So far as the right to payment or a part thereof under an assigned contract has not been fully earned by performance, and notwithstanding notification of the assignment, any modification of or substitution for the contract made in good faith and in accordance with reasonable commercial standards is effective against an assignee unless the account debtor has otherwise agreed but the assignee acquires corresponding rights under the modified or substituted contract. The assignment may provide that such modification or substitution is a breach by the assignor.

(3) The account debtor is authorized to pay the assignor until the account debtor receives notification that the amount due or to become due has been assigned and that payment is to be made to the assignee. A notification which does not reasonably identify the rights assigned is ineffective. If requested by the account debtor, the assignee must seasonably furnish reasonable proof that the assignment has been made and unless he does so the account debtor may pay the assignor.

(4) A term in any contract between an account debtor and an assignor is ineffective if it prohibits assignment of an account or prohibits creation of a security interest in a general intangible for money due or to become due or requires the account debtor's consent to such assignment or security interest. [1981 c 41 § 24; 1965 ex.s. c 157 § 9-318. Cf. former RCW sections: (i) RCW 61.20.090(3); 1943 c 71 § 9; Rem. Supp. 1943 § 11548-38. (ii) RCW 63.16.020; 1947 c 8 § 2; Rem. Supp. 1947 § 2721-2.]

Effective date—1981 c 41: See RCW 62A.11-101.

Actions on assigned choses in action: RCW 4.08.080.

PART 4 FILING

Filing of security interests created by deed of trust or mortgage made by corporation engaged in railroad or utility business or services: RCW 62A.9-302(5).

Seed bailment contracts

application of Article 62A.9 RCW to: RCW 15.48.270 through 15.48.290.

security interest not created by contract: RCW 15.48.280.

62A.9-401 Place of filing; erroneous filing; removal of collateral. (1) The proper place to file in order to perfect a security interest is as follows:

(a) when the collateral is timber to be cut or is minerals or the like (including oil and gas) or accounts subject to subsection (5) of RCW 62A.9-103, or when the financing statement is filed as a fixture filing (RCW 62A.9-313) and the collateral is goods which are or are to become fixtures, then in the office where a mortgage on the real estate would be filed or recorded;

(b) in all other cases, in the office of the department of licensing.

(2) A filing which is made in good faith in an improper place or not in all of the places required by this

section is nevertheless effective with regard to any collateral as to which the filing complied with the requirements of this Article and is also effective with regard to collateral covered by the financing statement against any person who has knowledge of the contents of such financing statement.

(3) A filing which is made in the proper place in this state continues effective even though the debtor's residence or place of business or the location of the collateral or its use, whichever controlled the original filing, is thereafter changed.

(4) The rules stated in RCW 62A.9-103 determine whether filing is necessary in this state.

(5) Notwithstanding the preceding subsections, and subject to subsection (3) of RCW 62A.9-302, the proper place to file in order to perfect a security interest in collateral, including fixtures, of a transmitting utility is with the department of licensing. This filing constitutes a fixture filing (RCW 62A.9-313) as to the collateral described therein which is or is to become fixtures.

(6) For the purposes of this section, the residence of an organization is its place of business if it has one or its chief executive office if it has more than one place of business. [1981 c 41 § 25; 1979 c 158 § 211; 1977 ex.s. c 117 § 7; 1965 ex.s. c 157 § 9-401. Cf. former RCW sections: (i) RCW 61.04.020; 1943 c 284 § 1; 1915 c 96 § 1; Code 1881 § 1987; Rem. Supp. 1943 § 3780; prior: 1879 p 105 § 2; 1877 p 286 § 3; 1875 p 44 § 3; 1863 p 426 § 1. (ii) RCW 61.20.030; 1943 c 71 § 3; Rem. Supp. 1943 § 11548-32. (iii) RCW 61.20.130; 1943 c 71 § 13; Rem. Supp. 1943 § 11548-42. (iv) RCW 63.12-.010; 1963 c 236 § 22; 1961 c 196 § 1; 1933 c 129 § 1; 1915 c 95 § 1; 1903 c 6 § 1; 1893 c 106 § 1; RRS § 3790. (v) RCW 63.16.010(6); 1947 c 8 § 1; Rem. Supp. 1947 § 2721-1.]

Effective date—1981 c 41: See RCW 62A.11-101.

Severability—Effective date—1977 ex.s. c 117: See notes following RCW 43.07.150.

62A.9-402 Formal requisites of financing statement; amendments; mortgage as financing statement. (1) A financing statement is sufficient if it gives the names of the debtor and the secured party, is signed by the debtor, gives an address of the secured party from which information concerning the security interest may be obtained, gives a mailing address of the debtor and contains a statement indicating the types, or describing the items, of collateral. A financing statement may be filed before a security agreement is made or a security interest otherwise attaches. When the financing statement covers timber to be cut or covers minerals or the like (including oil and gas) or accounts subject to subsection (5) of RCW 62A.9-103, or when the financing statement is filed as a fixture filing (RCW 62A.9-313) and the collateral is goods which are or are to become fixtures, the statement must also comply with subsection (5). A copy of the security agreement is sufficient as a financing statement if it contains the above information and is signed by the debtor. A carbon, photographic or other reproduction of a security agreement or a financing statement is sufficient as a financing statement if the

security agreement so provides or if the original has been filed in this state.

(2) A financing statement which otherwise complies with subsection (1) is sufficient when it is signed by the secured party instead of the debtor if it is filed to perfect a security interest in

(a) collateral already subject to a security interest in another jurisdiction when it is brought into this state or when the debtor's location is changed to this state. Such a financing statement must state that the collateral was brought into this state or that the debtor's location was changed to this state under such circumstances; or

(b) proceeds under RCW 62A.9-306 if the security interest in the original collateral was perfected. Such a financing statement must describe the original collateral; or

(c) collateral as to which the filing has lapsed; or

(d) collateral acquired after a change of name, identity or corporate structure of the debtor (subsection (7)).

(3) A form substantially as follows is sufficient to comply with subsection (1):

Name of debtor (or assignor)

Address

Name of secured party (or assignee)

Address

1. This financing statement covers the following types (or items) of property:

(Describe)

2. (If applicable) The above goods are to become fixtures on*

(Describe Real Estate)

and this financing statement is to be filed for record in the real estate records. (If the debtor does not have an interest of record) The name of a record owner is

*Where appropriate substitute either "The above timber is standing on" or "The above minerals or the like (including oil and gas) or accounts will be financed at the wellhead or minehead of the well or mine located on"

3. (If products of collateral are claimed)

Products of the collateral are also covered

(use

whichever Signature of Debtor (or Assignor)

is

applicable) Signature of Secured Party (or Assignee)

(4) A financing statement may be amended by filing a writing signed by both the debtor and the secured party: *Provided*, That a secured party may amend a financing statement without the signature of the debtor when the amendment is to change the address or name of the secured party. An amendment does not extend the period of effectiveness of a financing statement. If any amendment adds collateral, it is effective as to the added collateral only from the filing date of the amendment. In this Article, unless the context otherwise requires, the term "financing statement" means the original financing statement and any amendments. The fee for filing an

amendment shall be the same as the fee for filing a financing statement.

(5) A financing statement covering timber to be cut or covering minerals or the like (including oil and gas) or accounts subject to subsection (5) of RCW 62A.9-103, or a financing statement filed as a fixture filing (RCW 62A.9-313) where the debtor is not a transmitting utility, must show that it covers this type of collateral, must recite that it is to be filed for record in the real estate records, and the financing statement must contain a description of the real estate sufficient if it were contained in a mortgage of the real estate to give constructive notice of the mortgage under the law of this state. If the debtor does not have an interest of record in the real estate, the financing statement must show the name of a record owner.

(6) A mortgage is effective as a financing statement filed as a fixture filing from the date of its recording if (a) the goods are described in the mortgage by item or type, (b) the goods are or are to become fixtures related to the real estate described in the mortgage, (c) the mortgage complies with the requirements for a financing statement in this section other than a recital that it is to be filed in the real estate records, and (d) the mortgage is duly recorded. No fee with reference to the financing statement is required other than the regular recording and satisfaction fees with respect to the mortgage.

(7) A financing statement sufficiently shows the name of the debtor if it gives the individual, partnership or corporate name of the debtor, whether or not it adds other trade names or the names of partners. Where the debtor so changes his name or in the case of an organization its name, identity or corporate structure that a filed financing statement becomes seriously misleading, the filing is not effective to perfect a security interest in collateral acquired by the debtor more than four months after the change, unless a new appropriate financing statement or an amendment is filed before the expiration of that time. A filed financing statement remains effective with respect to collateral transferred by the debtor even though the secured party knows of or consents to the transfer.

(8) A financing statement substantially complying with the requirements of this section is effective even though it contains minor errors which are not seriously misleading. [1989 c 251 § 2; 1982 c 186 § 5; 1981 c 41 § 26; 1965 ex.s. c 157 § 9-402. Cf. former RCW sections: (i) RCW 61.04.020; 1943 c 284 § 1; 1915 c 96 § 1; Code 1881 § 1987; Rem. Supp. 1943 § 3780; prior: 1879 p 105 § 2; 1877 p 286 § 3; 1875 p 44 § 3; 1863 p 426 § 1. (ii) RCW 61.04.040; 1943 c 76 § 1; 1899 c 98 § 3; Rem. Supp. 1943 § 3782. (iii) RCW 61.20.130; 1943 c 71 § 13; Rem. Supp. 1943 § 11548-42. (iv) RCW 63-12.010; 1963 c 236 § 22; 1961 c 196 § 1; 1933 c 129 § 1; 1915 c 95 § 1; 1903 c 6 § 1; 1893 c 106 § 1; RRS § 3790. (v) RCW 63.16.030; 1947 c 8 § 3; Rem. Supp. 1947 § 2721-3.]

Effective date—1982 c 186: See note following RCW 62A.9-203.

Effective date—1981 c 41: See RCW 62A.11-101.

62A.9-403 What constitutes filing; duration of filing; effect of lapsed filing; duties of filing officer. (1) Presentation for filing of a financing statement and tender of the filing fee or acceptance of the statement by the filing officer constitutes filing under this Article.

(2) Except as provided in subsection (6) a filed financing statement is effective for a period of five years from the date of filing. The effectiveness of a filed financing statement lapses on the expiration of the five year period unless a continuation statement is filed prior to the lapse. If a security interest perfected by filing exists at the time insolvency proceedings are commenced by or against the debtor, the security interest remains perfected until termination of the insolvency proceedings and thereafter for a period of sixty days or until expiration of the five year period, whichever occurs later. Upon lapse the security interest becomes unperfected, unless it is perfected without filing. If the security interest becomes unperfected upon lapse, it is deemed to have been unperfected as against a person who became a purchaser or lien creditor before lapse.

(3) A continuation statement may be filed by the secured party within six months prior to the expiration of the five year period specified in subsection (2). Any such continuation statement must be signed by the secured party, identify the original statement by file number and state that the original statement is still effective. A continuation statement signed by a person other than the secured party of record must be accompanied by a separate written statement of assignment signed by the secured party of record and complying with subsection (2) of RCW 62A.9-405, including payment of the required fee. Upon timely filing of the continuation statement, the effectiveness of the original statement is continued for five years after the last date to which the filing was effective whereupon it lapses in the same manner as provided in subsection (2) unless another continuation statement is filed prior to such lapse. Succeeding continuation statements may be filed in the same manner to continue the effectiveness of the original statement. The filing officer may remove the original of any statement from the files and destroy it at any time if he has substituted a copy by microfilm or other photographic record. The filing officer may destroy any original, microfilm, or photographic record of any lapsed statement not earlier than one year after the lapse. The filing officer shall so arrange matters by physical annexation of financing statements to continuation statements or other related filings, or by other means, that if he physically destroys the original of the financing statements, a microfilm or other photographic copy of those statements which have been continued by a continuation statement or which are still effective under subsection (6) shall be retained.

(4) Except as provided in subsection (7) a filing officer shall mark each statement with a file number and with the date and hour of filing and shall hold the statement or a microfilm or other photographic copy thereof for public inspection. The original statement may be destroyed at any time after a microfilm or other photographic copy is made of the original statement. This

microfilm or other photographic copy shall thereafter be treated as if it were the original filing for all purposes. In addition the filing officer shall index the statements according to the name of the debtor and shall note in the index the file number and the address of the debtor given in the statement.

(5) The secured party may at his option show a trade name for any person.

(6) If the debtor is a transmitting utility (subsection (5) of RCW 62A.9-401) and a filed financing statement so states, it is effective until a termination statement is filed. A real estate mortgage which is effective as a fixture filing under subsection (6) of RCW 62A.9-402 remains effective as a fixture filing until the mortgage is released or satisfied of record or its effectiveness otherwise terminates as to the real estate.

(7) When a financing statement covers timber to be cut or covers minerals or the like (including oil and gas) or accounts subject to subsection (5) of RCW 62A.9-103, or is filed as a fixture filing, it shall be filed for record and the filing officer shall index it under the names of the debtor and any owner of record shown on the financing statement in the same fashion as if they were the mortgagors in a mortgage of the real estate described, and, to the extent that the law of this state provides for indexing of mortgages under the name of the mortgagee, under the name of the secured party as if he were the mortgagee thereunder, or where indexing is by description in the same fashion as if the financing statement were a mortgage of the real estate described. [1987 c 189 § 2; 1982 c 186 § 6; 1981 c 41 § 27; 1979 c 158 § 212; 1977 ex.s. c 117 § 8; 1967 c 114 § 5; 1965 ex.s. c 157 § 9-403. Cf. former RCW sections: (i) RCW 61.04.030; 1959 c 263 § 11; 1953 c 214 § 3; 1943 c 284 § 2; 1899 c 98 § 2; Rem. Supp. 1943 § 3781. (ii) RCW 61.04.040; 1943 c 76 § 1; 1899 c 98 § 3; Rem. Supp. 1943 § 3782. (iii) RCW 61.04.050; 1899 c 98 § 4; RRS § 3783. (iv) RCW 61.20.130; 1943 c 71 § 13; Rem. Supp. 1943 § 11548-42. (v) RCW 63.12.020; 1933 c 129 § 2; 1903 c 6 § 2; 1893 c 106 § 2; RRS § 3791. (vi) RCW 63.16.040 through 63.16.060; 1947 c 8 §§ 4 through 6; Rem. Supp. 1947 §§ 2721-4 through 2721-6.]

Effective date—1982 c 186: See note following RCW 62A.9-203.

Effective date—1981 c 41: See RCW 62A.11-101.

Severability—Effective date—1977 ex.s. c 117: See notes following RCW 43.07.150.

Emergency—Effective date—1967 c 114: See note following RCW 62A.4-406.

62A.9-404 Termination statement. (1) Whenever there is no outstanding secured obligation and no commitment to make advances, incur obligations or otherwise give value, the secured party must on written demand by the debtor send the debtor, for each filing officer with whom the financing statement was filed, a termination statement to the effect that he no longer claims a security interest under the financing statement, which shall be identified by file number. A termination statement signed by a person other than the secured party of record must be accompanied by a separate

written statement of assignment signed by the secured party of record complying with subsection (2) of RCW 62A.9-405, including payment of the required fee. If the affected secured party fails to file such a termination statement as required by this subsection, or to send such a termination statement within ten days after proper demand therefor he shall be liable to the debtor for one hundred dollars, and in addition for any loss caused to the debtor by such failure.

(2) On presentation to the filing officer of such a termination statement he must note it in the index. If he has received the termination statement in duplicate, he shall return one copy of the termination statement to the secured party stamped to show the time of receipt thereof. If the filing officer has substituted a copy by microfilm or other photographic record of the financing statement, and of any related continuation statement, statement of assignment and statement of release, he may destroy the originals at any time, and shall retain the substituted microfilm or other photographic record for one year after receipt of the termination statement.

(3) There shall be no fee for filing and indexing a termination statement including sending or delivering the financing statement. [1982 c 186 § 7; 1981 c 41 § 28; 1979 c 158 § 213; 1977 ex.s. c 117 § 9; 1967 c 114 § 6; 1965 ex.s. c 157 § 9-404. Cf. former RCW sections: (i) RCW 61.16.040; 1959 c 263 § 12; 1953 c 214 § 4; 1943 c 284 § 4; 1937 c 133 § 1; 1899 c 98 § 8; Rem. Supp. 1943 § 3787. (ii) RCW 61.16.050; 1937 c 133 § 2 (adding to 1899 c 98 a new section, § 9); RRS § 3787-1. (iii) RCW 61.16.070; 1937 c 133 § 2 (adding to 1899 c 98 a new section, § 11); RRS § 3787-3. (iv) RCW 63.16.070; 1947 c 8 § 7; Rem. Supp. 1947 § 2721-7.]

Effective date—1982 c 186: See note following RCW 62A.9-203.

Effective date—1981 c 41: See RCW 62A.11-101.

Severability—Effective date—1977 ex.s. c 117: See notes following RCW 43.07.150.

Emergency—Effective date—1967 c 114: See note following RCW 62A.4-406.

62A.9-405 Assignment of security interest; duties of filing officer. (1) A financing statement may disclose an assignment of a security interest in the collateral described in the financing statement by indication in the financing statement of the name and address of the assignee or by an assignment itself or a copy thereof on the face or back of the statement. On presentation to the filing officer of such a financing statement, the filing officer shall mark, hold, and process the same as provided in RCW 62A.9-403(4).

(2) A secured party may assign of record all or a part of his rights under a financing statement by the filing in the place where the original financing statement was filed of a separate written statement of assignment signed by the secured party of record and setting forth the name of the secured party of record and the debtor, the file number and the date of filing of the financing statement and the name and address of the assignee and containing a description of the collateral assigned. A

copy of the assignment is sufficient as a separate statement if it complies with the preceding sentence. On presentation to the filing officer of such a separate statement, the filing officer shall mark, hold, and process the statement the same as provided in RCW 62A.9-403(4). He shall note the assignment on the index of the financing statement or in the case of a fixture filing, or a filing covering timber to be cut, or covering minerals or the like (including oil and gas) or accounts subject to subsection (5) of RCW 62A.9-103, he shall index the assignment under the name of the assignor as grantor and, to the extent that the law of this state provides for indexing the assignment of a mortgage under the name of the assignee, he shall index the assignment of the financing statement under the name of the assignee. Notwithstanding the provisions of this subsection, an assignment of record of a security interest in a fixture contained in a mortgage effective as a fixture filing (subsection (6) of RCW 62A.9-402) may be made only by an assignment of the mortgage in the manner provided by the law of this state other than this Title.

(3) After the disclosure or filing of an assignment under this section, the assignee is the secured party of record. [1987 c 189 § 3; 1982 c 186 § 8; 1981 c 41 § 29; 1979 c 158 § 214; 1977 ex.s. c 117 § 10; 1967 c 114 § 7; 1965 ex.s. c 157 § 9-405. Cf. former RCW sections: (i) RCW 61.16.040; 1959 c 263 § 12; 1953 c 214 § 4; 1943 c 284 § 4; 1937 c 133 § 1; 1899 c 98 § 8; Rem. Supp. 1943 § 3787. (ii) RCW 61.16.050; 1937 c 133 § 2 (adding to 1899 c 98 a new section, § 9); RRS § 3787-1.]

Effective date—1982 c 186: See note following RCW 62A.9-203.

Effective date—1981 c 41: See RCW 62A.11-101.

Severability—Effective date—1977 ex.s. c 117: See notes following RCW 43.07.150.

Emergency—Effective date—1967 c 114: See note following RCW 62A.4-406.

62A.9-406 Release of collateral; duties of filing officer. A secured party of record may by his signed statement release all or a part of any collateral described in a filed financing statement. The statement of release is sufficient if it contains a description of the collateral being released, the name and address of the debtor, the name and address of the secured party, and the file number of the financing statement. A statement of release signed by a person other than the secured party of record must be accompanied by a separate written statement of assignment signed by the secured party of record and complying with subsection (2) of RCW 62A.9-405, including payment of the required fee. Upon presentation of such a statement of release, the filing officer shall mark, hold, and process the statement the same as provided in RCW 62A.9-403(4). [1987 c 189 § 4; 1982 c 186 § 9; 1981 c 41 § 30; 1979 c 158 § 215; 1977 ex.s. c 117 § 11; 1967 c 114 § 9; 1965 ex.s. c 157 § 9-406. Cf. former RCW sections: (i) RCW 61.04.010; 1929 c 156 § 1; 1899 c 98 § 1; RRS § 3779; cf. 1881 § 1986; 1879 p 104 § 1; 1877 p 286 § 1; 1875 p 43 § 1. (ii) RCW 61.16.040; 1959 c 263 § 12; 1953 c 214 § 4; 1943 c 284 § 4; 1937 c 133 § 1; 1899 c 98 § 8; Rem. Supp. 1943 § 3787.]

Effective date—1982 c 186: See note following RCW 62A.9-203.

Effective date—1981 c 41: See RCW 62A.11-101.

Severability—Effective date—1977 ex.s. c 117: See notes following RCW 43.07.150.

Emergency—Effective date—1967 c 114: See note following RCW 62A.4-406.

62A.9-407 Information from filing officer. (1) If the person filing any financing statement, termination statement, statement of assignment, or statement of release, furnishes the filing officer a copy thereof, the filing officer shall upon request note upon the copy the file number and date and hour of the filing of the original and deliver or send the copy to such person.

(2) Upon request of any person following payment of the required fees, the department of licensing shall issue its certificate showing whether there is on file with the department of licensing on the date and hour stated therein, any presently effective financing statement naming a particular debtor and any statement of assignment thereof and if there is, giving the date and hour of filing of each such statement and the names and addresses of each secured party therein. Upon request and following payment of the required fees, the department of licensing shall issue its certificate and shall furnish a copy of any filed financing statements or statements of assignment. [1987 c 189 § 5; 1982 c 186 § 10; 1981 c 41 § 31; 1967 c 114 § 10; 1965 ex.s. c 157 § 9-407.]

Effective date—1982 c 186: See note following RCW 62A.9-203.

Effective date—1981 c 41: See RCW 62A.11-101.

Emergency—Effective date—1967 c 114: See note following RCW 62A.4-406.

Duty of secretary of state to furnish copies of filed, deposited or recorded instruments: RCW 43.07.030.

62A.9-408 Financing statements covering consigned or leased goods. A consignor or lessor of goods may file a financing statement using the terms specified in RCW 62A.9-402 or the terms "consignor," "consignee," "lessor," "lessee" or the like. The provisions of this Part shall apply as appropriate to such a financing statement but its filing shall not of itself be a factor in determining whether or not the consignment or lease is intended as security (RCW 62A.1-201(37)). However, if it is determined for other reasons that the consignment or lease is so intended, a security interest of the consignor or lessor which attaches to the consigned or leased goods is perfected by such filing. [1981 c 41 § 32.]

Recodification—1981 c 41: "Section 11, chapter 114, Laws of 1967 which was codified pursuant to legislative direction as RCW 62A.9-408 shall be recodified as RCW 62A.9-420.

It is the intent of the legislature by recodifying this section to preserve the uniformity of the Uniform Commercial Code." [1981 c 41 § 33.]

Effective date—1981 c 41: See RCW 62A.11-101.

62A.9-409 Standard filing forms, fees, and uniform procedures; acceptance for filing of financial statements on and after June 12, 1967; laws governing; fees. In relation to Article 62A.9 RCW:

(1) The department of licensing may by rule prescribe standard filing forms, fees, and uniform procedures for

filing with, and obtaining information from, filing officers.

(2) Unless a filing officer has filed with the secretary of state on or before June 1, 1967, his certificate that financing statements, as defined in RCW 62A.9-402, will not be accepted by him for filing on and after June 12, 1967, such filing officer shall accept such financing statements for filing on and after June 12, 1967. Financing statements so filed shall be received, marked, indexed, and filed as provided in Title 62A RCW. The filing fees for filing such statements shall be as provided in Title 62A RCW. [1987 c 189 § 6; 1979 c 158 § 216; 1977 ex.s. c 117 § 12; 1967 c 114 § 12.]

Severability—Effective date—1977 ex.s. c 117: See notes following RCW 43.07.150.

62A.9-420 Presigning of security agreements and financing statements; prefiling of financing statements. (1) Although signed prior to midnight June 30, 1967, a security agreement and a financing statement has the same effect as if signed after said time.

(2) The provisions of this Title and of all other laws relating to financing statements and the filing of financing statements apply to financing statements filed prior to midnight June 30, 1967, notwithstanding that this Title had not yet taken effect. Notwithstanding the date and hour of filing marked on the statement, each financing statement so prefiling is deemed to have been filed on the date and hour when this Title became effective. [1967 c 114 § 11. Formerly RCW 62A.9-408.]

Reviser's note: Pursuant to legislative direction section 11, chapter 114, Laws of 1967 was recodified as RCW 62A.9-420. See note following RCW 62A.9-408.

Emergency—Effective date—1967 c 114: See note following RCW 62A.4-406.

PART 5 DEFAULT

62A.9-501 Default; procedure when security agreement covers both real and personal property. (1) When a debtor is in default under a security agreement, a secured party has the rights and remedies provided in this Part and except as limited by subsection (3) those provided in the security agreement. He may reduce his claim to judgment, foreclose or otherwise enforce the security interest by any available judicial procedure. If the collateral is documents the secured party may proceed either as to the documents or as to the goods covered thereby. A secured party in possession has the rights, remedies and duties provided in RCW 62A.9-207. The rights and remedies referred to in this subsection are cumulative.

Notwithstanding any other provision of this Code, in the case of a purchase money security interest in consumer goods taken or retained by the seller of such collateral to secure all or part of its price, the debtor shall not be liable for any deficiency after the secured party has disposed of such collateral under RCW 62A.9-504 or has retained such collateral in satisfaction of the debt under subsection (2) of RCW 62A.9-505.

(2) After default, the debtor has the rights and remedies provided in this Part, those provided in the security agreement and those provided in RCW 62A.9-207.

(3) To the extent that they give rights to the debtor and impose duties on the secured party, the rules stated in the subsections referred to below may not be waived or varied except as provided with respect to compulsory disposition of collateral (subsection (3) of RCW 62A.9-504 and RCW 62A.9-505) and with respect to redemption of collateral (RCW 62A.9-506) but the parties may by agreement determine the standards by which the fulfillment of these rights and duties is to be measured if such standards are not manifestly unreasonable:

(a) subsection (2) of RCW 62A.9-502 and subsection (2) of RCW 62A.9-504 insofar as they require accounting for surplus proceeds of collateral;

(b) subsection (3) of RCW 62A.9-504 and subsection (1) of RCW 62A.9-505 which deal with disposition of collateral;

(c) subsection (2) of RCW 62A.9-505 which deals with acceptance of collateral as discharge of obligation;

(d) RCW 62A.9-506 which deals with redemption of collateral; and

(e) subsection (1) of RCW 62A.9-507 which deals with the secured party's liability for failure to comply with this Part.

(4) If the security agreement covers both real and personal property, the secured party may proceed under this Part as to the personal property or he may proceed as to both the real and the personal property in accordance with his rights and remedies in respect of the real property in which case the provisions of this Part do not apply.

(5) When a secured party has reduced his claim to judgment the lien of any levy which may be made upon his collateral by virtue of any execution based upon the judgment shall relate back to the date of the perfection of the security interest in such collateral. A judicial sale, pursuant to such execution, is a foreclosure of the security interest by judicial procedure within the meaning of this section, and the secured party may purchase at the sale and thereafter hold the collateral free of any other requirements of this Article. [1981 c 41 § 34; 1965 ex.s. c 157 § 9-501. Cf. former RCW sections: (i) RCW 61.08.010-61.08.090, 61.08.120. (ii) RCW 61.12.160; Code 1881 §§ 618, 619; 1869 p 147 § 572; RRS §§ 1113 and 1114; formerly RCW 61.08.100 and 61.08.110. (iii) RCW 61.20.060; 1943 c 71 § 6; Rem. Supp. 1943 § 11548-35.]

Effective date—1981 c 41: See RCW 62A.11-101.

62A.9-502 Collection rights of secured party. (1) When so agreed and in any event on default the secured party is entitled to notify an account debtor or the obligor on an instrument to make payment to him whether or not the assignor was theretofore making collections on the collateral, and also to take control of any proceeds to which he is entitled under RCW 62A.9-306.

(2) A secured party who by agreement is entitled to charge back uncollected collateral or otherwise to full or limited recourse against the debtor and who undertakes

to collect from the account debtors or obligors must proceed in a commercially reasonable manner and may deduct his reasonable expenses of realization from the collections. If the security agreement secures an indebtedness, the secured party must account to the debtor for any surplus, and unless otherwise agreed, the debtor is liable for any deficiency. But, if the underlying transaction was a sale of accounts or chattel paper, the debtor is entitled to any surplus or is liable for any deficiency only if the security agreement so provides. [1981 c 41 § 35; 1965 ex.s. c 157 § 9-502.]

Effective date—1981 c 41: See RCW 62A.11-101.

62A.9-503 Secured party's right to take possession after default. Unless otherwise agreed a secured party has on default the right to take possession of the collateral. In taking possession a secured party may proceed without judicial process if this can be done without breach of the peace or may proceed by action. If the security agreement so provides the secured party may require the debtor to assemble the collateral and make it available to the secured party at a place to be designated by the secured party which is reasonably convenient to both parties. Without removal a secured party may render equipment unusable, and may dispose of collateral on the debtor's premises under RCW 62A.9-504. [1965 ex.s. c 157 § 9-503. Cf. former RCW sections: (i) RCW 61.08.090; Code 1881 § 1989; 1879 p 105 § 4; RRS § 1112. (ii) RCW 61.20.060; 1943 c 71 § 6; Rem. Supp. 1943 § 11548-35.]

62A.9-504 Secured party's right to dispose of collateral after default; effect of disposition. (1) A secured party after default may sell, lease or otherwise dispose of any or all of the collateral in its then condition or following any commercially reasonable preparation or processing. Any sale of goods is subject to the Article on Sales (Article 2). The proceeds of disposition shall be applied in the order following to

(a) the reasonable expenses of retaking, holding, preparing for sale or lease, selling, leasing and the like and, to the extent provided for in the agreement and not prohibited by law, the reasonable attorneys' fees and legal expenses incurred by the secured party;

(b) the satisfaction of indebtedness secured by the security interest under which the disposition is made;

(c) the satisfaction of indebtedness secured by any subordinate security interest in the collateral if written notification of demand therefor is received before distribution of the proceeds is completed. If requested by the secured party, the holder of a subordinate security interest must seasonably furnish reasonable proof of his interest, and unless he does so, the secured party need not comply with his demand.

(2) If the security interest secures an indebtedness, the secured party must account to the debtor for any surplus, and, unless otherwise agreed, the debtor is liable for any deficiency. But if the underlying transaction was a sale of accounts or chattel paper, the debtor is entitled to any surplus or is liable for any deficiency only if the security agreement so provides.

(3) Disposition of the collateral may be by public or private proceedings and may be made by way of one or more contracts. Sale or other disposition may be as a unit or in parcels and at any time and place and on any terms but every aspect of the disposition including the method, manner, time, place and terms must be commercially reasonable. Unless collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, reasonable notification of the time and place of any public sale or reasonable notification of the time after which any private sale or other intended disposition is to be made shall be sent by the secured party to the debtor, if he has not signed after default a statement renouncing or modifying his right to notification of sale and except in the case of consumer goods to any other person who has a security interest in the collateral and who has duly filed a financing statement indexed in the name of the debtor in this state. The secured party may buy at any public sale and if the collateral is of a type customarily sold in a recognized market or is of a type which is the subject of widely distributed standard price quotations he may buy at private sale.

(4) When collateral is disposed of by a secured party after default, the disposition transfers to a purchaser for value all of the debtor's rights therein, discharges the security interest under which it is made and any security interest or lien subordinate thereto. The purchaser takes free of all such rights and interests even though the secured party fails to comply with the requirements of this Part or of any judicial proceedings

(a) in the case of a public sale, if the purchaser has no knowledge of any defects in the sale and if he does not buy in collusion with the secured party, other bidders or the person conducting the sale; or

(b) in any other case, if the purchaser acts in good faith.

(5) A person who is liable to a secured party under a guaranty, indorsement, repurchase agreement or the like and who receives a transfer of collateral from the secured party or is subrogated to his rights has thereafter the rights and duties of the secured party. Such a transfer of collateral is not a sale or disposition of the collateral under this Article. [1981 c 41 § 36; 1965 ex.s. c 157 § 9-504. Cf. former RCW sections: (i) RCW 61.08-.010-61.08.090, 61.08.120. (ii) RCW 61.12.160; Code 1881 §§ 618, 619; 1869 p 147 § 572; RRS §§ 1113 and 1114; formerly RCW 61.08.100 and 61.08.110. (iii) RCW 61.20.060; 1943 c 71 § 6; Rem. Supp. 1943 § 11548-35.]

Effective date—1981 c 41: See RCW 62A.11-101.

Contractual attorneys' fees to be set by court: RCW 4.84.020.

Foreclosure: RCW 61.12.070, 61.12.140.

Sales under execution: Chapter 6.21 RCW.

62A.9-505 Compulsory disposition of collateral; acceptance of the collateral as discharge of obligation. (1) If the debtor has paid sixty percent of the cash price in the case of a purchase money security interest in consumer goods or sixty percent of the loan in the case of another security interest in consumer goods, and has not

signed after default a statement renouncing or modifying his rights under this Part a secured party who has taken possession of collateral must dispose of it under RCW 62A.9-504 and if he fails to do so within ninety days after he takes possession the debtor at his option may recover in conversion or under RCW 62A.9-507(1) on secured party's liability.

(2) In any other case involving consumer goods or any other collateral a secured party in possession may, after default, propose to retain the collateral in satisfaction of the obligation. Written notice of such proposal shall be sent to the debtor if he has not signed after default a statement renouncing or modifying his rights under this subsection and except in the case of consumer goods to any other person who has a security interest in the collateral and who has duly filed a financing statement indexed in the name of the debtor in this state. If the secured party receives objection in writing from a person entitled to receive notification within twenty-one days after the notice was sent, the secured party must dispose of the collateral under RCW 62A.9-504. In the absence of such written objection the secured party may retain the collateral in satisfaction of the debtor's obligation. [1981 c 41 § 37; 1965 ex.s. c 157 § 9-505. Cf. former RCW 61.20.060; 1943 c 71 § 6; Rem. Supp. 1943 § 11548-35.]

Effective date—1981 c 41: See RCW 62A.11-101.

62A.9-506 Debtor's right to redeem collateral. At any time before the secured party has disposed of collateral or entered into a contract for its disposition under RCW 62A.9-504 or before the obligation has been discharged under RCW 62A.9-505(2) the debtor or any other secured party may unless otherwise agreed in writing after default redeem the collateral by tendering fulfillment of all obligations secured by the collateral as well as the expenses reasonably incurred by the secured party in retaking, holding and preparing the collateral for disposition, in arranging for the sale, and to the extent provided in the agreement and not prohibited by law, his reasonable attorneys' fees and legal expenses. [1965 ex.s. c 157 § 9-506. Cf. former RCW sections: (i) RCW 61.12.160; Code 1881 §§ 618, 619; 1869 p 147 § 572; RRS §§ 1113 and 1114; formerly RCW 61.08.100 and 61.08.110. (ii) RCW 61.20.060; 1943 c 71 § 6; Rem. Supp. 1943 § 11548-35.]

Judgments—**Order of sale**—**Satisfaction**—**Upset price:** RCW 61.12.060.

62A.9-507 Secured party's liability for failure to comply with this part. (1) If it is established that the secured party is not proceeding in accordance with the provisions of this Part disposition may be ordered or restrained on appropriate terms and conditions. If the disposition has occurred the debtor or any person entitled to notification or whose security interest has been made known to the secured party prior to the disposition has a right to recover from the secured party any loss caused by a failure to comply with the provisions of this Part. If the collateral is consumer goods, the debtor has a right to recover in any event an amount not less than the

credit service charge plus ten percent of the principal amount of the debt or the time price differential plus ten percent of the cash price.

(2) The fact that a better price could have been obtained by a sale at a different time or in a different method from that selected by the secured party is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. If the secured party either sells the collateral in the usual manner in any recognized market therefor or if he sells at the price current in such market at the time of his sale or if he has otherwise sold in conformity with reasonable commercial practices among dealers in the type of property sold he has sold in a commercially reasonable manner. The principles stated in the two preceding sentences with respect to sales also apply as may be appropriate to other types of disposition. A disposition which has been approved in any judicial proceeding or by any bona fide creditors' committee or representative of creditors shall conclusively be deemed to be commercially reasonable, but this sentence does not indicate that any such approval must be obtained in any case nor does it indicate that any disposition not so approved is not commercially reasonable. [1965 ex.s. c 157 § 9-507. Cf. former RCW sections: (i) RCW 61.08.070; Code 1881 § 1997; 1879 p 106 § 12; RRS § 1110; prior: 1875 p 47 § 28. (ii) RCW 61.12.160; Code 1881 §§ 618, 619; 1869 p 147 § 572; RRS §§ 1113 and 1114; formerly RCW 61.08.100 and 61.08.110.]

Judgments—**Order of sale**—**Satisfaction**—**Upset price:** RCW 61.12.060.

ARTICLE 10

EFFECTIVE DATE AND REPEALER

Sections

- 62A.10-101 Effective date—1965 ex.s. c 157.
- 62A.10-102 Specific repealer; provision for transition.
- 62A.10-103 General repealer.
- 62A.10-104 Laws not repealed.

62A.10-101 Effective date—1965 ex.s. c 157. This Title shall become effective at midnight on June 30, 1967. It applies to transactions entered into and events occurring after that date. [1965 ex.s. c 157 § 10-101.]

62A.10-102 Specific repealer; provision for transition. (1) The following acts and all other acts and parts of acts inconsistent herewith are hereby repealed:

- (a) (i) RCW 22.04.010 through 22.04.610;
- (ii) RCW 23.80.010 through 23.80.250;
- (iii) RCW 30.16.020, 30.16.030, 30.16.040 and 30.16.050;
- (iv) RCW 30.40.030, 30.40.040 and 30.40.050;
- (v) RCW 30.52.010 through 30.52.160;
- (vi) RCW 61.04.010 through 61.04.090;
- (vii) RCW 61.08.010 through 61.08.120;
- (viii) RCW 61.12.160;
- (ix) RCW 61.16.040, 61.16.050 and 61.16.070;
- (x) RCW 61.20.010 through 61.20.190;

(xi) RCW 62.01.001 through 62.01.196 and 62.98.010 through 62.98.050;

(xii) RCW 63.04.010 through 63.04.780;

(xiii) RCW 63.08.010 through 63.08.060;

(xiv) RCW 63.12.010 through 63.12.030;

(xv) RCW 63.16.010 through 63.16.900;

(xvi) RCW 65.08.010, 65.08.020 and 65.08.040; and

(xvii) RCW 81.32.010 through 81.32.561: *Provided*, That such repeal shall not affect the validity of sections 81.29.010 through 81.29.050, chapter 14, Laws of 1961 (RCW 81.29.010 through 81.29.050).

(b) (i) Chapter 99, Laws of 1913;

(ii) Chapter 100, Laws of 1939;

(iii) Section 4, chapter 106, Laws of 1959 and sections 30.16.020, 30.16.030, 30.16.040 and 30.16.050, chapter 33, Laws of 1955;

(iv) Sections 30.40.030, 30.40.040 and 30.40.050, chapter 33, Laws of 1955;

(v) Section 3, chapter 194, Laws of 1963 and sections 30.52.010 through 30.52.160, chapter 33, Laws of 1955;

(vi) Section 11, chapter 263, Laws of 1959, section 3, chapter 214, Laws of 1953, sections 1, 2 and 3, chapter 284, Laws of 1943, section 1, chapter 76, Laws of 1943, section 1, chapter 121, Laws of 1939, section 1, chapter 156, Laws of 1929, sections 1, 2, 3, 4, 5, 6 and 7, chapter 98, Laws of 1899, sections 1986, 1987 and 1988, Code of 1881, section 1, page 104, Laws of 1879, section 1, page 286, Laws of 1877 and section 1, page 43, Laws of 1875;

(vii) Sections 1989, 1990, 1991, 1992, 1993, 1994, 1995, 1996, 1997 and 1998, Code of 1881, sections 4, 5, 6, 7, 8, 9, 10, 11 and 12, pages 105 and 106, Laws of 1879 and sections 18, 19, 20, 22, 23, 24 and 28, page 47, Laws of 1875;

(viii) Sections 618 and 619, Code of 1881 and section 572, page 147, Laws of 1869;

(ix) Section 12, chapter 263, Laws of 1959, section 4, chapter 214, Laws of 1953, section 4, chapter 284, Laws of 1943, sections 1 and 2, chapter 133, Laws of 1937 and sections 8, 9 and 11, chapter 98, Laws of 1899;

(x) Sections 1 and 2, chapter 249, Laws of 1957 and chapter 71, Laws of 1943;

(xi) Sections 62.01.001 through 62.01.196 and 62.98-.010 through 62.98.050, chapter 35, Laws of 1955;

(xii) Chapter 142, Laws of 1925 extraordinary session;

(xiii) Sections 1, 2, 3 and 4, chapter 247, Laws of 1953, section 1, chapter 98, Laws of 1943, sections 1, 2, 3 and 4, chapter 122, Laws of 1939 and sections 1, 2, 3 and 4, chapter 135, Laws of 1925 extraordinary session;

(xiv) Section 22, chapter 236, Laws of 1963, section 1, chapter 159, Laws of 1961, sections 1 and 2, chapter 196, Laws of 1937, sections 1 and 2, chapter 129, Laws of 1933, section 1, chapter 120, Laws of 1925 extraordinary session, section 1, chapter 95, Laws of 1915, sections 1 and 2, chapter 6, Laws of 1903 and sections 1 and 2, chapter 106, Laws of 1893;

(xv) Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 and 12, chapter 8, Laws of 1947;

(xvi) Sections 1 and 2, chapter 72, Laws of 1899, section 2327, Code of 1881, section 4, page 413, Laws of 1863 and section 4, page 404, Laws of 1854; and

(xvii) Chapter 159, Laws of 1915 and sections 81.32-.011 through 81.32.561, chapter 14, Laws of 1961.

(2) Transactions validly entered into before the effective date specified in RCW 62A.10-101 and the rights, duties and interests flowing from them remain valid thereafter and may be terminated, completed, consummated or enforced as required or permitted by any statute or other law amended or repealed by this Title as though such repeal or amendment had not occurred. [1965 ex.s. c 157 § 10-102.]

62A.10-103 General repealer. Except as provided in the following section, all acts and parts of acts inconsistent with this Title are hereby repealed. [1965 ex.s. c 157 § 10-103.]

62A.10-104 Laws not repealed. (1) The Article on Documents of Title (Article 7) does not repeal or modify any laws prescribing the form or contents of documents of title or the services or facilities to be afforded by bailees, or otherwise regulating bailees' businesses in respects not specifically dealt with herein; but the fact that such laws are violated does not affect the status of a document of title which otherwise complies with the definition of a document of title (RCW 62A.1-201).

(2) This Title does not repeal chapter 150, Laws of 1961 (chapter 21.17 RCW), cited as the Uniform Act for the Simplification of Fiduciary Security Transfers, and if in any respect there is any inconsistency between that Act and the Article of this Title on investment securities (Article 8) the provisions of the former Act shall control. [1965 ex.s. c 157 § 10-104.]

ARTICLE 11 EFFECTIVE DATE AND TRANSITION PROVISIONS

Sections

62A.11-101 Effective date—1981 c 41.

62A.11-102 Preservation of old transition provisions.

62A.11-103 Transition to the Uniform Commercial Code as amended by chapter 41, Laws of 1981; general rule.

62A.11-104 Transition provision on change of requirement of filing.

62A.11-105 Transition provision on change of place of filing.

62A.11-106 Required refilings.

62A.11-107 Transition provisions as to priorities.

62A.11-108 Presumption that rule of law continues unchanged.

62A.11-109 Effective financing statement; certificate by county auditor.

Reviser's note: Throughout Article 11, "chapter 41, Laws of 1981" is a translation of the term "this act."

62A.11-101 Effective date—1981 c 41. This act shall take effect at midnight on June 30, 1982. [1981 c 41 § 47.]

62A.11-102 Preservation of old transition provisions. The provisions of Article 10 shall continue to apply to the Uniform Commercial Code as amended by chapter 41, Laws of 1981 and for this purpose the Uniform

Commercial Code before midnight June 30, 1982 and the Uniform Commercial Code as amended by chapter 41, Laws of 1981 shall be considered one continuous statute. [1981 c 41 § 38.]

Effective date—1981 c 41: See RCW 62A.11-101.

62A.11-103 Transition to the Uniform Commercial Code as amended by chapter 41, Laws of 1981; general rule. Transactions validly entered into after June 30, 1967 and before midnight June 30, 1982, and which were subject to the provisions of the Uniform Commercial Code as it existed before midnight June 30, 1982 and which would be subject to the Uniform Commercial Code as amended if they had been entered into after midnight June 30, 1982 and the rights, duties and interests flowing from such transactions remain valid after midnight June 30, 1982 and may be terminated, completed, consummated or enforced as required or permitted by the Uniform Commercial Code as amended by chapter 41, Laws of 1981. Security interests arising out of such transactions which are perfected by midnight June 30, 1982 shall remain perfected until they lapse as provided in the Uniform Commercial Code as amended by chapter 41, Laws of 1981, and may be continued as permitted by the Uniform Commercial Code as amended by chapter 41, Laws of 1981, except as stated in RCW 62A.11-105. [1981 c 41 § 39.]

Effective date—1981 c 41: See RCW 62A.11-101.

62A.11-104 Transition provision on change of requirement of filing. A security interest for the perfection of which filing or the taking of possession was required under the Uniform Commercial Code as it existed before midnight June 30, 1982 and which attached prior to midnight June 30, 1982 but was not perfected shall be deemed perfected on midnight June 30, 1982 if the Uniform Commercial Code as amended by chapter 41, Laws of 1981 permits perfection without filing or authorizes filing in the office or offices where a prior ineffective filing was made. [1981 c 41 § 40.]

Effective date—1981 c 41: See RCW 62A.11-101.

62A.11-105 Transition provision on change of place of filing. (1) A financing statement or continuation statement filed prior to midnight June 30, 1982 which shall not have lapsed prior to midnight June 30, 1982, shall remain effective for the period provided in the Uniform Commercial Code as it existed before midnight June 30, 1982, but not less than five years after the filing.

(2) With respect to any collateral acquired by the debtor subsequent to midnight June 30, 1982, any effective financing statement or continuation statement described in this section shall apply only if the filing or filings are in the office or offices that would be appropriate to perfect the security interests in the new collateral under chapter 41, Laws of 1981.

(3) The effectiveness of any financing statement or continuation statement filed prior to midnight June 30, 1982 may be continued by a continuation statement as

permitted by the Uniform Commercial Code as amended by chapter 41, Laws of 1981, except that if the Uniform Commercial Code as amended by chapter 41, Laws of 1981 requires a filing in an office where there was no previous financing statement, a new financing statement conforming to RCW 62A.11-106 shall be filed in that office.

(4) If the record of a mortgage of real estate would have been effective as a fixture filing of goods described therein if the Uniform Commercial Code as amended by chapter 41, Laws of 1981 had been in effect on the date of recording the mortgage, the mortgage shall be deemed effective as a fixture filing as to such goods under subsection (6) of RCW 62A.9-402 as amended by chapter 41, Laws of 1981 on midnight June 30, 1982. [1981 c 41 § 41.]

Effective date—1981 c 41: See RCW 62A.11-101.

62A.11-106 Required refilings. (1) If a security interest is perfected or has priority on midnight June 30, 1982, as to all persons or as to certain persons without any filing or recording, and if the filing of a financing statement would be required for the perfection or priority of the security interest against those persons under the Uniform Commercial Code as amended by chapter 41, Laws of 1981, the perfection and priority rights of the security interest continue until three years after midnight June 30, 1982. The perfection will then lapse unless a financing statement is filed as provided in subsection (4) or unless the security interest is perfected otherwise than by filing.

(2) If a security interest is perfected when the Uniform Commercial Code as amended by chapter 41, Laws of 1981 takes effect under a law other than the Uniform Commercial Code which requires no further filing, refiling or recording to continue its perfection, perfection continues until and will lapse three years after the Uniform Commercial Code as amended by chapter 41, Laws of 1981 takes effect, unless a financing statement is filed as provided in subsection (4) or unless the security interest is perfected otherwise than by filing, or unless under subsection (3) of RCW 62A.9-302 the other law continues to govern filing.

(3) If a security interest is perfected by a filing, refiling or recording under a law repealed by chapter 41, Laws of 1981 which required further filing, refiling or recording to continue its perfection, perfection continues and will lapse on the date provided by the law so repealed for such further filing, refiling or recording unless a financing statement is filed as provided in subsection (4) or unless the security interest is perfected otherwise than by filing.

(4) A financing statement may be filed within six months before the perfection of a security interest would otherwise lapse. Any such financing statement may be signed by either the debtor or the secured party. It must identify the security agreement, statement or notice (however denominated in any statute or other law repealed or modified by chapter 41, Laws of 1981), state the office where and the date when the last filing, refiling or recording, if any, was made with respect thereto,

and the filing number, if any, or book and page, if any, of recording and further state that the security agreement, statement or notice, however denominated, in another filing office under the Uniform Commercial Code or under any statute or other law repealed or modified by chapter 41, Laws of 1981 is still effective. RCW 62A.9-401 and 62A.9-103 determine the proper place to file such a financing statement. Except as specified in this subsection, the provisions of RCW 62A.9-403(3) for continuation statements apply to such a financing statement. [1981 c 41 § 42.]

Effective date—1981 c 41: See RCW 62A.11-101.

62A.11-107 Transition provisions as to priorities.

Except as otherwise provided in this article, the Uniform Commercial Code as it existed before midnight June 30, 1982 shall apply to any questions of priority if the positions of the parties were fixed prior to midnight June 30, 1982. In other cases questions of priority shall be determined by the Uniform Commercial Code as amended by chapter 41, Laws of 1981. [1981 c 41 § 43.]

Effective date—1981 c 41: See RCW 62A.11-101.

62A.11-108 Presumption that rule of law continues unchanged. Unless a change in law has clearly been made, the provisions of the Uniform Commercial Code as amended by chapter 41, Laws of 1981 shall be deemed declaratory of the meaning of the Uniform Commercial Code as it existed before midnight June 30, 1982. [1981 c 41 § 44.]

Effective date—1981 c 41: See RCW 62A.11-101.

62A.11-109 Effective financing statement; certificate by county auditor. From and after midnight June 30, 1982, upon request of any person, the county auditor shall issue his certificate showing whether there is on file with the county auditor's office on the date and hour stated therein, any presently effective financing statement filed with the county auditor's office before midnight June 30, 1982, naming a particular debtor and any statement of assignment thereof and if there is, giving the date and hour of filing of each such statement and the names and addresses of each secured party therein. The uniform fee for such a certificate shall be four dollars. Upon request the county auditor shall issue his certificate and shall furnish a copy of any filed financing statements or statements of assignment for a uniform fee of ten dollars for each particular debtor's statements requested. [1981 c 41 § 45.]

Effective date—1981 c 41: See RCW 62A.11-101.

Title 63

PERSONAL PROPERTY

Chapters

- 63.10** Consumer leases.
- 63.14** Retail installment sales of goods and services.
- 63.18** Lease or rental of personal property—Disclaimer of warranty of merchantability or fitness.
- 63.21** Lost and found property.
- 63.24** Unclaimed property in hands of bailee.
- 63.26** Unclaimed property held by museum or historical society.
- 63.29** Uniform Unclaimed Property Act.
- 63.32** Unclaimed property in hands of city police.
- 63.35** Unclaimed property in hands of state patrol.
- 63.40** Unclaimed property in hands of sheriff.
- 63.42** Unclaimed inmate personal property.
- 63.44** Joint tenancies.
- 63.48** Escheat of postal savings system accounts.

Attachment: Chapter 6.25 RCW.

Chattel mortgages: Article 62A.9 RCW.

Community property: Chapter 26.16 RCW.

Corporate seals, effect of absence from instrument: RCW 64.04.105.

Corporate shares issued or transferred in joint tenancy form—Presumption—Transfer pursuant to direction of survivor: RCW 23B.07.240.

County property: Chapter 36.34 RCW.

Credit life insurance and credit accident and health insurance: Chapter 48.34 RCW.

Duration of trusts for employee benefits: Chapter 49.64 RCW.

Enforcement of judgments: Title 6 RCW.

Fox, mink, marten declared personalty: RCW 16.72.030.

Frauds and swindles—Encumbered, leased or rented personal property: RCW 9.45.060.

Intergovernmental disposition of personal property: Chapter 39.33 RCW.

Leases, satisfaction: Chapter 61.16 RCW.

Liens: Title 60 RCW.

Personal property sales, regulation of, generally: Titles 18 and 19 RCW.

Powers of appointment: Chapter 11.95 RCW.

Probate and trust law: Title 11 RCW.

Quieting title to personalty: RCW 7.28.310, 7.28.320.

Real property and conveyances: Title 64 RCW.

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Safe deposit companies: Chapter 22.28 RCW.

Separate property: Chapter 26.16 RCW.

State institutions, property of inmates, residents: RCW 72.23.230 through 72.23.250.

Taxation

estate: Title 83 RCW.

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The Washington Principal and Income Act: Chapter 11.104 RCW.

Timeshare regulation: Chapter 64.36 RCW.

Transfers in trust: RCW 19.36.020.

Uniform gifts to minors act: Chapter 11.93 RCW.

Chapter 63.10

CONSUMER LEASES

Sections

- 63.10.010 Legislative declaration.
- 63.10.020 Definitions.
- 63.10.030 Liability at expiration of lease—Residual value—Attorneys' fees—Lease terms.
- 63.10.040 Lease contracts—Disclosure requirements.
- 63.10.050 Violations—Unfair acts under consumer protection act.
- 63.10.060 Defense or action of usury—Limitations.
- 63.10.900 Severability—1983 c 158.

Installment sales contracts: Chapter 63.14 RCW.

63.10.010 Legislative declaration. The leasing of motor vehicles, furniture and fixtures, appliances, commercial equipment, and other personal property has become an important and widespread form of business transaction that is beneficial to the citizens and to the economy of the state. Users of personal property of all types and lessors throughout the state have relied upon the distinct nature of leasing as a modern means of transacting business that creates different relationships and legal consequences from those of lender and borrower in loan transactions and those of seller and buyer in installment sale transactions. The utility of lease transactions and the well-being of the state's economy and of the leasing industry require that leasing be a legally recognized and distinct form of transaction, creating legal relationships and having legal consequences different from loans or installment sales. [1983 c 158 § 1.]

63.10.020 Definitions. As used in this chapter, unless the context otherwise requires:

(1) The term "consumer lease" means a contract of lease or bailment for the use of personal property by a natural person for a period of time exceeding four months, and for a total contractual obligation not exceeding twenty-five thousand dollars, primarily for personal, family, or household purposes, whether or not the lessee has the option to purchase or otherwise become the owner of the property at the expiration of the lease, except that such term shall not include any lease which meets the definition of a retail installment contract under RCW 63.14.010. The inclusion in a lease of a provision whereby the lessee's or lessor's liability, at the end of the lease period or upon an earlier termination, is based on the value of the leased property at that time, shall not be deemed to make the transaction other than a consumer lease. The term "consumer lease" does not include a lease for agricultural, business, or commercial purposes, or to a government or governmental agency or instrumentality, or to an organization.

(2) The term "lessee" means a natural person who leases or is offered a consumer lease.

(3) The term "lessor" means a person who is regularly engaged in leasing, offering to lease, or arranging to lease under a consumer lease. [1983 c 158 § 2.]

63.10.030 Liability at expiration of lease—Residual value—Attorneys' fees—Lease terms. (1) Where the lessee's liability on expiration of a consumer lease is based on the estimated residual value of the property, such estimated residual value shall be a reasonable approximation of the anticipated actual fair market value of the property on lease expiration. There shall be a rebuttable presumption that the estimated residual value is unreasonable to the extent that the estimated residual value exceeds the actual residual value by more than three times the average payment allocable to a monthly period under the lease. In addition, where the lessee has such liability on expiration of a consumer lease there shall be a rebuttable presumption that the lessor's estimated residual value is not in good faith to the extent that the estimated residual value exceeds the actual residual value by more than three times the average payment allocable to a monthly period under the lease and such lessor shall not collect from the lessee the amount of such excess liability on expiration of a consumer lease unless the lessor brings a successful action with respect to such excess liability. In all actions, the lessor shall pay the lessee's reasonable attorneys' fees. The presumptions stated in this section shall not apply to the extent the excess of estimated over actual residual value is due to physical damage to the property beyond reasonable wear and use, or to excessive use, and the lease may set standards for such wear and use if such standards are not unreasonable. Nothing in this subsection shall preclude the right of a willing lessee to make any mutually agreeable final adjustment with respect to such excess residual liability, provided such an agreement is reached after termination of the lease.

(2) Penalties or other charges for delinquency, default, or early termination may be specified in the lease but only at an amount which is reasonable in the light of the anticipated or actual harm caused by the delinquency, default, or early termination, the difficulties of proof of loss, and the inconvenience or nonfeasibility of otherwise obtaining an adequate remedy.

(3) If a lease has a residual value provision at the termination of the lease, the lessee may obtain, at his expense, a professional appraisal of the leased property by an independent third party agreed to be both parties. Such appraisal shall be final and binding on the parties. [1983 c 158 § 3.]

63.10.040 Lease contracts—Disclosure requirements. (1) In any lease contract subject to this chapter, the following items, as applicable, shall be disclosed:

(a) A brief description of the leased property, sufficient to identify the property to the lessee and lessor.

(b) The total amount of any payment, such as a refundable security deposit paid by cash, check, or similar means, advance payment, capitalized cost reduction, or

any trade-in allowance, appropriately identified, to be paid by the lessee at consummation of the lease.

(c) The number, amount, and due dates or periods of payments scheduled under the lease and the total amount of the periodic payments.

(d) The total amount paid or payable by the lessee during the lease term for official fees, registration, certificate of title, license fees, or taxes.

(e) The total amount of all other charges, individually itemized, payable by the lessee to the lessor, which are not included in the periodic payments. This total includes the amount of any liabilities the lease imposes upon the lessee at the end of the term, but excludes the potential difference between the estimated and realized values required to be disclosed under (m) of this subsection.

(f) A brief identification of insurance in connection with the lease including (i) if provided or paid for by the lessor, the types and amounts of coverages and cost to the lessee, or (ii) if not provided or paid for by the lessor, the types and amounts of coverages required of the lessee.

(g) A statement identifying any express warranties or guarantees available to the lessee made by the lessor or manufacturer with respect to the leased property.

(h) An identification of the party responsible for maintaining or servicing the leased property together with a brief description of the responsibility, and a statement of reasonable standards for wear and use, if the lessor sets such standards.

(i) A description of any security interest, other than a security deposit disclosed under (b) of this subsection, held or to be retained by the lessor in connection with the lease and a clear identification of the property to which the security interest relates.

(j) The amount or method of determining the amount of any penalty or other charge for delinquency, default, or late payments.

(k) A statement of whether or not the lessee has the option to purchase the leased property and, if at the end of the lease term, at what price, and, if prior to the end of the lease term, at what time, and the price or method of determining the price.

(l) A statement of the conditions under which the lessee or lessor may terminate the lease prior to the end of the lease term and the amount or method of determining the amount of any penalty or other charge for early termination.

(m) A statement that the lessee shall be liable for the difference between the estimated value of the property and its realized value at early termination or the end of the lease term, if such liability exists.

(n) Where the lessee's liability at early termination or at the end of the lease term is based on the estimated value of the leased property, a statement that the lessee may obtain at the end of the lease term or at early termination, at the lessee's expense, a professional appraisal of the value which could be realized at sale of the leased property by an independent third party agreed to by the lessee and the lessor, which appraisal shall be final and binding on the parties.

(o) Where the lessee's liability at the end of the lease term is based upon the estimated value of the leased property:

(i) The value of the property at consummation of the lease, the itemized total lease obligation at the end of the lease term, and the difference between them.

(ii) That there is a rebuttable presumption that the estimated value of the leased property at the end of the lease term is unreasonable and not in good faith to the extent that it exceeds the realized value by more than three times the average payment allocable to a monthly period, and that the lessor cannot collect the amount of such excess liability unless the lessor brings a successful action in court in which the lessor pays the lessee's attorney's fees, and that this provision regarding the presumption and attorney's fees does not apply to the extent the excess of estimated value over realized value is due to unreasonable wear or use, or excessive use.

(iii) A statement that the requirements of (o)(ii) of this subsection do not preclude the right of a willing lessee to make any mutually agreeable final adjustment regarding such excess liability.

(2) Any consumer lease which complies with the disclosure requirements of Title I of the federal consumer protection act (90 Stat. 257, 15 U.S.C. Sec. 1667 et seq.), which is also known as the federal consumer leasing act, as of the date upon which the consumer lease is executed, shall be deemed to comply with the disclosure requirements of this chapter. [1983 c 158 § 4.]

63.10.050 Violations—Unfair acts under consumer protection act. A violation of this chapter is an unfair act or practice in the conduct of commerce for the purpose of the application of the consumer protection act, chapter 19.86 RCW. [1983 c 158 § 5.]

63.10.060 Defense or action of usury—Limitations. No person may plead the defense of usury or maintain any action thereon based upon a transaction heretofore entered into if such transaction:

(1) Constitutes a "consumer lease" as defined in RCW 63.10.020; or

(2) Would constitute such a consumer lease but for the fact that:

(i) The lessee was not a natural person;

(ii) The lease was not primarily for personal, family, or household purposes; or

(iii) The total contractual obligation exceeded twenty-five thousand dollars. [1983 c 158 § 8.]

63.10.900 Severability—1983 c 158. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1983 c 158 § 9.]

Chapter 63.14

RETAIL INSTALLMENT SALES OF GOODS AND SERVICES

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- 63.14.910 Saving—1963 c 236.
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63.14.010 Definitions. In this chapter, unless the context otherwise requires:

(1) "Goods" means all chattels personal when purchased primarily for personal, family, or household use and not for commercial or business use, but not including money or, except as provided in the next sentence, things in action. The term includes but is not limited to merchandise certificates or coupons, issued by a retail seller, to be used in their face amount in lieu of cash in exchange for goods or services sold by such a seller and goods which, at the time of sale or subsequently, are to be so affixed to real property as to become a part thereof, whether or not severable therefrom;

(2) "Lender credit card" means a card or device under a lender credit card agreement pursuant to which the issuer gives to a cardholder residing in this state the privilege of obtaining credit from the issuer or other persons in purchasing or leasing property or services, obtaining loans, or otherwise, and the issuer of which is not: (a) Principally engaged in the business of selling goods; or (b) a financial institution;

(3) "Lender credit card agreement" means an agreement entered into or performed in this state prescribing the terms of retail installment transactions pursuant to which the issuer may, with the buyer's consent, purchase or acquire one or more retail sellers' indebtedness of the buyer under a sales slip or memorandum evidencing the purchase, lease, loan, or otherwise to be paid in accordance with the agreement. The issuer of a lender credit card agreement shall not be principally engaged in the business of selling goods or be a financial institution;

(4) "Financial institution" means any bank or trust company, mutual savings bank, credit union, or savings and loan association organized pursuant to the laws of any one of the United States of America or the United States of America, or the laws of a foreign country if also qualified to conduct business in any one of the United States of America or pursuant to the laws of the United States of America;

(5) "Services" means work, labor, or services of any kind when purchased primarily for personal, family, or household use and not for commercial or business use whether or not furnished in connection with the delivery, installation, servicing, repair, or improvement of goods and includes repairs, alterations, or improvements upon or in connection with real property, but does not include services for which the price charged is required by law to

be determined or approved by or to be filed, subject to approval or disapproval, with the United States or any state, or any department, division, agency, officer, or official of either as in the case of transportation services;

(6) "Retail buyer" or "buyer" means a person who buys or agrees to buy goods or obtain services or agrees to have services rendered or furnished, from a retail seller;

(7) "Retail seller" or "seller" means a person engaged in the business of selling goods or services to retail buyers;

(8) "Retail installment transaction" means any transaction in which a retail buyer purchases goods or services from a retail seller pursuant to a retail installment contract, a retail charge agreement, or a lender credit card agreement, as defined in this section, which provides for a service charge, as defined in this section, and under which the buyer agrees to pay the unpaid balance in one or more installments or which provides for no service charge and under which the buyer agrees to pay the unpaid balance in more than four installments;

(9) "Retail installment contract" or "contract" means a contract, other than a retail charge agreement, a lender credit card agreement, or an instrument reflecting a sale made pursuant thereto, entered into or performed in this state for a retail installment transaction. The term "retail installment contract" may include a chattel mortgage, a conditional sale contract, and a contract in the form of a bailment or a lease if the bailee or lessee contracts to pay as compensation for their use a sum substantially equivalent to or in excess of the value of the goods sold and if it is agreed that the bailee or lessee is bound to become, or for no other or a merely nominal consideration, has the option of becoming the owner of the goods upon full compliance with the provisions of the bailment or lease. The term "retail installment contract" does not include: (a) A "consumer lease," heretofore or hereafter entered into, as defined in RCW 63.10.020; or (b) a lease which would constitute such "consumer lease" but for the fact that: (i) It was entered into before April 29, 1983; (ii) the lessee was not a natural person; (iii) the lease was not primarily for personal, family, or household purposes; or (iv) the total contractual obligations exceeded twenty-five thousand dollars;

(10) "Retail charge agreement," "revolving charge agreement," or "charge agreement" means an agreement entered into or performed in this state prescribing the terms of retail installment transactions which may be made thereunder from time to time and under the terms of which a service charge, as defined in this section, is to be computed in relation to the buyer's unpaid balance from time to time;

(11) "Service charge" however denominated or expressed, means the amount which is paid or payable for the privilege of purchasing goods or services to be paid for by the buyer in installments over a period of time. It does not include the amount, if any, charged for insurance premiums, delinquency charges, attorneys' fees, court costs, or official fees;

(12) "Sale price" means the price for which the seller would have sold or furnished to the buyer, and the buyer

would have bought or obtained from the seller, the goods or services which are the subject matter of a retail installment transaction. The sale price may include any taxes, registration and license fees, and charges for transferring vehicle titles, delivery, installation, servicing, repairs, alterations, or improvements;

(13) "Official fees" means the amount of the fees prescribed by law for filing, recording, or otherwise perfecting, and releasing or satisfying, a retained title, lien, or other security interest created by a retail installment transaction;

(14) "Time balance" means the principal balance plus the service charge;

(15) "Principal balance" means the sale price of the goods or services which are the subject matter of a retail installment contract less the amount of the buyer's down payment in money or goods or both, plus the amounts, if any, included therein, if a separate identified charge is made therefor and stated in the contract, for insurance and official fees;

(16) "Person" means an individual, partnership, joint venture, corporation, association, or any other group, however organized;

(17) "Rate" means the percentage which, when multiplied times the outstanding balance for each month or other installment period, yields the amount of the service charge for such month or period. [1984 c 280 § 1; 1983 c 158 § 7; 1981 c 77 § 1; 1972 ex.s. c 47 § 1; 1963 c 236 § 1.]

Severability—1983 c 158: See RCW 63.10.900.

Application, saving—**Severability**—1981 c 77: See RCW 63.14.902 and 63.14.903.

Effective date—1972 ex.s. c 47: "This 1972 amendatory act shall take effect on January 1, 1973." [1972 ex.s. c 47 § 5.] For codification of 1972 ex.s. c 47, see Codification Tables, Volume 0.

63.14.020 Retail installment contracts—Number of documents—Promissory notes—Date—Signatures—Completion—Type size. Every retail installment contract shall be contained in a single document which shall contain the entire agreement of the parties including any promissory notes or other evidences of indebtedness between the parties relating to the transaction, except as provided in RCW 63.14.050, 63.14.060 and 63.14.110: *Provided*, That where the buyer's obligation to pay the time balance is represented by a promissory note secured by a chattel mortgage, the promissory note may be a separate instrument if the mortgage recites the amount and terms of payment of such note and the promissory note recites that it is secured by a mortgage: *Provided further*, That any such promissory note or other evidence of indebtedness executed by the buyer shall not, when assigned or negotiated, cut off as to third parties any right of action or defense which the buyer may have against the seller, and each such promissory note or other evidence of indebtedness shall contain a statement to that effect: *And provided further*, That in a transaction involving the repair, alteration or improvement upon or in connection with real property, the contract may be secured by a mortgage on the real property contained in a separate document. Home improvement

retail sales transactions which are financed or insured by the Federal Housing Administration are not subject to this chapter.

The contract shall be dated, signed by the retail buyer and completed as to all essential provisions, except as otherwise provided in RCW 63.14.060 and 63.14.070. The printed or typed portion of the contract, other than instructions for completion, shall be in a size equal to at least eight point type. [1967 c 234 § 1; 1963 c 236 § 2.]

63.14.030 Retail installment contracts—Delivery to buyer of copy—Acknowledgment of delivery. The retail seller shall deliver to the retail buyer, at the time the buyer signs the contract a copy of the contract as signed by the buyer, unless the contract is completed by the buyer in situations covered by RCW 63.14.060, and if the contract is accepted at a later date by the seller the seller shall mail to the buyer at his address shown on the retail installment contract a copy of the contract as accepted by the seller or a copy of the memorandum as required in RCW 63.14.060. Until the seller does so, the buyer shall be obligated to pay only the sale price. Any acknowledgment by the buyer of delivery of a copy of the contract shall be in a size equal to at least ten point bold type and, if contained in the contract, shall appear directly above the buyer's signature. [1981 c 77 § 2; 1967 c 234 § 2; 1963 c 236 § 3.]

Application, saving—**Severability**—1981 c 77: See RCW 63.14.902 and 63.14.903.

63.14.040 Retail installment contracts—Contents. (1) The retail installment contract shall contain the names of the seller and the buyer, the place of business of the seller, the residence or other address of the buyer as specified by the buyer and a description or identification of the goods sold or to be sold, or service furnished or rendered or to be furnished or rendered. The contract also shall contain the following items, which shall be set forth in the sequence appearing below:

(1) (a) The sale price of each item of goods or services;

(2) (b) The amount of the buyer's down payment, if any, identifying the amounts paid in money and allowed for goods traded in;

(3) (c) The difference between items (1)(a) and (2)(b);

(4) (d) The aggregate amount, if any, included for insurance, specifying the type or types of insurance and the terms of coverage;

(5) (e) The aggregate amount of official fees, if any;

(6) (f) The principal balance, which is the sum of items (3)(c), (4)(d) and (5)(e);

(7) (g) The dollar amount or rate of the service charge;

(8) (h) The amount of the time balance owed by the buyer to the seller, which is the sum of items (6)(f) and (7)(g), if (7)(g) is stated in a dollar amount; and

(9) (i) Except as otherwise provided in the next two sentences, the maximum number of installment payments required and the amount of each installment and the due date of each payment necessary to pay such

balance. If installment payments other than the final payment are stated as a series of equal scheduled amounts and if the amount of the final installment payment does not substantially exceed the scheduled amount of each preceding installment payment, the maximum number of payments and the amount and due date of each payment need not be separately stated and the amount of the scheduled final installment payment may be stated as the remaining unpaid balance. The due date of the first installment payment may be fixed by a day or date or may be fixed by reference to the date of the contract or to the time of delivery or installation.

Additional items may be included to explain the calculations involved in determining the balance to be paid by the buyer.

(2) Every retail installment contract shall contain the following notice in ten point bold face type or larger directly above the space reserved in the contract for the signature of the buyer: "NOTICE TO BUYER:

(a) Do not sign this contract before you read it or if any spaces intended for the agreed terms, except as to unavailable information, are blank.

(b) You are entitled to a copy of this contract at the time you sign it.

(c) You may at any time pay off the full unpaid balance due under this contract, and in so doing you may receive a partial rebate of the service charge.

(d) The service charge does not exceed _____% (must be filled in) per annum computed monthly.

(e) You may cancel this contract if it is solicited in person, and you sign it, at a place other than the seller's business address shown on the contract, by sending notice of such cancellation by certified mail return receipt requested to the seller at his address shown on the contract which notice shall be posted not later than midnight of the third day (excluding Sundays and holidays) following your signing this contract. If you choose to cancel this contract, you must return or make available to the seller at the place of delivery any merchandise, in its original condition, received by you under this contract."

Clause (2)(e) needs to be included in the notice only if the contract is solicited in person by the seller or his representative, and the buyer signs it, at a place other than the seller's business address shown on the contract. [1981 c 77 § 3; 1972 ex.s. c 47 § 2; 1969 c 2 § 1 (Initiative Measure No. 245, approved November 5, 1968); 1967 c 234 § 3; 1963 c 236 § 4.]

Application, saving—Severability—1981 c 77: See RCW 63.14.902 and 63.14.903.

63.14.050 Retail installment contracts—Multiple documents permissible where original applies to purchases from time to time. A retail installment contract may be contained in more than one document, provided that one such document shall be an original document signed by the retail buyer, stated to be applicable to purchases of goods or services to be made by the retail buyer from time to time. In such case such document, together with the sales slip, account book or other written statement relating to each purchase, shall set forth

all of the information required by RCW 63.14.040 and shall constitute the retail installment contract for each purchase. On each succeeding purchase pursuant to such original document, the sales slip, account book or other written statement may at the option of the seller constitute the memorandum required by RCW 63.14.110. [1963 c 236 § 5.]

63.14.060 Retail installment contracts—Mail orders based on catalog or other printed solicitation. Retail installment contracts negotiated and entered into by mail or telephone without solicitation in person by salesmen or other representatives of the seller and based upon a catalog of the seller, or other printed solicitation of business, if such catalog or other printed solicitation clearly sets forth the cash sale prices and other terms of sales to be made through such medium, may be made as provided in this section. The provisions of this chapter with respect to retail installment contracts shall be applicable to such sales, except that the retail installment contract, when completed by the buyer need not contain the items required by RCW 63.14.040.

When the contract is received from the retail buyer, the seller shall prepare a written memorandum containing all of the information required by RCW 63.14.040 to be included in a retail installment contract. In lieu of delivering a copy of the contract to the retail buyer as provided in RCW 63.14.030, the seller shall deliver to the buyer a copy of such memorandum prior to the due date of the first installment payable under the contract: *Provided*, That if the catalog or other printed solicitation does not set forth all of the other terms of sales in addition to the cash sales prices, such memorandum shall be delivered to the buyer prior to or at the time of delivery of the goods or services. [1967 c 234 § 4; 1963 c 236 § 6.]

63.14.070 Retail installment contracts—Seller not to obtain buyer's signature when essential blank spaces not filled—Exceptions. The seller shall not obtain the signature of the buyer to any contract when it contains blank spaces of items which are essential provisions of the transaction except as provided in RCW 63.14.060: *Provided, however*, That if delivery of the goods is not made at the time of the execution of the contract, the identifying numbers or marks of the goods or similar information and the due date of the first installment may be inserted by the seller in the seller's counterpart of the contract after it has been signed by the buyer. [1963 c 236 § 7.]

63.14.080 Retail installment contracts—Prepayment in full of unpaid time balance—Refund of unearned service charge—"Rule of seventy-eighths". For the purpose of this section "periodic time balance" means the unpaid portion of the time balance as of the last day of each month, or other uniform time interval established by the regular consecutive payment period scheduled in a retail installment contract.

Notwithstanding the provisions of any retail installment contract to the contrary, and if the rights of the

purchaser have not been terminated or forfeited under the terms of the contract, any buyer may prepay in full the unpaid portion of the time balance thereof at any time before its final due date and, if he does so, he shall receive a refund credit of the unearned portion of the service charge for such prepayment. The amount of such refund credit shall be computed according to the "rule of seventy-eighths", that is it shall represent at least as great a portion of the original service charge, as the sum of the periodic time balances not yet due bears to the sum of all the periodic time balances under the schedule of payments in the contract: *Provided*, That where the earned service charge (total service charge minus refund credit) thus computed is less than the following minimum service charge: fifteen dollars where the principal balance is not in excess of two hundred and fifty dollars, twenty-five dollars where the principal balance exceeds two hundred and fifty dollars but is not in excess of five hundred dollars, thirty-seven dollars and fifty cents where the principal balance exceeds five hundred dollars but is not in excess of one thousand dollars, and fifty dollars where the principal balance exceeds one thousand dollars; then such minimum service charge shall be deemed to be the earned service charge: *And provided further*, That where the amount of such refund credit is less than one dollar, no refund credit need be made. [1967 c 234 § 5; 1963 c 236 § 8.]

63.14.090 Retail installment contracts, retail charge agreements, and lender credit card agreements—Delinquency or collection charges—Attorney's fees, court costs—Other provisions not inconsistent with chapter are permissible. The holder of any retail installment contract, retail charge agreement, or lender credit card agreement may not collect any delinquency or collection charges, including any attorney's fee and court costs and disbursements, unless the contract, charge agreement, or lender credit card agreement so provides. In such cases, the charges shall be reasonable, and no attorney's fee may be recovered unless the contract, charge agreement, or lender credit card agreement is referred for collection to an attorney not a salaried employee of the holder.

The contract, charge agreement, or lender credit card agreement may contain other provisions not inconsistent with the purposes of this chapter, including but not limited to provisions relating to refinancing, transfer of the buyer's equity, construction permits, and title reports. [1984 c 280 § 2; 1963 c 236 § 9.]

63.14.100 Receipt for cash payment—Retail installment contracts, statement of payment schedule and total amount unpaid. A buyer shall be given a written receipt for any payment when made in cash. Upon written request of the buyer, the holder of a retail installment contract shall give or forward to the buyer a written statement of the dates and amounts of payments and the total amount unpaid under the contract. Such a statement shall be given the buyer once without charge; if any additional statement is requested by the buyer, it shall be supplied by the holder at a charge not in excess

of one dollar for each additional statement so supplied. [1963 c 236 § 10.]

63.14.110 Consolidation of subsequent purchases with previous contract. (1) If, in a retail installment transaction, a retail buyer makes any subsequent purchases of goods or services from a retail seller from whom he has previously purchased goods or services under one or more retail installment contracts, and the amounts under such previous contract or contracts have not been fully paid, the subsequent purchases may, at the seller's option, be included in and consolidated with one or more of the previous contracts. All the provisions of this chapter with respect to retail installment contracts shall be applicable to such subsequent purchases except as hereinafter stated in this subsection. In the event of such consolidation, in lieu of the buyer's executing a retail installment contract respecting each subsequent purchase, as provided in this section, it shall be sufficient if the seller shall prepare a written memorandum of each such subsequent purchase, in which case the provisions of RCW 63.14.020, 63.14.030 and 63.14.040 shall not be applicable. Unless previously furnished in writing to the buyer by the seller, by sales slip, memoranda or otherwise, such memorandum shall set forth with respect to each subsequent purchase items (a) to (g) inclusive of RCW 63.14.040(1), and in addition, if the service charge is stated as a dollar amount, the amount of the time balance owed by the buyer to the seller for the subsequent purchase, the outstanding balance of the previous contract or contracts, the consolidated time balance, and the revised installments applicable to the consolidated time balance, if any, in accordance with RCW 63.14.040. If the service charge is not stated in a dollar amount, in addition to the items (a) to (g) inclusive of RCW 63.14.040(1), the memorandum shall set forth the outstanding balance of the previous contract or contracts, the consolidated outstanding balance and the revised installments applicable to the consolidated outstanding balance, in accordance with RCW 63.14.040.

The seller shall deliver to the buyer a copy of such memorandum prior to the due date of the first installment of such consolidated contract.

(2) When such subsequent purchases are made, if the seller has retained title or taken a lien or other security interest in any of the goods purchased under any one of the contracts included in the consolidation:

(a) The entire amount of all payments made prior to such subsequent purchases shall be deemed to have been applied on the previous purchases;

(b) The amount of any down payment on the subsequent purchase shall be allocated in its entirety to such subsequent purchase.

(c) Each payment received after the subsequent purchase shall be deemed to be allocated to all of the various time balances in the same proportion or ratio as the original cash sale prices of the various retail installment transactions bear to one another: *Provided*, That the seller may elect, where the amount of each installment payment is increased in connection with the subsequent

purchase, to allocate only the increased amount to the time balance of the subsequent retail installment transaction, and to allocate the amount of each installment payment prior to the increase to the time balance(s) existing at the time of the subsequent purchase.

The provisions of this subsection shall not apply to cases where such previous and subsequent purchases involve equipment, parts, or other goods attached or affixed to goods previously purchased and not fully paid, or to services in connection therewith rendered by the seller at the buyer's request. [1967 c 234 § 6; 1963 c 236 § 11.]

63.14.120 Retail charge agreements and lender credit card agreements—Information to be furnished by seller. (1) At or prior to the time a retail charge agreement or lender credit card agreement is made the seller shall advise the buyer in writing, on the application form or otherwise, or orally that a service charge will be computed on the outstanding balance for each month (which need not be a calendar month) or other regular period agreed upon, the schedule or rate by which the service charge will be computed, and that the buyer may at any time pay his or her total unpaid balance: *Provided*, That if this information is given orally, the seller shall, upon approval of the buyer's credit, deliver to the buyer or mail to the buyer's address, a memorandum setting forth this information.

(2) The seller or holder of a retail charge agreement or lender credit card agreement shall promptly supply the buyer with a statement as of the end of each monthly period (which need not be a calendar month) or other regular period agreed upon, in which there is any unpaid balance thereunder, which statement shall set forth the following:

(a) The unpaid balance under the retail charge agreement or lender credit card agreement at the beginning and at the end of the period;

(b) Unless otherwise furnished by the seller to the buyer by sales slip, memorandum, or otherwise, a description or identification of the goods or services purchased during the period, the sale price, and the date of each purchase;

(c) The payments made by the buyer to the seller and any other credits to the buyer during the period;

(d) The amount, if any, of any service charge for such period; and

(e) A legend to the effect that the buyer may at any time pay his or her total unpaid balance.

(3) Every retail charge agreement shall contain the following notice in ten point bold face type or larger directly above the space reserved in the charge agreement for the signature of the buyer: **NOTICE TO BUYER:**

(a) Do not sign this retail charge agreement before you read it or if any spaces intended for the agreed terms are left blank.

(b) You are entitled to a copy of this charge agreement at the time you sign it.

(c) You may at any time pay off the full unpaid balance under this charge agreement.

(d) You may cancel any purchases made under this charge agreement if the seller or his representative solicited in person such purchase, and you sign an agreement for such purchase, at a place other than the seller's business address shown on the charge agreement, by sending notice of such cancellation by certified mail return receipt requested to the seller at his address shown on the charge agreement, which notice shall be posted not later than midnight of the third day (excluding Sundays and holidays) following your signing of the purchase agreement. If you choose to cancel this purchase, you must return or make available to seller at the place of delivery any merchandise, in its original condition, received by you under this purchase agreement. [1984 c 280 § 3; 1981 c 77 § 4; 1972 ex.s. c 47 § 3; 1969 c 2 § 2 (Initiative Measure No. 245, approved November 5, 1968); 1967 c 234 § 7; 1963 c 236 § 12.]

Application, saving—Severability—1981 c 77: See RCW 63.14.902 and 63.14.903.

63.14.125 Lender credit card agreements—Security interests prohibited. A lender credit card agreement may not contain any provision for a security interest in real or personal property or fixtures of the buyer to secure payment of performance of the buyer's obligation under the lender credit card agreement. [1984 c 280 § 4.]

63.14.130 Retail installment contracts, retail charge agreements, and lender credit card agreements—Service charge—Maximums—Other fees and charges prohibited. The service charge shall be inclusive of all charges incident to investigating and making the retail installment contract or charge agreement and for the privilege of making the installment payments thereunder and no other fee, expense or charge whatsoever shall be taken, received, reserved or contracted therefor from the buyer.

(1) Except as provided in subsections (2) and (3) of this section, the service charge, in a retail installment contract, shall not exceed the highest of the following:

(a) A rate on outstanding unpaid balances which exceeds six percentage points above the average, rounded to the nearest one-quarter of one percent, of the equivalent coupon issue yields (as published by the Board of Governors of the Federal Reserve System) of the bill rates for twenty-six week treasury bills for the last market auctions conducted during February, May, August, and November of the year prior to the year in which the retail installment contract is executed; or

(b) Ten dollars.

(2) The service charge in a retail installment contract for the purchase of a motor vehicle shall not exceed the highest of the following:

(a) A rate on outstanding unpaid balances which exceeds six percentage points above the average, rounded to the nearest one-quarter of one percent, of the equivalent coupon issue yield (as published by the Board of Governors of the Federal Reserve System) of the bill rate for twenty-six week treasury bills for the last market auction conducted during February, May, August, or

November, as the case may be, prior to the quarter in which the retail installment contract for purchase of the motor vehicle is executed; or

(b) Ten dollars.

As used in this subsection, "motor vehicle" means every device capable of being moved upon a public highway and in, upon, or by which any person or property is or may be transported or drawn upon a public highway, except for devices moved by human or animal power or used exclusively upon stationary rails or tracks.

(3) The service charge in a retail installment contract for the purchase of a vessel shall not exceed the highest of the following:

(a) A rate on outstanding balances which exceeds six percentage points above the average, rounded to the nearest one-quarter of one percent, of the equivalent coupon issue yield, as published by the federal reserve bank of San Francisco, of the bill rate for twenty-six week treasury bills for the last market auction conducted prior to the quarter in which the retail installment contract for purchase of the vessel is expected; or

(b) Ten dollars.

As used in this subsection, "vessel" means any watercraft used or capable of being used as a means of transportation on the water, other than a seaplane.

(4) The service charge in a retail charge agreement, revolving charge agreement, lender credit card agreement, or charge agreement, shall not exceed one and one-half percent per month on the outstanding unpaid balances. If the service charge so computed is less than one dollar for any month, then one dollar may be charged.

(5) A service charge may be computed on the median amount within a range which does not exceed ten dollars and which is a part of a published schedule of consecutive ranges applied to an outstanding balance, provided the median amount is used in computing the service charge for all balances within such range. [1989 c 112 § 1; 1989 c 14 § 5; 1987 c 318 § 1; 1984 c 280 § 5; 1981 c 77 § 5; 1969 c 2 § 3 (Initiative Measure No. 245, approved November 5, 1968); 1967 c 234 § 8; 1963 c 236 § 13.]

Reviser's note: This section was amended by 1989 c 14 § 5 and by 1989 c 112 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—1987 c 318: "This act shall take effect January 1, 1988." [1987 c 318 § 2.]

Application, saving—Severability—1981 c 77: See RCW 63.14.902 and 63.14.903.

63.14.135 Retail installment contracts and charge agreements—Maximum allowable service charge—Computation—Publication in the Washington State Register. (1) On or before December 5th of each year the state treasurer shall compute the maximum service charge allowed under a retail installment contract or charge agreement under RCW 63.14.130(1)(a) for the succeeding calendar year. The treasurer shall file this charge with the state code reviser for publication in the

first issue of the Washington State Register for the succeeding calendar year in compliance with RCW 34.08.020.

(2) On or before the first Wednesday of the last month of each calendar quarter the state treasurer shall compute the maximum service charge allowed for a retail installment contract for the purchase of a motor vehicle or vessel pursuant to RCW 63.14.130(2)(a) and (3)(a) respectively for the succeeding calendar quarter. The treasurer shall file this charge with the state code reviser for publication in the first issue of the Washington State Register for the succeeding calendar quarter in compliance with RCW 34.08.020. [1989 c 112 § 2; 1988 c 72 § 1; 1986 c 60 § 2.]

63.14.140 Retail installment contracts, retail charge agreements, and lender credit card agreements—Insurance. If the cost of any insurance is included in the retail installment contract, retail charge agreement, or lender credit card agreement:

(1) The contract or agreement shall state the nature, purpose, term, and amount of such insurance, and in connection with the sale of a motor vehicle, the contract shall state that the insurance coverage ordered under the terms of this contract does not include "bodily injury liability," "public liability," and "property damage liability" coverage, where such coverage is in fact not included;

(2) The contract or agreement shall state whether the insurance is to be procured by the buyer or the seller;

(3) The amount, included for such insurance, shall not exceed the premiums chargeable in accordance with the rate fixed for such insurance by the insurer, except where the amount is less than one dollar;

(4) If the insurance is to be procured by the seller or holder, he shall, within forty-five days after delivery of the goods or furnishing of the services under the contract, deliver, mail or cause to be mailed to the buyer, at his or her address as specified in the contract, a notice thereof or a copy of the policy or policies of insurance or a certificate or certificates of the insurance so procured. [1984 c 280 § 6; 1963 c 236 § 14.]

63.14.150 Retail installment contracts, retail charge agreements, and lender credit card agreements—Agreements by buyer not to assert claim or defense or to submit to suit in another county invalid. No provision of a retail installment contract, retail charge agreement, or lender credit card agreement is valid by which the buyer agrees not to assert against the seller or against an assignee a claim or defense arising out of the sale, or by which the buyer agrees to submit to suit in a county other than the county where the buyer signed the contract or where the buyer resides or has his principal place of business. [1984 c 280 § 7; 1967 c 234 § 9; 1963 c 236 § 15.]

63.14.151 Retail installment contracts, retail charge agreements, and lender credit card agreements—Compliance with disclosure requirements of federal consumer protection act deemed compliance with chapter

63.14 RCW. Any retail installment contract, retail charge agreement, or lender credit card agreement that complies with the disclosure requirements of Title I of the federal consumer protection act (82 Stat. 146, 15 U.S.C. 1601) which is also known as the truth in lending act, as of the date upon which said retail installment contract, revolving charge agreement, or lender credit card agreement is executed, shall be deemed to comply with the disclosure provisions of chapter 63.14 RCW. [1984 c 280 § 8; 1981 c 77 § 9.]

Application, saving—Severability—1981 c 77: See RCW 63.14.902 and 63.14.903.

63.14.152 Declaratory judgment action to establish if service charge is excessive. The seller, holder, or buyer may bring an action for declaratory judgment to establish whether service charges contracted for or received in connection with a retail installment transaction are in excess of those allowed by *this 1967 amendatory act. Such an action shall be brought against the current holder or against the buyer or his successor in interest or, if the entire principal balance has been fully paid, by the buyer or his successor in interest against the holder to whom the final payment was made. No such action shall be commenced after six months following the date the final payment becomes due, whether by acceleration or otherwise, nor after six months following the date the principal balance is fully paid, whichever first occurs. If the buyer commences such an action and fails to establish that the service charge is in excess of that allowed by RCW 63.14.130, and if the court finds the action was frivolously commenced, the defendant or defendants may, in the court's discretion, recover reasonable attorney's fees and costs from the buyer. [1967 c 234 § 11.]

***Reviser's note:** For codification of "this 1967 amendatory act" [1967 c 234], see Codification Tables, Volume 0.

63.14.154 Cancellation of transaction by buyer—Procedure. (1) In addition to any other rights he may have, the buyer shall have the right to cancel a retail installment transaction for other than the seller's breach by sending notice of such cancellation to the seller at his place of business as set forth in the contract or charge agreement by certified mail, return receipt requested, which shall be posted not later than midnight of the third day (excluding Sundays and holidays) following the date the buyer signs the contract or charge agreement:

(a) If the retail installment transaction was entered into by the buyer and solicited in person or by a commercial telephone solicitation as defined by *this act by the seller or his representative at a place other than the seller's address, which may be his main or branch office, shown on the contract; and

(b) If the buyer returns goods received or makes them available to the seller as provided in clause (b) of subsection (2) of this section.

(2) In the event of cancellation pursuant to this section:

(a) The seller shall, without request, refund to the buyer within ten days after such cancellation all deposits, including any down payment, made under the contract or charge agreement and shall return all goods traded in to the seller on account or in contemplation of the contract less any reasonable costs actually incurred in making ready for sale the goods so traded in;

(b) The seller shall be entitled to reclaim and the buyer shall return or make available to the seller at the place of delivery in its original condition any goods received by the buyer under the contract or charge agreement;

(c) The buyer shall incur no additional liability for such cancellation. [1989 c 20 § 18; 1989 c 14 § 8; 1972 ex.s. c 47 § 4; 1967 c 234 § 12.]

Reviser's note: (1) This section was amended by 1989 c 14 § 8 and by 1989 c 20 § 18, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

* (2) "This act" consists of the enactment of RCW 19.158.010 through 19.158.160, 19.158.900, and 19.158.901, and the 1989 c 20 amendments to RCW 9A.82.010 and 63.14.154.

Severability—Effective date—1989 c 20: See RCW 19.158.900 and 19.158.901.

63.14.156 Extension or deferment of payments—Agreement, charges. The holder of a retail installment contract may, upon agreement with the buyer, extend the scheduled due date or defer a scheduled payment of all or of any part of any installment or installments payable thereunder. No charge shall be made for any such extension or deferment unless a written acknowledgment of such extension or deferment is sent or delivered to the buyer. The holder may charge and contract for the payment of an extension or deferral charge by the buyer and collect and receive the same, but such charge may not exceed those permitted by *RCW 63.14.130 (a), (b), or (c) on the amount of the installment or installments, or part thereof, extended or deferred for the period of extension or deferral. Such period shall not exceed the period from the date when such extended or deferred installment or installments, or part thereof, would have been payable in the absence of such extension or deferral, to the date when such installment or installments, or part thereof, are made payable under the agreement of extension or deferral; except that a minimum charge of one dollar for the period of extension or deferral may be made in any case where the extension or deferral charge, when computed at such rate, amounts to less than one dollar. Such agreement may also provide for the payment by the buyer of the additional cost to the holder of the contract of premiums for continuing in force, until the end of such period of extension or deferral, any insurance coverages provided for in the contract, subject to the provisions of RCW 63.14.140. [1967 c 234 § 13.]

***Reviser's note:** The reference to RCW 63.14.130 (a), (b), or (c) is erroneous. RCW 63.14.130(1) (a) or (b) is apparently intended.

63.14.158 Refinancing agreements—Costs—Contents. The holder of a retail installment contract or contracts may, upon agreement in writing with the

buyer, refinance the payment of the unpaid time balance or balances of the contract or contracts by providing for a new schedule of installment payments.

The holder may charge and contract for the payment of a refinance charge by the buyer and collect and receive the same but such refinance charge (1) shall be based upon the amount refinanced, plus any additional cost of insurance and of official fees incident to such refinancing, after the deduction of a refund credit in an amount equal to that to which the buyer would have been entitled under RCW 63.14.080 if he had prepaid in full his obligations under the contract or contracts, but in computing such refund credit there shall not be allowed the minimum earned service charge as authorized by clause (d) of subsection (1) of such section, and (2) may not exceed the rate of service charge provided under RCW 63.14.130. Such agreement for refinancing may also provide for the payment by the buyer of the additional cost to the holder of the contract or contracts of premiums for continuing in force, until the maturity of the contract or contracts as refinanced, any insurance coverages provided for therein, subject to the provisions of RCW 63.14.140.

The refinancing agreement shall set forth the amount of the unpaid time balance or balances to be refinanced, the amount of any refund credit, the amount to be refinanced after the deduction of the refund credit, the amount or rate of the service charge under the refinancing agreement, any additional cost of insurance and of official fees to the buyer, the new unpaid time balance, if the service charge is stated as a dollar amount, and the new schedule of installment payments. Where there is a consolidation of two or more contracts then the provisions of RCW 63.14.110 shall apply. [1967 c 234 § 14.]

Minimum earned service charges: RCW 63.14.080.

63.14.159 New payment schedule—When authorized. In the event a contract provides for the payment of any installment which is more than double the amount of the average of the preceding installments the buyer upon default of this installment, shall be given an absolute right to obtain a new payment schedule. Unless agreed to by the buyer, the periodic payments under the new schedule shall not be substantially greater than the average of the preceding installments. This section shall not apply if the payment schedule is adjusted to the seasonal or irregular income of the buyer or to accommodate the nature of the buyer's employment. [1967 c 234 § 15.]

63.14.160 Conduct or agreement of buyer does not waive remedies. No act or agreement of the retail buyer before or at the time of the making of a retail installment contract, retail charge agreement, lender credit card agreement, or purchases thereunder shall constitute a valid waiver of any of the provisions of this chapter or of any remedies granted to the buyer by law. [1984 c 280 § 9; 1963 c 236 § 16.]

63.14.165 Financial institution credit card agreement not subject to chapter 63.14 RCW, but subject to chapter 19.52 RCW. A financial institution credit card is a card or device issued under an arrangement pursuant to which the issuing financial institution gives to a card holder residing in this state the privilege of obtaining credit from the issuer or other persons in purchasing or leasing property or services, obtaining loans, or otherwise, and the issuer of which is not principally engaged in the business of selling goods.

Except as provided in RCW 63.14.167, a financial institution credit card agreement and credit extended pursuant to it is not subject to the provisions of this chapter but shall be subject to the provisions of chapter 19.52 RCW. [1984 c 280 § 10; 1981 c 77 § 10.]

Application, saving—Severability—1981 c 77: See RCW 63.14.902 and 63.14.903.

63.14.167 Lender credit card agreements and financial institution credit card agreements—Credit to account for returned goods or forgiveness of a debit for services—Statement of credit to card issuer—Notice to cardholder. (1) Pursuant to a lender credit card or financial institution credit card transaction in which a credit card has been used to obtain credit, the seller is a person other than the card issuer, and the seller accepts or allows a return of goods or forgiveness of a debit for services that were the subject of the sale, credit shall be applied to the obligor's account as provided by this section.

(2) Within seven working days after a transaction in which an obligor becomes entitled to credit, the seller shall transmit a statement to the card issuer through the normal channels established by the card issuer for the transmittal of such statements. The credit card issuer shall credit the obligor's account within three working days following receipt of a credit statement from the seller.

(3) The obligor is not responsible for payment of any service charges resulting from the seller's or card issuer's failure to comply with subsection (2) of this section.

(4) An issuer issuing a lender credit card or financial institution credit card shall mail or deliver a notice of the provisions of this section at least once per calendar year, at intervals of not less than six months nor more than eighteen months, either to all cardholders or to each cardholder entitled to receive a periodic statement for any one billing cycle. The notice shall state that the obligor is not responsible for payment of any service charges resulting from the seller's or card issuer's failure to comply with subsection (2) of this section. [1989 c 11 § 24; 1984 c 280 § 11.]

Severability—1989 c 11: See note following RCW 9A.56.220.

63.14.170 Violations—Penalties. Any person who shall wilfully and intentionally violate any provision of this chapter shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than one thousand dollars or by imprisonment for not more than six months, or both. Violation of any order or injunction issued pursuant to this chapter shall

constitute prima facie proof of a violation of this section. [1963 c 236 § 17.]

63.14.180 Noncomplying person barred from recovery of service charge, etc.—Remedy of buyer—Extent of recovery. Any person who enters into a retail installment contract, charge agreement, or lender credit card agreement that does not comply with the provisions of this chapter or who violates any provision of this chapter except as a result of an accidental or bona fide error shall be barred from the recovery of any service charge, official fees, or any delinquency or collection charge under or in connection with the related retail installment contract or purchases under a retail charge agreement or lender credit card agreement; but such person may nevertheless recover from the buyer an amount equal to the cash price of the goods or services and the cost to such person of any insurance included in the transaction: *Provided*, That if the service charge is in excess of that allowed by RCW 63.14.130, except as the result of an accidental or bona fide error, the buyer shall be entitled to an amount equal to the total of (1) twice the amount of the service charge paid, and (2) the amount of the service charge contracted for and not paid, plus (3) costs and reasonable attorneys' fees. The reduction in the cash price by the application of the above sentence shall be applied to diminish pro rata each future installment of principal amount payable under the terms of the contract or agreement. [1984 c 280 § 12; 1967 c 234 § 10; 1963 c 236 § 18.]

63.14.190 Restraint of violations. The attorney general or the prosecuting attorney may bring an action in the name of the state against any person to restrain and prevent any violation of this chapter. [1963 c 236 § 19.]

63.14.200 Assurance of discontinuance of unlawful practices. In the enforcement of this chapter, the attorney general may accept an assurance of discontinuance of any act or practice deemed in violation of this chapter, from any person engaging in, or who has engaged in, such act or practice. Any such assurance shall be in writing and be filed with and subject to the approval of the superior court of the county in which the alleged violator resides or has his principal place of business, or in Thurston county. Failure to perform the terms of any such assurance shall constitute prima facie proof of a violation of this chapter for the purpose of securing any injunction as provided in RCW 63.14.190 and for the purpose of RCW 63.14.180 hereof: *Provided*, That after commencement of any action by a prosecuting attorney, as provided herein, the attorney general may not accept an assurance of discontinuance without the consent of the prosecuting attorney. [1963 c 236 § 20.]

63.14.210 Violation of order or injunction—Penalty. Any person who violates any order or injunction issued pursuant to this chapter shall forfeit and pay a civil penalty of not more than one thousand dollars. For the purpose of this section the superior court issuing any injunction shall retain jurisdiction, and the cause shall be

continued, and in such cases the attorney general acting in the name of the state may petition for the recovery of civil penalties. [1963 c 236 § 21.]

63.14.900 Severability—1963 c 236. If any provision of this chapter is declared unconstitutional, or the applicability thereof to any person or circumstances is held invalid, the constitutionality of the remainder of the chapter and the applicability thereof to other persons and circumstances shall not be affected thereby. [1963 c 236 § 23.]

63.14.901 Severability—1967 c 234. If any provision of this chapter is declared unconstitutional, or the applicability thereof to any person or circumstances is held invalid, the constitutionality of the remainder of the act and the applicability thereof to other persons and circumstances shall not be affected thereby. [1967 c 234 § 16.]

63.14.902 Severability—1981 c 77. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1981 c 77 § 12.]

63.14.903 Application, saving—1981 c 77. This act applies only to loans, forbearances, or transactions which are entered into after May 8, 1981, or to existing loans, forbearances, contracts, or agreements which were not primarily for personal, family, or household use in which there is an addition to the principal amount of the credit outstanding after May 8, 1981. [1981 c 77 § 13.]

63.14.904 Severability—1984 c 280. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1984 c 280 § 13.]

63.14.910 Saving—1963 c 236. The provisions of this chapter shall not invalidate or make unlawful retail installment contracts or retail charge agreements executed prior to the effective date hereof. [1963 c 236 § 24.]

63.14.920 Effective date—1963 c 236. This chapter shall take effect October 1, 1963. [1963 c 236 § 25.]

63.14.921 Effective date—Saving—1967 c 234. *This 1967 amendatory act shall take effect on January 1, 1968. Nothing in *this 1967 amendatory act shall be construed to affect the validity of any agreement or contractual relationship entered into prior to such date, except that the rate of any service charge computed periodically on the outstanding balance in excess of that allowed by *this 1967 amendatory act shall be reduced to a permissible rate on or before January 1, 1968. [1967 c 234 § 17.]

*Reviser's note: "This 1967 amendatory act" [1967 c 234], see Codification Tables, Volume 0.

Chapter 63.18**LEASE OR RENTAL OF PERSONAL PROPERTY—DISCLAIMER OF WARRANTY OF MERCHANTABILITY OR FITNESS**

Sections

- 63.18.010 Lease or rental agreement for lease of personal property—Disclaimer of warranty of merchantability or fitness—Limitation—Exceptions.

63.18.010 Lease or rental agreement for lease of personal property—Disclaimer of warranty of merchantability or fitness—Limitation—Exceptions. In any lease or rental agreement for the lease of movable personal property for use primarily in this state (other than a lease under which the lessee is authorized to use such property at no charge), if the rental or other consideration paid or payable thereunder is at a rate which if computed on an annual basis would be six thousand dollars per year or less, no provision thereof purporting to disclaim any warranty of merchantability or fitness for particular purposes which may be implied by law shall be enforceable unless either (1) the disclaimer sets forth with particularity the qualities and characteristics which are not being warranted, or (2) the lessee is engaged in a public utility business or a public service business subject to regulation by the United States or this state. [1974 ex.s. c 180 § 3.]

Exclusion or modification of warranties: RCW 62A.2-316.

Chapter 63.21**LOST AND FOUND PROPERTY**

Sections

- 63.21.010 Procedure where finder wishes to claim found property—Appraisal—Surrender of property—Notice of intent to claim—Publication.
- 63.21.020 Circumstances extinguishing finder's claim to property.
- 63.21.030 Release of property to finder—Limitations—Payment to governmental entity of portion of appraised value—Expiration of finder's claim.
- 63.21.040 Failure to comply with chapter—Forfeiture of right to property.
- 63.21.050 Duties of chief law enforcement officer receiving found property.
- 63.21.060 Duties of governmental entity acquiring lost property—Disposal of property.
- 63.21.070 Claim to found property by employee, officer, or agent of governmental entity—Limitation.
- 63.21.080 Chapter not applicable to certain unclaimed property.
- 63.21.900 Severability—1979 ex.s. c 85.

63.21.010 Procedure where finder wishes to claim found property—Appraisal—Surrender of property—Notice of intent to claim—Publication. Any person who finds property that is not unlawful to possess, the owner of which is unknown, and who wishes to claim the found property, shall:

(1) Within seven days of the finding acquire a signed statement setting forth an appraisal of the current market value of the property prepared by a qualified person engaged in buying or selling like items or by a district court judge;

(2) Within seven days report the find of property and surrender, if requested, the property and a copy of the evidence of the value of the property to the chief law enforcement officer, or his or her designated representative, of the governmental entity where the property was found, and serve written notice upon the officer of the finder's intent to claim the property if the owner does not make out his or her right to it under this chapter; and

(3) Within thirty days of the finding cause notice of the finding to be published at least once a week for two successive weeks in a newspaper of general circulation in the county where the property was found. [1979 ex.s. c 85 § 1.]

63.21.020 Circumstances extinguishing finder's claim to property. The finder's claim to the property shall be extinguished:

(1) If the owner satisfactorily establishes, within sixty days after the find was reported to the appropriate officer, the owner's right to possession of the property; or

(2) If the chief law enforcement officer determines and so informs the finder that the property is illegal for the finder to possess. [1979 ex.s. c 85 § 2.]

63.21.030 Release of property to finder—Limitations—Payment to governmental entity of portion of appraised value—Expiration of finder's claim. (1) The found property shall be released to the finder and become the property of the finder sixty days after the find was reported to the appropriate officer if no owner has been found, or sixty days after the final disposition of any judicial or other official proceeding involving the property, whichever is later. The property shall be released only after the finder has presented evidence of:

(a) Compliance with the publication requirement of this chapter; and

(b) If the property is valued at more than twenty-five dollars, payment to the treasurer of the governmental entity handling the found property, the amount of five dollars, or ten percent of the appraised value of the property, whichever is greater, which amount shall be deposited in the general fund of the governmental entity.

(2) When ninety days have passed after the found property was reported to the appropriate officer, or ninety days after the final disposition of a judicial or other proceeding involving the found property, and the finder has not completed the requirements of this chapter, the finder's claim shall be deemed to have expired and the found property may be disposed of as unclaimed property under chapter 63.32 or 63.40 RCW. Such laws shall also apply whenever a finder states in writing that he or she has no intention of claiming the found property. [1979 ex.s. c 85 § 3.]

63.21.040 Failure to comply with chapter—Forfeiture of right to property. Any finder of property who fails to discharge the duties imposed by this chapter shall forfeit all right to the property and shall be liable for the full value of the property to its owner. [1979 ex.s. c 85 § 4.]

63.21.050 Duties of chief law enforcement officer receiving found property. The chief law enforcement officer or his or her designated representative to whom a finder surrenders property, shall:

(1) Advise the finder if the found property is illegal for him or her to possess;

(2) Advise the finder if the found property is to be held as evidence in judicial or other official proceedings;

(3) Advise the finder in writing of the procedures to be followed in claiming the found property;

(4) If the property is valued at twenty-five dollars or less, allow the finder to retain the property if it is determined there is no reason for the officer to retain the property;

(5) If the property exceeds twenty-five dollars in value and has been requested to be surrendered to the law enforcement agency, retain the property for sixty days before it can be claimed by the finder under this chapter, unless the owner shall have recovered the property;

(6) If the property is held as evidence in judicial or other official proceedings, retain the property for sixty days after the final disposition of the judicial or other official proceeding, before it can be claimed by the finder or owner under the provisions of this chapter;

(7) After the required number of days have passed, and if no owner has been found, surrender the property to the finder according to the requirements of this chapter; or

(8) If neither the finder nor the owner claim the property retained by the officer within thirty days of the time when the claim can be made, the property shall be disposed of as unclaimed property under chapter 63.32 or 63.40 RCW. [1979 ex.s. c 85 § 5.]

63.21.060 Duties of governmental entity acquiring lost property—Disposal of property. Any governmental entity that acquires lost property shall attempt to notify the apparent owner of the property. If the property is not returned to a person validly establishing ownership or right to possession of the property, the governmental entity shall forward the lost property within thirty days but not less than ten days after the time the governmental entity acquires the lost property to the chief law enforcement officer, or his or her designated representative, of the county in which the property was found, except that if the property is found within the borders of a city or town the property shall be forwarded to the chief law enforcement officer of the city or town or his or her designated representative. A governmental entity may elect to retain property which it acquires and dispose of the property as provided by chapter 63.32 or 63.40 RCW. [1979 ex.s. c 85 § 6.]

63.21.070 Claim to found property by employee, officer, or agent of governmental entity—Limitation. An employee, officer, or agent of a governmental entity who finds or acquires any property covered by this chapter while acting within the course of his or her employment

may not claim possession of the lost property as a finder under this chapter unless the governing body of the governmental entity has specifically provided, by ordinance, resolution, or rule for such a claim. [1979 ex.s. c 85 § 7.]

63.21.080 Chapter not applicable to certain unclaimed property. This chapter shall not apply to:

(1) Motor vehicles under chapter 46.52 RCW;

(2) Unclaimed property in the hands of a bailee under chapter 63.24 RCW; and

(3) Uniform disposition of unclaimed property under chapter 63.29 RCW. [1985 c 7 § 125; 1979 ex.s. c 85 § 8.]

63.21.900 Severability—1979 ex.s. c 85. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1979 ex.s. c 85 § 11.]

Chapter 63.24

UNCLAIMED PROPERTY IN HANDS OF BAILEE

Sections

63.24.150	Notice to owner.
63.24.160	Disposition of unclaimed property—Donation to charitable organization or transmittal to police or sheriff.
63.24.170	Bailee not liable to owner.

Abandoned inmate personal property: Chapter 63.42 RCW.

Unclaimed property in hands of state patrol: Chapter 63.35 RCW.

63.24.150 Notice to owner. Unless otherwise provided between the parties, if personal property deposited with a bailee is unclaimed for a period of thirty days, the bailee shall notify the owner, if known, either personally or by mail that the property is subject to disposition under RCW 63.24.160. [1981 c 154 § 4.]

63.24.160 Disposition of unclaimed property—Donation to charitable organization or transmittal to police or sheriff. If property not covered by chapter 63.26 RCW remains unclaimed sixty days after notice is given, or, if the owner's identity or address is unknown, sixty days from when notice was attempted, the bailee shall:

(1) If the reasonable aggregate value of the unclaimed property is less than one hundred dollars, donate the property, or proceeds thereof, to a charitable organization exempt from federal income tax under the federal internal revenue code; or

(2) If the reasonable aggregate value of the unclaimed property is one hundred dollars or more, forward the property to the chief of police or sheriff for disposition as unclaimed property under chapter 63.32 or 63.40 RCW. [1988 c 226 § 1; 1981 c 154 § 5.]

63.24.170 Bailee not liable to owner. A bailee is not liable to the owner for unclaimed property disposed of in good faith in accordance with the requirements of this chapter. [1981 c 154 § 6.]

Chapter 63.26

UNCLAIMED PROPERTY HELD BY MUSEUM OR HISTORICAL SOCIETY

Sections

63.26.010 Definitions.

63.26.020 Abandoned property—Notice.

63.26.030 Loaned property deemed donated—Notice of owner's change of address—Notice of provisions of chapter.

63.26.040 Notice of abandonment of property.

63.26.050 Vesting of title in museum or historical society—Subsequent purchase from museum or historical society.

63.26.010 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Museum or historical society" means an institution operated by a nonprofit corporation, nonprofit association, or public agency, primarily educational, scientific, historic, or aesthetic in purpose, which owns, borrows, studies, or cares for tangible objects, including archives, and exhibits them as appropriate.

(2) "Property" includes all documents and tangible objects, animate and inanimate, under the care of a museum or historical society which have intrinsic scientific, historic, artistic, or cultural value. [1988 c 226 § 3.]

63.26.020 Abandoned property—Notice. Any property held by a museum or historical society within the state, other than by terms of a loan agreement, that has been held for five years or more and has remained unclaimed shall be deemed to be abandoned. Such property shall become the property of the museum or historical society if the museum or society has given notice pursuant to RCW 63.26.040 and no assertion of title has been filed for the property within ninety days from the date of the second published notice. [1988 c 226 § 4.]

63.26.030 Loaned property deemed donated—Notice of owner's change of address—Notice of provisions of chapter. (1) Property subject to a loan agreement which is on loan to a museum or historical society shall be deemed to be donated to the museum or society if no claim is made or action filed to recover the property after termination or expiration of the loan and if the museum or society has given notice pursuant to RCW 63.26.040 and no assertion of title has been filed within ninety days from the date of the second published notice.

(2) A museum or society may terminate a loan of property if the property was loaned to the museum or society for an indefinite term and the property has been held by the museum or society for five years or more. Property on "permanent loan" shall be deemed to be loaned for an indefinite term.

(3) If property was loaned to the museum or society for a specified term, the museum or society may give notice of termination of the loan at any time after expiration of the specified term.

(4) It is the responsibility of the owner of property on loan to a museum or society to notify the museum or

society promptly in writing of any change of address or change in ownership of the property.

(5) When a museum or society accepts a loan of property, the museum or society shall inform the owner in writing of the provisions of this chapter. [1988 c 226 § 5.]

63.26.040 Notice of abandonment of property. (1) When a museum or historical society is required to give notice of abandonment of property or of termination of a loan, the museum or historical society shall mail such notice by certified mail, return receipt requested, to the last known owner at the most recent address of such owner as shown on the museum's or society's records. If the museum or society has no address on record, or the museum or society does not receive written proof of receipt of the mailed notice within thirty days of the date the notice was mailed, the museum or society shall publish notice, at least once each week for two consecutive weeks, in a newspaper of general circulation in both the county in which the museum is located and the county in which the last known address, if available, of the owner is located.

(2) The published notice shall contain:

(a) A description of the unclaimed property;

(b) The name and last known address of the owner;

(c) A request that all persons who may have any knowledge of the whereabouts of the owner provide written notice to the museum or society; and

(d) A statement that if written assertion of title is not presented by the owner to the museum or society within ninety days from the date of the second published notice, the property shall be deemed abandoned or donated and shall become the property of the museum or society.

(3) For purposes of this chapter, if the loan of property was made to a branch of a museum or society, the museum or society is deemed to be located in the county in which the branch is located. Otherwise the museum or society is located in the county in which it has its principal place of business. [1988 c 226 § 6.]

63.26.050 Vesting of title in museum or historical society—Subsequent purchase from museum or historical society. (1) If no written assertion of title has been presented by the owner to the museum or society within ninety days from the date of the second published notice, title to the property shall vest in the museum or historical society, free of all claims of the owner and of all persons claiming under the owner.

(2) One who purchases or otherwise acquires property from a museum or historical society acquires good title to the property if the museum or society has acquired title to the property under this chapter. [1988 c 226 § 7.]

Chapter 63.29

UNIFORM UNCLAIMED PROPERTY ACT

Sections

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Abandoned inmate personal property: Chapter 63.42 RCW.

Unclaimed property in hands of state patrol: Chapter 63.35 RCW.

63.29.010 Definitions and use of terms. As used in this chapter, unless the context otherwise requires:

(1) "Department" means the department of revenue established under RCW 82.01.050.

(2) "Apparent owner" means the person whose name appears on the records of the holder as the person entitled to property held, issued, or owing by the holder.

(3) "Attorney general" means the chief legal officer of this state referred to in chapter 43.10 RCW.

(4) "Banking organization" means a bank, trust company, savings bank, land bank, safe deposit company, private banker, or any organization defined by other law as a bank or banking organization.

(5) "Business association" means a nonpublic corporation, joint stock company, investment company, business trust, partnership, or association for business purposes of two or more individuals, whether or not for profit, including a banking organization, financial organization, insurance company, or utility.

(6) "Domicile" means the state of incorporation of a corporation and the state of the principal place of business of an unincorporated person.

(7) "Financial organization" means a savings and loan association, cooperative bank, building and loan association, or credit union.

(8) "Holder" means a person, wherever organized or domiciled, who is:

(a) In possession of property belonging to another,

(b) A trustee, or

(c) Indebted to another on an obligation.

(9) "Insurance company" means an association, corporation, fraternal or mutual benefit organization, whether or not for profit, which is engaged in providing insurance coverage, including accident, burial, casualty, credit life, contract performance, dental, fidelity, fire, health, hospitalization, illness, life (including endowments and annuities), malpractice, marine, mortgage, surety, and wage protection insurance.

(10) "Intangible property" does not include contract claims which are unliquidated but does include:

(a) Moneys, checks, drafts, deposits, interest, dividends, and income;

(b) Credit balances, customer overpayments, gift certificates, security deposits, refunds, credit memos, unpaid wages, unused airline tickets, and unidentified remittances, but does not include discounts which represent credit balances for which no consideration was given;

(c) Stocks, and other intangible ownership interests in business associations;

(d) Moneys deposited to redeem stocks, bonds, coupons, and other securities, or to make distributions;

(e) Liquidated amounts due and payable under the terms of insurance policies; and

(f) Amounts distributable from a trust or custodial fund established under a plan to provide health, welfare, pension, vacation, severance, retirement, death, stock purchase, profit sharing, employee savings, supplemental unemployment insurance, or similar benefits.

(11) "Last known address" means a description of the location of the apparent owner sufficient for the purpose of the delivery of mail.

(12) "Owner" means a depositor in the case of a deposit, a beneficiary in case of a trust other than a deposit in trust, a creditor, claimant, or payee in the case of other intangible property, or a person having a legal or equitable interest in property subject to this chapter or his legal representative.

(13) "Person" means an individual, business association, state or other government, governmental subdivision or agency, public corporation, public authority, estate, trust, two or more persons having a joint or common interest, or any other legal or commercial entity.

(14) "State" means any state, district, commonwealth, territory, insular possession, or any other area subject to the legislative authority of the United States.

(15) "Third party bank check" means any instrument drawn against a customer's account with a banking organization or financial organization on which the banking organization or financial organization is only secondarily liable.

(16) "Utility" means a person who owns or operates for public use any plant, equipment, property, franchise, or license for the transmission of communications or the production, storage, transmission, sale, delivery, or furnishing of electricity, water, steam, or gas. [1983 c 179 § 1.]

63.29.020 Property presumed abandoned—General rule.

(1) Except as otherwise provided by this chapter, all intangible property, including any income or increment derived therefrom, less any lawful charges, that is held, issued, or owing in the ordinary course of the holder's business and has remained unclaimed by the owner for more than five years after it became payable or distributable is presumed abandoned.

(2) Property, with the exception of unredeemed Washington state lottery tickets and unrepresented winning parimutuel tickets, is payable and distributable for the purpose of this chapter notwithstanding the owner's failure to make demand or to present any instrument or document required to receive payment.

(3) This chapter does not apply to claims drafts issued by insurance companies representing offers to settle claims unliquidated in amount or settled by subsequent drafts or other means.

(4) This chapter does not apply to property covered by chapter 63.26 RCW. [1988 c 226 § 2; 1983 c 179 § 2.]

63.29.030 General rules for taking custody of intangible unclaimed property. Unless otherwise provided in this chapter or by other statute of this state, intangible property is subject to the custody of this state as unclaimed property if the conditions raising a presumption of abandonment under RCW 63.29.020 and 63.29.050 through 63.29.160 are satisfied and:

(1) The last known address, as shown on the records of the holder, of the apparent owner is in this state;

(2) The records of the holder do not reflect the identity of the person entitled to the property and it is established that the last known address of the person entitled to the property is in this state;

(3) The records of the holder do not reflect the last known address of the apparent owner, and it is established that:

(a) The last known address of the person entitled to the property is in this state, or

(b) The holder is a domiciliary or a government or governmental subdivision or agency of this state and has not previously paid or delivered the property to the state of the last known address of the apparent owner or other person entitled to the property;

(4) The last known address, as shown on the records of the holder, of the apparent owner is in a state that

does not provide by law for the escheat or custodial taking of the property or its escheat or unclaimed property law is not applicable to the property and the holder is a domiciliary or a government or governmental subdivision or agency of this state: *Provided*, That a holder may rely, with acquittance, upon a list of such states which shall be provided by the department;

(5) The last known address, as shown on the records of the holder, of the apparent owner is in a foreign nation and the holder is a domiciliary or a government or governmental subdivision or agency of this state; or

(6) The transaction out of which the property arose occurred in this state; and

(a)(i) The last known address of the apparent owner or other person entitled to the property is unknown, or

(ii) The last known address of the apparent owner or other person entitled to the property is in a state that does not provide by law for the escheat or custodial taking of the property or its escheat or unclaimed property law is not applicable to the property: *Provided*, That a holder may rely, with acquittance, upon a list of such states which shall be provided by the department, and

(b) The holder is a domiciliary of a state that does not provide by law for the escheat or custodial taking of the property or its escheat or unclaimed property law is not applicable to the property. [1983 c 179 § 3.]

63.29.040 Travelers checks and money orders.

(1) Subject to subsection (4) of this section, any sum payable on a travelers check that has been outstanding for more than fifteen years after its issuance is presumed abandoned unless the owner, within fifteen years, has communicated in writing with the issuer concerning it or otherwise indicated an interest as evidenced by a memorandum or other record on file prepared by an employee of the issuer.

(2) Subject to subsection (4) of this section, any sum payable on a money order or similar written instrument, other than a third party bank check, that has been outstanding for more than five years after its issuance is presumed abandoned unless the owner, within five years, has communicated in writing with the issuer concerning it or otherwise indicated an interest as evidenced by a memorandum or other record on file prepared by an employee of the issuer.

(3) A holder may not deduct from the amount of a travelers check or money order any charge imposed by reason of the failure to present the instrument for payment unless there is a valid and enforceable written contract between the issuer and the owner of the instrument pursuant to which the issuer may impose a charge and the issuer regularly imposes such charges and does not regularly reverse or otherwise cancel them.

(4) No sum payable on a travelers check, money order, or similar written instrument, other than a third party bank check, described in subsections (1) and (2) of this section may be subjected to the custody of this state as unclaimed property unless:

(a) The records of the issuer show that the travelers check, money order, or similar written instrument was purchased in this state;

(b) The issuer has its principal place of business in this state and the records of the issuer do not show the state in which the travelers check, money order, or similar written instrument was purchased; or

(c) The issuer has its principal place of business in this state, the records of the issuer show the state in which the travelers check, money order, or similar written instrument was purchased and the laws of the state of purchase do not provide for the escheat or custodial taking of the property or its escheat or unclaimed property law is not applicable to the property. The department shall provide to the issuer a list of all such states and the issuer may rely with acquittance upon such list.

(5) Notwithstanding any other provision of this chapter, subsection (4) of this section applies to sums payable on travelers checks, money orders, and similar written instruments presumed abandoned on or after February 1, 1965, except to the extent that those sums have been paid over to a state. [1983 c 179 § 4.]

63.29.050 Checks, drafts, and similar instruments issued or certified by banking and financial organizations.

(1) Any sum payable on a check, draft, or similar instrument, except those subject to RCW 63.29.040, on which a banking or financial organization is directly liable, including a cashier's check and a certified check, which has been outstanding for more than five years after it was payable or after its issuance if payable on demand, is presumed abandoned, unless the owner, within five years, has communicated in writing with the banking or financial organization concerning it or otherwise indicated an interest as evidenced by a memorandum or other record on file prepared by an employee thereof.

(2) A holder may not deduct from the amount of any instrument subject to this section any charge imposed by reason of the failure to present the instrument for payment unless there is a valid and enforceable written contract between the holder and the owner of the instrument pursuant to which the holder may impose a charge, and the holder regularly imposes such charges and does not regularly reverse or otherwise cancel them. [1983 c 179 § 5.]

63.29.060 Bank deposits and funds in financial organizations.

(1) Any demand, savings, or matured time deposit with a banking or financial organization, including a deposit that is automatically renewable, and any funds paid toward the purchase of a share, a mutual investment certificate, or any other interest in a banking or financial organization is presumed abandoned unless the owner, within five years, has:

(a) In the case of a deposit, increased or decreased its amount or presented the passbook or other similar evidence of the deposit for the crediting of interest;

(b) Communicated in writing with the banking or financial organization concerning the property;

(c) Otherwise indicated an interest in the property as evidenced by a memorandum or other record on file prepared by an employee of the banking or financial organization;

(d) Owned other property to which subsection (1) (a), (b), or (c) of this section applies and if the banking or financial organization communicates in writing with the owner with regard to the property that would otherwise be presumed abandoned under this subsection at the address to which communications regarding the other property regularly are sent; or

(e) Had another relationship with the banking or financial organization concerning which the owner has:

(i) In the case of a deposit, increased or decreased the amount of the deposit or presented the passbook or other similar evidence of the deposit for the crediting of interest;

(ii) Communicated in writing with the banking or financial organization; or

(iii) Otherwise indicated an interest as evidenced by a memorandum or other record on file prepared by an employee of the banking or financial organization and if the banking or financial organization communicates in writing with the owner with regard to the property that would otherwise be abandoned under this subsection at the address to which communications regarding the other relationship regularly are sent.

(2) For purposes of subsection (1) of this section property includes interest and dividends.

(3) This chapter shall not apply to deposits made by a guardian or decedent's personal representative with a banking organization when the deposit is subject to withdrawal only upon the order of the court in the guardianship or estate proceeding.

(4) A holder may not impose with respect to property described in subsection (1) of this section any charge due to dormancy or inactivity or cease payment of interest unless:

(a) There is an enforceable written contract between the holder and the owner of the property pursuant to which the holder may impose a charge or cease payment of interest;

(b) For property in excess of ten dollars, the holder, no more than three months before the initial imposition of those charges or cessation of interest, has given written notice to the owner of the amount of those charges at the last known address of the owner stating that those charges will be imposed or that interest will cease, but the notice provided in this section need not be given with respect to charges imposed or interest ceased before June 30, 1983; and

(c) The holder regularly imposes such charges or ceases payment of interest and does not regularly reverse or otherwise cancel them or retroactively credit interest with respect to the property.

(5) Any property described in subsection (1) of this section that is automatically renewable is matured for purposes of subsection (1) of this section upon the expiration of its initial time period, or after one year if the initial period is less than one year, but in the case of any renewal to which the owner consents at or about the time of renewal by communicating in writing with the banking or financial organization or otherwise indicating consent as evidenced by a memorandum or other record on file prepared by an employee of the organization, the

property is matured upon the expiration of the last time period for which consent was given. If, at the time provided for delivery in RCW 63.29.190, a penalty or forfeiture in the payment of interest would result from the delivery of the property, the time for delivery is extended until the time when no penalty or forfeiture would result. [1983 c 179 § 6.]

63.29.070 Funds owing under life insurance policies.

(1) Funds held or owing under any life or endowment insurance policy or annuity contract that has matured or terminated are presumed abandoned if unclaimed for more than five years after the funds became due and payable as established from the records of the insurance company holding or owing the funds, but property described in subsection (3)(b) of this section is presumed abandoned if unclaimed for more than two years.

(2) If a person other than the insured or annuitant is entitled to the funds and an address of the person is not known to the company or it is not definite and certain from the records of the company who is entitled to the funds, it is presumed that the last known address of the person entitled to the funds is the same as the last known address of the insured or annuitant according to the records of the company.

(3) For purposes of this chapter, a life or endowment insurance policy or annuity contract not matured by actual proof of the death of the insured or annuitant according to the records of the company is matured and the proceeds due and payable if:

(a) The company knows that the insured or annuitant has died; or

(b)(i) The insured has attained, or would have attained if he were living, the limiting age under the mortality table on which the reserve is based;

(ii) The policy was in force at the time the insured attained, or would have attained, the limiting age specified in subparagraph (i) of this subsection; and

(iii) Neither the insured nor any other person appearing to have an interest in the policy within the preceding two years, according to the records of the company, has assigned, readjusted, or paid premiums on the policy, subjected the policy to a loan, corresponded in writing with the company concerning the policy, or otherwise indicated an interest as evidenced by a memorandum or other record on file prepared by an employee of the company.

(4) For purposes of this chapter, the application of an automatic premium loan provision or other nonforfeiture provision contained in an insurance policy does not prevent a policy from being matured or terminated under subsection (1) of this section if the insured has died or the insured or the beneficiaries of the policy otherwise have become entitled to the proceeds thereof before the depletion of the cash surrender value of a policy by the application of those provisions.

(5) If the laws of this state or the terms of the life insurance policy require the company to give notice to the insured or owner that an automatic premium loan provision or other nonforfeiture provision has been exercised and the notice, given to an insured or owner whose last

known address according to the records of the company is in this state, is undeliverable, the company shall make a reasonable search to ascertain the policyholder's correct address to which the notice must be mailed.

(6) Notwithstanding any other provision of law, if the company learns of the death of the insured or annuitant and the beneficiary has not communicated with the insurer within four months after the death, the company shall take reasonable steps to pay the proceeds to the beneficiary.

(7) Commencing two years after June 30, 1983, every change of beneficiary form issued by an insurance company under any life or endowment insurance policy or annuity contract to an insured or owner who is a resident of this state must request the following information:

(a) The name of each beneficiary, or if a class of beneficiaries is named, the name of each current beneficiary in the class;

(b) The address of each beneficiary; and

(c) The relationship of each beneficiary to the insured. [1983 c 179 § 7.]

63.29.080 Deposits held by utilities. (1) A deposit, including any interest thereon, made by a subscriber with a utility to secure payment or any sum paid in advance for utility services to be furnished, less any lawful deductions, that remains unclaimed by the owner for more than one year after termination of the services for which the deposit or advance payment was made is presumed abandoned.

(2) Any sum which a utility has been ordered to refund and which was received for utility services rendered in this state, together with any interest thereon, less any lawful deductions, that has remained unclaimed by the person appearing on the records of the utility entitled thereto for more than one year after the date it became payable in accordance with the final determination or order providing for the refund is presumed abandoned. [1983 c 179 § 8.]

63.29.090 Refunds held by business associations. Except to the extent otherwise ordered by the court or administrative agency, any sum that a business association has been ordered to refund by a court or administrative agency which has remained unclaimed by the owner for more than one year after it became payable in accordance with the final determination or order providing for the refund, whether or not the final determination or order requires any person entitled to a refund to make a claim for it, is presumed abandoned. [1983 c 179 § 9.]

63.29.100 Stock and other intangible interests in business associations. (1) Except as provided in subsections (2) and (5) of this section, stock or other intangible ownership interest in a business association, the existence of which is evidenced by records available to the association, is presumed abandoned and, with respect to the interest, the association is the holder, if a dividend, distribution, or other sum payable as a result of the interest has remained unclaimed by the owner for seven years and the owner within seven years has not:

(a) Communicated in writing with the association regarding the interest or a dividend, distribution, or other sum payable as a result of the interest; or

(b) Otherwise communicated with the association regarding the interest or a dividend, distribution, or other sum payable as a result of the interest, as evidenced by a memorandum or other record on file with the association prepared by an employee of the association.

(2) At the expiration of a seven-year period following the failure of the owner to claim a dividend, distribution, or other sum payable to the owner as a result of the interest, the interest is not presumed abandoned unless there have been at least seven dividends, distributions, or other sums paid during the period, none of which has been claimed by the owner. If seven dividends, distributions, or other sums are paid during the seven-year period, the period leading to a presumption of abandonment commences on the date payment of the first such unclaimed dividend, distribution, or other sum became due and payable. If seven dividends, distributions, or other sums are not paid during the presumptive period, the period continues to run until there have been seven dividends, distributions, or other sums that have not been claimed by the owner.

(3) The running of the seven-year period of abandonment ceases immediately upon the occurrence of a communication referred to in subsection (1) of this section. If any future dividend, distribution, or other sum payable to the owner as a result of the interest is subsequently not claimed by the owner, a new period of abandonment commences and relates back to the time a subsequent dividend, distribution, or other sum became due and payable.

(4) At the time any interest is presumed abandoned under this section, any dividend, distribution, or other sum then held for or owing to the owner as a result of the interest, and not previously presumed abandoned, is presumed abandoned.

(5) This chapter shall not apply to any stock or other intangible ownership interest enrolled in a plan that provides for the automatic reinvestment of dividends, distributions, or other sums payable as a result of the interest unless the records available to the administrator of the plan show, with respect to any intangible ownership interest not enrolled in the reinvestment plan, that the owner has not within seven years communicated in any manner described in subsection (1) of this section. [1983 c 179 § 10.]

63.29.110 Property of business associations held in course of dissolution. Intangible property distributable in the course of a dissolution of a business association which remains unclaimed by the owner for more than one year after the date specified for final distribution is presumed abandoned. [1983 c 179 § 11.]

63.29.120 Property held by agents and fiduciaries. (1) Intangible property and any income or increment derived therefrom held in a fiduciary capacity for the benefit of another person is presumed abandoned unless

the owner, within five years after it has become payable or distributable, has increased or decreased the principal, accepted payment of principal or income, communicated concerning the property, or otherwise indicated an interest as evidenced by a memorandum or other record on file prepared by the fiduciary.

(2) Funds in an individual retirement account or a retirement plan for self-employed individuals or similar account or plan established pursuant to the internal revenue laws of the United States are not payable or distributable within the meaning of subsection (1) of this section unless, under the terms of the account or plan, distribution of all or part of the funds would then be mandatory.

(3) For the purpose of this section, a person who holds property as an agent for a business association is deemed to hold the property in a fiduciary capacity for that business association alone, unless the agreement between him and the business association provides otherwise.

(4) For the purposes of this chapter, a person who is deemed to hold property in a fiduciary capacity for a business association alone is the holder of the property only insofar as the interest of the business association in the property is concerned, and the business association is the holder of the property insofar as the interest of any other person in the property is concerned. [1983 c 179 § 12.]

63.29.130 Property held by courts and public agencies. Intangible property held for the owner by a court, state or other government, governmental subdivision or agency, public corporation, or public authority which remains unclaimed by the owner for more than two years after becoming payable or distributable is presumed abandoned. [1983 c 179 § 13.]

63.29.140 Gift certificates and credit memos. (1) A gift certificate or a credit memo issued in the ordinary course of an issuer's business which remains unclaimed by the owner for more than five years after becoming payable or distributable is presumed abandoned.

(2) In the case of a gift certificate, the amount presumed abandoned is the price paid by the purchaser for the gift certificate. In the case of a credit memo, the amount presumed abandoned is the amount credited to the recipient of the memo. [1983 c 179 § 14.]

63.29.150 Wages. Unpaid wages, including wages represented by unrepresented payroll checks, owing in the ordinary course of the holder's business which remain unclaimed by the owner for more than one year after becoming payable are presumed abandoned. [1983 c 179 § 15.]

63.29.160 Contents of safe deposit box or other safekeeping repository. All tangible and intangible property held in a safe deposit box or any other safekeeping repository in this state in the ordinary course of the holder's business and proceeds resulting from the sale of the property permitted by other law, which remain unclaimed by the owner for more than five years after the

lease or rental period on the box or other repository has expired, are presumed abandoned. [1983 c 179 § 16.]

63.29.165 Property in self-storage facility. The personal papers and personal effects held by the owner and the excess proceeds of a sale conducted pursuant to RCW 19.150.080 by an owner of a self-service storage facility to satisfy the lien and costs of storage which are not claimed by the occupant of the storage space or any other person which remains unclaimed for more than six months are presumed abandoned. [1988 c 240 § 21.]

Severability—1988 c 240: See RCW 19.150.904.

63.29.170 Report of abandoned property. (1) A person holding property presumed abandoned and subject to custody as unclaimed property under this chapter shall report to the department concerning the property as provided in this section.

(2) The report must be verified and must include:

(a) Except with respect to travelers checks and money orders, the name, if known, and last known address, if any, of each person appearing from the records of the holder to be the owner of property of the value of twenty-five dollars or more presumed abandoned under this chapter;

(b) In the case of unclaimed funds of twenty-five dollars or more held or owing under any life or endowment insurance policy or annuity contract, the full name and last known address of the insured or annuitant and of the beneficiary according to the records of the insurance company holding or owing the funds;

(c) In the case of the contents of a safe deposit box or other safekeeping repository or in the case of other tangible property, a description of the property and the place where it is held and where it may be inspected by the department, and any amounts owing to the holder;

(d) The nature and identifying number, if any, or description of the property and the amount appearing from the records to be due, but items of value under twenty-five dollars each may be reported in the aggregate;

(e) The date the property became payable, demandable, or returnable, and the date of the last transaction with the apparent owner with respect to the property; and

(f) Other information the department prescribes by rule as necessary for the administration of this chapter.

(3) If the person holding property presumed abandoned and subject to custody as unclaimed property is a successor to other persons who previously held the property for the apparent owner or the holder has changed his name while holding the property, he shall file with his report all known names and addresses of each previous holder of the property.

(4) The report must be filed before November 1 of each year as of June 30, next preceding, but the report of any life insurance company must be filed before May 1 of each year as of December 31 next preceding. On written request by any person required to file a report, the department may postpone the reporting date.

(5) Not more than one hundred twenty days before filing the report required by this section, the holder in

possession of property presumed abandoned and subject to custody as unclaimed property under this chapter shall send written notice to the apparent owner at his last known address informing him that the holder is in possession of property subject to this chapter if:

(i) The holder has in its records an address for the apparent owner which the holder's records do not disclose to be inaccurate,

(ii) The claim of the apparent owner is not barred by the statute of limitations, and

(iii) The property has a value of seventy-five dollars or more. [1983 c 179 § 17.]

63.29.180 Notice and publication of lists of abandoned property. (1) The department shall cause a notice to be published not later than March 1, or in the case of property reported by life insurance companies, September 1, immediately following the report required by RCW 63.29.170 at least once a week for two consecutive weeks in a newspaper of general circulation in the county of this state in which is located the last known address of any person to be named in the notice. If no address is listed or the address is outside this state, the notice must be published in the county in which the holder of the property has its principal place of business within this state.

(2) The published notice must be entitled "Notice of Names of Persons Appearing to be Owners of Abandoned Property" and contain:

(a) The names in alphabetical order and last known address, if any, of persons listed in the report and entitled to notice within the county as specified in subsection (1) of this section;

(b) A statement that information concerning the property and the name and last known address of the holder may be obtained by any person possessing an interest in the property by addressing an inquiry to the department; and

(c) A statement that if proof of claim is not presented by the owner to the holder and the owner's right to receive the property is not established to the holder's satisfaction before April 20, or, in the case of property reported by life insurance companies, before October 20, the property will be placed not later than May 1, or in the case of property reported by life insurance companies, not later than November 1, in the custody of the department and all further claims must thereafter be directed to the department.

(3) The department is not required to publish in the notice any items of less than seventy-five dollars unless the department considers their publication to be in the public interest.

(4) Not later than March 1, or in the case of property reported by life insurance companies, not later than September 1, immediately following the report required by RCW 63.29.170, the department shall mail a notice to each person whose last known address is listed in the report and who appears to be entitled to property of the value of seventy-five dollars or more presumed abandoned under this chapter and any beneficiary of a life or

endowment insurance policy or annuity contract for whom the department has a last known address.

(5) The mailed notice must contain:

(a) A statement that, according to a report filed with the department, property is being held to which the addressee appears entitled;

(b) The name and last known address of the person holding the property and any necessary information regarding the changes of name and last known address of the holder; and

(c) A statement that, if satisfactory proof of claim is not presented by the owner to the holder by the date specified in the published notice, the property will be placed in the custody of the department and all further claims must be directed to the department.

(6) This section is not applicable to sums payable on travelers checks, money orders, and other written instruments presumed abandoned under RCW 63.29.040. [1986 c 84 § 1; 1983 c 179 § 18.]

63.29.190 Payment or delivery of abandoned property. (1) Except as otherwise provided in subsections (2) and (3) of this section, a person who is required to file a report under RCW 63.29.170, within six months after the final date for filing the report as required by RCW 63.29.170, shall pay or deliver to the department all abandoned property required to be reported.

(2) If the owner establishes the right to receive the abandoned property to the satisfaction of the holder before the property has been delivered or it appears that for some other reason the presumption of abandonment is erroneous, the holder need not pay or deliver the property to the department, and the property will no longer be presumed abandoned. In that case, the holder shall file with the department a verified written explanation of the proof of claim or of the error in the presumption of abandonment.

(3) Property reported under RCW 63.29.170 for which the holder is not required to report the name of the apparent owner must be delivered to the department at the time of filing the report.

(4) The holder of an interest under RCW 63.29.100 shall deliver a duplicate certificate or other evidence of ownership if the holder does not issue certificates of ownership to the department. Upon delivery of a duplicate certificate to the department, the holder and any transfer agent, registrar, or other person acting for or on behalf of a holder in executing or delivering the duplicate certificate is relieved of all liability of every kind in accordance with RCW 63.29.200 to every person, including any person acquiring the original certificate or the duplicate of the certificate issued to the department, for any losses or damages resulting to any person by the issuance and delivery to the department of the duplicate certificate. [1983 c 179 § 19.]

63.29.200 Custody by state—Holder relieved from liability—Reimbursement of holder paying claim—Reclaiming for owner—Defense of holder—Payment of safe deposit box or repository charges. (1) Upon the payment or delivery of property to the department, the

state assumes custody and responsibility for the safekeeping of the property. A person who pays or delivers property to the department in good faith is relieved of all liability to the extent of the value of the property paid or delivered for any claim then existing or which thereafter may arise or be made in respect to the property.

(2) A holder who has paid money to the department pursuant to this chapter may make payment to any person appearing to the holder to be entitled to payment and, upon filing proof of payment and proof that the payee was entitled thereto, the department shall promptly reimburse the holder for the payment without imposing any fee or other charge. If reimbursement is sought for a payment made on an instrument, including a travelers check or money order, the holder must be reimbursed under this subsection upon filing proof that the instrument was duly presented and that payment was made to a person who appeared to the holder to be entitled to payment. The holder must be reimbursed for payment made under this subsection even if the payment was made to a person whose claim was barred under RCW 63.29.290(1).

(3) A holder who has delivered property (including a certificate of any interest in a business association) other than money to the department pursuant to this chapter may reclaim the property if still in the possession of the department, without paying any fee or other charge, upon filing proof that the owner has claimed the property from the holder.

(4) The department may accept the holder's affidavit as sufficient proof of the facts that entitle the holder to recover money and property under this section.

(5) If the holder pays or delivers property to the department in good faith and thereafter another person claims the property from the holder or another state claims the money or property under its laws relating to escheat or abandoned or unclaimed property, the department, upon written notice of the claim, shall defend the holder against the claim and indemnify the holder against any liability on the claim.

(6) For the purposes of this section, "good faith" means that:

(a) Payment or delivery was made in a reasonable attempt to comply with this chapter;

(b) The person delivering the property was not a fiduciary then in breach of trust in respect to the property and had a reasonable basis for believing, based on the facts then known to him, that the property was abandoned for the purposes of this chapter; and

(c) There is no showing that the records pursuant to which the delivery was made did not meet reasonable commercial standards of practice in the industry.

(7) Property removed from a safe deposit box or other safekeeping repository is received by the department subject to the holder's right under this subsection to be reimbursed for the actual cost of the opening and to any valid lien or contract providing for the holder to be reimbursed for unpaid rent or storage charges. The department shall reimburse or pay the holder out of the proceeds remaining after deducting the department's

selling cost. The liability of the department for this reimbursement to the holder shall be limited to the proceeds of the sale of the property remaining after the deduction of the department's costs. [1983 c 179 § 20.]

63.29.210 Crediting of dividends, interest, or increments to owner's account. Whenever property other than money is paid or delivered to the department under this chapter, the owner is entitled to receive from the department any dividends, interest, or other increments realized or accruing on the property at or before liquidation or conversion thereof into money. [1983 c 179 § 21.]

63.29.220 Public sale of abandoned property. (1) Except as provided in subsections (2) and (3) of this section the department, within three years after the receipt of abandoned property, shall sell it to the highest bidder at public sale in whatever city in the state affords in the judgment of the department the most favorable market for the property involved. The department may decline the highest bid and reoffer the property for sale if in the judgment of the department the bid is insufficient. If in the judgment of the department the probable cost of sale exceeds the value of the property, it need not be offered for sale. Any sale held under this section must be preceded by a single publication of notice, at least three weeks in advance of sale, in a newspaper of general circulation in the county in which the property is to be sold.

(2) Securities listed on an established stock exchange must be sold at prices prevailing at the time of sale on the exchange. Other securities may be sold over the counter at prices prevailing at the time of sale or by any other method the department considers advisable. All securities may be sold over the counter at prices prevailing at the time of the sale, or by any other method the department deems advisable.

(3) Unless the department considers it to be in the best interest of the state to do otherwise, all securities, other than those presumed abandoned under RCW 63.29.100, delivered to the department must be held for at least one year before being sold.

(4) Unless the department considers it to be in the best interest of the state to do otherwise, all securities presumed abandoned under RCW 63.29.100 and delivered to the department must be held for at least three years before being sold. If the department sells any securities delivered pursuant to RCW 63.29.100 before the expiration of the three-year period, any person making a claim pursuant to this chapter before the end of the three-year period is entitled to either the proceeds of the sale of the securities or the market value of the securities at the time the claim is made, whichever amount is greater, less any deduction for fees pursuant to RCW 63.29.230(2). A person making a claim under this chapter after the expiration of this period is entitled to receive either the securities delivered to the department by the holder, if they still remain in the hands of the department, or the proceeds received from sale, less any amounts deducted pursuant to RCW 63.29.230(2), but

no person has any claim under this chapter against the state, the holder, any transfer agent, registrar, or other person acting for or on behalf of a holder for any appreciation in the value of the property occurring after delivery by the holder to the department.

(5) The purchaser of property at any sale conducted by the department pursuant to this chapter takes the property free of all claims of the owner or previous holder thereof and of all persons claiming through or under them. The department shall execute all documents necessary to complete the transfer of ownership. [1983 c 179 § 22.]

63.29.230 Deposit of funds. (1) Except as otherwise provided by this section, the department shall promptly deposit in the general fund of this state all funds received under this chapter, including the proceeds from the sale of abandoned property under RCW 63.29.220. The department shall retain in a separate trust fund an amount not less than two hundred fifty thousand dollars from which prompt payment of claims duly allowed must be made by the department. Before making the deposit, the department shall record the name and last known address of each person appearing from the holders' reports to be entitled to the property and the name and last known address of each insured person or annuitant and beneficiary and with respect to each policy or contract listed in the report of an insurance company its number, and the name of the company. The record must be available for public inspection at all reasonable business hours.

(2) The department of revenue may pay from the trust fund provided in subsection (1) of this section any costs of administering this chapter. [1983 c 179 § 23.]

63.29.240 Filing of claim with department. (1) A person, excluding another state, claiming an interest in any property paid or delivered to the department may file with it a claim on a form prescribed by it and verified by the claimant.

(2) The department shall consider each claim within ninety days after it is filed and give written notice to the claimant if the claim is denied in whole or in part. The notice may be given by mailing it to the last address, if any, stated in the claim as the address to which notices are to be sent. If no address for notices is stated in the claim, the notice may be mailed to the last address, if any, of the claimant as stated in the claim. No notice of denial need be given if the claim fails to state either the last address to which notices are to be sent or the address of the claimant.

(3) If a claim is allowed, the department shall pay over or deliver to the claimant the property or the amount the department actually received or the net proceeds if it has been sold by the department, together with any additional amount required by RCW 63.29.210. If the claim is for property presumed abandoned under RCW 63.29.100 which was sold by the department within three years after the date of delivery, the amount payable for that claim is the value of the property at the time the claim was made or the net proceeds

of sale, whichever is greater. If the property claimed was interest-bearing to the owner on the date of surrender by the holder, the department also shall pay interest at the legal rate or any lesser rate the property earned while in the possession of the holder. Interest begins to accrue when the property is delivered to the department and ceases on the earlier of the expiration of ten years after delivery or the date on which payment is made to the owner. No interest on interest-bearing property is payable for any period before June 30, 1983.

(4) Any holder who pays the owner for property that has been delivered to the state and which, if claimed from the department, would be subject to subsection (3) of this section shall add interest as provided in subsection (3) of this section. The added interest must be repaid to the holder by the department in the same manner as the principal. [1983 c 179 § 24.]

63.29.250 Claim of another state to recover property—Procedure. (1) At any time after property has been paid or delivered to the department under this chapter another state may recover the property if:

(a) The property was subjected to custody by this state because the records of the holder did not reflect the last known address of the apparent owner when the property was presumed abandoned under this chapter, and the other state establishes that the last known address of the apparent owner or other person entitled to the property was in that state and under the laws of that state the property escheated to or was subject to a claim of abandonment by that state;

(b) The last known address of the apparent owner or other person entitled to the property, as reflected by the records of the holder, is in the other state and under the laws of that state the property has escheated to or become subject to a claim of abandonment by that state;

(c) The records of the holder were erroneous in that they did not accurately reflect the actual owner of the property and the last known address of the actual owner is in the other state and under the laws of that state the property escheated to or was subject to a claim of abandonment by that state;

(d) The property was subjected to custody by this state under RCW 63.29.030(6) and under the laws of the state of domicile of the holder the property has escheated to or become subject to a claim of abandonment by that state; or

(e) The property is the sum payable on a travelers check, money order, or other similar instrument that was subjected to custody by this state under RCW 63.29.040, and the instrument was purchased in the other state, and under the laws of that state the property escheated to or became subject to a claim of abandonment by that state.

(2) The claim of another state to recover escheated or abandoned property must be presented in a form prescribed by the department, who shall decide the claim within ninety days after it is presented. The department shall allow the claim if it determines that the other state is entitled to the abandoned property under subsection (1) of this section.

(3) The department shall require a state, before recovering property under this section, to agree to indemnify this state and its officers and employees against any liability on a claim for the property. [1983 c 179 § 25.]

63.29.260 Action to establish claim. A person aggrieved by a decision of the department or whose claim has not been acted upon within ninety days after its filing may bring an action to establish the claim in the superior court of Thurston county naming the department as a defendant. The action must be brought within ninety days after the decision of the department or within one hundred eighty days after the filing of the claim if the department has failed to act on it. [1983 c 179 § 26.]

63.29.270 Election to take payment or delivery. (1) The department may decline to receive any property reported under this chapter which it considers to have a value less than the expense of giving notice and of sale. If the department elects not to receive custody of the property, the holder shall be notified within one hundred twenty days after filing the report required under RCW 63.29.170. The holder then may dispose of the property in such manner as it sees fit. No action or proceeding may be maintained against the holder for or on account of any action taken by the holder pursuant to this subsection with respect to the property.

(2) A holder, with the written consent of the department and upon conditions and terms prescribed by it, may report and deliver property before the property is presumed abandoned. Property delivered under this subsection must be held by the department and is not presumed abandoned until such time as it otherwise would be presumed abandoned under this chapter. [1983 c 179 § 27.]

63.29.280 Destruction or disposition of property having insubstantial commercial value—Immunity from liability. If the department determines after investigation that any property delivered under this chapter has insubstantial commercial value, the department may destroy or otherwise dispose of the property at any time. No action or proceeding may be maintained against the state or any officer or against the holder for or on account of any action taken by the department pursuant to this section. Documents which are to be destroyed shall be copied on film and retained for ten years. Original documents which the department has identified to be destroyed and which have legal significance or historical interest may be surrendered to the state historical museum or to the state library. [1983 c 179 § 28.]

63.29.290 Periods of limitation. (1) The expiration, after September 1, 1979, of any period of time specified by contract, statute, or court order, during which a claim for money or property can be made or during which an action or proceeding may be commenced or enforced to obtain payment of a claim for money or to recover property, does not prevent the money or property from being presumed abandoned or affect any duty to

file a report or to pay or deliver abandoned property to the department as required by this chapter.

(2) No action or proceeding may be commenced by the department with respect to any duty of a holder under this chapter more than six years after the duty arose. [1983 c 179 § 29.]

63.29.300 Requests for reports and examination of records. (1) The department may require any person who has not filed a report to file a verified report stating whether or not the person is holding any unclaimed property reportable or deliverable under this chapter. Nothing in this chapter requires reporting of property which is not subject to payment or delivery.

(2) The department, at reasonable times and upon reasonable notice, may examine the records of any person to determine whether the person has complied with the provisions of this chapter. The department may conduct the examination even if the person believes it is not in possession of any property reportable or deliverable under this chapter.

(3) If a person is treated under RCW 63.29.120 as the holder of the property only insofar as the interest of the business association in the property is concerned, the department, pursuant to subsection (2) of this section, may examine the records of the person if the department has given the notice required by subsection (2) of this section to both the person and the business association at least ninety days before the examination.

(4) If an examination of the records of a person results in the disclosure of property reportable and deliverable under this chapter, the department may assess the cost of the examination against the holder at the rate of one hundred forty dollars a day for each examiner, but in no case may the charges exceed the lesser of three thousand dollars or the value of the property found to be reportable and deliverable. No assessment shall be imposed where the person proves that failure to report and deliver property was inadvertent. The cost of examination made pursuant to subsection (3) of this section may be imposed only against the business association.

(5) If a holder fails after June 30, 1983, to maintain the records required by RCW 63.29.310 and the records of the holder available for the periods subject to this chapter are insufficient to permit the preparation of a report, the department may require the holder to report and pay such amounts as may reasonably be estimated from any available records. [1983 c 179 § 30.]

63.29.310 Retention of records. (1) Every holder required to file a report under RCW 63.29.170, as to any property for which it has obtained the last known address of the owner, shall maintain a record of the name and last known address of the owner for six years after the property becomes reportable, except to the extent that a shorter time is provided in subsection (2) of this section or by rule of the department.

(2) Any business association that sells in this state its travelers checks, money orders, or other similar written instruments, other than third-party bank checks on

which the business association is directly liable, or that provides such instruments to others for sale in this state, shall maintain a record of those instruments while they remain outstanding, indicating the state and date of issue for three years after the date the property is reportable. [1983 c 179 § 31.]

63.29.320 Enforcement. The department may bring an action in a court of competent jurisdiction to enforce this chapter. [1983 c 179 § 32.]

63.29.330 Interstate agreements and cooperation—Joint and reciprocal actions with other states.

(1) The department may enter into agreements with other states to exchange information needed to enable this or another state to audit or otherwise determine unclaimed property that it or another state may be entitled to subject to a claim of custody. The department by rule may require the reporting of information needed to enable compliance with agreements made pursuant to this section and prescribe the form.

(2) To avoid conflicts between the department's procedures and the procedures of administrators in other jurisdictions that enact the Uniform Unclaimed Property Act, the department, so far as is consistent with the purposes, policies, and provisions of this chapter, before adopting, amending or repealing rules, shall advise and consult with administrators in other jurisdictions that enact substantially the Uniform Unclaimed Property Act and take into consideration the rules of administrators in other jurisdictions that enact the Uniform Unclaimed Property Act.

(3) The department may join with other states to seek enforcement of this chapter against any person who is or may be holding property reportable under this chapter.

(4) At the request of another state, the attorney general of this state may bring an action in the name of the administrator of the other state in any court of competent jurisdiction to enforce the unclaimed property laws of the other state against a holder in this state of property subject to escheat or a claim of abandonment by the other state, if the other state has agreed to pay expenses incurred by the attorney general in bringing the action.

(5) The department may request that the attorney general of another state or any other person bring an action in the name of the department in the other state. This state shall pay all expenses including attorney's fees in any action under this subsection. The department may agree to pay the person bringing the action attorney's fees based in whole or in part on a percentage of the value of any property recovered in the action. Any expenses paid pursuant to this subsection may not be deducted from the amount that is subject to the claim by the owner under this chapter. [1983 c 179 § 33.]

63.29.340 Interest and penalties. (1) A person who fails to pay or deliver property within the time prescribed by this chapter shall be required to pay to the department interest at the maximum rate permitted under RCW 19.52.020 from the date the property should have been paid or delivered.

(2) A person who wilfully fails to render any report, to pay or deliver property, or to perform other duties required under this chapter shall pay a civil penalty of one hundred dollars for each day the report is withheld or the duty is not performed, but not more than five thousand dollars, plus one hundred percent of the value of the property which should have been reported, paid or delivered.

(3) A person who wilfully refuses after written demand by the department to pay or deliver property to the department as required under this chapter or who enters into a contract to avoid the duties of this chapter is guilty of a gross misdemeanor and upon conviction may be punished by a fine of not more than one thousand dollars or imprisonment for not more than one year, or both. [1983 c 179 § 34.]

63.29.350 Penalty for excessive fee for locating abandoned property. It is unlawful for any person to seek or receive from any person or contract with any person for any fee or compensation for locating or purporting to locate any property which he knows has been reported or paid or delivered to the department of revenue pursuant to this chapter in excess of five percent of the value thereof returned to such owner. Any person violating this section is guilty of a misdemeanor and shall be fined not less than the amount of the fee or charge he has sought or received or contracted for, and not more than ten times such amount, or imprisoned for not more than thirty days, or both. [1983 c 179 § 35.]

63.29.360 Foreign transactions. This chapter does not apply to any property held, due, and owing in a foreign country and arising out of a foreign transaction. [1983 c 179 § 36.]

63.29.370 Rules. The department may adopt necessary rules in accordance with chapter 34.05 RCW to carry out the provisions of this chapter. [1983 c 179 § 38.]

63.29.380 Information and records confidential. Any information or records required to be furnished to the department of revenue as provided in this chapter shall be confidential and shall not be disclosed to any person except the person who furnished the same to the department of revenue, and except as provided in RCW 63.29.180 and 63.29.230, or as may be necessary in the proper administration of this chapter. [1983 c 179 § 39.]

63.29.900 Effect of new provisions—Clarification of application. (1) This chapter does not relieve a holder of a duty that arose before June 30, 1983, to report, pay, or deliver property. A holder who did not comply with the law in effect before June 30, 1983, is subject to the applicable enforcement and penalty provisions that then existed and they are continued in effect for the purpose of this subsection, subject to RCW 63.29.290(2).

(2) The initial report to be filed under this chapter shall include all property which is presumed abandoned under this chapter. The report shall include property

that was not required to be reported before June 30, 1983, but which would have been presumed abandoned on or after September 1, 1979 under the terms of chapter 63.29 RCW.

(3) It shall be a defense to any action by the department that facts cannot be established because a holder, prior to January 1, 1983, destroyed or lost records or did not then keep records, if the destruction, loss, or failure to keep records did not violate laws existing at the time of the destruction, loss or failure. [1983 c 179 § 37.]

63.29.901 Captions not law—1983 c 179. Captions as used in sections of this act shall not constitute any part of the law. [1983 c 179 § 40.]

63.29.902 Uniformity of application and construction. This chapter shall be applied and construed as to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it. [1983 c 179 § 41.]

63.29.903 Short title. This chapter may be cited as the Uniform Unclaimed Property Act of 1983. [1983 c 179 § 42.]

63.29.904 Severability—1983 c 179. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1983 c 179 § 43.]

63.29.905 Effective date—1983 c 179. This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect June 30, 1983. [1983 c 179 § 47.]

Chapter 63.32

UNCLAIMED PROPERTY IN HANDS OF CITY POLICE

Sections	
63.32.010	Methods of disposition—Notice—Sale, retention, destruction, or trade.
63.32.020	Notice of sale.
63.32.030	Disposition of proceeds.
63.32.040	Reimbursement to owner.
63.32.050	Donation of unclaimed bicycles and toys to charity.

63.32.010 Methods of disposition—Notice—Sale, retention, destruction, or trade. Whenever any personal property shall come into the possession of the police authorities of any city in connection with the official performance of their duties and said personal property shall remain unclaimed or not taken away for a period of sixty days from date of written notice to the owner thereof, if known, which notice shall inform the owner of the disposition which may be made of the property under this section and the time that the owner has to claim the property and in all other cases for a period of sixty days from the time said property came into the possession of the police department, unless said property has

been held as evidence in any court, then, in that event, after sixty days from date when said case has been finally disposed of and said property released as evidence by order of the court, said city may:

(1) At any time thereafter sell said personal property at public auction to the highest and best bidder for cash in the manner hereinafter provided;

(2) Retain the property for the use of the police department subject to giving notice in the manner prescribed in RCW 63.32.020 and the right of the owner, or the owner's legal representative, to reclaim the property within one year after receipt of notice, without compensation for ordinary wear and tear if, in the opinion of the chief of police, the property consists of firearms or other items specifically usable in law enforcement work: *Provided*, That at the end of each calendar year during which there has been such a retention, the police department shall provide the city's mayor or council and retain for public inspection a list of such retained items and an estimation of each item's replacement value. At the end of the one-year period any unclaimed firearm shall be disposed of pursuant to RCW 9.41.098(2);

(3) Destroy an item of personal property at the discretion of the chief of police if the chief of police determines that the following circumstances have occurred:

(a) The property has no substantial commercial value, or the probable cost of sale exceeds the value of the property;

(b) The item has been unclaimed by any person after notice procedures have been met, as prescribed in this section; and

(c) The chief of police has determined that the item is unsafe and unable to be made safe for use by any member of the general public;

(4) If the item is not unsafe or illegal to possess or sell, such item, after satisfying the notice requirements as prescribed in RCW 63.32.020, may be offered by the chief of police to bona fide dealers, in trade for law enforcement equipment, which equipment shall be treated as retained property for purpose of annual listing requirements of subsection (2) of this section; or

(5) If the item is not unsafe or illegal to possess or sell, but has been, or may be used, in the judgment of the chief of police, in a manner that is illegal, such item may be destroyed. [1988 c 223 § 3; 1988 c 132 § 1; 1981 c 154 § 2; 1973 1st ex.s. c 44 § 1; 1939 c 148 § 1; 1925 ex.s. c 100 § 1; RRS § 8999-1.]

Reviser's note: This section was amended by 1988 c 132 § 1 and by 1988 c 223 § 3, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

63.32.020 Notice of sale. Before said personal property shall be sold, a notice of such sale fixing the time and place thereof which shall be at a suitable place, which will be noted in the advertisement for sale, and containing a description of the property to be sold shall be published at least once in the official newspaper of said city at least ten days prior to the date fixed for said sale. The notice shall be signed by the chief or other head of the police department of such city. If the owner

fails to reclaim said property prior to the time fixed for the sale in such notice, the chief or other head of the police department shall conduct said sale and sell the property described in the notice at public auction to the highest and best bidder for cash, and upon payment of the amount of such bid shall deliver the said property to such bidder. [1988 c 132 § 2; 1925 ex.s. c 100 § 2; RRS § 8999-2.]

63.32.030 Disposition of proceeds. The moneys arising from sales under the provisions of this chapter shall be first applied to the payment of the costs and expenses of the sale and then to the payment of lawful charges and expenses for the keep of said personal property and the balance, if any, shall be paid into the police pension fund of said city if such fund exists; otherwise into the city current expense fund. [1939 c 148 § 2; 1925 ex.s. c 100 § 3; RRS § 8999-3.]

63.32.040 Reimbursement to owner. If the owner of said personal property so sold, or his legal representative, shall, at any time within three years after such money shall have been deposited in said police pension fund or the city current expense fund, furnish satisfactory evidence to the police pension fund board or the city treasurer of said city of the ownership of said personal property he or they shall be entitled to receive from said police pension fund or city current expense fund the amount so deposited therein with interest. [1939 c 148 § 3; 1925 ex.s. c 100 § 4; RRS § 899-4.]

63.32.050 Donation of unclaimed bicycles and toys to charity. In addition to any other method of disposition of unclaimed property provided under this chapter, the police authorities of a city or town may donate unclaimed bicycles, tricycles, and toys to nonprofit charitable organizations for use by needy persons. [1987 c 182 § 1.]

Severability—1987 c 182: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1987 c 182 § 3.]

Chapter 63.35

UNCLAIMED PROPERTY IN HANDS OF STATE PATROL

Sections

63.35.010	Definitions.
63.35.020	Methods of disposition—Sale, retention, destruction, or trade.
63.35.030	Notice of sale.
63.35.040	Disposition of proceeds.
63.35.050	Reimbursement to owner.
63.35.060	Applicability of other statutes.
63.35.900	Severability—1989 c 222.

63.35.010 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Agency" means the Washington state patrol.

(2) "Chief" means the chief of the Washington state patrol or designee.

(3) "Personal property" or "property" includes both corporeal and incorporeal personal property and includes, among other property, contraband and money.

(4) "Contraband" means any property which is unlawful to produce or possess.

(5) "Money" means all currency, script, personal checks, money orders, or other negotiable instruments.

(6) "Owner" means the person in whom is vested the ownership, dominion, or title of the property.

(7) "Unclaimed" means that no owner of the property has been identified or has requested, in writing, the release of the property to themselves nor has the owner of the property designated an individual to receive the property or paid the required postage to effect delivery of the property.

(8) "Illegal items" means those items unlawful to be possessed. [1989 c 222 § 1.]

63.35.020 Methods of disposition—Sale, retention, destruction, or trade. Whenever any personal property shall come into the possession of the officers of the state patrol in connection with the official performance of their duties and said personal property shall remain unclaimed or not taken away for a period of sixty days from the date of written notice to the owner thereof, if known, which notice shall inform the owner of the disposition which may be made of the property under this section and the time that the owner has to claim the property and in all other cases for a period of sixty days from the time said property came into the possession of the state agency, unless said property has been held as evidence in any court, then, in that event, after sixty days from date when said case has been finally disposed of and said property released as evidence by order of the court, said agency may:

(1) At any time thereafter sell said personal property at public auction to the highest and best bidder for cash in the manner hereinafter provided;

(2) Retain the property for the use of the state patrol subject to giving notice in the manner prescribed in RCW 63.35.030 and the right of the owner, or the owner's legal representative, to reclaim the property within one year after receipt of notice, without compensation for ordinary wear and tear if, in the opinion of the chief, the property consists of firearms or other items specifically usable in law enforcement work: *Provided*, That at the end of each calendar year during which there has been such a retention, the state patrol shall provide the office of financial management and retain for public inspection a list of such retained items and an estimation of each item's replacement value;

(3) Destroy an item of personal property at the discretion of the chief if the chief determines that the following circumstances have occurred:

(a) The property has no substantial commercial value, or the probable cost of sale exceeds the value of the property;

(b) The item has been unclaimed by any person after notice procedures have been met, as prescribed in this section; and

(c) The chief has determined that the item is illegal to possess or sell or unsafe and unable to be made safe for use by any member of the general public;

(4) If the item is not unsafe or illegal to possess or sell, such item, after satisfying the notice requirements as prescribed in this section may be offered by the chief to bona fide dealers, in trade for law enforcement equipment, which equipment shall be treated as retained property for purpose of annual listing requirements of subsection (2) of this section; or

(5) At the end of one year, any unclaimed firearm shall be disposed of pursuant to RCW 9.41.098(2). Any other item which is not unsafe or illegal to possess or sell, but has been, or may be used, in the judgment of the chief, in a manner that is illegal, may be destroyed. [1989 c 222 § 2.]

63.35.030 Notice of sale. Before said personal property shall be sold, a notice of such sale fixing the time and place thereof which shall be at a suitable place, which will be noted in the advertisement for sale, and containing a description of the property to be sold shall be published at least once in a newspaper of general circulation in the county in which the property is to be sold at least ten days prior to the date fixed for the auction. The notice shall be signed by the chief. If the owner fails to reclaim said property prior to the time fixed for the sale in such notice, the chief shall conduct said sale and sell the property described in the notice at public auction to the highest and best bidder for cash, and upon payment of the amount of such bid shall deliver the said property to such bidder. [1989 c 222 § 3.]

63.35.040 Disposition of proceeds. The moneys arising from sales under the provisions of this chapter shall be first applied to the payment of the costs and expenses of the sale and then to the payment of lawful charges and expenses for the keep of said personal property and the balance, if any, shall be forwarded to the state treasurer to be deposited into the state patrol highway account. [1989 c 222 § 4.]

63.35.050 Reimbursement to owner. If the owner of said personal property so sold, or the owner's legal representative, shall, at any time within three years after such money shall have been deposited in the state patrol highway account, furnish satisfactory evidence to the state treasurer of the ownership of said personal property, the owner or the owner's legal representative shall be entitled to receive from said state patrol highway account the amount so deposited therein with interest. [1989 c 222 § 5.]

63.35.060 Applicability of other statutes. (1) Chapter 63.24 RCW, unclaimed property in hands of bailee, does not apply to personal property in the possession of the state patrol.

(2) The uniform unclaimed property act, chapter 63.29 RCW, does not apply to personal property in the possession of the state patrol. [1989 c 222 § 6.]

63.35.900 Severability—1989 c 222. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1989 c 222 § 9.]

Chapter 63.40

UNCLAIMED PROPERTY IN HANDS OF SHERIFF

Sections

63.40.010	Methods of disposition—Notice—Sale, retention, destruction, or trade.
63.40.020	Notice of sale, form, contents—Conduct of sale.
63.40.030	Disposition of proceeds.
63.40.040	Reimbursement to owner.
63.40.050	Uniform unclaimed property act not applicable.
63.40.060	Donation of unclaimed bicycles and toys to charity.

63.40.010 Methods of disposition—Notice—Sale, retention, destruction, or trade. Whenever any personal property, other than vehicles governed by chapter 46.52 RCW, shall come into the possession of the sheriff of any county in connection with the official performance of his duties and said personal property shall remain unclaimed or not taken away for a period of sixty days from date of written notice to the owner thereof, if known, which notice shall inform the owner of the disposition which may be made of the property under this section and the time that the owner has to claim the property and in all other cases for a period of sixty days from the time said property came into the possession of the sheriff's office, unless said property has been held as evidence in any court, then, in that event, after sixty days from date when said case has been finally disposed of and said property released as evidence by order of the court, said county sheriff may:

(1) At any time thereafter sell said personal property at public auction to the highest and best bidder for cash in the manner hereinafter provided;

(2) Retain the property for the use of the sheriff's office subject to giving notice in the manner prescribed in RCW 63.40.020 and the right of the owner, or his or her legal representative, to reclaim the property within one year after the receipt of notice, without compensation for ordinary wear and tear if, in the opinion of the county sheriff, the property consists of firearms or other items specifically usable in law enforcement work: *Provided*, That at the end of each calendar year during which there has been such a retention, the sheriff shall provide the county's executive or legislative authority and retain for public inspection a list of such retained items and an estimation of each item's replacement value. At the end of the one-year period any unclaimed firearm shall be disposed of pursuant to RCW 9.41.098(2);

(3) Destroy an item of personal property at the discretion of the county sheriff if the county sheriff determines that the following circumstances have occurred:

(a) The property has no substantial commercial value, or the probable cost of sale exceeds the value of the property;

(b) The item has been unclaimed by any person after notice procedures have been met, as prescribed in this section; and

(c) The county sheriff has determined that the item is unsafe and unable to be made safe for use by any member of the general public;

(4) If the item is not unsafe or illegal to possess or sell, such item, after satisfying the notice requirements as prescribed in RCW 63.40.020, may be offered by the county sheriff to bona fide dealers, in trade for law enforcement equipment, which equipment shall be treated as retained property for purpose of annual listing requirements of subsection (2) of this section; or

(5) If the item is not unsafe or illegal to possess or sell, but has been, or may be used, in the discretion of the county sheriff, in a manner that is illegal, such item may be destroyed. [1988 c 223 § 4; 1988 c 132 § 3; 1981 c 154 § 3; 1973 1st ex.s. c 44 § 4; 1961 c 104 § 1.]

Reviser's note: This section was amended by 1988 c 132 § 3 and by 1988 c 223 § 4, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

63.40.020 Notice of sale, form, contents—Conduct of sale. Before said personal property shall be sold, a notice of such sale fixing the time and place thereof which shall be at a suitable place, which will be noted in the advertisement for sale, and containing a description of the property to be sold shall be published at least once in an official newspaper in said county at least ten days prior to the date fixed for said sale. The notice shall be signed by the sheriff or his deputy. If the owner fails to reclaim said property prior to the time fixed for the sale in such notice, the sheriff or his deputy shall conduct said sale and sell the property described in the notice at public auction to the highest and best bidder for cash, and upon payment of the amount of such bid shall deliver the said property to such bidder. [1988 c 132 § 4; 1961 c 104 § 2.]

63.40.030 Disposition of proceeds. The moneys arising from sales under the provisions of this chapter shall be first applied to the payment of the costs and expenses of the sale and then to the payment of lawful charges and expenses for the keeping of said personal property and the balance, if any, shall be paid into the county current expense fund. [1961 c 104 § 3.]

63.40.040 Reimbursement to owner. If the owner of said personal property so sold, or his legal representative, shall, at any time within three years after such money shall have been deposited in the county current expense fund, furnish satisfactory evidence to the county treasurer of said county of the ownership of said personal property he or they shall be entitled to receive from said county current expense fund the amount so deposited therein. [1961 c 104 § 4.]

63.40.050 Uniform unclaimed property act not applicable. The provisions of chapter 63.29 RCW shall not apply to personal property in the possession of the office of county sheriff. [1985 c 7 § 126; 1961 c 104 § 5.]

63.40.060 Donation of unclaimed bicycles and toys to charity. In addition to any other method of disposition of unclaimed property provided under this chapter, the county sheriff may donate unclaimed bicycles, tricycles, and toys to nonprofit charitable organizations for use by needy persons. [1987 c 182 § 2.]

Severability—1987 c 182: See note following RCW 63.32.050.

Chapter 63.42

UNCLAIMED INMATE PERSONAL PROPERTY

Sections

63.42.010	Legislative intent.
63.42.020	Definitions.
63.42.030	Personal property presumed abandoned—Illegal items retained as evidence or destroyed.
63.42.040	Disposition of property presumed abandoned—Inventory—Notice.
63.42.050	Chapter not applicable if prior written agreement.
63.42.060	Application of chapters 63.24 and 63.29 RCW.
63.42.900	Severability—1983 1st ex.s. c 52.

63.42.010 Legislative intent. It is the intent of the legislature to relieve the department of corrections from unacceptable burdens of cost related to storage space and manpower in the preservation of inmate personal property if the property has been abandoned by the inmate and to enhance the security and safety of the institutions. [1983 1st ex.s. c 52 § 1.]

63.42.020 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Secretary" means the secretary of the department of corrections or the secretary's designees.

(2) "Personal property" or "property" includes both corporeal and incorporeal personal property and includes among others contraband and money.

(3) "Contraband" means all personal property including, but not limited to, alcoholic beverages and other items which a resident of a correctional institution may not have in the resident's possession, as defined in rules adopted by the secretary.

(4) "Money" means all currency, script, personal checks, money orders, or other negotiable instruments.

(5) "Owner" means the inmate, the inmate's legal representative, or any person claiming through or under the inmate entitled to title and possession of the property.

(6) "Unclaimed" means that no owner of the property has been identified or has requested, in writing, the release of the property to themselves nor has the owner of the property designated an individual to receive the property or paid the required postage to effect delivery of the property.

(7) "Inmate" means a person committed to the custody of the department of corrections or transferred from other states or the federal government.

(8) "Institutions" means those facilities set forth in RCW 72.01.050(2) and all community residential programs under the department's jurisdiction operated pursuant to chapter 72.65 RCW.

(9) "Department" means the department of corrections.

(10) "Illegal items" means those items unlawful to be possessed.

(11) "Nonprofit" has the meaning prescribed by state or federal law or rules. [1983 1st ex.s. c 52 § 2.]

63.42.030 Personal property presumed abandoned—Illegal items retained as evidence or destroyed.

(1) All personal property, and any income or increment which has accrued thereon, held for the owner by an institution that has remained unclaimed for more than six months from the date the owner terminated without authorization from work training release, transferred to a different institution, or when the owner is unknown or deceased, from the date the property was placed in the custody of the institution, is presumed abandoned: *Provided*, That the provisions of this section shall be extended for up to six months for any inmate, transferred to another institution, who has no recorded next of kin, or person to whom the unclaimed property can be sent.

(2) All personal property, and any income or increment which has accrued thereon, the inmate owner of which has been placed on escape status is presumed abandoned and shall be held for three months by the institution from which the inmate escaped. If the inmate owner remains on escape status for three months or if no other person claims ownership within three months, the property shall be disposed of as set forth in this chapter.

(3) All illegal items owned by and in the possession of an inmate shall be confiscated and held by the institution to which the inmate is assigned. Such items shall be held as required for evidence for law enforcement authorities. Illegal items not retained for evidence shall be destroyed. [1983 1st ex.s. c 52 § 3.]

Property of deceased inmates: RCW 11.08.101, 11.08.111, and 11.08.120.

63.42.040 Disposition of property presumed abandoned—Inventory—Notice.

(1) All personal property, other than money, presumed abandoned shall be destroyed unless, in the opinion of the secretary, the property may be used or has value to a charitable or nonprofit organization, in which case the property may be donated to the organization. A charitable or nonprofit organization does not have a claim nor shall the department or any employee thereof be held liable to any charitable or nonprofit organization for property which is destroyed rather than donated or for the donation of property to another charitable or nonprofit organization.

(2) Money presumed abandoned under this chapter shall be paid into the revolving fund set up in accordance with RCW 9.95.360.

(3) The department shall inventory all personal property prior to its destruction or donation.

(4) Before personal property is donated or destroyed, if the name and address of the owner thereof is known or if deceased, the address of the heirs as known, at least thirty days' notice of the donation or destruction of the personal property shall be given to the owner at the owner's residence or place of business or to some person

of suitable age and discretion residing or employed therein. If the name or residence of the owner or the owner's heirs is not known, a notice of the action fixing the time and place thereof shall be published at least once in an official newspaper in the county at least thirty days prior to the date fixed for the action. The notice shall be signed by the secretary. The notice need not contain a description of property, but shall contain a general statement that the property is unclaimed personal property of inmates, specifying the institution at which the property is held. If the owner fails to reclaim the property prior to the time fixed in the notice, the property shall be donated or destroyed. [1983 1st ex.s. c 52 § 4.]

Property of deceased inmates: RCW 11.08.101, 11.08.111, and 11.08.120.

63.42.050 Chapter not applicable if prior written agreement. This chapter does not apply if the inmate and the department have reached an agreement in writing regarding the disposition of the personal property. [1983 1st ex.s. c 52 § 5.]

63.42.060 Application of chapters 63.24 and 63.29 RCW. (1) The uniform unclaimed property act, chapter 63.29 RCW, does not apply to personal property in the possession of the department of corrections.

(2) Chapter 63.24 RCW, unclaimed property in hands of bailee, does not apply to personal property in the possession of the department of corrections. [1985 c 7 § 127; 1983 1st ex.s. c 52 § 6.]

63.42.900 Severability—1983 1st ex.s. c 52. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1983 1st ex.s. c 52 § 9.]

**Chapter 63.44
JOINT TENANCIES**

Sections

63.44.010 Joint tenancies in property.

Frauds and swindles—Failure to deliver leased personal property—Requisites for prosecution—Construction: RCW 9.45.062.

Safe deposit repository lease agreements ineffective to create joint ownership or transfer property at death: RCW 11.02.090(3).

63.44.010 Joint tenancies in property. See chapter 64.28 RCW.

**Chapter 63.48
ESCHEAT OF POSTAL SAVINGS SYSTEM
ACCOUNTS**

Sections

63.48.010 Accounts presumed abandoned and to escheat to state.

63.48.020 Director to request federal records.

63.48.030 Escheat proceedings brought in Thurston county.

63.48.040 Notice to depositors whose accounts are to be escheated.

63.48.050 Copy of judgment presented for payment—Disposition of proceeds.

63.48.060 Indemnification for losses as result of escheat proceedings—Source.

63.48.010 Accounts presumed abandoned and to escheat to state. All postal savings system accounts created by the deposits of persons whose last known addresses are in the state which have not been claimed by the persons entitled thereto before May 1, 1971, are presumed to have been abandoned by their owners and are declared to escheat and become the property of this state. [1971 ex.s. c 68 § 1.]

63.48.020 Director to request federal records. The director of revenue shall request from the bureau of accounts of the United States treasury department records providing the following information: The names of depositors at the post offices of this state whose accounts are unclaimed, their last addresses as shown by the records of the post office department, and the balance in each account. He shall agree to return to the bureau of accounts promptly all account cards showing last addresses in another state. [1971 ex.s. c 68 § 2.]

63.48.030 Escheat proceedings brought in Thurston county. The director of revenue may bring proceedings in the superior court for Thurston county to escheat unclaimed postal savings system accounts held by the United States treasury. A single proceeding may be used to escheat as many accounts as may be available for escheat at one time. [1971 ex.s. c 68 § 3.]

63.48.040 Notice to depositors whose accounts are to be escheated. The director of revenue shall notify depositors whose accounts are to be escheated as follows:

(1) A letter advising that a postal savings system account in the name of the addressee is about to be escheated and setting forth the procedure by which a deposit may be claimed shall be mailed by first class mail to the named depositor at the last address shown on the account records for each account to be escheated having an unpaid principal balance of more than twenty-five dollars.

(2) A general notice of intention to escheat postal savings system accounts shall be published once in each of three successive weeks in one or more newspapers which combine to provide general circulation throughout this state.

(3) A special notice of intention to escheat the unclaimed postal savings system accounts originally deposited in each post office must be published once in each of three successive weeks in a newspaper published in the county in which the post office is located or, if there is none, in a newspaper having general circulation in the county. This notice must list the names of the owners of each unclaimed account to be escheated having a principal balance of three dollars or more. [1971 ex.s. c 68 § 4.]

63.48.050 Copy of judgment presented for payment—Disposition of proceeds. The director of revenue shall present a copy of each final judgment of escheat to the United States treasury department for payment of the principal due and the interest computed under regulations of the United States treasury department. The payment received shall be deposited in the general fund in the state treasury. [1971 ex.s. c 68 § 5.]

63.48.060 Indemnification for losses as result of escheat proceedings—Source. This state shall indemnify the United States for any losses suffered as a result of the escheat of unclaimed postal savings system accounts. The burden of the indemnification falls upon the fund into which the proceeds of the escheated accounts have been paid. [1971 ex.s. c 68 § 6.]

Title 64

REAL PROPERTY AND CONVEYANCES

Chapters

- 64.04** Conveyances.
- 64.08** Acknowledgments.
- 64.12** Waste and trespass.
- 64.16** Alien land law.
- 64.20** Alienation of land by Indians.
- 64.28** Joint tenancies.
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- 64.36** Timeshare regulation.
- 64.40** Property rights—Damages from governmental actions.

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Actions or claims arising from construction, alteration, repair, design, planning, etc., of improvements upon real property: RCW 4.16.300 through 4.16.320.
Adverse possession: Chapter 7.28 RCW.
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Cemetery property: Chapter 68.28 RCW.
Commissioners to convey real estate: Chapter 6.28 RCW.
Community property: Chapter 26.16 RCW.
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Housing authorities law: Chapter 35.82 RCW.
Housing cooperation law: Chapter 35.83 RCW.
Indians and Indian lands: Chapter 37.12 RCW.
Intergovernmental disposition of property: Chapter 39.33 RCW.
Joint tenants, simultaneous death: RCW 11.05.030.
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Liens

improving property with nursery stock: Chapter 60.20 RCW.
landlord's: Chapter 60.72 RCW.
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timber and lumber: Chapter 60.24 RCW.
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Lis pendens: RCW 4.28.160, 4.28.320.
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Power of attorney, recording of revocation: RCW 65.08.130.
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Public lands, trespass: Chapter 79.40 RCW.
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Real estate brokers and salespersons: Chapter 18.85 RCW.
Real property, false representation concerning title: RCW 9.38.020.
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Rents and profits constitute real property for purposes of mortgages, trust deeds or assignments: RCW 7.28.230.
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Unlawful entry and detainer: Chapter 59.16 RCW.
Validity of agreement to indemnify against liability for negligence relative to construction or improvement of real property: RCW 4.24.115.
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Chapter 64.04 CONVEYANCES

Sections

- 64.04.010 Conveyances and encumbrances to be by deed.
- 64.04.020 Requisites of a deed.
- 64.04.030 Warranty deed—Form and effect.
- 64.04.040 Bargain and sale deed—Form and effect.
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- 64.04.055 Deeds for conveyance of apartments under horizontal property regimes act.
- 64.04.060 Word "heirs" unnecessary.
- 64.04.070 After acquired title follows deed.
- 64.04.080 Purchaser of community real property protected by record title.
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- 64.04.100 Private seals abolished—Validation.
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- 64.04.110 Recording.
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- 64.04.130 Interests in land for purposes of conservation, protection, preservation, etc.—Ownership by certain entities—Conveyances.
- 64.04.135 Criteria for monitoring historical conformance not to exceed those in original donation agreement—Exception.
- 64.04.140 Legislative declaration—Solar energy systems—Solar easements authorized.
- 64.04.150 Solar easements—Definitions.
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- 64.04.170 Interference with solar easement—Remedies.
- 64.04.180 Railroad properties as public utility and transportation corridors—Declaration of availability for public use—Acquisition of reversionary interest.
- 64.04.190 Public utility and transportation corridors—Defined.

Validating—1929 c 33: "All instruments in writing purporting to convey or encumber real estate situated in this state, or any interest therein, or other instrument in writing required to be acknowledged, heretofore executed and acknowledged according to the provisions of this act are hereby declared legal and valid." [1929 c 33 § 7; RRS § 10563, part.]

Validating—1891 p 178: "In all cases where real estate has been heretofore duly sold by a sheriff in pursuance of law by virtue of an execution or other process, and no deed having been made therefor in the manner required by law to the purchaser therefor [thereof] or other person entitled to the same by the sheriff making the sale, the successor in office of the sheriff making the sale having made a deed of the premises so sold to the purchaser or other person entitled to the same, such deed shall be valid and effectual to convey to the grantee the lands or premises so sold: *Provided*, That this act shall not be construed to affect the equities of third parties in the premises." [1891 p 178 § 1; RRS § 10569.]

Validating—1890 p 89: "All deeds, mortgages or other instruments in writing heretofore executed to convey real estate, or any interest therein, and which have no subscribing witness or witnesses thereto, are hereby cured of such defect and made valid, notwithstanding such omission: *Provided*, Nothing in this act shall be construed to affect vested rights or impair contracts made in good faith between parties prior to the passage of this act: *And provided further*, That nothing in this act shall be construed to give validity to, or in any manner affect, the sale or transfer of real estate made by the territory or state of Washington, or any officer, agent or employee thereof prior to the passage of this act." [1890 p 89 § 1; RRS § 10570.]

Reviser's note: The two sections below were repealed by 1929 c 33 § 15 but are retained for their historical value.

Validating—Code 1881: "All deeds, mortgages, or other instruments in writing, which, prior to the passage of this chapter may have been acknowledged before either of the foregoing named officers, or deputies, or before the clerk of any court, or his deputies, heretofore established by the laws of this territory, are hereby declared legal and valid, in so far as such acknowledgment is concerned." [Code 1881 § 2318; RRS § 10562.]

Validating—Code 1881: "That all deeds, mortgages, and other instruments at any time heretofore acknowledged according to the provisions of this chapter are hereby declared legal and valid." [Code 1881 § 2322; RRS § 10568.]

Recording of deeds and conveyances: Title 65 RCW.

64.04.010 Conveyances and encumbrances to be by deed. Every conveyance of real estate, or any interest therein, and every contract creating or evidencing any encumbrance upon real estate, shall be by deed: *Provided*, That when real estate, or any interest therein, is held in trust, the terms and conditions of which trust are of record, and the instrument creating such trust authorizes the issuance of certificates or written evidence of any interest in said real estate under said trust, and authorizes the transfer of such certificates or evidence of interest by assignment by the holder thereof by a simple writing or by endorsement on the back of such certificate or evidence of interest or delivery thereof to the

vendee, such transfer shall be valid, and all such assignments or transfers hereby authorized and heretofore made in accordance with the provisions of this section are hereby declared to be legal and valid. [1929 c 33 § 1; RRS § 10550. Prior: 1888 p 50 § 1; 1886 p 177 § 1; Code 1881 § 2311; 1877 p 312 § 1; 1873 p 465 § 1; 1863 p 430 § 1; 1860 p 299 § 1; 1854 p 402 § 1.]

64.04.020 Requisites of a deed. Every deed shall be in writing, signed by the party bound thereby, and acknowledged by the party before some person authorized by *this act to take acknowledgments of deeds. [1929 c 33 § 2; RRS § 10551. Prior: 1915 c 172 § 1; 1888 p 50 § 2; 1886 p 177 § 2; Code 1881 § 2312; 1854 p 402 § 2.]

***Reviser's note:** The language "this act" appears in 1929 c 33, which is codified in RCW 64.04.010–64.04.050, 64.08.010–64.08.070, 64.12.020 and 65.08.030.

64.04.030 Warranty deed—Form and effect. Warranty deeds for the conveyance of land may be substantially in the following form, without express covenants:

The grantor (here insert the name or names and place or residence) for and in consideration of (here insert consideration) in hand paid, conveys and warrants to (here insert the grantee's name or names) the following described real estate (here insert description), situated in the county of _____, state of Washington. Dated this _____ day of _____, 19__.

Every deed in substance in the above form, when otherwise duly executed, shall be deemed and held a conveyance in fee simple to the grantee, his heirs and assigns, with covenants on the part of the grantor: (1) That at the time of the making and delivery of such deed he was lawfully seized of an indefeasible estate in fee simple, in and to the premises therein described, and had good right and full power to convey the same; (2) that the same were then free from all encumbrances; and (3) that he warrants to the grantee, his heirs and assigns, the quiet and peaceable possession of such premises, and will defend the title thereto against all persons who may lawfully claim the same, and such covenants shall be obligatory upon any grantor, his heirs and personal representatives, as fully and with like effect as if written at full length in such deed. [1929 c 33 § 9; RRS § 10552. Prior: 1886 p 177 § 3.]

64.04.040 Bargain and sale deed—Form and effect. Bargain and sale deeds for the conveyance of land may be substantially in the following form, without express covenants: The grantor (here insert name or names and place of residence), for and in consideration of (here insert consideration) in hand paid, bargains, sells and conveys to (here insert the grantee's name or names) the following described real estate (here insert description) situated in the county of _____, state of Washington.

Dated this _____ day of _____, 19__.

Every deed in substance in the above form when otherwise duly executed, shall convey to the grantee, his heirs or assigns an estate of inheritance in fee simple, and shall be adjudged an express covenant to the grantee, his

heirs or assigns, to wit: That the grantor was seized of an indefeasible estate in fee simple, free from encumbrances, done or suffered from the grantor, except the rents and services that may be reserved, and also for quiet enjoyment against the grantor, his heirs and assigns, unless limited by express words contained in such deed; and the grantee, his heirs, executors, administrators and assigns may recover in any action for breaches as if such covenants were expressly inserted. [1929 c 33 § 10; RRS § 10553. Prior: 1886 p 178 § 4.]

64.04.050 Quitclaim deed—Form and effect. Quitclaim deeds may be in substance in the following form: The grantor (here insert the name or names and place of residence), for and in consideration of (here insert consideration) conveys and quitclaims to (here insert grantee's name or names) all interest in the following described real estate (here insert description), situated in the county of _____, state of Washington.

Dated this _____ day of _____, 19__.

Every deed in substance in the above form, when otherwise duly executed, shall be deemed and held a good and sufficient conveyance, release and quitclaim to the grantee, his heirs and assigns in fee of all the then existing legal and equitable rights of the grantor in the premises therein described, but shall not extend to the after acquired title unless words are added expressing such intention. [1929 c 33 § 11; RRS § 10554. Prior: 1886 p 178 § 5.]

64.04.055 Deeds for conveyance of apartments under horizontal property regimes act. All deeds for the conveyance of apartments as provided for in chapter 64.32 RCW shall be substantially in the form required by law for the conveyance of any other land or real property and shall in addition thereto contain the contents described in RCW 64.32.120. [1963 c 156 § 29.]

64.04.060 Word "heirs" unnecessary. The term "heirs", or other technical words of inheritance, shall not be necessary to create and convey an estate in fee simple. All conveyances heretofore made omitting the word "heirs", or other technical words of inheritance, but not limiting the estate conveyed, are hereby validated as and are declared to be conveyances of an estate in fee simple. [1931 c 20 § 1; RRS § 10558. Prior: 1888 p 51 § 4.]

64.04.070 After acquired title follows deed. Whenever any person or persons having sold and conveyed by deed any lands in this state, and who, at the time of such conveyance, had no title to such land, and any person or persons who may hereafter sell and convey by deed any lands in this state, and who shall not at the time of such sale and conveyance have the title to such land, shall acquire a title to such lands so sold and conveyed, such title shall inure to the benefit of the purchasers or conveyee or conveyees of such lands to whom such deed was executed and delivered, and to his and their heirs and assigns forever. And the title to such land so sold and conveyed shall pass to and vest in the conveyee or conveyees of such lands and to his or their heirs and assigns,

and shall thereafter run with such land. [1871 p 195 § 1; RRS § 10571. Cf. Code 1881 (Supp.) p 25 § 1.]

64.04.080 Purchaser of community real property protected by record title. See RCW 26.16.095.

64.04.090 Private seals abolished. The use of private seals upon all deeds, mortgages, leases, bonds, and other instruments, and contracts in writing, including deeds from a husband to his wife and from a wife to her husband for their respective community right, title, interest or estate in all or any portion of their community real property, is hereby abolished, and the addition of a private seal to any such instrument or contract in writing hereafter made, shall not affect its validity or legality in any respect. [1923 c 23 § 1; RRS § 10556. Prior: 1888 p 184 § 1; 1888 p 50 § 3; 1886 p 165 § 1; 1871 p 83 §§ 1, 2.]

64.04.100 Private seals abolished—Validation. All deeds, mortgages, leases, bonds and other instruments and contracts in writing, including deeds from a husband to his wife and from a wife to her husband for their respective community right, title, interest or estate in all or any portion of their community real property, which have heretofore been executed without the use of a private seal, are, notwithstanding, hereby declared to be legal and valid. [1923 c 23 § 2; RRS § 10557. Prior: 1888 p 184 § 2.]

64.04.105 Corporate seals—Effect of absence from instrument. The absence of a corporate seal on any deed, mortgage, lease, bond or other instrument or contract in writing shall not affect its validity, legality or character in any respect. [1957 c 200 § 1.]

64.04.110 Recording. See chapter 65.08 RCW.

64.04.120 Registration of land titles. See chapter 65.12 RCW.

64.04.130 Interests in land for purposes of conservation, protection, preservation, etc.—Ownership by certain entities—Conveyances. A development right, easement, covenant, restriction, or other right, or any interest less than the fee simple, to protect, preserve, maintain, improve, restore, limit the future use of, or conserve for open space purposes, any land or improvement on the land, whether the right or interest be appurtenant or in gross, may be held or acquired by any state agency, federal agency, county, city, town, or metropolitan municipal corporation, nonprofit historic preservation corporation, or nonprofit nature conservancy corporation. Any such right or interest shall constitute and be classified as real property. All instruments for the conveyance thereof shall be substantially in the form required by law for the conveyance of any land or other real property.

As used in this section, "nonprofit nature conservancy corporation" means an organization which qualifies as being tax exempt under 26 U.S.C. section 501(c)(3) (of the United States Internal Revenue Code of 1954, as

amended) as it existed on June 25, 1976, and which has as one of its principal purposes the conducting or facilitating of scientific research; the conserving of natural resources, including but not limited to biological resources, for the general public; or the conserving of natural areas including but not limited to wildlife or plant habitat.

As used in this section, "nonprofit historic preservation corporation" means an organization which qualifies as being tax exempt under 26 U.S.C. section 501(c)(3) of the United States Internal Revenue Code of 1954, as amended, and which has as one of its principal purposes the conducting or facilitating of historic preservation activities within the state, including conservation or preservation of historic sites, districts, buildings, and artifacts. [1987 c 341 § 1; 1979 ex.s. c 21 § 1.]

Acquisition of open space, land, or rights to future development by certain entities: RCW 84.34.200 through 84.34.250.

Property tax exemption for conservation futures on agricultural land: RCW 84.36.500.

64.04.135 Criteria for monitoring historical conformance not to exceed those in original donation agreement—Exception. The criteria for monitoring historical conformance shall not exceed those included in the original donation agreement, unless agreed to in writing between grantor and grantee. [1987 c 341 § 4.]

64.04.140 Legislative declaration—Solar energy systems—Solar easements authorized. The legislature declares that the potential economic and environmental benefits of solar energy use are considered to be in the public interest; therefore, local governments are authorized to encourage and protect access to direct sunlight for solar energy systems. The legislature further declares that solar easements appropriate to assuring continued access to direct sunlight for solar energy systems may be created and may be privately negotiated. [1979 ex.s. c 170 § 1.]

Severability—1979 ex.s. c 170: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1979 ex.s. c 170 § 15.]

64.04.150 Solar easements—Definitions. (1) As used in this chapter:

(a) "Solar energy system" means any device or combination of devices or elements which rely upon direct sunlight as an energy source, including but not limited to any substance or device which collects sunlight for use in:

- (i) The heating or cooling of a structure or building;
 - (ii) The heating or pumping of water;
 - (iii) Industrial, commercial, or agricultural processes;
- or
- (iv) The generation of electricity.

A solar energy system may be used for purposes in addition to the collection of solar energy. These uses include, but are not limited to, serving as a structural member or part of a roof of a building or structure and serving as a window or wall; and

(b) "Solar easement" means a right, expressed as an easement, restriction, covenant, or condition contained in any deed, contract, or other written instrument executed by or on behalf of any landowner for the purpose of assuring adequate access to direct sunlight for solar energy systems.

(2) A solar easement is an interest in real property, and shall be created in writing and shall be subject to the same conveyancing and instrument recording requirements as other easements.

(3) A solar easement shall be appurtenant and run with the land or lands benefited and burdened, unless otherwise provided in the easement.

(4) Any instrument creating a solar easement shall include but not be limited to:

(a) A description of the real property subject to the solar easement and a description of the real property benefiting from the solar easement; and

(b) A description of the extent of the solar easement which is sufficiently certain to allow the owner of the real property subject to the easement to ascertain the extent of the easement. Such description may be made by describing the vertical and horizontal angles, expressed in degrees, at which the solar easement extends over the real property subject to the easement and the points from which those angles are to be measured, or the height over the property above which the solar easement extends, or a prohibited shadow pattern, or any other reasonably certain description.

(5) Any instrument creating a solar easement may include:

(a) The terms or conditions or both under which the solar easement is granted or will be terminated; and

(b) Any provisions for compensation to the owner of property benefiting from the solar easement in the event of interference with the enjoyment of the solar easement, or compensation to the owner of the property subject to the solar easement for maintaining the solar easement. [1979 ex.s. c 170 § 12.]

Severability—1979 ex.s. c 170: See note following RCW 64.04.140.

64.04.160 Solar easements—Creation. A solar easement created under this chapter may only be created by written agreement. Nothing in this chapter shall be deemed to create or authorize the creation of an implied easement or a prescriptive easement. [1979 ex.s. c 170 § 14.]

Severability—1979 ex.s. c 170: See note following RCW 64.04.140.

64.04.170 Interference with solar easement—Remedies. In any action for interference with a solar easement, if the instrument creating the easement does not specify any appropriate and applicable remedies, the court may choose one or more remedies including but not limited to the following:

(1) Actual damages as measured by increased charges for supplemental energy, the capital cost of the solar energy system, and/or the cost of additional equipment necessary to supply sufficient energy:

(a) From the time the interference began until the actual or expected cessation of the interference; or

(b) If the interference is not expected to cease, in a lump sum which represents the present value of the damages from the time the interference began until the normally expected end of the useful life of the equipment which was interfered with;

(2) Reasonable and necessary attorney's fees as fixed by the court; and

(3) An injunction against the interference. [1979 ex.s. c 170 § 13.]

Severability—1979 ex.s. c 170: See note following RCW 64.04.140.

64.04.180 Railroad properties as public utility and transportation corridors—Declaration of availability for public use—Acquisition of reversionary interest. Railroad properties, including but not limited to rights-of-way, land held in fee and used for railroad operations, bridges, tunnels, and other facilities, are declared to be suitable for public use upon cessation of railroad operations on the properties. It is in the public interest of the state of Washington that such properties retain their character as public utility and transportation corridors, and that they may be made available for public uses including highways, other forms of mass transportation, conservation, energy production or transmission, or recreation. Nothing in this section or in RCW 64.04.190 authorizes a public agency or utility to acquire reversionary interests in public utility and transportation corridors without payment of just compensation. [1988 c 16 § 1; 1984 c 143 § 22.]

Severability—1984 c 143: See RCW 81.34.900.

64.04.190 Public utility and transportation corridors—Defined. Public utility and transportation corridors are railroad properties (1) on which railroad operations have ceased; (2) that have been found suitable for public use by an order of the Interstate Commerce Commission of the United States; and (3) that have been acquired by purchase, lease, donation, exchange, or other agreement by the state, one of its political subdivisions, or a public utility. [1988 c 16 § 2; 1984 c 143 § 23.]

Severability—1984 c 143: See RCW 81.34.900.

Chapter 64.08

ACKNOWLEDGMENTS

Sections

- 64.08.010 Who may take acknowledgments.
- 64.08.020 Acknowledgments out of state—Certificate.
- 64.08.040 Foreign acknowledgments, who may take.
- 64.08.050 Certificate of acknowledgment—Evidence.
- 64.08.060 Form of certificate for individual.
- 64.08.070 Form of certificate for corporation.
- 64.08.090 Authority of superintendents, business managers and officers of correctional institutions to take acknowledgments and administer oaths—Procedure.
- 64.08.100 Acknowledgments by persons unable to sign name.

Validating: See notes following chapter 64.04 RCW digest.

Acknowledgments

merchant seamen: RCW 73.20.010.

persons in the armed services: RCW 73.20.010.

persons outside United States in connection with war: RCW 73.20.010.

64.08.010 Who may take acknowledgments. Acknowledgments of deeds, mortgages and other instruments in writing, required to be acknowledged may be taken in this state before a justice of the supreme court, or the clerk thereof, or the deputy of such clerk, before a judge of the court of appeals, or the clerk thereof, before a judge of the superior court, or qualified court commissioner thereof, or the clerk thereof, or the deputy of such clerk, or a county auditor, or the deputy of such auditor, or a qualified notary public, or a qualified United States commissioner appointed by any district court of the United States for this state, and all said instruments heretofore executed and acknowledged according to the provisions of this section are hereby declared legal and valid. [1971 c 81 § 131; 1931 c 13 § 1; 1929 c 33 § 3; RRS § 10559. Prior: 1913 c 14 § 1; Code 1881 § 2315; 1879 p 110 § 1; 1877 p 317 § 5; 1875 p 107 § 1; 1873 p 466 § 5.]

64.08.020 Acknowledgments out of state—Certificate. Acknowledgments of deeds conveying or encumbering real estate situated in this state, or any interest therein, and other instruments in writing, required to be acknowledged, may be taken in any other state or territory of the United States, the District of Columbia, or in any possession of the United States, before any person authorized to take the acknowledgments of deeds by the laws of the state, territory, district or possession wherein the acknowledgment is taken, or before any commissioner appointed by the governor of this state, for that purpose, but unless such acknowledgment is taken before a commissioner so appointed by the governor, or before the clerk of a court of record of such state, territory, district or possession, or before a notary public or other officer having a seal of office, the instrument shall have attached thereto a certificate of the clerk of a court of record of the county, parish, or other political subdivision of such state, territory, district or possession wherein the acknowledgment was taken, under the seal of said court, certifying that the person who took the acknowledgment, and whose name is subscribed to the certificate thereof, was at the date thereof such officer as he represented himself to be, authorized by law to take acknowledgments of deeds, and that the clerk verily believes the signature of the person subscribed to the certificate of acknowledgment to be genuine. [1929 c 33 § 4; RRS §§ 10560, 10561. Prior: Code 1881 §§ 2316, 2317; 1877 p 313 §§ 6, 7; 1873 p 466 §§ 6, 7; 1867 pp 93, 94 §§ 1, 2; 1866 p 89 § 1; 1865 p 25 § 1. Formerly RCW 64.08.020 and 64.08.030.]

64.08.040 Foreign acknowledgments, who may take. Acknowledgments of deeds conveying or encumbering real estate situated in this state, or any interest therein and other instruments in writing, required to be acknowledged, may be taken in any foreign country before

any minister, plenipotentiary, secretary of legation, charge d'affaires, consul general, consul, vice consul, consular agent, or commercial agent appointed by the United States government, or before any notary public, or before the judge, clerk, or other proper officer of any court of said country, or before the mayor or other chief magistrate of any city, town or other municipal corporation therein. [1929 c 33 § 5; RRS § 10563, part. Prior: 1901 c 53 § 1; 1888 p 1 § 1; Code 1881 § 2319; 1875 p 108 § 2.]

64.08.050 Certificate of acknowledgment—Evidence. The officer, or person, taking an acknowledgment as in this chapter provided, shall certify the same by a certificate written upon or annexed to the instrument acknowledged and signed by him or her and sealed with his or her official seal, if any, and reciting in substance that the person, or persons, known to him or her as, or determined by satisfactory evidence to be, the person, or persons, whose name, or names, are signed to the instrument as executing the same, acknowledged before him or her on the date stated in the certificate that he, she, or they, executed the same freely and voluntarily. Such certificate shall be prima facie evidence of the facts therein recited. The officer or person taking the acknowledgment has satisfactory evidence that a person is the person whose name is signed on the instrument if that person: (1) Is personally known to the officer or person taking the acknowledgment; (2) is identified upon the oath or affirmation of a credible witness personally known to the officer or person taking the acknowledgment; or (3) is identified on the basis of identification documents. [1988 c 69 § 1; 1929 c 33 § 6; RRS §§ 10564, 10565. Prior: Code 1881 §§ 2320, 2321; 1879 p 158 §§ 2, 3.]

64.08.060 Form of certificate for individual. A certificate of acknowledgment for an individual, substantially in the following form or, after December 31, 1985, substantially in the form set forth in RCW 42.44.100(1), shall be sufficient for the purposes of this chapter and for any acknowledgment required to be taken in accordance with this chapter:

State of ----- }
County of ----- } ss.

On this day personally appeared before me (here insert the name of grantor or grantors) to me known to be the individual, or individuals described in and who executed the within and foregoing instrument, and acknowledged that he (she or they) signed the same as his (her or their) free and voluntary act and deed, for the uses and purposes therein mentioned. Given under my hand and official seal this ----- day of -----, 19... (Signature of officer and official seal)

If acknowledgment is taken before a notary public of this state the signature shall be followed by substantially the following: Notary Public in and for the state of Washington, residing at -----, (giving place of residence). [1988 c 69 § 2; 1929 c 33 § 13; RRS § 10566. Prior: 1888 p 51 § 2; 1886 p 179 § 7.]

64.08.070 Form of certificate for corporation. A certificate of acknowledgment for a corporation, substantially in the following form or, after December 31, 1985, substantially in the form set forth in RCW 42.44.100(2), shall be sufficient for the purposes of this chapter and for any acknowledgment required to be taken in accordance with this chapter:

State of ----- }
County of ----- } ss.

On this ----- day of -----, 19..., before me personally appeared -----, to me known to be the (president, vice president, secretary, treasurer, or other authorized officer or agent, as the case may be) of the corporation that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument and that the seal affixed is the corporate seal of said corporation.

In Witness Whereof I have hereunto set my hand and affixed my official seal the day and year first above written. (Signature and title of officer with place of residence of notary public.) [1988 c 69 § 3; 1929 c 33 § 14; RRS § 10567. Prior: 1903 c 132 § 1.]

64.08.090 Authority of superintendents, business managers and officers of correctional institutions to take acknowledgments and administer oaths—Procedure. The superintendents, associate and assistant superintendents, business managers, records officers and camp superintendents of any correctional institution or facility operated by the state of Washington are hereby authorized and empowered to take acknowledgments on any instruments of writing, and certify the same in the manner required by law, and to administer all oaths required by law to be administered, all of the foregoing acts to have the same effect as if performed by a notary public: *Provided*, That such authority shall only extend to taking acknowledgments for and administering oaths to officers, employees and residents of such institutions and facilities. None of the individuals herein empowered to take acknowledgments and administer oaths shall demand or accept any fee or compensation whatsoever for administering or taking any oath, affirmation, or acknowledgment under the authority conferred by this section.

In certifying any oath or in signing any instrument officially, an individual empowered to do so under this section shall, in addition to his name, state in writing his place of residence, the date of his action, and affix the seal of the institution where he is employed: *Provided*, That in certifying any oath to be used in any of the courts of this state, it shall not be necessary to append an impression of the official seal of the institution. [1972 ex.s. c 58 § 1.]

64.08.100 Acknowledgments by persons unable to sign name. Any person who is otherwise competent but is physically unable to sign his or her name or make a

mark may make an acknowledgment authorized under this chapter by orally directing the notary public or other authorized officer taking the acknowledgment to sign the person's name on his or her behalf. In taking an acknowledgment under this section, the notary public or other authorized officer shall, in addition to stating his or her name and place of residence, state that the signature in the acknowledgment was obtained under the authority of this section. [1987 c 76 § 2.]

Chapter 64.12 WASTE AND TRESPASS

Sections

64.12.010	Waste actionable.
64.12.020	Waste by guardian or tenant, action for.
64.12.030	Injury to or removing trees, etc.—Damages.
64.12.040	Mitigating circumstances—Damages.
64.12.045	Cutting, breaking, removing Christmas trees from state lands—Compensation.
64.12.050	Injunction to prevent waste on public land.
64.12.060	Action by occupant of unsurveyed land.

Actions to be commenced where subject is situated: RCW 4.12.010.

Damages for waste after injunction issued: RCW 7.40.200.

Injunctions, generally: Chapter 7.40 RCW.

Trespass

animals: Title 16 RCW.

criminal: Chapter 9A.16 RCW.

public lands: Chapter 79.40 RCW.

waste, executor or administrator may sue: RCW 11.48.010.

Waste

option contracts and coal leases on state lands: RCW 79.01.696.

restraining during redemption period: RCW 6.23.100.

trespass on state lands: Chapter 79.40 RCW.

64.12.010 Waste actionable. Wrongs heretofore remediable by action of waste shall be subjects of actions as other wrongs. [Code 1881 § 600; 1877 p 125 § 605; 1869 p 143 § 554; 1854 p 206 § 403; RRS § 937.]

64.12.020 Waste by guardian or tenant, action for. If a guardian, tenant in severalty or in common, for life or for years, or by sufferance, or at will, or a subtenant, of real property commit waste thereon, any person injured thereby may maintain an action at law for damages therefor against such guardian or tenant or subtenant; in which action, if the plaintiff prevails, there shall be judgment for treble damages, or for fifty dollars, whichever is greater, and the court, in addition may decree forfeiture of the estate of the party committing or permitting the waste, and of eviction from the property. The judgment, in any event, shall include as part of the costs of the prevailing party, a reasonable attorney's fee to be fixed by the court. But judgment of forfeiture and eviction shall only be given in favor of the person entitled to the reversion against the tenant in possession, when the injury to the estate in reversion is determined in the action to be equal to the value of the tenant's estate or unexpired term, or to have been done or suffered in malice. [1943 c 22 § 1; Code 1881 § 601; 1877 p 125 § 606; 1869 p 143 § 555; 1854 p 206 § 403; Rem. Supp. 1943 § 938.]

64.12.030 Injury to or removing trees, etc.—Damages. Whenever any person shall cut down, girdle or otherwise injure, or carry off any tree, timber or shrub on the land of another person, or on the street or highway in front of any person's house, village, town or city lot, or cultivated grounds, or on the commons or public grounds of any village, town or city, or on the street or highway in front thereof, without lawful authority, in an action by such person, village, town or city against the person committing such trespasses or any of them, if judgment be given for the plaintiff, it shall be given for treble the amount of damages claimed or assessed therefor, as the case may be. [Code 1881 § 602; 1877 p 125 § 607; 1869 p 143 § 556; RRS § 939.]

Trespass, public lands: Chapter 79.40 RCW.

64.12.040 Mitigating circumstances—Damages. If upon trial of such action it shall appear that the trespass was casual or involuntary, or that the defendant had probable cause to believe that the land on which such trespass was committed was his own, or that of the person in whose service or by whose direction the act was done, or that such tree or timber was taken from uninclosed woodlands, for the purpose of repairing any public highway or bridge upon the land or adjoining it, judgment shall only be given for single damages. [Code 1881 § 603; 1877 p 125 § 608; 1869 p 143 § 557; RRS § 940.]

64.12.045 Cutting, breaking, removing Christmas trees from state lands—Compensation. See RCW 79.40.070.

64.12.050 Injunction to prevent waste on public land. When any two or more persons are opposing claimants under the laws of the United States to any land in this state, and one is threatening to commit upon such land waste which tends materially to lessen the value of the inheritance and which cannot be compensated by damages and there is imminent danger that unless restrained such waste will be committed, the party, on filing his complaint and satisfying the court or judge of the existence of the facts, may have an injunction to restrain the adverse party. In all cases he shall give notice and bond as is provided in other cases where injunction is granted, and the injunction when granted shall be set aside or modified as is provided generally for injunction and restraining orders. [Code 1881 § 604; 1877 p 125 § 609; 1869 p 144 § 558; 1854 p 206 § 404; RRS § 941.]

Injunction, generally: Chapter 7.40 RCW.

64.12.060 Action by occupant of unsurveyed land. Any person now occupying and settled upon, or who may hereafter occupy or settle upon any of the unsurveyed public lands not to exceed one hundred sixty acres in this territory, for the purpose of holding and cultivating the same, may commence and maintain any action, in any court of competent jurisdiction, for interference with or injuries done to his or her possessions of said lands, against any person or persons so interfering with or injuring such lands or possessions: *Provided, always,*

That if any of the aforesaid class of settlers are absent from their claims continuously, for a period of six months in any one year, the said person or persons shall be deemed to have forfeited all rights under this act. [1883 p 70 § 1; RRS § 942.]

Reviser's note: The preamble and sections 2 and 3 of the 1883 act, section 1 of which is codified above as RCW 64.12.060, read as follows:

Preamble: "WHEREAS, A great many citizens of the United States are now settling upon and cultivating the unsurveyed government lands in this territory; and, as many years may elapse before the government surveys will be extended over the said lands, so that the settlers upon the same, can take them under the laws of the United States, and defend them against the trespass of others, therefore:"

"**Sec. 2.** Any person or persons, who shall wilfully and maliciously disturb, or in any wise injure, or destroy the dwelling house or other building, or any fence inclosing, or being on the claim of any of the aforesaid class of settlers, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined not less than fifty nor more than one hundred (\$100) dollars, for each and every offense, to which may be added imprisonment in the county jail, not exceeding ninety (90) days." [1883 p 71 § 2.]

"**Sec. 3.** Any person or persons, who shall wilfully or maliciously set fire to any dwelling, or other building, of any of the aforesaid class of settlers, shall be deemed guilty of arson, and subject to the penalties of the law in such cases, made and provided." [1883 p 71 § 3.]

Chapter 64.16 ALIEN LAND LAW

Sections

- 64.16.005 Aliens' rights and interests in lands same as native citizens'.
64.16.140 Certain titles confirmed.

64.16.005 Aliens' rights and interests in lands same as native citizens'. Any alien may acquire and hold lands, or any right thereto, or interest therein, by purchase, devise or descent; and he may convey, mortgage and devise the same, and if he shall die intestate, the same shall descend to his heirs, and in all cases such lands shall be held, conveyed, mortgaged or devised, or shall descend in like manner and with like effect as if such alien were a native citizen of this state or of the United States. [1967 c 163 § 2.]

1967 c 163 adopted to implement Amendment 42: "This act is adopted by the legislature to implement amendment 42 to the state Constitution approved by the voters of the state on November 8, 1966. Amendment 42 removed constitutional restrictions against alien ownership of land by repealing Article II, section 33 of the state Constitution, as amended and Amendments 24 and 29." [1967 c 163 § 1.]

Severability—1967 c 163: "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1967 c 163 § 9.]

The above two annotations apply to 1967 c 163. For codification of that act, see Codification Tables, Volume O.

64.16.140 Certain titles confirmed. All lands and all estates or interests in lands, within the state of Washington, which were conveyed or attempted to be conveyed to, or acquired or attempted to be acquired by, any alien or aliens, prior to the date of the adoption of this act, are hereby confirmed to the respective persons at present owning or claiming to own the title thereto derived by, through or under any such alien ownership

or attempted ownership, to the extent that title was vested in or conveyed by said alien or aliens: *Provided*, That nothing in this section shall be construed to affect, adversely or otherwise, any title to any such lands, or to any interest or estate therein, held or claimed by any private person or corporation adversely to the title hereby confirmed. [1967 c 163 § 3; 1895 c 111 § 1; RRS § 10589.]

Reviser's note: 1967 c 163 carried an emergency clause and was approved by the governor on March 21, 1967.

Chapter 64.20 ALIENATION OF LAND BY INDIANS

Sections

- 64.20.010 Puyallup Indians—Right of alienation.
64.20.025 Puyallup Indians—Right of alienation—When effective.
64.20.030 Sale of land or materials authorized.

Indian graves and records: Chapter 27.44 RCW.

Indians and Indian lands, jurisdiction: Chapter 37.12 RCW.

64.20.010 Puyallup Indians—Right of alienation. The said Indians who now hold, or who may hereafter hold, any of the lands of any reservation, in severalty, located in this state by virtue of treaties made between them and the United States, shall have power to lease, incumber, grant and alien the same in like manner and with like effect as any other person may do under the laws of the United States and of this state, and all restrictions in reference thereto are hereby removed. [1890 p 500 § 1; RRS § 10593.]

Preamble: "WHEREAS, It was and is provided by and in the treaty made with and between the chiefs, head men and delegates of the Indian tribes (including the Puyallup tribe) and the United States of America, which treaty is dated on the 26th day of December, 1854, among other things as follows: 'That the president, at his discretion, should cause the whole or any portion of the lands thereby reserved, or such land as might be selected in lieu thereof, to be surveyed into lots and assign the same to such individuals or families as are willing to avail themselves of the privilege and will locate on the same as a permanent home, on the same terms, and subject to the same regulations as are provided in the sixth article of the treaty with the Omahas, so far as the same may be applicable; and

'WHEREAS, It was and is provided by and in the sixth article of the treaty with the Omahas aforesaid, among other things, that said tracts of land shall not be aliened or leased for a longer term than two years, and shall be exempt from levy, sale or forfeiture, which conditions shall continue in force until a state constitution embracing such lands within its boundaries shall have been formed, and the legislature of the state shall remove the restrictions, but providing that no state legislature shall remove the restrictions * * * without the consent of the Congress;' and

'WHEREAS, The President of the United States, on the 30th day of January, 1866, made and issued patents to the Puyallup Indians, in severalty, for the lands of said reservation, which are now of record in the proper office in Pierce county, in the State of Washington; and

'WHEREAS, All the conditions now exist which said treaties contain, and which make it desirable and proper to remove the restrictions in respect to the alienation and disposition of said lands by the Indians, who now hold them in severalty: now, therefore,"

64.20.025 Puyallup Indians—Right of alienation—When effective. *This act shall take effect and be in force from and after the consent to such removal of

the restrictions shall have been given by the congress of the United States. [1890 p 501 § 3; no RRS.]

Reviser's note: *(1) The language "this act" appears in 1890 p 501 § 3, which act is codified herein as RCW 64.20.010 through 64.20.025.

(2) An act of congress of March 3, 1893, removed the restriction on transfer (Wilson Act, 27 Stat. p 633) but postponed the right to transfer for ten years, that is, until March 3, 1903.

64.20.030 Sale of land or materials authorized. Any Indian who owns within this state any land or real estate allotted to him by the government of the United States may with the consent of congress, either special or general, sell and convey by deed made, executed and acknowledged before any officer authorized to take acknowledgments to deeds within this state, any stone, mineral, petroleum or timber contained on said land or the fee thereof and such conveyance shall have the same effect as a deed of any other person or persons within this state; it being the intention of this section to remove from Indians residing in this state all existing disabilities relating to alienation of their real estate. [1899 c 96 § 1; RRS § 10595.]

Chapter 64.28 JOINT TENANCIES

Sections

64.28.010	Joint tenancies with right of survivorship authorized—Methods of creation—Creditors' rights saved.
64.28.020	Interest in favor of two or more is interest in common—Exceptions for joint tenancies, partnerships, trustees, etc.—Presumption of community property.
64.28.030	Bank deposits, choses in action, community property agreements not affected.
64.28.040	Character of joint tenancy interests held by husband and wife.

Safe deposit repository lease agreements ineffective to create joint ownership or transfer property at death: RCW 11.02.090(3).

64.28.010 Joint tenancies with right of survivorship authorized—Methods of creation—Creditors' rights saved. Whereas joint tenancy with right of survivorship permits property to pass to the survivor without the cost or delay of probate proceedings, there shall be a form of co-ownership of property, real and personal, known as joint tenancy. A joint tenancy shall have the incidents of survivorship and severability as at common law. Joint tenancy shall be created only by written instrument, which instrument shall expressly declare the interest created to be a joint tenancy. It may be created by a single agreement, transfer, deed, will, or other instrument of conveyance, or by agreement, transfer, deed or other instrument from a sole owner to himself and others, or from tenants in common or joint tenants to themselves or some of them, or to themselves or any of them and others, or from husband and wife, when holding title as community property, or otherwise, to themselves or to themselves and others, or to one of them and to another or others, or when granted or devised to executors or trustees as joint tenants: *Provided*, That such transfer shall not derogate from the rights of creditors.

(1989 Ed.)

[1963 ex.s. c 16 § 1; 1961 c 2 § 1 (Initiative Measure No. 208, approved November 8, 1960).]

64.28.020 Interest in favor of two or more is interest in common—Exceptions for joint tenancies, partnerships, trustees, etc.—Presumption of community property. (1) Every interest created in favor of two or more persons in their own right is an interest in common, unless acquired by them in partnership, for partnership purposes, or unless declared in its creation to be a joint tenancy, as provided in RCW 64.28.010, or unless acquired by executors or trustees.

(2) Interests in common held in the names of a husband and wife, whether or not in conjunction with others, are presumed to be their community property.

(3) Subsection (2) of this section applies as of June 9, 1988, to all existing or subsequently created interests in common. [1988 c 29 § 10; 1961 c 2 § 2 (Initiative Measure No. 208, approved November 8, 1960).]

64.28.030 Bank deposits, choses in action, community property agreements not affected. The provisions of this chapter shall not restrict the creation of a joint tenancy in a bank deposit or in other choses in action as heretofore or hereafter provided by law, nor restrict the power of husband and wife to make agreements as provided in RCW 26.16.120. [1961 c 2 § 3 (Initiative Measure No. 208, approved November 8, 1960).]

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

(2) This section applies as of January 1, 1985, to all existing or subsequently created joint tenancies. [1985 c 10 § 2. Prior: 1984 c 149 § 174.]

Purpose—1985 c 10: "The purpose of this act is to make technical corrections to chapter 149, Laws of 1984, and to ensure that the changes made in that chapter meet the constitutional requirements of Article II, section 19 of the state Constitution." [1985 c 10 § 1.]

Severability—1985 c 10: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1985 c 10 § 3.]

Short title—Application—1985 c 30: See RCW 11.02.900 and 11.02.901.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

Chapter 64.32 HORIZONTAL PROPERTY REGIMES ACT (CONDOMINIUMS)

Sections

64.32.010	Definitions.
64.32.020	Application of chapter.
64.32.030	Apartments and common areas declared real property.

[Title 64 RCW—p 9]

64.32.040	Ownership and possession of apartments and common areas.
64.32.050	Common areas and facilities.
64.32.060	Compliance with covenants, bylaws and administrative rules and regulations.
64.32.070	Liens or encumbrances—Enforcement—Satisfaction.
64.32.080	Common profits and expenses.
64.32.090	Contents of declaration.
64.32.100	Copy of survey map, building plans to be filed—Contents of plans.
64.32.110	Ordinances, resolutions, or zoning laws—Construction.
64.32.120	Contents of deeds or other conveyances of apartments.
64.32.130	Mortgages, liens or encumbrances affecting an apartment at time of first conveyance.
64.32.140	Recording.
64.32.150	Removal of property from provisions of chapter.
64.32.160	Removal of property from provisions of chapter—No bar to subsequent resubmission.
64.32.170	Records and books—Availability for examination—Audits.
64.32.180	Exemption from liability for contribution for common expenses prohibited.
64.32.190	Separate assessments and taxation.
64.32.200	Assessments for common expenses—Enforcement of collection—Liens and foreclosures—Liability of mortgagee or purchaser.
64.32.210	Conveyance—Liability of grantor and grantee for unpaid common expenses.
64.32.220	Insurance.
64.32.230	Destruction or damage to all or part of property—Disposition.
64.32.240	Actions.
64.32.250	Application of chapter, declaration and bylaws.
64.32.900	Short title.
64.32.910	Construction of term "this chapter."
64.32.920	Severability—1963 c 156.

Condominiums created after July 1, 1990: Chapter 64.34 RCW.

Conversion of apartments into condominiums, notice required: RCW 59.18.200.

Mutual savings banks, powers as to condominiums: RCW 32.04.025.

64.32.010 Definitions. As used in this chapter unless the context otherwise requires:

(1) "Apartment" means a part of the property intended for any type of independent use, including one or more rooms or spaces located on one or more floors (or part or parts thereof) in a building, or if not in a building, a separately delineated place of storage or moorage of a boat, plane, or motor vehicle, regardless of whether it is destined for a residence, an office, storage or moorage of a boat, plane, or motor vehicle, the operation of any industry or business, or for any other use not prohibited by law, and which has a direct exit to a public street or highway, or to a common area leading to such street or highway. The boundaries of an apartment located in a building are the interior surfaces of the perimeter walls, floors, ceilings, windows and doors thereof, and the apartment includes both the portions of the building so described and the air space so encompassed. If the apartment is a separately delineated place of storage or moorage of a boat, plane, or motor vehicle the boundaries are those specified in the declaration. In interpreting declarations, deeds, and plans, the existing physical boundaries of the apartment as originally constructed or as reconstructed in substantial accordance with the original plans thereof shall be conclusively presumed to be its boundaries rather than the metes and

bounds expressed or depicted in the declaration, deed or plan, regardless of settling or lateral movement of the building and regardless of minor variance between boundaries shown in the declaration, deed, or plan and those of apartments in the building.

(2) "Apartment owner" means the person or persons owning an apartment, as herein defined, in fee simple absolute or qualified, by way of leasehold or by way of a periodic estate, or in any other manner in which real property may be owned, leased or possessed in this state, together with an undivided interest in a like estate of the common areas and facilities in the percentage specified and established in the declaration as duly recorded or as it may be lawfully amended.

(3) "Apartment number" means the number, letter, or combination thereof, designating the apartment in the declaration as duly recorded or as it may be lawfully amended.

(4) "Association of apartment owners" means all of the apartment owners acting as a group in accordance with the bylaws and with the declaration as it is duly recorded or as they may be lawfully amended.

(5) "Building" means a building, containing two or more apartments, or two or more buildings each containing one or more apartments, and comprising a part of the property.

(6) "Common areas and facilities", unless otherwise provided in the declaration as duly recorded or as it may be lawfully amended, includes: (a) The land on which the building is located;

(b) The foundations, columns, girders, beams, supports, main walls, roofs, halls, corridors, lobbys, stairs, stairways, fire escapes, and entrances and exits of the building;

(c) The basements, yards, gardens, parking areas and storage spaces;

(d) The premises for the lodging of janitors or persons in charge of the property;

(e) The installations of central services such as power, light, gas, hot and cold water, heating, refrigeration, air conditioning and incinerating;

(f) The elevators, tanks, pumps, motors, fans, compressors, ducts and in general all apparatus and installations existing for common use;

(g) Such community and commercial facilities as may be provided for in the declaration as duly recorded or as it may be lawfully amended;

(h) All other parts of the property necessary or convenient to its existence, maintenance and safety, or normally in common use.

(7) "Common expenses" include: (a) All sums lawfully assessed against the apartment owners by the association of apartment owners;

(b) Expenses of administration, maintenance, repair, or replacement of the common areas and facilities;

(c) Expenses agreed upon as common expenses by the association of apartment owners;

(d) Expenses declared common expenses by the provisions of this chapter, or by the declaration as it is duly recorded, or by the bylaws, or as they may be lawfully amended.

(8) "Common profits" means the balance of all income, rents, profits and revenues from the common areas and facilities remaining after the deduction of the common expenses.

(9) "Declaration" means the instrument by which the property is submitted to provisions of this chapter, as hereinafter provided, and as it may be, from time to time, lawfully amended.

(10) "Land" means the material of the earth, whatever may be the ingredients of which it is composed, whether soil, rock, or other substance, whether or not submerged, and includes free or occupied space for an indefinite distance upwards as well as downwards, subject to limitations upon the use of airspace imposed, and rights in the use of the airspace granted, by the laws of this state or of the United States.

(11) "Limited common areas and facilities" includes those common areas and facilities designated in the declaration, as it is duly recorded or as it may be lawfully amended, as reserved for use of certain apartment or apartments to the exclusion of the other apartments.

(12) "Majority" or "majority of apartment owners" means the apartment owners with fifty-one percent or more of the votes in accordance with the percentages assigned in the declaration, as duly recorded or as it may be lawfully amended, to the apartments for voting purposes.

(13) "Person" includes any individual, corporation, partnership, association, trustee, or other legal entity.

(14) "Property" means the land, the building, all improvements and structures thereon, all owned in fee simple absolute or qualified, by way of leasehold or by way of a periodic estate, or in any other manner in which real property may be owned, leased or possessed in this state, and all easements, rights and appurtenances belonging thereto, none of which shall be considered as a security or security interest, and all articles of personalty intended for use in connection therewith, which have been or are intended to be submitted to the provisions of this chapter. [1987 c 383 § 1; 1981 c 304 § 34; 1965 ex.s. c 11 § 1; 1963 c 156 § 1.]

Applicability of RCW 64.32.010(1) to houseboat moorages: "The provisions of section 34 (1) shall not apply to moorages for houseboats without the approval of the local municipality." [1981 c 304 § 35.]

Severability—1981 c 304: See note following RCW 26.16.030.

64.32.020 Application of chapter. This chapter shall be applicable only to property, the sole owner or all of the owners, lessees or possessors of which submit the same to the provisions hereof by duly executing and recording a declaration as hereinafter provided. [1963 c 156 § 2.]

64.32.030 Apartments and common areas declared real property. Each apartment, together with its undivided interest in the common areas and facilities shall not be considered as an intangible or a security or any interest therein but shall for all purposes constitute and be classified as real property. [1963 c 156 § 3.]

64.32.040 Ownership and possession of apartments and common areas. Each apartment owner shall be entitled to the exclusive ownership and possession of his apartment but any apartment may be jointly or commonly owned by more than one person. Each apartment owner shall have the common right to a share, with other apartment owners, in the common areas and facilities. [1963 c 156 § 4.]

64.32.050 Common areas and facilities. (1) Each apartment owner shall be entitled to an undivided interest in the common areas and facilities in the percentage expressed in the declaration. Such percentage shall be computed by taking as a basis the value of the apartment in relation to the value of the property.

(2) The percentage of the undivided interest of each apartment owner in the common areas and facilities as expressed in the declaration shall not be altered except in accordance with procedures set forth in the bylaws and by amending the declaration. The percentage of the undivided interest in the common areas and facilities shall not be separated from the apartment to which it appertains even though such interest is not expressly mentioned or described in the conveyance or other instrument. Nothing in this section or this chapter shall be construed to detract from or limit the powers and duties of any assessing or taxing unit or official which is otherwise granted or imposed by law, rule, or regulation.

(3) The common areas and facilities shall remain undivided and no apartment owner or any other person shall bring any action for partition or division of any part thereof, unless the property has been removed from the provisions of this chapter as provided in RCW 64.32.150 and 64.32.230. Any covenant to the contrary shall be void. Nothing in this chapter shall be construed as a limitation on the right of partition by joint owners or owners in common of one or more apartments as to the ownership of such apartment or apartments.

(4) Each apartment owner shall have a nonexclusive easement for, and may use the common areas and facilities in accordance with the purpose for which they were intended without hindering or encroaching upon the lawful right of the other apartment owners.

(5) The necessary work of maintenance, repair and replacement of the common areas and facilities and the making of any addition or improvement thereto shall be carried out only as provided in this chapter and in the bylaws.

(6) The association of apartment owners shall have the irrevocable right, to be exercised by the manager or board of directors, to have access to each apartment from time to time during reasonable hours as may be necessary for the maintenance, repair, or replacement of any of the common areas and facilities therein or accessible therefrom, or for making emergency repairs therein necessary to prevent damage to the common areas and facilities or to another apartment or apartments. [1965 ex.s. c 11 § 2; 1963 c 156 § 5.]

64.32.060 Compliance with covenants, bylaws and administrative rules and regulations. Each apartment

owner shall comply strictly with the bylaws and with the administrative rules and regulations adopted pursuant thereto, as either may be lawfully amended from time to time, and with the covenants, conditions and restrictions set forth in the declaration or in the deed to his apartment. Failure to comply with any of the foregoing shall be ground for an action to recover sums due, for damages or injunctive relief, or both, maintainable by the manager or board of directors on behalf of the association of apartment owners or by a particularly aggrieved apartment owner. [1963 c 156 § 6.]

64.32.070 Liens or encumbrances—Enforcement—Satisfaction. (1) Subsequent to recording the declaration as provided in this chapter, and while the property remains subject to this chapter, no lien shall thereafter arise or be effective against the property. During such period, liens or encumbrances shall arise or be created only against each apartment and the percentage of undivided interest in the common areas and facilities and appurtenant to such apartment in the same manner and under the same conditions in every respect as liens or encumbrances may arise or be created upon or against any other separate parcel of real property subject to individual ownership: *Provided*, That no labor performed or materials furnished with the consent of or at the request of the owner of any apartment, or such owner's agent, contractor, or subcontractor, shall be the basis for the filing of a lien against any other apartment or any other property of any other apartment owner not expressly consenting to or requesting the same, except that such express consent shall be deemed to be given by any apartment owner in the case of emergency repairs. Labor performed or materials furnished for the common areas and facilities, if authorized by the association of apartment owners, the manager or board of directors shall be deemed to be performed or furnished with the express consent of each apartment owner and shall be the basis for the filing of a lien against each of the apartments and shall be subject to the provisions of subsection (2) of this section.

(2) In the event a lien against two or more apartments becomes effective, the apartment owners of the separate apartments may remove their apartment and the percentage of undivided interest in the common areas and facilities appurtenant to such apartment from the lien by payment of the fractional or proportional amounts attributable to each of the apartments affected. Such individual payments shall be computed by reference to the percentages appearing on the declaration. Subsequent to any such payment, discharge, or satisfaction, the apartment and the percentage of undivided interest in the common areas and facilities appurtenant thereto shall thereafter be free and clear of the liens so paid, satisfied, or discharged. Such partial payment, satisfaction, or discharge shall not prevent the lienor from proceeding to enforce his rights against any apartment and the percentage of undivided interest in the common areas and facilities appurtenant thereto not so paid, satisfied, or discharged. [1963 c 156 § 7.]

64.32.080 Common profits and expenses. The common profits of the property shall be distributed among, and the common expenses shall be charged to, the apartment owners according to the percentage of the undivided interest in the common areas and facilities. [1963 c 156 § 8.]

64.32.090 Contents of declaration. The declaration shall contain the following:

(1) A description of the land on which the building and improvement are or are to be located;

(2) A description of the building, stating the number of stories and basements, the number of apartments and the principal materials of which it is or is to be constructed;

(3) The apartment number of each apartment, and a statement of its location, approximate area, number of rooms, and immediate common area to which it has access, and any other data necessary for its proper identification;

(4) A description of the common areas and facilities;

(5) A description of the limited common areas and facilities, if any, stating to which apartments their use is reserved;

(6) The value of the property and of each apartment, and the percentage of undivided interest in the common areas and facilities appertaining to each apartment and its owner for all purposes, including voting;

(7) A statement of the purposes for which the building and each of the apartments are intended and restricted as to use;

(8) The name of a person to receive service of process in the cases provided for in this chapter, together with a residence or place of business of such person which shall be within the county in which the building is located;

(9) A provision as to the percentage of votes by the apartment owners which shall be determinative of whether to rebuild, repair, restore, or sell the property in event of damage or destruction of all or part of the property;

(10) A provision authorizing and establishing procedures for the subdividing and/or combining of any apartment or apartments, common areas and facilities or limited common areas and facilities, which procedures may provide for the accomplishment thereof through means of a metes and bounds description;

(11) A provision requiring the adoption of bylaws for the administration of the property or for other purposes not inconsistent with this chapter, which may include whether administration of the property shall be by a board of directors elected from among the apartment owners, by a manager, or managing agent, or otherwise, and the procedures for the adoption thereof and amendments thereto;

(12) Any further details in connection with the property which the person executing the declaration may deem desirable to set forth consistent with this chapter; and

(13) The method by which the declaration may be amended, consistent with this chapter: *Provided*, That not less than sixty percent of the apartment owners shall

consent to any amendment except that any amendment altering the value of the property and of each apartment and the percentage of undivided interest in the common areas and facilities shall require the unanimous consent of the apartment owners. [1963 c 156 § 9.]

64.32.100 Copy of survey map, building plans to be filed—Contents of plans. Simultaneously with the recording of the declaration there shall be filed in the office of the county auditor of the county in which the property is located a survey map of the surface of the land submitted to the provisions of this chapter showing the location or proposed location of the building or buildings thereon.

There also shall be filed simultaneously, a set of plans of the building or buildings showing as to each apartment:

- (1) The vertical and horizontal boundaries, as defined in RCW 64.32.010(1), in sufficient detail to identify and locate such boundaries relative to the survey map of the surface of the land by the use of standard survey methods;
- (2) The number of the apartment and its dimensions;
- (3) The approximate square footage of each unit;
- (4) The number of bathrooms, whole or partial;
- (5) The number of rooms to be used primarily as bedrooms;
- (6) The number of built-in fireplaces;
- (7) A statement of any scenic view which might affect the value of the apartment; and
- (8) The initial value of the apartment relative to the other apartments in the building.

The set of plans shall bear the verified statement of a registered architect, registered professional engineer, or registered land surveyor certifying that the plans accurately depict the location and dimensions of the apartments as built.

If such plans do not include such verified statement there shall be recorded prior to the first conveyance of any apartment an amendment to the declaration to which shall be attached a verified statement of a registered architect, registered professional engineer, or registered land surveyor, certifying that the plans theretofore filed or being filed simultaneously with such amendment, fully and accurately depict the apartment numbers, dimensions, and locations of the apartments as built.

Such plans shall each contain a reference to the date of recording of the declaration and the volume, page and county auditor's receiving number of the recorded declaration. Correspondingly, the record of the declaration or amendment thereof shall contain a reference to the file number of the plans of the building affected thereby.

All plans filed shall be in such style, size, form and quality as shall be prescribed by the county auditor of the county where filed, and a copy shall be delivered to the county assessor. [1987 c 383 § 2; 1965 ex.s. c 11 § 3; 1963 c 156 § 10.]

Fees for filing condominium surveys, maps, or plats: RCW 58.24.070.

64.32.110 Ordinances, resolutions, or zoning laws—Construction. Local ordinances, resolutions, or laws relating to zoning shall be construed to treat like structures, lots, or parcels in like manner regardless of whether the ownership thereof is divided by sale of apartments under this chapter rather than by lease of apartments. [1963 c 156 § 11.]

64.32.120 Contents of deeds or other conveyances of apartments. Deeds or other conveyances of apartments shall include the following:

- (1) A description of the land as provided in RCW 64.32.090, or the post office address of the property, including in either case the date of recording of the declaration and the volume, page and county auditor's receiving number of the recorded declaration;
- (2) The apartment number of the apartment in the declaration and any other data necessary for its proper identification;
- (3) A statement of the use for which the apartment is intended;
- (4) The percentage of undivided interest appertaining to the apartment, the common areas and facilities and limited common areas and facilities appertaining thereto, if any;
- (5) Any further details which the grantor and grantee may deem desirable to set forth consistent with the declaration and with this chapter. [1965 ex.s. c 11 § 4; 1963 c 156 § 12.]

64.32.130 Mortgages, liens or encumbrances affecting an apartment at time of first conveyance. At the time of the first conveyance of each apartment, every mortgage, lien, or other encumbrance affecting such apartment, including the percentage of undivided interest of the apartment in the common areas and facilities, shall be paid and satisfied of record, or the apartment being conveyed and its percentage of undivided interest in the common areas and facilities shall be released therefrom by partial release duly recorded. [1963 c 156 § 13.]

64.32.140 Recording. The declaration, any amendment thereto, any instrument by which the property may be removed from this chapter and every instrument affecting the property or any apartment shall be entitled to be recorded in the office of the auditor of the county in which the property is located. Neither the declaration nor any amendment thereof shall be valid unless duly recorded [1963 c 156 § 14.]

64.32.150 Removal of property from provisions of chapter. (1) All of the apartment owners may remove a property from the provisions of this chapter by an instrument to that effect duly recorded: *Provided*, That the mortgagees and holders of all liens affecting any of the apartments consent thereto or agree, in either case by instrument duly recorded, that their mortgages and liens be transferred to the percentage of the undivided interest of the apartment owner in the property as hereinafter provided;

(2) Upon removal of the property from the provisions of this chapter, the property shall be deemed to be owned in common by the apartment owners. The undivided interest in the property owned in common which shall appertain to each apartment owner shall be the percentage of the undivided interest previously owned by such owners in the common areas and facilities. [1963 c 156 § 15.]

64.32.160 Removal of property from provisions of chapter—No bar to subsequent resubmission. The removal provided for in RCW 64.32.150 shall in no way bar the subsequent resubmission of the property to the provisions of this chapter. [1963 c 156 § 16.]

64.32.170 Records and books—Availability for examination—Audits. The manager or board of directors, as the case may be, shall keep complete and accurate books and records of the receipts and expenditures affecting the common areas and facilities, specifying and itemizing the maintenance and repair expenses of the common areas and facilities and any other expenses incurred. Such books and records and the vouchers authorizing payments shall be available for examination by the apartment owners, their agents or attorneys, at any reasonable time or times. All books and records shall be kept in accordance with good accounting procedures and be audited at least once a year by an auditor outside of the organization. [1965 ex.s. c 11 § 5; 1963 c 156 § 17.]

64.32.180 Exemption from liability for contribution for common expenses prohibited. No apartment owner may exempt himself from liability for his contribution towards the common expenses by waiver of the use or enjoyment of any of the common areas and facilities or by abandonment of his apartment. [1963 c 156 § 18.]

64.32.190 Separate assessments and taxation. Each apartment and its undivided interest in the common areas and facilities shall be deemed to be a parcel and shall be subject to separate assessments and taxation by each assessing unit for all types of taxes authorized by law including but not limited to special ad valorem levies and special assessments. Neither the building, nor the property, nor any of the common areas and facilities shall be deemed to be a security or a parcel for any purpose. [1963 c 156 § 19.]

64.32.200 Assessments for common expenses—Enforcement of collection—Liens and foreclosures—Liability of mortgagee or purchaser. (1) The declaration may provide for the collection of all sums assessed by the association of apartment owners for the share of the common expenses chargeable to any apartment and the collection may be enforced in any manner provided in the declaration including but not limited to (a) ten days notice shall be given the delinquent apartment owner to the effect that unless such assessment is paid within ten days any or all utility services will be forthwith severed and shall remain severed until such assessment is paid, or (b) collection of such assessment

may be made by such lawful method of enforcement, judicial or extra-judicial, as may be provided in the declaration and/or bylaws.

(2) All sums assessed by the association of apartment owners but unpaid for the share of the common expenses chargeable to any apartment shall constitute a lien on such apartment prior to all other liens except only (a) tax liens on the apartment in favor of any assessing unit and/or special district, and (b) all sums unpaid on all mortgages of record. Such lien is not subject to the ban against execution or forced sales of homesteads under RCW 6.13.080 and may be foreclosed by suit by the manager or board of directors, acting on behalf of the apartment owners, in like manner as a mortgage of real property. In any such foreclosure the apartment owner shall be required to pay a reasonable rental for the apartment, if so provided in the bylaws, and the plaintiff in such foreclosures shall be entitled to the appointment of a receiver to collect the same. The manager or board of directors, acting on behalf of the apartment owners, shall have power, unless prohibited by the declaration, to bid on the apartment at foreclosure sale, and to acquire and hold, lease, mortgage and convey the same. Upon an express waiver in the complaint of any right to a deficiency judgment, the period of redemption shall be eight months after the sale. Suit to recover any judgment for any unpaid common expenses shall be maintainable without foreclosing or waiving the liens securing the same.

(3) Where the mortgagee of a mortgage of record or other purchaser of an apartment obtains possession of the apartment as a result of foreclosure of the mortgage, such possessor, his successors and assigns shall not be liable for the share of the common expenses or assessments by the association of apartment owners chargeable to such apartment which became due prior to such possession. Such unpaid share of common expenses of assessments shall be deemed to be common expenses collectible from all of the apartment owners including such possessor, his successors and assigns. [1988 c 192 § 2; 1965 ex.s. c 11 § 6; 1963 c 156 § 20.]

64.32.210 Conveyance—Liability of grantor and grantee for unpaid common expenses. In a voluntary conveyance the grantee of an apartment shall be jointly and severally liable with the grantor for all unpaid assessments against the latter for his share of the common expenses up to the time of the grantor's conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor. Any such grantee shall be entitled to a statement from the manager or board of directors, as the case may be, setting forth the amount of the unpaid assessments against the grantor and such grantee shall not be liable for, nor shall the apartment conveyed be subject to a lien for, any unpaid assessments against the grantor in excess of the amount therein set forth. [1963 c 156 § 21.]

64.32.220 Insurance. The manager or board of directors, if required by the declaration, bylaws, or by a majority of the apartment owners, or at the request of a

mortgagee having a mortgage of record covering an apartment, shall obtain insurance for the property against loss or damage by fire and such other hazards under such terms and for such amounts as shall be required or requested. Such insurance coverage shall be written on the property in the name of the manager or of the board of directors of the association of apartment owners, as trustee for each of the apartment owners in the percentages established in the declaration. Premiums shall be common expenses. Provision for such insurance shall be without prejudice to the right of each apartment owner to insure his own apartment and/or the personal contents thereof for his benefit. [1963 c 156 § 22.]

64.32.230 Destruction or damage to all or part of property—Disposition. If, within ninety days of the date of damage or destruction to all or part of the property it is not determined by the apartment owners to repair, reconstruct, or rebuild in accordance with the original plan, or by a unanimous vote of all apartment owners to do otherwise, then and in that event:

(1) The property shall be owned in common by the apartment owners;

(2) The undivided interest in the property owned in common which appertains to each apartment owner shall be the percentage of undivided interest previously owned by such owner in the common areas and facilities;

(3) Any mortgages or liens affecting any of the apartments shall be deemed transferred in accordance with the existing priorities to the percentage of the undivided interest of the apartment owner in the property as provided herein; and

(4) The property shall be subject to an action for partition at the suit of any apartment owner, in which event the net proceeds of sale, together with the net proceeds of the insurance of the property, if any, shall be considered as one fund; such fund shall be divided into separate shares one for each apartment owner in a percentage equal to the percentage of undivided interest owned by each such owner in the property; then, after first paying out of the respective share of each apartment owner, to the extent sufficient for the purpose, all mortgages and liens on the undivided interest in the property owned by such apartment owner, the balance remaining in each share shall then be distributed to each apartment owner respectively. [1965 ex.s. c 11 § 7; 1963 c 156 § 23.]

64.32.240 Actions. Without limiting the rights of any apartment owner, actions may be brought as provided by law and by the rules of court by the manager or board of directors, in either case in the discretion of the board of directors, on behalf of two or more of the apartment owners, as their respective interests may appear, with respect to any cause of action relating to the common areas and facilities or more than one apartment. Service of process on two or more apartment owners in any action relating to the common areas and facilities or more than one apartment may be made on the person designated in the declaration to receive service of process. Actions relating to the common areas

and facilities for damages arising out of tortious conduct shall be maintained only against the association of apartment owners and any judgment lien or other charge resulting therefrom shall be deemed a common expense, which judgment lien or other charge shall be removed from any apartment and its percentage of undivided interest in the common areas and facilities upon payment by the respective owner of his proportionate share thereof based on the percentage of undivided interest owned by such apartment owner. [1963 c 156 § 24.]

64.32.250 Application of chapter, declaration and bylaws. (1) All apartment owners, tenants of such owners, employees of such owners and tenants, and any other person that may in any manner use the property or any part thereof submitted to the provisions of this chapter, shall be subject to this chapter and to the declaration and bylaws of the association of apartment owners adopted pursuant to the provisions of this chapter.

(2) All agreements, decisions and determinations made by the association of apartment owners under the provisions of this chapter, the declaration, or the bylaws and in accordance with the voting percentages established in this chapter, the declaration, or the bylaws, shall be deemed to be binding on all apartment owners. [1963 c 156 § 25.]

64.32.900 Short title. This chapter shall be known as the horizontal property regimes act. [1963 c 156 § 26.]

64.32.910 Construction of term "this chapter." The term "this chapter" means RCW 64.32.010 through 64.32.250 and 64.32.900 through 64.32.920, and as they may hereafter be amended or supplemented by subsequent legislation. [1963 c 156 § 27.]

64.32.920 Severability—1963 c 156. If any provision of this chapter, or its application to any person or circumstance is held invalid, the remainder of the chapter, or the application of the provisions to other persons or circumstances is not affected. [1963 c 156 § 28.]

Chapter 64.34

CONDOMINIUM ACT

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ARTICLE 1 GENERAL PROVISIONS

64.34.010 Applicability. (Effective July 1, 1990.)

(1) This chapter applies to all condominiums created within this state after July 1, 1990. RCW 64.34.040 (separate titles and taxation), RCW 64.34.050 (applicability of local ordinances, regulations, and building codes), RCW 64.34.060 (condemnation), RCW 64.34.208 (construction and validity of declaration and bylaws), RCW 64.34.212 (description of units), RCW 64.34.304(1)(a) through (f) and (k) through (q) (powers of unit owners' association), RCW 64.34.344 (tort and contract liability), RCW 64.34.364 (lien for assessments), RCW 64.34.372 (association records), RCW 64.34.425 (resales of units), RCW 64.34.455 (effect of violation on rights of action; attorney's fees), and RCW 64.34.020 (definitions) to the extent necessary in construing any of those sections, apply to all condominiums created in this state before July 1, 1990; but those sections apply only with respect to events and circumstances occurring after July 1, 1990, and do not invalidate or supersede existing, inconsistent provisions of the declaration, bylaws, or survey maps or plans of those condominiums.

(2) The provisions of chapter 64.32 RCW do not apply to condominiums created after July 1, 1990, and do not invalidate any amendment to the declaration, bylaws, and survey maps and plans of any condominium created before July 1, 1990, if the amendment would be permitted by this chapter. The amendment must be adopted in conformity with the procedures and requirements specified by those instruments and by chapter 64.32 RCW. If the amendment grants to any person any rights, powers, or privileges permitted by this chapter which are not otherwise provided for in the declaration or chapter 64.32 RCW, all correlative obligations, liabilities, and restrictions in this chapter also apply to that person.

(3) This chapter does not apply to condominiums or units located outside this state.

(4) RCW 64.34.400 (applicability—waiver), RCW 64.34.405 (liability for public offering statement requirements), RCW 64.34.410 (public offering statement—general provisions), RCW 64.34.415 (public offering statement—condominiums containing conversion buildings), *4-105 (public offering statement—condominium securities), RCW 64.34.420 (purchaser's right to cancel), RCW 64.34.430 (escrow of deposits), and RCW 64.34.455 (effect of violations on rights of action—attorney's fees) apply with respect to all sales of units pursuant to purchase agreements entered into after July 1, 1990, in condominiums created before July 1, 1990, in which the declarant or an affiliate of the declarant owns at least ten units constituting at least twenty percent of the units in the condominium. [1989 c 43 § 1-102.]

*Reviser's note: Section 4-105 of this act was vetoed by the governor.

64.34.020 Definitions. (Effective July 1, 1990.) In the declaration and bylaws, unless specifically provided otherwise or the context requires otherwise, and in this chapter:

(1) "Affiliate of a declarant" means any person who controls, is controlled by, or is under common control with a declarant. A person "controls" a declarant if the person: (a) Is a general partner, officer, director, or employer of the declarant; (b) directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing, more than twenty percent of the voting interest in the declarant; (c) controls in any manner the election of a majority of the directors of the declarant; or (d) has contributed more than twenty percent of the capital of the declarant. A person "is controlled by" a declarant if the declarant: (i) Is a general partner, officer, director, or employer of the person; (ii) directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing, more than twenty percent of the voting interest in the person; (iii) controls in any manner the election of a majority of the directors of the person; or (iv) has contributed more than twenty percent of the capital of the person. Control does not exist if the powers described in this subsection are held solely as security for an obligation and are not exercised.

(2) "Allocated interests" means the undivided interest in the common elements, the common expense liability, and votes in the association allocated to each unit.

(3) "Assessment" means all sums chargeable by the association against a unit including, without limitation: (a) Regular and special assessments for common expenses, charges, and fines imposed by the association; (b) interest and late charges on any delinquent account; and (c) costs of collection, including reasonable attorneys' fees, incurred by the association in connection with the collection of a delinquent owner's account.

(4) "Association" or "unit owners' association" means the unit owners' association organized under RCW 64.34.300.

(5) "Board of directors" means the body, regardless of name, with primary authority to manage the affairs of the association.

(6) "Common elements" means all portions of a condominium other than the units.

(7) "Common expenses" means expenditures made by or financial liabilities of the association, together with any allocations to reserves.

(8) "Common expense liability" means the liability for common expenses allocated to each unit pursuant to RCW 64.34.224.

(9) "Condominium" means real property, portions of which are designated for separate ownership and the remainder of which is designated for common ownership solely by the owners of those portions. Real property is

not a condominium unless the undivided interests in the common elements are vested in the unit owners, and unless a declaration and a survey map and plans have been recorded pursuant to this chapter.

(10) "Conversion building" means a building that at any time before creation of the condominium was occupied wholly or partially by persons other than purchasers and persons who occupy with the consent of purchasers.

(11) "Conveyance" means any transfer of the ownership of a unit, including a transfer by deed or by real estate contract and, with respect to a unit in a leasehold condominium, a transfer by lease or assignment thereof, but shall not include a transfer solely for security.

(12) "Dealer" means a person who owns either six or more units in a condominium or fifty percent or more of the units in a condominium which have not previously been disposed of to any person other than a declarant or a dealer.

(13) "Declarant" means any person or group of persons acting in concert who (a) executes as declarant a declaration as defined in subsection (15) of this section, or (b) reserves or succeeds to any special declarant right under the declaration.

(14) "Declarant control" means the right of the declarant or persons designated by the declarant to appoint and remove officers and members of the board of directors pursuant to RCW 64.34.308 (4) or (5).

(15) "Declaration" means the document, however denominated, that creates a condominium by setting forth the information required by RCW 64.34.216 and any amendments to that document.

(16) "Development rights" means any right or combination of rights reserved by a declarant in the declaration to: (a) Add real property or improvements to a condominium; (b) create units, common elements, or limited common elements within real property included or added to a condominium; (c) subdivide units or convert units into common elements; or (d) withdraw real property from a condominium.

(17) "Dispose" or "disposition" means a voluntary transfer or conveyance to a purchaser or lessee of any legal or equitable interest in a unit, but does not include the transfer or release of a security interest.

(18) "Eligible mortgagee" means the holder of a mortgage on a unit that has filed with the secretary of the association a written request that it be given copies of notices of any action by the association that requires the consent of mortgagees.

(19) "Foreclosure" means a forfeiture or judicial or nonjudicial foreclosure of a mortgage or a deed in lieu thereof.

(20) "Identifying number" means a symbol or address that identifies only one unit in a condominium.

(21) "Leasehold condominium" means a condominium in which all or a portion of the real property is subject to a lease, the expiration or termination of which will terminate the condominium or reduce its size.

(22) "Limited common element" means a portion of the common elements allocated by the declaration or by operation of RCW 64.34.204 (2) or (4) for the exclusive use of one or more but fewer than all of the units.

(23) "Master association" means an organization described in RCW 64.34.276, whether or not it is also an association described in RCW 64.34.300.

(24) "Mortgage" means a mortgage, deed of trust or real estate contract.

(25) "Person" means a natural person, corporation, partnership, limited partnership, trust, governmental subdivision or agency, or other legal entity.

(26) "Purchaser" means any person, other than a declarant or a dealer, who by means of a disposition acquires a legal or equitable interest in a unit other than (a) a leasehold interest, including renewal options, of less than twenty years at the time of creation of the unit, or (b) as security for an obligation.

(27) "Real property" means any fee, leasehold or other estate or interest in, over, or under land, including structures, fixtures, and other improvements thereon and easements, rights and interests appurtenant thereto which by custom, usage, or law pass with a conveyance of land although not described in the contract of sale or instrument of conveyance. "Real property" includes parcels, with or without upper or lower boundaries, and spaces that may be filled with air or water.

(28) "Residential purposes" means use for dwelling or recreational purposes, or both.

(29) "Special declarant rights" means rights reserved for the benefit of a declarant to: (a) Complete improvements indicated on survey maps and plans filed with the declaration under RCW 64.34.232; (b) exercise any development right under RCW 64.34.236; (c) maintain sales offices, management offices, signs advertising the condominium, and models under RCW 64.34.256; (d) use easements through the common elements for the purpose of making improvements within the condominium or within real property which may be added to the condominium under RCW 64.34.260; (e) make the condominium part of a larger condominium or a development under RCW 64.34.276; (f) make the condominium subject to a master association under RCW 64.34.276; or (g) appoint or remove any officer of the association or any master association or any member of the board of directors during any period of declarant control under RCW 64.34.308(3).

(30) "Timeshare" shall have the meaning specified in the timeshare act, RCW 64.36.010(11).

(31) "Unit" means a physical portion of the condominium designated for separate ownership, the boundaries of which are described pursuant to RCW 64.34.216(1)(d). "Separate ownership" includes leasing a unit in a leasehold condominium under a lease that expires contemporaneously with any lease, the expiration or termination of which will remove the unit from the condominium.

(32) "Unit owner" means a declarant or other person who owns a unit or leases a unit in a leasehold condominium under a lease that expires simultaneously with any lease, the expiration or termination of which will remove the unit from the condominium, but does not include a person who has an interest in a unit solely as security for an obligation. "Unit owner" means the

vendee, not the vendor, of a unit under a real estate contract. [1989 c 43 § 1-103.]

64.34.030 Variation by agreement. (Effective July 1, 1990.) Except as expressly provided in this chapter, provisions of this chapter may not be varied by agreement, and rights conferred by this chapter may not be waived. A declarant may not act under a power of attorney or use any other device to evade the limitations or prohibitions of this chapter or the declaration. [1989 c 43 § 1-104.]

64.34.040 Separate interests—Taxation. (Effective July 1, 1990.) (1) If there is any unit owner other than a declarant, each unit that has been created, together with its interest in the common elements, constitutes for all purposes a separate parcel of real property.

(2) If there is any unit owner other than a declarant, each unit together with its interest in the common elements must be separately taxed and assessed.

(3) Any development right shall constitute a separate parcel of real property for property tax purposes and must be separately taxed and assessed.

(4) If there is no unit owner other than a declarant, the real property comprising the condominium may be taxed and assessed in any manner provided by law. [1989 c 43 § 1-105.]

64.34.050 Local ordinances, regulations, and building codes—Applicability. (Effective July 1, 1990.) (1) A zoning, subdivision, building code, or other real property law, ordinance, or regulation may not prohibit the condominium form of ownership or impose any requirement upon a condominium which it would not impose upon a physically identical development under a different form of ownership. Otherwise, no provision of this chapter invalidates or modifies any provision of any zoning, subdivision, building code, or other real property use law, ordinance, or regulation.

(2) This section shall not prohibit a county legislative authority from requiring the review and approval of declarations and amendments thereto and termination agreements executed pursuant to RCW 64.34.268(2) by the county assessor solely for the purpose of allocating the assessed value and property taxes. The review by the assessor shall be done in a reasonable and timely manner. [1989 c 43 § 1-106.]

64.34.060 Condemnation. (Effective July 1, 1990.) (1) If a unit is acquired by condemnation, or if part of a unit is acquired by condemnation leaving the unit owner with a remnant of a unit which may not practically or lawfully be used for any purpose permitted by the declaration, the award must compensate the unit owner for the owner's unit and its appurtenant interest in the common elements, whether or not any common elements are acquired. Upon acquisition, unless the decree otherwise provides, that unit's allocated interests are automatically reallocated to the remaining units in proportion to the respective allocated interests of those units before the

taking, and the association shall promptly prepare, execute, and record an amendment to the declaration reflecting the reallocations. Any remnant of a unit remaining after part of a unit is taken under this subsection is thereafter a common element.

(2) Except as provided in subsection (1) of this section, if part of a unit is acquired by condemnation, the award must compensate the unit owner for the reduction in value of the unit and its appurtenant interest in the common elements, whether or not any common elements are acquired. Upon acquisition, unless the decree otherwise provides: (a) That unit's allocated interests are reduced in proportion to the reduction in the size of the unit, or on any other basis specified in the declaration; and (b) the portion of the allocated interests divested from the partially acquired unit are automatically reallocated to that unit and the remaining units in proportion to the respective allocated interests of those units before the taking, with the partially acquired unit participating in the reallocation on the basis of its reduced allocated interests.

(3) If part of the common elements is acquired by condemnation the portion of the award attributable to the common elements taken shall be paid to the owners based on their respective interests in the common elements unless the declaration provides otherwise. Unless the declaration provides otherwise, any portion of the award attributable to the acquisition of a limited common element must be equally divided among the owners of the units to which that limited common element was allocated at the time of acquisition.

(4) The court judgment shall be recorded in every county in which any portion of the condominium is located.

(5) Should the association not act, based on a right reserved to the association in the declaration, on the owners' behalf in a condemnation process, the affected owners may individually or jointly act on their own behalf. [1989 c 43 § 1-107.]

64.34.070 Law applicable—General principles. (Effective July 1, 1990.) The principles of law and equity, including the law of corporations and unincorporated associations, the law of real property, and the law relative to capacity to contract, principal and agent, condemnation, estoppel, fraud, misrepresentation, duress, coercion, mistake, receivership, substantial performance, or other validating or invalidating cause supplement the provisions of this chapter, except to the extent inconsistent with this chapter. [1989 c 43 § 1-108.]

64.34.080 Contracts—Unconscionability. (Effective July 1, 1990.) (1) The court, upon finding as a matter of law that a contract or contract clause was unconscionable at the time the contract was made, may refuse to enforce the contract, enforce the remainder of the contract without the unconscionable clause, or limit the application of any unconscionable clause in order to avoid an unconscionable result.

(2) Whenever it is claimed, or appears to the court, that a contract or any contract clause is or may be unconscionable, the parties, in order to aid the court in making the determination, shall be afforded a reasonable opportunity to present evidence as to:

(a) The commercial setting of the negotiations;

(b) Whether a party has knowingly taken advantage of the inability of the other party reasonably to protect his or her interests by reason of physical or mental infirmity, illiteracy, or inability to understand the language of the agreement or similar factors;

(c) The effect and purpose of the contract or clause; and

(d) If a sale, any gross disparity at the time of contracting between the amount charged for the real property and the value of the real property measured by the price at which similar real property was readily obtainable in similar transactions, but a disparity between the contract price and the value of the real property measured by the price at which similar real property was readily obtainable in similar transactions does not, of itself, render the contract unconscionable. [1989 c 43 § 1-111.]

64.34.090 Obligation of good faith. (Effective July 1, 1990.) Every contract or duty governed by this chapter imposes an obligation of good faith in its performance or enforcement. [1989 c 43 § 1-112.]

64.34.100 Remedies liberally administered. (Effective July 1, 1990.) (1) The remedies provided by this chapter shall be liberally administered to the end that the aggrieved party is put in as good a position as if the other party had fully performed. However, consequential, special, or punitive damages may not be awarded except as specifically provided in this chapter or by other rule of law.

(2) Any right or obligation declared by this chapter is enforceable by judicial proceeding. [1989 c 43 § 1-113.]

ARTICLE 2

CREATION, ALTERATION, AND TERMINATION OF CONDOMINIUMS

64.34.200 Creation of condominium. (Effective July 1, 1990.) (1) A condominium may be created pursuant to this chapter only by recording a declaration executed by the owner of the interest subject to this chapter in the same manner as a deed and by simultaneously recording a survey map and plans pursuant to RCW 64.34.232. The declaration and survey map and plans must be recorded in every county in which any portion of the condominium is located, and the condominium shall not have the same name as any other existing condominium, whether created under this chapter or under chapter 64.32 RCW, in any county in which the condominium is located.

(2) A declaration or an amendment to a declaration adding units to a condominium may not be recorded unless all units thereby created are substantially completed in accordance with the plans required to be recorded by

RCW 64.34.232, as evidenced by a recorded certificate of completion executed by a licensed surveyor. [1989 c 43 § 2-101.]

64.34.204 Unit boundaries. (Effective July 1, 1990.) Except as provided by the declaration:

(1) If walls, floors, or ceilings are designated as boundaries of a unit, all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring, and any other materials constituting any part of the finished surfaces thereof are a part of the unit, and all other portions of the walls, floors, or ceilings are a part of the common elements.

(2) If any chute, flue, duct, wire, conduit, bearing wall, bearing column, or any other fixture lies partially within and partially outside the designated boundaries of a unit, any portion thereof serving only that unit is a limited common element allocated solely to that unit, and any portion thereof serving more than one unit or any portion of the common elements is a part of the common elements.

(3) Subject to the provisions of subsection (2) of this section, all spaces, interior partitions, and other fixtures and improvements within the boundaries of a unit are a part of the unit.

(4) Any shutters, awnings, window boxes, doorsteps, stoops, porches, balconies, patios, and all exterior doors and windows or other fixtures designed to serve a single unit, but which are located outside the unit's boundaries, are limited common elements allocated exclusively to that unit. [1989 c 43 § 2-102.]

64.34.208 Declaration and bylaws—Construction and validity. (Effective July 1, 1990.) (1) All provisions of the declaration and bylaws are severable.

(2) The rule against perpetuities may not be applied to defeat any provision of the declaration, bylaws, rules, or regulations adopted pursuant to RCW 64.34.304(1)(a).

(3) In the event of a conflict between the provisions of the declaration and the bylaws, the declaration prevails except to the extent the declaration is inconsistent with this chapter.

(4) The creation of a condominium shall not be impaired and title to a unit and common elements shall not be rendered unmarketable or otherwise affected by reason of an insignificant failure of the declaration or survey map and plans or any amendment thereto to comply with this chapter. Whether a significant failure impairs marketability shall not be determined by this chapter. [1989 c 43 § 2-103.]

64.34.212 Description of units. (Effective July 1, 1990.) A description of a unit which sets forth the name of the condominium, the recording number for the declaration, the county in which the condominium is located, and the identifying number of the unit is a sufficient legal description of that unit and all rights, obligations, and interests appurtenant to that unit which were created by the declaration or bylaws. [1989 c 43 § 2-104.]

64.34.216 Contents of declaration. (Effective July 1, 1990.) (1) The declaration for a condominium must contain:

(a) The name of the condominium, which must include the word "condominium" or be followed by the words "a condominium," and the name of the association;

(b) A legal description of the real property included in the condominium;

(c) A statement of the number of units which the declarant has created and reserves the right to create;

(d) The identifying number of each unit created by the declaration and a description of the boundaries of each unit if and to the extent they are different from the boundaries stated in RCW 64.34.204(1);

(e) With respect to each existing unit:

(i) The approximate square footage;

(ii) The number of bathrooms, whole or partial;

(iii) The number of rooms designated primarily as bedrooms;

(iv) The number of built-in fireplaces;

(v) The level or levels on which each unit is located; and

(vi) The type of heat and heat service;

(f) The number of parking spaces and whether covered, uncovered, or enclosed;

(g) The number of moorage slips, if any;

(h) A description of any limited common elements, other than those specified in RCW 64.34.204 (2) and (4) and 64.34.228 (2) and (3), as provided in RCW 64.34.232(2)(j);

(i) A description of any real property, except real property subject to development rights, which may be allocated subsequently as limited common elements, other than limited common elements specified in RCW 64.34.204 (2) and (4) and 64.34.228 (2) and (3), together with a statement that they may be so allocated;

(j) A description of any development rights and other special declarant rights under RCW 64.34.020(29) reserved by the declarant, together with a legal description of the real property to which each of those rights applies, and a time limit within which each of those rights must be exercised;

(k) If any development right may be exercised with respect to different parcels of real property at different times, a statement to that effect together with: (i) Either a statement fixing the boundaries of those portions and regulating the order in which those portions may be subjected to the exercise of each development right, or a statement that no assurances are made in those regards; and (ii) a statement as to whether, if any development right is exercised in any portion of the real property subject to that development right, that development right must be exercised in all or in any other portion of the remainder of that real property;

(l) Any other conditions or limitations under which the rights described in (j) of this subsection may be exercised or will lapse;

(m) An allocation to each unit of the allocated interests in the manner described in RCW 64.34.224;

(n) Any restrictions in the declaration on use, occupancy, or alienation of the units;

(o) A cross-reference by recording number to the survey map and plans for the units created by the declaration; and

(p) All matters required or permitted by RCW 64.34.220 through 64.34.232, 64.34.256, 64.34.260, 64.34.276, and 64.34.308(4).

(2) All amendments to the declaration shall contain a cross-reference by recording number to the declaration and to any prior amendments thereto. All amendments to the declaration adding units shall contain a cross-reference by recording number to the survey map and plans relating to the added units and set forth all information required by RCW 64.34.216(1) with respect to the added units.

(3) The declaration may contain any other matters the declarant deems appropriate. [1989 c 43 § 2-105.]

64.34.220 Leasehold condominiums. (Effective July 1, 1990.) (1) Any lease, the expiration or termination of which may terminate the condominium or reduce its size, or a memorandum thereof, shall be recorded. Every lessor of those leases must sign the declaration, and the declaration shall state:

(a) The recording number of the lease or a statement of where the complete lease may be inspected;

(b) The date on which the lease is scheduled to expire;

(c) A legal description of the real property subject to the lease;

(d) Any right of the unit owners to redeem the reversion and the manner whereby those rights may be exercised, or a statement that they do not have those rights;

(e) Any right of the unit owners to remove any improvements within a reasonable time after the expiration or termination of the lease, or a statement that they do not have those rights; and

(f) Any rights of the unit owners to renew the lease and the conditions of any renewal, or a statement that they do not have those rights.

(2) The declaration may provide for the collection by the association of the proportionate rents paid on the lease by the unit owners and may designate the association as the representative of the unit owners on all matters relating to the lease.

(3) If the declaration does not provide for the collection of rents by the association, the lessor may not terminate the interest of a unit owner who makes timely payment of the owner's share of the rent and otherwise complies with all covenants other than the payment of rent which, if violated, would entitle the lessor to terminate the lease.

(4) Acquisition of the leasehold interest of any unit owner by the owner of the reversion or remainder does not merge the leasehold and fee simple interests unless the leasehold interests of all unit owners subject to that reversion or remainder are acquired and the owner thereof records a document confirming the merger.

(5) If the expiration or termination of a lease decreases the number of units in a condominium, the allocated interests shall be reallocated in accordance with

RCW 64.34.060(1) as though those units had been taken by condemnation. Reallocations shall be confirmed by an amendment to the declaration and survey map and plans prepared, executed, and recorded by the association. [1989 c 43 § 2-106.]

64.34.224 Common element interests, votes, and expenses—Allocation. (Effective July 1, 1990.) (1) The declaration shall allocate a fraction or percentage of undivided interests in the common elements and in the common expenses of the association, and a portion of the votes in the association, to each unit and state the formulas used to establish those allocations. Those allocations may not discriminate in favor of units owned by the declarant or an affiliate of the declarant.

(2) If units may be added to or withdrawn from the condominium, the declaration shall state the formulas to be used to reallocate the allocated interests among all units included in the condominium after the addition or withdrawal.

(3) The declaration may provide: (a) For cumulative voting only for the purpose of electing members of the board of directors; and (b) for class voting on specified issues affecting the class if necessary to protect valid interests of the class. A declarant may not utilize cumulative or class voting for the purpose of evading any limitation imposed on declarants by this chapter, nor may units constitute a class because they are owned by a declarant.

(4) Except for minor variations due to rounding, the sum of the undivided interests in the common elements and common expense liabilities allocated at any time to all the units must each equal one if stated as fractions or one hundred percent if stated as percentages. In the event of discrepancy between an allocated interest and the result derived from application of the pertinent formula, the allocated interest prevails.

(5) Except where permitted by other sections of this chapter, the common elements are not subject to partition, and any purported conveyance, encumbrance, judicial sale, or other voluntary or involuntary transfer of an undivided interest in the common elements made without the unit to which that interest is allocated is void. [1989 c 43 § 2-107.]

64.34.228 Limited common elements. (Effective July 1, 1990.) (1) Except for the limited common elements described in RCW 64.34.204 (2) and (4), the declaration shall specify to which unit or units each limited common element is allocated.

(2) A limited common element may only be reallocated between units with the approval of the board of directors and by an amendment to the declaration executed by the owners of the units to which the limited common element was and will be allocated. The board of directors shall approve the request of the owner or owners under this subsection within thirty days, or within such other period provided by the declaration, unless the proposed reallocation does not comply with this chapter or the declaration. The failure of the board of directors to act upon a request within such period shall be deemed

approval thereof. The amendment shall be recorded in the names of the parties and of the condominium.

(3) Unless otherwise provided in the declaration, sixty-seven percent of the unit owners, including the owner of the unit to which the limited common element will be assigned or incorporated, must agree to reallocate a common element as a limited common element or to incorporate a limited common element into an existing unit. Such reallocation or incorporation shall be reflected in an amendment to the declaration, survey map, or plans. [1989 c 43 § 2-108.]

64.34.232 Survey maps and plans. (Effective July 1, 1990.) (1) A survey map and plans executed by the declarant shall be recorded simultaneously with, and contain cross-references by recording number to, the declaration and any amendments. The survey map and plans must be clear and legible and contain a certification by the person making the survey or the plans that all information required by this section is supplied. All plans filed shall be in such style, size, form and quality as shall be prescribed by the recording authority of the county where filed, and a copy shall be delivered to the county assessor.

(2) Each survey map shall show or state:

(a) The name of the condominium and a legal description and a survey of the land in the condominium and of any land that may be added to the condominium;

(b) The boundaries of all land not subject to development rights, or subject only to the development right to withdraw, and the location and dimensions of all existing buildings containing units on that land;

(c) The boundaries of any land subject to development rights, labeled to identify the rights applicable to each parcel;

(d) The extent of any encroachments by or upon any portion of the condominium;

(e) To the extent feasible, the location and dimensions of all recorded easements serving or burdening any portion of the condominium and any unrecorded easements of which a surveyor knows or reasonably should have known, based on standard industry practices, while conducting the survey;

(f) The location and dimensions of any vertical unit boundaries not shown or projected on plans recorded pursuant to subsection (4) of this section and that unit's identifying number;

(g) The location with reference to an established datum of any horizontal unit boundaries not shown or projected on plans recorded pursuant to subsection (4) of this section and that unit's identifying number;

(h) The location and dimensions of any real property in which the unit owners will own only an estate for years, labeled as "leasehold real property";

(i) The distance between any noncontiguous parcels of real property comprising the condominium;

(j) The general location of any existing principal common amenities listed in a public offering statement pursuant to RCW 64.34.410(1)(i) and any limited common elements, including limited common element porches, balconies, patios, parking spaces, and storage

facilities, but not including the other limited common elements described in RCW 64.34.204 (2) and (4);

(k) In the case of real property not subject to development rights, all other matters customarily shown on land surveys.

(3) A survey map may also show the intended location and dimensions of any contemplated improvement to be constructed anywhere within the condominium. Any contemplated improvement shown must be labeled either "MUST BE BUILT" or "NEED NOT BE BUILT."

(4) To the extent not shown or projected on the survey map, plans of the existing units must show or project:

(a) The location and dimensions of the vertical boundaries of each unit, and that unit's identifying number;

(b) Any horizontal unit boundaries, with reference to an established datum, and that unit's identifying number; and

(c) Any units in which the declarant has reserved the right to create additional units or common elements under RCW 64.34.236(3), identified appropriately.

(5) Unless the declaration provides otherwise, the horizontal boundaries of part of a unit located outside of a building have the same elevation as the horizontal boundaries of the inside part and in such case need not be depicted on the survey map and plans.

(6) Upon exercising any development right, the declarant shall record either a new survey map and plans necessary to conform to the requirements of subsections (1), (2), and (3) of this section or new certifications of a survey map and plans previously recorded if the documents otherwise conform to the requirements of those subsections.

(7) Any survey map, plan, or certification required by this section shall be made by a licensed surveyor. [1989 c 43 § 2-109.]

64.34.236 Development rights. (Effective July 1, 1990.) (1) To exercise any development right reserved under RCW 64.34.216(1)(j), the declarant shall prepare, execute, and record an amendment to the declaration under RCW 64.34.264, and comply with RCW 64.34.232. The declarant is the unit owner of any units thereby created. The amendment to the declaration shall assign an identifying number to each new unit created, and, except in the case of subdivision or conversion of units described in subsection (2) of this section, reallocate the allocated interests among all units. The amendment must describe any common elements and any limited common elements thereby created and, in the case of limited common elements, designate the unit to which each is allocated to the extent required by RCW 64.34.228.

(2) Development rights may be reserved within any real property added to the condominium if the amendment adding that real property includes all matters required by RCW 64.34.216 or 64.34.220, as the case may be, and the survey map and plans include all matters required by RCW 64.34.232. This provision does not extend the time limit on the exercise of development rights

imposed by the declaration pursuant to RCW 64.34.216(1)(j).

(3) Whenever a declarant exercises a development right to subdivide or convert a unit previously created into additional units, common elements, or both:

(a) If the declarant converts the unit entirely to common elements, the amendment to the declaration must reallocate all the allocated interests of that unit among the other units as if that unit had been taken by condemnation under RCW 64.34.060.

(b) If the declarant subdivides the unit into two or more units, whether or not any part of the unit is converted into common elements, the amendment to the declaration must reallocate all the allocated interests of the unit among the units created by the subdivision in any reasonable and equitable manner prescribed by the declarant.

(4) If the declaration provides, pursuant to RCW 64.34.216(1)(j), that all or a portion of the real property is subject to the development right of withdrawal:

(a) If all the real property is subject to withdrawal, and the declaration or survey map or amendment thereto does not describe separate portions of real property subject to that right, none of the real property may be withdrawn if a unit in that portion of the real property is owned by a person other than the declarant; and

(b) If a portion or portions are subject to withdrawal as described in the declaration or in the survey map or in any amendment thereto, no portion may be withdrawn if a unit in that portion of the real property is owned by a person other than the declarant. [1989 c 43 § 2-110.]

64.34.240 Alterations of units. (Effective July 1, 1990.) Subject to the provisions of the declaration and other provisions of law, a unit owner:

(1) May make any improvements or alterations to the owner's unit that do not affect the structural integrity or mechanical or electrical systems or lessen the support of any portion of the condominium;

(2) May not change the appearance of the common elements or the exterior appearance of a unit without permission of the association;

(3) After acquiring an adjoining unit or an adjoining part of an adjoining unit may, with approval of the board of directors, remove or alter any intervening partition or create apertures therein, even if the partition in whole or in part is a common element, if those acts do not adversely affect the structural integrity or mechanical or electrical systems or lessen the support of any portion of the condominium. Removal of partitions or creation of apertures under this subsection is not a relocation of boundaries. The board of directors shall approve a unit owner's request, which request shall include the plans and specifications for the proposed removal or alteration, under this subsection within thirty days, or within such other period provided by the declaration, unless the proposed alteration does not comply with this chapter or the declaration or impairs the structural integrity or mechanical or electrical systems in the condominium. The failure of the board of directors to act upon

a request within such period shall be deemed approval thereof. [1989 c 43 § 2-111.]

64.34.244 Relocation of boundaries—Adjoining units. (Effective July 1, 1990.) (1) Subject to the provisions of the declaration and other provisions of law, the boundaries between adjoining units may only be relocated by an amendment to the declaration upon application to the association by the owners of those units. If the owners of the adjoining units have specified a reallocation between their units of their allocated interests, the application must state the proposed reallocations. Unless the board of directors determines within thirty days, or such other period provided in the declaration, that the reallocations are unreasonable, the association shall prepare an amendment that identifies the units involved, states the reallocations, is executed by those unit owners, contains words of conveyance between them, and is recorded in the name of the grantor and the grantee.

(2) The association shall obtain and record survey maps or plans complying with the requirements of RCW 64.34.232(4) necessary to show the altered boundaries between adjoining units and their dimensions and identifying numbers. [1989 c 43 § 2-112.]

64.34.248 Subdivision of units. (Effective July 1, 1990.) (1) If the declaration permits, a unit may be subdivided into two or more units. Subject to the provisions of the declaration and other provisions of law, upon application of a unit owner to subdivide a unit, the association shall prepare, execute, and record an amendment to the declaration, including survey maps and plans, subdividing that unit.

(2) The amendment to the declaration must be executed by the owner of the unit to be subdivided, assign an identifying number to each unit created, and reallocate the allocated interests formerly allocated to the subdivided unit to the new units in any reasonable and equitable manner prescribed by the owner of the subdivided unit. [1989 c 43 § 2-113.]

64.34.252 Monuments as boundaries. (Effective July 1, 1990.) The physical boundaries of a unit constructed in substantial accordance with the original survey map and set of plans thereof become its boundaries rather than the metes and bounds expressed in the survey map or plans, regardless of settling or lateral movement of the building or minor variance between boundaries shown on the survey map or plans and those of the building. This section does not relieve a declarant or any other person of liability for failure to adhere to the survey map and plans. [1989 c 43 § 2-114.]

64.34.256 Use by declarant. (Effective July 1, 1990.) A declarant may maintain sales offices, management offices, and models in units or on common elements in the condominium only if the declaration so provides and specifies the rights of a declarant with regard to the number, size, location, and relocation thereof. Any sales office, management office, or model

not designated a unit by the declaration is a common element and, if a declarant ceases to be a unit owner, the declarant ceases to have any rights with regard thereto unless it is removed promptly from the condominium in accordance with a right to remove reserved in the declaration. Subject to any limitations in the declaration, a declarant may maintain signs on the common elements advertising the condominium. The provisions of this section are subject to the provisions of other state law and to local ordinances. [1989 c 43 § 2-115.]

64.34.260 Easement rights—Common elements. (Effective July 1, 1990.) Subject to the provisions of the declaration, a declarant has an easement through the common elements as may be reasonably necessary for the purpose of discharging a declarant's obligations or exercising special declarant rights, whether arising under this chapter or reserved in the declaration. [1989 c 43 § 2-116.]

64.34.264 Amendment of declaration. (Effective July 1, 1990.) (1) Except in cases of amendments that may be executed by a declarant under RCW 64.34.232(6) or 64.34.236; the association under RCW 64.34.060, 64.34.220(5), 64.34.228(3), 64.34.244(1), 64.34.248, or 64.34.268(8); or certain unit owners under RCW 64.34.228(2), 64.34.244(1), 64.34.248(2), or 64.34.268(2), and except as limited by subsection (4) of this section, the declaration, including the survey maps and plans, may be amended only by vote or agreement of unit owners of units to which at least sixty-seven percent of the votes in the association are allocated, or any larger percentage the declaration specifies: *Provided*, That the declaration may specify a smaller percentage only if all of the units are restricted exclusively to non-residential use.

(2) No action to challenge the validity of an amendment adopted by the association pursuant to this section may be brought more than one year after the amendment is recorded.

(3) Every amendment to the declaration must be recorded in every county in which any portion of the condominium is located, and is effective only upon recording. An amendment shall be indexed in the name of the condominium and shall contain a cross-reference by recording number to the declaration and each previously recorded amendment thereto.

(4) Except to the extent expressly permitted or required by other provisions of this chapter, no amendment may create or increase special declarant rights, increase the number of units, change the boundaries of any unit, the allocated interests of a unit, or the uses to which any unit is restricted, in the absence of the vote or agreement of the owner of each unit particularly affected and the owners of units to which at least ninety percent of the votes in the association are allocated other than the declarant or such larger percentage as the declaration provides.

(5) Amendments to the declaration required by this chapter to be recorded by the association shall be prepared, executed, recorded, and certified on behalf of the

association by any officer of the association designated for that purpose or, in the absence of designation, by the president of the association.

(6) No amendment may restrict, eliminate, or otherwise modify any special declarant right provided in the declaration without the consent of the declarant and any mortgagee of record with a security interest in the special declarant right or in any real property subject thereto, excluding mortgagees of units owned by persons other than the declarant. [1989 c 43 § 2-117.]

64.34.268 Termination of condominium. (Effective July 1, 1990.) (1) Except in the case of a taking of all the units by condemnation under RCW 64.34.060, a condominium may be terminated only by agreement of unit owners of units to which at least eighty percent of the votes in the association are allocated, or any larger percentage the declaration specifies: *Provided*, That the declaration may specify a smaller percentage only if all of the units in the condominium are restricted exclusively to nonresidential uses.

(2) An agreement to terminate must be evidenced by the execution of a termination agreement or ratifications thereof, in the same manner as a deed, by the requisite number of unit owners. The termination agreement must specify a date after which the agreement will be void unless it is recorded before that date and shall contain a description of the manner in which the creditors of the association will be paid or provided for. A termination agreement and all ratifications thereof must be recorded in every county in which a portion of the condominium is situated and is effective only upon recording. A termination agreement may be amended by complying with all of the requirements of this section.

(3) A termination agreement may provide that all the common elements and units of the condominium shall be sold following termination. If, pursuant to the agreement, any real property in the condominium is to be sold following termination, the termination agreement must set forth the minimum terms of the sale.

(4) The association, on behalf of the unit owners, may contract for the sale of real property in the condominium, but the contract is not binding on the unit owners until approved pursuant to subsections (1) and (2) of this section. If any real property in the condominium is to be sold following termination, title to that real property, upon termination, vests in the association as trustee for the holders of all interests in the units. Thereafter, the association has all powers necessary and appropriate to effect the sale. Until the sale has been concluded and the proceeds thereof distributed, the association continues in existence with all powers it had before termination. Proceeds of the sale must be distributed to unit owners and lien holders as their interests may appear, in proportion to the respective interests of unit owners as provided in subsection (7) of this section. Unless otherwise specified in the termination agreement, as long as the association holds title to the real property, each unit owner and the owner's successors in interest have an exclusive right to occupancy of the portion of the real property that formerly constituted the owner's unit.

During the period of that occupancy, each unit owner and the owner's successors in interest remain liable for all assessments and other obligations imposed on unit owners by this chapter or the declaration.

(5) If the real property constituting the condominium is not to be sold following termination, title to all the real property in the condominium vests in the unit owners upon termination as tenants in common in proportion to their respective interests as provided in subsection (7) of this section, and liens on the units shift accordingly. While the tenancy in common exists, each unit owner and the owner's successors in interest have an exclusive right to occupancy of the portion of the real property that formerly constituted the owner's unit.

(6) Following termination of the condominium, the proceeds of any sale of real property, together with the assets of the association, are held by the association as trustee for unit owners and holders of liens on the units and creditors of the association as their interests may appear. No such proceeds or assets may be disbursed to the owners until all of the creditors of the association have been paid or provided for. Following termination, creditors of the association holding liens on the units, which were recorded or perfected under RCW 4.64.020 before termination, may enforce those liens in the same manner as any lien holder.

(7) The respective interests of unit owners referred to in subsections (4), (5), and (6) of this section are as follows:

(a) Except as provided in (b) of this subsection, the respective interests of unit owners are the fair market values of their units, limited common elements, and common element interests immediately before the termination, as determined by one or more independent appraisers selected by the association. The decision of the independent appraisers shall be distributed to the unit owners and becomes final unless disapproved, within thirty days after distribution, by unit owners of units to which twenty-five percent of the votes in the association are allocated. The proportion of any unit owner's interest to that of all unit owners is determined by dividing the fair market value of that unit owner's unit and common element interest by the total fair market values of all the units and common elements.

(b) If any unit or any limited common element is destroyed to the extent that an appraisal of the fair market value thereof before destruction cannot be made, the interests of all unit owners are their respective common element interests immediately before the termination.

(8) Except as provided in subsection (9) of this section, foreclosure or enforcement of a lien or encumbrance against the entire condominium does not of itself terminate the condominium, and foreclosure or enforcement of a lien or encumbrance against a portion of the condominium, other than withdrawable real property, does not withdraw that portion from the condominium. Foreclosure or enforcement of a lien or encumbrance against withdrawable real property does not of itself withdraw that real property from the condominium, but the person taking title thereto has the right to require

from the association, upon request, an amendment excluding the real property from the condominium.

(9) If a lien or encumbrance against a portion of the real property that is withdrawable from the condominium has priority over the declaration, and the lien or encumbrance has not been partially released as to a unit, the parties foreclosing the lien or encumbrance may, upon foreclosure, record an instrument excluding the real property subject to that lien or encumbrance from the condominium. The board of directors shall reallocate interests as if the foreclosed portion were condemned.

(10) The right of partition under chapter 7.52 RCW shall be suspended if an agreement to sell the property is provided for in the termination agreement pursuant to subsection (3) of this section. The suspension of the right to partition shall continue unless and until no binding obligation to sell exists three months after the recording of the termination agreement, the binding sale agreement is terminated, or one year after the termination agreement is recorded, whichever first occurs. [1989 c 43 § 2-118.]

64.34.272 Rights of secured lenders. (Effective July 1, 1990.) The declaration may require that all or a specified number or percentage of the holders of mortgages encumbering the units approve specified actions of the unit owners or the association as a condition to the effectiveness of those actions, but no requirement for approval may operate to (1) deny or delegate control over the general administrative affairs of the association by the unit owners or the board of directors, or (2) prevent the association or the board of directors from commencing, intervening in, or settling any litigation or proceeding, or receiving and distributing any insurance proceeds except pursuant to RCW 64.34.352. With respect to any action requiring the consent of a specified number or percentage of mortgagees, the consent of only eligible mortgagees holding a first lien mortgage need be obtained and the percentage shall be based upon the votes attributable to units with respect to which eligible mortgagees have an interest. [1989 c 43 § 2-119.]

64.34.276 Master associations. (Effective July 1, 1990.) (1) If the declaration provides that any of the powers described in RCW 64.34.304 are to be exercised by or may be delegated to a profit or nonprofit corporation which exercises those or other powers on behalf of a development consisting of one or more condominiums or for the benefit of the unit owners of one or more condominiums, all provisions of this chapter applicable to unit owners' associations apply to any such corporation, except as modified by this section.

(2) Unless a master association is acting in the capacity of an association described in RCW 64.34.300, it may exercise the powers set forth in RCW 64.34.304(1)(b) only to the extent expressly permitted in the declarations of condominiums which are part of the master association or expressly described in the delegations of power from those condominiums to the master association.

(3) If the declaration of any condominium provides that the board of directors may delegate certain powers to a master association, the members of the board of directors have no liability for the acts or omissions of the master association with respect to those powers following delegation.

(4) The rights and responsibilities of unit owners with respect to the unit owners' association set forth in RCW 64.34.308, 64.34.332, 64.34.336, 64.34.340, and 64.34.348 apply in the conduct of the affairs of a master association only to those persons who elect the board of a master association, whether or not those persons are otherwise unit owners within the meaning of this chapter.

(5) Notwithstanding the provisions of RCW 64.34.308(6) with respect to the election of the board of directors of an association by all unit owners after the period of declarant control ends and even if a master association is also an association described in RCW 64.34.300, the certificate of incorporation or other instrument creating the master association and the declaration of each condominium, the powers of which are assigned by the declaration or delegated to the master association, must provide that the board of directors of the master association shall be elected after the period of declarant control in any of the following ways:

(a) All unit owners of all condominiums subject to the master association may elect all members of that board of directors.

(b) All members of the boards of directors of all condominiums subject to the master association may elect all members of that board of directors.

(c) All unit owners of each condominium subject to the master association may elect specified members of that board of directors.

(d) All members of the board of directors of each condominium subject to the master association may elect specified members of that board of directors. [1989 c 43 § 2-120.]

64.34.280 Merger or consolidation. (Effective July 1, 1990.) (1) Any two or more condominiums, by agreement of the unit owners as provided in subsection (2) of this section, may be merged or consolidated into a single condominium. In the event of a merger or consolidation, unless the agreement otherwise provides, the resultant condominium is, for all purposes, the legal successor of all of the preexisting condominiums and the operations and activities of all associations of the preexisting condominiums shall be merged or consolidated into a single association which shall hold all powers, rights, obligations, assets, and liabilities of all preexisting associations.

(2) An agreement of two or more condominiums to merge or consolidate pursuant to subsection (1) of this section must be evidenced by an agreement prepared, executed, recorded, and certified by the president of the association of each of the preexisting condominiums following approval by owners of units to which are allocated the percentage of votes in each condominium required to terminate that condominium. Any such agreement must be recorded in every county in which a

portion of the condominium is located and is not effective until recorded.

(3) Every merger or consolidation agreement must provide for the reallocation of the allocated interests in the new association among the units of the resultant condominium either (a) by stating the reallocations or the formulas upon which they are based or (b) by stating the portion of overall allocated interests of the new condominium which are allocated to all of the units comprising each of the preexisting condominiums, and providing that the percentages allocated to each unit formerly comprising a part of the preexisting condominium in such portion must be equal to the percentages of allocated interests allocated to that unit by the declaration of the preexisting condominium.

(4) All merged or consolidated condominiums under this section shall comply with this chapter. [1989 c 43 § 2-121.]

ARTICLE 3 MANAGEMENT OF CONDOMINIUM

64.34.300 Unit owners' association—Organization. (Effective July 1, 1990.) A unit owners' association shall be organized no later than the date the first unit in the condominium is conveyed. The membership of the association at all times shall consist exclusively of all the unit owners. Following termination of the condominium, the membership of the association shall consist of all of the unit owners at the time of termination entitled to distributions of proceeds under RCW 64.34.268 or their heirs, successors, or assigns. The association shall be organized as a profit or nonprofit corporation. In case of any conflict between *Title 23A RCW, the business corporation act, chapter 24.03 RCW, the nonprofit corporation act, or chapter 24.06 RCW, the nonprofit miscellaneous and mutual corporations act, and this chapter, this chapter shall control. [1989 c 43 § 3-101.]

*Reviser's note: Title 23A RCW was repealed by 1989 c 165 § 204, effective July 1, 1990. For later enactment, see Title 23B RCW.

64.34.304 Unit owners' association—Powers. (Effective July 1, 1990.) (1) Except as provided in subsection (2) of this section, and subject to the provisions of the declaration, the association may:

- (a) Adopt and amend bylaws, rules, and regulations;
- (b) Adopt and amend budgets for revenues, expenditures, and reserves, and impose and collect assessments for common expenses from unit owners;
- (c) Hire and discharge or contract with managing agents and other employees, agents, and independent contractors;
- (d) Institute, defend, or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more unit owners on matters affecting the condominium;
- (e) Make contracts and incur liabilities;
- (f) Regulate the use, maintenance, repair, replacement, and modification of common elements;
- (g) Cause additional improvements to be made as a part of the common elements;

(h) Acquire, hold, encumber, and convey in its own name any right, title, or interest to real or personal property, but common elements may be conveyed or subjected to a security interest only pursuant to RCW 64.34.348;

(i) Grant easements, leases, licenses, and concessions through or over the common elements and petition for or consent to the vacation of streets and alleys;

(j) Impose and collect any payments, fees, or charges for the use, rental, or operation of the common elements, other than limited common elements described in RCW 64.34.204 (2) and (4), and for services provided to unit owners;

(k) Impose and collect charges for late payment of assessments pursuant to RCW 64.34.364(10) and, after notice and an opportunity to be heard by the board of directors or by such representative designated by the board of directors and in accordance with such procedures as provided in the declaration or bylaws or rules and regulations adopted by the board of directors, levy reasonable fines in accordance with a previously established schedule thereof adopted by the board of directors and furnished to the owners for violations of the declaration, bylaws, and rules and regulations of the association;

(l) Impose and collect reasonable charges for the preparation and recording of amendments to the declaration, resale certificates required by RCW 64.34.435, and statements of unpaid assessments;

(m) Provide for the indemnification of its officers and board of directors and maintain directors' and officers' liability insurance;

(n) Assign its right to future income, including the right to receive common expense assessments, but only to the extent the declaration provides;

(o) Exercise any other powers conferred by the declaration or bylaws;

(p) Exercise all other powers that may be exercised in this state by the same type of corporation as the association; and

(q) Exercise any other powers necessary and proper for the governance and operation of the association.

(2) The declaration may not impose limitations on the power of the association to deal with the declarant which are more restrictive than the limitations imposed on the power of the association to deal with other persons. [1989 c 43 § 3-102.]

64.34.308 Board of directors and officers. (Effective July 1, 1990.) (1) Except as provided in the declaration, the bylaws, subsection (2) of this section, or other provisions of this chapter, the board of directors shall act in all instances on behalf of the association. In the performance of their duties, the officers and members of the board of directors are required to exercise: (a) If appointed by the declarant, the care required of fiduciaries of the unit owners; or (b) if elected by the unit owners, ordinary and reasonable care.

(2) The board of directors shall not act on behalf of the association to amend the declaration in any manner that requires the vote or approval of the unit owners

pursuant to RCW 64.34.264, to terminate the condominium pursuant to RCW 64.34.268, or to elect members of the board of directors or determine the qualifications, powers, and duties, or terms of office of members of the board of directors pursuant to subsection (6) of this section; but the board of directors may fill vacancies in its membership for the unexpired portion of any term.

(3) Within thirty days after adoption of any proposed budget for the condominium, the board of directors shall provide a summary of the budget to all the unit owners and shall set a date for a meeting of the unit owners to consider ratification of the budget not less than fourteen nor more than sixty days after mailing of the summary. Unless at that meeting the owners of units to which a majority of the votes in the association are allocated or any larger percentage specified in the declaration reject the budget, the budget is ratified, whether or not a quorum is present. In the event the proposed budget is rejected or the required notice is not given, the periodic budget last ratified by the unit owners shall be continued until such time as the unit owners ratify a subsequent budget proposed by the board of directors.

(4) Subject to subsection (5) of this section, the declaration may provide for a period of declarant control of the association, during which period a declarant, or persons designated by the declarant, may appoint and remove the officers and members of the board of directors. Regardless of the period provided in the declaration, a period of declarant control terminates no later than the earlier of: (a) Sixty days after conveyance of seventy-five percent of the units which may be created to unit owners other than a declarant; (b) two years after the last conveyance or transfer of record of a unit except as security for a debt; (c) two years after any development right to add new units was last exercised; or (d) the date on which the declarant records an amendment to the declaration pursuant to which the declarant voluntarily surrenders the right to further appoint and remove officers and members of the board of directors. A declarant may voluntarily surrender the right to appoint and remove officers and members of the board of directors before termination of that period pursuant to (a), (b), and (c) of this subsection, but in that event the declarant may require, for the duration of the period of declarant control, that specified actions of the association or board of directors, as described in a recorded instrument executed by the declarant, be approved by the declarant before they become effective.

(5) Not later than sixty days after conveyance of twenty-five percent of the units which may be created to unit owners other than a declarant, at least one member and not less than twenty-five percent of the members of the board of directors must be elected by unit owners other than the declarant. Not later than sixty days after conveyance of fifty percent of the units which may be created to unit owners other than a declarant, not less than thirty-three and one-third percent of the members of the board of directors must be elected by unit owners other than the declarant.

(6) Within thirty days after the termination of any period of declarant control, the unit owners shall elect a board of directors of at least three members, at least a majority of whom must be unit owners. The board of directors shall elect the officers. Such members of the board of directors and officers shall take office upon election.

(7) Notwithstanding any provision of the declaration or bylaws to the contrary, the unit owners, by a two-thirds vote of the voting power in the association present and entitled to vote at any meeting of the unit owners at which a quorum is present, may remove any member of the board of directors with or without cause, other than a member appointed by the declarant. The declarant may not remove any member of the board of directors elected by the unit owners. Prior to the termination of the period of declarant control, the unit owners, other than the declarant, may remove by a two-thirds vote, any director elected by the unit owners. [1989 c 43 § 3-103.]

64.34.312 Control of association—Transfer. (Effective July 1, 1990.) (1) Within sixty days after the termination of the period of declarant control provided in RCW 64.34.308(4) or, in the absence of such period, within sixty days after the first conveyance of a unit in the condominium, the declarant shall deliver to the association all property of the unit owners and of the association held or controlled by the declarant including, but not limited to:

(a) The original or a photocopy of the recorded declaration and each amendment to the declaration;

(b) The certificate of incorporation and a copy or duplicate original of the articles of incorporation of the association as filed with the secretary of state;

(c) The bylaws of the association;

(d) The minute books, including all minutes, and other books and records of the association;

(e) Any rules and regulations that have been adopted;

(f) Resignations of officers and members of the board who are required to resign because the declarant is required to relinquish control of the association;

(g) The financial records, including canceled checks, bank statements, and financial statements of the association, and source documents from the time of incorporation of the association through the date of transfer of control to the unit owners;

(h) Association funds or the control of the funds of the association;

(i) All tangible personal property of the association, represented by the declarant to be the property of the association or ostensibly the property of the association, and an inventory of the property;

(j) Except for alterations to a unit done by a unit owner other than the declarant, a copy of the declarant's plans and specifications utilized in the construction or remodeling of the condominium, with a certificate of the declarant or a licensed architect or engineer that the plans and specifications represent, to the best of their knowledge and belief, the actual plans and specifications

utilized by the declarant in the construction or remodeling of the condominium;

(k) Insurance policies or copies thereof for the condominium and association;

(l) Copies of any certificates of occupancy that may have been issued for the condominium;

(m) Any other permits issued by governmental bodies applicable to the condominium in force or issued within one year before the date of transfer of control to the unit owners;

(n) All written warranties that are still in effect for the common elements, or any other areas or facilities which the association has the responsibility to maintain and repair, from the contractor, subcontractors, suppliers, and manufacturers and all owners' manuals or instructions furnished to the declarant with respect to installed equipment or building systems;

(o) A roster of unit owners and eligible mortgagees and their addresses and telephone numbers, if known, as shown on the declarant's records and the date of closing of the first sale of each unit sold by the declarant;

(p) Any leases of the common elements or areas and other leases to which the association is a party;

(q) Any employment contracts or service contracts in which the association is one of the contracting parties or service contracts in which the association or the unit owners have an obligation or a responsibility, directly or indirectly, to pay some or all of the fee or charge of the person performing the service; and

(r) All other contracts to which the association is a party.

(2) Upon the transfer of control to the unit owners, the records of the association shall be audited as of the date of transfer by an independent certified public accountant in accordance with generally accepted auditing standards unless the unit owners, other than the declarant, by two-thirds vote elect to waive the audit. The cost of the audit shall be a common expense unless otherwise provided in the declaration. The accountant performing the audit shall examine supporting documents and records, including the cash disbursements and related paid invoices, to determine if expenditures were for association purposes and the billings, cash receipts, and related records to determine if the declarant was charged for and paid the proper amount of assessments. [1989 c 43 § 3-104.]

64.34.316 Special declarant rights—Transfer. (Effective July 1, 1990.) (1) No special declarant right, as described in RCW 64.34.020(29), created or reserved under this chapter may be transferred except by an instrument evidencing the transfer executed by the declarant or the declarant's successor and the transferee is recorded in every county in which any portion of the condominium is located. Each unit owner shall receive a copy of the recorded instrument, but the failure to furnish the copy shall not invalidate the transfer.

(2) Upon transfer of any special declarant right, the liability of a transferor declarant is as follows:

(a) A transferor is not relieved of any obligation or liability arising before the transfer and remains liable for

warranty obligations imposed upon the transferor by this chapter. Lack of privity does not deprive any unit owner of standing to maintain an action to enforce any obligation of the transferor.

(b) If a successor to any special declarant right is an affiliate of a declarant as described in RCW 64.34.020(1), the transferor is jointly and severally liable with the successor for any obligations or liabilities of the successor relating to the condominium.

(c) If a transferor retains any special declarant right, but transfers other special declarant rights to a successor who is not an affiliate of the declarant, the transferor is liable for any obligations or liabilities imposed on a declarant by this chapter or by the declaration relating to the retained special declarant rights arising after the transfer.

(d) A transferor has no liability for any act or omission or any breach of a contractual or warranty obligation arising from the exercise of a special declarant right by a successor declarant who is not an affiliate of the transferor.

(3) In case of foreclosure of a mortgage, tax sale, judicial sale, or sale under bankruptcy code or receivership proceedings of any unit owned by a declarant or real property in a condominium subject to development rights, a person acquiring title to all the real property being foreclosed or sold succeeds to all special declarant rights related to that real property held by that declarant and to any rights reserved in the declaration pursuant to RCW 64.34.256 and held by that declarant to maintain models, sales offices, and signs, unless such person requests that all or any of such rights not be transferred. The instrument conveying title shall describe any special declarant rights not being transferred.

(4) Upon foreclosure of a mortgage, tax sale, judicial sale, or sale under bankruptcy code or receivership proceedings of all units and other real property in a condominium owned by a declarant:

(a) The declarant ceases to have any special declarant rights; and

(b) The period of declarant control as described in RCW 64.34.308(4) terminates unless the judgment or instrument conveying title provides for transfer of all special declarant rights held by that declarant to a successor declarant.

(5) The liabilities and obligations of a person who succeeds to special declarant rights are as follows:

(a) A successor to any special declarant right who is an affiliate of a declarant is subject to all obligations and liabilities imposed on the transferor by this chapter or by the declaration;

(b) A successor to any special declarant right, other than a successor described in (c) or (d) of this subsection, who is not an affiliate of a declarant is subject to all obligations and liabilities imposed by this chapter or the declaration:

(i) On a declarant which relate to such successor's exercise or nonexercise of special declarant rights; or

(ii) On the declarant's transferor, other than:

(A) Misrepresentations by any previous declarant;

(B) Warranty obligations on improvements made by any previous declarant or made before the condominium was created;

(C) Breach of any fiduciary obligation by any previous declarant or the declarant's appointees to the board of directors; or

(D) Any liability or obligation imposed on the transferor as a result of the transferor's acts or omissions after the transfer;

(c) A successor to only a right reserved in the declaration to maintain models, sales offices, and signs as described in RCW 64.34.256, if the successor is not an affiliate of a declarant, may not exercise any other special declarant right and is not subject to any liability or obligation as a declarant, except the obligation to provide a public offering statement and any liability arising as a result thereof;

(d) A successor to all special declarant rights held by the successor's transferor who is not an affiliate of that declarant and who succeeded to those rights pursuant to a foreclosure, a deed in lieu of foreclosure, or a judgment or instrument conveying title to units under subsection (3) of this section may declare his or her intention in a recorded instrument to hold those rights solely for transfer to another person. Thereafter, until transferring all special declarant rights to any person acquiring title to any unit owned by the successor or until recording an instrument permitting exercise of all those rights, that successor may not exercise any of those rights other than any right held by the successor's transferor to control the board of directors in accordance with the provisions of RCW 64.34.308(4) for the duration of any period of declarant control, and any attempted exercise of those rights is void. So long as a successor declarant may not exercise special declarant rights under this subsection, the successor is not subject to any liability or obligation as a declarant other than liability for the successor's acts and omissions under RCW 64.34.308(4);

(e) Nothing in this section subjects any successor to a special declarant right to any claims against or other obligations of a transferor declarant, other than claims and obligations arising under this chapter or the declaration. [1989 c 43 § 3-105.]

64.34.320 Contracts and leases—Declarant—Termination. (Effective July 1, 1990.) If entered into before the board of directors elected by the unit owners pursuant to RCW 64.34.308(6) takes office, (1) any management contract, employment contract, or lease of recreational or parking areas or facilities, (2) any other contract or lease between the association and a declarant or an affiliate of a declarant, or (3) any contract or lease that is not bona fide or was unconscionable to the unit owners at the time entered into under the circumstances then prevailing may be terminated without penalty by the association at any time after the board of directors elected by the unit owners pursuant to RCW 64.34.308(6) takes office upon not less than ninety days' notice to the other party or within such lesser notice period provided for without penalty in the contract or

lease. This section does not apply to any lease, the termination of which would terminate the condominium or reduce its size, unless the real property subject to that lease was included in the condominium for the purpose of avoiding the right of the association to terminate a lease under this section. [1989 c 43 § 3-106.]

64.34.324 Bylaws. (Effective July 1, 1990.) (1) Unless provided for in the declaration, the bylaws of the association shall provide for:

(a) The number, qualifications, powers and duties, terms of office, and manner of electing and removing the board of directors and officers and filling vacancies;

(b) Election by the board of directors of such officers of the association as the bylaws specify;

(c) Which, if any, of its powers the board of directors or officers may delegate to other persons or to a managing agent;

(d) Which of its officers may prepare, execute, certify, and record amendments to the declaration on behalf of the association; and

(e) The method of amending the bylaws.

(2) Subject to the provisions of the declaration, the bylaws may provide for any other matters the association deems necessary and appropriate.

(3) If the declaration or bylaws provide that any officers or directors of the association must be unit owners, then notwithstanding the provision of RCW 64.34.020(32), the term "unit owner" in such context shall, unless the declaration or bylaws otherwise provide, be deemed to include any director, officer, partner in, or trustee of any person, who is, either alone or in conjunction with another person or persons, a unit owner. Any officer or director of the association who would not be eligible to serve as such if he or she were not a director, officer, partner in, or trustee of such a person shall be disqualified from continuing in office if he or she ceases to have any such affiliation with that person, or if that person would have been disqualified from continuing in such office as a natural person. [1989 c 43 § 3-107.]

64.34.328 Upkeep of condominium. (Effective July 1, 1990.) (1) Except to the extent provided by the declaration, subsection (2) of this section, or RCW 64.34.352(7), the association is responsible for maintenance, repair, and replacement of the common elements, including the limited common elements, and each unit owner is responsible for maintenance, repair, and replacement of the owner's unit. Each unit owner shall afford to the association and the other unit owners, and to their agents or employees, access through the owner's unit and limited common elements reasonably necessary for those purposes. If damage is inflicted on the common elements, or on any unit through which access is taken, the unit owner responsible for the damage, or the association if it is responsible, shall be liable for the repair thereof.

(2) In addition to the liability that a declarant as a unit owner has under this chapter, the declarant alone is liable for all expenses in connection with real property subject to development rights except that the declaration

may provide that the expenses associated with the operation, maintenance, repair, and replacement of a common element that the owners have a right to use shall be paid by the association as a common expense. No other unit owner and no other portion of the condominium is subject to a claim for payment of those expenses. Unless the declaration provides otherwise, any income or proceeds from real property subject to development rights inures to the declarant. [1989 c 43 § 3-108.]

64.34.332 Meetings. (Effective July 1, 1990.) A meeting of the association must be held at least once each year. Special meetings of the association may be called by the president, a majority of the board of directors, or by unit owners having twenty percent or any lower percentage specified in the declaration or bylaws of the votes in the association. Not less than ten nor more than sixty days in advance of any meeting, the secretary or other officer specified in the bylaws shall cause notice to be hand-delivered or sent prepaid by first class United States mail to the mailing address of each unit or to any other mailing address designated in writing by the unit owner. The notice of any meeting shall state the time and place of the meeting and the items on the agenda to be voted on by the members, including the general nature of any proposed amendment to the declaration or bylaws, changes in the previously approved budget that result in a change in assessment obligations, and any proposal to remove a director or officer. [1989 c 43 § 3-109.]

64.34.336 Quorums. (Effective July 1, 1990.) (1) Unless the bylaws specify a larger percentage, a quorum is present throughout any meeting of the association if the owners of units to which twenty-five percent of the votes of the association are allocated are present in person or by proxy at the beginning of the meeting.

(2) Unless the bylaws specify a larger percentage, a quorum is deemed present throughout any meeting of the board of directors if persons entitled to cast fifty percent of the votes on the board of directors are present at the beginning of the meeting. [1989 c 43 § 3-110.]

64.34.340 Voting—Proxies. (Effective July 1, 1990.) (1) If only one of the multiple owners of a unit is present at a meeting of the association, the owner is entitled to cast all the votes allocated to that unit. If more than one of the multiple owners are present, the votes allocated to that unit may be cast only in accordance with the agreement of a majority in interest of the multiple owners, unless the declaration expressly provides otherwise. There is majority agreement if any one of the multiple owners casts the votes allocated to that unit without protest being made promptly to the person presiding over the meeting by any of the other owners of the unit.

(2) Votes allocated to a unit may be cast pursuant to a proxy duly executed by a unit owner. If a unit is owned by more than one person, each owner of the unit may vote or register protest to the casting of votes by the other owners of the unit through a duly executed proxy.

A unit owner may not revoke a proxy given pursuant to this section except by actual notice of revocation to the person presiding over a meeting of the association. A proxy is void if it is not dated or purports to be revocable without notice. Unless stated otherwise in the proxy, a proxy terminates eleven months after its date of issuance.

(3) If the declaration requires that votes on specified matters affecting the condominium be cast by lessees rather than unit owners of leased units: (a) The provisions of subsections (1) and (2) of this section apply to lessees as if they were unit owners; (b) unit owners who have leased their units to other persons may not cast votes on those specified matters; and (c) lessees are entitled to notice of meetings, access to records, and other rights respecting those matters as if they were unit owners. Unit owners must also be given notice, in the manner provided in RCW 64.34.332, of all meetings at which lessees may be entitled to vote.

(4) No votes allocated to a unit owned by the association may be cast, and in determining the percentage of votes required to act on any matter, the votes allocated to units owned by the association shall be disregarded. [1989 c 43 § 3-111.]

64.34.344 Tort and contract liability. (Effective July 1, 1990.) Neither the association nor any unit owner except the declarant is liable for that declarant's torts in connection with any part of the condominium which that declarant has the responsibility to maintain. Otherwise, an action alleging a wrong done by the association must be brought against the association and not against any unit owner or any officer or director of the association. Unless the wrong was done by a unit owner other than the declarant, if the wrong by the association occurred during any period of declarant control and the association gives the declarant reasonable notice of and an opportunity to defend against the action, the declarant who then controlled the association is liable to the association or to any unit owner: (1) For all tort losses not covered by insurance suffered by the association or that unit owner; and (2) for all costs which the association would not have incurred but for a breach of contract or other wrongful act or omission by the association. If the declarant does not defend the action and is determined to be liable to the association under this section, the declarant is also liable for all litigation expenses, including reasonable attorneys' fees, incurred by the association in such defense. Any statute of limitations affecting the association's right of action under this section is tolled until the period of declarant control terminates. A unit owner is not precluded from bringing an action contemplated by this section because he or she is a unit owner or a member or officer of the association. Liens resulting from judgments against the association are governed by RCW 64.34.368. [1989 c 43 § 3-112.]

64.34.348 Common elements—Conveyance—Encumbrance. (Effective July 1, 1990.) (1) Portions of the common elements which are not necessary for the habitability of a unit may be conveyed or subjected to a

security interest by the association if the owners of units to which at least eighty percent of the votes in the association are allocated, including eighty percent of the votes allocated to units not owned by a declarant or an affiliate of a declarant, or any larger percentage the declaration specifies, agree to that action; but all the owners of units to which any limited common element is allocated must agree in order to convey that limited common element or subject it to a security interest. The declaration may specify a smaller percentage, but not less than sixty-seven percent of the votes not held by a declarant or an affiliate of a declarant, only if all of the units are restricted exclusively to nonresidential uses. Proceeds of the sale or financing are an asset of the association. The declaration may provide for a special allocation or distribution of the proceeds of the sale or refinancing of a limited common element.

(2) An agreement to convey common elements or subject them to a security interest must be evidenced by the execution of an agreement, or ratifications thereof, in the same manner as a deed, by the requisite number of unit owners. The agreement must specify a date after which the agreement will be void unless recorded before that date. The agreement and all ratifications thereof must be recorded in every county in which a portion of the condominium is situated and is effective only upon recording.

(3) The association, on behalf of the unit owners, may contract to convey common elements or subject them to a security interest, but the contract is not enforceable against the association until approved pursuant to subsections (1) and (2) of this section. Thereafter, the association has all powers necessary and appropriate to effect the conveyance or encumbrance, including the power to execute deeds or other instruments.

(4) Any purported conveyance, encumbrance, or other voluntary transfer of common elements, unless made pursuant to this section, is void.

(5) A conveyance or encumbrance of common elements pursuant to this section shall not deprive any unit of its rights of access and support.

(6) A conveyance or encumbrance of common elements pursuant to this section shall not affect the priority or validity of preexisting encumbrances. [1989 c 43 § 3-113.]

64.34.352 Insurance. (Effective July 1, 1990.) (1) Commencing not later than the time of the first conveyance of a unit to a person other than a declarant, the association shall maintain, to the extent reasonably available:

(a) Property insurance on the condominium, which may, but need not, include equipment, improvements, and betterments in a unit installed by the declarant or the unit owners, insuring against all risks of direct physical loss commonly insured against or, in the case of a conversion building, against fire and extended coverage perils. The total amount of insurance after application of any deductibles shall be not less than eighty percent, or such greater amount specified in the declaration, of the actual cash value of the insured property at the time the

insurance is purchased and at each renewal date, exclusive of land, excavations, foundations, and other items normally excluded from property policies; and

(b) Liability insurance, including medical payments insurance, in an amount determined by the board of directors but not less than the amount specified in the declaration, covering all occurrences commonly insured against for death, bodily injury, and property damage arising out of or in connection with the use, ownership, or maintenance of the common elements.

(2) If the insurance described in subsection (1) of this section is not reasonably available, the association promptly shall cause notice of that fact to be hand-delivered or sent prepaid by first class United States mail to all unit owners, to each eligible mortgagee, and to each mortgagee to whom a certificate or memorandum of insurance has been issued at their respective last known addresses. The declaration may require the association to carry any other insurance, and the association in any event may carry any other insurance it deems appropriate to protect the association or the unit owners.

(3) Insurance policies carried pursuant to subsection (1) of this section shall provide that:

(a) Each unit owner is an insured person under the policy with respect to liability arising out of the owner's interest in the common elements or membership in the association;

(b) The insurer waives its right to subrogation under the policy against any unit owner, member of the owner's household, and lessee of the owner;

(c) No act or omission by any unit owner, unless acting within the scope of the owner's authority on behalf of the association, will void the policy or be a condition to recovery under the policy; and

(d) If, at the time of a loss under the policy, there is other insurance in the name of a unit owner covering the same risk covered by the policy, the association's policy provides primary insurance.

(4) Any loss covered by the property insurance under subsection (1)(a) of this section must be adjusted with the association, but the insurance proceeds for that loss are payable to any insurance trustee designated for that purpose, or otherwise to the association, and not to any holder of a mortgage. The insurance trustee or the association shall hold any insurance proceeds in trust for unit owners and lienholders as their interests may appear. Subject to the provisions of subsection (7) of this section, the proceeds must be disbursed first for the repair or restoration of the damaged property, and unit owners and lienholders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired or restored or the condominium is terminated.

(5) An insurance policy issued to the association does not prevent a unit owner from obtaining insurance for the owner's own benefit.

(6) An insurer that has issued an insurance policy under this section shall issue certificates or memoranda of insurance to the association and, upon written request, to

any unit owner or holder of a mortgage. The insurer issuing the policy may not modify, cancel, or refuse to renew it until thirty days after notice of the proposed modification, cancellation, or nonrenewal has been mailed to the association, each unit owner, and each holder of a mortgage to whom a certificate or memorandum of insurance has been issued at their respective last known addresses. The insurer shall not modify the amount or the extent of the coverage by the policy, or cancel or refuse to renew the policy, without complying with this section.

(7) Any portion of the condominium for which insurance is required under this section which is damaged or destroyed shall be repaired or replaced promptly by the association unless: (a) The condominium is terminated; (b) repair or replacement would be illegal under any state or local health or safety statute or ordinance; or (c) eighty percent of the unit owners, including every owner of a unit or assigned limited common element which will not be rebuilt, vote not to rebuild. The cost of repair or replacement in excess of insurance proceeds and reserves is a common expense. If all of the damaged or destroyed portions of the condominium are not repaired or replaced: (i) The insurance proceeds attributable to the damaged common elements shall be used to restore the damaged area to a condition compatible with the remainder of the condominium; (ii) the insurance proceeds attributable to units and limited common elements which are not rebuilt shall be distributed to the owners of those units and the owners of the units to which those limited common elements were allocated, or to lienholders, as their interests may appear; and (iii) the remainder of the proceeds shall be distributed to all the unit owners or lienholders, as their interests may appear, in proportion to the common element interests of all the units. If the unit owners vote not to rebuild any unit, that unit's allocated interests are automatically reallocated upon the vote as if the unit had been condemned under RCW 64.34.060(1), and the association promptly shall prepare, execute, and record an amendment to the declaration reflecting the reallocations. Notwithstanding the provisions of this subsection, RCW 64.34.268 governs the distribution of insurance proceeds if the condominium is terminated.

(8) The provisions of this section may be varied or waived as provided in the declaration if all units of a condominium are restricted to nonresidential use. [1989 c 43 § 3-114.]

64.34.356 Surplus funds. (Effective July 1, 1990.) Unless otherwise provided in the declaration, any surplus funds of the association remaining after payment of or provision for common expenses and any prepayment of reserves shall, in the discretion of the board of directors, either be paid to the unit owners in proportion to their common expense liabilities or credited to them to reduce their future common expense assessments. [1989 c 43 § 3-115.]

64.34.360 Common expenses—Assessments. (Effective July 1, 1990.) (1) Until the association makes a

common expense assessment, the declarant shall pay all common expenses. After any assessment has been made by the association, assessments must be made at least annually, based on a budget adopted at least annually by the association.

(2) Except for assessments under subsections (3), (4), and (5) of this section, all common expenses must be assessed against all the units in accordance with the allocations set forth in the declaration pursuant to RCW 64.34.224(1). Any past due common expense assessment or installment thereof bears interest at the rate established by the association pursuant to RCW 64.34.364.

(3) To the extent required by the declaration:

(a) Any common expense associated with the operation, maintenance, repair, or replacement of a limited common element shall be paid by the owner of or assessed against the units to which that limited common element is assigned, equally, or in any other proportion that the declaration provides;

(b) Any common expense or portion thereof benefiting fewer than all of the units must be assessed exclusively against the units benefited;

(c) The costs of insurance must be assessed in proportion to risk; and

(d) The costs of utilities must be assessed in proportion to usage.

(4) Assessments to pay a judgment against the association pursuant to RCW 64.34.368(1) may be made only against the units in the condominium at the time the judgment was entered in proportion to their allocated common expense liabilities at the time the judgment was entered.

(5) To the extent that any common expense is caused by the misconduct of any unit owner, the association may assess that expense against the owner's unit.

(6) If common expense liabilities are reallocated, common expense assessments and any installment thereof not yet due shall be recalculated in accordance with the reallocated common expense liabilities. [1989 c 43 § 3-116.]

64.34.364 Lien for assessments. (Effective July 1, 1990.) (1) The association has a lien on a unit for any unpaid assessments levied against a unit from the time the assessment is due. Unless the declaration provides otherwise, fees, late charges, fines, and interest charged pursuant to RCW 64.34.304(1) (j), (k), and (l) are enforceable as assessments under this section. If an assessment is payable in installments, the association has a lien for the full amount of the assessment from the time the first installment thereof is due.

(2) A lien under this section shall be prior to all other liens and encumbrances on a unit except: (a) Liens and encumbrances recorded before the recording of the declaration; (b) a mortgage on the unit recorded before the date on which the assessment sought to be enforced became delinquent; and (c) liens for real property taxes and other governmental assessments or charges against the unit. If the association elects to foreclose its lien under this section judicially pursuant to chapter 61.12

RCW rather than nonjudicially pursuant to chapter 61.24 RCW, as provided by subsection (6) of this section, the lien shall also be prior to the mortgages described in (b) of this subsection to the extent of assessments for common expenses, excluding any amounts for capital improvements, based on the periodic budget adopted by the association pursuant to RCW 64.34.360(1) which would have become due, in the absence of acceleration, during the six months immediately preceding institution of an action to enforce the lien: *Provided*, That the priority of the association's lien against units encumbered by a mortgage held by an eligible mortgagee or by a first mortgagee which has given the association a written request for a notice of delinquent assessments shall be reduced by up to three months if and to the extent its foreclosure includes delinquencies which relate to a period after such holder becomes an eligible mortgagee or has given such notice and before the association gives the holder a written notice of the delinquency. This subsection does not affect the priority of mechanics' or materialmen's liens, or the priority of liens for other assessments made by the association. A lien under this section is not subject to the provisions of chapter 6.13 RCW.

(3) Unless the declaration otherwise provides, if two or more associations have liens for assessments created at any time on the same real estate, those liens have equal priority.

(4) Recording of the declaration constitutes record notice and perfection of the lien for assessments. While no further recording of any claim of lien for assessment under this section shall be required to perfect the association's lien, the association may record a notice of claim of lien for assessments under this section in the real property records of any county in which the condominium is located. Such recording shall not constitute the written notice of delinquency to a mortgagee referred to in subsection (2) of this section.

(5) A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within three years after the amount of the assessments sought to be recovered becomes due.

(6) The lien arising under this section may be enforced judicially by the association or its authorized representative in the manner set forth in chapter 61.12 RCW or nonjudicially in the manner set forth in chapter 61.24 RCW for nonjudicial foreclosure of deeds of trust if the declaration so provides and contains the prerequisites therefor set forth in such chapter. The association or its authorized representative shall have the power, unless prohibited by the declaration, to purchase the unit at the foreclosure sale and to acquire, hold, lease, mortgage, or convey the same. Upon an express waiver in the complaint of any right to a deficiency judgment in a judicial foreclosure action, the period of redemption shall be eight months. Nothing in this section shall prohibit an association from taking a deed in lieu of foreclosure.

(7) From the time of commencement of an action by the association to foreclose a lien for nonpayment of delinquent assessments against a unit that is not occupied by the owner thereof, the association shall be entitled to

the appointment of a receiver to collect from the lessee thereof the rent for the unit as and when due. If the rental is not paid, the receiver may obtain possession of the unit, refurbish it for rental up to a reasonable standard for rental units in this type of condominium, rent the unit or permit its rental to others, and apply the rents first to the cost of the receivership and attorneys' fees thereof, then to the cost of refurbishing the unit, then to applicable charges, then to costs, fees, and charges of the foreclosure action, and then to the payment of the delinquent assessments. Only a receiver may take possession and collect rents under this subsection, and a receiver shall not be appointed less than ninety days after the delinquency. The exercise by the association of the foregoing rights shall not affect the priority of preexisting liens on the unit.

(8) Except as provided in subsection (2) of this section, the holder of a mortgage or other purchaser of a unit who obtains the right of possession of the unit through foreclosure shall not be liable for assessments that became due prior to such right of possession. Such unpaid assessments shall be deemed to be common expenses collectible from all the unit owners, including such mortgagee or other purchaser of the unit. Foreclosure of a mortgage does not relieve the prior owner of personal liability for assessments accruing against the unit prior to the date of such sale as provided in this subsection.

(9) In addition to constituting a lien on the unit, each assessment shall be the joint and several obligation of the owner or owners of the unit to which the same are assessed as of the time the assessment is due. Suit to recover a personal judgment for any delinquent assessment shall be maintainable in any court of competent jurisdiction without foreclosing or waiving the lien securing such sums.

(10) The association may from time to time establish reasonable late charges and a rate of interest to be charged on all subsequent delinquent assessments or installments thereof. In the absence of another established nonusurious rate, delinquent assessments shall bear interest from the date of delinquency at the maximum rate permitted under RCW 19.52.020 on the date on which the assessments became delinquent.

(11) The association shall be entitled to recover any costs and reasonable attorneys' fees incurred in connection with the collection of delinquent assessments, whether or not such collection activities result in suit being commenced or prosecuted to judgment. In addition, the association shall be entitled to recover costs and reasonable attorneys' fees if it prevails on appeal and in the enforcement of a judgment.

(12) The association upon written request shall furnish to a unit owner or a mortgagee a statement signed by an officer or authorized agent of the association setting forth the amount of unpaid assessments against that unit. The statement shall be furnished within fifteen days after receipt of the request and is binding on the association, the board of directors, and every unit owner, unless and to the extent known by the recipient to be false.

(13) To the extent not inconsistent with this section, the declaration may provide for such additional remedies for collection of assessments as may be permitted by law. [1989 c 43 § 3-117.]

64.34.368 Liens—General provisions. (Effective July 1, 1990.) (1) Except as provided in subsection (2) of this section, a judgment for money against the association perfected under RCW 4.64.020 is a lien in favor of the judgment lienholder against all of the units in the condominium and their interest in the common elements at the time the judgment was entered. No other property of a unit owner is subject to the claims of creditors of the association.

(2) If the association has granted a security interest in the common elements to a creditor of the association pursuant to RCW 64.34.348, the holder of that security interest shall exercise its right first against such common elements before its judgment lien on any unit may be enforced.

(3) Whether perfected before or after the creation of the condominium, if a lien other than a mortgage, including a judgment lien or lien attributable to work performed or materials supplied before creation of the condominium, becomes effective against two or more units, the unit owner of an affected unit may pay to the lienholder the amount of the lien attributable to the owner's unit, and the lienholder, upon receipt of payment, promptly shall deliver a release of the lien covering that unit. The amount of the payment must be proportionate to the ratio which that unit owner's allocated common expense liability bears to the allocated common expense liabilities of all unit owners whose units are subject to the lien. After payment, the association may not assess or have a lien against that unit owner's unit for any portion of the common expenses incurred in connection with that lien.

(4) A judgment against the association shall be filed in the name of the condominium and the association and, when so filed, is notice of the lien against the units. [1989 c 43 § 3-118.]

64.34.372 Association records—Funds. (Effective July 1, 1990.) (1) The association shall keep financial records sufficiently detailed to enable the association to comply with RCW 64.34.425. All financial and other records shall be made reasonably available for examination by any unit owner and the owner's authorized agents. The financial records of condominiums consisting of fifty or more units shall be audited at least annually by a certified public accountant. In the case of a condominium consisting of fewer than fifty units, an annual audit is also required but may be waived annually by unit owners other than the declarant of units to which sixty percent of the votes are allocated, excluding the votes allocated to units owned by the declarant.

(2) The funds of an association shall not be commingled with the funds of any other association, nor with the funds of any manager of the association or any other person responsible for the custody of such funds. Any

reserve funds of an association shall be kept in a segregated account and any transaction affecting such funds, including the issuance of checks, shall require the signature of at least two persons who are officers or directors of the association. [1989 c 43 § 3-119.]

64.34.376 Association as trustee. (Effective July 1, 1990.) With respect to a third person dealing with the association in the association's capacity as a trustee, the existence of trust powers and their proper exercise by the association may be assumed without inquiry. A third person is not bound to inquire whether the association has power to act as trustee or is properly exercising trust powers. A third person, without actual knowledge that the association is exceeding or improperly exercising its powers, is fully protected in dealing with the association as if it possessed and properly exercised the powers it purports to exercise. A third person is not bound to assure the proper application of trust assets paid or delivered to the association in its capacity as trustee. [1989 c 43 § 3-120.]

ARTICLE 4 PROTECTION OF CONDOMINIUM PURCHASERS

64.34.400 Applicability—Waiver. (Effective July 1, 1990.) (1) This article applies to all units subject to this chapter, except as provided in subsection (2) of this section and unless and to the extent otherwise agreed to in writing by the seller and purchasers of those units which are not restricted to residential use in the declaration.

(2) Neither a public offering statement nor a resale certificate need be prepared or delivered in the case of:

- (a) A conveyance by gift, devise, or descent;
- (b) A conveyance pursuant to court order;
- (c) A disposition by a government or governmental agency;
- (d) A conveyance by foreclosure;
- (e) A disposition to a dealer who intends to offer those units to purchasers; or
- (f) A disposition that may be canceled at any time and for any reason by the purchaser without penalty. [1989 c 43 § 4-101.]

64.34.405 Public offering statement—Requirements—Liability. (Effective July 1, 1990.) (1) Except as provided in subsection (2) of this section or when no public offering statement is required, a declarant shall prepare a public offering statement conforming to the requirements of RCW 64.34.410 and 64.34.415.

(2) A declarant may transfer responsibility for preparation of all or a part of the public offering statement to a successor declarant pursuant to RCW 64.34.316 or to a dealer who intends to offer units in the condominium for the person's own account.

(3) Any declarant or dealer who offers a unit for the person's own account to a purchaser shall deliver a public offering statement in the manner prescribed in RCW

64.34.420(1). Any agent, attorney, or other person assisting the declarant or dealer in preparing the public offering statement may rely upon information provided by the declarant or dealer without independent investigation. The agent, attorney, or other person shall not be liable for any material misrepresentation in or omissions of material facts from the public offering statement unless the person had actual knowledge of the misrepresentation or omission at the time the public offering statement was prepared. The declarant or dealer shall be liable for any misrepresentation contained in the public offering statement or for any omission of material fact therefrom if the declarant or dealer had actual knowledge of the misrepresentation or omission or, in the exercise of reasonable care, should have known of the misrepresentation or omission.

(4) If a unit is part of a condominium and is part of another real property regime in connection with the sale of which the delivery of a public offering statement is required under the laws of this state, a single public offering statement, conforming to the requirements of RCW 64.34.410 and 64.34.415 as those requirements relate to all real property regimes in which the unit is located and conforming to any other requirements imposed under the laws of this state, may be prepared and delivered in lieu of providing two or more public offering statements. [1989 c 43 § 4-102.]

64.34.410 Public offering statement—General provisions. (Effective July 1, 1990.) (1) A public offering statement shall contain the following information:

- (a) The name and address of the condominium;
- (b) The name and address of the declarant;
- (c) The name and address of the management company, if any;
- (d) The relationship of the management company to the declarant, if any;
- (e) A list of up to the five most recent condominium projects completed by the declarant or an affiliate of the declarant within the past five years, including the names of the condominiums, their addresses, and the number of existing units in each. For the purpose of this section, a condominium is "completed" when any one unit therein has been rented or sold;
- (f) The nature of the interest being offered for sale;
- (g) A brief description of the permitted uses and use restrictions pertaining to the units and the common elements;
- (h) The number of existing units in the condominium and the maximum number of units that may be added to the condominium;
- (i) A list of the principal common amenities in the condominium which materially affect the value of the condominium and those that will or may be added to the condominium;
- (j) A list of the limited common elements assigned to the units being offered for sale;
- (k) The identification of any real property not in the condominium, the owner of which has access to any of the common elements, and a description of the terms of such access;

(l) The identification of any real property not in the condominium to which unit owners have access and a description of the terms of such access;

(m) The status of construction of the units and common elements, including estimated dates of completion if not completed;

(n) The estimated current common expense liability for the units being offered;

(o) An estimate of any payment with respect to the common expense liability for the units being offered which will be due at closing;

(p) The estimated current amount and purpose of any fees not included in the common expenses and charged by the declarant or the association for the use of any of the common elements;

(q) Any assessments which have been agreed to or are known to the declarant and which, if not paid, may constitute a lien against any units or common elements in favor of any governmental agency;

(r) The identification of any parts of the condominium, other than the units, which any individual owner will have the responsibility for maintaining;

(s) If the condominium involves a conversion building, the information required by RCW 64.34.415;

(t) Whether timesharing is restricted or prohibited, and if restricted, a general description of such restrictions;

(u) A list of all development rights reserved to the declarant and all special declarant rights reserved to the declarant, together with the dates such rights must terminate, and a copy of or reference by recording number to any recorded transfer of a special declarant right;

(v) The identification of any model units and a description of the material differences between the model unit available to the purchaser at the time the agreement for sale is executed and the unit being offered;

(w) Any liens on real property to be conveyed to the association required to be disclosed pursuant to RCW 64.34.435(2)(b);

(x) A list of any physical hazards known to the declarant which particularly affect the condominium or the immediate vicinity in which the condominium is located and which are not readily ascertainable by the purchaser;

(y) A brief description of any construction warranties to be provided to the purchaser;

(z) Any building code violation citations received by the declarant in connection with the condominium which have not been corrected;

(aa) A statement of any unsatisfied judgments or pending suits against the association, a statement of the status of any pending suits material to the condominium of which the declarant has actual knowledge, and a statement of any litigation brought by an owners' association, unit owner, or governmental entity in which the declarant or any affiliate of the declarant has been a defendant, arising out of the construction, sale, or administration of any condominium within the previous five years, together with the results thereof, if known;

(bb) Any rights of first refusal to lease or purchase any unit or any of the common elements;

(cc) The extent to which the insurance provided by the association covers furnishings, fixtures, and equipment located in the unit;

(dd) A notice which describes a purchaser's right to cancel the purchase agreement or extend the closing under RCW 64.34.420, including applicable time frames and procedures;

(ee) A list of the documents which the prospective purchaser is entitled to receive from the declarant before the rescission period commences;

(ff) A notice which states: A purchaser may not rely on any representation or express warranty unless it is contained in the public offering statement or made in writing signed by the declarant or by any person identified in the public offering statement as the declarant's agent;

(gg) A notice which states: This public offering statement is only a summary of some of the significant aspects of purchasing a unit in this condominium and the condominium documents are complex, contain other important information, and create binding legal obligations. You should consider seeking the assistance of legal counsel; and

(hh) Any other information and cross-references which the declarant believes will be helpful in describing the condominium to the recipients of the public offering statement, all of which may be included or not included at the option of the declarant.

(2) The public offering statement shall include copies of each of the following documents: The declaration, the survey map and plans, the articles of incorporation of the association, bylaws of the association, rules and regulations, if any, current or proposed budget for the association, and the balance sheet of the association current within ninety days if assessments have been collected for ninety days or more.

If any of the foregoing documents listed in this subsection are not available because they have not been executed, adopted, or recorded, drafts of such documents shall be provided with the public offering statement, and, before closing the sale of a unit, the purchaser shall be given copies of any material changes between the draft of the proposed documents and the final documents.

(3) The disclosures required by subsection (1) (g), (j), (r), (t), (u), and (bb) of this section shall also contain a reference to specific sections in the condominium documents which further explain the information disclosed.

(4) The disclosures required by subsection (1) (dd), (ff), and (gg) of this section shall be located at the top of the first page of the public offering statement and be typed or printed in ten-point bold face type size.

(5) A declarant shall promptly amend the public offering statement to reflect any material change in the information required by this section. [1989 c 43 § 4-103.]

64.34.415 Public offering statement—Conversion buildings. (Effective July 1, 1990.) (1) The public offering statement of a condominium containing any conversion building shall contain, in addition to the information required by RCW 64.34.410:

(a) A statement by the declarant, based on a report prepared by an independent, licensed architect or engineer, describing, to the extent reasonably ascertainable, the present condition of all structural components and mechanical and electrical installations material to the use and enjoyment of the building;

(b) A statement by the declarant of the expected useful life of each item reported on in (a) of this subsection or a statement that no representations are made in that regard; and

(c) A list of any outstanding notices of uncured violations of building code or other municipal regulations, together with the estimated cost of curing those violations. Unless the purchaser waives in writing the curing of specific violations, the extent to which the declarant will cure such violations prior to the closing of the sale of a unit in the condominium shall be included.

(2) This section applies only to buildings containing units that may be occupied for residential use. [1989 c 43 § 4-104.]

64.34.420 Purchaser's right to cancel. (Effective July 1, 1990.) (1) A person required to deliver a public offering statement pursuant to RCW 64.34.405(3) shall provide a purchaser of a unit with a copy of the public offering statement and all material amendments thereto before conveyance of that unit. Unless a purchaser is given the public offering statement more than seven days before execution of a contract for the purchase of a unit, the purchaser, before conveyance, shall have the right to cancel the contract within seven days after first receiving the public offering statement and, if necessary to have seven days to review the public offering statement and cancel the contract, to extend the closing date for conveyance to a date not more than seven days after first receiving the public offering statement. The purchaser shall have no right to cancel the contract upon receipt of an amendment unless the purchaser would have that right under generally applicable legal principles.

(2) If a purchaser elects to cancel a contract pursuant to subsection (1) of this section, the purchaser may do so by hand-delivering notice thereof to the offeror or by mailing notice thereof by prepaid United States mail to the offeror or to his or her agent for service of process. Cancellation is without penalty, and all payments made by the purchaser before cancellation shall be refunded promptly.

(3) If a person required to deliver a public offering statement pursuant to RCW 64.34.405(3) fails to provide a purchaser to whom a unit is conveyed with that public offering statement and all material amendments thereto as required by subsection (1) of this section, the purchaser is entitled to receive from that person an amount equal to the greater of (a) actual damages, or (b) ten percent of the sales price of the unit for a willful failure by the declarant or three percent of the sales

price of the unit for any other failure. There shall be no liability for failure to deliver any amendment unless such failure would have entitled the purchaser under generally applicable legal principles to cancel the contract for the purchase of the unit had the undisclosed information been evident to the purchaser before the closing of the purchase. [1989 c 43 § 4-106.]

64.34.425 Resale of unit. (Effective July 1, 1990.) (1) Except in the case of a sale where delivery of a public offering statement is required, or unless exempt under RCW 64.34.400(2), a unit owner shall furnish to a purchaser before execution of any contract for sale of a unit, or otherwise before conveyance, a copy of the declaration, the bylaws, the rules or regulations of the association, and a certificate, based on the books and records of the association and the actual knowledge of the person signing the certificate, containing:

(a) A statement disclosing the effect on the proposed conveyance of any right of first refusal or other restraint on the free alienability of the unit;

(b) A statement setting forth the amount of the monthly common expense assessment and any unpaid common expense or special assessment currently due and payable from the selling unit owner and a statement, which shall be current to within forty-five days, of any common expenses and special assessments past due over thirty days;

(c) A statement of any other fees payable by unit owners;

(d) A statement of any anticipated capital expenditures in excess of five percent of the annual budget of the association that have been approved by the board of directors;

(e) A statement of the amount of any reserves for capital expenditures and of any portions of those reserves currently designated by the association for any specified projects;

(f) A balance sheet of the association, which shall be current to within one hundred twenty days, and an income and expense statement of the association, if an income and expense statement has been prepared;

(g) The current operating budget of the association;

(h) A statement of any unsatisfied judgments against the association and the status of any pending suits in which the association is a defendant;

(i) A statement describing any insurance coverage provided for the benefit of unit owners;

(j) A statement as to whether there are any alterations or improvements to the unit or to the limited common elements assigned thereto that violate any provision of the declaration;

(k) A statement of the number of units, if any, still owned by the declarant, whether the declarant has transferred control of the association to the unit owners, and the date of such transfer;

(l) A statement as to whether there are any violations of the health or building codes with respect to the unit, the limited common elements assigned thereto, or any other portion of the condominium; and

(m) A statement of the remaining term of any leasehold estate affecting the condominium and the provisions governing any extension or renewal thereof.

(2) The association, within ten days after a request by a unit owner, shall furnish a certificate containing the information necessary to enable the unit owner to comply with this section. A unit owner providing a certificate pursuant to subsection (1) of this section is not liable to the purchaser for any erroneous information provided by the association and included in the certificate unless and to the extent the unit owner had actual knowledge thereof.

(3) A purchaser is not liable for any unpaid assessment or fee greater than the amount set forth in the certificate prepared by the association unless and to the extent such purchaser had actual knowledge thereof. A unit owner is not liable to a purchaser for the failure or delay of the association to provide the certificate in a timely manner, but the purchaser's contract is voidable by the purchaser until the certificate has been provided and for five days thereafter or until conveyance, whichever occurs first. [1989 c 43 § 4-107.]

64.34.430 Escrow of deposits. (Effective July 1, 1990.) Any deposit made in connection with the purchase or reservation of a unit from a person required to deliver a public offering statement pursuant to RCW 64.34.405(3) shall be placed in escrow and held either in this state or in the state where the unit is located in an escrow or trust account designated solely for that purpose by a licensed title insurance company, an attorney, a real estate broker, an independent bonded escrow company, or an institution whose accounts are insured by a governmental agency or instrumentality until: (1) Delivered to the declarant at closing; (2) delivered to the declarant because of purchaser's default under a contract to purchase the unit; (3) refunded to the purchaser; or (4) delivered to a court in connection with the filing of an interpleader action. [1989 c 43 § 4-108.]

64.34.435 Release of liens—Conveyance. (Effective July 1, 1990.) (1) At the time of the first conveyance of each unit, every mortgage, lien, or other encumbrance affecting that unit and any other unit or units or real property, other than the percentage of undivided interest of that unit in the common elements, shall be paid and satisfied of record, or the unit being conveyed and its undivided interest in the common elements shall be released therefrom by partial release duly recorded or the purchaser of that unit shall receive title insurance from a licensed title insurance company against such mortgage, lien or other encumbrance. This subsection does not apply to any real property which a declarant has the right to withdraw.

(2) Before conveying real property to the association the declarant shall have that real property released from: (a) All liens the foreclosure of which would deprive unit owners of any right of access to or easement of support

of their units; and (b) all other liens on that real property unless the public offering statement describes certain real property which may be conveyed subject to liens in specified amounts. [1989 c 43 § 4-109.]

64.34.440 Conversion buildings—Notice—Tenants. (Effective July 1, 1990.) (1) A declarant of a condominium containing conversion buildings, and any dealer who intends to offer units in such a condominium, shall give each of the residential tenants and any residential subtenant in possession of a portion of a conversion building notice of the conversion and provide those persons with the public offering statement no later than ninety days before the tenants and any subtenant in possession are required to vacate. The notice must set forth generally the rights of tenants and subtenants under this section and shall be delivered pursuant to notice requirements set forth in RCW 59.12.040. No tenant or subtenant may be required to vacate upon less than ninety days' notice, except by reason of nonpayment of rent, waste, conduct that disturbs other tenants' peaceful enjoyment of the premises, or act of unlawful detainer as defined in RCW 59.12.030, and the terms of the tenancy may not be altered during that period. Nothing in this subsection shall be deemed to waive or repeal RCW 59.18.200(2). Failure to give notice as required by this section is a defense to an action for possession.

(2) For sixty days after delivery or mailing of the notice described in subsection (1) of this section, the person required to give the notice shall offer to convey each unit or proposed unit occupied for residential use to the tenant who leases that unit. If a tenant fails to purchase the unit during that sixty-day period, the offeror may not offer to dispose of an interest in that unit during the following one hundred eighty days at a price or on terms more favorable to the offeree than the price or terms offered to the tenant. This subsection does not apply to any unit in a conversion building if that unit will be restricted exclusively to nonresidential use or the boundaries of the converted unit do not substantially conform to the dimensions of the residential unit before conversion.

(3) If a seller, in violation of subsection (2) of this section, conveys a unit to a purchaser for value who has no knowledge of the violation, recording of the deed conveying the unit extinguishes any right a tenant may have to purchase that unit but does not affect the right of a tenant to recover damages from the seller for a violation of subsection (2) of this section.

(4) If a notice of conversion specifies a date by which a unit or proposed unit must be vacated and otherwise complies with the provisions of this chapter and chapter 59.18 RCW, the notice also constitutes a notice to vacate specified by that statute.

(5) Nothing in this section permits termination of a lease by a declarant in violation of its terms. [1989 c 43 § 4-110.]

64.34.443 Express warranties of quality. (Effective July 1, 1990.) (1) Express warranties made by any seller to a purchaser of a unit, if relied upon by the purchaser, are created as follows:

(a) Any written affirmation of fact or promise which relates to the unit, its use, or rights appurtenant thereto, area improvements to the condominium that would directly benefit the unit, or the right to use or have the benefit of facilities not located in the condominium creates an express warranty that the unit and related rights and uses will conform to the affirmation or promise;

(b) Any model or written description of the physical characteristics of the condominium at the time the purchase agreement is executed, including plans and specifications of or for improvements, creates an express warranty that the condominium will conform to the model or description except pursuant to RCW 64.34.410(1)(v);

(c) Any written description of the quantity or extent of the real property comprising the condominium, including plats or surveys, creates an express warranty that the condominium will conform to the description, subject to customary tolerances; and

(d) A written provision that a buyer may put a unit only to a specified use is an express warranty that the specified use is lawful.

(2) Neither formal words, such as "warranty" or "guarantee," nor a specific intention to make a warranty are necessary to create an express warranty of quality, but a statement purporting to be merely an opinion or commendation of the real estate or its value does not create a warranty. A purchaser may not rely on any representation or express warranty unless it is contained in the public offering statement or made in writing signed by the declarant or declarant's agent identified in the public offering statement.

(3) Any conveyance of a unit transfers to the purchaser all express warranties of quality made by previous sellers. [1989 c 428 § 2.]

Captions—1989 c 428: "Section captions as used in this act do not constitute any part of the law." [1989 c 428 § 6.]

Effective date—1989 c 428: "*Sections 1 through 4 of this act shall take effect July 1, 1990." [1989 c 428 § 7.]

***Reviser's note:** Sections 1, 3, and 4 of this act were vetoed by the governor.

64.34.445 Implied warranties of quality. (Effective July 1, 1990.) (1) A declarant and any dealer warrants that a unit will be in at least as good condition at the earlier of the time of the conveyance or delivery of possession as it was at the time of contracting, reasonable wear and tear and damage by casualty or condemnation excepted.

(2) A declarant and any dealer impliedly warrants that a unit and the common elements in the condominium are suitable for the ordinary uses of real estate of its type and that any improvements made or contracted for by the person, or made by any person before the creation of the condominium, will be:

(a) Free from defective materials; and

(b) Constructed in accordance with applicable law, according to sound engineering and construction standards, and in a workmanlike manner.

(3) A declarant and any dealer warrants to a purchaser of a unit that may be used for residential use that

an existing use, continuation of which is contemplated by the parties, does not violate applicable law at the earlier of the time of conveyance or delivery of possession.

(4) Warranties imposed by this section may be excluded or modified as specified in RCW 64.34.450.

(5) For purposes of this section, improvements made or contracted for by an affiliate of a declarant, as defined in RCW 64.34.020(1), are made or contracted for by the declarant.

(6) Any conveyance of a unit transfers to the purchaser all of the declarant's implied warranties of quality. [1989 c 43 § 4-112.]

64.34.450 Implied warranties of quality—Exclusion—Modification. (Effective July 1, 1990.) (1) Except as limited by subsection (2) of this section, implied warranties of quality:

(a) May be excluded or modified by written agreement of the parties; and

(b) Are excluded by written expression of disclaimer, such as "as is," "with all faults," or other language which in common understanding calls the buyer's attention to the exclusion of warranties.

(2) With respect to a purchaser of a unit that may be occupied for residential use, no general disclaimer of implied warranties of quality is effective, but a declarant and any dealer may disclaim liability in an instrument signed by the purchaser for a specified defect or specified failure to comply with applicable law, if the defect or failure entered into and became a part of the basis of the bargain. [1989 c 43 § 4-113.]

64.34.455 Effect of violations on rights of action—Attorney's fees. (Effective July 1, 1990.) If a declarant or any other person subject to this chapter fails to comply with any provision hereof or any provision of the declaration or bylaws, any person or class of persons adversely affected by the failure to comply has a claim for appropriate relief. The court, in an appropriate case, may award reasonable attorney's fees to the prevailing party. [1989 c 43 § 4-115.]

64.34.460 Labeling of promotional material. (Effective July 1, 1990.) If any improvement contemplated in a condominium is labeled "NEED NOT BE BUILT" on a survey map or plan, or is to be located within a portion of the condominium with respect to which the declarant has reserved a development right, no promotional material may be displayed or delivered to prospective purchasers which describes or portrays that improvement unless the description or portrayal of the improvement in the promotional material is conspicuously labeled or identified as "NEED NOT BE BUILT." [1989 c 43 § 4-116.]

64.34.465 Improvements—Declarant's duties. (Effective July 1, 1990.) (1) The declarant shall complete all improvements labeled "MUST BE BUILT" on survey maps or plans prepared pursuant to RCW 64.34.232.

(2) The declarant is subject to liability for the prompt repair and restoration, to a condition compatible with the remainder of the condominium, of any portion of the condominium damaged by the exercise of rights reserved pursuant to or created by RCW 64.34.236, 64.34.240, 64.34.244, 64.34.248, 64.34.256, and 64.34.260. [1989 c 43 § 4-117.]

ARTICLE 5 MISCELLANEOUS

64.34.900 Short title. (Effective July 1, 1990.) This chapter shall be known and may be cited as the Washington condominium act or the condominium act. [1989 c 43 § 1-101.]

64.34.910 Section captions. (Effective July 1, 1990.) Section captions as used in this chapter do not constitute any part of the law. [1989 c 43 § 4-119.]

64.34.920 Severability—1989 c 43. (Effective July 1, 1990.) If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1989 c 43 § 4-120.]

64.34.930 Effective date—1989 c 43. This act shall take effect July 1, 1990. [1989 c 43 § 4-124.]

64.34.940 Construction against implicit repeal. (Effective July 1, 1990.) This chapter being a general act intended as a unified coverage of its subject matter, no part of it shall be construed to be impliedly repealed by subsequent legislation if that construction can reasonably be avoided. [1989 c 43 § 1-109.]

64.34.950 Uniformity of application and construction. (Effective July 1, 1990.) This chapter shall be applied and construed so as to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it. [1989 c 43 § 1-110.]

Chapter 64.36

TIMESHARE REGULATION

Sections

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

(1) "Advertisement" means any written, printed, audio, or visual communication which is published in whole or part to sell, offer to sell, or solicit an offer for a timeshare.

(2) "Affiliate of a promoter" means any person who controls, is controlled by, or is under the control of a promoter.

(3) "Commercial promotional programs" mean packaging or putting together advertising or promotional materials involving promises of gifts, prizes, awards, or other items of value to solicit prospective purchasers to purchase a product or commodity.

(4) "Director" means the director of licensing.

(5) "Interval" means that period of time when a timeshare owner is entitled to the possession and use of the timeshare unit.

(6) "Offer" means any inducement, solicitation, or attempt to encourage any person to acquire a timeshare.

(7) "Person" means a natural person, corporation, business trust, estate, trust, partnership, association, joint venture, or other legal or commercial entity.

(8) "Promoter" means any person directly or indirectly instrumental in organizing, wholly or in part, a timeshare offering.

(9) "Purchaser" means any person, other than a promoter, who by means of a voluntary transfer acquires a legal or equitable interest in a timeshare, other than as security for an obligation.

(10) "Sale" or "sell" includes every contract of sale of, contract to sell, or disposition of, a timeshare for value.

(11) "Timeshare" means a right to occupy a unit or any of several units during three or more separate time periods over a period of at least three years, including renewal options, whether or not coupled with an estate in land.

(12) "Timeshare expenses" means expenditures, fees, charges, or liabilities: (a) Incurred with respect to the timeshares by or on behalf of all timeshare owners in one timeshare property; and (b) imposed on the timeshare units by the entity governing a project of which the timeshare property is a part, together with any allocations to reserves but excluding purchase money payable for timeshares.

(13) "Timeshare instrument" means one or more documents, by whatever name denominated, creating or regulating timeshares.

(14) "Timeshare owner" means a person who is an owner or co-owner of a timeshare. If title to a timeshare is held in trust, "timeshare owner" means the beneficiary of the trust.

(15) "Timeshare salesperson" means any natural person who offers a timeshare unit for sale.

(16) "Unit" means the real or personal property, or portion thereof, in which the timeshare exists and which is designated for separate use. [1987 c 370 § 1; 1985 c 358 § 1; 1983 1st ex.s. c 22 § 1.]

64.36.020 Registration required before advertisement, solicitation, or offer—Requirements for registration—Exemption authorized. (1) A timeshare offering registration must be effective before any advertisement, solicitation of an offer, or any offer or sale of a timeshare may be made in this state.

(2) An applicant shall apply for registration by filing with the director:

(a) A copy of the disclosure document prepared in accordance with RCW 64.36.140 and signed by the applicant;

(b) An application for registration prepared in accordance with RCW 64.36.030;

(c) An irrevocable consent to service of process signed by the applicant;

(d) The prescribed registration fee; and

(e) Any other information the director may by rule require in the protection of the public interest.

(3) The registration requirements do not apply to:

(a) An offer, sale, or transfer of not more than one timeshare in any twelve-month period;

(b) A gratuitous transfer of a timeshare;

(c) A sale under court order;

(d) A sale by a government or governmental agency;

(e) A sale by forfeiture, foreclosure, or deed in lieu of foreclosure; or

(f) A sale of a timeshare property or all timeshare units therein to any one purchaser.

(4) The director may by rule or order exempt any potential registrant from the requirements of this chapter if the director finds registration is unnecessary for the protection of the public interest. [1983 1st ex.s. c 22 § 2.]

64.36.030 Application for registration—Contents.

The application for registration signed by the promoter shall contain the following information on a form prescribed by the director:

(1) The following financial statements showing the financial condition of the promoter and any affiliate:

(a) A balance sheet as of a date within four months before the filing of the application for registration; and

(b) Statements of income, shareholders' equity, and material changes in financial position as of the end of the last fiscal year and for any period between the end of the last fiscal year and the date of the last balance sheet;

(2) A projected budget for the timeshare project for two years after the offering being made, including but not limited to source of revenues and expenses of construction, development, management, maintenance, advertisement, operating reserves, interest, and any other necessary reserves;

(3) A statement of the selling costs per unit and total sales costs for the project, including sales commissions, advertisement fees, and fees for promotional literature;

(4) A description of the background of the promoters for the previous ten years, including information about the business experience of the promoter and any relevant criminal convictions, civil law suits, or administrative actions related to such promotion during that period;

(5) A statement disclosing any fees in excess of the stated price per unit to be charged to the purchasers, a description of their purpose, and the method of calculation;

(6) A statement disclosing when and where the promoter or an affiliate has previously sold timeshares;

(7) A statement of any liens, defects, or encumbrances on or affecting the title to the timeshare units;

(8) Copies of all timeshare instruments; and

(9) Any additional information to describe the risks which the director considers appropriate. [1983 1st ex.s. c 22 § 4.]

64.36.035 Applications for registration, consents to service, affidavits, and permits to market—Authorized signatures required—Corporate shield disclaimer prohibited. (1) Applications, consents to service of process, affidavits, and permits to market shall be signed by the promoter, unless a trustee or person with power of attorney is specifically authorized to make such signatures. If the signature of a person with a power of attorney or trustee is used, the filing of the signature shall include a copy of the authorizations for the signature. No promoter or other person responsible under this chapter shall disclaim responsibility because the signature of a trustee or attorney in fact, or other substitute was used.

(2) If the promoter is a corporation or a general partnership, each natural person therein, with a ten percent or greater interest or share in the promoter, shall, in addition to the promoter, be required to sign as required in this section, but may authorize a trustee or a person with power of attorney to make the signatures.

(3) All persons required to use or authorizing the use of their signatures in this section, individually or otherwise, shall be responsible for affidavits, applications, and permits signed, and for compliance with the provisions of this chapter. Individuals whose signatures are required under this section shall not disclaim their responsibilities because of any corporate shield. [1987 c 370 § 2.]

64.36.040 Application for registration—When effective. If no stop order is in effect and no proceeding is pending under RCW 64.36.100, a registration application becomes effective at 3:00 p.m. Pacific Standard Time on the afternoon of the thirtieth calendar day after the filing of the application or the last amendment or at such earlier time as the director determines. [1983 1st ex.s. c 22 § 5.]

64.36.050 Timeshare offering—Duration of registration—Renewal—Amendment—Penalties. (1) A timeshare offering is registered for a period of one year from the effective date of registration unless the director specifies a different period.

(2) Registration of a timeshare offering may be renewed for additional periods of one year each, unless the director by rule specifies a different period, by filing a renewal application with the director no later than thirty days before the expiration of the period in subsection (1) of this section and paying the prescribed fees. A renewal application shall contain any information the director requires to indicate any material changes in the information contained in the original application.

(3) If a material change in the condition of the promoter, the promoter's affiliates, the timeshare project, or the operation or management of the timeshare project occurs during any year, an amendment to the documents filed under RCW 64.36.030 shall be filed, along with the prescribed fees, as soon as reasonably possible and before any further sales occur.

(4) The promoter shall keep the information in the written disclosures reasonably current at all times by amending the registration. If the promoter fails to amend and keep current the written disclosures or the registrations in instances of material change, the director may require compliance under RCW 64.36.100 and assess penalties. [1987 c 370 § 3; 1983 1st ex.s. c 22 § 6.]

64.36.060 Application for registration—Acceptance of disclosure documents—Waiver of information—Additional information. (1) In lieu of the documents required to be filed under RCW 64.36.030, the director may by rule accept:

(a) Any disclosure document filed with agencies of the United States or any other state;

(b) Any disclosure document compiled in accordance with any rule of any agency of the United States or any other state; or

(c) Any documents submitted pursuant to registration of a timeshare offering under chapter 58.19 RCW before August 1, 1983.

(2) The director may by rule waive disclosure of information which the director considers unnecessary for the protection of timeshare purchasers.

(3) The director may by rule require the provision of any other information the director considers necessary to protect timeshare purchasers. [1983 1st ex.s. c 22 § 7.]

64.36.070 Registration as timeshare salesperson required—Exemption. Any individual offering timeshare units for the individual's own account or for the account of others shall be registered as a timeshare salesperson unless the timeshare offering is exempt from registration under RCW 64.36.020. Registration may be obtained by filing an application with the department of licensing on a form prescribed by the director. The director may require that the applicant demonstrate sufficient knowledge of the timeshare industry and this chapter. A timeshare salesperson who is licensed as a real estate broker or salesperson under chapter 18.85 RCW is exempt from the registration requirement of this section. [1983 1st ex.s. c 22 § 8.]

64.36.081 Fees. (1) Applicants or registrants under this chapter shall pay fees determined by the director as provided in RCW 43.24.086. These fees shall be prepaid and the director may establish fees for the following:

(a) Processing an original application for registration of a timeshare offering, along with an additional fee for each interval registered or in the timeshare program;

(b) Processing consolidations or adding additional inventory into the program;

(c) Reviewing and granting exemptions;

(d) Processing annual or periodic renewals;

(e) Initially and annually processing and administering any required impound, trust, or escrow arrangement;

(f) The review of advertising or promotional materials;

(g) Registering persons in the business of selling promotional programs for use in timeshare offerings or sales presentations;

(h) Registrations and renewal of registrations of salespersons;

(i) The transfer of salespersons' permits to other promoters;

(j) Administering and processing examinations for salespersons;

(k) Conducting site inspections of registered projects and projects for which registration is pending.

(2) The director may establish penalties for registrants in any situation where a registrant has failed to file an amendment to the registration or the disclosure document in a timely manner for material changes, as required in this chapter and rules adopted under this chapter. [1987 c 370 § 4.]

64.36.085 Inspections of projects—Identification of inspectors. (1) The director may require inspections of projects registered under this chapter and promoters and their agents shall cooperate by permitting staff of the department to conduct the inspections.

(2) The director may perform "spot checks" or inspections of sales offices, during tours or sales presentations or normal business hours, for purposes of enforcing this chapter and determining compliance by the operator and salespersons in the sales, advertising, and promotional activities regulated under this chapter. These inspections or spot checks may be conducted during or at the time of sales presentations or during the hours during which sales are ordinarily scheduled.

(3) The department employee making the inspections shall show identification upon request. It is a violation of this chapter for the operator or its sales representatives to refuse an inspection or refuse to cooperate with employees of the department conducting the inspection. [1987 c 370 § 5.]

64.36.090 Denial, suspension, or revocation of timeshare salesperson's application, registration, or license—Conditions—Summary order. The director may by order deny, suspend, or revoke a timeshare salesperson's registration or application for registration or a salesperson's license under chapter 18.85 RCW who is selling under this chapter, if the director finds that the order is in the public interest and the applicant or registrant:

(1) Has filed an application for registration as a timeshare salesperson or as a licensee under chapter 18.85 RCW which, as of its effective date, is incomplete in any material respect or contains any statement which is, in the light of the circumstances under which it was made, false or misleading with respect to any material fact;

(2) Has violated or failed to comply with any provision of this chapter or a predecessor act or any rule or order issued under this chapter or a predecessor act;

(3) Has been convicted within the past five years of any misdemeanor or felony involving theft, fraud, or any consumer protection statute, or any felony involving moral turpitude;

(4) Is permanently or temporarily enjoined by any court or administrative order from engaging in or continuing any conduct or practice involving any aspect of the timeshare business;

(5) Has engaged in dishonest or unethical practices in the timeshare, real estate, or camp resort business;

(6) Is insolvent either in the sense that the individual's liabilities exceed his or her assets or in the sense that the individual cannot meet his or her obligations as they mature; or

(7) Has not complied with any condition imposed by the director or is not qualified on the basis of such factors as training, experience, or knowledge of the timeshare business or this chapter.

The director may by order summarily postpone or suspend registration of the salesperson pending final determination of any proceeding under RCW 64.36.180. [1987 c 370 § 9; 1983 1st ex.s. c 22 § 9.]

64.36.100 Denial, suspension, or revocation of timeshare application or registration—Conditions—Notification. (1) The director may issue an order denying, suspending, or revoking any timeshare application or registration if the director finds that the order is in the public interest and that:

(a) The application, written disclosure, or registration is incomplete or contains any statement which is false or misleading with respect to any material fact;

(b) Any provision of this chapter, the permit to market, or any rule or order lawfully issued under this chapter has been violated by the promoter, its affiliates, or any natural person whose signature is required under this chapter;

(c) The activities of the promoter include, or would include, activities which are unlawful or in violation of a law, rule, or ordinance in this state or another jurisdiction;

(d) The timeshare offering has worked or tended to work a fraud on purchasers, or would likely be adverse to the interests or the economic or physical welfare of purchasers;

(e) The protections and security arrangements to assure future quiet enjoyment required under RCW 64.36.130 have not been provided as required by the director for the protection of purchasers: or

(f) The operating budget proposed by the promoter or promoter-controlled association appears inadequate to meet operating costs or funding of reserve accounts or fees for a consultant to determine adequacy have not been paid by the promoter.

(2) The director shall promptly notify the applicant or registrant of any order denying, suspending, or revoking registration and of the applicant's or registrant's right to request a hearing within fifteen days of notification. If the applicant or registrant does not request a hearing, the order remains in effect until the director modifies or vacates it. [1987 c 370 § 10; 1983 1st ex.s. c 22 § 10.]

64.36.110 Requirements of transfer of promoter's interest—Notice to purchaser. A promoter shall not sell,

lease, assign, or otherwise transfer the promoter's interest in the timeshare program unless the transferee agrees in writing to honor the timeshare purchaser's right to use and occupy the timeshare unit, honor the purchaser's right to cancel, and comply with this chapter. In the event of a transfer, each timeshare purchaser whose contract may be affected shall be given written notice of the transfer when the transfer is made. [1983 1st ex.s. c 22 § 11.]

64.36.120 Good faith required—Provision relieving person from duty prohibited—Out-of-state jurisdiction or venue designation void. (1) The parties to a timeshare agreement shall deal with each other in good faith.

(2) A timeshare promoter shall not require any timeshare purchaser to agree to a release, assignment, novation, waiver, or any other provision which relieves any person from a duty imposed by this chapter.

(3) Any provision in a timeshare contract or agreement which designates jurisdiction or venue in a forum outside this state is void with respect to any cause of action which is enforceable in this state. [1983 1st ex.s. c 22 § 12.]

64.36.130 Impoundment of proceeds from sales authorized—Establishment of trusts, escrows, etc. (1) The director may by rule require as a condition of registration under this chapter that the proceeds from the sale of the timeshares be impounded until the promoter receives an amount established by the director. The director may by rule determine the conditions of any impoundment required under this section, including the release of moneys for promotional purposes.

(2) The director, in lieu of or in addition to requiring impoundment under subsection (1) of this section, may require that the registrant establish trusts, escrows, or any other similar arrangement that assures the timeshare purchaser quiet enjoyment of the timeshare unit.

(3) Impounding will not be required for those timeshare offerors who are able to convey fee simple title, along with title insurance: *Provided*, That no other facilities are promised in the offering. [1983 1st ex.s. c 22 § 13.]

64.36.140 Disclosure document—Contents. Any person who offers or sells a timeshare shall provide the prospective purchaser a written disclosure document before the prospective purchaser signs an agreement for the purchase of a timeshare. The timeshare salesperson shall date and sign the disclosure document. The disclosure document shall include:

(1) The official name and address of the promoter, its parent or affiliates, and the names and addresses of the director and officers of each;

(2) The location of the timeshare property;

(3) A general description of the timeshare property and the timeshare units;

(4) A list of all units offered by the promoter in the same project including:

(a) The types, prices, and number of units;

(b) Identification and location of units;

(c) The types and durations of the timeshares;

(d) The maximum number of units that may become part of the timeshare property; and

(e) A statement of the maximum number of timeshares that may be created or a statement that there is no maximum.

(5) A description of any financing offered by the promoter;

(6) A statement of ownership of all properties included in the timeshare offering including any liens or encumbrances affecting the property;

(7) Copies of any agreements or leases to be signed by timeshare purchasers at closing and a copy of the timeshare instrument;

(8) The identity of the managing entity and the manner, if any, whereby the promoter may change the managing entity;

(9) A description of the selling costs both per unit and for the total project at the time the sale is made;

(10) A statement disclosing when and where the promoter or its affiliate has previously sold timeshares;

(11) A description of the nature and purpose of all charges, dues, maintenance fees, and other expenses that may be assessed, including:

(a) The current amounts assessed;

(b) The method and formula for changes; and

(c) The formula for payment of charges if all timeshares are not sold and a statement of who pays additional costs;

(12) Any services which the promoter provides or expenses the promoter pays which the promoter expects may become a timeshare expense at any subsequent time;

(13) A statement in bold face type on the cover page of the disclosure document and the cover page of the timeshare purchase agreement that within seven days after receipt of a disclosure document or the signing of the timeshare purchase agreement, whichever is later, a purchaser may cancel any agreement for the purchase of a timeshare from a promoter or a timeshare salesperson and that the cancellation must be in writing and be either hand delivered or mailed to the promoter or the promoter's agent;

(14) Any restraints on transfer of a timeshare or portion thereof;

(15) A description of the insurance coverage provided for the benefit of timeshare owners;

(16) A full and accurate disclosure of whether the timeshare owners are to be permitted or required to become members of or participate in any program for the exchange of property rights among themselves or with the timeshare owners of other timeshare units, or both, and a complete description of the program; and

(17) Any additional information the director finds necessary to fully inform prospective timeshare purchasers, including but not limited to information required by RCW 64.36.030. [1983 1st ex.s. c 22 § 3.]

64.36.150 Disclosure document to prospective purchasers—Cancellation and refund—Voidable agreement. The promoter or any person offering timeshare

interest shall provide a prospective purchaser with a copy of the disclosure document described in RCW 64.36.140 before the execution of any agreement for the purchase of a timeshare. A purchaser may, for seven days following execution of an agreement to purchase a timeshare, cancel the agreement and receive a refund of any consideration paid by providing written notice of the cancellation to the promoter or the promoter's agent either by mail or hand delivery. If the purchaser does not receive the disclosure document, the agreement is voidable by the purchaser until the purchaser receives the document and for seven days thereafter. [1983 1st ex.s. c 22 § 14.]

64.36.160 Application of liability provisions. No provision of this chapter imposing any liability applies to any act or omission in good faith in conformity with any rule, form, or order of the director, notwithstanding that the rule, form, or order may later be amended or rescinded or determined by judicial or other authority to be invalid for any reason. [1983 1st ex.s. c 22 § 15.]

64.36.170 Noncompliance—Unfair practice under chapter 19.86 RCW. Any failure to comply with this chapter constitutes an unfair and deceptive trade practice under chapter 19.86 RCW. [1983 1st ex.s. c 22 § 16.]

64.36.180 Entry of order—Summary order—Notice—Hearing. (1) Upon the entry of an order under RCW 64.36.090, 64.36.100, or 64.36.200, the director shall promptly notify the applicant or registrant that it has been entered and the reasons therefor, and that if requested in writing by the applicant or registrant within fifteen days after the receipt of the director's notification, the matter will be scheduled for hearing in accordance with subsections (2) and (3) of this section.

(2) Upon entry of a summary order, the following shall apply:

(a) If entry of the summary order results in the denial of an application under RCW 64.36.090 or 64.36.100, the hearing shall be held within a reasonable time and in accordance with chapter 34.05 RCW.

(b) If entry of the summary order results in the revocation or suspension of a registration under RCW 64.36.090 or 64.36.100, the registrant shall have an opportunity within ten days of receipt of such order to appear before the director or securities administrator to show cause why the summary order should not remain in effect. If the director or securities administrator finds that good cause is shown, he or she shall vacate the summary order. If he or she finds that good cause is not shown, the summary order shall remain in effect and the director shall give notice of opportunity for hearing which shall be held within a reasonable time.

(3) Upon entry of any nonsummary order under RCW 64.36.090 or 64.36.100, the hearing shall be held within a reasonable time and in accordance with chapter 34.05 RCW.

(4) If the applicant or registrant does not request a hearing within fifteen days after receipt of notice of opportunity for hearing, the order shall become final. [1983 1st ex.s. c 22 § 17.]

64.36.185 Director's powers—Employment of outside persons for advice on project operating budget—Reimbursement by promoter—Notice and hearing. (1) If it appears that the operating budget of a project fails to adequately provide for funding of reserve accounts, the director may employ outside professionals or consultants to provide advice or to develop an alternative budget. The promoter shall pay or reimburse the department for the costs incurred for such professional opinions.

(2) Before employing consultants under this section, the director shall provide the applicant with written notice and an opportunity for a hearing under chapter 34.05 RCW. [1987 c 370 § 6.]

64.36.190 Director's powers—Application to superior court to compel compliance. (1) The director may:

(a) Make public or private investigations within or outside the state to determine whether any registration should be granted, denied, or revoked or whether any person has violated or is about to violate any provision of this chapter or any rule or order issued under this chapter, or to aid in the enforcement of this chapter and rules or orders issued under this chapter;

(b) Administer oaths and affirmations, subpoena witnesses and compel their attendance, take evidence and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the director considers relevant to the inquiry;

(c) Publish information concerning any violation of this chapter or any rule or order issued under this chapter.

(2) If any person fails to comply with a lawful subpoena, refuses to testify under lawful interrogation, or refuses to produce documents and records, the director may apply to the superior court of any county for relief. After satisfactory evidence of wilful disobedience, the court may compel obedience by proceedings for contempt. [1983 1st ex.s. c 22 § 18.]

64.36.195 Assurances of discontinuance—Violation of assurance grounds for action. The director or persons to whom the director delegates such powers may enter into assurances of discontinuance in lieu of issuing a statement of charges or a cease and desist order or conducting a hearing under this chapter. The assurances shall consist of a statement of the law in question and an agreement to not violate the stated provision. The applicant or registrant shall not be required to admit to any violation of the law, nor shall the assurance be construed as such an admission. Violation or breaching of an assurance under this section shall be grounds for a suspension, revocation of registration, or imposition of a fine. [1987 c 370 § 7.]

64.36.200 Cease and desist order—Notification—Hearing. (1) The director may order any person to cease and desist from an act or practice if it appears that the person is violating or is about to violate any provision of this chapter or any rule or order issued under this chapter.

(2) Upon the entry of the temporary order to cease and desist, the director shall promptly notify the recipient of the order that it has been entered and the reasons therefor and that if requested in writing by such person within fifteen days after receipt of the director's notification, the matter will be scheduled for hearing which shall be held within a reasonable time and in accordance with chapter 34.05 RCW. The temporary order shall remain in effect until ten days after the hearing is held.

(3) If a person does not request a hearing within fifteen days after receipt of notice of opportunity for hearing, the order shall become final. [1983 1st ex.s. c 22 § 19.]

64.36.210 Unlawful acts. It is unlawful for any person in connection with the offer, sale, or lease of any timeshare in the state:

(1) To make any untrue or misleading statement of a material fact, or to omit a material fact;

(2) To employ any device, scheme, or artifice to defraud;

(3) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person;

(4) To file, or cause to be filed, with the director any document which contains any untrue or misleading information; or

(5) To violate any rule or order of the director. [1983 1st ex.s. c 22 § 20.]

64.36.220 Injunction, restraining order, writ of mandamus—Costs and attorney's fees—Appointment of receiver or conservator—Penalties. (1) The attorney general, in the name of the state or the director, may bring an action to enjoin any person from violating any provision of this chapter. Upon a proper showing, the superior court shall grant a permanent or temporary injunction, restraining order, or writ of mandamus. The court may make any additional orders or judgments which may be necessary to restore to any person any interest in any money or property, real or personal, which may have been acquired by means of any act prohibited or declared to be unlawful under this chapter. The prevailing party may recover costs of the action, including a reasonable attorney's fee.

(2) The superior court issuing an injunction shall retain jurisdiction. Any person who violates the terms of an injunction shall pay a civil penalty of not more than twenty-five thousand dollars.

(3) The attorney general, in the name of the state or the director, may apply to the superior court to appoint a receiver or conservator for any person, or the assets of any person, who is subject to a cease and desist order, permanent or temporary injunction, restraining order, or writ of mandamus.

(4) Any person who violates any provision of this chapter is subject to a civil penalty not to exceed two thousand dollars for each violation. Civil penalties authorized by this subsection shall be imposed in a civil action brought by the attorney general and shall be deposited in the general fund of the state treasury. Any action for recovery of a civil penalty shall be commenced within five years of the date of the alleged violation. [1983 1st ex.s. c 22 § 21.]

64.36.225 Liability of registrant or applicant for costs of proceedings. A registrant or applicant against whom an administrative or legal proceeding authorized under this chapter has been filed, shall be liable for and reimburse to the state of Washington by payment into the general fund, all administrative and legal costs, including attorney fees, incurred by the department in issuing and conducting administrative or legal proceedings that result in a final legal or administrative determination of any type or degree, in favor of the department or the state of Washington. [1987 c 370 § 8.]

64.36.230 Criminal penalties—Referral of evidence of violations. (1) Any person who violates RCW 64.36.020 is guilty of a gross misdemeanor punishable under chapter 9A.20 RCW. Any person who knowingly violates RCW 64.36.020 or 64.36.210 is guilty of a class C felony punishable under chapter 9A.20 RCW. No indictment or information for a felony may be returned under this chapter more than five years after the alleged violation.

(2) The director may refer evidence concerning violations of this chapter to the attorney general or the proper prosecuting attorney who may, with or without this reference, institute appropriate criminal proceedings. [1983 1st ex.s. c 22 § 22.]

64.36.240 Liability for violation of chapter. Any person who offers, sells, or materially aids in such offer or sale of a timeshare in violation of this chapter is liable to the person buying the timeshare who may sue either at law or in equity to recover the consideration paid for the timeshare, together with interest at ten percent per annum from date of payment and costs upon the tender of the timeshare, or for damages if the person no longer owns the timeshare. [1983 1st ex.s. c 22 § 23.]

64.36.250 Appointment of director to receive service—Requirements for effective service. Every applicant for registration under this chapter shall file with the director, in a form the director prescribes by rule, an irrevocable consent appointing the director to be the attorney of the applicant to receive service of any lawful process in any civil suit, action, or proceeding against the applicant or the applicant's successor, executor, or administrator which arises under this chapter or any rule or order issued under this chapter after the consent has been filed, with the same force and validity as if served personally on the person filing the consent. Service may be made by leaving a copy of the process in the office of

the director, but it is not effective unless: (1) The plaintiff, who may be the director in a suit, action, or proceeding instituted by the director, forthwith sends notice of the service and a copy of the process by certified mail to the defendant or respondent at the last address of the respondent or defendant on file with the director; and (2) the plaintiff's affidavit of compliance with this section is filed in the case on or before the return day of the process, if any, or within such further time as the court allows. [1983 1st ex.s. c 22 § 24.]

64.36.260 Certain acts not constituting findings or approval by the director—Certain representations unlawful. Neither the fact that an application for registration nor a disclosure document under RCW 64.36.140 has been filed, nor the fact that a timeshare offering is effectively registered, constitutes a finding by the director that any document filed under this chapter is true, complete, and not misleading, nor does either fact mean that the director has determined in any way the merits of, qualifications of, or recommended or given approval to any person, timeshare, or transaction. It is unlawful to make, or cause to be made, to any prospective purchaser any representation inconsistent with this section. [1983 1st ex.s. c 22 § 25.]

64.36.270 Rules, forms, and orders—Interpretive opinions. The director may make, amend, and repeal rules, forms, and orders when necessary to carry out this chapter. The director may honor requests for interpretive opinions. [1983 1st ex.s. c 22 § 26.]

64.36.280 Administration of chapter—Delegation of powers. The director shall appoint a competent person within the department of licensing to administer this chapter. The director shall delegate to the administrator any powers, subject to the authority of the director, which may be necessary to carry out this chapter. The administrator shall hold office at the pleasure of the director. [1983 1st ex.s. c 22 § 27.]

64.36.290 Application of chapters 21.20, 58.19, and 19.105 RCW—Exemption of certain camping and outdoor recreation enterprises. (1) All timeshares registered under this chapter are exempt from chapters 21.20, 58.19, and 19.105 RCW.

(2) This chapter shall not apply to any enterprise that has as its primary purpose camping and outdoor recreation and camping sites designed and promoted for the purpose of purchasers locating a trailer, tent, tent trailer, pick-up camper, or other similar device used for land-based portable housing. [1987 c 370 § 11; 1983 1st ex.s. c 22 § 28.]

64.36.300 Application of chapter 34.05 RCW. Chapter 34.05 RCW applies to any administrative procedures carried out by the director under this chapter unless otherwise provided in this chapter. [1983 1st ex.s. c 22 § 30.]

64.36.310 Copy of advertisement to be filed with director before publication—Application of chapter limited. (1) No person may publish any advertisement in this state offering a timeshare which is subject to the registration requirements of RCW 64.36.020 unless a true copy of the advertisement has been filed in the office of the director at least seven days before publication or a shorter period which the director by rule may establish. The right to subsequently publish the advertisement is subject to the approval of the director within that seven day period.

(2) Nothing in this chapter applies to any radio or television station or any publisher, printer, or distributor of any newspaper, magazine, billboard, or other advertising medium which accepts advertising in good faith without knowledge of its violation of any provision of this chapter. This subsection does not apply, however, to any publication devoted primarily to the soliciting of resale timeshare offerings and where the publisher or owner of the publication collects advance fees for the purpose of locating or finding potential resale buyers or sellers. [1987 c 370 § 12; 1983 1st ex.s. c 22 § 31.]

64.36.320 Free gifts, awards, and prizes—Security arrangement required of promisor—Other requirements—Private causes of action. (1) No person, including a promoter, may advertise, sell, contract for, solicit, arrange, or promise a free gift, an award, a prize, or other item of value in this state as a condition for attending a sales presentation, touring a facility, or performing other activities in connection with the offer or sale of a timeshare under this chapter, without first providing the director with a bond, letter of credit, cash depository, or other security arrangement that will assure performance by the promisor and delivery of the promised gift, award, sweepstakes, prize, or other item of value.

(2) Promoters under this chapter shall be strictly liable for delivering promised gifts, prizes, awards, or other items of value offered or advertised in connection with the marketing of timeshares.

(3) Persons promised but not receiving gifts, prizes, awards, or other items of consideration covered under this section, shall be entitled in any cause of action in the courts of this state in which their causes prevail, to be awarded treble the stated value of the gifts, prizes, or awards, court costs, and reasonable attorney fees.

(4) The director may require that any fees or funds of any description collected from persons in advance, in connection with delivery by the promisor of gifts, prizes, awards, or other items of value covered under this section, be placed in a depository in this state, where they shall remain until performance by the promisor.

(5) The director may require commercial promotional programs to be registered and require the provision of whatever information, including financial information, the department deems necessary for protection of purchasers.

(6) Persons offering commercial promotional programs shall sign and present to the department a consent

to service of process, in the manner required of promoters in this chapter.

(7) Registrants or their agents or other persons shall not take possession of promotional materials covered under this section and RCW 64.36.310, from recipients who have received the materials for attending a sales presentation or touring a project, unless the permission of the recipient is received and the recipient is provided with an accurate signed copy describing such promotional materials. The department shall adopt rules enforcing this subsection. [1987 c 370 § 13.]

64.36.330 Membership lists available for members and owners—Conditions—Exclusion of members' names from list—Commercial use of list. (1) Concerning any timeshare offered or sited in this state, it is unlawful and a violation of this chapter and chapter 19.86 RCW for any person, developer, promoter, operator, or other person in control of timeshares or the board of directors or appropriate officer of timeshares with such responsibilities, to fail to provide a member/owner of a timeshare with a membership list, including names, addresses, and lot, unit, or interval owned, under the following circumstances:

(a) Upon demand or by rule or order of the director of the department, for whatever purpose deemed necessary to administer this chapter;

(b) Upon written request sent by certified mail being made by a member of the timeshare, to a declarant, promoter, or other person who has established and is yet in control of the timeshare;

(c) Upon written request sent by certified mail of a member of a timeshare to the board of directors or appropriate officer of the timeshare or an affiliated timeshare.

(2) The board of directors of the timeshare may require that any applicant for a membership list, other than the department, pay reasonable costs for providing the list and an affidavit that the applicant will not use and will be responsible for any use of the list for commercial purposes.

(3) Upon request, a member's name shall be excluded from a membership list available to any person other than the director of licensing for purposes of administering statutes that are its responsibility. Such persons shall make their request for exclusion in writing by certified mail to the board of directors or the appropriate officer or director of the timeshare.

(4) It is unlawful for any person to use a membership list obtained under this section or otherwise, for commercial purposes, unless written permission to do so has been received from the board of directors or appropriate officer of the timeshare. Wilful use of a membership list for commercial purposes without such permission shall subject the violator to damages, costs, and reasonable attorneys' fees in any legal proceedings instituted by a member in which the member prevails alleging violation of this section. Members may petition the courts of this state for orders restraining such commercial use. [1987 c 370 § 14.]

64.36.900 Short title. This chapter may be known and cited as "The Timeshare Act." [1983 1st ex.s. c 22 § 32.]

64.36.901 Severability—1983 1st ex.s. c 22. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1983 1st ex.s. c 22 § 35.]

Chapter 64.40

PROPERTY RIGHTS—DAMAGES FROM GOVERNMENTAL ACTIONS

Sections

64.40.010	Definitions—Defense in action for damages.
64.40.020	Applicant for permit—Actions for damages from governmental actions.
64.40.030	Commencement of action—Time limitation.
64.40.040	Remedies cumulative.
64.40.900	Severability—1982 c 232.

64.40.010 Definitions—Defense in action for damages. As used in this chapter, the terms in this section shall have the meanings indicated unless the context clearly requires otherwise.

(1) "Agency" means the state of Washington, any of its political subdivisions, including any city, town, or county, and any other public body exercising regulatory authority or control over the use of real property in the state.

(2) "Permit" means any governmental approval required by law before an owner of a property interest may improve, sell, transfer, or otherwise put real property to use.

(3) "Property interest" means any interest or right in real property in the state.

(4) "Damages" means reasonable expenses and losses, other than speculative losses or profits, incurred between the time a cause of action arises and the time a holder of an interest in real property is granted relief as provided in RCW 64.40.020. Damages must be caused by an act, necessarily incurred, and actually suffered, realized, or expended, but are not based upon diminution in value of or damage to real property, or litigation expenses.

(5) "Regulation" means any ordinance, resolution, or other rule or regulation adopted pursuant to the authority provided by state law, which imposes or alters restrictions, limitations, or conditions on the use of real property.

(6) "Act" means a final decision by an agency which places requirements, limitations, or conditions upon the use of real property in excess of those allowed by applicable regulations in effect on the date an application for a permit is filed. "Act" also means the failure of an agency to act within time limits established by law in response to a property owner's application for a permit: *Provided*, That there is no "act" within the meaning of this section when the owner of a property interest agrees in writing to extensions of time, or to the conditions or limitations imposed upon an application for a permit.

"Act" shall not include lawful decisions of an agency which are designed to prevent a condition which would constitute a threat to the health, safety, welfare, or morals of residents in the area.

In any action brought pursuant to this chapter, a defense is available to a political subdivision of this state that its act was mandated by a change in statute or state rule or regulation and that such a change became effective subsequent to the filing of an application for a permit. [1982 c 232 § 1.]

64.40.020 Applicant for permit—Actions for damages from governmental actions. (1) Owners of a property interest who have filed an application for a permit have an action for damages to obtain relief from acts of an agency which are arbitrary, capricious, unlawful, or exceed lawful authority, or relief from a failure to act within time limits established by law: *Provided*, That the action is unlawful or in excess of lawful authority only if the final decision of the agency was made with knowledge of its unlawfulness or that it was in excess of lawful authority, or it should reasonably have been known to have been unlawful or in excess of lawful authority.

(2) The prevailing party in an action brought pursuant to this chapter may be entitled to reasonable costs and attorney's fees.

(3) No cause of action is created for relief from unintentional procedural or ministerial errors of an agency.

(4) Invalidation of any regulation in effect prior to the date an application for a permit is filed with the agency shall not constitute a cause of action under this chapter. [1982 c 232 § 2.]

64.40.030 Commencement of action—Time limitation. Any action to assert claims under the provisions of this chapter shall be commenced only within thirty days after all administrative remedies have been exhausted. [1982 c 232 § 3.]

64.40.040 Remedies cumulative. The remedies provided by this chapter are in addition to any other remedies provided by law. [1982 c 232 § 4.]

64.40.900 Severability—1982 c 232. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1982 c 232 § 5.]

Title 65

RECORDING, REGISTRATION, AND LEGAL PUBLICATION

Chapters

- 65.04** Duties of county auditor.
- 65.08** Recording.
- 65.12** Registration of land titles (Torrens Act).
- 65.16** Legal publications.
- 65.20** Classification of manufactured homes.

Assessor's plats: Chapter 58.18 RCW.

Assignment, satisfaction of mortgages: Chapter 61.16 RCW.

Civil procedure, legal publication generally: Chapter 4.28 RCW.

Community property

claim of spouse to be filed: RCW 26.16.100.

purchaser protected by record title: RCW 26.16.095.

Copies of recorded instruments as evidence: Chapter 5.44 RCW.

Corporate seals, effect of absence from instrument: RCW 64.04.105.

County auditor: Chapter 36.22 RCW.

Crop liens: Chapter 60.11 RCW.

Eminent domain by

corporations, judgment or decree: RCW 8.20.090.

county, decree: RCW 8.08.060.

school districts, decree: RCW 8.16.110.

state, judgment or decree: RCW 8.04.120.

Eminent domain, state lands, decree: RCW 8.28.010.

Fees of county officers: Chapter 36.18 RCW.

Field notes of irregular subdivided tracts: RCW 84.40.170.

Filing reports, claims, tax returns, etc.: RCW 1.12.070.

Lis pendens, effect of filing: RCW 4.28.320.

Notice of proposed constitutional amendments, publication of: RCW 29.27.072, 29.27.074.

Plats: Chapter 58.08 RCW, RCW 84.40.170.

Powers of appointment: Chapter 11.95 RCW.

RCW 65.08.070 applicable to rents and profits of real property: RCW 7.28.230.

Retail installment sales of goods and services: Chapter 63.14 RCW.

Secretary of state, duties: RCW 43.07.030.

Chapter 65.04

DUTIES OF COUNTY AUDITOR

Sections

- 65.04.020 Duty to provide records.
- 65.04.030 Instruments to be recorded or filed.
- 65.04.040 Photographic, microfilm, etc., recordation of instruments—Marginal notations—Arrangement of records.
- 65.04.050 Record of instruments, how made and kept.
- 65.04.060 Record when lien is discharged.
- 65.04.070 Recording judgments affecting real property.
- 65.04.080 Entries when instruments offered for record.
- 65.04.090 Further endorsements—Delivery.
- 65.04.110 Liability of auditor for damages.
- 65.04.115 Names on documents, etc., to be printed or typewritten—Indexing.
- 65.04.130 Fees to be paid or tendered.
- 65.04.140 Auditor as custodian of records.

Corporate seals, effect of absence from instrument: RCW 64.04.105.

County auditor: Chapter 36.22 RCW.

Fees of county officers, generally: Chapter 36.18 RCW.

Powers of appointment: Chapter 11.95 RCW.

65.04.020 Duty to provide records. For the purpose of recording deeds and other instruments of writing, required or permitted by law to be recorded, the county auditor shall procure such books for records as the business of the office requires. [1985 c 44 § 14; 1893 c 119 § 10; Code 1881 § 2726; RRS § 10600.]

65.04.030 Instruments to be recorded or filed. He must, upon the payment of his fees as required in RCW 36.18.010 for the same, acknowledge receipt therefor in writing or printed form and record in large and well bound books, or by photographic or photomechanical process, the following:

(1) Deeds, grants and transfers of real property, mortgages and releases of mortgages of real estate, instruments or agreements relating to community or separate property, powers of attorney to convey real estate, and leases which have been acknowledged or proved: *Provided*, That deeds, contracts and mortgages of real estate described by lot and block and addition or plat, shall not be filed or recorded until the plat of such addition has been filed and made a matter of record;

(2) Patents to lands and receivers' receipts, whether for mineral, timber, homestead or preemption claims or cash entries;

(3) All such other papers or writing as are required by law to be recorded and such as are required by law to be filed. [1985 c 44 § 15; 1967 c 98 § 1; 1919 c 182 § 1; 1893 c 119 § 11; Code 1881 § 2727; 1865 p 26 § 1; RRS § 10601.]

Claim of spouse in community realty to be filed: RCW 26.16.100.

Marriage certificate to county auditor, filing and recording, etc.: RCW 26.04.090, 26.04.100.

Purchaser of community realty protected by record title: RCW 26.16.095.

65.04.040 Photographic, microfilm, etc., recordation of instruments—Marginal notations—Arrangement of records. Any state, county, or municipal officer charged with the duty of recording instruments in public records, may, in lieu of transcription, record them by receiving number in the order filed, irrespective of the type of instrument, using a photographic or photomechanical process, which produces a clear, legible, and durable record and which has been tested and approved for the intended purpose by the state archivist.

In addition, the county auditor, in the exercise of his duty of recording instruments in public records, may, in lieu of transcription, record all instruments, which he is charged by law to record, except plats, by any photographic, photostatic, microfilm, microcard, miniature photographic or other process which actually reproduces

or forms a durable medium for so reproducing the original, and which has been tested and approved for the intended purpose by the state archivist. If the county auditor, in lieu of transcription, records any instrument by a process herein enumerated which produces a miniature copy of the original it shall not be necessary thereafter to make any notations or marginal notes, which are otherwise required by law, thereon: *Provided*, That in lieu of making said notations thereon, the auditor shall immediately make a note of such in both the direct and inverted indexes and other appropriate indexes, in the column headed "remarks", opposite the appropriate entry.

Previously recorded instruments may be processed and preserved by any means authorized under this section for the original recording of instruments. The county auditor may provide in his office for the use of the public books containing reproductions of instruments and other materials that have been recorded pursuant to the provisions of this section. The contents of such books may be arranged according to date of filing, irrespective of type of instrument, or in such other manner as the county auditor in his discretion shall deem proper. [1985 c 44 § 16; 1967 c 98 § 2; 1959 c 254 § 1; 1919 c 125 § 1; RRS § 10602.]

State archivist: RCW 40.14.020.

65.04.050 Record of instruments, how made and kept. Every auditor must keep a general index, direct and inverted. The direct index shall be divided into seven columns, and with heads to the respective columns, as follows: Time of reception, grantor, grantee, nature of instrument, volume and page where recorded, remarks, description of property. He shall correctly enter in such index every instrument concerning or affecting real estate which by law is required to be recorded, the names of grantors being in alphabetical order. The inverted index shall also be divided into seven columns, precisely similar, except that "grantee" shall occupy the second column and "grantor" the third, the names of grantees being [in] alphabetical order. For the purposes of *this act, the term "grantor" shall be construed to mean any person conveying or encumbering the title to any property, or any person against whom any *lis pendens*, judgment, notice of lien, order of sale, execution, writ of attachment, or claims of separate or community property shall be placed on record. He shall also keep a well bound book in which shall be platted all maps of towns, villages, or additions to the same within the county, together with the description, legend, acknowledgment or other writing thereon. He shall keep an index to such books of plats, which shall contain the name of the town, village or addition. He shall also enter in the general index above referred to, the name of the party or parties platting such town, village or addition in the column prescribed for "grantors", describing the grantee in such case as "the public": *Provided*, That the auditor shall not receive or record any such plat or map until the same shall have been approved by the mayor and common council of the municipality in which the property so

platted be situated, or if such property be not situated within any municipal corporation, then such plat must be first approved by the board of county commissioners of such county: *Provided further*, That the auditor shall not receive for record any plat, map or subdivision of land bearing a name the same or similar to the name of any map or plat already on record in his office. [1893 c 119 § 12; Code 1881 § 2728; 1869 p 314 § 24; RRS § 10603.]

**Reviser's note:* The language "this act" appears in 1893 c 119, codified herein as RCW 36.22.010, 36.22.030 through 36.22.080, 65.04.020, 65.04.030 and 65.04.050.

65.04.060 Record when lien is discharged. Whenever any mortgage, bond, lien, or instrument incumbering real estate, has been satisfied, released or discharged, by the recording of an instrument of release, or acknowledgment of satisfaction, the auditor shall immediately note in both the indices, in the column headed remarks, opposite to the appropriate entry, that such instrument, lien or incumbrance has been satisfied. And in all cases of the satisfaction or release of any recorded liens, mortgage, transcript of judgment, mechanic's liens, or other incumbrance whatsoever, the auditor shall note the same in index of transcripts of judgment. [1985 c 44 § 17; Code 1881 § 2729; 1869 p 315 § 25; RRS § 10604.]

65.04.070 Recording judgments affecting real property. The auditor must file and record with the record of deeds, grants and transfers certified copies of final judgments or decrees partitioning or affecting the title or possession of real property, any part of which is situated in the county of which he is recorder. Every such certified copy or partition, from the time of filing the same with the auditor for record, imparts notice to all persons of the contents thereof, and subsequent purchasers, mortgagees and lien holders purchase and take with like notice and effect as if such copy or decree was a duly recorded deed, grant or transfer. [Code 1881 § 2730; RRS § 10605.]

65.04.080 Entries when instruments offered for record. When any instrument, paper, or notice, authorized or required by law to be filed or recorded, is deposited in the county auditor's office for filing or record, that officer must indorse upon the same the time when it was received, noting the year, month, day, hour and minute of its reception, and must file, or file and record the same without delay, together with the acknowledgments, proofs, and certificates written or printed upon or annexed to the same, with the plats, surveys, schedules and other papers thereto annexed, in the order and as of the time when the same was received for filing or record, and must note on the instrument filed, or at the foot of the record the exact time of its reception, and the name of the person at whose request it was filed or filed and recorded: *Provided*, That the county auditor shall not be required to accept for filing, or filing and recording, any instrument unless there appear upon the face thereof, the name and nature of the instrument offered for filing, or filing and recording, as the case may be. [1985 c 44 §

18; 1927 c 187 § 1; Code 1881 § 2731; 1869 p 313 § 19; RRS § 10606.]

65.04.090 Further endorsements—Delivery. He must also endorse upon such instrument, paper or notice, the time when and the book and page in which it is recorded, and must thereafter deliver it, upon request, to the party leaving the same for record, or to his order. [Code 1881 § 2732; RRS § 10607.]

65.04.110 Liability of auditor for damages. If any county auditor to whom an instrument, proved or acknowledged according to law, or any paper or notice which may by law be recorded is delivered for record: (1) Neglects or refuses to record such instrument, paper or notice, within a reasonable time after receiving the same; or (2) Records any instruments, papers or notices untruly, or in any other manner than as hereinbefore directed; or, (3) Neglects or refuses to keep in his office such indexes as are required by *this act, or to make the proper entries therein; or, (4) Neglects or refuses to make the searches and to give the certificate required by *this act; or if such searches or certificate are incomplete and defective in any important particular affecting the property in respect to which the search is requested; or, (5) Alters, changes or obliterates any records deposited in his office, or inserts any new matter therein; he is liable to the party aggrieved for the amount of damage which may be occasioned thereby: *Provided*, That if the name or names and address hand printed, printed or typewritten on any instrument, proved or acknowledged according to law, or on any paper or notice which may by law be filed or recorded, is or are incorrect, or misspelled or not the true name or names of the party or parties appearing thereon, the county auditor shall not, by reason of such fact, be liable for any loss or damage resulting therefrom. [1965 c 134 § 1; Code 1881 § 2734; RRS § 10609.]

***Reviser's note:** The language "this act" appears in Code 1881 c 211, codified herein as RCW 5.44.070, 36.16.030 through 36.16.050, 36.16.070, 36.16.080, 36.22.110 through 36.22.130, 36.22.150, 65.04.020, 65.04.030, 65.04.050 through 65.04.110, 65.04.130, 65.04.140.

65.04.115 Names on documents, etc., to be printed or typewritten—Indexing. The name or names appearing on all documents or instruments, proved or acknowledged according to law, or on any paper which may by law be filed or recorded shall be hand printed, printed or typewritten so as to be legible and the county auditor shall index said documents and instruments in accordance with the hand printed, printed or typewritten name or names appearing thereon. [1965 c 134 § 2.]

65.04.130 Fees to be paid or tendered. Said county auditor is not bound to record any instrument, or file any paper or notice, or furnish any copies, or to render any service connected with his office, until his fees for the same, as prescribed by law, are if demanded paid or tendered. [Code 1881 § 2735; RRS § 10610.]

65.04.140 Auditor as custodian of records. The county auditor in his capacity of recorder of deeds is sole

custodian of all books in which are recorded deeds, mortgages, judgments, liens, incumbrances and other instruments of writing, indexes thereto, maps, charts, town plats, survey and other books and papers constituting the records and files in said office of recorder of deeds, and all such records and files are, and shall be, matters of public information, free of charge to any and all persons demanding to inspect or to examine the same, or to search the same for titles of property. It is said recorder's duty to arrange in suitable places the indexes of said books of record, and when practicable, the record books themselves, to the end that the same may be accessible to the public and convenient for said public inspection, examination and search, and not interfere with the said auditor's personal control and responsibility for the same, or prevent him from promptly furnishing the said records and files of his said office to persons demanding any information from the same. The said auditor or recorder must and shall, upon demand, and without charge, freely permit any and all persons, during reasonable office hours, to inspect, examine and search any or all of the records and files of his said office, and to gather any information therefrom, and to make any desired notes or memoranda about or concerning the same, and to prepare an abstract or abstracts of title to any and all property therein contained. [1886 p 163 § 1; 1883 p 34 § 1; Code 1881 § 2736; RRS § 10611.]

Chapter 65.08 RECORDING

Sections

65.08.030	Recorded irregular instrument imparts notice.
65.08.050	Recording land office receipts.
65.08.060	Terms defined.
65.08.070	Real property conveyances to be recorded.
65.08.090	Letters patent.
65.08.095	Conveyances of fee title by public bodies.
65.08.100	Certified copies.
65.08.110	Certified copies—Effect.
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65.08.140	No liability for error in recording when properly indexed.
65.08.150	Duty to record.
65.08.160	Recording master form instruments and mortgages or deeds of trust incorporating master form provisions.
65.08.170	Notice of additional water or sewer facility tap or connection charges—Required—Contents.
65.08.180	Notice of additional water or sewer facility tap or connection charges—Duration—Certificate of payment and release.

Corporate seals, effect of absence from instrument: RCW 64.04.105.

Powers of appointment: Chapter 11.95 RCW.

65.08.030 Recorded irregular instrument imparts notice. An instrument in writing purporting to convey or encumber real estate or any interest therein, which has been recorded in the auditor's office of the county in which the real estate is situated, although the instrument may not have been executed and acknowledged in accordance with the law in force at the time of its execution, shall impart the same notice to third persons, from

the date of recording, as if the instrument had been executed, acknowledged, and recorded, in accordance with the laws regulating the execution, acknowledgment, and recording of the instrument then in force. [1953 c 115 § 1. Prior: 1929 c 33 § 8; RRS § 10599.]

65.08.050 Recording land office receipts. Every cash or final receipt from any receiver, and every cash or final certificate from any register of the United States land office, evidencing that final payment has been made to the United States as required by law, or that the person named in such certificate is entitled, on presentation thereof, to a patent from the United States for land within the state of Washington, shall be recorded by the county auditor of the county wherein such land lies, on request of any party presenting the same, and any record heretofore made of any such cash or final receipt or certificate shall, from the date when this section becomes a law, and every record hereafter made of any such receipt or certificate shall, from the date of recording, impart to third persons and all the world, full notice of all the rights and equities of the person named in said cash or final receipt or certificate in the land described in such receipt or certificate. [1890 p 92 § 1; RRS § 10613.]

65.08.060 Terms defined. (1) The term "real property" as used in RCW 65.08.060 through 65.08.150 includes lands, tenements and hereditaments and chattels real and mortgage liens thereon except a leasehold for a term not exceeding two years.

(2) The term "purchaser" includes every person to whom any estate or interest in real property is conveyed for a valuable consideration and every assignee of a mortgage, lease or other conditional estate.

(3) The term "conveyance" includes every written instrument by which any estate or interest in real property is created, transferred, mortgaged or assigned or by which the title to any real property may be affected, including an instrument in execution of a power, although the power be one of revocation only, and an instrument releasing in whole or in part, postponing or subordinating a mortgage or other lien; except a will, a lease for a term of not exceeding two years, and an instrument granting a power to convey real property as the agent or attorney for the owner of the property. "To convey" is to execute a "conveyance" as defined in this subdivision.

(4) The term "recording officer" means the county auditor of the county. [1984 c 73 § 1; 1927 c 278 § 1; RRS § 10596-1.]

65.08.070 Real property conveyances to be recorded. A conveyance of real property, when acknowledged by the person executing the same (the acknowledgment being certified as required by law), may be recorded in the office of the recording officer of the county where the property is situated. Every such conveyance not so recorded is void as against any subsequent purchaser or mortgagee in good faith and for a valuable consideration from the same vendor, his heirs or devisees, of the same real property or any portion thereof whose conveyance is

first duly recorded. An instrument is deemed recorded the minute it is filed for record. [1927 c 278 § 2; RRS § 10596-2. Prior: 1897 c 5 § 1; Code 1881 § 2314; 1877 p 312 § 4; 1873 p 465 § 4; 1863 p 430 § 4; 1860 p 299 § 4; 1858 p 28 § 1; 1854 p 403 § 4.]

RCW 65.08.070 applicable to rents and profits of real property: RCW 7.28.230.

65.08.090 Letters patent. Letters patent from the United States or the state of Washington granting real property may be recorded in the office of the recording officer of the county where such property is situated in the same manner and with like effect as a conveyance that is entitled to be recorded. [1927 c 278 § 4; RRS § 10596-4.]

65.08.095 Conveyances of fee title by public bodies. Every conveyance of fee title to real property hereafter executed by the state or by any political subdivision or municipal corporation thereof shall be recorded by the grantor, after having been reviewed as to form by the grantee, at the expense of the grantee at the time of delivery to the grantee, and shall constitute legal delivery at the time of filing for record. [1963 c 49 § 1.]

65.08.100 Certified copies. A copy of a conveyance of or other instrument affecting real property recorded or filed in the office of the secretary of state or the commissioner of public lands, or of the record thereof, when certified in the manner required to entitle the same to be read in evidence, may be recorded with the certificate in the office of any recording officer of the state. [1927 c 278 § 5; RRS § 10596-5.]

65.08.110 Certified copies—Effect. A copy of a record, when certified or authenticated to entitle it to be read in evidence, may be recorded in any office where the original instrument would be entitled to be recorded. Such record has the same effect as if the original were so recorded. A copy of the record of a conveyance of or other instrument affecting separate parcels of real property situated in more than one county, when certified or authenticated to entitle it to be read in evidence may be recorded in the office of the recording officer of any county in which any such parcel is situated with the same effect as though the original instrument were so recorded. [1927 c 278 § 6; RRS § 10596-6.]

65.08.120 Assignment of mortgage—Notice. The recording of an assignment of a mortgage is not in itself notice to the mortgagor, his heirs, assigns or personal representatives, to invalidate a payment made by any of them to a prior holder of the mortgage. [1927 c 278 § 7; RRS § 10596-7.]

65.08.130 Revocation of power of attorney. A power of attorney or other instrument recorded pursuant to RCW 65.08.060 through 65.08.150 is not deemed revoked by any act of the party by whom it was executed unless the instrument of revocation is also recorded in

the same office in which the instrument granting the power was recorded. [1927 c 278 § 8; RRS § 10596-8.]

65.08.140 No liability for error in recording when properly indexed. A recording officer is not liable for recording an instrument in a wrong book, volume or set of records if the instrument is properly indexed with a reference to the volume and page where the instrument is actually of record. [1927 c 278 § 9; RRS § 10596-9. Formerly RCW 65.04.120.]

65.08.150 Duty to record. A recording officer, upon payment or tender to him of the lawful fees therefor, shall record in his office any instrument authorized or permitted to be so recorded by the laws of this state or by the laws of the United States. [1943 c 23 § 1; 1927 c 278 § 10; RRS § 10596-10. Formerly RCW 65.04.010.]

65.08.160 Recording master form instruments and mortgages or deeds of trust incorporating master form provisions. A mortgage or deed of trust of real estate may be recorded and constructive notice of the same and the contents thereof given in the following manner:

(1) An instrument containing a form or forms of covenants, conditions, obligations, powers, and other clauses of a mortgage or deed of trust may be recorded in the office of the county auditor of any county and the auditor of such county, upon the request of any person, on tender of the lawful fees therefor, shall record the same. Every such instrument shall be entitled on the face thereof as a "Master form recorded by . . . (name of person causing the instrument to be recorded)." Such instrument need not be acknowledged to be entitled to record.

(2) When any such instrument is recorded, the county auditor shall index such instrument under the name of the person causing it to be recorded in the manner provided for miscellaneous instruments relating to real estate.

(3) Thereafter any of the provisions of such master form instrument may be incorporated by reference in any mortgage or deed of trust of real estate situated within this state, if such reference in the mortgage or deed of trust states that the master form instrument was recorded in the county in which the mortgage or deed of trust is offered for record, the date when and the book and page or pages where such master form instrument was recorded, and that a copy of such master form instrument was furnished to the person executing the mortgage or deed of trust. The recording of any mortgage or deed of trust which has so incorporated by reference therein any of the provisions of a master form instrument recorded as provided in this section shall have like effect as if such provisions of the master form so incorporated by reference had been set forth fully in the mortgage or deed of trust.

(4) Whenever a mortgage or deed of trust is presented for recording on which is set forth matter purporting to be a copy or reproduction of such master form instrument or of part thereof, identified by its title as provided in subdivision (1) of this section and stating the date

when it was recorded and the book and page where it was recorded, preceded by the words "do not record" or "not to be recorded," and plainly separated from the matter to be recorded as a part of the mortgage or deed of trust in such manner that it will not appear upon a photographic reproduction of any page containing any part of the mortgage or deed of trust, such matter shall not be recorded by the county auditor to whom the instrument is presented for recording; in such case the county auditor shall record only the mortgage or deed of trust apart from such matter and shall not be liable for so doing, any other provisions of law to the contrary notwithstanding. [1967 c 148 § 1.]

65.08.170 Notice of additional water or sewer facility tap or connection charges—Required—Contents. When any municipality as defined in RCW 35.91.020 or any county has levied or intends to levy a charge on property pertaining to:

(1) The amount required by the provisions of a contract pursuant to RCW 35.91.020 under which the water or sewer facilities so tapped into or used were constructed; or

(2) Any connection charges which are in fact reimbursement for the cost of facilities constructed by the sale of revenue bonds; or

(3) The additional connection charge authorized in RCW 35.92.025;

such municipality or county shall record in the office in which deeds are recorded of the county or counties in which such facility is located a notice of additional tap or connection charges. Such notice shall contain either the legal description of the land affected by such additional tap or connection charges or a map making appropriate references to the United States government survey showing in outline the land affected or to be affected by such additional tap or connection charges. [1977 c 72 § 1.]

65.08.180 Notice of additional water or sewer facility tap or connection charges—Duration—Certificate of payment and release. The notice required by RCW 65.08.170, when duly recorded, shall be effective until there is recorded in the same office in which the notice was recorded a certificate of payment and release executed by the municipality or county. Such certificate shall contain a legal description of the particular parcel of land so released and shall be recorded within thirty days of the date of payment thereof. [1977 c 72 § 2.]

Chapter 65.12

REGISTRATION OF LAND TITLES (TORRENS ACT)

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Reviser's note: The lengthy captions set forth in the 1907 session law have been abandoned in favor of the shorter section captions published throughout this chapter.

65.12.005 Registration authorized—Who may apply. The owner of any estate or interest in land, whether legal or equitable, except unpatented land, may apply as hereinafter provided to have the title of said land registered. The application may be made by the applicant personally, or by an agent thereunto lawfully authorized in writing, which authority shall be executed and acknowledged in the same manner and form as is now required as to a deed, and shall be recorded in the office of the county auditor in the county in which the land, or the major portion thereof, is situated before the making of the application by such agent. A corporation may apply by its authorized agent, and an infant or any other person under disability by his legal guardian. Joint tenants and tenants in common shall join in the application. The person in whose behalf the application is made shall be named as applicant. [1907 c 250 § 1; RRS § 10622.]

Construction—1907 c 250: "This act shall be construed liberally, so far as may be necessary for the purpose of carrying out its general intent, which is, that any owner of land may register his title and bring his land under the provisions of this act, but no one is required so to do." [1907 c 250 § 97.]

65.12.010 Land subject to a lesser estate. It shall not be an objection to bringing land under this chapter, that the estate or interest of the applicant is subject to any outstanding lesser estate, mortgage, lien or charge; but no mortgage, lien, charge or lesser estate than a fee simple shall be registered unless the estate in fee simple to the same land is registered; and every such lesser estate, mortgage, lien or charge shall be noted upon the certificate of title and the duplicate thereof, and the title or interest certified shall be subject only to such estates, mortgages, liens and charges as are so noted, except as herein provided. [1907 c 250 § 2; RRS § 10623.]

65.12.015 Tax title land—Conditions to registration. No title derived through sale for any tax or assessment, or special assessment, shall be entitled to be registered, unless it shall be made to appear that the title of the applicant, or those through whom he claims title has been adjudicated by a court of competent jurisdiction, and a decree of such court duly made and recorded, decreeing the title of the applicant, or that the applicant or those through whom he claims title have been in the actual and undisputed possession of the land under such title at least seven years, immediately prior to the application, and shall have paid all taxes and assessments legally levied thereon during said times; unless the same is vacant and unoccupied lands or lots, in which case, where title is derived through sale for any tax or assessment or special assessment for any such vacant and unoccupied lands or lots, and the applicant, or those through whom he claims title, shall have paid all taxes and assessments legally levied thereon for eight successive years immediately prior to the application, in which case such lands and lots shall be entitled to be registered as other lands provided for by this section. [1907 c 250 § 3; RRS § 10624.]

65.12.020 Application. The application shall be in writing and shall be signed and verified by the oath of the applicant, or the person acting in his behalf. It shall set forth substantially:

(1) The name and place of residence of the applicant, and if the application is by one acting in behalf of another, the name and place of residence and capacity of the person so acting.

(2) Whether the applicant (except in the case of a corporation) is married or not, and, if married, the name and residence of the husband or wife, and the age of the applicant.

(3) The description of the land and the assessed value thereof, exclusive of improvements, according to the last official assessment, the same to be taken as a basis for the payments required under RCW 65.12.670 and 65.12.790(1).

(4) The applicant's estate or interest in the same, and whether the same is subject to homestead exemption.

(5) The names of all persons or parties who appear of record to have any title, claim, estate, lien or interest in the lands described in the application for registration.

(6) Whether the land is occupied or unoccupied, and if occupied by any other person than the applicant, the name and post office address of each occupant, and what estate he has or claims in the land.

(7) Whether the land is subject to any lien or incumbrance, and if any, give the nature and amount of the same, and if recorded, the book and page of record; also give the name and post office address of each holder thereof.

(8) Whether any other person has any estate or claims any interest in the land, in law or equity, in possession, remainder, reversion or expectancy, and if any, set forth the name and post office address of every such person and the nature of his estate or claim.

(9) In case it is desired to settle or establish boundary lines, the names and post office addresses of all the owners of the adjoining lands that may be affected thereby, as far as he is able, upon diligent inquiry, to ascertain the same.

(10) If the application is on behalf of a minor, the age of such minor shall be stated.

(11) When the place of residence of any person whose residence is required to be given is unknown, it may be so stated if the applicant will also state that upon diligent inquiry he had been unable to ascertain the same. [1907 c 250 § 4; RRS § 10625.]

65.12.025 Various lands in one application. Any number of contiguous pieces of land in the same county, and owned by the same person, and in the same right, or any number of pieces of property in the same county having the same chain of title and belonging to the same person, may be included in one application. [1907 c 250 § 5; RRS § 10626.]

65.12.030 Amendment of application. The application may be amended only by supplemental statement in writing, signed and sworn to as in the case of the original application. [1907 c 250 § 6; RRS § 10627.]

65.12.035 Form of application. The form of application may, with appropriate changes, be substantially as follows:

**FORM OF APPLICATION FOR
INITIAL REGISTRATION OF TITLE TO LAND**

State of Washington, } ss.
County of ----- }

In the superior court of the state of Washington in and for ----- county.

In the matter of the
application of -----
to register the title
to the land hereinafter
described } **PETITION**

To the Honorable -----, judge of said court: I hereby make application to have registered the title to the land hereinafter described, and do solemnly swear that the answers to the questions herewith, and the statements herein contained, are true to the best of my knowledge, information and belief.

First. Name of applicant, -----, age, ----- years.

Residence, ----- (number and street, if any). Married to ----- (name of husband or wife).

Second. Applications made by -----, acting as ----- (owner, agent or attorney). Residence, ----- (number, street).

Third. Description of real estate is as follows:

estate or interest therein is ----- and ----- subject to homestead.

Fourth. The land is ----- occupied by ----- (names of occupants), whose address is ----- (number street and town or city). The estate, interest or claim of occupant is -----

Fifth. Liens and incumbrances on the land ----- Name of holder or owner thereof is ----- Whose post office address is ----- Amount of claim, \$----- Recorded, Book -----, page -----, of the records of said county.

Sixth. Other persons, firm or corporation having or claiming any estate, interest or claim in law or equity, in possession, remainder, reversion or expectancy in said land are ----- whose addresses are ----- respectively. Character of estate, interest or claim is -----

Seventh. Other facts connected with said land and appropriate to be considered in this registration proceeding are -----

Eighth. Therefore, the applicant prays this honorable court to find or declare the title or interest of the applicant in said land and decree the same, and order the registrar of titles to register the same and to grant such other and further relief as may be proper in the premises.

(Applicant's signature)

By -----, agent, attorney, administrator or guardian.

Subscribed and sworn to before me this ----- day of -----, A.D. 19---

Notary Public in and for the state of Washington, residing at -----

[1907 c 250 § 7; RRS § 10628.]

65.12.040 Venue—Power of the court. The application for registration shall be made to the superior court of the state of Washington in and for the county wherein the land is situated. Said court shall have power to inquire into the condition of the title to and any interest in the land and any lien or encumbrance thereon, and to make all orders, judgments and decrees as may be necessary to determine, establish and declare the title or interest, legal or equitable, as against all persons, known, or unknown, and all liens and incumbrances existing thereon, whether by law, contract, judgment, mortgage, trust deed or otherwise, and to declare the order, priority and preference as between the same, and to remove all clouds from the title. [1907 c 250 § 8; RRS § 10629.]

65.12.050 Registrars of titles. The county auditors of the several counties of this state shall be registrars of titles in their respective counties; and their deputies shall be deputy registrars. All acts performed by registrars and deputy registrars under this law shall be performed under rules and instructions established and given by the

superior court having jurisdiction of the county in which they act. [1907 c 250 § 9; RRS § 10630.]

65.12.055 Bond of registrar. Every county auditor shall, before entering upon his duties as registrar of titles, give a bond with sufficient sureties, to be approved by a judge of the superior court of the state of Washington in and for his county, payable to the state of Washington, in such sum as shall be fixed by the said judge of the superior court, conditioned for the faithful discharge of his duties, and to deliver up all papers, books, records and other property belonging to the county or appertaining to his office as registrar of titles, whole, safe and undefaced, when lawfully required so to do; said bond shall be filed in the office of the secretary of state, and a copy thereof shall be filed and entered upon the records of the superior court in the county wherein the county auditor shall hold office. [1907 c 250 § 10; RRS § 10631.]

65.12.060 Deputy registrar—Duties—Vacancy. Deputy registrars shall perform any and all duties of the registrar in the name of the registrar, and the acts of such deputies shall be held to be the acts of the registrar, and in the case of the death of the registrar or his removal from office, the vacancy shall be filled in the same manner as is provided by law for filling such vacancy in the office of the county auditor. The person so appointed to fill such vacancy shall file a bond and be vested with the same powers as the registrar whose office he is appointed to fill. [1907 c 250 § 11; RRS § 10632.]

65.12.065 Registrar not to practice law—Liability for deputy. No registrar or deputy registrar shall practice as an attorney or counselor at law, nor prepare any papers in any proceeding herein provided for, nor while in the office be in partnership with any attorney or counselor at law so practicing. The registrar shall be liable for any neglect or omission of the duties of his office when occasioned by a deputy registrar, in the same manner as for his own personal neglect or omission. [1907 c 250 § 12; RRS § 10633.]

65.12.070 Nonresident to appoint agent. If the applicant is not a resident of the state of Washington, he shall file with his application a paper, duly acknowledged, appointing an agent residing in this state, giving his name in full and post office address, and shall therein agree that the service of any legal process in proceedings under or growing out of the application shall be of the same legal effect when made on said agent as if made on the applicant within this state. If the agent so appointed dies or removes from the state, the applicant shall at once make another appointment in like manner, and if he fails so to do, the court may dismiss the application. [1907 c 250 § 14; RRS § 10635.]

65.12.080 Filing application—Docket and record entries. The application shall be filed in the office of the clerk of the court to which the application is made and

in case of personal service a true copy thereof shall be served with the summons, and the clerk shall docket the case in a book to be kept for that purpose, which shall be known as the "land registration docket". The record entry of the application shall be entitled (name of applicant), plaintiff, against (here insert the names of all persons named in the application as being in possession of the premises, or as having any lien, incumbrance, right, title or interest in the land, and the names of all persons who shall be found by the report of the examiner hereinafter provided for to be in possession or to have any lien, incumbrance, right, title or interest in the land), also all other persons or parties unknown, claiming any right, title, estate, lien or interest in the real estate described in the application herein, defendants.

All orders, judgments and decrees of the court in the case shall be appropriately entered in such docket. All final orders or decrees shall be recorded, and proper reference made thereto in such docket. [1907 c 250 § 15; RRS § 10636.]

65.12.085 Filing abstract of title. The applicant shall also file with the said clerk, at the time the application is made, an abstract of title such as is now commonly used, prepared and certified to by the county auditor of the county, or a person, firm or corporation regularly engaged in the abstract business, and having satisfied the said superior court that they have a complete set of abstract books and are in existence and doing business at the time of the filing of the application under this chapter. [1907 c 250 § 15a; RRS § 10637.]

65.12.090 Examiner of titles—Appointment—Oath—Bond. The judges of the superior court in and for the state of Washington for the counties for which they were elected or appointed shall appoint a competent attorney in each county to be examiner of titles and legal adviser of the registrar. The examiner of titles in each county shall be paid in each case by the applicant such compensation as the judge of the superior court of the state of Washington in and for that county shall determine. Every examiner of titles shall, before entering upon the duties of his office, take and subscribe an oath of office to faithfully and impartially perform the duties of his office, and shall also give a bond in such amount and with such sureties as shall be approved by the judge of the said superior court, payable in like manner and with like conditions as required of the registrar. A copy of the bond shall be entered upon the records of said court and the original shall be filed with the registrar. [1907 c 250 § 13; RRS § 10634.]

65.12.100 Copy of application as lis pendens. At the time of the filing of the application in the office of the clerk of the court, a copy thereof, certified by the clerk, shall be filed (but need not be recorded) in the office of the county auditor, and shall have the force and effect of a lis pendens. [1907 c 250 § 16; RRS § 10638.]

65.12.110 Examination of title. Immediately after the filing of the abstract of title, the court shall enter an

order referring the application to an examiner of titles, who shall proceed to examine into the title and into the truth of the matters set forth in the application, and particularly whether the land is occupied, the nature of the occupation, if occupied, and by what right, and, also as to all judgments against the applicant or those through whom he claims title, which may be a lien upon the lands described in the application; he shall search the records and investigate all the facts brought to his notice, and file in the case a report thereon, including a certificate of his opinion upon the title. The clerk of the court shall thereupon give notice to the applicant of the filing of such report. If the opinion of the examiner is adverse to the applicant, he shall be allowed by the court a reasonable time in which to elect to proceed further, or to withdraw his application. The election shall be made in writing, and filed with the clerk of the court. [1907 c 250 § 17; RRS § 10639.]

65.12.120 Summons to issue. If, in the opinion of the examiner, the applicant has a title, as alleged, and proper for registration, or if the applicant, after an adverse opinion of the examiner, elects to proceed further, the clerk of the court shall, immediately upon the filing of the examiner's opinion or the applicant's election, as the case may be, issue a summons substantially in the form hereinafter provided. The summons shall be issued by the order of the court and attested by the clerk of the court. [1907 c 250 § 18; RRS § 10640.]

65.12.125 Summons—Form. The summons provided for in RCW 65.12.135 shall be in substance in the form following, to wit:

SUMMONS ON APPLICATION FOR REGISTRATION OF LAND

State of Washington, }
County of _____ } ss.

In the superior court of the state of Washington in and for the county of _____ (name of applicant), plaintiff, _____, versus _____ (names of all defendants), and all other persons or parties unknown, claiming any right, title, estate, lien or interest in the real estate, described in the application herein _____ defendants.

The state of Washington to the above-named defendants, greeting:

You are hereby summoned and required to answer the application of the applicant plaintiff in the above entitled application for registration of the following land situate in _____ county, Washington, to wit: (description of land), and to file your answer to the said application in the office of the clerk of said court, in said county, within twenty days after the service of this summons upon you, exclusive of the day of such service; and if you fail to answer the said application within the time aforesaid, the applicant plaintiff in this action will apply to the court for the relief demanded in the application herein.

Witness, -----, clerk of said court and the seal thereof, at -----, in said county and state, this ----- day of -----, A.D. 19---

(Seal.) ----- Clerk.

[1907 c 250 § 206; RRS § 10644.]

65.12.130 Parties to action. The applicant shall be known in the summons as the plaintiff. All persons named in the application or found by the report of the examiner as being in possession of the premises or as having of record any lien, incumbrance, right, title, or interest in the land, and all other persons who shall be designated as follows, viz: "All other persons or parties unknown claiming any right, title, estate, lien or interest in, to, or upon the real estate described in the application herein," shall be and shall be known as defendants. [1907 c 250 § 19; RRS § 10641.]

65.12.135 Service of summons. The summons shall be directed to the defendants and require them to appear and answer the application within twenty days after the service of the summons, exclusive of the day of service; and the summons shall be served as is now provided for the service of summons in civil actions in the superior court in this state, except as herein otherwise provided. The summons shall be served upon nonresident defendants and upon "all such unknown persons or parties," defendant, by publishing the summons in a newspaper of general circulation in the county where the application is filed, once in each week for three consecutive weeks, and the service by publication shall be deemed complete at the end of the twenty-first day from and including the first publication, provided that if any named defendant assents in writing to the registration as prayed for, which assent shall be endorsed upon the application or filed therewith and be duly witnessed and acknowledged, then in all such cases no service of summons upon the defendant shall be necessary. [1985 c 469 § 60; 1907 c 250 § 20; RRS § 10642.]

65.12.140 Copy mailed to nonresidents—Proof—Expense. The clerk of the court shall also, on or before twenty days after the first publication, send a copy thereof by mail to such defendants who are not residents of the state whose place of address is known or stated in the application, and whose appearance is not entered and who are not in person served with the summons. The certificate of the clerk that he has sent such notice, in pursuance of this section, shall be conclusive evidence thereof. Other or further notice of the application for registration may be given in such manner and to such persons as the court or any judge thereof may direct. The summons shall be served at the expense of the applicant, and proof of the service thereof shall be made as proof of service is now made in other civil actions. [1907 c 250 § 20a; RRS § 10643.]

65.12.145 Guardians ad litem. The court shall appoint a disinterested person to act as guardian ad litem for minors and other persons under disability, and for all other persons not in being who may appear to have an

interest in the land. The compensation of the said guardian shall be determined by the court, and paid as a part of the expense of the proceeding. [1907 c 250 § 21; RRS § 10645.]

65.12.150 Who may appear—Answer. Any person claiming an interest, whether named in the summons or not, may appear and file an answer within the time named in the summons, or within such further time as may be allowed by the court. The answer shall state all objections to the application, and shall set forth the interests claimed by the party filing the same, and shall be signed and sworn to by him or by some person in his behalf. [1907 c 250 § 22; RRS § 10646.]

65.12.155 Judgment by default—Proof. If no person appears and answers within the time named in the summons, or allowed by the court, the court may at once, upon the motion of the applicant, no reason to the contrary appearing, upon satisfactory proof of the applicant's right thereto, make its order and decree confirming the title of the applicant and ordering registration of the same. By the description in the summons, "all other persons unknown, claiming any right, title, lien, or interest in, to, or upon the real estate described in the application herein", all the world are made parties defendant, and shall be concluded by the default, order and decree. The court shall not be bound by the report of the examiners of title, but may require other or further proof. [1907 c 250 § 23; RRS § 10647.]

65.12.160 Cause set for trial—Default—Referral. If, in any case an appearance is entered and answer filed, the cause shall be set down for hearing on motion of either party, but a default and order shall first be entered against all persons who do not appear and answer in the manner provided in RCW 65.12.155. The court may refer the cause or any part thereof to one of the examiners of title, as referee, to hear the parties and their evidence, and make report thereon to the court. His report shall have the same force and effect as that of a referee appointed by the said superior court under the laws of this state now in force, and relating to the appointment, duties and powers of referees. [1907 c 250 § 24; RRS § 10648.]

65.12.165 Court may require further proof. The court may order such other or further hearing of the cause before the court or before the examiner of titles after the filing of the report of the examiner, referred to in RCW 65.12.160, and require such other and further proof by either of the parties to the cause as to the court shall seem meet and proper. [1907 c 250 § 25; RRS § 10649.]

65.12.170 Application dismissed or withdrawn. If, in any case, after hearing, the court finds that the applicant has not title proper for registration, a decree shall be entered dismissing the application, and such decree may be ordered to be without prejudice. The applicant may dismiss his application at any time, before the final

decree, upon such terms as may be fixed by the court, and upon motion to dismiss duly made by the court. [1907 c 250 § 26; RRS § 10650.]

65.12.175 Decree of registration—Effect—Appellate review. If the court, after hearing, finds that the applicant has title, whether as stated in his application or otherwise, proper for registration, a decree of confirmation of title and registration shall be entered. Every decree of registration shall bind the land, and quiet the title thereto, except as herein otherwise provided, and shall be forever binding and conclusive upon all persons, whether mentioned by name in the application, or included in "all other persons or parties unknown claiming any right, title, estate, lien or interest in, to, or upon the real estate described in the application herein", and such decree shall not be opened by reason of the absence, infancy or other disability of any person affected thereby, nor by any proceeding at law, or in equity, for reversing judgments or decrees, except as herein especially provided. Appellate review of the court's decision may be sought as in other civil actions. [1988 c 202 § 56; 1971 c 81 § 132; 1907 c 250 § 27; RRS § 10651.]

Severability—1988 c 202: See note following RCW 2.24.050.

65.12.180 Rights of persons not served. Any person having an interest in or lien upon the land who has not been actually served with process or notified of the filing of the application or the pendency thereof, may at any time within ninety days after the entry of such decree, and not afterwards, appear and file his sworn answer to such application in like manner as hereinbefore prescribed for making answer: *Provided, however,* That such person had no actual notice or information of the filing of such application or the pendency of the proceedings during the pendency thereof, or until within three months of the time of the filing of such answer, which facts shall be made to appear before answering by the affidavit of the person answering or the affidavit of some one in his behalf having knowledge of the facts, and *provided, also,* that no innocent purchaser for value has acquired an interest. If there is any such purchaser, the decree of registration shall not be opened, but shall remain in full force and effect forever, subject only to the right of appeal hereinbefore provided; but any person aggrieved by such decree in any case may pursue his remedy by suit in the nature of an action of tort against the applicant or any other person for fraud in procuring the decree; and may also bring his action for indemnity as hereinafter provided. Upon the filing of such answer, and not less than ten days' notice having been given to the applicant, and to such other interested parties as the court may order in such manner as shall be directed by the court, the court shall proceed to review the case, and if the court is satisfied that the order or decree ought to be opened, an order shall be entered to that effect, and the court shall proceed to review the proceedings, and shall make such order in the case as shall be equitable in the premises. An appeal may be allowed in this case, as well as from all other decrees affecting any registered title within a like time, and in a like manner, as in the

case of an original decree under this chapter, and not otherwise. [1907 c 250 § 28; RRS § 10652.]

65.12.190 Limitation of actions. No person shall commence any proceeding for the recovery of lands or any interest, right, lien or demand therein or upon the same adverse to the title or interest as found, or decreed in the decree of registration, unless within ninety days after the entry of the order or decree; and this section shall be construed as giving such right of action to such person only as shall not, because of some irregularity, insufficiency, or for some other cause, be bound and concluded by such order or decree. [1907 c 250 § 29; RRS § 10653.]

65.12.195 Title free from incumbrances—Exceptions. Every person receiving a certificate of title in pursuance of a decree of registration, and every subsequent purchaser of registered land who takes a certificate of title for value and in good faith, shall hold the same free from all incumbrances except only such estates, mortgages, liens, charges and interests as may be noted in the last certificate of title in the registrar's office, and except any of the following rights or incumbrances subsisting, namely:

- (1) Any existing lease for a period not exceeding three years, when there is actual occupation of the premises under the lease.
- (2) All public highways embraced in the description of the land included in the certificates shall be deemed to be excluded from the certificate. And any subsisting right of way or other easement, for ditches or water rights, upon, over or in respect to the land.
- (3) Any tax or special assessment for which a sale of the land has not been had at the date of the certificate of title.
- (4) Such right of appeal, or right to appear and contest the application, as is allowed by this chapter. And,
- (5) Liens, claims or rights, if any, arising or existing under the constitution or laws of the United States, and which the statutes of this state cannot or do not require to appear of record in the office of the county clerk and county auditor. [1907 c 250 § 30; RRS § 10654.]

65.12.200 Decree—Contents—Filing. Every decree of registration shall bear the date of the year, day, hour and minute of its entry, and shall be signed by the judge of the superior court of the state of Washington in and for the county in which the land is situated; it shall state whether the owner is married or unmarried, and if married, the name of the husband or wife; if the owner is under disability it shall state the nature of the disability, and if a minor, shall state his age. It shall contain a description of the land as finally determined by the court, and shall set forth the estate of the owner, and also in such manner as to show their relative priority, all particular estates, mortgages, easements, liens, attachments, homesteads and other incumbrances, including rights of husband and wife, if any, to which the land or the owner's estate is subject, and shall contain any other matter or information properly to be determined by the

court in pursuance of this chapter. The decree shall be stated in a convenient form for transcription upon the certificate of title, to be made as hereinafter provided by the registrar of titles. Immediately upon the filing of the decree of registration, the clerk shall file a certified copy thereof in the office of the registrar of titles. [1907 c 250 § 31; RRS § 10655.]

65.12.210 Interest acquired after filing application. Any person who shall take by conveyance, attachment, judgment, lien or otherwise any right, title or interest in the land, subsequent to the filing of a copy of the application for registration in the office of the county auditor, shall at once appear and answer as a party defendant in the proceeding for registration, and the right, title or interest of such person shall be subject to the order or decree of the court. [1907 c 250 § 32; RRS § 10656.]

65.12.220 Registration—Effect. The obtaining of a decree of registration and receiving of a certificate of title shall be deemed an agreement running with the land and binding upon the applicant and the successors in title, that the land shall be and forever remain registered land, subject to the provisions of this chapter and of all acts amendatory thereof, unless the same shall be withdrawn from registration in the manner hereinafter provided. All dealings with the land or any estate or interest therein after the same has been brought under this chapter, and all liens, encumbrances, and charges upon the same shall be made only subject to the terms of this chapter, so long as said land shall remain registered land and until the same shall be withdrawn from registration in the manner hereinafter provided. [1917 c 62 § 1; 1907 c 250 § 33; RRS § 10657.]

65.12.225 Withdrawal authorized—Effect. The owner or owners of any lands, the title to which has been or shall hereafter be registered in the manner provided by law, shall have the right to withdraw said lands from registration in the manner hereinafter provided, and after the same have been so withdrawn from registration, shall have the right to contract concerning, convey, encumber or otherwise deal with the title to said lands as freely and to the same extent and in the same manner as though the title had not been registered. [1917 c 62 § 2; RRS § 10658.]

65.12.230 Application to withdraw. The owner or owners of registered lands, desiring to withdraw the same from registration, shall make and file with the registrar of titles in the county in which said lands are situated, an application in substantially the following form:

To the registrar of titles in the county of _____, state of Washington:

I, (or we), _____, the undersigned registered owner__ in fee simple of the following described real property situated in the county of _____, state of Washington, to wit: (here insert the description of the property), hereby make application to have the title to said real property withdrawn from registration.

Witness my (or our) hand__ and seal__ this _____ day of _____, 19__.

Applicant's signature.

Said application shall be acknowledged in the same manner as is required for the acknowledgment of deeds. [1917 c 62 § 3; RRS § 10659.]

65.12.235 Certificate of withdrawal. Upon the filing of such application and the payment of a fee of five dollars, the registrar of titles, if it shall appear that the application is signed and acknowledged by all the registered owners of said land, shall issue to the [applicant] a certificate in substantially the following form:

This is to certify, That _____ the owner (or owners) in fee simple of the following described lands situated in the county of _____, state of Washington, the title to which has been heretofore registered under the laws of the state of Washington, to wit: (here insert description of the property), having heretofore filed his (or their) application for the withdrawal of the title to said lands from the registry system; Now, *therefore*, The title to said above described lands has been withdrawn from the effect and operation of the title registry system of the state of Washington and the owner (or owners) of said lands is (or are) by law authorized to contract concerning, convey, encumber or otherwise deal with the title to said lands in the same manner and to the same extent as though said title had never been registered.

Witness my hand and seal this _____ day of _____, 19__.

Registrar of Titles for
----- county.

[1973 c 121 § 1; 1917 c 62 § 4; RRS § 10660.]

65.12.240 Effect of recording. The person receiving such certificate of withdrawal shall record the same in the record of deeds in the office of the county auditor of the county in which the lands are situated and thereafter the title to said lands shall be conveyed or encumbered in the same manner as the title to lands that have not been registered. [1917 c 62 § 5; RRS § 10661.]

65.12.245 Title prior to withdrawal unaffected. *This act shall not be construed to disturb the effect of any proceedings under said registry system, wherein the question of title to said real property has been determined, but all proceedings had in connection with the registering of said title, relating to the settlement or determination of said title, prior to such withdrawal, shall have the same force and effect as if said title still remained under said registry system. [1917 c 62 § 6; RRS § 10662.]

*Reviser's note: The language "This act" appears in 1917 c 62 codified herein as RCW 65.12.220 through 65.12.245.

65.12.250 Entry of registration—Records. Immediately upon the filing of the decree of registration in the

office of the registrar of titles, the registrar shall proceed to register the title or interest pursuant to the terms of the decree in the manner herein provided. The registrar shall keep a book known as the "Register of Titles", wherein he shall enter all first and subsequent original certificates of title by binding or recording them therein in the order of their numbers, consecutively, beginning with number one, with appropriate blanks for entry of memorials and notations allowed by this chapter. Each certificate, with such blanks, shall constitute a separate page of such book. All memorials and notations that may be entered upon the register shall be entered upon the page whereon the last certificate of title of the land to which they relate is entered. The term certificate of title used in this chapter shall be deemed to include all memorials and notations thereon. [1907 c 250 § 34; RRS § 10663.]

65.12.255 Certificate of title. The certificate of registration shall contain the name of the owner, a description of the land and of the estate of the owner, and shall by memorial or notation contain a description of all incumbrances, liens and interests to which the estate of the owner is subject; it shall state the residence of the owner and, if a minor, give his age; if under disability, it shall state the nature of the disability; it shall state whether married or not, and, if married, the name of the husband or wife; in case of a trust, condition or limitation, it shall state the trust, condition or limitation, as the case may be; and shall contain and conform in respect to all statements to the certified copy of the decree of registration filed with the registrar of titles as hereinbefore provided; and shall be in form substantially as follows:

FIRST CERTIFICATE OF TITLE

Pursuant to order of the superior court of the state of Washington, in and for ----- county.

State of Washington, }
County of ----- } ss.

This is to certify that A----- B----- of -----, county of -----, state of -----, is now the owner of an estate (describe the estate) of, and in (describe the land), subject to the incumbrances, liens and interests noted by the memorial underwritten or indorsed thereon, subject to the exceptions and qualifications mentioned in the thirtieth section of "An Act relating to the registration and confirmation of titles to land," in the session laws of Washington for the year 1907 [RCW 65.12.195]. (Here note all statements provided herein to appear upon the certificate.)

In witness whereof, I have hereunto set my hand and affixed the official seal of my office this ----- day of -----, A.D. 19---

(Seal) -----,
Registrar of Titles.

[1907 c 250 § 35; RRS § 10664.]

65.12.260 Owner's certificate—Receipt. The registrar shall, at the time that he enters his original certificate of title, make an exact duplicate thereof, but putting on it the words "Owner's duplicate certificate of ownership", and deliver the same to the owner or to his attorney duly authorized. For the purpose of preserving evidence of the signature and handwriting of the owner in his office, it shall be the duty of the registrar to take from the owner, in every case where it is practicable so to do, his receipt for the certificate of title which shall be signed by the owner in person. Such receipt, when signed and delivered in the registrar's office, shall be witnessed by the registrar or deputy registrar. If such receipt is signed elsewhere, it shall be witnessed and acknowledged in the same manner as is now provided for the acknowledgment of deeds. When so signed, such receipt shall be prima facie evidence of the genuineness of such signature. [1907 c 250 § 36; RRS § 10665.]

65.12.265 Tenants in common. Where two or more persons are registered owners as tenants in common or otherwise, one owner's duplicate certificate can be issued for the entirety, or a separate duplicate owner's certificate may be issued to each owner for his undivided share. [1907 c 250 § 37; RRS § 10666.]

65.12.270 Subsequent certificates. All certificates subsequent to the first shall be in like form, except that they shall be entitled: "Transfer from No. -----", (the number of the next previous certificate relating to the same land), and shall also contain the words "Originally registered on the ----- day of -----, 19--, and entered in the book ----- at page ----- of register." [1907 c 250 § 38; RRS § 10667.]

65.12.275 Exchange of certificates—Platting land. A registered owner holding one duplicate certificate for several distinct parcels of land may surrender it and take out several certificates for portions thereof. A registered owner holding several duplicate certificates for several distinct parcels of land may surrender them and take out a single duplicate certificate for all of said parcels, or several certificates for different portions thereof. Such exchange of certificates, however, shall only be made by the order of the court upon petition therefor duly made by the owner. An owner of registered land who shall subdivide such land into lots, blocks or acre tracts shall file with the registrar of titles a plat of said land so subdivided, in the same manner and subject to the same rules of law and restrictions as is provided for platting land that is not registered. [1907 c 250 § 39; RRS § 10668.]

65.12.280 Effective date of certificate. The certificate of title shall relate back to and take effect as of the date of the decree of registration. [1907 c 250 § 40; RRS § 10669.]

65.12.290 Certificate of title as evidence. The original certificate in the registration book, any copy thereof duly certified under the signature of the registrar of

titles or his deputy, and authenticated by his seal and also the owner's duplicate certificate shall be received as evidence in all the courts of this state, and shall be conclusive as to all matters contained therein, except so far as is otherwise provided in this chapter. In case of a variance between the owner's duplicate certificate and the original certificate, the original shall prevail. [1907 c 250 § 41; RRS § 10670.]

65.12.300 Indexes and files—Forms. The registrar of titles, under the direction of the court, shall make and keep indexes of all duplication and of all certified copies and decrees of registration and certificates of titles, and shall also index and file in classified order all papers and instruments filed in his office relating to applications and to registered titles. The registrar shall also, under the direction of the court, prepare and keep forms of indexes and entry books. The court shall prepare and adopt convenient forms of certificates of titles, and also general forms of memorials or notations to be used by the registrars of titles in registering the common forms of conveyance and other instruments to express briefly their effect. [1907 c 250 § 42; RRS § 10671.]

65.12.310 Tract and alphabetical indexes. The registrar of titles shall keep tract indexes, in which shall be entered the lands registered in the numerical order of the townships, ranges, sections, and in cases of subdivisions, the blocks and lots therein, and the names of the owners, with a reference to the volume and page of the register of titles in which the lands are registered. He shall also keep alphabetical indexes, in which shall be entered, in alphabetical order, the names of all registered owners, and all other persons interested in, or holding charges upon, or any interest in, the registered land, with a reference to the volume and page of the register of titles in which the land is registered. [1907 c 250 § 43; RRS § 10672.]

65.12.320 Dealings with registered land. The owner of registered land may convey, mortgage, lease, charge or otherwise incumber, dispose of or deal with the same as fully as if it had not been registered. He may use forms of deeds, trust deeds, mortgages and leases or voluntary instruments, like those now in use, and sufficient in law for the purpose intended. But no voluntary instrument of conveyance, except a will and a lease, for a term not exceeding three years, purporting to convey or affect registered land, shall take effect as a conveyance, or bind the land; but shall operate only as a contract between the parties, and as evidence of the authority to the registrar of titles to make registration. The act of registration shall be the operative act to convey or affect the land. [1907 c 250 § 44; RRS § 10673.]

65.12.330 Registration has effect of recording. Every conveyance, lien, attachment, order, decree, judgment of a court of record, or instrument or entry which would, under existing law, if recorded, filed or entered in the office of the county clerk, and county auditor, of the county in which the real estate is situate, affect the said

real estate to which it relates, if the title thereto were not registered, shall, if recorded, filed or entered in the office of the registrar of titles in the county where the real estate to which such instrument relates is situate, affect in like manner the title thereto if registered, and shall be notice to all persons from the time of such recording, filing or entering. [1907 c 250 § 45; RRS § 10674.]

65.12.340 Filing—Numbering—Indexing—Public records. The registrar of titles shall number and note in a proper book to be kept for that purpose, the year, month, day, hour and minute of reception and number of all conveyances, orders or decrees, writs or other process, judgments, liens, or all other instruments, or papers or orders affecting the title of land, the title to which is registered. Every instrument so filed shall be retained in the office of the registrar of titles, and shall be regarded as registered from the time so noted, and the memorial of each instrument, when made on the certificate of title to which it refers, shall bear the same date. Every instrument so filed, whether voluntary or involuntary, shall be numbered and indexed, and indorsed with a reference to the proper certificate of title. All records and papers, relating to registered land, in the office of the registrar of titles shall be open to public inspection, in the same manner as are now the papers and records in the office of the county clerk and county auditor. [1907 c 250 § 46; RRS § 10675.]

65.12.350 Duplicate of instruments certified—Fees. Duplicates of all instruments, voluntary or involuntary, filed and registered in the office of the registrar of titles, may be presented with the originals, and shall be attested and sealed by the registrar of titles, and indorsed with the file number and other memoranda on the originals, and may be taken away by the person presenting the same. Certified copies of all instruments filed and registered may be obtained from the registrar of titles, on the payment of a fee of the same amount as is now allowed the county clerk and county auditor, for a like certified copy. [1907 c 250 § 47; RRS § 10676.]

65.12.360 New certificate—Register of less than fee—When form of memorial in doubt. No new certificate shall be entered or issued upon any transfer of registered land, which does not divest the title in fee simple of said land or some part thereof, from the owner or some one of the registered owners. All interest in the registered land, less than a freehold estate, shall be registered by filing with the registrar of titles, the instruments creating, transferring or claiming such interest, and by a brief memorandum or memorial thereof, made by a registrar of titles upon the certificate of title, and signed by him. A similar memorandum, or memorial, shall also be made on the owner's duplicate.

The cancellation or extinguishment of such interests shall be registered in the same manner. When any party in interest does not agree as to the proper memorial to be made upon the filing of any instrument, (voluntary or involuntary), presented for registration, or where the

registrar of titles is in doubt as to the form of such memorial, the question shall be referred to the court for decision, either on the certificate of the registrar of titles, or upon the demand in writing of any party in interest.

The registrar of titles shall bring before the court all the papers and evidence which may be necessary for the determination of the question by the court. The court, after notice to all parties in interest and a hearing, shall enter an order prescribing the form of the memorial, and the registrar of titles shall make registration in accordance therewith. [1907 c 250 § 48; RRS § 10677.]

65.12.370 Owner's certificate to be produced when new certificate issued. No new certificates of titles shall be entered, and no memorial shall be made upon any certificate of title, in pursuance of any deed, or other voluntary instrument, unless the owner's duplicate certificate is presented with such instrument, except in cases provided for in this chapter, or upon the order of the court for cause shown; and whenever such order is made a memorial therefor shall be entered, or a new certificate issued, as directed by said order. The production of the owner's duplicate certificate, whenever any voluntary instrument is presented for registration, shall be conclusive authority from the registered owner to the registrar of titles, to enter a new certificate, or to make a memorial of registration in accordance with such instrument; and a new certificate or memorial shall be binding upon the registered owner and upon all persons claiming under him in favor of every purchaser for value and in good faith. [1907 c 250 § 49; RRS § 10678.]

65.12.375 Owner's duplicate certificate. In the event that an owner's duplicate certificate of title shall be lost, mislaid or destroyed, the owner may make affidavit of the fact before any officer authorized to administer oaths, stating, with particularity, the facts relating to such loss, mislaying or destruction, and shall file the same in the office of the registrar of titles.

Any party in interest may thereupon apply to the court, and the court shall, upon proofs of the facts set forth in the affidavits, enter an order directing the registrar of titles to make and issue a new owner's duplicate certificate, such new owner's duplicate certificate shall be printed or marked, "Certified copy of owner's duplicate certificate", and such certified copy shall stand in the place of and have like effect as the owner's duplicate certificate. [1907 c 250 § 50; RRS § 10679.]

65.12.380 Conveyance of registered land. An owner of registered land, conveying the same, or any portion thereof, in fee, shall execute a deed of conveyance, which the grantor shall file with the registrar of titles in the county where the land lies. The owner's duplicate certificate shall be surrendered at the same time and shall be by the registrar marked "Canceled". The original certificate of title shall also be marked "Canceled". The registrar of titles shall thereupon entered in the register of titles, a new certificate of title to the grantee, and shall

prepare and deliver to such grantee an owner's duplicate certificate. All incumbrances, claims or interests adverse to the title of the registered owner shall be stated upon the new certificate or certificates, except insofar as they may be simultaneously released or discharged.

When only a part of the land described in a certificate is transferred, or some estate or interest in the land is to remain in the transferor, a new certificate shall be issued to him, for the part, estate or interest remaining in him. [1907 c 250 § 51; RRS § 10680.]

65.12.390 Certificate of tax payment. Before any deed, plat or other instrument affecting registered land shall be filed or registered in the office of the registrar of titles, the owner shall present a certificate from the county treasurer showing that all taxes then due thereon have been paid. [1907 c 250 § 52; RRS § 10681.]

65.12.400 Registered land charged as other land. Registered land and ownership therein shall in all respects be subject to the same burdens and incidents which attach by law to unregistered land. Nothing contained in this chapter shall in any way be construed to relieve registered land, or the owners thereof, from any rights incident to the relation of husband and wife, or from liability to attachment of mesne process, or levy on execution, or from liability from any lien of any description established by law on land or the improvements thereon, or the interest of the owner in such land or improvements, or to change the laws of descent, or the rights of partition between cotenants, or the right to take the same by eminent domain, or to relieve such land from liability to be recovered by an assignee in insolvency or trustee in bankruptcy, under the provisions of law relating thereto; or to change or affect in any way, any other rights or liabilities, created by law, applicable to unregistered land, except as otherwise expressly provided in this chapter, or any amendments hereof. [1907 c 250 § 53; RRS § 10682.]

65.12.410 Conveyances by attorney in fact. Any person may by attorney convey or otherwise deal with registered land, but the letters or power of attorney shall be acknowledged and filed with the registrar of titles, and registered. Any instrument revoking such letters, or power of attorney, shall be acknowledged in like manner. [1907 c 250 § 54; RRS § 10683.]

65.12.420 Encumbrances by owner. The owner of registered land may mortgage or encumber the same, by executing a trust deed or other instrument, sufficient in law for that purpose, and such instrument may be assigned, extended, discharged, released, in whole or in part, or otherwise dealt with by the mortgagee, by any form of instrument sufficient in law for the purpose; but such trust deed or other instrument, and all instruments assigning, extending, discharging, releasing or otherwise dealing with the encumbrance, shall be registered, and shall take effect upon the title only from the time of registration. [1907 c 250 § 55; RRS § 10684.]

65.12.430 Registration of mortgages. A trust deed shall be deemed to be a mortgage, and be subject to the same rules as a mortgage, excepting as to the manner of the foreclosure thereof. The registration of a mortgage shall be made in the following manner, to wit: The owner's duplicate certificate shall be presented to the registrar of titles with the mortgage deed or instrument to be registered, and the registrar shall enter upon the original certificate of title and also upon the owner's duplicate certificate, a memorial of the purport of the instrument registered, the time of filing, and the file number of the registered instrument. He shall also note upon the instrument registered, the time of filing, and a reference to the volume and page of the register of titles, wherein the same is registered. The registrar of titles shall also, at the request of the mortgagee, make out and deliver to him a duplicate certificate of title, like the owner's duplicate, except that the words, "Mortgagee's duplicate", shall be written or printed upon such certificate in large letters, diagonally across the face. A memorandum of the issuance of the mortgagee's duplicate shall be made upon the certificate of title. [1907 c 250 § 56; RRS § 10685.]

65.12.435 Dealings with mortgages. Whenever a mortgage upon which a mortgagee's duplicate has been issued is assigned, extended or otherwise dealt with, the mortgagee's duplicate shall be presented with the instrument assigning, extending, or otherwise dealing with the mortgage, and a memorial of the instrument shall be made upon the mortgagee's duplicate, and upon the original certificate of title. When the mortgage is discharged, or otherwise extinguished, the mortgagee's duplicate shall be surrendered and stamped, "Canceled". In case only a part of the charge or of the land is intended to be released, discharged, or surrendered, the entry shall be made by a memorial according in like manner as before provided for a release or discharge.

The production of the mortgagee's duplicate certificate shall be conclusive authority to register the instrument therewith presented. A mortgage on registered land may be discharged in whole or in part by the mortgagee in person on the register of titles in the same manner as a mortgage on unregistered land may be discharged by an entry on the margin of the record thereof, in the auditor's office, and such discharge shall be attested by the registrar of titles. [1907 c 250 § 57; RRS § 10686.]

65.12.440 Foreclosures on registered land. All charges upon registered land, or any estate or interest in the same, and any right thereunder, may be enforced as is now allowed by law, and all laws relating to the foreclosure of mortgages shall apply to mortgages upon registered land, or any estate or interest therein, except as herein otherwise provided, and except that a notice of the pendency of any suit or of any proceeding to enforce or foreclose the mortgage, or any charge, shall be filed in the office of the registrar of titles, and a memorial thereof entered on the register, at the time of, or prior

to, the commencement of such suit, or the beginning of any such proceeding. A notice so filed and registered shall be notice to the registrar of titles and all persons dealing with the land or any part thereof. When a mortgagee's duplicate has been issued, such duplicate shall, at the time of the registering of the notice, be presented, and a memorial of such notice shall be entered upon the mortgagee's duplicate. [1907 c 250 § 58; RRS § 10687.]

65.12.445 Registration of final decree—New certificate. In any action affecting registered land a judgment or final decree shall be entitled to registration on the presentation of a certified copy of the entry thereof from the clerk of the court where the action is pending to the registrar of titles. The registrar of titles shall enter a memorial thereof upon the original certificates of title, and upon the owner's duplicate, and also upon the mortgagee's and lessee's duplicate, if any there be outstanding. When the registered owner of such land is, by such judgment or decree, divested of his estate in fee to the land or any part thereof, the plaintiff or defendant shall be entitled to a new certificate of title for the land, or that part thereof, designated in the judgment or decree, and the registrar of titles shall enter such new certificate of title, and issue a new owner's duplicate, in such manner as is provided in the case of voluntary conveyance: *Provided, however,* That no such new certificate of title shall be entered, except upon the order of the superior court of the county in which the land is situated, and upon the filing in the office of the registrar of titles, an order of the court directing the entry of such new certificate. [1907 c 250 § 59; RRS § 10688.]

65.12.450 Title on foreclosure—Registration. Any person who has, by any action or proceeding to enforce or foreclose any mortgage, lien or charge upon registered land, become the owner in fee of the land, or any part thereof, shall be entitled to have his title registered, and the registrar of titles shall, upon application therefor, enter a new certificate of title for the land, or that part thereof, of which the applicant is the owner, and issue an owner's duplicate, in such manner as in the case of a voluntary conveyance of registered land: *Provided, however,* No such new certificate of title shall be entered, except after the time to redeem from such foreclosure has expired, and upon the filing in the office of the registrar of titles, an order of the superior court of the county directing the entry of such new certificates. [1907 c 250 § 60; RRS § 10689.]

65.12.460 Petition for new certificate. In all cases wherein, by this chapter, it is provided that a new certificate of title to registered land shall be entered by order of the court a person applying for such new certificate shall apply to the court by petition, setting forth the facts; and the court shall, after notice given to all parties in interest, as the court may direct, and upon hearing, make an order or decree for the entry of a new certificate to such person as shall appear to be entitled thereto. [1907 c 250 § 61; RRS § 10690.]

65.12.470 Registration of leases. Leases for registered land, for a term of three years or more, shall be registered in like manner as a mortgage, and the provisions herein relating to the registration of mortgages, shall also apply to the registration of leases. The registrar shall, at the request of the lessee, make out and deliver to him a duplicate of the certificate of title like the owner's duplicate, except the words, "Lessee's duplicate", shall be written or printed upon it in large letters diagonally across its face. [1907 c 250 § 62; RRS § 10691.]

65.12.480 Instruments with conditions. Whenever a deed, or other instrument, is filed in the office of the registrar of titles, for the purpose of effecting a transfer of or charge upon the registered land, or any estate or interest in the same, and it shall appear that the transfer or charge is to be in trust or upon condition or limitation expressed in such deed or instrument, such deed or instrument shall be registered in the usual manner, except that the particulars of the trust, condition, limitation or other equitable interest shall not be entered upon the certificate of title by memorial, but a memorandum or memorial shall be entered by the words, "in trust", or "upon condition", or other apt words, and by reference by number to the instrument authorizing or creating the same. A similar memorial shall be made upon the owner's duplicate certificate.

No transfer of, or charge upon, or dealing with, the land, estate or interest therein, shall thereafter be registered, except upon an order of the court first filed in the office of the registrar of titles, directing such transfer, charge, or dealing, in accordance with the true intent and meaning of the trust, condition or limitation. Such registration shall be conclusive evidence in favor of the person taking such transfer, charge, or right; and those claiming under him, in good faith, and for a valuable consideration, that such transfer, charge or other dealing is in accordance with the true intent and meaning of the trust, condition, or limitation. [1907 c 250 § 63; RRS § 10692.]

65.12.490 Transfers between trustees. When the title to registered land passes from a trustee to a new trustee, a new certificate shall be entered to him, and shall be registered in like manner as upon an original conveyance in trust. [1907 c 250 § 64; RRS § 10693.]

65.12.500 Trustee may register land. Any trustee shall have authority to file an application for the registration of any land held in trust by him, unless expressly prohibited by the instrument creating the trust. [1907 c 250 § 65; RRS § 10694.]

65.12.510 Creation of lien on registered land. In every case where writing of any description, or copy of any writ, order or decree is required by law to be filed or recorded in order to create or preserve any lien, right, or attachment upon unregistered land, such writing or copy, when intended to affect registered land, in lieu of recording, shall be filed and registered in the office of

the registrar of titles, in the county in which the land lies, and, in addition to any particulars required in such papers, for the filing or recording, shall also contain a reference to the number of the certificate of title of the land to be affected, and also, if the attachment, right or lien is not claimed on all the land in any certificate of title, a description sufficiently accurate for the identification of the land intended to be affected. [1907 c 250 § 66; RRS § 10695.]

65.12.520 Registration of liens. All attachments, liens and rights, of every description, shall be enforced, continued, reduced, discharged and dissolved, by any proceeding or method, sufficient and proper in law to enforce, continue, reduce, discharge or dissolve, like liens or unregistered land. All certificates, writing or other instruments, permitted or required by law, to be filed or recorded, to give effect to the enforcement, continuance, reduction, discharge or dissolution of attachments, liens or other rights upon registered land, or to give notice of such enforcement, continuance, reduction, discharge or dissolution, shall in the case of like attachments, liens or other rights upon registered land, be filed with the registrar of titles, and registered in the register of titles, in lieu of filing or recording. [1907 c 250 § 67; RRS § 10696.]

65.12.530 Entry as to plaintiff's attorney. The name and address of the attorney for the plaintiff in every action affecting the title to registered land, shall, in all cases, be endorsed upon the writ or other writing filed in the office of the registrar of titles, and he shall be deemed the attorney of the plaintiff until written notice that he has ceased to be such plaintiff's attorney shall be filed for registration by the plaintiff. [1907 c 250 § 68; RRS § 10697.]

65.12.540 Decree. A judgment, decree, or order of any court shall be a lien upon, or affect registered land, or any estate or interest therein, only when a certificate under the hand and official seal of the clerk of the court in which the same is of record, stating the date and purport of the judgment, decree, or order, or a certified copy of such judgment, decree, or order, or transcript of the judgment docket, is filed in the office of the registrar, and a memorial of the same is entered upon the register of the last certificate of the title to be affected. [1907 c 250 § 69; RRS § 10698.]

65.12.550 Title acquired on execution. Any person who has acquired any right, interest or estate in registered land by virtue of any execution, judgment, order or decree of the court, shall register his title so acquired, by filing in the office of the registrar of titles all writings or instruments permitted or required to be recorded in the case of unregistered land. If the interest or estate so acquired is the fee in the registered land, or any part thereof, the person acquiring such interest shall be entitled to have a new certificate of title, registered in him, in the same manner as is provided in the case of persons

acquiring title by an action or proceeding in foreclosure of mortgages. [1907 c 250 § 70; RRS § 10699.]

65.12.560 Termination of proceedings. The certificate of the clerk of the court in which any action or proceeding shall be pending, or any judgment or decree is of record, that such action or proceeding has been dismissed or otherwise disposed of, or that the judgment, decree, or order has been satisfied, released, reversed or overruled, or of any sheriff or any other officer that the levy of any execution, attachment, or other process, certified by him, has been released, discharged, or otherwise disposed of, being filed in the office of the registrar of titles and noted upon the register, shall be sufficient to authorize the registrar to cancel or otherwise treat the memorial of such action, proceeding, judgment, decree, order, or levy, according to the purport of such certificate. [1907 c 250 § 71; RRS § 10700.]

65.12.570 Land registered only after redemption period. Whenever registered land is sold, and the same is by law subject to redemption by the owner or any other person, the purchaser shall not be entitled to have a new certificate of title entered, until the time within which the land may be redeemed has expired. At any time after the time to redeem shall have expired, the purchaser may petition the court for an order directing the entry of a new certificate of title to him, and the court shall, after such notice as it may order, and hearing, grant and make an order directing the entry of such new certificate of title. [1907 c 250 § 72; RRS § 10701.]

65.12.580 Registration on inheritance. The heirs at law and devisees, upon the death of an owner of lands, and any estate or interest therein, registered pursuant to this chapter, on the expiration of thirty days after the entry of the decree of the superior court granting letters testamentary or of administration, or, in case of an appeal from such decree, at any time after the entry of a final decree, may file a certified copy of the final decree, of the superior court having jurisdiction, and of the will, if any, with the clerk of the superior court, in the county in which the land lies, and make application to the court for an order for the entry of a new certificate of title. The court shall issue notice to the executor or administrator and all other persons in interest, and may also give notice by publication in such newspaper or newspapers as it may deem proper, to all whom it may concern; and after hearing, may direct the entry of a new certificate or certificates to the person or persons who appear to be entitled thereto as heirs or devisees. Any new certificate so entered before the final settlement of the estate of the deceased owner, in the superior courts, shall state expressly that it is entered by transfer from the last certificate by descent or devise, and that the estate is in process of settlement. After the final settlement of the estate in the superior court, or after the expiration of the time allowed by law for bringing an action against an executor or administrator by creditors of the deceased, the heirs at law or devisees may petition the court for an

order to cancel the memorial upon their certificates, stating that the estate is in the course of settlement, and the court, after such notice as it may order, and a hearing, may grant the petition: *Provided, however,* That the liability of registered land to be sold for claims against the estate of the deceased, shall not in any way be diminished or changed. [1907 c 250 § 73; RRS § 10702.]

65.12.590 Probate court may direct sale of registered land. Nothing contained in this chapter shall include, affect or impair the jurisdiction of the superior court to order an executor, administrator or guardian to sell or mortgage registered land for any purpose for which such order may be granted in the case of unregistered land. The purchaser or mortgagee, taking a deed or mortgage executed in pursuance of such order of the superior court, shall be entitled to register his title, and to the entry of a new certificate of title or memorial of registration, upon application to the superior court, and upon filing in the office of the registrar of titles, an order of said court, directing the entry of such certificates. [1907 c 250 § 74; RRS § 10703.]

65.12.600 Trustees and receivers. An assignee for the benefit of creditors, receiver, trustee in bankruptcy, master in chancery, special commissioner, or other person appointed by the court, shall file in the office of the registrar of titles, the instrument or instruments by which he is vested with title, estate, or interest in any registered land, or a certified copy of an order of the court showing that such assignee, receiver, trustee in bankruptcy, master in chancery, special commissioner, or other person, is authorized to deal with such land, estate or interest, and, if it is in the power of such person, he shall, at the same time, present to the registrar of titles, the owner's duplicate certificate of title; thereupon the registrar shall enter upon the register of titles, and the duplicate certificate, if presented, a memorial thereof, with a reference to such order or deed by its file number. Such memorial having been entered, the assignee, receiver, trustee in bankruptcy, master in chancery, special commissioner or other person may, subject to the direction of the court, deal with or transfer such land as if he were a registered owner. [1907 c 250 § 75; RRS § 10704.]

65.12.610 Eminent domain—Reversion. Whenever registered land, or any right or interest therein, is taken by eminent domain, the state or body politic, or corporate or other authority exercising such right shall pay all fees on account of any memorial or registration or entry of new certificates, or duplicate thereof, and fees for the filing of instruments required by this chapter to be filed. When, for any reason, by operation of law, land which has been taken for public use reverts to the owner from whom it was taken, or his heirs or assigns, the court, upon petition of the person entitled to the benefit of the reversion, after such notice as it may order, and hearing, may order the entry of a new certificate of title to him. [1907 c 250 § 76; RRS § 10705.]

65.12.620 Registration when owner's certificate withheld. In every case where the registrar of titles enters a memorial upon a certificate of title, or enters a new certificate of title, in pursuance of any instrument executed by the registered owner, or by reason of any instrument or proceeding which affects or devises the title of the registered owner against his consent, if the outstanding owner's duplicate certificate is not presented, the registrar of titles shall not enter a new certificate or make a memorial, but the person claiming to be entitled thereto may apply by petition to the court. The court may order the registered owner, or any person withholding the duplicate certificate, to present or surrender the same, and direct the entry of a memorial or new certificate upon such presentation or surrender. If, in any case, the person withholding the duplicate certificate is not amenable to the process of the court, or cannot be found, or if, for any reason, the outstanding owner's duplicate certificate cannot be presented or surrendered without delay, the court may, by decree, annul the same, and order a new certificate of title to be entered. Such new certificate, and all duplicates thereof, shall contain a memorial of the annulment of the outstanding duplicate. If in any case of an outstanding mortgagee's or lessee's duplicate certificate shall be withheld or otherwise dealt with, like proceedings may be had to obtain registration as in case of the owner's withholding or refusing to deliver the duplicate receipt. [1907 c 250 § 77; RRS § 10706.]

65.12.630 Reference to examiner of title. In all cases where, under the provisions of this chapter, application is made to the court for an order or decree, the court may refer the matter to one of the examiners of title for hearing and report, in like manner, as is herein provided for the reference of the application for registration. [1907 c 250 § 78; RRS § 10707.]

65.12.635 Examiner of titles. Examiners of titles shall, upon the request of the registrar of titles, advise him upon any act or duty pertaining to the conduct of his office, and shall, upon request, prepare the form of any memorial to be made or entered by the registrar of titles. The examiner of titles shall have full power to administer oaths and examine witnesses involved in his investigation of titles. [1907 c 250 § 79; RRS § 10708.]

65.12.640 Registered instruments to contain names and addresses—Service of notices. Every writing and instrument required or permitted by this chapter to be filed for registration, shall contain or have endorsed upon it, the full name, place of residence and post office address of the grantee or other person requiring or claiming any right, title or interest under such instrument. Any change in residence or post office address of such person shall be endorsed by the registrar of titles in the original instrument, on receiving a sworn statement of such change. All names and addresses shall also be entered on all certificates. All notices required by, or given in pursuance of the provisions of this chapter by

the registrar of titles or by the court, after original registration, shall be served upon the person to be notified; if a resident of the state of Washington, as summons in civil actions are served; and proof of such service shall be made as on the return of a summons. All such notices shall be sent by mail, to the person to be notified, if not a resident of the state of Washington, and his residence and post office address, as stated in the certificate of title, or in any registered instrument under which he claims an interest. The certificate of the registrar of titles, or clerk of court, that any notice has been served, by mailing the same, as aforesaid, shall be conclusive proof of such notice: *Provided, however,* That the court may, in any case, order different or further service by publication or otherwise. [1907 c 250 § 80; RRS § 10709.]

65.12.650 Adverse claims—Procedure. Any person claiming any right or interest in registered land, adverse to the registered owner, arising subsequent to the date of the original registration, may, if no other provision is made in this chapter for registering the same, make a statement in writing, setting forth fully his alleged right or interest and how or under whom acquired, and a reference to the volume and page of the certificate of title of the registered owner, and a description of the land to which the right or interest is claimed. The statement shall be signed and sworn to, and shall state the adverse claimant's residence, and designate a place at which all notices may be served upon him. This statement shall be entitled to registration, as an adverse claim; and the court, upon the petition of any party in interest, shall grant a speedy hearing upon the question of the validity of such adverse claim, and shall enter such decree thereon as equity and justice may require.

If the claim is adjudged to be invalid, its registration shall be canceled. The court may, in any case, award such costs and damages, including reasonable attorneys' fees, as it may deem just in the premises. [1907 c 250 § 81; RRS § 10710.]

65.12.660 Assurance fund. Upon the original registration of land under this chapter, and also upon the entry of the certificate showing title as registered owners in heirs or devisees, there shall be paid to the registrar of titles, one-fortieth of one percent of the assessed value of the real estate on the basis of the last assessment for general taxation, as an assurance fund. [1973 1st ex.s. c 195 § 75; 1907 c 250 § 82; RRS § 10711.]

Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195: See notes following RCW 84.52.043.

65.12.670 Investment of fund. All sums of money received by the registrar as provided for in RCW 65.12.660, shall be forthwith paid by the registrar to the county treasurer of the county in which the land lies, for the purpose of an assurance fund, under the terms of this chapter; it shall be the duty of the county treasurer, whenever the amount on hand in said assurance fund is sufficient, to invest the same, principal and income, and report annually to the superior court of the same county

the condition and income thereof; and no investment of the funds, or any part thereof, shall be made without the approval of said court, by order entered of record. Said fund shall be invested only in bonds or securities of the United States, or of one of the states of the United States, or of the counties or other municipalities of this state. [1907 c 250 § 83; RRS § 10712.]

65.12.680 Recoveries from fund. Any person sustaining loss or damage, through any omission, mistake, or misfeasance of the registrar of titles, or of any examiner of titles, or of any deputy, or by the mistake or misfeasance of the clerk of the court, or any deputy, in the performance of their respective duties, under the provisions of this chapter, and any person wrongfully deprived of any land or any interest therein, through the bringing of the same, under the provisions of this chapter, or by the registration of any other person as the owner of such land, or by any mistake, omission, or misdescription in any certificate or entry, or memorial, in the register of titles, or by any cancellation, and who, by the provisions of this chapter, is barred or precluded from bringing any action for the recovery of such land, or interest therein, or claim thereon, may bring an action against the treasurer of the county in which such land is situated, for the recovery of damages to be paid out of the assurance fund. [1907 c 250 § 84; RRS § 10713.]

65.12.690 Parties defendant—Judgment—Payment—Duties of county attorney. If such action be for recovery for loss or damage arising only through any omission, mistake or misfeasance of the registrar of titles or his deputies, or of any examiner of titles, or any clerk of court or his deputy, in the performance of their respective duties, under the provisions of this chapter, then the county treasurer shall be the sole defendant to such action; but if such action be brought for loss or damage arising only through the fraud or wrongful act of some person or persons other than the registrar or his deputies, the examiners of title, the clerk of the court or his deputies, or arising jointly through the fraud or wrongful act of such other person or persons, and the omission, mistakes or misfeasance of the registrar of titles or his deputies, the examiners of titles, the clerk of the court or his deputies, then such action shall be brought against both the county treasurer and such persons or persons aforesaid. In all such actions, where there are defendants other than the county treasurer, and damages shall have been recovered, no final judgment shall be entered against the county treasurer, until execution against the other defendants shall be returned unsatisfied in whole or in part, and the officer returning the execution shall certify that the amount still due upon the execution cannot be collected except by application to the indemnity [assurance] fund. Thereupon the court, being satisfied as to the truth of such return, shall order final judgment against the treasurer, for the amount of the execution and costs, or so much thereof as remains unpaid. The county treasurer shall, upon such order of the court and final judgment, pay the amount of such judgment out of the assurance fund. It shall be the duty of

the county attorney to appear and defend all such actions. If the funds in the assurance funds at any time are insufficient to pay any judgment in full, the balance unpaid shall draw interest at the legal rate of interest, and be paid with such interest out of the first funds coming into said fund. [1907 c 250 § 85; RRS § 10714.]

65.12.700 When fund not liable—Maximum liability. The assurance fund shall not be liable in any action to pay for any loss, damage or deprivation occasioned by a breach of trust, whether expressed, implied, or constructive, by any registered owner who is a trustee, or by the improper exercise of any power of sale, in a mortgage or a trust deed. Final judgment shall not be entered against the county treasurer in any action against this chapter to recover from the assurance fund for more than a fair market value of the real estate at the time of the last payment to the assurance fund, on account of the same real estate. [1907 c 250 § 86; RRS § 10715.]

65.12.710 Limitation of actions. No action or proceeding for compensation for or by reason of any deprivation, loss or damage occasioned or sustained as provided in this chapter, shall be made, brought or taken, except within the period of six years from the time when right to bring or take such action or proceeding first accrued; except that if, at any time, when such right of action first accrues, the person entitled to bring such action, or take such proceeding, is under the age of eighteen years, or insane, imprisoned, or absent from the United States in the service of the United States, or of this state, then such person, or anyone claiming from, by, or under him, may bring the action, or take the proceeding, at any time within two years after such disability is removed, notwithstanding the time before limited in that behalf has expired. [1971 ex.s. c 292 § 49; 1907 c 250 § 87; RRS § 10716.]

Severability—1971 ex.s. c 292: See note following RCW 26.28.010.

65.12.720 Proceeding to change records. No erasure, alteration or amendment shall be made upon the register of titles after the entry of the certificate of title, or a memorial thereon, and the attestation of the same by the registrar of titles, except by order of the court. Any registered owner, or other person in interest, may at any time apply by petition to the court, on the ground that registered interests of any description, whether vested, contingent, expectant, or inchoate, have determined and ceased; or that new interests have arisen or been created, which do not appear upon the certificate; or that an error, omission or mistake was made in entering the certificate; or any memorial thereon, or any duplicate certificate; or that the name of any person on the certificate has been changed; or that the registered owner has been married, or if registered, has married, that the marriage has been terminated, or that a corporation which owned registered land has been dissolved, and has not conveyed the same within three years after its dissolution; or upon any other reasonable ground; and the court shall have jurisdiction to hear and determine the

petition after such notice as it may order, to all parties in interest, and may order the entry of a new certificate, the entry or cancellation of a memorial upon a certificate, or grant any other relief upon such terms and conditions, requiring security if necessary, as it may deem proper: *Provided, however*, That this section shall not be construed to give the court authority to open the original decree of registration, and that nothing shall be done or ordered by the court which shall impair the title or other interest of the purchaser, holding a certificate for value and in good faith, or his heirs or assigns, without his or their written consent. [1907 c 250 § 88; RRS § 10717.]

65.12.730 Certificate subject of larceny—Penalty. Certificates of title or duplicate certificates entered under this chapter, shall be subjects of larceny, and anyone unlawfully stealing or carrying away any such certificate, shall, upon conviction thereof, be deemed guilty of grand larceny, and punished accordingly. [1907 c 250 § 89; RRS § 10718.]

65.12.740 Perjury—Penalty. Whoever knowingly swears falsely to any statement required by this chapter to be made under oath shall be guilty of perjury, and shall be liable to the statutory penalties therefor. [1907 c 250 § 90; RRS § 10719.]

65.12.750 Fraud—False entries—Penalty. Whoever fraudulently procures, or assists fraudulently procuring, or is privy to the fraudulent procurement of any certificate of title, or other instrument, or of any entry in the register of titles, or other book kept in the registrar's office, or of any erasure or alteration in any entry in any such book, or in any instrument authorized by this chapter, or knowingly defrauds or is privy to defrauding any person by means of a false or fraudulent instrument, certificate, statement, or affidavit affecting registered land, shall be guilty of a felony, and upon conviction, shall be fined in any sum not exceeding five thousand dollars, or imprisoned in the penitentiary not exceeding five years, or both such fine and imprisonment, in the discretion of the court. [1907 c 250 § 91; RRS § 10720.]

65.12.760 Forgery—Penalty. Whoever forges or procures to be forged, or assists in forging, the seal of the registrar, or the name, signature or handwriting of any officer of the registry office, in case where such officer is expressly or impliedly authorized to affix his signature; or forges or procures to be forged, or assists in forging, the name, signature or handwriting of any person whomsoever, to any instrument which is expressly or impliedly authorized to be signed by such person; or uses any document upon which any impression or part of the impression of any seal of said registrar has been forged, knowing the same to have been forged, or any document, the signature to which has been forged, shall be guilty of a felony, and upon conviction shall be imprisoned in the penitentiary not exceeding ten years, or fined not exceeding one thousand dollars, or both fined

and imprisoned, in the discretion of the court. [1907 c 250 § 92; RRS § 10721.]

65.12.770 Civil actions unaffected. No proceeding or conviction for any act hereby declared to be a felony, shall affect any remedy which any person aggrieved or injured by such act may be entitled to at law, or in equity, against the person who has committed such act, or against his estate. [1907 c 250 § 93; RRS § 10722.]

65.12.780 Fees of clerk. On the filing of any application for registration, the applicant shall pay to the clerk of the court, in counties having more than forty thousand population, the sum of three dollars; and in all other counties, the sum of five dollars, which shall be in full of all clerk's fees and charges in such proceeding in behalf of the applicant. Any defendant, on entering his appearance, shall pay to the clerk of the court, the sum of three dollars, which shall be in full of all clerk's fees in behalf of such defendant. When any number of defendants enter their appearance at the same time, before default, but one fee shall be paid. Every publication in a newspaper required by this chapter shall be paid for by the party on whose application the order of publication is made, in addition to the fees above prescribed. The party at whose request any notice is issued, shall pay for the service of the same, except when sent by mail by the clerk of court, or the registrar of titles. [1907 c 250 § 94; RRS § 10723.]

65.12.790 Fees of registrar. The fees to be paid to the registrar of titles shall be as follows:

(1) At or before the time of filing of the certified copy of the application with the registrar, the applicant shall pay, to the registrar, on all land having an assessed value, exclusive of improvements, of one thousand dollars or less, thirty-one and one-quarter cents on each one thousand dollars, or major fraction thereof, of the assessed value of said land, additional.

(2) For granting certificates of title, upon each applicant, and registering the same, two dollars.

(3) For registering each transfer, including the filing of all instruments connected therewith, and the issuance and registration of the instruments connected therewith, and the issuance and registration of the new certificate of title, ten dollars.

(4) When the land transferred is held upon any trust, condition, or limitation, an additional fee of three dollars.

(5) For entry of each memorial on the register, including the filing of all instruments and papers connected therewith, and endorsements upon duplicate certificates, three dollars.

(6) For issuing each additional owner's duplicate certificate, mortgagee's duplicate certificate, or lessee's duplicate certificate, three dollars.

(7) For filing copy of will, with letters testamentary, or filing copy of letters of administration, and entering memorial thereof, two dollars and fifty cents.

(8) For the cancellation of each memorial, or charge, one dollar.

(9) For each certificate showing the condition of the register, one dollar.

(10) For any certified copy of any instrument or writing on file in his office, the same fees now allowed by law to county clerks and county auditors for like service.

(11) For any other service required, or necessary to carry out this chapter, and not hereinbefore itemized, such fee or fees as the court shall determine and establish.

(12) For registration of each mortgage and issuance of duplicate of title a fee of five dollars; for each deed of trust and issuance of duplicate of title a fee of eight dollars. [1973 1st ex.s. c 195 § 76; 1973 c 121 § 2; 1907 c 250 § 95; RRS § 10724.]

Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195: See notes following RCW 84.52.043.

65.12.800 Disposition of fees. One-half of all fees provided for in RCW 65.12.790(1), shall be collected by the registrar, and paid to the county treasurer of the county in which the fees are paid, to be used for the current expenses of the county; and all the remaining fees provided for in said section, and all the subdivisions thereof, shall be collected by the registrar, and applied the same as the other fees of his office; but his salary as county clerk or county auditor, as now provided by law, shall not be increased on account of the additional duties, or by reason of the allowance of additional fees provided for herein; and the said registrar, as such, shall receive no salary. [1907 c 250 § 96; RRS § 10725.]

Chapter 65.16 LEGAL PUBLICATIONS

Sections

65.16.010	Weekly publication—How made.
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65.16.160	Publication of ordinances.

Civil procedure, legal publication generally: Chapter 4.28 RCW.

Corporate seals, effect of absence from instrument: RCW 64.04.105.

Powers of appointment: Chapter 11.95 RCW.

65.16.010 Weekly publication—How made. The publication of legal notices required by law, or by an order of a judge or court, to be published in a newspaper once in each week for a specified number of weeks, shall be made on the day of each week in which such newspaper is published. [1893 c 127 § 27; RRS § 253.]

65.16.020 Qualifications of legal newspaper. The qualifications of a legal newspaper are that such newspaper shall have been published regularly, at least once a week, in the English language, as a newspaper of general circulation, in the city or town where the same is published at the time of application for approval, for at least six months prior to the date of such application; shall be compiled either in whole or in part in an office maintained at the place of publication; shall contain news of general interest as contrasted with news of interest primarily to an organization, group or class; and shall hold a second class mailing permit: *Provided*, That in case of the consolidation of two or more newspapers, such consolidated newspaper shall be considered as qualified if either or any of the papers so consolidated would be a qualified newspaper at the date of such legal publication, had not such consolidation taken place: *Provided*, That this section shall not disqualify as a legal newspaper any publication which, prior to June 8, 1961, was adjudged a legal newspaper, so long as it continues to meet the requirements under which it qualified. [1961 c 279 § 1; 1941 c 213 § 3; 1921 c 99 § 1; Rem. Supp. 1941 § 253-1. Prior: 1917 c 61 § 1.]

65.16.030 Affidavit of publication—Presumption. All legal and other official notices shall be published in a legal newspaper as herein defined, and the affidavit of publication shall state that the newspaper has been approved as a legal newspaper by order of the superior court of the county in which it is published, and shall be prima facie evidence of that fact. Wherever a legal notice, publication, advertisement or other official notice is required to be published by any statute or law of the state of Washington, the proof of such publication shall be the affidavit of the printer, publisher, foreman, principal clerk or business manager of the newspaper which published said notice. [1953 c 233 § 1; 1941 c 213 § 4; 1921 c 99 § 2; Rem. Supp. 1941 § 253-2.]

65.16.040 Legal publications to be approved—Order of approval. Sixty days from and after the date *this act becomes effective, a legal newspaper for the publication of any advertisement, notice, summons, report, proceeding, or other official document now or hereafter required by law to be published, shall be a newspaper which has been approved as a legal newspaper by order of the superior court of the county in which such newspaper is published. Such order may be entered without notice upon presentation of a petition by or on behalf of the publisher, setting forth the qualifications of the newspaper as required by *this act, and upon evidence satisfactory to the court that such newspaper is so qualified. [1941 c 213 § 1; Rem. Supp. 1941 § 253a.]

*Reviser's note: (1) The language "this act" appears in 1941 c 213 codified as RCW 65.16.020 through 65.16.080.

(2) The effective date of this act is midnight June 11, 1941; see preface 1941 session laws.

65.16.050 Revocation of approval—Notice. An order of approval of a newspaper shall remain effective from the time of the entry thereof until the approval be terminated by a subsequent order of the court, which

may be done whenever it shall be brought to the attention of the court that the newspaper is no longer qualified as a legal newspaper, and after notice of hearing issued by the clerk and served upon the publisher, at least ten days prior to the date of hearing, by delivering a copy of such notice to the person in charge of the business office of the publisher, or if the publisher has no business office at the time of service, by mailing a copy of such notice addressed to the publisher at the place of publication alleged in the petition for approval. [1941 c 213 § 2; Rem. Supp. 1941 § 253b.]

65.16.060 Choice of newspapers. Any summons, citation, notice of sheriff's sale, or legal advertisement of any description, the publication of which is now or may be hereafter required by law, may be published in any daily or weekly legal newspaper published in the county where the action, suit or other proceeding is pending, or is to be commenced or had, or in which such notice, summons, citation, or other legal advertisement is required to be given: *Provided, however,* That if there be more than one legal newspaper in which any such legal notice, summons, citation or legal advertisement might lawfully be published, then the plaintiff or moving party in the action, suit or proceeding shall have the exclusive right to designate in which of such qualified newspapers such legal notice, summons, citation, notice of sheriff's sale or other legal advertisement shall be published. [1941 c 213 § 6; 1921 c 99 § 5; Rem. Supp. 1941 § 253-5.]

65.16.070 List posted in clerk's office. Publications commenced in a legal newspaper, *when this act takes effect, may be completed in that newspaper notwithstanding any failure to obtain an order of approval under *this act, and notwithstanding an order of termination of approval prior to completion of publication. The clerk of the superior court of each county shall post and keep posted in a prominent place in his office a list of the newspapers published in that county which are approved as legal newspapers. [1941 c 213 § 7; RRS § 253-5a.]

*Reviser's note: "this act", "when this act takes effect", see note following RCW 65.16.040.

65.16.080 Scope of provisions. The provisions of *this act shall not apply in counties where no newspaper has been published for a period of one year prior to the publication of such legal or other official notices. [1941 c 213 § 5; 1921 c 99 § 3; Rem. Supp. 1941 § 253-3.]

*Reviser's note: "this act", see note following RCW 65.16.040.

65.16.091 Rates for legal notices. The rate charged by a newspaper for legal notices shall not exceed the national advertising rate extended by the newspaper to all general advertisers and advertising agencies in its published rate card. [1977 c 34 § 3.]

65.16.095 Rates for political candidates. The rate charged by a newspaper for advertising in relation to

candidates for political office shall not exceed the national advertising rate extended to all general advertisers and advertising agencies in its published rate card. [1955 c 186 § 2.]

Severability—1955 c 186: "If any section of this act shall be found unconstitutional it shall not invalidate the remaining section." [1955 c 186 § 3.]

65.16.100 Omissions for Sundays and holidays. Where any law or ordinance of any incorporated city or town in this state provides for the publication of any form of notice or advertisement for consecutive days in a daily newspaper, the publication of such notice on legal holidays and Sundays may be omitted without in any manner affecting the legality of such notice or advertisement: *Provided,* That the publication of the required number of notices is complied with. [1921 c 99 § 6; RRS § 253-6.]

65.16.110 Affidavit to cover payment of fees. The affidavit of publication of all notices required by law to be published shall state the full amount of the fee charged for such publication and that the fee has been paid in full. [1921 c 99 § 7; RRS § 253-7.]

65.16.120 Payment of fees in advance, on demand. When, by law, any publication is required to be made by an officer of any suit, process, notice, order or other papers, the costs of such publication shall, if demanded, be tendered by the party procuring such publication before such officer shall be compelled to make publication thereof. [Code 1881 § 2092; 1869 p 373 § 14; RRS § 504.]

65.16.130 Publication of official notices by radio or television—Restrictions. Any official of the state or any of its political subdivisions who is required by law to publish any notice required by law may supplement publication thereof by radio or television broadcast or both when, in his judgment, the public interest will be served thereby: *Provided,* That the time, place and nature of such notice only be read or shown with no reference to any person by name then a candidate for political office, and that such broadcasts shall be made only by duly employed personnel of the station from which such broadcasts emanate, and that notices by political subdivisions may be made only by stations situated within the county of origin of the legal notice. [1961 c 85 § 1; 1951 c 119 § 1.]

65.16.140 Broadcaster to retain copy or transcription. Each radio or television station broadcasting any legal notice or notice of event shall for a period of six months subsequent to such broadcast retain at its office a copy or transcription of the text of the notice as actually broadcast which shall be available for public inspection. [1961 c 85 § 2; 1951 c 119 § 2.]

65.16.150 Proof of publication by radio or television. Proof of publication of legal notice or notice of event by radio or television broadcast shall be by affidavit of the manager, an assistant manager or a program director of

the station broadcasting the same. [1961 c 85 § 3; 1951 c 119 § 3.]

65.16.160 Publication of ordinances. (1) Whenever any county, city, or town is required by law to publish legal notices containing the full text of any proposed or adopted ordinance in a newspaper, the county, city, or town may publish a summary of the ordinance which summary shall be approved by the governing body and which shall include:

- (a) The name of the county, city, or town;
- (b) The formal identification or citation number of the ordinance;
- (c) A descriptive title;
- (d) A section-by-section summary;
- (e) Any other information which the county, city, or town finds is necessary to provide a complete summary; and
- (f) A statement that the full text will be mailed upon request.

(2) Subsection (1) of this section notwithstanding, whenever any publication is made under this section and the proposed or adopted ordinance contains provisions regarding taxation or penalties or contains legal descriptions of real property, then the sections containing this matter shall be published in full and shall not be summarized. When a legal description of real property is involved, the notice shall also include the street address or addresses of the property described, if any. In the case of descriptions covering more than one street address, the street addresses of the four corners of the area described shall meet this requirement.

(3) The full text of any ordinance which is summarized by publication under this section shall be mailed without charge to any person who requests the text from the adopting county, city, or town. [1977 c 34 § 4.]

Chapter 65.20

CLASSIFICATION OF MANUFACTURED HOMES

Sections	
65.20.010	Purpose.
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65.20.030	Clarification of type of property and perfection of security interests.
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65.20.050	Elimination of title—Approval.
65.20.060	Eliminating title—Lenders and conveyances.
65.20.070	Eliminating title—Removing manufactured home when title has been eliminated.
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65.20.900	Prospective effect.
65.20.910	Effect on taxation.
65.20.920	Captions not law.
65.20.930	Short title.
65.20.940	Severability—1989 c 343.
65.20.950	Effective date—1989 c 343.

Certificates of ownership and registration: Chapter 46.12 RCW.

65.20.010 Purpose. (Effective March 1, 1990.) The legislature recognizes that confusion exists regarding the classification of manufactured homes as personal or real property. This confusion is increased because manufactured homes are treated as vehicles in some parts of state statutes, however these homes are often used as residences to house persons residing in the state of Washington. This results in a variety of problems, including: (1) Creating confusion as to the creation, perfection, and priority of security interests in manufactured homes; (2) making it more difficult and expensive to obtain financing and title insurance; (3) making it more difficult to utilize manufactured homes as an affordable housing option; and (4) increasing the risk of problems for and losses to the consumer. Therefore the purpose of this chapter is to clarify the type of property manufactured homes are, particularly relating to security interests, and to provide a statutory process to make the manufactured home real property by eliminating the title to a manufactured home when the home is affixed to land owned by the homeowner. [1989 c 343 § 1.]

65.20.020 Definitions. (Effective March 1, 1990.) Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Affixed" means that the manufactured home is installed in accordance with the installation standards in state law.

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

(3) "Eliminating the title" means to cancel an existing title issued by this state or a foreign jurisdiction or to waive the certificate of ownership required by chapter 46.12 RCW and recording the appropriate documents in the county real property records pursuant to this chapter.

(4) "Homeowner" means the owner of a manufactured home.

(5) "Land" means real property excluding the manufactured home.

(6) "Manufactured home" or "mobile home" means a structure, designed and constructed to be transportable in one or more sections and is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities that include plumbing, heating, and electrical systems contained therein. The structure must comply with the national mobile home construction and safety standards act of 1974 as adopted by chapter 43.22 RCW if applicable. "Manufactured home" does not include a modular home. A structure which met the definition of a "manufactured home" at the time of manufacture is still considered to meet this definition notwithstanding that it is no longer transportable.

(7) "Owner" means, when referring to a manufactured home that is titled, the person who is the registered owner. When referring to a mobile home that is untitled pursuant to this chapter, the owner is the person who owns the land. When referring to land, the person may have fee simple title, have a leasehold estate of thirty-five years or more, or be purchasing the property

on a real estate contract. Owners include joint tenants, tenants in common, holders of legal life estates, and holders of remainder interests.

(8) "Person" means any individual, trustee, partnership, corporation, or other legal entity. "Person" may refer to more than one individual or entity.

(9) "Secured party" means the legal owner when referring to a titled mobile home, or the lender securing a loan through a mortgage, deed of trust, or real estate contract when referring to land or land containing an untitled manufactured home pursuant to this chapter.

(10) "Security interest" means an interest in property to secure payment of a loan made by a secured party to a borrower.

(11) "Title" or "titled" means a certificate of ownership issued pursuant to chapter 46.12 RCW. [1989 c 343 § 2.]

65.20.030 Clarification of type of property and perfection of security interests. (Effective March 1, 1990.) When a manufactured home is sold or transferred on or after March 1, 1990, and when all ownership in the manufactured home is transferred through the sale or other transfer of the manufactured home to new owners, the manufactured home shall be real property when the new owners eliminate the title pursuant to this chapter. The manufactured home shall not be real property in any form, including fixture law, unless the title is eliminated under this chapter. Where any person who owned a used manufactured home on March 1, 1990, continues to own the manufactured home on or after March 1, 1990, the interests and rights of owners, secured parties, lienholders, and others in the manufactured home shall be based on the law prior to March 1, 1990, except where the owner voluntarily eliminates the title to the manufactured home by complying with this chapter. If the title to the manufactured home is eliminated under this chapter, the manufactured home shall be treated the same as a site-built structure and ownership shall be based on ownership of the real property through real property law. If the title to the manufactured home has not been eliminated under this chapter, ownership shall be based on chapter 46.12 RCW.

For purposes of perfecting and realizing upon security interests, manufactured homes shall always be treated as follows: (1) If the title has not been eliminated under this chapter, security interests in the manufactured home shall be perfected only under chapter 46.12 RCW and the lien shall be treated as securing personal property for purposes of realizing upon the security interest. If the manufactured home is attached to land owned by the homeowner and the secured party seeks to remove the home pursuant to a contract, the secured party is liable for damage to the land to the extent the secured party would be liable if the manufactured home was a fixture under chapter 62A.9 RCW; or (2) if the title has been eliminated under this chapter, a separate security interest in the manufactured home shall not exist, and the manufactured home shall only be secured as part of the real property through a mortgage, deed of trust, or real estate contract. [1989 c 343 § 3.]

65.20.040 Elimination of title—Application. (Effective March 1, 1990.) If a manufactured home is affixed to land that is owned by the homeowner, the homeowner may apply to the department to have the title to the manufactured home eliminated. The application package shall consist of the following:

(1) An affidavit, in the form prescribed by the department, signed by all the owners of the manufactured home and containing:

(a) The date;

(b) The names of all of the owners of record of the manufactured home;

(c) The legal description of the real property;

(d) A description of the manufactured home including model year, make, width, length, and vehicle identification number;

(e) The names of all secured parties in the manufactured home; and

(f) A statement that the owner of the manufactured home owns the real property to which it is affixed;

(2) Certificate of ownership for the manufactured home, or the manufacturer's statement of origin in the case of a new manufactured home. Where title is held by the secured party as legal owner, the consent of the secured party must be indicated by the legal owner releasing his or her security interest;

(3) A certification by the local government indicating that the manufactured home is affixed to the land;

(4) Payment of all licensing fees, excise tax, use tax, real estate tax, recording fees, and proof of payment of all property taxes then due; and

(5) Any other information the department may require. [1989 c 343 § 4.]

65.20.050 Elimination of title—Approval. (Effective March 1, 1990.) The department shall approve the application for elimination of the title when all requirements listed in RCW 65.20.040 have been satisfied and the registered and legal owners of the manufactured home have consented to the elimination of the title. After approval, the department shall have the approved application recorded in the county or counties in which the land is located and on which the manufactured home is affixed.

The county auditor shall record the approved application, and any other form prescribed by the department, in the county real property records. The manufactured home shall then be treated as real property as if it were a site-built structure. Removal of the manufactured home from the land is prohibited unless the procedures set forth in RCW 65.20.070 are complied with.

The department shall cancel the title after verification that the county auditor has recorded the appropriate documents, and the department shall maintain a record of each manufactured home title eliminated under this chapter by vehicle identification number. The title is deemed eliminated on the date the appropriate documents are recorded by the county auditor. [1989 c 343 § 5.]

65.20.060 Eliminating title—Lenders and conveyances. (Effective March 1, 1990.) It is the responsibility of the owner, secured parties, and others to take action as necessary to protect their respective interests in conjunction with the elimination of the title or reissuance of a previously eliminated title.

A manufactured home whose title has been eliminated shall be conveyed by deed or real estate contract and shall only be transferred together with the property to which it is affixed, unless procedures described in RCW 65.20.070 are completed.

Nothing in this chapter shall be construed to require a lender to consent to the elimination of the title of a manufactured home, or to retitling a manufactured home under RCW 65.20.070. The obligation of the lender to consent is governed solely by the agreement between the lender and the owner of the manufactured home. Absent any express written contractual obligation, a lender may withhold consent in the lender's sole discretion. In addition, the homeowner shall comply with all reasonable requirements imposed by a lender for obtaining consent, and a lender may charge a reasonable fee for processing a request for consent. [1989 c 343 § 6.]

65.20.070 Eliminating title—Removing manufactured home when title has been eliminated. (Effective March 1, 1990.) Before physical removal of an untitled manufactured home from the land the home is affixed to, the owner shall follow one of these two procedures:

(1) Where a title is to be issued or the home has been destroyed:

(a) The owner shall apply to the department for a title pursuant to chapter 46.12 RCW. In addition the owner shall provide:

(i) An affidavit in the form prescribed by the department, signed by the owners of the land and all secured parties and other lienholders in the land consenting to the removal of the home;

(ii) Payment of recording fees;

(iii) A certification from a title insurance company listing the owners and lienholders in the land and dated within ten days of the date of application for a new title under this subsection; and

(iv) Any other information the department may require;

(b) The owner shall apply for and obtain permits necessary to move a manufactured home including but not limited to the permit required by RCW 46.44.170, and comply with other regulations regarding moving a manufactured home; and

(c) The department shall approve the application for title when the requirements of chapter 46.12 RCW and this subsection have been satisfied. Upon approval the department shall have the approved application and the affidavit recorded in the county or counties in which the land from which the home is being removed is located and the department shall issue a title. The title is deemed effective on the date the appropriate documents are recorded with the county auditor.

(2) Where the manufactured home is to be moved to a new location but again will be affixed to land owned by the homeowner a new title need not be issued, but the following procedures must be complied with:

(a) The owner shall apply to the department for a transfer in location of the manufactured home and if a new owner, a transfer in ownership by filing an application pursuant to RCW 65.20.040. In addition the owner shall include:

(i) An affidavit in the form prescribed by the department signed by all of the owners of the real property from which the manufactured home is being moved indicating their consent. The affidavit shall include the consent of all secured parties and other lienholders in the land from which the manufactured home is being moved;

(ii) A legal description and property tax parcel number of the real property from which the home is being removed and a legal description and property tax parcel number of the land on which the home is being moved to; and

(iii) A certification from a title insurance company listing the owners and lienholders in the land and dated within ten days of the application for transfer in location under this subsection;

(b) The owner shall apply for and obtain permits necessary to move a manufactured home including but not limited to RCW 46.44.170, and comply with other regulations regarding moving a manufactured home; and

(c) After approval, including verification that the owners, secured parties, and other lienholders have consented to the move, the department shall have the approved application recorded in the county or counties in which the land from which the home is being removed and the land to which the home is being moved is located. [1989 c 343 § 7.]

65.20.080 Eliminating title—Uniform forms. (Effective March 1, 1990.) The department may prepare standard affidavits, lienholder's consents, and other forms to be used pursuant to this chapter. [1989 c 343 § 8.]

65.20.090 Eliminating title—Fees. (Effective March 1, 1990.) The director may, in addition to the title fees and other fees and taxes required under chapter 46.12 RCW establish by rule a reasonable fee to cover the cost of processing documents and performing services by the department required under this chapter.

Fees collected by the department for services provided by the department under this chapter shall be forwarded to the state treasurer. The state treasurer shall credit such moneys to the motor vehicle fund and all department expenses incurred in carrying out the provisions of this chapter shall be paid from such fund as authorized by legislative appropriation. [1989 c 343 § 9.]

65.20.100 Eliminating title—General supervision. (Effective March 1, 1990.) The department shall have the general supervision and control of the elimination of titles and shall have full power to do all things necessary

and proper to carry out the provisions of this chapter. The director shall have the power to appoint the county auditors as the agents of the department. [1989 c 343 § 11.]

65.20.110 Eliminating title—Rules. (Effective March 1, 1990.) The department may make any reasonable rules relating to the enforcement and proper operation of this chapter. [1989 c 343 § 12.]

65.20.120 Eliminating title—Notice. (Effective March 1, 1990.) County auditors shall notify county assessors regarding elimination of titles to manufactured homes, the retitling of manufactured homes, and the movement of manufactured homes under RCW 65.20.070. [1989 c 343 § 13.]

65.20.130 General penalties. (Effective March 1, 1990.) Every person who falsifies or intentionally omits material information required in an affidavit, or otherwise intentionally violates a material provision of this chapter, is guilty of a gross misdemeanor punishable in accordance with RCW 9A.20.021. [1989 c 343 § 10.]

65.20.900 Prospective effect. (Effective March 1, 1990.) This chapter applies prospectively only. RCW 65.20.030 applies to all security interests perfected on or after March 1, 1990. This chapter applies to the sale or transfer of manufactured homes on or after March 1, 1990, where all of the existing ownership rights and interests in the manufactured home are terminated in favor of new and different owners, or where persons who own a manufactured home on or after March 1, 1990, voluntarily elect to eliminate the title to the manufactured home under this chapter. [1989 c 343 § 14.]

65.20.910 Effect on taxation. (Effective March 1, 1990.) Nothing in this chapter shall be construed to affect the taxation of manufactured homes. [1989 c 343 § 15.]

65.20.920 Captions not law. (Effective March 1, 1990.) Section headings as used in this chapter do not constitute any part of the law. [1989 c 343 § 16.]

65.20.930 Short title. (Effective March 1, 1990.) This chapter may be known and cited as the manufactured home real property act. [1989 c 343 § 17.]

65.20.940 Severability—1989 c 343. (Effective March 1, 1990.) If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1989 c 343 § 26.]

65.20.950 Effective date—1989 c 343. This act shall take effect on March 1, 1990. [1989 c 343 § 27.]

Title 66

ALCOHOLIC BEVERAGE CONTROL

Chapters

- 66.04 Definitions.
- 66.08 Liquor control board—General provisions.
- 66.12 Exemptions.
- 66.16 State liquor stores.
- 66.20 Liquor permits.
- 66.24 Licenses—Stamp taxes.
- 66.28 Miscellaneous regulatory provisions.
- 66.32 Search and seizure.
- 66.36 Abatement proceedings.
- 66.40 Local option.
- 66.44 Enforcement—Penalties.
- 66.98 Construction.

Alcoholism, intoxication, and drug addiction private establishments: Chapter 71.12 RCW. treatment: Chapter 70.96A RCW.

Hospitalization and medical aid for public employees and dependents—Premiums, governmental contributions authorized: RCW 41.04.180, 41.04.190.

Wine grape industry, instruction relating to—Purpose—Administration: RCW 28B.30.067 and 28B.30.068.

Chapter 66.04 DEFINITIONS

Sections

- 66.04.010 Definitions.
- 66.04.011 "Public place" not to include certain parks and picnic areas.

66.04.010 Definitions. In this title, unless the context otherwise requires:

(1) "Alcohol" is that substance known as ethyl alcohol, hydrated oxide of ethyl, or spirit of wine, which is commonly produced by the fermentation or distillation of grain, starch, molasses, or sugar, or other substances including all dilutions and mixtures of this substance. The term "alcohol" does not include alcohol in the possession of a manufacturer or distiller of alcohol fuel, as described in RCW 66.12.130, which is intended to be denatured and used as a fuel for use in motor vehicles, farm implements, and machines or implements of husbandry.

(2) "Beer" means any malt beverage or malt liquor as these terms are defined in this chapter.

(3) "Brewer" means any person engaged in the business of manufacturing beer and malt liquor.

(4) "Board" means the liquor control board, constituted under this title.

(5) "Club" means an organization of persons, incorporated or unincorporated, operated solely for fraternal, benevolent, educational, athletic or social purposes, and not for pecuniary gain.

(6) "Consume" includes the putting of liquor to any use, whether by drinking or otherwise.

(7) "Dentist" means a practitioner of dentistry duly and regularly licensed and engaged in the practice of his profession within the state pursuant to chapter 18.32 RCW.

(8) "Distiller" means a person engaged in the business of distilling spirits.

(9) "Druggist" means any person who holds a valid certificate and is a registered pharmacist and is duly and regularly engaged in carrying on the business of pharmaceutical chemistry pursuant to chapter 18.64 RCW.

(10) "Drug store" means a place whose principal business is, the sale of drugs, medicines and pharmaceutical preparations and maintains a regular prescription department and employs a registered pharmacist during all hours the drug store is open.

(11) "Employee" means any person employed by the board, including a vendor, as hereinafter in this section defined.

(12) "Fund" means 'liquor revolving fund.'

(13) "Hotel" means every building or other structure kept, used, maintained, advertised or held out to the public to be a place where food is served and sleeping accommodations are offered for pay to transient guests, in which twenty or more rooms are used for the sleeping accommodation of such transient guests and having one or more dining rooms where meals are served to such transient guests, such sleeping accommodations and dining rooms being conducted in the same building and buildings, in connection therewith, and such structure or structures being provided, in the judgment of the board, with adequate and sanitary kitchen and dining room equipment and capacity, for preparing, cooking and serving suitable food for its guests: *Provided further*, That in cities and towns of less than five thousand population, the board shall have authority to waive the provisions requiring twenty or more rooms.

(14) "Imprisonment" means confinement in the county jail.

(15) "Liquor" includes the four varieties of liquor herein defined (alcohol, spirits, wine and beer), and all fermented, spirituous, vinous, or malt liquor, or combinations thereof, and mixed liquor, a part of which is fermented, spirituous, vinous or malt liquor, or otherwise intoxicating; and every liquid or solid or semisolid or other substance, patented or not, containing alcohol, spirits, wine or beer, and all drinks or drinkable liquids and all preparations or mixtures capable of human consumption, and any liquid, semisolid, solid, or other substance, which contains more than one percent of alcohol

by weight shall be conclusively deemed to be intoxicating. Liquor does not include confections or food products that contain one percent or less of alcohol by weight.

(16) "Manufacturer" means a person engaged in the preparation of liquor for sale, in any form whatsoever.

(17) "Malt beverage" or "malt liquor" means any beverage such as beer, ale, lager beer, stout, and porter obtained by the alcoholic fermentation of an infusion or decoction of pure hops, or pure extract of hops and pure barley malt or other wholesome grain or cereal in pure water containing not more than eight percent of alcohol by weight, and not less than one-half of one percent of alcohol by volume. For the purposes of this title, any such beverage containing more than eight percent of alcohol by weight shall be referred to as "strong beer."

(18) "Package" means any container or receptacle used for holding liquor.

(19) "Permit" means a permit for the purchase of liquor under this title.

(20) "Person" means an individual, copartnership, association, or corporation.

(21) "Physician" means a medical practitioner duly and regularly licensed and engaged in the practice of his profession within the state pursuant to chapter 18.71 RCW.

(22) "Prescription" means a memorandum signed by a physician and given by him to a patient for the obtaining of liquor pursuant to this title for medicinal purposes.

(23) "Public place" includes streets and alleys of incorporated cities and towns; state or county or township highways or roads; buildings and grounds used for school purposes; public dance halls and grounds adjacent thereto; those parts of establishments where beer may be sold under this title, soft drink establishments, public buildings, public meeting halls, lobbies, halls and dining rooms of hotels, restaurants, theatres, stores, garages and filling stations which are open to and are generally used by the public and to which the public is permitted to have unrestricted access; railroad trains, stages, and other public conveyances of all kinds and character, and the depots and waiting rooms used in conjunction therewith which are open to unrestricted use and access by the public; publicly owned bathing beaches, parks, and/or playgrounds; and all other places of like or similar nature to which the general public has unrestricted right of access, and which are generally used by the public.

(24) "Regulations" means regulations made by the board under the powers conferred by this title.

(25) "Restaurant" means any establishment provided with special space and accommodations where, in consideration of payment, food, without lodgings, is habitually furnished to the public, not including drug stores and soda fountains.

(26) "Sale" and "sell" include exchange, barter, and traffic; and also include the selling or supplying or distributing, by any means whatsoever, of liquor, or of any liquid known or described as beer or by any name whatever commonly used to describe malt or brewed liquor or of wine, by any person to any person; and also include a

sale or selling within the state to a foreign consignee or his agent in the state.

(27) "Soda fountain" means a place especially equipped with apparatus for the purpose of dispensing soft drinks, whether mixed or otherwise.

(28) "Spirits" means any beverage which contains alcohol obtained by distillation, including wines exceeding twenty-four percent of alcohol by volume.

(29) "Store" means a state liquor store established under this title.

(30) "Tavern" means any establishment with special space and accommodation for sale by the glass and for consumption on the premises, of beer, as herein defined.

(31) "Vendor" means a person employed by the board as a store manager under this title.

(32) "Winery" means a business conducted by any person for the manufacture of wine for sale, other than a domestic winery.

(33) "Domestic winery" means a place where wines are manufactured or produced within the state of Washington.

(34) "Wine" means any alcoholic beverage obtained by fermentation of fruits (grapes, berries, apples, et cetera) or other agricultural product containing sugar, to which any saccharine substances may have been added before, during or after fermentation, and containing not more than twenty-four percent of alcohol by volume, including sweet wines fortified with wine spirits, such as port, sherry, muscatel and angelica, not exceeding twenty-four percent of alcohol by volume and not less than one-half of one percent of alcohol by volume. For purposes of this title, any beverage containing less than fourteen percent of alcohol by volume when bottled or packaged by the manufacturer shall be referred to as "table wine," and any beverage containing alcohol in an amount equal to or more than fourteen percent by volume when bottled or packaged by the manufacturer shall be referred to as "fortified wine." However, "fortified wine" shall not include: (a) Wines that are both sealed or capped by cork closure and aged two years or more; and (b) wines that contain fourteen percent or more alcohol by volume solely as a result of the natural fermentation process and that have not been produced with the addition of wine spirits, brandy, or alcohol.

This subsection shall not be interpreted to require that any wine be labeled with the designation "table wine" or "fortified wine."

(35) "Beer wholesaler" means a person who buys beer from a brewer or brewery located either within or beyond the boundaries of the state for the purpose of selling the same pursuant to this title, or who represents such brewer or brewery as agent.

(36) "Wine wholesaler" means a person who buys wine from a vintner or winery located either within or beyond the boundaries of the state for the purpose of selling the same not in violation of this title, or who represents such vintner or winery as agent. [1987 c 386 § 3; 1984 c 78 § 5; 1982 c 39 § 1; 1981 1st ex.s. c 5 § 1; 1980 c 140 § 3; 1969 ex.s. c 21 § 13; 1935 c 158 § 1; 1933 ex.s. c 62 § 3; RRS § 7306-3. Formerly RCW 66.04.010 through 66.04.380.]

Finding and declaration—Severability—1984 c 78: See notes following RCW 66.12.160.

Severability—1982 c 39: "If any provision of this amendatory act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1982 c 39 § 3.]

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

Effective date—1969 ex.s. c 21: "The effective date of this 1969 amendatory act is July 1, 1969." [1969 ex.s. c 21 § 15.]

66.04.011 "Public place" not to include certain parks and picnic areas. "Public place" as defined in this title shall not include (a) any of those parks under the control of the state parks and recreation commission, nor, (b) parks and picnic areas adjacent to and held by the same ownership as licensed brewers and domestic wineries for the consumption of beer and wine produced by the respective brewery or winery, as prescribed by regulation adopted by the board pursuant to chapter 34.05 RCW. [1977 ex.s. c 219 § 1; 1971 ex.s. c 208 § 3.]

Chapter 66.08

LIQUOR CONTROL BOARD—GENERAL PROVISIONS

Sections

66.08.010	Title liberally construed.
66.08.012	Creation of board—Chairman—Quorum—Salary.
66.08.014	Terms of members—Vacancies—Principal office—Removal—Devotion of time to duties—Bond—Oath.
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66.08.020	Liquor control board to administer.
66.08.022	Attorney general is general counsel of board—Duties—Assistants.
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66.08.160	Acquisition of warehouse authorized.

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66.08.170	Liquor revolving fund—Creation—Composition—State treasurer as custodian—Daily deposits, exceptions—Budget and accounting act applicable.
66.08.180	Liquor revolving fund—Distribution—Reserve for administration—Disbursement to universities and department of social and health services.
66.08.190	Liquor revolving fund—Disbursement of excess funds to state, counties and cities.
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66.08.210	Liquor revolving fund—Computation for distribution to cities.
66.08.220	Liquor revolving fund—Separate account of part of gross sales to class H licensees, distribution.
66.08.230	Initial disbursement to wine commission—Repayment.

Board of review, business registration and licensing system, chairman as member of: RCW 19.02.040.

Hops, standards for baling and tare: RCW 19.92.240.

Public bodies may retain collection agencies to collect public debts: RCW 19.16.500.

66.08.010 Title liberally construed. This entire title shall be deemed an exercise of the police power of the state, for the protection of the welfare, health, peace, morals, and safety of the people of the state, and all its provisions shall be liberally construed for the accomplishment of that purpose. [1933 ex.s. c 62 § 2; RRS § 7306-2.]

66.08.012 Creation of board—Chairman—Quorum—Salary. There shall be a board, known as the "Washington state liquor control board," consisting of three members, to be appointed by the governor, with the consent of the senate, who shall each be paid an annual salary to be fixed by the governor in accordance with the provisions of RCW 43.03.040. The governor may, in his discretion, appoint one of the members as chairman of the board, and a majority of the members shall constitute a quorum of the board. [1961 c 307 § 7; 1949 c 5 § 8; 1945 c 208 § 1; 1937 c 225 § 1; 1933 ex.s. c 62 § 63; Rem. Supp. 1949 § 7306-63. Formerly RCW 43.66.010.]

Severability—1945 c 5: See RCW 66.98.080.

66.08.014 Terms of members—Vacancies—Principal office—Removal—Devotion of time to duties—Bond—Oath. (1) The members of the board to be appointed after December 2, 1948 shall be appointed for terms beginning January 15, 1949, and expiring as follows: One member of the board for a term of three years from January 15, 1949; one member of the board for a term of six years from January 15, 1949; and one member of the board for a term of nine years from January 15, 1949. Each of the members of the board appointed hereunder shall hold office until his successor is appointed and qualified. After June 11, 1986, the term that began on January 15, 1985, will end on January 15, 1989, the term beginning on January 15, 1988, will end on January 15, 1993, and the term beginning on January 15, 1991, will end on January 15, 1997. Thereafter, upon the expiration of the term of any

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member appointed after June 11, 1986, each succeeding member of the board shall be appointed and hold office for the term of six years. In case of a vacancy, it shall be filled by appointment by the governor for the unexpired portion of the term in which said vacancy occurs. No vacancy in the membership of the board shall impair the right of the remaining member or members to act, except as herein otherwise provided.

(2) The principal office of the board shall be at the state capitol, and it may establish such other offices as it may deem necessary.

(3) Any member of the board may be removed for inefficiency, malfeasance or misfeasance in office, upon specific written charges filed by the governor, who shall transmit such written charges to the member accused and to the chief justice of the supreme court. The chief justice shall thereupon designate a tribunal composed of three judges of the superior court to hear and adjudicate the charges. Such tribunal shall fix the time of the hearing, which shall be public, and the procedure for the hearing, and the decision of such tribunal shall be final and not subject to review by the supreme court. Removal of any member of the board by the tribunal shall disqualify such member for reappointment.

(4) Each member of the board shall devote his entire time to the duties of his office and no member of the board shall hold any other public office. Before entering upon the duties of his office, each of said members of the board shall enter into a surety bond executed by a surety company authorized to do business in this state, payable to the state of Washington, to be approved by the governor in the penal sum of fifty thousand dollars conditioned upon the faithful performance of his duties, and shall take and subscribe to the oath of office prescribed for elective state officers, which oath and bond shall be filed with the secretary of state. The premium for said bond shall be paid by the board. [1986 c 105 § 1; 1949 c 5 § 9; 1947 c 113 § 1; 1945 c 208 § 2; 1933 ex.s. c 62 § 64; Rem. Supp. 1949 § 7306-64. Formerly RCW 43.66.020.]

Severability—1949 c 5: See RCW 66.98.080.

66.08.016 Employees of the board. The board may employ such number of employees as in its judgment are required from time to time. [1961 c 1 § 30 (Initiative Measure No. 207, approved November 8, 1960); 1947 c 113 § 2; 1933 ex.s. c 62 § 65; Rem. Supp. 1947 § 7306-65. Formerly RCW 43.66.030.]

66.08.020 Liquor control board to administer. The administration of this title, including the general control, management and supervision of all liquor stores, shall be vested in the liquor control board, constituted under this title. [1933 ex.s. c 62 § 5; RRS § 7306-5.]

Prosecuting attorney to make annual report of liquor law prosecutions:
RCW 36.27.020.

66.08.022 Attorney general is general counsel of board—Duties—Assistants. The attorney general shall be the general counsel of the liquor control board

and he shall institute and prosecute all actions and proceedings which may be necessary in the enforcement and carrying out of the provisions of this chapter and Title 66 RCW.

He shall assign such assistants as may be necessary to the exclusive duty of assisting the liquor control board in the enforcement of Title 66 RCW. [1961 ex.s. c 6 § 2; 1933 ex.s. c 62 § 66; RRS § 7306-66. Formerly RCW 43.66.140.]

Effective date—Transfer of liquor revolving fund to state treasurer—Outstanding obligations—1961 ex.s. c 6: See notes following RCW 66.08.170.

66.08.024 Annual audit—State auditor's duties—Additional audits—Public records. The state auditor shall audit the books, records, and affairs of the board annually. The board may provide for additional audits by certified public accountants. All such audits shall be public records of the state. The payment of the audits provided for in this section shall be paid as provided in RCW 66.08.026 for other administrative expenses. [1987 c 74 § 1; 1981 1st ex.s. c 5 § 2; 1961 ex.s. c 6 § 3; 1937 c 138 § 1; 1935 c 174 § 12; 1933 ex.s. c 62 § 71; RRS § 7306-71. Formerly RCW 43.66.150.]

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

Effective date—Transfer of liquor revolving fund to state treasurer—Outstanding obligations—1961 ex.s. c 6: See notes following RCW 66.08.170.

66.08.026 Appropriation and payment of administrative expenses from liquor revolving fund—"Administrative expenses" defined. All administrative expenses of the board incurred on and after April 1, 1963 shall be appropriated and paid from the liquor revolving fund. These administrative expenses shall include, but not be limited to: The salaries and expenses of the board and its employees, the cost of establishing, leasing, maintaining, and operating state liquor stores and warehouses, legal services, annual or other audits, and other general costs of conducting the business of the board. The administrative expenses shall not, however, be deemed to include costs of liquor and lottery tickets purchased, the cost of transportation and delivery to the point of distribution, other costs pertaining to the acquisition and receipt of liquor and lottery tickets, packaging and repackaging of liquor, sales tax, and those amounts distributed pursuant to RCW 66.08.180, 66.08.190, 66.08.200, 66.08.210 and 66.08.220. [1983 c 160 § 2; 1963 c 239 § 1; 1961 ex.s. c 6 § 4. Formerly RCW 43.66.161.]

Severability—1963 c 239: "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1963 c 239 § 2.]

Effective date—Transfer of liquor revolving fund to state treasurer—Outstanding obligations—1961 ex.s. c 6: See notes following RCW 66.08.170.

66.08.028 Reports by board to governor and legislature. The board shall, from time to time, make reports to the governor covering such matters in connection with the administration and enforcement of this title as the

governor may require, and, subject to RCW 40.07.040, the board shall prepare and forward to the governor biennially, to be laid before the legislature, a report for the fiscal period containing:

(1) A financial statement and balance sheet showing in general the condition of the business and its operation during the year;

(2) A summary of all prosecutions for infractions and the results thereof;

(3) General information and remarks; and

(4) Any further information requested by the governor. [1987 c 505 § 56; 1977 c 75 § 79; 1955 c 182 § 1; 1935 c 174 § 13; 1933 ex.s. c 62 § 72; RRS § 7306-72. Formerly RCW 43.66.170.]

66.08.030 Regulations—Scope. (1) For the purpose of carrying into effect the provisions of this title according to their true intent or of supplying any deficiency therein, the board may make such regulations not inconsistent with the spirit of this title as are deemed necessary or advisable. All regulations so made shall be a public record and shall be filed in the office of the code reviser, and thereupon shall have the same force and effect as if incorporated in this title. Such regulations, together with a copy of this title, shall be published in pamphlets and shall be distributed as directed by the board.

(2) Without thereby limiting the generality of the provisions contained in subsection (1), it is declared that the power of the board to make regulations in the manner set out in that subsection shall extend to

(a) regulating the equipment and management of stores and warehouses in which state liquor is sold or kept, and prescribing the books and records to be kept therein and the reports to be made thereon to the board;

(b) prescribing the duties of the employees of the board, and regulating their conduct in the discharge of their duties;

(c) governing the purchase of liquor by the state and the furnishing of liquor to stores established under this title;

(d) determining the classes, varieties, and brands of liquor to be kept for sale at any store;

(e) prescribing, subject to RCW 66.16.080, the hours during which the state liquor stores shall be kept open for the sale of liquor;

(f) providing for the issuing and distributing of price lists showing the price to be paid by purchasers for each variety of liquor kept for sale under this title;

(g) prescribing an official seal and official labels and stamps and determining the manner in which they shall be attached to every package of liquor sold or sealed under this title, including the prescribing of different official seals or different official labels for different classes of liquor;

(h) providing for the payment by the board in whole or in part of the carrying charges on liquor shipped by freight or express;

(i) prescribing forms to be used for purposes of this title or the regulations, and the terms and conditions to

be contained in permits and licenses issued under this title;

(j) prescribing the fees payable in respect of permits and licenses issued under this title for which no fees are prescribed in this title, and prescribing the fees for anything done or permitted to be done under the regulations;

(k) prescribing the kinds and quantities of liquor which may be kept on hand by the holder of a special permit for the purposes named in the permit, regulating the manner in which the same shall be kept and disposed of, and providing for the inspection of the same at any time at the instance of the board;

(l) regulating the sale of liquor kept by the holders of licenses which entitle the holder to purchase and keep liquor for sale;

(m) prescribing the records of purchases or sales of liquor kept by the holders of licenses, and the reports to be made thereon to the board, and providing for inspection of the records so kept;

(n) prescribing the kinds and quantities of liquor for which a prescription may be given, and the number of prescriptions which may be given to the same patient within a stated period;

(o) prescribing the manner of giving and serving notices required by this title or the regulations, where not otherwise provided for in this title;

(p) regulating premises in which liquor is kept for export from the state, or from which liquor is exported, prescribing the books and records to be kept therein and the reports to be made thereon to the board, and providing for the inspection of the premises and the books, records and the liquor so kept;

(q) prescribing the conditions and qualifications requisite for the obtaining of club licenses and the books and records to be kept and the returns to be made by clubs, prescribing the manner of licensing clubs in any municipality or other locality, and providing for the inspection of clubs;

(r) prescribing the conditions, accommodations and qualifications requisite for the obtaining of licenses to sell beer and wines, and regulating the sale of beer and wines thereunder;

(s) specifying and regulating the time and periods when, and the manner, methods and means by which manufacturers shall deliver liquor within the state; and the time and periods when, and the manner, methods and means by which liquor may lawfully be conveyed or carried within the state;

(t) providing for the making of returns by brewers of their sales of beer shipped within the state, or from the state, showing the gross amount of such sales and providing for the inspection of brewers' books and records, and for the checking of the accuracy of any such returns;

(u) providing for the making of returns by the wholesalers of beer whose breweries are located beyond the boundaries of the state;

(v) providing for the making of returns by any other liquor manufacturers, showing the gross amount of liquor produced or purchased, the amount sold within and

exported from the state, and to whom so sold or exported, and providing for the inspection of the premises of any such liquor manufacturers, their books and records, and for the checking of any such return;

(w) providing for the giving of fidelity bonds by any or all of the employees of the board: *Provided*, That the premiums therefor shall be paid by the board;

(x) providing for the shipment by mail or common carrier of liquor to any person holding a permit and residing in any unit which has, by election pursuant to this title, prohibited the sale of liquor therein;

(y) prescribing methods of manufacture, conditions of sanitation, standards of ingredients, quality and identity of alcoholic beverages manufactured, sold, bottled, or handled by licensees and the board; and conducting from time to time, in the interest of the public health and general welfare, scientific studies and research relating to alcoholic beverages and the use and effect thereof;

(z) seizing, confiscating and destroying all alcoholic beverages manufactured, sold or offered for sale within this state which do not conform in all respects to the standards prescribed by this title or the regulations of the board: *Provided*, Nothing herein contained shall be construed as authorizing the liquor board to prescribe, alter, limit or in any way change the present law as to the quantity or percentage of alcohol used in the manufacturing of wine or other alcoholic beverages. [1977 ex.s. c 115 § 1; 1971 c 62 § 1; 1943 c 102 § 1; 1933 ex.s. c 62 § 79; RRS § 7306-79. Formerly RCW 66.08.030 and 66.08.040.]

66.08.050 Powers of board in general. The board, subject to the provisions of this title and the regulations, shall

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

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

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

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

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

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

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

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

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

(10) perform all other matters and things, whether similar to the foregoing or not, to carry out the provisions of this title, and shall have full power to do each and every act necessary to the conduct of its business, including all buying, selling, preparation and approval of forms, and every other function of the business whatsoever, subject only to audit by the state auditor: *Provided*, That the board shall have no authority to regulate the content of spoken language on licensed premises where wine and other liquors are served and where there is not a clear and present danger of disorderly conduct being provoked by such language. [1986 c 214 § 2; 1983 c 160 § 1; 1975 1st ex.s. c 173 § 1; 1969 ex.s. c 178 § 1; 1963 c 239 § 3; 1935 c 174 § 10; 1933 ex.s. c 62 § 69; RRS § 7306-69.]

Severability—1975 1st ex.s. c 173: "If any phrase, clause, subsection, or section of this 1975 amendatory act shall be declared unconstitutional or invalid by any court of competent jurisdiction, it shall be conclusively presumed that the legislature would have enacted this 1975 amendatory act without the phrase, clause, subsection, or section so held unconstitutional or invalid and the remainder of the act shall not be affected as a result of said part being held unconstitutional or invalid." [1975 1st ex.s. c 173 § 13.]

Effective date—1975 1st ex.s. c 173: "This 1975 amendatory act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1975." [1975 1st ex.s. c 173 § 14.]

Severability—1963 c 239: See note following RCW 66.08.026.

66.08.055 Oaths may be administered and affidavits, declarations received. Every member of the board, and every employee authorized by the board to issue permits under this title may administer any oath and take and receive any affidavit or declaration required under this title or the regulations. [1933 ex.s. c 62 § 80; RRS § 7306-80. Formerly RCW 43.66.050.]

66.08.060 Board cannot advertise liquor—Advertising regulations. The board shall not advertise liquor in any form or through any medium whatsoever. The board shall have power to adopt any and all reasonable regulations as to the kind, character and location of advertising of liquor. [1933 ex.s. c 62 § 43; RRS § 7306-43.]

66.08.070 Purchase of liquor by board—Consignment not prohibited—Warranty or affirmation not required for wine or malt purchases. (1) Every order for the purchase of liquor shall be authorized by the board, and no order for liquor shall be valid or binding unless it is so authorized and signed by the board or its authorized designee.

(2) A duplicate of every such order shall be kept on file in the office of the board.

(3) All cancellations of such orders made by the board shall be signed in the same manner and duplicates thereof kept on file in the office of the board. Nothing in this title shall be construed as preventing the board from accepting liquor on consignment.

(4) In the purchase of wine or malt beverages the board shall not require, as a term or condition of purchase, any warranty or affirmation with respect to the relationship of the price charged the board to any price charged any other buyer. [1985 c 226 § 2; 1973 1st ex.s. c 209 § 1; 1933 ex.s. c 62 § 67; RRS § 7306-67.]

Severability—1973 1st ex.s. c 209: "If any phrase, clause, subsection or section of this 1973 amendatory act shall be declared unconstitutional or invalid by any court of competent jurisdiction, it shall be conclusively presumed that the legislature would have enacted this 1973 amendatory act without the phrase, clause, subsection or section so held unconstitutional or invalid and the remainder of the act shall not be affected as a result of said part being held unconstitutional or invalid." [1973 1st ex.s. c 209 § 21.]

Effective date—1973 1st ex.s. c 209: "This 1973 amendatory act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1973." [1973 1st ex.s. c 209 § 22.]

66.08.075 Officers, employees not to represent manufacturer, wholesaler in sale to board. No official or employee of the liquor control board of the state of Washington shall, during his term of office or employment, or for a period of two years immediately following the termination thereof, represent directly or indirectly any manufacturer or wholesaler of liquor in the sale of liquor to the board. [1937 c 217 § 5 (adding new section 42-A to 1933 ex.s. c 62); RRS § 7306-42A. Formerly RCW 43.66.040.]

66.08.080 Interest in manufacture or sale of liquor prohibited. Except as provided by chapter 42.18 RCW, no member of the board and no employee of the board shall have any interest, directly or indirectly, in the manufacture of liquor or in any liquor sold under this title, or derive any profit or remuneration from the sale of liquor, other than the salary or wages payable to him in respect of his office or position, and shall receive no gratuity from any person in connection with such business. [1981 1st ex.s. c 5 § 3; 1933 ex.s. c 62 § 68; RRS § 7306-68.]

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66-98.090 and 66.98.100.

66.08.090 Sale of liquor by employees of board. No employee shall sell liquor in any other place, nor at any other time, nor otherwise than as authorized by the board under this title and the regulations. [1933 ex.s. c 62 § 31; RRS § 7306-31.]

66.08.100 Jurisdiction of action against board—Immunity from personal liability of members. No court of the state of Washington other than the superior court of Thurston county shall have jurisdiction over any action or proceeding against the board or any member thereof for anything done or omitted to be done in or

arising out of the performance of his or their duties under this title. Neither the board nor any member or members thereof shall be personally liable in any action at law for damages sustained by any person because of any acts performed or done or omitted to be done by the board or any employee of the board in the performance of his duties and in the administration of this title. [1935 c 174 § 9 (adding new section 62-A to 1933 ex.s. c 62); RRS § 7306-62A. Formerly RCW 66.08.100 and 66.08.110.]

66.08.120 Preemption of field by state—Exception. No municipality or county shall have power to license the sale of, or impose an excise tax upon, liquor as defined in this title, or to license the sale or distribution thereof in any manner; and any power now conferred by law on any municipality or county to license premises which may be licensed under this section, or to impose an excise tax upon liquor, or to license the sale and distribution thereof, as defined in this title, shall be suspended and shall be of no further effect: *Provided*, That municipalities and counties shall have power to adopt police ordinances and regulations not in conflict with this title or with the regulations made by the board. [1933 ex.s. c 62 § 29; RRS § 7306-29.]

66.08.130 Inspection of books and records—Goods possessed or shipped—Refusal as violation. For the purpose of obtaining information concerning any matter relating to the administration or enforcement of this title, the board, or any person appointed by it in writing for the purpose, may inspect the books and records of

- (1) any manufacturer;
- (2) any license holder;
- (3) any drug store holding a permit to sell on prescriptions;
- (4) the freight and express books and records and all waybills, bills of lading, receipts and documents in the possession of any common carrier doing business within the state, containing any information or record relating to any goods shipped or carried, or consigned or received for shipment or carriage within the state. Every manufacturer, license holder, drug store holding a permit to sell on prescriptions, and common carrier, and every owner or officer or employee of the foregoing, who neglects or refuses to produce and submit for inspection any book, record or document referred to in this section when requested to do so by the board or by a person so appointed by it shall be guilty of a violation of this title. [1981 1st ex.s. c 5 § 4; 1933 ex.s. c 62 § 56; RRS § 7306-56.]

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66-98.090 and 66.98.100.

66.08.140 Inspection of books and records—Financial dealings—Penalty for refusal. For the purpose of obtaining information concerning any matter relating to the administration or enforcement of this title, the board, or any person appointed by it in writing for the purpose, may inspect the books, documents and records

of any person lending money to or in any manner financing any license, holder or applicant for license insofar as such books, documents and/or records pertain to the financial transaction involved. Every person who neglects or refuses to produce and submit for inspection any book, record or document as required by this section when requested to do so by the board or by a person duly appointed by it shall be guilty of a violation of this title. [1945 c 48 § 1 (adding new section 56-A to 1933 ex.s. c 62); RRS § 7306-56A.]

66.08.150 Board's action as to permits and licenses—Administrative Procedure Act, applicability—Adjudicative proceeding—Opportunity for hearing—Summary suspension. The action, order, or decision of the board as to any denial of an application for the reissuance of a permit or license or as to any revocation, suspension, or modification of any permit or license shall be an adjudicative proceeding and subject to the applicable provisions of chapter 34.05 RCW.

(1) An opportunity for a hearing may be provided an applicant for the reissuance of a permit or license prior to the disposition of the application, and if no such opportunity for a prior hearing is provided then an opportunity for a hearing to reconsider the application must be provided the applicant.

(2) An opportunity for a hearing must be provided a permittee or licensee prior to a revocation or modification of any permit or license and, except as provided in subsection (4) of this section, prior to the suspension of any permit or license.

(3) No hearing shall be required until demanded by the applicant, permittee, or licensee.

(4) The board may summarily suspend a license or permit for a period of up to thirty days without a prior hearing if it finds that public health, safety, or welfare imperatively require emergency action, and incorporates a finding to that effect in its order; and proceedings for revocation or other action must be promptly instituted and determined. [1989 c 175 § 122; 1967 c 237 § 23; 1933 ex.s. c 62 § 62 RRS § 7306-62.]

Effective date—1989 c 175: See note following RCW 34.05.010.

66.08.160 Acquisition of warehouse authorized. The Washington state liquor board and the state finance committee are hereby authorized to lease or purchase or acquire a site and erect a warehouse building in the city of Seattle, and for that purpose may borrow money and may issue bonds in an amount not to exceed one million five hundred thousand dollars to be amortized from liquor revenues over a period of not to exceed ten years. [1947 c 134 § 1; No RRS.]

66.08.170 Liquor revolving fund—Creation—Composition—State treasurer as custodian—Daily deposits, exceptions—Budget and accounting act applicable. There shall be a fund, known as the "liquor revolving fund", which shall consist of all license fees, permit fees, penalties, forfeitures, and all other moneys, income, or revenue received by the board. The state

treasurer shall be custodian of the fund. All moneys received by the board or any employee thereof, except for change funds and an amount of petty cash as fixed by the board within the authority of law shall be deposited each day in a depository approved by the state treasurer and transferred to the state treasurer to be credited to the liquor revolving fund. Disbursements from the revolving fund shall be on authorization of the board or a duly authorized representative thereof. In order to maintain an effective expenditure and revenue control the liquor revolving fund shall be subject in all respects to chapter 43.88 RCW but no appropriation shall be required to permit expenditures and payment of obligations from such fund. [1961 ex.s. c 6 § 1; 1933 ex.s. c 62 § 73; RRS § 7306-73. Formerly RCW 43.66.060.]

Transfer of liquor revolving fund to state treasurer—Outstanding obligations: "On June 30, 1961, the Washington state liquor control board shall deliver and transfer to the state treasurer, as custodian, all moneys and accounts which comprise the liquor revolving fund, except change funds and petty cash, and the state treasurer shall assume custody thereof. All obligations outstanding as of June 30, 1961 shall be paid out of the liquor revolving fund." [1961 ex.s. c 6 § 5.]

Effective date—1961 ex.s. c 6: "This act shall take effect on June 30, 1961." [1961 ex.s. c 6 § 7.]

66.08.180 Liquor revolving fund—Distribution—Reserve for administration—Disbursement to universities and department of social and health services. Moneys in the liquor revolving fund shall be distributed by the board at least once every three months in accordance with RCW 66.08.190, 66.08.200 and 66.08.210: *Provided*, That the board shall reserve from distribution such amount not exceeding five hundred thousand dollars as may be necessary for the proper administration of this title: *And provided further*, That all license fees, penalties and forfeitures derived under this act from class H licenses or class H licensees shall every three months be disbursed by the board as follows:

(1) 5.95 percent to the University of Washington and 3.97 percent to Washington State University for alcoholism and drug abuse research and for the dissemination of such research;

(2) 1.75 percent, but in no event less than one hundred fifty thousand dollars per biennium, to the University of Washington to conduct the state toxicological laboratory pursuant to *RCW 68.08.107;

(3) 88.33 percent to the general fund to be used by the department of social and health services solely to carry out the purposes of **RCW 70.96.085, as now or hereafter amended;

(4) The first fifty-five dollars per license fee provided in RCW 66.24.320 and 66.24.330 up to a maximum of one hundred fifty thousand dollars annually shall be disbursed every three months by the board to the general fund to be used for juvenile alcohol and drug prevention programs for kindergarten through third grade to be administered by the superintendent of public instruction;

(5) Twenty percent of the remaining total amount derived from license fees pursuant to RCW 66.24.320, 66.24.330, 66.24.340, 66.24.350, 66.24.360, and 66.24.370, shall be transferred to the general fund to be used by the

department of social and health services solely to carry out the purposes of ****RCW 70.96.085**; and

(6) One-fourth cent per liter of the tax imposed by RCW 66.24.210 shall every three months be disbursed by the board to Washington State University solely for wine and wine grape research, extension programs related to wine and wine grape research, and resident instruction in both wine grape production and the processing aspects of the wine industry in accordance with RCW 28B.30.068. The director of financial management shall prescribe suitable accounting procedures to ensure that the funds transferred to the general fund to be used by the department of social and health services and appropriated are separately accounted for. [1987 c 458 § 10; 1986 c 87 § 1; 1981 1st ex.s. c 5 § 6; 1979 c 151 § 166; 1967 ex.s. c 75 § 1; 1965 ex.s. c 143 § 2; 1949 c 5 § 10; 1935 c 13 § 2; 1933 ex.s. c 62 § 77; Rem. Supp. 1949 § 7306-77. Formerly RCW 43.66.080.]

Reviser's note: *(1) RCW 68.08.107 was recodified as RCW 68.50.107 pursuant to 1987 c 331 § 89.

** (2) RCW 70.96.085 was repealed by 1989 c 270 § 35. Later enactment, see chapter 70.96A RCW.

Severability—1987 c 458: See note following RCW 48.21.160.

Effective date—1986 c 87: "This act shall take effect July 1, 1987." [1986 c 87 § 3.]

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

Effective date—1967 ex.s. c 75: "The effective date of this 1967 amendatory act is July 1, 1967." [1967 ex.s. c 75 § 3.]

Severability—1949 c 5: See RCW 66.98.080.

Distribution for state toxicological lab: RCW 68.50.107.

Wine grape industry, instruction relating to—Purpose—Administration: RCW 28B.30.067 and 28B.30.068.

66.08.190 Liquor revolving fund—Disbursement of excess funds to state, counties and cities. When excess funds are distributed, all moneys subject to distribution shall be disbursed as follows:

(1) Three-tenths of one percent to the department of community development to be allocated to border areas under RCW 66.08.195; and

(2) From the amount remaining after distribution under subsection (1) of this section, fifty percent to the general fund of the state, ten percent to the counties of the state, and forty percent to the incorporated cities and towns of the state. [1988 c 229 § 4; 1957 c 175 § 6. Prior: 1955 c 109 § 2; 1949 c 187 § 1, part; 1939 c 173 § 1, part; 1937 c 62 § 2, part; 1935 c 80 § 1, part; 1933 ex.s. c 62 § 78, part; Rem. Supp. 1949 § 7306-78, part. Formerly RCW 43.66.090.]

Finding—1988 c 229: "The legislature finds and declares that certain counties and municipalities near international borders are subjected to a constant volume and flow of travelers and visitors for whom local government services must be provided. The legislature further finds that it is in the public interest and for the protection of the health, property, and welfare of the residents and visitors to provide supplemental resources to augment and maintain existing levels of police protection in such areas and to alleviate the impact of such added burdens." [1988 c 229 § 2.]

Effective date—1988 c 229 §§ 2-4: "Sections 2 through 4 of this act shall take effect July 1, 1989." [1988 c 229 § 5.]

66.08.195 Liquor revolving fund—Allocation of funds to border areas. For the purposes of this section, the term "border area" means Blaine, Everson, Friday Harbor, Lynden, Nooksack, Northport, Oroville, Port Angeles, Sumas, and that area of Whatcom county commonly referred to as Point Roberts.

Funds allocable to border areas under RCW 66.08.190 shall be distributed pursuant to a formula developed by the department of community development, by rule, based on border traffic and historical public impacts of law enforcement problems caused by the border on local budgets. All such funds received by Whatcom county pursuant to this allocation shall be spent within the Point Roberts area. [1988 c 229 § 3.]

Finding—Effective date—1988 c 229: See notes following RCW 66.08.190.

66.08.200 Liquor revolving fund—Computation for distribution to counties—"Unincorporated area" defined. With respect to the ten percent share coming to the counties, the computations for distribution shall be made by the state agency responsible for collecting the same as follows:

The share coming to each eligible county shall be determined by a division among the eligible counties according to the relation which the population of the unincorporated area of such eligible county, as last determined by the office of financial management, bears to the population of the total combined unincorporated areas of all eligible counties, as determined by the office of financial management: *Provided*, That no county in which the sale of liquor is forbidden in the unincorporated area thereof as the result of an election shall be entitled to share in such distribution. "Unincorporated area" means all that portion of any county not included within the limits of incorporated cities and towns.

When a special county census has been conducted for the purpose of determining the population base of a county's unincorporated area for use in the distribution of liquor funds, the census figure shall become effective for the purpose of distributing funds as of the official census date once the census results have been certified by the office of financial management and officially submitted to the office of the secretary of state. [1979 c 151 § 167; 1977 ex.s. c 110 § 2; 1957 c 175 § 7. Prior: 1955 c 109 § 3; 1949 c 187 § 1, part; 1939 c 173 § 1, part; 1937 c 62 § 2, part; 1935 c 80 § 1, part; 1933 ex.s. c 62 § 78, part; Rem. Supp. 1949 § 7306-78, part. Formerly RCW 43.66.100.]

Population determinations, office of financial management: Chapter 43.62 RCW.

66.08.210 Liquor revolving fund—Computation for distribution to cities. With respect to the forty percent share coming to the incorporated cities and towns, the computations for distribution shall be made by the state agency responsible for collecting the same as follows:

The share coming to each eligible city or town shall be determined by a division among the eligible cities and towns within the state ratably on the basis of population

as last determined by the office of financial management: *And provided*, That no city or town in which the sale of liquor is forbidden as the result of an election shall be entitled to any share in such distribution. [1979 c 151 § 168; 1977 ex.s. c 110 § 3; 1957 c 175 § 8. Prior: 1949 c 187 § 1, part; 1939 c 173 § 1, part; 1937 c 62 § 2, part; 1935 c 80 § 1, part; 1933 ex.s. c 62 § 78, part; Rem. Supp. 1949 § 7306-78, part. Formerly RCW 43.66.110.]

Allocation of state funds on population basis: RCW 43.62.020, 43.62.030.

Determining population of territory annexed to city: RCW 35.13.260.

66.08.220 Liquor revolving fund—Separate account of part of gross sales to class H licensees, distribution. The board shall set aside in a separate account in the liquor revolving fund an amount equal to ten percent of its gross sales of liquor to class H licensees; and the moneys in said separate account shall be distributed in accordance with the provisions of RCW 66.08.190, 66.08.200 and 66.08.210: *Provided, however*, That no election unit in which the sale of liquor under class H licenses is unlawful shall be entitled to share in the distribution of moneys from such separate account. [1949 c 5 § 11 (adding new section 78-A to 1933 ex.s. c 62); Rem. Supp. 1949 § 7306-78A. Formerly RCW 43.66.130.]

Severability—1949 c 5: See RCW 66.98.080.

66.08.230 Initial disbursement to wine commission—Repayment. To provide for the operation of the wine commission prior to its first quarterly disbursement, the liquor control board shall, on July 1, 1987, disburse one hundred ten thousand dollars to the wine commission. However, such disbursement shall be repaid to the liquor control board by a reduction from the quarterly disbursements to the wine commission under RCW 66.24.210 of twenty-seven thousand five hundred dollars each quarter until such amount is repaid. These funds shall be used to establish the Washington wine commission and the other purposes delineated in chapter 15.88 RCW. [1987 c 452 § 12.]

Construction—Effective dates—Severability—1987 c 452: See RCW 15.88.900 through 15.88.902.

Chapter 66.12 EXEMPTIONS

Sections

66.12.010	Wine or beer manufactured for home use.
66.12.020	Sales of liquor to board.
66.12.030	Licensed manufacturers not prevented from storing liquor—Transshipment in interstate, foreign commerce—Interstate, foreign transactions protected.
66.12.060	Pharmaceutical preparations, patent medicines, denatured alcohol.
66.12.070	Medicinal, culinary and toilet preparations not usable as beverages—Sample and analysis.
66.12.110	Bringing alcoholic beverages into United States duty free for personal use—Payment of markup and tax on excess amounts—Class H license proximate to border.

66.12.120	Bringing alcoholic beverages into state from another state—Payment of markup and tax.
66.12.125	Alcohol for use as fuel—Legislative finding and declaration.
66.12.130	Alcohol for use as fuel in motor vehicles, farm implements, machines, etc., or in combination with other petroleum products for use as fuel.
66.12.140	Use of alcoholic beverages in culinary, restaurant, or food fermentation courses.
66.12.150	Beer or wine offered by hospital or nursing home for consumption on the premises.
66.12.160	Manufacture or sale of confections or food containing liquor.
66.12.170	Obtaining liquor for manufacturing confections or food products.
66.12.180	Donations to and use of wine by Washington wine commission.

66.12.010 Wine or beer manufactured for home use. Nothing in this title other than RCW 66.28.140, applies to wine or beer manufactured in any home for consumption therein, and not for sale. [1981 c 255 § 1; 1955 c 39 § 1; 1933 ex.s. c 62 § 32; RRS § 7306-32.]

66.12.020 Sales of liquor to board. Nothing in this title shall apply to or prevent the sale of liquor by any person to the board. [1933 ex.s. c 62 § 48; RRS § 7306-48.]

66.12.030 Licensed manufacturers not prevented from storing liquor—Transshipment in interstate, foreign commerce—Interstate, foreign transactions protected. (1) Nothing in this title shall prevent any person licensed to manufacture liquor from keeping liquor in his warehouse or place of business.

(2) Nothing in this title shall prevent the transshipment of liquor in interstate and foreign commerce; but no person shall import liquor into the state from any other state or country, except, as herein otherwise provided, for use or sale in the state, except the board.

(3) Every provision of this title which may affect transactions in liquor between a person in this state and a person in another state or in a foreign country shall be construed to affect such transactions so far only as the legislature has power to make laws in relation thereto. [1933 ex.s. c 62 § 49; RRS § 7306-49. Formerly RCW 66.12.030, 66.12.040 and 66.12.050.]

66.12.060 Pharmaceutical preparations, patent medicines, denatured alcohol. Nothing in this title shall apply to or prevent the sale, purchase or consumption

(1) of any pharmaceutical preparation containing liquor which is prepared by a druggist according to a formula of the pharmacopoeia of the United States, or the dispensatory of the United States; or

(2) of any proprietary or patent medicine; or

(3) of wood alcohol or denatured alcohol, except in the case of the sale, purchase, or consumption of wood alcohol or denatured alcohol for beverage purposes, either alone or combined with any other liquid or substance. [1933 ex.s. c 62 § 50; RRS § 7306-50.]

66.12.070 Medicinal, culinary and toilet preparations not usable as beverages—Sample and analysis. (1) Where a medicinal preparation contains liquor as one of

the necessary ingredients thereof, and also contains sufficient medication to prevent its use as an alcoholic beverage, nothing in this title shall apply to or prevent its composition or sale by a druggist when compounded from liquor purchased by the druggist under a special permit held by him, nor apply to or prevent the purchase or consumption of the preparation by any person for strictly medicinal purposes.

(2) Where a toilet or culinary preparation, that is to say, any perfume, lotion, or flavoring extract or essence, contains liquor and also contains sufficient ingredient or medication to prevent its use as a beverage, nothing in this title shall apply to or prevent the sale or purchase of that preparation by any druggist or other person who manufactures or deals in the preparation, nor apply to or prevent the purchase or consumption of the preparation by any person who purchases or consumes it for any toilet or culinary purpose.

(3) In order to determine whether any particular medicinal, toilet, or culinary preparation referred to in this section contains sufficient ingredient or medication to prevent its use as an alcoholic beverage, the board may cause a sample of the preparation, purchased or obtained from any person whomsoever, to be analyzed by an analyst appointed or designated by the board; and if it appears from a certificate signed by the analyst that he finds the sample so analyzed by him did not contain sufficient ingredient or medication to prevent its use as an alcoholic beverage, the certificate shall be conclusive evidence that the preparation, the sample of which was so analyzed, is not a preparation the sale or purchase of which is permitted by this section. [1933 ex.s. c 62 § 51; RRS § 7306-51. Formerly RCW 66.12.070, 66.12.080 and 66.12.090.]

66.12.110 Bringing alcoholic beverages into United States duty free for personal use—Payment of markup and tax on excess amounts—Class H license proximate to border. A person twenty-one years of age or over may bring into the state from without the United States, free of tax and markup, for his personal or household use such alcoholic beverages as have been declared and permitted to enter the United States duty free under federal law.

Such entry of alcoholic beverages in excess of that herein provided may be authorized by the board upon payment of an equivalent markup and tax as would be applicable to the purchase of the same or similar liquor at retail from a Washington state liquor store. The board shall adopt appropriate regulations pursuant to chapter 34.05 RCW for the purpose of carrying out the provisions of this section. The board may issue a class H license to a charitable or nonprofit corporation of the state of Washington, the majority of the officers and directors of which are United States citizens and the minority of the officers and directors of which are citizens of the Dominion of Canada, and where the location of the premises for such class H license is not more than ten miles south of the border between the United States and the province of British Columbia. [1975-'76 2nd

ex.s. c 20 § 1. Prior: 1975 1st ex.s. c 256 § 1; 1975 1st ex.s. c 173 § 2; 1967 c 38 § 1.]

Severability—Effective date—1975 1st ex.s. c 173: See notes following RCW 66.08.050.

66.12.120 Bringing alcoholic beverages into state from another state—Payment of markup and tax. Notwithstanding any other provision of Title 66 RCW, a person twenty-one years of age or over may be authorized by the board to bring into the state of Washington from another state a reasonable amount of alcoholic beverages for personal or household use only upon payment of an equivalent markup and tax as would be applicable to the purchase of the same or similar liquor at retail from a state liquor store. The board shall adopt appropriate regulations pursuant to chapter 34.05 RCW for the purpose of carrying into effect the provisions of this section. [1975 1st ex.s. c 173 § 3.]

Severability—Effective date—1975 1st ex.s. c 173: See notes following RCW 66.08.050.

66.12.125 Alcohol for use as fuel—Legislative finding and declaration. The legislature finds that the production of alcohol for use as a fuel or fuel supplement is of great importance to the state. Alcohol, when used as a fuel source, is less polluting to the atmosphere than conventional fuels and its use reduces the state's dependence on limited oil resources. Production of alcohol for use as a fuel provides a new use and market for Washington agricultural products and aids Washington farmers in producing food and fiber for the citizens of the state, nation, and world. Therefore, the legislature declares public policy to be one of encouragement toward the production and use of alcohol as a fuel or fuel supplement. [1980 c 140 § 1.]

66.12.130 Alcohol for use as fuel in motor vehicles, farm implements, machines, etc., or in combination with other petroleum products for use as fuel. Nothing in this title shall apply to or prevent the sale, importation, purchase, production, or blending of alcohol used solely for fuel to be used in motor vehicles, farm implements, and machines or implements of husbandry or in combination with gasoline or other petroleum products for use as such fuel. Manufacturers and distillers of such alcohol fuel are not required to obtain a license under this title. Alcohol which is produced for use as fuel shall be denatured in accordance with a formula approved by the federal bureau of alcohol, tobacco and firearms prior to the removal of the alcohol from the premises as described in the approved federal permit application: *Provided*, That alcohol which is being transferred between plants involved in the distillation or manufacture of alcohol fuel need not be denatured if it is transferred in accordance with federal bureau of alcohol, tobacco and firearms regulation 27 CFR 19.996 as existing on July 26, 1981. The exemptions from the state liquor control laws provided by this section only apply to distillers and manufacturers of alcohol to be used solely for fuel as long as the manufacturers and distillers are the holders

of an appropriate permit issued under federal law. [1981 c 179 § 1; 1980 c 140 § 2.]

66.12.140 Use of alcoholic beverages in culinary, restaurant, or food fermentation courses. (1) Nothing in this title shall prevent the use of beer, wine, and/or spirituous liquor, for cooking purposes only, in conjunction with a culinary or restaurant course offered by a college, university, community college, area vocational technical institute, or private vocational school. Further, nothing in this title shall prohibit the making of beer or wine in food fermentation courses offered by a college, university, community college, area vocational technical institute, or private vocational school.

(2) "Culinary or restaurant course" as used in this section means a course of instruction which includes practical experience in food preparation under the supervision of an instructor who is twenty-one years of age or older.

(3) Persons under twenty-one years of age participating in culinary or restaurant courses may handle beer, wine, or spirituous liquor for purposes of participating in the courses, but nothing in this section shall be construed to authorize consumption of liquor by persons under twenty-one years of age or to authorize possession of liquor by persons under twenty-one years of age at any time or place other than while preparing food under the supervision of the course instructor.

(4) Beer, wine, and/or spirituous liquor to be used in culinary or restaurant courses shall be purchased at retail from the board or a retailer licensed under this title. All such liquor shall be securely stored in the food preparation area and shall not be displayed in an area open to the general public.

(5) Colleges, universities, community colleges, area vocational technical institutes, and private vocational schools shall obtain the prior written approval of the board for use of beer, wine, and/or spirituous liquor for cooking purposes in their culinary or restaurant courses. [1982 c 85 § 8.]

66.12.150 Beer or wine offered by hospital or nursing home for consumption on the premises. Nothing in this title shall apply to or prevent a hospital, as defined in RCW 70.39.020, or a nursing home as defined in RCW 18.51.010, from offering or supplying without charge beer or wine by the individual glass to any patient, member of a patient's family, or patient visitor, for consumption on the premises: *Provided*, That such patient, family member, or visitor shall be at least twenty-one years of age, and that the beer or wine shall be purchased under this title. [1982 c 85 § 9.]

66.12.160 Manufacture or sale of confections or food containing liquor. Nothing in this title shall apply to or prevent the manufacture or sale of confections or food products containing alcohol or liquor if: (1) The confection or food product does not contain more than one percent of alcohol by weight; and (2) the confection or food product has a label stating: "This product contains liquor and the alcohol content is one percent or less of

the weight of the product." Manufacturers of confections or food products are not required to obtain a license under this title. [1984 c 78 § 3.]

Finding and declaration—1984 c 78: "The legislature finds that confectioners operating in the state are at an economic disadvantage due to a continued prohibition on the use of natural alcohol flavor in candies and that other related business entities, such as bakeries and delicatessens, may use natural alcohol flavors in the preparation of food for retail sale. Therefore, the legislature declares that the use of natural alcohol flavorings in an amount not to exceed the limit established in RCW 69.04.240 presents no threat to the public health and safety." [1984 c 78 § 1.]

Severability—1984 c 78: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1984 c 78 § 7.]

66.12.170 Obtaining liquor for manufacturing confections or food products. Nothing in this title shall be construed as limiting the right of any manufacturer of confections or food products from obtaining liquor from any source whatsoever if: (1) It is acquired pursuant to a permit issued under RCW 66.20.010(5); and (2) the applicable taxes imposed by this title are paid. [1984 c 78 § 4.]

Finding and declaration—Severability—1984 c 78: See notes following RCW 66.12.160.

66.12.180 Donations to and use of wine by Washington wine commission. The Washington wine commission created under RCW 15.88.030 may purchase or receive donations of Washington wine from wineries and may use such wine for promotional purposes. Wine furnished to the commission under this section which is used within the state is subject to the taxes imposed under RCW 66.24.210. No license, permit, or bond is required of the Washington wine commission under this title for promotional activities conducted under chapter 15.88 RCW. [1987 c 452 § 14.]

Construction—Effective dates—Severability—1987 c 452: See RCW 15.88.900 through 15.88.902.

Chapter 66.16 STATE LIQUOR STORES

Sections

66.16.010	Board may establish—Standard as to prices— Prices in special instances.
66.16.030	Vendor to be in charge.
66.16.040	Sales of liquor by employees—Identification cards—Permit holders—Sales for cash.
66.16.050	Sale of beer and wine to person licensed to sell.
66.16.060	Sealed packages may be required, exception.
66.16.070	Liquor cannot be opened or consumed on store premises.
66.16.080	Sunday closing.
66.16.090	Record of individual purchases confidential—Penalty for disclosure.
66.16.100	Sales of fortified wine.

66.16.010 Board may establish—Standard as to prices—Prices in special instances. (1) There shall be established at such places throughout the state as the liquor control board, constituted under this title, shall

deem advisable, stores to be known as "state liquor stores," for the sale of liquor in accordance with the provisions of this title and the regulations: *Provided*, That the prices of all liquor shall be fixed by the board from time to time so that the net annual revenue received by the board therefrom shall not exceed thirty-five percent.

(2) The liquor control board may, from time to time, fix the special price at which pure ethyl alcohol may be sold to physicians and dentists and institutions regularly conducted as hospitals, for use or consumption only in such hospitals; and may also fix the special price at which pure ethyl alcohol may be sold to schools, colleges and universities within the state for use for scientific purposes. Regularly conducted hospitals may have right to purchase pure ethyl alcohol on a federal permit.

(3) The liquor control board may also fix the special price at which pure ethyl alcohol may be sold to any department, branch or institution of the state of Washington, federal government, or to any person engaged in a manufacturing or industrial business or in scientific pursuits requiring alcohol for use therein.

(4) The liquor control board may also fix a special price at which pure ethyl alcohol may be sold to any private individual, and shall make regulations governing such sale of alcohol to private individuals as shall promote, as nearly as may be, the minimum purchase of such alcohol by such persons. [1939 c 172 § 10; 1937 c 62 § 1; 1933 ex.s. c 62 § 4; RRS § 7306-4. Formerly RCW 66.16.010 and 66.16.020.]

66.16.030 Vendor to be in charge. The sale of liquor at each state liquor store shall be conducted by a person employed under this title to be known as a "vendor," who shall, together with the employees under his direction, under the regulations of the board, be responsible for the carrying out of this title and the regulations, so far as they relate to the conduct of the store and the sale of liquor thereat. [1933 ex.s. c 62 § 6; RRS § 7306-6.]

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

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

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

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

(3) United States active duty military identification.

(4) Passport.

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

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

No liquor sold under this section shall be delivered until the purchaser has paid for the liquor in cash. [1981 1st ex.s. c 5 § 8; 1979 c 158 § 217; 1973 1st ex.s. c 209 § 3; 1971 ex.s. c 15 § 1; 1959 c 111 § 1; 1933 ex.s. c 62 § 7; RRS § 7306-7.]

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

Severability—Effective date—1973 1st ex.s. c 209: See notes following RCW 66.08.070.

Effective date—1971 ex.s. c 15: "The effective date of this 1971 amendatory act is July 1, 1971." [1971 ex.s. c 15 § 8.]

Renewal driver's license accepted as proper identification: RCW 46.20.185.

66.16.050 Sale of beer and wine to person licensed to sell. An employee may sell beer and wines to any licensee holding a license to sell under this title in accordance with the terms of said license. [1933 ex.s. c 62 § 8; RRS § 7306-8.]

66.16.060 Sealed packages may be required, exception. The board may in its discretion by regulation prescribe that any or all liquors other than malt liquor shall be delivered to any purchaser at a state liquor store only in a package sealed with the official seal. [1943 c 216 § 1; 1933 ex.s. c 62 § 9; RRS § 7306-9.]

66.16.070 Liquor cannot be opened or consumed on store premises. No employee in a state liquor store shall open or consume, or allow to be opened or consumed any liquor on the store premises. [1933 ex.s. c 62 § 10; RRS § 7306-10.]

66.16.080 Sunday closing. No sale or delivery of liquor shall be made on or from the premises of any state liquor store, nor shall any store be open for the sale of liquor, on Sunday, unless the board determines that unique circumstances exist which necessitate Sunday liquor sales by vendors appointed under RCW 66.08.050(2) of products of their own manufacture, not to exceed one case of liquor per customer. [1988 c 101 § 1; 1933 ex.s. c 62 § 11; RRS § 7306-11.]

66.16.090 Record of individual purchases confidential—Penalty for disclosure. All records whatsoever of the board showing purchases by any individual of liquor shall be deemed confidential, and, except subject to audit by the state auditor, shall not be permitted to be inspected by any person whatsoever, except by employees of the board to the extent permitted by the regulations; and no member of the board and no employee whatsoever shall give out any information concerning such records and neither such records nor any information relative thereto which shall make known the name of any individual purchaser shall be competent to be admitted as evidence in any court or courts except in prosecutions for illegal possession of and/or sale of liquor.

Any person violating the provisions of this section shall be guilty of a misdemeanor. [1933 ex.s. c 62 § 89; RRS § 7306-89.]

66.16.100 Sales of fortified wine. No state liquor store in a county with a population over three hundred thousand may sell fortified wine if the board finds that the sale would be against the public interest based on the factors in RCW 66.24.370. The burden of establishing that the sale would be against the public interest is on those persons objecting. [1987 c 386 § 5.]

Chapter 66.20 LIQUOR PERMITS

Sections

66.20.010	Permits classified—Issuance—Fees.
66.20.020	Permits not transferable—False name or address prohibited—Sacramental liquor, wine.
66.20.040	Applicant must sign permit.
66.20.060	Duration of permits.
66.20.070	Suspension or cancellation of permits.
66.20.080	Surrender of suspended or canceled permit—New permit, when.
66.20.090	Taking up permits wrongfully presented.
66.20.100	Physician may prescribe or administer liquor—Penalty.
66.20.110	Dentist may administer liquor—Penalty.
66.20.120	Hospitals, etc., may administer liquor—Penalty for violation.
66.20.140	Limitation on application after cancellation or suspension.
66.20.150	Purchases prohibited under canceled, suspended permit or under another's permit.
66.20.160	"Card of identification", "licensee", "store employee" defined for certain purposes.
66.20.170	Card of identification may be accepted as identification card and evidence of legal age.
66.20.180	Card of identification to be presented on request of licensee.
66.20.190	Identification card holder may be required to sign certification card—Contents—Procedure—Statement.
66.20.200	Unlawful acts relating to card of identification and certification card—Penalty.
66.20.210	Licensee's immunity to prosecution or suit—Certification card as evidence of good faith.

66.20.010 Permits classified—Issuance—Fees. Upon application in the prescribed form being made to any employee authorized by the board to issue permits, accompanied by payment of the prescribed fee, and upon the employee being satisfied that the applicant should be granted a permit under this title, the employee shall issue to the applicant under such regulations and at such fee as may be prescribed by the board a permit of the class applied for, as follows:

(1) Where the application is for a special permit by a physician or dentist, or by any person in charge of an institution regularly conducted as a hospital or sanatorium for the care of persons in ill health, or as a home devoted exclusively to the care of aged people, a special liquor purchase permit;

(2) Where the application is for a special permit by a person engaged within the state in mechanical or manufacturing business or in scientific pursuits requiring alcohol for use therein, or by any private individual, a special permit to purchase alcohol for the purpose named in the permit;

(3) Where the application is for a special permit to consume liquor at a banquet, at a specified date and place, a special permit to purchase liquor for consumption at such banquet, to such applicants as may be fixed by the board;

(4) Where the application is for a special permit to consume liquor on the premises of a business not licensed under this title, a special permit to purchase liquor for consumption thereon for such periods of time and to such applicants as may be fixed by the board;

(5) Where the application is for a special permit by a manufacturer to import or purchase within the state alcohol, malt, and other materials containing alcohol to be used in the manufacture of liquor, or other products, a special permit;

(6) Where the application is for a special permit by a person operating a drug store to purchase liquor at retail prices only, to be thereafter sold by such person on the prescription of a physician, a special liquor purchase permit;

(7) Where the application is for a special permit by an authorized representative of a military installation operated by or for any of the armed forces within the geographical boundaries of the state of Washington, a special permit to purchase liquor for use on such military installation at prices to be fixed by the board;

(8) Where the application is for a special permit by a manufacturer, importer, wholesaler, or agent thereof, to serve liquor without charge to delegates and guests at a convention of a trade association composed of licensees of the board, when the said liquor is served in a hospitality room or from a booth in a board-approved suppliers' display room at the convention, and when the liquor so served is for consumption in the said hospitality room or display room during the convention, anything in Title 66 RCW to the contrary notwithstanding. Any such spirituous liquor shall be purchased from the board or a class H licensee and any such beer and wine shall be subject to the taxes imposed by RCW 66.24.290 and 66.24.210;

(9) Where the application is for a special permit by a manufacturer, importer, wholesaler, or agent thereof, to donate liquor for a reception, breakfast, luncheon, or dinner for delegates and guests at a convention of a trade association composed of licensees of the board, when the liquor so donated is for consumption at the said reception, breakfast, luncheon, or dinner during the convention, anything in Title 66 RCW to the contrary notwithstanding. Any such spirituous liquor shall be purchased from the board or a class H licensee and any such beer and wine shall be subject to the taxes imposed by RCW 66.24.290 and 66.24.210;

(10) Where the application is for a special permit by a manufacturer, importer, wholesaler, or agent thereof,

to donate and/or serve liquor without charge to delegates and guests at an international trade fair, show, or exposition held under the auspices of a federal, state, or local governmental entity or organized and promoted by a nonprofit organization, anything in Title 66 RCW to the contrary notwithstanding. Any such spirituous liquor shall be purchased from the board and any such beer or wine shall be subject to the taxes imposed by RCW 66.24.290 and 66.24.210;

(11) Where the application is for an annual special permit by a person operating a bed and breakfast lodging facility to donate or serve wine or beer without charge to overnight guests of the facility if the wine or beer is for consumption on the premises of the facility. "Bed and breakfast lodging facility," as used in this subsection, means a hotel or similar facility offering from one to eight lodging units and breakfast to travelers and guests. [1984 c 78 § 6; 1984 c 45 § 1; 1983 c 13 § 1; 1982 c 85 § 1; 1975-'76 2nd ex.s. c 62 § 2; 1959 c 111 § 2; 1951 2nd ex.s. c 13 § 1; 1933 ex.s. c 62 § 12; RRS § 7306-12.]

Reviser's note: This section was amended by 1984 c 45 § 1 and by 1984 c 78 § 6, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Finding and declaration—Severability—1984 c 78: See notes following RCW 66.12.160.

66.20.020 Permits not transferable—False name or address prohibited—Sacramental liquor, wine. (1) Every permit shall be issued in the name of the applicant therefor, and no permit shall be transferable, nor shall the holder of any permit allow any other person to use the permit.

(2) No person shall apply in any false or fictitious name for the issuance to him of a permit, and no person shall furnish a false or fictitious address in his application for a permit.

(3) Nothing in this title shall be construed as limiting the right of any minister, priest or rabbi, or religious organization from obtaining wine for sacramental purposes directly from any source whatsoever, whether from within the limits of the state of Washington or from outside the state; nor shall any fee be charged, directly or indirectly, for the exercise of this right. The board shall have the power and authority to make reasonable rules and regulations concerning the importing of any such liquor or wine, for the purpose of preventing any unlawful use of such right. [1933 ex.s. c 62 § 13; RRS § 7306-13. Formerly RCW 66.12.100, 66.20.020 and 66.20.030.]

66.20.040 Applicant must sign permit. No permit shall be valid or be accepted or used for the purchase of liquor until the applicant for the permit has written his signature thereon in the prescribed manner, for the purposes of identification as the holder thereof, in the presence of the employee to whom the application is made. [1933 ex.s. c 62 § 14; RRS § 7306-14.]

66.20.060 Duration of permits. Every permit issued for use after October 1, 1955, shall expire at midnight

on the thirtieth day of June of the fiscal year for which the permit was issued, except special permits for banquets and special permits to physicians, dentists, or persons in charge of an institution regularly conducted as a hospital or sanatorium for the care of persons in ill health, or as a home devoted exclusively to the care of aged people. [1955 c 180 § 1; 1935 c 174 § 1; 1933 ex.s. c 62 § 16; RRS § 7306-16.]

66.20.070 Suspension or cancellation of permits. Where the holder of any permit issued under this title violates any provision of this title or of the regulations, or is an interdicted person, or is otherwise disqualified from holding a permit, the board, upon proof to its satisfaction of the fact or existence of such violation, interdiction, or disqualification, and in its discretion, may with or without any hearing, suspend the permit and all rights of the holder thereunder for such period as the board sees fit, or may cancel the permit. [1933 ex.s. c 62 § 17; RRS § 7306-17.]

66.20.080 Surrender of suspended or canceled permit—New permit, when. Upon receipt of notice of the suspension or cancellation of his permit, the holder of the permit shall forthwith deliver up the permit to the board. Where the permit has been suspended only, the board shall return the permit to the holder at the expiration or termination of the period of suspension. Where the permit has been suspended or canceled, no employee shall knowingly issue to the person whose permit is suspended or canceled a permit under this title until the end of the period of suspension or within the period of one year from the date of cancellation. [1933 ex.s. c 62 § 18; RRS § 7306-18.]

66.20.090 Taking up permits wrongfully presented. Where any permit is presented to an employee by a person who is not the holder of the permit, or where any permit which is suspended or canceled is presented to an employee, the employee shall retain the permit in his custody and shall forthwith notify the board of the fact of its retention. [1933 ex.s. c 62 § 19; RRS § 7306-19.]

66.20.100 Physician may prescribe or administer liquor—Penalty. Any physician who deems liquor necessary for the health of a patient, whether an interdicted person or not, whom he has seen or visited professionally may give to the patient a prescription therefor, signed by the physician, or the physician may administer the liquor to the patient, for which purpose the physician may administer the liquor purchased by him under special permit and may charge for the liquor so administered; but no prescription shall be given or liquor be administered by a physician except to bona fide patients in cases of actual need, and when in the judgment of the physician the use of liquor as medicine in the quantity prescribed or administered is necessary; and any physician who administers liquor in evasion or violation of this title shall be guilty of a violation of this title. [1933 ex.s. c 62 § 20; RRS § 7306-20.]

66.20.110 Dentist may administer liquor—Penalty. Any dentist who deems it necessary that any patient then under treatment by him should be supplied with liquor as a stimulant or restorative may administer to the patient the liquor so needed, and for that purpose the dentist shall administer liquor obtained by him under special permit pursuant to this title, and may charge for the liquor so administered; but no liquor shall be administered by a dentist except to bona fide patients in cases of actual need; and every dentist who administers liquor in evasion or violation of this title shall be guilty of a violation of this title. [1933 ex.s. c 62 § 21; RRS § 7306–21.]

66.20.120 Hospitals, etc., may administer liquor—Penalty for violation. Any person in charge of an institution regularly conducted as a hospital or sanatorium for the care of persons in ill health, or as a home devoted exclusively to the care of aged people, may, if he holds a special permit under this title for that purpose, administer liquor purchased by him under his special permit to any patient or inmate of the institution who is in need of the same, either by way of external application or otherwise for medicinal purposes, and may charge for the liquor so administered; but no liquor shall be administered by any person under this section except to bona fide patients or inmates of the institution of which he is in charge and in cases of actual need and every person in charge of an institution who administers liquor in evasion or violation of this title shall be guilty of a violation of this title. [1933 ex.s. c 62 § 22; RRS § 7306–22.]

66.20.140 Limitation on application after cancellation or suspension. No person whose permit has been canceled within the period of twelve months next preceding, or is suspended, shall make application to any employee under this title for another permit. [1933 ex.s. c 62 § 40; RRS § 7306–40.]

66.20.150 Purchases prohibited under canceled, suspended permit or under another's permit. No person shall purchase or attempt to purchase liquor under a permit which is suspended, or which has been canceled, or of which he is not the holder. [1933 ex.s. c 62 § 41; RRS § 7306–41.]

66.20.160 "Card of identification", "licensee", "store employee" defined for certain purposes. Words and phrases as used in RCW 66.20.160 to 66.20.210, inclusive, shall have the following meaning:

"Card of identification" means any one of those cards described in RCW 66.16.040.

"Licensee" means the holder of a retail liquor license issued by the board, and includes any employee or agent of the licensee.

"Store employee" means a person employed in a state liquor store or agency to sell liquor. [1973 1st ex.s. c 209 § 4; 1971 ex.s. c 15 § 2; 1959 c 111 § 4; 1949 c 67 § 1; Rem. Supp. 1949 § 7306–19A.]

Severability—Effective date—1973 1st ex.s. c 209: See notes following RCW 66.08.070.

Effective date—1971 ex.s. c 15: See note following RCW 66.16.040.

66.20.170 Card of identification may be accepted as identification card and evidence of legal age. A card of identification may for the purpose of this title and for the purpose of procuring liquor, be accepted as an identification card by any licensee or store employee and as evidence of legal age of the person presenting such card, provided the licensee or store employee complies with the conditions and procedures prescribed herein and such regulations as may be made by the board. [1973 1st ex.s. c 209 § 5; 1971 ex.s. c 15 § 3; 1959 c 111 § 5; 1949 c 67 § 2; Rem. Supp. 1949 § 7306–19B.]

Severability—Effective date—1973 1st ex.s. c 209: See notes following RCW 66.08.070.

Effective date—1971 ex.s. c 15: See note following RCW 66.16.040.

66.20.180 Card of identification to be presented on request of licensee. A card of identification shall be presented by the holder thereof upon request of any licensee, store employee, peace officer, or enforcement officer of the board for the purpose of aiding the licensee, store employee, peace officer, or enforcement officer of the board to determine whether or not such person is of legal age to purchase liquor when such person desires to procure liquor from a licensed establishment or state liquor store or agency. [1973 1st ex.s. c 209 § 6; 1971 ex.s. c 15 § 4; 1959 c 111 § 6; 1949 c 67 § 3; Rem. Supp. 1949 § 7306–19C.]

Severability—Effective date—1973 1st ex.s. c 209: See notes following RCW 66.08.070.

Effective date—1971 ex.s. c 15: See note following RCW 66.16.040.

66.20.190 Identification card holder may be required to sign certification card—Contents—Procedure—Statement. In addition to the presentation by the holder and verification by the licensee or store employee of such card of identification, the licensee or store employee who is still in doubt about the true age of the holder shall require the person whose age may be in question to sign a certification card and record an accurate description and serial number of his card of identification thereon. Such statement shall be upon a five-inch by eight-inch file card, which card shall be filed alphabetically by the licensee or store employee at or before the close of business on the day on which the statement is executed, in the file box containing a suitable alphabetical index and the card shall be subject to examination by any peace officer or agent or employee of the board at all times. The certification card shall also contain in bold-face type a statement stating that the signer understands that conviction for unlawful purchase of alcoholic beverages or misuse of the certification card may result in criminal penalties including imprisonment or fine or both. [1981 1st ex.s. c 5 § 9; 1975 1st ex.s. c 173 § 4; 1973 1st ex.s. c 209 § 7; 1971 ex.s. c 15 § 5; 1959 c 111 § 7; 1949 c 67 § 4; Rem. Supp. 1949 § 7306–19D.]

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

Severability—Effective date—1975 1st ex.s. c 173: See notes following RCW 66.08.050.

Severability—Effective date—1973 1st ex.s. c 209: See notes following RCW 66.08.070.

Effective date—1971 ex.s. c 15: See note following RCW 66.16.040.

66.20.200 Unlawful acts relating to card of identification and certification card—Penalty. It shall be unlawful for the owner of a card of identification to transfer the card to any other person for the purpose of aiding such person to procure alcoholic beverages from any licensee or store employee. Any person who shall permit his card of identification to be used by another or transfer such card to another for the purpose of aiding such transferee to obtain alcoholic beverages from a licensee or store employee, shall be guilty of a misdemeanor punishable as provided by RCW 9A.20.021, except that a minimum fine of two hundred fifty dollars shall be imposed and any sentence requiring community service shall require not fewer than twenty-five hours of such service. Any person not entitled thereto who unlawfully procures or has issued or transferred to him a card of identification, and any person who possesses a card of identification not issued to him, and any person who makes any false statement on any certification card required by RCW 66.20.190, as now or hereafter amended, to be signed by him, shall be guilty of a misdemeanor punishable as provided by RCW 9A.20.021, except that a minimum fine of two hundred fifty dollars shall be imposed and any sentence requiring community service shall require not fewer than twenty-five hours of such service. [1987 c 101 § 4; 1973 1st ex.s. c 209 § 8; 1971 ex.s. c 15 § 6; 1969 ex.s. c 178 § 2; 1959 c 111 § 8; 1949 c 67 § 5; Rem. Supp. 1949 § 7306–19E.]

Severability—Effective date—1973 1st ex.s. c 209: See notes following RCW 66.08.070.

Effective date—1971 ex.s. c 15: See note following RCW 66.16.040.

Unlawful transfer to a minor of an identification of age: RCW 66.44.325.

66.20.210 Licensee's immunity to prosecution or suit—Certification card as evidence of good faith. No licensee or the agent or employee of the licensee, or store employee, shall be prosecuted criminally or be sued in any civil action for serving liquor to a person under legal age to purchase liquor if such person has presented a card of identification in accordance with RCW 66.20.180, and has signed a certification card as provided in RCW 66.20.190.

Such card in the possession of a licensee may be offered as a defense in any hearing held by the board for serving liquor to the person who signed the card and may be considered by the board as evidence that the licensee acted in good faith. [1973 1st ex.s. c 209 § 9; 1971 ex.s. c 15 § 7; 1959 c 111 § 9; 1949 c 67 § 6; Rem. Supp. 1949 § 7306–19F.]

Severability—Effective date—1973 1st ex.s. c 209: See notes following RCW 66.08.070.

Effective date—1971 ex.s. c 15: See note following RCW 66.16.040.

Chapter 66.24

LICENSES—STAMP TAXES

Sections

- 66.24.010 Issuance, transferability, refusal, suspension, or cancellation—Grounds, hearings, procedure—Duration of licenses or certificates of approval—Conditions and restrictions—Posting—Notice to local authorities—Proximity to churches, schools, etc.—Temporary licenses.
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66.24.010 Issuance, transferability, refusal, suspension, or cancellation—Grounds, hearings, procedure—Duration of licenses or certificates of approval—Conditions and restrictions—Posting—Notice to local authorities—Proximity to churches, schools, etc.—Temporary licenses. (1) Every license shall be issued in the name of the applicant, and the holder thereof shall not allow any other person to use the license.

(2) For the purpose of considering any application for a license, the board may cause an inspection of the premises to be made, and may inquire into all matters in connection with the construction and operation of the premises. For the purpose of reviewing any application for a license and for considering the denial, suspension or revocation of any license, the liquor control board may consider any prior criminal conduct of the applicant and the provisions of RCW 9.95.240 and of chapter 9.96A RCW shall not apply to such cases. The board may, in its discretion, grant or refuse the license applied for. No retail license of any kind may be issued to:

(a) A person who has not resided in the state for at least one month prior to making application, except in cases of licenses issued to dining places on railroads, boats, or aircraft;

(b) A copartnership, unless all of the members thereof are qualified to obtain a license, as provided in this section;

(c) A person whose place of business is conducted by a manager or agent, unless such manager or agent possesses the same qualifications required of the licensee;

(d) A corporation, unless it was created under the laws of the state of Washington or holds a certificate of authority to transact business in the state of Washington.

(3) The board may, in its discretion, subject to the provisions of RCW 66.08.150, suspend or cancel any license; and all rights of the licensee to keep or sell liquor thereunder shall be suspended or terminated, as the case may be. The board may request the appointment of administrative law judges under chapter 34.12 RCW who shall have power to administer oaths, issue subpoenas for the attendance of witnesses and the production of papers, books, accounts, documents, and testimony, examine witnesses, and to receive testimony in any inquiry, investigation, hearing, or proceeding in any part of the state, under such rules and regulations as the board may adopt.

Witnesses shall be allowed fees and mileage each way to and from any such inquiry, investigation, hearing, or proceeding at the rate authorized by RCW 34.05.446, as now or hereafter amended. Fees need not be paid in advance of appearance of witnesses to testify or to produce books, records, or other legal evidence.

In case of disobedience of any person to comply with the order of the board or a subpoena issued by the board, or any of its members, or administrative law judges, or on the refusal of a witness to testify to any matter regarding which he may be lawfully interrogated, the judge of the superior court of the county in which the person resides, on application of any member of the board or administrative law judge, shall compel obedience by contempt proceedings, as in the case of disobedience of the requirements of a subpoena issued from said court or a refusal to testify therein.

(4) Upon receipt of notice of the suspension or cancellation of a license, the licensee shall forthwith deliver up the license to the board. Where the license has been suspended only, the board shall return the license to the licensee at the expiration or termination of the period of suspension. The board shall notify all vendors in the city or place where the licensee has its premises of the suspension or cancellation of the license; and no employee may allow or cause any liquor to be delivered to or for any person at the premises of that licensee.

(5) (a) At the time of the original issuance of a class H license, the board shall prorate the license fee charged to the new licensee according to the number of calendar quarters, or portion thereof, remaining until the first renewal of that license is required.

(b) Unless sooner canceled, every license issued by the board shall expire at midnight of the thirtieth day of June of the fiscal year for which it was issued. However, if the board deems it feasible and desirable to do so, it may establish, by rule pursuant to chapter 34.05 RCW, a system for staggering the annual renewal dates for any and all licenses authorized by this chapter. If such a system of staggered annual renewal dates is established by the board, the license fees provided by this chapter shall be appropriately prorated during the first year that the system is in effect.

(6) Every license issued under this section shall be subject to all conditions and restrictions imposed by this title or by the regulations in force from time to time. All conditions and restrictions imposed by the board in the issuance of an individual license shall be listed on the

face of the individual license along with the trade name, address, and expiration date.

(7) Every licensee shall post and keep posted its license, or licenses, in a conspicuous place on the premises.

(8) Before the board shall issue a license to an applicant it shall give notice of such application to the chief executive officer of the incorporated city or town, if the application be for a license within an incorporated city or town, or to the county legislative authority, if the application be for a license outside the boundaries of incorporated cities or towns; and such incorporated city or town, through the official or employee selected by it, or the county legislative authority or the official or employee selected by it, shall have the right to file with the board within twenty days after date of transmittal of such notice, written objections against the applicant or against the premises for which the license is asked, and shall include with such objections a statement of all facts upon which such objections are based, and in case written objections are filed, may request and the liquor control board may in its discretion hold a formal hearing subject to the applicable provisions of Title 34 RCW, as now or hereafter amended. Upon the granting of a license under this title the board shall send a duplicate of the license or written notification to the chief executive officer of the incorporated city or town in which the license is granted, or to the county legislative authority if the license is granted outside the boundaries of incorporated cities or towns.

(9) Before the board issues any license to any applicant, it shall give (a) due consideration to the location of the business to be conducted under such license with respect to the proximity of churches, schools, and public institutions and (b) written notice by certified mail of the application to churches, schools, and public institutions within five hundred feet of the premises to be licensed. The board shall issue no beer retailer license class A, B, D, or E or wine retailer license class C or F or class H license covering any premises not now licensed, if such premises are within five hundred feet of the premises of any tax-supported public elementary or secondary school measured along the most direct route over or across established public walks, streets, or other public passageway from the outer property line of the school grounds to the nearest public entrance of the premises proposed for license, and if, after receipt by the school or public institution of the notice as provided in this subsection, the board receives written notice, within twenty days after posting such notice, from an official representative or representatives of the school within five hundred feet of said proposed licensed premises, indicating to the board that there is an objection to the issuance of such license because of proximity to a school. For the purpose of this section, church shall mean a building erected for and used exclusively for religious worship and schooling or other activity in connection therewith. No liquor license may be issued or reissued by the board to any motor sports facility or licensee operating within the motor sports facility unless the motor sports facility

enforces a program reasonably calculated to prevent alcohol or alcoholic beverages not purchased within the facility from entering the facility and such program is approved by local law enforcement agencies. It is the intent under this subsection that a retail license shall not be issued by the board where doing so would, in the judgment of the board, adversely affect a private school meeting the requirements for private schools under Title 28A RCW, which school is within five hundred feet of the proposed licensee. The board shall fully consider and give substantial weight to objections filed by private schools. If a license is issued despite the proximity of a private school, the board shall state in a letter addressed to the private school the board's reasons for issuing the license.

(10) The restrictions set forth in the preceding subsection shall not prohibit the board from authorizing the transfer of existing licenses now located within the restricted area to other persons or locations within the restricted area: *Provided*, Such transfer shall in no case result in establishing the licensed premises closer to a church or school than it was before the transfer.

(11) Nothing in this section prohibits the board, in its discretion, from issuing a temporary retail or wholesaler license to a transferee of a retail or wholesaler license to continue the operation of the retail or wholesaler premises during the period a transfer application for the license from person to person at the same premises is pending and when the following conditions exist:

(a) The licensed premises has been operated under a retail or wholesaler license within ninety days of the date of filing the application for a temporary license;

(b) The retail or wholesaler license for the premises has been surrendered pursuant to issuance of a temporary operating license;

(c) The applicant for the temporary license has filed with the board an application for transfer of the retail or wholesaler license at such premises to himself or herself; and

(d) The application for a temporary license is accompanied by a temporary license fee established by the board by rule.

A temporary license issued by the board under this section shall be for a period not to exceed sixty days. A temporary license may be extended at the discretion of the board for an additional sixty-day period upon payment of an additional fee and upon compliance with all conditions required in this section.

Refusal by the board to issue or extend a temporary license shall not entitle the applicant to request a hearing. A temporary license may be canceled or suspended summarily at any time if the board determines that good cause for cancellation or suspension exists. RCW 66.08-.130 and chapter 34.05 RCW shall apply to temporary licenses.

Application for a temporary license shall be on such form as the board shall prescribe. If an application for a temporary license is withdrawn before issuance or is refused by the board, the fee which accompanied such application shall be refunded in full. [1988 c 200 § 1; 1987 c 217 § 1; 1983 c 160 § 3; 1982 c 85 § 2; 1981 1st ex.s. c

5 § 10; 1981 c 67 § 31; 1974 ex.s. c 66 § 1; 1973 1st ex.s. c 209 § 10; 1971 c 70 § 1; 1969 ex.s. c 178 § 3; 1947 c 144 § 1; 1935 c 174 § 3; 1933 ex.s. c 62 § 27; Rem. Supp. 1947 § 7306–27. Formerly RCW 66.24.010, part and 66.24.020 through 66.24.100. Former part of section: 1937 c 217 § 1 (23U) now codified as RCW 66.24.025.]

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66-98.090 and 66.98.100.

Effective dates—Severability—1981 c 67: See notes following RCW 34.12.010.

Severability—Effective date—1973 1st ex.s. c 209: See notes following RCW 66.08.070.

Effective date—1971 c 70: "The effective date of this 1971 amendatory act is July 1, 1971." [1971 c 70 § 4.]

66.24.015 Nonrefundable application fee for retail licenses. An application for a new annual retail license under this title shall be accompanied by payment of a nonrefundable seventy-five dollar fee to cover expenses incurred in processing the application. If the application is approved, the application fee shall be applied toward the fee charged for the license. [1988 c 200 § 4.]

66.24.025 Assignment of license—Fee—Exception—Corporate changes, approval—Fee. (1) The holder of one or more licenses may assign and transfer the same to any qualified person under such rules and regulations as the board may prescribe: *Provided, however,* That no such assignment and transfer shall be made which will result in both a change of licensee and change of location; the fee for such assignment and transfer shall be seventy-five dollars: *Provided, further,* That no fee will be charged for transfer to the surviving spouse only of a deceased licensee if the parties were maintaining a marital community and the license was issued in the names of one or both of the parties.

(2) The proposed sale of more than ten percent of the outstanding and/or issued stock of a licensed corporation or any proposed change in the officers of a licensed corporation must be reported to the board, and board approval must be obtained before such changes are made. A fee of seventy-five dollars will be charged for the processing of such change of stock ownership and/or corporate officers. [1981 1st ex.s. c 5 § 11; 1973 1st ex.s. c 209 § 11; 1971 c 70 § 2; 1937 c 217 § 1 (23U) (adding new section 23-U to 1933 ex.s. c 62); RRS § 7306–23U.]

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66-98.090 and 66.98.100.

Severability—Effective date—1973 1st ex.s. c 209: See notes following RCW 66.08.070.

Effective date—1971 c 70: See note following RCW 66.24.010.

66.24.120 Vacation of suspension on payment of penalty. The board in suspending any license may further provide in the order of suspension that such suspension shall be vacated upon payment to the board by the licensee of a monetary penalty in an amount then fixed by the board. [1973 1st ex.s. c 209 § 12; 1939 c 172 § 7 (adding new section 27-C to 1933 ex.s. c 62); RRS § 7306–27C.]

Severability—Effective date—1973 1st ex.s. c 209: See notes following RCW 66.08.070.

66.24.140 Distillers' license—Fee. There shall be a license to distillers, including blending, rectifying and bottling; fee two thousand dollars per annum: *Provided,* That the board shall license stills used and to be used solely and only by a commercial chemist for laboratory purposes, and not for the manufacture of liquor for sale, at a fee of twenty dollars per annum: *Provided, further,* That the board shall license stills used and to be used solely and only for laboratory purposes in any school, college or educational institution in the state, without fee: *Provided, further,* That the board shall license stills which shall have been duly licensed as fruit and/or wine distilleries by the federal government, used and to be used solely as fruit and/or wine distilleries in the production of fruit brandy and wine spirits, at a fee of two hundred dollars per annum. [1981 1st ex.s. c 5 § 28; 1937 c 217 § 1 (23D) (adding new section 23-D to 1933 ex.s. c 62); RRS § 7306–23D.]

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66-98.090 and 66.98.100.

66.24.150 Manufacturers' license—Scope—Fee. There shall be a license to manufacturers of liquor, including all kinds of manufacturers except those licensed as distillers, brewers, wineries, and domestic wineries, authorizing such licensees to manufacture, import, sell, and export liquor from the state; fee five hundred dollars per annum. [1981 1st ex.s. c 5 § 29; 1937 c 217 § 1 (23A) (adding new section 23-A to 1933 ex.s. c 62); RRS § 7306–23A.]

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66-98.090 and 66.98.100.

66.24.160 Liquor importer's license—Fee. A liquor importer's license may be issued to any qualified person, firm or corporation, entitling the holder thereof to import into the state any liquor other than beer or wine; to store the same within the state, and to sell and export the same from the state; fee six hundred dollars per annum. Such liquor importer's license shall be subject to all conditions and restrictions imposed by this title or by the rules and regulations of the board, and shall be issued only upon such terms and conditions as may be imposed by the board. No liquor importer's license shall be required in sales to the Washington state liquor control board. [1981 1st ex.s. c 5 § 30; 1970 ex.s. c 13 § 1. Prior: 1969 ex.s. c 275 § 2; 1969 ex.s. c 21 § 1; 1937 c 217 § 1 (23J) (adding new section 23-J to 1933 ex.s. c 62); RRS § 7306 (23J).]

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66-98.090 and 66.98.100.

66.24.170 Domestic winery license—Fee—Report—Wine wholesaler's and retailer's licenses included. (1) There shall be a license to domestic wineries; fee to be computed only on the liters manufactured: One hundred thousand liters or less per year, one hundred dollars per year; over one hundred thousand liters to

seven hundred fifty thousand liters per year, four hundred dollars per year; and over seven hundred fifty thousand liters per year, eight hundred dollars per year.

(2) Any applicant for a domestic winery license shall, at the time of filing application for license, accompany such application with a license fee based upon a reasonable estimate of the amount of wine liters to be manufactured by such applicant. Persons holding domestic winery licenses shall report annually at the end of each fiscal year, at such time and in such manner as the board may prescribe, the amount of wine manufactured by them during the fiscal year. If the total amount of wine manufactured during the year exceeds the amount permitted annually by the license fee already paid the board, the licensee shall pay such additional license fee as may be unpaid in accordance with the schedule provided in this section.

(3) Any domestic winery licensed under this section shall also be considered as holding, for the purposes of selling wines of its own production, a current wine wholesaler's license under RCW 66.24.200 and a wine retailer's license, class F, under RCW 66.24.370 without further application or fee. Any winery operating as a wholesaler or retailer under this subsection shall comply with the applicable laws and rules relating to such wholesalers and retailers. [1982 c 85 § 4; 1981 1st ex.s. c 5 § 31; 1939 c 172 § 1 (23C); 1937 c 217 § 1 (23C) (adding new section 23-C to 1933 ex.s. c 62); RRS § 7306-23C. Formerly RCW 66.24.170, 66.24.180 and 66.24.190.]

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

66.24.185 Bonded wine warehouse storage license—Qualifications and requirements—Fee. (1) There shall be a license for bonded wine warehouses which shall authorize the storage of bottled wine only. Under this license a licensee may maintain a warehouse for the storage of wine off the premises of a winery.

(2) The board shall adopt similar qualifications for a bonded wine warehouse license as required for obtaining a domestic winery license as specified in RCW 66.24.010 and 66.24.170. A licensee must be a sole proprietor, a partnership or a corporation. One or more domestic wineries may operate as a partnership, corporation, business co-op or agricultural co-op for the purposes of obtaining a bonded wine warehouse license.

(3) All bottled wine shipped to a bonded wine warehouse from a winery or another bonded wine warehouse shall remain under bond and no tax imposed under RCW 66.24.210 shall be due, unless the wine is removed from bond and shipped to a licensed Washington wine wholesaler. Wine may be removed from a bonded wine warehouse only for the purpose of being (a) exported from the state, (b) shipped to a licensed Washington wine wholesaler, or (c) returned to a winery or bonded wine warehouse.

(4) Warehousing of wine by any person other than (a) a licensed domestic winery or a bonded wine warehouse

licensed under the provisions of this section, (b) a licensed Washington wine wholesaler, (c) a licensed Washington wine importer, or (d) the liquor control board, is prohibited.

(5) A license applicant shall hold a federal permit for a bonded wine cellar and post a continuing wine tax bond in the amount of five thousand dollars in a form prescribed by the board prior to the issuance of a bonded wine warehouse license. The fee for this license shall be one hundred dollars per annum.

(6) The board shall adopt rules requiring a bonded wine warehouse to be physically secure, zoned for the intended use and physically separated from any other use.

(7) Every licensee shall submit to the board a monthly report of movement of bottled wines to and from a bonded wine warehouse in a form prescribed by the board. The board may adopt other necessary procedures by which bonded wine warehouses are licensed and regulated. [1984 c 19 § 1.]

66.24.200 Wine wholesaler's license—Fee. There shall be a license to wine wholesalers to sell wine, manufactured within or without the state, to licensed wholesalers and/or to holders of wine retailer's licenses and to export the same from the state; fee five hundred dollars per annum for each distributing unit. [1981 1st ex.s. c 5 § 32; 1969 ex.s. c 21 § 2; 1937 c 217 § 1 (23K) (adding new section 23-K to 1933 ex.s. c 62); RRS § 7306-23K.]

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

Effective date—1969 ex.s. c 21: See note following RCW 66.04.010.

66.24.204 Wine importer's license—Fee—Scope—Conditions and restrictions. (1) It shall be unlawful for any person, firm or corporation, to import wine into the state of Washington or to transport or cause the same to be transported into the state of Washington for sale therein, unless such person, firm or corporation, has obtained from the Washington state liquor control board and have in force a wine importer's license. The license fee for such wine importer's license shall be sixty dollars per annum;

(2) The wine importer's license herein provided for shall authorize the holder thereof to sell wine imported, or transported, or caused to be transported thereunder to licensed wine wholesalers within the state and to export the same from the state. Every person, firm or corporation, licensed as a wine importer, shall establish and maintain a principal office within the state, at which shall be kept proper records of all wine imported into the state, under his, their, or its license. No wine importer's license shall be granted to a nonresident of the state, nor to a corporation whose principal place of business is outside the state, until such applicant has established such principal office within the state as hereinbefore provided, and has designated a statutory agent within the state upon whom service can be made;

(3) Every wine importer's license issued under this title shall be subject to all conditions and restrictions imposed by this title, or by the rules and regulations of the board. [1981 1st ex.s. c 5 § 33; 1969 ex.s. c 21 § 9.]

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

Effective date—1969 ex.s. c 21: See note following RCW 66.04.010.

66.24.206 Certificate of approval required for out-of-state winery or manufacturer of wine or importer of wine produced outside United States—Reports—Agreement with board—Fee. No wine wholesaler nor wine importer shall purchase any wine not manufactured within the state of Washington by a winery holding a license as a manufacturer of wine from the state of Washington, and/or transport or cause the same to be transported into the state of Washington for resale therein, unless the winery or manufacturer of such wine, or the licensed importer of wine produced outside the United States, has obtained from the Washington state liquor control board a certificate of approval, as hereinafter provided. The certificate of approval herein provided for shall not be granted unless and until such winery, manufacturer, or licensed importer of wine produced outside the United States, shall have made a written agreement with the board to furnish to the board, on or before the twentieth day of each month, a report under oath, on a form to be prescribed by the board, showing the quantity of wine sold or delivered to each licensed wine importer, or imported by the licensed importer of wine produced outside the United States, during the preceding month, and shall further have agreed with the board, that such wineries, manufacturers, or licensed importers of wine produced outside the United States, and all general sales corporations or agencies maintained by them, and all of their trade representatives and agents, shall and will faithfully comply with all laws of the state of Washington pertaining to the sale of intoxicating liquors and all rules and regulations of the Washington state liquor control board. If any such winery, manufacturer, or licensed importer of wine produced outside the United States, shall, after obtaining such certificate, fail to submit such report, or if such winery, manufacturer, or licensed importer of wine produced outside the United States, or general sales corporations or agencies maintained by them, or their trade representatives or agents, shall violate the terms of such agreement, the board shall, in its discretion, suspend or revoke such certificate: *Provided, however,* That such certificates of approval shall only authorize the holder thereof to ship or import into the state of Washington specifically named designated and identified types of wine which conform to the provisions of RCW 66.28.110 and for which the liquor control board has issued a certificate of label approval. The Washington state liquor control board shall not certify wines labeled with names which may be confused with other nonalcoholic beverages, whether manufactured or produced from a domestic winery or imported, nor wines which fail to meet quality standards established by the board.

The fee for the certificate of approval, issued pursuant to the provisions of this title, shall be one hundred dollars per annum, which sum shall accompany the application for such certificate. [1981 1st ex.s. c 5 § 34; 1973 1st ex.s. c 209 § 13; 1969 ex.s. c 21 § 10.]

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

Severability—Effective date—1973 1st ex.s. c 209: See notes following RCW 66.08.070.

Effective date—1969 ex.s. c 21: See note following RCW 66.04.010.

66.24.210 Imposition of tax on all wines sold to wine wholesalers and liquor control board—Additional taxes imposed. (1) There is hereby imposed upon all wines sold to wine wholesalers and the Washington state liquor control board, within the state a tax at the rate of twenty and one-fourth cents per liter: *Provided, however,* That wine sold or shipped in bulk from one winery to another winery shall not be subject to such tax. The tax provided for in this section may, if so prescribed by the board, be collected by means of stamps to be furnished by the board, or by direct payments based on wine purchased by wine wholesalers. Every person purchasing wine under the provisions of this section shall on or before the twentieth day of each month report to the board all purchases during the preceding calendar month in such manner and upon such forms as may be prescribed by the board, and with such report shall pay the tax due from the purchases covered by such report unless the same has previously been paid. Any such purchaser of wine whose applicable tax payment is not postmarked by the twentieth day following the month of purchase will be assessed a penalty at the rate of two percent a month or fraction thereof. If this tax be collected by means of stamps, every such person shall procure from the board revenue stamps representing the tax in such form as the board shall prescribe and shall affix the same to the package or container in such manner and in such denomination as required by the board and shall cancel the same prior to the delivery of the package or container containing the wine to the purchaser. If the tax is not collected by means of stamps, the board may require that every such person shall execute to and file with the board a bond to be approved by the board, in such amount as the board may fix, securing the payment of the tax. If any such person fails to pay the tax when due, the board may forthwith suspend or cancel the license until all taxes are paid.

(2) An additional tax is imposed equal to the rate specified in RCW 82.02.030 multiplied by the tax payable under subsection (1) of this section. All revenues collected during any month from this additional tax shall be transferred to the state general fund by the twenty-fifth day of the following month.

(3) An additional tax is imposed on wines subject to tax under subsection (1) of this section, at the rate of one-fourth of one cent per liter for wine sold after June 30, 1987. Such additional tax shall cease to be imposed on July 1, 1993. All revenues collected under this subsection (3) shall be disbursed quarterly to the

Washington wine commission for use in carrying out the purposes of chapter 15.88 RCW.

(4) Until July 1, 1995, an additional tax is imposed on all wine subject to tax under subsection (1) of this section. The additional tax is equal to twenty-three and forty-four one-hundredths cents per liter on wine containing alcohol in an amount equal to or more than fourteen percent by volume when bottled or packaged by the manufacturer and one cent per liter on all other wine. All revenues collected during any month from this additional tax shall be deposited in the drug enforcement and education account under RCW 69.50.520 by the twenty-fifth day of the following month. [1989 c 271 § 501; 1987 c 452 § 11; 1983 2nd ex.s. c 3 § 10; 1982 1st ex.s. c 35 § 23; 1981 1st ex.s. c 5 § 12; 1973 1st ex.s. c 204 § 2; 1969 ex.s. c 21 § 3; 1943 c 216 § 2; 1939 c 172 § 3; 1935 c 158 § 3 (adding new section 24-A to 1933 ex.s. c 62); Rem. Supp. 1943 § 7306-24A. Formerly RCW 66.04.120, 66.24.210, part, 66.24.220 and 66.24.230, part. FORMER PART OF SECTION: 1933 ex.s. c 62 § 25, part, now codified as RCW 66.24.230.]

Effective dates—1989 c 271: See note following RCW 66.28.200.

Severability—1989 c 271: See note following RCW 9.94A.310.

Construction—Effective dates—Severability—1987 c 452: See RCW 15.88.900 through 15.88.902.

Construction—Severability—Effective dates—1983 2nd ex.s. c 3: See notes following RCW 82.04.255.

Severability—Effective dates—1982 1st ex.s. c 35: See notes following RCW 82.08.020.

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

Floor stocks tax: "There is hereby imposed upon every licensed wine wholesaler who possesses wine for resale upon which the tax has not been paid under section 2 of this 1973 amendatory act, a floor stocks tax of sixty-five cents per wine gallon on wine in his possession or under his control on June 30, 1973. Each such wholesaler shall within twenty days after June 30, 1973, file a report with the Washington State liquor control board in such form as the board may prescribe, showing the wine products on hand July 1, 1973, converted to gallons thereof and the amount of tax due thereon. The tax imposed by this section shall be due and payable within twenty days after July 1, 1973, and thereafter bear interest at the rate of one percent per month." [1973 1st ex.s. c 204 § 3.]

Effective date—1973 1st ex.s. c 204: See note following RCW 82.08.150.

Effective date—1969 ex.s. c 21: See note following RCW 66.04.010.

Giving away of liquor prohibited—Exceptions: RCW 66.28.040.

No tax imposed on wine shipped to bonded wine warehouse: RCW 66.24.185.

66.24.215 Levy of assessment on wine producers and growers to fund wine commission—Assessment rate changes—Procedures—Disbursement—Continuation. (1) To provide for permanent funding of the wine commission after July 1, 1989, agricultural commodity assessments shall be levied by the board on wine producers and growers as follows:

(a) Beginning on July 1, 1989, the assessment on wine producers shall be two cents per gallon on sales of packaged Washington wines.

(b) Beginning on July 1, 1989, the assessment on growers of Washington vinifera wine grapes shall be levied as provided in RCW 15.88.130.

(c) After July 1, 1993, assessment rates under subsection (1)(a) of this section may be changed pursuant to a referendum conducted by the Washington wine commission and approved by a majority vote of wine producers. The weight of each producer's vote shall be equal to the percentage of that producer's share of Washington vinifera wine production in the prior year.

(d) After July 1, 1993, assessment amounts under subsection (1)(b) of this section may be changed pursuant to a referendum conducted by the Washington wine commission and approved by a majority vote of grape growers. The weight of each grower's vote shall be equal to the percentage of that grower's share of Washington vinifera grape sales in the prior year.

(2) Assessments collected under this section shall be disbursed quarterly to the Washington wine commission for use in carrying out the purposes of chapter 15.88 RCW.

(3) Prior to July 1, 1996, a referendum shall be conducted to determine whether to continue the Washington wine commission as representing both wine producers and grape growers. The voting shall not be weighted. The wine producers shall vote whether to continue the commission's coverage of wineries and wine production. The grape producers shall vote whether to continue the commission's coverage of issues pertaining to grape growing. If a majority of both wine and grape producers favor the continuation of the commission, the assessments shall continue as provided in subsection (2) (b) and (d) of this section. If only one group of producers favors the continuation, the assessments shall only be levied on the group which favored the continuation. [1988 c 257 § 7; 1987 c 452 § 13.]

Construction—Effective dates—Severability—1987 c 452: See RCW 15.88.900 through 15.88.902.

66.24.230 Monthly reports of winery and wine importer—Prohibited, authorized sales. Every winery and wine importer licensed under this title shall make monthly reports to the board pursuant to the regulations. Such winery and wine importer shall make no sales of wine within the state of Washington except to the board, or as otherwise provided in this title. [1969 ex.s. c 21 § 4; 1933 ex.s. c 62 § 25; RRS § 7306-25. Formerly RCW 66.24.210 and 66.24.230. FORMER PART OF SECTION: 1943 c 216 § 2, part, now codified in RCW 66.24.210.]

Effective date—1969 ex.s. c 21: See note following RCW 66.04.010.

66.24.240 Brewers' license—Fee—Breweries operating as wholesalers or retailers. (1) There shall be a license to brewers to manufacture malt liquors, fee per annum to be based on current fiscal year's production at the rate of fifty dollars per thousand barrels, with a maximum fee of two thousand dollars, such license fee to be collected and paid under such rules and regulations as the board shall prescribe.

(2) Any brewery licensed under this section shall also be considered as holding, for the purposes of selling malt liquor of its own production, a beer wholesaler's license

under RCW 66.24.250, a beer retailer's license, class B, under RCW 66.24.330, and a beer retailer's license, class E, under RCW 66.24.360 without further application or fee. Any brewery operating as a wholesaler or retailer under this subsection shall comply with the applicable laws and rules relating to such wholesalers and retailers. [1985 c 226 § 1; 1982 c 85 § 5; 1981 1st ex.s. c 5 § 13; 1937 c 217 § 1 (23B) (adding new section 23-B to 1933 ex.s. c 62); RRS § 7306-23B.]

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66-98.090 and 66.98.100.

66.24.250 Beer wholesalers' license—Fee. There shall be a license to beer wholesalers to sell beer, manufactured within or without the state, to licensed wholesalers and/or to holders of beer retailer's licenses, and to export the same from the state; fee five hundred dollars per annum for each distributing unit. [1981 1st ex.s. c 5 § 14; 1937 c 217 § 1 (23E) (adding new section 23-E to 1933 ex.s. c 62); RRS § 7306-23E.]

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66-98.090 and 66.98.100.

66.24.260 Beer importers' license—Fee—Rights of licensee—Principal office and agent. (1) It shall be unlawful for any person, firm or corporation, to import beer into the state of Washington or to transport or cause the same to be transported into the state of Washington for sale therein, unless such person, firm or corporation, has obtained from the Washington state liquor control board and have in force a beer importer's license. The license fee for such beer importer's license shall be sixty dollars per annum;

(2) The beer importer's license herein provided for shall authorize the holder thereof to sell beer imported, or transported, or caused to be transported thereunder to licensed beer wholesalers within the state and to export the same from the state. Every person, firm or corporation, licensed as a beer importer, shall establish and maintain a principal office within the state, at which shall be kept proper records of all beer imported into the state, under his, their, or its license. No beer importer's license shall be granted to a nonresident of the state, nor to a corporation whose principal place of business is outside the state, until such applicant has established such principal office within the state as hereinbefore provided, and has designated a statutory agent within the state upon whom service can be made;

(3) Every beer importer's license issued under this title shall be subject to all conditions and restrictions imposed by this title, or by the rules and regulations of the board. [1981 1st ex.s. c 5 § 15; 1937 c 217 § 1 (23G) (adding new section 23-G to 1933 ex.s. c 62); RRS § 7306-23G.]

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66-98.090 and 66.98.100.

66.24.270 Manufacturers' monthly report to board of quantity of malt liquor sales made to beer wholesalers—Certificate of approval and report for out-of-state or imported beer—Fee. (1) Every person, firm or

corporation, holding a license to manufacture malt liquors within the state of Washington, shall, on or before the twentieth day of each month, furnish to the Washington state liquor control board, on a form to be prescribed by the board, a statement showing the quantity of malt liquors sold for resale during the preceding calendar month to each beer wholesaler within the state of Washington;

(2) No beer wholesaler nor beer importer shall purchase any beer not manufactured within the state of Washington by a brewer holding a license as a manufacturer of malt liquors from the state of Washington, and/or transport or cause the same to be transported into the state of Washington for resale therein, unless the brewer or manufacturer of such beer or the licensed importer of beer produced outside the United States has obtained from the Washington state liquor control board a certificate of approval, as hereinafter provided. The certificate of approval herein provided for shall not be granted unless and until such brewer or manufacturer of malt liquors or the licensed importer of beer produced outside the United States shall have made a written agreement with the board to furnish to the board, on or before the twentieth day of each month, a report under oath, on a form to be prescribed by the board, showing the quantity of beer sold or delivered to each licensed beer importer or imported by the licensed importer of beer produced outside the United States during the preceding month, and shall further have agreed with the board, that such brewer or manufacturer of malt liquors or the licensed importer of beer produced outside the United States and all general sales corporations or agencies maintained by such brewers or manufacturers or importers, and all trade representatives or agents of such brewer or manufacturer of malt liquors or the licensed importer of beer produced outside the United States, and of such general sales corporations and agencies, shall and will faithfully comply with all laws of the state of Washington pertaining to the sale of intoxicating liquors and all rules and regulations of the Washington state liquor control board. If any such brewer or manufacturer of malt liquors or the licensed importer of beer produced outside the United States shall, after obtaining such certificate, fail to submit such report, or if such brewer or manufacturer of malt liquors or the licensed importer of beer produced outside the United States or general sales corporation or agency maintained by such brewers or manufacturers or importers, or any representative or agent thereof, shall violate the terms of such agreement, the board shall, in its discretion, suspend or revoke such certificate;

(3) The fee for the certificate of approval, issued pursuant to the provisions of this title, shall be one hundred dollars per annum, which sum shall accompany the application for such certificate. [1981 1st ex.s. c 5 § 35; 1973 1st ex.s. c 209 § 14; 1969 ex.s. c 178 § 4; 1937 c 217 § 1 (23F) (adding new section 23-F to 1933 ex.s. c 62); RRS § 7306-23F. Formerly RCW 66.24.270 and 66.24.280.]

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66-98.090 and 66.98.100.

Severability—Effective date—1973 1st ex.s. c 209: See notes following RCW 66.08.070.

66.24.290 Authorized, prohibited sales by brewer or wholesaler—Monthly report of sales—Added tax on gallonage—Penalty for late tax payment—Revenue stamps—Additional taxes. (1) Any brewer or beer wholesaler licensed under this title may sell and deliver beer to holders of authorized licenses direct, but to no other person, other than the board; and every such brewer or beer wholesaler shall report all sales to the board monthly, pursuant to the regulations, and shall pay to the board as an added tax for the privilege of manufacturing and selling the beer within the state a tax of two dollars and sixty cents per barrel of thirty-one gallons on sales to licensees within the state and on sales to licensees within the state of bottled and canned beer shall pay a tax computed in gallons at the rate of two dollars and sixty cents per barrel of thirty-one gallons. Any brewer or beer wholesaler whose applicable tax payment is not postmarked by the twentieth day following the month of sale will be assessed a penalty at the rate of two percent per month or fraction thereof. Each such brewer or wholesaler shall procure from the board revenue stamps representing such tax in form prescribed by the board and shall affix the same to the barrel or package in such manner and in such denominations as required by the board, and shall cancel the same prior to commencing delivery from his place of business or warehouse of such barrels or packages. Beer shall be sold by brewers and wholesalers in sealed barrels or packages. The revenue stamps herein provided for need not be affixed and canceled in the making of resales of barrels or packages already taxed by the affixation and cancellation of stamps as provided in this section.

(2) An additional tax is imposed equal to the rate specified in RCW 82.02.030 multiplied by the tax payable under subsection (1) of this section. All revenues collected during any month from this additional tax shall be transferred to the state general fund by the twenty-fifth day of the following month.

(3) Until July 1, 1995, an additional tax is imposed on all beer subject to tax under subsection (1) of this section. The additional tax is equal to two dollars per barrel of thirty-one gallons. All revenues collected during any month from this additional tax shall be deposited in the drug enforcement and education account under RCW 69.50.520 by the twenty-fifth day of the following month.

(4) The tax imposed under this section shall not apply to "strong beer" as defined in this title. [1989 c 271 § 502; 1983 2nd ex.s. c 3 § 11; 1982 1st ex.s. c 35 § 24; 1981 1st ex.s. c 5 § 16; 1965 ex.s. c 173 § 30; 1933 ex.s. c 62 § 24; RRS § 7306–24.]

Effective dates—1989 c 271: See note following RCW 66.28.200.

Severability—1989 c 271: See note following RCW 9.94A.310.

Construction—Severability—Effective dates—1983 2nd ex.s. c 3: See notes following RCW 82.04.255.

Severability—Effective dates—1982 1st ex.s. c 35: See notes following RCW 82.08.020.

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

Severability—1965 ex.s. c 173: See note following RCW 82.98.030.

Giving away of liquor prohibited—Exceptions: RCW 66.28.040.

66.24.300 Refunds for unused, destroyed, exported beer stamps—Waiver of stamps. (1) The board may make refunds for all stamp taxes paid on beer exported from the state for use outside the state, and also for tax stamps destroyed prior to the consummation of any sale of beer within the state, or for unused stamps returned to the board.

(2) The board may waive the use of revenue stamps in the collection of the tax on beer. If the tax is not collected by means of stamps, the board may require filing with the board of a bond to be approved by it, in such amount as the board may fix, securing the payment of the tax. If any licensee fails to pay the tax when due, the board may forthwith suspend or cancel his license until all taxes are paid. [1951 c 93 § 1; 1937 c 217 § 2 (adding new section 24–B to 1933 ex.s. c 62); RRS § 7306–24B.]

66.24.305 Refunds of taxes on unsalable wine and beer. The board may refund the tax on wine imposed by RCW 66.24.210, and the tax on beer imposed by RCW 66.24.290, when such taxpaid products have been deemed to be unsalable and are destroyed within the state in accordance with procedures established by the board. [1975 1st ex.s. c 173 § 11.]

Severability—Effective date—1975 1st ex.s. c 173: See notes following RCW 66.08.050.

66.24.310 Agent's license—Qualifications—Conditions and restrictions—Fee. (1) No person shall canvass for, solicit, receive, or take orders for the purchase or sale of liquor, nor contact any licensees of the board in goodwill activities, unless such person shall be the accredited representative of a person, firm, or corporation holding a certificate of approval issued pursuant to RCW 66.24.270 or 66.24.206, a beer wholesaler's license, a brewer's license, a beer importer's license, a domestic winery license, a wine importer's license, or a wine wholesaler's license within the state of Washington, or the accredited representative of a distiller, manufacturer, importer, or distributor of spiritous liquor, or foreign produced beer or wine, and shall have applied for and received an agent's license: *Provided, however,* That the provisions of this section shall not apply to drivers who deliver beer or wine;

(2) Every agent's license issued under this title shall be subject to all conditions and restrictions imposed by this title or by the rules and regulations of the board; the board, for the purpose of maintaining an orderly market, may limit the number of agent's licenses issued for representation of specific classes of eligible employers;

(3) Every application for an agent's license must be approved by a holder of a certificate of approval issued pursuant to RCW 66.24.270 or 66.24.206, a licensed beer wholesaler, a licensed brewer, a licensed beer importer, a licensed domestic winery, a licensed wine importer, a licensed wine wholesaler, or by a distiller,

manufacturer, importer, or distributor of spiritous liquor, or foreign produced beer or wine, as the rules and regulations of the board shall require;

(4) The fee for an agent's license shall be twenty-five dollars per annum;

(5) An accredited representative of a distiller, manufacturer, importer, or distributor of spiritous liquor may, after he has applied for and received an agent's license, contact retail licensees of the board only in goodwill activities pertaining to spiritous liquor products. [1981 1st ex.s. c 5 § 36; 1975-'76 2nd ex.s. c 74 § 1; 1971 ex.s. c 138 § 1; 1969 ex.s. c 21 § 5; 1939 c 172 § 2; 1937 c 217 § 1 (23I) (adding new section 23-I to 1933 ex.s. c 62); RRS § 7306-23I.]

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66-98.090 and 66.98.100.

Effective date—1975-'76 2nd ex.s. c 74: "The effective date of this 1976 amendatory act shall be July 1, 1976." [1975-'76 2nd ex.s. c 74 § 4.]

Effective date—1969 ex.s. c 21: See note following RCW 64.04.010.

66.24.320 Beer retailer's license—Class A—Fee—Restrictions on selling unpasteurized beer. There shall be a beer retailer's license to be designated as a class A license to sell beer at retail, for consumption on the premises and to sell unpasteurized beer for consumption off the premises: *Provided, however,* That unpasteurized beer so sold must be in original sealed packages of the manufacturer or bottler of not less than seven and three-fourths gallons: *And provided further,* That unpasteurized beer may be sold to a purchaser in a sanitary container brought to the premises by the purchaser and filled at the tap by the retailer at the time of sale; such license to be issued only to hotels, restaurants, drug stores or soda fountains, dining places on boats and airplanes, to clubs, and at sports arenas or race tracks during recognized professional athletic events. The annual fee for said license, if issued in cities and towns, shall be graduated according to the population thereof as follows:

Cities and towns	Fee
Less than 20,000	\$ 205
20,000 or over	\$ 355

The annual fee for such license, if issued outside of cities and towns, shall be two hundred five dollars: *Provided, however,* That the annual license fee for such license, if issued to dining places on vessels not exceeding one thousand gross tons, plying on inland waters of the state of Washington on regular schedules, shall be two hundred five dollars. [1987 c 458 § 11; 1981 1st ex.s. c 5 § 37; 1977 ex.s. c 9 § 1; 1969 c 117 § 1; 1967 ex.s. c 75 § 2; 1941 c 220 § 1; 1937 c 217 § 1 (23M) (adding new section 23-M to 1933 ex.s. c 62); Rem. Supp. 1941 § 7306-23M.]

Severability—1987 c 458: See note following RCW 48.21.160.

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66-98.090 and 66.98.100.

Effective date—1967 ex.s. c 75: See note following RCW 66.08.180.

66.24.330 Beer retailer's license—Class B—Fee—Restrictions on selling unpasteurized beer. There shall be a beer retailer's license to be designated as a class B license to sell beer at retail, for consumption on the premises and to sell unpasteurized beer for consumption off the premises: *Provided, however,* That unpasteurized beer so sold must be in original sealed packages of the manufacturer or bottler of not less than seven and three-fourths gallons: *And provided further,* That unpasteurized beer may be sold to a purchaser in a sanitary container brought to the premises by the purchaser and filled at the tap by the retailer at the time of sale; such license to be issued only to a person operating a tavern. The annual fee for said license, if issued in cities and towns, shall be graduated according to the population thereof as follows:

Cities and towns	Fees
Less than 20,000	\$ 205
20,000 or over	\$ 355

The annual fee for such license, if issued outside of cities and towns, shall be two hundred five dollars. [1987 c 458 § 12; 1981 1st ex.s. c 5 § 38; 1977 ex.s. c 9 § 2; 1973 1st ex.s. c 209 § 15; 1967 ex.s. c 75 § 3; 1941 c 220 § 2; 1937 c 217 § 1 (23N) (adding new section 23-N to 1933 ex.s. c 62); Rem. Supp. 1941 § 7306-23N.]

Severability—1987 c 458: See note following RCW 48.21.160.

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66-98.090 and 66.98.100.

Severability—Effective date—1973 1st ex.s. c 209: See notes following RCW 66.08.070.

Effective date—1967 ex.s. c 75: See note following RCW 66.08.180.

66.24.340 Wine retailer's license—Class C—Fee—Removing unconsumed wine, when. There shall be a wine retailer's license to be designated as a class C license to sell wine at retail, for consumption on the premises only: *Provided,* That a patron of a hotel, restaurant, or club licensed under this section may remove from the premises recorked or recapped in its original container any portion of wine which was purchased for consumption with a meal; such license to be issued to hotels, restaurants, dining places on boats and airplanes, clubs, and to taverns. The annual fee for said license, when issued in cities and towns, shall be graduated according to the population thereof as follows:

Cities and towns	Fees
Less than 20,000	\$150
20,000 or over	\$300

The annual fee, when issued outside of the limits of cities and towns, shall be one hundred fifty dollars: *Provided, however,* That the annual license fee for such license, if issued to dining places on vessels not exceeding one thousand gross tons plying only on inland waters of the state of Washington on regular schedules, shall be one hundred fifty dollars. [1981 1st ex.s. c 5 § 39; 1981 c 94 § 1; 1977 ex.s. c 9 § 3; 1967 ex.s. c 75 § 4; 1941 c 220 § 3; 1937 c 217 § 1 (23 O) (adding new section 23-O to 1933 ex.s. c 62); Rem. Supp. 1941 § 7306-23-O.]

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66-98.090 and 66.98.100.

Effective date—1967 ex.s. c 75: See note following RCW 66.08.180.

66.24.350 Beer retailer's license—Class D—Fee. There shall be a beer retailer's license to be designated as class D license to sell pasteurized beer by the opened bottle at retail, for consumption upon the premises only, such license to be issued to hotels, restaurants, dining places on boats and aeroplanes, clubs, drug stores, or soda fountains, and such other places where the sale of beer is not the principal business conducted; fee one hundred twenty-five dollars per annum. [1981 1st ex.s. c 5 § 40; 1967 ex.s. c 75 § 5; 1937 c 217 § 1 (23P) (adding new section 23-P to 1933 ex.s. c 62); RRS § 7306-23P.]

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

Effective date—1967 ex.s. c 75: See note following RCW 66.08.180.

66.24.360 Beer retailer's license—Class E—Fee—Samples. There shall be a beer retailer's license to be designated as class E license to sell pasteurized beer at retail in bottles and original packages, not to be consumed upon the premises where sold, at any store other than the state liquor stores; fee seventy-five dollars per annum for each store: *Provided*, That a holder of a class A or a class B license shall be entitled to the privileges permitted in this section by paying an annual fee of twenty-five dollars for each store. Licensees under this section whose business is primarily the sale of beer and/or wine at retail may provide, free or for a charge, single-serving samples of two ounces or less to customers for the purpose of sales promotion. Sampling activities of licensees under this section shall be subject to RCW 66.28.010 and 66.28.040 and the cost of sampling under this section may not be borne, directly or indirectly, by any manufacturer, importer, or wholesaler of liquor.

For the purpose of this section, "pasteurized beer" includes, in addition to the usual and customary meaning, bottle conditioned beer which has been fermented partially or completely in the container in which it is sold to the retail customer and which may contain residual active yeast. The bottles and original packages in which such bottle conditioned beer may be sold under this section shall not exceed one hundred seventy ounces in capacity. [1987 c 46 § 1; 1981 1st ex.s. c 5 § 41; 1967 ex.s. c 75 § 6; 1937 c 217 § 1 (23Q) (adding new section 23-Q to 1933 ex.s. c 62); RRS § 7306-23Q.]

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

Effective date—1967 ex.s. c 75: See note following RCW 66.08.180.

Employees under eighteen allowed to handle beer or wine: RCW 66.44.340.

66.24.370 Wine retailer's license—Class F—Fee—Samples, when. (1) There shall be a wine retailer's license to be designated as class F license to sell, subject to subsection (2) of this section, table and fortified wine in bottles and original packages, not to be consumed on the premises where sold, at any store other

than the state liquor stores: *Provided*, Such licensee shall pay to the state liquor stores for wines purchased from such stores the current retail price; fee seventy-five dollars per annum: *Provided, further*, That a holder of a class A or class B license shall be entitled to the privileges permitted in this section by paying an annual fee of twenty-five dollars for each store.

(2) In counties with a population over three hundred thousand, the board shall issue a restricted class F license, authorizing the licensee to sell only table wine, if the board finds upon issuance or renewal of the license that the sale of fortified wine would be against the public interest. In determining the public interest, the board shall consider at least the following factors:

(a) The likelihood that the applicant will sell fortified wine to persons who are intoxicated;

(b) Law enforcement problems in the vicinity of the applicant's establishment that may arise from persons purchasing fortified wine at the establishment; and

(c) Whether the sale of fortified wine would be detrimental to or inconsistent with a government-operated or funded alcohol treatment or detoxification program in the area.

If the board receives no evidence or objection that the sale of fortified wine would be against the public interest, it shall issue or renew the license without restriction, as applicable. The burden of establishing that the sale of fortified wine by the licensee would be against the public interest is on those persons objecting.

(3) Licensees under this section whose business is primarily the sale of wine at retail may provide, free or for a charge, single-serving samples of two ounces or less to customers for the purpose of sales promotion. [1987 c 386 § 4; 1981 1st ex.s. c 5 § 42; 1981 c 182 § 1; 1973 1st ex.s. c 209 § 16; 1967 ex.s. c 75 § 7; 1937 c 217 § 1 (23R) (adding new section 23-R to 1933 ex.s. c 62); RRS § 7306-23R.]

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

Severability—Effective date—1973 1st ex.s. c 209: See notes following RCW 66.08.070.

Effective date—1967 ex.s. c 75: See note following RCW 66.08.180.

Employees eighteen years or older allowed to handle beer or wine: RCW 66.44.340.

66.24.375 "Society or organization" and "nonprofit organization" defined for certain purposes. "Society or organization" as used in RCW 66.24.380 and 66.24.500 and "nonprofit organization" as used in RCW 66.24.510 means a not-for-profit group organized and operated solely for charitable, religious, social, political, educational, civic, fraternal, athletic, or benevolent purposes. No portion of the profits from events sponsored by a not-for-profit group may be paid directly or indirectly to members, officers, directors, or trustees except for services performed for the organization. Any compensation paid to its officers and executives must be only for actual services and at levels comparable to the compensation for like positions within the state. A society or organization which is registered with the secretary of state

or the federal internal revenue service as a nonprofit organization may submit such registration as proof that it is a not-for-profit group. [1981 c 287 § 2.]

Effective date—1981 c 287: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1981." [1981 c 287 § 3.]

66.24.380 Special beer license—Class G—Fee. There shall be a beer retailer's license to be designated as class G; a special license to a society or organization to sell beer at picnics or other special occasions at a specified date and place; fee thirty-five dollars per day. Sale, service, and consumption of beer is to be confined to specified premises or designated areas only. [1988 c 200 § 2; 1981 1st ex.s. c 5 § 43; 1973 1st ex.s. c 209 § 17; 1969 ex.s. c 178 § 5; 1937 c 217 § 1 (23S) (adding new section 23-S to 1933 ex.s. c 62); RRS § 7306-23S.]

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.090 and 66.98.100.

Severability—Effective date—1973 1st ex.s. c 209: See notes following RCW 66.08.070.

"Society or organization" and "nonprofit organization" defined for certain purposes: RCW 66.24.375.

66.24.395 Interstate common carriers' licenses—Class CCI—Fees—Scope. (1) (a) There shall be a license that may be issued to corporations, associations, or persons operating as federally licensed commercial common passenger carriers engaged in interstate commerce, in or over territorial limits of the state of Washington on passenger trains, vessels, or airplanes. Such license shall permit the sale of spirituous liquor, wine, and beer at retail for passenger consumption within the state upon one such train passenger car, vessel, or airplane, while in or over the territorial limits of the state. Such license shall include the privilege of transporting into and storing within the state such liquor for subsequent retail sale to passengers in passenger train cars, vessels or airplanes. The fees for such master license shall be seven hundred fifty dollars per annum (class CCI-1): *Provided*, That where the sale and/or service of alcoholic beverages by such federally licensed common passenger carrier does not include spirituous liquor, the fee shall be two hundred fifty dollars per annum (class CCI-2): *Provided, further*, That upon payment of an additional sum of five dollars per annum per car, or vessel, or airplane, the privileges authorized by such license classes shall extend to additional cars, or vessels, or airplanes operated by the same licensee within the state, and a duplicate license for each additional car, or vessel, or airplane shall be issued: *Provided, further*, That such licensee may make such sales and/or service upon cars, or vessels, or airplanes in emergency for not more than five consecutive days without such license: *And provided, further*, That such license shall be valid only while such cars, or vessels, or airplanes are actively operated as common carriers for hire in interstate commerce and not while they are out of such common carrier service.

(b) Alcoholic beverages sold and/or served for consumption by such interstate common carriers while

within or over the territorial limits of this state shall be subject to such board markup and state liquor taxes in an amount to approximate the revenue that would have been realized from such markup and taxes had the alcoholic beverages been purchased in Washington: *Provided*, That the board's markup shall be applied on spirituous liquor only. Such common carriers shall report such sales and/or service and pay such markup and taxes in accordance with procedures prescribed by the board.

(2) Where such an interstate federally licensed common carrier does not sell spirituous liquor, wine, or beer at retail for passenger consumption while within or over the territorial limits of this state, but the business operation of the interstate common carrier requires the bringing in and storing of liquor within the state the license fee shall be five hundred dollars per annum (class CCI-3): *Provided*, That where such transporting and/or storage of alcoholic beverages by such common carrier does not include spirituous liquor, the license fee shall be one hundred twenty-five dollars per annum (class CCI-4).

(3) Alcoholic beverages sold and delivered in this state to interstate common carriers for use under the provisions of this section shall be considered exported from the state, subject to the conditions provided in subsection (1)(b). The storage facilities for liquor within the state by common carriers licensed under this section shall be subject to written approval by the board. [1981 1st ex.s. c 5 § 44; 1975 1st ex.s. c 245 § 2.]

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.090 and 66.98.100.

66.24.400 Liquor by the drink, class H licenses—Liquor by the bottle for hotel or club guests—Removing unconsumed liquor, when. There shall be a retailer's license, to be known and designated as class H license, to sell spirituous liquor by the individual glass, beer, and wine, at retail, for consumption on the premises, including mixed drinks and cocktails compounded or mixed on the premises only: *Provided*, That a hotel, or club licensed under chapter 70.62 RCW with overnight sleeping accommodations, that is licensed under this section may sell liquor by the bottle to registered guests of the hotel or club for consumption in guest rooms, hospitality rooms, or at banquets in the hotel or club: *Provided further*, That a patron of a bona fide hotel, restaurant, or club licensed under this section may remove from the premises recorked or recapped in its original container any portion of wine which was purchased for consumption with a meal, and registered guests who have purchased liquor from the hotel or club by the bottle may remove from the premises any unused portion of such liquor in its original container. Such class H license may be issued only to bona fide restaurants, hotels and clubs, and to dining, club and buffet cars on passenger trains, and to dining places on passenger boats and airplanes, and to dining places at publicly owned civic centers with facilities for sports, entertainment, and conventions, and to such other establishments operated and maintained primarily for the benefit of tourists, vacationers and

travelers as the board shall determine are qualified to have, and in the discretion of the board should have, a class H license under the provisions and limitations of this title. [1987 c 196 § 1; 1986 c 208 § 1; 1981 c 94 § 2; 1977 ex.s. c 9 § 4; 1971 ex.s. c 208 § 1; 1949 c 5 § 1 (adding new section 23-S-1 to 1933 ex.s. c 62); Rem. Supp. 1949 § 7306-23S-1.]

Effective date—1986 c 208: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of state government and its existing public institutions, and shall take effect on May 1, 1986." [1986 c 208 § 2.]

Severability—1949 c 5: See RCW 66.98.080.

66.24.410 Liquor by the drink, class H licenses—

Terms defined. (1) "Spirituous liquor," as used in RCW 66.24.400 to 66.24.450, inclusive, means "liquor" as defined in RCW 66.04.010, except "wine" and "beer" sold as such.

(2) "Restaurant" as used in RCW 66.24.400 to 66.24.450, inclusive, means an establishment provided with special space and accommodations where, in consideration of payment, food, without lodgings, is habitually furnished to the public, not including drug stores and soda fountains: *Provided*, That such establishments shall be approved by the board and that the board shall be satisfied that such establishment is maintained in a substantial manner as a place for preparing, cooking and serving of complete meals. The service of only fry orders or such food and victuals as sandwiches, hamburgers, or salads shall not be deemed in compliance with this definition.

(3) "Hotel," "clubs," "wine" and "beer" are used in RCW 66.24.400 to 66.24.450, inclusive, with the meaning given in chapter 66.04 RCW: *Provided*, That any such hotel shall be provided with special space and accommodations where, in consideration of payment, food is habitually furnished to the public: *Provided further*, That the board shall be satisfied that such hotel is maintained in a substantial manner as a place for preparing, cooking and serving of complete meals. The service of only fry orders, sandwiches, hamburgers, or salads shall not be deemed in compliance with this definition. [1983 c 3 § 164; 1981 1st ex.s. c 5 § 17; 1969 ex.s. c 112 § 1; 1957 c 263 § 2. Prior: 1949 c 5 § 2, part (adding new section 23-S-2 to 1933 ex.s. c 62); Rem. Supp. 1949 § 7306-23S-2, part.]

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

Severability—1949 c 5: See RCW 66.98.080.

66.24.420 Liquor by the drink, class H licenses—

Schedule of fees—Location—Number of licenses.

(1) The class H license shall be issued in accordance with the following schedule of annual fees:

(a) The annual fee for said license, if issued to a club, whether inside or outside of incorporated cities and towns, shall be seven hundred dollars.

(b) The annual fee for said license, if issued to any other class H licensee in incorporated cities and towns, shall be graduated according to the population thereof as follows:

Incorporated	Fees
Cities and towns	
Less than 20,000	\$1,200
20,000 or over	\$2,000

(c) The annual fee for said license when issued to any other class H licensee outside of incorporated cities and towns shall be: Two thousand dollars; this fee shall be prorated according to the calendar quarters, or portion thereof, during which the licensee is open for business, except in case of suspension or revocation of the license.

(d) Where the license shall be issued to any corporation, association or person operating a bona fide restaurant in an airport terminal facility providing service to transient passengers with more than one place where liquor is to be dispensed and sold, such license shall be issued upon the payment of the annual fee, which shall be a master license and shall permit such sale within and from one such place. Such license may be extended to additional places on the premises at the discretion of the board and a duplicate license may be issued for each such additional place: *Provided*, That the holder of a master license for a restaurant in an airport terminal facility shall be required to maintain in a substantial manner at least one place on the premises for preparing, cooking and serving of complete meals, and such food service shall be available on request in other licensed places on the premises: *Provided further*, That an additional license fee of twenty-five percent of the annual master license fee shall be required for such duplicate licenses.

(e) Where the license shall be issued to any corporation, association, or person operating dining places at publicly owned civic centers with facilities for sports, entertainment, and conventions, with more than one place where liquor is to be dispensed and sold, such license shall be issued upon the payment of the annual fee, which shall be a master license and shall permit such sale within and from one such place. Such license may be extended to additional places on the premises at the discretion of the board and a duplicate license may be issued for each such additional place: *Provided*, That the holder of a master license for a dining place at such a publicly owned civic center shall be required to maintain in a substantial manner at least one place on the premises for preparing, cooking and serving of complete meals, and food service shall be available on request in other licensed places on the premises: *Provided further*, That an additional license fee of ten dollars shall be required for such duplicate licenses.

(f) Where the license shall be issued to any corporation, association or person operating more than one building containing dining places at privately owned facilities which are open to the public and where there is a continuity of ownership of all adjacent property, such license shall be issued upon the payment of an annual fee which shall be a master license and shall permit such sale within and from one such place. Such license may be extended to the additional dining places on the property at the discretion of the board and a duplicate license may be issued for each additional place: *Provided*, That the holder of the master license for the dining

place shall not offer alcoholic beverages for sale, service, and consumption at the additional place unless food service is available at both the location of the master license and the duplicate license: *Provided further*, That an additional license fee of twenty dollars shall be required for such duplicate licenses.

(2) The board, so far as in its judgment is reasonably possible, shall confine class H licenses to the business districts of cities and towns and other communities, and not grant such licenses in residential districts, nor within the immediate vicinity of schools, without being limited in the administration of this subsection to any specific distance requirements.

(3) The board shall have discretion to issue class H licenses outside of cities and towns in the state of Washington. The purpose of this subsection is to enable the board, in its discretion, to license in areas outside of cities and towns and other communities, establishments which are operated and maintained primarily for the benefit of tourists, vacationers and travelers, and also golf and country clubs, and common carriers operating dining, club and buffet cars, or boats.

(4) The total number of class H licenses issued in the state of Washington by the board, not including those class H licenses issued to clubs, shall not in the aggregate at any time exceed one license for each fifteen hundred of population in the state, determined according to the yearly population determination developed by the office of financial management pursuant to RCW 43.62.030.

(5) Notwithstanding the provisions of subsection (4) of this section, the board shall refuse a class H license to any applicant if in the opinion of the board the class H licenses already granted for the particular locality are adequate for the reasonable needs of the community. [1981 1st ex.s. c 5 § 45; 1979 c 87 § 1; 1977 ex.s. c 219 § 4; 1975 1st ex.s. c 245 § 1; 1971 ex.s. c 208 § 2; 1970 ex.s. c 13 § 2. Prior: 1969 ex.s. c 178 § 6; 1969 ex.s. c 136 § 1; 1965 ex.s. c 143 § 3; 1949 c 5 § 3 (adding new section 23-S-3 to 1933 ex.s. c 62); Rem. Supp. 1949 § 7306-23S-3.]

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66-98.090 and 66.98.100.

Severability—1949 c 5: See RCW 66.98.080.

66.24.425 Liquor by the drink, class H licenses—Restaurants not serving the general public. (1) The board may, in its discretion, issue a class H license to a business which qualifies as a "restaurant" as that term is defined in RCW 66.24.410 in all respects except that the business does not serve the general public but, through membership qualification, selectively restricts admission to the business. For purposes of RCW 66.24.400 and 66.24.420, all licenses issued under this section shall be considered class H restaurant licenses and shall be subject to all requirements, fees, and qualifications in this title, or in rules adopted by the board, as are applicable to class H restaurant licenses generally except that no service to the general public may be required.

(2) No license shall be issued under this section to a business:

(a) Which shall not have been in continuous operation for at least one year immediately prior to the date of its application; or

(b) Which denies membership or admission to any person because of race, creed, color, national origin, sex, or the presence of any sensory, mental, or physical handicap. [1982 c 85 § 3.]

66.24.440 Liquor by the drink, class H licenses—Purchase of liquor by licensees—Discount. Each class H licensee shall be entitled to purchase any spirituous liquor items salable under such class H license from the board at a discount of not less than fifteen percent from the retail price fixed by the board, together with all taxes. [1949 c 5 § 5 (adding new section 23-S-5 to 1933 ex.s. c 62); Rem. Supp. 1949 § 7306-23S-5.]

Severability—1949 c 5: See RCW 66.98.080.

66.24.450 Liquor by the drink, class H licenses—Licenses to clubs—Qualifications. No club shall be entitled to a class H license:

(1) Unless such club has been in continuous operation for at least one year immediately prior to the date of its application for such license;

(2) Unless the club premises be constructed and equipped, conducted, managed, and operated to the satisfaction of the board and in accordance with this title and the regulations made thereunder;

(3) Unless the board shall have determined pursuant to any regulations made by it with respect to clubs, that such club is a bona fide club; it being the intent of this section that license shall not be granted to a club which is, or has been, primarily formed or activated to obtain a license to sell liquor, but solely to a bona fide club, where the sale of liquor is incidental to the main purposes of the club, as defined in RCW 66.04.010(5). [1981 1st ex.s. c 5 § 18; 1949 c 5 § 6; 1937 c 217 § 1 (23T) (adding new section 23-T to 1933 ex.s. c 62); Rem. Supp. 1949 § 7306-23T.]

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66-98.090 and 66.98.100.

Severability—1949 c 5: See RCW 66.98.080.

66.24.455 Bowling establishments—Extension of premises to concourse and lane areas—Class A, C, D or H licensees. Subject to approval by the board, holders of class A, C, D or H licenses may extend their premises for the sale, service and consumption of liquor authorized under their respective licenses to the concourse or lane areas in a bowling establishment where the concourse or lane areas are adjacent to the food preparation service facility. [1974 ex.s. c 65 § 1.]

66.24.480 Bottle clubs—License required. "Bottle club" means a club or association operating for profit or otherwise and conducting or maintaining premises in which the members or other persons may resort for the primary or incidental purpose of keeping or consuming liquor on the premises.

Except as permitted under a license issued by the Washington state liquor control board, it is unlawful for

any person to conduct or maintain by himself or by associating with others, or to in any manner aid, assist, or abet in conducting or maintaining a bottle club. [1951 c 120 § 2 (adding a new section to Title 66 RCW).]

Reviser's note: As to the constitutionality of this section, see *Derby Club v. Beckett*, 41 Wn. 2d 869 (1953).

66.24.481 Public place or club—License or permit required—Penalty. No public place or club, or agent, servant or employee thereof, shall keep or allow to be kept, either by itself, its agent, servant or employee, or any other person, any liquor in any place maintained or conducted by such public place or club, nor shall it permit the drinking of any liquor in any such place, unless the sale of liquor in said place is authorized by virtue of a valid and subsisting license issued by the Washington state liquor control board, or the consumption of liquor in said place is authorized by a special banquet permit issued by said board. Every person who violates any provision of this section shall be guilty of a gross misdemeanor.

"Public place," for purposes of this section only, shall mean in addition to the definition set forth in *RCW 66.04.010(24), any place to which admission is charged or in which any pecuniary gain is realized by the owner or operator of such place in selling or vending food or soft drinks. [1969 ex.s. c 250 § 2; 1953 c 141 § 1 (adding a new section to chapter 66.24 RCW).]

***Reviser's note:** RCW 66.04.010(24), which defines "public place," was renumbered RCW 66.04.010(23) by 1980 c 140 § 3.

66.24.490 Special occasion license—Class I—Fee. (1) There shall be a retailer's license to be designated as a class I license; this shall be a special occasion license to be issued to the holder of a class H license to extend the privilege of selling and serving spirituous liquor by the individual glass, beer, and wine, at retail, for consumption on the premises, to members and guests of a society or organization on special occasions at a specified date and place when such special occasions of such groups are held on premises other than the class H licensed premises and for consumption on the premises of such outside location. The holder of such special occasion license shall be allowed to remove from the liquor stocks at the licensed class H premises, liquor for sale and service at such special occasion locations. Such special class I license shall be issued for a specified date and place and upon payment of a fee of twenty-five dollars per day or, upon proper application to the liquor control board, an annual class I license may be issued to the holder of a class H license upon payment of a fee of three hundred fifty dollars.

(2) The holder of an annual class I license shall obtain prior board approval for each event at which the class I license will be utilized. When applying for such board approval, the class I licensee shall provide to the board all necessary or requested information concerning the society or organization which will be holding the function at which the class I license will be utilized.

(3) Upon receipt of a request for utilization of a class I license at a particular time and place, the board shall

give notification of the pending request to the chief executive officer of the incorporated city or town, if the function is to be held within an incorporated city or town, or to the county legislative authority if the function is to be held outside the boundaries of incorporated cities or towns.

(4) If attendance at the function, for which class I license utilization approval is requested, will be open to the general public, board approval may only be given where the society or organization sponsoring the function is within the definition of "society or organization" in RCW 66.24.375. If attendance at the function will be limited to members and invited guests of the sponsoring society or organization, board approval may be given even though the sponsoring society or organization is not within the definition of "society or organization" in RCW 66.24.375.

(5) Where the applicant for either a daily or annual class I license is a class H club licensee, the board shall not issue the class I license, or approve the use of a previously issued class I license, unless the following requirements are met:

(a) The gross food sales of the class H club exceed its gross liquor sales; and

(b) The event for which the class I license will be used is hosted by a member of the class H licensed club. [1987 c 386 § 6; 1985 c 306 § 1; 1981 1st ex.s. c 5 § 19; 1977 ex.s. c 9 § 5; 1969 ex.s. c 178 § 7; 1967 c 55 § 1.]

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

66.24.495 Retailer's license—Class L—Fee—Terms defined. (1) There shall be a retailer's license to be designated as class L. This shall be a special license to be issued to any nonprofit arts organization which sponsors and presents productions or performances of an artistic or cultural nature in a specific theater or other appropriate designated indoor premises approved by the board. The license shall permit the licensee to sell liquor to patrons of productions or performances for consumption on the premises at these events. The fee for the license shall be two hundred fifty dollars per annum.

(2) For the purposes of this section, the term "nonprofit arts organization" means an organization which is organized and operated for the purpose of providing artistic or cultural exhibitions, presentations, or performances or cultural or art education programs, as defined in subsection (3) of this section, for viewing or attendance by the general public. The organization must be a not-for-profit corporation under chapter 24.03 RCW and managed by a governing board of not less than eight individuals none of whom is a paid employee of the organization or by a corporation sole under chapter 24.12 RCW. In addition, the corporation must satisfy the following conditions:

(a) No part of its income may be paid directly or indirectly to its members, stockholders, officers, directors, or trustees except in the form of services rendered by the corporation in accordance with its purposes and bylaws;

(b) Salary or compensation paid to its officers and executives must be only for actual services rendered, and

at levels comparable to the salary or compensation of like positions within the state;

(c) Assets of the corporation must be irrevocably dedicated to the activities for which the license is granted and, on the liquidation, dissolution, or abandonment by the corporation, may not inure directly or indirectly to the benefit of any member or individual except a nonprofit organization, association, or corporation;

(d) The corporation must be duly licensed or certified when licensing or certification is required by law or regulation;

(e) The proceeds derived from sales of liquor, except for reasonable operating costs, must be used in furtherance of the purposes of the organization;

(f) Services must be available regardless of race, color, national origin, or ancestry; and

(g) The liquor control board shall have access to its books in order to determine whether the corporation is entitled to a license.

(3) The term "artistic or cultural exhibitions, presentations, or performances or cultural or art education programs" includes and is limited to:

(a) An exhibition or presentation of works of art or objects of cultural or historical significance, such as those commonly displayed in art or history museums;

(b) A musical or dramatic performance or series of performances; or

(c) An educational seminar or program, or series of such programs, offered by the organization to the general public on an artistic, cultural, or historical subject. [1981 c 142 § 1.]

66.24.500 Special occasion wine retailer's license—Class J—Fee—Additional fee for selling wine not consumed on premises—Regulations. There shall be a wine retailer's license to be designated as class J; a special license to a society or organization to sell wine at special occasions at a specified date and place; fee thirty-five dollars per day. Sale, service, and consumption of wine is to be confined to specified premises or designated areas only: *Provided*, That a holder of a class J license shall be permitted to sell at no more than two licensed events each year to members and guests in attendance at the special occasion limited quantities of wine in unopened bottles and original packages, not to be consumed on the premises where sold, by paying an additional fee of ten dollars per day. The board shall adopt appropriate regulations pursuant to chapter 34.05 RCW for the purpose of carrying out the provisions of this section. [1988 c 200 § 3; 1982 c 85 § 6. Prior: 1981 1st ex.s. c 5 § 46; 1981 c 287 § 1; 1973 1st ex.s. c 209 § 18; 1969 ex.s. c 178 § 9.]

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66-98.090 and 66.98.100.

Effective date—1981 c 287: See note following RCW 66.24.375.

Severability—Effective date—1973 1st ex.s. c 209: See notes following RCW 66.08.070.

"Society or organization" and "nonprofit organization" defined for certain purposes: RCW 66.24.375.

66.24.510 Nonprofit organization special occasion license—Class K—Fee. There shall be a spirituous

liquor retailer's license to be designated as class K; a special license to a nonprofit organization to sell spirituous liquor as defined in RCW 66.24.410 by the glass, including mixed drinks and cocktails compounded or mixed on the premises only, to their members and guests at special occasions at a specified date and place; fee thirty-five dollars per day. Sale, service, and consumption of spirituous liquor is to be confined to specified premises or designated areas only. Spirituous liquor so sold shall be purchased at a state liquor store or agency without discount at retail prices including all taxes. No more than two such licenses may be issued to any one nonprofit organization during a calendar year. [1984 c 71 § 1; 1981 1st ex.s. c 5 § 47; 1975 1st ex.s. c 173 § 12.]

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66-98.090 and 66.98.100.

Severability—Effective date—1975 1st ex.s. c 173: See notes following RCW 66.08.050.

"Society or organization" and "nonprofit organization" defined for certain purposes: RCW 66.24.375.

66.24.520 Grower's license—Fee. There shall be a grower's license to sell wine made from grapes or other agricultural products owned at the time of vinification by the licensee in bulk to holders of domestic wineries', distillers', or manufacturers' licenses or for export. The wine shall be made upon the premises of a domestic winery licensee and is referred to in this section as grower's wine. A grower's license authorizes the agricultural product grower to contract for the manufacturing of wine from the grower's own agricultural product, store wine in bulk made from agricultural products produced by the holder of this license, and to sell wine in bulk made from the grower's own agricultural products to a winery or distillery in the state of Washington or to export in bulk for sale out-of-state. The annual fee for a grower's license shall be seventy-five dollars. For the purpose of chapter 66.28 RCW, a grower licensee shall be deemed a manufacturer. [1986 c 214 § 1.]

66.24.530 Duty free exporter's license—Class S—Fee. (1) There shall be a license to be designated as a class S license to qualified duty free exporters authorizing such exporters to sell beer and wine to vessels for consumption outside the state of Washington.

(2) To qualify for a license under subsection (1) of this section, the exporter shall have:

(a) An importer's basic permit issued by the United States bureau of alcohol, tobacco, and firearms and a customs house license in conjunction with a common carriers bond;

(b) A customs bonded warehouse, or be able to operate from a foreign trade zone; and

(c) A notarized signed statement from the purchaser stating that the product is for consumption outside the state of Washington.

(3) The license for qualified duty free exporters shall authorize the duty free exporter to purchase from a brewery, winery, beer wholesaler, wine wholesaler, beer importer, or wine importer licensed by the state of Washington.

(4) Beer and/or wine sold and delivered in this state to duty free exporters for use under this section shall be considered exported from the state.

(5) The fee for this license shall be one hundred dollars per annum. [1987 c 386 § 1.]

66.24.550 Wine retailer's license—Class P—Fee—Limitations. There shall be a wine retailer's license to be designated as class P to solicit, take orders for, sell and deliver wine in bottles and original packages to persons other than the person placing the order. A class P license may be issued only to a business solely engaged in the sale or sale and delivery of gifts at retail which holds no other class of license under this title or to a person in the business of selling flowers or floral arrangements at retail. No minimum wine inventory requirement shall apply to holders of class P licenses. The fee for this license is seventy-five dollars per year. Delivery of wine under a class P license shall be made in accordance with all applicable provisions of this title and the rules of the board, and no wine so delivered shall be opened on any premises licensed under this title. A class P license does not authorize door-to-door solicitation of gift wine delivery orders. Deliveries of wine under a class P license shall be made only in conjunction with gifts or flowers. [1989 c 149 § 1; 1986 c 40 § 1; 1982 c 85 § 10.]

Chapter 66.28

MISCELLANEOUS REGULATORY PROVISIONS

Sections

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66.28.190	Sales of nonliquor food products.
66.28.200	Keg registration—Requirements of seller.
66.28.210	Keg registration—Requirements of purchaser.
66.28.220	Keg registration—Identification of containers—Rules—Sale in violation of rules unlawful.
66.28.230	Keg registration—Penalties.
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Grower licensee deemed a manufacturer: RCW 66.24.520.

Labels, unlawful refilling, etc., of trademarked containers: Chapter 19.76 RCW.

66.28.010 Manufacturers, importers and wholesalers barred from interest in retail business or location—Advances prohibited—"Financial interest" defined—Exceptions.

(1) No manufacturer, importer, or wholesaler, or person financially interested, directly or indirectly, in such business, whether resident or nonresident, shall have any financial interest, direct or indirect, in any licensed retail business, nor shall any manufacturer, importer, or wholesaler own any of the property upon which such licensed persons conduct their business, nor shall any such licensed person, under any arrangement whatsoever, conduct his business upon property in which any manufacturer, importer, or wholesaler has any interest. Except as provided in subsection (3) of this section, no manufacturer, importer, or wholesaler shall advance moneys or moneys' worth to a licensed person under an arrangement, nor shall such licensed person receive, under an arrangement, an advance of moneys or moneys' worth: *Provided*, That "person" as used in this section only shall not include those state or federally chartered banks, state or federally chartered savings and loan associations, state or federally chartered mutual savings banks, or institutional investors which are not controlled directly or indirectly by a manufacturer, importer, or wholesaler as long as the bank, savings and loan association, or institutional investor does not influence or attempt to influence the purchasing practices of the retailer with respect to alcoholic beverages. No manufacturer, importer, or wholesaler shall be eligible to receive or hold a retail license under this title, nor shall such manufacturer, importer, or wholesaler sell at retail any liquor as herein defined: *Provided*, That nothing in this section shall prohibit a licensed brewer or domestic winery from being licensed as a retailer pursuant to chapter 66.24 RCW for the purpose of selling beer or wine of its own production at retail on the brewery or winery premises. Such beer and wine so sold at retail shall be subject to the taxes imposed by RCW 66.24.290 and 66.24.210 and to reporting and bonding requirements as prescribed by regulations adopted by the board pursuant to chapter 34.05 RCW: *Provided further*, That nothing in this section shall prohibit a licensed brewer or domestic winery, or a lessee of a licensed brewer or domestic winery, from being licensed as a class H restaurant pursuant to chapter 66.24 RCW for the purpose of selling liquor at a class H premises on the property on which the primary manufacturing facility of the licensed brewer or domestic winery is located or on contiguous property owned by the licensed brewer or domestic winery as prescribed by regulations adopted by the board pursuant to chapter 34.05 RCW.

(2) Financial interest, direct or indirect, as used in this section, shall include any interest, whether by stock ownership, mortgage, lien, or through interlocking directors, or otherwise. Pursuant to rules promulgated by the board in accordance with chapter 34.05 RCW manufacturers, wholesalers and importers may perform, and retailers may accept the service of building, rotating and restocking case displays and stock room inventories; rotating and rearranging can and bottle displays of their own products; provide point of sale material and brand signs; price case goods of their own brands; and perform such similar normal business services as the board may by regulation prescribe.

(3)(a) This section does not prohibit a manufacturer, importer, or wholesaler from providing services to a class G or J retail licensee for: (i) Installation of draft beer dispensing equipment or advertising, (ii) advertising, pouring or dispensing of wine at a wine tasting exhibition or judging event, or (iii) a class G or J retail licensee from receiving any such services as may be provided by a manufacturer, importer, or wholesaler: *Provided*, That nothing in this section shall prohibit a retail licensee, or any person financially interested, directly or indirectly, in such a retail licensee from having a financial interest, direct or indirect, in a business which provides, for a compensation commensurate in value to the services provided, bottling, canning or other services to a manufacturer, so long as the retail licensee or person interested therein has no direct financial interest in or control of said manufacturer.

(b) A person holding contractual rights to payment from selling a liquor wholesaler's business and transferring the license shall not be deemed to have a financial interest under this section if the person (i) lacks any ownership in or control of the wholesaler, (ii) is not employed by the wholesaler, and (iii) does not influence or attempt to influence liquor purchases by retail liquor licensees from the wholesaler.

(c) The board shall adopt such rules as are deemed necessary to carry out the purposes and provisions of subsection (3)(a) of this section in accordance with the administrative procedure act, chapter 34.05 RCW.

(4) A license issued under RCW 66.24.395 does not constitute a retail license for the purposes of this section. [1985 c 363 § 1; 1982 c 85 § 7; 1977 ex.s. c 219 § 2; 1975-'76 2nd ex.s. c 74 § 3; 1975 1st ex.s. c 173 § 6; 1937 c 217 § 6; 1935 c 174 § 14; 1933 ex.s. c 62 § 90; RRS § 7306-90. Prior: 1909 c 84 § 1.]

Effective date—1975-'76 2nd ex.s. c 74: See note following RCW 66.24.310.

Severability—**Effective date**—1975 1st ex.s. c 173: See notes following RCW 66.08.050.

Giving away of liquor prohibited—*Exceptions*: RCW 66.28.040.

66.28.030 Responsibility of brewers, vintners, manufacturers holding certificate approval and importers for conduct of wholesaler—Penalties. Every licensed brewer, domestic winery, manufacturer holding a certificate of approval, licensed wine importer and licensed beer importer shall be responsible for the conduct of any

licensed beer or wine wholesaler in selling, or contracting to sell, to retail licensees, beer or wine manufactured by such brewer, domestic winery, manufacturer holding a certificate of approval or imported by such beer or wine importer. Where the board finds that any licensed beer or wine wholesaler has violated any of the provisions of this title or of the regulations of the board in selling or contracting to sell beer or wine to retail licensees, the board may, in addition to any punishment inflicted or imposed upon such wholesaler, prohibit the sale of the brand or brands of beer or wine involved in such violation to any or all retail licensees within the trade territory usually served by such wholesaler for such period of time as the board may fix, irrespective of whether the brewer manufacturing such beer or the beer importer importing such beer or the domestic winery manufacturing such wine or the wine importer importing such wine or the certificate of approval holder manufacturing such beer or wine actually participated in such violation. [1975 1st ex.s. c 173 § 8; 1969 ex.s. c 21 § 6; 1939 c 172 § 8 (adding new section 27-D to 1933 ex.s. c 62); RRS § 7306-27D.]

Severability—**Effective date**—1975 1st ex.s. c 173: See notes following RCW 66.08.050.

Effective date—1969 ex.s. c 21: See note following RCW 66.04.010.

66.28.040 Giving away of liquor prohibited—Exceptions. Except as permitted by the board under RCW 66.20.010, no brewer, wholesaler, distiller, winery, importer, rectifier, or other manufacturer of liquor shall, within the state, by himself, his clerk, servant, or agent, give to any person any liquor; but nothing in this section nor in RCW 66.28.010 shall prevent a brewer, wholesaler, winery, or importer from furnishing samples of beer or wine to authorized licensees for the purpose of negotiating a sale, in accordance with regulations adopted by the liquor control board, provided that the samples are subject to taxes imposed by RCW 66.24.290 and 66.24.210; nothing in this section shall prevent the furnishing of samples of liquor to the board for the purpose of negotiating the sale of liquor to the state liquor control board; nothing in this section shall prevent a brewery, winery, or wholesaler from furnishing beer or wine for instructional purposes under RCW 66.28.150; nothing in this section shall prevent a winery or wholesaler from furnishing wine without charge to a not-for-profit group organized and operated solely for the purpose of enology or the study of viticulture which has been in existence for at least six months and any wine so furnished shall be used solely for such educational purposes, provided that the wine furnished shall be subject to the taxes imposed by RCW 66.24.210; nothing in this section shall prevent a brewer from serving beer without charge, on the brewery premises; nothing in this section shall prevent donations of wine for the purposes of RCW 66.12.180; and nothing in this section shall prevent a domestic winery from serving wine without charge, on the winery premises. [1987 c 452 § 15; 1983 c 13 § 2; 1983 c 3 § 165; 1982 1st ex.s. c 26 § 2; 1981 c 182 § 2;

1975 1st ex.s. c 173 § 10; 1969 ex.s. c 21 § 7; 1935 c 174 § 4; 1933 ex.s. c 62 § 30; RRS § 7306-30.]

Construction—Effective dates—Severability—1987 c 452: See RCW 15.88.900 through 15.88.902.

Severability—Effective date—1975 1st ex.s. c 173: See notes following RCW 66.08.050.

Effective date—1969 ex.s. c 21: See note following RCW 66.04.010.

66.28.045 Furnishing samples to board—Standards for accountability—Regulations. The legislature finds the furnishing of samples of liquor to the state liquor control board is an integral and essential part of the operation of the state liquor business. The legislature further finds that it is necessary to establish adequate standards for the accountability of the receipt, use and disposition of liquor samples. The board shall adopt appropriate regulations pursuant to chapter 34.05 RCW for the purpose of carrying out the provisions of this section. [1975 1st ex.s. c 173 § 9.]

Severability—Effective date—1975 1st ex.s. c 173: See notes following RCW 66.08.050.

66.28.050 Solicitation of orders prohibited—Exceptions. No person shall canvass for, solicit, receive, or take orders for the purchase or sale of any liquor, or act as agent for the purchase or sale of liquor except as authorized by RCW 66.24.310 as now or hereafter amended or by RCW 66.24.550. Nothing in this section contained shall apply to agents dealing with the board or to the receipt or transmission of a telegram or letter by any telegraph agent or operator or post office employee in the ordinary course of his employment as such agent, operator or employee. [1982 c 85 § 11; 1975-'76 2nd ex.s. c 74 § 2; 1969 ex.s. c 21 § 8; 1937 c 217 § 4; 1933 ex.s. c 62 § 42; RRS § 7306-42.]

Effective date—1975-'76 2nd ex.s. c 74: See note following RCW 66.24.310.

Effective date—1969 ex.s. c 21: See note following RCW 64.04.010.

66.28.060 Distillers to make monthly report—No sale except to board. Every distillery licensed under this title shall make monthly reports to the board pursuant to the regulations. No such distillery shall make any sale of spirits within the state of Washington except to the board. [1933 ex.s. c 62 § 26; RRS § 7306-26.]

66.28.070 Restrictions on purchases of beer by retail licensee, brewer and wholesaler. (1) Except as provided in subsection (2) of this section, it shall be unlawful for any retail beer licensee to purchase beer, except from a duly licensed beer wholesaler, and it shall be unlawful for any brewer or beer wholesaler to purchase beer, except from a duly licensed beer wholesaler or beer importer.

(2) A beer retailer licensee may purchase beer from a government agency which has lawfully seized beer from a licensed beer retailer, or from a board-authorized retailer, or from a licensed retailer which has discontinued

business if the wholesaler has refused to accept beer from that retailer for return and refund. Beer purchased under this subsection shall meet the quality standards set by its manufacturer. [1987 c 205 § 1; 1937 c 217 § 1(23H) (adding new section 23-H to 1933 ex.s. c 62); RRS § 7306-23H.]

66.28.080 Permit for music and dancing upon licensed premises. It shall be unlawful for any person, firm or corporation holding any retailer's license to permit or allow upon the premises licensed any music, dancing, or entertainment whatsoever, unless and until permission thereto is specifically granted by appropriate license or permit of the proper authorities of the city or town in which such licensed premises are situated, or the board of county commissioners, if the same be situated outside an incorporated city or town: *Provided*, That the words "music and entertainment," as herein used, shall not apply to radios or mechanical musical devices. [1969 ex.s. c 178 § 8; 1949 c 5 § 7; 1937 c 217 § 3 (adding new section 27-A to 1933 ex.s. c 62); Rem. Supp. 1949 § 7306-27A.]

Severability—1949 c 5: See RCW 66.98.080.

66.28.090 Licensed premises or banquet permit premises open to inspection—Failure to allow, violation. (1) All licensed premises used in the manufacture, storage, or sale of liquor, or any premises or parts of premises used or in any way connected, physically or otherwise, with the licensed business, and/or any premises where a banquet permit has been granted, shall at all times be open to inspection by any liquor enforcement officer, inspector or peace officer.

(2) Every person, being on any such premises and having charge thereof, who refuses or fails to admit a liquor enforcement officer, inspector or peace officer demanding to enter therein in pursuance of this section in the execution of his/her duty, or who obstructs or attempts to obstruct the entry of such liquor enforcement officer, inspector or officer of the peace, or who refuses to allow a liquor enforcement officer, and/or an inspector to examine the books of the licensee, or who refuses or neglects to make any return required by this title or the regulations, shall be guilty of a violation of this title. [1981 1st ex.s. c 5 § 20; 1935 c 174 § 7; 1933 ex.s. c 62 § 52; RRS § 7306-52.]

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

66.28.100 Spirits to be labeled—Contents. Every person manufacturing spirits as defined in this title shall put upon all packages containing spirits so manufactured a distinctive label, showing the nature of the contents, the name of the person by whom the spirits were manufactured, the place where the spirits were manufactured, and showing the alcoholic content of such spirits. For the purpose of this section the contents of packages containing spirits shall be shown by the use of the words "whiskey", "rum", "brandy", and the like, on the outside of such packages. [1933 ex.s. c 62 § 46; RRS § 7306-46.]

66.28.110 Wine to be labeled—Contents. Every person producing, manufacturing, bottling or distributing wine shall put upon all packages a distinctive label such as will provide the consumer with adequate information as to the identity and quality of the product, the alcoholic content thereof, the net contents of the package, the name of the producer, manufacturer or bottler thereof and such other information as the board may by regulation prescribe. [1939 c 172 § 4; 1933 ex.s. c 62 § 45; RRS § 7306-45.]

66.28.120 Malt liquor to be labeled—Contents. Every person manufacturing or distributing malt liquor for sale within the state shall put upon all packages containing malt liquor so manufactured or distributed a distinctive label showing the nature of the contents, the name of the person by whom the malt liquor was manufactured, and the place where it was manufactured. For the purpose of this section, the contents of packages containing malt liquor shall be shown by the use of the word "beer," "ale," "malt liquor," "stout," or "porter," on the outside of the packages. [1982 c 39 § 2; 1961 c 36 § 1; 1933 ex.s. c 62 § 44; RRS § 7306-44.]

Severability—1982 c 39: See note following RCW 66.04.010.

66.28.130 Selling or serving of liquor to or consumption by standing or walking person. It shall not be unlawful for a retail licensee whose premises are open to the general public to sell, supply or serve liquor to a person for consumption on the licensed retail premises if said person is standing or walking, nor shall it be unlawful for such licensee to permit any said person so standing or walking to consume liquor on such premises: *Provided however,* That the retail licensee of such a premises may at his discretion, promulgate a house rule that no person shall be served nor allowed to consume liquor unless said person is seated. [1969 ex.s. c 112 § 2.]

66.28.140 Removing family wine from home for exhibition or use at wine tastings or competitions—Conditions. (1) An adult member of a household may remove family wine from the home for exhibition or use at organized wine tastings or competitions, subject to the following conditions:

(a) The quantity removed by a producer for these purposes is limited to a quantity not exceeding one gallon;

(b) Family wine is not removed for sale or for the use of any person other than the producer. This subparagraph does not preclude any necessary tasting of the wine when the exhibition or wine tasting includes judging the merits of the wine by judges who have been selected by the organization sponsoring the affair; and

(c) When the display contest or judging purpose has been served, any remaining portion of the sample is returned to the family premises from which removed.

(2) As used in this section, "family wine" means wine manufactured in the home for consumption therein, and not for sale. [1981 c 255 § 2.]

66.28.150 Breweries, wineries, and wholesalers authorized to conduct courses of instruction on beer and wine. A brewery, winery, or wholesaler may, without charge, instruct licensees and their employees, or conduct courses of instruction for licensees and their employees, on the subject of beer or wine, including but not limited to, the history, nature, values, and characteristics of beer or wine, the use of wine lists, and the methods of presenting, serving, storing, and handling beer or wine. The brewery, winery, or wholesaler may furnish beer or wine and such other equipment, materials, and utensils as may be required for use in connection with the instruction or courses of instruction. The instruction or courses of instruction may be given at the premises of the brewery, winery, or wholesaler, at the premises of a retail licensee, or elsewhere. [1982 1st ex.s. c 26 § 1.]

66.28.155 Breweries, wineries, wholesalers, or agents authorized to conduct educational activities on licensed premises of retailer. A brewery, winery, wholesaler, or its licensed agent may conduct educational activities or provide product information to the consumer on the licensed premises of a retailer. Information on the subject of wine or beer, including but not limited to, the history, nature, quality, and characteristics of a wine or beer, methods of harvest, production, storage, handling, and distribution of a wine or beer, and the general development of the wine and beer industry may be provided by a brewery, winery, wholesaler, or its licensed agent to the public on the licensed premises of a retailer. The retailer requesting such activity shall attempt to schedule a series of brewery, winery, and wholesaler appearances in an effort to equitably represent the industries. Nothing in this section permits a brewery, winery, wholesaler, or its licensed agent to receive compensation or financial benefit from the educational activities or product information presented on the licensed premises of a retailer. The promotional value of such educational activities or product information shall not be considered advancement of moneys or of moneys' worth within the meaning of RCW 66.28.010. [1984 c 196 § 1.]

66.28.160 Promotion of liquor at colleges and universities. No liquor manufacturer, importer, wholesaler, retailer, agent thereof, or campus representative of any of the foregoing, may conduct promotional activities for any liquor product on the campus of any college or university nor may any such entities engage in activities that facilitate or promote the consumption of alcoholic beverages by the students of the college or university at which the activity takes place. This section does not prohibit the following:

(1) The sale of alcoholic beverages, by retail licensees on their licensed premises, to persons of legal age and condition to consume alcoholic beverages;

(2) Sponsorship of broadcasting services for events on a college or university campus;

(3) Liquor advertising in campus publications; or

(4) Financial assistance to an activity and acknowledgment of the source of the assistance, if the assistance,

activity, and acknowledgment are each approved by the college or university administration. [1985 c 352 § 20.]

Severability—1985 c 352: See note following RCW 10.05.010.

66.28.170 Wine or malt manufacturers—Discrimination in price to purchaser for resale prohibited. It is unlawful for a manufacturer of wine or malt beverages holding a certificate of approval issued under RCW 66.24.270 or 66.24.206, a brewer's license, or a domestic winery license to discriminate in price in selling to any purchaser for resale in the state. [1985 c 226 § 3.]

66.28.180 Price modification by certain persons, firms, or corporations—Board notification and approval. It is unlawful for a person, firm, or corporation holding a certificate of approval issued under RCW 66.24.270 or 66.24.206, a beer wholesaler's license, a brewer's license, a beer importer's license, a domestic winery license, a wine importer's license, or a wine wholesaler's license within the state of Washington to modify any prices without prior notification to and approval of the board. [1985 c 226 § 4.]

66.28.190 Sales of nonliquor food products. RCW 66.28.010 notwithstanding, persons licensed under RCW 66.24.200 as wine wholesalers and persons licensed under RCW 66.24.250 as beer wholesalers may sell at wholesale nonliquor food products on thirty-day credit terms to persons licensed as retailers under this title, but complete and separate accounting records shall be maintained on all sales of nonliquor food products to ensure that such persons are in compliance with RCW 66.28.010.

For the purpose of this section, "nonliquor food products" include[s] all food products for human consumption as defined in RCW 82.08.0293 as it exists on July 1, 1987, except that for the purposes of this section bottled water and carbonated beverages, whether liquid or frozen, shall be considered food products. [1988 c 50 § 1.]

66.28.200 Keg registration—Requirements of seller. Only licensees holding a class A or B license in combination with a class E license may sell malt liquor in kegs or other containers capable of holding four gallons or more of liquid. Any person who sells or offers for sale the contents of kegs or other containers containing four gallons or more of malt liquor, or leases kegs or other containers that will hold four gallons of malt liquor, to consumers who are not licensed under chapter 66.24 RCW shall do the following for any transaction involving the container:

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

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

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

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

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

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

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

(5) Require the purchaser to maintain a copy of the declaration and receipt next to or adjacent to the keg or other container, in no event a distance greater than five feet, and visible without a physical barrier from the keg, during the time that the keg or other container is in the purchaser's possession or control. [1989 c 271 § 229.]

Effective dates—1989 c 271: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately, except:

(1) Sections 502 and 504 of this act shall take effect June 1, 1989; and

(2) Sections 229 through 233, 501, 503, and 505 through 509 of this act shall take effect July 1, 1989." [1989 c 271 § 607.]

Severability—1989 c 271: See note following RCW 9.94A.310.

66.28.210 Keg registration—Requirements of purchaser. Any person who purchases the contents of kegs or other containers containing four gallons or more of malt liquor, or purchases or leases the container shall:

(1) Sign a declaration and receipt for the keg or other container or beverage in substantially the form provided in RCW 66.28.220;

(2) Provide one piece of identification pursuant to RCW 66.16.040;

(3) Be of legal age to purchase, possess, or use malt liquor;

(4) Not allow any person under the age of twenty-one to consume the beverage except as provided by RCW 66.44.270;

(5) Not remove, obliterate, or allow to be removed or obliterated, the identification required under rules adopted by the board;

(6) Not move, keep, or store the keg or its contents, except for transporting to and from the distributor, at any place other than that particular address declared on the receipt and declaration; and

(7) Maintain a copy of the declaration and receipt next to or adjacent to the keg or other container, in no event a distance greater than five feet, and visible without a physical barrier from the keg, during the time that the keg or other container is in the purchaser's possession or control. [1989 c 271 § 230.]

Effective dates—1989 c 271: See note following RCW 66.28.200.

Severability—1989 c 271: See note following RCW 9.94A.310.

66.28.220 Keg registration—Identification of containers—Rules—Sale in violation of rules unlawful. The board shall adopt rules requiring retail licensees to affix appropriate identification on all containers of four

gallons or more of malt liquor for the purpose of tracing the purchasers of such containers. The rules may provide for identification to be done on a state-wide basis or on the basis of smaller geographical areas.

The board shall develop and make available forms for the declaration and receipt required by RCW 66.28.200.

It is unlawful for any person to sell or offer for sale kegs or other containers containing four gallons or more of malt liquor to consumers who are not licensed under chapter 66.24 RCW if the kegs or containers are not identified in compliance with rules adopted by the board. [1989 c 271 § 231.]

Effective dates—1989 c 271: See note following RCW 66.28.200.
Severability—1989 c 271: See note following RCW 9.94A.310.

66.28.230 Keg registration—Penalties. (1) Except as provided in subsection (2) of this section, the violation of any provisions of RCW 66.28.200 through 66.28.220 is punishable by a fine of not more than five hundred dollars.

(2) Except as provided in RCW 66.44.270, a person who intentionally furnishes a keg or other container containing four or more gallons of malt liquor to a minor is liable, on conviction, for a first offense for a penalty of not more than five hundred dollars, or for imprisonment for not more than two months, or both; for a second offense for a penalty of not more than five hundred dollars or imprisonment for not more than six months, or both; and for a third or subsequent offense for a penalty of not more than five hundred dollars or imprisonment for more than one year, or both. [1989 c 271 § 232.]

Effective dates—1989 c 271: See note following RCW 66.28.200.
Severability—1989 c 271: See note following RCW 9.94A.310.

66.28.240 Keg registration—State preemption. The state of Washington fully occupies and preempts the entire field of keg registration. Cities, towns, and counties or other municipalities may enact only those laws and ordinances relating to keg registration that are consistent with this chapter. Such local ordinances shall have the same or lesser penalties as provided for by state law. Local laws and ordinances that are inconsistent with, more restrictive than, or exceed the requirements of state law shall not be enacted and are preempted and repealed, regardless of the nature of the code, charter, or home rule status of the city, town, county, or municipality. [1989 c 271 § 233.]

Effective dates—1989 c 271: See note following RCW 66.28.200.
Severability—1989 c 271: See note following RCW 9.94A.310.

Chapter 66.32

SEARCH AND SEIZURE

Sections

66.32.010	Possession of contraband liquor.
66.32.020	Search warrant—Search and seizure.
66.32.030	Service of warrant—Receipt for seized property.
66.32.040	Forfeiture of liquor directed if kept unlawfully.
66.32.050	Hearing.

66.32.060	Claimants may appear.
66.32.070	Judgment of forfeiture—Disposition of proceeds of property sold.
66.32.080	Forfeiture action no bar to criminal prosecution.
66.32.090	Seized liquor to be reported and delivered to board.

66.32.010 Possession of contraband liquor. Except as permitted by the board, no liquor shall be kept or had by any person within this state unless the package in which the liquor was contained had, while containing that liquor, been sealed with the official seal adopted by the board, except in the case of:

- (1) Liquor imported by the board; or
- (2) Liquor manufactured in the state for sale to the board or for export; or
- (3) Beer, purchased in accordance with the provisions of law; or
- (4) Wine or beer exempted in RCW 66.12.010. [1955 c 39 § 3. Prior: 1943 c 216 § 3(1); 1933 ex.s. c 62 § 33(1); Rem. Supp. 1943 § 7306–33(1).]

66.32.020 Search warrant—Search and seizure. If, upon the sworn complaint of any person, it is made to appear to any judge of the superior court or district court, that there is probable cause to believe that intoxicating liquor is being manufactured, sold, bartered, exchanged, given away, furnished, or otherwise disposed of or kept in violation of the provisions of this title, such judge shall, with or without the approval of the prosecuting attorney, issue a warrant directed to a civil officer of the state duly authorized to enforce or assist in enforcing any law thereof, or to an inspector of the board, commanding the civil officer or inspector to search the premises, room, house, building, boat, vehicle, structure or place designated and described in the complaint and warrant, and to seize all intoxicating liquor there found, together with the vessels in which it is contained, and all implements, furniture, and fixtures used or kept for the illegal manufacture, sale, barter, exchange, giving away, furnishing, or otherwise disposing of the liquor, and to safely keep the same, and to make a return of the warrant within ten days, showing all acts and things done thereunder, with a particular statement of all articles seized and the name of the person or persons in whose possession they were found, if any, and if no person is found in the possession of the articles, the return shall so state. [1987 c 202 § 220; 1955 c 288 § 1; 1955 c 39 § 4. Prior: 1943 c 216 § 3(2), part; 1933 ex.s. c 62 § 33(2), part; Rem. Supp. 1943 § 7306–33(2), part.]

Intent—1987 c 202: See note following RCW 2.04.190.

66.32.030 Service of warrant—Receipt for seized property. A copy of the warrant, together with a detailed receipt for the property taken shall be served upon the person found in possession of any intoxicating liquor, furniture, or fixtures so seized, and if no person is found in possession thereof, a copy of the warrant and receipt shall be left in a conspicuous place upon the premises wherein they are found. [1955 c 39 § 5. Prior: 1943 c 216 § 3(2), part; 1933 ex.s. c 62 § 33(2), part; Rem. Supp. 1943 § 7306–33(2), part.]

66.32.040 Forfeiture of liquor directed if kept unlawfully. All liquor seized pursuant to the authority of the warrant shall, upon adjudication that it was kept in violation of this title, be forfeited and upon forfeiture be delivered to the board. [1955 c 39 § 6. Prior: 1943 c 216 § 3(2), part; 1933 ex.s. c 62 § 23(2), part; Rem. Supp. 1943 § 7306–33(2), part.]

66.32.050 Hearing. Upon the return of the warrant as provided herein, the judge shall fix a time, not less than ten days, and not more than thirty days thereafter, for the hearing of the return, when he or she shall proceed to hear and determine whether or not the articles seized, or any part thereof, were used or in any manner kept or possessed by any person with the intention of violating any of the provisions of this title. [1987 c 202 § 221; 1955 c 39 § 7. Prior: 1943 c 216 § 3(3), part; 1933 ex.s. c 62 § 33(2), part; Rem. Supp. 1943 § 7306–33(3), part.]

Intent—1987 c 202: See note following RCW 2.04.190.

66.32.060 Claimants may appear. At the hearing, any person claiming any interest in any of the articles seized may appear and be heard upon filing a written claim setting forth particularly the character and extent of his interest, and the burden shall rest upon the claimant to show, by competent evidence, his property right or interest in the articles claimed, and that they were not used in violation of any of the provisions of this title, and were not in any manner kept or possessed with the intention of violating any of its provisions. [1955 c 39 § 8. Prior: 1943 c 216 § 3(3), part; 1933 ex.s. c 62 § 33(2), part; Rem. Supp. 1943 § 7306–33(3), part.]

66.32.070 Judgment of forfeiture—Disposition of proceeds of property sold. If, upon the hearing, the evidence warrants, or, if no person appears as claimant, the judge shall thereupon enter a judgment of forfeiture, and order such articles destroyed forthwith: *Provided*, That if, in the opinion of the judge, any of the forfeited articles other than intoxicating liquors are of value and adapted to any lawful use, the judge shall, as a part of the order and judgment, direct that the articles other than intoxicating liquor be sold as upon execution by the officer having them in custody, and the proceeds of the sale after payment of all costs of the proceedings shall be paid into the liquor revolving fund. [1987 c 202 § 222; 1955 c 39 § 9. Prior: 1943 c 216 § 3(3), part; 1933 ex.s. c 62 § 33(2), part; Rem. Supp. 1943 § 7306–33(3), part.]

Intent—1987 c 202: See note following RCW 2.04.190.

66.32.080 Forfeiture action no bar to criminal prosecution. Action under RCW 66.32.010 through 66.32.080 and the forfeiture, destruction, or sale of any articles thereunder shall not bar prosecution under any other provision. [1955 c 39 § 10. Prior: 1943 c 216 § 3(3), part; 1933 ex.s. c 62 § 33(2), part; Rem. Supp. 1943 § 7306–33(3), part.]

66.32.090 Seized liquor to be reported and delivered to board. In every case in which liquor is seized by a sheriff or deputy of any county or by a police officer of any municipality or by a member of the Washington state patrol, or any other authorized peace officer or inspector, it shall be the duty of the sheriff or deputy of any county, or chief of police of the municipality, or the chief of the Washington state patrol, as the case may be, to forthwith report in writing to the board of particulars of such seizure, and to immediately deliver over such liquor to the board, or its duly authorized representative, at such place as may be designated by it. [1987 c 202 § 223; 1935 c 174 § 8; 1933 ex.s. c 62 § 55; RRS § 7306–55.]

Intent—1987 c 202: See note following RCW 2.04.190.

Chapter 66.36

ABATEMENT PROCEEDINGS

Sections

66.36.010 Places where liquor unlawfully kept declared a nuisance—Abatement of activity and realty—Judgment—Bond to reopen.

66.36.010 Places where liquor unlawfully kept declared a nuisance—Abatement of activity and realty—Judgment—Bond to reopen. Any room, house, building, boat, vehicle, structure or place, except premises licensed under this title, where liquor, as defined in this title, is manufactured, kept, sold, bartered, exchanged, given away, furnished or otherwise disposed of in violation of the provisions of this title or of the laws of this state relating to the manufacture, importation, transportation, possession, distribution and sale of liquor, and all property kept in and used in maintaining such a place, are hereby declared to be a common nuisance. The prosecuting attorney of the county in which such nuisance is situated shall institute and maintain an action in the superior court of such county in the name of the state of Washington to abate and perpetually enjoin such nuisance. The plaintiff shall not be required to give bond in such action, and restraining orders, temporary injunctions and permanent injunctions may be granted in said cause as in other injunction proceedings, and upon final judgment against the defendant, such court may also order that said room, house, building, boat, vehicle, structure or place, shall be closed for a period of one year; or until the owner, lessee, tenant or occupant thereof shall give bond with sufficient surety, to be approved by the court making the order, in the penal sum of not less than one thousand dollars payable to the state of Washington, and conditioned that liquor will not thereafter be manufactured, kept, sold, bartered, exchanged, given away, furnished or otherwise disposed of thereon or therein in violation of the provisions of this title or of the laws of this state relating to the manufacture, importation, transportation, possession, distribution and sale of liquor, and that he will pay all fines, costs and damages assessed against him for any violation of

this title or of the laws of this state relating to the manufacture, importation, transportation, possession, distribution and sale of liquor. If any condition of such bond be violated, the whole amount may be recovered as a penalty for the use of the county wherein the premises are situated.

In all cases where any person has been convicted of a violation of this title or the laws of this state relating to the manufacture, importation, transportation, possession, distribution and sale of liquor an action may be brought in the superior court of the county in which the premises are situated, to abate as a nuisance any real estate or other property involved in the commission of said offense, and in any such action a certified copy of the record of such conviction shall be admissible in evidence and prima facie evidence that the room, house, building, boat, vehicle, structure or place against which such action is brought is a public nuisance. [1939 c 172 § 9 (adding new section 33-A to 1933 ex.s. c 62); RRS § 7306-33A. Formerly RCW 66.36.010 through 66.36.040.]

Chapter 66.40
LOCAL OPTION

Sections
66.40.010 Local option units.
66.40.020 Election may be held.
66.40.030 Class H license election.
66.40.040 Petition for election—Contents—Procedure—Signatures, filing, form, copies, fees, etc.—Public inspection.
66.40.100 Check of petitions.
66.40.110 Form of ballot.
66.40.120 Canvass of votes—Effect.
66.40.130 Effect of election as to class H licenses.
66.40.140 Certificate of result to board—Grace period—Permitted activities.
66.40.150 Concurrent liquor elections in same election unit prohibited.

66.40.010 Local option units. For the purpose of an election upon the question of whether the sale of liquors shall be permitted, the election unit shall be any incorporated city or town, or all that portion of any county not included within the limits of incorporated cities and towns. [1957 c 263 § 3. Prior: (i) 1933 ex.s. c 62 § 82; RRS § 7306-82. (ii) 1949 c 5 § 2, part (adding new section 23-S-2 to 1933 ex.s. c 62); Rem. Supp. 1949 § 7306-23S-2, part.]

Severability—1949 c 5: See RCW 66.98.080.

66.40.020 Election may be held. Within any unit referred to in RCW 66.40.010, upon compliance with the conditions hereinafter prescribed, there may be held, at the time and as a part of any general election, an election upon the question of whether the sale of liquor shall be permitted within such unit; and in the event that any such election is held in any such unit, no other election under this section shall be held prior to the next succeeding general election. [1933 ex.s. c 62 § 83; RRS § 7306-83.]

66.40.030 Class H license election. Within any unit referred to in RCW 66.40.010, there may be held a separate election upon the question of whether the sale of liquor under class H licenses, shall be permitted within such unit. The conditions and procedure for holding such election shall be those prescribed by RCW 66.40.020, 66.40.040, 66.40.100, 66.40.110 and 66.40.120. Whenever a majority of qualified voters voting upon said question in any such unit shall have voted "against the sale of liquor under class H licenses", the county auditor shall file with the liquor control board a certificate showing the result of the canvass at such election; and after ninety days from and after the date of the canvass, it shall not be lawful for licensees to maintain and operate premises therein licensed under class H licenses. Elections held under RCW 66.40.010, 66.40.020, 66.40.040, 66.40.100, 66.40.110, 66.40.120 and 66.40.140, shall be limited to the question of whether the sale of liquor by means other than under class H licenses shall be permitted within such election unit. [1949 c 5 § 12 (adding new section 83-A to 1933 ex.s. c 62); Rem. Supp. 1949 § 7306-83A.]

Severability—1949 c 5: See RCW 66.98.080.

66.40.040 Petition for election—Contents—Procedure—Signatures, filing, form, copies, fees, etc.—Public inspection. Any unit referred to in RCW 66.40.010 may hold such election upon the question of whether the sale of liquor shall be permitted within the boundaries of such unit, upon the filing with the county auditor of the county within which such unit is located, of a petition subscribed by qualified electors of the unit equal in number to at least thirty percent of the electors voting at the last general election within such unit. Such petition shall designate the unit in which the election is desired to be had, the date upon which the election is desired to be held, and the question that is desired to be submitted. The persons signing such a petition shall state their post office address, the name or number of the precinct in which they reside, and in case the subscriber be a resident of a city, the street and house number, if any, of his residence, and the date of signature. Said petition shall be filed not less than sixty days nor more than ninety days prior to the date upon which the election is to be held. No signature shall be valid unless the above requirements are complied with, and unless the date of signing the same is less than ninety days preceding the date of filing. No signature shall be withdrawn after the filing of such petition. Such petition may consist of one or more sheets and shall be fastened together as one document, filed as a whole, and when filed shall not be withdrawn or added to. Such petition shall be a public document and shall be subject to the inspection of the public. Upon the request of anyone filing such a petition and paying, or tendering to the county auditor one dollar for each hundred names, or fraction thereof, signed thereto, together with a copy thereof, said county auditor shall immediately compare the original and copy and attach to such copy and deliver to such person his official certificate that such copy is a true copy of the original, stating the date when such original was filed in

his office; and said officer shall furnish, upon the demand of any person, a copy of said petition, upon payment of the same fee required for the filing of original petitions. [1933 ex.s. c 62 § 84; RRS § 7306-84. Formerly RCW 66.40.040 through 66.40.090.]

66.40.100 Check of petitions. Upon the filing of a petition as hereinbefore provided, the county auditor with whom it is filed shall cause the names on said petition to be compared with the names on the voters' official registration records provided for by law with respect to such unit. The officer or deputy making the comparison shall place his initials in ink opposite the signatures of those persons who are shown by such registration records to be legal voters and shall certify that the signatures so initialed are the signatures of legal voters of the state of Washington and of said unit, and shall sign such certificate. In the event that said petition, after such comparison, shall be found to have been signed by the percentage of legal voters of said unit referred to in RCW 66.40.040, the question shall be placed upon the ballot at the next general election. [1933 ex.s. c 62 § 85; RRS § 7306-85.]

66.40.110 Form of ballot. Upon the ballot to be used at such general election the question shall be submitted in the following form:

"Shall the sale of liquor be permitted within ----- (here specify the unit in which election is to be held)." Immediately below said question shall be placed the alternative answers, as follows:

"For sale of liquor ()
Against sale of liquor ()."

Each person desiring to vote in favor of permitting the sale of liquor within the unit in which the election is to be held shall designate his choice beside the words "For sale of liquor", and those desiring to vote against the permitting of the sale of liquor within such unit shall designate their choice beside the words "Against sale of liquor", and the ballot shall be counted accordingly. [1933 ex.s. c 62 § 86; RRS § 7306-86.]

66.40.120 Canvass of votes—Effect. The returns of any such election shall be canvassed in the manner provided by law. If the majority of qualified electors voting upon said question at said election shall have voted "For sale of liquor" within the unit in which the election is held, the sale of liquor may be continued in accordance with the provisions of this title. If the majority of the qualified electors voting on such question at any such election shall vote "Against sale of liquor", then, within thirty days after such canvass no sale or purchase of liquor, save as herein provided, shall be made within such unit until such permission so to do be subsequently granted at an election held for that purpose under the provisions of this title. [1933 ex.s. c 62 § 87; RRS § 7306-87.]

66.40.130 Effect of election as to class H licenses. Ninety days after December 2, 1948, class H licenses may be issued in any election unit in which the sale of

liquor is then lawful. No class H license shall be issued in any election unit in which the sale of liquor is forbidden as the result of an election held under RCW 66.40-.010, 66.40.020, 66.40.040, 66.40.100, 66.40.110, 66.40.120 and 66.40.140, unless a majority of the qualified electors in such election unit voting upon this initiative at the general election in November, 1948, vote in favor of this initiative, or unless at a subsequent general election in which the question of whether the sale of liquor under class H licenses shall be permitted within such unit is submitted to the electorate, as provided in RCW 66.40.030, a majority of the qualified electors voting upon such question vote "for the sale of liquor under class H licenses." [1949 c 5 § 13 (adding new section 87-A to 1933 ex.s. c 62); Rem. Supp. 1949 § 7306-87A.]

Severability—1949 c 5: See RCW 66.98.080.

66.40.140 Certificate of result to board—Grace period—Permitted activities. Whenever a majority of qualified voters voting upon said question in any such unit shall have voted "Against sale of liquor", the county auditor shall file with the liquor control board a certificate showing the result of the canvass at such election; and thereafter, except as hereinafter provided, it shall not be lawful for a liquor store to be operated therein nor for licensees to maintain and operate licensed premises therein except as hereinafter provided:

(1) As to any stores maintained by the board within any such unit at the time of such licensing, the board shall have a period of thirty days from and after the date of the canvass of the vote upon such election to continue operation of its store or stores therein.

(2) As to any premises licensed hereunder within any such unit at the time of such election, such licensee shall have a period of sixty days from and after the date of the canvass of the vote upon such election in which to discontinue operation of its store or stores therein.

(3) Nothing herein contained shall prevent any distillery, brewery, rectifying plant or winery or the licensed operators thereof from selling its manufactured product, manufactured within such unit, outside the boundaries thereof.

(4) Nothing herein contained shall prevent any person residing in any unit in which the sale of liquor shall have been forbidden by popular vote as herein provided, who is otherwise qualified to receive and hold a permit under this title, from lawfully purchasing without the unit and transporting into or receiving within the unit, liquor lawfully purchased by him outside the boundaries of such unit. [1933 ex.s. c 62 § 88; RRS § 7306-88.]

66.40.150 Concurrent liquor elections in same election unit prohibited. No election in any unit referred to in RCW 66.40.010, 66.40.020, 66.40.040, 66.40.100, 66.40.110, 66.40.120 and 66.40.140, upon the question of whether the sale of liquor shall be permitted within the boundaries of such unit shall be held at the same time as an election is held in the same unit upon the question of whether the sale of liquor under the provisions of RCW 66.40.030 shall be permitted. In the event

valid and sufficient petitions are filed which would otherwise place both questions on the same ballot that question upon which the petition was filed with the county auditor first shall be placed on the ballot to the exclusion of the other. [1949 c 93 § 1 (adding new section 88-A to 1933 ex.s. c 62); Rem. Supp. 1949 § 7306-88A.]

Chapter 66.44

ENFORCEMENT—PENALTIES

Sections

- 66.44.010 Local officers to enforce law—Authority of board—Liquor enforcement officers.
- 66.44.040 Sufficiency of description of offenses in complaints, informations, process, etc.
- 66.44.050 Description of offense in words of statutes—Proof required.
- 66.44.060 Proof of unlawful sale establishes prima facie intent.
- 66.44.070 Certified analysis is prima facie evidence of alcoholic content.
- 66.44.080 Service of process on corporation.
- 66.44.090 Acting without license.
- 66.44.100 Opening or consuming liquor in public place—Penalty.
- 66.44.120 Unlawful use of seal.
- 66.44.130 Sales of liquor by drink or bottle.
- 66.44.140 Unlawful sale, transportation of spirituous liquor without stamp or seal—Unlawful operation, possession of still or mash.
- 66.44.150 Buying liquor illegally.
- 66.44.160 Illegal possession, transportation of alcoholic beverages.
- 66.44.170 Illegal possession of liquor with intent to sell—Prima facie evidence, what is.
- 66.44.175 Violations of law.
- 66.44.180 General penalties—Jurisdiction for violations.
- 66.44.190 Sales on university grounds prohibited—Exceptions.
- 66.44.200 Sales to persons apparently under the influence of liquor.
- 66.44.210 Obtaining liquor for ineligible person.
- 66.44.240 Drinking in public conveyance—Penalty against carrier—Exception.
- 66.44.250 Drinking in public conveyance—Penalty against individual—Restricted application.
- 66.44.265 Candidates giving or purchasing liquor on election day prohibited.
- 66.44.270 Furnishing liquor to minors—Possession, use—Exceptions.
- 66.44.280 Minor applying for permit.
- 66.44.290 Minor purchasing or attempting to purchase liquor.
- 66.44.291 Minor purchasing or attempting to purchase liquor—Penalty against persons between ages of eighteen and twenty, inclusive.
- 66.44.292 Sales to minors by licensee or employee—Board notification to prosecuting attorney to formulate charges against minors.
- 66.44.300 Treating minor, etc., in public place where liquor sold.
- 66.44.310 Minors frequenting taverns or cocktail lounges—Misrepresentation of age—Penalty—Classification of licensees.
- 66.44.316 Certain persons eighteen years and over permitted to enter and remain upon licensed premises during employment.
- 66.44.320 Sales of liquor to minors a violation.
- 66.44.325 Unlawful transfer to a minor of an identification of age.
- 66.44.328 Preparation or acquisition and supply to persons under age twenty-one of facsimile of official identification card—Penalty.
- 66.44.330 Prosecutions to be reported by prosecuting attorney and police court.

- 66.44.340 Employees eighteen years and over allowed to sell and handle beer and wine for class E and/or F licensed employers.
- 66.44.350 Employees eighteen years and over allowed to serve and carry liquor, clean up, etc., for class A, C, D and/or H licensed employers.
- 66.44.365 Juvenile driving privileges—Alcohol or drug violations.
- 66.44.370 Resisting or opposing officers in enforcement of title.
- 66.44.800 Compliance by Washington wine commission.

Minors prohibited to enter bars or taverns: RCW 26.28.080.

Sale or gift of tobacco or intoxicating liquor to persons under certain age is gross misdemeanor: RCW 26.28.080.

State institutions, bringing in liquor prohibited: RCW 72.23.300.

66.44.010 Local officers to enforce law—Authority of board—Liquor enforcement officers. (1) All county and municipal peace officers are hereby charged with the duty of investigating and prosecuting all violations of this title, and the penal laws of this state relating to the manufacture, importation, transportation, possession, distribution and sale of liquor, and all fines imposed for violations of this title and the penal laws of this state relating to the manufacture, importation, transportation, possession, distribution and sale of liquor shall belong to the county, city or town wherein the court imposing the fine is located, and shall be placed in the general fund for payment of the salaries of those engaged in the enforcement of the provisions of this title and the penal laws of this state relating to the manufacture, importation, transportation, possession, distribution and sale of liquor: *Provided*, That all fees, fines, forfeitures and penalties collected or assessed by a district court because of the violation of a state law shall be remitted as provided in chapter 3.62 RCW as now exists or is later amended.

(2) In addition to any and all other powers granted, the board shall have the power to enforce the penal provisions of this title and the penal laws of this state relating to the manufacture, importation, transportation, possession, distribution and sale of liquor. The board may appoint and employ, assign to duty and fix the compensation of, officers to be designated as liquor enforcement officers. Such liquor enforcement officers shall have the power, under the supervision of the board, to enforce the penal provisions of this title and the penal laws of this state relating to the manufacture, importation, transportation, possession, distribution and sale of liquor. They shall have the power and authority to serve and execute all warrants and process of law issued by the courts in enforcing the penal provisions of this title or of any penal law of this state relating to the manufacture, importation, transportation, possession, distribution and sale of liquor. They shall have the power to arrest without a warrant any person or persons found in the act of violating any of the penal provisions of this title or of any penal law of this state relating to the manufacture, importation, transportation, possession, distribution and sale of liquor. [1987 c 202 § 224; 1969 ex.s. c 199 § 28; 1939 c 172 § 5; 1935 c 174 § 11; 1933 ex.s. c 62 § 70; RRS § 7306-70. Formerly RCW 66.44-.010 through 66.44.030.]

Intent—1987 c 202: See note following RCW 2.04.190.

66.44.040 Sufficiency of description of offenses in complaints, informations, process, etc. In describing the offense respecting the sale, or keeping for sale or other disposal, of liquor, or the having, keeping, giving, purchasing or consumption of liquor in any information, summons, conviction, warrant, or proceeding under this title, it shall be sufficient to simply state the sale, or keeping for sale or disposal, having, keeping, giving, purchasing, or consumption of liquor, without stating the name or kind of such liquor or the price thereof, or to whom it was sold or disposed of, or by whom consumed, or from whom it was purchased or received; and it shall not be necessary to state the quantity of liquor so sold, kept for sale, disposed of, had, kept, given, purchased, or consumed, except in the case of offenses where the quantity is essential, and then it shall be sufficient to allege the sale or disposal of more or less than such quantity. [1933 ex.s. c 62 § 57; RRS § 7306–57.]

66.44.050 Description of offense in words of statutes—Proof required. The description of any offense under this title, in the words of this title, or in any words of like effect, shall be sufficient in law; and any exception, exemption, provision, excuse, or qualification, whether it occurs by way of proviso or in the description of the offense in this title, may be proved by the defendant, but need not be specified or negated in the information; but if it is so specified or negated, no proof in relation to the matter so specified or negated shall be required on the part of the informant or complainant. [1933 ex.s. c 62 § 58; RRS § 7306–58.]

66.44.060 Proof of unlawful sale establishes prima facie intent. In any proceeding under this title, proof of one unlawful sale of liquor shall suffice to establish prima facie the intent or purpose of unlawfully keeping liquor for sale in violation of this title. [1933 ex.s. c 62 § 59; RRS § 7306–59.]

66.44.070 Certified analysis is prima facie evidence of alcoholic content. A certificate, signed by any person appointed or designated by the board in writing as an analyst, as to the percentage of alcohol contained in any liquid, drink, liquor, or combination of liquors, when produced in any court or before any court shall be prima facie evidence of the percentage of alcohol contained therein. [1933 ex.s. c 62 § 60; RRS § 7306–60.]

66.44.080 Service of process on corporation. In all prosecutions, actions, or proceedings under the provisions of this title against a corporation, every summons, warrant, order, writ or other proceeding may be served on the corporation in the same manner as is now provided by law for service of civil process. [1933 ex.s. c 62 § 61; RRS § 7306–61.]

66.44.090 Acting without license. Any person doing any act required to be licensed under this title without having in force a license issued to him shall be guilty of a gross misdemeanor. [1955 c 289 § 2. Prior: (i) 1933 ex.s. c 62 § 28; RRS § 7306–28. (ii) 1939 c 172 § 6(1);

1935 c 174 § 6(1); 1933 ex.s. c 62 § 92(1); RRS § 7306–92(1).]

66.44.100 Opening or consuming liquor in public place—Penalty. Except as permitted by this title, no person shall open the package containing liquor or consume liquor in a public place. Every person who violates any provision of this section shall be guilty of a misdemeanor, and on conviction therefor shall be fined not more than one hundred dollars. [1981 1st ex.s. c 5 § 21; 1933 ex.s. c 62 § 34; RRS § 7306–34.]

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66-98.090 and 66.98.100.

66.44.120 Unlawful use of seal. No person other than an employee of the board shall keep or have in his possession any official seal prescribed under this title, unless the same is attached to a package which has been purchased from a vendor or store employee; nor shall any person keep or have in his possession any design in imitation of any official seal prescribed under this title, or calculated to deceive by its resemblance thereto, or any paper upon which any design in imitation thereof, or calculated to deceive as aforesaid, is stamped, engraved, lithographed, printed or otherwise marked.

Every person who wilfully violates any provision of this section shall be guilty of a gross misdemeanor and shall be liable on conviction thereof for a first offense to imprisonment in the county jail for a period of not less than three months nor more than six months, without the option of the payment of a fine; for a second offense, to imprisonment in the county jail for not less than six months nor more than one year, without the option of the payment of a fine; for a third offense or subsequent offenses to imprisonment in the state penitentiary for not less than one year nor more than two years. [1933 ex.s. c 62 § 47; RRS § 7306–47.]

66.44.130 Sales of liquor by drink or bottle. Except as otherwise provided in this title, every person who sells by the drink or bottle, any liquor shall be guilty of a violation of this title. [1955 c 289 § 3. Prior: 1939 c 172 § 6(2); 1935 c 174 § 15(2); 1933 ex.s. c 62 § 92(2); RRS § 7306–92(2).]

66.44.140 Unlawful sale, transportation of spirituous liquor without stamp or seal—Unlawful operation, possession of still or mash. Every person who shall sell or offer for sale, or transport in any manner, any spirituous liquor, without government stamp or seal attached thereto, or who shall operate without a license, any still or other device for the production of spirituous liquor, or shall have in his possession or under his control any mash capable of being distilled into spirituous liquor except as provided in RCW 66.12.130, shall be guilty of a gross misdemeanor and upon conviction thereof shall upon his first conviction be fined not less than five hundred dollars and confined in the county jail not less than six months, and upon second and subsequent conviction shall be fined not less than one thousand dollars and confined in the county jail not less than one year. [1980

c 140 § 4; 1955 c 289 § 4. Prior: 1939 c 172 § 6(3); 1935 c 174 § 15(3); 1933 ex.s. c 62 § 92(3); RRS § 7306-92(3).]

66.44.150 Buying liquor illegally. If any person in this state buys alcoholic beverages from any person other than the board, a state liquor store, or some person authorized by the board to sell them, he shall be guilty of a misdemeanor. [1955 c 289 § 5. Prior: 1939 c 172 § 6(4); 1935 c 174 § 15(4); 1933 ex.s. c 62 § 92(4); RRS § 7306-92(4).]

66.44.160 Illegal possession, transportation of alcoholic beverages. Except as otherwise provided in this title, any person who has or keeps or transports alcoholic beverages other than those purchased from the board, a state liquor store, or some person authorized by the board to sell them, shall be guilty of a violation of this title. [1955 c 289 § 6. Prior: 1939 c 172 § 6(5); 1935 c 174 § 15(5); 1933 ex.s. c 62 § 92(5); RRS § 7306-92(5).]

66.44.170 Illegal possession of liquor with intent to sell—Prima facie evidence, what is. Any person who keeps or possesses liquor upon his person or in any place, or on premises conducted or maintained by him as principal or agent with the intent to sell it contrary to provisions of this title, shall be guilty of a violation of this title. The possession of liquor by the principal or agent on premises conducted or maintained, under federal authority, as a retail dealer in liquors, shall be prima facie evidence of the intent to sell liquor. [1955 c 289 § 7. Prior: 1937 c 144 § 1 (adding new section 92A to 1933 ex.s. c 62); RRS § 7306-92A.]

66.44.175 Violations of law. Every person who violates any provision of this title or the regulations shall be guilty of a violation of this title, whether otherwise declared or not. [1933 ex.s. c 62 § 91; RRS § 7306-91.]

66.44.180 General penalties—Jurisdiction for violations. Every person guilty of a violation of this title for which no penalty has been specifically provided shall be liable, on conviction, for a first offense to a penalty of not more than five hundred dollars, or to imprisonment for not more than two months, or both; for a second offense to imprisonment for not more than six months; and for a third or subsequent offense to imprisonment for not more than one year. If the offender convicted of an offense referred to in this section is a corporation, it shall for a first offense be liable to a penalty of not more than five thousand dollars, and for a second or subsequent offense to a penalty of not more than ten thousand dollars, or to forfeiture of its corporate license, or both.

Every district judge and municipal judge shall have concurrent jurisdiction with superior court judges of the state of Washington of all violations of the provisions of this title and may impose any punishment provided therefor. [1987 c 202 § 225; 1981 1st ex.s. c 5 § 22; 1935 c 174 § 16; 1933 ex.s. c 62 § 93; RRS § 7306-93.]

Intent—1987 c 202: See note following RCW 2.04.190.

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

66.44.190 Sales on university grounds prohibited—Exceptions. Except at the faculty center as so designated by the university board of regents to the Washington state liquor control board who may issue a class H club license therefor, it shall be unlawful to sell any intoxicating liquors, with or without a license on the grounds of the University of Washington, otherwise known and described as follows: Fractional section 16, township 25 north, range 4 east of Willamette Meridian except to the extent allowed under banquet permits issued pursuant to RCW 66.24.490. [1979 ex.s. c 104 § 1; 1975 1st ex.s. c 68 § 1; 1967 c 21 § 1; 1951 c 120 § 1; 1933 ex.s. c 49 § 1; 1895 c 75 § 1; RRS § 5100.]

Application of Title 66 RCW to deleted territory: "All of the provisions of Title 66 RCW and the rules and regulations promulgated thereunder shall fully apply to the territory deleted from RCW 66.44.190 by section 1 of this 1967 amendatory act." [1967 c 21 § 2.]

66.44.200 Sales to persons apparently under the influence of liquor. No person shall sell any liquor to any person apparently under the influence of liquor. [1933 ex.s. c 62 § 36; RRS § 7306-36.]

66.44.210 Obtaining liquor for ineligible person. Except in the case of liquor administered by a physician or dentist or sold upon a prescription in accordance with the provisions of this title, no person shall procure or supply, or assist directly or indirectly in procuring or supplying, liquor for or to anyone whose permit is suspended or has been canceled. [1933 ex.s. c 62 § 38; RRS § 7306-38.]

66.44.240 Drinking in public conveyance—Penalty against carrier—Exception. Every person engaged wholly or in part in the business of carrying passengers for hire, and every agent, servant, or employee of such person, who knowingly permits any person to drink any intoxicating liquor in any public conveyance, except in the compartment where such liquor is sold or served under the authority of a license lawfully issued, is guilty of a misdemeanor. This section does not apply to a public conveyance that is commercially chartered for group use or a for-hire vehicle licensed under city, county, or state law. [1983 c 165 § 29; 1909 c 249 § 442; RRS § 2694.]

Reviser's note: Caption for 1909 c 249 § 442 reads as follows: "Sec. 442. Common Carrier Not to Permit Drinking in Public Conveyance."

Legislative finding, intent—Effective dates—Severability—1983 c 165: See notes following RCW 46.20.308.

Alcoholic beverages, drinking or open container in vehicle on highway, exceptions: RCW 46.61.519.

66.44.250 Drinking in public conveyance—Penalty against individual—Restricted application. Every person who drinks any intoxicating liquor in any public conveyance, except in a compartment or place where sold or served under the authority of a license lawfully issued, is guilty of a misdemeanor. With respect to a public conveyance that is commercially chartered for group use and with respect to a for-hire vehicle licensed

under city, county, or state law, this section applies only to the driver of the vehicle. [1983 c 165 § 30; 1909 c 249 § 441; RRS § 2693.]

Reviser's note: Caption for 1909 c 249 § 441 reads as follows: "Sec. 441. Prohibiting Drinking in Public Conveyances."

Legislative finding, intent—Effective dates—Severability—1983 c 165: See notes following RCW 46.20.308.

Alcoholic beverages, drinking or open container in vehicle on highway, exceptions: RCW 46.61.519.

66.44.265 Candidates giving or purchasing liquor on election day prohibited. It shall be unlawful for a candidate for office or for nomination thereto whose name appears upon the ballot at any election to give to or purchase for another person, not a member of his or her family, any liquor in or upon any premises licensed by the state for the sale of any such liquor by the drink during the hours that the polls are open on the day of such election. [1971 ex.s. c 112 § 2.]

66.44.270 Furnishing liquor to minors—Possession, use—Exceptions. (1) It is unlawful for any person to sell, give, or otherwise supply liquor to any person under the age of twenty-one years or permit any person under that age to consume liquor on his or her premises or on any premises under his or her control.

(2) It is unlawful for any person under the age of twenty-one years to possess, consume, or otherwise acquire any liquor.

(3) This section does not apply to liquor given or permitted to be given to a person under the age of twenty-one years by a parent or guardian and consumed in the presence of the parent or guardian. This subsection shall not authorize consumption or possession of liquor by a person under the age of twenty-one years on any premises licensed under chapter 66.24 RCW.

(4) This section does not apply to liquor given for medicinal purposes to a person under the age of twenty-one years by a parent, guardian, physician, or dentist.

(5) This section does not apply to liquor given to a person under the age of twenty-one years when such liquor is being used in connection with religious services and the amount consumed is the minimal amount necessary for the religious service.

(6) Conviction or forfeiture of bail for a violation of this section by a person under the age of twenty-one years at the time of such conviction or forfeiture shall not be a disqualification of that person to acquire a license to sell or dispense any liquor after that person has attained the age of twenty-one years. [1987 c 458 § 3; 1955 c 70 § 2. Prior: 1935 c 174 § 6(1); 1933 ex.s. c 62 § 37(1); RRS § 7306-37(1); prior: Code 1881 § 939; 1877 p 205 § 5.]

Severability—1987 c 458: See note following RCW 48.21.160.

66.44.280 Minor applying for permit. Every person under the age of twenty-one years who makes application for a permit shall be guilty of an offense against this title. [1955 c 70 § 3. Prior: 1935 c 174 § 6(2); 1933 ex.s. c 62 § 37(2); RRS § 7306-37(2).]

66.44.290 Minor purchasing or attempting to purchase liquor. Every person under the age of twenty-one years who purchases or attempts to purchase liquor shall be guilty of a violation of this title. [1965 c 49 § 1; 1955 c 70 § 4. Prior: 1935 c 174 § 6(1); 1933 ex.s. c 62 § 37(1); RRS § 7306-37(1).]

66.44.291 Minor purchasing or attempting to purchase liquor—Penalty against persons between ages of eighteen and twenty, inclusive. Every person between the ages of eighteen and twenty, inclusive, who is convicted of a violation of RCW 66.44.290 is guilty of a misdemeanor punishable as provided by RCW 9A.20.021, except that a minimum fine of two hundred fifty dollars shall be imposed and any sentence requiring community service shall require not fewer than twenty-five hours of such service. [1987 c 101 § 1; 1965 c 49 § 2.]

66.44.292 Sales to minors by licensee or employee—Board notification to prosecuting attorney to formulate charges against minors. The Washington state liquor control board shall furnish notification of any hearing or hearings held, wherein any licensee or his employee is found to have sold liquor to a minor, to the prosecuting attorney of the county in which the sale took place, upon which the prosecuting attorney may formulate charges against said minor or minors for such violation of RCW 66.44.290 as may appear. [1981 1st ex.s. c 5 § 23; 1965 c 49 § 3.]

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

66.44.300 Treating minor, etc., in public place where liquor sold. Any person who invites a minor into a public place where liquor is sold and treats, gives or purchases liquor for such minor, or permits a minor to treat, give or purchase liquor for him; or holds out such minor to be over the age of twenty-one years to the owner of the liquor establishment shall be guilty of a misdemeanor. [1941 c 78 § 1; Rem. Supp. 1941 § 7306-37A.]

66.44.310 Minors frequenting taverns or cocktail lounges—Misrepresentation of age—Penalty—Classification of licensees. (1) Except as otherwise provided by RCW 66.44.316 and 66.44.350, it shall be a misdemeanor,

(a) To serve or allow to remain on the premises of any tavern, or cocktail lounge portion of any class H licensed premises, any person under the age of twenty-one years;

(b) For any person under the age of twenty-one years to enter or remain on the premises of any tavern, or cocktail lounge portion of any public class H licensed premises;

(c) For any person under the age of twenty-one years to represent his age as being twenty-one or more years for the purpose of securing admission to, or remaining on the premises of, any tavern or cocktail lounge portion of any class H licensed premises.

(2) The Washington state liquor control board shall have the power and it shall be its duty to classify the various licensees, as taverns or otherwise, within the

meaning of this title, except bona fide restaurants, dining rooms and cafes serving commercial food to the public shall not be classified as taverns during the hours such food service is made available to the public. [1981 1st ex.s. c 5 § 24; 1943 c 245 § 1 (adding new section 36-A to 1933 ex.s. c 62); Rem. Supp. 1943 § 7306-36A. Formerly RCW 66.24.130 and 66.44.310.]

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66-98.090 and 66.98.100.

66.44.316 Certain persons eighteen years and over permitted to enter and remain upon licensed premises during employment. It is lawful for:

(1) Professional musicians, professional disc jockeys, or professional sound or lighting technicians actively engaged in support of professional musicians or professional disc jockeys, eighteen years of age and older, to enter and to remain in any premises licensed under the provisions of Title 66 RCW, but only during and in the course of their employment as musicians, disc jockeys, or sound or lighting technicians;

(2) Persons eighteen years of age and older performing janitorial services to enter and remain on premises licensed under the provisions of Title 66 RCW when the premises are closed but only during and in the course of their performance of janitorial services;

(3) Employees of amusement device companies, which employees are eighteen years of age or older, to enter and to remain in any premises licensed under the provisions of Title 66 RCW, but only during and in the course of their employment for the purpose of installing, maintaining, repairing, or removing an amusement device. For the purposes of this section amusement device means coin-operated video games, pinball machines, juke boxes, or other similar devices; and

(4) Security and law enforcement officers, and fire fighters eighteen years of age or older to enter and to remain in any premises licensed under Title 66 RCW, but only during and in the course of their official duties and only if they are not the direct employees of the licensee. However, the application of the [this] subsection to security officers is limited to casual, isolated incidents arising in the course of their duties and does not extend to continuous or frequent entering or remaining in any licensed premises.

This section shall not be construed as permitting the sale or distribution of any alcoholic beverages to any person under the age of twenty-one years. [1985 c 323 § 1; 1984 c 136 § 1; 1980 c 22 § 1; 1973 1st ex.s. c 96 § 1.]

66.44.320 Sales of liquor to minors a violation. Every person who shall sell any intoxicating liquor to any minor shall be guilty of a violation of Title 66 RCW. [1973 1st ex.s. c 209 § 19; 1933 c 2 § 1; 1929 c 200 § 1; RRS § 7328-1.]

Severability—Effective date—1973 1st ex.s. c 209: See notes following RCW 66.08.070.

66.44.325 Unlawful transfer to a minor of an identification of age. Any person who transfers in any manner

an identification of age to a minor for the purpose of permitting such minor to obtain alcoholic beverages shall be guilty of a misdemeanor punishable as provided by RCW 9A.20.021, except that a minimum fine of two hundred fifty dollars shall be imposed and any sentence requiring community service shall require not fewer than twenty-five hours of such service: *Provided*, That corroborative testimony of a witness other than the minor shall be a condition precedent to conviction. [1987 c 101 § 2; 1961 c 147 § 1.]

Cards of identification: RCW 66.20.160 through 66.20.210.

66.44.328 Preparation or acquisition and supply to persons under age twenty-one of facsimile of official identification card—Penalty. No person may forge, alter, counterfeit, otherwise prepare or acquire and supply to a person under the age of twenty-one years a facsimile of any of the officially issued cards of identification that are required for presentation under RCW 66.16.040. A violation of this section is a gross misdemeanor punishable as provided by RCW 9A.20.021 except that a minimum fine of two thousand five hundred dollars shall be imposed. [1987 c 101 § 3.]

66.44.330 Prosecutions to be reported by prosecuting attorney and police court. See RCW 36.27.020(13).

66.44.340 Employees eighteen years and over allowed to sell and handle beer and wine for class E and/or F licensed employers. Employers holding class E and/or F licenses exclusively are permitted to allow their employees, between the ages of eighteen and twenty-one years, to sell, stock, and handle beer or wine in, on or about any establishment holding a class E and/or class F license exclusively: *Provided*, That there is an adult twenty-one years of age or older on duty supervising the sale of liquor at the licensed premises: *Provided*, That minor employees may make deliveries of beer and/or wine purchased from licensees holding class E and/or class F licenses exclusively, when delivery is made to cars of customers adjacent to such licensed premises but only, however, when the minor employee is accompanied by the purchaser. [1986 c 5 § 1; 1981 1st ex.s. c 5 § 48; 1969 ex.s. c 38 § 1.]

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66-98.090 and 66.98.100.

66.44.350 Employees eighteen years and over allowed to serve and carry liquor, clean up, etc., for class A, C, D and/or H licensed employers. Notwithstanding provisions of RCW 66.44.310, employees of class A, C, D and/or H licensees eighteen years of age and over may take orders for, serve and sell liquor in any part of the licensed premises except cocktail lounges, bars, or other areas classified by the Washington state liquor control board as off-limits to persons under twenty-one years of age: *Provided*, That such employees may enter such restricted areas to perform work assignments including picking up liquor for service in other parts of the licensed premises, performing clean up work, setting up and arranging tables, delivering supplies, delivering messages, serving

food, and seating patrons: *Provided further*, That such employees shall remain in the areas off-limits to minors no longer than is necessary to carry out their aforementioned duties: *Provided further*, That such employees shall not be permitted to perform activities or functions of a bartender. [1988 c 160 § 1; 1975 1st ex.s. c 204 § 1.]

66.44.365 Juvenile driving privileges—Alcohol or drug violations. (1) If a juvenile thirteen years of age or older and under the age of eighteen is found by a court to have committed any offense that is a violation of this chapter, the court shall notify the department of licensing within twenty-four hours after entry of the judgment.

(2) Except as otherwise provided in subsection (3) of this section, upon petition of a juvenile whose privilege to drive has been revoked pursuant to RCW 46.20.265, the court may notify the department of licensing that the juvenile's privilege to drive should be reinstated.

(3) If the conviction is for the juvenile's first violation of this chapter or chapter 69.41, 69.50, or 69.52 RCW, a juvenile may not petition the court for reinstatement of the juvenile's privilege to drive revoked pursuant to RCW 46.20.265 until the later of ninety days after the date the juvenile turns sixteen or ninety days after the judgment was entered. If the conviction was for the juvenile's second or subsequent violation of this chapter or chapter 69.41, 69.50, or 69.52 RCW, the juvenile may not petition the court for reinstatement of the juvenile's privilege to drive revoked pursuant to RCW 46.20.265 until the later of the date the juvenile turns seventeen or one year after the date judgment was entered. [1989 c 271 § 118; 1988 c 148 § 3.]

Severability—1989 c 271: See note following RCW 9.94A.310.

Legislative finding—Severability—1988 c 148: See notes following RCW 13.40.265.

66.44.370 Resisting or opposing officers in enforcement of title. No person shall knowingly or wilfully resist or oppose any state, county, or municipal peace officer, or liquor enforcement officer, in the discharge of his/her duties under Title 66 RCW, or aid and abet such resistance or opposition. Any person who violates this section shall be guilty of a violation of this title and subject to arrest by any such officer. [1981 1st ex.s. c 5 § 27.]

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

66.44.800 Compliance by Washington wine commission. Nothing contained in chapter 15.88 RCW shall affect the compliance by the Washington wine commission with this chapter. [1987 c 452 § 17.]

Construction—Effective dates—Severability—1987 c 452: See RCW 15.88.900 through 15.88.902.

Chapter 66.98 CONSTRUCTION

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66.98.010	Short title.
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66.98.030	Effect of act on certain laws—1933 ex.s. c 62.
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66.98.050	Effective date and application—1939 c 172.
66.98.060	Rights of class H licensees—1949 c 5.
66.98.070	Regulations by board—1949 c 5.
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66.98.090	Severability—1981 1st ex.s. c 5.
66.98.100	Effective date—1981 1st ex.s. c 5.

66.98.010 Short title. This act may be cited as the "Washington State Liquor Act." [1933 ex.s. c 62 § 1; RRS § 7306-1.]

66.98.020 Severability and construction—1933 ex.s. c 62. If any clause, part or section of this act shall be adjudged invalid, such judgment shall not affect nor invalidate the remainder of the act, but shall be confined in its operation to the clause, part or section directly involved in the controversy in which such judgment was rendered. If the operation of any clause, part or section of this act shall be held to impair the obligation of contract, or to deny to any person any right or protection secured to him by the Constitution of the United States of America, or by the Constitution of the state of Washington, it is hereby declared that, had the invalidity of such clause, part or section been considered at the time of the enactment of this act, the remainder of the act would nevertheless have been adopted without such and any and all such invalid clauses, parts or sections. [1933 ex.s. c 62 § 94; RRS § 7306-94.]

66.98.030 Effect of act on certain laws—1933 ex.s. c 62. Nothing in this act shall be construed to amend or repeal chapter 2 of the Laws of 1933, or any portion thereof. [1933 ex.s. c 62 § 95; RRS § 7306-95.]

Reviser's note: 1933 c 2 referred to herein consisted of two sections, section 1 of which is codified as RCW 66.44.320 and section 2 was a repeal of earlier liquor laws.

66.98.040 Effective date and application—1937 c 217. This act is necessary for the support of the state government and its existing public institutions and shall take effect immediately: *Provided, however*, That any person, who shall at the time this act takes effect be the bona fide holder of a license duly issued under chapter 62, Laws of 1933, extraordinary session, as amended by chapters 13, 80, 158 and 174, Laws of 1935, shall be entitled to exercise the rights and privileges granted by such license until the 30th day of September, 1937: *And provided further*, That all persons lawfully engaged in activities not required to be licensed prior to the taking effect of this act but which are required to be licensed under the provisions of this act shall have thirty days from and after the taking effect of this act in which to comply with the same. [1937 c 217 § 8; RRS § 7306-97.]

Reviser's note: 1933 ex.s. c 62 referred to herein is the basic liquor act codified in this title; the 1937 act in which it appears was amendatory thereof.

public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1981. [1981 1st ex.s. c 5 § 51.]

66.98.050 Effective date and application—1939 c 172. This act is necessary for the support of the state government and its existing public institutions and shall take effect immediately: *Provided, however,* That any person, who shall at the time this act takes effect be the bona fide holder of a license duly issued under chapter 62, Laws of 1933, extraordinary session, as amended by chapters 13, 80, 158 and 174, Laws of 1935 and chapters 62 and 217, Laws of 1937, shall be entitled to exercise the rights and privileges granted by such license until the 30th day of September, 1939: *And provided further,* That all persons lawfully engaged in activities not required to be licensed prior to the taking effect of this act but which are required to be licensed under the provisions of this act shall have thirty days from and after the taking effect of this act in which to comply with the same. [1939 c 172 § 11; RRS § 7306-97a.]

Reviser's note: 1933 ex.s. c 62 referred to herein is the basic liquor act codified in this title; the 1939 act in which it appears was amendatory thereof.

66.98.060 Rights of class H licensees—1949 c 5. Notwithstanding any provisions of chapter 62 of the Laws of 1933, extraordinary session, as last amended, or of any provisions of any other law which may otherwise be applicable, it shall be lawful for the holder of a class H license to sell beer, wine and spirituous liquor in this state in accordance with the terms of this act. [1949 c 5 § 14; No RRS. Formerly: RCW 66.24.460.]

Reviser's note: 1933 ex.s. c 62, referred to in section 14 of the liquor by the drink initiative of 1949, is the basic liquor act codified in this title.

66.98.070 Regulations by board—1949 c 5. For the purpose of carrying into effect the provisions of this act, the board shall have the same power to make regulations not inconsistent with the spirit of this act as is provided by section 79 of chapter 62 of the Laws of 1933, extraordinary session. [1949 c 5 § 15; No RRS. Formerly: RCW 66.24.470.]

Reviser's note: "Section 79 of chapter 62 of the Laws of 1933, extraordinary session", referred to in section 15 of the liquor by the drink initiative of 1949, is codified, as amended, in RCW 66.08.030.

66.98.080 Severability—1949 c 5. If any section or provision of this act shall be adjudged to be invalid, such adjudication shall not affect the validity of the act as whole or any section, provision, or part thereof not adjudged to be invalid. [1949 c 5 § 17; No RRS.]

66.98.090 Severability—1981 1st ex.s. c 5. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1981 1st ex.s. c 5 § 50.]

66.98.100 Effective date—1981 1st ex.s. c 5. This act is necessary for the immediate preservation of the

Title 67

SPORTS AND RECREATION—CONVENTION FACILITIES

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Chapter 67.04

BASEBALL

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67.04.010 Penalty for bribery in relation to baseball game. Any person who shall bribe or offer to bribe, any baseball player with intent to influence his play, action or conduct in any baseball game, or any person who shall bribe or offer to bribe any umpire of a baseball game, with intent to influence him to make a wrong decision or to bias his opinion or judgment in relation to any baseball game or any play occurring therein, or any person who shall bribe or offer to bribe any manager, or other official of a baseball club, league or association, by whatsoever name called, conducting said game of baseball to throw or lose a game of baseball, shall be guilty of a gross misdemeanor. [1921 c 181 § 1; RRS § 2321-1.]

67.04.020 Penalty for acceptance of bribe. Any baseball player who shall accept or agree to accept, a bribe offered for the purpose of wrongfully influencing his play, action or conduct in any baseball game, or any umpire of a baseball game who shall accept or agree to accept a bribe offered for the purpose of influencing him to make a wrong decision, or biasing his opinions, rulings or judgment with regard to any play, or any manager of a baseball club, or club or league official, who shall accept, or agree to accept, any bribe offered for the purpose of inducing him to lose or cause to be lost any baseball game, as set forth in RCW 67.04.010, shall be guilty of a gross misdemeanor. [1921 c 181 § 2; RRS § 2321-2.]

67.04.030 Elements of offense outlined. To complete the offenses mentioned in RCW 67.04.010 and 67.04.020, it shall not be necessary that the baseball player, manager, umpire or official, shall, at the time, have been actually employed, selected or appointed to perform their respective duties; it shall be sufficient if the bribe be offered, accepted or agreed to with the view of probable employment, selection or appointment of the person to whom the bribe is offered, or by whom it is accepted. Neither shall it be necessary that such baseball player, umpire or manager actually play or participate in a game or games concerning which said bribe is offered or accepted; it shall be sufficient if the bribe be given, offered or accepted in view of his or their possibly participating therein. [1921 c 181 § 3; RRS § 2321-3.]

67.04.040 "Bribe" defined. By a "bribe" as used in RCW 67.04.010 through 67.04.080, is meant any gift,

emolument, money or thing of value, testimonial, privilege, appointment or personal advantage, or the promise of either, bestowed or promised for the purpose of influencing, directly or indirectly, any baseball player, manager, umpire, club or league official, to see which game an admission fee may be charged, or in which game of baseball any player, manager or umpire is paid any compensation for his services. Said bribe as defined in RCW 67.04.010 through 67.04.080 need not be direct; it may be such as is hidden under the semblance of a sale, bet, wager, payment of a debt, or in any other manner designed to cover the true intention of the parties. [1921 c 181 § 4; RRS § 2321-4.]

67.04.050 Corrupt baseball playing—Penalty. Any baseball player, manager or club or league official who shall commit any wilful act of omission or commission in playing, or directing the playing, of a baseball game, with intent to cause the ball club, with which he is affiliated, to lose a baseball game; or any umpire officiating in a baseball game, or any club or league official who shall commit any wilful act connected with his official duties for the purpose and with the intent to cause a baseball club to win or lose a baseball game, which it would not otherwise have won or lost under the rules governing the playing of said game, shall be guilty of a gross misdemeanor. [1921 c 181 § 5; RRS § 2321-5.]

67.04.060 Venue of action. In all prosecutions under RCW 67.04.010 through 67.04.080 the venue may be laid in any county where the bribe herein referred to was given, offered or accepted, or in which the baseball game was played in relation to which the bribe was offered, given or accepted, or the acts referred to in RCW 67.04.050 committed. [1921 c 181 § 6; RRS § 2321-6.]

67.04.070 Bonus or extra compensation. Nothing in RCW 67.04.010 through 67.04.080 shall be construed to prohibit the giving or offering of any bonus or extra compensation to any manager or baseball player by any person to encourage such manager or player to a higher degree of skill, ability or diligence in the performance of his duties. [1921 c 181 § 7; RRS § 2321-7.]

67.04.080 Scope of provisions as to bribes. RCW 67.04.010 through 67.04.080 shall apply only to baseball league and club officials, umpires, managers and players who act in such capacity in games where the public is generally invited to attend and a general admission fee is charged. [1921 c 181 § 8; RRS § 2321-8.]

67.04.090 Baseball contracts with minors—Definitions. As used in RCW 67.04.090 through 67.04.150 the following terms shall have the following meanings:

(1) "Minor" shall mean any person under the age of eighteen years, and who has not graduated from high school: *Provided*, That should he become eighteen during his senior year he shall be a minor until the end of the school year;

(2) "Contract" shall mean any contract, agreement, bonus or gratuity arrangement, whether oral or written;

(3) "Organized professional baseball" shall mean and include all persons, firms, corporations, associations, or teams or clubs, or agents thereof, engaged in professional baseball, or in promoting the interest of professional baseball, or sponsoring or managing other persons, firms, corporations, associations, teams, or clubs who play baseball in any of the major or minor professional baseball leagues, or any such league hereafter organized;

(4) "Agent" shall, in addition to its generally accepted legal meaning, mean and include those persons commonly known as "baseball scouts";

(5) "Prosecuting attorney" shall mean the prosecuting attorney, or his regular deputy, of the county in which the minor's parent is domiciled;

(6) "Parent" shall mean parent, parents or guardian. [1951 c 78 § 2.]

Purpose—1951 c 78: "The welfare of the children of this state is of paramount interest to the people of the state. It is the purpose of this act to foster the education of minors and to protect their moral and physical well-being. Organized professional baseball has in numerous cases induced minors to enter into contracts and agreements which have been unfair and injurious to them." [1951 c 78 § 1.]

Severability—1951 c 78: "If any portion, section, or clause of this act, shall be declared or found invalid by any court of competent jurisdiction, such adjudication shall not affect the remainder of this act." [1951 c 78 § 9.]

67.04.100 Contract with minor void unless approved. Any contract between organized professional baseball and a minor shall be null and void and contrary to the public policy of the state, unless and until such contract be approved as hereinafter provided. [1951 c 78 § 3.]

Purpose—**Severability**—1951 c 78: See notes following RCW 67.04.090.

67.04.110 Approval by prosecuting attorney. No contract within RCW 67.04.090 through 67.04.150 shall be null and void, nor shall any of the prohibitions or penalties provided in RCW 67.04.090 through 67.04.150 be applicable if such contract be first approved in writing by the prosecuting attorney. Such approval may be sought jointly, or at the request of either party seeking a contract. [1951 c 78 § 4.]

Purpose—**Severability**—1951 c 78: See notes following RCW 67.04.090.

67.04.120 Basis of approval. The prosecuting attorney shall have the authority to examine all the parties to the proposed contract and any other interested person and shall approve such contract if the following facts and circumstances are found to exist:

(1) That the minor has not been signed, approached, or contacted, directly or indirectly, pertaining to a professional baseball contract except as herein permitted by approval of the prosecuting attorney;

(2) That the minor has been apprised of the fact that approval of the contract may deprive him of his amateur status;

(3) That the parent of the minor and the minor have consented to the contract;

(4) That the prosecuting attorney has concluded that the contract conforms to the provisions of RCW 67.04-.090 through 67.04.150, and is a valid and binding contract;

(5) That the contract permits the minor to have at least five months available each year to continue his high school education. [1951 c 78 § 5.]

Purpose—**Severability**—1951 c 78: See notes following RCW 67.04.090.

Employment permits: RCW 28A.27.090.

67.04.130 Effect of disapproval. Should the prosecuting attorney not approve the contract as above provided, then such contract shall be void, and the status of the minor shall remain as if no contract had been made, unless the prosecuting attorney's determination be the result of arbitrary or capricious action. [1951 c 78 § 6.]

Purpose—**Severability**—1951 c 78: See notes following RCW 67.04.090.

67.04.140 Negotiations with minor prohibited. No representative of organized professional baseball nor agent, nor person purporting to be able to represent any institution in organized baseball, whether so authorized to represent such institution or not, shall initiate or participate in any negotiations which would induce an evasion of this law in any way, including the removal of any minor to another state, or violate the minor's high school athletic eligibility. [1951 c 78 § 7.]

Purpose—**Severability**—1951 c 78: See notes following RCW 67.04.090.

67.04.150 Penalty for violation of provisions as to contracts with minors. Any person, firm, corporation, association, or agent thereof, who enters into a contract with a minor, or gives a bonus or any gratuity to any minor to secure the minor's promise to enter into a contract in violation of the provisions of RCW 67.04.090 through 67.04.150, or shall otherwise violate any provisions of RCW 67.04.090 through 67.04.150, shall be guilty of a gross misdemeanor. [1951 c 78 § 8.]

Purpose—**Severability**—1951 c 78: See notes following RCW 67.04.090.

Chapter 67.08

BOXING, SPARRING, AND WRESTLING

Sections	
67.08.001	State professional athletic commission—Creation—Terms—Vacancies.
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67.08.160	Medical emergencies—Promoter's responsibility.
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67.08.900	Severability—1933 c 184.

67.08.001 State professional athletic commission—Creation—Terms—Vacancies. There is hereby created and established a state commission to be known and designated as the "state professional athletic commission" and in this chapter referred to as the commission. The commission shall be composed of three members who shall be appointed by the governor and shall be subject to removal at the pleasure of the governor. The members of the first commission to be appointed after June 7, 1933, shall be appointed for the terms beginning July 1, 1933, and expiring as follows: One commissioner for the term expiring January 31, 1934, one commissioner for the term expiring January 31, 1935, and one commissioner for the term expiring January 31, 1936. Each of the first commissioners appointed shall hold office until his successor is appointed and qualified. Upon the expiration of the terms of the three commissioners first appointed, each succeeding commissioner shall be appointed to hold office for a term of four years and until his successor shall have been appointed and qualified. In case of a vacancy, it shall be filled by the appointment by the governor for the unexpired portion of the term in which such vacancy occurs. [1989 c 127 § 5; 1988 c 19 § 1; 1981 c 337 § 1; 1933 c 184 § 1; RRS § 8276-1. Formerly RCW 43.48.010.]

67.08.002 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Boxing" includes, but is not limited to, sumo, judo, and karate in addition to fisticuffs, but does not include professional wrestling.

(2) "Commission" means the professional athletic commission.

(3) "Promoter" means any person and, in the case of a corporation, an officer, director, employee, or shareholder thereof, who produces, arranges, or stages any professional wrestling exhibition or boxing contest.

(4) "Wrestling exhibition" or "wrestling show" means a form of sports entertainment in which the participants display their skills in a struggle against each other in the ring and either the outcome may be predetermined or the participants do not necessarily strive to win, or both. [1989 c 127 § 1.]

67.08.003 Official bonds—Compensation and travel expenses. Before entering upon the duties of his office, each commissioner shall enter into a surety bond, executed by a surety company authorized to do business in this state, payable to the state, and approved by the attorney general, in the penal sum of two thousand dollars conditioned upon the faithful performance of his duties, which bond shall be filed with the secretary of state. Each member of the commission shall be reimbursed for the cost of his bond, be compensated in accordance with RCW 43.03.240, and be reimbursed for travel expenses in accordance with RCW 43.03.050 and 43.03.060 while in the performance of his duties. [1984 c 287 § 99; 1977 c 9 § 1. Prior: 1975-'76 2nd ex.s. c 48 § 1; 1975-'76 2nd ex.s. c 34 § 153; 1959 c 305 § 1; 1933 c 184 § 2; RRS § 8276-2. Formerly RCW 43.48.020.]

Legislative findings—Severability—Effective date—1984 c 287: See notes following RCW 43.03.220.

Effective date—Severability—1975-'76 2nd ex.s. c 34: See notes following RCW 2.08.115.

67.08.005 Meetings—Officers—Quorum—Office. The first members of the commission shall meet at such time and place, not more than thirty days after their appointment as shall be designated by the governor and shall organize by electing a chairman and an executive secretary and adopt rules and regulations for the conduct of their meetings. A majority of the members of the commission shall constitute a quorum for the transaction of business. A general office for the transaction of business of the commission shall be designated. The commission may hold meetings and conduct business at such times and places as they may deem necessary. [1981 c 337 § 2; 1933 c 184 § 3; RRS § 8276-3. Formerly RCW 43.48.030.]

67.08.007 Officers, employees, inspectors. The commission may employ and fix the compensation of such officers, employees, and inspectors as may be necessary to administer the provisions of this chapter as amended. [1959 c 305 § 2; 1933 c 184 § 4; RRS § 8276-4. Formerly RCW 43.48.040.]

67.08.009 Records—Seal—Oaths—Compulsory process. The commission shall keep full and correct minutes of its transactions and proceedings, which shall at all times be open to the public inspection. The commission shall adopt and procure a seal and all process or certificates issued by it shall be attested under such seal. Copies of the record of said commission shall be certified by the secretary and attested with the seal of said commission. Any member of the commission, or any employee thereof, officially designated by said commission shall have the power to administer oaths in all matters pertaining to or concerning the proceedings or the official duties of the commission. The commission shall have power to summon witnesses to appear and testify on any matter deemed material to the proper discharge of its duties, such summons shall be served in like manner as a subpoena issued out of the superior court and shall be served by the sheriff of the proper county, and

such service returned by him to said commission, without compensation therefor. [1933 c 184 § 5; RRS § 8276-5. Formerly RCW 43.48.050.]

67.08.010 Licenses for boxing, sparring, and wrestling events—Telecasts. The commission shall have power to issue and for cause to revoke a license to conduct boxing contests, sparring matches, or wrestling shows or exhibitions including a simultaneous telecast of any live, current or spontaneous boxing, sparring or wrestling match or performance on a closed circuit telecast within this state, whether originating in this state or elsewhere, and for which a charge is made, as herein provided under such terms and conditions and at such times and places as the commission may determine. Such licenses shall entitle the holder thereof to conduct boxing contests and sparring and/or wrestling matches and exhibitions under such terms and conditions and at such times and places as the commission may determine. In case the commission shall refuse to grant a license to any applicant, or shall cancel any license, such applicant, or the holder of such canceled license shall be entitled, upon application, to a hearing to be held not less than sixty days after the filing of such order at such place as the commission may designate: *Provided, however,* That if it has been found by a valid finding and such finding is fully set forth in such order, that the applicant or licensee has been guilty of disobeying any provision of this chapter, such hearing shall be denied. [1989 c 127 § 13; 1975-'76 2nd ex.s. c 48 § 2; 1933 c 184 § 7; RRS § 8276-7. Prior: 1909 c 249 § 304; 1890 p 109 § 1; 1886 p 82 § 1.]

67.08.015 Duties of commission—Licensing—Exemptions—Medical certification. The commission shall have power and it shall be its duty to direct, supervise, and control all boxing contests, sparring matches, and wrestling shows or exhibitions conducted within the state and no such boxing contest, sparring match, or wrestling show or exhibition shall be held or given within this state except in accordance with the provisions of this chapter. The commission may, in its discretion, issue and for cause revoke a license to conduct, hold or give boxing and sparring contests, and wrestling shows and exhibitions where an admission fee is charged by any club, corporation, organization, association, or fraternal society: *Provided, however,* That all boxing contests, sparring or wrestling matches or exhibitions which:

(1) Are conducted by any common school, college, or university, whether public or private, or by the official student association thereof, whether on or off the school, college, or university grounds, where all the participating contestants are bona fide students enrolled in any common school, college, or university, within or without this state; or

(2) Are entirely amateur events promoted on a non-profit basis or for charitable purposes; shall not be subject to the provisions of this chapter: *Provided, further,* That every contestant in any boxing contest or sparring match not conducted under the provisions of this chapter, prior to engaging in any such

contest or match, shall be examined by a practicing physician at least once in each calendar year or, where such contest is conducted by a common school, college or university as further described in this section, once in each academic year in which instance such physician shall also designate the maximum and minimum weights at which such contestant shall be medically certified to participate: *Provided further,* That no contestant shall be permitted to participate in any such boxing contest, sparring or wrestling match or exhibition in any weight classification other than that or those for which he is certificated: *Provided further,* That the organizations exempted by this section from the provisions of this chapter shall be governed by RCW 67.08.080 as said section applies to boxing contests or sparring matches or exhibitions conducted by organizations exempted by this section from the general provisions of this chapter. No boxing contest, sparring match, or wrestling show or exhibition shall be conducted within the state except pursuant to a license issued in accordance with the provisions of this chapter and the rules and regulations of the commission except as hereinabove provided. [1989 c 127 § 14; 1977 c 9 § 2. Prior: 1975-'76 2nd ex.s. c 48 § 3; 1975 c 1 § 1; 1973 c 53 § 1; 1951 c 48 § 2.]

67.08.030 Promoters—Bond—Medical insurance. (1) Every boxing promoter, as a condition for receiving a license, shall file a good and sufficient bond in the sum of ten thousand dollars with the commission, conditioned upon the faithful performance by such licensee of the provisions of this chapter, the payment of the taxes, officials, and contracts as provided for herein and the observance of all rules and regulations of the commission, which bond shall be subject to the approval of the attorney general.

(2) Every promoter of a wrestling exhibition or closed circuit telecast as a condition of receiving a license as provided for under this chapter shall file a good and sufficient bond in the sum of one thousand dollars with the commission in cities of less than one hundred fifty thousand inhabitants and of two thousand five hundred dollars in cities of more than one hundred fifty thousand inhabitants conditioned upon the faithful performance by such licensee of the provisions of this chapter, the payment of the taxes and officials provided for herein and the observance of all rules and regulations of the commission, which bond shall be subject to the approval of the attorney general.

(3) Boxing promoters must obtain medical insurance to cover any injuries incurred by participants at the time of the event. [1989 c 127 § 6; 1933 c 184 § 9; RRS § 8276-9.]

67.08.040 Issuance of license. Upon the approval by the commission of any application for a license, as hereinabove provided, and the filing of the bond the commission shall forthwith issue such license. [1975-'76 2nd ex.s. c 48 § 4; 1933 c 184 § 10; RRS § 8276-10.]

67.08.050 Statement and report of event—Tax on gross receipts. (1) Any promoter as herein provided shall

within seven days prior to the holding of any boxing contest or sparring match or exhibition file with the commission a statement setting forth the name of each licensee, his or her manager or managers and such other information as the commission may require. Any promoter shall, within seven days before holding any wrestling exhibition or show, file with the commission a statement setting forth the name of each contestant, his or her manager or managers, and such other information as the commission may require. Participant changes within a twenty-four hour period regarding a wrestling exhibition or show may be allowed after notice to the commission, if the new participant holds a valid license under this chapter. The commission may stop any event that is a part of a wrestling exhibition wherein any participant is not licensed under this chapter. Upon the termination of any contest or exhibition the promoter shall file with the designated commission representative a written report, duly verified as the commission may require showing the number of tickets sold for such contest, the price charged for such tickets and the gross proceeds thereof, and such other and further information as the commission may require. The promoter shall pay to the commission at the time of filing the above report a tax equal to five percent of such gross receipts and said five percent of such gross receipts shall be immediately paid by the commission into the state general fund.

(2) The number of complimentary tickets shall be limited to two percent of the total tickets sold per event location. All complimentary tickets exceeding this set amount shall be subject to taxation. [1989 c 127 § 7; 1933 c 184 § 11; RRS § 8276-11. FORMER PART OF SECTION: 1939 c 54 § 1; RRS § 8276-11a, now footnoted below.]

Emergency—Effective date—1939 c 54. "That this act is necessary for the immediate support of the state government and its existing public institutions and shall take effect April 1, 1939." [1939 c 54 § 6; no RRS.]

67.08.055 Simultaneous or closed circuit telecasts—Report—Tax on gross receipts. Every licensee who charges and receives an admission fee for exhibiting a simultaneous telecast of any live, current, or spontaneous boxing or sparring match, or wrestling exhibition or show on a closed circuit telecast viewed within this state shall, within seventy-two hours after such event, furnish to the commission a verified written report on a form which is supplied by the commission showing the number of tickets issued or sold, and the gross receipts therefor without any deductions whatsoever. Such licensee shall also, at the same time, pay to the commission a tax equal to five percent of such gross receipts paid for admission to the showing of the contest, match or exhibition. In no event, however, shall the tax be less than twenty-five dollars. The tax shall apply uniformly at the same rate to all persons subject to the tax. Such receipts shall be immediately paid by the commission into the general fund of the state. [1989 c 127 § 15; 1975-'76 2nd ex.s. c 48 § 5.]

67.08.060 Inspectors—Duties—Fee for attending events—Travel expenses. The commission may appoint official inspectors at least one of which, in the absence of a member of the commission, shall be present at any boxing contest or sparring match or exhibition held under the provisions of this chapter and may be present at any wrestling exhibition or show. Such inspectors shall carry a card signed by the chairman of the commission evidencing their authority. It shall be their duty to see that all rules and regulations of the commission and the provisions of this chapter are strictly complied with and to be present at the accounting of the gross receipts of any contest, and such inspector is authorized to receive from the licensee conducting the contest the statement of receipts herein provided for and to immediately transmit such reports to the commission. Each inspector shall receive a fee from the licensee to be set by the commission for each contest officially attended. Each inspector shall also receive from the state travel expenses in accordance with RCW 43.03.050 and 43.03.060 as now existing or hereafter amended. [1989 c 127 § 16; 1988 c 19 § 2; 1975-'76 2nd ex.s. c 34 § 154; 1959 c 305 § 4; 1933 c 184 § 12; RRS § 8276-12.]

Effective date—Severability—1975-'76 2nd ex.s. c 34: See notes following RCW 2.08.115.

67.08.080 Rounds and bouts limited—Weight of gloves. No boxing contest or sparring exhibition held in this state whether under the provisions of this chapter or otherwise shall be for more than ten rounds and no one round of any such contest or exhibition shall be scheduled for less than or longer than three minutes and there shall be not less than one minute intermission between each round. In the event of bouts involving state or regional championships the commission may grant an extension of no more than two additional rounds to allow total bouts of twelve rounds, and in bouts involving national championships the commission may grant an extension of no more than five additional rounds to allow total bouts of fifteen rounds. No contestant in any boxing contest or sparring match or exhibition whether under this chapter or otherwise shall be permitted to wear gloves weighing less than eight ounces. The commission shall promulgate rules and regulations to assure clean and sportsmanlike conduct on the part of all contestants and officials, and the orderly and proper conduct of the contest in all respects, and to otherwise make rules and regulations consistent with this chapter, but such rules and regulations shall apply only to contests held under the provisions of this chapter. [1989 c 127 § 8; 1974 ex.s. c 45 § 1; 1959 c 305 § 5; 1933 c 184 § 14; RRS § 8276-14.]

67.08.090 Physician's attendance—Examination of contestants. Each contestant for boxing or sparring shall be examined within eight hours prior to the contest by a competent physician appointed by the commission. The physician shall forthwith and before such contest report in writing and over his or her signature the physical condition of each and every contestant to the commissioner or inspector present at such contest. No

contestant whose physical condition is not approved by the examining physician shall be permitted to participate in any contest. Blank forms of physicians' report shall be provided by the commission and all questions upon such blanks shall be answered in full. The examining physician shall be paid a fee designated by the commission by the promoter conducting such match or exhibition. The commission may have a participant in a wrestling exhibition or show examined by a physician appointed by the commission prior to the exhibition or show. A participant in a wrestling exhibition or show whose condition is not approved by the examining physician shall not be permitted to participate in the exhibition or show. No boxing contest, sparring match, or exhibition shall be held unless a licensed physician of the commission or his or her duly appointed representative is present throughout the contest. The commission may require that a physician be present at a wrestling exhibition or show. Any physician present at a wrestling show or exhibition shall be paid for by the promoter.

Any practicing physician and surgeon may be selected by the board as the examining physician. Such physician present at such contest shall have authority to stop any contest when in the physician's opinion it would be dangerous to a contestant to continue, and in such event it shall be the physician's duty to stop such contest. [1989 c 127 § 9; 1933 c 184 § 15; RRS § 8276-15.]

67.08.100 Annual licenses—Fees—Revocation.

(1) The commission may grant annual licenses upon application in compliance with the rules and regulations prescribed by the commission, and the payment of the fees, the amount of which is to be determined by the commission, prescribed to promoters, managers, referees, boxers, wrestlers, and seconds: *Provided*, That the provisions of this section shall not apply to contestants or participants in strictly amateur contests and/or fraternal organizations and/or veterans' organizations chartered by congress or the defense department or any bona fide athletic club which is a member of the Pacific northwest association of the amateur athletic union of the United States, holding and promoting athletic contests and where all funds are used primarily for the benefit of their members.

(2) Any such license may be revoked by the commission for any cause which it shall deem sufficient.

(3) No person shall participate or serve in any of the above capacities unless licensed as provided in this chapter.

(4) The referee for any boxing contest shall be designated by the commission from among such licensed referees.

(5) The referee for any wrestling exhibition or show shall be provided by the promoter and licensed by the commission. [1989 c 127 § 10; 1959 c 305 § 6; 1933 c 184 § 16; RRS § 8276-16. FORMER PART OF SECTION: 1933 c 184 § 20, part; RRS § 8276-20, part, now codified in RCW 67.08.025.]

67.08.110 Participation in purse—Conducting sham events—Forfeiture of license. Any person or any

member of any group of persons or corporation promoting boxing exhibitions or contests who shall participate directly or indirectly in the purse or fee of any manager of any boxers or any boxer and any licensee who shall conduct or participate in any sham or fake boxing contest or sparring match or exhibition shall thereby forfeit its license and the commission shall declare such license canceled and void and such licensee shall not thereafter be entitled to receive another such, or any license issued pursuant to the provisions of this chapter. [1989 c 127 § 11; 1933 c 184 § 17; RRS § 8276-17.]

67.08.120 Violation of rules—Sham events—

Penalties. Any contestant or licensee who shall participate in any sham or fake boxing contest, match, or exhibition and any licensee or participant who violates any rule or regulation of the commission shall be penalized in the following manner: For the first offense he shall be restrained by order of the commission for a period of not less than three months from participating in any contest held under the provisions of this chapter, such suspension to take effect immediately after the occurrence of the offense; for any second offense such contestant shall be forever suspended from participation in any contest held under the provisions of this chapter. [1989 c 127 § 12; 1933 c 184 § 18; RRS § 8276-18.]

67.08.130 Failure to make reports—Additional tax—Notice—Penalty for delinquency.

Whenever any licensee shall fail to make a report of any contest within the time prescribed by this chapter or when such report is unsatisfactory to the commission, the secretary shall examine the books and records of such licensee; he may subpoena and examine under oath any officer of such licensee and such other person or persons as he may deem necessary to a determination of the total gross receipts from any contest and the amount of tax thereon. If, upon the completion of such examination it shall be determined that an additional tax is due, notice thereof shall be served upon the licensee, and if such licensee shall fail to pay such additional tax within twenty days after service of such notice such delinquent licensee shall forfeit its license and shall forever be disqualified from receiving any new license and in addition thereto such licensee and the members thereof shall be jointly and severally liable to this state in the penal sum of one thousand dollars to be collected by the attorney general by civil action in the name of the state in the manner provided by law. [1933 c 184 § 19; RRS § 8276-19.]

67.08.140 Penalty for conducting events without license—Injunctions.

Any person, club, corporation, organization, association, fraternal society, participant, or promoter conducting or participating in boxing contests, sparring matches, or wrestling shows or exhibitions within this state without having first obtained a license therefor in the manner provided by this chapter is in violation of this chapter and shall be guilty of a misdemeanor excepting such contests excluded from the operation of this chapter by RCW 67.08.015. The attorney general, each prosecuting attorney, the commission,

or any citizen of any county where any person, club, corporation, organization, association, fraternal society, promoter, or participant shall threaten to hold, or appears likely to hold or participate in athletic contests or exhibitions in violation of this chapter, may in accordance with the laws of this state governing injunctions, enjoin such person, club, corporation, organization, association, fraternal society, promoter, or participant from holding or participating in such contest or exhibition. [1989 c 127 § 17; 1988 c 19 § 3; 1959 c 305 § 7; 1951 c 48 § 1; 1933 c 184 § 22; RRS § 8276–22.]

67.08.150 General penalty. Any person, firm or corporation violating any of the provisions of this chapter for which no penalty is herein provided shall be guilty of a misdemeanor. [1933 c 184 § 24; RRS § 8276–24.]

67.08.160 Medical emergencies—Promoter's responsibility. A promoter shall have an ambulance or paramedical unit present at the arena in case a serious injury occurs unless an ambulance or paramedical unit is located within five miles of the arena and that unit is on call for such an occurrence. [1989 c 127 § 2.]

67.08.170 Security—Promoter's responsibility. A promoter shall ensure that adequate security personnel are in attendance at a wrestling exhibition or boxing contest to control fans in attendance. The size of the security force shall be determined by mutual agreement of the promoter, the person in charge of operating the arena or other facility, and the commission. [1989 c 127 § 3.]

67.08.180 General prohibitions—Penalties. (1) It is unlawful for any promoter or person associated with or employed by any promoter to destroy any ticket or ticket stub, whether sold or unsold, within three months after the date of any exhibition or show.

(2) It is unlawful for any wrestler to deliberately cut himself or herself or otherwise mutilate himself or herself while participating in a wrestling exhibition.

(3) Any licensee convicted under chapter 69.50 RCW shall have his or her license revoked.

(4) The striking of any person that is not a licensed participant at a wrestling exhibition or show shall constitute grounds for suspension, revocation, or both. [1989 c 127 § 4.]

67.08.900 Severability—1933 c 184. If any section or provision of this chapter shall be adjudged to be invalid or unconstitutional, such adjudication shall not affect the validity of this chapter as a whole, or any section, provision or part thereof not adjudged invalid or unconstitutional. [1933 c 184 § 25; RRS § 8276–25.]

Chapter 67.12

DANCING AND DANCE HALLS—BILLIARDS, POOL AND BOWLING

Sections

- 67.12.021 Licenses for public dances and public recreational or entertainment activities—Fees.
67.12.110 License required for rural pool halls, billiard halls, and bowling alleys.

Regulations of dance halls and other places of amusement by cities and towns, see under applicable class of city or town: Title 35 RCW and RCW 35A.11.020.

Unlawful to admit minors into dance halls, pool rooms and certain other places of amusement: RCW 26.28.080.

67.12.021 Licenses for public dances and public recreational or entertainment activities—Fees. Counties are authorized to adopt ordinances to license and regulate public dances and other public recreational or entertainment activities in the unincorporated areas of the county whether or not held inside or outside of a building and whether or not admission charges are imposed.

License fees may be adequate to finance the costs of issuing the license and enforcing the regulations, including related law enforcement activities. [1987 c 250 § 1.]

67.12.110 License required for rural pool halls, billiard halls, and bowling alleys. The county legislative authority of each county in the state of Washington shall have sole and exclusive authority and power to regulate, restrain, license, or prohibit the maintenance or running of pool halls, billiard halls, and bowling alleys outside of the incorporated limits of each incorporated city, town, or village in their respective counties: *Provided*, That the annual license fee for maintenance or running such pool halls, billiard halls, and bowling alleys shall be fixed in accordance with RCW 36.32.120(3), and which license fee shall be paid annually in advance to the appropriate county official: *Provided further*, That nothing herein or elsewhere shall be so construed as to prevent the county legislative authority from revoking any license at any time prior to the expiration thereof for any cause by such county legislative authority deemed proper. And if said county legislative authority revokes said license it shall refund the unearned portion of such license. [1985 c 91 § 10; 1909 c 112 § 1; RRS § 8289.]

Licensing under 1873 act: Chapter 67.14 RCW.

Chapter 67.14

BILLIARD TABLES, BOWLING ALLEYS AND MISCELLANEOUS GAMES—1873 ACT

Sections

- 67.14.010 Hawkers and auctioneers must procure license—Exceptions.
67.14.020 Sale or other disposition of liquor—County license—Penalty.
67.14.030 Hawkers and auctioneers—Issuance of license.
67.14.040 Retail liquor license.
67.14.050 Wholesale liquor license—Billiard table, bowling alley licenses.
67.14.060 Liquor sales, keeping games, without license—Penalty.

67.14.070	Purchase of license—Bond.
67.14.080	Duration of license.
67.14.090	Issuance of license.
67.14.100	When contrivance deemed kept for hire.
67.14.110	Druggists excepted.
67.14.120	Disposition of fees, fines and forfeitures.

Reviser's note: The territorial act codified herein, though for the most part obsolete, has never been expressly repealed. "An Act relating to licenses", it empowers the county commissioners to license hawkers and auctioneers, persons dealing in intoxicating liquors, and persons conducting bowling alleys, billiard tables and other games. The auctioneer sections have been codified as RCW 36.71.070 and 36.71.080. As to the sections relating to intoxicating liquors, it seems clear that this field has been preempted by the state; see RCW 66.08.120. For a later enactment concerning the licensing of rural pool halls, billiard halls and bowling alleys, see RCW 67.12.110.

Alcoholic beverage control: Title 66 RCW.

67.14.010 Hawkers and auctioneers must procure license—Exceptions. See RCW 36.71.070.

67.14.020 Sale or other disposition of liquor—County license—Penalty. If any person shall sell or dispose of any spirituous, malt, or fermented liquors or wines, in any quantity less than one gallon, without first obtaining a license therefor as hereinafter provided, such person shall, for each and every such offense, be liable to a fine of not less than five nor more than fifty dollars, with costs of prosecution. [1873 p 437 § 2; Code 1881, Bagley's Supp. p 26 § 2.]

67.14.030 Hawkers and auctioneers—Issuance of license. See RCW 36.71.080.

67.14.040 Retail liquor license. The legislative authorities of each county, in their respective counties, shall have the power to grant license to persons to keep drinking houses or saloons therein, at which spirituous, malt, or fermented liquors and wines may be sold in less quantities than one gallon; and such license shall be called a retail license upon the payment, by the person applying for such license, of the sum of three hundred dollars a year into the county treasury, and the execution of a good and sufficient bond, executed to such county in the sum of one thousand dollars, to be approved by such legislative authority or the county auditor of the county in which such license is granted, conditioned that he will keep such drinking saloon or house in a quiet, peaceable, and orderly manner: *Provided*, The foregoing shall not be so construed as to prevent the legislative authority of any county from granting licenses to drinking saloons or houses therein, when there is but little business doing, for less than three hundred dollars, but in no case for less than one hundred dollars per annum: *And provided further*, That such license shall be used only in the precinct to which it shall be granted; *Provided further*, that no license shall be used in more than one place at the same time. *And further provided*, That no license shall be granted to any person to retail spirituous liquors until he shall furnish to the legislative authority satisfactory proof that he is a person of good moral character. [1973 1st ex.s. c 154 § 100; 1875 p 124 § 1; 1873 p 438 § 4; Code 1881, Bagley's Supp. p 26 § 4.]

Severability—1973 1st ex.s. c 154: See note following RCW 2.12.030.

67.14.050 Wholesale liquor license—Billiard table, bowling alley licenses. Said county commissioners in their respective counties shall also have power to grant licenses to sell spirituous liquors and wines therein in greater quantities than one gallon, to be called a wholesale license upon payment of the sum of not to exceed one hundred dollars per annum into the county treasury by such person so desiring such license; also, upon payment of not to exceed a like sum into the county treasury by any person desiring a grocery license to sell lager beer to grant such person such license to sell for the period of one year. Also, upon the payment of such sum as the county commissioners may establish and fix, by order duly entered in the record of their proceedings, not exceeding twenty-five dollars per annum for each billiard table, pigeon-hole table, or bowling alley, grant a license to any person applying for the same and giving such bond not exceeding two hundred dollars, as such commissioners may require: *Provided*, No person shall be required to take out any license to sell any wine made from fruit produced by such person's own labor, in this territory. [1873 p 438 § 5; Code 1881, Bagley's Supp. p 27 § 5.]

License required for rural pool halls, billiard halls and bowling alleys: RCW 67.12.110.

67.14.060 Liquor sales, keeping games, without license—Penalty. Any person who shall sell spirituous liquors or wines in greater quantities than one gallon, or shall retail lager beer, or keep a billiard table or tables, or bowling alley or alleys for hire, in any county in this territory, without first taking out a license therefor, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not exceeding fifty dollars nor less than five dollars, and shall be committed to the county jail of the county where such offense may be committed, and be placed at hard labor until such fine and cost shall be paid or they may otherwise be discharged by due course of law. [1873 p 439 § 6; Code 1881, Bagley's Supp. p 27 § 6; RRS § 8290. Formerly RCW 67.12.120.]

67.14.070 Purchase of license—Bond. Any person desiring a license to do any business provided by this chapter that a license shall be taken out for doing, shall have the same granted by paying to the county treasurer of the county where he wishes to carry on such business the maximum sum that the county commissioners are by this chapter authorized to fix therefor, and executing such bond, to be approved by the county auditor, as is provided in this chapter, shall be given before license shall issue for carrying on such business. [1873 p 439 § 7; Code 1881, Bagley's Supp. p 27 § 7.]

67.14.080 Duration of license. The licenses authorized to be granted by this chapter shall at the option of the person applying for the same, be granted for six, nine, or twelve months, and the person holding such license may transact the business thereby authorized at

any place in the county where such license is granted: *Provided*, That such business shall not be transacted in but one place in the county at a time. [1873 p 439 § 8; Code 1881, Bagley's Supp. p 27 § 8.]

67.14.090 Issuance of license. Upon presentation to the county auditor of any county of the certificate of the county treasurer that any person has paid into the county treasury the amount provided by this chapter, to be paid for the transaction of any business that a license may be granted to transact, and for the time provided in this chapter, and upon the execution and delivery to such auditor of the bond hereinbefore required, it shall be the duty of such county auditor to issue such license to such person so presenting such certificate, executing and delivering such bond and making application therefor, for the period of time that the money as shown by the treasurer's certificate would entitle the person so presenting the same to have a license issued for. [1873 p 439 § 9; Code 1881, Bagley's Supp. p 27 § 9.]

67.14.100 When contrivance deemed kept for hire. Any person who shall keep a billiard table or tables, pigeon-hole, Jenny Lind, and all other gaming tables, or bowling alley or bowling alleys in a drinking saloon or house or in a room or building adjoining or attached thereto, and shall allow the same to be used by two or more persons to determine by play thereon which of the persons so playing shall pay for drinks, cigars, or other articles for sale in such saloon or drinking house, shall, within the meaning of this chapter, be deemed to be keeping the same for hire. [1873 p 440 § 10; Code 1881, Bagley's Supp. p 28 § 10; RRS § 8291. Formerly RCW 67.12.130.]

67.14.110 Druggists excepted. None of the provisions of this chapter shall be held to apply to the sale by apothecaries or druggists of spirituous, malt, or fermented liquors or wines for medicinal purposes, upon the prescription of a practicing physician. [1873 p 440 § 11; Code 1881, Bagley's Supp. p 28 § 11.]

67.14.120 Disposition of fees, fines and forfeitures. All fines and forfeitures collected under this chapter, and all moneys paid into the treasury of any county for licenses as aforesaid, shall be applied to school or county purposes as the local laws of such county may direct: *Provided*, That this chapter shall not affect or apply to any private or local laws upon the subject of license in any county in this territory except King county, and no license shall be construed to mean more than the house or saloon kept by the same party or parties: *Provided, further*, That no part of this chapter shall in any way apply to the county of Island: *And provided, further*, That all moneys for licenses within the corporate limits of the town of Olympia shall be paid directly into the town treasury of said town as a municipal fund for the use of said town: *And provided further*, That all fees, fines, forfeitures and penalties collected or assessed by a district court because of the violation of a state law shall be remitted as provided in chapter 3.62 RCW as now

exists or is later amended. [1987 c 202 § 226; 1969 ex.s. c 199 § 29; 1873 p 440 § 12; Code 1881, Bagley's Supp. p 28 § 12.]

Intent—1987 c 202: See note following RCW 2.04.190.

Collection and disposition of fines and costs: Chapter 10.82 RCW.

Chapter 67.16 HORSE RACING

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Exemptions to commission merchant's act: RCW 20.01.030.

67.16.010 Definitions. Unless the context otherwise requires, words and phrases as used herein shall mean:

"Commission" shall mean the Washington horse racing commission, hereinafter created.

"Person" shall mean and include individuals, firms, corporations and associations.

"Race meet" shall mean and include any exhibition of thoroughbred, quarter horse, paint horse, appaloosa horse racing, arabian horse racing, or standard bred harness horse racing, where the parimutuel system is used.

Singular shall include the plural, and the plural shall include the singular; and words importing one gender shall be regarded as including all other genders. [1985 c 146 § 1; 1982 c 132 § 1; 1969 c 22 § 1; 1949 c 236 § 1; 1933 c 55 § 1; Rem. Supp. 1949 § 8312-1.]

Severability—1985 c 146: "If any provisions or application of any provisions of this chapter are invalidated by a court of law, the remainder of the chapter shall not be affected." [1985 c 146 § 15.]

Severability—1982 c 132: "If any provision of this amendatory act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1982 c 132 § 6.]

**67.16.012 Washington horse racing commission—
Creation—Terms—Vacancies—Bonds—Oaths.**

There is hereby created the Washington horse racing commission, to consist of three commissioners, appointed by the governor and confirmed by the senate. The commissioners shall be citizens, residents, and qualified electors of the state of Washington, one of whom shall be a breeder of race horses and shall be of at least one year's standing. The terms of the members shall be six years. Each member shall hold office until his or her successor is appointed and qualified. Vacancies in the office of commissioner shall be filled by appointment to be made by the governor for the unexpired term. Any commissioner may be removed at any time at the pleasure of the governor. Before entering upon the duties of his or her office, each commissioner shall enter into a surety company bond, to be approved by the governor and attorney general, payable to the state of Washington, in the penal sum of five thousand dollars, conditioned upon the faithful performance of his or her duties and the correct accounting and payment of all sums received and coming within his or her control under this chapter, and in addition thereto each commissioner shall take and subscribe to an oath of office of the same form as that prescribed by law for elective state officers. [1987 c 453 § 2; 1973 1st ex.s. c 216 § 1; 1969 ex.s. c 233 § 1; 1933 c 55 § 2; RRS § 8312-2. Formerly RCW 43.50.010.]

Severability—1933 c 55: "In case any part or portion of this act shall be held unconstitutional, such holding shall not affect the validity of this act as a whole or any other part or portion of this act not adjudged unconstitutional. All acts in conflict herewith are hereby repealed." [1933 c 55 § 10.]

**67.16.014 Washington horse racing commission—
Ex officio nonvoting members—Expiration of section.**
In addition to the commission members appointed under

RCW 67.16.012, there shall be four ex officio nonvoting members consisting of: (1) Two members of the senate, one from the majority political party and one from the minority political party, both to be appointed by the president of the senate; and (2) two members of the house of representatives, one from the majority political party and one from the minority political party, both to be appointed by the speaker of the house of representatives. The appointments shall be for the term of two years or for the period in which the appointee serves as a legislator, whichever expires first. Members may be re-appointed, and vacancies shall be filled in the same manner as original appointments are made. The ex officio members shall assist in the policy making, rather than administrative, functions of the commission, and shall collect data deemed essential to future legislative proposals and exchange information with the commission. The ex officio members shall be deemed engaged in legislative business while in attendance upon the business of the commission and shall be limited to such allowances therefor as otherwise provided in RCW 44.04.120, the same to be paid from the horse racing commission fund as being expenses relative to commission business.

This section shall expire on October 31, 1991. [1987 c 453 § 3.]

**67.16.015 Washington horse racing commission—
Organization—Secretary—Records—Annual reports.**

The commission shall organize by electing one of its members chairman, and shall appoint and employ a secretary, and such other clerical, office, and other help as is necessary in the performance of the duties imposed upon it by this chapter. The commission shall keep detailed records of all meetings and of the business transacted therein, and of all the collections and disbursements. The commission shall prepare and submit an annual report to the governor. All records of the commission shall be public records and as such, subject to public inspection. [1977 c 75 § 80; 1933 c 55 § 3; RRS § 8312-3. Formerly RCW 43.50.020.]

**67.16.017 Washington horse racing commission—
Compensation and travel expenses.**

Each member of the Washington horse racing commission shall be compensated in accordance with RCW 43.03.250 and shall be reimbursed for travel expenses in accordance with RCW 43.03.050 and 43.03.060 in going to, attending, and returning from meetings of the commission, and travel expenses incurred in the discharge of such duties as may be requested of him by a majority vote of the commission, but in no event shall a commissioner be paid in any one fiscal year in excess of one hundred twenty days, except the chairman of the commission who may be paid for not more than one hundred fifty days. [1984 c 287 § 100; 1975-'76 2nd ex.s. c 34 § 155; 1969 ex.s. c 233 § 2.]

Legislative findings—Severability—Effective date—1984 c 287: See notes following RCW 43.03.220.

Effective date—Severability—1975-'76 2nd ex.s. c 34: See notes following RCW 2.08.115.

67.16.020 Commission to fix time, place, duration of race meets—Race meet license—Participant's license, fee, duration. It shall be the duty of the commission, as soon as it is possible after its organization, to prepare and promulgate a complete set of rules and regulations to govern the race meets in this state. It shall determine and announce the place, time and duration of race meets for which license fees are exacted; and it shall be the duty of each person holding a license under the authority of this chapter, and every owner, trainer, jockey, and attendant at any race course in this state, to comply with all rules and regulations promulgated and all orders issued by the commission. It shall be unlawful for any person to hold any race meet without having first obtained and having in force and effect a license issued by the commission as in this chapter provided; and it shall be unlawful for any owner, trainer or jockey to participate in race meets in this state without first securing a license therefor from the state racing commission, the fee for which shall be set by the commission which shall offset the cost of administration and shall not be for a period exceeding one year. [1989 c 385 § 5; 1985 c 146 § 2; 1982 c 32 § 1; 1933 c 55 § 4; RRS § 8312-4. Formerly RCW 67.16.020 and 67.16.030.]

Severability—1985 c 146: See note following RCW 67.16.010.

Severability—1982 c 32: "If any provision of this amendatory act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1982 c 32 § 6.]

67.16.040 Commission to regulate and license meets—Inspection. The commission created by this chapter is hereby authorized, and it shall be its duty, to license, regulate and supervise all race meets held in this state under the terms of this chapter, and to cause the various race courses of the state to be visited and inspected at least once a year. [1933 c 55 § 5; RRS § 8312-5.]

67.16.050 Application for meet—Issuance of license—Fee—Cancellation, grounds, procedure. Every person making application for license to hold a race meet, under the provisions of this chapter shall file an application with the commission which shall set forth the time, the place, the number of days such meet will continue, and such other information as the commission may require. The commission shall be the sole judge of whether or not the race meet shall be licensed and the number of days the meet shall continue. No person who has been convicted of any crime involving moral turpitude shall be issued a license, nor shall any license be issued to any person who has violated the terms or provisions of this chapter, or any of the rules and regulations of the commission made pursuant thereto, or who has failed to pay to the commission any or all sums required under the provisions of this chapter. The license shall specify the number of days the race meet shall continue and the number of races per day, which shall be not less than six nor more than eleven, and for which

a fee shall be paid daily in advance of five hundred dollars for each day for those meets which had gross receipts from parimutuel machines in excess of fifty million dollars in the previous year and two hundred dollars for each day for meets which had gross receipts from parimutuel machines at or below fifty million dollars in the previous year; in addition any newly authorized race meets shall pay two hundred dollars per day for the first year: *Provided*, That if unforeseen obstacles arise, which prevent the holding, or completion of any race meet, the license fee for the meet, or for a portion which cannot be held may be refunded the licensee, if the commission deems the reasons for failure to hold or complete the race meet sufficient. Any unexpired license held by any person who violates any of the provisions of this chapter, or any of the rules or regulations of the commission made pursuant thereto, or who fails to pay to the commission any and all sums required under the provisions of this chapter, shall be subject to cancellation and revocation by the commission. Such cancellation shall be made only after a summary hearing before the commission, of which three days' notice, in writing, shall be given the licensee, specifying the grounds for the proposed cancellation, and at which hearing the licensee shall be given an opportunity to be heard in opposition to the proposed cancellation. [1985 c 146 § 3; 1982 c 32 § 2; 1973 1st ex.s. c 39 § 1; 1933 c 55 § 6; RRS § 8312-6.]

Severability—1985 c 146: See note following RCW 67.16.010.

Severability—1982 c 32: See note following RCW 67.16.020.

67.16.060 Prohibited practices—Parimutuel system permitted—Race meet as public nuisance. (1) It shall be unlawful:

(a) To conduct pool selling, bookmaking, or to circulate hand books; or

(b) To bet or wager on any horse race other than by the parimutuel method; or

(c) For any licensee to take more than the percentage provided in RCW 67.16.170; or

(d) For any licensee to compute breaks in the parimutuel system otherwise than at ten cents.

(2) Any wilful violation of the terms of this chapter, or of any rule, regulation, or order of the commission shall constitute a gross misdemeanor and when such violation is by a person holding a license under this chapter, the commission may cancel the license held by the offender, and such cancellation shall operate as a forfeiture of all rights and privileges granted by the commission and of all sums of money paid to the commission by the offender; and the action of the commission in that respect shall be final.

(3) The commission shall have power to exclude from any and all race courses of the state of Washington any person whom the commission deems detrimental to the best interests of racing or any person who wilfully violates any of the provisions of this chapter or of any rule, regulation, or order issued by the commission.

(4) Every race meet held in this state contrary to the provisions of this chapter is hereby declared to be a

public nuisance. [1985 c 146 § 4; 1979 c 31 § 1; 1933 c 55 § 7; RRS § 8312-7.]

Severability—1985 c 146: See note following RCW 67.16.010.
Gambling: Chapters 9.46 and 9.47 RCW.

67.16.070 Races for local breeders. For the purpose of encouraging the breeding, within this state, of valuable thoroughbred, quarter and/or standard bred race horses, at least one race of each day's meet shall consist exclusively of Washington bred horses. [1949 c 236 § 2; 1933 c 55 § 8; Rem. Supp. 1949 § 8312-8.]

67.16.075 Breeders' awards and owners' bonuses—Eligibility—Certification. Only breeders or owners of Washington-bred horses are eligible to demand and receive a breeder's award, an owner's bonus or both. The commission shall promulgate rules and regulations to certify Washington-bred horses. In setting standards to certify horses as Washington-bred, the commission shall seek the advice of and consult with industry, including (1) the Washington Horse Breeders' Association, for thoroughbreds; (2) the Washington State Standardbred Association, for standardbred harness horses; (3) the Northern Racing Quarter Horse Association, for quarter horses; (4) the Washington State Appaloosa Racing Association, for appaloosas; and (5) the Washington State Arabian Horse Racing Association, for arabian horses. [1985 c 146 § 13.]

Severability—1985 c 146: See note following RCW 67.16.010.

67.16.080 Horses to be registered. A quarter horse to be eligible for a race meet herein shall be duly registered with the American Quarter Horse Association. An appaloosa horse to be eligible for a race meet herein shall be duly registered with the National Appaloosa Horse Club or any successor thereto. An arabian horse to be eligible for a race meet herein shall be duly registered with the Arabian Horse Registry of America, or any successor thereto. [1982 c 132 § 2; 1969 c 22 § 2; 1949 c 236 § 3; Rem. Supp. 1949 § 8312-13.]

Severability—1982 c 132: See note following RCW 67.16.010.

67.16.090 Races not limited to horses of same breed. In any race meet in which quarter horses, thoroughbred horses, appaloosa horses, standard bred harness horses, paint horses, or arabian horses participate horses of different breeds may be allowed to compete in the same race if such mixed races are so designated in the racing conditions. [1985 c 146 § 5; 1982 c 132 § 3; 1969 c 22 § 3; 1949 c 236 § 4; Rem. Supp. 1949 § 8312-14.]

Severability—1985 c 146: See note following RCW 67.16.010.

Severability—1982 c 132: See note following RCW 67.16.010.

67.16.100 Gross receipts and fees—Commission's percentage—Disposition—"Fair fund" and "state trade fair fund". In addition to the license fees required by this chapter, the licensee shall pay to the commission the percentages of the gross receipts of all parimutuel machines at each race meet in accordance with RCW

67.16.105, which sums shall be paid daily to the commission.

All sums paid to the commission, together with all sums collected for license fees under the provisions of this chapter, shall be disposed of by the commission as follows: Twenty-two percent thereof shall be retained by the commission for the payment of the salaries of its members, secretary, clerical, office, and other help and all expenses incurred in carrying out the provisions of this chapter. No salary, wages, expenses, or compensation of any kind shall be paid by the state in connection with the work of the commission. Forty percent shall, on the next business day following the receipt thereof, be paid to the state treasurer to be deposited in the general fund, and three percent shall, on the next business day following the receipt thereof, be paid to the state treasurer, who is hereby made ex officio treasurer of a fund to be known as the "state trade fair fund" which shall be maintained as a separate and independent fund, and made available to the director of trade and economic development for the sole purpose of assisting state trade fairs. Thirty-five percent shall be paid to the state treasurer, who is hereby made ex officio treasurer of a fund to be known as the "fair fund," which shall be maintained as a separate and independent fund outside of the state treasury, and made available to the director of agriculture for the sole purpose of assisting fairs in the manner provided in Title 15 RCW. Any moneys collected or paid to the commission under the terms of this chapter and not expended at the close of the fiscal biennium shall be paid to the state treasurer and be placed in the general fund. The commission may, with the approval of the office of financial management, retain any sum required for working capital. [1985 c 466 § 67; 1985 c 146 § 6; 1980 c 16 § 1. Prior: 1979 c 151 § 169; 1979 c 31 § 2; 1977 c 75 § 81; 1965 c 148 § 7; 1955 c 106 § 5; 1947 c 34 § 2; 1941 c 48 § 4; 1935 c 182 § 30; 1933 c 55 § 9; Rem. Supp. 1947 § 8312-9.]

Reviser's note: This section was amended by 1985 c 146 § 6 and by 1985 c 466 § 67, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—Severability—1985 c 466: See notes following RCW 43.31.005.

Severability—1985 c 146: See note following RCW 67.16.010.

State international trade fairs: RCW 43.31.790 through 43.31.850.

Transfer of surplus funds in state trade fair fund to general fund: RCW 43.31.832 through 43.31.834.

67.16.101 Legislative finding—Responsibilities of horse racing commission—Availability of interest on one percent of gross receipts to support small race courses. The legislature finds that:

(1) A primary responsibility of the horse racing commission is the encouragement of the training and development of the equine industry in the state of Washington whether the result of this training and development results in legalized horse racing or in the recreational use of horses;

(2) The horse racing commission has a further major responsibility to assure that any facility used as a race course should be maintained and upgraded to insure the

continued safety of both the public and the horse at any time the facility is used for the training or contesting of these animals;

(3) Small race courses within the state have difficulty in obtaining sufficient funds to provide the maintenance and upgrading necessary to assure this safety at these facilities, or to permit frequent use of these facilities by 4-H children or other horse owners involved in training; and

(4) The one percent of the parimutuel machine gross receipts used to pay a special purse to the licensed owners of Washington bred horses is available for the purpose of drawing interest, thereby obtaining sufficient funds to be disbursed to achieve the necessary support to these small race courses. [1977 ex.s. c 372 § 1.]

Severability—1977 ex.s. c 372: "If any provision of this 1977 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1977 ex.s. c 372 § 3.]

67.16.102 Additional one percent of gross receipts to be withheld—Payment to owners—Payment of interest on one percent and amount retained by commission under RCW 67.16.100. Notwithstanding any other provision of chapter 67.16 RCW to the contrary the licensee shall withhold and shall pay daily to the commission, in addition to the percentages authorized by RCW 67.16.100 and 67.16.130, as now or hereafter amended, and RCW 67.16.105, one percent of the gross receipts of all parimutuel machines at each race meet which sums shall, at the end of each meet, be paid by the commission to the licensed owners of those horses finishing first, second, third and fourth Washington bred only at each meet from which the additional one percent is derived in accordance with an equitable distribution formula to be promulgated by the commission prior to the commencement of each race meet: *Provided*, That nothing in this section shall apply to race meets which are nonprofit in nature, or of ten days or less or which have an average daily handle of less than one hundred twenty thousand dollars: *Provided*, That the additional one percent of the gross receipts of all parimutuel machines at each race meet and the amount retained by the commission as specified in RCW 67.16.100 shall be deposited daily in a time deposit by the commission and the interest derived therefrom shall be distributed annually on an equal basis to those race courses at which independent race meets are held which are nonprofit in nature and are of ten days or less: *Provided*, That prior to receiving a payment under this section any new race course shall meet the qualifications set forth in this section for a period of two years: *Provided, further*, That said distributed funds shall be used for the purpose of maintaining and upgrading the respective racing courses and equine quartering areas of said nonprofit meets. The commission shall not permit the licensees to take into consideration the benefits derived from this section in establishing purses. [1982 c 132 § 5; 1979 c 31 § 3; 1977 ex.s. c 372 § 2; 1969 ex.s. c 233 § 3.]

Severability—1982 c 132: See note following RCW 67.16.010.

Severability—1977 ex.s. c 372: See note following RCW 67.16.101.

67.16.105 Gross receipts—Commission's percentage. Except as provided for satellite wagers in RCW 67.16.210, the licensee shall pay to the commission daily for each authorized day of racing the following applicable percentage of all daily gross receipts from all parimutuel machines at each race meet:

(1) One-half percent of the daily gross receipts, if the daily gross receipts are two hundred thousand dollars or less;

(2) One percent of the daily gross receipts, if the daily gross receipts are two hundred thousand one dollars to four hundred thousand dollars; and

(3) Four percent of the daily gross receipts if the daily gross receipts are four hundred thousand one dollars or more. [1987 c 347 § 4; 1985 c 146 § 7; 1982 c 32 § 3; 1979 c 31 § 6.]

Severability—1985 c 146: See note following RCW 67.16.010.

Severability—1982 c 32: See note following RCW 67.16.020.

67.16.110 Broadcasting and motion picture rights reserved. All radio broadcasting rights, and motion picture rights in connection with meets licensed hereunder are reserved to the state and the commission shall lease or license same only to the highest bidder. The exercise of such rights shall at all times be under the supervision of the commission. [1980 c 32 § 10; 1933 c 55 § 11; RRS § 8312–11.]

67.16.130 Nonprofit race meets—Licensing authorized—Fees—Gross receipts, licensee's percentage.

(1) Notwithstanding any other provision of law or of chapter 67.16 RCW, the commission may license race meets which are nonprofit in nature, of ten days or less, and which have an average daily handle of one hundred twenty thousand dollars or less, at a daily licensing fee of ten dollars, and the sponsoring nonprofit association shall be exempt from any other fees as provided for in chapter 67.16 RCW or by rule or regulation of the commission: *Provided*, That the commission on or after January 1, 1971 may deny the application for a license to conduct a racing meet by a nonprofit association, if same shall be determined not to be a nonprofit association by the Washington state racing commission.

(2) Notwithstanding any other provision of law or of chapter 67.16 RCW the licensees of race meets which are nonprofit in nature, of ten days or less, and which have an average daily handle of one hundred twenty thousand dollars or less, shall withhold and shall pay daily to the commission the percentages authorized by RCW 67.16.105, 67.16.170, and 67.16.175.

(3) Notwithstanding any other provision of law or of chapter 67.16 RCW or any rule promulgated by the commission, no license for a race meet which is nonprofit in nature, of ten days or less, and which has an average daily handle of one hundred twenty thousand dollars or less, shall be denied for the reason that the applicant has not installed an electric parimutuel tote board.

(4) As a condition to the reduction in fees as provided for in subsection (1) hereof, all fees charged to horse owners, trainers, or jockeys, or any other fee charged for a permit incident to the running of such race meet shall be retained by the commission as reimbursement for its expenses incurred in connection with the particular race meet. [1985 c 146 § 8; 1982 c 32 § 4; 1979 c 31 § 4; 1969 ex.s. c 94 § 2.]

Severability—1985 c 146: See note following RCW 67.16.010.

Severability—1982 c 32: See note following RCW 67.16.020.

Effective date—1969 ex.s. c 94: "This 1969 amendatory act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect May 1, 1969." [1969 ex.s. c 94 § 3.]

67.16.140 Employees of commission—Employment restriction. No employee of the horse racing commission shall serve as an employee of any track at which that individual will also serve as an employee of the commission. [1973 1st ex.s. c 216 § 3.]

67.16.150 Employees of commission—Commissioners—Financial interest restrictions. No employee nor any commissioner of the horse racing commission shall have any financial interest whatsoever, other than an ownership interest in a community venture, in any track at which said employee serves as an agent or employee of the commission or at any track with respect to a commissioner. [1973 1st ex.s. c 216 § 4.]

67.16.160 Rules and regulations implementing conflict of interest laws. No later than ninety days after July 16, 1973 the horse racing commission shall promulgate, pursuant to chapter 34.05 RCW, reasonable rules and regulations implementing to the extent applicable to the circumstances of the horse racing commission the conflict of interest laws of the state of Washington as set forth in chapters 42.18, 42.21 and 42.22 RCW. [1973 1st ex.s. c 216 § 5.]

67.16.170 Gross receipts—Retention of percentage by race meets. Except as provided for satellite wagers in RCW 67.16.220, race meets which have gross receipts of all parimutuel machines for each authorized day of racing may retain the following from the daily gross receipts of all parimutuel machines:

(1) On a daily handle of two hundred thousand dollars or less, the licensee shall retain fourteen and one-half percent of such gross receipts;

(2) On a daily handle of two hundred thousand one dollars to four hundred thousand dollars, the licensee shall retain fourteen percent of such gross receipts; and

(3) On a daily handle of four hundred thousand one dollars or more, the licensee shall retain eleven percent of such gross receipts. [1987 c 347 § 2; 1985 c 146 § 9; 1983 c 228 § 1; 1979 c 31 § 5.]

Severability—1985 c 146: See note following RCW 67.16.010.

67.16.175 Gross receipts—Exotic races—Retention of percentage by race meets. (1) Except as provided for satellite wagers in RCW 67.16.210 and

67.16.220, daily gross receipts of all parimutuel machines from wagers on exotic races shall be distributed according to this section:

(a) In addition to the amounts set forth in RCW 67.16.105, an additional two and five-tenths percent of gross receipts on races with two or more selections and three and five-tenths percent of gross receipts on races with three or more selections shall be paid to the commission. The commission shall retain thirty-one percent of the additional percentages from exotic races and shall forward the balance to the state treasurer daily for deposit in the general fund.

(b) In addition to the amounts authorized to be retained in RCW 67.16.170, race meets may retain an additional three percent of the daily gross receipts of all parimutuel machines from wagers on exotic races requiring two selections to be used as provided in subsection (2) of this section.

(c) In addition to the amounts authorized to be retained in RCW 67.16.170, race meets may retain an additional six percent of the daily gross receipts of all parimutuel machines from wagers on exotic races requiring three or more selections to be used as provided in subsection (2) of this section.

(2) Of the amounts retained in subsection (1) (b) and (c) of this section, one percent shall be used for Washington-bred breeder awards, not to exceed twenty percent of the winner's share of the purse.

(3) Any portion of the remaining moneys retained in subsection (1) (b) and (c) of this section shall be shared equally by the race track and participating horsemen. The amount shared by participating horsemen shall be in addition to and shall not supplant the customary purse structure between race tracks and participating horsemen.

(4) As used in this section, "exotic races" means any multiple wager. Exotic races are subject to approval of the commission. [1987 c 453 § 1; 1987 c 347 § 3; 1986 c 43 § 1; 1985 c 146 § 10; 1981 c 135 § 1.]

Reviser's note: This section was amended by 1987 c 347 § 3 and by 1987 c 453 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Severability—1985 c 146: See note following RCW 67.16.010.

Severability—1981 c 135: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1981 c 135 § 2.]

67.16.190 Parimutuel pools on televised or simulcast races of national or regional interest—Limitations. Upon written application to the commission by a licensee holding a race meet, and approval by the commission, the licensee may conduct the sale of parimutuel pools on in-state or out-of-state televised or simulcast races of national or regional interest: *Provided*, That the sale of such parimutuel pools shall be conducted only within the enclosure of the licensee's race course and only during the conduct of a race meet in the state of Washington by said licensee. [1985 c 146 § 12; 1981 c 70 § 3.]

Severability—1985 c 146: See note following RCW 67.16.010.

67.16.200 Satellite locations—Parimutuel wagering. (Expires October 31, 1991.) (1) A racing association licensed by the commission to conduct a race meet may seek approval from the commission to conduct parimutuel wagering on its program at a satellite location or locations within the state of Washington. The sale of parimutuel pools at satellite locations shall be conducted only during the licensee's race meet and simultaneous to all parimutuel wagering activity conducted at the licensee's racing facility in the state of Washington. The commission's authority to approve satellite wagering at a particular location is subject to the following limitations:

(a) The commission may approve only one satellite location in each county in the state; however, the commission may grant approval for more than one licensee to conduct wagering at each satellite location.

(b) The commission shall not allow a licensee to conduct satellite wagering at a satellite location within fifty air miles of the licensee's racing facility.

(c)(i) The commission may allow a licensee to conduct satellite wagering at a satellite location within fifty air miles of the racing facility of another licensee who conducts race meets of thirty days or more, but only if the satellite location is the racing facility of another licensee who conducts race meets of thirty days or more and only if the licensee seeking to conduct satellite wagering suspends its program during the conduct of the meets of all licensees within fifty air miles.

(ii) Subject to subsection (1)(c)(i) of this section, the commission may allow a licensee to conduct satellite wagering at a satellite location within fifty air miles of the racing facility of another licensee who conducts race meets of under thirty days, but only if the licensee seeking to conduct satellite wagering suspends its satellite program during the conduct of the meets of all licensees within fifty air miles.

(2) Subject to local zoning and other land use ordinances, the commission shall be the sole judge of whether approval to conduct wagering at a satellite location shall be granted.

(3) The licensee shall combine the parimutuel pools of the satellite location with those of the racing facility for the purpose of determining odds and computing payoffs. The amount wagered at the satellite location shall be combined with the amount wagered at the racing facility for the application of take out formulas and distribution as provided in RCW 67.16.102, 67.16.105, 67.16.130, 67.16.170, 67.16.175, 67.16.210, and 67.16.220. A satellite extension of the licensee's racing facility shall be subject to the same application of the rules of racing as the licensee's racing facility. [1987 c 347 § 1.]

67.16.210 Satellite wagers—Gross receipts—Commission's percentage. (Expires October 31, 1991.) (1) The licensee shall pay to the commission daily for each authorized day of racing the following applicable percentage of all daily gross receipts of all parimutuel machines from satellite wagers on all races:

(a) On a daily handle of two hundred thousand dollars or less, the licensee shall pay to the commission

one-half percent of the daily gross receipts of parimutuel machines from satellite wagers;

(b) On a daily handle of two hundred thousand dollars to four hundred thousand dollars, the licensee shall pay to the commission one-half percent of daily gross receipts of parimutuel machines from satellite wagers; and

(c) On a daily handle of four hundred thousand one dollars or more, the licensee shall pay to the commission three percent of daily gross receipts of parimutuel machines from satellite wagers.

(2) In addition to the amounts set forth in subsection (1) of this section, the licensee shall pay daily to the commission an additional one percent of gross receipts on all parimutuel machines from satellite wagers on exotic races.

(3) As used in this section, "exotic races" has the meaning defined in RCW 67.16.175. [1987 c 347 § 5.]

67.16.220 Satellite wagers—Gross receipts—Licensee's percentage. (Expires October 31, 1991.) (1) The licensee may retain for each authorized day of racing the following applicable percentage of all daily gross receipts of all parimutuel machines from satellite wagers:

(a) On a daily handle of two hundred thousand dollars or less, the licensee shall retain fourteen and one-half percent of such gross receipts;

(b) On a daily handle of two hundred thousand one dollars to four hundred thousand dollars, the licensee shall retain fourteen and one-half percent of such gross receipts; and

(c) On a daily handle of four hundred thousand one dollars or more, the licensee shall retain twelve percent of such gross receipts.

(2) In addition to the amounts set forth in subsection (1) of this section, the licensee may retain an additional four and one-half percent of the daily gross receipts on all parimutuel machines from satellite wagers on exotic races requiring two selections and an additional eight and one-half percent on daily gross receipts of parimutuel machines from satellite wagers on exotic races requiring three or more selections, to be used as provided in subsection (3) of this section.

(3) Of the amounts retained in subsection (2) of this section, one percent shall be used for Washington-bred breeder awards, not to exceed twenty percent of the winner's share of the purse.

(4) As used in this section, "exotic races" has the meaning defined in RCW 67.16.175. [1987 c 347 § 6.]

67.16.230 Satellite locations—Fees. (Expires October 31, 1991.) The commission is authorized to establish and collect an annual fee for each separate satellite location. The fee to be collected from the licensee shall be set to reflect the commission's expected costs of approving, regulating, and monitoring each satellite location, provided commission revenues generated under RCW 67.16.210 from the licensee shall be credited annually towards the licensee's fee assessment under this section. [1987 c 347 § 7.]

67.16.240 Expiration of RCW 67.16.200 through 67.16.230—Review. RCW 67.16.200 through 67.16.230 shall expire on October 31, 1991, unless extended by law for an additional fixed period of time and shall be subject to review under chapter 43.131 RCW. [1987 c 347 § 8.]

67.16.300 Industrial insurance premium assessments. In addition to the license fees authorized by this chapter, the commission shall collect the industrial insurance premium assessments required under RCW 51.16.210 from trainers, grooms, and owners. The industrial insurance premium assessments required under RCW 51.16.210 shall be retroactive to January 1, 1989, and shall be collected from all licensees whose licenses were issued after that date. The commission shall deposit the industrial insurance premium assessments in the industrial insurance trust fund as required by rules adopted by the department of labor and industries. [1989 c 385 § 2.]

67.16.900 Severability—General repealer—1933 c 55. In case any part or portion of this chapter shall be held unconstitutional, such holding shall not affect the validity of this chapter as a whole or any other part or portion of this chapter not adjudged unconstitutional. All acts in conflict herewith are hereby repealed. [1933 c 55 § 10; RRS § 8312-10.]

Chapter 67.20

PARKS, BATHING BEACHES, PUBLIC CAMPS

Sections

- 67.20.010 Authority to acquire and operate certain recreational facilities—Charges—Eminent domain.
- 67.20.015 Authority to establish and operate public camps—Charges.
- 67.20.020 Contracts for cooperation.
- 67.20.030 Scope of chapter.

County parks and recreational facilities: Chapter 36.68 RCW.
Eminent domain: Title 8 RCW.
Metropolitan park districts: Chapter 35.61 RCW.
Recreation districts act for counties: Chapter 36.69 RCW.
State parks and recreation commission: Chapter 43.51 RCW.

67.20.010 Authority to acquire and operate certain recreational facilities—Charges—Eminent domain. Any city in this state acting through its city council, or its board of park commissioners when authorized by charter or ordinance, any separately organized park district acting through its board of park commissioners or other governing officers, any school district acting through its board of school directors, any county acting through its board of county commissioners, any park and recreation service area acting through its governing body, and any town acting through its town council shall have power, acting independently or in conjunction with the United States, the state of Washington, any county, city, park district, school district or town or any number of such public organizations to acquire any land within this state for park, playground, gymnasiums, swimming

pools, field houses and other recreational facilities, bathing beach or public camp purposes and roads leading from said parks, playgrounds, gymnasiums, swimming pools, field houses and other recreational facilities, bathing beaches, or public camps to nearby highways by donation, purchase or condemnation, and to build, construct, care for, control, supervise, improve, operate and maintain parks, playgrounds, gymnasiums, swimming pools, field houses and other recreational facilities, bathing beaches, roads and public camps upon any such land, including the power to enact and enforce such police regulations not inconsistent with the constitution and laws of the state of Washington, as are deemed necessary for the government and control of the same. The power of eminent domain herein granted shall not extend to any land outside the territorial limits of the governmental unit or units exercising said power. [1988 c 82 § 7; 1949 c 97 § 1; 1921 c 107 § 1; Rem. Supp. 1949 § 9319. FORMER PART OF SECTION: 1949 c 97 § 3; 1921 c 107 § 3; Rem. Supp. 1949 § 9321 now codified as RCW 67.20.015.]

67.20.015 Authority to establish and operate public camps—Charges. Any city, town, county, separately organized park district, or school district shall have power to establish, care for, control, supervise, improve, operate and maintain a public camp, or camps anywhere within the state, and to that end may make, promulgate and enforce any reasonable rules and regulations in reference to such camps and make such charges for the use thereof as may be deemed expedient. [1949 c 97 § 3; 1921 c 107 § 3; Rem. Supp. 1949 § 9321. Formerly RCW 67.20.010, part.]

67.20.020 Contracts for cooperation. Any city, park district, school district, county or town shall have power to enter into any contract in writing with any organization or organizations referred to in this chapter for the purpose of conducting a recreation program or exercising any other power granted by this chapter. In the conduct of such recreation program property or facilities owned by any individual, group or organization, whether public or private, may be utilized by consent of the owner. [1949 c 97 § 2; 1921 c 107 § 2; Rem. Supp. 1949 § 9320.]

67.20.030 Scope of chapter. This chapter shall not be construed to repeal or limit any existing power of any city or park district, but to grant powers in addition thereto. [1949 c 97 § 4; 1921 c 107 § 4; Rem. Supp. 1949 § 9319 note.]

Chapter 67.24

FRAUD IN SPORTING CONTEST

Sections

- 67.24.010 Commission of, declared felony—1945 c 107.
- 67.24.020 Scope of 1945 c 107.

67.24.010 Commission of, declared felony—1945 c 107. Every person who shall give, offer, receive or

promise, directly or indirectly, any compensation, gratuity or reward, or make any promise thereof, or who shall fraudulently commit any act by trick, device or bunco, or any means whatsoever with intent to influence or change the outcome of any sporting contest between men or between animals, shall be guilty of a felony and shall be punished by imprisonment in the state penitentiary for not less than five years. [1945 c 107 § 1; 1941 c 181 § 1; Rem. Supp. 1945 § 2499–1.]

67.24.020 Scope of 1945 c 107. All of the acts and statutes in conflict herewith are hereby repealed except chapter 55, Laws of 1933 [chapters 43.50 and 67.16 RCW] and amendments thereto. [1945 c 107 § 2; Rem. Supp. 1945 § 2499–1 note.]

Chapter 67.28

PUBLIC STADIUM, CONVENTION, PERFORMING ARTS, AND VISUAL ARTS FACILITIES

Sections

67.28.080	Definitions.
67.28.090	Stadium commission created—Appointment and selection of members—Expenses and per diem.
67.28.100	Duties of commission—Report and recommendations of feasibility studies.
67.28.110	Authorization to engage professional help.
67.28.120	Authorization to acquire, maintain, operate, etc., public stadium, convention, performing arts, and/or visual arts facilities.
67.28.130	Conveyance or lease of lands, properties or facilities authorized—Joint participation, use of facilities.
67.28.140	Declaration of public purpose—Right of eminent domain.
67.28.150	Issuance of general obligation bonds—Maturity—Methods of payment.
67.28.160	Revenue bonds—Issuance, sale, form, term, payment, reserves, actions.
67.28.170	Power to lease all or part of facilities—Disposition of proceeds.
67.28.180	Special excise tax authorized—Hotel, motel, rooming house, trailer camp, etc., charges—Conditions imposed upon levies.
67.28.182	Special excise tax authorized—Pierce county—Hotel, motel, rooming house, trailer camp, etc., charges—Conditions imposed upon levies.
67.28.183	Exemption from tax—Emergency lodging for homeless persons—Conditions.
67.28.184	Use of hotel–motel tax revenues by cities for professional sports franchise facilities limited.
67.28.185	Prior resolutions or ordinances in conflict with RCW 67.28.180(2) declared invalid.
67.28.190	Special excise tax authorized—Payment of tax to municipality—Deduction from sales tax required to be paid to department of revenue.
67.28.200	Special excise tax authorized—Exemptions, rules and regulations may be established—Collection.
67.28.210	Special excise tax authorized—Proceeds credited to special fund—Limitation on use—Investment.
67.28.220	Powers additional and supplemental to other laws.
67.28.230	Special excise tax authorized—Ocean Shores—Hotel, motel, rooming house, trailer camp, etc., charges.
67.28.240	Special excise tax authorized—Hotel, motel, rooming house, trailer camp, etc., charges—Conditions imposed upon levies.
67.28.250	Special excise tax authorized—Pierce and Thurston counties—Hotel, motel, rooming house, trailer camp, etc., charges.

67.28.350	Real property beneath air space dedicated to public body for stadium facilities—Exemption from property taxes.
67.28.900	Severability—1965 c 15.
67.28.910	Severability—1967 c 236.
67.28.911	Severability—1973 2nd ex.s. c 34.
67.28.912	Severability—1975 1st ex.s. c 225.
67.28.913	Severability—1988 ex.s. c 1.

Multipurpose community centers: Chapter 35.59 RCW.

Stadiums, coliseums, powers of counties to build and operate: RCW 36.68.090.

67.28.080 Definitions. "Municipality" as used in this chapter means any county, city or town of the state of Washington.

"Person" as used in this chapter means the federal government or any agency thereof, the state or any agency, subdivision, taxing district or municipal corporation thereof other than county, city or town, any private corporation, partnership, association, or individual. [1967 c 236 § 1.]

Reviser's note: Throughout this chapter, "this act" has been changed to "this chapter". This act, 1967 c 236, is codified as this chapter and RCW 82.02.020.

67.28.090 Stadium commission created—Appointment and selection of members—Expenses and per diem. There is created a stadium commission to consist of six members to be selected as follows:

The governor shall appoint a chairman and one other member of the commission.

Any class AA county, class A county, or first class county may within ninety days following June 8, 1967 submit to the governor a request that the commission conduct a study and investigation as provided in RCW 67.28.100 relative to the construction of a stadium within such county. Such request shall be supported by plans and other relevant information.

Within two weeks of the end of the ninety–day period, the governor and/or the two members of the commission appointed by him shall meet and consider any such requests, and shall accept that request which in their sole discretion appears to present the most feasible plan.

Thereupon, the board of county commissioners of the county whose request is accepted shall select two members from its body as members of the commission, and the mayor of the city having the largest population in such county shall appoint two members from such city's legislative body to the commission.

The commission shall meet at such time or times as may be designated either by the governor or by the chairman of the board, and shall serve without compensation. They shall receive, for time spent on the commission, per diem and mileage allowances in conformity with the amounts allowed for legislators under the provisions of RCW 44.04.120. [1967 c 236 § 2.]

67.28.100 Duties of commission—Report and recommendations of feasibility studies. The commission is charged with and shall have the duty of making a complete study and investigation into the acquisition of a site for public stadium facilities, including feasibility studies in connection therewith, and shall report its findings and

recommendations to the governing body of the county whose request is accepted as provided in RCW 67.28-.090. [1967 c 236 § 3.]

67.28.110 Authorization to engage professional help. The commission is authorized to engage professional help including, but not limited to, (1) research and motivational study analysts, (2) cost analysis accountants, (3) professional engineers, architects and designers, professional urban planners, and such other staff as may be necessary to carry out its duties under this chapter. [1967 c 236 § 4.]

67.28.120 Authorization to acquire, maintain, operate, etc., public stadium, convention, performing arts, and/or visual arts facilities. Any municipality is authorized either individually or jointly with any other municipality, or person, or any combination thereof, to acquire by purchase, gift or grant, to lease as lessee, and to construct, install, add to, improve, replace, repair, maintain, operate and regulate the use of public stadium facilities, convention center facilities, performing arts center facilities, and/or visual art center facilities, whether located within or without such municipality, including but not limited to buildings, structures, concession and service facilities, roads, bridges, walks, ramps and other access facilities, terminal and parking facilities for private vehicles and public transportation vehicles and systems, together with all lands, properties, property rights, equipment, utilities, accessories and appurtenances necessary for such public stadium facilities, convention center facilities, performing arts center facilities, or visual arts center facilities, and to pay for any engineering, planning, financial, legal and professional services incident to the development and operation of such public facilities. [1979 ex.s. c 222 § 1; 1973 2nd ex.s. c 34 § 1; 1967 c 236 § 5.]

67.28.130 Conveyance or lease of lands, properties or facilities authorized—Joint participation, use of facilities. Any municipality, taxing district, or municipal corporation is authorized to convey or lease any lands, properties or facilities to any other municipality for the development by such other municipality of public stadium facilities, convention center facilities, performing arts center facilities, and/or visual art center facilities or to provide for the joint use of such lands, properties or facilities, or to participate in the financing of all or any part of the public facilities on such terms as may be fixed by agreement between the respective legislative bodies without submitting the matter to the voters of such municipalities, unless the provisions of general law applicable to the incurring of municipal indebtedness shall require such submission. [1979 ex.s. c 222 § 2; 1973 2nd ex.s. c 34 § 2; 1967 c 236 § 6.]

67.28.140 Declaration of public purpose—Right of eminent domain. The acts authorized herein are declared to be strictly for the public purposes of the municipalities authorized to perform same. Any municipality as

defined in RCW 67.28.080 shall have the power to acquire by condemnation and purchase any lands and property rights, both within and without its boundaries, which are necessary to carry out the purposes of this chapter. Such right of eminent domain shall be exercised by the legislative body of each such municipality in the manner provided by applicable general law or under chapter 8.12 RCW. [1967 c 236 § 7.]

67.28.150 Issuance of general obligation bonds—Maturity—Methods of payment. To carry out the purposes of this chapter any municipality shall have the power to issue general obligation bonds within the limitations now or hereafter prescribed by the laws of this state. Such general obligation bonds shall be authorized, executed, issued and made payable as other general obligation bonds of such municipality: *Provided*, That the governing body of such municipality may provide that such bonds mature in not to exceed forty years from the date of their issue, may provide that such bonds also be made payable from any special taxes provided for in RCW 67.28.180, and may provide that such bonds also be made payable from any otherwise unpledged revenue which may be derived from the ownership or operation of any properties. [1984 c 186 § 56; 1967 c 236 § 8.]

Purpose—1984 c 186: See note following RCW 39.46.110.

67.28.160 Revenue bonds—Issuance, sale, form, term, payment, reserves, actions. (1) To carry out the purposes of this chapter the legislative body of any municipality shall have the power to issue revenue bonds without submitting the matter to the voters of the municipality: *Provided*, That the legislative body shall create a special fund or funds for the sole purpose of paying the principal of and interest on the bonds of each such issue, into which fund or funds the legislative body may obligate the municipality to pay all or part of amounts collected from the special taxes provided for in RCW 67.28.180, and/or to pay such amounts of the gross revenue of all or any part of the facilities constructed, acquired, improved, added to, repaired or replaced pursuant to this chapter, as the legislative body shall determine: *Provided, further*, That the principal of and interest on such bonds shall be payable only out of such special fund or funds, and the owners of such bonds shall have a lien and charge against the gross revenue pledged to such fund.

Such revenue bonds and the interest thereon issued against such fund or funds shall constitute a claim of the owners thereof only as against such fund or funds and the revenue pledged therefor, and shall not constitute a general indebtedness of the municipality.

Each such revenue bond shall state upon its face that it is payable from such special fund or funds, and all revenue bonds issued under this chapter shall be negotiable securities within the provisions of the law of this state. Such revenue bonds may be registered either as to principal only or as to principal and interest as provided in RCW 39.46.030, or may be bearer bonds; shall be in such denominations as the legislative body shall deem proper; shall be payable at such time or times and at

such places as shall be determined by the legislative body; shall be executed in such manner and bear interest at such rate or rates as shall be determined by the legislative body.

Such revenue bonds shall be sold in such manner as the legislative body shall deem to be for the best interests of the municipality, either at public or private sale.

The legislative body may at the time of the issuance of such revenue bonds make such covenants with the owners of said bonds as it may deem necessary to secure and guaranty the payment of the principal thereof and the interest thereon, including but not being limited to covenants to set aside adequate reserves to secure or guaranty the payment of such principal and interest, to pledge and apply thereto part or all of any lawfully authorized special taxes provided for in RCW 67.28.180, to maintain rates, charges or rentals sufficient with other available moneys to pay such principal and interest and to maintain adequate coverage over debt service, to appoint a trustee or trustees for the bond owners, to safeguard the expenditure of the proceeds of sale of such bonds and to fix the powers and duties of such trustee or trustees and to make such other covenants as the legislative body may deem necessary to accomplish the most advantageous sale of such bonds. The legislative body may also provide that revenue bonds payable out of the same source may later be issued on a parity with revenue bonds being issued and sold.

The legislative body may include in the principal amount of any such revenue bond issue an amount for engineering, architectural, planning, financial, legal, and other services and charges incident to the acquisition or construction of public stadium facilities, convention center facilities, performing arts center facilities, and/or visual arts center facilities, an amount to establish necessary reserves, an amount for working capital and an amount necessary for interest during the period of construction of any facilities to be financed from the proceeds of such issue plus six months. The legislative body may, if it deems it in the best interest of the municipality, provide in any contract for the construction or acquisition of any facilities or additions or improvements thereto or replacements or extensions thereof that payment therefor shall be made only in such revenue bonds.

If the municipality shall fail to carry out or perform any of its obligations or covenants made in the authorization, issuance and sale of such bonds, the owner of any such bond may bring action against the municipality and compel the performance of any or all of such covenants.

(2) Notwithstanding subsection (1) of this section, such bonds may be issued and sold in accordance with chapter 39.46 RCW. [1983 c 167 § 168; 1979 ex.s. c 222 § 3; 1973 2nd ex.s. c 34 § 3; 1967 c 236 § 9.]

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

67.28.170 Power to lease all or part of facilities—Disposition of proceeds. The legislative body of any municipality owning or operating public stadium facilities,

convention center facilities, performing arts center facilities, and/or visual arts center facilities acquired or developed pursuant to this chapter shall have power to lease to any municipality or person, or to contract for the use or operation by any municipality or person, of all or any part of the facilities authorized by this chapter, including but not limited to parking facilities, concession facilities of all kinds and any property or property rights appurtenant to such stadium facilities, convention center facilities, performing arts center facilities, and/or visual arts center facilities, for such period and under such terms and conditions and upon such rentals, fees and charges as such legislative body may determine, and may pledge all or any portion of such rentals, fees and charges and all other revenue derived from the ownership and/or operation of such facilities to pay and to secure the payment of general obligation bonds and/or revenue bonds of such municipality issued for authorized public stadium, convention center, performing arts center, and/or visual arts center facilities purposes. [1979 ex.s. c 222 § 4; 1973 2nd ex.s. c 34 § 4; 1967 c 236 § 10.]

67.28.180 Special excise tax authorized—Hotel, motel, rooming house, trailer camp, etc., charges—Conditions imposed upon levies. (1) Subject to the conditions set forth in subsections (2) and (3) of this section, the legislative body of any county or any city, is authorized to levy and collect a special excise tax of not to exceed two percent on the sale of or charge made for the furnishing of lodging by a hotel, rooming house, tourist court, motel, trailer camp, and the granting of any similar license to use real property, as distinguished from the renting or leasing of real property: *Provided*, That it shall be presumed that the occupancy of real property for a continuous period of one month or more constitutes a rental or lease of real property and not a mere license to use or to enjoy the same.

(2) Any levy authorized by this section shall be subject to the following:

(a) Any county ordinance or resolution adopted pursuant to this section shall contain, in addition to all other provisions required to conform to this chapter, a provision allowing a credit against the county tax for the full amount of any city tax imposed pursuant to this section upon the same taxable event.

(b) In the event that any county has levied the tax authorized by this section and has, prior to June 26, 1975, either pledged the tax revenues for payment of principal and interest on city revenue or general obligation bonds authorized and issued pursuant to RCW 67.28.150 through 67.28.160 or has authorized and issued revenue or general obligation bonds pursuant to the provisions of RCW 67.28.150 through 67.28.160, such county shall be exempt from the provisions of subsection (a), to the extent that the tax revenues are pledged for payment of principal and interest on bonds issued at any time pursuant to the provisions of RCW 67.28.150 through 67.28.160: *Provided*, That so much of such pledged tax revenues, together with any investment earnings thereon, not immediately necessary for actual

payment of principal and interest on such bonds may be used: (i) In class AA counties, for repayment either of limited tax levy general obligation bonds or of any county fund or account from which a loan was made, the proceeds from the bonds or loan being used to pay for constructing, installing, improving, and equipping stadium capital improvement projects, and to pay for any engineering, planning, financial, legal and professional services incident to the development of such stadium capital improvement projects, regardless of the date the debt for such capital improvement projects was or may be incurred; or (ii) in counties other than class AA counties, for county-owned facilities for agricultural promotion.

As used in this subsection (2)(b), "capital improvement projects" may include, but not be limited to a stadium restaurant facility, restroom facilities, artificial turf system, seating facilities, parking facilities and scoreboard and information system adjacent to or within a county owned stadium, together with equipment, utilities, accessories and appurtenances necessary thereto. The stadium restaurant authorized by this subsection (2)(b) shall be operated by a private concessionaire under a contract with the county.

(c) No city within a county exempt under subsection (2)(b) of this section may levy the tax authorized by this section so long as said county is so exempt: *Provided*, That in the event that any city in such county has levied the tax authorized by this section and has, prior to June 26, 1975, authorized and issued revenue or general obligation bonds pursuant to the provisions of RCW 67.28.150 through 67.28.160, such city may levy the tax so long as and to the extent that the tax revenues are pledged for payment of principal and interest on bonds issued pursuant to the provisions of RCW 67.28.150 through 67.28.160.

(3) Any levy authorized by this section by a county that has levied the tax authorized by this section and has, prior to June 26, 1975, either pledged the tax revenues for payment of principal and interest on city revenue or general obligation bonds authorized and issued pursuant to RCW 67.28.150 through 67.28.160 or has authorized and issued revenue or general obligation bonds pursuant to the provisions of RCW 67.28.150 through 67.28.160 shall be subject to the following:

(a) Taxes collected under this section in any calendar year in excess of five million three hundred thousand dollars shall only be used for art museums, cultural museums, the arts, and/or the performing arts.

(b) No taxes collected under this section may be used for the operation or maintenance of a public stadium that is financed directly or indirectly by bonds to which the tax is pledged. Expenditures for operation or maintenance include all expenditures other than expenditures that directly result in new fixed assets or that directly increase the capacity, life span, or operating economy of existing fixed assets.

(c) No ad valorem property taxes may be used for debt service on bonds issued for a public stadium that is financed by bonds to which the tax is pledged, unless the taxes collected under this section are or are projected to

be insufficient to meet debt service requirements on such bonds.

(d) If a substantial part of the operation and management of a public stadium that is financed directly or indirectly by bonds to which the tax is pledged is performed by a nonpublic entity or if a public stadium is sold that is financed directly or indirectly by bonds to which the tax is pledged, any bonds to which the tax is pledged shall be retired.

(e) The county shall not lease a public stadium that is financed directly or indirectly by bonds to which the tax is pledged to, or authorize the use of the public stadium by, a professional major league sports franchise unless the sports franchise gives the right of first refusal to purchase the sports franchise, upon its sale, to local government. This subsection (3)(e) does not apply to contracts in existence on April 1, 1986.

If a court of competent jurisdiction declares any provision of this subsection (3) invalid, then that invalid provision shall be null and void and the remainder of this section is not affected. [1987 c 483 § 1; 1986 c 104 § 1; 1985 c 272 § 1; 1975 1st ex.s. c 225 § 1; 1973 2nd ex.s. c 34 § 5; 1970 ex.s. c 89 § 1; 1967 c 236 § 11.]

Effective date—1986 c 104: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect April 1, 1986." [1986 c 104 § 2.]

Severability—1985 c 272: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1985 c 272 § 2.]

Special excise tax

authorized for convention or trade facilities: RCW 67.40.100.

imposed in King county for state convention and trade center: RCW 67.40.090.

67.28.182 Special excise tax authorized—Pierce county—Hotel, motel, rooming house, trailer camp, etc., charges—Conditions imposed upon levies. (1) The legislative body of Pierce county and the councils of cities in Pierce county are each authorized to levy and collect a special excise tax of not to exceed two percent on the sale of or charge made for the furnishing of lodging by a hotel, rooming house, tourist court, motel, trailer camp, and the granting of any similar license to use real property, as distinguished from the renting or leasing of real property. For the purposes of this tax, it shall be presumed that the occupancy of real property for a continuous period of one month or more constitutes a rental or lease of real property and not a mere license to use or to enjoy the same.

(2) Any county ordinance or resolution adopted under this section shall contain, in addition to all other provisions required to conform to this chapter, a provision allowing a credit against the county tax for the full amount of any city tax imposed under this section upon the same taxable event.

(3) Any seller, as defined in RCW 82.08.010, who is required to collect any tax under this section shall pay over such tax to the county or city as provided in RCW 67.28.200. The deduction from state taxes under RCW 67.28.190 does not apply to taxes imposed under this section.

(4) All taxes levied and collected under this section shall be credited to a special fund in the treasury of the county or city. Such taxes shall be levied only for the purpose of visitor and convention promotion and development. Until withdrawn for use, the moneys accumulated in such fund may be invested in interest bearing securities by the county or city treasurer in any manner authorized by law. [1987 c 483 § 2.]

67.28.183 Exemption from tax—Emergency lodging for homeless persons—Conditions. (1) The tax levied by RCW 67.28.180 and 67.28.182 shall not apply to emergency lodging provided for homeless persons for a period of thirty consecutive days under a shelter voucher program administered by an eligible organization.

(2) For the purposes of this exemption, an eligible organization includes only cities, towns, and counties, or their respective agencies, and groups providing emergency food and shelter services. [1988 c 61 § 2.]

Effective date—1988 c 61: See note following RCW 82.08.0299.

67.28.184 Use of hotel–motel tax revenues by cities for professional sports franchise facilities limited. No city imposing the tax authorized under RCW 67.28.180 may use the tax proceeds directly or indirectly to acquire, construct, operate, or maintain facilities or land intended to be used by a professional sports franchise if the county within which the city is located uses the proceeds of its tax imposed under RCW 67.28.180 to directly or indirectly acquire, construct, operate, or maintain a facility used by a professional sports franchise. [1987 1st ex.s. c 8 § 7.]

Severability—1987 1st ex.s. c 8: See note following RCW 67.40.020.

67.28.185 Prior resolutions or ordinances in conflict with RCW 67.28.180(2) declared invalid. Any resolution or ordinance, enacted prior to June 26, 1975, shall be deemed to be invalid from and after June 26, 1975 to the extent said resolution or ordinance is in conflict with subsection (2) of RCW 67.28.180, as now or hereafter amended. [1975 1st ex.s. c 225 § 2.]

67.28.190 Special excise tax authorized—Payment of tax to municipality—Deduction from sales tax required to be paid to department of revenue. Any seller, as defined in RCW 82.08.010, who is required to collect any tax under RCW 67.28.180 for any municipality shall pay over such tax to such municipality as provided in RCW 67.28.200 and such tax shall be deducted from the amount of tax such seller would otherwise be required to collect and to pay over to the department of revenue under chapter 82.08 RCW. [1967 c 236 § 12.]

67.28.200 Special excise tax authorized—Exemptions, rules and regulations may be established—Collection. The legislative body of any county or city may establish reasonable exemptions and may adopt such reasonable rules and regulations as may be necessary for the levy and collection of the taxes authorized by RCW

67.28.180, 67.28.182, and 67.28.230 through 67.28.250. The department of revenue shall perform the collection of such taxes on behalf of such county or city at no cost to such county or city. [1988 ex.s. c 1 § 23; 1987 c 483 § 3; 1970 ex.s. c 89 § 2; 1967 c 236 § 13.]

67.28.210 Special excise tax authorized—Proceeds credited to special fund—Limitation on use—Investment. All taxes levied and collected under RCW 67.28.180, 67.28.230, and 67.28.240 shall be credited to a special fund in the treasury of the county or city imposing such tax. Such taxes shall be levied only for the purpose of paying all or any part of the cost of acquisition, construction, or operating of stadium facilities, convention center facilities, performing arts center facilities, and/or visual arts center facilities or to pay or secure the payment of all or any portion of general obligation bonds or revenue bonds issued for such purpose or purposes under this chapter, or to pay for advertising, publicizing, or otherwise distributing information for the purpose of attracting visitors and encouraging tourist expansion when a county or city has imposed such tax for such purpose, or as one of the purposes hereunder, and until withdrawn for use, the moneys accumulated in such fund or funds may be invested in interest bearing securities by the county or city treasurer in any manner authorized by law. In addition such taxes may be used to develop strategies to expand tourism in distressed areas, as defined in RCW 43.165.010: *Provided*, That any county, and any city within a county, bordering upon Grays Harbor may use the proceeds of such taxes for construction and maintenance of a movable tall ships tourist attraction in cooperation with a tall ships restoration society, except to the extent that such proceeds are used for payment of principal and interest on debt incurred prior to June 11, 1986: *Provided further*, That any city or county may use the proceeds of such taxes for the refurbishing and operation of a steam railway for tourism promotion purposes. [1988 ex.s. c 1 § 24; 1986 c 308 § 1; 1979 ex.s. c 222 § 5; 1973 2nd ex.s. c 34 § 6; 1970 ex.s. c 89 § 3; 1967 c 236 § 14.]

Severability—1986 c 308: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1986 c 308 § 3.]

67.28.220 Powers additional and supplemental to other laws. The powers and authority conferred upon municipalities under the provisions of this chapter shall be construed as in addition and supplemental to powers or authority conferred by any other law, and nothing contained herein shall be construed as limiting any other powers or authority of such municipalities. [1967 c 236 § 15.]

67.28.230 Special excise tax authorized—Ocean Shores—Hotel, motel, rooming house, trailer camp, etc., charges. (1) The legislative body of the city of Ocean Shores is authorized to levy and collect a special excise tax of not to exceed three percent on the sale of or charge made for the furnishing of lodging by a hotel, rooming house, tourist court, motel, trailer camp, and

the granting of any similar license to use real property, as distinguished from the renting or leasing of real property. For the purposes of this tax, it shall be presumed that the occupancy of real property for a continuous period of one month or more constitutes a rental or lease of real property and not a mere license to use or to enjoy the same.

(2) Any seller, as defined in RCW 82.08.010, who is required to collect any tax under this section shall pay over such tax to the city as provided in RCW 67.28.200. The deduction from state taxes under RCW 67.28.190 does not apply to taxes imposed under this section. [1988 ex.s. c 1 § 20.]

67.28.240 Special excise tax authorized—Hotel, motel, rooming house, trailer camp, etc., charges—

Conditions imposed upon levies. (1) The legislative body of a county that qualified under RCW 67.28.180(2)(b) other than a class AA county and the legislative bodies of cities in the qualifying county are each authorized to levy and collect a special excise tax of two percent on the sale of or charge made for the furnishing of lodging by a hotel, rooming house, tourist court, motel, trailer camp, and the granting of any similar license to use real property, as distinguished from the renting or leasing of real property. For the purposes of this tax, it shall be presumed that the occupancy of real property for a continuous period of one month or more constitutes a rental or lease of real property and not a mere license to use or to enjoy the same.

(2) No city may impose the special excise tax authorized in subsection (1) of this section during the time the city is imposing the tax under RCW 67.28.180, and no county may impose the special excise tax authorized in subsection (1) of this section until such time as those cities within the county containing at least one-half of the total incorporated population have imposed the tax.

(3) Any county ordinance or resolution adopted under this section shall contain, in addition to all other provisions required to conform to this chapter, a provision allowing a credit against the county tax for the full amount of any city tax imposed under this section upon the same taxable event.

(4) Any seller, as defined in RCW 82.08.010, who is required to collect any tax under this section shall pay over such tax to the county or city as provided in RCW 67.28.200. The deduction from state taxes under RCW 67.28.190 does not apply to taxes imposed under this section. [1988 ex.s. c 1 § 21.]

67.28.250 Special excise tax authorized—Pierce and Thurston counties—Hotel, motel, rooming house, trailer camp, etc., charges.

(1) The legislative body of Pierce and Thurston counties are authorized to levy and collect a special excise tax not to exceed three percent on the sale of or charge made for the furnishing of lodging by a hotel, rooming house, tourist court, motel, trailer camp, and the granting of any similar license to use real

property, as distinguished from the renting or leasing of real property. For the purposes of this tax, it shall be presumed that the occupancy of real property for a continuous period of one month or more constitutes a rental or lease of real property and not a mere license to use or to enjoy the same.

(2) The tax authorized in subsection (1) of this section is in addition to any other tax authorized by law.

(3) Any seller, as defined in RCW 82.08.010, who is required to collect any tax under this section shall pay over such tax to the county as provided in RCW 67.28.200. The deduction from state taxes under RCW 67.28.190 does not apply to taxes imposed under this section.

(4) All taxes levied and collected under this section shall be credited to a special fund in the treasury of the county. Such taxes shall be levied only for the purpose of paying all or any part of the cost of the siting, acquisition, construction, operation, and maintenance of an indoor aquatic facility in Pierce county and an Olympic academy facility in Thurston county, and may be used for and pledged to the payment of bonds, leases, or other obligations issued or incurred for such purposes. [1988 ex.s. c 1 § 22.]

67.28.350 Real property beneath air space dedicated to public body for stadium facilities—Exemption from property taxes. See RCW 84.36.270 through 84.36.290.

67.28.900 Severability—1965 c 15. If any provision of this chapter, or its application to any person or circumstance is held invalid, the remainder of the chapter, or the application of the provision to other persons or circumstances is not affected. [1965 c 15 § 8.]

67.28.910 Severability—1967 c 236. If any provision of this act, or its application to any municipality, person or circumstance is held invalid, the remainder of this act or the application of the provision to other municipalities, persons or circumstances is not affected. [1967 c 236 § 19.]

67.28.911 Severability—1973 2nd ex.s. c 34. If any provision of this 1973 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1973 2nd ex.s. c 34 § 7.]

67.28.912 Severability—1975 1st ex.s. c 225. If any provision of this 1975 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1975 1st ex.s. c 225 § 3.]

67.28.913 Severability—1988 ex.s. c 1. See RCW 36.100.900.

Chapter 67.30

MULTIPURPOSE SPORTS STADIA

Sections

67.30.010	Declaration of public purpose and necessity.
67.30.020	Participation by cities and counties—Powers— Costs, how paid.
67.30.030	Issuance of revenue bonds—Limitations— Retirement.
67.30.040	Power to appropriate and raise moneys.
67.30.050	Powers additional and supplemental to other laws.
67.30.900	Severability—1967 c 166.

Multipurpose community centers: Chapter 35.59 RCW.

Professional sports franchise, cities authorized to own and operate: RCW 35.21.695.

Stadia, coliseums, powers of counties to build and operate: RCW 36.68.090.

67.30.010 Declaration of public purpose and necessity. The participation of counties and cities in multipurpose sports stadia which may be used for football, baseball, soccer, conventions, home shows or any and all similar activities; the purchase, lease, condemnation, or other acquisition of necessary real property therefor; the acquisition by condemnation or otherwise, lease, construction, improvement, maintenance, and equipping of buildings or other structures upon such real property or other real property; the operation and maintenance necessary for such participation, and the exercise of any other powers herein granted to counties and cities, are hereby declared to be public, governmental, and municipal functions, exercised for a public purpose, and matters of public necessity, and such real property and other property acquired, constructed, improved, maintained, equipped, and used by counties and cities in the manner and for the purposes enumerated in this chapter shall and are hereby declared to be acquired, constructed, improved, maintained, equipped and used for public, governmental, and municipal purposes and as a matter of public necessity. [1967 c 166 § 2.]

67.30.020 Participation by cities and counties—Powers—Costs, how paid. The counties and cities are authorized, upon passage of an ordinance in the prescribed manner, to participate in the financing, construction, acquisition, operation, and maintenance of multipurpose sports stadia within their boundaries. Counties and cities are also authorized, through their governing authorities, to purchase, lease, condemn, or otherwise acquire property, real or personal; to construct, improve, maintain and equip buildings or other structures; and expend moneys for investigations, planning, operations, and maintenance necessary for such participation.

The cost of any such acquisition, condemnation, construction, improvement, maintenance, equipping, investigations, planning, operation, or maintenance necessary for such participation may be paid for by appropriation of moneys available therefor, gifts, or wholly or partly from the proceeds of revenue bonds as the governing authority may determine. [1967 c 166 § 3.]

67.30.030 Issuance of revenue bonds—Limitations—Retirement. Any revenue bonds to be issued by any county or city pursuant to the provisions of this chapter, shall be authorized and issued in the manner prescribed by the laws of this state for the issuance and authorization of bonds thereof for public purposes generally: *Provided*, That the bonds shall not be issued for a period beyond the life of the improvement to be acquired by the use of the bonds.

The bonding authority authorized for the purposes of this chapter shall be limited to the issuance of revenue bonds payable from a special fund or funds created solely from revenues derived from the facility. The owners and holders of such bonds shall have a lien and charge against the gross revenue of the facility. Such revenue bonds and the interest thereon against such fund or funds shall be a valid claim of the holders thereof only as against such fund or funds and the revenue pledged therefor, and shall not constitute a general indebtedness of the municipality. The governing authority of any county or city may by ordinance take such action as may be necessary and incidental to the issuance of such bonds and the retirement thereof. The provisions of chapter 36.67 RCW not inconsistent with this chapter shall apply to the issuance and retirement of any such revenue bonds. [1967 c 166 § 4.]

67.30.040 Power to appropriate and raise moneys. The governing body having power to appropriate moneys within any county or city for the purpose of purchasing, condemning, leasing or otherwise acquiring property, constructing, improving, maintaining, and equipping buildings or other structures, and the investigations, planning, operation or maintenance necessary to participation in any such all-purpose or multipurpose sports stadium, is hereby authorized to appropriate and cause to be raised by taxation or otherwise moneys sufficient to carry out such purpose. [1967 c 166 § 5.]

67.30.050 Powers additional and supplemental to other laws. The powers and authority conferred upon counties and cities under the provisions of this chapter, shall be construed as in addition and supplemental to powers or authority conferred by any other law, and nothing contained herein shall be construed as limiting any other such powers or authority. [1967 c 166 § 6.]

67.30.900 Severability—1967 c 166. If any provision of this chapter, or its application to any person or circumstance is held invalid, the remainder of the chapter, or the application of the provision to other persons or circumstances is not affected. [1967 c 166 § 7.]

Chapter 67.32

WASHINGTON STATE RECREATION TRAILS SYSTEM

Sections

67.32.010	Short title.
67.32.020	Definitions.
67.32.030	Purpose.

- 67.32.040 Trails to be designated by IAC—Inclusion of other trails—Procedure.
- 67.32.050 State trails plan.
- 67.32.060 Proposals for designation of existing or proposed trails as state recreational trails.
- 67.32.070 Coordination by IAC.
- 67.32.080 Categories of trails or areas—Policy statement as to certain state lands.
- 67.32.090 General types of use.
- 67.32.100 Guidelines.
- 67.32.110 Consultation and cooperation with state, federal and local agencies.
- 67.32.120 Reports to governor and legislature.
- 67.32.130 Participation by volunteer organizations—Liability of public agencies therefor limited.
- 67.32.140 Department of transportation—Participation.

Disposition of off-road vehicle moneys: RCW 46.09.110.

Severance or destruction of trails by highway construction, alternative or reconstruction: RCW 47.30.010.

Trails or paths along highways: RCW 47.30.020.

67.32.010 Short title. This chapter may be cited as the Washington State Recreation Trails System Act. [1970 ex.s. c 76 § 1.]

67.32.020 Definitions. As used in this chapter, "IAC" means the Washington state interagency committee for outdoor recreation, and "system" means the Washington state recreation trails system. [1970 ex.s. c 76 § 2.]

Interagency committee for outdoor recreation: Chapter 43.99 RCW.

67.32.030 Purpose. (1) In order to provide for the ever increasing outdoor recreation needs of an expanding resident and tourist population and to promote public access to, travel within, and the enjoyment and appreciation of outdoor areas of Washington, it is declared to be in the public interest to plan a system of trails throughout the state to enable and encourage the public to engage in outdoor recreation activities.

(2) The purpose of this chapter is to provide the means for attaining these objectives by instituting a method for establishing a system of state recreation trails, and by prescribing the manner by which a proposed trail may be included in the system. [1970 ex.s. c 76 § 3.]

67.32.040 Trails to be designated by IAC—Inclusion of other trails—Procedure. (1) The system shall be composed of trails as designated by the IAC. Such trails shall meet the conditions established in this chapter and such supplementary criteria as the IAC may prescribe.

(2) The IAC shall establish a procedure whereby federal, state, and local governmental agencies and/or public and private organizations may propose trails for inclusion within the system. Such proposals will comply with the proposal requirements contained in RCW 67.32.060.

(3) In consultation with appropriate federal, state, and local governmental agencies and public and private organizations, the IAC shall establish a procedure for public review of the proposals considered appropriate for

inclusion in the state-wide trails system. [1970 ex.s. c 76 § 4.]

67.32.050 State trails plan. The director shall prepare a state trails plan as part of the state-wide outdoor recreation and open space plan. Included in this plan shall be an inventory of existing trails and potential trail routes on all lands within the state presently being used or with potential for use by all types of trail users. Such trails plan may include general routes or corridors within which specific trails or segments thereof may be considered for designation as state recreation trails. [1989 c 237 § 7; 1971 ex.s. c 47 § 1; 1970 ex.s. c 76 § 5.]

Effective date—1989 c 237: See note following RCW 43.99.010.

Severability—1971 ex.s. c 47: See RCW 46.09.900.

Application of chapter—Permission necessary to enter upon private lands: RCW 46.09.010.

67.32.060 Proposals for designation of existing or proposed trails as state recreational trails. Before any specific existing or proposed trail is considered for designation as a state recreational trail, a proposal must be submitted to the IAC showing the following:

(1) For existing trails:

(a) The route of such trail, including maps and illustrations, and the recommended mode or modes of travel to be permitted thereon;

(b) The characteristics that, in the judgment of the agency or organization proposing the trail, make it worthy of designation as a component of a state recreation trail or trail system;

(c) A map showing the current status of land ownership and use along the designated route;

(d) The name of the agency or combination of agencies that would be responsible for acquiring additional trail rights-of-way or easements, trail improvement, operation and maintenance, and a statement from those agencies indicating the conditions under which they would be willing to accept those responsibilities;

(e) Any anticipated problems of maintaining and supervising the use of such trail and any anticipated hazards to the use of any land or resource adjacent to such trail;

(f) And such others as deemed necessary by the IAC.

(2) In addition, for proposed trails or for existing trails which require additional right-of-way acquisition, easements, and/or development:

(a) The method of acquiring trail rights-of-way or easements;

(b) The estimated cost of acquisition of lands, or interest in land, if any is required;

(c) The plans for developing the trail and the estimated cost thereof;

(d) Proposed sources of funds to accomplish (2)(a) and (2)(b) of this section. [1970 ex.s. c 76 § 6.]

67.32.070 Coordination by IAC. Following designation of a state recreation trail, the IAC may coordinate:

(1) The agency or agencies that will acquire (where appropriate), develop and/or maintain the trail;

(2) The most appropriate location for the trail;

(3) Modes of travel to be permitted;

(4) And other functions as appropriate. [1970 ex.s. c 76 § 7.]

67.32.080 Categories of trails or areas—Policy statement as to certain state lands. The following seven categories of trails or areas are hereby established for purposes of this chapter:

(1) Cross-state trails which connect scenic, historical, geological, geographical, or other significant features which are characteristic of the state;

(2) Water-oriented trails which provide a designated path to, on, or along fresh and/or salt water in which the water is the primary point of interest;

(3) Scenic-access trails which give access to quality recreation, scenic, historic or cultural areas of state-wide or national significance;

(4) Urban trails which provide opportunities within an urban setting for walking, bicycling, horseback riding, or other compatible activities. Where appropriate, they will connect parks, scenic areas, historical points, and neighboring communities;

(5) Historical trails which identify and interpret routes which were significant in the historical settlement and development of the state;

(6) ORV vehicle trails which are suitable for use by both four-wheel drive vehicles and two-wheel vehicles. Such trails may be included as a part of the trail systems enumerated in subsections (1), (2), (3) and (5) of this section or may be separately designated;

(7) Off-road and off-trail areas which are suitable for use by both four-wheel drive vehicles and two-wheel vehicles. IAC shall coordinate an inventory and classification of such areas giving consideration to the type of use such areas will receive from persons operating four-wheel drive vehicles and two-wheel vehicles.

The planning and designation of trails shall take into account and give due regard to the interests of federal agencies, state agencies and bodies, counties, municipalities, private landowners and individuals, and interested recreation organizations. It is not required that the above categories be used to designate specific trails, but the IAC will assure that full consideration is given to including trails from all categories within the system. As it relates to all classes of trails and to all types of trail users, it is herein declared as state policy to increase recreational trail access to and within state and federally owned lands and private lands where access may be obtained. It is the intent of the legislature that public recreation facilities be developed as fully as possible to provide greater recreation opportunities for the citizens of the state. The purpose of *this 1972 amendatory act is to increase the availability of trails and areas for off-road vehicles by granting authority to state and local governments to maintain a system of ORV trails and areas, and to fund the program to provide for such development. State lands should be used as fully as possible for all public recreation which is compatible with the income-producing requirements of the various trusts. [1977 ex.s. c 220 § 21; 1972 ex.s. c 153 § 1; 1971 ex.s. c 47 § 2; 1970 ex.s. c 76 § 8.]

**Reviser's note:* For translation of "this 1972 amendatory act" [1972 ex.s. c 153], see Codification Tables, Volume 0.

Severability—1971 ex.s. c 47: See RCW 46.09.900.

Application of chapter—Permission necessary to enter upon private lands: RCW 46.09.010.

67.32.090 General types of use. All trails designated as state recreational trails will be constructed, maintained, and operated to provide for one or more of the following general types of use: Foot, foot powered bicycle, horse, motor vehicular or watercraft travel as appropriate to the terrain and location, or to legal, administrative or other necessary restraints. It is further provided that the same trail shall not be designated for use by foot and vehicular travel at the same time. [1970 ex.s. c 76 § 9.]

67.32.100 Guidelines. With the concurrence of any federal or state agency administering lands through which a state recreation trail may pass, and after consultation with local governments, private organizations and landowners which the IAC knows or believes to be concerned, the IAC may issue guidelines including, but not limited to: Encouraging the permissive use of volunteer organizations for planning, maintenance or trail construction assistance; trail construction and maintenance standards, a trail use reporting procedure, and a uniform trail mapping system. [1971 ex.s. c 47 § 3; 1970 ex.s. c 76 § 10.]

Severability—1971 ex.s. c 47: See RCW 46.09.900.

Application of chapter—Permission necessary to enter upon private lands: RCW 46.09.010.

67.32.110 Consultation and cooperation with state, federal and local agencies. The IAC is authorized and encouraged to consult and to cooperate with any state, federal or local governmental agency or body, with private landowners, and with any privately owned utility having jurisdiction or control over or information concerning the use, abandonment or disposition of roadways, utility rights-of-way, or other properties suitable for the purpose of improving or expanding the system in order to assure, to the extent practicable, that any such properties having value for state recreation trail purposes may be made available for such use. [1970 ex.s. c 76 § 11.]

67.32.120 Reports to governor and legislature. From time to time, the IAC shall report to the governor and the legislature on the status of the state recreational trails system. [1970 ex.s. c 76 § 12.]

67.32.130 Participation by volunteer organizations—Liability of public agencies therefor limited. Volunteer organizations may assist public agencies, with the agency's approval, in the construction and maintenance of recreational trails in accordance with the guidelines issued by the interagency committee. In carrying out such volunteer activities the members of the organizations shall not be considered employees or agents of the public agency administering the trails, and such public agencies shall not be subject to any liability

whatsoever arising out of volunteer activities. The liability of public agencies to members of such volunteer organizations shall be limited in the same manner as provided for in RCW 4.24.210. [1971 ex.s. c 47 § 4.]

Severability—1971 ex.s. c 47: See RCW 46.09.900.

Application of chapter—Permission necessary to enter upon private lands: RCW 46.09.010.

67.32.140 Department of transportation—Participation. The department of transportation shall consider plans for trails along and across all new construction projects, improvement projects, and along or across any existing highways in the state system as deemed desirable by the IAC. [1984 c 7 § 368; 1971 ex.s. c 47 § 5.]

Severability—1984 c 7: See note following RCW 47.01.141.

Severability—1971 ex.s. c 47: See RCW 46.09.900.

Application of chapter—Permission necessary to enter upon private lands: RCW 46.09.010.

Chapter 67.34

WINTER RECREATION COMMISSION

Sections

- 67.34.011 Legislative declaration—Commission established—Membership.
- 67.34.021 Powers and duties.

67.34.011 Legislative declaration—Commission established—Membership. (Effective until June 30, 1994.) The legislature recognizes that:

(1) Interest in outdoor recreation has been steadily increasing, and that the facilities that now exist are inadequate to meet the growing demands of the people of Washington and the out-of-state tourist trade;

(2) The state is becoming a popular winter recreation area and has not fully developed its winter tourism industry adequately to respond to the increasing demand, as has been successfully done in the mountain states, Idaho, and British Columbia;

(3) The state of Washington presently has a flourishing winter recreation industry which adds more than twenty-five thousand new skiers each year. Far greater potential exists for year-round resort development which should include an emphasis on all winter recreation activities. Expansion of the winter recreation industry will attract tourist trade from other states and countries and will have a substantial positive impact on both the state and national economies; and

(4) The economic well-being of the state will be improved upon the introduction of new industry to provide employment, income to the state, and revenue for government.

The legislature recognizes the need to identify areas appropriate for recreational development on state lands or on federal lands which can be exchanged for state lands under state and federal laws.

Therefore, the legislature hereby establishes the Washington state winter recreation commission which shall be composed as follows: Two members of the senate appointed by the president of the senate, including one member from each caucus; two members of the

house of representatives appointed by the speaker of the house of representatives, including one member from each caucus; one representative to be appointed by the governor from each of the following state departments: The parks and recreation commission, department of trade and economic development, and department of natural resources; two representatives of industry appointed by the governor; two representatives of the environmental community appointed by the governor; one representative of cities appointed by the governor; and one representative of counties appointed by the governor. The commission shall choose one of its legislative members as chair.

Commission members and legislative staff shall be reimbursed for travel expenses under RCW 43.03.050 and 43.03.060. Members of the legislature serving on the commission shall be reimbursed for travel expenses under RCW 44.04.120. [1987 c 526 § 1.]

Continuation of commission—1987 c 526: "The commission created under RCW 67.34.011 shall be considered a continuation of the prior commission, and members of the prior commission shall continue to be members of the new commission except that the legislative membership of the commission shall be subject to reappointment." [1987 c 526 § 3.]

67.34.021 Powers and duties. (Effective until June 30, 1994.) The Washington state winter recreation commission shall:

(1) Study and identify potential sites for new winter recreation development, with consideration of the availability and suitability of the land, local interests, environmental impact, and established roads and transportation access.

(2) Facilitate trades of land for existing or new winter recreation areas with the federal government, the United States Department of Agriculture, the United States Forest Service, the United States Bureau of Land Management, and other agencies which could be involved in exchanges of land.

(3) Recommend the supervisory management structure at the state level which would oversee the lease, maintenance, and development of lands for recreational projects.

(4) Utilize legislative staff assistance which shall be provided by the appropriate legislative committees and conduct such studies as are necessary for the performance of its duties. State agencies may assign to the commission such personnel as are necessary to assist the commission in the performance of its duties.

(5) Consult with federal and state agencies and representatives of science, industry, agriculture, labor, conservation organizations, state and local governments, concerned citizens, and other groups.

(6) Hold such public hearings as are necessary to insure early, meaningful, and continuous public input and involvement in the commission's work.

(7) Propose changes in state law and rules of state agencies, if considered necessary, to carry out the purpose of this chapter.

(8) Establish advisory committees to advise the commission in the performance of its duties. The membership of the advisory committees shall be balanced in

terms of the points of view and interests represented. Members of the advisory committees shall serve without compensation of any sort.

(9) Submit a biennial report to the legislature beginning in 1989 on the progress of the commission. [1987 c 526 § 2.]

Continuation of commission—1987 c 526: See note following RCW 67.34.011.

Chapter 67.38

CULTURAL ARTS, STADIUM AND CONVENTION DISTRICTS

Sections

67.38.010	Purpose.
67.38.020	Definitions.
67.38.030	Cultural arts, stadium and convention district— Creation.
67.38.040	Multicounty district—Creation.
67.38.050	Governing body.
67.38.060	Comprehensive plan—Development—Elements.
67.38.070	Comprehensive plan—Review—Approval or disapproval—Resubmission.
67.38.080	Annexation election.
67.38.090	District as quasi municipal corporation—General powers.
67.38.100	Additional powers.
67.38.110	Issuance of general obligation bonds—Maturity— Excess levies.
67.38.120	Revenue bonds—Issuance, sale, term, payment.
67.38.130	Cultural arts, stadium and convention district tax levies.
67.38.140	Contribution of sums for expenses.
67.38.150	Treasurer and auditor—Bond—Duties— Funds—Depositaries.
67.38.160	Dissolution and liquidation.
67.38.900	Captions not law—1982 1st ex.s. c 22.
67.38.905	Severability—1982 1st ex.s. c 22.

67.38.010 Purpose. The legislature finds that expansion of a cultural tourism would attract new visitors to our state and aid the development of a nonpolluting industry. The creation or renovation, and operation of cultural arts, stadium and convention facilities benefiting all the citizens of this state would enhance the recreational industry's ability to attract such new visitors. The additional income and employment resulting therefrom would strengthen the economic base of the state.

It is declared that the construction, modification, renovation, and operation of facilities for cultural arts, stadium and convention uses will enhance the progress and economic growth of this state. The continued growth and development of this recreational industry provides for the general welfare and is an appropriate matter of concern to the people of the state of Washington. [1982 1st ex.s. c 22 § 1.]

67.38.020 Definitions. Unless the context clearly indicates otherwise, for the purposes of this chapter the following definitions shall apply:

(1) "Cultural arts, stadium and convention district," or "district," means a quasi municipal corporation of the state of Washington created pursuant to this chapter.

(2) "Component city" means an incorporated city within a public cultural arts, stadium and convention benefit area.

(3) "City" means any city or town.

(4) "City council" means the legislative body of any city.

(5) "Municipality" means a port district, public school district or community college district. [1982 1st ex.s. c 22 § 2.]

67.38.030 Cultural arts, stadium and convention district—Creation. (1) The process to create a cultural arts, stadium and convention district may be initiated by:

(a) The adoption of a resolution by the county legislative authority calling for a public hearing on the proposed creation of such a district and delineating proposed boundaries of the district; or

(b) The governing bodies of two or more cities located within the same county adopting resolutions calling for a public hearing on the proposed creation of such a district and delineating proposed boundaries of such a district: *Provided*, That this method may not be used more frequently than once in any twelve month period in the same county; or

(c) The filing of a petition with the county legislative authority, calling for a public hearing on the proposed creation of such a district and delineating proposed boundaries of the district, that is signed by at least ten percent of the registered voters residing in the proposed district at the last general election. Such signatures will be certified by the county auditor or the county elections department.

(2) Within sixty days of the adoption of such resolutions, or presentation of such a petition, the county legislative authority shall hold a public hearing on the proposed creation of such a district. Notice of the hearing shall be published at least once a week for three consecutive weeks in one or more newspapers of general circulation within the proposed boundaries of the district. The notice shall include a general description and map of the proposed boundaries. Additional notice shall also be mailed to the governing body of each city and municipality located all or partially within the proposed district. At such hearing, or any continuation thereof, any interested party may appear and be heard on the formation of the proposed district.

The county legislative authority shall delete the area included within the boundaries of a city from the proposed district if prior to the public hearing the city submits to the county legislative authority a copy of an adopted resolution requesting its deletion from the proposed district. The county legislative authority may delete any other areas from the proposed boundaries. Additional territory may be included within the proposed boundaries, but only if such inclusion is subject to a subsequent hearing, with notice provided in the same manner as for the original hearing.

(3) A proposition to create a cultural arts, stadium and convention district shall be submitted to the voters of the proposed district within two years of the adoption of a resolution providing for such submittal by the county legislative authority at the conclusion of such hearings. The resolution shall establish the boundaries of

the district and include a finding that the creation of the district is in the public interest and that the area included within the district can reasonably be expected to benefit from its creation. No portion of a city may be included in such a district unless the entire city is included. The boundaries of such a district shall follow school district or community college boundaries in as far as practicable.

(4) The proposition to create a cultural arts, stadium and convention district shall be submitted to the voters of the proposed district at the next general election held sixty or more days after the adoption of the resolution. The district shall be created upon approval of the proposition by simple majority vote. The ballot proposition submitted to the voters shall be in substantially the following form:

**FORMATION OF CULTURAL ARTS,
STADIUM AND CONVENTION
DISTRICT**

Shall a cultural arts, stadium and convention district be established for the area described in a resolution of the legislative authority of _____ county, adopted on the _____ day of _____, 19__?

[1982 1st ex.s. c 22 § 3.]

67.38.040 Multicounty district—Creation. A joint hearing by the legislative authorities of two or more counties on the proposed creation of a cultural arts, stadium and convention district including areas within such counties may be held as provided herein:

(1) The process to initiate such a hearing shall be identical with the process provided in RCW 67.38.030(1), except a resolution of all the legislative authorities of each county with territory proposed to be included shall be necessary.

(2) No territory may be added to or deleted from such a proposed district, except by action of the county legislative authority of the county within whose boundaries the territory lies pursuant to the process provided in RCW 67.38.030.

(3) The resolutions shall each contain identical provisions concerning the governing body, as delineated in RCW 67.38.050. [1982 1st ex.s. c 22 § 4.]

67.38.050 Governing body. The number of persons on the governing body of the district and how such persons shall be selected and replaced shall be included in the resolution of the county legislative authority providing for the submittal of the proposition to create the district to the voters. Members of the governing body may only consist of a combination of city council members or mayors of the city or cities included within the district, members of the county legislative authority, the county executive of a county operating under a home rule charter, elected members of the governing bodies of municipalities located within the district, and members of the board of regents of a community college district. No governing body may consist of more than nine members. The resolution may also provide for additional, ex officio, nonvoting members consisting of elected officials

or appointed officials from the counties, cities, or municipalities which are located all or partially within the boundaries of such a district and who [which] do not have elected or appointed officials sitting on the governing body.

Any member of the governing body, or any ex officio member, who is not an elective official whose office is a full-time position may be reimbursed for reasonable expenses actually incurred in attending meetings or engaging in other district business as provided in RCW 42.24.090. [1982 1st ex.s. c 22 § 5.]

67.38.060 Comprehensive plan—Development—Elements. The cultural arts, stadium and convention district, as authorized in this chapter, shall develop a comprehensive cultural arts, stadium and convention plan for the district. Such plan shall include, but not be limited to the following elements:

(1) The levels of cultural arts, stadium and convention services that can be reasonably provided for various portions of the district.

(2) The funding requirements, including local tax sources or federal funds, necessary to provide various levels of service within the district.

(3) The impact of such a service on other cultural arts, stadium and convention systems operating within that county or adjacent counties. [1982 1st ex.s. c 22 § 6.]

67.38.070 Comprehensive plan—Review—Approval or disapproval—Resubmission. The comprehensive cultural arts, stadium and convention plan adopted by the district shall be reviewed by the state department of community development to determine:

(1) Whether the plan will enhance the progress of the state and provide for the general welfare of the population; and

(2) Whether such plan is eligible for matching federal funds.

After reviewing the comprehensive cultural arts, stadium and convention plan, the state department of community development shall have sixty days in which to approve such plan and to certify to the state treasurer that such district shall be eligible to receive funds. To be approved a plan shall provide for coordinated cultural arts, stadium and convention planning, and be consistent with the public cultural arts, stadium and convention coordination criteria in a manner prescribed by chapter 35.60 RCW. In the event such comprehensive plan is disapproved and ruled ineligible to receive funds, the state department of community development shall provide written notice to the district within thirty days as to the reasons for such plan's disapproval and such ineligibility. The district may resubmit such plan upon reconsideration and correction of such deficiencies cited in such notice of disapproval. [1985 c 6 § 22; 1982 1st ex.s. c 22 § 7.]

67.38.080 Annexation election. An election to authorize the annexation of contiguous territory to a cultural arts, stadium and convention district may be

submitted to the voters of the area proposed to be annexed upon the passage of a resolution of the governing body of the district. Approval by simple majority vote shall authorize such annexation. [1982 1st ex.s. c 22 § 8.]

67.38.090 District as quasi municipal corporation—General powers. A cultural arts, stadium and convention district is a quasi municipal corporation, an independent taxing "authority" within the meaning of Article VII, section 1, of the state Constitution, and a "taxing district" within the meaning of Article VII, section 2, of the state Constitution. A district shall constitute a body corporate and shall possess all the usual powers of a corporation for public purpose. In addition to the powers specifically granted by this chapter, a district shall have all powers which are necessary to carry out the purposes of this chapter. A cultural arts, stadium and convention district may contract with the United States or any agency thereof, any state or agency thereof, any other cultural arts, stadium and convention district, any county, city, metropolitan municipal corporation, special district, or governmental agency, within or without the state, and any private person, firm or corporation for the purpose of receiving gifts or grants or securing loans or advances for preliminary planning and feasibility studies, or for the design, construction or renovation or operation of cultural arts, stadium and convention facilities. In addition, a district may contract with any governmental agency or with any private person, firm or corporation for the use by either contracting party of all or any part of the facilities, structures, lands, interests in lands, air rights over lands and rights of way of all kinds which are owned, leased or held by the other party and for the purpose of planning, constructing or operating any facility or performing any service which the cultural arts, stadium and convention district may be authorized to operate or perform, on such terms as may be agreed upon by the contracting parties. Before any contract for the lease or operation of any cultural arts, stadium and convention district facilities shall be let to any private person, firm or corporation, competitive bids shall be called upon such notice, bidder qualifications and bid conditions as the district shall determine.

A district may sue and be sued in its corporate capacity in all courts and in all proceedings. [1982 1st ex.s. c 22 § 9.]

67.38.100 Additional powers. The governing body of a cultural arts, stadium and convention district shall have the following powers in addition to the general powers granted by this chapter:

(1) To prepare, adopt and carry out a general comprehensive plan for cultural arts, stadium and convention service which will best serve the residents of the district and to amend said plan from time to time to meet changed conditions and requirements.

(2) To acquire by purchase, gift or grant and to lease, convey, construct, add to, improve, replace, repair,

maintain, and operate cultural arts, stadium and convention facilities and properties within the district, including portable and mobile facilities and parking facilities and properties and such other facilities and properties as may be necessary for passenger and vehicular access to and from such facilities and properties, together with all lands, rights of way, property, equipment and accessories necessary for such systems and facilities. Cultural arts, stadium and convention facilities and properties which are presently owned by any component city, county or municipality may be acquired or used by the district only with the consent of the legislative authority, council or governing body of the component city, county or municipality owning such facilities. A component city, county or municipality is hereby authorized to convey or lease such facilities to a district or to contract for their joint use on such terms as may be fixed by agreement between the component city, county or municipality and the district, without submitting the matter to the voters of such component city, county or municipality.

(3) To fix rates and charges for the use of such facilities. [1982 1st ex.s. c 22 § 10.]

67.38.110 Issuance of general obligation bonds—Maturity—Excess levies. To carry out the purpose of this chapter, any cultural arts, stadium and convention district shall have the power to issue general obligation bonds for capital purposes only, not to exceed an amount, together with any outstanding nonvoter approved general obligation indebtedness equal to three-eighths of one percent of the value of taxable property within such district, as the term "value of taxable property" is defined in RCW 39.36.015. A cultural arts, stadium and convention district is additionally authorized to issue general obligation bonds for capital purposes only, together with any outstanding general obligation indebtedness, not to exceed an amount equal to three-fourths of one percent of the value of the taxable property within the district, as the term "value of taxable property" is defined in RCW 39.36.015, and to provide for the retirement thereof by excess levies when the voters approve a ballot proposition providing for both the bond issuance and imposition of such levies at a special election called for that purpose in the manner prescribed by section 6, Article VIII and section 2, Article VII of the Constitution and by RCW 84.52.056. Elections shall be held as provided in RCW 39.36.050. General obligation bonds may not be issued with maturities in excess of forty years. Such bonds shall be issued and sold in accordance with chapter 39.46 RCW. [1984 c 186 § 57; 1983 c 167 § 169; 1982 1st ex.s. c 22 § 11.]

Purpose—1984 c 186: See note following RCW 39.46.110.

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

67.38.120 Revenue bonds—Issuance, sale, term, payment. (1) To carry out the purposes of this chapter, the cultural arts, stadium and convention district shall have the power to issue revenue bonds: *Provided*, That the district governing body shall create or have created a

special fund or funds for the sole purpose of paying the principal of and interest on the bonds of each such issue, into which fund or funds the governing body may obligate the district to pay such amounts of the gross revenue of all or any part of the facilities constructed, acquired, improved, repaired or replaced pursuant to this chapter, as the governing body shall determine: *Provided further*, That the principal of and interest on such bonds shall be payable only out of such special fund or funds, and the owners of such bonds shall have a lien and charge against the gross revenue pledged to such fund. Such bonds may be in any form, including bearer bonds or registered bonds as provided in RCW 39.46.030.

The governing body of a district shall have such further powers and duties in carrying out the purposes of this chapter as provided in RCW 67.28.160.

(2) Notwithstanding subsection (1) of this section, such bonds may be issued and sold in accordance with chapter 39.46 RCW. [1983 c 167 § 170; 1982 1st ex.s. c 22 § 12.]

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

67.38.130 Cultural arts, stadium and convention district tax levies. The governing body of a cultural arts, stadium and convention district may levy or cause to levy the following ad valorem taxes:

(1) Regular ad valorem property tax levies in an amount equal to twenty-five cents or less per thousand dollars of the assessed value of property in the district in each year for six consecutive years when specifically authorized so to do by a majority of at least three-fifths of the electors thereof approving a proposition authorizing the levies submitted at a general or special election, at which election the number of persons voting "yes" on the proposition shall constitute three-fifths of a number equal to forty percentum of the total votes cast in such taxing district at the last preceding general election; or by a majority of at least three-fifths of the electors thereof voting on the proposition when the number of electors voting yes on the proposition exceeds forty percentum of the total votes cast in such taxing district in the last preceding general election. Ballot propositions shall conform with RCW 29.30.111.

In the event a cultural arts, stadium and convention district is levying property taxes, which in combination with property taxes levied by other taxing districts subject to the one percent limitation provided for in Article VII, section 2, of our state Constitution result in taxes in excess of the limitation provided for in RCW 84.52.043, the cultural arts, stadium and convention district property tax levy shall be reduced or eliminated before the property tax levies of other taxing districts are reduced: *Provided*, That no cultural arts, stadium, and convention district may pledge anticipated revenues derived from the property tax herein authorized as security for payments of bonds issued pursuant to subsection (1) of this section: *Provided, further*, That such limitation shall not apply to property taxes approved pursuant to subsections (2) and (3) of this section.

The limitation in RCW 84.55.010 shall apply to levies after the first levy authorized under this section following the approval of such levy by voters pursuant to this section.

(2) An annual excess ad valorem property tax for general district purposes when authorized by the district voters in the manner prescribed by section 2, Article VII of the Constitution and by RCW 84.52.052.

(3) Multi-year excess ad valorem property tax levies used to retire general obligation bond issues when authorized by the district voters in the manner prescribed by section 2, Article VII of the Constitution and by RCW 84.52.056.

The district shall include in its regular property tax levy for each year a sum sufficient to pay the interest and principal on all outstanding general obligation bonds issued without voter approval pursuant to RCW 67.38.110 and may include a sum sufficient to create a sinking fund for the redemption of all outstanding bonds. [1984 c 131 § 4; 1982 1st ex.s. c 22 § 13.]

Purpose—1984 c 131 §§ 3-9: See note following RCW 29.30.111.

67.38.140 Contribution of sums for expenses. The county or counties and each component city included in the district collecting or planning to collect the hotel/motel tax pursuant to RCW 67.28.180 may contribute such revenue towards the expense for maintaining and operating the cultural arts, stadium and convention system in such manner as shall be agreed upon between them. [1982 1st ex.s. c 22 § 14.]

67.38.150 Treasurer and auditor—Bond—Duties—Funds—Depositaries. Unless the cultural arts, stadium and convention district governing body, by resolution, designates some other person having experience in financial or fiscal matters as treasurer of the district, the treasurer of the county in which a cultural arts, stadium and convention district is located shall be ex officio treasurer of the district: *Provided*, That in the case of a multicounty cultural arts, stadium and convention district, the county treasurer of the county with the greatest amount of area within the district shall be the ex officio treasurer of the district. The district may, and if the treasurer is not a county treasurer shall, require a bond for such treasurer with a surety company authorized to do business in the state of Washington, in an amount and under the terms and conditions as agreed to by the district, by resolution, in such amount from time to time which will protect the authority against loss. The premium on any such bond shall be paid by the authority.

All district funds shall be paid to the treasurer and shall be disbursed by the treasurer only on warrants issued by an auditor appointed by the district, upon orders or vouchers approved by the governing body. The treasurer shall establish a "cultural arts, stadium and convention fund," into which shall be paid district funds as provided in RCW 67.38.140 and the treasurer shall maintain such special funds as may be created by the governing body into which said treasurer shall place all moneys as the governing body may, by resolution, direct.

If the treasurer of the district is a treasurer of the county, all district funds shall be deposited with the county depository under the same restrictions, contracts, and security as provided for county depositories; the county auditor of such county shall keep the records of the receipts and disbursements, and shall draw, and such county treasurer shall honor and pay all warrants, which shall be approved before issuance and payment as directed by the district. [1982 1st ex.s. c 22 § 15.]

67.38.160 Dissolution and liquidation. A cultural arts, stadium and convention district established in accordance with this chapter shall be dissolved and its affairs liquidated when so directed by a majority of persons in the district voting on such question. An election placing such question before the voters may be called in the following manner:

(1) By resolution of the cultural arts, stadium and convention district governing authority;

(2) By resolution of the county legislative body or bodies with the concurrence therein by resolution of the city council of a component city; or

(3) By petition calling for such election signed by at least ten percent of the qualified voters residing within the district filed with the auditor of the county wherein the largest portion of the district is located. The auditor shall examine the same and certify to the sufficiency of the signatures thereon: *Provided*, That to be validated, signatures must have been collected within a ninety-day period as designated by the petition sponsors.

With dissolution of the district, any outstanding obligations and bonded indebtedness of the district shall be satisfied or allocated by mutual agreement to the county or counties and component cities of the cultural arts, stadium and convention district. [1982 1st ex.s. c 22 § 16.]

67.38.900 Captions not law—1982 1st ex.s. c 22. Section captions as used in this amendatory act shall not be construed as and do not constitute any part of the law. [1982 1st ex.s. c 22 § 19.]

67.38.905 Severability—1982 1st ex.s. c 22. If any provision of this amendatory act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1982 1st ex.s. c 22 § 21.]

Chapter 67.40

CONVENTION AND TRADE FACILITIES

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67.40.120	Contracts for marketing facility and services—Matching nonstate funds.
67.40.900	Severability—1982 c 34.
67.40.901	Severability—1988 ex.s. c 1.

67.40.010 Legislative finding. The legislature finds and declares as the express purpose of this chapter:

(1) The convention and trade show business will provide both direct and indirect civic and economic benefits to the people of the state of Washington.

(2) The location of a state convention and trade center in the city of Seattle will particularly benefit and increase the occupancy of larger hotels and other lodging facilities in the city of Seattle and to a lesser extent in King county.

(3) Imposing a special excise tax on the price of lodging in Seattle, and at a lower rate elsewhere in King county, is an appropriate method of paying for a substantial part of the cost of constructing, maintaining, and operating a state convention and trade center. [1983 2nd ex.s. c 1 § 1; 1982 c 34 § 1.]

67.40.020 State convention and trade center—Public nonprofit corporation authorized—Board of directors—Powers and duties. (1) The governor is authorized to form a public nonprofit corporation in the same manner as a private nonprofit corporation is formed under chapter 24.03 RCW. The public corporation shall be an instrumentality of the state and have all the powers and be subject to the same restrictions as are permitted or prescribed to private nonprofit corporations, but shall exercise those powers only for carrying out the purposes of this chapter and those purposes necessarily implied therefrom. The governor shall appoint a board of nine directors for the corporation who shall serve terms of six years, except that two of the original directors shall serve for two years and two of the original directors shall serve for four years. After January 1, 1991, at least one position on the board shall be filled by a member representing management in the hotel or motel industry subject to taxation under RCW 67.40.090. The directors may provide for the payment of their expenses. The corporation may cause a state convention

and trade center with an overall size of approximately three hundred thousand square feet to be designed and constructed on a site in the city of Seattle. In acquiring, designing, and constructing the state convention and trade center, the corporation shall consider the recommendations and proposals issued on December 11, 1981, by the joint select committee on the state convention and trade center.

(2) The corporation may acquire and transfer real and personal property by lease, sublease, purchase, or sale, and further acquire property by condemnation of privately owned property or rights to and interests in such property pursuant to the procedure in chapter 8.04 RCW. However, acquisitions and transfers of real property, other than by lease, may be made only if the acquisition or transfer is approved by the director of financial management in consultation with the chairpersons of the committees on ways and means of the senate and house of representatives. The corporation may accept gifts or grants, request the financing provided for in RCW 67.40.030, cause the state convention and trade center facilities to be constructed, and do whatever is necessary or appropriate to carry out those purposes. Upon approval by the director of financial management in consultation with the chairpersons of the ways and means committees of the house of representatives and the senate, the corporation may enter into lease and sublease contracts for a term exceeding the fiscal period in which these lease and sublease contracts are made. The terms of sale or lease of properties acquired by the corporation on February 9, 1987, pursuant to the property purchase and settlement agreement entered into by the corporation on June 12, 1986, including the McKay parcel which the corporation is contractually obligated to sell under that agreement, shall also be subject to the approval of the director of financial management in consultation with the chairpersons of the ways and means committees of the house of representatives and the senate. No approval by the director of financial management is required for leases of individual retail space, meeting rooms, or convention-related facilities. In order to allow the corporation flexibility to secure appropriate insurance by negotiation, the corporation is exempt from RCW 48.30.270. The corporation shall maintain, operate, promote, and manage the state convention and trade center.

(3) In order to allow the corporation flexibility in its personnel policies, the corporation is exempt from chapter 41.06 RCW, chapter 41.05 RCW, RCW 43.01.040 through 43.01.044, chapter 41.04 RCW and chapter 41.40 RCW.

(4) In order to allow the corporation to receive payment for goods and services consistent with the practice of the convention and trade show industry, the corporation may honor credit cards in payment for food and beverage purchases, rental of space or facilities, electrical services, equipment, and other goods or services offered by the corporation. [1988 ex.s. c 1 § 1; 1987 1st ex.s. c 8 § 2; 1984 c 210 § 1; 1983 2nd ex.s. c 1 § 2; 1982 c 34 § 2.]

Severability—1987 1st ex.s. c 8: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1987 1st ex.s. c 8 § 17.]

Savings—1984 c 210: "This act shall not terminate or modify any right acquired under a contract of employment in existence prior to March 27, 1984." [1984 c 210 § 7.] For codification of 1984 c 210, see Codification Tables, Volume 0.

Severability—1984 c 210: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1984 c 210 § 8.]

67.40.025 State convention and trade center operations account—Operating revenues—Expenditures. All operating revenues received by the corporation formed under RCW 67.40.020 shall be deposited in the state convention and trade center operations account, hereby created in the state treasury. Moneys in the account, including unanticipated revenues under RCW 43.79.270, may be spent only after appropriation by statute, and may be used only for operation and promotion of the center.

Subject to approval by the office of financial management under RCW 43.88.260, the corporation may expend moneys for operational purposes in excess of the balance in the account, to the extent the corporation receives or will receive additional operating revenues.

As used in this section, "operating revenues" does not include any moneys required to be deposited in the state convention and trade center account. [1988 ex.s. c 1 § 2; 1987 1st ex.s. c 8 § 3; 1985 c 233 § 2.]

Severability—1987 1st ex.s. c 8: See note following RCW 67.40.020.

67.40.027 Compensation and travel expenses of board members. Members of the board shall be compensated in accordance with RCW 43.03.250 and shall be reimbursed for travel expenses under RCW 43.03.050 and 43.03.060. [1985 c 233 § 3.]

Reimbursement for out-of-state travel expenses incurred by employees of state convention and trade center: RCW 43.03.062.

67.40.030 General obligation bonds—Authorized—Appropriation required. For the purpose of providing funds for the state convention and trade center, the state finance committee is authorized to issue, upon request of the corporation formed under RCW 67.40.020 and in one or more offerings, general obligation bonds of the state of Washington in the sum of one hundred sixty million, seven hundred sixty-five thousand dollars, or so much thereof as may be required, to finance this project and all costs incidental thereto, to capitalize all or a portion of interest during construction, to provide for expansion, renovation, exterior cleanup and repair of the Eagles building, conversion of various retail and other space to meeting rooms, and contingency costs of the center, purchase of the McKay Parcel as defined in the property and purchase agreement entered into by the corporation on June 12, 1986, and to reimburse the general fund for expenditures in support of the project. The state finance committee may make such bond covenants as it deems necessary to carry out

the purposes of this section and this chapter. No bonds authorized in this section may be offered for sale without prior legislative appropriation. [1988 ex.s. c 1 § 3; 1987 1st ex.s. c 3 § 12; 1985 c 233 § 1; 1983 2nd ex.s. c 1 § 3; 1982 c 34 § 3.]

Severability—1987 1st ex.s. c 3: See RCW 43.99G.901.

67.40.040 Deposit of proceeds in state convention and trade center account and appropriate subaccounts—Credit against future borrowings—Use. (1) The proceeds from the sale of the bonds authorized in RCW 67.40.030, earnings from the investment of the proceeds, proceeds of the tax imposed under RCW 67.40.090, and all other moneys received by the state convention and trade center from any public or private source which are intended to fund the acquisition, design, construction, expansion, exterior cleanup and repair of the Eagles building, conversion of various retail and other space to meeting rooms, purchase of the land and building known as the McKay Parcel, or renovation of the center, shall be deposited in the state convention and trade center account hereby created in the state treasury and in such subaccounts as are deemed appropriate by the directors of the corporation.

(2) Seventy-five percent of the income from the investment of the corporation's funds deposited in the account, including interest earned thereon, before and after May 10, 1985, shall be credited against any future borrowings by the state convention and trade center corporation from the general fund for debt service or otherwise at the time such funds are needed after July 1, 1987.

(3) Moneys in the account, including unanticipated revenues under RCW 43.79.270, shall be used exclusively for the following purposes in the following priority:

(a) For reimbursement of the state general fund under RCW 67.40.060;

(b) After appropriation by statute:

(i) For payment of expenses incurred in the issuance and sale of the bonds issued under RCW 67.40.030;

(ii) For acquisition, design, and construction of the state convention and trade center; and

(iii) For reimbursement of any expenditures from the state general fund in support of the state convention and trade center; and

(c) For transfer to the state convention and trade center operations account.

(4) The corporation shall identify with specificity those facilities of the state convention and trade center that are to be financed with proceeds of general obligation bonds, the interest on which is intended to be excluded from gross income for federal income tax purposes. The corporation shall not permit the extent or manner of private business use of those bond-financed facilities to be inconsistent with treatment of such bonds as governmental bonds under applicable provisions of the Internal Revenue Code of 1986, as amended. [1988 ex.s. c 1 § 4; 1987 1st ex.s. c 8 § 4; 1985 c 57 § 66; 1983 2nd ex.s. c 1 § 4; 1982 c 34 § 4.]

Severability—1987 1st ex.s. c 8: See note following RCW 67.40.020.

Effective date—1985 c 57: See note following RCW 15.52.320.

67.40.050 Administration of proceeds. The moneys deposited pursuant to RCW 67.40.040 in the state convention and trade center account of the general fund shall be administered by the corporation formed under RCW 67.40.020, subject to legislative appropriation. [1982 c 34 § 5.]

67.40.055 Transfer of funds to account—Repayment of borrowed funds with interest. The state treasurer shall from time to time transfer from the state general fund, or such other funds as the state treasurer deems appropriate, to the state convention and trade center operations account such amounts as are necessary to fund appropriations from the account, other than, after August 31, 1988, for appropriations for the purpose of marketing the facilities or services of the state convention and trade center. All amounts borrowed under the authority of this section shall be repaid to the appropriate fund, together with interest at a rate determined by the state treasurer to be equivalent to the return on investments of the state treasury during the period the amounts are borrowed. [1988 ex.s. c 1 § 5; 1987 1st ex.s. c 8 § 11.]

Severability—1987 1st ex.s. c 8: See note following RCW 67.40.020.

67.40.060 Retirement of bonds from state general obligation bond retirement fund—Transfer from accounts—Pledge and promise—Remedies of bondholders. The state general obligation bond retirement fund shall be used for the payment of the principal of and interest on the bonds authorized in RCW 67.40.030.

The state finance committee shall, on or before June 30th of each year, certify to the state treasurer the amount needed in the ensuing twelve months to meet the bond retirement and interest requirements. Not less than thirty days prior to the date on which any interest or principal and interest payment is due, the state treasurer shall withdraw from any general state revenues received in the state treasury and deposit in the state general obligation bond retirement fund an amount equal to the amount certified by the state finance committee to be due on that payment date. On each date on which any interest or principal and interest is due, the state treasurer shall cause an identical amount to be paid out of the state convention and trade center account, or *state convention and trade center operations account, from the proceeds of the special excise tax imposed under RCW 67.40.090, operating revenues of the state convention and trade center, and bond proceeds and earnings on the investment of bond proceeds, for deposit in the general fund of the state treasury. Any deficiency in such transfer shall be made up as soon as special excise taxes are available for transfer and shall constitute a continuing obligation of the state convention and trade center account until all deficiencies are fully paid.

Bonds issued under RCW 67.40.030 shall state that they are a general obligation of the state of Washington,

shall pledge the full faith and credit of the state to the payment of the principal thereof and the interest thereon, and shall contain an unconditional promise to pay the principal and interest as the same shall become due.

The owner and holder of each of the bonds or the trustee for the owner and holder of any of the bonds may by mandamus or other appropriate proceeding require the transfer and payment of funds as directed in this section. [1987 1st ex.s. c 8 § 5; 1983 2nd ex.s. c 1 § 5; 1982 c 34 § 6.]

***Reviser's note:** This reference apparently should be to the state trade and convention center operations account created in RCW 67.40.025.

Severability—1987 1st ex.s. c 8: See note following RCW 67.40.020.

67.40.070 Legislature may provide additional means for payment of bonds. The legislature may increase the rate of tax imposed in RCW 67.40.090 (1) and (2) or may provide additional means for raising moneys for the payment of the principal of and interest on the bonds authorized in RCW 67.40.030, and RCW 67.40.060 shall not be deemed to provide an exclusive method for the payment. [1982 c 34 § 7.]

67.40.080 Bonds legal investment for public funds. The bonds authorized in RCW 67.40.030 shall be a legal investment for all state funds or funds under state control and for all funds of any other public body. [1982 c 34 § 8.]

67.40.090 Special excise tax imposed in King county—Hotel, motel, rooming house, trailer camp, etc., charges—Rates—Proceeds. (1) Commencing April 1, 1982, there is imposed, and the department of revenue shall collect, in King county a special excise tax on the sale of or charge made for the furnishing of lodging by a hotel, rooming house, tourist court, motel, or trailer camp, and the granting of any similar license to use real property, as distinguished from the renting or leasing of real property, except that no such tax may be levied on any premises having fewer than sixty lodging units. It shall be presumed that the occupancy of real property for a continuous period of one month or more constitutes rental or lease of real property and not a mere license to use or enjoy the same. The legislature on behalf of the state pledges to maintain and continue this tax until the bonds authorized by this chapter are fully redeemed, both principal and interest.

(2) The rate of the tax imposed under this section shall be as provided in this subsection.

(a) From April 1, 1982, through December 31, 1982, inclusive, the rate shall be three percent in the city of Seattle and two percent in King county outside the city of Seattle.

(b) From January 1, 1983, through June 30, 1988, inclusive, the rate shall be five percent in the city of Seattle and two percent in King county outside the city of Seattle.

(c) From July 1, 1988, through December 31, 1992, inclusive, the rate shall be six percent in the city of

Seattle and two and four-tenths percent in King county outside the city of Seattle.

(d) From January 1, 1993, until the change date, the rate shall be seven percent in the city of Seattle and two and eight-tenths percent in King county outside the city of Seattle.

(e) On and after the change date, the rate shall be six percent in the city of Seattle and two and four-tenths percent in King county outside the city of Seattle.

(f) As used in this section, "change date" means the October 1st next occurring after certification occurs under (g) of this subsection.

(g) On August 1st of 1993 and of each year thereafter until certification occurs under this subsection, the state treasurer shall determine whether seventy-one and forty-three one-hundredths percent of the revenues actually collected and deposited with the state treasurer for the tax imposed under this section during the twelve months ending June 30th of that year, excluding penalties and interest, exceeds the amount actually paid in debt service during the same period for bonds issued under RCW 67.40.030 by at least two million dollars. If so, the state treasurer shall so certify to the department of revenue.

(3) The proceeds of the special excise tax shall be deposited as provided in this subsection.

(a) Through June 30, 1988, inclusive, all proceeds shall be deposited in the state convention and trade center account.

(b) From July 1, 1988, through December 31, 1992, inclusive, eighty-three and thirty-three one-hundredths percent of the proceeds shall be deposited in the state convention and trade center account. The remainder shall be deposited in the state convention and trade center operations account.

(c) From January 1, 1993, until the change date, eighty-five and seventy-one one-hundredths percent of the proceeds shall be deposited in the state convention and trade center account. The remainder shall be deposited in the state convention and trade center operations account.

(d) On and after the change date, eighty-three and thirty-three one-hundredths percent of the proceeds shall be deposited in the state convention and trade center account. The remainder shall be deposited in the state convention and trade center operations account.

(4) Chapter 82.32 RCW applies to the tax imposed under this section. [1988 ex.s. c 1 § 6; 1987 1st ex.s. c 8 § 6; 1982 c 34 § 9.]

Intent—1988 ex.s. c 1 § 6: "The legislature intends that the additional revenue generated by the increase in the special excise tax from five to six percent in the city of Seattle and from two percent to two and four-tenths percent in King county outside the city of Seattle be used for marketing the facilities and services of the convention center, for promoting the locale as a convention and visitor destination, and for related activities. Actual use of these funds shall be determined through biennial appropriation by the legislature." [1988 ex.s. c 1 § 7.]

Severability—1987 1st ex.s. c 8: See note following RCW 67.40.020.

Special excise taxes authorized for public stadium, convention, and arts facilities: Chapter 67.28 RCW.

67.40.100 Limitation on license fees and taxes on hotels, motels, rooming houses, trailer camps, etc.—Special excise tax authorized for convention and trade facilities—Conditions. (1) Except as provided in chapters 67.28 and 82.14 RCW and subsection (2) of this section, after January 1, 1983, no city, town, or county in which the tax under RCW 67.40.090 is imposed may impose a license fee or tax on the act or privilege of engaging in business to furnish lodging by a hotel, rooming house, tourist court, motel, trailer camp, or similar facilities in excess of the rate imposed upon other persons engaged in the business of making sales at retail as that term is defined in chapter 82.04 RCW.

(2) A city incorporated before January 1, 1982, with a population over sixty thousand located in a county with a population over one million, other than the city of Seattle, may impose a special excise tax under the following conditions:

(a) The proceeds of the tax must be used solely for the acquisition, design, and construction of convention and trade facilities and may be used for and pledged to the payment of bonds, leases, or other obligations issued or incurred for such purposes.

(b) The legislative body of the city, before imposing the tax, must authorize a complete study and investigation of the desirability and economic feasibility of the proposed convention and trade facilities.

(c) The rate of the tax shall not exceed three percent.

(d) The tax shall be imposed on the sale of or charge made for the furnishing of lodging by a hotel, rooming house, tourist court, motel, or trailer camp, and the granting of any similar license to use real property, as distinguished from the renting or leasing of real property, except that no such tax may be levied on any premises having fewer than sixty lodging units. [1988 ex.s. c 1 § 25; 1982 c 34 § 10.]

67.40.105 Exemption from tax—Emergency lodging for homeless persons—Conditions. (1) The tax levied by RCW 67.40.090 and the tax authorized under RCW 67.40.100(2) shall not apply to emergency lodging provided for homeless persons for a period of less than thirty consecutive days under a shelter voucher program administered by an eligible organization.

(2) For the purposes of this exemption, an eligible organization includes only cities, towns, and counties, or their respective agencies, and groups providing emergency food and shelter services. [1988 c 61 § 3.]

Effective date—1988 c 61: See note following RCW 82.08.0299.

67.40.110 Use of revenues from convention and trade center facilities excise tax by cities for professional sports franchise facilities limited. No city imposing the tax authorized under RCW 67.40.100(2) may use the tax proceeds directly or indirectly to acquire, construct, operate, or maintain facilities or land intended to be used by a professional sports franchise if the county within which the city is located uses the proceeds of its tax imposed under RCW 67.28.180 to directly or indirectly acquire, construct, operate, or maintain a facility

used by a professional sports franchise. [1987 1st ex.s. c 8 § 8.]

Severability—1987 1st ex.s. c 8: See note following RCW 67.40.020.

67.40.120 Contracts for marketing facility and services—Matching nonstate funds. The state convention and trade center corporation may contract with the Seattle–King county convention and visitors bureau for marketing the convention and trade center facility and services. Any contract with the Seattle–King county convention and visitors bureau shall include, but is not limited to, the following condition: Each dollar in convention and trade center operations account funds provided to the Seattle–King county convention and visitors bureau shall be matched by at least one dollar and ten cents in nonstate funds. [1988 ex.s. c 1 § 8.]

67.40.900 Severability—1982 c 34. If any provision of this act or its application to any municipality, person, or circumstance is held invalid, the remainder of the act or the application of the provision to other municipalities, persons, or circumstances is not affected. [1982 c 34 § 13.]

67.40.901 Severability—1988 ex.s. c 1. See RCW 36.100.900.

Chapter 67.42 AMUSEMENT RIDES

Sections	
67.42.010	Definitions.
67.42.020	Requirements—Operation of amusement ride or structure.
67.42.025	Inspections and inspectors—Comparable regulation and comparable qualification.
67.42.030	Permit—Application—Decal.
67.42.040	Permit—Duration—Material modification of ride or structure.
67.42.050	Rules—Orders to cease operation—Administrative proceedings.
67.42.060	Fees.
67.42.070	Penalty.
67.42.080	Counties and municipalities—Supplemental ordinances.
67.42.900	Severability—1985 c 262.
67.42.901	Effective date—1985 c 262.

67.42.010 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Amusement structure" means any electrical or mechanical devices or combinations thereof operated for revenue and to provide amusement or entertainment to viewers or audiences at carnivals, fairs, or amusement parks. "Amusement structure" does not include games in which a member of the public must perform an act, nor concessions at which customers may make purchases.

(2) "Amusement ride" means any vehicle, boat, or other mechanical device moving upon or within a structure, along cables or rails, through the air by centrifugal

force or otherwise, or across water, that is used to convey one or more individuals for amusement, entertainment, diversion, or recreation. "Amusement ride" includes, but is not limited to, devices commonly known as skyrides, ferris wheels, carousels, parachute towers, tunnels of love, and roller coasters. "Amusement ride" shall not include: (a) Conveyances for persons in recreational winter sports activities such as ski lifts, ski tows, j-bars, t-bars, and similar devices subject to regulation under chapter 70.88 RCW; (b) any single-passenger coin-operated ride that is manually, mechanically, or electrically operated and customarily placed in a public location and that does not normally require the supervision or services of an operator; (c) nonmechanized playground equipment, including but not limited to, swings, seesaws, stationary spring-mounted animal features, rider-propelled merry-go-rounds, climbers, slides, trampolines, and physical fitness devices; or (d) water slides.

(3) "Department" means the department of labor and industries.

(4) "Insurance policy" means an insurance policy written by an insurer authorized to do business in this state under Title 48 RCW. [1985 c 262 § 1.]

67.42.020 Requirements—Operation of amusement ride or structure. Before operating any amusement ride or structure, the owner or operator shall:

(1) Obtain a permit pursuant to RCW 67.42.030;

(2) Have the amusement ride or structure inspected for safety at least once annually by an insurer, a person with whom the insurer has contracted, or a person who meets the qualifications set by the department and obtain from the insurer or person a written certificate that the inspection has been made and that the amusement ride or structure meets the standards for coverage and is covered by the insurer as required by subsection (3) of this section;

(3) Have and keep in effect an insurance policy in an amount not less than one million dollars per occurrence insuring: (a) The owner or operator; and (b) any municipality or county on whose property the amusement ride or structure stands, or any municipality or county which has contracted with the owner or operator against liability for injury to persons arising out of the use of the amusement ride or structure;

(4) File with the department the inspection certificate and insurance policy required by this section; and

(5) File with each sponsor, lessor, landowner, or other person responsible for an amusement structure or ride being offered for use by the public a certificate stating that the insurance required by subsection (3) of this section is in effect. [1986 c 86 § 1; 1985 c 262 § 2.]

67.42.025 Inspections and inspectors—Comparable regulation and comparable qualification. (1) An amusement ride that has been inspected in any state, territory, or possession of the United States that, in the discretion of the department, has a level of regulation comparable to this chapter, shall be deemed to meet the inspection requirement of this chapter.

(2) An amusement ride inspector who is authorized to inspect amusement rides in any state, territory, or possession of the United States, who, in the discretion of the department, has a level of qualifications comparable to those required under this chapter, shall be deemed qualified to inspect amusement rides under this chapter. [1986 c 86 § 2.]

67.42.030 Permit—Application—Decal. (1) Application for an operating permit to operate an amusement ride or structure shall be made on an annual basis by the owner or operator of the amusement ride or structure. The application shall be made on forms prescribed by the department and shall include the certificate required by RCW 67.42.020(2).

(2) The department shall issue a decal with each permit. The decal shall be affixed on or adjacent to the control panel of the amusement ride or structure in a location visible to the patrons of the ride or structure. [1985 c 262 § 3.]

67.42.040 Permit—Duration—Material modification of ride or structure. (1) Except as provided in subsection (2) of this section or unless a shorter period is specified by the department, permits issued under RCW 67.42.030 are valid for a one-year period.

(2) If an amusement ride or structure is materially rebuilt or materially modified so as to change the original action of the amusement ride or structure, the amusement ride or structure shall be subject to a new inspection under RCW 67.42.020 and the owner or operator shall apply for a new permit under RCW 67.42.030.

(3) If an amusement ride or structure for which a permit has been issued pursuant to RCW 67.42.030 is moved and installed in another place but is not materially rebuilt or materially modified so as to change the original action of the amusement ride or structure, no new permit is required prior to the expiration of the permit. [1985 c 262 § 4.]

67.42.050 Rules—Orders to cease operation—Administrative proceedings. (1) The department shall adopt rules under chapter 34.05 RCW to administer this chapter. Such rules may exempt amusement rides or structures otherwise subject to this chapter if the amusement rides or structures are located on lands owned by [the] United States government or its agencies and are required to comply with federal safety standards at least equal to those under this chapter.

(2) The department may order in writing the cessation of the operation of an amusement ride or structure for which no valid permit is in effect or for which the owner or operator does not have an insurance policy as required by RCW 67.42.020.

(3) All proceedings relating to permits or orders to cease operation under this chapter shall be conducted pursuant to chapter 34.05 RCW. [1985 c 262 § 5.]

67.42.060 Fees. The department may charge a reasonable fee not to exceed ten dollars for each permit issued under RCW 67.42.030. All fees collected by the department under this chapter shall be deposited in the state general fund. [1985 c 262 § 6.]

67.42.070 Penalty. Any person who operates an amusement ride or structure without complying with the requirements of this chapter is guilty of a gross misdemeanor. [1985 c 262 § 7.]

67.42.080 Counties and municipalities—Supplemental ordinances. Nothing contained in this chapter prevents a county or municipality from adopting and enforcing ordinances which relate to the operation of amusement rides or structures and supplement the provisions of this chapter. [1985 c 262 § 8.]

67.42.900 Severability—1985 c 262. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1985 c 262 § 10.]

67.42.901 Effective date—1985 c 262. This act shall take effect on January 1, 1986. [1985 c 262 § 11.]

Chapter 67.70 STATE LOTTERY

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67.70.030	State lottery commission created—Membership—Terms—Vacancies—Chairman—Quorum.
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67.70.060	Powers of director.
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67.70.180	Persons prohibited from purchasing tickets or shares or receiving prizes—Penalty.
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67.70.220	Payment of prizes to minor.
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67.70.240	Use of moneys in state lottery account limited.
67.70.250	Methods for payment of prizes by installments.
67.70.255	Debts owed to state agency or political subdivision—Debt information to lottery commission—Prize set off against debts.

67.70.260	Lottery administrative account created.
67.70.270	Members of commission—Compensation—Travel expenses.
67.70.280	Application of administrative procedure act.
67.70.290	Post-audits by state auditor.
67.70.300	Investigations by attorney general authorized.
67.70.310	Management review by director of financial management authorized.
67.70.320	Verification by certified public accountant.
67.70.330	Enforcement powers of director—Office of the director designated law enforcement agency.
67.70.900	Expiration of chapter—Evaluation and report.
67.70.902	Construction—1982 2nd ex.s. c 7.
67.70.903	Severability—1982 2nd ex.s. c 7.
67.70.904	Severability—1985 c 375.
67.70.905	Effective date—1985 c 375.

67.70.010 Definitions. For the purposes of this chapter:

(1) "Commission" means the state lottery commission established by this chapter;

(2) "Lottery" or "state lottery" means the lottery established and operated pursuant to this chapter;

(3) "Director" means the director of the state lottery established by this chapter. [1987 c 511 § 1; 1982 2nd ex.s. c 7 § 1.]

67.70.030 State lottery commission created—Membership—Terms—Vacancies—Chairman—Quorum. There is created the state lottery commission to consist of five members appointed by the governor with the consent of the senate. Of the initial members, one shall serve a term of two years, one shall serve a term of three years, one shall serve a term of four years, one shall serve a term of five years, and one shall serve a term of six years. Their successors, all of whom shall be citizen members appointed by the governor with the consent of the senate, upon being appointed and qualified, shall serve six-year terms. No member of the commission who has served a full six-year term is eligible for reappointment. In case of a vacancy, it shall be filled by appointment by the governor for the unexpired portion of the term in which the vacancy occurs.

The governor shall designate one member of the commission to serve as chairman at the governor's pleasure.

A majority of the members shall constitute a quorum for the transaction of business. [1982 2nd ex.s. c 7 § 3.]

67.70.040 Powers and duties of commission. The commission shall have the power, and it shall be its duty:

(1) To promulgate such rules governing the establishment and operation of a state lottery as it deems necessary and desirable in order that such a lottery be initiated at the earliest feasible and practicable time, and in order that such lottery produce the maximum amount of net revenues for the state consonant with the dignity of the state and the general welfare of the people. Such rules shall include, but shall not be limited to, the following:

(a) The type of lottery to be conducted which may include the selling of tickets or shares, or the use of electronic or mechanical devices or video terminals which do not require a printed ticket: *Provided*, That

approval of the legislature shall be required before entering any agreement with other state lotteries to conduct shared games;

(b) The price, or prices, of tickets or shares in the lottery;

(c) The numbers and sizes of the prizes on the winning tickets or shares;

(d) The manner of selecting the winning tickets or shares;

(e) The manner and time of payment of prizes to the holder of winning tickets or shares which, at the director's option, may be paid in lump sum amounts or installments over a period of years;

(f) The frequency of the drawings or selections of winning tickets or shares, without limitation;

(g) Without limit as to number, the type or types of locations at which tickets or shares may be sold;

(h) The method to be used in selling tickets or shares, which may include the use of electronic or mechanical devices and video terminals;

(i) The licensing of agents to sell or distribute tickets or shares, except that a person under the age of eighteen shall not be licensed as an agent;

(j) The manner and amount of compensation, if any, to be paid licensed sales agents necessary to provide for the adequate availability of tickets or shares to prospective buyers and for the convenience of the public;

(k) The apportionment of the total revenues accruing from the sale of lottery tickets or shares and from all other sources among: (i) The payment of prizes to the holders of winning tickets or shares, which shall not be less than forty-five percent of the gross annual revenue from such lottery, less amounts of unclaimed prizes deposited in the general fund under RCW 67.70.190 during the fiscal year ending June 30, 1989, (ii) transfers to the lottery administrative account created by RCW 67.70.260, and (iii) transfer to the state's general fund. Transfers to the state general fund shall be made in compliance with RCW 43.01.050;

(l) Such other matters necessary or desirable for the efficient and economical operation and administration of the lottery and for the convenience of the purchasers of tickets or shares and the holders of winning tickets or shares.

(2) To ensure that in each place authorized to sell lottery tickets or shares, on the back of the ticket or share, and in any advertising or promotion there shall be conspicuously displayed an estimate of the probability of purchasing a winning ticket.

(3) To amend, repeal, or supplement any such rules from time to time as it deems necessary or desirable.

(4) To advise and make recommendations to the director for the operation and administration of the lottery. [1988 c 289 § 801; 1987 c 511 § 2; 1985 c 375 § 1; 1982 2nd ex.s. c 7 § 4.]

Severability—1988 c 289: See note following RCW 50.16.070.

67.70.050 Office of director created—Appointment—Salary—Duties. There is created the office of director of the state lottery. The director shall be appointed by the governor with the consent of the senate.

The director shall serve at the pleasure of the governor and shall receive such salary as is determined by the governor, but in no case may the director's salary be more than ninety percent of the salary of the governor. The director shall:

(1) Supervise and administer the operation of the lottery in accordance with the provisions of this chapter and with the rules of the commission.

(2) Appoint such deputy and assistant directors as may be required to carry out the functions and duties of his office: *Provided*, That the provisions of the state civil service law, chapter 41.06 RCW, shall not apply to such deputy and assistant directors.

(3) Appoint such professional, technical, and clerical assistants and employees as may be necessary to perform the duties imposed by this chapter: *Provided*, That the provisions of the state civil service law, chapter 41.06 RCW, shall not apply to such employees as are engaged in undercover audit or investigative work or security operations but shall apply to other employees appointed by the director, except as provided for in subsection (2) of this section.

(4) In accordance with the provisions of this chapter and the rules of the commission, license as agents to sell or distribute lottery tickets such persons as in his opinion will best serve the public convenience and promote the sale of tickets or shares. The director may require a bond from any licensed agent, in such amount as provided in the rules of the commission. Every licensed agent shall prominently display his license, or a copy thereof, as provided in the rules of the commission. License fees may be established by the commission, and, if established, shall be deposited in the state lottery account created by RCW 67.70.230.

(5) Confer regularly as necessary or desirable with the commission on the operation and administration of the lottery; make available for inspection by the commission, upon request, all books, records, files, and other information and documents of the lottery; and advise the commission and recommend such matters as the director deems necessary and advisable to improve the operation and administration of the lottery.

(6) Subject to the applicable laws relating to public contracts, enter into contracts for the operation of the lottery, or any part thereof, and into contracts for the promotion of the lottery. No contract awarded or entered into by the director may be assigned by the holder thereof except by specific approval of the commission: *Provided*, That nothing in this chapter authorizes the director to enter into public contracts for the regular and permanent administration of the lottery after the initial development and implementation.

(7) Certify quarterly to the state treasurer and the commission a full and complete statement of lottery revenues, prize disbursements, and other expenses for the preceding quarter.

(8) Report immediately to the governor and the legislature any matters which require immediate changes in the laws of this state in order to prevent abuses and evasions of this chapter or rules promulgated thereunder or

to rectify undesirable conditions in connection with the administration or operation of the lottery.

(9) Carry on a continuous study and investigation of the lottery throughout the state: (a) For the purpose of ascertaining any defects in this chapter or in the rules issued thereunder by reason whereof any abuses in the administration and operation of the lottery or any evasion of this chapter or the rules may arise or be practiced, (b) for the purpose of formulating recommendations for changes in this chapter and the rules promulgated thereunder to prevent such abuses and evasions, (c) to guard against the use of this chapter and the rules issued thereunder as a cloak for the carrying on of professional gambling and crime, and (d) to insure that this chapter and rules shall be in such form and be so administered as to serve the true purposes of this chapter.

(10) Make a continuous study and investigation of: (a) The operation and the administration of similar laws which may be in effect in other states or countries, (b) the operation of an additional game or games for the benefit of a particular program or purpose, (c) any literature on the subject which from time to time may be published or available, (d) any federal laws which may affect the operation of the lottery, and (e) the reaction of the citizens of this state to existing and potential features of the lottery with a view to recommending or effecting changes that will tend to serve the purposes of this chapter.

(11) Have all enforcement powers granted in chapter 9.46 RCW.

(12) Perform all other matters and things necessary to carry out the purposes and provisions of this chapter. [1987 c 511 § 3; 1987 c 505 § 57; 1986 c 158 § 21; 1985 c 375 § 2; 1982 2nd ex.s. c 7 § 5.]

Reviser's note: This section was amended by 1987 c 505 § 57 and by 1987 c 511 § 3, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

67.70.055 Activities prohibited to officers, employees, and members. The director, deputy directors, any assistant directors, and employees of the state lottery and members of the lottery commission shall not:

(1) Serve as an officer or manager of any corporation or organization which conducts a lottery or gambling activity;

(2) Receive or share in, directly or indirectly, the gross profits of any lottery or other gambling activity regulated by the gambling commission;

(3) Be beneficially interested in any contract for the manufacture or sale of gambling devices, the conduct of a lottery or other gambling activity, or the provision of independent consultant services in connection with a lottery or other gambling activity. [1987 c 511 § 4; 1986 c 4 § 2.]

67.70.060 Powers of director. (1) The director or the director's authorized representative may:

(a) Make necessary public or private investigations within or outside of this state to determine whether any

person has violated or is about to violate this chapter or any rule or order hereunder, or to aid in the enforcement of this chapter or in the prescribing of rules and forms hereunder; and

(b) Inspect the books, documents, and records of any person lending money to or in any manner financing any license holder or applicant for a license or receiving any income or profits from the use of such license for the purpose of determining compliance or noncompliance with the provisions of this chapter or the rules and regulations adopted pursuant thereto.

(2) For the purpose of any investigation or proceeding under this chapter, the director or an administrative law judge appointed under chapter 34.12 RCW may conduct hearings, administer oaths or affirmations, or upon the director's or administrative law judge's motion or upon request of any party may subpoena witnesses, compel attendance, take depositions, take evidence, or require the production of any matter which is relevant to the investigation or proceeding, including but not limited to the existence, description, nature, custody, condition, or location of any books, documents, or other tangible things, or the identity or location of persons having knowledge or relevant facts, or any other matter reasonably calculated to lead to the discovery of material evidence.

(3) Upon failure to obey a subpoena or to answer questions propounded by the administrative law judge and upon reasonable notice to all persons affected thereby, the director may apply to the superior court for an order compelling compliance.

(4) The administrative law judges appointed under chapter 34.12 RCW may conduct hearings respecting the suspension, revocation, or denial of licenses, may administer oaths, admit or deny admission of evidence, compel the attendance of witnesses, issue subpoenas, issue orders, and exercise all other powers and perform all other functions set out in chapter 34.05 RCW.

(5) Except as otherwise provided in this chapter, all proceedings under this chapter shall be in accordance with the Administrative Procedure Act, chapter 34.05 RCW. [1989 c 175 § 123; 1982 2nd ex.s. c 7 § 6.]

Effective date—1989 c 175: See note following RCW 34.05.010.

67.70.070 Licenses for lottery sales agents—Factors—"Person" defined. No license as an agent to sell lottery tickets or shares may be issued to any person to engage in business exclusively as a lottery sales agent. Before issuing a license the director shall consider such factors as: (1) The financial responsibility and security of the person and his business or activity, (2) the accessibility of his place of business or activity to the public, (3) the sufficiency of existing licenses to serve the public convenience, and (4) the volume of expected sales.

For purposes of this section, the term "person" means an individual, association, corporation, club, trust, estate, society, company, joint stock company, receiver, trustee, assignee, referee, or any other person acting in a fiduciary or representative capacity, whether appointed

by a court or otherwise, and any combination of individuals. "Person" does not mean any department, commission, agency, or instrumentality of the state, or any county or municipality or any agency or instrumentality thereof, except for retail outlets of the state liquor control board. [1982 2nd ex.s. c 7 § 7.]

67.70.080 License as authority to act. Any person licensed as provided in this chapter is hereby authorized and empowered to act as a lottery sales agent. [1982 2nd ex.s. c 7 § 8.]

67.70.090 Denial, suspension, and revocation of licenses. The director may deny an application for, or suspend or revoke, after notice and hearing, any license issued pursuant to this chapter. Such license may, however, be temporarily suspended by the director without prior notice, pending any prosecution, investigation, or hearing. A license may be suspended or revoked or an application may be denied by the director for one or more of the following reasons:

(1) Failure to account for lottery tickets received or the proceeds of the sale of lottery tickets or to file a bond if required by the director or to comply with the instructions of the director concerning the licensed activity;

(2) For any of the reasons or grounds stated in RCW 9.46.075 or violation of this chapter or the rules of the commission;

(3) Failure to file any return or report or to keep records or to pay any tax required by this chapter;

(4) Fraud, deceit, misrepresentation, or conduct prejudicial to public confidence in the state lottery;

(5) That the number of lottery tickets sold by the lottery sales agent is insufficient to meet administrative costs, or that public convenience is adequately served by other licensees;

(6) A material change, since issuance of the license with respect to any matters required to be considered by the director under RCW 67.70.070.

For the purpose of reviewing any application for a license and for considering the denial, suspension, or revocation of any license the director may consider any prior criminal conduct of the applicant or licensee and the provisions of RCW 9.95.240 and of chapter 9.96A RCW shall not apply to such cases. [1982 2nd ex.s. c 7 § 9.]

67.70.100 Assignment of rights prohibited—Exceptions—Discharge of liability. No right of any person to a prize drawn is assignable, except that payment of any prize drawn may be paid to the estate of a deceased prize winner, and except that any person pursuant to an appropriate judicial order may be paid the prize to which the winner is entitled. The commission and the director shall be discharged of all further liability upon payment of a prize pursuant to this section. [1982 2nd ex.s. c 7 § 10.]

67.70.110 Maximum price of ticket or share limited—Sale by other than licensed agent prohibited. A

person shall not sell a ticket or share at a price greater than that fixed by rule of the commission. No person other than a licensed lottery sales agent shall sell lottery tickets, except that nothing in this section prevents any person from giving lottery tickets or shares to another as a gift. [1982 2nd ex.s. c 7 § 11.]

67.70.120 Sale to minor prohibited—Exception—Penalties. A ticket or share shall not be sold to any person under the age of eighteen, but this shall not be deemed to prohibit the purchase of a ticket or share for the purpose of making a gift by a person eighteen years of age or older to a person less than that age. Any licensee who knowingly sells or offers to sell a lottery ticket or share to any person under the age of eighteen is guilty of a misdemeanor. In the event that a person under the age of eighteen years directly purchases a ticket in violation of this section, that person is guilty of a misdemeanor. No prize will be paid to such person and the prize money otherwise payable on the ticket will be treated as unclaimed pursuant to RCW 67.70.190. [1987 c 511 § 6; 1982 2nd ex.s. c 7 § 12.]

67.70.130 Prohibited acts—Penalty. A person shall not alter or forge a lottery ticket. A person shall not claim a lottery prize or share of a lottery prize by means of fraud, deceit, or misrepresentation. A person shall not conspire, aid, abet, or agree to aid another person or persons to claim a lottery prize or share of a lottery prize by means of fraud, deceit, or misrepresentation.

A violation of this section is a felony. [1982 2nd ex.s. c 7 § 13.]

67.70.140 Penalty for unlicensed activity. Any person who conducts any activity for which a license is required by this chapter, or by rule of the commission, without the required license, is guilty of a felony. If any corporation conducts any activity for which a license is required by this chapter, or by rule of the commission, without the required license, it may be punished by forfeiture of its corporate charter, in addition to the other penalties set forth in this section. [1982 2nd ex.s. c 7 § 14.]

67.70.150 Penalty for false or misleading statement or entry or failure to produce documents. Whoever, in any application for a license or in any book or record required to be maintained or in any report required to be submitted, makes any false or misleading statement, or makes any false or misleading entry or wilfully fails to maintain or make any entry required to be maintained or made, or who wilfully refuses to produce for inspection any book, record, or document required to be maintained or made by federal or state law is guilty of a gross misdemeanor. [1982 2nd ex.s. c 7 § 15.]

67.70.160 Penalty for violation of chapter—Exceptions. Any person who violates any provision of this chapter for which no penalty is otherwise provided, or knowingly causes, aids, abets, or conspires with another

to cause any person to violate any provision of this chapter is guilty of a class C felony, except where other penalties are specifically provided for in this chapter. [1982 2nd ex.s. c 7 § 16.]

67.70.170 Penalty for violation of rules—Exceptions. Any person who violates any rule adopted pursuant to this chapter for which no penalty is otherwise provided, or knowingly causes, aids, abets, or conspires with another to cause any person to violate any rule adopted pursuant to this chapter is guilty of a gross misdemeanor, except where other penalties are specifically provided for in this chapter. [1982 2nd ex.s. c 7 § 17.]

67.70.180 Persons prohibited from purchasing tickets or shares or receiving prizes—Penalty. A ticket or share shall not be purchased by, and a prize shall not be paid to any member of the commission, the director, or an employee of the lottery or to any spouse, child, brother, sister, or parent residing as a member of the same household in the principal place of abode of any member of the commission, the director or an employee of the lottery.

A violation of this section is a misdemeanor. [1987 c 511 § 7; 1982 2nd ex.s. c 7 § 18.]

67.70.190 Unclaimed prizes. (1) Unclaimed prizes shall be retained in the state lottery account for the person entitled thereto for one hundred eighty days after the drawing in which the prize is won, or after the official end of the game for instant prizes. If no claim is made for the prize within this time, the prize shall be retained in the state lottery fund for further use as prizes, except as provided in subsection (2) of this section, and all rights to the prize shall be extinguished.

(2) During the fiscal year ending June 30, 1989, moneys from unclaimed prizes shall be used as follows:

(a) Fifty percent of the moneys, not exceeding one million dollars, shall be deposited quarterly in the general fund.

(b) The remainder of the moneys shall be retained in the state lottery account for further use as prizes. [1988 c 289 § 802; 1987 c 511 § 8; 1982 2nd ex.s. c 7 § 19.]

Severability—1988 c 289: See note following RCW 50.16.070.

67.70.200 Deposit of moneys received by agents from sales—Power of director—Reports. The director, in his discretion, may require any or all lottery sales agents to deposit to the credit of the state lottery account in banks designated by the state treasurer, all moneys received by such agents from the sale of lottery tickets or shares, less the amount, if any, retained as compensation for the sale of the tickets or shares, and to file with the director or his designated agents, reports of their receipts and transactions in the sale of lottery tickets in such form and containing such information as he may require. The director may make such arrangements for any person, including a bank, to perform such functions, activities, or services in connection with the operation of the lottery as he or she may deem advisable pursuant to this

chapter and the rules of the commission, and such functions, activities, or services shall constitute lawful functions, activities, and services of such person. [1987 c 511 § 9; 1982 2nd ex.s. c 7 § 20.]

67.70.210 Other law inapplicable to sale of tickets or shares. No other law, including chapter 9.46 RCW, providing any penalty or disability for the sale of lottery tickets or any acts done in connection with a lottery applies to the sale of tickets or shares performed pursuant to this chapter. [1982 2nd ex.s. c 7 § 21.]

67.70.220 Payment of prizes to minor. If the person entitled to a prize is under the age of eighteen years, and such prize is less than five thousand dollars, the director may direct payment of the prize by delivery to an adult member of the minor's family or a guardian of the minor of a check or draft payable to the order of such minor. If the person entitled to a prize is under the age of eighteen years, and such prize is five thousand dollars or more, the director may direct payment to such minor by depositing the amount of the prize in any bank to the credit of an adult member of the minor's family or a guardian of the minor as custodian for such minor. The person so named as custodian shall have the same duties and powers as a person designated as a custodian in a manner prescribed by the Washington uniform gifts to minors act, chapter 11.93 RCW, and for the purposes of this section the terms "adult member of a minor's family," "guardian of a minor," and "bank" shall have the same meaning as in chapter 11.93 RCW. The commission and the director shall be discharged of all further liability upon payment of a prize to a minor pursuant to this section. [1985 c 7 § 128; 1982 2nd ex.s. c 7 § 22.]

67.70.230 State lottery account created. There is hereby created and established a separate account, to be known as the state lottery account. Such account shall be managed, maintained, and controlled by the commission and shall consist of all revenues received from the sale of lottery tickets or shares, and all other moneys credited or transferred thereto from any other fund or source pursuant to law. The account shall be a separate account outside the state treasury. No appropriation is required to permit expenditures and payment of obligations from the account. [1985 c 375 § 4; 1982 2nd ex.s. c 7 § 23.]

67.70.240 Use of moneys in state lottery account limited. The moneys in the state lottery account shall be used only: (1) For the payment of prizes to the holders of winning lottery tickets or shares; (2) for purposes of making deposits into the reserve account created by RCW 67.70.250 and into the lottery administrative account created by RCW 67.70.260; (3) for purposes of making deposits into the state's general fund; (4) for purposes of making deposits into the housing trust fund under the provisions of *section 7 of this 1987 act; (5) for the purchase and promotion of lottery games and game-related services; and (6) for the payment of agent compensation.

The office of financial management shall require the allotment of all expenses paid from the account and shall report to the ways and means committees of the senate and house of representatives any changes in the allotments. [1987 c 513 § 7; 1985 c 375 § 5; 1982 2nd ex.s. c 7 § 24.]

***Reviser's note:** "Section 7 of this 1987 act" apparently refers to a section in a preliminary version of the act (1987 Engrossed Second Substitute House Bill No. 164) that directed unclaimed state lottery prizes to be deposited into the housing trust fund. That section was deleted in the final bill.

Effective date—Severability—1987 c 513: See notes following RCW 18.85.310.

67.70.250 Methods for payment of prizes by installments. If the director decides to pay any portion of or all of the prizes in the form of installments over a period of years, the director shall provide for the payment of all such installments for any specific lottery game by one, but not both, of the following methods:

(1) The director may enter into contracts with any financially responsible person or firm providing for the payment of such installments; or

(2) The director may establish and maintain a reserve account into which shall be placed sufficient moneys for the director to pay such installments as they become due. Such reserve account shall be maintained as a separate and independent fund outside the state treasury. [1987 c 511 § 11; 1982 2nd ex.s. c 7 § 25.]

67.70.255 Debts owed to state agency or political subdivision—Debt information to lottery commission—Prize set off against debts. (1) Any state agency or political subdivision that maintains records of debts owed to the state or political subdivision, or that the state is authorized to enforce or collect, may submit data processing tapes containing debt information to the lottery in a format specified by the lottery. State agencies or political subdivisions submitting debt information tapes shall provide updates on a regular basis at intervals not to exceed one month and shall be solely responsible for the accuracy of the information contained therein.

(2) The lottery shall include the debt information submitted by state agencies or political subdivisions in its validation and prize payment process. The lottery shall delay payment of a prize exceeding six hundred dollars for a period not to exceed two working days, to any person owing a debt to a state agency or political subdivision pursuant to the information submitted in subsection (1) of this section. The lottery shall contact the state agency or political subdivision that provided the information to verify the debt. The prize shall be paid to the claimant if the debt is not verified by the submitting state agency or political subdivision within two working days. If the debt is verified, the prize shall be disbursed pursuant to subsection (3) of this section.

(3) Prior to disbursement, any lottery prize exceeding six hundred dollars shall be set off against any debts owed by the prize winner to a state agency or political subdivision, or that the state is authorized to enforce or collect. [1986 c 83 § 2.]

Policy—1986 c 83: "The award of prizes by the state lottery is one of many functions of the state government. As such, the lottery prizes should be subject to debts owed to the state or that the state is authorized to enforce or collect. This policy expedites collections of obligations through interagency cooperation." [1986 c 83 § 1.]

Effective date—1986 c 83: "This act shall take effect September 1, 1986." [1986 c 83 § 3.]

67.70.260 Lottery administrative account created. There is hereby created the lottery administrative account in the state treasury. The account shall be managed, controlled, and maintained by the director. The legislature may appropriate from the account for the payment of costs incurred in the operation and administration of the lottery. [1985 c 375 § 6; 1982 2nd ex.s. c 7 § 26.]

67.70.270 Members of commission—Compensation—Travel expenses. Each member of the commission shall be compensated in accordance with RCW 43.03.250 and shall be reimbursed for actual necessary traveling and other expenses in going to, attending, and returning from meetings of the commission and actual and necessary traveling and other expenses incurred in the discharge of such duties as may be requested by a majority vote of the commission or by the director. [1984 c 287 § 101; 1982 2nd ex.s. c 7 § 27.]

Legislative findings—Severability—Effective date—1984 c 287: See notes following RCW 43.03.220.

67.70.280 Application of administrative procedure act. The provisions of the administrative procedure act, chapter 34.05 RCW, shall apply to administrative actions taken by the commission or the director pursuant to this chapter. [1982 2nd ex.s. c 7 § 28.]

67.70.290 Post-audits by state auditor. The state auditor shall conduct an annual post-audit of all accounts and transactions of the lottery and such other special post-audits as he may be directed to conduct pursuant to chapter 43.09 RCW. [1982 2nd ex.s. c 7 § 29.]

67.70.300 Investigations by attorney general authorized. The attorney general may investigate violations of this chapter, and of the criminal laws within this state, by the commission, the director, or the director's employees, licensees, or agents, in the manner prescribed for criminal investigations in RCW 43.10.090. [1987 c 511 § 13; 1982 2nd ex.s. c 7 § 30.]

67.70.310 Management review by director of financial management authorized. The director of financial management may conduct a management review of the commission's lottery operations to assure that:

(1) The manner and time of payment of prizes to the holder of winning tickets or shares is consistent with this chapter and the rules adopted under this chapter;

(2) The apportionment of total revenues accruing from the sale of lottery tickets or shares and from all other sources is consistent with this chapter;

(3) The manner and type of lottery being conducted, and the expenses incidental thereto, are the most efficient and cost-effective; and

(4) The commission is not unnecessarily incurring operating and administrative costs.

In conducting a management review, the director of financial management may inspect the books, documents, and records of the commission. Upon completion of a management review, all irregularities shall be reported to the attorney general, the legislative budget committee, and the state auditor. The director of financial management shall make such recommendations as may be necessary for the most efficient and cost-effective operation of the lottery. [1982 2nd ex.s. c 7 § 31.]

67.70.320 Verification by certified public accountant. The director of financial management shall select a certified public accountant to verify that:

(1) The manner of selecting the winning tickets or shares is consistent with this chapter; and

(2) The manner and time of payment of prizes to the holder of winning tickets or shares is consistent with this chapter. The cost of these services shall be paid from moneys placed within the lottery administrative account created in RCW 67.70.260. [1987 c 511 § 14; 1982 2nd ex.s. c 7 § 32.]

67.70.330 Enforcement powers of director—Office of the director designated law enforcement agency. The director shall have the power to enforce this chapter and the penal laws of this state relating to the conduct of or participation in lottery activities and the manufacturing, importation, transportation, distribution, possession, and sale of equipment or paraphernalia used or for use in connection therewith. The director, the deputy director, assistant directors, and each of the director's investigators, enforcement officers, and inspectors shall have the power to enforce this chapter and the penal laws of this state relating to the conduct of or participation in lottery activities and the manufacturing, importation, transportation, distribution, possession, and sale of equipment or paraphernalia used or for use in connection therewith. They shall have the power and authority to apply for and execute all warrants and serve process of law issued by the courts in enforcing the penal provisions of this chapter and the penal laws of this state relating to the conduct of or participation in lottery activities and the manufacturing, importation, transportation, distribution, possession, and sale of equipment or paraphernalia used or for use in connection therewith. To the extent set forth in this section, the office of the director shall be a law enforcement agency of this state with the power to investigate for violations of and to enforce the provisions

of this chapter and to obtain information from and provide information to all other law enforcement agencies. [1987 c 511 § 15; 1982 2nd ex.s. c 7 § 33.]

67.70.900 Expiration of chapter—Evaluation and report. This chapter shall expire July 1, 1992, unless extended by law. The legislative budget committee shall evaluate the effectiveness of this chapter. The final report of the evaluation shall be available to the legislature at least six months prior to the scheduled termination date. The report shall include, but is not limited to, objective findings of fact, conclusions, and recommendations as to continuation, modification, or termination of this chapter. [1987 c 511 § 16; 1982 2nd ex.s. c 7 § 34.]

67.70.902 Construction—1982 2nd ex.s. c 7. This act shall be liberally construed to carry out the purposes and policies of the act. [1982 2nd ex.s. c 7 § 35.]

67.70.903 Severability—1982 2nd ex.s. c 7. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1982 2nd ex.s. c 7 § 40.]

67.70.904 Severability—1985 c 375. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1985 c 375 § 9.]

67.70.905 Effective date—1985 c 375. This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions and shall take effect March 1, 1985. [1985 c 375 § 10.]

Reviser's note: 1985 c 375 was signed by the governor on May 20, 1985.

Title 68

CEMETERIES, MORGUES AND HUMAN REMAINS

Chapters

- 68.04** Definitions.
- 68.05** Cemetery board.
- 68.20** Private cemeteries.
- 68.24** Cemetery property.
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Chapter 68.04 DEFINITIONS

Sections

- 68.04.020 "Human remains", "remains" defined.
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- 68.04.040 "Cemetery".
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68.04.240 "Plot owner", "owner", "lot proprietor".

68.04.020 "Human remains", "remains" defined. "Human remains" or "remains" means the body of a deceased person, and includes the body in any stage of decomposition except cremated remains. [1977 c 47 § 1; 1943 c 247 § 2; Rem. Supp. 1943 § 3778–2.]

Short title—1943 c 247: "This act shall be known as the 'General Cemetery Act.'" [1943 c 247 § 1.]

Severability—1943 c 247: "If any section, subdivision, sentence or clause of this act shall be held invalid or unconstitutional, such holding shall not affect the validity of the remaining portions of this act." [1943 c 247 § 147.]

The foregoing annotations apply to 1943 c 247, the general cemetery act, which act refers to sections codified as follows: RCW 68.04.020 through 68.04.240, 68.08.010 through 68.08.030, 68.08.120 through 68.08.220, 68.08.240, 68.20.010 through 68.20.100, 68.24.010 through 68.24.180, 68.28.010 through 68.28.070, 68.32.010 through 68.32.170, 68.36.010 through 68.36.100, 68.40.010 through 68.40.090, 68.44.010 through 68.44.170, and 68.48.040 through 68.48.090.

68.04.030 "Cremated remains". "Cremated remains" means a human body after cremation in a crematory. [1977 c 47 § 2; 1943 c 247 § 3; Rem. Supp. 1943 § 3778–3.]

68.04.040 "Cemetery". "Cemetery" means any one, or a combination of more than one, of the following, in a place used, or intended to be used, and dedicated, for cemetery purposes:

- (1) A burial park, for earth interments.
- (2) A mausoleum, for crypt interments.
- (3) A columbarium, for permanent cinerary interments. [1979 c 21 § 1; 1943 c 247 § 4; Rem. Supp. § 3778–4.]

68.04.050 "Burial park". "Burial park" means a tract of land for the burial of human remains in the ground, used or intended to be used, and dedicated, for cemetery purposes. [1943 c 247 § 5; Rem. Supp. 1943 § 3778–5.]

68.04.060 "Mausoleum". "Mausoleum" means a structure or building for the entombment of human remains in crypts in a place used, or intended to be used, and dedicated, for cemetery purposes. [1979 c 21 § 2; 1943 c 247 § 6; Rem. Supp. 1943 § 3778–6.]

68.04.070 "Crematory". "Crematory" means a building or structure containing one or more retorts for the reduction of bodies of deceased persons to cremated remains. [1943 c 247 § 7; Rem. Supp. 1943 § 3778–7.]

68.04.080 "Columbarium". "Columbarium" means a structure, room, or other space in a building or structure

containing niches for permanent inurnment of cremated remains in a place used, or intended to be used, and dedicated, for cemetery purposes. [1943 c 247 § 8; Rem. Supp. 1943 § 3778-8.]

68.04.090 "Crematory and columbarium". "Crematory and columbarium" means a building or structure containing both a crematory and columbarium. [1943 c 247 § 9; Rem. Supp. 1943 § 3778-9.]

68.04.100 "Interment". "Interment" means the disposition of human remains by cremation and inurnment, entombment, or burial in a place used, or intended to be used, and dedicated, for cemetery purposes. [1943 c 247 § 10; Rem. Supp. 1943 § 3778-10.]

68.04.110 "Cremation". "Cremation" means the reduction of the body of a deceased person to cremated remains in a crematory in such a manner that the largest dimension of any remaining particle does not exceed five millimeters: *Provided*, That if a person entitled to possession of such remains under the provisions of RCW 68.50.270 is going to place the cremated remains in a cemetery, mausoleum, columbarium, or building devoted exclusively to religious purposes, the five millimeter dimension requirement shall not apply. [1987 c 331 § 1; 1977 c 47 § 3; 1943 c 247 § 11; Rem. Supp. 1943 § 3778-11.]

Effective date—1987 c 331: See RCW 68.05.900.

68.04.120 "Inurnment". "Inurnment" means placing cremated remains in an urn or vault and placing it in a niche. [1943 c 247 § 12; Rem. Supp. 1943 § 3778-12.]

68.04.130 "Entombment". "Entombment" means the placement of human remains in a crypt or vault. [1943 c 247 § 13; Rem. Supp. 1943 § 3778-13.]

68.04.140 "Burial". "Burial" means the placement of human remains in a grave. [1943 c 247 § 14; Rem. Supp. 1943 § 3778-14.]

68.04.150 "Grave". "Grave" means a space of ground in a burial park, used or intended to be used, for burial. [1943 c 247 § 15; Rem. Supp. 1943 § 3778-15.]

68.04.160 "Crypt". "Crypt" means a space in a mausoleum of sufficient size, used or intended to be used, to entomb uncremated human remains. [1979 c 21 § 3; 1943 c 247 § 16; Rem. Supp. 1943 § 3778-16.]

68.04.165 "Vault", "lawn crypt", "liner". "Vault", "lawn crypt" or "liner" means any container which is buried in the ground and into which human remains are placed in the burial process. [1979 c 21 § 4.]

68.04.170 "Niche". "Niche" means a space in a columbarium or urn garden used, or intended to be used, for inurnment of cremated human remains. [1943 c 247 § 17; Rem. Supp. 1943 § 3778-17.]

68.04.180 "Temporary receiving vault". "Temporary receiving vault" means a vault used or intended to be used for the temporary placement of human remains. [1943 c 247 § 18; Rem. Supp. 1943 § 3778-18.]

68.04.190 "Cemetery authority". "Cemetery authority" includes cemetery corporation, association, corporation sole, or other person owning or controlling cemetery lands or property. [1943 c 247 § 19; Rem. Supp. 1943 § 3778-19.]

68.04.200 "Cemetery corporation", "cemetery association". "Cemetery corporation", "cemetery association", or "cemetery corporation or association" mean any corporation now or hereafter organized which is or may be authorized by its articles to conduct any one or more or all of the businesses of a cemetery, but do not mean or include a corporation sole. [1943 c 247 § 20; Rem. Supp. 1943 § 3778-20.]

68.04.210 "Cemetery business", etc. "Cemetery business", "cemetery businesses", and "cemetery purposes" are used interchangeably and mean any and all business and purposes requisite to, necessary for, or incident to, establishing, maintaining, operating, improving, or conducting a cemetery, interring human remains, and the care, preservation, and embellishment of cemetery property. [1943 c 247 § 21; Rem. Supp. 1943 § 3778-21.]

68.04.220 "Directors", "governing body". "Directors" or "governing body" means the board of directors, board of trustees, or other governing body of a cemetery association. [1943 c 247 § 22; Rem. Supp. 1943 § 3778-22.]

68.04.230 "Lot", "plot", etc. "Lot", "plot", or "interment plot" means space in a cemetery, used or intended to be used for the interment of human remains. Such terms include and apply to one or more than one adjoining graves, one or more than one adjoining crypts or vaults, or one or more than one adjoining niches. [1943 c 247 § 23; Rem. Supp. 1943 § 3778-23.]

68.04.240 "Plot owner", "owner", "lot proprietor". "Plot owner", "owner", or "lot proprietor" means any person in whose name an interment plot stands of record as owner, in the office of a cemetery authority. [1943 c 247 § 24; Rem. Supp. 1943 § 3778-24.]

Chapter 68.05 CEMETERY BOARD

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68.05.010 Definitions. The definitions in chapter 68.04 RCW are applicable to this chapter and govern the meaning of terms used herein, except as otherwise provided expressly or by necessary implication. [1953 c 290 § 26.]

Short title—1953 c 290: "This act shall be known as 'The Cemetery Act.'" [1953 c 290 § 55.] This applies to RCW 68.05.010 through 68.05.280.

68.05.020 "Board" defined. The term "board" used in this chapter means the cemetery board. [1953 c 290 § 27.]

68.05.024 "Department" defined. "Department" used in this chapter means the department of licensing. [1987 c 331 § 2.]

68.05.028 "Director" defined. "Director" used in this chapter means the director of licensing. [1987 c 331 § 3.]

68.05.030 "Endowment care", "endowed care" defined. The terms "endowment care" or "endowed care" used in this chapter shall include special care, care, or maintenance and all funds held for or represented as maintenance funds. [1987 c 331 § 4; 1953 c 290 § 28.]

68.05.040 Cemetery board created—Appointments—Terms. A cemetery board is created to consist of six members to be appointed by the governor. Appointments shall be for four-year terms. Each member shall hold office until the expiration of the term for which the member is appointed or until a successor has been appointed and qualified. [1987 c 331 § 5; 1977 ex.s. c 351 § 1; 1953 c 290 § 31.]

Severability—1977 ex.s. c 351: "If any provision of this 1977 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1977 ex.s. c 351 § 7.]

68.05.050 Qualifications of members. Three members of the board shall be persons who have had experience in this state in the active administrative management of a cemetery authority or as a member of the board of directors thereof. Two members of the board shall be persons who have legal, accounting, or other professional experience which relates to the duties of the board. The sixth member of the board shall represent the general public and shall not have a financial interest in the cemetery business. [1979 c 21 § 5; 1977 ex.s. c 351 § 2; 1953 c 290 § 32.]

Severability—1977 ex.s. c 351: See note following RCW 68.05.040.

68.05.060 Compensation and travel expenses. Each member of the board shall be compensated in accordance with RCW 43.03.240 and shall receive travel expenses in accordance with RCW 43.03.050 and 43.03.060. [1984 c 287 § 102; 1975-'76 2nd ex.s. c 34 § 156; 1953 c 290 § 33.]

Legislative findings—Severability—Effective date—1984 c 287: See notes following RCW 43.03.220.

Effective date—Severability—1975-'76 2nd ex.s. c 34: See notes following RCW 2.08.115.

68.05.080 Meetings. The board shall meet at least twice a year in order to conduct its business and may meet at such other times as it may designate. The chair, the director, or a majority of board members may call a

meeting. The board may meet at any place within this state. [1987 c 331 § 6; 1953 c 290 § 35.]

68.05.090 Administration and enforcement of title. The board shall enforce and administer the provisions of chapters 68.04 through 68.50 RCW, subject to provisions of *RCW 68.05.280. The board may adopt and amend bylaws establishing its organization and method of operation. In addition to enforcement of this chapter the board shall enforce chapters 68.20, 68.24, 68.28, 68.32, 68.36, 68.40, 68.44, 68.46, and 68.50 RCW. The board may refer such evidence as may be available concerning violations of chapters 68.20, 68.24, 68.28, 68.32, 68.36, 68.40, 68.44, 68.46, and 68.50 RCW to the attorney general or the proper prosecuting attorney, who may in his or her discretion, with or without such a reference, in addition to any other action the board might commence, bring an action in the name of the board against any person to restrain and prevent the doing of any act or practice prohibited or declared unlawful in chapters 68.20, 68.24, 68.28, 68.32, 68.36, 68.40, 68.44, 68.46, or 68.50 RCW and shall have standing to seek enforcement of said provisions in the superior court of the state of Washington for the county in which the principal office of the cemetery authority is located. [1987 c 331 § 7; 1979 c 21 § 6; 1953 c 290 § 39.]

*Reviser's note: RCW 68.05.280 was recodified as RCW 68.05.400.

68.05.095 Officers—Executive secretary. The board shall elect annually a chairman and vice chairman and such other officers as it shall determine from among its members. The director, in consultation with the board, may employ and prescribe the duties of the executive secretary. The executive secretary shall have a minimum of five years' experience in cemetery management unless this requirement is waived by the board. [1987 c 331 § 8; 1953 c 290 § 34. Formerly RCW 68.05.070.]

68.05.100 Rules and regulations. The board may establish necessary rules and regulations for the enforcement of this title and the laws subject to its jurisdiction and prescribe the form of statements and reports provided for in this title. Rules regulating the cremation of human remains and establishing fees and permit requirements shall be adopted in consultation with the state board of funeral directors and embalmers. [1987 c 331 § 9; 1985 c 402 § 8; 1953 c 290 § 36.]

Legislative finding—1985 c 402: See note following RCW 68.50.165.

68.05.105 Authority of the board. The board has the following authority:

- (1) To adopt, amend, and rescind such rules as are deemed necessary to carry out this title;
- (2) To investigate all complaints or reports of unprofessional conduct as defined in this chapter and to hold hearings;
- (3) To issue subpoenas and administer oaths in connection with any investigation, hearing, or proceeding held under this title;

(4) To take or cause depositions to be taken and use other discovery procedures as needed in any investigation, hearing, or proceeding held under this title;

(5) To compel attendance of witnesses at hearings;

(6) In the course of investigating a complaint, to conduct practice reviews;

(7) To take emergency action pending proceedings by the board;

(8) To use the office of administrative hearings as authorized in chapter 34.12 RCW to conduct hearings. However, the board shall make the final decision;

(9) To use consultants or individual members of the board to assist in the direction of investigations and issuance of statements of charges. However, those board members shall not subsequently participate in the hearing of the case;

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

(11) To contract with persons or organizations to provide services necessary for the monitoring and supervision of licensees, or authorities who are for any authorized purpose subject to monitoring by the board;

(12) To adopt standards of professional conduct or practice;

(13) To grant or deny authorities or license applications, and in the event of a finding of unprofessional conduct by an applicant, authority, or license holder, to impose any sanction against a license applicant, authority, or license holder provided by this title;

(14) To enter into an assurance of discontinuance in lieu of issuing a statement of charges or conducting a hearing. The assurance shall consist of a statement of the law in question and an agreement to not violate the stated provision. The applicant, holder of an authority to operate, or license holder shall not be required to admit to any violation of the law, nor shall the assurance be construed as such an admission. Violation of an assurance under this subsection is grounds for disciplinary action;

(15) To revoke the license or authority;

(16) To suspend the license or authority for a fixed or indefinite term;

(17) To restrict or limit the license or authority;

(18) To censure or reprimand;

(19) To cause compliance with conditions of probation for a designated period of time;

(20) To fine for each violation of this title, not to exceed one thousand dollars per violation. Funds received shall be placed in the cemetery account;

(21) To order corrective action.

Any of the actions under this section may be totally or partly stayed by the board. In determining what action is appropriate, the board must first consider what sanctions are necessary to protect or compensate the public. All costs associated with compliance with orders issued under this section are the obligation of the license or authority holder or applicant. [1987 c 331 § 10.]

68.05.115 Sale or transfer of cemetery authority or creation of a new cemetery—Application for new certificate of authority—Compliance required—Penalty. Prior to the sale or transfer of ownership or control of any cemetery authority or the creation of a new cemetery, any person, corporation or other legal entity desiring to acquire such ownership or control or desiring to create a new cemetery shall apply in writing to the board for a new certificate of authority to operate a cemetery and shall comply with all provisions of Title 68 RCW relating to applications for, and the basis for granting, an original certificate of authority. The board shall, in addition, enter any order deemed necessary for the protection of all endowment care funds and/or prearrangement trust fund during such transfer. As a condition of applying for a new certificate of authority, the entity desiring to acquire such ownership or control must agree to be bound by all then existing prearrangement contracts and the board shall enter that agreement as a condition of the transfer. Persons and business entities selling and persons and business entities purchasing ownership or control of a cemetery authority shall each verify and attest to an endowment care fund report and/or a prearrangement trust fund report showing the status of such funds on the date of the sale on a written report form prescribed by the board. Such reports shall be considered part of the application for authority to operate. Failure to comply with this section shall be a gross misdemeanor and any sale or transfer in violation of this section shall be void. [1987 c 331 § 11; 1979 c 21 § 11; 1973 1st ex.s. c 68 § 17; 1969 ex.s. c 99 § 5. Formerly RCW 68.05.255.]

68.05.120 Actions to enforce law—Attorney general. The board is authorized to bring actions to enforce the provisions of the law subject to its jurisdiction, in which actions it shall be represented by the attorney general. [1953 c 290 § 38.]

68.05.150 Powers, duties, concerning examination of funds. In making such examination the board:

(1) Shall have free access to the books and records relating to the endowment care funds, their collection and investment, and the number of graves, crypts, and niches under endowment care;

(2) Shall inspect and examine the endowment care funds to determine their condition and the existence of the investments;

(3) Shall ascertain if the cemetery authority has complied with all the laws applicable to endowment care funds;

(4) Shall have free access to all records required to be maintained pursuant to this chapter and to chapter 68.46 RCW with respect to prearrangement merchandise or services, unconstructed crypts or niches, or undeveloped graves; and

(5) Shall ascertain if the cemetery authority has complied with the laws applicable to prearrangement trust funds. [1979 c 21 § 8; 1973 1st ex.s. c 68 § 14; 1953 c 290 § 44.]

68.05.155 Prearrangement sales license. To enter into prearrangement contracts as defined in RCW 68.46.010, a cemetery authority shall have a valid prearrangement sales license. To apply for a prearrangement sales license, a cemetery authority shall:

(1) File with the board its request showing:

(a) Its name, location, and organization date;

(b) The kinds of cemetery business or merchandise it proposes to transact;

(c) A statement of its current financial condition, management, and affairs on a form satisfactory to or furnished by the board; and

(d) Such other documents, stipulations, or information as the board may reasonably require to evidence compliance with the provisions of this chapter; and

(2) Deposit with the department the fees required by this chapter to be paid for filing the accompanying documents, and for the prearrangement sales license, if granted. [1987 c 331 § 12; 1979 c 21 § 28. Formerly RCW 68.46.140.]

68.05.160 Action required when authority fails to deposit minimum endowment amount or comply with prearrangement contract provisions. If any examination made by the board, or any report filed with it, shows that there has not been collected and deposited in the endowment care funds the minimum amounts required by this title, or if the board finds that the cemetery authority has failed to comply with the requirements of this chapter and chapter 68.46 RCW with respect to prearrangement contracts, merchandise, or services, unconstructed crypts or niches or undeveloped graves, or prearrangement trust funds, the board shall require such cemetery authority to comply with this chapter or with chapter 68.40 or 68.46 RCW, as the case may be. [1979 c 21 § 9; 1973 1st ex.s. c 68 § 15; 1953 c 290 § 45.]

68.05.170 Order requiring reinvestment in compliance with title—Actions for preservation and protection. (1) Whenever the board finds, after notice and hearing, that any endowment care funds have been invested in violation of this title, it shall by written order mailed to the person or body in charge of the fund require the reinvestment of the funds in conformity with this title within the period specified by it which shall be not more than six months. Such period may be extended by the board in its discretion.

(2) The board may bring actions for the preservation and protection of endowment care funds in the superior court of the county in which the cemetery is located and the court shall appoint substitute trustees and make any other order which may be necessary for the preservation, protection and recovery of endowment care funds, whenever a cemetery authority or the trustees of its fund have:

(a) transferred or attempted to transfer any property to, or made any loan from, the endowment care funds for the benefit of the cemetery authority or any director, officer, agent or employee of the cemetery authority or trustee of any endowment care funds; or,

(b) failed to reinvest endowment care funds in accordance with a board order issued under subsection one of this section; or,

(c) invested endowment care funds in violation of this title; or,

(d) taken action or failed to take action to preserve and protect the endowment care funds, evidencing a lack of concern therefor; or,

(e) become financially irresponsible or transferred control of the cemetery authority to any person who, or business entity which, is financially irresponsible; or,

(f) is in danger of becoming insolvent or has gone into bankruptcy or receivership; or,

(g) taken any action in violation of Title 68 RCW or failed to take action required by Title 68 RCW or has failed to comply with lawful rules, regulations and orders of the board.

(3) Whenever the board or its representative has reason to believe that endowment care funds or prearrangement trust funds are in danger of being lost or dissipated during the time required for notice and hearing, it may immediately impound or seize documents, financial instruments, or other trust fund assets, or take other actions deemed necessary under the circumstances for the preservation and protection of endowment care funds or prearrangement trust funds, including, but not limited to, immediate substitutions of trustees. [1987 c 331 § 23; 1969 ex.s. c 99 § 1; 1953 c 290 § 46.]

68.05.173 Revocation, suspension of certificate or prearrangement sales license. Upon violation of any of the provisions of this title, the board may revoke or suspend the certificate of authority and may revoke, suspend, or terminate the prearrangement sales license of any cemetery authority. [1987 c 331 § 24; 1953 c 290 § 49. Formerly RCW 68.05.250.]

68.05.175 Permit or endorsement required for cremation—Regulation of affiliated and nonaffiliated crematories. A permit or endorsement issued by the cemetery board or under chapter 18.39 RCW is required in order to operate a crematory or conduct a cremation. Crematories owned or operated by or located on property licensed as a funeral establishment shall be regulated by the board of funeral directors and embalmers. Crematories not affiliated with a funeral establishment shall be regulated by the cemetery board. [1987 c 331 § 13; 1985 c 402 § 4. Formerly RCW 68.05.257.]

Legislative finding—1985 c 402: See note following RCW 68.50.165.

68.05.180 Annual report of authority—Contents—Verification. Each cemetery authority in charge of cemetery endowment care funds shall annually, and within ninety days after the end of the calendar or fiscal year of the cemetery authority, file with the board a written report in form and content prescribed by the board.

These reports shall be verified by the president or vice president, one other officer of the cemetery authority, the accountant or auditor preparing the same, and, if

required by the board for good cause, a certified public accountant in accordance with generally accepted auditing standards. [1979 c 21 § 10; 1977 ex.s. c 351 § 3; 1973 1st ex.s. c 68 § 16; 1953 c 290 § 40.]

Severability—1977 ex.s. c 351: See note following RCW 68.05.040.

68.05.185 Requirements as to crematories. No crematory shall hereafter be constructed or established unless the crematory is of fireproof construction and there is in connection therewith a fireproof columbarium, a fireproof mausoleum, a fireproof room for temporary care of cremated remains or a burial park amply equipped at all times for the interment of remains of bodies cremated at the crematory. No crematorium may be operated without a valid permit or endorsement issued in accordance with RCW 68.05.175 or chapter 18.39 RCW. Nothing herein contained shall prevent existing crematories from being repaired, altered, or reconstructed. Nothing in this title shall prohibit the cremation of human remains in existing crematories, nor the temporary storage of cremated remains. [1987 c 331 § 14; 1943 c 247 § 56; Rem. Supp. 1943 § 3778–56. Formerly RCW 68.48.050.]

68.05.190 Examination of reports. The board shall examine the reports filed with it as to their compliance with the requirements of the law. [1953 c 290 § 41.]

68.05.195 Burial or disposal of cremated remains—Permit or endorsement required. Any person other than persons defined in RCW 68.50.160 who buries or otherwise disposes of cremated remains by land, by air, or by sea shall have a permit or endorsement issued in accordance with RCW 68.05.100 and shall be subject to that section. [1987 c 331 § 15.]

68.05.205 Regulatory charges—Maximum rate. Every cemetery authority shall pay for each cemetery operated by it, an annual regulatory charge to be fixed by the director of not more than three dollars per interment, entombment, and inurnment made during the preceding full calendar year, which charges shall be deposited in the cemetery account. Upon payment of said charges and compliance with the provisions of Title 68 RCW and the lawful orders, rules, and regulations of the board, the board will issue a certificate of authority. [1987 c 331 § 16; 1983 1st ex.s. c 5 § 1; 1977 ex.s. c 351 § 4; 1969 ex.s. c 99 § 4; 1953 c 290 § 51. Formerly RCW 68.05.230.]

Severability—1983 1st ex.s. c 5: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1983 1st ex.s. c 5 § 3.]

Severability—1977 ex.s. c 351: See note following RCW 68.05.040.

68.05.210 Proof of applicant's compliance with law, rules, etc., financial responsibility and reputation. The board may require such proof as it deems advisable concerning the compliance by such applicant to all the laws, rules, regulations, ordinances and orders applicable to it.

The board shall also require proof that the applicant and its officers and directors are financially responsible, trustworthy and have good personal and business reputations, in order that only cemeteries of permanent benefit to the community in which they are located will be established in this state. [1969 ex.s. c 99 § 2; 1953 c 290 § 48.]

68.05.215 Certificates—Regulatory charges, when payable—Duration—Suspension, restoration—Transferability. The regulatory charges for cemetery certificates at all periods of the year are the same as provided in this chapter. All regulatory charges are payable at the time of the filing of the application and in advance of the issuance of the certificates. All certificates shall be issued for the year and shall expire at midnight, the thirty-first day of January of each year, or at whatever time during any year that ownership or control of any cemetery authority is transferred or sold. Cemetery certificates shall not be transferable. Failure to pay the regulatory charge fixed by the director prior to the first day of February for any year automatically shall suspend the certificate of authority. Such certificate may be restored upon payment to the department of the prescribed charges. [1987 c 331 § 17; 1969 ex.s. c 99 § 3; 1953 c 290 § 50. Formerly RCW 68.05.220.]

68.05.225 Sales licenses—Terms—Fees. All prearrangement sales licenses issued under this chapter shall be issued for the year and shall expire at midnight, the thirty-first day of January of each year, or at whatever time during any year that ownership or control of any cemetery authority is transferred or sold.

The director, in accordance with RCW 43.24.086, shall set and the department shall collect in advance the fees required for licensing.

Failure to pay the regulatory charge fixed by the director before the first day of February for any year shall automatically suspend the license. Such license may be restored upon payment to the department of the prescribed charges. [1987 c 331 § 18; 1979 c 21 § 29. Formerly RCW 68.46.180.]

68.05.235 Financial statements—Failure to file. (1) Each authorized cemetery authority shall within ninety days after the close of its accounting year file with the board upon the board's request a true and accurate statement of its financial condition, transactions, and affairs for the preceding year. The statement shall be on such forms and shall contain such information as required by this chapter and by the board.

(2) The board shall suspend or revoke the prearrangement sales license of any cemetery authority which fails to comply with the request. [1987 c 331 § 19; 1979 c 21 § 37. Formerly RCW 68.46.095.]

68.05.240 Interment, certificate of authority required—Penalty. It shall be a misdemeanor for any cemetery authority to make any interment without a

valid, subsisting, and unsuspended certificate of authority. Each interment shall be a separate violation. [1953 c 290 § 52.]

68.05.245 Crematory permits or endorsements—Terms—Fees. All crematory permits or endorsements issued under this chapter shall be issued for the year and shall expire at midnight, the thirty-first day of January of each year, or at whatever time during any year that ownership or control of any cemetery authority which operates such crematory is transferred or sold.

The director shall set and the department shall collect in advance the fees required for licensing.

Failure to pay the regulatory charge fixed by the director before the first day of February for any year shall automatically suspend the permit or endorsement. Such permit or endorsement may be restored upon payment to the department of the prescribed charges. [1987 c 331 § 20.]

68.05.254 Examination of endowment funds and prearrangement trust funds—Expense—Location. (1) The board shall examine the endowment care and prearrangement trust fund or funds of a cemetery authority:

(a) Whenever it deems necessary, but at least once every three years after the original examination except where the cemetery authority is either required by the board to, or voluntarily files an annual financial report for the fund certified by a certified public accountant or a licensed public accountant in accordance with generally accepted auditing standards;

(b) One year following the issuance of a new certificate of authority;

(c) Whenever the cemetery authority in charge of endowment care or prearrangement trust fund or funds fails after reasonable notice from the board to file the reports required by this chapter; or

(d) Whenever it is requested by verified petition signed by twenty-five lot owners alleging that the endowment care funds are not in compliance with this title, or whenever it is requested by verified petition signed by twenty-five purchasers or beneficiaries of prearrangement merchandise or services alleging that the prearrangement trust funds are not in compliance with this title, in either of which cases, the examination shall be at the expense of the petitioners.

(2) The expense of the endowment care and prearrangement trust fund examination as provided in subsection (1) (a) and (b) of this section shall be paid by the cemetery authority. Such examination shall be privately conducted in the principal office of the cemetery authority.

(3) The requirements that examinations be conducted once every three years and that they be conducted in the principal office of the cemetery authority do not apply to any endowment care or prearrangement fund that is less than twenty-five thousand dollars. The board shall, at its discretion, decide when and where the examinations shall take place. [1987 c 331 § 21; 1979 c 21 § 7; 1973 1st ex.s. c 68 § 12; 1953 c 290 § 42. Formerly RCW 68.05.130.]

68.05.259 Examination expense—Effect of refusal to pay—Disposition. If any cemetery authority refuses to pay any examination expenses within thirty days of completion of the examination or refuses to pay certain examination expenses in advance as required by the department for cause, the board shall revoke any existing certificate of authority. Examination expenses incurred in conjunction with a transfer of ownership of a cemetery shall be paid by the selling entity. All examination expense moneys collected by the department shall be paid to the department. [1987 c 331 § 22; 1973 1st ex.s. c 68 § 13; 1953 c 290 § 43. Formerly RCW 68.05.140.]

68.05.285 "Cemetery fund". There shall be, in the office of the state treasurer, a fund to be known and designated as the "cemetery fund." All regulatory fees or other moneys to be paid under this chapter, unless provision be made otherwise, shall be paid at least once a month to the state treasurer to be credited to the cemetery fund. All moneys credited to the cemetery fund shall be used, when appropriated by the legislature, by the cemetery board to carry out the provisions of this chapter. [1953 c 290 § 29. Formerly RCW 68.05.270.]

Cemetery fund abolished and moneys transferred to cemetery account in state treasury: RCW 43.79.330 through 43.79.334.

68.05.290 Board members' immunity from suits. Members of the board shall be immune from suit in any action, civil or criminal, based upon any official acts performed in good faith as members of such board, and the state shall defend, indemnify, and hold the members of the board harmless from all claims or suits arising in any manner from such acts. Expenses incurred by the state under this section shall be paid from the general fund. [1979 c 21 § 12.]

68.05.300 Certificates of authority or sales licenses—Grounds for termination. The board may revoke, suspend, or terminate a certificate of authority or prearrangement sales license if a cemetery authority:

- (1) Fails to comply with any provision of this chapter or any proper order or regulation of the board;
- (2) Is found by the board to be in such condition that further execution of prearrangement contracts would be hazardous to purchasers or beneficiaries and the people of this state;
- (3) Refuses to be examined, or refuses to submit to examination or to produce its accounts, records, and files for examination by the board when required;
- (4) Is found by the board after investigation or receipt of reliable information to be managed by persons who are incompetent or untrustworthy or so lacking in managerial experience as to make the proposed or continued operation hazardous to purchasers, beneficiaries, or the public; or
- (5) Is found by the board to use false, misleading, or deceptive advertisements or sales methods. [1987 c 331 § 25; 1979 c 21 § 30. Formerly RCW 68.46.190.]

68.05.310 Certificates of authority or sales licenses—Notice, procedures for board action. The

board or its authorized representative shall give a cemetery authority notice of its intention to suspend, revoke, or refuse to renew a certificate of authority or a prearrangement sales license, and shall grant the cemetery authority a hearing, in the manner required for adjudicative proceedings under chapter 34.05 RCW, the Administrative Procedure Act, before the order of suspension, revocation, or refusal may become effective.

No cemetery authority whose prearrangement sales license has been suspended, revoked, or refused shall be authorized to enter into prearrangement contracts. Any prearrangement sale by an unlicensed cemetery authority shall be voidable by the purchaser who shall be entitled to a full refund. [1989 c 175 § 124; 1987 c 331 § 26; 1979 c 21 § 31. Formerly RCW 68.46.200.]

Effective date—1989 c 175: See note following RCW 34.05.010.

68.05.320 Board action against authorities—Administrative procedures. (1) The board or its authorized representative may issue and serve upon a cemetery authority a notice of charges if in the opinion of the board or its authorized representative the cemetery authority:

(a) Is engaging in or has engaged in practices likely to endanger the future delivery of cemetery merchandise or services, unconstructed crypts or niches, or undeveloped graves;

(b) Is violating or has violated any statute of the state of Washington or any rule of the board; or

(c) Is about to do an act prohibited in (1)(a) or (1)(b) of this section when the opinion is based upon reasonable cause.

(2) The notice shall contain a statement of the facts constituting the alleged violation or practice and shall fix a time and place at which a hearing will be held to determine whether an order to cease and desist should issue against the cemetery authority. The hearing shall be set not earlier than ten nor later than thirty days after service of the notice unless a later date is set by the board or its authorized representative at the request of the cemetery authority.

Unless the cemetery authority appears at the hearing by a duly authorized representative it shall be deemed to have consented to the issuance of a cease and desist order. In the event of this consent or if upon the record made at the hearing the board finds that any violation or practice specified in the notice of charges has been established, the board may issue and serve upon the cemetery authority an order to cease and desist from the violation or practice. The order may require the cemetery authority and its directors, officers, employees, and agents to cease and desist from the violation or practice and may require the cemetery authority to take affirmative action to correct the conditions resulting from the violation or practice.

(3) A cease and desist order shall become effective at the expiration of ten days after service of the order upon the cemetery authority except that a cease and desist order issued upon consent shall become effective as provided in the order unless it is stayed, modified, terminated, or set aside by action of the board or a reviewing court.

(4) The powers of the board under this section are in addition to the power of the board to refuse to renew or to revoke or suspend a cemetery authority's prearrangement sales license. [1979 c 21 § 32. Formerly RCW 68.46.220.]

68.05.330 Violation—Penalty—Unfair practice—Other laws applicable. Unless specified otherwise in this title, any person who violates or aids or abets any person in the violation of any of the provisions of this title shall be guilty of a class C felony punishable under chapter 9A.20 RCW. A violation shall constitute an unfair practice under chapter 19.86 RCW and shall be grounds for revocation of the certificate of authority under this chapter or revocation of the prearrangement sales license under this chapter. Retail installment transactions under this chapter shall be governed by chapter 63.14 RCW. The provisions of this chapter shall be cumulative and nonexclusive and shall not affect any other remedy available at law. [1987 c 331 § 27; 1984 c 53 § 6; 1979 c 21 § 39. Formerly RCW 68.46.210.]

68.05.340 Board action against authorities—Cease and desist orders. Whenever the board or its authorized representative determines that a cemetery authority is in violation of this title or that the continuation of acts or practices of the cemetery authority is likely to cause insolvency or substantial dissipation of assets or earnings of the cemetery authority's endowment care or prearrangement trust fund or to otherwise seriously prejudice the interests of the purchasers or beneficiaries of prearrangement contracts, the board, or its authorized representative, may issue a temporary order requiring the cemetery authority to cease and desist from the violation or practice. The order shall become effective upon service on the cemetery authority and shall remain effective unless set aside, limited, or suspended by a court in proceedings under RCW 68.05.350 or until the board dismisses the charges specified in the notice under RCW 68.05.320 or until the effective date of a cease and desist order issued against the cemetery authority under RCW 68.05.320. [1987 c 331 § 28; 1979 c 21 § 33. Formerly RCW 68.46.230.]

68.05.350 Delaying board action pending administrative proceedings. Within ten days after a cemetery authority has been served with a temporary cease and desist order, the cemetery authority may apply to the superior court in the county of its principal place of business for an injunction setting aside, limiting, or suspending the order pending completion of the administrative proceedings under RCW 68.05.320. [1987 c 331 § 29; 1979 c 21 § 34. Formerly RCW 68.46.240.]

68.05.360 Board action against authorities—Hearing location—Decision—Review. Any administrative hearing under RCW 68.05.320 may be held at such place as is designated by the board and shall be conducted in accordance with chapter 34.05 RCW.

Within sixty days after the hearing the board shall render a decision which shall include findings of fact

upon which the decision is based and shall issue and serve upon each party to the proceeding an order or orders consistent with RCW 68.05.320.

Review of the decision shall be as provided in chapter 34.05 RCW. [1987 c 331 § 30; 1979 c 21 § 35. Formerly RCW 68.46.250.]

68.05.370 Board action against authorities—Enforcement of orders. The board may apply to the superior court of the county of the principal place of business of the cemetery authority affected for enforcement of any effective and outstanding order issued under RCW 68.05.320 or 68.05.340, and the court shall have jurisdiction to order compliance with the order. [1987 c 331 § 31; 1979 c 21 § 36. Formerly RCW 68.46.260.]

68.05.390 Permit or endorsement required for cremation—Penalty. Conducting a cremation without a permit or endorsement is a misdemeanor. Each such cremation is a violation. [1987 c 331 § 32.]

68.05.400 Exemptions from chapter. The provisions of this chapter do not apply to any of the following:

(1) Nonprofit cemeteries which are owned or operated by any recognized religious denomination which qualifies for an exemption from real estate taxation under RCW 84.36.020 on any of its churches or the ground upon which any of its churches are or will be built; or

(2) Any cemetery controlled and operated by a corner, county, city, town, or cemetery district. [1979 c 21 § 13; 1961 c 133 § 1; 1953 c 290 § 30. Formerly RCW 68.05.280.]

68.05.410 "Historic grave" defined. "Historic grave" as used in this chapter means a grave or graves that were placed outside a cemetery dedicated pursuant to chapter 68.24 RCW, prior to *passage of this section; except Indian graves and burial cairns protected under chapter 27.44 RCW. [1989 c 44 § 4.]

***Reviser's note:** "This section" passed the Senate March 6, 1989, passed the House of Representatives April 4, 1989, and took effect July 23, 1989.

Intent—1989 c 44: See RCW 27.44.030.

Captions not law—Liberal construction—1989 c 44: See RCW 27.44.900 and 27.44.901.

68.05.420 Protection of historic graves—Penalty.

(1) Any person who knowingly removes, mutilates, defaces, injures, or destroys any historic grave shall be guilty of a class C felony punishable under chapter 9A.20 RCW. Persons disturbing historic graves through inadvertence, including disturbance through construction, shall reinter the human remains under the supervision of the cemetery board. Expenses to reinter such human remains are to be provided by the office of archaeology and historic preservation.

(2) This section does not apply to actions taken in the performance of official law enforcement duties.

(3) It shall be a complete defense in a prosecution under subsection (1) of this section if the defendant can prove by a preponderance of evidence that the alleged acts were accidental or inadvertent and that reasonable

efforts were made to preserve the remains accidentally disturbed or discovered, and that the accidental discovery or disturbance was properly reported. [1989 c 44 § 5.]

Intent—1989 c 44: See RCW 27.44.030.

Captions not law—**Liberal construction**—1989 c 44: See RCW 27.44.900 and 27.44.901.

68.05.900 Effective date—1987 c 331. This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1987. [1987 c 331 § 91.]

Chapter 68.20 PRIVATE CEMETERIES

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68.20.010 Incorporation required. It is unlawful for any corporation, copartnership, firm, trust, association, or individual to engage in or transact any of the businesses of a cemetery within this state except by means of a corporation duly organized for that purpose. [1943 c 247 § 42; Rem. Supp. 1943 § 3778–42.]

68.20.020 Corporations, how organized. Any private corporation authorized by its articles so to do, may establish, maintain, manage, improve, or operate a cemetery, and conduct any or all of the businesses of a cemetery, either for or without profit to its members or stockholders. A nonprofit cemetery corporation may be organized in the manner provided in chapter 24.03 RCW. A profit corporation may be organized in the manner provided in the general corporation laws of the state of Washington. [1983 c 3 § 167; 1943 c 247 § 43; Rem. Supp. 1943 § 3778–43. Prior: 1899 c 33 § 1; 1856–7 p 28 § 1.]

[Title 68 RCW—p 10]

68.20.030 Powers of existing corporations enlarged. The powers, privileges and duties conferred and imposed upon any corporation, firm, copartnership, association, trust, or individual, existing and doing business under the laws of this state, are hereby enlarged as each particular case may require to conform to the provisions of *this act. [1943 c 247 § 45; Rem. Supp. 1943 § 3778–45.]

*Reviser's note: "this act", see note following RCW 68.04.020.

68.20.040 Prior corporations not affected. The provisions of *this act do not affect the corporate existence or rights or powers of any cemetery organized under any law then existing prior to **the effective date of this act, and as to such cemeteries and their rights, powers specified in their charters or articles of incorporation, the laws under which the corporation was organized and existed and under which such rights and powers become fixed or vested are applicable. [1943 c 247 § 44; Rem. Supp. 1943 § 3778–44.]

Reviser's note: *(1) "this act", see note following RCW 68.04.020.

** (2) "the effective date of this act" is midnight June 9, 1943, see preface 1943 session laws.

68.20.050 General powers of cemetery corporations. Unless otherwise limited by the law under which created[,] cemetery authorities shall in the conduct of their business have the same powers granted by law to corporations in general, including the right to contract such pecuniary obligations within the limitation of general law as may be required, and may secure them by mortgage, deed of trust, or otherwise upon their property. [1943 c 247 § 59; Rem. Supp. 1943 § 3778–59.]

68.20.060 Specific powers—Rule making and enforcement. A cemetery authority may make, adopt, amend, add to, revise, or modify, and enforce rules and regulations for the use, care, control, management, restriction and protection of all or any part of its cemetery and for the other purposes specified in RCW 68.20.061 through 68.20.067, 68.20.070 and *68.48.080. [1943 c 247 § 46; Rem. Supp. 1943 § 3778–46. Formerly RCW 68.20.070, part. FORMER PART OF SECTION: 1943 c 247 §§ 47 through 52 now codified as RCW 68.20.061 through 68.20.066.]

*Reviser's note: RCW 68.48.080 is recodified as RCW 68.56.050 pursuant to 1987 c 331 § 89.

68.20.061 Specific powers—Control of property. It may restrict and limit the use of all property within its cemetery. [1943 c 247 § 47; Rem. Supp. 1943 § 3778–47. Formerly RCW 68.20.060, part.]

68.20.062 Specific powers—Regulation as to type of markers, monuments, etc. It may regulate the uniformity, class, and kind of all markers, monuments, and other structures within the cemetery and its subdivisions. [1943 c 247 § 48; Rem. Supp. 1943 § 3778–48. Formerly RCW 68.20.060, part.]

68.20.063 Specific powers—Regulation or prohibition as to the erection of monuments, effigies, etc. It may regulate or prohibit the erection of monuments, markers, effigies, and structures within any portion of the cemetery. [1943 c 247 § 49; Rem. Supp. 1943 § 3778–49. Formerly RCW 68.20.060, part.]

68.20.064 Specific powers—Regulation of plants and shrubs. It may regulate or prevent the introduction or care of plants or shrubs within the cemetery. [1943 c 247 § 50; Rem. Supp. 1943 § 3778–50. Formerly RCW 68.20.060, part.]

68.20.065 Specific powers—Prevention of interment. It may prevent interment in any part of the cemetery of human remains not entitled to interment and prevent the use of interment plots for purposes violative of its restrictions or rules and regulations. [1943 c 247 § 51; Rem. Supp. 1943 § 3778–51. Formerly RCW 68.20.060, part.]

68.20.066 Specific powers—Prevention of improper assemblages. It may regulate the conduct of persons and prevent improper assemblages in the cemetery. [1943 c 247 § 52; Rem. Supp. 1943 § 3778–52. Formerly RCW 68.20.060, part.]

68.20.067 Specific powers—Rules and regulations for general purposes. It may make and enforce rules and regulations for all other purposes deemed necessary by the cemetery authority for the proper conduct of the business of the cemetery, for the transfer of any plot or the right of interment, and the protection and safeguarding of the premises, and the principles, plans, and ideals on which the cemetery is conducted. [1943 c 247 § 53; Rem. Supp. 1943 § 3778–53. Formerly RCW 68.20.070, part.]

68.20.070 Rules and regulations—Posting. The rules and regulations made pursuant to RCW 68.20.060 shall be plainly printed or typewritten and maintained subject to inspection in the office of the cemetery authority or in such place or places within the cemetery as the cemetery authority may prescribe. [1943 c 247 § 54; Rem. Supp. 1943 § 3778–54. FORMER PART OF SECTION: 1943 c 247 §§ 46 and 53 now codified as RCW 68.20.060 and 68.20.067.]

68.20.080 Cities and counties may regulate cemeteries. Cities and counties are authorized to enact ordinances regulating or prohibiting the establishment of new cemeteries or the extension of existing ones and to give power to local planning commissions to pass upon and make recommendations to local legislative bodies concerning the establishment or extension of cemeteries. [1943 c 247 § 143; Rem. Supp. 1943 § 3778–143.]

Section applies to certain mausoleums, columbariums, etc.: RCW 68.28.010.

68.20.090 Permit required, when. It shall be unlawful for any person, firm, or corporation to establish or

maintain any cemetery or to extend the boundaries of any existing cemetery in this state without a permit first having been applied for and permission obtained in accordance with the city and county ordinance and other zoning or statutory provisions governing the same. [1943 c 247 § 144; Rem. Supp. 1943 § 3778–144.]

Section applies to certain mausoleums, columbariums, etc.: RCW 68.28.010.

68.20.110 Nonprofit cemetery association—Tax exempt land—Irreducible fund—Bonds. *Such association shall be authorized to purchase or take by gift or devise, and hold land exempt from execution and from any appropriation to public purposes for the sole purpose of a cemetery not exceeding eighty acres, which shall be exempt from taxation if intended to be used exclusively for burial purposes without discrimination as to race, color, national origin or ancestry, and in nowise with a view to profit of the members of such association: *Provided*, That when the land already held by the association is all practically used then the amount thereof may be increased by adding thereto not exceeding twenty acres at a time. Such association may by its bylaws provide that a stated percentage of the moneys realized from the sale of lots, donations or other sources of revenue, shall constitute an irreducible fund, which fund may be invested in such manner or loaned upon such securities as the association or the trustees thereof may deem proper. The interest or income arising from the irreducible fund, provided for in any bylaws, or so much thereof as may be necessary, shall be devoted exclusively to the preservation and embellishment of the lots sold to the members of such association, and where any bylaws has been enacted for the creation of an irreducible fund as herein provided for it cannot thereafter be amended in any manner whatever except for the purpose of increasing such fund. After paying for the land all the future receipts and income of such association subject to the provisions herein for the creation of an irreducible fund, whether from the sale of lots, from donations, rents or otherwise, shall be applied exclusively to laying out, preserving, protecting and embellishing the cemetery and the avenues leading thereto, and in the erection of such buildings as may be necessary or convenient for the cemetery purposes, and to paying the necessary expenses of the association. No debts shall be contracted in anticipation of any future receipts except for originally purchasing, laying out and embellishing the grounds and avenues, for which debts so contracted such association may issue bonds or notes and secure the same by way of mortgage upon any of its lands, excepting such lots as shall have been conveyed to the members thereof; and such association shall have power to adopt such rules and regulations as they shall deem expedient for disposing of and for conveying burial lots. [1961 c 103 § 2; 1899 c 33 § 3; RRS § 3766. Formerly RCW 68.20.110 and 68.24.200.]

*Reviser's note: The term "Such association" appears in 1899 c 33 which act provided for the creation of cemetery associations pursuant to 1895 c 158 which was codified in chapter 24.16 RCW which was

repealed by the Washington Nonprofit Corporation Act, 1967 c 235, chapter 24.03 RCW.

Construction—1961 c 103: See note following RCW 49.60.040.

Property taxes, exemptions: RCW 84.36.020.

68.20.120 Sold lots exempt from taxes, etc.—**Nonprofit associations.** Burial lots, sold by *such association shall be for the sole purpose of interment, and shall be exempt from taxation, execution, attachment or other claims, lien or process whatsoever, if used as intended, exclusively for burial purposes and in nowise with a view to profit. [1899 c 33 § 5; RRS § 3768. Formerly RCW 68.24.210.]

*Reviser's note: "such association", see note following RCW 68.20.110.

Cemetery property exempt from execution: RCW 68.24.220.
taxation: RCW 84.36.020.

68.20.130 Ground plans. All *such associations shall cause a plan of their grounds and of the blocks and lots by them laid out, to be made and recorded, such blocks and lots to be numbered by regular consecutive numbers, and shall have power to enclose, improve and adorn the grounds and avenues, to erect buildings for the use of the association and to prescribe rules for the designation and adorning of lots and for erecting monuments in the cemetery, and to prohibit any use, division, improvement or adornment of a lot which they may deem improper. An annual exhibit shall be made of the affairs of the association. The plan, or plat, hereinbefore required, shall be recorded by the proper county auditor for a fee not to exceed ten cents a lot, and if the actual cost of recording the same shall be less than ten cents a lot, then said auditor shall record the same at the actual cost thereof. [1905 c 64 § 1; 1899 c 33 § 6; RRS § 3769. Formerly RCW 68.24.230.]

*Reviser's note: "such associations", see note following RCW 68.20.110.

County auditor's fees, generally: RCW 36.18.010.

68.20.140 Certain cemeteries exempt from chapter. This chapter does not apply to any cemetery controlled and operated by a coroner, county, city, town, or cemetery district. [1987 c 331 § 33.]

Effective date—1987 c 331: See RCW 68.05.900.

Chapter 68.24 CEMETERY PROPERTY

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68.24.240	Certain cemetery lands exempt from taxes, etc.—1901 c 147.

68.24.010 Right to acquire property. Cemetery authorities may take by purchase, donation or devise, property consisting of lands, mausoleums, crematories, and columbariums, or other property within which the interment of the dead may be authorized by law. [1943 c 247 § 61; Rem. Supp. 1943 § 3778–61.]

68.24.020 Surveys and maps. Every cemetery authority, from time to time as its property may be required for cemetery purposes, shall:

(1) In case of land, survey and subdivide it into sections, blocks, plots, avenues, walks, or other subdivisions; make a good and substantial map or plat showing the sections, plots, avenues, walks or other subdivisions, with descriptive names or numbers.

(2) In case of a mausoleum, or columbarium, it shall make a good and substantial map or plat on which shall be delineated the sections, halls, rooms, corridors, elevation, and other divisions, with descriptive names or numbers. [1943 c 247 § 62; Rem. Supp. 1943 § 3778–62.]

68.24.030 Declaration of dedication and maps—Filing. The cemetery authority shall file the map or plat in the office of the recorder of the county in which all or a portion of the property is situated. The cemetery authority shall also file for record in the county recorder's office a written declaration of dedication of the property delineated on the plat or map, dedicating the property exclusively to cemetery purposes. [1943 c 247 § 63; Rem. Supp. 1943 § 3778–63.]

County auditor: Chapter 36.22 RCW.

County auditor fees, generally: RCW 36.18.010.

68.24.040 Dedication, when complete. Upon the filing of the map or plat and the filing of the declaration for record, the dedication is complete for all purposes and thereafter the property shall be held, occupied, and used exclusively for a cemetery and for cemetery purposes. [1943 c 247 § 64; Rem. Supp. 1943 § 3778–64.]

68.24.050 Constructive notice. The filed map or plat and the recorded declaration are constructive notice to all persons of the dedication of the property to cemetery purposes. [1943 c 247 § 66; Rem. Supp. 1943 § 3778–66.]

68.24.060 Maps and plats—Amendment. Any part or subdivision of the property so mapped and plotted may, by order of the directors, be resurveyed and altered

in shape and size and an amended map or plat filed, so long as such change does not disturb the interred remains of any deceased person. [1943 c 247 § 65; Rem. Supp. 1943 § 3778–65.]

68.24.070 Permanency of dedication. After property is dedicated to cemetery purposes pursuant to RCW 68.24.010 through 68.24.060, neither the dedication, nor the title of a plot owner, shall be affected by the dissolution of the cemetery authority, by nonuser on its part, by alienation of the property, by any incumbrances, by sale under execution, or otherwise except as provided in *this act. [1943 c 247 § 67; Rem. Supp. 1943 § 3778–67.]

*Reviser's note: "this act", see note following RCW 68.04.020.

68.24.080 Rule against perpetuities, etc., inapplicable. Dedication to cemetery purposes pursuant to *this act is not invalid as violating any laws against perpetuities or the suspension of the power of alienation of title to or use of property, but is expressly permitted and shall be deemed to be in respect for the dead, a provision for the interment of human remains, and a duty to, and for the benefit of, the general public. [1943 c 247 § 68; Rem. Supp. 1943 § 3778–68.]

*Reviser's note: "this act", see note following RCW 68.04.020.

68.24.090 Removal of dedication—Procedure. Property dedicated to cemetery purposes shall be held and used exclusively for cemetery purposes, unless and until the dedication is removed from all or any part of it by an order and decree of the superior court of the county in which the property is situated, in a proceeding brought by the cemetery authority for that purpose and upon notice of hearing and proof satisfactory to the court:

(1) That no interments were made in or that all interments have been removed from that portion of the property from which dedication is sought to be removed.

(2) That the portion of the property from which dedication is sought to be removed is not being used for interment of human remains.

(3) That notice of the proposed removal of dedication has been given the cemetery board in writing at least sixty days before filing the proceedings in superior court. [1987 c 331 § 34; 1943 c 247 § 76; Rem. Supp. 1943 § 3778–76.]

Effective date—1987 c 331: See RCW 68.05.900.

68.24.100 Notice of hearing. The notice of hearing provided in RCW 68.24.090 shall be given by publication once a week for at least three consecutive weeks in a newspaper of general circulation in the county where said cemetery is located, and the posting of copies of the notice in three conspicuous places on that portion of the property from which the dedication is to be removed. Said notice shall:

(1) Describe the portion of the cemetery property sought to be removed from dedication.

(2) State that all remains have been removed or that no interments have been made in the portion of the cemetery property sought to be removed from dedication.

(3) Specify the time and place of the hearing. [1943 c 247 § 77; Rem. Supp. 1943 § 3778–77.]

68.24.110 Sale of plots. After filing the map or plat and recording the declaration of dedication, a cemetery authority may sell and convey plots subject to such rules and regulations as may be then in effect or thereafter adopted by the cemetery authority, and subject to such other and further limitations, conditions and restrictions as may be inserted in or made a part of the declaration of dedication by reference, or included in the instrument of conveyance of such plot. [1943 c 247 § 70; Rem. Supp. 1943 § 3778–70. FORMER PART OF SECTION: 1943 c 247 § 72 now codified as RCW 68.24.115.]

68.24.115 Execution of conveyances. All conveyances made by a cemetery authority shall be signed by such officer or officers as are authorized by the cemetery authority. [1943 c 247 § 72; Rem. Supp. 1943 § 3778–72. Formerly RCW 68.24.110, part.]

68.24.120 Plots indivisible. All plots, the use of which has been conveyed by deed or certificate of ownership as a separate plot, are indivisible except with the consent of the cemetery authority, or as provided by law. [1943 c 247 § 71; Rem. Supp. 1943 § 3778–71.]

68.24.130 Sales for resale prohibited—Penalty. It shall be unlawful for any person, firm or corporation to sell or offer to sell a cemetery plot upon the promise, representation or inducement of resale at a financial profit. Each person violating this section shall be guilty of a misdemeanor and each violation shall constitute a separate offense. [1943 c 247 § 73; Rem. Supp. 1943 § 3778–73.]

68.24.140 Commission on sales prohibited—Penalty. It shall be unlawful for a cemetery authority to pay or offer to pay to any person, firm or corporation, directly or indirectly, a commission or bonus or rebate or other thing of value for the sale of a plot or services. This shall not apply to a person regularly employed by the cemetery authority for such purpose. Each person violating this section shall be guilty of a misdemeanor and each violation shall constitute a separate offense. [1943 c 247 § 74; Rem. Supp. 1943 § 3778–74.]

68.24.150 Employment of "runners" prohibited—Penalty. Every person who pays or causes to be paid or offers to pay to any other person, firm, or corporation, directly or indirectly, except as provided in RCW 68.24.140, any commission or bonus or rebate, or other thing of value in consideration of recommending or causing a dead human body to be disposed of in any crematory or cemetery, is guilty of a misdemeanor and each violation shall constitute a separate offense. [1943 c 247 § 75; Rem. Supp. 1943 § 3778–75.]

68.24.160 Liens subordinate to dedication. All mortgages, deeds of trust and other liens of any nature, hereafter contracted, placed or incurred upon property which has been and was at the time of the creation or placing of the lien, dedicated as a cemetery pursuant to this part, or upon property which is afterwards, with the consent of the owner of any mortgage, trust deed or lien, dedicated to cemetery purposes pursuant to this part, shall not affect or defeat the dedication, but the mortgage, deed of trust, or other lien is subject and subordinate to such dedication and any and all sales made upon foreclosure are subject and subordinate to the dedication for cemetery purposes. [1943 c 247 § 60; Rem. Supp. 1943 § 3778–60.]

Effective date—1943 c 247: See note following RCW 68.20.040.

68.24.170 Record of ownership and transfers. A record shall be kept of the ownership of all plots in the cemetery which have been conveyed by the cemetery authority and of all transfers of plots in the cemetery. No transfer of any plot, heretofore or hereafter made, or any right of interment, shall be complete or effective until recorded on the books of the cemetery authority. [1943 c 247 § 40; Rem. Supp. 1943 § 3778–40. FORMER PART OF SECTION: 1943 c 247 § 41 now codified as RCW 68.24.175.]

68.24.175 Inspection of records. The records shall be open to inspection during the customary office hours of the cemetery. [1943 c 247 § 41; Rem. Supp. 1943 § 3778–41. Formerly RCW 68.24.170, part.]

68.24.180 Opening of roads, railroads through cemetery—Consent required—Exception. After dedication under this title, and as long as the property remains dedicated to cemetery purposes, a railroad, street, road, alley, pipe line, pole line, or other public thoroughfare or utility shall not be laid out, through, over, or across any part of it without the consent of the cemetery authority owning and operating it, or of not less than two-thirds of the owners of interment plots. However, so long as the action is commenced prior to March 31, 1961, the department of transportation may condemn for state highway purposes for Primary State Highway No. 14 in the vicinity of Gig Harbor land in any burial ground or cemetery in the following cases: (1) Where no organized or known authority is in charge of any such cemetery, or (2) where the necessary consent cannot be obtained and the court finds that considerations of highway safety necessitate the taking of the land. A judgment entered in the condemnation proceedings shall require that before an entry is made on the land condemned for state highway purposes, the state shall, at its own expense, remove or cause to be removed from the land any bodies buried therein and suitably reinter them elsewhere to the satisfaction of relatives, if they can be found. [1984 c 7 § 369; 1959 c 217 § 1; 1947 c 69 § 1; 1943 c 247 § 69; Rem. Supp. 1947 § 3778–69.]

Severability—1984 c 7: See note following RCW 47.01.141.

68.24.190 Opening road through cemetery—Penalty. Every person who shall make or open any road, or construct any railway, turnpike, canal, or other public easement over, through, in, or upon, such part of any inclosure as may be used for the burial of the dead, without authority of law or the consent of the owner thereof, shall be guilty of a misdemeanor. [1909 c 249 § 241; RRS § 2493.]

68.24.220 Burying place exempt from execution. Whenever any part of *such burying ground shall have been designated and appropriated by the proprietors thereof as the burying place of any particular person or family, the same shall not be liable to be taken or disposed of by any warrant or execution, for any tax or debt whatever; nor shall the same be liable to be sold to satisfy the demands of creditors whenever the estate of such owner shall be insolvent. [1857 p 28 § 2; RRS § 3760.]

***Reviser's note:** The phrase "such burying ground" appears in 1856–57 p 28, which act provided for the creation of corporations for the purpose of establishing a burying ground or place of sepulture.

Cemetery property exempt from taxation: RCW 84.36.020.

68.24.240 Certain cemetery lands exempt from taxes, etc.—1901 c 147. Upon compliance with the requirements of *this act said lands shall forever be exempt from taxation, judgment and other liens and executions. [1901 c 147 § 4; RRS § 3763.]

***Reviser's note:** "this act" appears in 1901 c 147, the remaining sections of which act were repealed by 1943 c 247 § 148. These sections read as follows:

"Section 1. Any person owning any land, exclusive of encumbrances of any kind, situate two miles outside of the corporate limits of any incorporated city or town, may have the same reserved exclusively for burial and cemetery purposes by complying with the terms of this act, provided said lands so sought to be reserved shall not exceed in area one acre.

Sec. 2. Such person or persons shall cause such land to be surveyed and platted.

Sec. 3. A deed of dedication of said tract for burial and cemetery purposes with a copy of said plat shall be filed with the county auditor of the county in which said lands are situated and the title thereto shall be and remain in the owner, his heirs and assigns, subject to the trust aforesaid."

Property taxes, exemptions: RCW 84.36.020.

Chapter 68.28

MAUSOLEUMS AND COLUMBARIUMS

Sections

68.28.010	Sections applicable to mausoleums, columbariums, etc.
68.28.020	Buildings converted to use as a place of interment.
68.28.030	Standards of construction.
68.28.040	Fireproof construction.
68.28.050	Ordinances and specifications to be complied with.
68.28.060	Improper construction a nuisance—Penalty.
68.28.065	Court to fix costs.
68.28.070	Construction in compliance with existing laws.

68.28.010 Sections applicable to mausoleums, columbariums, etc. RCW 68.28.020 through 68.28.070, 68.20.080, 68.20.090, *68.48.040 and 68.48.060, apply to all buildings, mausoleums and columbariums used or intended to be used for the interment of the remains of

fifteen or more persons whether erected under or above the surface of the earth where any portion of the building is exposed to view or, when interment is completed, is less than three feet below the surface of the earth and covered by earth. [1943 c 247 § 134; Rem. Supp. 1943 § 3778-134.]

***Reviser's note:** RCW 68.48.040 and 68.48.060 have been recodified as RCW 68.56.040 and 68.56.050, respectively, pursuant to 1987 c 331 § 89.

68.28.020 Buildings converted to use as a place of interment. A building not erected for, or which is not used as, a place of interment of human remains which is converted or altered for such use is subject to ***this act**. [1943 c 247 § 135; Rem. Supp. 1943 § 3778-135.]

***Reviser's note:** "this act", see note following RCW 68.04.020.

68.28.030 Standards of construction. No building or structure intended to be used for the interment of human remains shall be constructed, and a building not used for the interment of human remains shall not be altered for use or used for interment purposes, unless constructed of such material and workmanship as will insure its durability and permanence as dictated and determined at the time by modern mausoleum construction and engineering science. [1943 c 247 § 136; Rem. Supp. 1943 § 3778-136.]

68.28.040 Fireproof construction. All mausoleums or columbariums hereafter constructed shall be of class A fireproof construction. [1943 c 247 § 137; Rem. Supp. 1943 § 3778-137.]

Effective date—1943 c 247: See note following RCW 68.20.040.

68.28.050 Ordinances and specifications to be complied with. If the proposed site is within the jurisdiction of a city having ordinances and specifications governing class A construction, the provisions of the local ordinances and specifications shall not be violated. [1943 c 247 § 138; Rem. Supp. 1943 § 3778-138.]

68.28.060 Improper construction a nuisance—Penalty. Every owner or operator of a mausoleum or columbarium erected in violation of ***this act** is guilty of maintaining a public nuisance and upon conviction is punishable by a fine of not less than five hundred dollars nor more than five thousand dollars or by imprisonment in a county jail for not less than one month nor more than six months, or by both; and, in addition is liable for all costs, expenses and disbursements paid or incurred in prosecuting the case. [1943 c 247 § 140; Rem. Supp. 1943 § 3778-140.]

***Reviser's note:** "this act", see note following RCW 68.04.020.

68.28.065 Court to fix costs. The costs, expenses and disbursements shall be fixed by the court having jurisdiction of the case. [1943 c 247 § 141; Rem. Supp. 1943 § 3778-141.]

68.28.070 Construction in compliance with existing laws. The penalties of ***this act** shall not apply as to any

building which, at the time of construction was constructed in compliance with the laws then existing, if its use is not in violation of the laws for the protection of public health. [1943 c 247 § 142; Rem. Supp. 1943 § 3778-142.]

***Reviser's note:** "this act", see note following RCW 68.04.020.

Chapter 68.32

TITLE AND RIGHTS TO CEMETERY PLOTS

Sections

68.32.010	Presumption as to title.
68.32.020	Vested right of spouse.
68.32.030	Vested right—Termination.
68.32.040	Descent of title to plot.
68.32.050	Affidavit as authorization.
68.32.060	Family plots—Alienability.
68.32.070	Joint tenants—Vested rights.
68.32.080	Joint tenants—Survivorship.
68.32.090	Joint tenants—Identification.
68.32.100	Co-owners may designate representative.
68.32.110	Order of interment—General.
68.32.120	Order of interment, when no parent or child survives.
68.32.130	Waiver of right of interment.
68.32.140	Termination of vested right by waiver.
68.32.150	Limitations on vested rights.
68.32.160	Conveyance of plot to cemetery authority, effect.
68.32.170	Exemption from inheritance tax.

68.32.010 Presumption as to title. All plots conveyed to individuals are presumed to be the sole and separate property of the owner named in the instrument of conveyance. [1943 c 247 § 88; Rem. Supp. 1943 § 3778-88.]

68.32.020 Vested right of spouse. The spouse of an owner of any plot containing more than one interment space has a vested right of interment of his remains in the plot and any person thereafter becoming the spouse of the owner has a vested right of interment of his remains in the plot if more than one interment space is unoccupied at the time the person becomes the spouse of the owner. [1943 c 247 § 89; Rem. Supp. 1943 § 3778-89.]

68.32.030 Vested right—Termination. No conveyance or other action of the owner without the written consent or joinder of the spouse of the owner divests the spouse of a vested right of interment, except that a final decree of divorce between them terminates the vested right of interment unless otherwise provided in the decree. [1943 c 247 § 90; Rem. Supp. 1943 § 3778-90.]

68.32.040 Descent of title to plot. If no interment is made in an interment plot which has been transferred by deed or certificate of ownership to an individual owner, or if all remains previously interred are lawfully removed, upon the death of the owner, unless the owner has disposed of the plot either by specific devise or by a written declaration filed and recorded in the office of the cemetery authority, the plot descends to the surviving spouse or, if there is no surviving spouse, to the heirs at law of the owner subject to the rights of interment of the

decedent. [1979 c 21 § 15; 1943 c 247 § 91; Rem. Supp. 1943 § 3778-91.]

68.32.050 Affidavit as authorization. An affidavit by a person having knowledge of the facts setting forth the fact of the death of the owner and the name of the person or persons entitled to the use of the plot pursuant to RCW 68.32.010 through 68.32.040, is complete authorization to the cemetery authority to permit the use of the unoccupied portions of the plot by the person entitled to the use of it. [1943 c 247 § 93; Rem. Supp. 1943 § 3778-93.]

68.32.060 Family plots—Alienability. Whenever an interment of the remains of a member or of a relative of a member of the family of the record owner or of the remains of the record owner is made in a plot transferred by deed or certificate of ownership to an individual owner and both the owner and the surviving spouse, if any, die with children then living without making disposition of the plot either by a specific devise, or by a written declaration filed and recorded in the office of the cemetery authority, the plot shall thereafter be held as a family plot and shall be subject to alienation only upon agreement of the children of the owner living at the time of said alienation. [1979 c 21 § 16; 1943 c 247 § 98; Rem. Supp. 1943 § 3778-98.]

68.32.070 Joint tenants—Vested rights. In a conveyance to two or more persons as joint tenants each joint tenant has a vested right of interment in the plot conveyed. [1943 c 247 § 94; Rem. Supp. 1943 § 3778-94.]

68.32.080 Joint tenants—Survivorship. Upon the death of a joint tenant, the title to the plot held in joint tenancy immediately vests in the survivors, subject to the vested right of interment of the remains of the deceased joint tenant. [1943 c 247 § 95; Rem. Supp. 1943 § 3778-95.]

Joint tenants, simultaneous death: RCW 11.05.030.

68.32.090 Joint tenants—Identification. An affidavit by any person having knowledge of the facts setting forth the fact of the death of one joint tenant and establishing the identity of the surviving joint tenants named in the deed to any plot, when filed with the cemetery authority operating the cemetery in which the plot is located, is complete authorization to the cemetery authority to permit the use of the unoccupied portion of the plot in accordance with the directions of the surviving joint tenants or their successors in interest. [1943 c 247 § 96; Rem. Supp. 1943 § 3778-96.]

68.32.100 Co-owners may designate representative. When there are several owners of a plot, or of rights of interment in it, they may designate one or more persons to represent the plot and file written notice of designation with the cemetery authority. In the absence of such notice or of written objection to its so doing, the cemetery authority is not liable to any owner for interring or

permitting an interment in the plot upon the request or direction of any co-owner of the plot. [1943 c 247 § 97; Rem. Supp. 1943 § 3778-97.]

68.32.110 Order of interment—General. In a family plot one grave, niche or crypt may be used for the owner's interment; one for the owner's surviving spouse, if any, who by law has a vested right of interment in it; and in those remaining, if any, the parents and children of the deceased owner in order of death may be interred without the consent of any person claiming any interest in the plot. [1943 c 247 § 99; Rem. Supp. 1943 § 3778-99.]

68.32.120 Order of interment, when no parent or child survives. If no parents or child survives, the right of interment goes in the order of death first, to the spouse of any child of the record owner, and second, in the order of death to the next heirs at law of the owner or the spouse of any heir at law. [1943 c 247 § 100; Rem. Supp. 1943 § 3778-100.]

68.32.130 Waiver of right of interment. Any surviving spouse, parent, child, or heir having a right of interment in a family plot may waive such right in favor of any other relative or spouse of a relative of the deceased owner; and upon such waiver the remains of the person in whose favor the waiver is made may be interred in the plot. [1943 c 247 § 101; Rem. Supp. 1943 § 3778-101.]

68.32.140 Termination of vested right by waiver. A vested right of interment may be waived and is terminated upon the interment elsewhere of the remains of the person in whom vested. [1943 c 247 § 102; Rem. Supp. 1943 § 3778-102.]

68.32.150 Limitations on vested rights. No vested right of interment gives to any person the right to have his remains interred in any interment space in which the remains of any deceased person having a prior vested right of interment have been interred, nor does it give any person the right to have the remains of more than one deceased person interred in a single interment space in violation of the rules and regulations of the cemetery in which the interment space is located. [1943 c 247 § 103; Rem. Supp. 1943 § 3778-103.]

68.32.160 Conveyance of plot to cemetery authority, effect. A cemetery authority may take and hold any plot conveyed or devised to it by the plot owner so that it will be inalienable, and interments shall be restricted to the persons designated in the conveyance or devise. [1943 c 247 § 104; Rem. Supp. 1943 § 3778-104.]

68.32.170 Exemption from inheritance tax. Cemetery property passing to an individual by reason of the death of the owner is exempt from all inheritance taxes. [1943 c 247 § 92; Rem. Supp. 1943 § 3778-92.]

Reviser's note: The inheritance tax was repealed by 1981 2nd ex.s. c 7 § 83.100.160 (Initiative Measure No. 402). See RCW 83.100.900. For later enactment, see chapter 83.100 RCW.

Chapter 68.36
ABANDONED LOTS

Sections

68.36.010	Sale of abandoned space—Presumption of abandonment.
68.36.020	Notice—Requisites—Limitation on placing.
68.36.030	Petition for order of abandonment—Notice and hearing.
68.36.040	Service of notice.
68.36.050	Hearing—Order—Attorney's fee.
68.36.060	Contract for care before adjudication.
68.36.070	Contract for care within one year after adjudication.
68.36.080	Sale after one year.
68.36.090	Disposition of proceeds.
68.36.100	Petition may cover several lots.

68.36.010 Sale of abandoned space—Presumption of abandonment. The ownership of or right in or to unoccupied cemetery space in this state shall, upon abandonment, be subject to forfeiture and sale by the person, association, corporation or municipality having ownership or management of the cemetery containing such unoccupied cemetery space, for the purpose of providing for *perpetual care. The continued failure by an owner to maintain or care for an unoccupied cemetery lot, unoccupied part of lot, unoccupied lots or parts of lots for a period of five years shall create and establish a presumption that the same has been abandoned. [1943 c 247 § 78; Rem. Supp. 1943 § 3778–78.]

***Reviser's note:** The term "perpetual care" referred to herein originally appeared throughout this chapter and chapters 68.40 and 68.44 RCW. The legislature in 1953 c 290 amended most sections in these chapters to read "endowment care". 1953 c 290 § 24 provides that it is a misdemeanor for any cemetery authority, cemetery broker, etc., to represent that any fund set up for maintaining care is perpetual. See RCW 68.40.085.

68.36.020 Notice—Requisites—Limitation on placing. Before such five year period shall commence to run, the owner or manager of the cemetery shall place upon and during such five year period shall maintain upon such unoccupied cemetery space a suitable notice, setting forth the date the notice is placed thereon and stating that such unoccupied space is subject to forfeiture and sale by the owner or manager of the cemetery to provide for *perpetual care, if the owner of such unoccupied space fails during the next five years following the date of the notice to maintain or care for the same or unless the owner of such unoccupied space contracts for the *perpetual care of the same: *Provided, however,* That such a notice cannot be placed on the unoccupied space in any cemetery lot until twenty years have elapsed since the last interment in any such lot of a member of the immediate family of the record owner. Members of the immediate family shall be construed to include surviving spouse, children, parents, and brothers and sisters. [1943 c 247 § 79; Rem. Supp. 1943 § 3778–79.]

***Reviser's note:** "perpetual care", see note following RCW 68.36.010.

68.36.030 Petition for order of abandonment—Notice and hearing. After such five year period, the

owner or manager of the cemetery may file in the office of the county clerk for the county in which the cemetery is located a verified petition, setting forth its ownership or management of the cemetery, the facts relating to the continued failure by the owner for a period of five consecutive years to maintain or care for such cemetery lot, part of lot, lots or parts of lots and such facts relating to the ownership thereof as petitioner may have, and asking for an order of the superior court for such county, adjudging the lot, part of lot, lots or parts of lots to have been abandoned.

At the time of filing such petition, the owner or manager of the cemetery shall apply for and the superior court for such county shall fix a time for the hearing of the petition not less than sixty days nor more than ninety days from the time of the application. Not less than sixty days before the time fixed for the hearing of the petition, notice of the hearing and the nature and object of the same shall be given to the owner of such unoccupied space, as herein provided. [1943 c 247 § 80; Rem. Supp. 1943 § 3778–80.]

68.36.040 Service of notice. The notice may be served personally upon the owner, or may be given by the mailing of the notice by registered mail to the owner to his last known address and by publishing the notice three times in a legal newspaper published in the county in which the cemetery is located, and if there be no legal newspaper in the county, then in a legal newspaper published in an adjoining county, and if there be no legal newspaper in an adjoining county, then in a legal newspaper published at the capital of the state. In the event that the whereabouts of the owner is unknown, or if the owner be unknown, then the notice may be given to such owner, unknown owner or unknown claimant, and all other persons or parties claiming any right, title or interest therein, by publishing the notice three times in a legal newspaper as aforesaid. The affidavit of the owner or manager of the cemetery involved to the effect that such owner or claimant is unknown to him and that he exercised diligence in attempting to locate such unknown parties shall, if filed in the proceeding, be conclusive to that effect. [1943 c 247 § 81; Rem. Supp. 1943 § 3778–81.]

68.36.050 Hearing—Order—Attorney's fee. Thereupon, such owner or claimant may appear and make answer to the allegations of said petition, and in case of his failure so to do prior to the day fixed for hearing, his default shall be entered and it shall then be the duty of the superior court for such county to immediately enter an order adjudging such unoccupied space to have been abandoned and subject to sale at the expiration of one year by the person, association, corporation or municipality having ownership or management of the cemetery containing the same. In the event the owner or claimant shall appear and file his answer prior to the day fixed for the hearing, the presumption of abandonment shall no longer exist, and on the day fixed for the hearing of said petition or on any subsequent day to

which the hearing of the cause is adjourned, the allegations and proof of the parties shall be presented to the court and if the court shall determine therefrom that there has been a continued failure to maintain or care for such unoccupied space for a period of five consecutive years preceding the filing of said petition, an order shall be entered accordingly adjudging such unoccupied space to have been abandoned and subject to sale at the expiration of one year by the person, association, corporation or municipality having ownership of the cemetery containing the same. Upon any adjudication of abandonment, the court shall fix such sum as it shall deem reasonable as an attorney's fee for petitioner's attorney for each lot, part of lot, lots or parts of lots adjudged to have been abandoned in such proceedings. [1943 c 247 § 82; Rem. Supp. 1943 § 3778-82.]

68.36.060 Contract for care before adjudication. If at any time before the adjudication of abandonment the owner of an unoccupied space contracts with the owner or manager of the cemetery for the endowment care of the space, the court shall dismiss the proceedings as to such unoccupied space. [1953 c 290 § 1; 1943 c 247 § 83; Rem. Supp. 1943 § 3778-83.]

68.36.070 Contract for care within one year after adjudication. If at any time within one year after the adjudication of abandonment, the former owner of the unoccupied space shall contract for its endowment care, and reimburse the owner or manager of the cemetery for the expense of the proceedings, including attorney's fees, the space shall not be sold and the order adjudging it to have been abandoned shall be vacated upon petition of the former owner. [1953 c 290 § 2; 1943 c 247 § 84; Rem. Supp. 1943 § 3778-84.]

68.36.080 Sale after one year. One year after the entry of the order adjudging such lot, part of lot, lots or parts of lots to have been abandoned, the owner or manager of the cemetery in which the same is located shall have the power to sell the same, in whole or in part, at public or private sale, and convey by deed good, clear and sufficient title thereto. [1943 c 247 § 85; Rem. Supp. 1943 § 3778-85.]

68.36.090 Disposition of proceeds. Not more than twenty percent of the funds realized from the sale of abandoned space shall be used to defray the expenses of the proceedings to abandon, and the improving of it in such manner as to place it in condition for care, and the balance shall be placed immediately in a trust fund or shall be immediately transferred to a nonprofit organization to be used exclusively for the endowment care and maintenance of the cemetery. [1953 c 290 § 3; 1943 c 247 § 86; Rem. Supp. 1943 § 3778-86.]

68.36.100 Petition may cover several lots. In any one petition for abandonment, a petitioner may, irrespective of diversity of ownership, include in any such petition as many lots or parts of lots as come within the provisions

of *this act. The petition for abandonment shall be entitled: "In the Matter of the Abandonment, Forfeiture and Sale of Unoccupied and Uncared for Space located in ----- Cemetery." [1943 c 247 § 87; Rem. Supp. 1943 § 3778-87.]

*Reviser's note: "this act", see note following RCW 68.04.020.

Chapter 68.40

ENDOWMENT AND NONENDOWMENT CARE

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68.40.010	Cemetery authorities—Deposit in endowment care fund required.
68.40.025	Nonendowed sections—Identification.
68.40.040	Endowment care fiscal reports—Review by plot owners.
68.40.060	May accept property in trust—Application of income.
68.40.085	Representing fund as perpetual—Penalty.
68.40.090	Penalty.
68.40.095	Certain cemeteries exempt from chapter.
68.40.100	Only nonendowment care cemeteries now in existence are authorized.
68.40.900	Effective date—1987 c 331.

68.40.010 Cemetery authorities—Deposit in endowment care fund required. After July 1, 1987, a cemetery authority not exempt under this chapter shall deposit in an endowment care fund not less than the following amounts for plots sold: Ten percent of the gross sales price, with a minimum of ten dollars for each adult grave; ten percent of the gross sales price, with a minimum of five dollars for each niche; and ten percent of the gross sales price, with a minimum of thirty dollars for each crypt.

In the event that a cemetery authority sells a lot, crypt, or niche at a price that is less than its current list price, or gives away, bequeaths, or otherwise gives title to a lot, crypt, or niche, such lot, crypt, or niche shall be endowed at the rate at which it would normally be endowed: A minimum of ten percent of normal sales price or ten dollars per lot, whichever is greater; ten percent of normal sales price or five dollars per niche, whichever is greater; and ten percent of normal sales price or thirty dollars per crypt, whichever is greater.

The deposits shall be made not later than the twentieth day of the month following the final payment on the sale price. If a contract for crypts, niches, or graves is sold, pledged, or otherwise encumbered as security for a loan by the cemetery authority, the cemetery authority shall pay into the endowment care fund ten percent of the gross sales price with a minimum of ten dollars for each adult grave, five dollars for each niche, and thirty dollars for each crypt within twenty days of receipt of payment of the proceeds from such sale or loan.

Any cemetery hereafter established shall have deposited in an endowment care fund the sum of twenty-five thousand dollars before disposing of any plot or making any sale thereof. [1987 c 331 § 35; 1984 c 53 § 1; 1961 c 133 § 2; 1953 c 290 § 4; 1943 c 247 § 118; Rem. Supp. 1943 § 3778-118.]

68.40.025 Nonendowed sections—Identification. Cemeteries with nonendowed sections opened before July 1, 1987, shall only be required to endow sections opened after July 1, 1987. On the face of any contract, receipt, or deed used for sales of nonendowed lots shall be prominently displayed the words "Nonendowment section." All nonendowed sections shall be identified as such by posting of a legible sign containing the following phrase: "Nonendowment section." [1987 c 331 § 36.]

68.40.040 Endowment care fiscal reports—Review by plot owners. A cemetery authority not exempt under this chapter shall file in its principal office for review by plot owners the previous seven fiscal years' endowment care reports as filed with the cemetery board in accordance with RCW 68.44.150. [1987 c 331 § 37; 1953 c 290 § 7; 1943 c 247 § 122; Rem. Supp. 1943 § 3778-122.]

68.40.060 May accept property in trust—Application of income. The cemetery authority of an endowment care cemetery may accept any property bequeathed, granted, or given to it in trust and may apply the income from such property bequeathed, granted, or given to in trust to any or all of the following purposes:

- (1) Improvement or embellishment of all or any part of the cemetery or any lot in it;
- (2) Erection, renewal, repair, or preservation of any monument, fence, building, or other structure in the cemetery;
- (3) Planting or cultivation of trees, shrubs, or plants in or around any part of the cemetery;
- (4) Special care or ornamenting of any part of any plot, section, or building in the cemetery; and
- (5) Any purpose or use consistent with the purpose for which the cemetery was established or is maintained. [1987 c 331 § 38; 1953 c 290 § 8; 1943 c 247 § 129; Rem. Supp. 1943 § 3778-129.]

68.40.085 Representing fund as perpetual—Penalty. It is a misdemeanor for any cemetery authority, its officers, employees, or agents, or a cemetery broker or salesman to represent that an endowment care fund, or any other fund set up for maintaining care, is perpetual. [1953 c 290 § 24.]

68.40.090 Penalty. Any person, partnership, corporation, association, or his or its agents or representatives who shall violate any of the provisions of this chapter or make any false statement appearing on any sign, contract, agreement, receipt, statement, literature or other publication shall be guilty of a misdemeanor. [1987 c 331 § 39; 1943 c 247 § 125; Rem. Supp. 1943 § 3778-125.]

68.40.095 Certain cemeteries exempt from chapter. This chapter does not apply to any cemetery controlled and operated by a coroner, county, city, town, or cemetery district. [1987 c 331 § 40.]

68.40.100 Only nonendowment care cemeteries now in existence are authorized. After June 7, 1979, no nonendowment care cemetery may be established. However, any nonendowment care cemetery in existence on June 7, 1979, may continue to operate as a nonendowment care cemetery. [1979 c 21 § 18.]

68.40.900 Effective date—1987 c 331. See RCW 68.05.900.

Chapter 68.44 ENDOWMENT CARE FUND

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68.44.010	Funds authorized—Investments.
68.44.020	Use and care of funds.
68.44.030	Authorized investments.
68.44.060	Unauthorized loans—Penalty.
68.44.070	Purpose of endowment care—Validity.
68.44.080	Plans for care—Source of fund.
68.44.090	Covenant to care for cemetery.
68.44.100	Agreement by owner to care for plot.
68.44.110	Trustees of fund.
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68.44.120	Directors as trustees—Secretary.
68.44.130	Bank or trust company as trustee.
68.44.140	Compensation of trustees.
68.44.150	Annual report of condition of fund.
68.44.160	Contributions.
68.44.170	Use of income from fund.
68.44.180	Certain cemeteries exempt from chapter.
68.44.900	Effective date—1987 c 331.

68.44.010 Funds authorized—Investments. Any cemetery authority not exempt under chapter 68.40 RCW shall establish, maintain, and operate an inviolable endowment care fund. Endowment care, special care, and other cemetery authorities' endowment care funds may be commingled for investment and the income therefrom shall be divided between the funds in the proportion that each contributed to the sum invested. The funds shall be held in the name of the trustees appointed by the cemetery authority with the words "endowment care fund" being a part of the name. [1987 c 331 § 41; 1953 c 290 § 11; 1943 c 247 § 105; Rem. Supp. 1943 § 3778-105.]

68.44.020 Use and care of funds. Endowment care funds shall not be used for any purpose other than to provide, through income only, for the endowment care stipulated in the instrument by which the fund was established, and shall be kept separate and distinct from all assets of the cemetery authority. The principal shall forever remain inviolable and may not be reduced in any way not found within RCW 11.100.020. [1987 c 331 § 42; 1953 c 290 § 12. Prior: (i) 1943 c 247 § 106; Rem. Supp. 1943 § 3778-106. (ii) 1943 c 247 § 126; Rem. Supp. 1943 § 3778-126.]

68.44.030 Authorized investments. Endowment care funds shall be kept invested in accordance with the provisions of RCW 11.100.020 subject to the following restrictions:

(1) No officer or director of the cemetery authority, trustee of the endowment care or special care funds, or spouse, sibling, parent, grandparent, or issue of such officer, director, or trustee, shall borrow any of such funds for himself, directly or indirectly.

(2) No funds shall be loaned to the cemetery authority, its agents, or employees, or to any corporation, partnership, or other business entity in which the cemetery authority has any ownership interest.

(3) No funds shall be invested with persons or business entities operating in a business field directly related to cemeteries, including, but not limited to, mortuaries, monument production and sales, florists, and rental of funeral facilities.

(4) Notwithstanding any other provisions contained in this section, funds may be invested in any commercial bank, mutual savings bank, or savings and loan association duly chartered and operating under the laws of the United States or statutes of the state of Washington. [1985 c 30 § 138. Prior: 1984 c 149 § 175; 1979 c 21 § 19; 1953 c 290 § 13; 1943 c 247 § 127; Rem. Supp. 1943 § 3778-127.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

68.44.060 Unauthorized loans—Penalty. Every director or officer authorizing or consenting to a loan, and the person who receives a loan, in violation of RCW 68.44.030 are severally guilty of a class C felony punishable under chapter 9A.20 RCW. [1984 c 53 § 2; 1943 c 247 § 133; Rem. Supp. 1943 § 3778-133.]

68.44.070 Purpose of endowment care—Validity. The endowment care and special care funds and all payments or contributions thereto are hereby expressly permitted for charitable and eleemosynary purposes. Endowment care and such contributions are provisions for the discharge of a duty from the persons contributing to the persons interred and to be interred in the cemetery and provisions for the benefit and protection of the public by preserving and keeping cemeteries from becoming unkempt and places of reproach and desolation in the communities in which they are situated. No payment, or contribution for general endowment care, is invalid by reason of any indefiniteness or uncertainty of the persons designated as beneficiaries in the instruments creating the trust, nor is the fund or any contribution to it invalid as violating any law against perpetuities, or the suspension of the power of alienation of title to property. [1953 c 290 § 16. Prior: (i) 1943 c 247 § 130; Rem. Supp. 1943 § 3778-130. (ii) 1943 c 247 § 117; Rem. Supp. 1943 § 3778-117.]

68.44.080 Plans for care—Source of fund. The cemetery authority may from time to time adopt plans for the general care, maintenance, and embellishment of its cemetery, and charge and collect from all purchasers of plots such reasonable sum as it deems will aggregate a fund, the reasonable income from which will provide

care, maintenance, and embellishment on an endowment basis. [1953 c 290 § 17; 1943 c 247 § 108; Rem. Supp. 1943 § 3778-108.]

68.44.090 Covenant to care for cemetery. Upon payment of the purchase price and the amount fixed as a proportionate contribution for endowment care, there may be included in the deed of conveyance or by separate instrument, an agreement to care, in accordance with the plan adopted, for the cemetery and its appurtenances on an endowment basis to the proportionate extent the income received by the cemetery authority from the contribution will permit. [1953 c 290 § 18; 1943 c 247 § 109; Rem. Supp. 1943 § 3778-109.]

68.44.100 Agreement by owner to care for plot. Upon the application of an owner of a plot, and upon the payment by him of the amount fixed as a reasonable and proportionate contribution for endowment care, a cemetery authority may enter into an agreement with him for the care of his plot and its appurtenances. [1953 c 290 § 19; 1943 c 247 § 110; Rem. Supp. 1943 § 3778-110.]

68.44.110 Trustees of fund. Unless an association of lot owners has been created for the purpose of appointing trustees, the cemetery authority shall appoint a board of not less than three members as trustees for its endowment care fund, who shall hold office subject to the direction of the cemetery authority. [1987 c 331 § 43; 1953 c 290 § 20; 1943 c 247 § 111; Rem. Supp. 1943 § 3778-111.]

68.44.115 Trustee to file statement with board—Resignation of trusteeship. To be considered qualified as a trustee, each trustee of an endowment care fund appointed in accordance with this chapter shall file with the board a statement of acceptance of fiduciary responsibility, on a form approved by the board, before assuming the duties of trustee. The trustee shall remain in the trustee's fiduciary capacity until such time as the trustee advises the cemetery board in writing of the trustee's resignation of trusteeship. [1987 c 331 § 44.]

68.44.120 Directors as trustees—Secretary. The directors of a cemetery authority may be the trustees of its endowment care fund. When the fund is in the care of the directors as a board of trustees the secretary of the cemetery authority shall act as its secretary and keep a true record of all of its proceedings. [1987 c 331 § 45; 1953 c 290 § 21; 1943 c 247 § 112; Rem. Supp. 1943 § 3778-112.]

68.44.130 Bank or trust company as trustee. In lieu of the appointment of a board of trustees of its endowment care fund, any cemetery authority may appoint as sole trustee of its endowment care fund any bank or trust company qualified to engage in the trust business, and said bank or trust company shall be authorized to receive and accept said fund, including any accumulated endowment care fund in existence at the time of its appointment. [1987 c 331 § 46; 1943 c 247 § 113; Rem. Supp. 1943 § 3778-113.]

68.44.140 Compensation of trustees. Compensation to the board of trustees or trustee for services as trustee and other compensation for administration of trust funds shall not exceed in the aggregate the customary fees charged by banks and trust companies for like services. Such fees may not be paid from the fund principal. [1987 c 331 § 47; 1979 c 21 § 20; 1943 c 247 § 114; Rem. Supp. 1943 § 3778-114.]

68.44.150 Annual report of condition of fund. The cemetery authority or the trustees in whose names the funds are held shall, annually, and within ninety days after the end of the calendar or fiscal year of the cemetery authority, make and keep on file for seven years a true and correct written report, verified on oath by an officer of the cemetery authority or by the oath of one or more of the trustees, showing the actual financial condition of the funds. [1987 c 331 § 48; 1979 c 21 § 21; 1943 c 247 § 115; Rem. Supp. 1943 § 3778-115.]

68.44.160 Contributions. A cemetery authority which has established an endowment care fund may take and hold, as a part of or incident to the fund, any property, real, personal, or mixed, bequeathed, devised, granted, given, or otherwise contributed to it for its endowment care fund. [1953 c 290 § 22; 1943 c 247 § 116; Rem. Supp. 1943 § 3778-116.]

68.44.170 Use of income from fund. The income from the endowment care fund shall be used solely for the general care, maintenance, and embellishment of the cemetery, and shall be applied in such manner as the cemetery authority may from time to time determine to be for the best interest of the cemetery. [1953 c 290 § 23; 1943 c 247 § 107; Rem. Supp. 1943 § 3778-107.]

68.44.180 Certain cemeteries exempt from chapter. This chapter does not apply to any cemetery controlled and operated by a coroner, county, city, town, or cemetery district. [1987 c 331 § 49.]

68.44.900 Effective date—1987 c 331. See RCW 68.05.900.

- 68.46.080 Other use of trust funds prohibited.
- 68.46.090 Financial reports—Filing—Verification.
- 68.46.100 Information to be furnished purchaser in contract—Information to be furnished purchaser of unconstructed crypts or niches or undeveloped graves.
- 68.46.110 Compliance required.
- 68.46.125 Certain cemeteries exempt from chapter.
- 68.46.130 Exemptions from chapter granted by board.
- 68.46.150 Sales licenses—Qualifications.
- 68.46.160 Contract forms—Filing.
- 68.46.170 Sales licenses—Requirement.
- 68.46.900 Effective date—1987 c 331.

Prearrangement funeral service contracts: RCW 18.39.240 through 18.39.360.

68.46.010 Definitions. Unless the context clearly indicates otherwise, the following terms as used only in this chapter have the meaning given in this section:

(1) "Prearrangement contract" means a contract for purchase of cemetery merchandise or services, unconstructed crypts or niches, or undeveloped graves to be furnished at a future date for a specific consideration which is paid in advance by one or more payments in one sum or by installment payments.

(2) "Cemetery authority" shall have the same meaning as in RCW 68.04.190, and shall also include any individual, partnership, firm, joint venture, corporation, company, association, or joint [joint] stock company, any of which sells cemetery services or merchandise, unconstructed crypts or niches, or undeveloped graves through a prearrangement contract, but shall not include insurance companies licensed under chapter 48.05 RCW.

(3) "Cemetery merchandise or services" and "merchandise or services" mean those services normally performed by cemetery authorities, including the sale of monuments, markers, memorials, nameplates, liners, vaults, boxes, urns, vases, interment services, or any one or more of them.

(4) "Prearrangement trust fund" means all funds required to be maintained in one or more funds for the benefit of beneficiaries by either this chapter or by the terms of a prearrangement contract, as herein defined.

(5) "Depository" means a qualified public depository as defined by RCW 39.58.010, a credit union as governed by chapter 31.12 RCW, a mutual savings bank as governed by Title 32 RCW, a savings and loan association as governed by Title 33 RCW, and a federal credit union or a federal savings and loan association organized, operated, and governed by any act of congress, in which prearrangement funds are deposited by any cemetery authority.

(6) "Board" means the cemetery board established under chapter 68.05 RCW or its authorized representative.

(7) "Undeveloped grave" means any grave in an area which a cemetery authority has not landscaped and groomed to the extent customary in the cemetery industry in that community. [1979 c 21 § 22; 1975 1st ex.s. c 55 § 1; 1973 1st ex.s. c 68 § 1.]

68.46.020 Prearrangement trust funds—Required. Any cemetery authority selling by prearrangement contracts any merchandise or services shall establish and maintain one or more prearrangement funds for the

Chapter 68.46

PREARRANGEMENT CONTRACTS

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68.46.010	Definitions.
68.46.020	Prearrangement trust funds—Required.
68.46.030	Prearrangement trust funds—Deposits—Bond requirements.
68.46.040	Prearrangement trust funds—Deposit with qualified public depository or certain insured instruments.
68.46.050	Withdrawals from trust funds.
68.46.055	Cemetery authority may not enter into certain retail contracts which require or permit authority to furnish merchandise, services, etc., at future date—Exclusion of transactions under chapter 63.14 RCW—Prearrangement contracts—Duty of cemetery authority upon death of purchaser or owner.
68.46.060	Termination of contract by purchaser or beneficiary.
68.46.070	Involuntary termination of contract—Refund.
68.46.075	Inactive contracts—Funds transfer—Obligations.

benefit of beneficiaries of prearrangement contracts. [1973 1st ex.s. c 68 § 2.]

68.46.030 Prearrangement trust funds—Deposits—Bond requirements. (1) A cemetery authority shall deposit in its prearrangement trust account a percentage of all funds collected in payment of each prearrangement contract equal to the greater of:

(a) Fifty percent of the contract price; or
 (b) The percentage which the total of the wholesale cost of merchandise and the direct cost of services to be provided pursuant to the contract is of the total contract price.

(2) Any cemetery authority which does not file and maintain with the board a bond as provided in subsection (4) of this section shall deposit in its prearrangement trust fund fifty percent, or greater percentage as determined under subsection (1) of this section, of all moneys received in payment of each prearrangement contract, excluding sales tax and endowment care if such charge is made.

(3) Any cemetery authority which files and maintains with the board a bond as provided in subsection (4) of this section shall deposit in its prearrangement trust fund each payment as made on the last fifty percent, or greater percentage as determined under subsection (1) of this section, of each prearrangement contract, excluding sales tax and endowment care, if such charge is made.

(4) Each cemetery authority electing to make payments to its prearrangement trust fund pursuant to subsection (3) of this section shall file and maintain with the board a bond, issued by a surety company authorized to do business in the state, in the amount by which the cemetery authority's contingent liability for refunds pursuant to RCW 68.46.060 exceeds the amount deposited in its prearrangement trust fund. The bond shall run to the state and shall be conditioned that it is for the use and benefit of any person requesting a refund pursuant to RCW 68.46.060 if the cemetery authority does not promptly pay to said person the refund due pursuant to RCW 68.46.060. In addition to any other remedy, every person not promptly receiving the refund due pursuant to RCW 68.46.060 may sue the surety for the refund. The liability of the surety shall not exceed the amount of the bond. Termination or cancellation shall not be effective unless notice is delivered by the surety to the board at least thirty days prior to the date of termination or cancellation. The board shall immediately notify the cemetery authority affected by the termination or cancellation by certified mail, return receipt requested. The cemetery authority shall thereupon obtain another bond or make such other arrangement as may be satisfactory to the board to assure its ability to make refunds pursuant to RCW 68.46.060.

(5) Deposits to the prearrangement trust fund shall be made not later than the twentieth day of each month following receipt of each payment required to be deposited. If a prearrangement contract is sold, pledged, or otherwise encumbered as security for a loan by the cemetery authority, the cemetery authority shall pay into the

prearrangement trust fund fifty percent of the total sale price of the prearrangement contract within twenty days of receipt of payment of the proceeds from the sale or loan.

(6) Any failure to fund a prearrangement contract as required by this section shall be grounds for revocation of the cemetery authority's prearrangement sales license. [1984 c 53 § 3; 1979 c 21 § 24; 1973 1st ex.s. c 68 § 3.]

68.46.040 Prearrangement trust funds—Deposit with qualified public depository or certain insured instruments. All prearrangement trust funds shall be deposited in a qualified public depository as defined by RCW 68.46.010 or in instruments insured by any agency of the federal government, if these securities are held in public depository. Such savings accounts shall be designated as the "prearrangement trust fund" by name and the particular cemetery authority for the benefit of the beneficiaries named in any prearrangement contract. [1987 c 331 § 50; 1973 1st ex.s. c 68 § 4.]

68.46.050 Withdrawals from trust funds. A bank, trust company, or savings and loan association designated as the depository of prearrangement funds shall permit withdrawal by a cemetery authority of all funds deposited under any specific prearrangement contract plus interest accrued thereon, under the following circumstances and conditions:

(1) If the cemetery authority files a verified statement with the depository that the prearrangement merchandise and services covered by a contract have been furnished and delivered in accordance therewith; or

(2) If the cemetery authority files a verified statement that a specific prearrangement contract has been canceled in accordance with its terms. [1973 1st ex.s. c 68 § 5.]

68.46.055 Cemetery authority may not enter into certain retail contracts which require or permit authority to furnish merchandise, services, etc., at future date—Exclusion of transactions under chapter 63.14 RCW—Prearrangement contracts—Duty of cemetery authority upon death of purchaser or owner. (1) No cemetery authority may enter into a retail contract for the purchase of debentures, shares, scrip, bonds, notes, or any instrument or evidence of indebtedness, excluding retail installment sales transactions governed by chapter 63.14 RCW, which directly or indirectly requires or permits the cemetery authority to furnish to the holder at a future date cemetery merchandise or services, or crypts, niches, or graves.

(2) A cemetery authority which enters into prearrangement contracts for the sale of unconstructed crypts or niches or undeveloped graves or which conveys undeveloped graves by gift shall maintain an adequate inventory of constructed crypts or niches and developed graves which in quality are equal to or better than the unconstructed crypts or niches, or undeveloped graves if they were constructed or developed. In the event of the death of a purchaser or owner of an unconstructed crypt or niche or undeveloped grave before the unconstructed

crypt or niche or undeveloped grave is constructed or developed the cemetery authority shall provide a constructed crypt or niche or developed grave of equal or better quality without additional cost or charge. If two or more unconstructed crypts or niches or undeveloped graves are conveyed with the intention that the crypts or niches or graves shall be contiguous to each other or maintained together as a group and the death of any one purchaser or owner in such group occurs before the unconstructed crypts or niches or undeveloped graves are developed, the cemetery authority shall provide additional constructed crypts or niches or developed graves of equal or better quality contiguous to each other or together as a group as originally intended to other purchasers or owners in the group without additional cost or charge. [1984 c 53 § 8.]

68.46.060 Termination of contract by purchaser or beneficiary. Any purchaser or beneficiary or beneficiaries may, upon written demand of any cemetery authority, demand that any prearrangement contract with such cemetery authority be terminated. In such event, the cemetery authority shall within thirty days refund to such purchaser or beneficiary or beneficiaries fifty percent of the moneys received less the contractual price of any merchandise delivered or services performed before the termination plus interest earned. In any case, where, under a prearrangement contract there is more than one beneficiary, no written demand as provided in this section shall be honored by any cemetery authority unless the written demand provided for in this section shall bear the signatures of all of such beneficiaries. [1987 c 331 § 51; 1984 c 53 § 4; 1979 c 21 § 25; 1973 1st ex.s. c 68 § 6.]

68.46.070 Involuntary termination of contract—Refund. Prearrangement contracts shall terminate upon demand of the purchaser of the contract if the cemetery authority shall go out of business, become insolvent or bankrupt, make an assignment for the benefit of creditors, or for any other reason be unable to fulfill the obligations under the contract. Upon demand by the purchaser or beneficiary or beneficiaries of any prearrangement contract, the cemetery authority shall refund one hundred percent of the original contract, less delivered services and merchandise, including funds held in deposit and interest earned thereon, unless otherwise ordered by a court of competent jurisdiction. [1987 c 331 § 52; 1979 c 21 § 26; 1973 1st ex.s. c 68 § 7.]

68.46.075 Inactive contracts—Funds transfer—Obligations. In the event the beneficiary or beneficiaries of a prearrangement contract make no claim within fifty years of the date of the contract for the merchandise and services provided in the prearrangement contract, the funds deposited in the prearrangement trust funds attributable to that contract and the interest on said funds shall be transferred to the cemetery authority's endowment fund to be used for the uses and purposes for which the endowment fund was established. However,

the cemetery authority shall remain obligated for merchandise and services, unconstructed crypts or niches, and undeveloped graves under the terms of the prearrangement contract. Claims may be made for merchandise and services, unconstructed crypts or niches, and undeveloped graves on a prearrangement contract after the funds have been transferred to the endowment fund and shall be paid for from the endowment fund income to the extent of the funds attributable to the prearrangement contract. [1979 c 21 § 27.]

68.46.080 Other use of trust funds prohibited. Prearrangement trust funds shall not be used in any way, directly or indirectly, for the benefit of the cemetery authority or any director, officer, agent or employee of any cemetery authority, including, but not limited to any encumbrance, pledge, or other utilization or prearrangement trust funds as collateral or other security. [1973 1st ex.s. c 68 § 8.]

68.46.090 Financial reports—Filing—Verification. Any cemetery authority selling prearrangement merchandise or other prearrangement services shall file in its office or offices and with the cemetery board a written report upon forms prepared by the cemetery board which shall state the amount of the principle of the prearrangement trust fund or funds, the depository of such fund or funds, and cash on hand which is or may be due to such fund as well as such other information the board may deem appropriate. All information appearing on such written reports shall be revised at least annually. These reports shall be verified by the president, or the vice president, and one other officer of the cemetery authority, the accountant or auditor who prepared the report, and, if required by the board for good cause, a certified public accountant in accordance with generally accepted auditing standards. Verification of these reports by a certified public accountant in accordance with generally accepted auditing standards shall be required on reports from cemetery authorities which manage prearrangement trust funds totaling in excess of five hundred thousand dollars. [1983 c 190 § 1; 1977 ex.s. c 351 § 5; 1973 1st ex.s. c 68 § 9.]

Severability—1977 ex.s. c 351: See note following RCW 68.05.040.

68.46.100 Information to be furnished purchaser in contract—Information to be furnished purchaser of unconstructed crypts or niches or undeveloped graves. Every prearrangement contract shall contain language which informs the purchaser of the prearrangement trust fund and the amount to be deposited in the prearrangement trust fund, which shall not be less than fifty percent of the cash purchase price of the merchandise and services in the contract and shall not include charges for endowment care when included in the purchase price.

Every prearrangement contract shall contain language prominently featured on the face of the contract disclosing to the purchaser what items will be delivered before need, either stored or installed, and thus not subject to funding or refund.

Every prearrangement contract for the sale of unconstructed crypts or niches or undeveloped graves and every conveyance instrument shall contain language which informs the purchaser that if the purchaser dies before the unconstructed crypt or niche or undeveloped grave is constructed or developed the cemetery authority must provide, without additional cost or charge, a constructed crypt or niche or developed grave of equal or better quality than the unconstructed crypt or niche or undeveloped grave would have been if it were constructed or developed. [1987 c 331 § 53; 1984 c 53 § 5; 1973 1st ex.s. c 68 § 10.]

68.46.110 Compliance required. No cemetery authority shall sell, offer to sell or authorize the sale of cemetery merchandise or services or accept funds in payment of any prearrangement contract, either directly or indirectly, unless such acts are performed in compliance with *this act, and under the authority of a valid, subsisting and unsuspended certificate of authority to operate a cemetery in this state by the Washington state cemetery board. [1973 1st ex.s. c 68 § 11.]

*Reviser's note: For translation of "this act" [1973 1st ex.s. c 68], see Codification Tables, Volume 0.

68.46.125 Certain cemeteries exempt from chapter. This chapter does not apply to any cemetery controlled and operated by a coroner, county, city, town, or cemetery district. [1987 c 331 § 54.]

68.46.130 Exemptions from chapter granted by board. The cemetery board may grant an exemption from any or all of the requirements of this chapter relating to prearrangement contracts to any cemetery authority which:

- (1) Sells less than twenty prearrangement contracts per year; and
- (2) Deposits one hundred percent of all funds received into a trust fund under RCW 68.46.030, as now or hereafter amended. [1979 c 21 § 43.]

68.46.150 Sales licenses—Qualifications. To qualify for and hold a prearrangement sales license a cemetery authority must comply with and qualify according to the provisions of this chapter. [1979 c 21 § 40.]

68.46.160 Contract forms—Filing. No cemetery authority shall use a prearrangement contract without first filing the form of such contract with the board: *Provided*, That the board may order the cemetery authority to cease using any prearrangement contract form which:

- (1) Is in violation of any provision of this chapter;
- (2) Is misleading or deceptive; or
- (3) Is being used in connection with solicitation by false, misleading or deceptive advertising or sales practices.

Use of a prearrangement contract form which is not on file with the board or which the board has ordered the cemetery authority not to use shall be a violation of this chapter. [1979 c 21 § 38.]

68.46.170 Sales licenses—Requirement. No cemetery authority shall enter into prearrangement contracts in this state unless the cemetery authority has obtained a prearrangement sales license issued by the board or its authorized representative and such license is then current and valid. [1979 c 21 § 23.]

68.46.900 Effective date—1987 c 331. See RCW 68.05.900.

Chapter 68.50 HUMAN REMAINS

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County commissioners to dispose of remains of indigents: RCW 36.39.030.

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Fellowship program in forensic pathology: RCW 28B.20.426.

Fetal deaths: Chapter 70.58 RCW.

Undertaker must file death certificate: RCW 70.58.240.

Veterans and relatives: Chapter 73.24 RCW.

68.50.010 Coroner's jurisdiction over remains. The jurisdiction of bodies of all deceased persons who come to their death suddenly when in apparent good health without medical attendance within the thirty-six hours preceding death; or where the circumstances of death indicate death was caused by unnatural or unlawful means; or where death occurs under suspicious circumstances; or where a coroner's autopsy or post mortem or coroner's inquest is to be held; or where death results from unknown or obscure causes, or where death occurs within one year following an accident; or where the death is caused by any violence whatsoever, or where death results from a known or suspected abortion; whether self-induced or otherwise; where death apparently results from drowning, hanging, burns, electrocution, gunshot wounds, stabs or cuts, lightning, starvation, radiation, exposure, alcoholism, narcotics or other addictions, tetanus, strangulations, suffocation or smothering; or where death is due to premature birth or still birth; or where death is due to a violent contagious disease or suspected contagious disease which may be a public health hazard; or where death results from alleged rape, carnal knowledge or sodomy, where death occurs in a jail or prison; where a body is found dead or is not claimed by relatives or friends, is hereby vested in the county coroner, which bodies may be removed and

placed in the morgue under such rules as are adopted by the coroner with the approval of the county commissioners, having jurisdiction, providing therein how the bodies shall be brought to and cared for at the morgue and held for the proper identification where necessary. [1963 c 178 § 1; 1953 c 188 § 1; 1917 c 90 § 3; RRS § 6042. Formerly RCW 68.08.010.]

68.50.015 Immunity for determining cause and manner of death—Judicial review of determination. A county coroner or county medical examiner or persons acting in that capacity shall be immune from civil liability for determining the cause and manner of death. The accuracy of the determinations is subject to judicial review. [1987 c 263 § 1.]

68.50.020 Notice to coroner—Penalty. It shall be the duty of every person who knows of the existence and location of a dead body coming under the jurisdiction of the coroner as set forth in RCW 68.50.010, to notify the coroner thereof in the most expeditious manner possible, unless such person shall have good reason to believe that such notice has already been given. Any person knowing of the existence of such dead body and not having good reason to believe that the coroner has notice thereof and who shall fail to give notice to the coroner as aforesaid, shall be guilty of a misdemeanor. [1987 c 331 § 55; 1917 c 90 § 4; RRS § 6043. Formerly RCW 68.08.020.]

68.50.030 Free care and delivery of remains. No charge shall be made for the removal to or care of any body while in the morgue and upon the request of relatives or friends the body after investigation shall be delivered to the friends at any point in the city without charge. [1917 c 90 § 5; RRS § 6044. Formerly RCW 68.08.030.]

68.50.035 Unlawful to refuse burial to non-Caucasian. It shall be unlawful for any cemetery under this chapter to refuse burial to any person because such person may not be of the Caucasian race. [1953 c 290 § 53. Formerly RCW 68.05.260.]

Reviser's note: RCW 68.50.035 (formerly RCW 68.05.260) was declared unconstitutional in *Price v. Evergreen Cemetery Co. of Seattle* (1960) 157 Wash. Dec. 249.

68.50.040 Deceased's effects to be listed. Duplicate lists of all jewelry, moneys, papers, and other personal property of the deceased shall be made immediately upon finding the same by the coroner or his assistants. The original of such lists shall be kept as a public record at the morgue and the duplicate thereof shall be forthwith duly certified to by the coroner and filed with the county auditor. [1917 c 90 § 6; RRS § 6045. Formerly RCW 68.08.040.]

68.50.050 Removal or concealment of body—Penalty. Any person, not authorized by the coroner or his deputies, who removes the body of a deceased person not claimed by a relative or friend, or who came to their death by reason of violence or from unnatural causes or where there shall exist reasonable grounds for the belief

that such death has been caused by unlawful means at the hands of another, to any undertaking rooms or elsewhere, or any person who directs, aids or abets such taking, and any person who in any way conceals the body of a deceased person for the purpose of taking the same to any undertaking rooms or elsewhere, shall in each of said cases be guilty of a gross misdemeanor and upon conviction thereof shall be punished by fine of not more than one thousand dollars, or by imprisonment in the county jail for not more than one year or by both fine and imprisonment in the discretion of the court. [1917 c 90 § 7; RRS § 6046. Formerly RCW 68.08.050.]

68.50.060 Bodies for instruction purposes. Any physician or surgeon of this state, or any medical student under the authority of any such physician or surgeon, may obtain, as hereinafter provided, and have in his possession human dead bodies, or the parts thereof, for the purposes of anatomical inquiry or instruction. [1891 c 123 § 1; RRS § 10026. Formerly RCW 68.08.060.]

68.50.070 Bodies, when may be used for dissection. Any sheriff, coroner, keeper or superintendent of a county poorhouse, public hospital, county jail, or state institution shall surrender the dead bodies of persons required to be buried at the public expense, to any physician or surgeon, to be by him used for the advancement of anatomical science, preference being given to medical schools in this state, for their use in the instruction of medical students. If the deceased person during his last sickness requested to be buried, or if within thirty days after his death some person claiming to be a relative or a responsible officer of a church organization with which the deceased at the time of his death was affiliated requires the body to be buried, his body shall be buried. [1959 c 23 § 1; 1953 c 224 § 2; 1891 c 123 § 2; RRS § 10027. Formerly RCW 68.08.070.]

68.50.080 Certificate and bond before receiving bodies. Every physician or surgeon before receiving the dead body must give to the board or officer surrendering the same to him a certificate from the medical society of the county in which he resides, or if there is none, from the board of supervisors of the same, that he is a fit person to receive such dead body. He must also give a bond with two sureties, that each body so by him received will be used only for the promotion of anatomical science, and that it will be used for such purpose in this state only, and so as in no event to outrage the public feeling. [1891 c 123 § 3; RRS § 10028. Formerly RCW 68.08.080.]

68.50.090 Penalty. Any person violating any provision of RCW 68.50.060 through 68.50.080 shall upon conviction thereof be fined in any sum not exceeding five hundred dollars. [1987 c 331 § 56; 1891 c 123 § 4; RRS § 10029. Formerly RCW 68.08.090.]

68.50.100 Dissection, when permitted—Autopsy of person under the age of three years. The right to dissect

a dead body shall be limited to cases specially provided by statute or by the direction or will of the deceased; cases where a coroner is authorized to hold an inquest upon the body, and then only as he may authorize dissection; and cases where the spouse or next of kin charged by law with the duty of burial shall authorize dissection for the purpose of ascertaining the cause of death, and then only to the extent so authorized: *Provided*, That the coroner, in his discretion, may make or cause to be made by a competent pathologist, toxicologist, or physician, an autopsy or post mortem in any case in which the coroner has jurisdiction of a body: *Provided, further*, That the coroner may with the approval of the University of Washington and with the consent of a parent or guardian deliver any body of a deceased person under the age of three years over which he has jurisdiction to the University of Washington medical school for the purpose of having an autopsy made to determine the cause of death. Every person who shall make, cause, or procure to be made any dissection of a body, except as above provided, shall be guilty of a gross misdemeanor. [1963 c 178 § 2; 1953 c 188 § 2; 1909 c 249 § 237; RRS § 2489. Formerly RCW 68.08.100.]

68.50.101 Autopsy, post mortem—Who may authorize. Autopsy or post mortem may be performed in any case where authorization has been given by a member of one of the following classes of persons in the following order of priority:

- (1) The surviving spouse;
 - (2) Any child of the decedent who is eighteen years of age or older;
 - (3) One of the parents of the decedent;
 - (4) Any adult brother or sister of the decedent;
 - (5) A person who was guardian of the decedent at the time of death;
 - (6) Any other person or agency authorized or under an obligation to dispose of the remains of the decedent.
- The chief official of any such agency shall designate one or more persons to execute authorizations pursuant to the provisions of this section.

If the person seeking authority to perform an autopsy or post mortem makes reasonable efforts to locate and secure authorization from a competent person in the first or succeeding class and finds no such person available, authorization may be given by any person in the next class, in the order of descending priority. However, no person under this section shall have the power to authorize an autopsy or post mortem if a person of higher priority under this section has refused such authorization: *Provided*, That this section shall not affect autopsies performed pursuant to RCW 68.50.010 or 68.50.103. [1987 c 331 § 57; 1977 c 79 § 1; 1953 c 188 § 11. Formerly RCW 68.08.101.]

68.50.102 Court petition for autopsy—Cost. Any party by showing just cause may petition the court to have autopsy made and results thereof made known to said party at his own expense. [1953 c 188 § 12. Formerly RCW 68.08.102.]

68.50.103 Autopsies in industrial deaths. In an industrial death where the cause of death is unknown, and where the department of labor and industries is concerned, said department in its discretion, may request the coroner in writing to perform an autopsy to determine the cause of death. The coroner shall be required to promptly perform such autopsy upon receipt of the written request from the department of labor and industries. [1953 c 188 § 6. Formerly RCW 68.08.103.]

68.50.104 Cost of autopsy. The cost of autopsy shall be borne by the county in which the autopsy is performed, except when requested by the department of labor and industries, in which case, the department shall bear the cost of such autopsy; and except when performed on a body of an infant under the age of three years by the University of Washington medical school, in which case the medical school shall bear the cost of such autopsy.

When the county bears the cost of an autopsy, it shall be reimbursed from the death investigations' account, established by RCW 43.79.445, as follows:

(1) Up to forty percent of the cost of contracting for the services of a pathologist to perform an autopsy; and

(2) Up to twenty-five percent of the salary of pathologists who are primarily engaged in performing autopsies and are (a) county coroners or county medical examiners, or (b) employees of a county coroner or county medical examiner.

Payments from the account shall be made pursuant to biennial appropriation: *Provided*, That no county may reduce funds appropriated for this purpose below 1983 budgeted levels. [1983 1st ex.s. c 16 § 14; 1963 c 178 § 3; 1953 c 188 § 7. Formerly RCW 68.08.104.]

Severability—Effective date—1983 1st ex.s. c 16: See RCW 43.103.900 and 43.103.901.

68.50.105 Autopsies, post mortems—Reports and records confidential—Exceptions. Reports and records of autopsies or post mortems shall be confidential, except that the following persons may examine and obtain copies of any such report or record: The personal representative of the decedent as defined in RCW 11.02.005, any family member, the attending physician, the prosecuting attorney or law enforcement agencies having jurisdiction, public health officials, or to the department of labor and industries in cases in which it has an interest under RCW 68.50.103.

The coroner, the medical examiner, or the attending physician shall, upon request, meet with the family of the decedent to discuss the findings of the autopsy or post mortem. For the purposes of this section, the term "family" means the surviving spouse, or any child, parent, grandparent, grandchild, brother, or sister of the decedent, or any person who was guardian of the decedent at the time of death. [1987 c 331 § 58; 1985 c 300 § 1; 1977 c 79 § 2; 1953 c 188 § 9. Formerly RCW 68.08.105.]

68.50.106 Autopsies, post mortems—Analyses—Opinions—Evidence—Costs. In any case in which

an autopsy or post mortem is performed, the coroner or medical examiner, upon his own authority or upon the request of the prosecuting attorney or other law enforcement agency having jurisdiction, may make or cause to be made an analysis of the stomach contents, blood, or organs, or tissues of a deceased person and secure professional opinions thereon and retain or dispose of any specimens or organs of the deceased which in his discretion are desirable or needful for anatomic, bacteriological, chemical, or toxicological examination or upon lawful request are needed or desired for evidence to be presented in court. When the autopsy or post mortem requires examination in the region of the pituitary gland, that gland may be removed and utilized for any desirable or needful purpose: *Provided*, That a reasonable effort to obtain consent as required under RCW 68.50.350 shall be made if that organ is to be so utilized. Costs shall be borne by the county. [1987 c 331 § 59; 1975-'76 2nd ex.s. c 28 § 1; 1953 c 188 § 10. Formerly RCW 68.08.106.]

68.50.107 State toxicological laboratory established—State toxicologist—Washington State University police school. There shall be established at the University of Washington Medical School a state toxicological laboratory under the direction of the state toxicologist whose duty it will be to perform all necessary toxicologic procedures requested by all coroners, medical examiners, and prosecuting attorneys. Annually the president of the University of Washington, with the consent of the state death investigations council, shall appoint a competent toxicologist as state toxicologist who shall serve a one year term. The state toxicologist may be reappointed to as many additional one year terms as the president of the university and the death investigations council deem proper. The facilities of the police school of the Washington State University and the services of its professional staff shall be made available to coroners, medical examiners, and prosecuting attorneys in their investigations under this chapter. This laboratory shall be funded by disbursement from the class H license fees as provided in RCW 66.08.180. [1986 c 87 § 2; 1983 1st ex.s. c 16 § 10; 1975-'76 2nd ex.s. c 84 § 1; 1970 ex.s. c 24 § 1; 1953 c 188 § 13. Formerly RCW 68.08.107.]

Effective date—1986 c 87: See note following RCW 66.08.180.

Severability—Effective date—1983 1st ex.s. c 16: See RCW 43.103.900 and 43.103.901.

State death investigations council: Chapter 43.103 RCW.

68.50.108 Autopsies, post mortems—Consent to embalm or cremate body—Time limitation. No dead body upon which the coroner, or prosecuting attorney, if there be no coroner in the county, may perform an autopsy or post mortem, shall be embalmed or cremated without the consent of the coroner having jurisdiction, and failure to obtain such consent shall be a misdemeanor: *Provided*, That such autopsy or post mortem must be performed within five days, unless the coroner shall obtain an order from the superior court extending such time. [1953 c 188 § 8. Formerly RCW 68.08.108.]

68.50.110 Burial or cremating. Except in cases of dissection provided for in RCW 68.50.100, and where a dead body shall rightfully be carried through or removed from the state for the purpose of burial elsewhere, every dead body of a human being lying within this state, and the remains of any dissected body, after dissection, shall be decently buried, or cremated within a reasonable time after death. [1987 c 331 § 60; 1909 c 249 § 238; RRS § 2490. Formerly RCW 68.08.110.]

68.50.120 Holding body for debt—Penalty. Every person who arrests, attaches, detains, or claims to detain any human remains for any debt or demand, or upon any pretended lien or charge, is guilty of a gross misdemeanor. [1943 c 247 § 27; Rem. Supp. 1943 § 3778–27. Formerly RCW 68.08.120.]

68.50.130 Unlawful disposal of remains. Every person who permanently deposits or disposes of any human remains, except as otherwise provided by law, in any place, except in a cemetery or a building dedicated exclusively for religious purposes, is guilty of a misdemeanor. [1943 c 247 § 28; Rem. Supp. 1943 § 3778–28. Formerly RCW 68.08.130.]

68.50.135 Individual's remains—Burial on island solely owned by individual, immediate family, or estate. The human remains of an individual may be buried on the property of the individual or the individual's immediate family or estate if such property is an island in the sole ownership of the individual, or the individual's immediate family or estate, without obtaining a permit or a variance from any zoning ordinance if in compliance with other applicable state laws. [1984 c 53 § 7. Formerly RCW 68.08.135.]

68.50.140 Opening graves—Stealing body—Receiving same. Every person who shall remove the dead body of a human being, or any part thereof, from a grave, vault, or other place where the same has been buried or deposited awaiting burial or cremation, without authority of law, with intent to sell the same, or for the purpose of securing a reward for its return, or for dissection, or from malice or wantonness, shall be punished by imprisonment in the state penitentiary for not more than five years, or by a fine of not more than one thousand dollars, or by both.

Every person who shall purchase or receive, except for burial or cremation, any such dead body, or any part thereof, knowing that the same has been removed contrary to the foregoing provisions, shall be punished by imprisonment in the state penitentiary for not more than three years, or by a fine of not more than one thousand dollars, or by both.

Every person who shall open a grave or other place of interment, temporary or otherwise, or a building where such dead body is deposited while awaiting burial or cremation, with intent to remove said body or any part thereof, for the purpose of selling or demanding money for the same, for dissection, from malice or wantonness, or with intent to sell or remove the coffin or of any part

thereof, or anything attached thereto, or any vestment, or other article interred, or intended to be interred with the body, shall be punished by imprisonment in the state penitentiary for not more than three years, or by a fine of not more than one thousand dollars, or by both. [1909 c 249 § 239; RRS § 2491. FORMER PART OF SECTION: 1943 c 247 § 25 now codified as RCW 68.50.145. Formerly RCW 68.08.140.]

68.50.145 Removing remains—Penalty. Every person who removes any part of any human remains from any place where it has been interred, or from any place where it is deposited while awaiting interment, with intent to sell it, or to dissect it, without authority of law, or from malice or wantonness, shall be punished by imprisonment in the state penitentiary for not more than five years, or by a fine of not more than one thousand dollars, or by both. [1943 c 247 § 25; Rem. Supp. 1943 c 3778–25. Formerly RCW 68.08.140, part, and 68.08.145.]

68.50.150 Mutilating, disinterring human remains—Penalty. Every person who mutilates, disinters, or removes from the place of interment any human remains without authority of law, shall be punished by imprisonment in the state penitentiary for not more than three years, or by a fine of not more than one thousand dollars, or by both. [1943 c 247 § 26; Rem. Supp. 1943 § 3778–26. Formerly RCW 68.08.150.]

68.50.160 Liability for cost of disposing of remains. The right to control the disposition of the remains of a deceased person, unless other directions have been given by the decedent, vests in, and the duty of interment and the liability for the reasonable cost of interment of such remains devolves upon the following in the order named:

- (1) The surviving spouse.
- (2) The surviving children of the decedent.
- (3) The surviving parents of the decedent.

The liability for the reasonable cost of interment devolves jointly and severally upon all kin of the decedent hereinbefore mentioned in the same degree of kindred and upon the estate of the decedent. [1943 c 247 § 29; Rem. Supp. 1943 § 3778–29. Formerly RCW 68.08.160.]

County burial of indigent deceased veterans: RCW 73.08.070.

Disposal of remains of indigent persons: RCW 36.39.030.

Order of payment of debts of estate: RCW 11.76.110.

Welfare and relief, funeral expenses: RCW 74.08.120.

68.50.165 Embalming services—When provided without charge. If embalming services are not desired nor required for the type of arrangements chosen by the authorized family member or representative and a refrigeration unit is unavailable for use, embalming services shall be provided without charge in instances where the body is to be held more than twenty-four hours. [1985 c 402 § 2. Formerly RCW 68.08.165.]

Legislative finding—1985 c 402: "The legislature finds that certain practices in storing human remains and in performing cremations violate common notions of decency and generally held expectations. In

enacting this legislation, the legislature is reaffirming that certain practices, which have never been acceptable, violate principles of human dignity." [1985 c 402 § 1.] For translation of "this legislation" [1985 c 402], see Codification Tables, Volume 0.

68.50.170 Effect of authorization. Any person signing any authorization for the interment or cremation of any remains warrants the truthfulness of any fact set forth in the authorization, the identity of the person whose remains are sought to be interred or cremated, and his authority to order interments or cremation. He is personally liable for all damage occasioned by or resulting from breach of such warranty. [1943 c 247 § 30; Rem. Supp. 1943 § 3778–30. Formerly RCW 68.08.170.]

68.50.180 Right to rely on authorization—State agency funding for cremation. The cemetery authority may inter or cremate any remains upon the receipt of a written authorization of a person representing himself to be a person who has acquired the right to control the disposition of the remains. A cemetery authority is not liable for interring or cremating pursuant to such authorization, unless it has actual notice that such representation is untrue.

In the event the state of Washington or any of its agencies provide the funds for the disposition of any remains and the state or its agency elects to provide the funds for cremation only, the cemetery authority shall not be criminally or civilly liable for cremating the remains. [1979 c 21 § 14; 1943 c 247 § 31; Rem. Supp. 1943 § 3778–31. Formerly RCW 68.08.180.]

68.50.185 Individual cremation—Exception—Penalty. (1) A person authorized to dispose of human remains shall not cremate or cause to be cremated more than one body at a time unless written permission, after full and adequate disclosure regarding the manner of cremation, has been received from the person or persons under RCW 68.50.160 having the authority to order cremation. This restriction shall not apply when equipment, techniques, or devices are employed that keep human remains separate and distinct before, during, and after the cremation process.

(2) Violation of this section is a gross misdemeanor. [1987 c 331 § 61; 1985 c 402 § 3. Formerly RCW 68.08.185.]

Legislative finding—1985 c 402: See note following RCW 68.50.165.

68.50.190 Liability for damages—Limitation. No action shall lie against any cemetery authority relating to the remains of any person which have been left in its possession for a period of two years, unless a written contract has been entered into with the cemetery authority for their care or unless permanent interment has been made. Nothing in this section shall be construed as an extension of the existing statute prescribing the period within which an action based upon a tort must be commenced. No licensed funeral director shall be liable in damages for any cremated human remains after the remains have been deposited with a cemetery in the state

of Washington. [1943 c 247 § 32; Rem. Supp. 1943 § 3778–32. Formerly RCW 68.08.190.]

Limitation of actions: Chapter 4.16 RCW.

68.50.200 Permission to remove remains. The remains of a deceased person may be removed from a plot in a cemetery with the consent of the cemetery authority and the written consent of one of the following in the order named:

- (1) The surviving spouse.
- (2) The surviving children of the decedent.
- (3) The surviving parents of the decedent.
- (4) The surviving brothers or sisters of the decedent.

If the required consent cannot be obtained, permission by the superior court of the county where the cemetery is situated is sufficient: *Provided*, That the permission shall not violate the terms of a written contract or the rules and regulations of the cemetery authority. [1943 c 247 § 33; Rem. Supp. 1943 § 3778–33. Formerly RCW 68.08.200.]

68.50.210 Notice for order to remove remains. Notice of application to the court for such permission shall be given, at least ten days prior thereto, personally, or at least fifteen days prior thereto if by mail, to the cemetery authority and to the persons not consenting, and to every other person on whom service of notice may be required by the court. [1943 c 247 § 34; Rem. Supp. 1943 § 3778–34. Formerly RCW 68.08.210.]

68.50.220 Exceptions. RCW 68.50.200 and 68.50.210 do not apply to or prohibit the removal of any remains from one plot to another in the same cemetery or the removal of remains by a cemetery authority from a plot for which the purchase price is past due and unpaid, to some other suitable place; nor do they apply to the disinterment of remains upon order of court or coroner. [1987 c 331 § 62; 1943 c 247 § 35; Rem. Supp. 1943 § 3778–35. Formerly RCW 68.08.220.]

68.50.230 Undisposed remains—Rules. Whenever any dead human body shall have been in the lawful possession of any person, firm, corporation or association for a period of one year or more, or whenever the incinerated remains of any dead human body have been in the lawful possession of any person, firm, corporation or association for a period of two years or more, and the relatives of, or persons interested in, the deceased person shall fail, neglect or refuse for such periods of time, respectively, to direct the disposition to be made of such body or remains, such body or remains may be disposed of by the person, firm, corporation or association having such lawful possession thereof, under and in accordance with rules adopted by the cemetery board and the board of funeral directors and embalmers, not inconsistent with any statute of the state of Washington or rule or regulation prescribed by the state board of health. [1985 c 402 § 9; 1979 c 158 § 218; 1937 c 108 § 14; RRS § 8323–3. Formerly RCW 68.08.230.]

Legislative finding—1985 c 402: See note following RCW 68.50.165.

68.50.232 Undisposed remains—Entrusting to funeral homes or mortuaries. See RCW 36.24.155.

68.50.240 Record of remains to be kept. The person in charge of any premises on which interments or cremations are made shall keep a record of all remains interred or cremated on the premises under his charge, in each case stating the name of each deceased person, date of cremation or interment, and name and address of the funeral director. [1943 c 247 § 39; Rem. Supp. 1943 § 3778–39. Formerly RCW 68.08.240.]

68.50.250 Crematory record of caskets. No crematory shall hereafter cremate the remains of any human body without making a permanent signed record of the color, shape and outside covering of the casket consumed with such body, said record to be open to inspection of any person lawfully entitled thereto. [1943 c 247 § 57; Rem. Supp. 1943 § 3778–57. FORMER PART OF SECTION: 1943 c 247 § 58 now codified as RCW 68.50.260. Formerly RCW 68.20.100.]

68.50.260 Crematory record of caskets—Penalty. Each person violating any provision of *RCW 68.20.100 shall be guilty of a misdemeanor and each violation shall constitute a separate offense. [1943 c 247 § 58; Rem. Supp. 1943 § 3778–58. Formerly RCW 68.20.100, part, and 68.20.105.]

***Reviser's note:** RCW 68.20.100 was recodified as RCW 68.50.250 pursuant to 1987 c 331 § 89.

68.50.270 Possession of cremated remains. The person or persons determined under RCW 68.50.160 as having authority to order cremation shall be entitled to possession of the cremated remains without further intervention by the state or its political subdivisions. [1987 c 331 § 63; 1977 c 47 § 4. Formerly RCW 68.08.245.]

68.50.280 Corneal tissue for transplantation—Authority of county coroner, medical examiner or designee to provide—Conditions. In any case where a patient is in need of corneal tissue for a transplantation, the county coroner, or county medical examiner or designee, may provide corneal tissue, from decedents under his or her jurisdiction, upon the request of an eye bank approved and authorized to make such requests by the secretary of the department of health, subject to the following conditions:

(1) Ready identification of the decedent is impossible, or

(2) A reasonable effort to obtain such consent as is required under RCW 68.50.350 is made, within the time period during which corneal tissue is a viable transplant, and no objection by the next of kin is known, and

(3) Removal of the cornea for transplantation will not interfere with the subsequent course of an investigation or autopsy or alter the post mortem facial appearance of the decedent. [1989 1st ex.s. c 9 § 224; 1987 c 331 § 64; 1975–'76 2nd ex.s. c 60 § 1. Formerly RCW 68.08.300.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

68.50.290 Corneal tissue for transplantation—Presumption of good faith. In any subsequent civil action in which the next of kin of a decedent contends that he/she affirmatively informed the county coroner or medical examiner or designee of his/her objection to removal of corneal tissue from the decedent, it shall be presumed that the county coroner or medical examiner acted in good faith and without knowledge of the objection. [1975–'76 2nd ex.s. c 60 § 2. Formerly RCW 68.08.305.]

68.50.300 Release of information concerning a death. (1) The county coroner, medical examiner, or prosecuting attorney having jurisdiction may in such official's discretion release information concerning a person's death to the media and general public, in order to aid in identifying the deceased, when the identity of the deceased is unknown to the official and when he does not know the information to be readily available through other sources.

(2) The county coroner, medical examiner, or prosecuting attorney may withhold any information which directly or indirectly identifies a decedent until either:

(a) A notification period of forty-eight hours has elapsed after identification of the decedent by such official; or

(b) The next of kin of the decedent has been notified.

During the forty-eight hour notification period, such official shall make a good faith attempt to locate and notify the next of kin of the decedent. [1981 c 176 § 2. Formerly RCW 68.08.320.]

68.50.310 Dental identification system established—Powers and duties. A dental identification system is established in the identification section of the Washington state patrol. The dental identification system shall act as a repository or computer center or both for dental examination records and it shall be responsible for comparing such records with dental records filed under RCW 68.50.330. It shall also determine which scoring probabilities are the highest for purposes of identification and shall submit such information to the coroner or medical examiner who prepared and forwarded the dental examination records. Once the dental identification system is established, operating funds shall come from the state general fund. [1987 c 331 § 65; 1983 1st ex.s. c 16 § 15. Formerly RCW 68.08.350.]

Severability—Effective date—1983 1st ex.s. c 16: See RCW 43.103.900 and 43.103.901.

68.50.320 Persons missing thirty days or more—Request for consent to obtain dental records—Submission of dental records to dental identification system—Records to be erased when person found—Availability of files. When a person reported missing has not been found within thirty days of the report, the sheriff, chief of police, county coroner or county medical examiner, or other law enforcement authority initiating and conducting the investigation for the missing person shall ask the missing person's family or next of kin to give written consent to contact the dentist or dentists of

the missing person and request the person's dental records.

When a person reported missing has not been found within thirty days, the sheriff, chief of police, or other law enforcement authority initiating and conducting the investigation for the missing person shall confer with the county coroner or medical examiner prior to the preparation of a missing person's report. After conferring with the coroner or medical examiner, the sheriff, chief of police, or other law enforcement authority shall submit a missing person's report and the dental records received under this section to the dental identification system of the state patrol *identification and criminal history section on forms supplied by the state patrol for such purpose.

When a person reported missing has been found, the sheriff, chief of police, coroner or medical examiner, or other law enforcement authority shall report such information to the state patrol. The dental identification system shall then erase all records with respect to such person.

The dental identification system shall maintain a file of information regarding persons reported to it as missing and who have not been reported found. The file shall contain the information referred to in this section and such other information as the state patrol finds relevant to assist in the location of a missing person.

The files of the dental identification system shall, upon request, be made available to law enforcement agencies attempting to locate missing persons. [1984 c 17 § 18; 1983 1st ex.s. c 16 § 16. Formerly RCW 68.08.355.]

***Reviser's note:** The "identification and criminal history" section has been redesignated the "identification, child abuse, and criminal history" section. See RCW 43.43.700.

Severability—Effective date—1983 1st ex.s. c 16: See RCW 43.103.900 and 43.103.901.

Missing children clearinghouse and hotline: Chapter 13.60 RCW.

68.50.330 Identification of body or human remains by dental examination—Comparison of dental examination records with dental records of dental identification system. If the county coroner or county medical examiner investigating a death is unable to establish the identity of a body or human remains by visual means, fingerprints, or other identifying data, he or she shall have a qualified dentist, as determined by the county coroner or county medical examiner, carry out a dental examination of the body or human remains. If the county coroner or county medical examiner with the aid of the dental examination and other identifying findings is still unable to establish the identity of the body or human remains, he or she shall prepare and forward such dental examination records to the dental identification system of the state patrol *identification and criminal history section on forms supplied by the state patrol for such purposes.

The dental identification system shall act as a repository or computer center or both with respect to such dental examination records. It shall compare such dental examination records with dental records filed with it and

shall determine which scoring probabilities are the highest for the purposes of identification. It shall then submit such information to the county coroner or county medical examiner who prepared and forwarded the dental examination records. [1984 c 17 § 19; 1983 1st ex.s. c 16 § 17. Formerly RCW 68.08.360.]

***Reviser's note:** The "identification and criminal history" section has been redesignated the "identification, child abuse, and criminal history" section. See RCW 43.43.700.

Severability—Effective date—1983 1st ex.s. c 16: See RCW 43.103.900 and 43.103.901.

68.50.340 Definitions. (1) "Bank or storage facility" means a facility licensed, accredited, or approved under the laws of any state for storage of human bodies or parts thereof including pacemakers.

(2) "Decedent" means a deceased individual and includes a stillborn infant or fetus.

(3) "Donor" means an individual who makes a gift of all or part of his body.

(4) "Hospital" means a hospital licensed, accredited, or approved under the laws of any state; includes a hospital operated by the United States government, a state, or a subdivision thereof, although not required to be licensed under state laws.

(5) "Part" means pacemakers, organs, tissues, eyes, bones, arteries, blood, other fluids and any other portions of a human body including artificial parts.

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

(7) "Physician" or "surgeon" means a physician or surgeon licensed or authorized to practice under the laws of any state.

(8) "State" includes any state, district, commonwealth, territory, insular possession, and any other area subject to the legislative authority of the United States of America. [1981 c 44 § 1; 1969 c 80 § 2. Formerly RCW 68.08.500.]

68.50.350 Gift of any part of body to take effect upon death authorized—Who may make—Priorities—Examination—Rights of donee paramount. (1) Any individual of sound mind and eighteen years of age or more may give all or any part of his body for any purpose specified in RCW 68.50.360, the gift to take effect upon death.

(2) Any of the following persons, in order of priority stated, when persons in prior classes are not available at the time of death, and in the absence of actual notice of contrary indications by the decedent or actual notice of opposition by a member of the same or a prior class, may give all or any part of the decedent's body for any purpose specified in RCW 68.50.360:

- (a) the spouse,
- (b) an adult son or daughter,
- (c) either parent,
- (d) an adult brother or sister,
- (e) a guardian of the person of the decedent at the time of his death,

(f) any other person authorized or under obligation to dispose of the body.

(3) If the donee has actual notice of contrary indications by the decedent or that a gift by a member of a class is opposed by a member of the same or a prior class, the donee shall not accept the gift. The persons authorized by subsection (2) may make the gift after death or during the terminal illness.

(4) A gift of all or part of a body authorizes any examination necessary to assure medical acceptability of the gift for the purposes intended.

(5) The rights of the donee created by the gift are paramount to the rights of others except as provided by RCW 68.50.400(4). [1987 c 331 § 66; 1969 c 80 § 3. Formerly RCW 68.08.510.]

68.50.360 Eligible donees—Eye removal by embalmers. (1) The following persons may become donees of gifts of bodies or parts thereof for the purposes stated:

(a) Any hospital, surgeon, physician, or other entity which has a physician or surgeon as a regular full-time employee, for medical or dental education, research, advancement of medical or dental science, therapy, or transplantation;

(b) Any accredited medical or dental school, college or university for education, research, advancement of medical or dental science, or therapy;

(c) Any bank or storage facility, for medical or dental education, research, advancement of medical or dental science, therapy, or transplantation; or

(d) Any specified individual for therapy or transplantation needed by him.

(2) If the part of the body that is the gift is an eye, the donee or the person authorized to accept the gift may employ or authorize a qualified embalmer, licensed under chapter 18.39 RCW, to remove the eye. [1982 c 9 § 1; 1979 c 37 § 1; 1969 c 80 § 4. Formerly RCW 68.08.520.]

68.50.370 Gift by will, card, document, or driver's license—Procedures. (1) A gift of all or part of the body under RCW 68.50.350(1), may be made by will. The gift becomes effective upon the death of the testator without waiting for probate. If the will is not probated, or if it is declared invalid for testamentary purposes, the gift, to the extent that it has been acted upon in good faith, is nevertheless valid and effective.

(2) A gift of all or part of the body under RCW 68.50.350(1), may also be made by document other than a will. The gift becomes effective upon the death of the donor. The document, which may be a card designed to be carried on the person, must be signed by the donor in the presence of two witnesses who must sign the document in his presence. If the donor cannot sign, the document may be signed for him at his direction and in his presence in the presence of two witnesses who must sign the document in his presence. Delivery of the document of gift during the donor's lifetime is not necessary to make the gift valid.

(3) A gift of all or part of the body under RCW 68.50.350(1) may also be made by a statement provided

for on Washington state driver's licenses. The gift becomes effective upon the death of the licensee. The statement must be signed by the licensee in the presence of two witnesses, who must sign the statement in the presence of the donor. Delivery of the license during the donor's lifetime is not necessary to make the gift valid. The gift shall become invalidated upon expiration, cancellation, revocation, or suspension of the license, and the gift must be renewed upon renewal of each license: *Provided*, That the statement of gift herein provided for shall contain a provision, including a clear instruction to the donor, providing for a means by which the donor may at his will revoke such gift: *Provided further*, That nothing in this chapter shall be construed to invalidate a donor card located elsewhere.

(4) The gift may be made to a specified donee or without specifying a donee. If the latter, the gift may be accepted by the attending physician as donee upon or following death. If the gift is made to a specified donee who is not available at the time and place of death, the attending physician upon or following death, in the absence of any expressed indication that the donor desired otherwise, may accept the gift as donee. The physician who becomes a donee under this subsection shall not participate in the procedures for removing or transplanting a part.

(5) Notwithstanding RCW 68.50.400(2), the donor may designate in his will, card, or other document of gift the surgeon or physician to carry out the appropriate procedures. In the absence of a designation or if the designee is not available, the donee or other person authorized to accept the gift may employ or authorize any surgeon or physician for the purpose.

(6) Any gift by a person designated in RCW 68.50.350(2), shall be made by a document signed by him or made by his telegraphic, recorded telephonic, or other recorded message. [1987 c 331 § 67; 1975 c 54 § 2; 1969 c 80 § 5. Formerly RCW 68.08.530.]

Drivers' licenses, anatomical gift statements: RCW 46.20.113.

68.50.380 Delivery of will, card or other document to specified donee. If the gift is made by the donor to a specified donee, the will, card, or other document, or an executed copy thereof, may be delivered to the donee to expedite the appropriate procedures immediately after death. Delivery is not necessary to the validity of the gift. The will, card, or other document, or an executed copy thereof, may be deposited in any hospital, bank or storage facility or registry office that accepts it for safe-keeping or for facilitation of procedures after death. On request of any interested party upon or after the donor's death, the person in possession shall produce the document for examination. [1969 c 80 § 6. Formerly RCW 68.08.540.]

68.50.390 Amendment or revocation of gift. (1) If the will, card, or other document or executed copy thereof, has been delivered to a specified donee, the donor may amend or revoke the gift by:

(a) the execution and delivery to the donee of a signed statement;

(b) an oral statement made in the presence of two persons and communicated to the donee;

(c) a statement during a terminal illness or injury addressed to an attending physician and communicated to the donee;

(d) a signed card or document found on his person or in his effects.

(2) Any document of gift which has not been delivered to the donee may be revoked by the donor in the manner set out in subsection (1) above, or by destruction, cancellation, or mutilation of the document and all executed copies thereof.

(3) Any gift made by a will may also be amended or revoked in the manner provided for amendment or revocation of wills, or as provided in subsection (1) above. [1969 c 80 § 7. Formerly RCW 68.08.550.]

68.50.400 Acceptance or rejection of gift—Time of death—Liability for damages. (1) The donee may accept or reject the gift. If the donee accepts a gift of the entire body, he may, subject to the terms of the gift, authorize embalming and the use of the body in funeral services. If the gift is of a part of the body, the donee, upon the death of the donor and prior to embalming, shall cause the part to be removed without unnecessary mutilation. After removal of the part, custody of the remainder of the body vests in the surviving spouse, next of kin, or other persons under obligation to dispose of the body.

(2) The time of death shall be determined by a physician who tends the donor at his death, or, if none, the physician who certifies the death. The physician shall not participate in the procedures for removing or transplanting a part.

(3) A person who acts in good faith in accord with the terms of RCW 68.50.340 through 68.50.420 or with the anatomical gift laws of another state (or a foreign country) is not liable for damages in any civil action or subject to prosecution in any criminal proceeding for his act.

(4) The provisions of RCW 68.50.340 through 68.50.420 are subject to the laws of this state prescribing powers and duties with respect to autopsies. [1987 c 331 § 68; 1969 c 80 § 8. Formerly RCW 68.08.560.]

68.50.410 Uniformity. RCW 68.50.340 through 68.50.420 shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it. [1987 c 331 § 69; 1969 c 80 § 9. Formerly RCW 68.08.600.]

68.50.420 Short title. RCW 68.50.340 through 68.50.420 may be cited as the "Uniform Anatomical Gift Act". [1987 c 331 § 70; 1969 c 80 § 11. Formerly RCW 68.08.610.]

68.50.500 Identification of potential donors—Hospital procedures. Each hospital shall develop procedures for identifying potential organ and tissue donors. The procedures shall require that any deceased individual's next of kin or other individual, as set forth in RCW

68.50.350, at or near the time of notification of death be asked whether the deceased was an organ donor. If not, the family shall be informed of the option to donate organs and tissues pursuant to the uniform anatomical gift act. With the approval of the designated next of kin or other individual, as set forth in RCW 68.50.350, the hospital shall then notify an established eye bank, tissue bank, or organ procurement agency including those organ procurement agencies associated with a national organ procurement transportation network or other eligible donee, as specified in RCW 68.50.360, and cooperate in the procurement of the anatomical gift or gifts. The procedures shall encourage reasonable discretion and sensitivity to the family circumstances in all discussions regarding donations of tissue or organs. The procedures may take into account the deceased individual's religious beliefs or obvious unsuitability for organ and tissue donation. Laws pertaining to the jurisdiction of the coroner shall be complied with in all cases of reportable deaths pursuant to RCW 68.50.010. [1987 c 331 § 71; 1986 c 129 § 1. Formerly RCW 68.08.650.]

68.50.510 Good faith compliance with RCW 68.50.500—Hospital liability. No act or omission of a hospital in developing or implementing the provisions of RCW 68.50.500, when performed in good faith, shall be a basis for the imposition of any liability upon the hospital.

This section shall not apply to any act or omission of the hospital that constitutes gross negligence or wilful and wanton conduct. [1987 c 331 § 72; 1986 c 129 § 2. Formerly RCW 68.08.660.]

68.50.900 Effective date—1987 c 331. See RCW 68.05.900.

Chapter 68.52

PUBLIC CEMETERIES AND MORGUES

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- 68.52.901 Effective date—1987 c 331.

Public bodies may retain collection agencies to collect public debts:
RCW 19.16.500.

Taxation, exemptions: RCW 84.36.020.

68.52.010 Morgues authorized in counties. The county legislative authority of each county may at its discretion provide and equip a public morgue together with suitable morgue wagon for the conveyance, receipt and proper disposition of the bodies of all deceased persons not claimed by relatives, and of all dead bodies which are by law subject to a post mortem or coroner's inquest: *Provided, however,* That only one public morgue may be established in any county: *Provided further,* That counties may agree to establish joint morgue facilities pursuant to chapter 39.34 RCW. [1983 1st ex.s. c 16 § 19; 1917 c 90 § 1; RRS § 6040. Formerly RCW 68.12.010.]

Severability—Effective date—1983 1st ex.s. c 16: See RCW 43.103.900 and 43.103.901.

68.52.020 Coroner to control morgue—Expense. Such morgue shall be under the control and management of the coroner who shall have power with the advice and consent of the county commissioners, to employ the necessary deputies and employees; and, with the advice and consent of the county commissioners, to fix their salaries and compensation, which, together with the expenses of operating such morgue, shall be paid monthly out of the county treasury. [1917 c 90 § 2; RRS § 6041. Formerly RCW 68.12.020.]

68.52.030 Counties and cities may provide for burial, acquire cemeteries, etc. Each and every county, town or city, shall have power to provide a hearse and pall for burial of the dead, and to procure and hold lands for burying grounds, and to make regulations and fence the same, and to preserve the monuments erected therein, and to levy and collect the necessary taxes for that purpose, in the same manner as other taxes are levied and

collected. [1857 p 28 § 3; RRS § 3772. Formerly RCW 68.12.030.]

68.52.040 Cities and towns may own, improve, etc., cemeteries. Any city or town may acquire, hold, or improve land for cemetery purposes, and may sell lots therein, and may provide by ordinance that a specified percentage of the proceeds therefrom be set aside and invested, and the income from the investment be used in the care of the lots, and may take and hold any property devised, bequeathed or given upon trust, and apply the income thereof for the improvement or embellishment of the cemeteries or the erection or preservation of structures, fences, or walks therein, or for the repair, preservation, erection, or renewal of any tomb, monument, gravestone, fence, railing, or other erection at or around a cemetery, lot, or plat, or for planting and cultivating trees, shrubs, flowers, or plants in or around the lot or plot, or for improving or embellishing the cemetery in any other manner or form consistent with the design and purpose of the city, according to the terms of the grant, devise, or bequest. [1955 c 378 § 1; 1909 c 156 § 1; RRS § 3773. Formerly RCW 68.12.040.]

68.52.045 Cities and towns may provide for a cemetery board. The legislative body of any city or town may provide by ordinance for a cemetery board to be appointed by the mayor in cities and towns operating under the mayor-council form of government, by the city commission in cities operating under the commission form of government, and by the city manager in cities and towns operating under the council-manager form of government: *Provided further,* That no ordinance shall be enacted, pursuant to this section, in conflict with provisions contained in charters of cities of the first class. [1955 c 378 § 2. Formerly RCW 68.12.045.]

68.52.050 Cemetery improvement fund. All moneys received in the manner above provided shall be deposited with the city treasurer, and shall be kept apart in a fund known as the cemetery improvement fund, and shall be paid out only upon warrants drawn by the order of the cemetery board, if such a board exists, or by order of the body, department, commission, or committee duly authorized by ordinance to issue such an order, or by the legislative body of a city or town, which order shall be approved by such legislative body if such order is not issued by the legislative body, and shall be indorsed by the mayor and attested by the city comptroller or other authorized officer. [1955 c 378 § 3; 1909 c 156 § 4; RRS § 3776. Formerly RCW 68.12.050.]

68.52.060 Care and investment of fund. It shall be the duty of the cemetery board and other body or commission having in charge the care and operation of cemeteries to invest all sums set aside from the sale of lots, and all sums of money received, and to care for the income of all money and property held in trust for the purposes designated herein: *Provided, however,* That all investments shall be made in municipal, county, school or state bonds, general obligation warrants of the city

owning such cemetery, or in first mortgages on good and improved real estate. [1933 c 91 § 1; 1909 c 156 § 2; RRS § 3774. FORMER PART OF SECTION: 1909 c 156 § 3 now codified as RCW 68.52.065. Formerly RCW 68.12.060.]

68.52.065 Approval of investments. All investments shall be approved by the council or legislative body of the city. [1909 c 156 § 3; RRS § 3775. Formerly RCW 68.12.060, part, and 68.12.065.]

68.52.070 Cemetery fund—Management. The said city shall, by ordinance, make all necessary rules and regulations concerning the control and management of said fund to properly safeguard the same, but shall in nowise be liable for any of said funds except a misappropriation thereof, and shall not have power to bind the city or said fund for any further liability than whatever net interest may be actually realized from such investments, and shall not be liable to any particular person for more than the proportionate part of such net earnings. [1909 c 156 § 6; RRS § 3778. Formerly RCW 68.12.070.]

68.52.080 Books of account—Audit. Accurate books of account shall be kept of all transactions pertaining to said fund, which books shall be open to the public for inspection and shall be audited by the auditing committee of said city. [1909 c 156 § 5; RRS § 3777. Formerly RCW 68.12.080.]

68.52.090 Establishment authorized. Cemetery districts may be established in all counties and on any island in any county, as in this chapter provided. [1971 c 19 § 1; 1957 c 99 § 1; 1953 c 41 § 1; 1947 c 27 § 1; 1947 c 6 § 1; Rem. Supp. 1947 § 3778–150. Formerly RCW 68.16.010.]

68.52.100 Petition—Requisites—Examination. For the purpose of forming a cemetery district, a petition designating the boundaries of the proposed district by metes and bounds or describing the lands to be included in the proposed district by government townships, ranges and legal subdivisions, signed by not less than fifteen percent of the qualified registered electors, who are property owners or are purchasing property under contract and who are resident within the boundaries of the district, setting forth the object of the formation of such district and stating that the establishment thereof will be conducive to the public welfare and convenience, shall be filed with the county auditor of the county within which the proposed district is located, accompanied by an obligation signed by two or more petitioners agreeing to pay the cost of publishing the notice hereinafter provided for. The county auditor shall, within thirty days from the date of filing of such petition, examine the signatures and certify to the sufficiency or insufficiency thereof and for such purpose shall have access to registration books and records in possession of the registration officers of the election precincts included in whole or in part within the boundaries of the proposed

district and to the tax rolls and other records in the offices of the county assessor and county treasurer. No person having signed a petition shall be allowed to withdraw his name therefrom after it has been filed with the county auditor. If the petition is found to contain a sufficient number of signatures of qualified persons, the county auditor shall transmit it, with his certificate of sufficiency attached, to the board of county commissioners which shall thereupon, by resolution entered upon its minutes, receive the same and fix a day and hour when it will publicly hear said petition. [1947 c 6 § 2; Rem. Supp. 1947 § 3778–151. Formerly RCW 68.16.020.]

68.52.110 Hearing, place and date of. The hearing on such petition shall be at the office of the board of county commissioners and shall be held not less than twenty nor more than forty days from the date of receipt thereof from the county auditor. The hearing may be completed on the day set therefor or it may be adjourned from time to time as may be necessary, but such adjournment or adjournments shall not extend the time for determining said petition more than sixty days in all from the date of receipt by the board. [1947 c 6 § 3; Rem. Supp. 1947 § 3778–152. Formerly RCW 68.16.030.]

68.52.120 Publication and posting of petition and notice of hearing. A copy of the petition with the names of petitioners omitted, together with a notice signed by the clerk of the board of county commissioners stating the day, hour and place of the hearing, shall be published in three consecutive weekly issues of the official newspaper of the county prior to the date of hearing. Said clerk shall also cause a copy of the petition with the names of petitioners omitted, together with a copy of the notice attached, to be posted for not less than fifteen days before the date of hearing in each of three public places within the boundaries of the proposed district, to be previously designated by him and made a matter of record in the proceedings. [1947 c 6 § 4; Rem. Supp. 1947 § 3778–153. Formerly RCW 68.16.040.]

68.52.130 Hearing—Inclusion and exclusion of lands. At the time and place fixed for hearing on the petition or at any adjournment thereof, the board of county commissioners shall hear said petition and receive such evidence as it may deem material in favor of or opposed to the formation of the district or to the inclusion therein or exclusion therefrom of any lands, but no lands not within the boundaries of the proposed district as described in the petition shall be included without a written waiver describing the land, executed by all persons having any interest of record therein, having been filed in the proceedings. No land within the boundaries described in petition shall be excluded from the district. [1947 c 6 § 5; Rem. Supp. 1947 § 3778–154. Formerly RCW 68.16.050.]

68.52.140 Election on formation of district and to elect first commissioners. The board of county commissioners shall have full authority to hear and determine

the petition, and if it finds that the formation of the district will be conducive to the public welfare and convenience, it shall by resolution so declare, otherwise it shall deny the petition. If the board finds in favor of the formation of the district, it shall designate the name and number of the district, fix the boundaries thereof, and cause an election to be held therein for the purpose of determining whether or not the district shall be organized under the provisions of this chapter, and for the purpose of electing its first cemetery district commissioners. The board shall, prior to calling the said election, name three registered resident electors who are property owners or are purchasing property under contract within the boundaries of the district as candidates for election as cemetery district commissioners. These electors are exempt from the requirements of chapter 42.17 RCW. [1982 c 60 § 2; 1947 c 6 § 6; Rem. Supp. 1947 § 3778–155. Formerly RCW 68.16.060.]

68.52.150 Election, how conducted—Notice. Except as otherwise provided in this chapter, the election shall insofar as possible be called, noticed, held, conducted and canvassed in the same manner and by the same officials as provided by law for special elections in the county. For the purpose of such election county voting precincts may be combined or divided and redefined, and the territory in the district shall be included in one or more election precincts as may be deemed convenient, a polling place being designated for each such precinct. The notice of election shall state generally and briefly the purpose thereof, shall give the boundaries of the proposed district, define the election precinct or precincts, designate the polling place for each, mention the names of the candidates for first cemetery district commissioners, and name the day of the election and the hours during which the polls will be open. [1947 c 6 § 7; Rem. Supp. 1947 § 3778–156. Formerly RCW 68.16.070.]

Elections: Title 29 RCW.

68.52.160 Election ballot. The ballot for said election shall be in such form as may be convenient but shall present the propositions substantially as follows:

----- (insert county name) ----- cemetery district No.
 ----- (insert number) -----
 ----- Yes -----
 ----- (insert county name) ----- cemetery district No.
 ----- (insert number) -----
 ----- No -----

and shall specify the names of the candidates nominated for election as the first cemetery district commissioners with appropriate space to vote for the same. [1947 c 6 § 8; Rem. Supp. 1947 § 3778–157. Formerly RCW 68.16.080.]

68.52.170 Canvass of returns—Resolution of organization. The returns of such election shall be canvassed at the court house on the Monday next following

the day of the election, but the canvass may be adjourned from time to time if necessary to await the receipt of election returns which may be unavoidably delayed. The canvassing officials, upon conclusion of the canvass, shall forthwith certify the results thereof in writing to the board of county commissioners. If upon examination of the certificate of the canvassing officials it is found that two-thirds of all the votes cast at said election were in favor of the formation of the cemetery district, the board of county commissioners shall, by resolution entered upon its minutes, declare such territory duly organized as a cemetery district under the name theretofore designated and shall declare the three candidates receiving the highest number of votes for cemetery commissioners, the duly elected first cemetery commissioners of the district. The clerk of the board of county commissioners shall certify a copy of the resolution and cause it to be filed for record in the offices of the county auditor and the county assessor of the county. The certified copy shall be entitled to record without payment of a recording fee. If the certificate of the canvassing officials shows that the proposition to organize the proposed cemetery district failed to receive two-thirds of the votes cast at said election, the board of county commissioners shall enter a minute to that effect and all proceedings theretofore had shall become null and void. [1947 c 6 § 9; Rem. Supp. 1947 § 3778–158. Formerly RCW 68.16.090.]

68.52.180 Review—Organization complete. Any person, firm or corporation having a substantial interest involved, and feeling aggrieved by any finding, determination or resolution of the board of county commissioners under the provisions of this chapter, may appeal within five days after such finding, determination or resolution was made to the superior court of the county in the same manner as provided by law for appeals from orders of said board. After the expiration of five days from the date of the resolution declaring the district organized, and upon filing of certified copies thereof in the offices of the county auditor and county assessor, the formation of the district shall be complete and its legal existence shall not thereafter be questioned by any person by reason of any defect in the proceedings had for the creation thereof. [1947 c 6 § 10; Rem. Supp. 1947 § 3778–159. Formerly RCW 68.16.100.]

Appeals from action of board of county commissioners: RCW 36.32.330.

68.52.190 General powers of district. Cemetery districts created under this chapter shall be deemed to be municipal corporations within the purview of the Constitution and laws of the state of Washington. They shall constitute bodies corporate and possess all the usual powers of corporations for public purposes. They shall have full authority to carry out the objects of their creation, and to that end are empowered to acquire, hold, lease, manage, occupy and sell real and personal property or any interest therein; to enter into and perform any and all necessary contracts; to appoint and employ

necessary officers, agents and employees; to contract indebtedness, to borrow money, and to issue general obligation bonds in accordance with chapter 39.46 RCW; to levy and enforce the collection of taxes against the lands within the district, and to do any and all lawful acts to effectuate the purposes of this chapter. [1984 c 186 § 58; 1967 c 164 § 6; 1947 c 6 § 11; Rem. Supp. 1947 § 3778–160. Formerly RCW 68.16.110.]

Purpose—1984 c 186: See note following RCW 39.46.110.

Purpose—**Severability**—1967 c 164: See notes following RCW 4.96.010.

Tortious conduct of political subdivisions, municipal corporations and quasi municipal corporations, liability for damages: RCW 4.96.010.

68.52.191 Contracts with third class cities, towns, for public facilities and services—Joint purchasing. See RCW 35.24.274 and 35.24.275.

Townships—Joint acquisition, operation and maintenance of public cemeteries: RCW 45.12.021.

68.52.192 Public cemetery facilities or services—Cooperation with public or private agencies—Joint purchasing. A cemetery district may jointly operate or provide, cooperate to operate and provide and/or contract for a term of not to exceed five years to provide or have provided public cemetery facilities or services, with any other public or private agency, including out of state public agencies, which each is separately authorized to operate or provide, under terms mutually agreed upon by such public or private agencies. The governing body of a cemetery district may join with any other public or private agency in buying supplies, equipment, and services collectively. [1963 c 112 § 3. Formerly RCW 68.16.112.]

68.52.193 Public cemetery facilities or services—"Public agency" defined. As used in RCW 68.52.192, "public agency" means counties, cities and towns, special districts, or quasi municipal corporations. [1987 c 331 § 73; 1963 c 112 § 2. Formerly RCW 68.16.113.]

68.52.200 Right of eminent domain. The taking and damaging of property or rights therein by any cemetery district to carry out the purposes of its creation, are hereby declared to be for a public use, and any such district shall have and exercise the power of eminent domain to acquire any property or rights therein, either inside or outside the district for the use of such district. In exercising the power of eminent domain, a district shall proceed in the manner provided by law for the appropriation of real property or rights therein by private corporations. It may at its option unite in a single action proceedings to condemn property held by separate owners. Two or more condemnation suits instituted separately may also in the discretion of the court be consolidated upon motion of any interested party into a single action. In such cases the jury shall render separate verdicts for each tract of land in different ownership. No finding of the jury or decree of the court as to damages in any condemnation suit instituted by the district shall be held or construed to destroy the right of the district

to levy and collect taxes for any and all district purposes against the uncondemned land situated within the district. [1947 c 6 § 12; Rem. Supp. 1947 § 3778–161. Formerly RCW 68.16.120.]

Eminent domain: State Constitution Art. 1 § 16 (Amendment 9).

Eminent domain by corporations: Chapter 8.20 RCW.

68.52.210 Power to do cemetery business—District may embrace certain cities and towns—Eminent domain exception. (1) A cemetery district organized under this chapter shall have power to acquire, establish, maintain, manage, improve and operate cemeteries and conduct any and all of the businesses of a cemetery as defined in this title. A cemetery district shall constitute a cemetery authority as defined in this title and shall have and exercise all powers conferred thereby upon a cemetery authority and be subject to the provisions thereof.

(2) A cemetery district may include within its boundaries the lands embraced within the corporate limits of any incorporated city or town up to and including third class cities in all counties and in any such cases the district may acquire any cemetery or cemeteries theretofore maintained and operated by any such city or town and proceed to maintain, manage, improve and operate the same under the provisions hereof. In such event the governing body of the city or town, after the transfer takes place, shall levy no cemetery tax. The power of eminent domain heretofore conferred shall not extend to the condemnation of existing cemeteries within the district: *Provided*, That no cemetery district shall operate a cemetery within the corporate limits of any city or town where there is a private cemetery operated for profit. [1971 c 19 § 2; 1959 c 23 § 2; 1957 c 39 § 1; 1947 c 6 § 13; Rem. Supp. 1947 § 3778–162. Formerly RCW 68.16.130.]

68.52.220 District commissioners—Election. The affairs of the district shall be managed by a board of cemetery district commissioners composed of three qualified electors of the district. Members of the board shall receive no compensation for their services, but shall receive expenses necessarily incurred in attending meetings of the board or when otherwise engaged in district business. The board shall fix the compensation to be paid the secretary and other employees of the district. The first three cemetery district commissioners shall serve only until the first day in January following the next general election, provided such election occurs thirty or more days after the formation of the district, and until their successors have been elected and qualified and have assumed office in accordance with RCW 29.04.170. At the next general district election, as provided in RCW 29.13.020, provided it occurs thirty or more days after the formation of the district, three members of the board of cemetery commissioners shall be chosen. They and all subsequently elected cemetery commissioners shall have the same qualifications as required of the first three cemetery commissioners and are exempt from the requirements of chapter 42.17 RCW. The candidate receiving the highest number of votes shall serve for a

term of six years beginning on the first day in January following; the candidate receiving the next higher number of votes shall serve for a term of four years from said date; and the candidate receiving the next higher number of votes shall serve for a term of two years from said date. Upon the expiration of their respective terms, all cemetery commissioners shall be elected for terms of six years to begin on the first day in January next succeeding the day of election and shall serve until their successors have been elected and qualified and assume office in accordance with RCW 29.04.170. Elections shall be called, noticed, conducted and canvassed by the same officials as provided for general county elections. The polling places for a cemetery district election shall be those of the county voting precincts which include any of the territory within the cemetery district, and may be located outside the boundaries of the district, and no such election shall be held irregular or void on that account. [1982 c 60 § 3; 1979 ex.s. c 126 § 40; 1947 c 6 § 14; Rem. Supp. 1947 § 3778-163. Formerly RCW 68.16.140.]

Purpose—1979 ex.s. c 126: See RCW 29.04.170(1).

68.52.230 Declarations of candidacy. Not later than fifteen days before the day of election, any qualified registered elector of the district desiring to become a candidate for the office of cemetery district commissioner shall file with the county auditor of his county a statement of his candidacy in the same manner as provided for candidates for county office. All electors so filing their statements shall be entitled to have their names appear as candidates on the election ballot. [1947 c 6 § 15; Rem. Supp. 1947 § 3778-164. Formerly RCW 68.16.150.]

Declaration of candidacy: RCW 29.18.030 through 29.18.060.

68.52.240 Vacancies. In case a vacancy occurs in the office of cemetery commissioner, it shall be filled by appointment of a qualified registered elector of the district by the board of county commissioners, and the person appointed shall serve until his successor has been elected and qualified. At the next general election, provided there is sufficient time for the nomination of candidates for the office of cemetery commissioner after the filling of a vacancy in such office, there shall be elected a cemetery commissioner to serve for the remainder of the unexpired term. [1947 c 6 § 16; Rem. Supp. 1947 § 3778-165. Formerly RCW 68.16.160.]

68.52.250 Special elections. Special elections submitting propositions to the qualified voters of the district may be called at any time by resolution of the cemetery commissioners, and shall be called, noticed, held, conducted and canvassed in the same manner and by the same officials as provided for the election to determine whether the district shall be created. The qualifications of electors at all district elections shall be the same as for general state and county elections. [1947 c 6 § 17; Rem. Supp. 1947 § 3778-166. Formerly RCW 68.16.170.]

Qualifications of electors: RCW 29.07.070.

68.52.260 Oath of commissioners. Each cemetery commissioner, before assuming the duties of his office, shall take and subscribe an official oath to faithfully discharge the duties of his office, which oath shall be filed in the office of the county auditor. [1986 c 167 § 24; 1947 c 6 § 18; Rem. Supp. 1947 § 3778-167. Formerly RCW 68.16.180.]

Severability—1986 c 167: See note following RCW 29.01.055.

68.52.270 Organization of board—Secretary—Office—Meetings—Powers. The board of cemetery district commissioners shall organize and elect a chairman from their number and shall appoint a secretary for such term as they may determine. The secretary shall keep a record of proceedings of the board and perform such other duties as may be prescribed by law or by the board, and shall also take and subscribe an oath for the faithful discharge of his duties, which shall be filed with the county clerk. The office of the board of cemetery commissioners and principal place of business of the district shall be at some place in the district designated by the board. The board shall hold regular monthly meetings at its office on such day as it may by resolution determine and may adjourn such meetings as may be required for the transaction of business. Special meetings of the board may be called at any time by a majority of the commissioners or by the secretary and the chairman of the board. Any commissioner not joining in the call of a special meeting shall be entitled to three days written notice by mail of such meeting, specifying generally the business to be transacted. All meetings of the board of cemetery commissioners shall be public and a majority shall constitute a quorum. All records of the board shall be open to the inspection of any elector of the district at any meeting of the board. The board shall adopt a seal for the district; manage and conduct the affairs of the district; make and execute all necessary contracts; employ any necessary service, and promulgate reasonable rules and regulations for the government of the district and the performance of its functions and generally perform all acts which may be necessary to carry out the purposes for which the district was formed. [1947 c 6 § 19; Rem. Supp. 1947 § 3778-168. Formerly RCW 68.16.190.]

68.52.280 Duty of county treasurer—Cemetery district fund. It shall be the duty of the county treasurer of the county in which any cemetery district is situated to receive and disburse all district revenues and collect all taxes authorized and levied under this chapter. There is hereby created in the office of county treasurer of each county in which a cemetery district shall be organized for the use of the district, a cemetery district fund. All taxes levied for district purposes when collected shall be placed by the county treasurer in the cemetery district fund. [1947 c 6 § 20; Rem. Supp. 1947 § 3778-169. Formerly RCW 68.16.200.]

68.52.290 Tax levy authorized for fund. Annually, after the county board of equalization has equalized assessments for general tax purposes, the secretary of the district shall prepare a budget of the requirements of the cemetery district fund, certify the same and deliver it to the board of county commissioners in ample time for such board to levy district taxes. At the time of making general tax levies in each year, the board of county commissioners shall levy taxes required for cemetery district purposes against the real and personal property in the district in accordance with the equalized valuation thereof for general tax purposes, and as a part of said general taxes. Such levies shall be part of the general tax roll and be collected as a part of general taxes against the property in the district. [1947 c 6 § 21; Rem. Supp. 1947 § 3778-170. Formerly RCW 68.16.210.]

68.52.300 Disbursement of fund. The county treasurer shall disburse the cemetery district fund upon warrants issued by the county auditor on vouchers approved and signed by a majority of the board of cemetery commissioners and the secretary thereof. [1947 c 6 § 22; Rem. Supp. 1947 § 3778-171. Formerly RCW 68.16.220.]

68.52.310 Limitation of indebtedness—Limitation of tax levy. The board of cemetery commissioners shall have no authority to contract indebtedness in any year in excess of the aggregate amount of the currently levied taxes, which annual tax levy for cemetery district purposes shall not exceed eleven and one-quarter cents per thousand dollars of assessed valuation. [1973 1st ex.s. c 195 § 77; 1947 c 6 § 23; Rem. Supp. 1947 § 3778-172. Formerly RCW 68.16.230.]

Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195: See notes following RCW 84.52.043.

68.52.320 Dissolution of districts. Cemetery districts may be dissolved by a majority vote of the electors at an election called for that purpose, which shall be conducted in the same manner as provided for special elections, and no further district obligations shall thereafter be incurred, but such dissolution shall not abridge or cancel any of the outstanding obligations of the district, and the board of county commissioners shall have authority to make annual levies against the lands included within the district until the obligations of the district are fully paid. When the obligations are fully paid, any moneys remaining in the cemetery district fund and all collections of unpaid district taxes shall be transferred to the current expense fund of the county. [1947 c 6 § 24; Rem. Supp. 1947 § 3778-173. Formerly RCW 68.16.240.]

Dissolution of districts: Chapter 53.48 RCW.

Dissolution of inactive special purpose districts: Chapter 36.96 RCW.

68.52.330 Disincorporation of district located in class A or AA county and inactive for five years. See chapter 57.90 RCW.

68.52.900 Severability—1947 c 6. If any portion of this act shall be adjudged invalid or unconstitutional for any reason, such adjudication shall not affect, impair or invalidate the remaining portions of the act. [1947 c 6 § 25; no RRS. Formerly RCW 68.16.900.]

68.52.901 Effective date—1987 c 331. See RCW 68.05.900.

Chapter 68.54

ANNEXATION AND MERGER OF CEMETERY DISTRICTS

Sections

68.54.010	Annexation—Petition—Procedure.
68.54.020	Merger—Authorized.
68.54.030	Merger—Petition—Procedure—Contents.
68.54.040	Merger—Petition—Rejection, concurrence or modification—Signatures.
68.54.050	Merger—Petition—Special election.
68.54.060	Merger—Petition—Election—Vote required—Merger effected.
68.54.070	Merger—Petition—When election dispensed with.
68.54.080	Merger—Preexisting obligations.
68.54.090	Merger—Transfer of all property, funds, assessments.
68.54.100	Merger and transfer of part of one district to adjacent district—Petition—Election—Vote.
68.54.110	Merger and transfer of part of one district to adjacent district—When election dispensed with.
68.54.120	Merger and transfer of part of one district to adjacent district—Preexisting indebtedness.
68.54.900	Effective date—1987 c 331.

68.54.010 Annexation—Petition—Procedure. Any territory contiguous to a cemetery district and not within the boundaries of a city or town other than as set forth in RCW 68.52.210 or other cemetery district may be annexed to such cemetery district by petition of fifteen percent of the qualified registered electors residing within the territory proposed to be annexed. Such petition shall be filed with the cemetery commissioners of the cemetery district and if the said cemetery commissioners shall concur in the said petition they shall then file such petition with the county auditor who shall within thirty days from the date of filing such petition examine the signatures thereof and certify to the sufficiency or insufficiency thereof. After the county auditor shall have certified to the sufficiency of the petition, the proceedings thereafter by the board of county commissioners, and the rights and powers and duties of the board of county commissioners, petitioners and objectors and the election and canvass thereof shall be the same as in the original proceedings to form a cemetery district: *Provided*, That the board of county commissioners shall have authority and it shall be its duty to determine on an equitable basis, the amount of obligation which the territory to be annexed to the district shall assume, if any, to place the taxpayers of the existing district on a fair and equitable relationship with the taxpayers of the territory to be annexed by reason of the benefits of coming into a going district previously supported by the taxpayers of the existing district, and such obligation may be paid to the district in yearly installments to be fixed by the county board if within the limits as outlined

in RCW 68.52.310 and included in the annual tax levies against the property in such annexed territory until fully paid. The amount of the obligation and the plan of payment thereof filed by the county board shall be set out in general terms in the notice of election for annexation: *Provided*, That the special election shall be held only within the boundaries of the territory proposed to be annexed to said cemetery district. Upon the entry of the order of the board of county commissioners incorporating such contiguous territory within such existing cemetery district, said territory shall become subject to the indebtedness, bonded or otherwise, of said existing district in like manner as the territory of said district. Should such petition be signed by sixty percent of the qualified registered electors residing within the territory proposed to be annexed, and should the cemetery commissioners concur therein, an election in such territory and a hearing on such petition shall be dispensed with and the board of county commissioners shall enter its order incorporating such territory within the said existing cemetery district. [1987 c 331 § 74; 1969 ex.s. c 78 § 1. Formerly RCW 68.18.010.]

68.54.020 Merger—Authorized. A cemetery district organized under *chapter 68.16 RCW may merge with another such district lying adjacent thereto, upon such terms and conditions as they agree upon, in the manner hereinafter provided. The district desiring to merge with another district shall hereinafter be called the "merging district", and the district into which the merger is to be made shall be called the "merger district". [1969 ex.s. c 78 § 2. Formerly RCW 68.18.020.]

*Reviser's note: Chapter 68.16 RCW was recodified as chapter 68.52 RCW pursuant to 1987 c 331 § 89.

68.54.030 Merger—Petition—Procedure—Contents. To effect such a merger, a petition therefor shall be filed with the board of the merger district by the commissioners of the merging district. The commissioners of the merging district may sign and file the petition upon their own initiative, and they shall file such a petition when it is signed by fifteen percent of the qualified electors resident in the merging district and presented to them. The petition shall state the reasons for the merger; give a detailed statement of the district's finances, listing its assets and liabilities; state the terms and conditions under which the merger is proposed; and pray for the merger. [1969 ex.s. c 78 § 3. Formerly RCW 68.18.030.]

68.54.040 Merger—Petition—Rejection, concurrence or modification—Signatures. The board of the merger district may, by resolution, reject the petition, or it may concur therein as presented, or it may modify the terms and conditions of the proposed merger, and shall transmit the petition, together with a copy of its resolution thereon to the merging district. If the petition is concurred in as presented or as modified, the board of the merging district shall forthwith present the

petition to the auditor of the county in which the merging district is situated, who shall within thirty days examine the signatures thereon and certify to the sufficiency or insufficiency thereof, and for that purpose he shall have access to all registration books and records in the possession of the registration officers of the election precincts included, in whole or in part, within the merging district. Such books and records shall be prima facie evidence of truth of the certificate. No signatures may be withdrawn from the petition after the filing. [1969 ex.s. c 78 § 4. Formerly RCW 68.18.040.]

68.54.050 Merger—Petition—Special election. If the auditor finds that the petition contains the signatures of a sufficient number of qualified electors, he shall return it, together with his certificate of sufficiency attached thereto, to the board of the merging district. Thereupon such board shall adopt a resolution, calling a special election in the merging district, at which shall be submitted to the electors thereof, the question of the merger. [1969 ex.s. c 78 § 5. Formerly RCW 68.18.050.]

68.54.060 Merger—Petition—Election—Vote required—Merger effected. The board of [the] merging district shall notify the board of the merger district of the results of the election. If three-fifths of the votes cast at the election favor the merger, the respective district boards shall adopt concurrent resolutions, declaring the districts merged, under the name of the merger district. Thereupon the districts are merged into one district, under the name of the merger district; the merging district is dissolved without further proceedings; and the boundaries of the merger district are thereby extended to include all the area of the merging district. Thereafter the legal existence cannot be questioned by any person by reason of any defect in the proceedings had for the merger. [1969 ex.s. c 78 § 6. Formerly RCW 68.18.060.]

68.54.070 Merger—Petition—When election dispensed with. If three-fifths of all the qualified electors in the merging district sign the petition to merge, no election on the question of the merger is necessary. In such case the auditor shall return the petition, together with his certificate of sufficiency attached thereto, to the board of the merging district. Thereupon the boards of the respective districts shall adopt their concurrent resolutions of merger in the same manner and to the same effect as if the merger had been authorized by an election. [1969 ex.s. c 78 § 7. Formerly RCW 68.18.070.]

68.54.080 Merger—Preexisting obligations. None of the obligations of the merged districts or of a local improvement district therein shall be affected by the merger and dissolution, and all land liable to be assessed to pay any of such indebtedness shall remain liable to the same extent as if the merger had not been made, and any assessments theretofore levied against the land shall remain unimpaired and shall be collected in the same

manner as if no merger had been made. The commissioners of the merged district shall have all the powers possessed at the time of the merger by the commissioners of the two districts, to levy, assess and cause to be collected all assessments against any land in both districts which may be necessary to provide for the payment of the indebtedness thereof, and until the assessments are collected and all indebtedness of the districts paid, separate funds shall be maintained for each district as were maintained before the merger: *Provided*, That the board of the merged district may, with the consent of the creditors of the districts merged, cancel any or all assessments theretofore levied, in accordance with the terms and conditions of the merger, to the end that the lands in the respective districts shall bear their fair and proportionate share of such indebtedness. [1969 ex.s. c 78 § 8. Formerly RCW 68.18.080.]

68.54.090 Merger—Transfer of all property, funds, assessments. The commissioners of the merging district shall, forthwith upon completion of the merger, transfer, convey, and deliver to the merged district all property and funds of the merging district, together with all interest in and right to collect any assessments theretofore levied. [1969 ex.s. c 78 § 9. Formerly RCW 68.18.090.]

68.54.100 Merger and transfer of part of one district to adjacent district—Petition—Election—Vote. A part of one district may be transferred and merged with an adjacent district whenever such area can be better served by the merged district. To effect such a merger a petition, signed by not less than fifteen percent of the qualified electors residing in the area to be merged, shall be filed with the commissioners of the merging district. Such petition shall be promoted by one or more qualified electors within the area to be transferred. If the commissioners of the merging district act favorably upon the petition, then the petition shall be presented to the commissioners of the merger district. If the commissioners of the merger district act favorably upon the petition, an election shall be called in the area merged.

In the event that either board of cemetery commissioners should not concur with the petition, the petition may then be presented to a county review board established for such purposes, if there be no county review board for such purposes then to the state review board and if there be no state review board, then to the county commissioners of the county in which the area to be merged is situated, who shall decide if the area can be better served by such a merger; upon an affirmative decision an election shall be called in the area merged.

A majority of the votes cast shall be necessary to approve the transfer. [1969 ex.s. c 78 § 10. Formerly RCW 68.18.100.]

68.54.110 Merger and transfer of part of one district to adjacent district—When election dispensed with. If three-fifths of all the qualified electors in the area to be merged sign a petition to merge the districts, no election

on the question of the merger is necessary, in which case the auditor shall return the petition, together with his certificate of sufficiency attached thereto, to the boards of the merging districts. Thereupon the boards of the respective districts shall adopt their concurrent resolutions of transfer in the same manner and to the same effect as if the same had been authorized by an election. [1969 ex.s. c 78 § 11. Formerly RCW 68.18.110.]

68.54.120 Merger and transfer of part of one district to adjacent district—Preexisting indebtedness. When a part of one cemetery district is transferred to another as provided by RCW 68.54.100 and 68.54.110, said part shall be relieved of all liability for any indebtedness of the district from which it is withdrawn. However, the acquiring district shall pay to the losing district that portion of the latter's indebtedness for which the transferred part was liable. This amount shall not exceed the proportion that the assessed valuation of the transferred part bears to the assessed valuation of the whole district from which said part is withdrawn. The adjustment of such indebtedness shall be based on the assessment for the year in which the transfer is made. The boards of commissioners of the districts involved in the said transfer and merger shall enter into a contract for the payment by the acquiring district of the above-referred to indebtedness under such terms as they deem proper, provided such contract shall not impair the security of existing creditors. [1987 c 331 § 75; 1969 ex.s. c 78 § 12. Formerly RCW 68.18.120.]

68.54.900 Effective date—1987 c 331. See RCW 68.05.900.

Chapter 68.56

PENAL AND MISCELLANEOUS PROVISIONS

Sections	
68.56.010	Unlawful damage to graves, markers, shrubs, etc.— Interfering with funeral.
68.56.020	Unlawful damage to graves, markers, shrubs, etc.— Civil liability for damage.
68.56.030	Unlawful damage to graves, markers, shrubs, etc.— Exceptions.
68.56.040	Nonconforming cemetery a nuisance—Penalty— Costs of prosecution.
68.56.050	Defendant liable for costs.
68.56.060	Police authority—Who may exercise.
68.56.070	Forfeiture of office for inattention to duty.
68.56.900	Effective date—1987 c 331.

Burial, removal permits required: RCW 70.58.230.

Care of veterans' plot at Olympia: RCW 73.24.020.

68.56.010 Unlawful damage to graves, markers, shrubs, etc.—Interfering with funeral. Every person is guilty of a gross misdemeanor who unlawfully or without right wilfully does any of the following:

- (1) Destroys, cuts, mutilates, effaces, or otherwise injures, tears down or removes, any tomb, plot, monument, memorial or marker in a cemetery, or any gate, door, fence, wall, post or railing, or any enclosure for the protection of a cemetery or any property in a cemetery.

(2) Destroys, cuts, breaks, removes or injures any building, statuary, ornamentation, tree, shrub, flower or plant within the limits of a cemetery.

(3) Disturbs, obstructs, detains or interferes with any person carrying or accompanying human remains to a cemetery or funeral establishment, or engaged in a funeral service, or an interment. [1943 c 247 § 36; Rem. Supp. 1943 § 3778-36. Cf. 1909 c 249 § 240 and 1856-57 p 28 §§ 4, 5. Formerly RCW 68.48.010.]

68.56.020 Unlawful damage to graves, markers, shrubs, etc.—Civil liability for damage. Any person violating any provision of *RCW 68.48.010 is liable, in a civil action by and in the name of the cemetery authority, to pay all damages occasioned by his unlawful acts. The sum recovered shall be applied in payment for the repair and restoration of the property injured or destroyed. [1943 c 247 § 37; Rem. Supp. 1943 § 3778-37. Formerly RCW 68.48.020.]

*Reviser's note: RCW 68.48.010 was recodified as RCW 68.56.010 pursuant to 1987 c 331 § 89.

68.56.030 Unlawful damage to graves, markers, shrubs, etc.—Exceptions. The provisions of *RCW 68.48.010 do not apply to the removal or unavoidable breakage or injury, by a cemetery authority, of any thing placed in or upon any portion of its cemetery in violation of any of the rules or regulations of the cemetery authority, nor to the removal of anything placed in the cemetery by or with the consent of the cemetery authority which has become in a wrecked, unsightly or dilapidated condition. [1943 c 247 § 37; Rem. Supp. 1943 § 3778-37. Formerly RCW 68.48.030.]

*Reviser's note: RCW 68.48.010 was recodified as RCW 68.56.010 pursuant to 1987 c 331 § 89.

68.56.040 Nonconforming cemetery a nuisance—Penalty—Costs of prosecution. Every person, firm or corporation who is the owner or operator of a cemetery established in violation of *this act is guilty of maintaining a public nuisance and upon conviction is punishable by a fine of not less than five hundred dollars nor more than five thousand dollars or by imprisonment in a county jail for not less than one month nor more than six months, or by both; and, in addition is liable for all costs, expenses and disbursements paid or incurred in prosecuting the case. [1943 c 247 § 145; Rem. Supp. 1943 § 3778-145. Formerly RCW 68.48.040.]

*Reviser's note: "This act", see note following RCW 68.04.020.

Section applies to certain mausoleums, columbariums, etc.: RCW 68.28.010.

68.56.050 Defendant liable for costs. Every person who violates any provision of *this act is guilty of a misdemeanor, and in addition is liable for all costs, expenses, and disbursements paid or incurred by a person prosecuting the case. [1943 c 247 § 139; Rem. Supp. 1943 § 3778-139. Formerly RCW 68.48.060.]

*Reviser's note: "This act", see note following RCW 68.04.020.

Costs, etc., to be fixed by court having jurisdiction: RCW 68.28.065.

Section applies to certain mausoleums, columbariums, etc.: RCW 68.28.010.

68.56.060 Police authority—Who may exercise. The sexton, superintendent or other person in charge of a cemetery, and such other persons as the cemetery authority designates have the authority of a police officer for the purpose of maintaining order, enforcing the rules and regulations of the cemetery association, the laws of the state, and the ordinances of the city or county, within the cemetery over which he has charge, and within such radius as may be necessary to protect the cemetery property. [1943 c 247 § 55; Rem. Supp. 1943 § 3778-55. Formerly RCW 68.48.080.]

68.56.070 Forfeiture of office for inattention to duty. The office of any director or officer who acts or permits action contrary to *this act immediately thereupon becomes vacant. [1943 c 247 § 132; Rem. Supp. 1943 § 3778-132. Formerly RCW 68.48.090.]

*Reviser's note: "This act", see note following RCW 68.04.020.

68.56.900 Effective date—1987 c 331. See RCW 68.05.900.

Title 69

FOOD, DRUGS, COSMETICS, AND POISONS

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Chapter 69.04

FOOD, DRUG, AND COSMETIC ACT

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69.04.001 Statement of purpose. This chapter is intended to enact state legislation (1) which safeguards the public health and promotes the public welfare by protecting the consuming public from injury by product use and the purchasing public from injury by merchandising deceit, flowing from intrastate commerce in food, drugs, devices, and cosmetics; and (2) which is uniform, as provided in this chapter, with the federal food, drug, and cosmetic act; and with the federal trade commission act, to the extent it expressly outlaws the false advertisement of food, drugs, devices, and cosmetics; and (3) which thus promotes uniformity of such law and its administration and enforcement, in and throughout the United States. [1945 c 257 § 2; Rem. Supp. 1945 § 6163–51.]

Conformity with federal regulations: RCW 69.04.190 and 69.04.200.

69.04.002 Introductory. For the purposes of this chapter, terms shall apply as herein defined unless the context clearly indicates otherwise. [1945 c 257 § 3; Rem. Supp. 1945 § 6163–52.]

69.04.003 "Federal act" defined. The term "federal act" means the federal food, drug, and cosmetic act, approved on June 25, 1938. (Title 21 U.S.C. 301 et seq.; 52 Stat. 1040 et seq.) [1945 c 257 § 4; Rem. Supp. 1945 § 6163–53.]

69.04.004 "Intrastate commerce". The term "intrastate commerce" means any and all commerce within the state of Washington and subject to the jurisdiction thereof; and includes the operation of any business or service establishment. [1945 c 257 § 5; Rem. Supp. 1945 § 6163–54.]

69.04.005 "Sale". The term "sale" means any and every sale and includes (1) manufacture, processing, packing, canning, bottling, or any other production, preparation, or putting up; (2) exposure, offer, or any other proffer; (3) holding, storing, or any other possessing; (4) dispensing, giving, delivering, serving, or any other supplying; and (5) applying, administering, or any other using. [1945 c 257 § 6; Rem. Supp. 1945 § 6163-55.]

69.04.006 "Director". The term "director" means the director of the department of agriculture of the state of Washington and his duly authorized representatives. [1945 c 257 § 7; Rem. Supp. 1945 § 6163-56.]

Director of agriculture, general duties: Chapter 43.23 RCW.

69.04.007 "Person". The term "person" includes individual, partnership, corporation, and association. [1945 c 257 § 8; Rem. Supp. 1945 § 6163-57.]

69.04.008 "Food". The term "food" means (1) articles used for food or drink for man or other animals, (2) chewing gum, and (3) articles used for components of any such article. [1945 c 257 § 9; Rem. Supp. 1945 § 6163-58.]

69.04.009 "Drugs". The term "drug" means (1) articles recognized in the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States, or official national formulary, or any supplement to any of them; and (2) articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals; and (3) articles (other than food) intended to affect the structure or any function of the body of man or other animals; and (4) articles intended for use as a component of any article specified in clause (1), (2), or (3); but does not include devices or their components, parts, or accessories. [1945 c 257 § 10; Rem. Supp. 1945 § 6163-59. Prior: 1907 c 211 § 2.]

69.04.010 "Device". The term "device" (except when used in RCW 69.04.016 and in RCW 69.04.040(10), 69.04.270, 69.04.690, and in RCW 69.04.470 as used in the sentence "(as compared with other words, statements, designs, or devices, in the labeling)") means instruments, apparatus, and contrivances, including their components, parts and accessories, intended (1) for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals; or (2) to affect the structure or any function of the body of man or other animals. [1945 c 257 § 11; Rem. Supp. 1945 § 6163-60.]

69.04.011 "Cosmetic". The term "cosmetic" means (1) articles intended to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to the human body or any part thereof for cleansing, beautifying, promoting attractiveness, or altering the appearance, and (2) articles intended for use as a component of

any such article; except that such term shall not include soap. [1945 c 257 § 12; Rem. Supp. 1945 § 6163-61.]

69.04.012 "Official compendium". The term "official compendium" mean the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States, official national formulary, or any supplement to any of them. [1945 c 257 § 13; Rem. Supp. 1945 § 6163-62.]

69.04.013 "Label". The term "label" means a display of written, printed, or graphic matter upon the immediate container of any article; and a requirement made by or under authority of this chapter that any word, statement, or other information appear on the label shall not be considered to be complied with unless such word, statement, or other information also appears on the outside container or wrapper, if any there be, of the retail package of such article, or is easily legible through the outside container or wrapper. [1945 c 257 § 14; Rem. Supp. 1945 § 6163-63.]

69.04.014 "Immediate container". The term "immediate container" does not include package liners. [1945 c 257 § 15; Rem. Supp. 1945 § 6163-64.]

69.04.015 "Labeling". The term "labeling" means all labels and other written, printed, or graphic matter (1) upon any article or any of its containers or wrappers, or (2) accompanying such article. [1945 c 257 § 16; Rem. Supp. 1945 § 6163-65.]

Crimes relating to labeling: Chapter 9.16 RCW, RCW 69.40.055.

69.04.016 "Misleading labeling or advertisement", how determined. If any article is alleged to be misbranded because the labeling is misleading, or if an advertisement is alleged to be false because it is misleading, then in determining whether the labeling or advertisement is misleading there shall be taken into account (among other things) not only representations made or suggested by statement, word, design, device, sound, or any combination thereof, but also the extent to which the labeling or advertisement fails to reveal facts material in the light of such representations or material with respect to consequences which may result from the use of the article to which the labeling or advertisement relates under the conditions of use prescribed in the labeling or advertisement thereof or under such conditions of use as are customary or usual. [1945 c 257 § 17; Rem. Supp. 1945 § 6163-66.]

Crimes relating to advertising: Chapter 9.04 RCW.

69.04.017 "Antiseptic" as germicide. The representation of a drug, in its labeling or advertisement, as an antiseptic shall be considered to be a representation that it is a germicide, except in the case of a drug purporting to be, or represented as, an antiseptic for inhibitory use as a wet dressing, ointment, dusting powder, or such other use as involves prolonged contact with the body. [1945 c 257 § 18; Rem. Supp. 1945 § 6163-67.]

69.04.018 "New drug" defined. The term "new drug" means (1) any drug the composition of which is such that such drug is not generally recognized, among experts qualified by scientific training and experience to evaluate the safety of drugs, as safe for use under the conditions prescribed, recommended, or suggested in the labeling thereof; or (2) any drug the composition of which is such that such drug, as a result of investigations to determine its safety for use under such conditions, has become so recognized, but which has not, otherwise than in such investigations, been used to a material extent or for a material time under such conditions: *Provided*, That no drug in use on the *effective date of this chapter shall be regarded as a new drug. [1945 c 257 § 19; Rem. Supp. 1945 § 6163-68.]

*Effective date—1945 c 257: See RCW 69.04.860.

69.04.019 "Advertisement". The term "advertisement" means all representations, other than by labeling, for the purpose of inducing, or which are likely to induce, directly or indirectly, the purchase of food, drugs, devices, or cosmetics. [1945 c 257 § 20; Rem. Supp. 1945 § 6163-69.]

69.04.020 "Contaminated with filth". The term "contaminated with filth" applies to any food, drug, device, or cosmetic not securely protected from dust, dirt, and as far as may be necessary by all reasonable means, from all foreign or injurious contaminations. [1945 c 257 § 21; Rem. Supp. 1945 § 6163-70.]

69.04.021 "Package". The word "package" shall include, and be construed to include, wrapped meats enclosed in papers or other materials as prepared by the manufacturers thereof for sale. [1963 c 198 § 8.]

69.04.022 "Pesticide chemical". The term "pesticide chemical" means any substance defined as an economic poison and/or agricultural pesticide in Title 15 RCW as now enacted or hereafter amended. [1963 c 198 § 9.]

69.04.023 "Raw agricultural commodity". The term "raw agricultural commodity" means any food in its raw or natural state, including all fruits that are washed, colored or otherwise treated in their unpeeled natural form prior to marketing. [1963 c 198 § 10.]

69.04.024 "Food additive", "safe". (1) The term "food additive" means any substance the intended use of which results or may reasonably be expected to result, directly or indirectly, in its becoming a component or otherwise affecting the characteristics of any food (including any substance intended for use in producing, manufacturing, packing, processing, preparing, treating, packaging, transporting, or holding food; and including any source of radiation intended for any such use), if such substance generally is recognized, among experts qualified by scientific training and experience to evaluate its safety, as having been adequately shown through scientific procedures (or, in the case of a substance used

in food prior to January 1, 1958; through either scientific procedures or experience based on common use in food) to be unsafe under the conditions of its intended use; except that such term does not include; (a) a pesticide chemical in or on a raw agricultural commodity; or (b) a pesticide chemical to the extent that it is intended for use or is used in the production, storage, or transportation of any raw agricultural commodity; or (c) a color additive.

(2) The term "safe" as used in the food additive definition has reference to the health of man or animal. [1963 c 198 § 11.]

69.04.025 "Color additive", "color". (1) The term "color additive" means a material which (a) is a dye, pigment, or other substance made by a process of synthesis or similar artifice, or extracted, isolated, or otherwise derived, with or without intermediate or final change of identity, from a vegetable, animal, mineral, or other source, and (b) when added or applied to a food is capable (alone or through reaction with other substance) of imparting color thereto; except that such term does not include any material which the director, by regulation, determines is used (or intended to be used) solely for a purpose or purposes other than coloring.

(2) The term "color" includes black, white, and intermediate grays.

(3) Nothing in subsection (1) hereof shall be construed to apply to any pesticide chemical, soil or plant nutrient, or other agricultural chemical solely because of its effect in aiding, retarding, or otherwise affecting, directly or indirectly, the growth or other natural physiological processes of produce of the soil and thereby affecting its color, whether before or after harvest. [1963 c 198 § 12.]

69.04.040 Prohibited acts. The following acts and the causing thereof are hereby prohibited:

(1) The sale in intrastate commerce of any food, drug, device, or cosmetic that is adulterated or misbranded.

(2) The adulteration or misbranding of any food, drug, device, or cosmetic in intrastate commerce.

(3) The receipt in intrastate commerce of any food, drug, device, or cosmetic that is adulterated or misbranded, and the sale thereof in such commerce for pay or otherwise.

(4) The introduction or delivery for introduction into intrastate commerce of (a) any food in violation of RCW 69.04.350; or (b) any new drug in violation of RCW 69.04.570.

(5) The dissemination within this state, in any manner or by any means or through any medium, of any false advertisement.

(6) The refusal to permit (a) entry and the taking of a sample or specimen or the making of any investigation or examination as authorized by RCW 69.04.780; or (b) access to or copying of any record as authorized by RCW 69.04.810.

(7) The refusal to permit entry or inspection as authorized by RCW 69.04.820.

(8) The removal, mutilation, or violation of an embargo notice as authorized by RCW 69.04.110.

(9) The giving of a guaranty or undertaking in intrastate commerce, referred to in RCW 69.04.080, that is false.

(10) The forging, counterfeiting, simulating, or falsely representing, or without proper authority, using any mark, stamp, tag, label, or other identification device authorized or required by regulations promulgated under RCW 69.04.350.

(11) The alteration, mutilation, destruction, obliteration, or removal of the whole or any part of the labeling of a food, drug, device, or cosmetic, or the doing of any other act with respect to a food, drug, device, or cosmetic, or the labeling or advertisement thereof, which results in a violation of this chapter.

(12) The using in intrastate commerce, in the labeling or advertisement of any drug, of any representation or suggestion that an application with respect to such drug is effective under section 505 of the federal act or under RCW 69.04.570, or that such drug complies with the provisions of either such section. [1945 c 257 § 22; Rem. Supp. 1945 § 6163-71. Prior: 1917 c 168 § 1; 1907 c 211 § 1; 1901 c 94 § 1.]

69.04.050 Remedy by injunction. (1) In addition to the remedies hereinafter provided the director is hereby authorized to apply to the superior court of Thurston county for, and such court shall have jurisdiction upon prompt hearing and for cause shown to grant, a temporary or permanent injunction restraining any person from violating any provision of RCW 69.04.040; without proof that an adequate remedy at law does not exist.

(2) Whenever it appears to the satisfaction of the court in the case of a newspaper, magazine, periodical, or other publication, published at regular intervals (a) that restraining the dissemination of a false advertisement in any particular issue of such publication would delay the delivery of such issue after the regular time therefor, and (b) that such delay would be due to the method by which the manufacture and distribution of such publication is customarily conducted by the publisher in accordance with sound business practice, and not to any method or device adopted for the evasion of this section or to prevent or delay the issuance of an injunction or restraining order with respect to such false advertisement or any other advertisement, the court shall exclude such issue from the operation of the restraining order or injunction. [1945 c 257 § 23; Rem. Supp. 1945 § 6163-72.]

Injunctions, generally: Chapter 7.40 RCW.

69.04.060 Criminal penalty for violations. Any person who violates any provision of RCW 69.04.040 shall be guilty of a misdemeanor and shall on conviction thereof be subject to a fine of not more than two hundred dollars; but if the violation is committed after a conviction of such person under this section has become final, such person shall be subject to imprisonment for not more than thirty days, or a fine of not more than five hundred dollars, or both such imprisonment and

fine. [1945 c 257 § 24; Rem. Supp. 1945 § 6163-73. Prior: 1907 c 211 § 12; 1901 c 94 § 11.]

69.04.070 Additional penalty. Notwithstanding the provisions of RCW 69.04.060, in case of a violation of any provision of RCW 69.04.040, with intent to defraud or mislead, the penalty shall be imprisonment for not more than ninety days, or a fine of not more than one thousand dollars, or both such imprisonment and fine. [1945 c 257 § 25; Rem. Supp. 1945 § 6163-74.]

69.04.080 Avoidance of penalty. No person shall be subject to the penalties of RCW 69.04.060:

(1) For having violated RCW 69.04.040(3), if he establishes that he received and sold such article in good faith, unless he refuses on request of the director to furnish the name and address of the person in the state of Washington from whom he received such article and copies of all available documents pertaining to his receipt thereof; or

(2) For having violated RCW 69.04.040(1), (3), or (4), if he establishes a guaranty or undertaking signed by, and containing the name and address of, the person in the state of Washington from whom he received such article in good faith, to the effect that such article complies with this chapter; or

(3) For having violated RCW 69.04.040(5), if he establishes a guaranty or undertaking signed by, and containing the name and address of, the person in the state of Washington from whom he received such advertisement in good faith, to the effect that such advertisement complies with this chapter; or

(4) For having violated RCW 69.04.040(9), if he establishes that he gave such guaranty or undertaking in good faith and in reliance on a guaranty or undertaking to him, which guaranty or undertaking was to the same effect and was signed by, and contained the name and address of, a person in the state of Washington. [1945 c 257 § 26; Rem. Supp. 1945 § 6163-75.]

69.04.090 Liability of disseminator of advertisement. No publisher, radio broadcast licensee, advertising agency, or agency or medium for the dissemination of an advertisement, except the manufacturer, packer, distributor, or seller of the article to which the advertisement relates, shall be subject to the penalties of RCW 69.04.060 by reason of his dissemination of any false advertisement, unless he has refused on the request of the director to furnish the name and address of the manufacturer, packer, distributor, seller, or advertising agency in the state of Washington, who caused him to disseminate such false advertisement. [1945 c 257 § 27; Rem. Supp. 1945 § 6163-76.]

69.04.100 Condemnation of adulterated or misbranded article. Whenever the director shall find in intrastate commerce an article subject to this chapter which is so adulterated or misbranded that it is unfit or unsafe for human use and its immediate condemnation is required to protect the public health, such article is hereby declared to be a nuisance and the director is

hereby authorized forthwith to destroy such article or to render it unsalable for human use. [1945 c 257 § 28; Rem. Supp. 1945 § 6163-77.]

69.04.110 Embargo of articles. Whenever the director shall find, or shall have probable cause to believe, that an article subject to this chapter is in intrastate commerce in violation of this chapter, and that its embargo under this section is required to protect the consuming or purchasing public from injury, or possible injury, he is hereby authorized to affix to such article a notice of its embargo and against its sale in intrastate commerce, without permission given under this chapter. But if, after such article has been so embargoed, the director shall find that such article does not involve a violation of this chapter, such embargo shall be forthwith removed. [1975 1st ex.s. c 7 § 25; 1945 c 257 § 29; Rem. Supp. 1945 § 6163-78.]

Purpose of section: See RCW 69.04.398.

69.04.120 Procedure on embargo. When the director has embargoed an article, he shall, forthwith and without delay and in no event later than twenty days after the affixing of notice of its embargo, petition the superior court for an order affirming the embargo. The court then has jurisdiction, for cause shown and after prompt hearing to any claimant of the embargoed article, to issue an order which directs the removal of the embargo or the destruction or the correction and release of the article. An order for destruction or correction and release shall contain such provision for the payment of pertinent court costs and fees and administrative expenses as is equitable and which the court deems appropriate in the circumstances. An order for correction and release may contain such provision for a bond as the court finds indicated in the circumstances. [1983 c 95 § 8; 1945 c 257 § 30; Rem. Supp. 1945 § 6163-79.]

69.04.130 Petitions may be consolidated. Two or more petitions under RCW 69.04.120, which pend at the same time and which present the same issue and claimant hereunder, shall be consolidated for simultaneous determination by one court of jurisdiction, upon application to any court of jurisdiction by the director or by such claimant. [1945 c 257 § 31; Rem. Supp. 1945 § 6163-80.]

69.04.140 Claimant entitled to sample. The claimant in any proceeding by petition under RCW 69.04.120 shall be entitled to receive a representative sample of the article subject to such proceeding, upon application to the court of jurisdiction made at any time after such petition and prior to the hearing thereon. [1945 c 257 § 32; Rem. Supp. 1945 § 6163-81.]

69.04.150 Damages not recoverable if probable cause existed. No state court shall allow the recovery of damages from administrative action for condemnation under RCW 69.04.100 or for embargo under RCW 69.04.110, if the court finds that there was probable cause for such action. [1945 c 257 § 33; Rem. Supp. 1945 § 6163-82.]

69.04.160 Prosecutions. (1) It shall be the duty of each state attorney, county attorney, or city attorney to whom the director reports any violation of this chapter, or regulations promulgated under it, to cause appropriate proceedings to be instituted in the proper courts, without delay, and to be duly prosecuted as prescribed by law.

(2) Before any violation of this chapter is reported by the director to any such attorney for the institution of a criminal proceeding, the person against whom such proceeding is contemplated shall be given appropriate notice and an opportunity to present his views to the director, either orally or in writing, with regard to such contemplated proceeding. [1945 c 257 § 34; Rem. Supp. 1945 § 6163-83.]

69.04.170 Minor infractions. Nothing in this chapter shall be construed as requiring the director to report for the institution of proceedings under this chapter, minor violations of this chapter, whenever he believes that the public interest will be adequately served in the circumstances by a suitable written notice or warning. [1945 c 257 § 35; Rem. Supp. 1945 § 6163-84.]

69.04.180 Proceedings to be in name of state. All such proceedings for the enforcement, or to restrain violations, of this chapter shall be by and in the name of the state of Washington. [1945 c 257 § 36; Rem. Supp. 1945 § 6163-85.]

69.04.190 Standards may be prescribed by regulations. Whenever in the judgment of the director such action will promote honesty and fair dealing in the interest of consumers, he shall promulgate regulations fixing and establishing for any food, under its common or usual name so far as practicable, a reasonable definition and standard of identity, a reasonable standard of quality, and/or reasonable standards of fill of container. In prescribing any standard of fill of container, consideration shall be given to and due allowance shall be made for product or volume shrinkage or expansion unavoidable in good commercial practice, and need for packing and protective material. In prescribing any standard of quality for any canned fruit or canned vegetable, consideration shall be given to and due allowance shall be made for the differing characteristics of the several varieties thereof. In prescribing a definition and standard of identity for any food or class of food in which optional ingredients are permitted, the director shall, for the purpose of promoting honesty and fair dealing in the interest of consumers, designate the optional ingredients which shall be named on the label. [1945 c 257 § 37; Rem. Supp. 1945 § 6163-86. Prior: 1917 c 168 § 2.]

69.04.200 Conformance with federal standards. The definitions and standards of identity, the standards of quality and fill of container, and the label requirements prescribed by regulations promulgated under *this section shall conform, insofar as practicable, with those prescribed by regulations promulgated under section 401 of the federal act and to the definitions and standards

promulgated under the meat inspection act approved March 4, 1907, as amended. [1945 c 257 § 38; Rem. Supp. 1945 § 6163-87.]

*Reviser's note: The language "this section" appears in 1945 c 257 § 38 but apparently refers to 1945 c 257 § 37 codified as RCW 69.04.190.

69.04.205 Bacon—Packaging at retail to reveal quality and leanness. All packaged bacon other than that packaged in cans shall be offered and exposed for sale and sold, within the state of Washington only at retail in packages which permit the buyer to readily view the quality and degree of leanness of the product. [1971 c 49 § 1.]

69.04.206 Bacon—Rules, regulations and standards—Withholding packaging use—Hearing—Final determination—Appeal. The director of the department of agriculture is hereby authorized to promulgate rules, regulations, and standards for the implementation of RCW 69.04.205 through 69.04.207. If the director has reason to believe that any packaging method, package, or container in use or proposed for use with respect to the marketing of bacon is false or misleading in any particular, or does not meet the requirements of RCW 69.04.205, he may direct that such use be withheld unless the packaging method, package, or container is modified in such manner as he may prescribe so that it will not be false or misleading. If the person, firm, or corporation using or proposing to use the packaging method, package, or container does not accept the determination of the director such person, firm, or corporation may request a hearing, but the use of the packaging method, package, or container shall, if the director so directs, be withheld pending hearing and final determination by the director. Any such determination by the director shall be conclusive unless, within thirty days after receipt of notice of such final determination, the person, firm, or corporation adversely affected thereby appeals to a court of proper jurisdiction. [1971 c 49 § 2.]

69.04.207 Bacon—Effective date. RCW 69.04.205 through 69.04.207 shall take effect on January 1, 1972. [1971 c 49 § 3.]

69.04.210 Food—Adulteration by poisonous or deleterious substance. A food shall be deemed to be adulterated:

(1) If it bears or contains any poisonous or deleterious substance which may render it injurious to health; but in case the substance is not an added substance such food shall not be considered adulterated under this clause if the quantity of such substance in such food does not ordinarily render it injurious to health; or

(2) (a) If it bears or contains any added poisonous or added deleterious substance (other than one which is (i) a pesticide chemical in or on a raw agricultural commodity; (ii) a food additive, or (iii) a color additive) which is unsafe within the meaning of RCW 69.04.390, or (b) if it is a raw agricultural commodity and it bears

or contains a pesticide chemical which is unsafe within the meaning of RCW 69.04.392, or (c) if it is, or it bears or contains, any food additive which is unsafe within the meaning of RCW 69.04.394: *Provided*, That where a pesticide chemical has been used in or on a raw agricultural commodity in conformity with an exemption granted or a tolerance prescribed under RCW 69.04.392 and such raw agricultural commodity has been subjected to processing such as canning, cooking, freezing, dehydrating, or milling, the residue of such pesticide chemical remaining in or on such processed food shall, notwithstanding the provisions of RCW 69.04.390 and 69.04.394, not be deemed unsafe if such residue in or on the raw agricultural commodity has been removed to the extent possible in good manufacturing practice and the concentration of such residue in the processed food when ready to eat is not greater than the tolerance prescribed for the raw agricultural commodity; or

(3) If it consists in whole or in part of any diseased, contaminated, filthy, putrid, or decomposed substance, or if it is otherwise unfit for food; or

(4) If it has been produced, prepared, packed, or held under insanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered diseased, unwholesome, or injurious to health; or

(5) If it is in whole or in part the product of a diseased animal or of an animal which has died otherwise than by slaughter or which has been fed on the uncooked offal from a slaughterhouse; or

(6) If its container is composed in whole or in part of any poisonous or deleterious substance which may render the contents injurious to health; or

(7) If it has been intentionally subjected to radiation, unless the use of the radiation was in conformity with a regulation or exemption in effect pursuant to RCW 69.04.394. [1963 c 198 § 1; 1945 c 257 § 39; Rem. Supp. 1945 § 6163-88. Prior: 1923 c 36 § 1; 1907 c 211 § 3; 1901 c 94 § 3.]

69.04.220 Food—Adulteration by abstraction, addition, substitution, etc. A food shall be deemed to be adulterated (1) if any valuable constituent has been in whole or in part omitted or abstracted therefrom; or (2) if any substance has been substituted wholly or in part therefor; or (3) if damage or inferiority has been concealed in any manner; or (4) if any substance has been added thereto or mixed or packed therewith so as to increase its bulk or weight, or reduce its quality or strength, or make it appear better or of greater value than it is. [1945 c 257 § 40; Rem. Supp. 1945 § 6163-89.]

69.04.231 Food—Adulteration by color additive. A food shall be deemed to be adulterated if it is, or it bears or contains a color additive which is unsafe within the meaning of RCW 69.04.396. [1963 c 198 § 5.]

69.04.240 Confectionery—Adulteration. A food shall be deemed to be adulterated if it is confectionery

and it bears or contains any alcohol from natural or artificial alcohol flavoring in excess of one percent of the weight of the confection or any nonnutritive article or substance except harmless coloring, harmless flavoring, harmless resinous glaze not in excess of four-tenths of one percent, natural gum, and pectin: *Provided*, That this section shall not apply to any chewing gum by reason of its containing harmless nonnutritive masticatory substances. [1984 c 78 § 2; 1945 c 257 § 42; Rem. Supp. 1945 § 6163–91. Prior: 1923 c 36 § 1, part; 1907 c 211 § 3, part.]

Finding and declaration—Severability—1984 c 78: See notes following RCW 66.12.160.

69.04.245 Poultry—Improper use of state's geographic outline. Uncooked poultry is deemed to be misbranded if it is produced outside of this state but the label for the poultry contains the geographic outline of this state. [1989 c 257 § 2.]

Legislative findings—1989 c 257: "The legislature finds that: Poultry produced in this state is known throughout the state for its high quality; and one of the sources of that quality is the proximity of production centers to retail outlets in the state. The legislature also finds that labeling which misrepresents poultry produced elsewhere as being a product of this state may lead consumers to purchase products which they would not otherwise purchase. The legislature further finds that the presence of the geographic outline of this state on a label for poultry produced outside of the state misrepresents the product as having been produced in this state." [1989 c 257 § 1.]

69.04.250 Food—Misbranding by false label, etc. A food shall be deemed to be misbranded (1) if its labeling is false or misleading in any particular; or (2) if it is offered for sale under the name of another food; or (3) if it is an imitation of another food, unless its label bears, in type of uniform size and prominence, the word "imitation" and, immediately thereafter, the name of the food imitated; or (4) if its container is so made, formed or filled as to be misleading. [1945 c 257 § 43; Rem. Supp. 1945 § 6163–92. Prior: 1923 c 36 § 2; 1907 c 211 § 4.]

69.04.260 Packaged food—Misbranding. If a food is in package form, it shall be deemed to be misbranded, unless it bears a label containing (1) the name and place of business of the manufacturer, packer, or distributor; and (2) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count: *Provided*, That under clause (2) of this section reasonable variations shall be permitted, and exemptions as to small packages shall be established, by regulations promulgated by the director. [1945 c 257 § 44; Rem. Supp. 1945 § 6163–93.]

69.04.270 Food—Misbranding by lack of prominent label. A food shall be deemed to be misbranded if any word, statement, or other information required by or under authority of this chapter to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of

purchase and use. [1945 c 257 § 45; Rem. Supp. 1945 § 6163–94.]

69.04.280 Food—Misbranding for nonconformity with standard of identity. If a food purports to be or is represented as a food for which a definition and standard of identity has been prescribed by regulations as provided by RCW 69.04.190, it shall be deemed to be misbranded unless (1) it conforms to such definition and standard, and (2) its label bears the name of the food specified in the definition and standard, and, insofar as may be required by such regulations, the common names of optional ingredients (other than spices, flavoring, and coloring) present in such food. [1945 c 257 § 46; Rem. Supp. 1945 § 6163–95.]

69.04.290 Food—Misbranding for nonconformity with standard of quality. If a food purports to be or is represented as a food for which a standard of quality has been prescribed by regulations as provided by RCW 69.04.190, and its quality falls below such standard, it shall be deemed to be misbranded unless its label bears in such manner and form as such regulations specify, a statement that it falls below such standard. [1945 c 257 § 47; Rem. Supp. 1945 § 6163–96.]

69.04.300 Food—Misbranding for nonconformity with standard of fill. If a food purports to be or is represented as a food for which a standard or standards of fill of container have been prescribed by regulations as provided by RCW 69.04.190, and it falls below the standard of fill of container applicable thereto, it shall be deemed to be misbranded unless its label bears, in such manner and form as such regulations specify, a statement that it falls below such standard. [1945 c 257 § 48; Rem. Supp. 1945 § 6163–97.]

69.04.310 Food—Misbranding by failure to show usual name and ingredients. If a food is not subject to the provisions of RCW 69.04.280, it shall be deemed to be misbranded unless its label bears (1) the common or usual name of the food, if any there be, and (2) in case it is fabricated from two or more ingredients, the common or usual name of each such ingredient; except that spices, flavorings, and colorings, other than those sold as such, may be designated as spices, flavorings, and colorings without naming each: *Provided*, That, to the extent that compliance with the requirements of clause (2) of this section is impracticable, or results in deception or unfair competition, exemptions shall be established by regulations promulgated by the director. [1945 c 257 § 49; Rem. Supp. 1945 § 6163–98.]

69.04.315 Halibut—Misbranding by failure to show proper name. No person shall label or offer for sale any food fish product designated as halibut, with or without additional descriptive words unless such food fish product is *Hippoglossus Hippoglossus* or *Hippoglossus Stenolepis*. Any person violating the provisions of this section shall be guilty of misbranding under the provisions of this chapter. [1967 ex.s. c 79 § 1.]

69.04.320 Food—Misbranding by failure to show dietary properties. If a food purports to be or is represented for special dietary uses, it shall be deemed to be misbranded, unless its label bears such information concerning its vitamin, mineral and other dietary properties as is necessary in order to fully inform purchasers as to its value for such uses, as provided by regulations promulgated by the director, such regulations to conform insofar as practicable with regulations under section 403(j) of the federal act. [1945 c 257 § 50; Rem. Supp. 1945 § 6163-99.]

69.04.330 Food—Misbranding by failure to show artificial flavoring, coloring, etc. If a food bears or contains any artificial flavoring, artificial coloring, or chemical preservative, it shall be deemed to be misbranded unless it bears labeling stating that fact: *Provided*, That to the extent that compliance with the requirements of this section is impracticable, exemptions shall be established by regulations promulgated by the director. The provisions of this section and of RCW 69.04.280 and 69.04.310, with respect to artificial coloring, shall not apply in the case of butter, cheese, or ice cream. [1945 c 257 § 51; Rem. Supp. 1945 § 6163-100.]

69.04.331 Popcorn sold by theaters or commercial food service establishments—Misbranded if the use of butter or ingredients of butter-like flavoring not disclosed. (1) If a theater or other commercial food service establishment prepares and sells popcorn for human consumption, the establishment, at the point of sale, shall disclose by posting a sign in a conspicuous manner to prospective consumers a statement as to whether the butter or butter-like flavoring added to or attributed to the popcorn offered for sale is butter as defined in RCW 15.32.010 or is some other product. If the flavoring is some other product, the establishment shall also disclose the ingredients of the product.

The director of agriculture shall adopt rules prescribing the size and content of the sign upon which the disclosure is to be made. Any popcorn sold by or offered for sale by such an establishment to a consumer in violation of this section or the rules of the director implementing this section shall be deemed to be misbranded for the purposes of this chapter.

(2) The provisions of subsection (1) of this section do not apply to packaged popcorn labeled so as to disclose ingredients as required by law for prepackaged foods. [1986 c 203 § 17.]

Severability—1986 c 203: See note following RCW 15.04.100.

69.04.333 Poultry and poultry products—Label to indicate if product frozen. It shall be unlawful for any person to sell at retail or display for sale at retail any poultry and poultry products, including turkey, which has been frozen at any time, without having the package or container in which the same is sold bear a label clearly discernible to a customer that such product has been frozen and whether or not the same has since been thawed. No such poultry or poultry product shall be sold

unless in such a package or container bearing said label. [1969 ex.s. c 194 § 1.]

Washington wholesome poultry products act: Chapter 16.74 RCW.

69.04.334 Turkeys—Label requirement as to grading. No person shall advertise for sale, sell, offer for sale or hold for sale in intrastate commerce any turkey that does not bear a label. Such label shall be properly displayed on the package if such turkey is prepackaged, or attached to the turkey if not prepackaged. Such label shall, if the turkey has been graded, state the name of the governmental agency, whether federal or state, and the grade. No turkey which has been graded may be labeled as being ungraded. Any advertisement in any media concerning the sale of turkeys shall state or set forth whether a turkey is ungraded or graded and the specific grade if graded. [1969 ex.s. c 194 § 2.]

69.04.335 RCW 69.04.333 and 69.04.334 subject to enforcement and penalty provisions of chapter. The provisions of this chapter shall be applicable to the enforcement of RCW 69.04.333 and 69.04.334 and any person violating the provisions of RCW 69.04.333 and 69.04.334 shall be subject to the applicable civil and criminal penalties for such violations as provided for in this chapter. [1969 ex.s. c 194 § 3.]

69.04.340 Natural vitamin, mineral, or dietary properties need not be shown. Nothing in this chapter shall be construed to require the labeling or advertising to indicate the natural vitamin, natural mineral, or other natural dietary properties of dairy products or other agricultural products when sold as food. [1945 c 257 § 52; Rem. Supp. 1945 § 6163-101.]

69.04.350 Permits to manufacture or process certain foods. Whenever the director finds after investigation that the distribution in intrastate commerce of any class of food may, by reason of contamination with microorganisms during the manufacture, processing, or packing thereof in any locality, be injurious to health, and that such injurious nature cannot be adequately determined after such articles have entered intrastate commerce, he then, and in such case only, shall promulgate regulations providing for the issuance, to manufacturers, processors, or packers of such class of food in such locality, of permits to which shall be attached such conditions governing the manufacture, processing, or packing of such class of food, for such temporary period of time, as may be necessary to protect the public health; and after the effective date of such regulations, and during such temporary period, no person shall introduce or deliver for introduction into intrastate commerce, any such food manufactured, processed, or packed by any such manufacturer, processor, or packer unless such manufacturer, processor, or packer holds a permit issued by the director as provided by such regulations. Insofar as practicable such regulations shall conform with, shall specify the conditions prescribed by, and shall remain in effect only so long as those promulgated under section

404(a) of the federal act. [1945 c 257 § 53; Rem. Supp. 1945 § 6163-102.]

69.04.360 Suspension of permit. The director is authorized to suspend immediately upon notice any permit issued under authority of *this section, if it is found that any of the conditions of the permit have been violated. The holder of a permit so suspended shall be privileged at any time to apply for the reinstatement of such permit, and the director shall, immediately after prompt hearing and an inspection of the factory or establishment, reinstate such permit, if it is found that adequate measures have been taken to comply with and maintain the conditions of the permit, as originally issued or as amended. [1945 c 257 § 54; Rem. Supp. 1945 § 6163-103.]

*Reviser's note: The language "this section" appears in 1945 c 257 § 54 but apparently refers to 1945 c 257 § 53 codified as RCW 69.04.350.

69.04.370 Right of access for inspection. Any officer or employee duly designated by the director shall have access to any factory or establishment, the operator of which holds a permit from the director, for the purpose of ascertaining whether or not the conditions of the permit are being complied with, and denial of access for such inspection shall be ground for suspension of the permit until such access is freely given by the operator. [1945 c 257 § 55; Rem. Supp. 1945 § 6163-104.]

69.04.380 Food exempt if in transit for completion purposes. Food which is, in accordance with the practice of the trade, to be processed, labeled, or repacked in substantial quantities at an establishment other than the establishment where it was originally processed or packed, is exempted from the affirmative labeling requirements of this chapter, while it is in transit in intrastate commerce from the one establishment to the other, if such transit is made in good faith for such completion purposes only; but it is otherwise subject to all the applicable provisions of this chapter. [1945 c 257 § 56; Rem. Supp. 1945 § 6163-105.]

69.04.390 Regulations permitting tolerance of harmful matter. Any poisonous or deleterious substance added to any food, except where such substance is required in the production thereof or cannot be avoided by good manufacturing practice, shall be deemed unsafe for purposes of the application of clause (2)(a) of RCW 69.04.210; but when such substance is so required or cannot be so avoided, the director shall promulgate regulations limiting the quantity therein or thereon to such extent as he finds necessary for the protection of public health, and any quantity exceeding the limits so fixed shall also be deemed unsafe for purposes of the application of clause (2)(a) of RCW 69.04.210. While such a regulation is in effect limiting the quantity of any such substance in the case of any food, such food shall not, by reason of bearing or containing any added amount of such substance, be considered to be adulterated within

the meaning of clause (1) of RCW 69.04.210. In determining the quantity of such added substance to be tolerated in or on different articles of food, the director shall take into account the extent to which the use of such substance is required or cannot be avoided in the production of each such article, and the other ways in which the consumer may be affected by the same or other poisonous or deleterious substances. [1963 c 198 § 2; 1945 c 257 § 57; Rem. Supp. 1945 § 6163-106.]

69.04.392 Regulations permitting tolerance of harmful matter—Pesticide chemicals in or on raw agricultural commodities. (1) Any poisonous or deleterious pesticide chemical, or any pesticide chemical which generally is recognized among experts qualified by scientific training and experience to evaluate the safety of pesticide chemicals as unsafe for use, added to a raw agricultural commodity, shall be deemed unsafe for the purpose of the application of clause (2) of RCW 69.04.210 unless:

(a) A tolerance for such pesticide chemical in or on the raw agricultural commodity has been prescribed pursuant to subsection (2) hereof and the quantity of such pesticide chemical in or on the raw agricultural commodity is within the limits of the tolerance so prescribed; or

(b) With respect to use in or on such raw agricultural commodity, the pesticide chemical has been exempted from the requirement of a tolerance pursuant to subsection (2) hereof.

While a tolerance or exemption from tolerance is in effect for a pesticide chemical with respect to any raw agricultural commodity, such raw agricultural commodity shall not, by reason of bearing or containing any added amount of such pesticide chemical, be considered to be adulterated within the meaning of clause (1) of RCW 69.04.210.

(2) The regulations promulgated under section 408 of the Federal Food, Drug and Cosmetic Act, as of July 1, 1975, setting forth the tolerances for pesticide chemicals in or on any raw agricultural commodity, are hereby adopted as the regulations for tolerances applicable to this chapter: *Provided*, That the director is hereby authorized to adopt by regulation any new or future amendments to such federal regulations for tolerances, including exemption from tolerance and zero tolerances, to the extent necessary to protect the public health. The director is also authorized to issue regulations in the absence of federal regulations and to prescribe therein tolerances for pesticides, exemptions, and zero tolerances, upon his own motion or upon the petition of any interested party requesting that such a regulation be established. It shall be incumbent upon such petitioner to establish, by data submitted to the director, that a necessity exists for such regulation and that the effect of such regulation will not be detrimental to the public health. If the data furnished by the petitioner is not sufficient to allow the director to determine whether such a regulation should be promulgated, the director may require additional data to be submitted and failure to comply with this request shall be sufficient grounds to

deny the request of the petitioner for the issuance of such regulation.

(3) In adopting any new or amended tolerances by regulation issued pursuant to this section, the director shall give appropriate consideration, among other relevant factors, to the following: (a) The purpose of this chapter being to promote uniformity of state legislation with the federal act; (b) the necessity for the production of an adequate, wholesome, and economical food supply; (c) the other ways in which the consumer may be affected by the same pesticide chemical or by other related substances that are poisonous or deleterious; and (d) the opinion of experts qualified by scientific training and experience to determine the proper tolerance to be allowed for any pesticide chemical. [1975 1st ex.s. c 7 § 26; 1963 c 198 § 3.]

Purpose of section: See RCW 69.04.398.

69.04.394 Regulations permitting tolerance of harmful matter—Food additives. (1) A food additive shall, with respect to any particular use or intended use of such additives, be deemed unsafe for the purpose of the application of clause (2)(c) of RCW 69.04.210, unless:

(a) It and its use or intended use conform to the terms of an exemption granted, pursuant to a regulation under subsection (2) hereof providing for the exemption from the requirements of this section for any food additive, and any food bearing or containing such additive, intended solely for investigational use by qualified experts when in the director's opinion such exemption is consistent with the public health; or

(b) There is in effect, and it and its use or intended use are in conformity with a regulation issued or effective under subsection (2) hereof prescribing the conditions under which such additive may be safely used.

While such a regulation relating to a food additive is in effect, a food shall not, by reason of bearing or containing such an additive in accordance with the regulation, be considered adulterated within the meaning of clause (1) of RCW 69.04.210.

(2) The regulations promulgated under section 409 of the Federal Food, Drug and Cosmetic Act, as of July 1, 1975, prescribing the conditions under which such food additive may be safely used, are hereby adopted as the regulations applicable to this chapter: *Provided*, That the director is hereby authorized to adopt by regulation any new or future amendments to the federal regulations. The director is also authorized to issue regulations in the absence of federal regulations and to prescribe the conditions under which a food additive may be safely used and exemptions where such food additive is to be used solely for investigational purposes; either upon his own motion or upon the petition of any interested party requesting that such a regulation be established. It shall be incumbent upon such petitioner to establish, by data submitted to the director, that a necessity exists for such regulation and that the effect of such a regulation will not be detrimental to the public health. If the data furnished by the petitioner is not sufficient to allow the director to determine whether such a regulation should be promulgated, the director may require additional data to

be submitted and failure to comply with this request shall be sufficient grounds to deny the request of the petitioner for the issuance of such a regulation.

(3) In adopting any new or amended regulations pursuant to this section, the director shall give appropriate consideration, among other relevant factors, to the following: (a) The purpose of this chapter being to promote uniformity of state legislation with the federal act; (b) the probable consumption of the additive and of any substance formed in or on food because of the use of the additive; (c) the cumulative effect of such additive in the diet of man or animals, taking into account any chemically or pharmacologically related substance or substances in such diet; and (d) safety factors which in the opinion of experts qualified by scientific training and experience to evaluate the safety of food additives are generally recognized as appropriate for the use of animal experimentation data. [1975 1st ex.s. c 7 § 27; 1963 c 198 § 4.]

Purpose of section: See RCW 69.04.398.

69.04.396 Regulations permitting tolerance of harmful matter—Color additives. (1) A color additive shall, with respect to any particular use (for which it is being used or intended to be used or is represented as suitable) in or on food, be deemed unsafe for the purpose of the application of RCW 69.04.231, unless:

(a) There is in effect, and such color additive and such use are in conformity with, a regulation issued under this section listing such additive for such use, including any provision of such regulation prescribing the conditions under which such additive may be safely used;

(b) Such additive and such use thereof conform to the terms of an exemption for experimental use which is in effect pursuant to regulation under this section.

While there are in effect regulations under this section relating to a color additive or an exemption with respect to such additive a food shall not, by reason of bearing or containing such additive in all respects in accordance with such regulations or such exemption, be considered adulterated within the meaning of clause (1) of RCW 69.04.210.

(2) The regulations promulgated under section 706 of the Federal Food, Drug and Cosmetic Act, as of July 1, 1975, prescribing the use or limited use of such color additive, are hereby adopted as the regulations applicable to this chapter: *Provided*, That the director is hereby authorized to adopt by regulation any new or future amendments to the federal regulations. The director is also authorized to issue regulations in the absence of federal regulations and to prescribe therein the conditions under which a color additive may be safely used including exemptions for experimental purposes. Such a regulation may be issued either upon the director's own motion or upon the petition of any interested party requesting that such a regulation be established. It shall be incumbent upon such petitioner to establish, by data submitted to the director, that a necessity exists for such regulation and that the effect of such a regulation will

not be detrimental to the public health. If the data furnished by the petitioner is not sufficient to allow the director to determine whether such a regulation should be promulgated, the director may require additional data to be submitted and failure to comply with this request shall be sufficient grounds to deny the request of the petitioner for the issuance of such a regulation.

(3) In adopting any new or amended regulations pursuant to this section, the director shall give appropriate consideration, among other relevant factors, to the following: (a) The purpose of this chapter being to promote uniformity of state legislation with the federal act; (b) the probable consumption of, or other relevant exposure from, the additive and of any substance formed in or on food because of the use of the additive; (c) the cumulative effect, if any, of such additive in the diet of man or animals, taking into account the same or any chemically or pharmacologically related substance or substances in such diet; (d) safety factors which, in the opinion of experts qualified by scientific training and experience to evaluate the safety of color additives for the use or uses for which the additive is proposed to be listed, are generally recognized as appropriate for the use of animal experimentation data; (e) the availability of any needed practicable methods of analysis for determining the identity and quantity of (i) the pure dye and all intermediates and other impurities contained in such color additives, (ii) such additive in or on any article of food, and (iii) any substance formed in or on such article because of the use of such additive; and (f) the conformity by the manufacturer with the established standards in the industry relating to the proper formation of such color additive so as to result in a finished product safe for use as a color additive. [1975 1st ex.s. c 7 § 28; 1963 c 198 § 6.]

Purpose of section: See RCW 69.04.398.

Food—Adulteration by color additive: RCW 69.04.231.

69.04.398 Purpose of RCW 69.04.110, 69.04.392, 69.04.394, 69.04.396—Uniformity with federal laws and regulations—Application to production of kosher food products. (1) The purpose of RCW 69.04.110, 69.04.392, 69.04.394, and 69.04.396 is to promote uniformity of state legislation and regulations with the Federal Food, Drug and Cosmetic Act 21 USC 301 et seq. and regulations adopted thereunder. In accord with such declared purpose any regulation adopted under said federal food, drug and cosmetic act concerning food in effect on July 1, 1975, and not adopted under any other specific provision of RCW 69.04.110, 69.04.392, 69.04.394, and 69.04.396 are hereby deemed to have been adopted under the provision hereof. Further, to promote such uniformity any regulation adopted hereafter under the provisions of the federal food, drug and cosmetic act concerning food and published in the federal register shall be deemed to have been adopted under the provisions of RCW 69.04.110, 69.04.392, 69.04.394, and 69.04.396 in accord with chapter 34.05 RCW as enacted or hereafter amended. The director may, however, within thirty days of the publication of the adoption of any such regulation under the federal food, drug and

cosmetic act give public notice that a hearing will be held to determine if such regulation shall not be applicable under the provisions of RCW 69.04.110, 69.04.392, 69.04.394, and 69.04.396. Such hearing shall be in accord with the requirements of chapter 34.05 RCW as enacted or hereafter amended.

(2) The provisions of subsection (1) of this section do not apply to rules adopted by the director as necessary to permit the production of kosher food products as defined in RCW 69.90.010. [1986 c 203 § 18; 1975 1st ex.s. c 7 § 36.]

Severability—1986 c 203: See note following RCW 15.04.100.

69.04.399 Civil penalty for violations of standards for component parts of fluid dairy products adopted under RCW 69.04.398. See RCW 15.36.595.

69.04.400 Conformance with federal regulations. The regulations promulgated under RCW 69.04.390 shall conform, insofar as practicable, with those promulgated under section 406 of the federal act. [1963 c 198 § 7; 1945 c 257 § 58; Rem. Supp. 1945 § 6163–107.]

69.04.410 Drugs—Adulteration by harmful substances. A drug or device shall be deemed to be adulterated (1) if it consists in whole or in part of any filthy, putrid, or decomposed substance; or (2) if it has been produced, prepared, packed, or held under insanitary conditions whereby it may have been contaminated with filth, or whereby it may have been rendered injurious to health; or (3) if it is a drug and its container is composed in whole or in part of any poisonous or deleterious substance which may render the contents injurious to health; or (4) if it is a drug and it bears or contains, for purposes of coloring only, a coal tar color other than one that is harmless and suitable for use in drugs for such purposes, as provided by regulations promulgated under section 504 of the federal act. [1945 c 257 § 59; Rem. Supp. 1945 § 6163–108. Prior: 1923 c 36 § 1; 1907 c 211 § 3; 1901 c 94 § 3.]

69.04.420 Drugs—Adulteration for failure to comply with compendium standard. If a drug or device purports to be or is represented as a drug the name of which is recognized in an official compendium, and its strength differs from, or its quality or purity falls below, the standard set forth in such compendium, it shall be deemed to be adulterated. Such determination as to strength, quality or purity shall be made in accordance with the tests or methods of assay set forth in such compendium or prescribed by regulations promulgated under section 501(b) of the federal act. No drug defined in an official compendium shall be deemed to be adulterated under this section because it differs from the standard of strength, quality, or purity therefor set forth in such compendium, if its difference in strength, quality, or purity from such standard is plainly stated on its label. Whenever a drug is recognized in both the United States pharmacopoeia and the homeopathic pharmacopoeia of the United States, it shall be subject to the requirements of the United States pharmacopoeia unless it

is labeled and offered for sale as a homeopathic drug, in which case it shall be subject to the provisions of the homeopathic pharmacopoeia of the United States and not to those of the United States pharmacopoeia. [1945 c 257 § 60; Rem. Supp. 1945 § 6163-109.]

69.04.430 Drugs—Adulteration for lack of represented purity or quality. If a drug or device is not subject to the provisions of RCW 69.04.420 and its strength differs from, or its purity or quality falls below, that which it purports or is represented to possess, it shall be deemed to be adulterated. [1945 c 257 § 61; Rem. Supp. 1945 § 6163-110.]

69.04.440 Drugs—Adulteration by admixture or substitution of ingredients. A drug shall be deemed to be adulterated if any substance has been (1) mixed or packed therewith so as to reduce its quality or strength or (2) substituted wholly or in part therefor. [1945 c 257 § 62; Rem. Supp. 1945 § 6163-111.]

69.04.450 Drugs—Misbranding by false labeling. A drug or device shall be deemed to be misbranded if its labeling is false or misleading in any particular. [1945 c 257 § 63; Rem. Supp. 1945 § 6163-112. Prior: 1923 c 36 § 2; 1907 c 211 § 4.]

69.04.460 Packaged drugs—Misbranding. If a drug or device is in package form, it shall be deemed to be misbranded unless it bears a label containing (1) the name and place of business of the manufacturer, packer, or distributor; and (2) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count: *Provided*, That under clause (2) of this section reasonable variations shall be permitted, and exemptions as to small packages shall be established, by regulations promulgated by the director. [1945 c 257 § 64; Rem. Supp. 1945 § 6163-113. Prior: 1923 c 36 § 2; 1907 c 211 § 4.]

69.04.470 Drugs—Misbranding by lack of prominent label. A drug or device shall be deemed to be misbranded if any word, statement, or other information required by or under authority of this chapter to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use. [1945 c 257 § 65; Rem. Supp. 1945 § 6163-114. Prior: 1923 c 36 § 2; 1907 c 211 § 4.]

69.04.480 Drugs—Misbranding for failure to state content of habit forming drug. A drug or device shall be deemed to be misbranded if it is for use by man and contains any quantity of the narcotic or hypnotic substance alpha eucaine, barbituric acid, beta eucaine, bromal, cannabis, carbomal, chloral, coca, cocaine, codeine, heroin, marijuana, morphine, opium, paraldehyde, peyote, or sulphomethane; or any chemical derivative of such substance, which derivative has been

designated as habit forming by regulations promulgated under section 502(d) of the federal act; unless its label bears the name and quantity or proportion of such substance or derivative and in juxtaposition therewith the statement "Warning—May be habit forming." [1945 c 257 § 66; Rem. Supp. 1945 § 6163-115. Prior: 1923 c 36 § 2; 1907 c 211 § 4.]

69.04.490 Drugs—Misbranding by failure to show usual name and ingredients. If a drug is not designated solely by a name recognized in an official compendium it shall be deemed to be misbranded unless its label bears (1) the common or usual name of the drug, if such there be; and (2), in case it is fabricated from two or more ingredients, the common or usual name of each active ingredient, including the quantity, kind, and proportion of any alcohol, and also including, whether active or not, the name and quantity or proportion of any bromides, ether, chloroform, acetanilid, acetphenetidin, amidopyrine, antipyrine, atropine, hyoscine, hyoscyamine, arsenic, digitalis, glucosides, mercury, ouabain, strophanthin, strychnine, thyroid, or any derivative or preparation of any such substances, contained therein: *Provided*, That to the extent that compliance with the requirements of clause (2) of this section is impracticable, exemptions shall be established by regulations promulgated by the director. [1945 c 257 § 67; Rem. Supp. 1945 § 6163-116. Prior: 1923 c 36 § 2; 1907 c 211 § 4.]

69.04.500 Drugs—Misbranding by failure to give directions for use and warnings. A drug or device shall be deemed to be misbranded unless its labeling bears (1) adequate directions for use; and (2) such adequate warnings against use in those pathological conditions or by children where its use may be dangerous to health, or against unsafe dosage or methods or duration of administration or application, in such manner and form, as are necessary for the protection of users: *Provided*, That where any requirement of clause (1) of this section as applied to any drug or device, is not necessary for the protection of the public health, the director shall promulgate regulations exempting such drug or device from such requirements. Such regulations shall include the exemptions prescribed under section 502(f)(1) of the federal act, insofar as such exemptions are applicable hereunder. [1945 c 257 § 68; Rem. Supp. 1945 § 6163-117. Prior: 1923 c 36 § 2; 1907 c 211 § 4.]

69.04.510 Drugs—Misbranding for improper packaging and labeling. A drug or device shall be deemed to be misbranded if it purports to be a drug the name of which is recognized in an official compendium, unless it is packaged and labeled as prescribed therein: *Provided*, That the method of packing may be modified with the consent of the director, as permitted under section 502(g) of the federal act. Whenever a drug is recognized in both the United States pharmacopoeia and the homeopathic pharmacopoeia of the United States, it shall be subject to the requirements of the United States pharmacopoeia with respect to packaging and labeling unless it is labeled and offered for sale as a homeopathic

drug, in which case it shall be subject to the provisions of the homeopathic pharmacopoeia of the United States, and not to those of the United States pharmacopoeia. [1945 c 257 § 69; Rem. Supp. 1945 § 6163-118. Prior: 1923 c 36 § 2; 1907 c 211 § 4.]

69.04.520 Drugs—Misbranding for failure to show possibility of deterioration. If a drug or device has been found by the secretary of agriculture of the United States to be a drug liable to deterioration, it shall be deemed to be misbranded unless it is packaged in such form and manner, and its label bears a statement of such precautions, as required in an official compendium or by regulations promulgated under section 502(h) of the federal act for the protection of the public health. [1945 c 257 § 70; Rem. Supp. 1945 § 6163-119. Prior: 1923 c 36 § 2; 1907 c 211 § 4.]

69.04.530 Drugs—Misbranding by misleading representation. A drug shall be deemed to be misbranded if (1) its container is so made, formed, or filled as to be misleading; or (2) if it is an imitation of another drug; or (3) if it is offered for sale under the name of another drug; or (4) if it is dangerous to health when used in the dosage, or with the frequency or duration prescribed, recommended, or suggested in the labeling thereof. [1945 c 257 § 71; Rem. Supp. 1945 § 6163-120. Prior: 1923 c 36 § 2; 1907 c 211 § 4.]

69.04.540 Drugs—Misbranding by sale without prescription of drug requiring it. A drug or device shall be deemed to be misbranded if it is a drug which by label provides, or which the federal act or any applicable law requires by label to provide, in effect, that it shall be used only upon the prescription of a physician, dentist, or veterinarian, unless it is dispensed at retail on a written prescription signed by a physician, dentist, or veterinarian, who is licensed by law to administer such a drug. [1945 c 257 § 72; Rem. Supp. 1945 § 6163-121. Prior: 1923 c 36 § 2; 1907 c 211 § 4.]

69.04.550 Drugs exempt if in transit for completion purposes. A drug or device which is, in accordance with the practice of the trade, to be processed, labeled, or repacked in substantial quantities at an establishment other than the establishment where it was originally processed or packed, is exempted from the affirmative labeling and packaging requirements of this chapter, while it is in transit in intrastate commerce from the one establishment to the other, if such transit is made in good faith for such completion purposes only; but it is otherwise subject to all the applicable provisions of this chapter. [1945 c 257 § 73; Rem. Supp. 1945 § 6163-122.]

69.04.560 Dispensing of certain drugs exempt. A drug dispensed on a written prescription signed by a physician, dentist, or veterinarian (except a drug dispensed in the course of the conduct of a business of dispensing drugs pursuant to diagnosis by mail) shall, if (1) such physician, dentist, or veterinarian is licensed by law

to administer such drug, and (2) such drug bears a label containing the name and place of business of the dispenser, the serial number and date of such prescription, and the name of such physician, dentist, or veterinarian, be exempt from the requirements of RCW 69.04.450 through 69.04.540. [1945 c 257 § 74; Rem. Supp. 1945 § 6163-123.]

69.04.565 DMSO (dimethyl sulfoxide) authorized. Notwithstanding any other provision of state law, DMSO (dimethyl sulfoxide) may be introduced into intrastate commerce as long as (1) it is manufactured or distributed by persons licensed pursuant to chapter 18.64 RCW or chapter 18.92 RCW, and (2) it is used, or intended to be used, in the treatment of human beings or animals for any ailment or adverse condition: *Provided*, That DMSO intended for topical application, consistent with rules governing purity and labeling promulgated by the state board of pharmacy, shall not be considered a legend drug and may be sold by any retailer. [1981 c 50 § 1.]

DMSO use by health facilities, physicians: RCW 70.54.190.

69.04.570 Introduction of new drug. No person shall introduce or deliver for introduction into intrastate commerce any new drug which is subject to section 505 of the federal act unless an application with respect to such drug has become effective thereunder. No person shall introduce or deliver for introduction into intrastate commerce any new drug which is not subject to section 505 of the federal act, unless (1) it has been found, by appropriate tests, that such drug is not unsafe for use under the conditions prescribed, recommended, or suggested in the labeling thereof; and (2) an application has been filed under this section of this chapter with respect to such drug: *Provided*, That the requirement of clause (2) shall not apply to any drug introduced into intrastate commerce at any time prior to the enactment of this chapter or introduced into interstate commerce at any time prior to the enactment of the federal act: *Provided further*, That if the director finds that the requirement of clause (2) as applied to any drug or class of drugs, is not necessary for the protection of the public health, he shall promulgate regulations of exemption accordingly. [1945 c 257 § 75; Rem. Supp. 1945 § 6163-124.]

69.04.580 Application for introduction. An application under RCW 69.04.570 shall be filed with the director, and subject to any waiver by the director, shall include (1) full reports of investigations which have been made to show whether or not the drug, subject to the application, is safe for use under the conditions prescribed, recommended, or suggested in the labeling thereof; (2) a full list of the articles used as components of such drug; (3) a full statement of the composition of such drug; (4) a full description of the methods used in, and the facilities and controls used for, the manufacture, processing, and packing of such drug; (5) such samples of such drug and of the articles used as components thereof as the director may require; and (6) specimens of

the labeling proposed to be used for such drug. [1945 c 257 § 76; Rem. Supp. 1945 § 6163-125.]

69.04.590 Effective date of application. An application filed under RCW 69.04.570 shall become effective on the sixtieth day after the filing thereof, unless the director (1) makes such application effective prior to such day; or (2) issues an order with respect to such application pursuant to RCW 69.04.600. [1945 c 257 § 77; Rem. Supp. 1945 § 6163-126.]

69.04.600 Denial of application. If the director finds, upon the basis of the information before him and after due notice and opportunity for hearing to the applicant, that the drug, subject to the application, is not safe for use under the conditions prescribed, recommended, or suggested in the labeling thereof, he shall, prior to such effective date, issue an order refusing to permit such application to become effective and stating the findings upon which it is based. [1945 c 257 § 78; Rem. Supp. 1945 § 6163-127.]

69.04.610 Revocation of denial. An order refusing to permit an application under RCW 69.04.570 to become effective may be suspended or revoked by the director, for cause and by order stating the findings upon which it is based. [1945 c 257 § 79; Rem. Supp. 1945 § 6163-128.]

69.04.620 Service of order of denial. Orders of the director issued under RCW 69.04.600 shall be served (1) in person by a duly authorized representative of the director or (2) by mailing the order by registered mail addressed to the applicant or respondent at his address last known to the director. [1945 c 257 § 80; Rem. Supp. 1945 § 6163-129.]

69.04.630 Drug for investigational use exempt. A drug shall be exempt from the operation of RCW 69.04.570 which is intended, and introduced or delivered for introduction into intrastate commerce, solely for investigational use by experts qualified by scientific training and experience to investigate the safety of drugs and which is plainly labeled "For investigational use only." [1945 c 257 § 81; Rem. Supp. 1945 § 6163-130.]

69.04.640 Court review of denial. The superior court of Thurston county shall have jurisdiction to review and to affirm, modify, or set aside any order issued under RCW 69.04.600, upon petition seasonably made by the person to whom the order is addressed and after prompt hearing upon due notice to both parties. [1945 c 257 § 82; Rem. Supp. 1945 § 6163-131.]

69.04.650 Dispensing of certain drugs exempt. A drug dispensed on a written prescription signed by a physician, dentist, or veterinarian (except a drug dispensed in the course of the conduct of a business of dispensing drugs pursuant to diagnosis by mail) shall, if (1) such physician, dentist, or veterinarian is licensed by law

to administer such drug, and (2) such drug bears a label containing the name and place of business of the dispenser, the serial number and date of such prescription, and the name of such physician, dentist, or veterinarian, be exempt from the operation of RCW 69.04.570 through 69.04.640. [1945 c 257 § 83; Rem. Supp. 1945 § 6163-132.]

69.04.660 Federally licensed drugs exempt. The provisions of RCW 69.04.570 shall not apply to any drug which is licensed under the federal virus, serum, and toxin act of July 1, 1902; or under the federal virus, serums, toxins, antitoxins, and analogous products act of March 4, 1913. [1945 c 257 § 84; Rem. Supp. 1945 § 6163-133.]

69.04.670 Cosmetics—Adulteration by injurious substances. A cosmetic shall be deemed to be adulterated (1) if it bears or contains any poisonous or deleterious substance which may render it injurious to users under the conditions of use prescribed in the labeling thereof, or under such conditions of use as are customary or usual: *Provided*, That this provision shall not apply to coal tar hair dye, the label of which bears the following legend conspicuously displayed thereon: "Caution—This product contains ingredients which may cause skin irritation on certain individuals and a preliminary test according to accompanying direction should first be made. This product must not be used for dyeing the eyelashes or eyebrows; to do so may cause blindness.", and the labeling of which bears adequate directions for such preliminary testing. For the purposes of this paragraph and paragraph (5) the term "hair dye" shall not include eyelash dyes or eyebrow dyes; or (2) if it consists in whole or in part of any filthy, putrid, or decomposed substance; or (3) if it has been produced, prepared, packed, or held under insanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health; or (4) if its container is composed in whole or in part of any poisonous or deleterious substance which may render the contents injurious to health; or (5) if it is not a hair dye and it bears or contains a coal tar color other than one that is harmless and suitable for use in cosmetics, as provided by regulations promulgated under section 604 of the federal act. [1945 c 257 § 85; Rem. Supp. 1945 § 6163-134.]

69.04.680 Cosmetics—Misbranding by false label, etc. A cosmetic shall be deemed to be misbranded (1) if its labeling is false or misleading in any particular; or (2) if in package form, unless it bears a label containing (a) the name and place of business of the manufacturer, packer, or distributor; and (b) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count: *Provided*, That under clause (b) of this section reasonable variations shall be permitted, and exemptions as to small packages shall be established, by regulations prescribed by the director. [1945 c 257 § 86; Rem. Supp. 1945 § 6163-135.]

69.04.690 Cosmetics—Misbranding by lack of prominent label. A cosmetic shall be deemed to be misbranded (1) if any word, statement, or other information required by or under authority of this chapter to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use; or (2) if its container is so made, formed, or filled as to be misleading. [1945 c 257 § 87; Rem. Supp. 1945 § 6163–136.]

69.04.700 Cosmetics exempt if in transit for completion purposes. A cosmetic which is, in accordance with the practice of the trade, to be processed, labeled, or repacked in substantial quantities at an establishment other than the establishment where it was originally processed or packed, is exempted from the affirmative labeling requirements of this chapter, while it is in transit in intrastate commerce from the one establishment to the other, if such transit is made in good faith for such completion purposes only; but it is otherwise subject to all the applicable provisions of this chapter. [1945 c 257 § 88; Rem. Supp. 1945 § 6163–137.]

69.04.710 Advertisement, when deemed false. An advertisement of a food, drug, device, or cosmetic shall be deemed to be false, if it is false or misleading in any particular. [1945 c 257 § 89; Rem. Supp. 1945 § 6163–138.]

69.04.720 Advertising of cure of certain diseases deemed false. The advertisement of a drug or device representing it to have any effect in albuminuria, appendicitis, arteriosclerosis, blood poison, bone disease, Bright's disease, cancer, carbuncles, cholecystitis, diabetes, diphtheria, dropsy, erysipelas, gallstones, heart and vascular diseases, high blood pressure, mastoiditis, measles, meningitis, mumps, nephritis, otitis media, paralysis, pneumonia, poliomyelitis (infantile paralysis), prostate gland disorders, pyelitis, scarlet fever, sexual impotence, sinus infection, smallpox, tuberculosis, tumors, typhoid, uremia, *venereal disease, shall also be deemed to be false; except that no advertisement not in violation of RCW 69.04.710 shall be deemed to be false under this section if it is disseminated only to members of the medical, veterinary, dental, pharmaceutical, and other legally recognized professions dealing with the healing arts, or appears only in the scientific periodicals of these professions, or is disseminated only for the purpose of public health education by persons not commercially interested, directly or indirectly, in the sale of such drugs or devices: *Provided*, That whenever the director determines that an advance in medical science has made any type of self-medication safe as to any of the diseases named above, the director shall by regulation authorize the advertisement of drugs having curative or therapeutic effect for such disease, subject to such conditions and restrictions as the director may deem necessary in the interest of public health: *Provided further*, That this

section shall not be construed as indicating that self-medication for diseases other than those named herein is safe or efficacious. [1945 c 257 § 90; Rem. Supp. 1945 § 6163–139.]

*Reviser's note: The term "venereal disease" was changed to "sexually transmitted disease" by 1988 c 206.

69.04.730 Enforcement, where vested—Regulations. The authority to promulgate regulations for the efficient enforcement of this chapter is hereby vested in the director: *Provided, however*, That the director shall designate the Washington state board of pharmacy to carry out all the provisions of this chapter pertaining to drugs and cosmetics, with authority to promulgate regulations for the efficient enforcement thereof. [1945 c 257 § 91 (vetoed); 1947 c 25 (passed notwithstanding veto); Rem. Supp. 1947 § 6163–139a.]

69.04.740 Regulations to conform with federal regulations. The purpose of this chapter being to promote uniformity of state legislation with the federal act, the director is hereby authorized (1) to adopt, insofar as applicable, the regulations from time to time promulgated under the federal act; and (2) to make the regulations promulgated under this chapter conform, insofar as practicable, with those promulgated under the federal act. [1945 c 257 § 92; Rem. Supp. 1945 § 6163–140.]

69.04.750 Hearings. Hearings authorized or required by this chapter shall be conducted by the director or his duly authorized representative designated for the purpose. [1945 c 257 § 93; Rem. Supp. 1945 § 6163–141.]

69.04.761 Hearing on proposed regulation—Procedure. The director shall hold a public hearing upon a proposal to promulgate any new or amended regulation under this chapter. The procedure to be followed concerning such hearings shall comply in all respects with chapter 34.05 RCW (Administrative Procedure Act) as now enacted or hereafter amended. [1963 c 198 § 13.]

69.04.770 Review on petition prior to effective date. The director shall have jurisdiction to review and to affirm, modify, or set aside any order issued under *RCW 69.04.760, promulgating a new or amended regulation under this chapter, upon petition made at any time prior to the effective date of such regulation, by any person adversely affected by such order. [1945 c 257 § 95; Rem. Supp. 1945 § 6163–143.]

*Reviser's note: RCW 69.04.760 was repealed by 1963 c 198 § 15. Later enactment, see RCW 69.04.761.

69.04.780 Investigations—Samples—Right of entry. The director shall cause the investigation and examination of food, drugs, devices, and cosmetics subject to this chapter. The director shall have the right (1) to take a sample or specimen of any such article, for examination under this chapter, upon tendering the market price therefor to the person having such article in custody; and (2) to enter any place or establishment within this state, at reasonable times, for the purpose of taking

a sample or specimen of any such article, for such examination. [1945 c 257 § 96; Rem. Supp. 1945 § 6163-144.]

69.04.790 Owner may obtain part of sample. Where a sample or specimen of any such article is taken for examination under this chapter the director shall, upon request, provide a part thereof for examination by any person named on the label of such article, or the owner thereof, or his attorney or agent; except that the director is authorized, by regulation, to make such reasonable exceptions from, and to impose such reasonable terms and conditions relating to, the operation of this section as he finds necessary for the proper administration of the provisions of this chapter. [1945 c 257 § 97; Rem. Supp. 1945 § 6163-145.]

69.04.800 Access to records of other agencies. For the purpose of enforcing the provisions of this chapter, pertinent records of any administrative agency of the state government shall be open to inspection by the director. [1945 c 257 § 98; Rem. Supp. 1945 § 6163-146.]

69.04.810 Access to records of intrastate carriers. For the purpose of enforcing the provisions of this chapter, carriers engaged in intrastate commerce, and persons receiving food, drugs, devices, or cosmetics in intrastate commerce or holding such articles so received, shall, upon the request of the director, permit the director at reasonable times, to have access to and to copy all records showing the movement in intrastate commerce of any food, drug, device, or cosmetic, or the holding thereof during or after such movement, and the quantity, shipper, and consignee thereof; and it shall be unlawful for any such carrier or person to fail to permit such access to and the copying of any such records so requested when such request is accompanied by a statement in writing specifying the nature or kind of food, drug, device, or cosmetic to which such request relates: *Provided*, That evidence obtained under this section shall not be used in a criminal prosecution of the person from whom obtained: *Provided further*, That carriers shall not be subject to the other provisions of this chapter by reason of their receipt, carriage, holding, or delivery of food, drugs, devices, or cosmetics in the usual course of business as carriers. [1945 c 257 § 99; Rem. Supp. 1945 § 6163-147.]

69.04.820 Right of entry to factories, warehouses, vehicles, etc. For the purpose of enforcing the provisions of this chapter, the director is authorized (1) to enter, at reasonable times, any factory, warehouse, or establishment subject to this chapter, or to enter any vehicle being used to transport or hold food, drugs, devices, or cosmetics in intrastate commerce; and (2) to inspect, at reasonable times, such factory, warehouse, establishment, or vehicle and all pertinent equipment, finished and unfinished materials, containers, labeling, and advertisements therein. [1945 c 257 § 100; Rem. Supp. 1945 § 6163-148.]

69.04.830 Publication of reports of judgments, orders and decrees. The director may cause to be published from time to time reports summarizing all judgments, decrees, and court orders which have been rendered under this chapter, including the nature of the charge and the disposition thereof. [1945 c 257 § 101; Rem. Supp. 1945 § 6163-149.]

69.04.840 Dissemination of information. The director may cause to be disseminated information regarding food, drugs, devices, or cosmetics in situations involving, in the opinion of the director, imminent danger to health or gross deception of, or fraud upon, the consumer. Nothing in this section shall be construed to prohibit the director from collecting, reporting, and illustrating the results of his examinations and investigations under this chapter. [1945 c 257 § 102; Rem. Supp. 1945 § 6163-150.]

69.04.845 Severability—1945 c 257. If any provision of this chapter is declared unconstitutional, or the applicability thereof to any person or circumstances is held invalid, the constitutionality of the remainder of the chapter and the applicability thereof to other persons and circumstances shall not be affected thereby. [1945 c 257 § 103; Rem. Supp. 1945 § 6163-151.]

69.04.850 Construction—1945 c 257. This chapter and the regulations promulgated hereunder shall be so interpreted and construed as to effectuate its general purpose to secure uniformity with federal acts and regulations relating to adulterating, misbranding and false advertising of food, drugs, devices, and cosmetics. [1945 c 257 § 104; Rem. Supp. 1945 § 6163-152.]

69.04.860 Effective date of chapter—1945 c 257. This chapter shall take effect ninety days after the date of its enactment, and all state laws or parts of laws in conflict with this chapter are then repealed: *Provided*, That the provisions of section 91 shall become effective on the enactment of this chapter, and thereafter the director is hereby authorized to conduct hearings and to promulgate regulations which shall become effective on or after the effective date of this chapter as the director shall direct: *Provided further*, That all other provisions of this chapter to the extent that they may relate to the enforcement of such sections, shall take effect on the date of the enactment of this chapter. [1945 c 257 § 105; Rem. Supp. 1945 § 6163-153.]

Reviser's note: 1945 c 257 § 91 referred to herein was vetoed by the governor but was subsequently reenacted as 1947 c 25 notwithstanding the veto. Section 91 is codified as RCW 69.04.730. For effective date of section 91 see preface 1947 session laws.

69.04.870 Short title. This chapter may be cited as the Uniform Washington Food, Drug, and Cosmetic Act. [1945 c 257 § 1; Rem. Supp. 1945 § 6163-50.]

69.04.900 Perishable packaged food—Pull date labeling—Definitions. For the purpose of RCW 69.04.900 through 69.04.920:

(1) "Perishable packaged food goods" means and includes all foods and beverages, except alcoholic beverages, frozen foods, fresh meat, poultry and fish and a raw agricultural commodity as defined in this chapter, intended for human consumption which are canned, bottled, or packaged other than at the time and point of retail sale, which have a high risk of spoilage within a period of thirty days, and as determined by the director of the department of agriculture by rule and regulation to be perishable.

(2) "Pull date" means the latest date a packaged food product shall be offered for sale to the public.

(3) "Shelf life" means the length of time during which a packaged food product will retain its safe consumption quality if stored under proper temperature conditions.

(4) "Fish" as used in subsection (1) of this section shall mean any water breathing animals, including, but not limited to, shellfish such as lobster, clams, crab, or other mollusca which are prepared, processed, sold, or intended or offered for sale. [1974 ex.s. c 57 § 1; 1973 1st ex.s. c 112 § 1.]

69.04.905 Perishable packaged food—Pull date labeling—Required. All perishable packaged food goods with a projected shelf life of thirty days or less, which are offered for sale to the public after January 1, 1974 shall state on the package the pull date. The pull date must be stated in day, and month and be in a style and format that is readily decipherable by consumers: *Provided*, That the director of the department of agriculture may exclude the monthly requirement on the pull date for perishable packaged food goods which have a shelf life of seven days or less. No perishable packaged food goods shall be offered for sale after the pull date, except as provided in RCW 69.04.910. [1974 ex.s. c 57 § 2; 1973 1st ex.s. c 112 § 2.]

69.04.910 Perishable packaged food—Pull date labeling—Selling or trading goods beyond pull date—Repackaging to substitute for original date—Exception. No person shall sell, trade or barter any perishable packaged food goods beyond the pull date appearing thereon, nor shall any person rewrap or repack any packaged perishable food goods with the intention of placing a pull date thereon which is different from the original: *Provided, however*, That those packaged perishable food goods whose pull dates have expired may be sold if they are still wholesome and are without danger to health, and are clearly identified as having passed the pull date. [1973 1st ex.s. c 112 § 3.]

69.04.915 Perishable packaged food—Pull date labeling—Storage—Rules and regulations. The director of the department of agriculture shall by rule and regulation establish uniform standards for pull date labeling, and optimum storage conditions of perishable packaged food goods. In addition to his other duties the director, in consultation with the secretary of the department of health where appropriate, may promulgate such other rules and regulations as may be necessary to

carry out the purposes of RCW 69.04.900 through 69.04.920. [1989 1st ex.s. c 9 § 225; 1973 1st ex.s. c 112 § 4.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

69.04.920 Perishable packaged food—Pull date labeling—Penalties. Any person convicted of a violation of RCW 69.04.905 or 69.04.910 shall be punishable by a fine not to exceed five hundred dollars. [1973 1st ex.s. c 112 § 5.]

69.04.930 Frozen fish and meat—Labeling requirements—Exceptions. It shall be unlawful for any person to sell at retail or display for sale at retail any food fish or shellfish as defined in RCW 75.08.011, any meat capable of use as human food as defined in RCW 16.49A.150 as now or hereafter amended, or any meat food product as defined in RCW 16.49A.130 as now or hereafter amended which has been frozen at any time, without having the package or container in which the same is sold bear a label clearly discernible to a customer that such product has been frozen and whether or not the same has since been thawed. No such food fish or shellfish, meat or meat food product shall be sold unless in such a package or container bearing said label: *Provided*, That this section shall not include any of the aforementioned food or food products that have been frozen prior to being smoked, cured, cooked or subjected to the heat of commercial sterilization. [1988 c 254 § 8; 1983 1st ex.s. c 46 § 179; 1975 c 39 § 1.]

Intent—Savings—Effective date—1983 1st ex.s. c 46: See RCW 75.98.005 through 75.98.007.

69.04.940 Imported lamb products—Labeling requirements. All retail sales of fresh or frozen lamb products which are imported from another country shall be labelled with the country of origin. For the purposes of this section "imported lamb products" shall include but not be limited to, live lambs imported from another country but slaughtered in the United States. [1987 c 393 § 25.]

Chapter 69.06

FOOD AND BEVERAGE ESTABLISHMENT WORKERS' PERMITS

Sections	
69.06.010	Food and beverage service worker's permit—Filing, duration.
69.06.020	Permit exclusive and valid throughout state—Fee.
69.06.030	Diseased persons—May not work—Employer may not hire.
69.06.040	Application of chapter to retail food establishments.
69.06.045	Application of chapter to temporary food service establishments.
69.06.050	Permit to be secured within thirty days from time of employment.
69.06.060	Penalty.

69.06.010 Food and beverage service worker's permit—Filing, duration. It shall be unlawful for any

person to be employed in the handling of unwrapped or unpackaged food unless he or she shall furnish and place on file with the person in charge of such establishment, a food and beverage service worker's permit, as prescribed by the state board of health. Such permit shall be kept on file by the employer or kept by the employee on his or her person and open for inspection at all reasonable hours by authorized public health officials. Such permit shall be returned to the employee upon termination of employment. Initial permits shall be valid for two years from the date of issuance. Subsequent renewal permits shall be valid for five years from the date of issuance. [1987 c 223 § 5; 1957 c 197 § 1.]

69.06.020 Permit exclusive and valid throughout state—Fee. The permit provided in RCW 69.06.010 shall be valid in every city, town and county in the state, for the period for which it is issued, and no other health certificate shall be required of such employees by any municipal corporation or political subdivision of the state. The cost of the permit shall be uniform throughout the state and shall be in that amount set by the state board of health. The cost of the permit shall reflect actual costs of food worker training and education, administration of the program, and testing of applicants. The state board of health shall periodically review the costs associated with the permit program and adjust the fee accordingly. The board shall also ensure that the fee is not set at an amount that would prohibit low-income persons from obtaining permits. [1987 c 223 § 6; 1957 c 197 § 2.]

69.06.030 Diseased persons—May not work—Employer may not hire. It shall be unlawful for any person afflicted with any contagious or infectious disease to work in or about any place where unwrapped or unpackaged food and/or beverage products are prepared or sold, or offered for sale for human consumption and it shall be unlawful for any person knowingly to employ a person so afflicted. [1957 c 197 § 3.]

69.06.040 Application of chapter to retail food establishments. This chapter shall apply to any retail establishment engaged in the business of food handling or food service. [1987 c 223 § 7; 1957 c 197 § 4.]

69.06.045 Application of chapter to temporary food service establishments. As used in this section, "temporary food service establishment" means a food service establishment operating at a fixed location for a period of time of not more than twenty-one consecutive days in conjunction with a single event or celebration. This chapter applies to temporary food service establishments with the following exceptions:

- (1) Only the operator or person in charge of a temporary food service establishment shall be required to secure a food and beverage service workers' permit; and
- (2) The operator or person in charge of a temporary food service establishment shall secure a valid food and beverage service workers' permit before commencing the food handling operation. [1987 c 223 § 8.]

69.06.050 Permit to be secured within thirty days from time of employment. Individuals under this chapter shall have thirty days from commencement of employment to secure health permits. [1957 c 197 § 5.]

69.06.060 Penalty. Any violation of the provisions of this chapter shall be a misdemeanor. [1957 c 197 § 6.]

Chapter 69.07

WASHINGTON FOOD PROCESSING ACT

Sections	
69.07.010	Definitions.
69.07.020	Enforcement—Rules—Adoption—Contents—Standards.
69.07.040	Food processing license—Expiration date—Application, contents—Fee.
69.07.050	Renewal of license—Additional fee, when.
69.07.060	Denial, suspension or revocation of license—Grounds.
69.07.070	Rules and regulations, hearings subject to Administrative Procedure Act.
69.07.080	Inspections by department—Access—When.
69.07.085	Sanitary certificates—Fee.
69.07.090	Requirements for plants already in operation—Extension of time for compliance, when.
69.07.100	Establishments exempted from provisions of chapter.
69.07.110	Enforcement of chapter.
69.07.120	Disposition of moneys.
69.07.130	Chapter not to affect existing liabilities.
69.07.140	Violations—Warning notice.
69.07.150	Violations—Penalties.
69.07.160	Authority of director and department under chapter 69.04 RCW not impaired by any provision of chapter 69.07 RCW.
69.07.900	Chapter is cumulative and nonexclusive.
69.07.910	Severability—1967 ex.s. c 121.
69.07.920	Short title.

69.07.010 Definitions. For the purposes of this chapter:

- (1) "Department" means the department of agriculture of the state of Washington;
- (2) "Director" means the director of the department;
- (3) "Food" means any substance used for food or drink by man and any ingredient used for components of any such substance regardless of the quantity of such component;
- (4) "Sale" means selling, offering for sale, holding for sale, preparing for sale, trading, bartering, offering a gift as an inducement for sale of, and advertising for sale in any media;
- (5) "Food processing" means the handling or processing of any food in any manner in preparation for sale for human consumption: *Provided*, That it shall not include fresh fruit or vegetables merely washed or trimmed while being prepared or packaged for sale in their natural state;
- (6) "Food processing plant" includes but is not limited to any premises, plant, establishment, facilities and the appurtenances thereto, in whole or in part, where food is prepared, handled or processed in any manner for resale or distribution to retail outlets, restaurants, and any such other facility selling or distributing to the ultimate consumer: *Provided*, That retail outlets, as set forth herein, processing foods in any manner for resale shall

be considered a food processing plant as to such processing;

(7) "Food service establishment" shall mean any fixed or mobile restaurant, coffee shop, cafeteria, short order cafe, luncheonette, grill, tearoom, sandwich shop, soda fountain, tavern, bar, cocktail lounge, night club, roadside stand, industrial-feeding establishment, retail grocery, retail food market, retail meat market, retail bakery, private, public, or nonprofit organization routinely serving food, catering kitchen, commissary or similar place in which food or drink is prepared for sale or for service on the premises or elsewhere, and any other eating or drinking establishment or operation where food is served or provided for the public with or without charge.

For the purpose of this chapter any custom cannery or processing plant where raw food products, food, or food products are processed for the owner thereof, or the food processing facilities are made available to the owners or persons in control of raw food products or food or food products for processing in any manner, shall be considered to be food processing plants. [1967 ex.s. c 121 § 1.]

69.07.020 Enforcement—Rules—Adoption—Contents—Standards. (1) The department shall enforce and carry out the provisions of this chapter, and may adopt the necessary rules to carry out its purposes.

(2) Such rules may include:

(a) Standards for temperature controls in the storage of foods, so as to provide proper refrigeration.

(b) Standards for temperatures at which low acid foods must be processed and the length of time such temperatures must be applied and at what pressure in the processing of such low acid foods.

(c) Standards and types of recording devices that must be used in providing records of the processing of low acid foods, and how they shall be made available to the department of agriculture for inspection.

(d) Requirements for the keeping of records of the temperatures, times and pressures at which foods were processed, or for the temperatures at which refrigerated products were stored by the licensee and the furnishing of such records to the department.

(e) Standards that must be used to establish the temperature and purity of water used in the processing of foods. [1969 c 68 § 1; 1967 ex.s. c 121 § 2.]

69.07.040 Food processing license—Expiration date—Application, contents—Fee. It shall be unlawful for any person to operate a food processing plant or process foods without first having obtained an annual license from the department, which shall expire on the 31st day of March following issuance. A separate license shall be required for each food processing plant. Application for a license shall be on a form prescribed by the director and accompanied by a twenty-five dollar annual license fee. Such application shall include the full name of the applicant for the license and the location of the food processing plant he intends to operate. If such applicant is an individual, receiver, trustee, firm, partnership, association or corporation, the full name of each

member of the firm or partnership, or names of the officers of the association or corporation shall be given on the application. Such application shall further state the principal business address of the applicant in the state and elsewhere and the name of a person domiciled in this state authorized to receive and accept service of summons of legal notices of all kinds for the applicant, and any other necessary information prescribed by the director. Upon the approval of the application by the director and compliance with the provisions of this chapter, including the applicable regulations adopted hereunder by the department, the applicant shall be issued a license or renewal thereof. [1988 c 5 § 1; 1969 c 68 § 2; 1967 ex.s. c 121 § 4.]

69.07.050 Renewal of license—Additional fee, when. If the application for renewal of any license provided for under this chapter is not filed prior to April 1st in any year, an additional fee of fifteen dollars shall be assessed and added to the original fee and shall be paid by the applicant before the renewal license shall be issued: *Provided*, That such additional fee shall not be charged if the applicant furnishes an affidavit certifying that he or she has not operated a food processing plant or processed foods subsequent to the expiration of his or her license. [1988 c 5 § 2; 1967 ex.s. c 121 § 5.]

69.07.060 Denial, suspension or revocation of license—Grounds. The director may, subsequent to a hearing thereon, deny, suspend or revoke any license provided for in this chapter if he determines that an applicant has committed any of the following acts:

(1) Refused, neglected or failed to comply with the provisions of this chapter, the rules and regulations adopted hereunder, or any lawful order of the director.

(2) Refused, neglected or failed to keep and maintain records required by this chapter, or to make such records available when requested pursuant to the provisions of this chapter.

(3) Refused the department access to any portion or area of the food processing plant for the purpose of carrying out the provisions of this chapter.

(4) Refused the department access to any records required to be kept under the provisions of this chapter.

(5) Refused, neglected, or failed to comply with any provisions of chapter 69.04 RCW, Washington Food, Drug, and Cosmetic Act, or any regulations adopted thereunder. [1979 c 154 § 19; 1967 ex.s. c 121 § 6.]

Severability—1979 c 154: See note following RCW 15.49.330.

69.07.070 Rules and regulations, hearings subject to Administrative Procedure Act. The adoption of any rules and regulations under the provisions of this chapter, or the holding of a hearing in regard to a license issued or which may be issued under the provisions of this chapter shall be subject to the applicable provisions of chapter 34.05 RCW, the Administrative Procedure Act, as enacted or hereafter amended. [1967 ex.s. c 121 § 7.]

69.07.080 Inspections by department—Access—When. For purpose of determining whether the rules

adopted pursuant to RCW 69.07.020, as now or hereafter amended are complied with, the department shall have access for inspection purposes to any part, portion or area of a food processing plant, and any records required to be kept under the provisions of this chapter or rules and regulations adopted hereunder. Such inspection shall, when possible, be made during regular business hours or during any working shift of said food processing plant. The department may, however, inspect such food processing plant at any time when it has received information that an emergency affecting the public health has arisen and such food processing plant is or may be involved in the matters causing such emergency. [1969 c 68 § 3; 1967 ex.s. c 121 § 8.]

69.07.085 Sanitary certificates—Fee. The department may issue sanitary certificates to food processors under this chapter subject to such requirements as it may establish by rule. The fee for issuance shall be twenty dollars per certificate. Fees collected under this section shall be deposited in the agricultural local fund. [1988 c 254 § 9.]

69.07.090 Requirements for plants already in operation—Extension of time for compliance, when. Any food processing plant in actual operation at the time of July 30, 1967 or any seasonal food processing plant which has operated during any portion of the twelve months immediately preceding July 30, 1967, shall be granted a license, upon application and payment of the proper license fee, subject to meeting those immediate and absolute minimum requirements in this chapter or rules or regulations promulgated thereunder for the protection of the public health. The department may, however, grant such food processing plant such additional time as may be reasonably necessary, to allow for major renovations, improvements, or additions to said food processing plant, as required to meet the provisions of this chapter or rules and regulations adopted hereunder: *Provided*, That such extension of time shall not apply to the mandatory use of indicating and recording thermometers on retorts or other facilities or equipment used to process food under temperature changes. [1967 ex.s. c 121 § 9.]

69.07.100 Establishments exempted from provisions of chapter. The provisions of this chapter shall not apply to establishments issued a permit or licensed under the provisions of:

- (1) Chapter 15.32 RCW, the Dairies and dairy products act;
- (2) Chapter 69.25 RCW, the Washington wholesome eggs and egg products act;
- (3) Chapter 69.28 RCW, the Washington state honey act;
- (4) Chapter 16.49 RCW, the Meat inspection act;
- (5) Title 66 RCW, relating to alcoholic beverage control; and
- (6) Chapter 69.30 RCW, the Sanitary control of shellfish act: *Provided*, That if any such establishments process foods not specifically provided for in the above

entitled acts, such establishments shall be subject to the provisions of this chapter.

The provisions of this chapter shall not apply to restaurants or food service establishments. [1988 c 5 § 4; 1983 c 3 § 168; 1967 ex.s. c 121 § 10.]

69.07.110 Enforcement of chapter. The department may use all the civil remedies provided for in chapter 69.04 RCW (The Uniform Washington Food, Drug, and Cosmetic Act) in carrying out and enforcing the provisions of this chapter. [1967 ex.s. c.121 § 11.]

69.07.120 Disposition of moneys. All moneys received by the department under the provisions of this chapter shall be paid into the state treasury. [1967 ex.s. c 121 § 12.]

69.07.130 Chapter not to affect existing liabilities. The enactment of this chapter shall not have the effect of terminating, or in any way modifying any liability, civil or criminal, which shall already be in existence on July 30, 1967. [1967 ex.s. c 121 § 13.]

69.07.140 Violations—Warning notice. Nothing in this chapter shall be construed as requiring the department to report for prosecution violations of this chapter when it believes that the public interest will best be served by a suitable notice of warning in writing. [1967 ex.s. c 121 § 14.]

69.07.150 Violations—Penalties. Any person violating any provision of this chapter or any rule or regulation adopted hereunder shall be guilty of a misdemeanor and guilty of a gross misdemeanor for any second and subsequent violation: *Provided*, That any offense committed more than five years after a previous conviction shall be considered a first offense. [1967 ex.s. c 121 § 15.]

69.07.160 Authority of director and department under chapter 69.04 RCW not impaired by any provision of chapter 69.07 RCW. The authority granted to the director and to the department under the provisions of the Uniform Washington Food, Drug, and Cosmetic Act (chapter 69.04 RCW), as now or hereafter amended, shall not be deemed to be reduced or otherwise impaired as a result of any provision or provisions of the Washington Food Processing Act (chapter 69.07 RCW). [1969 c 68 § 4.]

69.07.900 Chapter is cumulative and nonexclusive. The provisions of this chapter shall be cumulative and nonexclusive and shall not affect any other remedy. [1967 ex.s. c 121 § 16.]

69.07.910 Severability—1967 ex.s. c 121. If any provision of this chapter, or its application to any person or circumstance is held invalid, the remainder of the chapter, or the application of the provision to other persons or circumstances is not affected. [1967 ex.s. c 121 § 17.]

69.07.920 Short title. This chapter shall be known and designated as the Washington food processing act. [1967 ex.s. c 121 § 18.]

Chapter 69.08

FLOUR, WHITE BREAD, AND ROLLS

Sections

69.08.010	Definitions.
69.08.020	Director, duty to enforce.
69.08.030	Flour—Content requirements.
69.08.040	Bread and rolls—Content requirements.
69.08.045	Specialty breads or rolls, macaroni or macaroni products, enriched white flour required—Exemptions.
69.08.050	Intrastate and interstate standards to conform.
69.08.060	Shortage of ingredients—Procedure.
69.08.070	Regulations, how and where kept—Copies for distribution.
69.08.080	Right of entry, to take samples, etc.
69.08.090	Penalty.

Weights and measures, bread: RCW 19.92.100 through 19.92.120.

69.08.010 Definitions. When used in this chapter, unless the context otherwise requires:

(1) "Flour" includes and shall be limited to the foods commonly known in the milling and baking industries as (a) white flour, also known as wheat flour or plain flour; (b) bromated flour; (c) self-rising flour, also known as self-rising white flour or self-rising wheat flour, and (d) phosphated flour, also known as phosphated white flour or phosphated wheat flour, but excludes whole wheat flour;

(2) "White bread" means any bread made with flour, as defined in (1), whether baked in a pan or on a hearth or screen, which is commonly known or usually represented and sold as white bread, including Vienna bread, French bread, and Italian bread;

(3) "Specialty breads" shall mean any yeast-raised bread, such as potato bread, raisin bread or egg sesame bread other than that bread defined in subsection (2) above;

(4) "Rolls" includes plain white rolls and buns of the semibread dough type, namely: soft rolls, such as hamburger rolls, hot dog rolls, Parker House rolls, and hard rolls, such as Vienna rolls, Kaiser rolls, but shall not include yeast-raised sweet rolls or sweet buns made with fillings or coatings, such as cinnamon rolls or buns and butterfly rolls;

(5) "Specialty rolls" shall mean any sweet rolls or sweet buns, including those made with fillings or coatings, such as cinnamon rolls or buns, butterfly rolls, doughnuts, and English muffins, other than those rolls defined in subsection (4) above;

(6) "Director" means the director of the state department of agriculture of the state of Washington;

(7) "Person" means an individual, a corporation, a partnership, an association, a joint stock company, a trust, or any group of persons whether incorporated or not, engaged in the commercial manufacture or sale of flour, white bread or rolls. [1971 c 27 § 1; 1945 c 192 § 1; Rem. Supp. 1945 § 6294-160.]

69.08.020 Director, duty to enforce. The director is hereby charged with the duty of enforcing the provisions of this chapter and he is hereby authorized and directed to make, amend or rescind regulations for the efficient enforcement of this chapter. [1945 c 192 § 4; Rem. Supp. 1945 § 6294-163.]

69.08.030 Flour—Content requirements. It shall be unlawful for any person to manufacture, mix, compound, sell or offer for sale, for human consumption in this state, flour, as defined in RCW 69.08.010, unless the following vitamins and minerals are contained in each pound of such flour: Not less than 2.9 mg of thiamine; not less than 1.8 mg of riboflavin; not less than 24.0 mg of niacin or niacin-amide; not less than 20.0 mg of iron (Fe); except in the case of self-rising flour which in addition to the above ingredients may contain 960.0 mg of calcium (Ca): *Provided*, That the terms of this section shall not apply to flour sold to distributors, bakers or other processors, if the purchaser furnishes to the seller a certificate in such form as the director shall by rule prescribe, certifying that such flour will be (1) resold to a distributor, baker or other processor, or (2) used in the manufacture, mixing or compounding of flour, white bread or rolls enriched to meet the requirements of this chapter, or (3) used in the manufacture of products other than flour, white bread or rolls. It shall be unlawful for any such purchaser so furnishing any such certificate to use or resell the flour so purchased in any manner other than as prescribed in this section. [1985 c 25 § 1; 1945 c 192 § 2; Rem. Supp. 1945 § 6294-161.]

69.08.040 Bread and rolls—Content requirements. It shall be unlawful for any person to manufacture, bake, sell, or offer for sale, for human consumption in this state, any white bread or rolls as defined in RCW 69.08.010, unless the following vitamins and minerals are contained in each pound of such bread or rolls: Not less than 1.8 mg of thiamine; not less than 1.1 mg of riboflavin; not less than 15.0 mg of niacin; not less than 12.5 mg of iron (Fe). [1985 c 25 § 2; 1945 c 192 § 3; Rem. Supp. 1945 § 6294-162.]

69.08.045 Specialty breads or rolls, macaroni or macaroni products, enriched white flour required—Exemptions. It shall be unlawful for any person to manufacture, bake, sell, or offer for sale for human consumption in this state, any specialty breads, or specialty rolls as defined in RCW 69.08.010 or macaroni or macaroni products as defined by the department by rule without using enriched white flour in the baking thereof: *Provided, however*, That those products which contain one hundred percent whole wheat or graham flour are exempted from the requirements of this section. [1988 c 5 § 5; 1971 c 27 § 2.]

69.08.050 Intrastate and interstate standards to conform. Whenever the vitamin and mineral requirements set forth in RCW 69.08.030 and 69.08.040 are no longer

in conformity with the legally established standards governing the interstate shipment of enriched flour and enriched white bread or enriched rolls, the director, in order to maintain uniformity between intrastate and interstate vitamin and mineral requirements for the foods within the provisions of this chapter, is authorized and directed to modify or revise such requirements to conform with amended standards governing interstate shipments. [1945 c 192 § 5; Rem. Supp. 1945 § 6294-164.]

69.08.060 Shortage of ingredients—Procedure. In the event of findings by the director that there is an existing or imminent shortage of any ingredient required by RCW 69.08.030 and 69.08.040, and that because of such shortage the sale and distribution of flour or white bread or rolls may be impeded by the enforcement of this chapter, the director shall issue a regulation, to be effective immediately upon issuance, permitting the omission of such ingredient from flour or white bread or rolls; and if he finds it necessary or appropriate, excepting such foods from labeling requirements until the further regulation of the director. Any such findings may be made without hearing, on the basis of an order or of factual information supplied by the appropriate federal agency or officer. In the absence of any such regulation of the appropriate federal agency or factual information supplied by it, the director on his own motion may, and upon receiving the sworn statements of ten or more persons subject to this chapter that they believe such a shortage exists or is imminent shall, within twenty days thereafter hold a public hearing with respect thereto at which any interested person may present evidence; and shall make findings based upon the evidence presented. The director shall publish notice of any such hearing at least ten days prior thereto. Whenever the director has reason to believe that such shortage no longer exists, he shall hold a public hearing, after at least ten days' notice shall have been given, at which any interested person may present evidence, and he shall make findings based upon the evidence so presented. If his findings be that such shortage no longer exists, he shall issue a regulation to become effective not less than thirty days after publication thereof, revoking such previous regulation: *Provided, however,* That undisposed floor stocks of flour on hand at the effective date, of such revocation regulation, or flour manufactured prior to such effective date, for sale in this state may thereafter be lawfully sold or disposed of. [1945 c 192 § 6; Rem. Supp. 1945 § 6294-165.]

69.08.070 Regulations, how and where kept—Copies for distribution. All regulations adopted by the director pursuant to this chapter shall be kept in a well bound book in the office of the director and shall become effective upon such date as the director shall fix. Printed copies of such regulations shall be made available for public distribution. [1945 c 192 § 7; Rem. Supp. 1945 § 6294-166.]

69.08.080 Right of entry, to take samples, etc. For the purpose of this chapter, the director, or such officers

or employees under his supervision as he may designate, is authorized to take samples for analysis and to conduct examinations and investigations, and to enter, at reasonable times, any factory, mill, bakery, warehouse, shop or establishment where flour, white bread or rolls are manufactured, processed, packed, sold or held, or any vehicle being used for the transportation thereof, and to inspect any such place or vehicle and any flour, white bread or rolls therein, and all pertinent equipment, materials, containers and labeling. [1945 c 192 § 8; Rem. Supp. 1945 § 6294-167.]

69.08.090 Penalty. Any person who violates any of the provisions of this chapter or the orders, rules or regulations promulgated by the director under authority thereof, shall upon conviction thereof be subjected to fine for each and every offense, in a sum not exceeding one thousand dollars, or to imprisonment, not to exceed ninety days. [1945 c 192 § 9; Rem. Supp. 1945 § 6294-168.]

Chapter 69.25

WASHINGTON WHOLESOME EGGS AND EGG PRODUCTS ACT

Sections

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69.25.010 Legislative finding. Eggs and egg products are an important source of the state's total supply of food, and are used in food in various forms. They are consumed throughout the state and the major portion thereof moves in intrastate commerce. It is essential, in the public interest, that the health and welfare of consumers be protected by the adoption of measures prescribed herein for assuring that eggs and egg products distributed to them and used in products consumed by them are wholesome, otherwise not adulterated, and properly labeled and packaged. Lack of effective regulation for the handling or disposition of unwholesome, otherwise adulterated, or improperly labeled or packaged egg products and certain qualities of eggs is injurious to the public welfare and destroys markets for wholesome, unadulterated, and properly labeled and packaged eggs and egg products and results in sundry losses to producers and processors, as well as injury to consumers. Unwholesome, otherwise adulterated, or improperly labeled or packaged products can be sold at lower prices and compete unfairly with the wholesome, unadulterated, and properly labeled and packaged products, to the detriment of consumers and the public generally. It is hereby found that all egg products and the qualities of eggs which are regulated under this chapter are either in intrastate commerce, or substantially affect such commerce, and that regulation by the director, as contemplated by this chapter, is appropriate to protect the health and welfare of consumers. [1975 1st ex.s. c 201 § 2.]

69.25.020 Definitions. When used in this chapter the following terms shall have the indicated meanings, unless the context otherwise requires:

- (1) "Department" means the department of agriculture of the state of Washington.
- (2) "Director" means the director of the department or his duly authorized representative.
- (3) "Person" means any natural person, firm, partnership, exchange, association, trustee, receiver, corporation, and any member, officer, or employee thereof, or assignee for the benefit of creditors.

(4) "Adulterated" applies to any egg or egg product under one or more of the following circumstances:

(a) If it bears or contains any poisonous or deleterious substance which may render it injurious to health; but in case the substance is not an added substance, such article shall not be considered adulterated under this clause if the quantity of such substance in or on such article does not ordinarily render it injurious to health;

(b) If it bears or contains any added poisonous or added deleterious substance (other than one which is: (i) A pesticide chemical in or on a raw agricultural commodity; (ii) a food additive; or (iii) a color additive) which may, in the judgment of the director, make such article unfit for human food;

(c) If it is, in whole or in part, a raw agricultural commodity and such commodity bears or contains a pesticide chemical which is unsafe within the meaning of RCW 69.04.392, as enacted or hereafter amended;

(d) If it bears or contains any food additive which is unsafe within the meaning of RCW 69.04.394, as enacted or hereafter amended;

(e) If it bears or contains any color additive which is unsafe within the meaning of RCW 69.04.396, as enacted or hereafter amended: *Provided*, That an article which is not otherwise deemed adulterated under subsection (4)(c), (d), or (e) of this section shall nevertheless be deemed adulterated if use of the pesticide chemical, food additive, or color additive, in or on such article, is prohibited by regulations of the director in official plants;

(f) If it consists in whole or in part of any filthy, putrid, or decomposed substance, or if it is otherwise unfit for human food;

(g) If it has been prepared, packaged, or held under insanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health;

(h) If it is an egg which has been subjected to incubation or the product of any egg which has been subjected to incubation;

(i) If its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health;

(j) If it has been intentionally subjected to radiation, unless the use of the radiation was in conformity with a regulation or exemption in effect pursuant to RCW 69.04.394; or

(k) If any valuable constituent has been in whole or in part omitted or abstracted therefrom; or if any substance has been substituted, wholly or in part therefor; or if damage or inferiority has been concealed in any manner; or if any substance has been added thereto or mixed or packed therewith so as to increase its bulk or weight, or reduce its quality or strength, or make it appear better or of greater value than it is.

(5) "Capable of use as human food" shall apply to any egg or egg product unless it is denatured, or otherwise identified, as required by regulations prescribed by the director, to deter its use as human food.

(6) "Intrastate commerce" means any eggs or egg products in intrastate commerce, whether such eggs or

egg products are intended for sale, held for sale, offered for sale, sold, stored, transported, or handled in this state in any manner and prepared for eventual distribution in this state, whether at wholesale or retail.

(7) "Container" or "package" includes any box, can, tin, plastic, or other receptacle, wrapper, or cover.

(8) "Immediate container" means any consumer package, or any other container in which egg products, not consumer-packaged, are packed.

(9) "Shipping container" means any container used in packaging a product packed in an immediate container.

(10) "Egg handler" or "dealer" means any person who produces, contracts for or obtains possession or control of any eggs for the purpose of sale to another dealer or retailer, or for processing and sale to a dealer, retailer or consumer: *Provided*, That for the purpose of this chapter, "sell" or "sale" includes the following: Offer for sale, expose for sale, have in possession for sale, exchange, barter, trade, or as an inducement for the sale of another product.

(11) "Egg product" means any dried, frozen, or liquid eggs, with or without added ingredients, excepting products which contain eggs only in a relatively small proportion, or historically have not been, in the judgment of the director, considered by consumers as products of the egg food industry, and which may be exempted by the director under such conditions as he may prescribe to assure that the egg ingredients are not adulterated and such products are not represented as egg products.

(12) "Egg" means the shell egg of the domesticated chicken, turkey, duck, goose, or guinea, or any other specie of fowl.

(13) "Check" means an egg that has a broken shell or crack in the shell but has its shell membranes intact and contents not leaking.

(14) "Clean and sound shell egg" means any egg whose shell is free of adhering dirt or foreign material and is not cracked or broken.

(15) "Dirty egg" means an egg that has a shell that is unbroken and has adhering dirt or foreign material.

(16) "Incubator reject" means an egg that has been subjected to incubation and has been removed from incubation during the hatching operations as infertile or otherwise unhatchable.

(17) "Inedible" means eggs of the following descriptions: Black rots, yellow rots, white rots, mixed rots (addled eggs), sour eggs, eggs with green whites, eggs with stuck yolks, moldy eggs, musty eggs, eggs showing blood rings, and eggs containing embryo chicks (at or beyond the blood ring stage).

(18) "Leaker" means an egg that has a crack or break in the shell and shell membranes to the extent that the egg contents are exposed or are exuding or free to exude through the shell.

(19) "Loss" means an egg that is unfit for human food because it is smashed or broken so that its contents are leaking; or overheated, frozen, or contaminated; or an incubator reject; or because it contains a bloody white, large meat spots, a large quantity of blood, or other foreign material.

(20) "Restricted egg" means any check, dirty egg, incubator reject, inedible, leaker, or loss.

(21) "Inspection" means the application of such inspection methods and techniques as are deemed necessary by the director to carry out the provisions of this chapter.

(22) "Inspector" means any employee or official of the department authorized to inspect eggs or egg products under the authority of this chapter.

(23) "Misbranded" shall apply to egg products which are not labeled and packaged in accordance with the requirements prescribed by regulations of the director under RCW 69.25.100.

(24) "Official certificate" means any certificate prescribed by regulations of the director for issuance by an inspector or other person performing official functions under this chapter.

(25) "Official device" means any device prescribed or authorized by the director for use in applying any official mark.

(26) "Official inspection legend" means any symbol prescribed by regulations of the director showing that egg products were inspected in accordance with this chapter.

(27) "Official mark" means the official inspection legend or any other symbol prescribed by regulations of the director to identify the status of any article under this chapter.

(28) "Official plant" means any plant which is licensed under the provisions of this chapter, at which inspection of the processing of egg products is maintained by the United States department of agriculture or by the state under cooperative agreements with the United States department of agriculture or by the state.

(29) "Official standards" means the standards of quality, grades, and weight classes for eggs, adopted under the provisions of this chapter.

(30) "Pasteurize" means the subjecting of each particle of egg products to heat or other treatments to destroy harmful, viable micro-organisms by such processes as may be prescribed by regulations of the director.

(31) "Pesticide chemical", "food additive", "color additive", and "raw agricultural commodity" shall have the same meaning for purposes of this chapter as prescribed in chapter 69.04 RCW.

(32) "Plant" means any place of business where egg products are processed.

(33) "Processing" means manufacturing egg products, including breaking eggs or filtering, mixing, blending, pasteurizing, stabilizing, cooling, freezing, drying, or packaging egg products.

(34) "Retailer" means any person in intrastate commerce who sells eggs to a consumer.

(35) "At retail" means any transaction in intrastate commerce between a retailer and a consumer.

(36) "Consumer" means any person who purchases eggs for his or her own family use or consumption; or any restaurant, hotel, boarding house, bakery, or other institution or concern which purchases eggs for serving to guests or patrons thereof, or for its own use in cooking or baking.

(37) "Candling" means the examination of the interior of eggs by the use of transmitted light used in a partially dark room or place.

(38) "Master license system" means the mechanism established by chapter 19.02 RCW by which master licenses, endorsed for individual state-issued licenses, are issued and renewed utilizing a master application and a master license expiration date common to each renewable license endorsement. [1982 c 182 § 42; 1975 1st ex.s. c 201 § 3.]

Severability—1982 c 182: See RCW 19.02.901.

69.25.030 Purpose—**Certain federal rules adopted by reference**—**Hearing, notice by director**—**Adoption of rules by director.** The purpose of this chapter is to promote uniformity of state legislation and regulations with the federal egg products inspection act, 21 U.S.C. sec. 1031, et seq., and regulations adopted thereunder. In accord with such declared purpose, any regulations adopted under the federal egg products inspection act relating to eggs and egg products, as defined in RCW 69.25.020 (11) and (12), in effect on July 1, 1975, are hereby deemed to have been adopted under the provisions hereof. Further, to promote such uniformity, any regulations adopted hereafter under the provisions of the federal egg products inspection act relating to eggs and egg products, as defined in RCW 69.25.020 (11) and (12), and published in the federal register, shall be deemed to have been adopted under the provisions of this chapter in accord with chapter 34.05 RCW, as now or hereafter amended. The director may, however, within thirty days of the publication of the adoption of any such regulation under the federal egg products inspection act, give public notice that a hearing will be held to determine if such regulations shall not be applicable under the provisions of this chapter. Such hearing shall be in accord with the requirements of chapter 34.05 RCW, as now or hereafter amended.

The director, in addition to the foregoing, may adopt any rule and regulation necessary to carry out the purpose and provisions of this chapter. [1975 1st ex.s. c 201 § 4.]

69.25.040 Application of administrative procedure act. The adoption, amendment, modification, or revocation of any rules or regulations under the provisions of this chapter, or the holding of a hearing in regard to a license issued or which may be issued or denied under the provisions of this chapter, shall be subject to the applicable provisions of chapter 34.05 RCW, the administrative procedure act, as now or hereafter amended. [1975 1st ex.s. c 201 § 5.]

69.25.050 Egg handler's or dealer's license and number—**Branch license**—**Application, fee, posting required, procedure.** No person shall act as an egg handler or dealer without first obtaining an annual license and permanent dealer's number from the department; such license shall expire on the master license expiration date. Application for an egg dealer license or egg dealer branch license, shall be made through the master license

system. The annual egg dealer license fee shall be ten dollars and the annual egg dealer branch license fee shall be five dollars. A copy of the master license shall be posted at each location where such licensee operates. Such application shall include the full name of the applicant for the license and the location of each facility he intends to operate. If such applicant is an individual, receiver, trustee, firm, partnership, association or corporation, the full name of each member of the firm or partnership or the names of the officers of the association or corporation shall be given on the application. Such application shall further state the principal business address of the applicant in the state and elsewhere and the name of a person domiciled in this state authorized to receive and accept service of summons of legal notices of all kinds for the applicant and any other necessary information prescribed by the director. Upon the approval of the application and compliance with the provisions of this chapter, including the applicable regulations adopted hereunder by the department, the applicant shall be issued a license or renewal thereof. Such license and permanent egg handler or dealer's number shall be nontransferable. [1982 c 182 § 43; 1975 1st ex.s. c 201 § 6.]

Severability—1982 c 182: See RCW 19.02.901.

Master license—*Expiration date:* RCW 19.02.090.

Master license system

definition: RCW 69.25.020(38).

existing licenses or permits registered under, when: RCW 19.02.810.

to include additional licenses: RCW 19.02.110.

69.25.060 Egg handler's or dealer's license—**Late renewal fee.** If the application for the renewal of an egg handler's or dealer's license is not filed before the master license expiration date, the master license delinquency fee shall be assessed under chapter 19.02 RCW and shall be paid by the applicant before the renewal license shall be issued. [1982 c 182 § 44; 1975 1st ex.s. c 201 § 7.]

Severability—1982 c 182: See RCW 19.02.901.

Master license

delinquency fee—*Rate*—*Disposition:* RCW 19.02.085.

expiration date: RCW 19.02.090.

system—*Existing licenses or permits registered under, when:* RCW 19.02.810.

69.25.070 Egg handler's or dealer's license—**Denial, suspension, revocation, or conditional issuance.** The department may deny, suspend, revoke, or issue a license or a conditional license if it determines that an applicant or licensee has committed any of the following acts:

(1) That the applicant or licensee is violating or has violated any of the provisions of this chapter or rules and regulations adopted thereunder.

(2) That the application contains any materially false or misleading statement or involves any misrepresentation by any officer, agent, or employee of the applicant.

(3) That the applicant or licensee has concealed or withheld any facts regarding any violation of this chapter by any officer, agent, or employee of the applicant or licensee. [1975 1st ex.s. c 201 § 8.]

69.25.080 Continuous inspection at processing plants—Exemptions—Condemnation and destruction of adulterated eggs and egg products—Reprocessing—Appeal—Inspections of egg handlers. (1) For the purpose of preventing the entry into or movement in intrastate commerce of any egg product which is capable of use as human food and is misbranded or adulterated, the director shall, whenever processing operations are being conducted, unless under inspection by the United States department of agriculture, cause continuous inspection to be made, in accordance with the regulations promulgated under this chapter, of the processing of egg products, in each plant processing egg products for commerce, unless exempted under RCW 69.25.170. Without restricting the application of the preceding sentence to other kinds of establishments within its provisions, any food manufacturing establishment, institution, or restaurant which uses any eggs that do not meet the requirements of RCW 69.25.170(1)(a) in the preparation of any articles for human food, shall be deemed to be a plant processing egg products, with respect to such operations.

(2) The director, at any time, shall cause such retention, segregation, and reinspection as he deems necessary of eggs and egg products capable of use as human food in each official plant.

(3) Eggs and egg products found to be adulterated at official plants shall be condemned, and if no appeal be taken from such determination or condemnation, such articles shall be destroyed for human food purposes under the supervision of an inspector: *Provided*, That articles which may by reprocessing be made not adulterated need not be condemned and destroyed if so reprocessed under the supervision of an inspector and thereafter found to be not adulterated. If an appeal be taken from such determination, the eggs or egg products shall be appropriately marked and segregated pending completion of an appeal inspection, which appeal shall be at the cost of the appellant if the director determines that the appeal is frivolous. If the determination of condemnation is sustained, the eggs or egg products shall be destroyed for human food purposes under the supervision of an inspector.

(4) The director shall cause such other inspections to be made of the business premises, facilities, inventory, operations, and records of egg handlers, and the records and inventory of other persons required to keep records under RCW 69.25.140, as he deems appropriate (and in the case of shell egg packers, packing eggs for the ultimate consumer, at least once each calendar quarter) to assure that only eggs fit for human food are used for such purpose, and otherwise to assure compliance by egg handlers and other persons with the requirements of RCW 69.25.140, except that the director shall cause such inspections to be made as he deems appropriate to assure compliance with such requirements at food manufacturing establishments, institutions, and restaurants, other than plants processing egg products. Representatives of the director shall be afforded access to all such places of business for purposes of making the inspections provided for in this chapter. [1975 1st ex.s. c 201 § 9.]

69.25.090 Sanitary operation of official plants—Inspection refused if requirements not met. (1) The operator of each official plant shall operate such plant in accordance with such sanitary practices and shall have such premises, facilities, and equipment as are required by regulations promulgated by the director to effectuate the purposes of this chapter, including requirements for segregation and disposition of restricted eggs.

(2) The director shall refuse to render inspection to any plant whose premises, facilities, or equipment, or the operation thereof, fail to meet the requirements of this section. [1975 1st ex.s. c 201 § 10.]

69.25.100 Egg products—Pasteurization—Labeling requirements—False or misleading labels or containers—Director may order use of withheld—Hearing, determination, and appeal. (1) Egg products inspected at any official plant under the authority of this chapter and found to be not adulterated shall be pasteurized before they leave the official plant, except as otherwise permitted by regulations of the director, and shall at the time they leave the official plant, bear in distinctly legible form on their shipping containers or immediate containers, or both, when required by regulations of the director, the official inspection legend and official plant number, of the plant where the products were processed, and such other information as the director may require by regulations to describe the products adequately and to assure that they will not have false or misleading labeling.

(2) No labeling or container shall be used for egg products at official plants if it is false or misleading or has not been approved as required by the regulations of the director. If the director has reason to believe that any labeling or the size or form of any container in use or proposed for use with respect to egg products at any official plant is false or misleading in any particular, he may direct that such use be withheld unless the labeling or container is modified in such manner as he may prescribe so that it will not be false or misleading. If the person using or proposing to use the labeling or container does not accept the determination of the director, such person may request a hearing, but the use of the labeling or container shall, if the director so directs, be withheld pending hearing and final determination by the director. Any such determination by the director shall be conclusive unless, within thirty days after receipt of notice of such final determination, the person adversely affected thereby appeals to the superior court in the county in which such person has its principal place of business. [1975 1st ex.s. c 201 § 11.]

69.25.110 Prohibited acts and practices. (1) No person shall buy, sell, or transport, or offer to buy or sell, or offer or receive for transportation, in any business in intrastate commerce any restricted eggs, capable of use as human food, except as authorized by regulations of the director under such conditions as he may prescribe to assure that only eggs fit for human food are used for such purpose.

(2) No egg handler shall possess with intent to use, or use, any restricted eggs in the preparation of human food for intrastate commerce except that such eggs may be so possessed and used when authorized by regulations of the director under such conditions as he may prescribe to assure that only eggs fit for human food are used for such purpose.

(3) No person shall process any egg products for intrastate commerce at any plant except in compliance with the requirements of this chapter.

(4) No person shall buy, sell, or transport, or offer to buy or sell, or offer or receive for transportation, in intrastate commerce any egg products required to be inspected under this chapter unless they have been so inspected and are labeled and packaged in accordance with the requirements of RCW 69.25.100.

(5) No operator of any official plant shall allow any egg products to be moved from such plant if they are adulterated or misbranded and capable of use as human food.

(6) No person shall:

(a) Manufacture, cast, print, lithograph, or otherwise make any device containing any official mark or simulation thereof, or any label bearing any such mark or simulation, or any form of official certificate or simulation thereof, except as authorized by the director;

(b) Forge or alter any official device, mark, or certificate;

(c) Without authorization from the director, use any official device, mark, or certificate, or simulation thereof, or detach, deface, or destroy any official device or mark; or use any labeling or container ordered to be withheld from use under RCW 69.25.100 after final judicial affirmance of such order or expiration of the time for appeal if no appeal is taken under said section;

(d) Contrary to the regulations prescribed by the director, fail to use, or to detach, deface, or destroy any official device, mark, or certificate;

(e) Knowingly possess, without promptly notifying the director or his representative, any official device or any counterfeit, simulated, forged, or improperly altered official certificate or any device or label, or any eggs or egg products bearing any counterfeit, simulated, forged, or improperly altered official mark;

(f) Knowingly make any false statement in any shipper's certificate or other nonofficial or official certificate provided for in the regulations prescribed by the director;

(g) Knowingly represent that any article has been inspected or exempted, under this chapter when in fact it has not been so inspected or exempted; and

(h) Refuse access, at any reasonable time, to any representative of the director, to any plant or other place of business subject to inspection under any provisions of this chapter.

(7) No person, while an official or employee of the state or local governmental agency, or thereafter, shall use to his own advantage, or reveal other than to the authorized representatives of the United States government or the state in their official capacity, or as ordered

by a court in a judicial proceeding, any information acquired under the authority of this chapter concerning any matter which the originator or relator of such information claims to be entitled to protection as a trade secret. [1975 1st ex.s. c 201 § 12.]

69.25.120 Director to cooperate with other agencies—May conduct examinations. The director shall, whenever he determines that it would effectuate the purposes of this chapter, cooperate with any state, federal or other governmental agencies in carrying out any provisions of this chapter. In carrying out the provisions of this chapter, the director may conduct such examinations, investigations, and inspections as he determines practicable through any officer or employee of any such agency commissioned by him for such purpose. [1975 1st ex.s. c 201 § 13.]

69.25.130 Eggs or egg products not intended for use as human food—Identification or denaturing required. Inspection shall not be provided under this chapter at any plant for the processing of any egg products which are not intended for use as human food, but such articles, prior to their offer for sale or transportation in intrastate commerce, shall be denatured or identified as prescribed by regulations of the director to deter their use for human food. No person shall buy, sell, or transport or offer to buy or sell, or offer or receive for transportation, in intrastate commerce, any restricted eggs or egg products which are not intended for use as human food unless they are denatured or identified as required by the regulations of the director. [1975 1st ex.s. c 201 § 14.]

69.25.140 Records required, access to and copying of. For the purpose of enforcing the provisions of this chapter and the regulations promulgated thereunder, all persons engaged in the business of transporting, shipping, or receiving any eggs or egg products in intrastate commerce or in interstate commerce, or holding such articles so received, and all egg handlers, shall maintain such records showing, for such time and in such form and manner, as the director may prescribe, to the extent that they are concerned therewith, the receipt, delivery, sale, movement, and disposition of all eggs and egg products handled by them, and shall, upon the request of the director, permit him at reasonable times to have access to and to copy all such records. [1975 1st ex.s. c 201 § 15.]

69.25.150 Penalties—Liability of employer—Defense—Interference with person performing official duties. (1) Any person who commits any offense prohibited by RCW 69.25.110 shall upon conviction be guilty of a gross misdemeanor. When construing or enforcing the provisions of RCW 69.25.110, the act, omission, or failure of any person acting for or employed by any individual, partnership, corporation, or association within the scope of his employment or office shall in every case

be deemed the act, omission, or failure of such individual, partnership, corporation, or association, as well as of such person.

(2) No carrier or warehouseman shall be subject to the penalties of this chapter, other than the penalties for violation of RCW 69.25.140, or subsection (3) of this section, by reason of his receipt, carriage, holding, or delivery, in the usual course of business, as a carrier or warehouseman of eggs or egg products owned by another person unless the carrier or warehouseman has knowledge, or is in possession of facts which would cause a reasonable person to believe that such eggs or egg products were not eligible for transportation under, or were otherwise in violation of, this chapter, or unless the carrier or warehouseman refuses to furnish on request of a representative of the director the name and address of the person from whom he received such eggs or egg products and copies of all documents, if there be any, pertaining to the delivery of the eggs or egg products to, or by, such carrier or warehouseman.

(3) Notwithstanding any other provision of law any person who forcibly assaults, resists, impedes, intimidates, or interferes with any person while engaged in or on account of the performance of his official duties under this chapter shall be punished by a fine of not more than five thousand dollars or imprisonment in the state penitentiary for not more than three years, or both. Whoever, in the commission of any such act, uses a deadly or dangerous weapon, shall be punished by a fine of not more than ten thousand dollars or by imprisonment in the state penitentiary for not more than ten years, or both. [1975 1st ex.s. c 201 § 16.]

69.25.160 Notice of violation—May take place of prosecution. Before any violation of this chapter, other than RCW 69.25.150(3), is reported by the director to any prosecuting attorney for institution of a criminal proceeding, the person against whom such proceeding is contemplated shall be given reasonable notice of the alleged violation and opportunity to present his views orally or in writing with regard to such contemplated proceeding. Nothing in this chapter shall be construed as requiring the director to report for criminal prosecution violation of this chapter whenever he believes that the public interest will be adequately served and compliance with this chapter obtained by a suitable written notice of warning. [1975 1st ex.s. c 201 § 17.]

69.25.170 Exemptions permitted by rule of director.

(1) The director may, by regulation and under such conditions and procedures as he may prescribe, exempt from specific provisions of this chapter:

(a) The sale, transportation, possession, or use of eggs which contain no more restricted eggs than are allowed by the tolerance in the official state standards for consumer grades for shell eggs;

(b) The processing of egg products at any plant where the facilities and operating procedures meet such sanitary standards as may be prescribed by the director, and where the eggs received or used in the manufacture of egg products contain no more restricted eggs than are

allowed by the official standards of the state consumer grades for shell eggs, and the egg products processed at such plant;

(c) The sale of eggs by any poultry producer from his own flocks directly to a household consumer exclusively for use by such consumer and members of his household and his nonpaying guests and employees, and the transportation, possession, and use of such eggs in accordance with this subsection;

(d) The sale of eggs by shell egg packers on his own premises directly to household consumers for use by such consumer and members of his household and his nonpaying guests and employees, and the transportation, possession, and use of such eggs in accordance with this subsection.

(2) The director may modify or revoke any regulation granting exemption under this chapter whenever he deems such action appropriate to effectuate the purposes of this chapter. [1975 1st ex.s. c 201 § 18.]

69.25.180 Limiting entry of eggs and egg products into official plants. The director may limit the entry of eggs and egg products and other materials into official plants under such conditions as he may prescribe to assure that allowing the entry of such articles into such plants will be consistent with the purposes of this chapter. [1975 1st ex.s. c 201 § 19.]

69.25.190 Embargo of eggs or egg products in violation of this chapter—Time limit—Removal of official marks. Whenever any eggs or egg products subject to this chapter are found by any authorized representative of the director upon any premises and there is reason to believe that they are or have been processed, bought, sold, possessed, used, transported, or offered or received for sale or transportation in violation of this chapter, or that they are in any other way in violation of this chapter, or whenever any restricted eggs capable of use as human food are found by such a representative in the possession of any person not authorized to acquire such eggs under the regulations of the director, such articles may be embargoed by such representative for a reasonable period but not to exceed twenty days, pending action under RCW 69.25.200 or notification of any federal or other governmental authorities having jurisdiction over such articles, and shall not be moved by any person from the place at which they are located when so detained until released by such representative. All official marks may be required by such representative to be removed from such articles before they are released unless it appears to the satisfaction of the director that the articles are eligible to retain such marks. [1975 1st ex.s. c 201 § 20.]

69.25.200 Embargo—Petition for court order affirming—Removal of embargo or destruction or correction and release—Court costs, fees, administrative expenses—Bond may be required. When the director has embargoed any eggs or egg products, he shall petition the superior court of the county in which the eggs or egg products are located for an order affirming such

embargo. Such court shall have jurisdiction for cause shown and after a prompt hearing to any claimant of eggs or egg products, shall issue an order which directs the removal of such embargo or the destruction or correction and release of such eggs and egg products. An order for destruction or the correction and release of such eggs and egg products shall contain such provision for the payment of pertinent court costs and fees and administrative expenses as is equitable and which the court deems appropriate in the circumstances. An order for correction and release may contain such provisions for a bond as the court finds indicated in the circumstance. [1975 1st ex.s. c 201 § 21.]

69.25.210 Embargo—Order affirming not required, when. The director need not petition the superior court as provided for in RCW 69.25.200 if the owner or claimant of such eggs or egg products agrees in writing to the disposition of such eggs or egg products as the director may order. [1975 1st ex.s. c 201 § 22.]

69.25.220 Embargo—Consolidation of petitions. Two or more petitions under RCW 69.25.200 which pend at the same time and which present the same issue and claimant hereunder may be consolidated for simultaneous determination by one court of competent jurisdiction, upon application to any court of jurisdiction by the director or claimant. [1975 1st ex.s. c 201 § 23.]

69.25.230 Embargo—Sampling of article. The claimant in any proceeding by petition under RCW 69.25.200 shall be entitled to receive a representative sample of the article subject to such proceedings upon application to the court of competent jurisdiction made at any time after such petition and prior to the hearing thereon. [1975 1st ex.s. c 201 § 24.]

69.25.240 Condemnation—Recovery of damages restricted. No state court shall allow the recovery of damages for administrative action for condemnation under the provisions of this chapter, if the court finds that there was probable cause for such action. [1975 1st ex.s. c 201 § 25.]

69.25.250 Assessment—Rate, applicability, time of payment—Reports—Contents, frequency. There is hereby levied an assessment not to exceed two and one-half mills per dozen eggs entering intrastate commerce, as prescribed by rules and regulations issued by the director. Such assessment shall be applicable to all eggs entering intrastate commerce except as provided in RCW 69.25.170 and 69.25.290. Such assessment shall be paid to the director on a monthly basis on or before the tenth day following the month such eggs enter intrastate commerce. The director may require reports by egg handlers or dealers along with the payment of the assessment fee. Such reports may include any and all pertinent information necessary to carry out the purposes of this chapter. The director may, by regulations, require egg container manufacturers to report on a monthly basis all egg containers sold to any egg handler or dealer

and bearing such egg handler or dealer's license number. [1975 1st ex.s. c 201 § 26.]

69.25.260 Assessment—Prepayment by purchase of egg seals—Permit for printing seal on containers or labels. Any egg handler or dealer may prepay the assessment provided for in RCW 69.25.250 by purchasing Washington state egg seals from the director to be placed on egg containers showing that the proper assessment has been paid. Any carton manufacturer or printer may apply to the director for a permit to place reasonable facsimiles of the Washington state egg seals to be imprinted on egg containers or on the identification labels which show egg grade and size and the name of the egg handler or dealer. The director shall, from time to time, prescribe rules and regulations governing the affixing of seals and he is authorized to cancel any such permit issued pursuant to this chapter, whenever he finds that a violation of the terms under which the permit has been granted has been violated. [1979 ex.s. c 238 § 10; 1975 1st ex.s. c 201 § 27.]

Severability—1979 ex.s. c 238: See note following RCW 15.44.010.

69.25.270 Assessment—Monthly payment—Audit—Failure to pay, penalty. Every egg handler or dealer who pays assessments required under the provisions of this chapter on a monthly basis in lieu of seals shall be subject to audit by the director at such frequency as is deemed necessary by the director. The cost to the director for performing such audit shall be chargeable to and payable by the egg handler or dealer subject to audit. Failure to pay assessments when due or refusal to pay for audit costs may be cause for a summary suspension of an egg handler's or dealer's license and a charge of one percent per month, or fraction thereof shall be added to the sum due the director, for each remittance not received by the director when due. The conditions and charges applicable to egg handlers and dealers set forth herein shall also be applicable to payments due the director for facsimiles of seals placed on egg containers. [1987 c 393 § 16; 1975 1st ex.s. c 201 § 28.]

69.25.280 Assessment—Use of proceeds. The proceeds from assessment fees paid to the director shall be retained for the inspection of eggs and carrying out the provisions of this chapter relating to eggs. [1975 1st ex.s. c 201 § 29.]

69.25.290 Assessment—Exclusions. The assessments provided in this chapter shall not apply to:

- (1) Sale and shipment to points outside of this state;
- (2) Sale to the United States government and its instrumentalities;
- (3) Sale to breaking plants for processing into egg products;
- (4) Sale between egg dealers. [1975 1st ex.s. c 201 § 30.]

69.25.300 Transfer of moneys in state egg account. All moneys in the state egg account, created by *RCW 69.24.450, at the time of July 1, 1975, shall be transferred to the director and shall be retained and expended for administering and carrying out the purposes of this chapter. [1975 1st ex.s. c 201 § 31.]

*Reviser's note: RCW 69.24.450 was repealed by 1975 1st ex.s. c 201 § 40.

69.25.310 Containers—Marking required—Obliteration of previous markings required for reuse—Penalty. All containers used by an egg handler or dealer to package eggs shall bear the name and address or the permanent number issued by the director to said egg handler or dealer. Such permanent number shall be displayed in a size and location prescribed by the director. It shall constitute a gross misdemeanor for any egg handler or dealer to reuse a container which bears the permanent number of another egg handler or dealer unless such number is totally obliterated prior to reuse. The director may in addition require the obliteration of any or all markings that may be on any container which will be reused for eggs by an egg handler or dealer. [1975 1st ex.s. c 201 § 32.]

69.25.320 Records required, additional—Sales to retailer or food service—Exception—Defense to charged violation—Sale of eggs deteriorated due to storage time. In addition to any other records required to be kept and furnished the director under the provisions of this chapter, the director may require any person who sells to any retailer, or to any restaurant, hotel, boarding house, bakery, or any institution or concern which purchases eggs for serving to guests or patrons thereof or for its use in preparation of any food product for human consumption, candled or graded eggs other than those of his own production sold and delivered on the premises where produced, to furnish that retailer or other purchaser with an invoice covering each such sale, showing the exact grade or quality, and the size or weight of the eggs sold, according to the standards prescribed by the director, together with the name and address of the person by whom the eggs were sold. The person selling and the retailer or other purchaser shall keep a copy of said invoice on file at his place of business for a period of thirty days, during which time the copy shall be available for inspection at all reasonable times by the director: *Provided*, That no retailer or other purchaser shall be guilty of a violation of this chapter if he can establish a guarantee from the person from whom the eggs were purchased to the effect that they, at the time of purchase, conformed to the information required by the director on such invoice: *Provided further*, That if the retailer or other purchaser having labeled any such eggs in accordance with the invoice keeps them for such a time after they are purchased as to cause them to deteriorate to a lower grade or standard, and sells them under the label of the invoice grade or standard, he shall be guilty of a violation of this chapter.

No invoice shall be required on eggs when packed for sale to the United States department of defense, or a

component thereof, if labeled with grades promulgated by the United States secretary of agriculture. [1975 1st ex.s. c 201 § 33.]

69.25.330 Exemption from chapter. The provisions of this chapter shall not apply to the sale of eggs by any egg producer with an annual egg production from a flock of three thousand or less hens. [1975 1st ex.s. c 201 § 34.]

69.25.340 General penalty. Any person violating any provision of this chapter or regulations for which a penalty is not specifically provided for in this chapter, shall be guilty of a misdemeanor and guilty of a gross misdemeanor for any subsequent violation: *Provided*, That any offense committed more than five years after a previous conviction shall be considered a first offense. [1975 1st ex.s. c 201 § 36.]

69.25.900 Savings. The enactment of this chapter shall not have the effect of terminating or in any way modifying any liability, civil or criminal, which shall already be in existence on July 1, 1975. [1975 1st ex.s. c 201 § 35.]

69.25.910 Chapter is cumulative and nonexclusive. The provisions of this chapter shall be cumulative and nonexclusive and shall not affect any other remedy at law. [1975 1st ex.s. c 201 § 37.]

69.25.920 Severability—1975 1st ex.s. c 201. If any provision of this chapter, or its application to any person or circumstance is held invalid, the remainder of the chapter, or the application of the provision to other persons or circumstances is not affected. [1975 1st ex.s. c 201 § 38.]

69.25.930 Short title. This act may be known and cited as the "Washington wholesome eggs and egg products act". [1975 1st ex.s. c 201 § 39.]

Chapter 69.28

HONEY

Sections

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Bees and apiaries: Chapter 15.60 RCW.

Commission merchants, agricultural products: Title 20 RCW.

69.28.020 Enforcement power and duty of director and agents. The director is hereby empowered, through his duly authorized agents, to enforce all provisions of this chapter. The director shall have the power to define, promulgate and enforce such reasonable regulations as he may deem necessary in carrying out the provisions of this chapter. [1939 c 199 § 29; RRS § 6163–29. FORMER PART OF SECTION: 1939 c 199 § 44 now codified as RCW 69.28.025.]

69.28.025 Rules and regulations have force of law. Any rules or regulations promulgated and published by the director under the provisions of this chapter shall have the force and effect of law. [1939 c 199 § 44; RRS § 6163–44. Formerly RCW 69.28.020, part.]

69.28.030 Rules prescribing standards. The director is hereby authorized, and it shall be his duty, upon the taking effect of this chapter and from time to time thereafter, to adopt, establish and promulgate reasonable rules and regulations specifying grades or standards of quality governing the sale of honey: *Provided*, That, in the interest of uniformity, such grades and standards of quality shall conform as nearly to those established by the United States department of agriculture as local conditions will permit. [1939 c 199 § 24; RRS § 6163–24.]

69.28.040 Right to enter, inspect, and take samples. The director or any of his duly authorized agents shall have the power to enter and inspect at reasonable times every place, vehicle, plant or other place where honey is being produced, stored, packed, transported, exposed, or offered for sale, and to inspect all such honey and the containers thereof and to take for inspection such samples of said honey as may be necessary. [1939 c 199 § 28; RRS § 6163–28.]

69.28.050 Containers to be labeled. It shall be unlawful to deliver for shipment, ship, transport, sell, expose or offer for sale any containers or subcontainers of honey within this state unless they shall be conspicuously marked with the name and address of the producer or distributor, the net weight of the honey, the grade of the honey, and, if imported from any foreign country, the name of the country or territory from which the said honey was imported, or if a blend of honey, any part of which is foreign honey, the container must be labeled with the name of the country or territory where such honey was produced and the proportion of each foreign honey used in the blend. [1939 c 199 § 32; RRS § 6163–32.]

69.28.060 Requisites of markings. When any markings are used or required to be used under this chapter on any container of honey to identify the container or describe the contents thereof, such markings must be plainly and conspicuously marked, stamped, stenciled, printed, labeled or branded in the English language, in letters large enough to be discernible by any person, on the front, side or top of any container. [1939 c 199 § 35; RRS § 6163–35.]

69.28.070 "Marked" defined—When honey need not be marked. The term "marked" shall mean printed in the English language on the top, front or side of any container containing honey: *Provided*, That it shall not be necessary to mark honey sold by the producer thereof to any distributor, packer or manufacturer with the net weight, color or grade if the honey is to be used in the manufacture of honey products or is to be graded and packaged by the distributor or packer for resale. [1939 c 199 § 21; RRS § 6163–21.]

69.28.080 Purchaser to be advised of standards—Exceptions. It shall be unlawful for any person to deliver, sell, offer, or expose for sale any honey for human consumption within the state without notifying the person or persons purchasing or intending to purchase the same, of the exact grade or quality of such honey, according to the standards prescribed by the director, by stamping or printing on the container of any such honey such grade or quality: *Provided*, This section shall not apply to honey while it is in transit in intrastate commerce from one establishment to the other, to be processed, labeled, or repacked. [1961 c 60 § 1; 1957 c 103 § 1; 1949 c 105 § 6; 1939 c 199 § 39; Rem. Supp. 1949 § 6163–39.]

69.28.090 Forgery, simulation, etc., of marks, labels, etc., unlawful. It shall be unlawful to forge, counterfeit, simulate, falsely represent or alter without proper authority any mark, stamp, tab, label, seal, sticker or other identification device provided by this chapter. [1961 c 60 § 2; 1939 c 199 § 40; RRS § 6163-40. FORMER PART OF SECTION: 1939 c 199 § 41 now codified as RCW 69.28.095.]

69.28.095 Unlawful mutilation or removal of seals, marks, etc., used by director. It shall be unlawful to mutilate, destroy, obliterate, or remove without proper authority, any mark, stamp, tag, label, seal, sticker or other identification device used by the director under the provisions of this chapter. [1939 c 199 § 41; RRS § 6163-41. Formerly RCW 69.28.090, part.]

69.28.100 Marks for "slack-filled" container. Any slack-filled container shall be conspicuously marked "slack-filled". [1939 c 199 § 36; RRS § 6163-36. FORMER PART OF SECTION: 1939 c 199 § 10 now codified as RCW 69.28.270.]

69.28.110 Use of used containers. It shall be unlawful to sell, offer, or expose for sale to the consumer any honey in any second-hand or used containers which formerly contained honey, unless all markings as to grade, name and weight have been obliterated, removed or erased. [1939 c 199 § 37; RRS § 6163-37.]

69.28.120 Floral source labels. Any honey which is a blend of two or more floral types of honey shall not be labeled as a honey product from any one particular floral source alone. [1939 c 199 § 34; RRS § 6163-34.]

69.28.130 Adulterated honey—Sale or offer unlawful. It shall be unlawful for any person to sell, offer or intend for sale any adulterated honey as honey. [1939 c 199 § 26; RRS § 6163-26. FORMER PART OF SECTION: 1939 c 199 §§ 27 and 33 now codified as RCW 69.28.133 and 69.28.135.]

69.28.133 Nonconforming honey—Sale or offer unlawful. It shall be unlawful for any person to sell, offer or intend for sale any honey which does not conform to the provisions of this chapter or any regulation promulgated by the director under this chapter. [1939 c 199 § 27; RRS § 6163-27. Formerly RCW 69.28.130, part.]

69.28.135 Warning-tagged honey—Movement prohibited. It shall be unlawful to move any honey or containers of honey to which any warning tag or notice has been affixed except under authority from the director. [1939 c 199 § 33; RRS § 6163-33. Formerly RCW 69.28.130, part.]

69.28.140 Possession of unlawful honey as evidence. Possession by any person, of any honey which is sold, exposed or offered for sale in violation of this chapter shall be prima facie evidence that the same is kept or shipped to the said person, in violation of the provisions of this chapter. [1939 c 199 § 30; RRS § 6163-30.]

69.28.170 Inspectors—Prosecutions. It shall be the duty of the director to enforce this chapter and to appoint and employment [employ] such inspectors as may be necessary therefor. The director shall notify the prosecuting attorneys for the counties of the state of violations of this chapter occurring in their respective counties, and it shall be the duty of the respective prosecuting attorneys immediately to institute and prosecute proceeding in their respective counties and to enforce the penalties provided for by this chapter. [1939 c 199 § 43; RRS § 6163-43.]

69.28.180 Violation of rules and regulations unlawful. It shall be unlawful for any person to violate any rule or regulation promulgated by the director under the provisions of this chapter. [1939 c 199 § 25; RRS § 6163-25. FORMER PART OF SECTION: 1939 c 199 § 44 now codified in RCW 69.28.185.]

69.28.185 Penalty. Any person who violates any of the provisions of this chapter shall be guilty of a misdemeanor, and upon violation thereof shall be punishable by a fine of not more than five hundred dollars or imprisonment in the county jail for a period of not more than six months or by both such fine and imprisonment. [1939 c 199 § 42; RRS § 6163-42. Formerly RCW 69.28.180, part.]

69.28.190 "Director" defined. The term "director" means the director of agriculture of the state of Washington or his duly authorized representative. [1939 c 199 § 2; RRS § 6163-2. Formerly RCW 69.28.010, part.]

69.28.200 "Container" defined. The term "container" shall mean any box, crate, chest, carton, barrel, keg, bottle, jar, can or any other receptacle containing honey. [1939 c 199 § 3; RRS § 6163-3.]

69.28.210 "Subcontainer" defined. The term "subcontainer" shall mean any section box or other receptacle used within a container. [1939 c 199 § 4; RRS § 6163-4.]

69.28.220 "Section box" defined. The term "section box" shall mean the wood or other frame in which bees have built a small comb of honey. [1939 c 199 § 5; RRS § 6163-5.]

69.28.230 "Clean and sound containers" defined. The term "clean and sound containers" shall mean containers which are virtually free from rust, stains or leaks. [1939 c 199 § 6; RRS § 6163-6.]

69.28.240 "Pack", "packing", or "packed" defined. The term "pack", "packing", or "packed" shall mean the arrangement of all or part of the subcontainers in any container. [1939 c 199 § 7; RRS § 6163-7.]

69.28.250 "Label" defined. The term "label" shall mean a display of written, printed or graphic matter

upon the immediate container of any article. [1939 c 199 § 8; RRS § 6163-8.]

69.28.260 "Person" defined. The term "person" includes individual, partnership, corporation and/or association. [1939 c 199 § 9; RRS § 6163-9.]

69.28.270 "Slack-filled" defined. The term "slack-filled" shall mean that the contents of any container occupy less than ninety-five percent of the volume of the closed container. [1939 c 199 § 10; RRS § 6163-10. Formerly RCW 69.28.100, part.]

69.28.280 "Deceptive arrangement" defined. The term "deceptive arrangement" shall mean any lot or load, arrangement or display of honey which has in any exposed surface, honey which is so superior in quality, appearance or condition, or in any other respects, to any of that which is concealed or unexposed as to materially misrepresent any part of the lot, load, arrangement or display. [1939 c 199 § 11; RRS § 6163-11.]

69.28.290 "Misabeled" defined. The term "misabeled" shall mean the placing or presence of any false or misleading statement, design or device upon, or in connection with, any container or lot of honey, or upon the label, lining or wrapper of any such container, or any placard used in connection therewith, and having reference to such honey. A statement, design or device is false and misleading when the honey to which it refers does not conform in every respect to such statement. [1939 c 199 § 12; RRS § 6163-12.]

69.28.300 "Placard" defined. The term "placard" means any sign, label or designation, other than an oral designation, used with any honey as a description or identification thereof. [1939 c 199 § 13; RRS § 6163-13.]

69.28.310 "Honey" defined. The term "honey" as used herein is the nectar of floral exudations of plants, gathered and stored in the comb by honey bees (*apis mellifica*). It is laevo-rotatory, contains not more than twenty-five percent of water, not more than twenty-five one-hundredths of one percent of ash, not more than eight percent of sucrose, its specific gravity is 1.412, its weight not less than eleven pounds twelve ounces per standard gallon of 231 cubic inches at sixty-eight degrees Fahrenheit. [1939 c 199 § 14; RRS § 6163-14. Formerly RCW 69.28.010, part.]

69.28.320 "Comb-honey" defined. The term "comb-honey" means honey which has not been extracted from the comb. [1939 c 199 § 15; RRS § 6163-15.]

69.28.330 "Extracted honey" defined. The term "extracted honey" means honey which has been removed from the comb. [1939 c 199 § 16; RRS § 6163-16.]

69.28.340 "Crystallized honey" defined. The term "crystallized honey" means honey which has assumed a solid form due to the crystallization of one or more of

the natural sugars therein. [1939 c 199 § 17; RRS § 6163-17.]

69.28.350 "Honeydew" defined. The term "honeydew" is the saccharine exudation of plants, other than nectarous exudations, gathered and stored in the comb by honey bees (*apis mellifica*) and is dextrorotatory. [1939 c 199 § 18; RRS § 6163-18. Formerly RCW 69.28.010, part.]

69.28.360 "Foreign material" defined. The term "foreign material" means pollen, wax particles, insects, or materials not deposited by bees. [1937 c 199 § 19; RRS § 6163-19.]

69.28.370 "Foreign honey" defined. The term "foreign honey" means any honey not produced within the continental United States. [1939 c 199 § 20; RRS § 6163-20.]

69.28.380 "Adulterated honey" defined. The term "adulterated honey" means any honey to which has been added honeydew, glucose, dextrose, molasses, sugar, sugar syrup, invert sugar, or any other similar product or products, other than the nectar of floral exudations of plants gathered and stored in the comb by honey bees. [1939 c 199 § 22; RRS § 6163-22. Formerly RCW 69.28.010, part.]

69.28.390 "Serious damage" defined. The term "serious damage" means any injury or defect that seriously affects the edibility or shipping quality of the honey. [1939 c 199 § 23; RRS § 6163-23.]

69.28.400 Labeling requirements for artificial honey or mixtures containing honey. (1) No person shall sell, keep for sale, expose or offer for sale, any article or product in imitation or semblance of honey branded exclusively as "honey", "liquid or extracted honey", "strained honey" or "pure honey".

(2) No person, firm, association, company or corporation shall manufacture, sell, expose or offer for sale, any compound or mixture branded or labeled exclusively as honey which shall be made up of honey mixed with any other substance or ingredient.

(3) Whenever honey is mixed with any other substance or ingredient and the commodity is to be marketed in imitation or semblance of honey, the product shall be labeled with the word "artificial" or "imitation" in the same type size and style as the word "honey";

(4) Whenever any substance or commodity is to be marketed in imitation or semblance of honey, but contains no honey, the product shall not be branded or labeled with the word "honey" and/or depict thereon a picture or drawing of a bee, bee hive, or honeycomb;

(5) Whenever honey is mixed with any other substance or ingredient and the commodity is to be marketed, there shall be printed on the package containing such compound or mixture a statement giving the ingredients of which it is made; if honey is one of such ingredients it shall be so stated in the same size type as are

the other ingredients; nor shall such compound or mixture be branded or labeled exclusively with the word "honey" in any form other than as herein provided; nor shall any product in semblance of honey, whether a mixture or not, be sold, exposed or offered for sale as honey, or branded or labeled exclusively with the word "honey", unless such article is pure honey. [1975 1st ex.s. c 283 § 1.]

69.28.410 Embargo on honey or product—Notice by director—Removal. Whenever the director shall find, or shall have probable cause to believe, that any honey or product subject to the provisions of this chapter, as now or hereafter amended, is in intrastate commerce, which was introduced into such intrastate commerce in violation of the provisions of this chapter, as now or hereafter amended, he is hereby authorized to affix to such honey or product a notice placing an embargo on such honey or product, and prohibiting its sale in intrastate commerce, and no person shall move or sell such honey or product without first receiving permission from the director to move or sell such honey or product. But if, after such honey or product has been embargoed, the director shall find that such honey or product does not involve a violation of this chapter, as now or hereafter amended, such embargo shall be forthwith removed. [1975 1st ex.s. c 283 § 3.]

69.28.420 Embargo on honey or product—Court order affirming, required—Order for destruction or correction and release—Bond. When the director has embargoed any honey or product he shall, no later than twenty days after the affixing of notice of its embargo, petition the superior court for an order affirming such embargo. Such court shall then have jurisdiction, for cause shown and after prompt hearing to any claimant of such honey or product, to issue an order which directs the removal of such embargo or the destruction or the correction and release of such honey or product. An order for destruction or correction and release shall contain such provision for the payment of pertinent court costs and fees and administrative expenses, as is equitable and which the court deems appropriate in the circumstances. An order for correction and release may contain such provision for bond, as the court finds indicated in the circumstances. [1975 1st ex.s. c 283 § 4.]

69.28.430 Consolidation of petitions presenting same issue and claimant. Two or more petitions under this chapter, as now or hereafter amended, which pend at the same time and which present the same issue and claimant hereunder, shall be consolidated for simultaneous determination by one court of jurisdiction, upon application to any court of jurisdiction by the director or by such claimant. [1975 1st ex.s. c 283 § 5.]

69.28.440 Sample of honey or product may be obtained—Procedure. The claimant in any proceeding by petition under this chapter, as now or hereafter amended, shall be entitled to receive a representative

sample of the honey or product subject to such proceeding, upon application to the court of jurisdiction made at any time after such petition and prior to the hearing thereon. [1975 1st ex.s. c 283 § 6.]

69.28.450 Recovery of damages barred if probable cause for embargo. No state court shall allow the recovery of damages for embargo under this chapter, as now or hereafter amended, if the court finds that there was probable cause for such action. [1975 1st ex.s. c 283 § 7.]

69.28.900 Severability—1939 c 199. If any provisions of this chapter, or the application thereof to any person or circumstance, is held invalid, the remainder of the chapter, and the application of such provisions to other persons or circumstances, shall not be affected thereby. If any section, subsection, sentence, clause, or phrase of this chapter is for any reason held to be unconstitutional, such decisions shall not affect the validity of the remaining portions of this chapter. The legislature hereby declares that it would have passed this chapter and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more of the other sections, subsections, sentences, clauses and phrases be declared unconstitutional. [1939 c 199 § 45; RRS § 6163-45.]

69.28.910 Short title. This chapter may be known and cited as the Washington state honey act. [1939 c 199 § 1; RRS § 6163-1.]

Chapter 69.30

SANITARY CONTROL OF SHELLFISH

Sections	
69.30.005	Purpose.
69.30.010	Definitions.
69.30.020	Certificate of compliance required for sale.
69.30.030	Rules and regulations—Duties of state board of health.
69.30.050	Certificates of approval—Shellfish growing areas.
69.30.060	Certificates of approval—Culling, shucking, packing establishments.
69.30.070	Certificates of approval—Compliance with other laws and rules required.
69.30.080	Certificates of approval—Denial, revocation, suspension, modification—Procedure.
69.30.110	Possession or sale in violation of chapter—Enforcement—Seizure—Disposal.
69.30.120	Inspection by department—Fisheries patrol officers.
69.30.130	Water pollution laws and rules applicable.
69.30.140	Penalties.
69.30.145	Civil penalties.
69.30.150	Civil penalties—General provisions.
69.30.900	Severability—1955 c 144.

Shellfish: Chapter 75.24 RCW.

69.30.005 Purpose. The purpose of this chapter is to provide for the sanitary control of shellfish. Protection of the public health requires assurances that commercial shellfish are harvested only from approved growing areas and that processing of shellfish is conducted in a safe and sanitary manner. [1989 c 200 § 2.]

69.30.010 Definitions. When used in this chapter, the following terms shall have the following meanings:

(1) "Shellfish" means all varieties of fresh and frozen oysters, mussels, and clams, either shucked or in the shell, and any fresh or frozen edible products thereof.

(2) "Sale" means to sell, offer for sale, barter, trade, deliver, consign, hold for sale, consignment, barter, trade, or delivery, and/or possess with intent to sell or dispose of in any commercial manner.

(3) "Shellfish growing areas" means the lands and waters in and upon which shellfish are grown for harvesting in commercial quantity or for sale for human consumption.

(4) "Establishment" means the buildings, together with the necessary equipment and appurtenances, used for the storage, culling, shucking, packing and/or shipping of shellfish in commercial quantity or for sale for human consumption.

(5) "Person" means any individual, partnership, firm, company, corporation, association, or the authorized agents of any such entities.

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

(7) "Secretary" means the secretary of social and health services or his or her authorized representatives.

(8) "Commercial quantity" means any quantity exceeding: (a) Forty pounds of mussels; (b) one hundred oysters; (c) fourteen horseclams; (d) six geoducks; or (e) fifty pounds of hard or soft shell clams. [1989 c 200 § 1; 1985 c 51 § 1; 1979 c 141 § 70; 1955 c 144 § 1.]

***Reviser's note:** Powers and duties of the department of social and health services and the secretary of social and health services transferred to the department of health and the secretary of health. See RCW 43.70.060.

69.30.020 Certificate of compliance required for sale. Only shellfish bearing a certificate of compliance with the sanitary requirements of this state or a state, territory, province or country of origin whose requirements are equal or comparable to those established pursuant to this chapter may be sold or offered for sale in the state of Washington. [1955 c 144 § 2.]

69.30.030 Rules and regulations—Duties of state board of health. The state board of health shall cause such investigations to be made as are necessary to determine reasonable requirements governing the sanitation of shellfish growing areas and shellfish plant facilities and operations, in order to protect public health and carry out the provisions of this chapter; and shall adopt such requirements as rules and regulations of the state board of health. Such rules and regulations may include reasonable sanitary requirements relative to the quality of shellfish growing waters and areas, boat and barge sanitation, building construction, water supply, sewage and waste water disposal, lighting and ventilation, insect and rodent control, shell disposal, garbage and waste disposal, cleanliness of establishment, the handling, storage, construction and maintenance of equipment, the handling, storage and refrigeration of shellfish and the identification of containers. [1955 c 144 § 3.]

69.30.050 Certificates of approval—Shellfish growing areas. Shellfish growing areas, from which shellfish are removed in a commercial quantity or for sale for human consumption shall be in a safe and sanitary condition, meeting the requirements of the state board of health; and such shellfish growing areas shall be so certified by the department. Any person desiring to remove shellfish in a commercial quantity or for sale for human consumption from a growing area in the state of Washington shall first apply to the department for a certificate of approval of the growing area. The department shall cause the shellfish growing area to be inspected and if the area meets the sanitary requirements of the state board of health, the department shall issue a certificate of approval for that area. Such certificates shall be issued for a period not to exceed twelve months and may be revoked at any time the area is found not to be in compliance with the sanitary requirements of the state board of health. [1985 c 51 § 2; 1955 c 144 § 5.]

69.30.060 Certificates of approval—Culling, shucking, packing establishments. No person shall cull, shuck, or pack shellfish in the state of Washington in a commercial quantity or for sale for human consumption unless the establishment in which such operations are conducted has been certified by the department as meeting the requirements of the state board of health. Any person desiring to cull, shuck, or pack shellfish within the state of Washington in a commercial quantity or for sale for human consumption, shall apply to the department for a certificate of approval for the establishment in which such operations will be done. The department shall cause such establishment to be inspected, and if the establishment meets the sanitary requirements of the state board of health, the department shall issue a certificate of approval. Such certificates of approval shall be issued for a period not to exceed twelve months, and may be revoked at any time the establishment or the operations are found not to be in compliance with the sanitary requirements of the state board of health. [1985 c 51 § 3; 1955 c 144 § 6.]

69.30.070 Certificates of approval—Compliance with other laws and rules required. Any certificate of approval issued under the provisions of this chapter shall not relieve any person from complying with the laws, rules and/or regulations of the state department of fisheries, relative to shellfish. [1955 c 144 § 7.]

69.30.080 Certificates of approval—Denial, revocation, suspension, modification—Procedure. The department may deny, revoke, suspend, or modify a certificate of approval, license, or other necessary departmental approval in any case in which it determines there has been a failure or refusal to comply with this chapter or rules adopted under it. RCW 43.20A.205 governs notice of a license denial, revocation, suspension, or modification and provides the right to an adjudicative proceeding. [1989 c 175 § 125; 1979 c 141 § 71; 1955 c 144 § 8.]

Effective date—1989 c 175: See note following RCW 34.05.010.

69.30.110 Possession or sale in violation of chapter—Enforcement—Seizure—Disposal. It is unlawful to possess a commercial quantity of shellfish or to sell or offer to sell for human consumption shellfish in the state which have not been grown, shucked, packed, or shipped in accordance with the provisions of this chapter. Failure of a shellfish grower to display immediately a certificate of approval issued under RCW 69.30.050 to an authorized representative of the department, a fisheries patrol officer, or an ex officio fisheries patrol officer subjects the grower to the penalty provisions of this chapter, as well as immediate seizure of the shellfish by the representative or officer.

Failure of a shellfish processor to display a certificate of approval issued under RCW 69.30.060 to an authorized representative of the department, a fisheries patrol officer, or an ex officio fisheries patrol officer subjects the processor to the penalty provisions of this chapter, as well as immediate seizure of the shellfish by the representative or officer.

Shellfish seized under this section shall be subject to prompt disposal by the representative or officer and may not be used for human consumption. The state board of health shall develop by rule procedures for the disposal of the seized shellfish. [1985 c 51 § 4; 1979 c 141 § 74; 1955 c 144 § 11.]

69.30.120 Inspection by department—Fisheries patrol officers. The department may enter and inspect any shellfish growing area or establishment for the purposes of determining compliance with this chapter. The department may inspect all certificates of approval and all shellfish, and take for inspection such samples of shellfish as may reasonably be necessary to carry out the provisions of this chapter. For purposes of this chapter, fisheries patrol officers or ex officio fisheries patrol officers are limited to entry, inspection, and destruction of shellfish to achieve compliance with RCW 69.30.110 and to taking for inspection samples of shellfish as may reasonably be necessary to carry out this chapter. [1985 c 51 § 5; 1955 c 144 § 12.]

69.30.130 Water pollution laws and rules applicable. All existing laws and rules and regulations governing the pollution of waters of the state shall apply in the control of pollution of shellfish growing areas. [1955 c 144 § 13.]

69.30.140 Penalties. Any person found violating any of the provisions of this chapter shall be guilty of a gross misdemeanor, and upon conviction thereof shall be subject to a fine of not less than twenty-five dollars nor more than one thousand dollars, or imprisonment in the county jail of the county in which the offense was committed for not less than thirty days nor more than one year, or to both fine and imprisonment. A conviction is an unvacated forfeiture of bail or collateral deposited to secure the defendant's appearance in court, the payment of a fine, a plea of guilty, or a finding of guilt on a violation of this chapter, regardless of whether imposition of sentence is deferred or the penalty is suspended, and

shall be treated as a violation conviction for purposes of license forfeiture under RCW 75.10.120. [1985 c 51 § 6; 1955 c 144 § 14.]

69.30.145 Civil penalties. As limited by RCW 69.30.150, the department may impose civil penalties for violations of standards set forth in this chapter or rules adopted under RCW 69.30.030. [1989 c 200 § 3.]

69.30.150 Civil penalties—General provisions. (1) In addition to any other penalty provided by law, every person who violates standards set forth in this chapter or rules adopted under RCW 69.30.030 is subject to a penalty of not more than five hundred dollars per day for every violation. Every violation is a separate and distinct offense. In case of a continuing violation, every day's continuance is a separate and distinct violation. Every person who, through an act of commission or omission, procures, aids, or abets in the violation is in violation of this section and is subject to the penalty provided in this section.

(2) The penalty provided for in this section shall be imposed by a notice in writing to the person against whom the civil fine is assessed and shall describe the violation with reasonable particularity. The notice shall be personally served in the manner of service of a summons in a civil action or in a manner which shows proof of receipt. Any penalty imposed by this section shall become due and payable twenty-eight days after receipt of notice unless application for remission or mitigation is made as provided in subsection (3) of this section or unless application for an adjudicative proceeding is filed as provided in subsection (4) of this section.

(3) Within fourteen days after the notice is received, the person incurring the penalty may apply in writing to the department for the remission or mitigation of the penalty. Upon receipt of the application, the department may remit or mitigate the penalty upon whatever terms the department deems proper, giving consideration to the degree of hazard associated with the violation. The department may only grant a remission or mitigation that it deems to be in the best interests of carrying out the purposes of this chapter. The department may ascertain the facts regarding all such applications in a manner it deems proper. When an application for remission or mitigation is made, any penalty incurred pursuant to this section becomes due and payable twenty-eight days after receipt of the notice setting forth the disposition of the application, unless an application for an adjudicative proceeding to contest the disposition is filed as provided in subsection (4) of this section.

(4) Within twenty-eight days after notice is received, the person incurring the penalty may file an application for an adjudicative proceeding and may pursue subsequent review as provided in chapter 34.05 RCW and applicable rules of the department or board of health.

(5) Any penalty imposed by final order following an adjudicative proceeding becomes due and payable upon service of the final order.

(6) The attorney general may bring an action in the name of the department in the superior court of

Thurston county or of any county in which the violator may do business to collect any penalty imposed under this chapter.

(7) All penalties imposed under this section shall be paid to the state treasury and credited to the general fund. [1989 c 200 § 4.]

69.30.900 Severability—1955 c 144. If any provision of this chapter or the application thereof to any person or circumstances shall be held invalid, such invalidity shall not affect the provisions of the application of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of the chapter are declared to be severable. [1955 c 144 § 15.]

Chapter 69.36

WASHINGTON CAUSTIC POISON ACT OF 1929

Sections

69.36.010	Definitions.
69.36.020	Misbranded sales, etc., prohibited—Exceptions.
69.36.030	Condemnation of misbranded packages.
69.36.040	Enforcement—Approval of labels.
69.36.050	Duty to prosecute.
69.36.060	Penalty.
69.36.070	Short title.

Highway transportation of poisons, corrosives, etc.: RCW 46.48.170 through 46.48.180.

69.36.010 Definitions. In this chapter, unless the context or subject matter otherwise requires,

(1) The term "dangerous caustic or corrosive substance" means each and all of the acids, alkalis, and substances named below: (a) Hydrochloric acid and any preparation containing free or chemically unneutralized hydrochloric acid (HCl) in a concentration of ten percent or more; (b) Sulphuric acid and any preparation containing free or chemically unneutralized sulphuric acid (H₂SO₄) in concentration of ten percent or more; (c) Nitric acid or any preparation containing free or chemically unneutralized nitric acid (HNO₃) in a concentration of five percent or more; (d) Carboic acid (C₆H₅OH), otherwise known as phenol, and any preparation containing carboic acid in a concentration of five percent or more; (e) Oxalic acid and any preparation containing free or chemically unneutralized oxalic acid (H₂C₂O₄) in a concentration of ten percent or more; (f) Any salt of oxalic acid and any preparation containing any such salt in a concentration of ten percent or more; (g) Acetic acid or any preparation containing free or chemically unneutralized acetic acid (HC₂H₃O₂) in a concentration of twenty percent or more; (h) Hypochlorous acid, either free or combined, and any preparation containing the same in a concentration so as to yield ten percent or more by weight of available chlorine, excluding calx chlorinata, bleaching powder, and chloride of lime; (i) Potassium hydroxide and any preparation containing free or chemically unneutralized potassium hydroxide (KOH), including caustic potash and Vienna paste, in a concentration of ten percent or more; (j) Sodium hydroxide and any preparation containing free or

chemically unneutralized sodium hydroxide (NaOH), including caustic soda and lye, in a concentration of ten percent or more; (k) Silver nitrate, sometimes known as lunar caustic, and any preparation containing silver nitrate (AgNO₃) in a concentration of five percent or more, and (l) Ammonia water and any preparation yielding free or chemically uncombined ammonia (NH₃), including ammonium hydroxide and "harts-horn", in a concentration of five percent or more.

(2) The term "misbranded parcel, package, or container" means a retail parcel, package, or container of any dangerous caustic or corrosive substance for household use, not bearing a conspicuous, easily legible label or sticker, containing (a) the name of the article; (b) the name and place of business of the manufacturer, packer, seller, or distributor; (c) the word "POISON", running parallel with the main body of reading matter on said label or sticker, on a clear, plain background of a distinctly contrasting color, in uncondensed gothic capital letters, the letters to be not less than twenty-four point size, unless there is on said label or sticker no other type so large, in which event the type shall be not smaller than the largest type on the label or sticker, and (d) directions for treatment in case of accidental personal injury by the dangerous caustic or corrosive substance; *Provided*, That such directions need not appear on labels or stickers on parcels, packages or containers at the time of shipment or of delivery for shipment by manufacturers or wholesalers for other than household use. *Provided further*, That this chapter is not to be construed as applying to any substance subject to the chapter, sold at wholesale or retail for use by a retail druggist in filling prescriptions or in dispensing, in pursuance of a prescription by a physician, dentist, or veterinarian; or for use by or under the direction of a physician, dentist, or veterinarian; or for use by a chemist in the practice or teaching of his profession; or for any industrial or professional use, or for use in any of the arts and sciences. [1929 c 82 § 1; RRS § 2508-1. Formerly RCW 69.36-.010 and 69.36.020, part.]

69.36.020 Misbranded sales, etc., prohibited—Exceptions. No person shall sell, barter, or exchange, or receive, hold, pack, display, or offer for sale, barter, or exchange, in this state any dangerous caustic or corrosive substance in a misbranded parcel, package, or container, said parcel, package, or container being designed for household use; *Provided*, That household products for cleaning and washing purposes, subject to this chapter and labeled in accordance therewith, may be sold, offered for sale, held for sale and distributed in this state by any dealer, wholesale or retail; *Provided further*, That no person shall be liable to prosecution and conviction under this chapter when he establishes a guaranty bearing the signature and address of a vendor residing in the United States from whom he purchased the dangerous caustic or corrosive substance, to the effect that such substance is not misbranded within the meaning of this chapter. No person in this state shall give any such guaranty when such dangerous caustic or corrosive substance is in fact misbranded within the meaning of this

chapter. [1929 c 82 § 2; RRS § 2508-2. FORMER PART OF SECTION: 1929 c 82 § 1 now codified in RCW 69.32.010.]

69.36.030 Condemnation of misbranded packages.

Any dangerous caustic or corrosive substance in a misbranded parcel, package, or container suitable for household use, that is being sold, bartered, or exchanged, or held, displayed, or offered for sale, barter, or exchange, shall be liable to be proceeded against in any superior court within the jurisdiction of which the same is found and seized for confiscation, and if such substance is condemned as misbranded, by said court, it shall be disposed of by destruction or sale, as the court may direct; and if sold, the proceeds, less the actual costs and charges, shall be paid over to the state treasurer; but such substance shall not be sold contrary to the laws of the state: *Provided, however,* That upon the payment of the costs of such proceedings and the execution and delivery of a good and sufficient bond to the effect that such substance will not be unlawfully sold or otherwise disposed of, the court may by order direct that such substance be delivered to the owner thereof. Such condemnation proceedings shall conform as near as may be to proceedings in the seizure, and condemnation of substances unfit for human consumption. [1929 c 82 § 3; RRS § 2508-3.]

69.36.040 Enforcement—Approval of labels. The director of agriculture shall enforce the provisions of this chapter, and he is hereby authorized and empowered to approve and register such brands and labels intended for use under the provisions of this chapter as may be submitted to him for that purpose and as may in his judgment conform to the requirements of this statute: *Provided, however,* That in any prosecution under this chapter the fact that any brand or label involved in said prosecution has not been submitted to said director for approval, or if submitted, has not been approved by him, shall be immaterial. [1929 c 82 § 5; RRS § 2508-5.]

69.36.050 Duty to prosecute. Every prosecuting attorney to whom there is presented, or who in any way procures, satisfactory evidence of any violation of the provisions of this chapter shall cause appropriate proceedings to be commenced and prosecuted in the proper courts, without delay, for the enforcement of the penalties as in such cases herein provided. [1929 c 82 § 6; RRS § 2508-6.]

69.36.060 Penalty. Any person violating the provisions of this chapter shall be guilty of a misdemeanor. [1929 c 82 § 4; RRS § 2508-4.]

69.36.070 Short title. This chapter may be cited as the Washington Caustic Poison Act of 1929. [1929 c 82 § 7; RRS § 2508-7.]

Chapter 69.38

POISONS—SALES AND MANUFACTURING

Sections

69.38.010	"Poison" defined.
69.38.020	Exemptions from chapter.
69.38.030	Poison register—Identification of purchaser.
69.38.040	Inspection of poison register—Penalty for failure to maintain register.
69.38.050	False representation—Penalty.
69.38.060	Manufacturers and sellers of poisons—License required—Penalty.

69.38.010 "Poison" defined. As used in this chapter "poison" means:

- (1) Arsenic and its preparations;
- (2) Cyanide and its preparations, including hydrocyanic acid;
- (3) Strychnine; and
- (4) Any other substance designated by the state board of pharmacy which, when introduced into the human body in quantities of sixty grains or less, causes violent sickness or death. [1987 c 34 § 1.]

69.38.020 Exemptions from chapter. All substances regulated under chapters 15.58, 17.21, 69.04, 69.41, and 69.50 RCW, and chapter 69.45 RCW are exempt from the provisions of this chapter. [1987 c 34 § 2.]

69.38.030 Poison register—Identification of purchaser. It is unlawful for any person, either on the person's own behalf or while an employee of another, to sell any poison without first recording in ink in a "poison register" kept solely for this purpose the following information:

- (1) The date and hour of the sale;
- (2) The full name and home address of the purchaser;
- (3) The kind and quantity of poison sold; and
- (4) The purpose for which the poison is being purchased.

The purchaser shall present to the seller identification which contains the purchaser's photograph and signature. No sale may be made unless the seller is satisfied that the purchaser's representations are true and that the poison will be used for a lawful purpose. Both the purchaser and the seller shall sign the poison register entry.

If a delivery of a poison will be made outside the confines of the seller's premises, the seller may require the business purchasing the poison to submit a letter of authorization as a substitute for the purchaser's photograph and signature requirements. The letter of authorization shall include the unified business identifier and address of the business, a full description of how the substance will be used, and the signature of the purchaser. Either the seller or the employee of the seller delivering or transferring the poison shall affix his or her signature to the letter as a witness to the signature and identification of the purchaser. The transaction shall be recorded in the poison register as provided in this section. Letters of authorization shall be kept with the poison register and shall be subject to the inspection and preservation requirements contained in RCW 69.38.040. [1988 c 197 § 1; 1987 c 34 § 3.]

69.38.040 Inspection of poison register—Penalty for failure to maintain register. Every poison register shall be open for inspection by law enforcement and health officials at all times and shall be preserved for at least two years after the date of the last entry. Any person failing to maintain the poison register as required in this chapter is guilty of a misdemeanor. [1987 c 34 § 4.]

69.38.050 False representation—Penalty. Any person making any false representation to a seller when purchasing a poison is guilty of a gross misdemeanor. [1987 c 34 § 5.]

69.38.060 Manufacturers and sellers of poisons—License required—Penalty. The state board of pharmacy, after consulting with the department of health, shall require and provide for the annual licensure of every person now or hereafter engaged in manufacturing or selling poisons within this state. Upon a payment of a fee as set by the department, the department shall issue a license in such form as it may prescribe to such manufacturer or seller. Such license shall be displayed in a conspicuous place in such manufacturer's or seller's place of business for which it is issued.

Any person manufacturing or selling poison within this state without a license is guilty of a misdemeanor. [1989 1st ex.s. c 9 § 440; 1987 c 34 § 6.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

Chapter 69.40

POISONS AND DANGEROUS DRUGS

Sections

69.40.010	Poison in edible products.
69.40.015	Poison in edible products—Penalty.
69.40.020	Poison in milk or food products—Penalty.
69.40.025	Supplementary to existing laws—Enforcement.
69.40.030	Placing poison or other harmful object or substance in food, drinks, medicine or water—Penalty.
69.40.055	Selling repackaged poison without labeling—Penalty.
69.40.150	Drug control assistance unit investigative assistance for enforcement of chapter.

Pharmacists: Chapter 18.64 RCW.

Poison information centers: Chapter 18.76 RCW.

Poisoning animals—Strychnine sales: RCW 16.52.190 through 16.52.195.

Poisonous bait, etc., a game violation: RCW 77.16.060.

Washington pesticide application act: Chapter 17.21 RCW.

69.40.010 Poison in edible products. It shall be unlawful for any person to sell, offer for sale, use, distribute, or leave in any place, any crackers, biscuit, bread or any other preparation resembling or in similitude, of any edible product, containing arsenic, strychnine or any other poison. [1905 c 141 § 1; RRS § 6140. FORMER PART OF SECTION: 1905 c 141 § 2 now codified as RCW 69.40.015.]

69.40.015 Poison in edible products—Penalty. Any person violating the provisions of RCW 69.40.010 shall upon conviction be punished by a fine of not less

than ten dollars nor more than five hundred dollars. [1905 c 141 § 2; RRS § 6141. Formerly RCW 69.40-.010, part.]

69.40.020 Poison in milk or food products—Penalty. Any person who shall sell, offer to sell, or have in his possession for the purpose of sale, either as owner, proprietor, or assistant, or in any manner whatsoever, whether for hire or otherwise, any milk or any food products, containing the chemical ingredient commonly known as formaldehyde, or in which any formaldehyde or other poisonous substance has been mixed, for the purpose of preservation or otherwise, shall be guilty of a felony, and upon conviction thereof shall be imprisoned in the penitentiary for the period of not less than one year nor more than three years. [1905 c 50 § 1; RRS § 6142. FORMER PART OF SECTION: 1905 c 50 § 2, now codified as RCW 69.40.025.]

69.40.025 Supplementary to existing laws—Enforcement. *This act shall be supplementary to the laws of this state now in force prohibiting the adulteration of food and fraud in the sale thereof; and the state dairy and food commissioner, the chemist of the state agricultural experiment station, the state attorney general and the prosecuting attorneys of the several counties of this state are hereby required, without additional compensation, to assist in the execution of *this act, and in the prosecution of all persons charged with the violation thereof, in like manner and with like powers as they are now authorized and required by law to enforce the laws of this state against the adulteration of food and fraud in the sale thereof. [1905 c 50 § 2; RRS § 6143. Formerly RCW 69.40.020, part.]

Reviser's note: *(1) "This act" appears in 1905 c 50 and the sections of the act are codified as RCW 69.40.020 and 69.40.025.

(2) The duties of the state dairy and food commissioner have devolved upon the director of agriculture through a chain of statute as follows: 1913 c 60 § 6(2); 1921 c 7 § 93(1). See RCW 43.23.090(1).

69.40.030 Placing poison or other harmful object or substance in food, drinks, medicine or water—Penalty. Every person who shall wilfully mingle poison or place any harmful object or substance, including but not limited to pins, tacks, needles, nails, razor blades, wire, or glass in any food, drink, medicine, or other edible substance intended or prepared for the use of a human being or who shall knowingly furnish, with intent to harm another person, any food, drink, medicine, or other edible substance containing such poison or harmful object or substance to another human being, and every person who shall wilfully poison any spring, well or reservoir of water, shall be punished by imprisonment in the state penitentiary for not less than five years or by a fine of not less than one thousand dollars: *Provided, however,* That *this act shall not apply to the employer or employers of a person who violates the provisions contained herein without such employer's knowledge. [1973 c 119 § 1; 1909 c 249 § 264; RRS § 2516. Prior: Code 1881 § 802; 1873 p 185 § 27; 1869 p 202 § 25; 1854 p 79 § 25.]

Reviser's note: *(1) *this act* refers to the amendment to this section by 1973 c 119 § 1.

(2) Caption for 1909 c 249 § 264 reads: "Wilfully poisoning food."

69.40.055 Selling repackaged poison without labeling—Penalty. It shall be unlawful for any person to sell at retail or furnish any repackaged poison drug or product without affixing or causing to be affixed to the bottle, box, vessel, or package a label containing the name of the article, all labeling required by the Food and Drug Administration and other federal or state laws or regulations, and the word "poison" distinctly shown with the name and place of the business of the seller.

This section shall not apply to the dispensing of drugs or poisons on the prescription of a practitioner.

The board of pharmacy shall have the authority to promulgate rules for the enforcement and implementation of this section.

Every person who shall violate any of the provisions of this section shall be guilty of a misdemeanor. [1981 c 147 § 4.]

69.40.150 Drug control assistance unit investigative assistance for enforcement of chapter. See RCW 43.43.610.

Chapter 69.41

LEGEND DRUGS—PRESCRIPTION DRUGS

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69.41.010 Definitions. As used in this chapter, the following terms has [have] the meaning[s] indicated unless the context clearly requires otherwise:

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

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

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

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

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

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

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

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

(8) "Drug" means:

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

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

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

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

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

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

(11) "Practitioner" means:

(a) A physician under chapter 18.71 RCW, an osteopathic physician or an osteopathic physician and surgeon

under chapter 18.57 RCW, a dentist under chapter 18.32 RCW, a podiatrist under chapter 18.22 RCW, a veterinarian under chapter 18.92 RCW, a registered nurse under chapter 18.88 RCW, a licensed practical nurse under chapter 18.78 RCW, an optometrist under chapter 18.53 RCW who is certified by the optometry board under RCW 18.53.010, an osteopathic physician's assistant under chapter 18.57A RCW, or a physician's assistant under chapter 18.71A RCW, or a pharmacist under chapter 18.64 RCW;

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

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

(12) "Secretary" means the secretary of health or the secretary's designee. [1989 1st ex.s. c 9 § 426; 1989 c 36 § 3; 1984 c 153 § 17; 1980 c 71 § 1; 1979 ex.s. c 139 § 1; 1973 1st ex.s. c 186 § 1.]

Reviser's note: This section was amended by 1989 c 36 § 3 and by 1989 1st ex.s. c 9 § 426, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

69.41.020 Prohibited acts—Information not privileged communication. Legend drugs shall not be sold, delivered, dispensed or administered except in accordance with this chapter.

(1) No person shall obtain or attempt to obtain a legend drug, or procure or attempt to procure the administration of a legend drug:

(a) By fraud, deceit, misrepresentation, or subterfuge; or

(b) By the forgery or alteration of a prescription or of any written order; or

(c) By the concealment of a material fact; or

(d) By the use of a false name or the giving of a false address.

(2) Information communicated to a practitioner in an effort unlawfully to procure a legend drug, or unlawfully to procure the administration of any such drug, shall not be deemed a privileged communication.

(3) No person shall willfully make a false statement in any prescription, order, report, or record, required by this chapter.

(4) No person shall, for the purpose of obtaining a legend drug, falsely assume the title of, or represent himself to be, a manufacturer, wholesaler, or any practitioner.

(5) No person shall make or utter any false or forged prescription or other written order for legend drugs.

(6) No person shall affix any false or forged label to a package or receptacle containing legend drugs.

(7) No person shall willfully fail to maintain the records required by RCW 69.41.042 and 69.41.270. [1989

1st ex.s. c 9 § 408; 1989 c 352 § 8; 1973 1st ex.s. c 186 § 2.]

Reviser's note: This section was amended by 1989 c 352 § 8 and by 1989 1st ex.s. c 9 § 408, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

69.41.030 Sale, delivery, or possession of legend drug without prescription or order prohibited—Exceptions.

It shall be unlawful for any person to sell, deliver, or possess any legend drug except upon the order or prescription of a physician under chapter 18.71 RCW, an osteopathic physician or an osteopathic physician and surgeon under chapter 18.57 RCW, a dentist under chapter 18.32 RCW, a podiatrist under chapter 18.22 RCW, a veterinarian under chapter 18.92 RCW, a commissioned medical or dental officer in the United States armed forces, marine hospital service, or public health service in the discharge of his official duties, a duly licensed physician or dentist employed by the veterans administration in the discharge of his official duties, a registered nurse under chapter 18.88 RCW when authorized by the board of nursing, an osteopathic physician's assistant under chapter 18.57A RCW when authorized by the committee of osteopathic examiners, a physician's assistant under chapter 18.71A RCW when authorized by the board of medical examiners, or a physician licensed to practice medicine and surgery or a physician licensed to practice osteopathy and surgery in any province of Canada which shares a common border with the state of Washington or in any state of the United States: *Provided, however,* That the above provisions shall not apply to sale, delivery, or possession by drug wholesalers or drug manufacturers, or their agents or employees, or to any practitioner acting within the scope of his license, or to a common or contract carrier or warehouseman, or any employee thereof, whose possession of any legend drug is in the usual course of business or employment: *Provided further,* That nothing in this chapter or chapter 18.64 RCW shall prevent a family planning clinic that is under contract with the department of social and health services from selling, delivering, possessing, and dispensing commercially prepackaged oral contraceptives prescribed by authorized, licensed health care practitioners: *Provided further,* That it shall be unlawful to fill a prescription written by an authorized prescriber who is not licensed in this state if more than six months has passed since the date of the issuance of the original prescription. [1987 c 144 § 1; 1981 c 120 § 1; 1979 ex.s. c 139 § 2; 1977 c 69 § 1; 1973 1st ex.s. c 186 § 3.]

69.41.032 Prescription of legend drugs by dialysis programs. This chapter shall not prevent a medicare-approved dialysis center or facility operating a medicare-approved home dialysis program from selling, delivering, possessing, or dispensing directly to its dialysis patients, in case or full shelf lots, if prescribed by a physician licensed under chapter 18.57 or 18.71 RCW,

those legend drugs determined by the board pursuant to rule. [1987 c 41 § 2.]

Application of pharmacy statutes to dialysis programs: RCW 18.64.257.

69.41.040 Prescription requirements. A prescription, in order to be effective in legalizing the possession of legend drugs, must be issued for a legitimate medical purpose by one authorized to prescribe the use of such legend drugs. An order purporting to be a prescription issued to a drug abuser or habitual user of legend drugs, not in the course of professional treatment, is not a prescription within the meaning and intent of this section; and the person who knows or should know that he is filling such an order, as well as the person issuing it, may be charged with violation of this chapter. A legitimate medical purpose shall include use in the course of a bona fide research program in conjunction with a hospital or university. [1973 1st ex.s. c 186 § 4.]

69.41.042 Record requirements. A pharmaceutical manufacturer, wholesaler, pharmacy, or practitioner who purchases, dispenses, or distributes legend drugs shall maintain invoices or such other records as are necessary to account for the receipt and disposition of the legend drugs.

The records maintained pursuant to this section shall be available for inspection by the board and its authorized representatives and shall be maintained for two years. [1989 1st ex.s. c 9 § 405.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

69.41.044 Confidentiality. All records, reports, and information obtained by the board or its authorized representatives from or on behalf of a pharmaceutical manufacturer, representative of a manufacturer, wholesaler, pharmacy, or practitioner who purchases, dispenses, or distributes legend drugs under this chapter are confidential and exempt from public inspection and copying under chapter 42.17 RCW. Nothing in this section restricts the investigations or the proceedings of the board so long as the board and its authorized representatives comply with the provisions of chapter 42.17 RCW. [1989 1st ex.s. c 9 § 406.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

69.41.050 Labeling requirements. To every box, bottle, jar, tube or other container of a legend drug, which is dispensed by a practitioner authorized to prescribe legend drugs, there shall be affixed a label bearing the name of the prescriber, complete directions for use, the name of the drug either by the brand or generic name and strength per unit dose, name of patient and date: *Provided*, That the practitioner may omit the name and dosage of the drug if he determines that his patient should not have this information and that, if the drug dispensed is a trial sample in its original package and which is labeled in accordance with federal law or regulation, there need be set forth additionally only the name

of the issuing practitioner and the name of the patient. [1980 c 83 § 8; 1973 1st ex.s. c 186 § 5.]

69.41.060 Search and seizure. If, upon the sworn complaint of any person, it shall be made to appear to any judge of the superior or district court that there is probable cause to believe that any legend drug is being used, manufactured, sold, bartered, exchanged, given away, furnished or otherwise disposed of or kept in violation of the provisions of this chapter, such judge shall, with or without the approval of the prosecuting attorney, issue a warrant directed to any peace officer in the county, commanding the peace officer to search the premises designated and described in such complaint and warrant, and to seize all legend drugs there found, together with the vessels in which they are contained, and all implements, furniture and fixtures used or kept for the illegal manufacture, sale, barter, exchange, giving away, furnishing or otherwise disposing of such legend drugs and to safely keep the same, and to make a return of said warrant within three days, showing all acts and things done thereunder, with a particular statement of all articles seized and the name of the person or persons in whose possession the same were found, if any, and if no person be found in the possession of said articles, the returns shall so state. A copy of said warrant shall be served upon the person or persons found in possession of any such legend drugs, furniture or fixtures so seized, and if no person be found in the possession thereof, a copy of said warrant shall be posted on the door of the building or room wherein the same are found, or, if there be no door, then in any conspicuous place upon the premises. [1987 c 202 § 227; 1973 1st ex.s. c 186 § 6.]

Intent—1987 c 202: See note following RCW 2.04.190.

69.41.062 Search and seizure at rental premises—Notification of landlord. Whenever a legend drug which is sold, delivered, or possessed in violation of this chapter is seized at rental premises, the law enforcement agency shall make a reasonable attempt to discover the identity of the landlord and shall notify the landlord in writing, at the last address listed in the property tax records and at any other address known by the law enforcement agency, of the seizure and the location of the seizure. [1988 c 150 § 8.]

Legislative findings—Severability—1988 c 150: See notes following RCW 59.18.130.

69.41.065 Violations—Juvenile driving privileges. (1) If a juvenile thirteen years of age or older and under the age of twenty-one is found by a court to have committed any offense that is a violation of this chapter, the court shall notify the department of licensing within twenty-four hours after entry of the judgment.

(2) Except as otherwise provided in subsection (3) of this section, upon petition of a juvenile whose privilege to drive has been revoked pursuant to RCW 46.20.265, the court may notify the department of licensing that the juvenile's privilege to drive should be reinstated.

(3) If the conviction is for the juvenile's first violation of this chapter or chapter 66.44, 69.50, or 69.52 RCW,

the juvenile may not petition the court for reinstatement of the juvenile's privilege to drive revoked pursuant to RCW 46.20.265 until the later of ninety days after the date the juvenile turns sixteen or ninety days after the judgment was entered. If the conviction was for the juvenile's second or subsequent violation of this chapter or chapter 66.44, 69.50, or 69.52 RCW, the juvenile may not petition the court for reinstatement of the juvenile's privilege to drive revoked pursuant to RCW 46.20.265 until the later of the date the juvenile turns seventeen or one year after the date judgment was entered. [1989 c 271 § 119; 1988 c 148 § 4.]

Severability—1989 c 271: See note following RCW 9.94A.310.

Legislative finding—**Severability**—1988 c 148: See notes following RCW 13.40.265.

69.41.070 Penalties. Whoever violates any provision of this chapter shall, upon conviction, be fined and imprisoned as herein provided:

(1) For a violation of RCW 69.41.020, the offender shall be guilty of a felony.

(2) For a violation of RCW 69.41.030 involving the sale, delivery, or possession with intent to sell or deliver, the offender shall be guilty of a felony.

(3) For a violation of RCW 69.41.030 involving possession, the offender shall be guilty of a misdemeanor.

(4) For a violation of RCW 69.41.040, the offender shall be guilty of a felony.

(5) For a violation of RCW 69.41.050, the offender shall be guilty of a misdemeanor.

(6) Any offense which is a violation of chapter 69.50 RCW other than RCW 69.50.401(c) shall not be charged under this chapter.

(7) For a violation of RCW 69.41.320(1), the offender shall be guilty of a gross misdemeanor and subject to disciplinary action under RCW 18.130.180.

(8)(a) A person who violates the provisions of this chapter by possessing under two hundred tablets or eight 2cc bottles of steroid without a valid prescription is guilty of a gross misdemeanor.

(b) A person who violates the provisions of this chapter by possessing over two hundred tablets or eight 2cc bottles of steroid without a valid prescription is guilty of a class C felony and shall be punished according to *RCW 9A.20.010(1)(c). [1989 c 369 § 4; 1983 1st ex.s. c 4 § 4; 1973 1st ex.s. c 186 § 7.]

***Reviser's note:** The reference to RCW 9A.20.010(1)(c) is erroneous. The section governing the maximum sentence for a class C felony is RCW 9A.20.021(1)(c).

Severability—1983 1st ex.s. c 4: See note following RCW 9A.48.070.

69.41.075 Rules—**Availability of lists of drugs.**

The state board of pharmacy may make such rules for the enforcement of this chapter as are deemed necessary or advisable. The board shall identify, by rule-making pursuant to chapter 34.05 RCW, those drugs which may be dispensed only on prescription or are restricted to use by practitioners, only. In so doing the board shall consider the toxicity or other potentiality for harmful effect of the drug, the method of its use, and any collateral

safeguards necessary to its use. The board shall classify a drug as a legend drug where these considerations indicate the drug is not safe for use except under the supervision of a practitioner.

In identifying legend drugs the board may incorporate in its rules lists of drugs contained in commercial pharmaceutical publications by making specific reference to each such list and the date and edition of the commercial publication containing it. Any such lists so incorporated shall be available for public inspection at the headquarters of the department of health and shall be available on request from the department of health upon payment of a reasonable fee to be set by the department. [1989 1st ex.s. c 9 § 427; 1979 ex.s. c 139 § 3.]

Effective date—**Severability**—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

69.41.080 Animal control—**Rules for possession and use of legend drugs.**

Humane societies and animal control agencies registered with the state board of pharmacy under chapter 69.50 RCW and authorized to euthanize animals may purchase, possess, and administer approved legend drugs for the sole purpose of sedating animals prior to euthanasia, when necessary, and for use in chemical capture programs. For the purposes of this section, "approved legend drugs" means those legend drugs designated by the board by rule as being approved for use by such societies and agencies for animal sedating or capture and does not include any substance regulated under chapter 69.50 RCW. Any society or agency so registered shall not permit persons to administer any legend drugs unless such person has demonstrated to the satisfaction of the board adequate knowledge of the potential hazards involved in and the proper techniques to be used in administering the drugs.

The board shall promulgate rules to regulate the purchase, possession, and administration of legend drugs by such societies and agencies and to insure strict compliance with the provisions of this section. Such rules shall require that the storage, inventory control, administration, and recordkeeping for approved legend drugs conform to the standards adopted by the board under chapter 69.50 RCW to regulate the use of controlled substances by such societies and agencies. The board may suspend or revoke a registration under chapter 69.50 RCW upon a determination by the board that the person administering legend drugs has not demonstrated adequate knowledge as herein provided. This authority is granted in addition to any other power to suspend or revoke a registration as provided by law. [1989 c 242 § 1.]

SUBSTITUTION OF PRESCRIPTION DRUGS

69.41.100 Legislative recognition and declaration.

The legislature recognizes the responsibility of the state to insure that the citizens of the state are offered a choice between generic drugs and brand name drugs and the benefit of quality pharmaceutical products at competitive prices. Advances in the drug industry resulting from research and the elimination of counterfeiting of prescription drugs should benefit the users of the drugs.

Pharmacy must continue to operate with accountability and effectiveness. The legislature hereby declares it to be the policy of the state that its citizens receive safe and therapeutically effective drug products at the most reasonable cost consistent with high drug quality standards. [1986 c 52 § 1; 1977 ex.s. c 352 § 1.]

Severability—1977 ex.s. c 352: "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1977 ex.s. c 352 § 10.] This applies to RCW 69.41.100 through 69.41.180.

69.41.110 Definitions. As used in RCW 69.41.100 through 69.41.180, the following words shall have the following meanings:

(1) "Brand name" means the proprietary or trade name selected by the manufacturer and placed upon a drug, its container, label, or wrapping at the time of packaging;

(2) "Generic name" means the official title of a drug or drug ingredients published in the latest edition of a nationally recognized pharmacopoeia or formulary;

(3) "Substitute" means to dispense, with the practitioner's authorization, a "therapeutically equivalent" drug product of the identical base or salt as the specific drug product prescribed: *Provided*, That with the practitioner's prior consent, therapeutically equivalent drugs other than the identical base or salt may be dispensed;

(4) "Therapeutically equivalent" means essentially the same efficacy and toxicity when administered to an individual in the same dosage regimen; and

(5) "Practitioner" means a physician, osteopathic physician and surgeon, dentist, veterinarian, or any other person authorized to prescribe drugs under the laws of this state. [1979 c 110 § 1; 1977 ex.s. c 352 § 2.]

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

If a written prescription is involved, the form shall have two signature lines at opposite ends on the bottom of the form. Under the line at the right side shall be clearly printed the words "DISPENSE AS WRITTEN". Under the line at the left side shall be clearly printed the words "SUBSTITUTION PERMITTED". The practitioner shall communicate the instructions to the pharmacist by signing the appropriate line. No prescription shall be valid without the signature of the practitioner on one of these lines.

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

The pharmacist shall note the manufacturer of the drug dispensed on the file copy of a written or oral prescription. [1979 c 110 § 2; 1977 ex.s. c 352 § 3.]

69.41.130 Savings in price to be passed on to purchaser. Unless the brand name drug is requested by the patient or the patient's representative, the pharmacist shall substitute an equivalent drug product which he has in stock if its wholesale price to the pharmacist is less than the wholesale price of the prescribed drug product, and at least sixty percent of the savings shall be passed on to the purchaser. [1986 c 52 § 2; 1979 c 110 § 3; 1977 ex.s. c 352 § 4.]

69.41.140 Minimum manufacturing standards and practices. A pharmacist may not substitute a product under the provisions of this section unless the manufacturer has shown that the drug has been manufactured with the following minimum good manufacturing standards and practices:

(1) Maintain quality control standards equal to those of the Food and Drug Administration;

(2) Comply with regulations promulgated by the Food and Drug Administration. [1979 c 110 § 4; 1977 ex.s. c 352 § 5.]

69.41.150 Liability of practitioner, pharmacist. (1) A practitioner who authorizes a prescribed drug shall not be liable for any side effects or adverse reactions caused by the manner or method by which a substituted drug product is selected or dispensed.

(2) A pharmacist who substitutes an equivalent drug product pursuant to RCW 69.41.100 through 69.41.180 as now or hereafter amended assumes no greater liability for selecting the dispensed drug product than would be incurred in filling a prescription for a drug product prescribed by its established name. [1979 c 110 § 5; 1977 ex.s. c 352 § 6.]

69.41.160 Pharmacy signs as to substitution for prescribed drugs. Every pharmacy shall post a sign in a location at the prescription counter that is readily visible to patrons stating, "Under Washington law, an equivalent but less expensive drug may in some cases be substituted for the drug prescribed by your doctor. Such substitution, however, may only be made with the consent of your doctor. Please consult your pharmacist or physician for more information." [1979 c 110 § 6; 1977 ex.s. c 352 § 7.]

69.41.170 Coercion of pharmacist prohibited—Penalty. It shall be unlawful for any employer to coerce, within the meaning of RCW 9A.36.070, any pharmacist to dispense a generic drug or to substitute a generic drug for another drug. A violation of this section shall be punishable as a misdemeanor. [1977 ex.s. c 352 § 8.]

69.41.180 Rules. The state board of pharmacy may adopt any necessary rules under chapter 34.05 RCW for the implementation, continuation, or enforcement of RCW 69.41.100 through 69.41.180, including, but not limited to, a list of therapeutically or nontherapeutically equivalent drugs which, when adopted, shall be provided to all registered pharmacists in the state and shall be

updated as necessary. [1979 c 110 § 7; 1977 ex.s. c 352 § 9.]

IDENTIFICATION OF LEGEND DRUGS— MARKING

69.41.200 Requirements for identification of legend drugs—Marking. (1) No legend drug in solid dosage form may be manufactured or commercially distributed within this state unless it has clearly marked or imprinted on it an individual symbol, number, company name, words, letters, marking, or National Drug Code number identifying the drug and the manufacturer or distributor of such drug.

(2) No manufacturer or distributor may sell any legend drug contained within a bottle, vial, carton, or other container, or in any way affixed or appended to or enclosed within a package of any kind designed or intended for delivery in such container or package to an ultimate consumer within this state unless such container or package has clearly and permanently marked or imprinted on it an individual symbol, number, company name, words, letters, marking, or National Drug Code number identifying the drug and the manufacturer or distributor of such drug.

(3) Whenever the distributor of a legend drug does not also manufacture it, the names and places of businesses of both shall appear on the stock container or package label in words that truly distinguish each. [1980 c 83 § 1.]

69.41.210 Definitions. The terms defined in this section shall have the meanings indicated when used in RCW 69.41.200 through 69.41.260.

(1) "Distributor" means any corporation, person, or other entity which distributes for sale a legend drug under its own label even though it is not the actual manufacturer of the legend drug.

(2) "Solid dosage form" means capsules or tablets or similar legend drug products intended for administration and which could be ingested orally.

(3) "Legend drug" means any drugs which are required by state law or regulation of the board to be dispensed as prescription only or are restricted to use by prescribing practitioners only and shall include controlled substances in Schedules II through V of chapter 69.50 RCW.

(4) "Board" means the state board of pharmacy. [1980 c 83 § 2.]

69.41.220 Published lists of drug imprints—Requirements for. Each manufacturer and distributor shall publish and provide to the board by filing with the department printed material which will identify each current imprint used by the manufacturer or distributor. The board shall be notified of any change by the filing of any change with the department. This information shall be provided by the department to all pharmacies

licensed in the state of Washington, poison control centers, and hospital emergency rooms. [1989 1st ex.s. c 9 § 428; 1980 c 83 § 3.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

69.41.230 Drugs in violation are contraband. Any legend drug prepared or manufactured or offered for sale in violation of this chapter or implementing rules shall be contraband and subject to seizure under the provisions of RCW 69.41.060. [1980 c 83 § 4.]

69.41.240 Rules—Labeling and marking. The board shall have authority to promulgate rules and regulations for the enforcement and implementation of RCW 69.41.050 and 69.41.200 through 69.41.260. [1980 c 83 § 5.]

69.41.250 Exemptions. (1) The board, upon application of a manufacturer, may exempt a particular legend drug from the requirements of RCW 69.41.050 and 69.41.200 through 69.41.260 on the grounds that imprinting is infeasible because of size, texture, or other unique characteristics.

(2) The provisions of RCW 69.41.050 and 69.41.200 through 69.41.260 shall not apply to any legend drug which is prepared or manufactured by a pharmacy in this state and is for the purpose of retail sale from such pharmacy and not intended for resale. [1980 c 83 § 6.]

69.41.260 Manufacture or distribution for resale—Requirements. All legend drugs manufactured or distributed for resale to any entity in this state other than the ultimate consumer shall meet the requirements of RCW 69.41.050 and 69.41.200 through 69.41.260 from a date eighteen months after June 12, 1980. [1980 c 83 § 7.]

69.41.270 Maintenance of records—Inspection by board. A pharmaceutical manufacturer, wholesaler, pharmacy, or practitioner who purchases, dispenses, or distributes legend drugs shall maintain invoices or such other records as are necessary to account for the receipt and disposition of the legend drugs.

The records maintained pursuant to this section shall be available for inspection by the board and its authorized representatives and shall be maintained for two years. [1989 c 352 § 5.]

69.41.280 Confidentiality of records. All records, reports, and information obtained by the board or its authorized representatives from or on behalf of a pharmaceutical manufacturer, representative of a manufacturer, wholesaler, pharmacy, or practitioner who purchases, dispenses, or distributes legend drugs under this chapter are confidential and exempt from public inspection and copying under chapter 42.17 RCW. Nothing in this section restricts the investigations or the proceedings of the board so long as the board and its authorized representatives comply with the provisions of chapter 42.17 RCW. [1989 c 352 § 6.]

USE OF STEROIDS

69.41.300 Definitions. For the purposes of RCW 69.41.070 and 69.41.300 through 69.41.340, "steroids" shall include the following:

(1) "Anabolic steroids" means synthetic derivatives of testosterone or any isomer, ester, salt, or derivative that act in the same manner on the human body;

(2) "Androgens" means testosterone in one of its forms or a derivative, isomer, ester, or salt, that act in the same manner on the human body; and

(3) "Human growth hormones" means growth hormones, or a derivative, isomer, ester, or salt that act in the same manner on the human body. [1989 c 369 § 1.]

69.41.310 Rules. The state board of pharmacy shall specify by rule drugs to be classified as steroids as defined in RCW 69.41.300.

On or before December 1 of each year, the board shall inform the appropriate legislative committees of reference of the drugs that the board has added to the steroids in RCW 69.41.300. The board shall submit a statement of rationale for the changes. [1989 c 369 § 2.]

69.41.320 Practitioners—Restricted use—Medical records. (1) A practitioner shall not prescribe, administer, or dispense steroids, as defined in RCW 69.41.300, or any form of autotransfusion for the purpose of manipulating hormones to increase muscle mass, strength, or weight, or for the purpose of enhancing athletic ability, without a medical necessity to do so.

(2) A practitioner shall complete and maintain patient medical records which accurately reflect the prescribing, administering, or dispensing of any substance or drug described in this section or any form of autotransfusion. Patient medical records shall indicate the diagnosis and purpose for which the substance, drug, or autotransfusion is prescribed, administered, or dispensed and any additional information upon which the diagnosis is based. [1989 c 369 § 3.]

69.41.330 Public warnings—School districts. The superintendent of public instruction shall develop and distribute to all school districts signs of appropriate design and dimensions advising students of the health risks that steroids present when used solely to enhance athletic ability, and of the penalties for their unlawful possession provided by RCW 69.41.070 and 69.41.300 through 69.41.340.

School districts shall post or cause the signs to be posted in a prominent place for ease of viewing on the premises of school athletic departments. [1989 c 369 § 5.]

69.41.340 Student athletes—Violations—Penalty. The superintendent of public instruction, in consultation with the Washington interscholastic activity association, shall promulgate rules by January 1, 1990, regarding loss of eligibility to participate in school-sponsored athletic events for any student athlete found to have violated this chapter. The regents or trustees of

each institution of higher education shall promulgate rules by January 1, 1990, regarding loss of eligibility to participate in school-sponsored athletic events for any student athlete found to have violated this chapter. [1989 c 369 § 6.]

69.41.900 Severability—1979 c 110. If any provision of this 1979 act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1979 c 110 § 8.]

Chapter 69.43

PRECURSOR DRUGS

Sections	
69.43.010	Report to state board of pharmacy—List of substances—Modification of list—Identification of purchasers—Report of transactions—Penalties.
69.43.020	Receipt of substance from source outside state—Report—Penalty.
69.43.030	Exemptions.
69.43.040	Reporting form.
69.43.050	Rules.
69.43.060	Theft—Missing quantity—Reporting.
69.43.070	Sale, transfer, or furnishing of substance for unlawful purpose—Receipt of substance with intent to use unlawfully—Class B felony.
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69.43.090	Permit to sell, transfer, furnish, or receive substance—Exemptions—Application for permit—Fee—Renewal—Penalty.
69.43.100	Refusal, suspension, or revocation of a manufacturer's or wholesaler's permit.

69.43.010 Report to state board of pharmacy—List of substances—Modification of list—Identification of purchasers—Report of transactions—Penalties. (1) Beginning July 1, 1988, a report to the state board of pharmacy shall be submitted in accordance with this chapter by a manufacturer, retailer, or other person who sells, transfers, or otherwise furnishes to any person in this state any of the following substances or their salts or isomers:

- (a) Anthranilic acid;
- (b) Barbituric acid;
- (c) Chloephedrine;
- (d) Diethyl malonate;
- (e) D-lysergic acid;
- (f) Ephedrine;
- (g) Ergotamine tartrate;
- (h) Ethylamine;
- (i) Ethyl malonate;
- (j) Ethylephedrine;
- (k) Lead acetate;
- (l) Malonic acid;
- (m) Methylamine;
- (n) Methylformamide;
- (o) Methylephedrine;
- (p) Methylpseudoephedrine;
- (q) N-acetylanthranilic acid;
- (r) Norpseudoephedrine;
- (s) Phenylacetic acid;
- (t) Phenylpropanolamine;

- (u) Piperidine;
- (v) Pseudoephedrine; and
- (w) Pyrrolidine.

(2) The state board of pharmacy shall administer this chapter and may, by rule adopted pursuant to chapter 34.05 RCW, add a substance to or remove a substance from the list in subsection (1) of this section. In determining whether to add or remove a substance, the board shall consider the following:

(a) The likelihood that the substance is useable as a precursor in the illegal production of a controlled substance as defined in chapter 69.50 RCW;

(b) The availability of the substance;

(c) The relative appropriateness of including the substance in this chapter or in chapter 69.50 RCW; and

(d) The extent and nature of legitimate uses for the substance.

(3) On or before December 1 of each year, the board shall inform the committees of reference of the legislature of the substances added, deleted, or changed in subsection (1) of this section and include an explanation of these actions.

(4) (a) Beginning on July 1, 1988, any manufacturer, wholesaler, retailer, or other person shall, before selling, transferring, or otherwise furnishing any substance specified in subsection (1) of this section to a person in this state, require proper identification from the purchaser.

(b) For the purposes of this subsection, "proper identification" means, in the case of a face-to-face purchase, a motor vehicle operator's license or other official state-issued identification of the purchaser containing a photograph of the purchaser, and includes the residential or mailing address of the purchaser, other than a post office box number, the motor vehicle license number of any motor vehicle owned or operated by the purchaser, a letter of authorization from any business for which any substance specified in subsection (1) of this section is being furnished, which includes the business license number and address of the business, a description of how the substance is to be used, and the signature of the purchaser. The person selling, transferring, or otherwise furnishing any substance specified in subsection (1) of this section shall affix his or her signature as a witness to the signature and identification of the purchaser. The state board of pharmacy shall provide by rule for the proper identification of purchasers in other than face-to-face purchases.

(c) A violation of this subsection is a misdemeanor.

(5) Beginning on July 1, 1988, any manufacturer, wholesaler, retailer, or other person who sells, transfers, or otherwise furnishes the substance specified in subsection (1) of this section to a person in this state shall, not less than twenty-one days before delivery of the substance, submit a report of the transaction, which includes the identification information specified in subsection (4) of this section to the state board of pharmacy. However, the state board of pharmacy may authorize the submission of the reports on a monthly basis with respect to repeated, regular transactions between

the furnisher and the recipient involving the same substance if the state board of pharmacy determines that either of the following exist:

(a) A pattern of regular supply of the substance exists between the manufacturer, wholesaler, retailer, or other person who sells, transfers, or otherwise furnishes such substance and the recipient of the substance; or

(b) The recipient has established a record of using the substance for lawful purposes.

(6) Any person specified in subsection (5) of this section who does not submit a report as required by that subsection is guilty of a gross misdemeanor. [1988 c 147 § 1.]

69.43.020 Receipt of substance from source outside state—Report—Penalty. (1) Beginning on July 1, 1988, any manufacturer, wholesaler, retailer, or other person subject to any other reporting requirements in this chapter, who receives from a source outside of this state any substance specified in RCW 69.43.010(1), shall submit a report of such transaction to the state board of pharmacy under rules adopted by the board.

(2) Any person specified in subsection (1) of this section who does not submit a report as required by subsection (1) of this section is guilty of a gross misdemeanor. [1988 c 147 § 2.]

69.43.030 Exemptions. RCW 69.43.010 and 69.43.020 do not apply to any of the following:

(1) Any pharmacist or other authorized person who sells or furnishes a substance upon the prescription of a practitioner, as defined in chapter 69.41 RCW;

(2) Any practitioner who administers or furnishes a substance to his or her patients;

(3) Any manufacturer or wholesaler licensed by the state board of pharmacy who sells, transfers, or otherwise furnishes a substance to a licensed pharmacy or practitioner;

(4) Any sale, transfer, furnishing, or receipt of any drug that contains ephedrine, phenylpropanolamine, or pseudoephedrine, or of any cosmetic that contains a substance specified in RCW 69.43.010(1), if such drug or cosmetic is lawfully sold, transferred, or furnished, over the counter without a prescription under chapter 69.04 or 69.41 RCW. [1988 c 147 § 3.]

69.43.040 Reporting form. (1) The department of health, in accordance with rules developed by the state board of pharmacy shall provide a common reporting form for the substances in RCW 69.43.010 that contains at least the following information:

(a) Name of the substance;

(b) Quantity of the substance sold, transferred, or furnished;

(c) The date the substance was sold, transferred, or furnished;

(d) The name and address of the person buying or receiving the substance; and

(e) The name and address of the manufacturer, wholesaler, retailer, or other person selling, transferring, or furnishing the substance.

(2) Monthly reports authorized under subsection (1)(e) of this section may be computer-generated in accordance with rules adopted by the department. [1989 1st ex.s. c 9 § 441; 1988 c 147 § 4.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

69.43.050 Rules. (1) The state board of pharmacy may adopt all rules necessary to carry out this chapter.

(2) Notwithstanding subsection (1) of this section, the department of health may adopt rules necessary for the administration of this chapter. [1989 1st ex.s. c 9 § 442; 1988 c 147 § 5.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

69.43.060 Theft—Missing quantity—Reporting.

(1) The theft or loss of any substance under RCW 69.43.010 discovered by any person regulated by this chapter shall be reported to the state board of pharmacy within seven days after such discovery.

(2) Any difference between the quantity of any substance under RCW 69.43.010 received and the quantity shipped shall be reported to the state board of pharmacy within seven days of the receipt of actual knowledge of the discrepancy. When applicable, any report made pursuant to this subsection shall also include the name of any common carrier or person who transported the substance and the date of shipment of the substance. [1988 c 147 § 6.]

69.43.070 Sale, transfer, or furnishing of substance for unlawful purpose—Receipt of substance with intent to use unlawfully—Class B felony. (1) Any manufacturer, wholesaler, retailer, or other person who sells, transfers, or otherwise furnishes any substance listed in RCW 69.43.010 with knowledge or the intent that the recipient will use the substance unlawfully to manufacture a controlled substance under chapter 69.50 RCW is guilty of a class B felony under chapter 9A.20 RCW.

(2) Any person who receives any substance listed in RCW 69.43.010 with intent to use the substance unlawfully to manufacture a controlled substance under chapter 69.50 RCW is guilty of a class B felony under chapter 9A.20 RCW. [1988 c 147 § 7.]

69.43.080 False statement in report or record—Class C felony. It is unlawful for any person knowingly to make a false statement in connection with any report or record required under this chapter. A violation of this section is a class C felony under chapter 9A.20 RCW. [1988 c 147 § 8.]

69.43.090 Permit to sell, transfer, furnish, or receive substance—Exemptions—Application for permit—Fee—Renewal—Penalty. (1) Any manufacturer, wholesaler, retailer, or other person who sells, transfers, or otherwise furnishes any substance specified in RCW 69.43.010 to a person in this state or who receives from a source outside of the state any substance specified in RCW 69.43.010 shall obtain a permit for

the conduct of that business from the state board of pharmacy. However, a permit shall not be required of any manufacturer, wholesaler, retailer, or other person for the sale, transfer, furnishing, or receipt of any drug that contains ephedrine, phenylpropanolamine, or pseudoephedrine, or of any cosmetic that contains a substance specified in RCW 69.43.010(1), if such drug or cosmetic is lawfully sold, transferred, or furnished over the counter without a prescription or by a prescription under chapter 69.04 or 69.41 RCW.

(2) Applications for permits shall be filed with the department in writing and signed by the applicant, and shall set forth the name of the applicant, the business in which the applicant is engaged, the business address of the applicant, and a full description of any substance sold, transferred, or otherwise furnished, or received.

(3) The board may grant permits on forms prescribed by it. The permits shall be effective for not more than one year from the date of issuance.

(4) Each applicant shall pay at the time of filing an application for a permit a fee determined by the department.

(5) A permit granted under this chapter may be renewed on a date to be determined by the board, and annually thereafter, upon the filing of a renewal application and the payment of a permit renewal fee determined by the department.

(6) Permit fees charged by the department shall not exceed the costs incurred by the department in administering this chapter.

(7) Selling, transferring, or otherwise furnishing, or receiving any substance specified in RCW 69.43.010 without a required permit, is a gross misdemeanor. [1989 1st ex.s. c 9 § 443; 1988 c 147 § 9.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

69.43.100 Refusal, suspension, or revocation of a manufacturer's or wholesaler's permit. The board shall have the power to refuse, suspend, or revoke the permit of any manufacturer or wholesaler upon proof that:

(1) The permit was procured through fraud, misrepresentation, or deceit;

(2) The permittee has violated or has permitted any employee to violate any of the laws of this state relating to drugs, controlled substances, cosmetics, or nonprescription drugs, or has violated any of the rules and regulations of the board of pharmacy. [1988 c 147 § 10.]

Chapter 69.45 DRUG SAMPLES

Sections	
69.45.010	Definitions.
69.45.020	Registration of manufacturers—Additional information required by the department.
69.45.030	Records maintained by manufacturer—Report of loss or theft of drug samples—Reports of practitioners receiving controlled substance drug samples.
69.45.040	Storage and transportation of drug samples—Disposal of samples which have exceeded their expiration dates.

69.45.050	Distribution of drug samples—Written request— No fee or charge permitted—Possession of legend drugs or controlled substances by manufacturers' representatives.
69.45.060	Disposal of surplus, outdated, or damaged drug samples.
69.45.070	Registration fees.
69.45.080	Violations of chapter—Manufacturer's liability— Penalty—Seizure of drug samples.
69.45.090	Records, reports, and information confidential—Ex- emption from public inspection under chapter 42.17 RCW.
69.45.900	Severability—1987 c 411.

69.45.010 Definitions. The definitions in this section apply throughout this chapter.

(1) "Board" means the board of pharmacy.

(2) "Drug samples" means any federal food and drug administration approved controlled substance, legend drug, or products requiring prescriptions in this state, which is distributed at no charge to a practitioner by a manufacturer or a manufacturer's representative, exclusive of drugs under clinical investigations approved by the federal food and drug administration.

(3) "Controlled substance" means a drug, substance, or immediate precursor of such drug or substance, so designated under or pursuant to chapter 69.50 RCW, the uniform controlled substances act.

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

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

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

(7) "Legend drug" means any drug that is required by state law or by regulations of the board to be dispensed on prescription only or is restricted to use by practitioners only.

(8) "Manufacturer" means a person or other entity engaged in the manufacture or distribution of drugs or devices, but does not include a manufacturer's representative.

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

(10) "Practitioner" means a physician under chapter 18.71 RCW, an osteopathic physician or an osteopathic physician and surgeon under chapter 18.57 RCW, a dentist under chapter 18.32 RCW, a podiatrist under chapter 18.22 RCW, a veterinarian under chapter 18.92 RCW, a pharmacist under chapter 18.64 RCW, a commissioned medical or dental officer in the United States armed forces or the public health service in the discharge of his or her official duties, a duly licensed physician or dentist employed by the veterans administration in the discharge of his or her official duties, a registered nurse under chapter 18.88 RCW when

authorized to prescribe by the board of nursing, an osteopathic physician's assistant under chapter 18.57A RCW when authorized by the board of osteopathic medicine and surgery, or a physician's assistant under chapter 18.71A RCW when authorized by the board of medical examiners.

(11) "Manufacturer's representative" means an agent or employee of a drug manufacturer who is authorized by the drug manufacturer to possess drug samples for the purpose of distribution in this state to appropriately authorized health care practitioners.

(12) "Reasonable cause" means a state of facts found to exist that would warrant a reasonably intelligent and prudent person to believe that a person has violated state or federal drug laws or regulations.

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

(14) "Secretary" means the secretary of health or the secretary's designee. [1989 1st ex.s. c 9 § 444; 1987 c 411 § 1.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

69.45.020 Registration of manufacturers—Additional information required by the department. A manufacturer that intends to distribute drug samples in this state shall register annually with the department, providing the name and address of the manufacturer, and shall:

(1) Provide a twenty-four hour telephone number and the name of the individual(s) who shall respond to reasonable official inquiries from the department, as directed by the board, based on reasonable cause, regarding required records, reports, or requests for information pursuant to a specific investigation of a possible violation. Each official request by the department and each response by a manufacturer shall be limited to the information specifically relevant to the particular official investigation. Requests for the address of sites in this state at which drug samples are stored by the manufacturer's representative and the names and addresses of the individuals who are responsible for the storage or distribution of the drug samples shall be responded to as soon as possible but not later than the close of business on the next business day following the request; or

(2) If a twenty-four hour telephone number is not available, provide the addresses of sites in this state at which drug samples are stored by the manufacturer's representative, and the names and addresses of the individuals who are responsible for the storage or distribution of the drug samples. The manufacturer shall annually submit a complete updated list of the sites and individuals to the department. [1989 1st ex.s. c 9 § 445; 1987 c 411 § 2.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

69.45.030 Records maintained by manufacturer—Report of loss or theft of drug samples—Reports of practitioners receiving controlled substance drug samples.

(1) The following records shall be maintained by the manufacturer distributing drug samples in this state and

shall be available for inspection by authorized representatives of the department based on reasonable cause and pursuant to an official investigation:

(a) An inventory of drug samples held in this state for distribution, taken at least annually by a representative of the manufacturer other than the individual in direct control of the drug samples;

(b) Records or documents to account for all drug samples distributed, destroyed, or returned to the manufacturer. The records shall include records for sample drugs signed for by practitioners, dates and methods of destruction, and any dates of returns; and

(c) Copies of all reports of lost or stolen drug samples.

(2) All required records shall be maintained for two years and shall include transaction dates.

(3) Manufacturers shall report to the department the discovery of any loss or theft of drug samples as soon as possible but not later than the close of business on the next business day following the discovery.

(4) Manufacturers shall report to the department as frequently as, and at the same time as, their other reports to the federal drug enforcement administration, or its lawful successor, the name, address and federal registration number for each practitioner who has received controlled substance drug samples and the name, strength and quantity of the controlled substance drug samples distributed. [1989 1st ex.s. c 9 § 446; 1987 c 411 § 3.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

69.45.040 Storage and transportation of drug samples—Disposal of samples which have exceeded their expiration dates. (1) Drug samples shall be stored in compliance with the requirements of federal and state laws, rules, and regulations.

(2) Drug samples shall be maintained in a locked area to which access is limited to persons authorized by the manufacturer.

(3) Drug samples shall be stored and transported in such a manner as to be free of contamination, deterioration, and adulteration.

(4) Drug samples shall be stored under conditions of temperature, light, moisture, and ventilation so as to meet the label instructions for each drug.

(5) Drug samples which have exceeded the expiration date shall be physically separated from other drug samples until disposed of or returned to the manufacturer. [1987 c 411 § 4.]

69.45.050 Distribution of drug samples—Written request—No fee or charge permitted—Possession of legend drugs or controlled substances by manufacturers' representatives. (1) Drug samples may be distributed by a manufacturer or a manufacturer's representative only to practitioners legally authorized to prescribe such drugs or, at the request of such practitioner, to pharmacies of hospitals or other health care entities. The recipient of the drug sample must execute a written receipt upon delivery that is returned to the manufacturer or the manufacturer's representative.

(2) Drug samples may be distributed by a manufacturer or a manufacturer's representative only to a practitioner legally authorized to prescribe such drugs pursuant to a written request for such samples. The request shall contain:

(a) The recipient's name, address, and professional designation;

(b) The name, strength, and quantity of the drug samples delivered;

(c) The name or identification of the manufacturer and of the individual distributing the drug sample; and

(d) The dated signature of the practitioner requesting the drug sample.

(3) No fee or charge may be imposed for sample drugs distributed in this state.

(4) A manufacturer's representative shall not possess legend drugs or controlled substances other than those distributed by the manufacturer they represent. Nothing in this section prevents a manufacturer's representative from possessing a legally prescribed and dispensed legend drug or controlled substance. [1989 c 164 § 2; 1987 c 411 § 5.]

Legislative finding—1989 c 164: "The legislature finds that chapter 69.45 RCW is more restrictive than the federal prescription drug marketing act of 1987, and the legislature further finds that a change in chapter 69.45 RCW accepting the position of the federal law is beneficial to the citizens of this state." [1989 c 164 § 1.]

69.45.060 Disposal of surplus, outdated, or damaged drug samples. Surplus, outdated, or damaged drug samples shall be disposed of as follows:

(1) Returned to the manufacturer; or

(2) Witnessed destruction by such means as to assure that the drug cannot be retrieved. However, controlled substances shall be returned to the manufacturer or disposed of in accordance with rules adopted by the board: *Provided*, That the board shall adopt by rule the regulations of the federal drug enforcement administration or its lawful successor unless, stating reasonable grounds, it adopts rules consistent with such regulations. [1987 c 411 § 6.]

69.45.070 Registration fees. The department may charge reasonable fees for registration. The registration fee shall not exceed the fee charged by the department for a pharmacy location license. [1989 1st ex.s. c 9 § 447; 1987 c 411 § 7.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

69.45.080 Violations of chapter—Manufacturer's liability—Penalty—Seizure of drug samples. (1) The manufacturer is responsible for the actions and conduct of its representatives with regard to drug samples.

(2) The board may hold a public hearing to examine a possible violation and may require a designated representative of the manufacturer to attend.

(3) If a manufacturer fails to comply with this chapter following notification by the board, the board may impose a civil penalty of up to five thousand dollars. The board shall take no action to impose any civil penalty

except pursuant to a hearing held in accordance with chapter 34.05 RCW.

(4) Specific drug samples which are distributed in this state in violation of this chapter, following notification by the board, shall be subject to seizure following the procedures set out in RCW 69.41.060. [1987 c 411 § 8.]

69.45.090 Records, reports, and information confidential—Exemption from public inspection under chapter 42.17 RCW. All records, reports, and information obtained by the board from or on behalf of a manufacturer or manufacturer's representative under this chapter are confidential and exempt from public inspection and copying under chapter 42.17 RCW. This section does not apply to public disclosure of the identity of persons found by the board to have violated state or federal law, rules, or regulations. This section is not intended to restrict the investigations and proceedings of the board so long as the board maintains the confidentiality required by this section. [1987 c 411 § 9.]

69.45.900 Severability—1987 c 411. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1987 c 411 § 12.]

Chapter 69.50

UNIFORM CONTROLLED SUBSTANCES ACT

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69.50.604 Short title.
69.50.605 Severability—1971 ex.s. c 308.
69.50.606 Repealers.
69.50.607 Effective date—1971 ex.s. c 308.
69.50.608 State preemption.

Drug nuisances—Injunctions: Chapter 7.43 RCW.

ARTICLE I DEFINITIONS

69.50.101 Definitions. As used in this chapter:

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

- (1) a practitioner, or
- (2) the patient or research subject at the direction and in the presence of the practitioner.

(b) "Agent" means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor, or dispenser. It does not include a common or contract carrier, public warehouseman, or employee of the carrier or warehouseman.

(c) "Drug enforcement administration" means the federal drug enforcement administration in the United States Department of Justice, or its successor agency.

(d) "Controlled substance" means a drug, substance, or immediate precursor in Schedules I through V of Article II.

(e) "Counterfeit substance" means a controlled substance which, or the container or labeling of which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, number or device, or any likeness thereof, of a manufacturer, distributor, or dispenser other than the person who in fact manufactured, distributed, or dispensed the substance.

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

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

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

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

(j) "Distribute" means to deliver other than by administering or dispensing a controlled substance.

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

(l) "Drug" means (1) substances recognized as drugs in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or Official National Formulary, or any supplement to any of them; (2) substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or animals; (3) substances (other than food) intended to affect the structure or any function of the body of man or animals; and (4) substances intended for use as a component of any article specified in clause (1), (2), or (3) of this subsection. It does not include devices or their components, parts, or accessories.

(m) "Immediate precursor" means a substance which the state board of pharmacy has found to be and by rule designates as being the principal compound commonly used or produced primarily for use, and which is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance, the control of which is necessary to prevent, curtail, or limit manufacture.

(n) "Manufacture" means the production, preparation, propagation, compounding, conversion or processing of a controlled substance, either directly or indirectly by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container, except that this term does not include the preparation or compounding of a controlled substance by an individual for his own use or the preparation, compounding, packaging, or labeling of a controlled substance:

(1) by a practitioner as an incident to his administering or dispensing of a controlled substance in the course of his professional practice, or

(2) by a practitioner, or by his authorized agent under his supervision, for the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale.

(o) "Marihuana" means all parts of the plant of the genus *Cannabis* L., whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.

(p) "Narcotic drug" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

(1) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate.

(2) Any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in clause 1, but not including the isoquinoline alkaloids of opium.

(3) Opium poppy and poppy straw.

(4) Coca leaves and any salt, compound, derivative, or preparation of coca leaves, and any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, but not including decocainized coca leaves or extractions of coca leaves which do not contain cocaine or ecgonine.

(q) "Opiate" means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. It does not include, unless specifically designated as controlled under RCW 69.50.201, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). It does include its racemic and levorotatory forms.

(r) "Opium poppy" means the plant of the genus *Papaver* L., except its seeds, capable of producing an opiate.

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

(t) "Poppy straw" means all parts, except the seeds, of the opium poppy, after mowing.

(u) "Practitioner" means:

(1) A physician under chapter 18.71 RCW, an osteopathic physician or an osteopathic physician and surgeon under chapter 18.57 RCW, a dentist under chapter 18.32 RCW, a chiropractist under chapter 18.22 RCW, a veterinarian under chapter 18.92 RCW, a registered

nurse under chapter 18.88 RCW, a licensed practical nurse under chapter 18.78 RCW, a pharmacist under chapter 18.64 RCW or a scientific investigator under this chapter, licensed, registered or otherwise permitted insofar as is consistent with those licensing laws to distribute, dispense, conduct research with respect to or administer a controlled substance in the course of their professional practice or research in this state.

(2) A pharmacy, hospital or other institution licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to or to administer a controlled substance in the course of professional practice or research in this state.

(3) A physician licensed to practice medicine and surgery or a physician licensed to practice osteopathy and surgery in any state of the United States.

(v) "Production" includes the manufacture, planting, cultivation, growing, or harvesting of a controlled substance.

(w) "Secretary" means the secretary of health or the secretary's designee.

(x) "State", when applied to a part of the United States, includes any state, district, commonwealth, territory, insular possession thereof, and any area subject to the legal authority of the United States of America.

(y) "Ultimate user" means a person who lawfully possesses a controlled substance for his own use or for the use of a member of his household or for administering to an animal owned by him or by a member of his household.

(z) "Board" means the state board of pharmacy. [1989 1st ex.s. c 9 § 429; 1987 c 144 § 2; 1986 c 124 § 1; 1984 c 153 § 18; 1980 c 71 § 2; 1973 2nd ex.s. c 38 § 1; 1971 ex.s. c 308 § 69.50.101.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

Severability—1973 2nd ex.s. c 38: "If any of the provisions of this amendatory act, or its application to any person or circumstance is held invalid, the remainder of the amendatory act, or the application of the provision to other persons or circumstances, or the act prior to its amendment is not affected." [1973 2nd ex.s. c 38 § 3.]

69.50.102 Drug paraphernalia—Definitions. (a) As used in this chapter, "drug paraphernalia" means all equipment, products, and materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance. It includes, but is not limited to:

(1) Kits used, intended for use, or designed for use in planting, propagating, cultivating, growing, or harvesting of any species of plant which is a controlled substance or from which a controlled substance can be derived;

(2) Kits used, intended for use, or designed for use in manufacturing, compounding, converting, producing, processing, or preparing controlled substances;

(3) Isomerization devices used, intended for use, or designed for use in increasing the potency of any species of plant which is a controlled substance;

(4) Testing equipment used, intended for use, or designed for use in identifying or in analyzing the strength, effectiveness, or purity of controlled substances;

(5) Scales and balances used, intended for use, or designed for use in weighing or measuring controlled substances;

(6) Diluents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose, and lactose, used, intended for use, or designed for use in cutting controlled substances;

(7) Separation gins and sifters used, intended for use, or designed for use in removing twigs and seeds from, or in otherwise cleaning or refining, marijuana;

(8) Blenders, bowls, containers, spoons, and mixing devices used, intended for use, or designed for use in compounding controlled substances;

(9) Capsules, balloons, envelopes, and other containers used, intended for use, or designed for use in packaging small quantities of controlled substances;

(10) Containers and other objects used, intended for use, or designed for use in storing or concealing controlled substances;

(11) Hypodermic syringes, needles, and other objects used, intended for use, or designed for use in parenterally injecting controlled substances into the human body;

(12) Objects used, intended for use, or designed for use in ingesting, inhaling, or otherwise introducing marijuana, cocaine, hashish, or hashish oil into the human body, such as:

(i) Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls;

(ii) Water pipes;

(iii) Carburetor tubes and devices;

(iv) Smoking and carburetion masks;

(v) Roach clips: Meaning objects used to hold burning material, such as a marijuana cigarette, that has become too small or too short to be held in the hand;

(vi) Miniature cocaine spoons, and cocaine vials;

(vii) Chamber pipes;

(viii) Carburetor pipes;

(ix) Electric pipes;

(x) Air-driven pipes;

(xi) Chillums;

(xii) Bongs; and

(xiii) Ice pipes or chillers.

(b) In determining whether an object is drug paraphernalia under this section, a court or other authority should consider, in addition to all other logically relevant factors, the following:

(1) Statements by an owner or by anyone in control of the object concerning its use;

(2) Prior convictions, if any, of an owner, or of anyone in control of the object, under any state or federal law relating to any controlled substance;

(3) The proximity of the object, in time and space, to a direct violation of this chapter;

(4) The proximity of the object to controlled substances;

(5) The existence of any residue of controlled substances on the object;

(6) Direct or circumstantial evidence of the intent of an owner, or of anyone in control of the object, to deliver it to persons whom he knows, or should reasonably know, intend to use the object to facilitate a violation of this chapter; the innocence of an owner, or of anyone in control of the object, as to a direct violation of this chapter shall not prevent a finding that the object is intended or designed for use as drug paraphernalia;

(7) Instructions, oral or written, provided with the object concerning its use;

(8) Descriptive materials accompanying the object which explain or depict its use;

(9) National and local advertising concerning its use;

(10) The manner in which the object is displayed for sale;

(11) Whether the owner, or anyone in control of the object, is a legitimate supplier of like or related items to the community, such as a licensed distributor or dealer of tobacco products;

(12) Direct or circumstantial evidence of the ratio of sales of the object(s) to the total sales of the business enterprise;

(13) The existence and scope of legitimate uses for the object in the community; and

(14) Expert testimony concerning its use. [1981 c 48 § 1.]

Severability—1981 c 48: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1981 c 48 § 4.]

ARTICLE II STANDARDS AND SCHEDULES

69.50.201 Enforcement of chapter—Authority to change schedules of controlled substances. (a) The state board of pharmacy shall enforce this chapter and may add substances to or delete or reschedule all substances enumerated in the schedules in RCW 69.50.204, 69.50.206, 69.50.208, 69.50.210, or 69.50.212 pursuant to the rule-making procedures of chapter 34.05 RCW. In making a determination regarding a substance, the board shall consider the following:

(1) the actual or relative potential for abuse;

(2) the scientific evidence of its pharmacological effect, if known;

(3) the state of current scientific knowledge regarding the substance;

(4) the history and current pattern of abuse;

(5) the scope, duration, and significance of abuse;

(6) the risk to the public health;

(7) the potential of the substance to produce psychic or physiological dependence liability; and

(8) whether the substance is an immediate precursor of a substance already controlled under this Article.

(b) After considering the factors enumerated in subsection (a) the board may issue a rule controlling the

substance if it finds the substance has a potential for abuse.

(c) If the board designates a substance as an immediate precursor, substances which are precursors of the controlled precursor shall not be subject to control solely because they are precursors of the controlled precursor.

(d) If any substance is designated, rescheduled, or deleted as a controlled substance under federal law and notice thereof is given to the board, the substance shall be similarly controlled under this chapter after the expiration of thirty days from publication in the Federal Register of a final order designating a substance as a controlled substance or rescheduling or deleting a substance, unless within that thirty day period, the board objects to inclusion, rescheduling, or deletion. In that case, the board shall proceed pursuant to the rule-making procedures of chapter 34.05 RCW.

(e) Authority to control under this section does not extend to distilled spirits, wine, malt beverages, or tobacco as those terms are defined or used in Title 66 RCW and Title 26 RCW.

(f) The board shall exclude any nonnarcotic substances from a schedule if such substances may, under the Federal Food, Drug and Cosmetic Act, and under regulations of the drug enforcement administration, and the laws of this state including RCW 18.64.250, be lawfully sold over the counter.

(g) On or before December 1 of each year, the board shall inform the committees of reference of the legislature of the controlled substances added, deleted, or changed on the schedules specified in this chapter and which includes an explanation of these actions. [1989 1st ex.s. c 9 § 430; 1986 c 124 § 2; 1971 ex.s. c 308 § 69.50.201.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

69.50.202 Nomenclature. The controlled substances listed or to be listed in the schedules in RCW 69.50.204, 69.50.206, 69.50.208, 69.50.210, and 69.50.212 are included by whatever official, common, usual, chemical, or trade name designated. [1971 ex.s. c 308 § 69.50.202.]

69.50.203 Schedule I tests. The state board of pharmacy shall place a substance in Schedule I if it finds that the substance:

(1) has high potential for abuse; and

(2) has no accepted medical use in treatment in the United States or lacks accepted safety for use in treatment under medical supervision. [1971 ex.s. c 308 § 69.50.203.]

69.50.204 Schedule I. (a) The controlled substances listed in this section, by whatever official name, common or usual name, chemical name, or brand name, are included in Schedule I.

(b) Opiates. Unless specifically excepted or unless listed in another schedule, any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, whenever the existence of

these isomers, esters, ethers, and salts is possible within the specific chemical designation:

- (1) Acetylmethadol;
- (2) Alfentanil;
- (3) Allylprodine;
- (4) Alphacetylmethadol;
- (5) Alphameprodine;
- (6) Alphamethadol;
- (7) Alpha-methylfentanyl (N-[1-alpha-methyl-beta-phenyl) ethyl-4-piperidyl] propionanllide; 1-(1-methyl-2-phenylethyl)-4-(N-propanilido) piperidine);

- (8) Benzethidine;
- (9) Betacetylmethadol;
- (10) Betameprodine;
- (11) Betamethadol;
- (12) Betaprodine;
- (13) Clonitazene;
- (14) Dextromoramide;
- (15) Diampromide;
- (16) Diethylthiambutene;
- (17) Difenoxin;
- (18) Dimenoxadol;
- (19) Dimepheptanol;
- (20) Dimethylthiambutene;
- (21) Dioxaphetyl butyrate;
- (22) Dipipanone;
- (23) Ethylmethylthiambutene;
- (24) Etonitazene;
- (25) Etoxadine;
- (26) Furethidine;
- (27) Hydroxypethidine;
- (28) Ketobemidone;
- (29) Levomoramide;
- (30) Levophenacylmorphan;
- (31) Morpheridine;
- (32) Noracymethadol;
- (33) Norlevorphanol;
- (34) Normethadone;
- (35) Norpipanone;
- (36) Phenadoxone;
- (37) Phenampromide;
- (38) Phenomorphan;
- (39) Phenoperidine;
- (40) Piritramide;
- (41) Propheptazine;
- (42) Properidine;
- (43) Propiram;
- (44) Racemoramide;
- (45) Tilidine;
- (46) Trimeperidine.

(c) Opium derivatives. Unless specifically excepted or unless listed in another schedule, any of the following opium derivatives, their salts, isomers, and salts of isomers, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (1) Acetorphine;
- (2) Acetyldihydrocodeine;
- (3) Benzylmorphine;
- (4) Codeine methylbromide;
- (5) Codeine-N-Oxide;

- (6) Cyprenorphine;
- (7) Desomorphine;
- (8) Dihydromorphine;
- (9) Drotebanol;
- (10) Etorphine (except hydrochloride salt);
- (11) Heroin;
- (12) Hydromorphanol;
- (13) Methyl-desorphine;
- (14) Methyl-dihydromorphine;
- (15) Morphine methylbromide;
- (16) Morphine methylsulfonate;
- (17) Morphine-N-Oxide;
- (18) Myrophine;
- (19) Nicocodeine;
- (20) Nicomorphine;
- (21) Normorphine;
- (22) Pholcodine;
- (23) Thebacon.

(d) Hallucinogenic substances. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following hallucinogenic substances, or which contains any of its salts, isomers, and salts of isomers, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation (For purposes of paragraph (d) of this section, only, the term "isomer" includes the optical, position, and geometric isomers.):

- (1) 3,4-methylenedioxy amphetamine;
- (2) 5-methoxy-3,4-methylenedioxy amphetamine;
- (3) 3,4,5-trimethoxy amphetamine;
- (4) 4-bromo-2,5-dimethoxy-amphetamine: Some trade or other names: 4-bromo-2,5-dimethoxy-alpha-methylphenethylamine; 4-bromo-2,5-DMA;
- (5) 2,5-dimethoxyamphetamine: Some trade or other names: 2,5-dimethoxy-alpha-methylphenethylamine; 2,5-DMA;
- (6) 4-methoxyamphetamine: Some trade or other names: 4-methoxy-alpha-methylphenethylamine; paramethoxyamphetamine; PMA;
- (7) 4-methyl-2,5-dimethoxyamphetamine: Some trade or other names: 4-methyl-2,5-dimethoxy-alpha-methylphenethylamine; "DOM"; "STP";
- (8) Bufotenine: Some trade or other names: 3-(beta-Dimethylaminoethyl)-5-hydroxyindole; 3-(2-dimethylaminoethyl)-5-indolol; N, N-dimethylserotonin; 5-hydroxy-N,N-dimethyltryptamine; mappine;
- (9) Diethyltryptamine: Some trade or other names: N,N-Diethyltryptamine; DET;
- (10) Dimethyltryptamine: Some trade or other names: DMT;
- (11) Ibogaine: Some trade or other names: 7-Ethyl-6,6 beta,7,8,9,10,12,13,-octahydro-2-methoxy-6,9-methano-5H-pyndo (1',2'1,2) azepino (5,4-b) indole; Tabernanthe iboga;
- (12) Lysergic acid diethylamide;
- (13) Marihuana;
- (14) Mescaline;
- (15) Parahexyl-7374; some trade or other names: 3-Hexyl-1-hydroxy-7, 8, 9, 10-tetrahydro-6, 6, 9-trimethyl-6H-dibenzo[b,d]pyran; synhexyl;

(16) Peyote, meaning all parts of the plant presently classified botanically as *Lophophora Williamsii* Lemaire, whether growing or not, the seeds thereof, any extract from any part of such plant, and every compound, manufacture, salts, derivative, mixture, or preparation of such plant, its seeds, or extracts (interprets 21 U.S.C. Sec. 812(c), Schedule I(c)(12));

(17) N-ethyl-3-piperidyl benzilate;

(18) N-methyl-3-piperidyl benzilate;

(19) Psilocybin;

(20) Psilocyn;

(21) Tetrahydrocannabinols, synthetic equivalents of the substances contained in the plant, or in the resinous extractives of *Cannabis*, specifically, and/or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity such as the following:

(i) Delta 1 – cis – or trans

tetrahydrocannabinol, and their optical isomers;

(ii) Delta 6 – cis – or trans

tetrahydrocannabinol, and their optical isomers;

(iii) Delta 3.4 – cis – or trans

tetrahydrocannabinol, and its optical isomers;

(Since nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of numerical designation of atomic positions covered, are all included.)

(22) Ethylamine analog of phencyclidine: Some trade or other names: N-ethyl-1-phenylcyclohexylamine, (1-phenylcyclohexyl) ethylamine; N-(1-phenylcyclohexyl)ethylamine; cyclohexamine; PCE;

(23) Pyrrolidine analog of phencyclidine: Some trade or other names: 1-(1-phenylcyclohexyl)pyrrolidine; PCPy; PHP;

(24) Thiophene analog of phencyclidine: Some trade or other names: 1-(1-[2-thienyl]-cyclohexyl)-piperidine; 2-thienyl analog of phencyclidine; TCP; TCP.

(e) Depressants. Unless specifically excepted or unless listed in another schedule, any material compound, mixture, or preparation which contains any quantity of mecloqualone having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

(1) Mecloqualone;

(2) Methaqualone.

(f) Stimulants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers:

(1) Fenethyline;

(2) N-ethylamphetamine;

(3) 3-methylfentanyl (N-(3-methyl-1-(2-phenylethyl)-4-piperidyl)-N-phenylpropanamide), its optical and geometric isomers, salts and salts of isomers;

(4) 3,4-methylenedioxymethamphetamine (MDMA), its optical, positional and geometric isomers, salts and salts of isomers;

(5) 1-methyl-4-phenyl-4-propionoxy-piperidine (MPPP), its optical isomers, salts, and salts of isomers;

(6) 1-(2-phenylethyl)-4-phenyl-4-acetyloxypiperidine (PEPAP), its optical isomers, salts and salts of isomers. [1986 c 124 § 3; 1980 c 138 § 1; 1971 ex.s. c 308 § 69.50.204.]

State board of pharmacy may change schedules of controlled substances: RCW 69.50.201.

69.50.205 Schedule II tests. The state board of pharmacy shall place a substance in Schedule II if it finds that:

(1) the substance has high potential for abuse;

(2) the substance has currently accepted medical use in treatment in the United States, or currently accepted medical use with severe restrictions; and

(3) the abuse of the substance may lead to severe psychic or physical dependence. [1971 ex.s. c 308 § 69.50.205.]

69.50.206 Schedule II. (a) The drugs and other substances listed in this section, by whatever official name, common or usual name, chemical name, or brand name designated, are included in Schedule II.

(b) Substances. (Vegetable origin or chemical synthesis.) Unless specifically excepted, any of the following substances, except those listed in other schedules, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by combination of extraction and chemical synthesis:

(1) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate, excluding apomorphine, dextrophan, nalbuphine, naloxone, and naltrexone, and their respective salts, but including the following:

(i) Raw opium;

(ii) Opium extracts;

(iii) Opium fluid extracts;

(iv) Powdered opium;

(v) Granulated opium;

(vi) Tincture of opium;

(vii) Codeine;

(viii) Ethylmorphine;

(ix) Etorphine hydrochloride;

(x) Hydrocodone;

(xi) Hydromorphone;

(xii) Metopon;

(xiii) Morphine;

(xiv) Oxycodone;

(xv) Oxymorphone; and

(xvi) Thebaine.

(2) Any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in paragraph (b)(1) of this section, but not including the isoquinoline alkaloids of opium.

(3) Opium poppy and poppy straw.

(4) Coca leaves and any salt, compound, derivative, or preparation of coca leaves, and any salt, compound, derivative, or preparation thereof which is chemically

equivalent or identical with any of these substances, but not including decocainized coca leaves or extractions which do not contain cocaine or ecgonine.

(5) Methylbenzoyllecgonine (cocaine — its salts, optical isomers, and salts of optical isomers).

(6) Concentrate of poppy straw (The crude extract of poppy straw in either liquid, solid, or powder form which contains the phenanthrine alkaloids of the opium poppy.)

(c) Opiates. Unless specifically excepted or unless in another schedule, any of the following opiates, including its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation, dextropropoxyphene and levopropoxyphene excepted:

- (1) Alphaprodine;
- (2) Anileridine;
- (3) Bezitramide;
- (4) Bulk dextropropoxyphene (nondosage forms);
- (5) Dihydrocodeine;
- (6) Diphenoxylate;
- (7) Fentanyl;
- (8) Isomethadone;
- (9) Levomethorphan;
- (10) Levorphanol;
- (11) Metazocine;
- (12) Methadone;
- (13) Methadone—Intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane;
- (14) Moramide—Intermediate, 2-methyl-3-morpholino-1, 1-diphenylpropane-carboxylic acid;
- (15) Pethidine (meperidine);
- (16) Pethidine—Intermediate—A, 4-cyano-1-methyl-4-phenylpiperidine;
- (17) Pethidine—Intermediate—B, ethyl-4-phenylpiperidine-4-carboxylate;
- (18) Pethidine—Intermediate—C, 1-methyl-4-phenylpiperidine-4-carboxylic acid;
- (19) Phenazocine;
- (20) Piminodine;
- (21) Racemethorphan;
- (22) Racemorphan;
- (23) Sufentanil.

(d) Stimulants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system:

- (1) Amphetamine, its salts, optical isomers, and salts of its optical isomers;
- (2) Methamphetamine, its salts, isomers, and salts of its isomers;
- (3) Phenmetrazine and its salts;
- (4) Methylphenidate.

(e) Depressants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers whenever the existence of such salts,

isomers, and salts of isomers is possible within the specific chemical designation:

- (1) Amobarbital;
- (2) Pentobarbital;
- (3) Phencyclidine;
- (4) Secobarbital.

(f) Immediate precursors. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances:

- (1) Immediate precursor to amphetamine and methamphetamine;
- (2) Phenylacetone: Some trade or other names phenyl-2-propanone, P2P, benzyl methyl ketone, methyl benzyl ketone.
- (3) Immediate precursors to phencyclidine (PCP):
 - (i) 1-phenylcyclohexylamine;
 - (ii) 1-piperidinocyclohexanecarbonitrile (PCC). [1986 c 124 § 4; 1980 c 138 § 2; 1971 ex.s. c 308 § 69.50.206.]

State board of pharmacy may change schedules of controlled substances: RCW 69.50.201.

69.50.207 Schedule III tests. The state board of pharmacy shall place a substance in Schedule III if it finds that:

- (1) the substance has a potential for abuse less than the substances listed in Schedules I and II;
- (2) the substance has currently accepted medical use in treatment in the United States; and
- (3) abuse of the substance may lead to moderate or low physical dependence or high psychological dependence. [1971 ex.s. c 308 § 69.50.207.]

69.50.208 Schedule III. (a) The drugs and other substances listed in this section, by whatever official name, common or usual name, chemical name, or brand name designated, are included in Schedule III.

(b) Stimulants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers (whether optical, position, or geometric), and salts of such isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (1) Those compounds, mixtures, or preparations in dosage unit form containing any stimulant substances listed in Schedule II which compounds, mixtures, or preparations are referred to as excepted compounds in Schedule III as published in 21 CFR 1308.13(b)(1) as of April 1, 1985, and any other drug of the quantitative composition shown in that list for those drugs or which is the same except that it contains a lesser quantity of controlled substances;

- (2) Benzphetamine;
- (3) Chlorphentermine;
- (4) Clortermine;
- (5) Phendimetrazine.

(c) Depressants. Unless specifically excepted or unless listed in another schedule, any material, compound,

mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system:

(1) Any compound, mixture, or preparation containing:

- (i) Amobarbital;
- (ii) Secobarbital;
- (iii) Pentobarbital;

or any salt thereof and one or more other active medicinal ingredients which are not listed in any schedule;

(2) Any suppository dosage form containing:

- (i) Amobarbital;
- (ii) Secobarbital;
- (iii) Pentobarbital;

or any salt of any of these drugs and approved by the Food and Drug Administration for marketing only as a suppository;

(3) Any substance which contains any quantity of a derivative of barbituric acid, or any salt of a derivative of barbituric acid;

- (4) Chlorhexadol;
 - (5) Glutethimide;
 - (6) Lysergic acid;
 - (7) Lysergic acid amide;
 - (8) Methyprylon;
 - (9) Sulfondiethylmethane;
 - (10) Sulfonethylmethane;
 - (11) Sulfonmethane.
- (d) Nalorphine.

(e) Narcotic drugs. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or any salts thereof calculated as the free anhydrous base or alkaloid, in limited quantities as set forth in paragraph (e) of this section:

(1) Not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium;

(2) Not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(3) Not more than 300 milligrams of dihydrocodeine per 100 milliliters or not more than 15 milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium;

(4) Not more than 300 milligrams of dihydrocodeine per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(5) Not more than 1.8 grams of dihydrocodeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(6) Not more than 300 milligrams of ethylmorphine per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(7) Not more than 500 milligrams of opium per 100 milliliters or per 100 grams, or not more than 25 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(8) Not more than 50 milligrams of morphine per 100 milliliters or per 100 grams with one or more active, nonnarcotic ingredients in recognized therapeutic amounts. [1986 c 124 § 5; 1980 c 138 § 3; 1971 ex.s. c 308 § 69.50.208.]

State board of pharmacy may change schedules of controlled substances: RCW 69.50.201.

69.50.209 Schedule IV tests. The state board of pharmacy shall place a substance in Schedule IV if it finds that:

(1) the substance has a low potential for abuse relative to substances in Schedule III;

(2) the substance has currently accepted medical use in treatment in the United States; and

(3) abuse of the substance may lead to limited physical dependence or psychological dependence relative to the substances in Schedule III. [1971 ex.s. c 308 § 69.50.209.]

69.50.210 Schedule IV. (a) The drugs and other substances listed in this section, by whatever official name, common or usual name, chemical name, or brand name designated, are included in Schedule IV.

(b) Narcotic drugs. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing any of the following narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below:

(1) Not more than 1 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit.

(2) Dextropropoxyphene (alpha-(+)-e-dimethylamino-1,2-diphenyl-3-methyl-2 propionoxybutane).

(c) Depressants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (1) Alprazolam;
- (2) Barbitol;
- (3) Chloral betaine;
- (4) Chloral hydrate;
- (5) Chlordiazepoxide;
- (6) Clonazepam;
- (7) Clorazepate;
- (8) Diazepam;
- (9) Ethchlorvynol;
- (10) Ethinamate;
- (11) Flurazepam;
- (12) Halazepam;
- (13) Lorazepam;
- (14) Mebutamate;
- (15) Meprobamate;

- (16) Methohexital;
- (17) Methylphenobarbital (mephobarbital);
- (18) Oxazepam;
- (19) Paraldehyde;
- (20) Petrichloral;
- (21) Phenobarbital;
- (22) Prazepam;
- (23) Temazepam;
- (24) Triazolam.

(d) Fenfluramine. Any material, compound, mixture, or preparation which contains any quantity of the following substances, including its salts, isomers (whether optical, position, or geometric), and salts of such isomers, whenever the existence of such salts, isomers, and salts of isomers is possible.

- (1) Fenfluramine.

(e) Stimulants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers (whether optical, position, or geometric), and salts of such isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (1) Diethylpropion;
- (2) Mazindol;
- (3) Pemoline (including organometallic complexes and chelates thereof);
- (4) Phentermine;
- (5) Pipradrol;
- (6) SPA ((-)-1-dimethylamino-1, 2-dephenylethane.

(f) Other substances. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances, including its salts:

- (1) Pentazocine. [1986 c 124 § 6; 1981 c 147 § 2; 1980 c 138 § 4; 1971 ex.s. c 308 § 69.50.210.]

State board of pharmacy may change schedules of controlled substances: RCW 69.50.201.

69.50.211 Schedule V tests. The state board of pharmacy shall place a substance in Schedule V if it finds that:

- (1) the substance has low potential for abuse relative to the controlled substances listed in Schedule IV;
- (2) the substance has currently accepted medical use in treatment in the United States; and
- (3) the substance has limited physical dependence or psychological dependence liability relative to the controlled substances listed in Schedule IV. [1971 ex.s. c 308 § 69.50.211.]

69.50.212 Schedule V. (a) The drugs and other substances listed in this section, by whatever official name, common or usual name, chemical name, or brand name designated, are included in Schedule V.

(b) Narcotic drugs containing nonnarcotic active medicinal ingredients. Any compound, mixture, or preparation containing any of the following narcotic drugs, or

their salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth in this section, which shall include one or more nonnarcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation, valuable medicinal qualities other than those possessed by the narcotic drug alone:

(1) Not more than 200 milligrams of codeine per 100 milliliters or per 100 grams;

(2) Not more than 100 milligrams of dihydrocodeine per 100 milliliters or per 100 grams;

(3) Not more than 100 milligrams of ethylmorphine per 100 milliliters or per 100 grams;

(4) Not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit;

(5) Not more than 100 milligrams of opium per 100 milliliters or per 100 grams;

(6) Not more than 0.5 milligrams of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit;

(c) Buprenorphine. [1986 c 124 § 7; 1980 c 138 § 5; 1971 ex.s. c 308 § 69.50.212.]

State board of pharmacy may change schedules of controlled substances: RCW 69.50.201.

69.50.213 Republishing of schedules. The state board of pharmacy shall at least semiannually for two years from May 21, 1971 and thereafter annually consider the revision of the schedules published pursuant to chapter 34.05 RCW. [1971 ex.s. c 308 § 69.50.213.]

ARTICLE III REGULATION OF MANUFACTURE, DISTRIBUTION, AND DISPENSING OF CONTROLLED SUBSTANCES

69.50.301 Rules. The state board of pharmacy may promulgate rules and the secretary may set fees of not less than ten dollars or more than fifty dollars relating to the registration and control of the manufacture, distribution, and dispensing of controlled substances within this state. [1989 1st ex.s. c 9 § 431; 1971 ex.s. c 308 § 69.50.301.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

69.50.302 Registration requirements. (a) Every person who manufactures, distributes, or dispenses any controlled substance within this state or who proposes to engage in the manufacture, distribution, or dispensing of any controlled substance within this state, must obtain annually a registration issued by the department in accordance with the board's rules.

(b) Persons registered by the department under this chapter to manufacture, distribute, dispense, or conduct research with controlled substances may possess, manufacture, distribute, dispense, or conduct research with those substances to the extent authorized by their registration and in conformity with the other provisions of this Article.

(c) The following persons need not register and may lawfully possess controlled substances under this chapter:

(1) an agent or employee of any registered manufacturer, distributor, or dispenser of any controlled substance if he is acting in the usual course of his business or employment. This exemption shall not include any agent or employee distributing sample controlled substances to practitioners without an order;

(2) a common or contract carrier or warehouseman, or an employee thereof, whose possession of any controlled substance is in the usual course of business or employment;

(3) an ultimate user or a person in possession of any controlled substance pursuant to a lawful order of a practitioner or in lawful possession of a Schedule V substance.

(d) The board may waive by rule the requirement for registration of certain manufacturers, distributors, or dispensers if it finds it consistent with the public health and safety. Personal practitioners licensed or registered in the state of Washington under the respective professional licensing acts shall not be required to be registered under this chapter unless the specific exemption is denied pursuant to RCW 69.50.305 for violation of any provisions of this chapter.

(e) A separate registration is required at each principal place of business or professional practice where the applicant manufactures, distributes, or dispenses controlled substances.

(f) The department may inspect the establishment of a registrant or applicant for registration in accordance with the board's rule. [1989 1st ex.s. c 9 § 432; 1971 ex.s. c 308 § 69.50.302.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

69.50.303 Registration. (a) The department shall register an applicant to manufacture or distribute controlled substances included in RCW 69.50.204, 69.50.206, 69.50.208, 69.50.210, and 69.50.212 unless the board determines that the issuance of that registration would be inconsistent with the public interest. In determining the public interest, the board shall consider the following factors:

(1) maintenance of effective controls against diversion of controlled substances into other than legitimate medical, scientific, or industrial channels;

(2) compliance with applicable state and local law;

(3) any convictions of the applicant under any federal and state laws relating to any controlled substance;

(4) past experience in the manufacture or distribution of controlled substances, and the existence in the applicant's establishment of effective controls against diversion;

(5) furnishing by the applicant of false or fraudulent material in any application filed under this chapter;

(6) suspension or revocation of the applicant's federal registration to manufacture, distribute, or dispense controlled substances as authorized by federal law; and

(7) any other factors relevant to and consistent with the public health and safety.

(b) Registration under subsection (a) does not entitle a registrant to manufacture and distribute controlled substances in Schedule I or II other than those specified in the registration.

(c) Practitioners must be registered, or exempted under RCW 69.50.302(d), to dispense any controlled substances or to conduct research with controlled substances in Schedules II through V if they are authorized to dispense or conduct research under the law of this state. The board need not require separate registration under this Article for practitioners engaging in research with nonnarcotic controlled substances in Schedules II through V where the registrant is already registered under this Article in another capacity. Practitioners registered under federal law to conduct research with Schedule I substances may conduct research with Schedule I substances within this state upon furnishing the board evidence of that federal registration.

(d) Compliance by manufacturers and distributors with the provisions of the federal law respecting registration entitles them to be registered under this chapter upon application and payment of the required fee. [1989 1st ex.s. c 9 § 433; 1971 ex.s. c 308 § 69.50.303.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

69.50.304 Revocation and suspension of registration.

(a) A registration, or exemption from registration, under RCW 69.50.303 to manufacture, distribute, or dispense a controlled substance may be suspended or revoked by the state board of pharmacy upon a finding that the registrant:

(1) has furnished false or fraudulent material information in any application filed under this chapter;

(2) has been found guilty of a felony under any state or federal law relating to any controlled substance;

(3) has had his federal registration suspended or revoked to manufacture, distribute, or dispense controlled substances; or

(4) has violated any state or federal rule or regulation regarding controlled substances.

(b) The board may limit revocation or suspension of a registration to the particular controlled substance or schedule of controlled substances, with respect to which grounds for revocation or suspension exist.

(c) If the board suspends or revokes a registration, all controlled substances owned or possessed by the registrant at the time of suspension or the effective date of the revocation order may be placed under seal. No disposition may be made of substances under seal until the time for taking an appeal has elapsed or until all appeals have been concluded unless a court, upon application therefor, orders the sale of perishable substances and the deposit of the proceeds of the sale with the court. Upon a revocation order becoming final, all controlled substances may be forfeited to the state.

(d) The department shall promptly notify the drug enforcement administration of all orders suspending or revoking registration and all forfeitures of controlled

substances. [1989 1st ex.s. c 9 § 434; 1986 c 124 § 8; 1971 ex.s. c 308 § 69.50.304.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

69.50.305 Procedure for denial, suspension, or revocation of registration. (a) Any registration, or exemption from registration, issued pursuant to the provisions of this chapter shall not be denied, suspended, or revoked unless the board denies, suspends, or revokes such registration, or exemption from registration, by proceedings consistent with the administrative procedure act, chapter 34.05 RCW.

(b) The board may suspend any registration simultaneously with the institution of proceedings under RCW 69.50.304, or where renewal of registration is refused, if it finds that there is an imminent danger to the public health or safety which warrants this action. The suspension shall continue in effect until the conclusion of the proceedings, including judicial review thereof, unless sooner withdrawn by the board or dissolved by a court of competent jurisdiction. [1971 ex.s. c 308 § 69.50.305.]

69.50.306 Records of registrants. Persons registered, or exempted from registration under RCW 69.50.302(d), to manufacture, distribute, dispense, or administer controlled substances under this chapter shall keep records and maintain inventories in conformance with the record-keeping and inventory requirements of federal law and with any additional rules the state board of pharmacy issues. [1971 ex.s. c 308 § 69.50.306.]

69.50.307 Order forms. Controlled substances in Schedule I and II shall be distributed by a registrant or person exempt from registration under RCW 69.50.302(d) to another registrant, or person exempt from registration under RCW 69.50.302(d), only pursuant to an order form. Compliance with the provisions of federal law respecting order forms shall be deemed compliance with this section. [1971 ex.s. c 308 § 69.50.307.]

69.50.308 Prescriptions. (a) Except when dispensed directly by a practitioner authorized to prescribe or administer a controlled substance to an ultimate user, no controlled substance in Schedule II may be dispensed without the written prescription of a practitioner.

(b) In emergency situations, as defined by rule of the state board of pharmacy, Schedule II drugs may be dispensed upon oral prescription of a practitioner, reduced promptly to writing and filed by the pharmacy. Prescriptions shall be retained in conformity with the requirements of RCW 69.50.306. No prescription for a Schedule II substance may be refilled.

(c) Except when dispensed directly by a practitioner authorized to prescribe or administer a controlled substance to an ultimate user, a controlled substance included in Schedule III or IV, which is a prescription drug as determined under RCW 69.04.560, shall not be dispensed without a written or oral prescription of a

practitioner. Any oral prescription must be promptly reduced to writing. The prescription shall not be filled or refilled more than six months after the date thereof or be refilled more than five times, unless renewed by the practitioner.

(d) A valid prescription or lawful order of a practitioner, in order to be effective in legalizing the possession of controlled substances, must be issued in good faith for a legitimate medical purpose by one authorized to prescribe the use of such controlled substance. An order purporting to be a prescription not in the course of professional treatment is not a valid prescription or lawful order of a practitioner within the meaning and intent of this chapter; and the person who knows or should know that he is filling such an order, as well as the person issuing it, can be charged with a violation of this chapter.

(e) A controlled substance included in Schedule V shall not be distributed or dispensed other than for a medical purpose. [1971 ex.s. c 308 § 69.50.308.]

69.50.309 Containers. A person to whom or for whose use any controlled substance has been prescribed, sold, or dispensed by a practitioner, and the owner of any animal for which such controlled substance has been prescribed, sold, or dispensed may lawfully possess it only in the container in which it was delivered to him by the person selling or dispensing the same. [1971 ex.s. c 308 § 69.50.309.]

69.50.310 Sodium pentobarbital—Registration of humane societies and animal control agencies for use in animal control. On and after September 21, 1977, a humane society and animal control agency may apply to the department for registration pursuant to the applicable provisions of this chapter for the sole purpose of being authorized to purchase, possess, and administer sodium pentobarbital to euthanize injured, sick, homeless, or unwanted domestic pets and animals. Any agency so registered shall not permit a person to administer sodium pentobarbital unless such person has demonstrated adequate knowledge of the potential hazards and proper techniques to be used in administering this drug.

The department may issue a limited registration to carry out the provisions of this section. The board shall promulgate such rules as it deems necessary to insure strict compliance with the provisions of this section. The board may suspend or revoke registration upon determination that the person administering sodium pentobarbital has not demonstrated adequate knowledge as herein provided. This authority is granted in addition to any other power to suspend or revoke registration as provided by law. [1989 1st ex.s. c 9 § 435; 1977 ex.s. c 197 § 1.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

69.50.311 Triplicate prescription form program—Compliance by health care practitioners. Any licensed health care practitioner with prescription or dispensing

authority shall, as a condition of licensure and as directed by the practitioner's disciplinary board, consent to the requirement, if imposed, of complying with a triPLICATE prescription form program as may be established by rule by the department of health. [1989 1st ex.s. c 9 § 436; 1984 c 153 § 20.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

ARTICLE IV OFFENSES AND PENALTIES

69.50.401 Prohibited acts: A—Penalties. (a) Except as authorized by this chapter, it is unlawful for any person to manufacture, deliver, or possess with intent to manufacture or deliver, a controlled substance.

(1) Any person who violates this subsection with respect to:

(i) a controlled substance classified in Schedule I or II which is a narcotic drug, is guilty of a crime and upon conviction may be imprisoned for not more than ten years, or (A) fined not more than twenty-five thousand dollars if the crime involved less than two kilograms of the drug, or both such imprisonment and fine; or (B) if the crime involved two or more kilograms of the drug, then fined not more than one hundred thousand dollars for the first two kilograms and not more than fifty dollars for each gram in excess of two kilograms, or both such imprisonment and fine;

(ii) any other controlled substance classified in Schedule I, II, or III, is guilty of a crime and upon conviction may be imprisoned for not more than five years, fined not more than ten thousand dollars, or both;

(iii) a substance classified in Schedule IV, is guilty of a crime and upon conviction may be imprisoned for not more than five years, fined not more than ten thousand dollars, or both;

(iv) a substance classified in Schedule V, is guilty of a crime and upon conviction may be imprisoned for not more than five years, fined not more than ten thousand dollars, or both.

(b) Except as authorized by this chapter, it is unlawful for any person to create, deliver, or possess a counterfeit substance.

(1) Any person who violates this subsection with respect to:

(i) a counterfeit substance classified in Schedule I or II which is a narcotic drug, is guilty of a crime and upon conviction may be imprisoned for not more than ten years, fined not more than twenty-five thousand dollars, or both;

(ii) any other counterfeit substance classified in Schedule I, II, or III, is guilty of a crime and upon conviction may be imprisoned for not more than five years, fined not more than ten thousand dollars, or both;

(iii) a counterfeit substance classified in Schedule IV, is guilty of a crime and upon conviction may be imprisoned for not more than five years, fined not more than ten thousand dollars, or both;

(iv) a counterfeit substance classified in Schedule V, is guilty of a crime and upon conviction may be imprisoned for not more than five years, fined not more than ten thousand dollars, or both.

(c) It is unlawful, except as authorized in this chapter and chapter 69.41 RCW, for any person to offer, arrange, or negotiate for the sale, gift, delivery, dispensing, distribution, or administration of a controlled substance to any person and then sell, give, deliver, dispense, distribute, or administer to that person any other liquid, substance, or material in lieu of such controlled substance. Any person who violates this subsection is guilty of a crime and upon conviction may be imprisoned for not more than five years, fined not more than ten thousand dollars, or both.

(d) It is unlawful for any person to possess a controlled substance unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of his professional practice, or except as otherwise authorized by this chapter. Any person who violates this subsection is guilty of a crime, and upon conviction may be imprisoned for not more than five years, fined not more than ten thousand dollars, or both, except as provided for in subsection (e) of this section.

(e) Except as provided for in subsection (a)(1)(ii) of this section any person found guilty of possession of forty grams or less of marihuana shall be guilty of a misdemeanor.

(f) It is unlawful to compensate, threaten, solicit, or in any other manner involve a person under the age of eighteen years in a transaction unlawfully to manufacture, sell, or deliver a controlled substance. A violation of this subsection shall be punished as a class C felony punishable in accordance with RCW 9A.20.021.

This section shall not apply to offenses defined and punishable under the provisions of RCW 69.50.410. [1989 c 271 § 104; 1987 c 458 § 4; 1979 c 67 § 1; 1973 2nd ex.s. c 2 § 1; 1971 ex.s. c 308 § 69.50.401.]

Application—1989 c 271 §§ 101 through 111: See note following RCW 9.94A.310.

Severability—1989 c 271: See note following RCW 9.94A.310.

Severability—1987 c 458: See note following RCW 48.21.160.

69.50.402 Prohibited acts: B—Penalties. (a) It is unlawful for any person:

(1) who is subject to Article III to distribute or dispense a controlled substance in violation of RCW 69.50.308;

(2) who is a registrant, to manufacture a controlled substance not authorized by his registration, or to distribute or dispense a controlled substance not authorized by his registration to another registrant or other authorized person;

(3) who is a practitioner, to prescribe, order, dispense, administer, supply, or give to any person:

(i) any amphetamine, including its salts, optical isomers, and salts of optical isomers classified as a schedule II controlled substance by the board of pharmacy pursuant to chapter 34.05 RCW; or

(ii) any nonnarcotic stimulant classified as a schedule II controlled substance and designated as a nonnarcotic stimulant by the board of pharmacy pursuant to chapter 34.05 RCW;

except for the treatment of narcolepsy or for the treatment of hyperkinesia, or for the treatment of drug-induced brain dysfunction, or for the treatment of epilepsy, or for the differential diagnostic psychiatric evaluation of depression, or for the treatment of depression shown to be refractory to other therapeutic modalities, or for the clinical investigation of the effects of such drugs or compounds, in which case an investigative protocol therefor shall have been submitted to and reviewed and approved by the state board of pharmacy before the investigation has been begun: *Provided*, That the board of pharmacy, in consultation with the medical disciplinary board and the osteopathic disciplinary board, may establish by rule, pursuant to chapter 34.05 RCW, disease states or conditions in addition to those listed in this subsection for the treatment of which Schedule II nonnarcotic stimulants may be prescribed, ordered, dispensed, administered, supplied, or given to patients by practitioners: *And provided, further*, That investigations by the board of pharmacy of abuse of prescriptive authority by physicians, licensed pursuant to chapter 18.71 RCW, pursuant to subsection (a)(3) of this section shall be done in consultation with the medical disciplinary board;

(4) to refuse or fail to make, keep or furnish any record, notification, order form, statement, invoice or information required under this chapter;

(5) to refuse an entry into any premises for any inspection authorized by this chapter; or

(6) knowingly to keep or maintain any store, shop, warehouse, dwelling, building, vehicle, boat, aircraft, or other structure or place, which is resorted to by persons using controlled substances in violation of this chapter for the purpose of using these substances, or which is used for keeping or selling them in violation of this chapter.

(b) Any person who violates this section is guilty of a crime and upon conviction may be imprisoned for not more than two years, fined not more than two thousand dollars, or both. [1980 c 138 § 6; 1979 ex.s. c 119 § 1; 1971 ex.s. c 308 § 69.50.402.]

69.50.403 Prohibited acts: C—Penalties. (a) It is unlawful for any person knowingly or intentionally:

(1) To distribute as a registrant a controlled substance classified in Schedules I or II, except pursuant to an order form as required by RCW 69.50.307;

(2) To use in the course of the manufacture or distribution of a controlled substance a registration number which is fictitious, revoked, suspended, or issued to another person;

(3) To obtain or attempt to obtain a controlled substance, or procure or attempt to procure the administration of a controlled substance, (i) by fraud, deceit, misrepresentation, or subterfuge; or (ii) by forgery or alteration of a prescription or any written order; or (iii)

by the concealment of material fact; or (iv) by the use of a false name or the giving of a false address.

(4) To falsely assume the title of, or represent himself to be, a manufacturer, wholesaler, pharmacist, physician, dentist, veterinarian, or other authorized person for the purpose of obtaining a controlled substance.

(5) To make or utter any false or forged prescription or false or forged written order.

(6) To affix any false or forged label to a package or receptacle containing controlled substances.

(7) To furnish false or fraudulent material information in, or omit any material information from, any application, report, or other document required to be kept or filed under this chapter, or any record required to be kept by this chapter; or

(8) To make, distribute, or possess any punch, die, plate, stone, or other thing designed to print, imprint, or reproduce the trademark, trade name, or other identifying mark, imprint, or device of another or any likeness of any of the foregoing upon any drug or container or labeling thereof so as to render the drug a counterfeit substance.

(b) Information communicated to a practitioner in an effort unlawfully to procure a controlled substance or unlawfully to procure the administration of such substance, shall not be deemed a privileged communication.

(c) Any person who violates this section is guilty of a crime and upon conviction may be imprisoned for not more than two years, or fined not more than two thousand dollars, or both. [1971 ex.s. c 308 § 69.50.403.]

69.50.404 Penalties under other laws. Any penalty imposed for violation of this chapter is in addition to, and not in lieu of, any civil or administrative penalty or sanction otherwise authorized by law. [1971 ex.s. c 308 § 69.50.404.]

69.50.405 Bar to prosecution. If a violation of this chapter is a violation of a federal law or the law of another state, a conviction or acquittal under federal law or the law of another state for the same act is a bar to prosecution in this state. [1971 ex.s. c 308 § 69.50.405.]

69.50.406 Distribution to persons under age eighteen.

(a) Any person eighteen years of age or over who violates RCW 69.50.401(a) by distributing a controlled substance listed in Schedules I or II which is a narcotic drug to a person under eighteen years of age is punishable by the fine authorized by RCW 69.50.401(a)(1)(i), by a term of imprisonment of up to twice that authorized by RCW 69.50.401(a)(1)(i), or by both.

(b) Any person eighteen years of age or over who violates RCW 69.50.401(a) by distributing any other controlled substance listed in Schedules I, II, III, IV, and V to a person under eighteen years of age who is at least three years his junior is punishable by the fine authorized by RCW 69.50.401(a)(1)(ii), (iii), or (iv), by a term of imprisonment up to twice that authorized by RCW 69.50.401(a)(1)(ii), (iii), or (iv), or both. [1987 c 458 § 5; 1971 ex.s. c 308 § 69.50.406.]

Severability—1987 c 458: See note following RCW 48.21.160.

69.50.407 Conspiracy. Any person who attempts or conspires to commit any offense defined in this chapter is punishable by imprisonment or fine or both which may not exceed the maximum punishment prescribed for the offense, the commission of which was the object of the attempt or conspiracy. [1971 ex.s. c 308 § 69.50.407.]

69.50.408 Second or subsequent offenses. (a) Any person convicted of a second or subsequent offense under this chapter may be imprisoned for a term up to twice the term otherwise authorized, fined an amount up to twice that otherwise authorized, or both.

(b) For purposes of this section, an offense is considered a second or subsequent offense, if, prior to his conviction of the offense, the offender has at any time been convicted under this chapter or under any statute of the United States or of any state relating to narcotic drugs, marihuana, depressant, stimulant, or hallucinogenic drugs.

(c) This section does not apply to offenses under RCW 69.50.401(d). [1989 c 8 § 3; 1971 ex.s. c 308 § 69.50.408.]

69.50.410 Prohibited acts: D—Penalties. (1) Except as authorized by this chapter it shall be unlawful for any person to sell for profit any controlled substance or counterfeit substance classified in Schedule I, RCW 69.50.204, except leaves and flowering tops of marihuana.

For the purposes of this section only, the following words and phrases shall have the following meanings:

(a) "To sell" means the passing of title and possession of a controlled substance from the seller to the buyer for a price whether or not the price is paid immediately or at a future date.

(b) "For profit" means the obtaining of anything of value in exchange for a controlled substance.

(c) "Price" means anything of value.

(2) Any person convicted of a violation of subsection (1) of this section shall receive a sentence of not more than five years in a correctional facility of the department of social and health services for the first offense. Any person convicted on a second or subsequent cause, the sale having transpired after prosecution and conviction on the first cause, of subsection (1) of this section shall receive a mandatory sentence of five years in a correctional facility of the department of social and health services and no judge of any court shall suspend or defer the sentence imposed for the second or subsequent violation of subsection (1) of this section.

(3) Any person convicted of a violation of subsection (1) of this section by selling heroin shall receive a mandatory sentence of two years in a correctional facility of the department of social and health services and no judge of any court shall suspend or defer the sentence imposed for such violation. Any person convicted on a second or subsequent sale of heroin, the sale having transpired after prosecution and conviction on the first cause of the sale of heroin shall receive a mandatory

sentence of ten years in a correctional facility of the department of social and health services and no judge of any court shall suspend or defer the sentence imposed for this second or subsequent violation: *Provided*, That the *board of prison terms and paroles under RCW 9.95.040 shall not reduce the minimum term imposed for a violation under this subsection.

(4) In addition to the sentences provided in subsection (2) of this section, any person convicted of a violation of subsection (1) of this section shall be fined in an amount calculated to at least eliminate any and all proceeds or profits directly or indirectly gained by such person as a result of sales of controlled substances in violation of the laws of this or other states, or the United States, up to the amount of five hundred thousand dollars on each count.

(5) Any person, addicted to the use of controlled substances, who voluntarily applies to the department of social and health services for the purpose of participating in a rehabilitation program approved by the department for addicts of controlled substances shall be immune from prosecution for subsection (1) offenses unless a filing of an information or indictment against such person for a violation of subsection (1) of this section is made prior to his voluntary participation in the program of the department of social and health services. All applications for immunity under this section shall be sent to the department of social and health services in Olympia. It shall be the duty of the department to stamp each application received pursuant to this section with the date and time of receipt.

This section shall not apply to offenses defined and punishable under the provisions of RCW 69.50.401 as now or hereafter amended. [1975-'76 2nd ex.s. c 103 § 1; 1973 2nd ex.s. c 2 § 2.]

***Reviser's note:** The "board of prison terms and paroles" was redesignated the "indefinite sentence review board" by 1986 c 224, effective July 1, 1986.

69.50.412 Prohibited acts: E—Penalties. (1) It is unlawful for any person to use drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance. Any person who violates this subsection is guilty of a misdemeanor.

(2) It is unlawful for any person to deliver, possess with intent to deliver, or manufacture with intent to deliver drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance. Any person who violates this subsection is guilty of a misdemeanor.

(3) Any person eighteen years of age or over who violates subsection (2) of this section by delivering drug paraphernalia to a person under eighteen years of age

who is at least three years his junior is guilty of a gross misdemeanor.

(4) It is unlawful for any person to place in any newspaper, magazine, handbill, or other publication any advertisement, knowing, or under circumstances where one reasonably should know, that the purpose of the advertisement, in whole or in part, is to promote the sale of objects designed or intended for use as drug paraphernalia. Any person who violates this subsection is guilty of a misdemeanor. [1981 c 48 § 2.]

Severability—1981 c 48: See note following RCW 69.50.102.

69.50.413 Health care practitioners—Suspension of license for violation of chapter. The license of any licensed health care practitioner shall be suspended for any violation of this chapter. The suspension shall run concurrently with, and not less than, the term of the sentence for the violation. [1984 c 153 § 21.]

69.50.414 Sale or transfer of controlled substance to minor—Cause of action by parent—Damages. The parent or legal guardian of any minor to whom a controlled substance, as defined in RCW 69.50.101, is sold or transferred, shall have a cause of action against the person who sold or transferred the controlled substance for all damages to the minor or his or her parent or legal guardian caused by such sale or transfer. Damages shall include: (a) Actual damages, including the cost for treatment or rehabilitation of the minor child's drug dependency, (b) forfeiture to the parent or legal guardian of the cash value of any proceeds received from such sale or transfer of a controlled substance, and (c) reasonable attorney fees.

This section shall not apply to a practitioner, as defined in *RCW 69.50.101(t), who sells or transfers a controlled substance to a minor pursuant to a valid prescription or order. [1986 c 124 § 10.]

*Reviser's note: The reference to RCW 69.50.101(t) is erroneous. "Practitioner" is defined in (u) of that section.

69.50.415 Controlled substances homicide—Penalty. (a) A person who unlawfully delivers a controlled substance in violation of RCW 69.50.401(a)(1) (i) or (ii) which controlled substance is subsequently used by the person to whom it was delivered, resulting in the death of the user, is guilty of controlled substances homicide.

(b) Controlled substances homicide is a class B felony punishable according to RCW 9A.20.021. [1987 c 458 § 2.]

Severability—1987 c 458: See note following RCW 48.21.160.

69.50.420 Violations—Juvenile driving privileges. (1) If a juvenile thirteen years of age or older and under the age of twenty-one is found by a court to have committed any offense that is a violation of this chapter, the court shall notify the department of licensing within twenty-four hours after entry of the judgment.

(2) Except as otherwise provided in subsection (3) of this section, upon petition of a juvenile whose privilege to drive has been revoked pursuant to RCW 46.20.265,

the court may at any time the court deems appropriate notify the department of licensing to reinstate the juvenile's privilege to drive.

(3) If the conviction is for the juvenile's first violation of this chapter or chapter 66.44, 69.41, or 69.52 RCW, the juvenile may not petition the court for reinstatement of the juvenile's privilege to drive revoked pursuant to RCW 46.20.265 until the later of ninety days after the date the juvenile turns sixteen or ninety days after the judgment was entered. If the conviction was for the juvenile's second or subsequent violation of this chapter or chapter 66.44, 69.41, or 69.52 RCW, the juvenile may not petition the court for reinstatement of the juvenile's privilege to drive revoked pursuant to RCW 46.20.265 until the later of the date the juvenile turns seventeen or one year after the date judgment was entered. [1989 c 271 § 120; 1988 c 148 § 5.]

Severability—1989 c 271: See note following RCW 9.94A.310.

Legislative finding—Severability—1988 c 148: See notes following RCW 13.40.265.

69.50.425 Misdemeanor violations—Minimum imprisonment. A person who is convicted of a misdemeanor violation of any provision of this chapter shall be punished by imprisonment for not less than twenty-four consecutive hours, and by a fine of not less than two hundred fifty dollars. On a second or subsequent conviction, the fine shall not be less than five hundred dollars. These fines shall be in addition to any other fine or penalty imposed. Unless the court finds that the imposition of the minimum imprisonment will pose a substantial risk to the defendant's physical or mental well-being or that local jail facilities are in an overcrowded condition, the minimum term of imprisonment shall not be suspended or deferred. If the court finds such risk or overcrowding exists, it shall sentence the defendant to a minimum of forty hours of community service. If a minimum term of imprisonment is suspended or deferred, the court shall state in writing the reason for granting the suspension or deferral and the facts upon which the suspension or deferral is based. Unless the court finds the person to be indigent, the minimum fine shall not be suspended or deferred. [1989 c 271 § 105.]

Application—1989 c 271 §§ 101 through 111: See note following RCW 9.94A.310.

Severability—1989 c 271: See note following RCW 9.94A.310.

69.50.430 Additional fine for certain felony violations. (1) Every person convicted of a felony violation of RCW 69.50.401, 69.50.402, 69.50.403, 69.50.406, 69.50.407, 69.50.410, or 69.50.415 shall be fined one thousand dollars in addition to any other fine or penalty imposed. Unless the court finds the person to be indigent, this additional fine shall not be suspended or deferred by the court.

(2) On a second or subsequent conviction for violation of any of the laws listed in subsection (1) of this section, the person shall be fined two thousand dollars in addition to any other fine or penalty imposed. Unless the court finds the person to be indigent, this additional fine

shall not be suspended or deferred by the court. [1989 c 271 § 106.]

Application—1989 c 271 §§ 101 through 111: See note following RCW 9.94A.310.

Severability—1989 c 271: See note following RCW 9.94A.310.

69.50.435 Violations committed on school bus or in or near school grounds or school bus route stop—Additional penalty—Defenses—Construction—Definitions. (a) Any person who violates RCW 69.50.401(a) by manufacturing, selling, delivering, or possessing with the intent to manufacture, sell, or deliver a controlled substance listed under that subsection to a person in a school or on a school bus or within one thousand feet of a school bus route stop designated by the school district or within one thousand feet of the perimeter of the school grounds is punishable by a fine of up to twice the fine otherwise authorized by this chapter, but not including twice the fine authorized by RCW 69.50.406, or by imprisonment of up to twice the imprisonment otherwise authorized by this chapter, but not including twice the imprisonment authorized by RCW 69.50.406, or by both such fine and imprisonment.

(b) It is not a defense to a prosecution for a violation of this section that the person was unaware that the prohibited conduct took place while in a school or school bus or within one thousand feet of the school or school bus route stop.

(c) It is not a defense to a prosecution for a violation of this section or any other prosecution under this chapter that persons under the age of eighteen were not present in the school, the school bus, or at the school bus route stop at the time of the offense or that school was not in session.

(d) It is an affirmative defense to a prosecution for a violation of this section that the prohibited conduct took place entirely within a private residence, that no person under eighteen years of age or younger was present in such private residence at any time during the commission of the offense, and that the prohibited conduct did not involve delivering, manufacturing, selling, or possessing with the intent to manufacture, sell, or deliver any controlled substance in RCW 69.50.401(a) for profit. The affirmative defense established in this section shall be proved by the defendant by a preponderance of the evidence. This section shall not be construed to establish an affirmative defense with respect to a prosecution for an offense defined in any other section of this chapter.

(e) In a prosecution under this section, a map produced or reproduced by any municipal, school district, or county engineer for the purpose of depicting the location and boundaries of the area on or within one thousand feet of any property used for a school or school bus route stop, or a true copy of such a map, shall under proper authentication, be admissible and shall constitute prima facie evidence of the location and boundaries of those areas if the governing body of the municipality, school district, or county has adopted a resolution or ordinance approving the map as the official location and record of the location and boundaries of the area on or within one

thousand feet of the school or school bus route stop. Any map approved under this section or a true copy of the map shall be filed with the clerk of the municipality or county, and shall be maintained as an official record of the municipality or county. This section shall not be construed as precluding the prosecution from introducing or relying upon any other evidence or testimony to establish any element of the offense. This section shall not be construed as precluding the use or admissibility of any map or diagram other than the one which has been approved by the governing body of a municipality, school district, or county if the map or diagram is otherwise admissible under court rule.

(f) As used in this section the following terms have the meanings indicated unless the context clearly requires otherwise:

(1) "School" has the meaning under RCW 28A.01.055 or 28A.01.060. The term "school" also includes a private school approved under RCW 28A.02.201;

(2) "School bus" means a school bus as defined by the superintendent of public instruction by rule which is owned and operated by any school district and all school buses which are privately owned and operated under contract or otherwise with any school district in the state for the transportation of students. The term does not include buses operated by common carriers in the urban transportation of students such as transportation of students through a municipal transportation system; and

(3) "School bus route stop" means a school bus stop as designated on maps submitted by school districts to the office of the superintendent of public instruction. [1989 c 271 § 112.]

Severability—1989 c 271: See note following RCW 9.94A.310.

ARTICLE V ENFORCEMENT AND ADMINISTRATIVE PROVISIONS

69.50.500 Powers of enforcement personnel. (a) It is hereby made the duty of the state board of pharmacy, the department, and their officers, agents, inspectors and representatives, and all law enforcement officers within the state, and of all prosecuting attorneys, to enforce all provisions of this chapter, except those specifically delegated, and to cooperate with all agencies charged with the enforcement of the laws of the United States, of this state, and all other states, relating to controlled substances as defined in this chapter.

(b) Employees of the department of health, who are so designated by the board as enforcement officers are declared to be peace officers and shall be vested with police powers to enforce the drug laws of this state, including this chapter. [1989 1st ex.s. c 9 § 437; 1971 ex.s. c 308 § 69.50.500.]

Effective date—**Severability**—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

69.50.501 Administrative inspections. The state board of pharmacy may make administrative inspections

of controlled premises in accordance with the following provisions:

(1) For purposes of this section only, "controlled premises" means:

(a) places where persons registered or exempted from registration requirements under this chapter are required to keep records; and

(b) places including factories, warehouses, establishments, and conveyances in which persons registered or exempted from registration requirements under this chapter are permitted to hold, manufacture, compound, process, sell, deliver, or otherwise dispose of any controlled substance.

(2) When authorized by an administrative inspection warrant issued pursuant to RCW 69.50.502 an officer or employee designated by the board, upon presenting the warrant and appropriate credentials to the owner, operator, or agent in charge, may enter controlled premises for the purpose of conducting an administrative inspection.

(3) When authorized by an administrative inspection warrant, an officer or employee designated by the board may:

(a) inspect and copy records required by this chapter to be kept;

(b) inspect, within reasonable limits and in a reasonable manner, controlled premises and all pertinent equipment, finished and unfinished material, containers and labeling found therein, and, except as provided in subsection (5) of this section, all other things therein, including records, files, papers, processes, controls, and facilities bearing on violation of this chapter; and

(c) inventory any stock of any controlled substance therein and obtain samples thereof;

(4) This section does not prevent the inspection without a warrant of books and records pursuant to an administrative subpoena issued in accordance with chapter 34.05 RCW, nor does it prevent entries and administrative inspections, including seizures of property, without a warrant:

(a) if the owner, operator, or agent in charge of the controlled premises consents;

(b) in situations presenting imminent danger to health or safety;

(c) in situations involving inspection of conveyances if there is reasonable cause to believe that the mobility of the conveyance makes it impracticable to obtain a warrant;

(d) in any other exceptional or emergency circumstance where time or opportunity to apply for a warrant is lacking; or,

(e) in all other situations in which a warrant is not constitutionally required;

(5) An inspection authorized by this section shall not extend to financial data, sales data, other than shipment data, or pricing data unless the owner, operator, or agent in charge of the controlled premises consents in writing. [1971 ex.s. c 308 § 69.50.501.]

69.50.502 Warrants for administrative inspections. Issuance and execution of administrative inspection warrants shall be as follows:

(1) A judge of a superior court, or a judge of a district court within his jurisdiction, and upon proper oath or affirmation showing probable cause, may issue warrants for the purpose of conducting administrative inspections authorized by this chapter or rules hereunder, and seizures of property appropriate to the inspections. For purposes of the issuance of administrative inspection warrants, probable cause exists upon showing a valid public interest in the effective enforcement of this chapter or rules hereunder, sufficient to justify administrative inspection of the area, premises, building or conveyance in the circumstances specified in the application for the warrant;

(2) A warrant shall issue only upon an affidavit of a designated officer or employee having knowledge of the facts alleged, sworn to before the judge and establishing the grounds for issuing the warrant. If the judge is satisfied that grounds for the application exist or that there is probable cause to believe they exist, he shall issue a warrant identifying the area, premises, building, or conveyance to be inspected, the purpose of the inspection, and, if appropriate, the type of property to be inspected, if any. The warrant shall:

(a) state the grounds for its issuance and the name of each person whose affidavit has been taken in support thereof;

(b) be directed to a person authorized by RCW 69.50.500 to execute it;

(c) command the person to whom it is directed to inspect the area, premises, building, or conveyance identified for the purpose specified and, if appropriate, direct the seizure of the property specified;

(d) identify the item or types of property to be seized, if any;

(e) direct that it be served during normal business hours and designate the judge to whom it shall be returned;

(3) A warrant issued pursuant to this section must be executed and returned within ten days of its date unless, upon a showing of a need for additional time, the court orders otherwise. If property is seized pursuant to a warrant, a copy shall be given to the person from whom or from whose premises the property is taken, together with a receipt for the property taken. The return of the warrant shall be made promptly, accompanied by a written inventory of any property taken. The inventory shall be made in the presence of the person executing the warrant and of the person from whose possession or premises the property was taken, if present, or in the presence of at least one credible person other than the person executing the warrant. A copy of the inventory shall be delivered to the person from whom or from whose premises the property was taken and to the applicant for the warrant;

(4) The judge who has issued a warrant shall attach thereto a copy of the return and all papers returnable in connection therewith and file them with the clerk of the

court in which the inspection was made. [1971 ex.s. c 308 § 69.50.502.]

69.50.503 Injunctions. (a) The superior courts of this state have jurisdiction to restrain or enjoin violations of this chapter.

(b) The defendant may demand trial by jury for an alleged violation of an injunction or restraining order under this section. [1971 ex.s. c 308 § 69.50.503.]

69.50.504 Cooperative arrangements. The state board of pharmacy shall cooperate with federal and other state agencies in discharging its responsibilities concerning traffic in controlled substances and in suppressing the abuse of controlled substances. [1971 ex.s. c 308 § 69.50.504.]

69.50.505 Seizure and forfeiture. (a) The following are subject to seizure and forfeiture and no property right exists in them:

(1) All controlled substances which have been manufactured, distributed, dispensed, acquired, or possessed in violation of this chapter or chapter 69.41 or 69.52 RCW;

(2) All raw materials, products, and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, delivering, importing, or exporting any controlled substance in violation of this chapter or chapter 69.41 or 69.52 RCW;

(3) All property which is used, or intended for use, as a container for property described in paragraphs (1) or (2);

(4) All conveyances, including aircraft, vehicles, or vessels, which are used, or intended for use, in any manner to facilitate the sale of property described in paragraphs (1) or (2), except that:

(i) No conveyance used by any person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this section unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of this chapter or chapter 69.41 or 69.52 RCW;

(ii) No conveyance is subject to forfeiture under this section by reason of any act or omission established by the owner thereof to have been committed or omitted without the owner's knowledge or consent;

(iii) A forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party if the secured party neither had knowledge of nor consented to the act or omission; and

(iv) When the owner of a conveyance has been arrested under this chapter or chapter 69.41 or 69.52 RCW the conveyance in which the person is arrested may not be subject to forfeiture unless it is seized or process is issued for its seizure within ten days of the owner's arrest;

(5) All books, records, and research products and materials, including formulas, microfilm, tapes, and data which are used, or intended for use, in violation of this chapter or chapter 69.41 or 69.52 RCW;

(6) All drug paraphernalia;

(7) All moneys, negotiable instruments, securities, or other tangible or intangible property of value furnished or intended to be furnished by any person in exchange for a controlled substance in violation of this chapter or chapter 69.41 or 69.52 RCW, all tangible or intangible personal property, proceeds, or assets acquired in whole or in part with proceeds traceable to an exchange or series of exchanges in violation of this chapter or chapter 69.41 or 69.52 RCW, and all moneys, negotiable instruments, and securities used or intended to be used to facilitate any violation of this chapter or chapter 69.41 or 69.52 RCW: *Provided*, That a forfeiture of money, negotiable instruments, securities, or other tangible or intangible property encumbered by a bona fide security interest is subject to the interest of the secured party if, at the time the security interest was created, the secured party neither had knowledge of nor consented to the act or omission: *Provided further*, That no personal property may be forfeited under this paragraph, to the extent of the interest of an owner, by reason of any act or omission which that owner establishes was committed or omitted without the owner's knowledge or consent; and

(8) All real property, including any right, title, and interest in the whole of any lot or tract of land, and any appurtenances or improvements which are being used with the knowledge of the owner for the manufacturing, compounding, processing, delivery, importing, or exporting of any controlled substance, or which have been acquired in whole or in part with proceeds traceable to an exchange or series of exchanges in violation of this chapter or chapter 69.41 or 69.52 RCW, if such activity is not less than a class C felony and a substantial nexus exists between the commercial production or sale of the controlled substance and the real property: *Provided*, That:

(i) No property may be forfeited pursuant to this subsection, to the extent of the interest of an owner, by reason of any act or omission committed or omitted without the owner's knowledge or consent;

(ii) The bona fide gift of a controlled substance, legend drug, or imitation controlled substance shall not result in the forfeiture of real property;

(iii) The possession of marijuana shall not result in the forfeiture of real property unless the marijuana is possessed for commercial purposes, the amount possessed is five or more plants or one pound or more of marijuana, and a substantial nexus exists between the possession of marijuana and the real property. In such a case, the intent of the offender shall be determined by the preponderance of the evidence, including the offender's prior criminal history, the amount of marijuana possessed by the offender, the sophistication of the activity or equipment used by the offender, and other evidence which demonstrates the offender's intent to engage in commercial activity;

(iv) The unlawful sale of marijuana or a legend drug shall not result in the forfeiture of real property unless the sale was forty grams or more in the case of marijuana or one hundred dollars or more in the case of a legend drug, and a substantial nexus exists between the unlawful sale and the real property; and

(v) A forfeiture of real property encumbered by a bona fide security interest is subject to the interest of the secured party if the secured party, at the time the security interest was created, neither had knowledge of nor consented to the act or omission.

(b) Real or personal property subject to forfeiture under this chapter may be seized by any board inspector or law enforcement officer of this state upon process issued by any superior court having jurisdiction over the property. Seizure of real property shall include the filing of a lis pendens by the seizing agency. Real property seized under this section shall not be transferred or otherwise conveyed until ninety days after seizure or until a judgment of forfeiture is entered, whichever is later: *Provided*, That real property seized under this section may be transferred or conveyed to any person or entity who acquires title by foreclosure or deed in lieu of foreclosure of a security interest. Seizure of personal property without process may be made if:

(1) The seizure is incident to an arrest or a search under a search warrant or an inspection under an administrative inspection warrant;

(2) The property subject to seizure has been the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceeding based upon this chapter;

(3) A board inspector or law enforcement officer has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or

(4) The board inspector or law enforcement officer has probable cause to believe that the property was used or is intended to be used in violation of this chapter.

(c) In the event of seizure pursuant to subsection (b), proceedings for forfeiture shall be deemed commenced by the seizure. The law enforcement agency under whose authority the seizure was made shall cause notice to be served within fifteen days following the seizure on the owner of the property seized and the person in charge thereof and any person having any known right or interest therein, including any community property interest, of the seizure and intended forfeiture of the seized property. Service of notice of seizure of real property shall be made according to the rules of civil procedure. However, the state may not obtain a default judgment with respect to real property against a party who is served by substituted service absent an affidavit stating that a good faith effort has been made to ascertain if the defaulted party is incarcerated within the state, and that there is no present basis to believe that the party is incarcerated within the state. The notice of seizure in other cases may be served by any method authorized by law or court rule including but not limited to service by certified mail with return receipt requested. Service by mail shall be deemed complete upon mailing within the fifteen day period following the seizure.

(d) If no person notifies the seizing law enforcement agency in writing of the person's claim of ownership or right to possession of items specified in subsection (a)(4), (a)(7), or (a)(8) of this section within forty-five days of the seizure in the case of personal property and ninety days in the case of real property, the item seized

shall be deemed forfeited. The community property interest in real property of a person whose spouse committed a violation giving rise to seizure of the real property may not be forfeited if the person did not participate in the violation.

(e) If any person notifies the seizing law enforcement agency in writing of the person's claim of ownership or right to possession of items specified in subsection (a)(2), (a)(3), (a)(4), (a)(5), (a)(6), (a)(7), or (a)(8) of this section within forty-five days of the seizure in the case of personal property and ninety days in the case of real property, the person or persons shall be afforded a reasonable opportunity to be heard as to the claim or right. The hearing shall be before the chief law enforcement officer of the seizing agency or the chief law enforcement officer's designee, except where the seizing agency is a state agency as defined in RCW 34.12.020(4), the hearing shall be before the chief law enforcement officer of the seizing agency or an administrative law judge appointed under chapter 34.12 RCW, except that any person asserting a claim or right may remove the matter to a court of competent jurisdiction if the aggregate value of the article or articles involved is more than five hundred dollars. The court to which the matter is to be removed shall be the district court when such aggregate value is ten thousand dollars or less of personal property. A hearing before the seizing agency and any appeal therefrom shall be under Title 34 RCW. In a court hearing between two or more claimants to the article or articles involved, the prevailing party shall be entitled to a judgment for costs and reasonable attorney's fees. In cases involving personal property, the burden of producing evidence shall be upon the person claiming to be the lawful owner or the person claiming to have the lawful right to possession of the property. In cases involving real property, the burden of producing evidence shall be upon the law enforcement agency. The burden of proof that the seized real property is subject to forfeiture shall be upon the law enforcement agency. The seizing law enforcement agency shall promptly return the article or articles to the claimant upon a determination by the administrative law judge or court that the claimant is the present lawful owner or is lawfully entitled to possession thereof of items specified in subsection (a)(2), (a)(3), (a)(4), (a)(5), (a)(6), (a)(7), or (a)(8) of this section.

(f) When property is forfeited under this chapter the board or seizing law enforcement agency may:

(1) Retain it for official use or upon application by any law enforcement agency of this state release such property to such agency for the exclusive use of enforcing the provisions of this chapter;

(2) (i) Sell that which is not required to be destroyed by law and which is not harmful to the public. The proceeds and all moneys forfeited under this title shall be used for payment of all proper expenses of the investigation leading to the seizure, including any money delivered to the subject of the investigation by the law enforcement agency, and of the proceedings for forfeiture and sale, including expenses of seizure, maintenance of custody, advertising, actual costs of the prosecuting or

city attorney, and court costs. Money remaining after the payment of all expenses shall be distributed as follows:

(A) Twenty-five percent of the money derived from the forfeiture of real property and seventy-five percent of the money derived from the forfeiture of personal property shall be deposited in the general fund of the state, county, and/or city of the seizing law enforcement agency and shall be used exclusively for the expansion or improvement of law enforcement services. These services may include the creation of reward funds for the purpose of rewarding informants who supply information leading to the arrest, prosecution and conviction of persons who violate laws relating to controlled substances. Such moneys shall not supplant preexisting funding sources;

(B) Twenty-five percent of money derived from the forfeiture of real property and twenty-five percent of money derived from the forfeiture of personal property shall be remitted to the state treasurer for deposit in the public safety and education account established in RCW 43.08.250;

(C) Until July 1, 1995, fifty percent of money derived from the forfeiture of real property shall be remitted to the state treasurer for deposit in the drug enforcement and education account under RCW 69.50.520, on and after July 1, 1995, the fifty percent of the money shall be remitted in the same manner as the twenty-five percent of the money remitted under (2)(i)(A) of this subsection; and

(D) If an investigation involves a seizure of moneys and proceeds having an aggregate value of less than five thousand dollars, the moneys and proceeds may be deposited in total in the general fund of the governmental unit of the seizing law enforcement agency and shall be appropriated exclusively for the expansion of narcotics enforcement services. Such moneys shall not supplant preexisting funding sources.

(ii) Money deposited according to this section must be deposited within ninety days of the date of final disposition of either the administrative seizure or the judicial seizure;

(3) Request the appropriate sheriff or director of public safety to take custody of the property and remove it for disposition in accordance with law; or

(4) Forward it to the drug enforcement administration for disposition.

(g) Controlled substances listed in Schedule I, II, III, IV, and V that are possessed, transferred, sold, or offered for sale in violation of this chapter are contraband and shall be seized and summarily forfeited to the state. Controlled substances listed in Schedule I, II, III, IV, and V, which are seized or come into the possession of the board, the owners of which are unknown, are contraband and shall be summarily forfeited to the board.

(h) Species of plants from which controlled substances in Schedules I and II may be derived which have been planted or cultivated in violation of this chapter, or of which the owners or cultivators are unknown, or which are wild growths, may be seized and summarily forfeited to the board.

(i) The failure, upon demand by a board inspector or law enforcement officer, of the person in occupancy or in control of land or premises upon which the species of plants are growing or being stored to produce an appropriate registration or proof that he is the holder thereof constitutes authority for the seizure and forfeiture of the plants.

(j) Upon the entry of an order of forfeiture of real property, the court shall forward a copy of the order to the assessor of the county in which the property is located. Orders for the forfeiture of real property shall be entered by the superior court, subject to court rules. Such an order shall be filed by the seizing agency in the county auditor's records in the county in which the real property is located. [1989 c 271 § 212; 1988 c 282 § 2; 1986 c 124 § 9; 1984 c 258 § 333; 1983 c 2 § 15. Prior: 1982 c 189 § 6; 1982 c 171 § 1; prior: 1981 c 67 § 32; 1981 c 48 § 3; 1977 ex.s. c 77 § 1; 1971 ex.s. c 308 § 69.50.505.]

Findings—1989 c 271: "The legislature finds that: Drug offenses and crimes resulting from illegal drug use are destructive to society; the nature of drug trafficking results in many property crimes and crimes of violence; state and local governmental agencies incur immense expenses in the investigation, prosecution, adjudication, incarceration, and treatment of drug-related offenders and the compensation of their victims; drug-related offenses are difficult to eradicate because of the profits derived from the criminal activities, which can be invested in legitimate assets and later used for further criminal activities; and the forfeiture of real assets where a substantial nexus exists between the commercial production or sale of the substances and the real property will provide a significant deterrent to crime by removing the profit incentive of drug trafficking, and will provide a revenue source that will partially defray the large costs incurred by government as a result of these crimes. The legislature recognizes that seizure of real property is a very powerful tool and should not be applied in cases in which a manifest injustice would occur as a result of forfeiture of an innocent spouse's community property interest." [1989 c 271 § 211.]

Severability—1989 c 271: See note following RCW 9.94A.310.

Severability—1988 c 282: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1988 c 282 § 3.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

Intent—1984 c 258: See note following RCW 3.46.120.

Severability—1983 c 2: See note following RCW 18.71.030.

Effective date—1982 c 189: See note following RCW 34.12.020.

Severability—Effective date—1982 c 171: See RCW 69.52.900 and 69.52.901.

Severability—1981 c 48: See note following RCW 69.50.102.

69.50.506 Burden of proof; liabilities. (a) It is not necessary for the state to negate any exemption or exception in this chapter in any complaint, information, indictment or other pleading or in any trial, hearing, or other proceeding under this chapter. The burden of proof of any exemption or exception is upon the person claiming it.

(b) In the absence of proof that a person is the duly authorized holder of an appropriate registration or order form issued under this chapter, he is presumed not to be the holder of the registration or form. The burden of proof is upon him to rebut the presumption.

(c) No liability is imposed by this chapter upon any authorized state, county or municipal officer, engaged in

the lawful performance of his duties. [1971 ex.s. c 308 § 69.50.506.]

69.50.507 Judicial review. All final determinations, findings and conclusions of the state board of pharmacy under this chapter are final and conclusive decisions of the matters involved. Any person aggrieved by the decision may obtain review of the decision in the superior court wherein he resides or in the superior court of Thurston county, such review to be in conformity with the administrative procedure act, chapter 34.05 RCW. [1971 ex.s. c 308 § 69.50.507.]

69.50.508 Education and research. (a) The state board of pharmacy may carry out educational programs designed to prevent and deter misuse and abuse of controlled substances. In connection with these programs it may:

(1) promote better recognition of the problems of misuse and abuse of controlled substances within the regulated industry and among interested groups and organizations;

(2) assist the regulated industry and interested groups and organizations in contributing to the reduction of misuse and abuse of controlled substances;

(3) consult with interested groups and organizations to aid them in solving administrative and organizational problems;

(4) evaluate procedures, projects, techniques, and controls conducted or proposed as part of educational programs on misuse and abuse of controlled substances;

(5) disseminate the results of research on misuse and abuse of controlled substances to promote a better public understanding of what problems exist and what can be done to combat them; and

(6) assist in the education and training of state and local law enforcement officials in their efforts to control misuse and abuse of controlled substances.

(b) The board may encourage research on misuse and abuse of controlled substances. In connection with the research, and in furtherance of the enforcement of this chapter, it may:

(1) establish methods to assess accurately the effects of controlled substances and identify and characterize those with potential for abuse;

(2) make studies and undertake programs of research to:

(i) develop new or improved approaches, techniques, systems, equipment and devices to strengthen the enforcement of this chapter;

(ii) determine patterns of misuse and abuse of controlled substances and the social effects thereof; and,

(iii) improve methods for preventing, predicting, understanding and dealing with the misuse and abuse of controlled substances; and,

(3) enter into contracts with public agencies, institutions of higher education, and private organizations or individuals for the purpose of conducting research, demonstrations, or special projects which bear directly on misuse and abuse of controlled substances.

(c) The board may enter into contracts for educational and research activities without performance bonds.

(d) The board may authorize persons engaged in research on the use and effects of controlled substances to withhold the names and other identifying characteristics of individuals who are the subjects of the research. Persons who obtain this authorization are not compelled in any civil, criminal, administrative, legislative, or other proceeding to identify the individuals who are the subjects of research for which the authorization was obtained.

(e) The board may authorize the possession and distribution of controlled substances by persons engaged in research. Persons who obtain this authorization are exempt from state prosecution for possession and distribution of controlled substances to the extent of the authorization. [1971 ex.s. c 308 § 69.50.508.]

69.50.509 Search and seizure of controlled substances. If, upon the sworn complaint of any person, it shall be made to appear to any judge of the superior court, district court, or municipal court that there is probable cause to believe that any controlled substance is being used, manufactured, sold, bartered, exchanged, administered, dispensed, delivered, distributed, produced, possessed, given away, furnished or otherwise disposed of or kept in violation of the provisions of this chapter, such judge shall, with or without the approval of the prosecuting attorney, issue a warrant directed to any law enforcement officer of the state, commanding him or her to search the premises designated and described in such complaint and warrant, and to seize all controlled substances there found, together with the vessels in which they are contained, and all implements, furniture and fixtures used or kept for the illegal manufacture, sale, barter, exchange, administering, dispensing, delivering, distributing, producing, possessing, giving away, furnishing or otherwise disposing of such controlled substances, and to safely keep the same, and to make a return of said warrant within three days, showing all acts and things done thereunder, with a particular statement of all articles seized and the name of the person or persons in whose possession the same were found, if any, and if no person be found in the possession of said articles, the returns shall so state. The provisions of RCW 10.31.030 as now or hereafter amended shall apply to actions taken pursuant to this chapter. [1987 c 202 § 228; 1971 ex.s. c 308 § 69.50.509.]

Intent—1987 c 202: See note following RCW 2.04.190.

69.50.510 Search and seizure at rental premises—Notification of landlord. Whenever a controlled substance which is manufactured, distributed, dispensed, or acquired in violation of this chapter is seized at rental premises, the law enforcement agency shall make a reasonable attempt to discover the identity of the landlord and shall notify the landlord in writing, at the last address listed in the property tax records and at any other address known by the law enforcement agency, of the seizure and the location of the seizure. [1988 c 150 § 9.]

Legislative findings—Severability—1988 c 150: See notes following RCW 59.18.130.

69.50.511 Clean-up of hazardous substances at illegal drug manufacturing facility—Rules. Law enforcement agencies who during the official investigation or enforcement of any illegal drug manufacturing facility come in contact with or are aware of any substances suspected of being hazardous as defined in RCW 70.105D.020(5), shall notify the department of ecology for the purpose of securing a contractor to identify, clean-up, store, and dispose of suspected hazardous substances, except for those random and representative samples obtained for evidentiary purposes. The department of ecology shall make every effort to recover costs from the parties responsible for the suspected hazardous substance. All recoveries shall be deposited in the account or fund from which contractor payments are made.

The department of ecology may adopt rules to carry out its responsibilities under this section. The department of ecology shall consult with law enforcement agencies prior to adopting any rule or policy relating to this section. [1989 c 271 § 228.]

Severability—1989 c 271: See note following RCW 9.94A.310.

69.50.520 Drug enforcement and education account. The drug enforcement and education account is created in the state treasury. All designated receipts from RCW 66.24.210(4), 66.24.290(3), 69.50.505(f)(2)(i)(C), 82.08.150(5), 82.24.020(2), 82.64.020, and section 420, chapter 271, Laws of 1989 shall be deposited into the account. Expenditures from the account may be used only for funding services and programs under *this act. [1989 c 271 § 401.]

***Reviser's note:** For codification of "this act" [1989 c 271], see Codification Tables, Volume 0.

Appropriation—Standards—1989 c 271 § 401: "The sum of one million eight hundred thousand dollars, or as much thereof as may be necessary, is appropriated for the biennium ending June 30, 1991, from the drug enforcement and education account to the office of the administrator for the courts for the treatment alternatives to street crime program. These funds shall be used for providing services in domestic cases under chapter 26.09, 26.10, or 26.50 RCW. These funds shall not be available for expenditure until January 1, 1990. The office of the administrator for the courts shall establish standards for the courts to recover the expenses of the program specified in this section from the participants, based upon the individual participant's ability to pay. All fees collected shall be remitted to the state treasurer for deposit in the drug enforcement and education account under section 401 of this act." [1989 c 271 § 420.]

Captions not law—1989 c 271: "Part, subpart, and section headings and the index as used in this act do not constitute any part of the law." [1989 c 271 § 605.]

Severability—1989 c 271: See note following RCW 9.94A.310.

ARTICLE VI MISCELLANEOUS

69.50.601 Pending proceedings. (a) Prosecution for any violation of law occurring prior to May 21, 1971 is not affected or abated by this chapter. If the offense being prosecuted is similar to one set out in Article IV of

this chapter, then the penalties under Article IV apply if they are less than those under prior law.

(b) Civil seizures or forfeitures and injunctive proceedings commenced prior to May 21, 1971 are not affected by this chapter.

(c) All administrative proceedings pending under prior laws which are superseded by this chapter shall be continued and brought to a final determination in accord with the laws and rules in effect prior to May 21, 1971. Any substance controlled under prior law which is not listed within Schedules I through V, is automatically controlled without further proceedings and shall be listed in the appropriate schedule.

(d) The state board of pharmacy shall initially permit persons to register who own or operate any establishment engaged in the manufacture, distribution, or dispensing of any controlled substance prior to May 21, 1971 and who are registered or licensed by the state.

(e) This chapter applies to violations of law, seizures and forfeiture, injunctive proceedings, administrative proceedings and investigations which occur following May 21, 1971. [1971 ex.s. c 308 § 69.50.601.]

69.50.602 Continuation of rules. Any orders and rules promulgated under any law affected by this chapter and in effect on May 21, 1971 and not in conflict with it continue in effect until modified, superseded or repealed. [1971 ex.s. c 308 § 69.50.602.]

69.50.603 Uniformity of interpretation. This chapter shall be so applied and construed as to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among those states which enact it. [1971 ex.s. c 308 § 69.50.603.]

69.50.604 Short title. This chapter may be cited as the Uniform Controlled Substances Act. [1971 ex.s. c 308 § 69.50.604.]

69.50.605 Severability—1971 ex.s. c 308. If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable. [1971 ex.s. c 308 § 69.50.605.]

69.50.606 Repealers. The laws specified below are repealed except with respect to rights and duties which matured, penalties which were incurred and proceedings which were begun before the effective date of this act:

(1) Section 2072, Code of 1881, section 418, chapter 249, Laws of 1909, section 4, chapter 205, Laws of 1963 and RCW 9.91.030;

(2) Section 69.33.220, chapter 27, Laws of 1959, section 7, chapter 256, Laws of 1969 ex. sess. and RCW 69.33.220;

(3) Sections 69.33.230 through 69.33.280, chapter 27, Laws of 1959 and RCW 69.33.230 through 69.33.280;

(4) Section 69.33.290, chapter 27, Laws of 1959, section 1, chapter 97, Laws of 1959 and RCW 69.33.290;

(5) Section 69.33.300, chapter 27, Laws of 1959, section 8, chapter 256, Laws of 1969 ex. sess. and RCW 69.33.300;

(6) Sections 69.33.310 through 69.33.400, chapter 27, Laws of 1959 and RCW 69.33.310 through 69.33.400;

(7) Section 69.33.410, chapter 27, Laws of 1959, section 20, chapter 38, Laws of 1963 and RCW 69.33.410;

(8) Sections 69.33.420 through 69.33.440, 69.33.900 through 69.33.950, chapter 27, Laws of 1959 and RCW 69.33.420 through 69.33.440, 69.33.900 through 69.33.950;

(9) Section 255, chapter 249, Laws of 1909 and RCW 69.40.040;

(10) Section 1, chapter 6, Laws of 1939, section 1, chapter 29, Laws of 1939, section 1, chapter 57, Laws of 1945, section 1, chapter 24, Laws of 1955, section 1, chapter 49, Laws of 1961, section 1, chapter 71, Laws of 1967, section 9, chapter 256, Laws of 1969 ex. sess. and RCW 69.40.060;

(11) Section 1, chapter 23, Laws of 1955, section 2, chapter 49, Laws of 1961, section 2, chapter 71, Laws of 1967 and RCW 69.40.061;

(12) Section 21, chapter 38, Laws of 1963 and RCW 69.40.063;

(13) Section 2, chapter 6, Laws of 1939, section 23, chapter 38, Laws of 1963, section 10, chapter 256, Laws of 1969 ex. sess. and RCW 69.40.070;

(14) Section 12, chapter 256, Laws of 1969 ex. sess. and RCW 69.40.075;

(15) Section 1, chapter 205, Laws of 1963 and RCW 69.40.080;

(16) Section 2, chapter 205, Laws of 1963 and RCW 69.40.090;

(17) Section 3, chapter 205, Laws of 1963 and RCW 69.40.100;

(18) Section 11, chapter 256, Laws of 1969 ex. sess. and RCW 69.40.110;

(19) Section 1, chapter 33, Laws of 1970 ex. sess. and RCW 69.40.120; and

(20) Section 1, chapter 80, Laws of 1970 ex. sess. [1971 ex.s. c 308 § 69.50.606.]

69.50.607 Effective date—1971 ex.s. c 308. This act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect immediately. [1971 ex.s. c 308 § 69.50.607.]

Reviser's note: The effective date of 1971 ex.s. c 308 was May 21, 1971.

69.50.608 State preemption. The state of Washington fully occupies and preempts the entire field of setting penalties for violations of the controlled substances act. Cities, towns, and counties or other municipalities may enact only those laws and ordinances relating to controlled substances that are consistent with this chapter. Such local ordinances shall have the same penalties as provided for by state law. Local laws and ordinances that are inconsistent with the requirements of state law shall not be enacted and are preempted and repealed, regardless of the nature of the code, charter, or

home rule status of the city, town, county, or municipality. [1989 c 271 § 601.]

Chapter 69.51

CONTROLLED SUBSTANCES THERAPEUTIC RESEARCH ACT

Sections

69.51.010	Short title.
69.51.020	Legislative purpose.
69.51.030	Definitions.
69.51.040	Controlled substances therapeutic research program.
69.51.050	Patient qualification review committee.
69.51.060	Sources and distribution of marijuana.
69.51.070	Report to the governor, legislature.
69.51.080	Cannabis and related products considered Schedule II substances.

69.51.010 Short title. This chapter may be cited as the Controlled Substances Therapeutic Research Act. [1979 c 136 § 1.]

69.51.020 Legislative purpose. The legislature finds that recent research has shown that the use of marijuana may alleviate the nausea and ill effects of cancer chemotherapy and radiology, and, additionally, may alleviate the ill effects of glaucoma. The legislature further finds that there is a need for further research and experimentation regarding the use of marijuana under strictly controlled circumstances. It is for this purpose that the Controlled Substances Therapeutic Research Act is hereby enacted. [1979 c 136 § 2.]

69.51.030 Definitions. As used in this chapter:

- (1) "Board" means the state board of pharmacy;
- (2) "Department" means the department of health.
- (3) "Marijuana" means all parts of the plant of the genus *Cannabis* L., whether growing or not, the seeds thereof, the resin extracted from any part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin; and
- (4) "Practitioner" means a physician licensed pursuant to chapter 18.71 or 18.57 RCW. [1989 1st ex.s. c 9 § 438; 1979 c 136 § 3.]

Effective date—**Severability**—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

69.51.040 Controlled substances therapeutic research program. (1) There is established in the board the controlled substances therapeutic research program. The program shall be administered by the department. The board shall promulgate rules necessary for the proper administration of the Controlled Substances Therapeutic Research Act. In such promulgation, the board shall take into consideration those pertinent rules promulgated by the United States drug enforcement agency, the food and drug administration, and the national institute on drug abuse.

(2) Except as provided in RCW 69.51.050(4), the controlled substances therapeutic research program shall be limited to cancer chemotherapy and radiology patients and glaucoma patients, who are certified to the

patient qualification review committee by a practitioner as being involved in a life-threatening or sense-threatening situation. No patient may be admitted to the controlled substances therapeutic research program without full disclosure by the practitioner of the experimental nature of this program and of the possible risks and side effects of the proposed treatment in accordance with the informed consent provisions of chapter 7.70 RCW.

(3) The board shall provide by rule for a program of registration with the department of bona fide controlled substance therapeutic research projects. [1989 1st ex.s. c 9 § 439; 1979 c 136 § 4.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

69.51.050 Patient qualification review committee. (1) The board shall appoint a patient qualification review committee to serve at its pleasure. The patient qualification review committee shall be comprised of:

(a) A physician licensed to practice medicine in Washington state and specializing in the practice of ophthalmology;

(b) A physician licensed to practice medicine in Washington state and specializing in the subspecialty of medical oncology;

(c) A physician licensed to practice medicine in Washington state and specializing in the practice of psychiatry; and

(d) A physician licensed to practice medicine in Washington state and specializing in the practice of radiology.

Members of the committee shall be compensated at the rate of fifty dollars per day for each day spent in the performance of their official duties, and shall receive reimbursement for their travel expenses as provided in RCW 43.03.050 and 43.03.060.

(2) The patient qualification review committee shall review all applicants for the controlled substance therapeutic research program and their licensed practitioners and certify their participation in the program.

(3) The patient qualification review committee and the board shall insure that the privacy of individuals who participate in the controlled substance therapeutic research program is protected by withholding from all persons not connected with the conduct of the research the names and other identifying characteristics of such individuals. Persons authorized to engage in research under the controlled substance therapeutic research program may not be compelled in any civil, criminal, administrative, legislative, or other proceeding to identify the individuals who are the subjects of research for which the authorization was granted, except to the extent necessary to permit the board to determine whether the research is being conducted in accordance with the authorization.

(4) The patient qualification review committee may include other disease groups for participation in the controlled substances therapeutic research program after pertinent medical data have been presented by a practitioner to both the committee and the board, and after

approval for such participation has been granted pursuant to pertinent rules promulgated by the United States drug enforcement agency, the food and drug administration, and the national institute on drug abuse. [1979 c 136 § 5.]

69.51.060 Sources and distribution of marijuana. (1) The board shall obtain marijuana through whatever means it deems most appropriate and consistent with regulations promulgated by the United States food and drug administration, the drug enforcement agency, and the national institute on drug abuse, and pursuant to the provisions of this chapter.

(2) The board may use marijuana which has been confiscated by local or state law enforcement agencies and has been determined to be free from contamination.

(3) The board shall distribute the analyzed marijuana to approved practitioners and/or institutions in accordance with rules promulgated by the board. [1979 c 136 § 6.]

69.51.070 Report to the governor, legislature. The board, in conjunction with the patient qualification review committee, shall report its findings and recommendations to the governor and the forty-seventh legislature regarding the effectiveness of the controlled substances therapeutic research program. [1979 c 136 § 7.]

69.51.080 Cannabis and related products considered Schedule II substances. (1) The enumeration of tetrahydrocannabinols, or a chemical derivative of tetrahydrocannabinols in RCW 69.50.204 as a Schedule I controlled substance does not apply to the use of cannabis, tetrahydrocannabinols, or a chemical derivative of tetrahydrocannabinols by certified patients pursuant to the provisions of this chapter.

(2) Cannabis, tetrahydrocannabinols, or a chemical derivative of tetrahydrocannabinols shall be considered Schedule II substances as enumerated in RCW 69.50.206 only for the purposes enumerated in this chapter. [1979 c 136 § 8.]

Chapter 69.52

IMITATION CONTROLLED SUBSTANCES

Sections	
69.52.010	Legislative findings.
69.52.020	Definitions.
69.52.030	Violations—Exceptions.
69.52.040	Seizure of contraband.
69.52.045	Seizure at rental premises—Notification of landlord.
69.52.050	Injunctive action by attorney general authorized.
69.52.060	Injunctive or other legal action by manufacturer of controlled substances authorized.
69.52.070	Violations—Juvenile driving privileges.
69.52.900	Severability—1982 c 171.
69.52.901	Effective date—1982 c 171.

Drug nuisances—Injunctions: Chapter 7.43 RCW.

69.52.010 Legislative findings. The legislature finds that imitation controlled substances are being manufactured to imitate the appearance of the dosage units of

controlled substances for sale to school age youths and others to facilitate the fraudulent sale of controlled substances. The legislature further finds that manufacturers are endeavoring to profit from the manufacture of these imitation controlled substances while avoiding liability by accurately labeling the containers or packaging which contain these imitation controlled substances. The close similarity of appearance between dosage units of imitation controlled substances and controlled substances is indicative of a deliberate and wilful attempt to profit by deception without regard to the tragic human consequences. The use of imitation controlled substances is responsible for a growing number of injuries and deaths, and the legislature hereby declares that this chapter is necessary for the protection and preservation of the public health and safety. [1982 c 171 § 2.]

69.52.020 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Controlled substance" means a substance as that term is defined in chapter 69.50 RCW.

(2) "Distribute" means the actual or constructive transfer (or attempted transfer) or delivery or dispensing to another of an imitation controlled substance.

(3) "Imitation controlled substance" means a substance that is not a controlled substance, but which by appearance or representation would lead a reasonable person to believe that the substance is a controlled substance. Appearance includes, but is not limited to, color, shape, size, and markings of the dosage unit. Representation includes, but is not limited to, representations or factors of the following nature:

(a) Statements made by an owner or by anyone else in control of the substance concerning the nature of the substance, or its use or effect;

(b) Statements made to the recipient that the substance may be resold for inordinate profit; or

(c) Whether the substance is packaged in a manner normally used for illicit controlled substances.

(4) "Manufacture" means the production, preparation, compounding, processing, encapsulating, packaging or repackaging, or labeling or relabeling of an imitation controlled substance. [1982 c 171 § 3.]

69.52.030 Violations—Exceptions. (1) It is unlawful for any person to manufacture, distribute, or possess with intent to distribute, an imitation controlled substance. Any person who violates this subsection shall, upon conviction, be guilty of a class C felony.

(2) Any person eighteen years of age or over who violates subsection (1) of this section by distributing an imitation controlled substance to a person under eighteen years of age is guilty of a class B felony.

(3) It is unlawful for any person to cause to be placed in any newspaper, magazine, handbill, or other publication, or to post or distribute in any public place, any advertisement or solicitation offering for sale imitation controlled substances. Any person who violates this subsection is guilty of a class C felony.

(4) No civil or criminal liability shall be imposed by virtue of this chapter on any person registered under the Uniform Controlled Substances Act pursuant to RCW 69.50.301 or 69.50.303 who manufactures, distributes, or possesses an imitation controlled substance for use as a placebo or other use by a registered practitioner, as defined in *RCW 69.50.101(t), in the course of professional practice or research.

(5) No prosecution under this chapter shall be dismissed solely by reason of the fact that the dosage units were contained in a bottle or other container with a label accurately describing the ingredients of the imitation controlled substance dosage units. The good faith of the defendant shall be an issue of fact for the trier of fact. [1983 1st ex.s. c 4 § 5; 1982 c 171 § 4.]

*Reviser's note: The reference to RCW 69.50.101(t) is erroneous. "Practitioner" is defined in (u) of that section.

Severability—1983 1st ex.s. c 4: See note following RCW 9A.48.070.

69.52.040 Seizure of contraband. Imitation controlled substances shall be subject to seizure, forfeiture, and disposition in the same manner as are controlled substances under RCW 69.50.505. [1982 c 171 § 5.]

69.52.045 Seizure at rental premises—Notification of landlord. Whenever an imitation controlled substance which is manufactured, distributed, or possessed in violation of this chapter is seized at rental premises, the law enforcement agency shall make a reasonable attempt to discover the identity of the landlord and shall notify the landlord in writing, at the last address listed in the property tax records and at any other address known to the law enforcement agency, of the seizure and the location of the seizure. [1988 c 150 § 10.]

Legislative findings—Severability—1988 c 150: See notes following RCW 59.18.130.

69.52.050 Injunctive action by attorney general authorized. The attorney general is authorized to apply for injunctive action against a manufacturer or distributor of imitation controlled substances in this state. [1982 c 171 § 6.]

69.52.060 Injunctive or other legal action by manufacturer of controlled substances authorized. Any manufacturer of controlled substances licensed or registered in a state requiring such licensure or registration, may bring injunctive or other action against a manufacturer or distributor of imitation controlled substances in this state. [1982 c 171 § 7.]

69.52.070 Violations—Juvenile driving privileges. (1) If a juvenile thirteen years of age or older and under the age of twenty-one is found by a court to have committed any offense that is a violation of this chapter, the court shall notify the department of licensing within twenty-four hours after entry of the judgment.

(2) Except as otherwise provided in subsection (3) of this section, upon petition of a juvenile whose privilege to drive has been revoked pursuant to RCW 46.20.265,

the court may at any time the court deems appropriate notify the department of licensing to reinstate the juvenile's privilege to drive.

(3) If the conviction is for the juvenile's first violation of this chapter or chapter 66.44, 69.41, or 69.50 RCW, the juvenile may not petition the court for reinstatement of the juvenile's privilege to drive revoked pursuant to RCW 46.20.265 until the later of ninety days after the date the juvenile turns sixteen or ninety days after the judgment was entered. If the conviction was for the juvenile's second or subsequent violation of this chapter or chapter 66.44, 69.41, or 69.50 RCW, the juvenile may not petition the court for reinstatement of the juvenile's privilege to drive revoked pursuant to RCW 46.20.265 until the later of the date the juvenile turns seventeen or one year after the date judgment was entered. [1989 c 271 § 121; 1988 c 148 § 6.]

Severability—1989 c 271: See note following RCW 9.94A.310.

Legislative finding—**Severability**—1988 c 148: See notes following RCW 13.40.265.

69.52.900 Severability—1982 c 171. If any provision of this chapter or its application to any person or circumstance is held invalid, the remainder of the chapter or the application of the provision to other persons or circumstances is not affected. [1982 c 171 § 8.]

69.52.901 Effective date—1982 c 171. This act shall take effect on July 1, 1982. [1982 c 171 § 10.]

Chapter 69.53

USE OF BUILDINGS FOR UNLAWFUL DRUGS

Sections

69.53.010	Unlawful use of building for drug purposes—Liability of owner or manager—Penalty.
69.53.020	Unlawful fortification of building for drug purposes—Penalty.
69.53.030	Unlawful use of fortified building—Penalty.

69.53.010 Unlawful use of building for drug purposes—**Liability of owner or manager**—**Penalty**. (1) It is unlawful for any person who has under his or her management or control any building, room, space, or enclosure, either as an owner, lessee, agent, employee, or mortgagee, to knowingly rent, lease, or make available for use, with or without compensation, the building, room, space, or enclosure for the purpose of unlawfully manufacturing, delivering, selling, storing, or giving away any controlled substance under chapter 69.50 RCW, legend drug under chapter 69.41 RCW, or imitation controlled substance under chapter 69.52 RCW.

(2) It shall be a defense for an owner, manager, or other person in control pursuant to subsection (1) of this section to, in good faith, notify a law enforcement agency of suspected drug activity pursuant to subsection (1) of this section, or to process an unlawful detainer action for drug-related activity against the tenant or occupant.

(1989 Ed.)

(3) A violation of this section is a class C felony punishable under chapter 9A.20 RCW. [1988 c 150 § 13; 1987 c 458 § 7.]

Legislative findings—**Severability**—1988 c 150: See notes following RCW 59.18.130.

Severability—1987 c 458: See note following RCW 48.21.160.

69.53.020 Unlawful fortification of building for drug purposes—**Penalty**. (1) It is unlawful for any person who has under his or her management or control any building, room, space, or enclosure, either as an owner, lessee, agent, employee, or mortgagee, to knowingly allow the building, room, space, or enclosure to be fortified to suppress law enforcement entry in order to further the unlawful manufacture, delivery, sale, storage, or gift of any controlled substance under chapter 69.50 RCW, legend drug under chapter 69.41 RCW, or imitation controlled substance under chapter 69.52 RCW.

(2) It shall be a defense for an owner, manager, or other person in control pursuant to subsection (1) of this section to, in good faith, notify a law enforcement agency of suspected drug activity pursuant to subsection (1) of this section, or to process an unlawful detainer action for drug-related activity against the tenant or occupant.

(3) A violation of this section is a class C felony punishable under chapter 9A.20 RCW. [1988 c 150 § 14; 1987 c 458 § 8.]

Legislative findings—**Severability**—1988 c 150: See notes following RCW 59.18.130.

Severability—1987 c 458: See note following RCW 48.21.160.

69.53.030 Unlawful use of fortified building—**Penalty**. (1) It is unlawful for any person to use a building, room, space, or enclosure specifically designed to suppress law enforcement entry in order to unlawfully manufacture, deliver, sell, store, or give away any controlled substance under chapter 69.50 RCW, legend drug under chapter 69.41 RCW, or imitation controlled substance under chapter 69.52 RCW.

(2) A violation of this section is a class C felony punishable under chapter 9A.20 RCW. [1987 c 458 § 9.]

Severability—1987 c 458: See note following RCW 48.21.160.

Chapter 69.60

OVER-THE-COUNTER MEDICATIONS

Sections

69.60.010	Legislative findings.
69.60.020	Definitions.
69.60.030	Identification required.
69.60.040	Imprint information—Publication—Availability.
69.60.050	Noncompliance—Contraband—Fine.
69.60.060	Rules.
69.60.070	Imprinting requirements—Retailers and wholesalers.
69.60.080	Exemptions—Application by manufacturer.
69.60.090	Implementation of federal system—Termination of state system.

69.60.010 Legislative findings. The legislature of the state of Washington finds that:

[Title 69 RCW—p 77]

(1) Accidental and purposeful ingestions of solid medication forms continue to be the most frequent cause of poisoning in our state;

(2) Modern treatment is dependent upon knowing the ingredients of the ingestant;

(3) The imprinting of identifying characteristics on all tablets, capsules, and caplets of prescription medication forms, both trade name products and generic products, has been extremely beneficial in our state and was accomplished at trivial cost to the manufacturers and consumers;

(4) Although over-the-counter medications usually constitute a lower order of risk to ingestees, treatment after overdose is equally dependent upon knowing the ingredients involved, but there is no coding index uniformly used by this class of medication;

(5) Approximately seventy percent of over-the-counter medications in solid form already have some type of an identifier imprinted on their surfaces;

(6) While particular efforts are being instituted to prevent recurrent tampering with over-the-counter medications, the added benefit of rapid and prompt identification of all possible contaminated products, including over-the-counter medications, would make for a significant improvement in planning for appropriate tracking and monitoring programs;

(7) At the same time, health care professionals serving the elderly find it especially advantageous to be able to identify and confirm the ingredients of their multiple medications, including over-the-counter products, as are often consumed by such patients;

(8) The legislature supports and encourages efforts that are being made to establish a national, legally enforceable system governing the imprinting of solid dosage form over-the-counter medications, which system is consistent with the requirements of this chapter. [1989 c 247 § 1.]

69.60.020 Definitions. The terms defined in this section shall have the meanings indicated when used in this chapter.

(1) "Solid dosage form" means capsules or tablets or similar over-the-counter medication products intended for administration and which could be ingested orally.

(2) "Over-the-counter medication" means a drug that can be obtained without a prescription and is not restricted to use by prescribing practitioners. For purposes of this chapter, over-the-counter medication does not include vitamins.

(3) "Board" means the state board of pharmacy.

(4) "Purveyor" means any corporation, person, or other entity that offers over-the-counter medications for wholesale, retail, or other type of sale. [1989 c 247 § 3.]

69.60.030 Identification required. (1) No over-the-counter medication in solid dosage form may be manufactured or commercially distributed within this state unless it has clearly marked or imprinted on it an individual symbol, number, company name, words, letters, marking, or national drug code number identifying the medication and the manufacturer or distributor of the

medication: *Provided, however,* That an over-the-counter medication which has clearly marked or imprinted on it a distinctive logo, symbol, product name, letters, or other identifying mark, or which by its color, shape, or size together with a distinctive logo, symbol, product name, letters, or other mark is identifiable, shall be deemed in compliance with the provisions of this chapter.

(2) No manufacturer may sell any over-the-counter medication contained within a bottle, vial, carton, or other container, or in any way affixed or appended to or enclosed within a package of any kind designed or intended for delivery in such container or package to an ultimate consumer within this state unless such container or package has clearly and permanently marked or imprinted on it an individual symbol, number, company name, words, letters, marking, or national drug code number identifying the medication and the manufacturer of the medication. [1989 c 247 § 2.]

69.60.040 Imprint information—Publication—Availability. Each manufacturer shall publish and provide to the board printed material which will identify each current imprint used by the manufacturer and the board shall be notified of any change. This information shall be provided by the board to all pharmacies licensed in the state of Washington, poison control centers, and hospital emergency rooms. [1989 c 247 § 4.]

69.60.050 Noncompliance—Contraband—Fine. (1) Any over-the-counter medication prepared or manufactured or offered for sale in violation of this chapter or implementing rules shall be contraband and subject to seizure, in the same manner as contraband legend drugs under RCW 69.41.060.

(2) A purveyor who fails to comply with this chapter after one notice of noncompliance by the board is subject to a one thousand dollar civil fine for each instance of noncompliance. [1989 c 247 § 5.]

69.60.060 Rules. The board shall have authority to promulgate rules for the enforcement and implementation of this chapter. [1989 c 247 § 6.]

69.60.070 Imprinting requirements—Retailers and wholesalers. All over-the-counter medications manufactured in, received by, distributed to, or shipped to any retailer or wholesaler in this state after January 1, 1993, shall meet the requirements of this chapter. No over-the-counter medication may be sold to a consumer in this state after January 1, 1994, unless such over-the-counter medication complies with the imprinting requirements of this chapter. [1989 c 247 § 7.]

69.60.080 Exemptions—Application by manufacturer. The board, upon application of a manufacturer, may exempt an over-the-counter drug from the requirements of chapter 69.60 RCW on the grounds that imprinting is infeasible because of size, texture, or other unique characteristics. [1989 c 247 § 8.]

69.60.090 Implementation of federal system—Termination of state system. Before January 1, 1993, the board of pharmacy will consult with the state toxicologist to determine whether the federal government has established a legally enforceable system that is substantially equivalent to the requirements of this chapter, which governs the imprinting of solid dosage form over-the-counter medication. To be substantially equivalent, the effective dates for implementation of the federal system must be the same or earlier than the dates of implementation set out in the state system. If the board determines that the federal system is substantially equivalent to the state system, this chapter will cease to exist on January 1, 1993. If the board determines that the federal system is substantially equivalent, except that the federal dates for implementation are later than the Washington state dates, this chapter will cease to exist when the federal system is implemented. [1989 c 247 § 9.]

Chapter 69.80

FOOD DONATION AND DISTRIBUTION— LIABILITY

Sections

69.80.010	Purpose.
69.80.020	Definitions.
69.80.030	Donors and distributing organizations—Limitation of civil and criminal liability.
69.80.040	Information and referral service for food donation program.
69.80.050	Inspection of donated food by state and local agencies.
69.80.900	Construction.

69.80.010 Purpose. The purpose of this chapter is to promote the free distribution of food to needy persons, prevent waste of food products, and provide liability protection for persons and organizations donating or distributing such food products. [1983 c 241 § 1.]

69.80.020 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Distributing organization" means a charitable nonprofit organization under section 501(c) of the federal internal revenue code which distributes food free of charge and includes any nonprofit organization that distributes food free of charge to other nonprofit organizations or to the public.

(2) "Donor" means a person, corporation, association, or other organization which donates food to a distributing organization. "Donor" includes, but is not limited to, farmers, processors, distributors, wholesalers, and retailers of food. "Donor" also includes persons who harvest agricultural crops or perishable foods which have been donated by the owner to a distributing organization.

(3) "Food" means food products for human consumption as defined in RCW 69.04.008. [1983 c 241 § 2.]

69.80.030 Donors and distributing organizations—Limitation of civil and criminal liability. Donors and distributing organizations are not liable for civil damages or criminal penalties resulting from the nature, age, condition, or packaging of the donated food, including any liability under chapter 15.32 or 69.04 RCW, unless the donor or distributing organization acts with gross negligence or intentional misconduct. [1983 c 241 § 3.]

69.80.040 Information and referral service for food donation program. The department of agriculture shall maintain an information and referral service for persons and organizations that have notified the department of their desire to participate in the food donation program under this chapter. [1983 c 241 § 4.]

69.80.050 Inspection of donated food by state and local agencies. Appropriate state and local agencies are authorized to inspect donated food items for wholesomeness and may establish procedures for the handling of food items. [1983 c 241 § 6.]

69.80.900 Construction. Nothing in this chapter may be construed to create any liability of, or penalty against a donor or distributing organization except as provided in RCW 69.80.030. [1983 c 241 § 5.]

Chapter 69.90

KOSHER FOOD PRODUCTS

Sections

69.90.010	Definitions.
69.90.020	Sale of "kosher" and "kosher style" food products prohibited if not kosher—Representations.
69.90.030	Violation of chapter is violation of consumer protection act.
69.90.040	Violation of chapter is gross misdemeanor.
69.90.900	Short title.

Organic food products: Chapter 15.86 RCW.

69.90.010 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Food product" includes any article other than drugs, whether in raw or prepared form, liquid or solid, or packaged or unpackaged, and which is used for human consumption.

(2) "Kosher" means a food product which has been prepared, processed, manufactured, maintained, and sold in accordance with the requisites of traditional Jewish dietary law.

(3) "Person" includes individuals, partnerships, corporations, and associations. [1985 c 127 § 2.]

69.90.020 Sale of "kosher" and "kosher style" food products prohibited if not kosher—Representations. No person may knowingly sell or offer for sale any food product represented as "kosher" or "kosher style" when that person knows that the food product is not kosher and when the representation is likely to cause a prospective purchaser to believe that it is kosher. Such a representation can be made orally or in writing, or by display

of a sign, mark, insignia, or simulation. [1985 c 127 § 3.]

69.90.030 Violation of chapter is violation of consumer protection act. A violation of this chapter shall constitute a violation of the consumer protection act, chapter 19.86 RCW. [1985 c 127 § 4.]

69.90.040 Violation of chapter is gross misdemeanor. Any person who violates any provision of this chapter shall be guilty of a gross misdemeanor. [1985 c 127 § 5.]

69.90.900 Short title. This chapter shall be known as the sale of kosher food products act of 1985. [1985 c 127 § 1.]

Title 70

PUBLIC HEALTH AND SAFETY

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Asbestos, regulation of use: Chapter 49.26 RCW.
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Autopsies, post mortems: Chapter 68.50 RCW.
Board of health and bureau of vital statistics authorized: State Constitution Art. 20 § 1.
Child labor: Chapter 49.12 RCW.
Civil defense: Chapter 38.52 RCW.
Control of pet animals infected with diseases communicable to humans: Chapter 16.70 RCW.
Council for the prevention of child abuse and neglect: Chapter 43.121 RCW.
Dangerous caustic and corrosive substances: Chapter 69.36 RCW.
Department of social and health services: Chapter 43.20A RCW.
Electricians and electrical installations: Chapter 19.28 RCW.
Fire protection board, state: Chapter 48.48 RCW.
Food processing act: Chapter 69.07 RCW.
Health care services: Chapter 48.44 RCW.
Health measures in public schools: Chapter 28A.31 RCW, RCW 28A.60.320.
Immunization program, local health department participation: RCW 28A.31.100 through 28A.31.120.
Industrial safety and health: Chapter 49.17 RCW.
Inhaling toxic fumes: Chapter 9.47A RCW.
Milk and milk products for animal food: Chapter 15.37 RCW.
Natural gas, regulations: RCW 80.28.210.
Public bodies may retain collection agencies to collect public debts: RCW 19.16.500.
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Safety in coal mines: Title 78 RCW.
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Sale or gift of tobacco or intoxicating liquor to minor is gross misdemeanor: RCW 26.28.080.
Sanitary control of shellfish: Chapter 69.30 RCW.
Social and health services, department of: Chapter 43.20A RCW.
State board of health: Chapter 43.20 RCW.
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**Chapter 70.01
GENERAL PROVISIONS**

- Sections
- 70.01.010 Cooperation with federal government—Construction.
 - 70.01.020 Donation of blood by person eighteen or over without parental consent authorized.

70.01.010 Cooperation with federal government—Construction. In furtherance of the policy of this state to cooperate with the federal government in the public health programs, the department of social and health services shall adopt such rules and regulations as may become necessary to entitle this state to participate in federal funds unless the same be expressly prohibited by law. Any section or provision of the public health laws of this state which may be susceptible to more than one construction shall be interpreted in favor of the construction most likely to satisfy federal laws entitling this state to receive federal funds for the various programs of public health. [1985 c 213 § 14; 1969 ex.s. c 25 § 1; 1967 ex.s. c 102 § 12.]

Savings—Effective date—1985 c 213: See notes following RCW 43.20.050.

Severability—1967 ex.s. c 102: See note following RCW 43.70.130.

70.01.020 Donation of blood by person eighteen or over without parental consent authorized. Any person of the age of eighteen years or over shall be eligible to donate blood in any voluntary and noncompensatory blood program without the necessity of obtaining parental permission or authorization. [1969 c 51 § 1.]

**Chapter 70.05
LOCAL HEALTH DEPARTMENTS, BOARDS,
OFFICERS—REGULATIONS**

- Sections
- 70.05.005 Transfer of duties to the department of health.
 - 70.05.010 Definitions.
 - 70.05.020 Cities and towns—Organization of local health boards.
 - 70.05.030 Counties—Board of county commissioners to constitute local health board—Jurisdiction.
 - 70.05.040 Local board of health—Chairman—Administrative officer—Vacancies.
 - 70.05.045 Administrative officer—Responsibilities.
 - 70.05.050 Local health officer—Appointment—Term—Employment of personnel—Salary and expenses.
 - 70.05.051 Local health officer—Qualifications.
 - 70.05.053 Provisionally qualified local health officers—Appointment—Term—Requirements.
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 - 70.05.130 Expenses of state, health district, or county in enforcing health laws and regulations—Payment by county or city.
 - 70.05.132 Expenses of state or county in enforcing health laws and regulations—Payment by city or town—Procedure on failure to pay.
 - 70.05.135 Treasurer—District funds—Contributions by counties and cities.

- 70.05.140 Expenses of providing public health services—Payment by counties and cities—Procedure on failure to pay.
- 70.05.145 Payments by city or town to support health department—Agreement with jurisdiction operating department—Procedure if agreement not reached—Board of arbitrators.
- 70.05.150 Contracts for sale or purchase of health services authorized.

Health districts: Chapter 70.46 RCW.

State board of health: Chapter 43.20 RCW.

70.05.005 Transfer of duties to the department of health. The powers and duties of the department of social and health services and the secretary of social and health services under this chapter shall be performed by the department of health and the secretary of health. [1989 1st ex.s. c 9 § 243.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

70.05.010 Definitions. For the purposes of chapter 70.05 RCW and RCW 70.46.020 through 70.46.090 and unless the context thereof clearly indicates to the contrary:

(1) "Local health departments" means the city, town, county or district which provides public health services to persons within the area;

(2) "Local health officer" means the legally qualified physician who has been appointed as the health officer for the city, town, county or district public health department;

(3) "Local board of health" means the city, town, county or district board of health.

(4) "Health district" means all territory encompassed within a single county and all cities and towns therein except cities with a population of over one hundred thousand, or all the territory consisting of one or more counties and all the cities and towns in all of the combined counties except cities of over one hundred thousand population which have been combined and organized pursuant to the provisions of chapter 70.05 RCW and RCW 70.46.020 through 70.46.090: *Provided*, That cities with a population of over one hundred thousand may be included in a health district as provided in RCW 70.46.040. [1967 ex.s. c 51 § 1.]

Severability—1967 ex.s. c 51: "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1967 ex.s. c 51 § 24.] For codification of 1967 ex.s. c 51, see Codification Tables, Volume 0.

70.05.020 Cities and towns—Organization of local health boards. The governing body of every city or town in this state, except where such city or town is a part of a county health department, a health district, or is purchasing health services under a contract as authorized by chapter 70.05 RCW and RCW 70.46.020 through 70.46.090, shall hereafter organize as a local board of health or shall appoint a local board of health from its members of at least three persons who shall organize as a local board of health for such city or town. [1967 ex.s. c 51 § 2.]

70.05.030 Counties—Board of county commissioners to constitute local health board—Jurisdiction. The board of county commissioners of each and every county in this state, except where such county is a part of a health district or is purchasing services under a contract as authorized by chapter 70.05 RCW and RCW 70.46.020 through 70.46.090, shall constitute the local board of health for such county, and said local board of health's jurisdiction shall be coextensive with the boundaries of said county, except that nothing herein contained shall give said board jurisdiction in cities of over one hundred thousand population or in such other cities and towns as are providing health services which meet health standards pursuant to RCW 70.46.090. [1967 ex.s. c 51 § 3.]

70.05.040 Local board of health—Chairman—Administrative officer—Vacancies. The local board of health shall elect a chairman and may appoint an administrative officer. A local health officer shall be appointed pursuant to RCW 70.05.050. Vacancies on the local board of health shall be filled by appointment within thirty days and made in the same manner as was the original appointment. At the first meeting of the local board of health, the members shall elect a chairman to serve for a period of one year. In home rule charter counties that have a local board of health established under RCW 70.05.050, the administrative officer may be appointed by the official designated under the county's charter. [1984 c 25 § 1; 1983 1st ex.s. c 39 § 1; 1967 ex.s. c 51 § 4.]

70.05.045 Administrative officer—Responsibilities. The administrative officer shall act as executive secretary and administrative officer for the local board of health, and shall be responsible for administering the operations of the board including such other administrative duties required by the local health board, except for duties assigned to the health officer as enumerated in RCW 70.05.070 and other applicable state law. [1984 c 25 § 2.]

70.05.050 Local health officer—Appointment—Term—Employment of personnel—Salary and expenses. Each local board of health, other than boards which are established under RCW 70.05.030 and which are located in counties having home rule charters, shall appoint a local health officer. In home rule charter counties which have a local board of health established under RCW 70.05.030, the local health officer shall be appointed by the official designated under the provisions of the county's charter.

The local health officer shall be an experienced physician licensed to practice medicine and surgery or osteopathy and surgery in this state and who is qualified or provisionally qualified in accordance with the standards prescribed in RCW 70.05.051 through 70.05.055 to hold the office of local health officer. No term of office shall be established for the local health officer but he shall not be removed until after notice is given him, and an

opportunity for a hearing before the board or official responsible for his appointment under this section as to the reason for his removal. He shall act as executive secretary to, and administrative officer for the local board of health and shall also be empowered to employ such technical and other personnel as approved by the local board of health except where the local board of health has appointed an administrative officer under RCW 70.05.040. The local health officer shall be paid such salary and allowed such expenses as shall be determined by the local board of health. [1984 c 25 § 5; 1983 1st ex.s. c 39 § 2; 1969 ex.s. c 114 § 1; 1967 ex.s. c 51 § 9.]

70.05.051 Local health officer—Qualifications. The following persons holding licenses as required by RCW 70.05.050 shall be deemed qualified to hold the position of local health officer:

(1) Persons holding the degree of master of public health or its equivalent;

(2) Persons not meeting the requirements of subsection (1) of this section, who upon August 11, 1969 are currently employed in this state as a local health officer and whom the secretary of social and health services recommends in writing to the local board of health as qualified; and

(3) Persons qualified by virtue of completing three years of service as a provisionally qualified officer pursuant to RCW 70.05.053 through 70.05.055. [1979 c 141 § 75; 1969 ex.s. c 114 § 2.]

70.05.053 Provisionally qualified local health officers—Appointment—Term—Requirements. A person holding a license required by RCW 70.05.050 but not meeting any of the requirements for qualification prescribed by RCW 70.05.051 may be appointed by the board or official responsible for appointing the local health officer under RCW 70.05.050 as a provisionally qualified local health officer for a maximum period of three years upon the following conditions and in accordance with the following procedures:

(1) He shall participate in an in-service orientation to the field of public health as provided in RCW 70.05.054, and

(2) He shall satisfy the secretary of social and health services pursuant to the periodic interviews prescribed by RCW 70.05.055 that he has successfully completed such in-service orientation and is conducting such program of good health practices as may be required by the jurisdictional area concerned. [1983 1st ex.s. c 39 § 3; 1979 c 141 § 76; 1969 ex.s. c 114 § 3.]

70.05.054 Provisionally qualified local health officers—In-service public health orientation program. The secretary of social and health services shall provide an in-service public health orientation program for the benefit of provisionally qualified local health officers.

Such program shall consist of—

(1) A three months course in public health training conducted by the secretary either in the state department of social and health services, in a county and/or

city health department, in a local health district, or in an institution of higher education; or

(2) An on-the-job, self-training program pursuant to a standardized syllabus setting forth the major duties of a local health officer including the techniques and practices of public health principles expected of qualified local health officers: *Provided*, That each provisionally qualified local health officer may choose which type of training he shall pursue. [1979 c 141 § 77; 1969 ex.s. c 114 § 4.]

70.05.055 Provisionally qualified local health officers—Interview—Evaluation as to qualification as local public health officer. Each year, on a date which shall be as near as possible to the anniversary date of appointment as provisional local health officer, the secretary of social and health services or his designee shall personally visit such provisional officer's office for a personal review and discussion of the activity, plans, and study being carried on relative to the provisional officer's jurisdictional area: *Provided*, That the third such interview shall occur three months prior to the end of the three year provisional term. A standardized checklist shall be used for all such interviews, but such checklist shall not constitute a grading sheet or evaluation form for use in the ultimate decision of qualification of the provisional appointee as a public health officer.

Copies of the results of each interview shall be supplied to the provisional officer within two weeks following each such interview.

Following the third such interview, the secretary of social and health services shall evaluate the provisional local health officer's in-service performance and shall notify such officer by certified mail of his decision whether or not to qualify such officer as a local public health officer. Such notice shall be mailed at least sixty days prior to the third anniversary date of provisional appointment. Failure to so mail such notice shall constitute a decision that such provisional officer is qualified. [1979 c 141 § 78; 1969 ex.s. c 114 § 5.]

70.05.060 Powers and duties of local board of health. Each local board of health shall have supervision over all matters pertaining to the preservation of the life and health of the people within its jurisdiction and shall:

(1) Enforce through the local health officer or the administrative officer appointed under RCW 70.05.040, if any, the public health statutes of the state and rules and regulations promulgated by the state board of health and the secretary of social and health services;

(2) Supervise the maintenance of all health and sanitary measures for the protection of the public health within its jurisdiction;

(3) Enact such local rules and regulations as are necessary in order to preserve, promote and improve the public health and provide for the enforcement thereof;

(4) Provide for the control and prevention of any dangerous, contagious or infectious disease within the jurisdiction of the local health department;

(5) Provide for the prevention, control and abatement of nuisances detrimental to the public health;

(6) Make such reports to the state board of health through the local health officer or the administrative officer as the state board of health may require; and

(7) Establish fee schedules for issuing or renewing licenses or permits or for such other services as are authorized by the law and the rules and regulations of the state board of health: *Provided*, That such fees for services shall not exceed the actual cost of providing any such services. [1984 c 25 § 6; 1979 c 141 § 79; 1967 ex.s. c 51 § 10.]

70.05.070 Local health officer—Powers and duties. The local health officer, acting under the direction of the local board of health or under direction of the administrative officer appointed under RCW 70.05.040, if any, shall:

(1) Enforce the public health statutes of the state, rules and regulations of the state board of health and the secretary of social and health services, and all local health rules, regulations and ordinances within his jurisdiction;

(2) Take such action as is necessary to maintain health and sanitation supervision over the territory within his jurisdiction;

(3) Control and prevent the spread of any dangerous, contagious or infectious diseases that may occur within his jurisdiction;

(4) Inform the public as to the causes, nature, and prevention of disease and disability and the preservation, promotion and improvement of health within his jurisdiction;

(5) Prevent, control or abate nuisances which are detrimental to the public health;

(6) Attend all conferences called by the secretary of social and health services or his authorized representative;

(7) Collect such fees as are established by the state board of health or the local board of health for the issuance or renewal of licenses or permits or such other fees as may be authorized by law or by the rules and regulations of the state board of health.

(8) Take such measures as he deems necessary in order to promote the public health, to participate in the establishment of health educational or training activities, and to authorize the attendance of employees of the local health department or individuals engaged in community health programs related to or part of the programs of the local health department. [1984 c 25 § 7; 1979 c 141 § 80; 1967 ex.s. c 51 § 12.]

70.05.080 Local health officer—Failure to appoint—Procedure. If the local board of health or other official responsible for appointing a local health officer under RCW 70.05.050 refuses or neglects to appoint a local health officer after a vacancy exists, the secretary of social and health services may appoint a local health officer and fix the compensation. The local health officer so appointed shall have the same duties, powers and authority as though appointed under RCW 70.05.050. Such local health officer shall serve until a qualified individual is appointed according to the procedures set

forth in RCW 70.05.050. The board or official responsible for appointing the local health officer under RCW 70.05.050 shall also be authorized to appoint an acting health officer to serve whenever the health officer is absent or incapacitated and unable to fulfill his responsibilities under the provisions of chapter 70.05 RCW and RCW 70.46.020 through 70.46.090. [1983 1st ex.s. c 39 § 4; 1979 c 141 § 81; 1967 ex.s. c 51 § 13.]

70.05.090 Physicians to report diseases. Whenever any physician shall attend any person sick with any dangerous contagious or infectious disease, or with any diseases required by the state board of health to be reported, he shall, within twenty-four hours, give notice thereof to the local health officer within whose jurisdiction such sick person may then be or to the state department of social and health services in Olympia. [1979 c 141 § 82; 1967 ex.s. c 51 § 14.]

70.05.100 Determination of character of disease. In case of the question arising as to whether or not any person is affected or is sick with a dangerous, contagious or infectious disease, the opinion of the local health officer shall prevail until the state department of social and health services can be notified, and then the opinion of the executive officer of the state department of social and health services, or any physician he may appoint to examine such case, shall be final. [1979 c 141 § 83; 1967 ex.s. c 51 § 15.]

70.05.110 Local health officials and physicians to report contagious diseases. It shall be the duty of the local board of health, health authorities or officials, and of physicians in localities where there are no local health authorities or officials, to report to the state board of health, promptly upon discovery thereof, the existence of any one of the following diseases which may come under their observation, to wit: Asiatic cholera, yellow fever, smallpox, scarlet fever, diphtheria, typhus, typhoid fever, bubonic plague or leprosy, and of such other contagious or infectious diseases as the state board may from time to time specify. [1967 ex.s. c 51 § 16.]

70.05.120 Violations—Remedies—Penalties. Any local health officer or administrative officer appointed under RCW 70.05.040, if any, who shall refuse or neglect to obey or enforce the provisions of chapter 70.05 RCW and RCW 70.46.020 through 70.46.090 or the rules, regulations or orders of the state board of health or who shall refuse or neglect to make prompt and accurate reports to the state board of health, may be removed as local health officer or administrative officer by the state board of health and shall not again be reappointed except with the consent of the state board of health. Any person may complain to the state board of health concerning the failure of the local health officer or administrative officer to carry out the laws or the rules and regulations concerning public health, and the state board of health shall, if a preliminary investigation so warrants, call a hearing to determine whether the local health officer or administrative officer is guilty of

the alleged acts. Such hearings shall be held pursuant to the provisions of chapter 34.05 RCW, and the rules and regulations of the state board of health adopted thereunder.

Any member of a local board of health who shall violate any of the provisions of chapter 70.05 RCW and RCW 70.46.020 through 70.46.090 or refuse or neglect to obey or enforce any of the rules, regulations or orders of the state board of health made for the prevention, suppression or control of any dangerous contagious or infectious disease or for the protection of the health of the people of this state, shall be guilty of a misdemeanor, and upon conviction shall be fined not less than ten dollars nor more than two hundred dollars. Any physician who shall refuse or neglect to report to the proper health officer or administrative officer within twelve hours after first attending any case of contagious or infectious disease or any diseases required by the state board of health to be reported or any case suspicious of being one of such diseases, shall be guilty of a misdemeanor, and upon conviction shall be fined not less than ten dollars nor more than two hundred dollars for each case that is not reported.

Any person violating any of the provisions of chapter 70.05 RCW and RCW 70.46.020 through 70.46.090 or violating or refusing or neglecting to obey any of the rules, regulations or orders made for the prevention, suppression and control of dangerous contagious and infectious diseases by the local board of health or local health officer or administrative officer or state board of health, or who shall leave any isolation hospital or quarantined house or place without the consent of the proper health officer or who evades or breaks quarantine or conceals a case of contagious or infectious disease or assists in evading or breaking any quarantine or concealing any case of contagious or infectious disease, shall be guilty of a misdemeanor, and upon conviction thereof shall be subject to a fine of not less than twenty-five dollars nor more than one hundred dollars or to imprisonment in the county jail not to exceed ninety days or to both fine and imprisonment. [1984 c 25 § 8; 1967 ex.s. c 51 § 17.]

70.05.130 Expenses of state, health district, or county in enforcing health laws and regulations—Payment by county or city. All expenses incurred by the state, health district, or county in carrying out the provisions of chapter 70.05 RCW and RCW 70.46.020 through 70.46.090 or any other public health law, or the rules and regulations of the state department of social and health services enacted under such laws, shall be paid by the county or city by which or in behalf of which such expenses shall have been incurred and such expenses shall constitute a claim against the general fund as provided herein. [1979 c 141 § 84; 1967 ex.s. c 51 § 18.]

70.05.132 Expenses of state or county in enforcing health laws and regulations—Payment by city or

town—Procedure on failure to pay. All expenses incurred by the state or county in carrying out the provisions of chapters 70.05 and 70.08 RCW, any other public health law, or the rules enacted under such laws by the state board of health shall be paid by the city or town by which or on whose behalf such expenses were incurred. The local health officer or the administrative officer appointed under RCW 70.05.040, if any, shall certify the amount agreed upon or determined by arbitration under RCW 70.05.145 which remains unpaid by each city or town to the fiscal or warrant issuing officer of such city or town.

If the certified expense is not paid by the city or town within thirty days after the end of the fiscal year, the local health officer shall certify the amount due to the auditor of the county in which the city or town is situated, who shall promptly issue a warrant on the county treasurer payable out of the current expense fund of the county, or in accordance with the procedures of the fiscal agent of the combined city-county health department. Any sums paid in this manner shall be reimbursed by the county auditor out of the money due the city or town at the next monthly settlement or settlements of the collection of taxes and until the certified amount is satisfied and shall be transferred to the county's current expense fund or to the fiscal agent of the combined city-county health department. [1984 c 25 § 9; 1983 1st ex.s. c 39 § 6.]

70.05.135 Treasurer—District funds—Contributions by counties and cities. See RCW 70.46.080.

70.05.140 Expenses of providing public health services—Payment by counties and cities—Procedure on failure to pay. See RCW 70.46.085.

70.05.145 Payments by city or town to support health department—Agreement with jurisdiction operating department—Procedure if agreement not reached—Board of arbitrators. Each city or town which is part of a county health department established under chapter 70.05 RCW or a combined city-county health department established under chapter 70.08 RCW, or is purchasing health services from a health department under a contract authorized by RCW 70.05.150 or 70.08.090, shall pay such sums to support the operations of such department as are agreed upon by the city or town and the jurisdiction operating the department, in accordance with guidelines established by the state board of health which specify those services or types of services that cities, towns, and counties must provide, and those services which are optional. If no agreement can be reached between the jurisdiction operating the health department and such city or town following a reasonable period of good faith negotiations, including mediation where appropriate, the matter shall be resolved by a board of arbitrators which shall be convened at the request of either party. The board of arbitrators shall consist of a representative of the jurisdiction operating the health department, a representative from

the city or town involved, and a third representative appointed by the other two representatives. If no agreement can be reached regarding the third representative, the third representative shall be appointed by a judge of the superior court of the county of the jurisdiction operating the department. The determination by the board of arbitrators of the amount to be paid by the city or town shall be binding on all parties. The cost, if any, of the representative appointed by each party shall be borne by that party. The cost, if any, of the third representative shall be shared equally by both parties. [1983 1st ex.s. c 39 § 5.]

70.05.150 Contracts for sale or purchase of health services authorized. In addition to powers already granted them, any city, town, county, district or local health department may contract for either the sale or purchase of any or all health services from any local health department: *Provided*, That such contract shall require the approval of the state board of health. [1967 ex.s. c 51 § 22.]

**Chapter 70.08
COMBINED CITY-COUNTY HEALTH
DEPARTMENTS**

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70.08.005	Transfer of duties to the department of health.
70.08.010	Combined city-county health departments— Establishment.
70.08.020	Director of public health—Powers and duties.
70.08.030	Qualifications.
70.08.040	Director of public health—Appointment, term of office.
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70.08.070	Employees may be included in civil service or retire- ment plans of city, county, or combined department.
70.08.080	Pooling of funds.
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70.08.100	Termination of agreement to operate combined city- county health department.
70.08.110	Prior expenditures in operating combined health depart- ment ratified.
70.08.900	Severability—1980 c 57.

Control of cities and towns over water pollution: Chapter 35.88 RCW.

70.08.005 Transfer of duties to the department of health. The powers and duties of the secretary of social and health services under this chapter shall be performed by the secretary of health. [1989 1st ex.s. c 9 § 244.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

70.08.010 Combined city-county health departments—Establishment. Any city with one hundred thousand or more population and the county in which it is located, are authorized, as shall be agreed upon between the respective governing bodies of such city and said county, to establish and operate a combined city

and county health department, and to appoint the director of public health. [1985 c 124 § 1; 1949 c 46 § 1; Rem. Supp. 1949 § 6099-30.]

70.08.020 Director of public health—Powers and duties. The director of public health is authorized to and shall exercise all powers and perform all duties by law vested in the local health officer. [1985 c 124 § 2; 1949 c 46 § 2; Rem. Supp. 1949 § 6099-31.]

70.08.030 Qualifications. Notwithstanding any provisions to the contrary contained in any city or county charter, the director of public health, under this chapter shall meet as a minimum one of the following standards of educational achievement and vocational experience to be qualified for appointment to the office:

(1) Bachelor's degree in business administration, public administration, hospital administration, management, nursing, environmental health, epidemiology, public health, or its equivalent and five years of experience in administration in a community-related field; or

(2) A graduate degree in any of the fields listed in subsection (1) of this section, or in medicine or osteopathy, plus three years of administrative experience in a community-related field.

The director shall not engage in the private practice of the director's profession during such tenure of office and shall not be included in the classified civil service of the said city or the said county.

If the director of public health does not meet the qualifications of a health officer or a physician under RCW 70.05.050, the director shall employ a person so qualified to advise the director on medical or public health matters. [1985 c 124 § 3; 1984 c 25 § 3; 1949 c 46 § 3; Rem. Supp. 1949 § 6099-32.]

70.08.040 Director of public health—Appointment, term of office. Notwithstanding any provisions to the contrary contained in any city or county charter, where a combined department is established under this chapter, the director of public health under this chapter shall be appointed by the county executive of the county and the mayor of the city for a term of four years and until a successor is appointed and confirmed. The director of public health may be reappointed by the county executive of the county and the mayor of the city for additional four year terms. The appointment shall be effective only upon a majority vote confirmation of the legislative authority of the county and the legislative authority of the city. The director may be removed by the county executive of the county, after consultation with the mayor of the city, upon filing a statement of reasons therefor with the legislative authorities of the county and the city. [1985 c 124 § 4; 1980 c 57 § 1; 1949 c 46 § 4; Rem. Supp. 1949 § 6099-33.]

70.08.050 May act as health officer for other cities or towns. Nothing in this chapter shall prohibit the director of public health as provided herein from acting as health officer for any other city or town within the

county, nor from acting as health officer in any adjoining county or any city or town within such county having a contract or agreement as provided in RCW 70.08.090: *Provided, however,* That before being appointed health officer for such adjoining county, the secretary of social and health services shall first give his approval thereto. [1979 c 141 § 85; 1949 c 46 § 8; Rem. Supp. 1949 § 6099–37.]

70.08.060 Director of public health shall be registrar of vital statistics. The director of public health under this chapter shall be registrar of vital statistics for all cities and counties under his jurisdiction and shall conduct such vital statistics work in accordance with the same laws and/or rules and regulations pertaining to vital statistics for a city of the first class. [1961 ex.s. c 5 § 4; 1949 c 46 § 9; Rem. Supp. 1949 § 6099–38.]

Vital statistics: Chapter 70.58 RCW.

70.08.070 Employees may be included in civil service or retirement plans of city, county, or combined department. Notwithstanding any provisions to the contrary contained in any city or county charter, and to the extent provided by the city and the county pursuant to appropriate legislative enactment, employees of the combined city and county health department may be included in the personnel system or civil service and retirement plans of the city or the county or a personnel system for the combined city and county health department that is separate from the personnel system or civil service of either county or city: *Provided,* That residential requirements for such positions shall be coextensive with the county boundaries: *Provided further,* That the city or county is authorized to pay such parts of the expense of operating and maintaining such personnel system or civil service and retirement system and to contribute to the retirement fund in behalf of employees such sums as may be agreed upon between the legislative authorities of such city and county. [1982 c 203 § 1; 1980 c 57 § 2; 1949 c 46 § 5; Rem. Supp. 1949 § 6099–34.]

70.08.080 Pooling of funds. The city by ordinance, and the county by appropriate legislative enactment, under this chapter may pool all or any part of their respective funds available for public health purposes, in the office of the city treasurer or the office of the county treasurer in a special pooling fund to be established in accordance with agreements between the legislative authorities of said city and county and which shall be expended for the combined health department. [1980 c 57 § 3; 1949 c 46 § 6; Rem. Supp. 1949 § 6099–35.]

Expenses of county in enforcing health laws, payment by city or town: RCW 70.05.132.

Payments by city or town for health services: RCW 70.05.145.

70.08.090 Other cities or agencies may contract for services. Any other city in said county, other governmental agency or any charitable or health agency may by contract or by agreement with the governing bodies

of the combined health department receive public health services. [1949 c 46 § 7; Rem. Supp. 1949 § 6099–36.]

70.08.100 Termination of agreement to operate combined city–county health department. Agreement to operate a combined city and county health department made under this chapter may after two years from the date of such agreement, be terminated by either party at the end of any calendar year upon notice in writing given at least six months prior thereto. The termination of such agreement shall not relieve either party of any obligations to which it has been previously committed. [1949 c 46 § 10; Rem. Supp. 1949 § 6099–39.]

70.08.110 Prior expenditures in operating combined health department ratified. Any expenditures heretofore made by a city of one hundred thousand population or more, and by the county in which it is located, not made fraudulently and which were within the legal limits of indebtedness, towards the expense of maintenance and operation of a combined health department, are hereby legalized and ratified. [1949 c 46 § 11; Rem. Supp. 1949 § 6099–40.]

70.08.900 Severability—1980 c 57. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1980 c 57 § 4.]

Chapter 70.10

COMPREHENSIVE COMMUNITY HEALTH CENTERS

Sections

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| 70.10.010 | Declaration of policy—Combining health services—State authorized to cooperate with other entities in constructing. |
| 70.10.020 | "Comprehensive community health center" defined. |
| 70.10.030 | Authorization to apply for and administer federal or state funds. |
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| 70.10.060 | Adoption of rules and regulations—Liberal construction of chapter. |

Community mental health services act: Chapter 71.24 RCW.

Mental health and retardation services, interstate contracts: RCW 71.28.010.

70.10.010 Declaration of policy—Combining health services—State authorized to cooperate with other entities in constructing. It is declared to be the policy of the legislature of the state of Washington that, wherever feasible, community health, mental health and mental retardation services shall be combined within single facilities in order to provide maximum utilization of available funds and personnel, and to assure the

greatest possible coordination of such services for the benefit of those requiring them. It is further declared to be the policy of the legislature to authorize the state to cooperate with counties, cities, and other municipal corporations in order to encourage them to take such steps as may be necessary to construct comprehensive community health centers in communities throughout the state. [1967 ex.s. c 4 § 1.]

70.10.020 "Comprehensive community health center" defined. The term "comprehensive community health center" as used in this chapter shall mean a health facility housing community health, mental health, and developmental disabilities services. [1977 ex.s. c 80 § 37; 1967 ex.s. c 4 § 2.]

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.

70.10.030 Authorization to apply for and administer federal or state funds. The several agencies of the state authorized to administer within the state the various federal acts providing federal moneys to assist in the cost of establishing community health, mental health, and mental retardation facilities, are authorized to apply for and disburse federal grants, matching funds, or other funds, including gifts or donations from any source, available for use by counties, cities, other municipal corporations or nonprofit corporations. Upon application, these agencies shall also be authorized to distribute such state funds as may be appropriated by the legislature for such local construction projects: *Provided*, That where state funds have been appropriated to assist in covering the cost of constructing a comprehensive community health center, or a community health, mental health, or mental retardation facility, and where any county, city, other municipal corporation or nonprofit corporation has submitted an approved application for such state funds, then, after any applicable federal grant has been deducted from the total cost of construction, the state agency or agencies in charge of each program may allocate to such applicant an amount not to exceed fifty percent of that particular program's contribution toward the balance of remaining construction costs. [1967 ex.s. c 4 § 3.]

70.10.040 Application for federal or state funds for construction of facility as part of or separate from health center—Processing and approval by administering agencies—Decision on use as part of comprehensive health center. Any application for federal or state funds to be used for construction of the community health, mental health, or developmental disabilities facility, which will be part of the comprehensive community health center as defined in RCW 70.10.020, shall be separately processed and approved by the state agency which has been designated to administer the particular federal or state program involved. Any application for federal or state funds for a construction project to establish a community health, mental health, or developmental disabilities facility not part of a comprehensive health center shall be processed by the state agency

which is designated to administer the particular federal or state program involved. This agency shall also forward a copy of the application to the other agency or agencies designated to administer the program or programs providing funds for construction of the facilities which make up a comprehensive health center. The agency or agencies receiving this copy of the application shall have a period of time not to exceed sixty days in which to file a statement with the agency to which the application has been submitted and to any statutory advisory council or committee which has been designated to advise the administering agency with regard to the program, stating that the proposed facility should or should not be part of a comprehensive health center. [1977 ex.s. c 80 § 38; 1967 ex.s. c 4 § 4.]

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.

70.10.050 Application for federal or state funds for construction of facility as part of or separate from health center—Cooperation between agencies in standardizing application procedures and forms. The several state agencies processing applications for the construction of comprehensive health centers for community health, mental health, or developmental disability facilities shall cooperate to develop general procedures to be used in implementing the statute and to attempt to develop application forms and procedures which are as nearly standard as possible, after taking cognizance of the different information required in the various programs, to assist applicants in applying to various state agencies. [1977 ex.s. c 80 § 39; 1967 ex.s. c 4 § 5.]

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.

70.10.060 Adoption of rules and regulations—Liberal construction of chapter. In furtherance of the legislative policy to authorize the state to cooperate with the federal government in facilitating the construction of comprehensive community health centers, the state agencies involved shall adopt such rules and regulations as may become necessary to entitle the state and local units of government to share in federal grants, matching funds, or other funds, unless the same be expressly prohibited by this chapter. Any section or provision of this chapter susceptible to more than one construction shall be interpreted in favor of the construction most likely to satisfy federal laws entitling the state and local units of government to receive federal grants, matching funds or other funds for the construction of comprehensive community health centers. [1967 ex.s. c 4 § 6.]

Chapter 70.12 PUBLIC HEALTH FUNDS

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70.12.005	Transfer of duties to the department of health.
	COUNTY FUNDS
70.12.015	Secretary may expend funds in counties.
70.12.025	County funds for public health.

PUBLIC HEALTH POOLING FUND

70.12.030	Public health pooling fund authorized—"Health district" defined.
70.12.040	Fund, how maintained and disbursed.
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70.12.060	Expenditures geared to budget.
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70.12.005 Transfer of duties to the department of health. The powers and duties of the department of social and health services and the secretary of social and health services under this chapter shall be performed by the department of health and the secretary of health. [1989 1st ex.s. c 9 § 245.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

COUNTY FUNDS

70.12.015 Secretary may expend funds in counties. The secretary of social and health services is hereby authorized to apportion and expend such sums as he shall deem necessary for public health work in the counties of the state, from the appropriations made to the state department of social and health services for county public health work. [1979 c 141 § 86; 1939 c 191 § 2; RRS § 6001-1. Formerly RCW 70.12.080.]

70.12.025 County funds for public health. Each county legislative authority shall annually budget and appropriate a sum for public health work. [1975 1st ex.s. c 291 § 2.]

Effective dates—Severability—1975 1st ex.s. c 291: See notes following RCW 82.04.050.

PUBLIC HEALTH POOLING FUND

70.12.030 Public health pooling fund authorized—"Health district" defined. Any county, first class city or health district is hereby authorized and empowered to create a "public health pooling fund", hereafter called the "fund", for the efficient management and control of all moneys coming to such county, first class city or district for public health purposes.

"Health district" as used herein may mean all territory consisting of one or more counties and all cities with a population of one hundred thousand or less, and towns therein. [1945 c 46 § 1; 1943 c 190 § 1; Rem. Supp. 1945 § 6099-1.]

70.12.040 Fund, how maintained and disbursed. Any such fund may be established in the county treasurer's office or the city treasurer's office of a first class city according to the type of local health department organization existing.

In a district composed of more than one county, the county treasurer of the county having the largest population shall be the custodian of the fund, and the county auditor of said county shall keep the record of receipts and disbursements; and shall draw and the county treasurer shall honor and pay all such warrants.

Into any such fund so established may be paid:

(1) All grants from any state fund for county public health work;

(2) Any county current expense funds appropriated for the health department;

(3) Any other money appropriated by the county for health work;

(4) City funds appropriated for the health department;

(5) All moneys received from any governmental agency, local, state or federal which may contribute to the local health department; and

(6) Any contributions from any charitable or voluntary agency or contributions from any individual or estate.

Any school district may contract in writing for health services with the health department of the county, first class city or health district, and place such funds in the public health pooling fund in accordance with the contract. [1983 c 3 § 170; 1945 c 46 § 2; 1943 c 190 § 2; Rem. Supp. 1945 § 6099-2.]

70.12.050 Expenditures from fund. All expenditures in connection with salaries, wages and operations incurred in carrying on the health department of the county, first class city or health district shall be paid out of such fund. [1945 c 46 § 3; 1943 c 190 § 3; Rem. Supp. 1945 § 6099-3.]

70.12.060 Expenditures geared to budget. Any fund established as herein provided shall be expended so as to make the expenditures thereof agree with any respective appropriation period. Any accumulation in any such fund so established shall be taken into consideration when preparing any budget for the operations for the ensuing year. [1943 c 190 § 4; Rem. Supp. 1943 § 6099-4.]

70.12.070 Fund subject to audit and check by state. The public health pool fund shall be subject to audit by the division of departmental audits and shall be subject to check by the state department of social and health services. [1979 c 141 § 87; 1943 c 190 § 5; Rem. Supp. 1943 § 6099-5.]

Chapter 70.14

HEALTH CARE SERVICES PURCHASED BY STATE AGENCIES

Sections

70.14.020	State agencies to identify alternative health care providers.
70.14.030	Health care utilization review procedures.
70.14.040	Review of prospective rate setting methods.
70.14.050	Drug purchasing cost controls—Establishment of drug formularies.

State health care cost containment policies: RCW 43.41.160.

70.14.020 State agencies to identify alternative health care providers. Each of the agencies listed in *RCW 70.14.010, with the exception of the department of labor and industries, which expends more than five

hundred thousand dollars annually of state funds for purchase of health care shall identify the availability and costs of nonfee for service providers of health care, including preferred provider organizations, health maintenance organizations, managed health care or case management systems, or other nonfee for service alternatives. In each case where feasible in which an alternative health care provider arrangement, of similar scope and quality, is available at lower cost than fee for service providers, such state agencies shall make the services of the alternative provider available to clients, consumers, or employees for whom state dollars are spent to purchase health care. As consistent with other state and federal law, requirements for copayments, deductibles, the scope of available services, or other incentives shall be used to encourage clients, consumers, or employees to use the lowest cost providers, except that copayments or deductibles shall not be required where they might have the impact of denying access to necessary health care in a timely manner. [1986 c 303 § 7.]

***Reviser's note:** RCW 70.14.010 was repealed by 1988 c 107 § 35, effective October 1, 1988.

Medical assistance—Agreements with managed health care systems: RCW 74.09.522.

70.14.030 Health care utilization review procedures.

Plans for establishing or improving utilization review procedures for purchased health care services shall be developed by each agency listed in *RCW 70.14.010. The plans shall specifically address such utilization review procedures as prior authorization of services, hospital inpatient length of stay review, requirements for use of outpatient surgeries and the obtaining of second opinions for surgeries, review of invoices or claims submitted by service providers, and performance audit of providers. [1986 c 303 § 8.]

***Reviser's note:** RCW 70.14.010 was repealed by 1988 c 107 § 35, effective October 1, 1988.

70.14.040 Review of prospective rate setting methods.

The state agencies listed in *RCW 70.14.010 shall review the feasibility of establishing prospective payment approaches within their health care programs. Work plans or timetables shall be prepared for the development of prospective rates. The agencies shall identify legislative actions that may be necessary to facilitate the adoption of prospective rate setting methods. [1986 c 303 § 9.]

***Reviser's note:** RCW 70.14.010 was repealed by 1988 c 107 § 35, effective October 1, 1988.

70.14.050 Drug purchasing cost controls—Establishment of drug formularies.

(1) Each agency listed in *RCW 70.14.010 shall individually or in cooperation with other agencies take any necessary actions to control costs without reducing the quality of care when reimbursing for or purchasing drugs. To accomplish this purpose, each agency shall investigate the feasibility of and may establish a drug formulary designating which drugs may be paid for through their health care programs. For purposes of this section, a drug formulary

means a list of drugs, either inclusive or exclusive, that defines which drugs are eligible for reimbursement by the agency.

(2) In developing the drug formulary authorized by this section, agencies:

(a) Shall prohibit reimbursement for drugs that are determined to be ineffective by the United States food and drug administration;

(b) Shall adopt rules in order to ensure that less expensive generic drugs will be substituted for brand name drugs in those instances where the quality of care is not diminished;

(c) Where possible, may authorize reimbursement for drugs only in economical quantities;

(d) May limit the prices paid for drugs by such means as central purchasing, volume contracting, or setting maximum prices to be paid;

(e) Shall consider the approval of drugs with lower abuse potential in substitution for drugs with significant abuse potential; and

(f) May take other necessary measures to control costs of drugs without reducing the quality of care.

(3) Agencies may provide for reasonable exceptions to the drug formulary required by this section.

(4) Agencies may establish medical advisory committees, or utilize committees already established, to assist in the development of the drug formulary required by this section. [1986 c 303 § 10.]

***Reviser's note:** RCW 70.14.010 was repealed by 1988 c 107 § 35, effective October 1, 1988.

Chapter 70.22

MOSQUITO CONTROL

Sections

70.22.005	Transfer of duties to the department of health.
70.22.010	Declaration of purpose.
70.22.020	Secretary of social and health services may make inspections, investigations, and determinations and provide for control.
70.22.030	Secretary to coordinate plans.
70.22.040	Secretary may contract with, receive funds from entities and individuals—Authorization for governmental entities to contract, grant funds, levy taxes.
70.22.050	Powers and duties of secretary of social and health services.
70.22.060	Governmental entities to cooperate with secretary.
70.22.900	Severability—1961 c 283.

70.22.005 Transfer of duties to the department of health. The powers and duties of the secretary of social and health services under this chapter shall be performed by the secretary of health. [1989 1st ex.s. c 9 § 246.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

70.22.010 Declaration of purpose. The purpose of this chapter is to establish a state-wide program for the control or elimination of mosquitoes as a health hazard. [1961 c 283 § 1.]

Mosquito control districts: Chapter 17.28 RCW.

70.22.020 Secretary of social and health services may make inspections, investigations, and determinations and provide for control. The secretary of social and health services is hereby authorized and empowered to make or cause to be made such inspections, investigations, studies and determinations as he may from time to time deem advisable in order to ascertain the effect of mosquitoes as a health hazard, and, to the extent to which funds are available, to provide for the control or elimination thereof in any or all parts of the state. [1979 c 141 § 88; 1961 c 283 § 2.]

70.22.030 Secretary to coordinate plans. The secretary of social and health services shall coordinate plans for mosquito control work which may be projected by any county, city or town, municipal corporation, taxing district, state department or agency, federal government agency, or any person, group or organization, and arrange for cooperation between any such districts, departments, agencies, persons, groups or organizations. [1979 c 141 § 89; 1961 c 283 § 3.]

70.22.040 Secretary may contract with, receive funds from entities and individuals—Authorization for governmental entities to contract, grant funds, levy taxes. The secretary of social and health services is authorized and empowered to receive funds from any county, city or town, municipal corporation, taxing district, the federal government, or any person, group or organization to carry out the purpose of this chapter. In connection therewith the secretary is authorized and empowered to contract with any such county, city, or town, municipal corporation, taxing district, the federal government, person, group or organization with respect to the construction and maintenance of facilities and other work for the purpose of effecting mosquito control or elimination, and any such county, city or town, municipal corporation, or taxing district obligated to carry out the provisions of any such contract entered into with the secretary of social and health services is authorized, empowered and directed to appropriate, and if necessary, to levy taxes for and pay over such funds as its contract with the secretary may from time to time require. [1979 c 141 § 90; 1961 c 283 § 4.]

70.22.050 Powers and duties of secretary of social and health services. To carry out the purpose of this chapter, the secretary of social and health services may:

- (1) Abate as nuisances breeding places for mosquitoes as defined in RCW 17.28.170;
- (2) Acquire by gift, devise, bequest, lease, or purchase, real and personal property necessary or convenient for carrying out the purpose of this chapter;
- (3) Make contracts, employ engineers, health officers, sanitarians, physicians, laboratory personnel, attorneys, and other technical or professional assistants;
- (4) Publish information or literature; and
- (5) Do any and all other things necessary to carry out the purpose of this chapter: *Provided*, That no program shall be permitted nor any action taken in pursuance thereof which may be injurious to the life or health of

game or fish. [1989 c 11 § 25; 1979 c 141 § 91; 1961 c 283 § 5.]

Severability—1989 c 11: See note following RCW 9A.56.220.

70.22.060 Governmental entities to cooperate with secretary. Each state department, agency, and political subdivision shall cooperate with the secretary of social and health services in carrying out the purposes of this chapter. [1979 c 141 § 92; 1961 c 283 § 6.]

70.22.900 Severability—1961 c 283. If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1961 c 283 § 7.]

Chapter 70.24

CONTROL AND TREATMENT OF SEXUALLY TRANSMITTED DISEASES

(Formerly: Control and treatment of venereal diseases)

Sections

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| 70.24.005 | Transfer of duties to the department of health. |
| 70.24.015 | Legislative finding. |
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| 70.24.024 | Orders for examinations and counseling—Restrictive measures—Investigation—Issuance of order—Confidential notice and hearing—Exception. |
| 70.24.034 | Detention—Grounds—Order—Hearing. |
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| 70.24.100 | Syphilis laboratory tests. |
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- 70.24.290 Public school employees—Rules for AIDS education and training.
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- 70.24.310 Health care facility employees—Rules for AIDS education and training.
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- 70.24.340 Convicted persons—Mandatory testing and counseling for certain offenses—Employees substantial exposure to bodily fluids—Procedure.
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- 70.24.380 Board of health—Rules for counseling and testing.
- 70.24.400 Department to establish regional AIDS service networks—Funding—Lead counties—Regional plans—University of Washington, center for AIDS education.
- 70.24.410 AIDS advisory committee—Duties, review of insurance problems—Termination.
- 70.24.420 Additional local funding of treatment programs not required.
- 70.24.430 Application of chapter to persons subject to jurisdiction of department of corrections.
- 70.24.440 Class IV human immunodeficiency virus insurance program.
- 70.24.900 Severability—1988 c 206.

Center for voluntary action: RCW 43.150.050.

70.24.005 Transfer of duties to the department of health. The powers and duties of the department of social and health services, the department of licensing, and the secretary of social and health services under this chapter shall be performed by the department of health and the secretary of health. [1989 1st ex.s. c 9 § 247.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

70.24.015 Legislative finding. The legislature declares that sexually transmitted diseases constitute a serious and sometimes fatal threat to the public and individual health and welfare of the people of the state. The legislature finds that the incidence of sexually transmitted diseases is rising at an alarming rate and that these diseases result in significant social, health, and economic costs, including infant and maternal mortality, temporary and lifelong disability, and premature death. The legislature further finds that sexually transmitted diseases, by their nature, involve sensitive issues of privacy, and it is the intent of the legislature that all programs designed to deal with these diseases afford patients privacy, confidentiality, and dignity. The legislature also finds that medical knowledge and information about sexually transmitted diseases are rapidly changing. It is therefore the intent of the legislature to provide a program that is sufficiently flexible to meet emerging needs, deals efficiently and effectively with reducing the incidence of sexually transmitted diseases, and provides patients with a secure knowledge that information they

provide will remain private and confidential. [1988 c 206 § 901.]

70.24.017 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter:

(1) "Acquired immunodeficiency syndrome" or "AIDS" means the clinical syndrome of HIV-related illness as defined by the board of health by rule.

(2) "Board" means the state board of health.

(3) "Department" means the department of social and health services, or any successor department with jurisdiction over public health matters.

(4) "Health care provider" means any person who is a member of a profession under RCW 18.130.040 or other person providing medical, nursing, psychological, or other health care services regulated by the department of licensing or the department of social and health services.

(5) "Health care facility" means a hospital, nursing home, neuropsychiatric or mental health facility, home health agency, hospice, child care agency, adult family home, group care facility, family foster home, clinic, blood bank, blood center, sperm bank, laboratory, or other social service or health care institution regulated or operated by the department of social and health services.

(6) "HIV-related condition" means any medical condition resulting from infection with HIV including, but not limited to, seropositivity for HIV.

(7) "Human immunodeficiency virus" or "HIV" means all HIV and HIV-related viruses which damage the cellular branch of the human immune or neurological systems and leave the infected person immunodeficient or neurologically impaired.

(8) "Test for a sexually transmitted disease" means a test approved by the board by rule.

(9) "Legal guardian" means a person appointed by a court to assume legal authority for another who has been found incompetent or, in the case of a minor, a person who has legal custody of the child.

(10) "Local public health officer" means the officer directing the county health department or his or her designee who has been given the responsibility and authority to protect the health of the public within his or her jurisdiction.

(11) "Person" includes any natural person, partnership, association, joint venture, trust, public or private corporation, or health facility.

(12) "Release of test results" means a written authorization for disclosure of any sexually transmitted disease test result which is signed, dated, and which specifies to whom disclosure is authorized and the time period during which the release is to be effective.

(13) "Sexually transmitted disease" means a bacterial, viral, fungal, or parasitic disease, determined by the board by rule to be sexually transmitted, to be a threat to the public health and welfare, and to be a disease for which a legitimate public interest will be served by providing for regulation and treatment. The board shall designate chancroid, gonorrhea, granuloma inguinale,

lymphogranuloma venereum, genital herpes simplex, chlamydia, nongonococcal urethritis (NGU), trachomitis, genital human papilloma virus infection, syphilis, acquired immunodeficiency syndrome (AIDS), and human immunodeficiency virus (HIV) infection as sexually transmitted diseases, and shall consider the recommendations and classifications of the centers for disease control and other nationally recognized medical authorities in designating other diseases as sexually transmitted.

(14) "State public health officer" means the secretary of social and health services or an officer appointed by the secretary. [1988 c 206 § 101.]

70.24.022 Interviews, examination, counseling, or treatment of infected persons or persons believed to be infected—Dissemination of false information—Penalty. (1) The board shall adopt rules authorizing interviews and the state and local public health officers and their authorized representatives may interview, or cause to be interviewed, all persons infected with a sexually transmitted disease and all persons who, in accordance with standards adopted by the board by rule, are reasonably believed to be infected with such diseases for the purpose of investigating the source and spread of the diseases and for the purpose of ordering a person to submit to examination, counseling, or treatment as necessary for the protection of the public health and safety, subject to RCW 70.24.024.

(2) State and local public health officers or their authorized representatives shall investigate identified partners of persons infected with sexually transmitted diseases in accordance with procedures prescribed by the board.

(3) All information gathered in the course of contact investigation pursuant to this section shall be considered confidential.

(4) No person contacted under this section or reasonably believed to be infected with a sexually transmitted disease who reveals the name or names of sexual contacts during the course of an investigation shall be held liable in a civil action for such revelation, unless the revelation is made with a knowing or reckless disregard for the truth.

(5) Any person who knowingly or maliciously disseminates any false information or report concerning the existence of any sexually transmitted disease under this section is guilty of a gross misdemeanor punishable as provided under RCW 9A.20.021. [1988 c 206 § 906.]

70.24.024 Orders for examinations and counseling—Restrictive measures—Investigation—Issuance of order—Confidential notice and hearing—Exception. (1) Subject to the provisions of this chapter, the state and local public health officers or their authorized representatives may examine and counsel or cause to be examined and counseled persons reasonably believed to be infected with or to have been exposed to a sexually transmitted disease.

(2) Orders or restrictive measures directed to persons with a sexually transmitted disease shall be used as the

last resort when other measures to protect the public health have failed, including reasonable efforts, which shall be documented, to obtain the voluntary cooperation of the person who may be subject to such an order. The orders and measures shall be applied serially with the least intrusive measures used first. The burden of proof shall be on the state or local public health officer to show that specified grounds exist for the issuance of the orders or restrictive measures and that the terms and conditions imposed are no more restrictive than necessary to protect the public health.

(3) When the state or local public health officer within his or her respective jurisdiction knows or has reason to believe, because of direct medical knowledge or reliable testimony of others in a position to have direct knowledge of a person's behavior, that a person has a sexually transmitted disease and is engaging in specified conduct, as determined by the board by rule based upon generally accepted standards of medical and public health science, that endangers the public health, he or she shall conduct an investigation in accordance with procedures prescribed by the board to evaluate the specific facts alleged, if any, and the reliability and credibility of the person or persons providing such information and, if satisfied that the allegations are true, he or she may issue an order according to the following priority to:

(a) Order a person to submit to a medical examination or testing, seek counseling, or obtain medical treatment for curable diseases, or any combination of these, within a period of time determined by the public health officer, not to exceed fourteen days.

(b) Order a person to immediately cease and desist from specified conduct which endangers the health of others by imposing such restrictions upon the person as are necessary to prevent the specified conduct that endangers the health of others only if the public health officer has determined that clear and convincing evidence exists to believe that such person has been ordered to report for counseling as provided in (a) of this subsection and continues to demonstrate behavior which endangers the health of others. Any restriction shall be in writing, setting forth the name of the person to be restricted and the initial period of time, not to exceed three months, during which the order shall remain effective, the terms of the restrictions, and such other conditions as may be necessary to protect the public health. Restrictions shall be imposed in the least-restrictive manner necessary to protect the public health.

(4)(a) Upon the issuance of any order by the state or local public health officer or an authorized representative pursuant to subsection (3) of this section or RCW 70.24.340(4), such public health officer shall give written notice promptly, personally, and confidentially to the person who is the subject of the order stating the grounds and provisions of the order, including the factual bases therefor, the evidence relied upon for proof of infection and dangerous behavior, and the likelihood of repetition of such behaviors in the absence of such an order, and notifying the person who is the subject of the order that, if he or she contests the order, he or she may

appear at a judicial hearing on the enforceability of the order, to be held in superior court. He or she may have an attorney appear on his or her behalf in the hearing at public expense, if necessary. The hearing shall be held within seventy-two hours of receipt of the notice, unless the person subject to the order agrees to comply. If the person contests the order, no invasive medical procedures shall be carried out prior to a hearing being held pursuant to this subsection. If the person does not contest the order within seventy-two hours of receiving it, and the person does not comply with the order within the time period specified for compliance with the order, the state or local public health officer may request a warrant be issued by the superior court to insure appearance at the hearing. The hearing shall be within seventy-two hours of the expiration date of the time specified for compliance with the original order. The burden of proof shall be on the public health officer to show by clear and convincing evidence that the specified grounds exist for the issuance of the order and for the need for compliance and that the terms and conditions imposed therein are no more restrictive than necessary to protect the public health. Upon conclusion of the hearing, the court shall issue appropriate orders affirming, modifying, or dismissing the order.

(b) If the superior court dismisses the order of the public health officer, the fact that the order was issued shall be expunged from the records of the department or local department of health.

(5) Any hearing conducted pursuant to this section shall be closed and confidential unless a public hearing is requested by the person who is the subject of the order, in which case the hearing will be conducted in open court. Unless in open hearing, any transcripts or records relating thereto shall also be confidential and may be sealed by the order of the court. [1988 c 206 § 909.]

70.24.034 Detention—Grounds—Order—Hearing. (1) When the procedures of RCW 70.24.024 have been exhausted and the state or local public health officer, within his or her respective jurisdiction, knows or has reason to believe, because of medical information, that a person has a sexually transmitted disease and that the person continues to engage in behaviors that present an imminent danger to the public health as defined by the board by rule based upon generally accepted standards of medical and public health science, the public health officer may bring an action in superior court to detain the person in a facility designated by the board for a period of time necessary to accomplish a program of counseling and education, excluding any coercive techniques or procedures, designed to get the person to adopt nondangerous behavior. In no case may the period exceed ninety days under each order. The board shall establish, by rule, standards for counseling and education under this subsection. The public health officer shall request the prosecuting attorney to file such action in superior court. During that period, reasonable efforts will be made in a noncoercive manner to get the person to adopt nondangerous behavior.

(2) If an action is filed as outlined in subsection (1) of this section, the superior court, upon the petition of the prosecuting attorney, shall issue other appropriate court orders including, but not limited to, an order to take the person into custody immediately, for a period not to exceed seventy-two hours, and place him or her in a facility designated or approved by the board. The person who is the subject of the order shall be given written notice of the order promptly, personally, and confidentially, stating the grounds and provisions of the order, including the factual bases therefor, the evidence relied upon for proof of infection and dangerous behavior, and the likelihood of repetition of such behaviors in the absence of such an order, and notifying the person that if he or she refuses to comply with the order he or she may appear at a hearing to review the order and that he or she may have an attorney appear on his or her behalf in the hearing at public expense, if necessary. If the person contests testing or treatment, no invasive medical procedures shall be carried out prior to a hearing being held pursuant to subsection (3) of this section.

(3) The hearing shall be conducted no later than forty-eight hours after the receipt of the order. The person who is subject to the order has a right to be present at the hearing and may have an attorney appear on his or her behalf in the hearing, at public expense if necessary. If the order being contested includes detention for a period of fourteen days or longer, the person shall also have the right to a trial by jury upon request. Upon conclusion of the hearing or trial by jury, the court shall issue appropriate orders.

The court may continue the hearing upon the request of the person who is subject to the order for good cause shown for no more than five additional judicial days. If a trial by jury is requested, the court, upon motion, may continue the hearing for no more than ten additional judicial days. During the pendency of the continuance, the court may order that the person contesting the order remain in detention or may place terms and conditions upon the person which the court deems appropriate to protect public health.

(4) The burden of proof shall be on the state or local public health officer to show by clear and convincing evidence that grounds exist for the issuance of any court order pursuant to subsection (2) or (3) of this section. If the superior court dismisses the order, the fact that the order was issued shall be expunged from the records of the state or local department of health.

(5) Any hearing conducted by the superior court pursuant to subsection (2) or (3) of this section shall be closed and confidential unless a public hearing is requested by the person who is the subject of the order, in which case the hearing will be conducted in open court. Unless in open hearing, any transcripts or records relating thereto shall also be confidential and may be sealed by order of the court.

(6) Any order entered by the superior court pursuant to subsection (1) or (2) of this section shall impose terms and conditions no more restrictive than necessary to protect the public health. [1988 c 206 § 910.]

70.24.050 Diagnosis of sexually transmitted diseases—Confirmation—Anonymous prevalence reports. Diagnosis of a sexually transmitted disease in every instance must be confirmed by laboratory tests or examinations in a laboratory approved or conducted in accordance with procedures and such other requirements as may be established by the board. Laboratories testing for HIV shall report anonymous HIV prevalence results to the department, for health statistics purposes, in a manner established by the board. [1988 c 206 § 907; 1919 c 114 § 6; RRS § 6105.]

70.24.070 Detention and treatment facilities. For the purpose of carrying out this chapter, the board shall have the power and authority to designate facilities for the detention and treatment of persons found to be infected with a sexually transmitted disease and to designate any such facility in any hospital or other public or private institution, other than a jail or correctional facility, having, or which may be provided with, such necessary detention, segregation, isolation, clinic and hospital facilities as may be required and prescribed by the board, and to enter into arrangements for the conduct of such facilities with the public officials or persons, associations, or corporations in charge of or maintaining and operating such institutions. [1988 c 206 § 908; 1919 c 114 § 8; RRS § 6107.]

70.24.080 Penalty. Any person who shall violate any of the provisions of this chapter or any lawful rule adopted by the board pursuant to the authority herein granted, or who shall fail or refuse to obey any lawful order issued by any state, county or municipal public health officer, pursuant to the authority granted in this chapter, shall be deemed guilty of a gross misdemeanor punishable as provided under RCW 9A.20.021. [1988 c 206 § 911; 1919 c 114 § 5; RRS § 6104.]

70.24.084 Violations of chapter—Aggrieved persons—Right of action. (1) Any person aggrieved by a violation of this chapter shall have a right of action in superior court and may recover for each violation:

(a) Against any person who negligently violates a provision of this chapter, one thousand dollars, or actual damages, whichever is greater, for each violation.

(b) Against any person who intentionally or recklessly violates a provision of this chapter, two thousand dollars, or actual damages, whichever is greater, for each violation.

(c) Reasonable attorneys' fees and costs.

(d) Such other relief, including an injunction, as the court may deem appropriate.

(2) Any action under this chapter is barred unless the action is commenced within three years after the cause of action accrues.

(3) Nothing in this chapter limits the rights of the subject of a test for a sexually transmitted disease to recover damages or other relief under any other applicable law.

(4) Nothing in this chapter may be construed to impose civil liability or criminal sanction for disclosure of a

test result for a sexually transmitted disease in accordance with any reporting requirement for a diagnosed case of sexually transmitted disease by the department or the centers for disease control of the United States public health service. [1988 c 206 § 914.]

70.24.090 Pregnant women—Test for syphilis. Every physician attending a pregnant woman in the state of Washington during gestation shall, in the case of each woman so attended, take or cause to be taken a sample of blood of such woman at the time of first examination, and submit such sample to an approved laboratory for a standard serological test for syphilis. If the pregnant woman first presents herself for examination after the fifth month of gestation the physician or other attendant shall in addition to the above, advise and urge the patient to secure a medical examination and blood test before the fifth month of any subsequent pregnancies. [1939 c 165 § 1; RRS § 6002-1.]

70.24.095 Pregnant women—Drug treatment program participants—AIDS counseling. (1) Every health care practitioner attending a pregnant woman or a person seeking treatment of a sexually transmitted disease shall insure that AIDS counseling of the patient is conducted.

(2) AIDS counseling shall be provided to each person in a drug treatment program under *chapter 69.54 RCW. [1988 c 206 § 705.]

*Reviser's note: Chapter 69.54 RCW was repealed by 1989 c 270 § 35.

70.24.100 Syphilis laboratory tests. A standard serological test shall be a laboratory test for syphilis approved by the secretary of social and health services and shall be performed either by a laboratory approved by the secretary of social and health services for the performance of the particular serological test used or by the state department of social and health services, on request of the physician free of charge. [1979 c 141 § 95; 1939 c 165 § 2; RRS § 6002-2.]

70.24.105 Disclosure of HIV antibody test or testing or treatment of sexually transmitted diseases—Exchange of medical information. (1) No person may disclose or be compelled to disclose the identity of any person who has investigated, considered, or requested a test or treatment for a sexually transmitted disease, except as authorized by this chapter.

(2) No person may disclose or be compelled to disclose the identity of any person upon whom an HIV antibody test is performed, or the results of such a test, nor may the result of a test for any other sexually transmitted disease when it is positive be disclosed. This protection against disclosure of test subject, diagnosis, or treatment also applies to any information relating to diagnosis of or treatment for HIV infection and for any other confirmed sexually transmitted disease. The following persons, however, may receive such information:

(a) The subject of the test or the subject's legal representative for health care decisions in accordance with

RCW 7.70.065, with the exception of such a representative of a minor child over fourteen years of age and otherwise competent;

(b) Any person who secures a specific release of test results or information relating to HIV or confirmed diagnosis of or treatment for any other sexually transmitted disease executed by the subject or the subject's legal representative for health care decisions in accordance with RCW 7.70.065, with the exception of such a representative of a minor child over fourteen years of age and otherwise competent;

(c) The state public health officer, a local public health officer, or the centers for disease control of the United States public health service in accordance with reporting requirements for a diagnosed case of a sexually transmitted disease;

(d) A health facility or health care provider that procures, processes, distributes, or uses: (i) A human body part, tissue, or blood from a deceased person with respect to medical information regarding that person; (ii) semen, including that provided prior to March 23, 1988, for the purpose of artificial insemination; or (iii) blood specimens;

(e) Any state or local public health officer conducting an investigation pursuant to RCW 70.24.024, provided that such record was obtained by means of court ordered HIV testing pursuant to RCW 70.24.340 or 70.24.024;

(f) A person allowed access to the record by a court order granted after application showing good cause therefor. In assessing good cause, the court shall weigh the public interest and the need for disclosure against the injury to the patient, to the physician-patient relationship, and to the treatment services. Upon the granting of the order, the court, in determining the extent to which any disclosure of all or any part of the record of any such test is necessary, shall impose appropriate safeguards against unauthorized disclosure. An order authorizing disclosure shall: (i) Limit disclosure to those parts of the patient's record deemed essential to fulfill the objective for which the order was granted; (ii) limit disclosure to those persons whose need for information is the basis for the order; and (iii) include any other appropriate measures to keep disclosure to a minimum for the protection of the patient, the physician-patient relationship, and the treatment services, including but not limited to the written statement set forth in subsection (5) of this section;

(g) Persons who, because of their behavioral interaction with the infected individual, have been placed at risk for acquisition of a sexually transmitted disease, as provided in RCW 70.24.022, if the health officer or authorized representative believes that the exposed person was unaware that a risk of disease exposure existed and that the disclosure of the identity of the infected person is necessary;

(h) A law enforcement officer, fire fighter, health care provider, health care facility staff person, or other persons as defined by the board in rule pursuant to RCW 70.24.340(4), who has requested a test of a person whose bodily fluids he or she has been substantially exposed to,

pursuant to RCW 70.24.340(4), if a state or local public health officer performs the test;

(i) Claims management personnel employed by or associated with an insurer, health care service contractor, health maintenance organization, self-funded health plan, state-administered health care claims payer, or any other payer of health care claims where such disclosure is to be used solely for the prompt and accurate evaluation and payment of medical or related claims. Information released under this subsection shall be confidential and shall not be released or available to persons who are not involved in handling or determining medical claims payment; and

(j) A department of social and health services worker, a child placing agency worker, or a guardian ad litem who is responsible for making or reviewing placement or case-planning decisions or recommendations to the court regarding a child, who is less than fourteen years of age, has a sexually transmitted disease, and is in the custody of the department of social and health services or a licensed child placing agency; this information may also be received by a person responsible for providing residential care for such a child when the department of social and health services or a licensed child placing agency determines that it is necessary for the provision of child care services.

(3) No person to whom the results of a test for a sexually transmitted disease have been disclosed pursuant to subsection (2) of this section may disclose the test results to another person except as authorized by that subsection.

(4) The release of sexually transmitted disease information regarding an offender, except as provided in subsection (2)(e) of this section, shall be governed as follows:

(a) The sexually transmitted disease status of a department of corrections offender shall be made available by department of corrections health care providers to a department of corrections superintendent or administrator as necessary for disease prevention or control and for protection of the safety and security of the staff, offenders, and the public. The information may be submitted to transporting officers and receiving facilities, including facilities that are not under the department of correction's jurisdiction.

(b) The sexually transmitted disease status of a person detained in a jail shall be made available by the local public health officer to a jail administrator as necessary for disease prevention or control and for protection of the safety and security of the staff, offenders, and the public. The information may be submitted to transporting officers and receiving facilities.

(c) Information regarding a department of corrections offender's sexually transmitted disease status is confidential and may be disclosed by a correctional superintendent or administrator or local jail administrator only as necessary for disease prevention or control and for protection of the safety and security of the staff, offenders, and the public. Unauthorized disclosure of this information to any person may result in disciplinary

action, in addition to any other penalties as may be prescribed by law.

(5) Whenever disclosure is made pursuant to this section, except for subsections (2)(a) and (6) of this section, it shall be accompanied by a statement in writing which includes the following or substantially similar language: "This information has been disclosed to you from records whose confidentiality is protected by state law. State law prohibits you from making any further disclosure of it without the specific written consent of the person to whom it pertains, or as otherwise permitted by state law. A general authorization for the release of medical or other information is NOT sufficient for this purpose." An oral disclosure shall be accompanied or followed by such a notice within ten days.

(6) The requirements of this section shall not apply to the customary methods utilized for the exchange of medical information among health care providers in order to provide health care services to the patient, nor shall they apply within health care facilities where there is a need for access to confidential medical information to fulfill professional duties. [1989 c 123 § 1; 1988 c 206 § 904.]

70.24.110 Minors—Treatment, consent, liability for payment for care. A minor fourteen years of age or older who may have come in contact with any sexually transmitted disease or suspected sexually transmitted disease may give consent to the furnishing of hospital, medical and surgical care related to the diagnosis or treatment of such disease. Such consent shall not be subject to disaffirmance because of minority. The consent of the parent, parents, or legal guardian of such minor shall not be necessary to authorize hospital, medical and surgical care related to such disease and such parent, parents, or legal guardian shall not be liable for payment for any care rendered pursuant to this section. [1988 c 206 § 912; 1969 ex.s. c 164 § 1.]

70.24.120 Sexually transmitted disease case investigators—Authority to withdraw blood. Sexually transmitted disease case investigators, upon specific authorization from a physician, are hereby authorized to perform venipuncture or skin puncture on a person for the sole purpose of withdrawing blood for use in sexually transmitted disease tests.

The term "sexually transmitted disease case investigator" shall mean only those persons who:

- (1) Are employed by public health authorities; and
- (2) Have been trained by a physician in proper procedures to be employed when withdrawing blood in accordance with training requirements established by the department of social and health services; and
- (3) Possess a statement signed by the instructing physician that the training required by subsection (2) of this section has been successfully completed.

The term "physician" means any person licensed under the provisions of chapters 18.57 or 18.71 RCW. [1988 c 206 § 913; 1977 c 59 § 1.]

70.24.125 Reporting requirements for sexually transmitted diseases—Rules. The board shall establish reporting requirements for sexually transmitted diseases by rule. Reporting under this section may be required for such sexually transmitted diseases included under this chapter as the board finds appropriate. [1988 c 206 § 905.]

70.24.130 Adoption of rules. The board shall adopt such rules as are necessary to implement and enforce this chapter. Rules may also be adopted by the department of social and health services or the department of licensing for the purposes of this chapter. The rules may include procedures for taking appropriate action, in addition to any other penalty under this chapter, with regard to health care facilities or health care providers which violate this chapter or the rules adopted under this chapter. The rules shall prescribe stringent safeguards to protect the confidentiality of the persons and records subject to this chapter. The procedures set forth in chapter 34.05 RCW apply to the administration of this chapter, except that in case of conflict between chapter 34.05 RCW and this chapter, the provisions of this chapter shall control. [1988 c 206 § 915.]

70.24.140 Certain infected persons—Sexual intercourse unlawful without notification. It is unlawful for any person who has a sexually transmitted disease, except HIV infection, when such person knows he or she is infected with such a disease and when such person has been informed that he or she may communicate the disease to another person through sexual intercourse, to have sexual intercourse with any other person, unless such other person has been informed of the presence of the sexually transmitted disease. [1988 c 206 § 917.]

Effective date—1988 c 206 §§ 916, 917: See note following RCW 9A.36.021.

70.24.150 Immunity of certain public employees. Members of the state board of health and local boards of health, public health officers, and employees of the department of social and health services and local health departments are immune from civil action for damages arising out of the good faith performance of their duties as prescribed by this chapter, unless such performance constitutes gross negligence. [1988 c 206 § 918.]

70.24.200 Information for the general public on sexually transmitted diseases—Emphasis. Information directed to the general public and providing education regarding any sexually transmitted disease that is written, published, distributed, or used by any public entity, and all such information paid for, in whole or in part, with any public moneys shall give emphasis to the importance of sexual abstinence, sexual fidelity, and avoidance of substance abuse in controlling disease. [1988 c 206 § 201.]

70.24.210 Information for children on sexually transmitted diseases—Emphasis. All material directed to children in grades kindergarten through twelve and

providing education regarding any sexually transmitted disease that is written, published, distributed, or used by any public entity, and all such information paid for, in whole or in part, with any public moneys shall give emphasis to the importance of sexual abstinence outside lawful marriage and avoidance of substance abuse in controlling disease. [1988 c 206 § 202.]

Common school curriculum: RCW 28A.05.010.

70.24.220 AIDS education in public schools—Finding. The legislature finds that the public schools provide a unique and appropriate setting for educating young people about the pathology and prevention of acquired immunodeficiency syndrome (AIDS). The legislature recognizes that schools and communities vary throughout the state and that locally elected school directors should have a significant role in establishing a program of AIDS education in their districts. [1988 c 206 § 401.]

70.24.240 Clearinghouse for AIDS educational materials. The number of acquired immunodeficiency syndrome (AIDS) cases in the state may reach five thousand by 1991. This makes it necessary to provide our state's workforce with the resources and knowledge to deal with the epidemic. To ensure that accurate information is available to the state's work force, a clearinghouse for all technically correct educational materials related to AIDS should be created. [1988 c 206 § 601.]

70.24.250 Office on AIDS—Repository and clearinghouse for AIDS education and training material—University of Washington duties. There is established in the department an office on AIDS. If a department of health is created, the office on AIDS shall be transferred to the department of health, and its chief shall report directly to the secretary of health. The office on AIDS shall have as its chief a physician licensed under chapter 18.57 or 18.71 RCW or a person experienced in public health who shall report directly to the assistant secretary for health. This office shall be the repository and clearinghouse for all education and training material related to the treatment, transmission, and prevention of AIDS. The office on AIDS shall have the responsibility for coordinating all publicly funded education and service activities related to AIDS. The University of Washington shall provide the office on AIDS with appropriate training and educational materials necessary to carry out its duties. The office on AIDS shall assist state agencies with information necessary to carry out the purposes of this chapter. The department shall work with state and county agencies and specific employee and professional groups to provide information appropriate to their needs, and shall make educational materials available to private employers and encourage them to distribute this information to their employees. [1988 c 206 § 602.]

70.24.260 Emergency medical personnel—Rules for AIDS education and training. The department shall adopt rules that recommend appropriate education and training for licensed and certified emergency medical

personnel under chapter 18.73 RCW on the prevention, transmission, and treatment of AIDS. The department shall require appropriate education or training as a condition of certification or license issuance or renewal. [1988 c 206 § 603.]

70.24.270 Health professionals—Rules for AIDS education and training. Each disciplining authority under chapter 18.130 RCW shall adopt rules that require appropriate education and training for licensees on the prevention, transmission, and treatment of AIDS. The disciplining authorities shall work with the office on AIDS under RCW 70.24.250 to develop the training and educational material necessary for health professionals. [1988 c 206 § 604.]

70.24.280 Board of pharmacy—Rules for AIDS education and training. The state board of pharmacy shall adopt rules that require appropriate education and training for licensees on the prevention, transmission, and treatment of AIDS. The board shall work with the office on AIDS under RCW 70.24.250 to develop the training and educational material necessary for health professionals. [1988 c 206 § 605.]

70.24.290 Public school employees—Rules for AIDS education and training. The superintendent of public instruction shall adopt rules that require appropriate education and training, to be included as part of their present continuing education requirements, for public school employees on the prevention, transmission, and treatment of AIDS. The superintendent of public instruction shall work with the office on AIDS under RCW 70.24.250 to develop the educational and training material necessary for school employees. [1988 c 206 § 606.]

70.24.300 State and local government employees—Determination of substantial likelihood of exposure—Rules for AIDS education and training. The state personnel board, the higher education personnel board, and each unit of local government shall determine whether any employees under their jurisdiction have a substantial likelihood of exposure in the course of their employment to the human immunodeficiency virus. If so, the agency or unit of government shall adopt rules requiring appropriate training and education for the employees on the prevention, transmission, and treatment of AIDS. The rules shall specifically provide for such training and education for law enforcement, correctional, and health care workers. The state personnel board, the higher education personnel board, and each unit of local government shall work with the office on AIDS under RCW 70.24.250 to develop the educational and training material necessary for employees. [1988 c 206 § 607.]

70.24.310 Health care facility employees—Rules for AIDS education and training. The department shall adopt rules requiring appropriate education and training of employees of state licensed or certified health care facilities. The education and training shall be on the

prevention, transmission, and treatment of AIDS and shall not be required for employees who are covered by comparable rules adopted under other sections of this chapter. In adopting rules under this section, the department shall consider infection control standards and educational materials available from appropriate professional associations and professionally prepared publications. [1988 c 206 § 608.]

70.24.320 Counseling and testing—AIDS and HIV—Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Pretest counseling" means counseling aimed at helping the individual understand ways to reduce the risk of HIV infection, the nature and purpose of the tests, the significance of the results, and the potential dangers of the disease, and to assess the individual's ability to cope with the results.

(2) "Posttest counseling" means further counseling following testing usually directed toward increasing the individual's understanding of the human immunodeficiency virus infection, changing the individual's behavior, and, if necessary, encouraging the individual to notify persons with whom there has been contact capable of spreading HIV.

(3) "AIDS counseling" means counseling directed toward increasing the individual's understanding of acquired immunodeficiency syndrome and changing the individual's behavior.

(4) "HIV testing" means a test indicative of infection with the human immunodeficiency virus as specified by the board of health by rule. [1988 c 206 § 701.]

70.24.325 Counseling and testing—Insurance requirements. (1) This section shall apply to counseling and consent for HIV testing administered as part of an application for coverage authorized under Title 48 RCW.

(2) Persons subject to regulation under Title 48 RCW who are requesting an insured, a subscriber, or a potential insured or subscriber to furnish the results of an HIV test for underwriting purposes as a condition for obtaining or renewing coverage under an insurance contract, health care service contract, or health maintenance organization agreement shall:

(a) Provide written information to the individual prior to being tested which explains:

- (i) What an HIV test is;
- (ii) Behaviors that place a person at risk for HIV infection;
- (iii) That the purpose of HIV testing in this setting is to determine eligibility for coverage;
- (iv) The potential risks of HIV testing; and
- (v) Where to obtain HIV pretest counseling.

(b) Obtain informed specific written consent for an HIV test. The written informed consent shall include:

- (i) An explanation of the confidential treatment of the test results which limits access to the results to persons

involved in handling or determining applications for coverage or claims of the applicant or claimant and to those persons designated under (c)(iii) of this subsection; and

(ii) Requirements under (c)(iii) of this subsection.

(c) Establish procedures to inform an applicant of the following:

(i) That post-test counseling, as specified under WAC 248-100-209(4), is required if an HIV test is positive or indeterminate;

(ii) That post-test counseling occurs at the time a positive or indeterminate HIV test result is given to the tested individual;

(iii) That the applicant may designate a health care provider or health care agency to whom the insurer, the health care service contractor, or health maintenance organization will provide positive or indeterminate test results for interpretation and post-test counseling. When an applicant does not identify a designated health care provider or health care agency and the applicant's test results are either positive or indeterminate, the insurer, the health care service contractor, or health maintenance organization shall provide the test results to the local health department for interpretation and post-test counseling; and

(iv) That positive or indeterminate HIV test results shall not be sent directly to the applicant. [1989 c 387 § 1.]

70.24.330 HIV testing—Consent, exceptions. No person may undergo HIV testing without the person's consent except:

(1) Pursuant to RCW 7.70.065 for incompetent persons;

(2) In seroprevalence studies where neither the persons whose blood is being tested know the test results nor the persons conducting the tests know who is undergoing testing;

(3) If the department of labor and industries determines that it is relevant, in which case payments made under Title 51 RCW may be conditioned on the taking of an HIV antibody test; or

(4) As otherwise expressly authorized by this chapter. [1988 c 206 § 702.]

70.24.340 Convicted persons—Mandatory testing and counseling for certain offenses—Employees substantial exposure to bodily fluids—Procedure. (1) Local health departments authorized under this chapter shall conduct or cause to be conducted pretest counseling, HIV testing, and posttest counseling of all persons:

(a) Convicted of a sexual offense under chapter 9A.44 RCW;

(b) Convicted of prostitution or offenses relating to prostitution under chapter 9A.88 RCW; or

(c) Convicted of drug offenses under chapter 69.50 RCW if the court determines at the time of conviction that the related drug offense is one associated with the use of hypodermic needles.

(2) Such testing shall be conducted as soon as possible after sentencing and shall be so ordered by the sentencing judge.

(3) This section applies only to offenses committed after March 23, 1988.

(4) A law enforcement officer, fire fighter, health care provider, health care facility staff person, or other categories of employment determined by the board in rule to be at risk of substantial exposure to HIV, who has experienced a substantial exposure to another person's bodily fluids in the course of his or her employment, may request a state or local public health officer to order pretest counseling, HIV testing, and posttest counseling for the person whose bodily fluids he or she has been exposed to. The person who is subject to the order shall be given written notice of the order promptly, personally, and confidentially, stating the grounds and provisions of the order, including the factual basis therefor. If the person who is subject to the order refuses to comply, the state or local public health officer may petition the superior court for a hearing. The standard of review for the order is whether substantial exposure occurred and whether that exposure presents a possible risk of transmission of the HIV virus as defined by the board by rule. Upon conclusion of the hearing, the court shall issue the appropriate order. The state or local public health officer shall perform counseling and testing under this subsection if he or she finds that the exposure was substantial and presents a possible risk as defined by the board of health by rule. [1988 c 206 § 703.]

70.24.350 Prostitution and drug offenses—Voluntary testing and counseling. Local health departments, in cooperation with the regional AIDS services networks, shall make available voluntary testing and counseling services to all persons arrested for prostitution offenses under chapter 9A.88 RCW and drug offenses under chapter 69.50 RCW. Services shall include educational materials that outline the seriousness of AIDS and encourage voluntary participation. [1988 c 206 § 704.]

70.24.360 Jail detainees—Testing and counseling of persons who present a possible risk. Jail administrators, with the approval of the local public health officer, may order pretest counseling, HIV testing, and posttest counseling for persons detained in the jail if the local public health officer determines that actual or threatened behavior presents a possible risk to the staff, general public, or other persons. Approval of the local public health officer shall be based on RCW 70.24.024(3) and may be contested through RCW 70.24.024(4). The administrator shall establish, pursuant to RCW 70.48.071, a procedure to document the possible risk which is the basis for the HIV testing. "Possible risk," as used in this section, shall be defined by the board in rule. Documentation of the behavior, or threat thereof, shall be reviewed with the person to try to assure that the person understands the basis for testing. [1988 c 206 § 706.]

70.24.370 Correction facility inmates—Counseling and testing of persons who present a possible risk—Training for administrators and superintendents—

Procedure. (1) Department of corrections facility administrators may order pretest counseling, HIV testing, and posttest counseling for inmates if the secretary of corrections or the secretary's designee determines that actual or threatened behavior presents a possible risk to the staff, general public, or other inmates. The department of corrections shall establish a procedure to document the possible risk which is the basis for the HIV testing. "Possible risk," as used in this section, shall be defined by the department of corrections after consultation with the board. Possible risk, as used in the documentation of the behavior, or threat thereof, shall be reviewed with the inmate.

(2) Department of corrections administrators and superintendents who are authorized to make decisions about testing and dissemination of test information shall, at least annually, participate in training seminars on public health considerations conducted by the assistant secretary for public health or her or his designee.

(3) Administrative hearing requirements set forth in chapter 34.05 RCW do not apply to the procedure developed by the department of corrections pursuant to this section. This section shall not be construed as requiring any hearing process except as may be required under existing federal constitutional law.

(4) RCW 70.24.340 does not apply to the department of corrections or to inmates in its custody or subject to its jurisdiction. [1988 c 206 § 707.]

70.24.380 Board of health—Rules for counseling and testing. The board of health shall adopt rules establishing minimum standards for pretest counseling, HIV testing, posttest counseling, and AIDS counseling. [1988 c 206 § 709.]

70.24.400 Department to establish regional AIDS service networks—Funding—Lead counties—Regional plans—University of Washington, center for AIDS education. The department shall establish a statewide system of regional acquired immunodeficiency syndrome (AIDS) service networks as follows:

(1) The secretary of social and health services shall direct that all state or federal funds, excluding those from federal Title XIX for services or other activities authorized in this chapter, shall be allocated to the office on AIDS established in RCW 70.24.250. The secretary shall further direct that all funds for services and activities specified in subsection (3) of this section shall be provided to lead counties through contractual agreements based on plans developed as provided in subsection (2) of this section, unless direction of such funds is explicitly prohibited by federal law, federal regulation, or federal policy. The department shall deny funding allocations to lead counties only if the denial is based upon documented incidents of nonfeasance, misfeasance, or malfeasance. However, the department shall give written notice and thirty days for corrective action in incidents of misfeasance or nonfeasance before funding may be denied. The department shall designate six AIDS service network regions encompassing the state. In doing so, the department shall use the boundaries of the regional

structures in place for the community services administration on January 1, 1988.

(2) The department shall request that a lead county within each region, which shall be the county with the largest population, prepare, through a cooperative effort of local health departments within the region, a regional organizational and service plan, which meets the requirements set forth in subsection (3) of this section. Efforts should be made to use existing plans, where appropriate. The plan should place emphasis on contracting with existing hospitals, major voluntary organizations, or health care organizations within a region that have in the past provided quality services similar to those mentioned in subsection (3) of this section and that have demonstrated an interest in providing any of the components listed in subsection (3) of this section. If any of the counties within a region do not participate, it shall be the lead county's responsibility to develop the part of the plan for the nonparticipating county or counties. If all of the counties within a region do not participate, the department shall assume the responsibility.

(3) The regional AIDS service network plan shall include the following components:

(a) A designated single administrative or coordinating agency;

(b) A complement of services to include:

(i) Voluntary and anonymous counseling and testing;

(ii) Mandatory testing and/or counseling services for certain individuals, as required by law;

(iii) Notification of sexual partners of infected persons, as required by law;

(iv) Education for the general public, health professionals, and high-risk groups;

(v) Intervention strategies to reduce the incidence of HIV infection among high-risk groups, possibly including needle sterilization and methadone maintenance;

(vi) Related community outreach services for runaway youth;

(vii) Case management;

(viii) Strategies for the development of volunteer networks;

(ix) Strategies for the coordination of related agencies within the network; and

(x) Other necessary information, including needs particular to the region;

(c) A service delivery model that includes:

(i) Case management services; and

(ii) A community-based continuum-of-care model encompassing both medical, mental health, and social services with the goal of maintaining persons with AIDS in a home-like setting, to the extent possible, in the least-expensive manner; and

(d) Budget, caseload, and staffing projections.

(4) Efforts shall be made by both the counties and the department to use existing service delivery systems, where possible, in developing the networks.

(5) The University of Washington health science program, in cooperation with the office on AIDS may, within available resources, establish a center for AIDS education, which shall be linked to the networks. The

center for AIDS education is not intended to engage in state-funded research related to HIV infection, AIDS, or HIV-related conditions. Its duties shall include providing the office on AIDS with the appropriate educational materials necessary to carry out that office's duties.

(6) The department shall implement this section, consistent with available funds, by October 1, 1988, by establishing six regional AIDS service networks whose combined jurisdictions shall include the entire state.

(a) Until June 30, 1991, available funding for each regional AIDS service network shall be allocated as follows:

(i) Seventy-five percent of the amount provided for regional AIDS service networks shall be allocated per capita based on the number of persons residing within each region, but in no case less than one hundred fifty thousand dollars for each regional AIDS service network per fiscal year. This amount shall be expended for testing, counseling, education, case management, notification of sexual partners of infected persons, planning, coordination, and other services required by law, except for those enumerated in (ii) of this subsection.

(ii) Twenty-five percent of the amount provided for regional AIDS service networks shall be allocated for intervention strategies specifically addressing groups that are at a high risk of being infected with the human immunodeficiency virus. The allocation shall be made by the office on AIDS based on documented need as specified in regional AIDS network plans.

(b) After June 30, 1991, the funding shall be allocated as provided by law. By December 15, 1990, the department shall report to the appropriate committees of the legislature on proposed methods of funding regional AIDS service networks.

(7) The regional AIDS service networks shall be the official state regional agencies for AIDS information education and coordination of services. The state public health officer, as designated by the secretary of social and health services, shall make adequate efforts to publicize the existence and functions of the networks.

(8) If the department is not able to establish a network by an agreement solely with counties, it may contract with nonprofit agencies for any or all of the designated network responsibilities.

(9) The department, in establishing the networks, shall study mechanisms that could lead to reduced costs and/or increased access to services. The methods shall include capitation.

(10) The department shall reflect in its departmental biennial budget request the funds necessary to implement this section.

(11) The department shall submit an implementation plan to the appropriate committees of the legislature by July 1, 1988.

(12) The use of appropriate materials may be authorized by regional AIDS service networks in the prevention or control of HIV infection. [1988 c 206 § 801.]

70.24.410 AIDS advisory committee—Duties, review of insurance problems—Termination. To assist

the secretary of social and health services in the development and implementation of AIDS programs, the governor shall appoint an AIDS advisory committee. Among its duties shall be a review of insurance problems as related to persons with AIDS. The committee shall terminate on June 30, 1991. [1988 c 206 § 803.]

70.24.420 Additional local funding of treatment programs not required. Nothing in this chapter may be construed to require additional local funding of programs to treat communicable disease established as of March 23, 1988. [1988 c 206 § 919.]

70.24.430 Application of chapter to persons subject to jurisdiction of department of corrections. Nothing in this chapter is intended to create a state-mandated liberty interest of any nature for offenders or inmates confined in department of corrections facilities or subject to the jurisdiction of the department of corrections. [1988 c 206 § 920.]

70.24.440 Class IV human immunodeficiency virus insurance program. (1) "Class IV human immunodeficiency virus insurance program," as used in this section, means the program financed by state funds to assure health insurance coverage for individuals with class IV human immunodeficiency virus infection, as defined by the state board of health, who meet eligibility requirements established by the department.

(2) The department may pay for health insurance coverage with funds appropriated for this purpose on behalf of persons who are infected with class IV human immunodeficiency virus, meet program eligibility requirements, and are eligible for "continuation coverage" as provided by the federal consolidated omnibus budget reconciliation act of 1985 or group health insurance policies: *Provided*, That this authorization to pay for health insurance shall cease on June 30, 1991, as to any coverage not initiated prior to that date. [1989 c 260 § 3.]

70.24.900 Severability—1988 c 206. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1988 c 206 § 1001.]

Chapter 70.28

CONTROL OF TUBERCULOSIS

Sections

70.28.010	Physicians required to report cases.
70.28.020	Record of reports.
70.28.031	Powers and duties of health officers.
70.28.033	Isolation or examination order of health officer—Violation—Penalty.
70.28.035	Isolation or examination order of health officer—Refusal to obey—Application for superior court order.
70.28.037	Superior court order for confinement of individuals having active tuberculosis.
70.28.040	Penalty.
70.28.050	Enforcement of regulations.

(1989 Ed.)

Reviser's note: Powers and duties of the department of social and health services and the secretary of social and health services transferred to the department of health and the secretary of health. See RCW 43.70.060.

70.28.010 Physicians required to report cases. All practicing physicians in the state are hereby required to report to the local boards of health in writing, the name, age, sex, occupation and residence of every person having tuberculosis who has been attended by, or who has come under the observation of such physician within five days thereof. [1967 c 54 § 1; 1899 c 71 § 1; RRS § 6109.]

Severability—1967 c 54: "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1967 c 54 § 20.] For codification of 1967 c 54, see Codification Tables, Volume 0.

70.28.020 Record of reports. All local boards of health in this state are hereby required to receive and keep a permanent record of the reports required by RCW 70.28.010 to be made to them; such records shall not be open to public inspection, but shall be submitted to the proper inspection of other local and state boards of health alone, and such records shall not be published nor made public. [1967 c 54 § 2; 1899 c 71 § 2; RRS § 6110.]

70.28.031 Powers and duties of health officers. Each health officer is hereby directed to use every available means to ascertain the existence of, and immediately to investigate, all reported or suspected cases of tuberculosis in the infectious stages within his jurisdiction and to ascertain the sources of such infections. In carrying out such investigations, each health officer is hereby invested with full powers of inspection, examination and quarantine or isolation of all persons known to be infected with tuberculosis in an infectious stage or persons who have been previously diagnosed as having tuberculosis and who are under medical orders for periodic follow-up examinations and is hereby directed:

(a) To make such examinations as are deemed necessary of persons reasonably suspected of having tuberculosis in an infectious stage and to isolate or isolate and quarantine such persons, whenever deemed necessary for the protection of the public health.

(b) To make such examinations as deemed necessary of persons who have been previously diagnosed as having tuberculosis and who are under medical orders for periodic follow-up examinations.

(c) Follow local rules and regulations regarding examinations, quarantine, or isolation, and all rules, regulations, and orders of the state board and of the department in carrying out such examination, quarantine or isolation.

(d) Whenever the health officer shall determine on reasonable grounds that an examination of any person is necessary for the preservation and protection of the public health, he shall make an examination order in writing, setting forth the name of the person to be examined, the time and place of the examination, and such

other terms and conditions as may be necessary to protect the public health. Nothing contained in this subdivision shall be construed to prevent any person whom the health officer determines should have an examination for infectious tuberculosis from having such an examination made by a physician of his own choice who is licensed to practice osteopathy and surgery under chapter 18.57 RCW or medicine and surgery under chapter 18.71 RCW under such terms and conditions as the health officer shall determine on reasonable grounds to be necessary to protect the public health.

(e) Whenever the health officer shall determine that quarantine or isolation in a particular case is necessary for the preservation and protection of the public health, he shall make an isolation or quarantine order in writing, setting forth the name of the person to be isolated, the period of time during which the order shall remain effective, the place of isolation or quarantine, and such other terms and conditions as may be necessary to protect the public health.

(f) Upon the making of an examination, isolation, or quarantine order as provided in this section, a copy of such order shall be served upon the person named in such order.

(g) Upon the receipt of information that any examination, quarantine, or isolation order, made and served as herein provided, has been violated, the health officer shall advise the prosecuting attorney of the county in which such violation has occurred, in writing, and shall submit to such prosecuting attorney the information in his possession relating to the subject matter of such examination, isolation, or quarantine order, and of such violation or violations thereof.

(h) Any and all orders authorized under this section shall be made by the health officer or his tuberculosis control officer. [1967 c 54 § 4.]

70.28.033 Isolation or examination order of health officer—Violation—Penalty. Inasmuch as the order provided for by RCW 70.28.031 is for the protection of the public health, any person who, after service upon him of an order of a health officer directing his isolation or examination as provided for in RCW 70.28.031, violates or fails to comply with the same or any provision thereof, is guilty of a misdemeanor, and, upon conviction thereof, in addition to any and all other penalties which may be imposed by law upon such conviction, may be ordered by the court confined until such order of such health officer shall have been fully complied with or terminated by such health officer, but not exceeding six months from the date of passing judgment upon such conviction: *Provided*, That the court, upon suitable assurances that such order of such health officer will be complied with, may place any person convicted of a violation of such order of such health officer upon probation for a period not to exceed two years, upon condition that the said order of said health officer be fully complied with: *And provided further*, That upon any subsequent violation of such order of such health officer, such probation shall be terminated and confinement as herein provided ordered by the court. [1967 c 54 § 5.]

70.28.035 Isolation or examination order of health officer—Refusal to obey—Application for superior court order. In addition to the proceedings set forth in RCW 70.28.031, where a local health officer has reasonable cause to believe that an individual has tuberculosis as defined in the rules and regulations of the state board of health, and the individual refuses to obey the order of the local health officer to appear for an initial examination or a follow-up examination, the health officer may apply to the superior court for an order requiring the individual to comply with the order of the local health officer. [1967 c 54 § 6.]

70.28.037 Superior court order for confinement of individuals having active tuberculosis. Where it has been determined after an examination as prescribed above, that an individual has active tuberculosis, and he resides in a county in which no tuberculosis facility is located, upon application to the superior court by the local health officer, the superior court may order the sheriff to transport said individual to a designated tuberculosis facility for isolation, treatment and care until such time as the medical director of the hospital determines that his condition is such that it is safe for him to be discharged from the facility. [1967 c 54 § 7.]

70.28.040 Penalty. Any practicing physician who shall wilfully fail to comply with the provisions of RCW 70.28.010 shall be guilty of a misdemeanor, and on conviction thereof may be fined for the first offense not exceeding five dollars, and for any subsequent offense not exceeding one hundred dollars. [1899 c 71 § 4; RRS § 6112.]

70.28.050 Enforcement of regulations. It is hereby made the duty of every person having tuberculosis and of every one attending such person, and of the authorities of public and private institutions, hospitals or dispensaries, to observe and enforce the sanitary rules and regulations prescribed from time to time by the local boards of health and by the state board of health for the prevention of the spread of pulmonary tuberculosis. [1967 c 54 § 3; 1899 c 71 § 5; RRS § 6113.]

Chapter 70.30

TUBERCULOSIS HOSPITALS AND FACILITIES

Sections

70.30.061	Admissions to facility.
70.30.072	Payment for care of patients.
70.30.081	Annual inspections.

Reviser's note: Powers and duties of the department of social and health services and the secretary of social and health services transferred to the department of health and the secretary of health. See RCW 43.70.060.

County hospitals: Chapter 36.62 RCW.

Hospital's lien: Chapter 60.44 RCW.

Labor regulations, collective bargaining—Health care activities: Chapter 49.66 RCW.

70.30.061 Admissions to facility. Any person residing in the state and needing treatment for tuberculosis,

may apply in person to the local health officer or to any licensed physician for examination and if such physician has reasonable cause to believe that said person is suffering from tuberculosis in any form he may apply to the local health officer or tuberculosis hospital director for admission of said person to an appropriate facility for the care and treatment of tuberculosis. [1973 1st ex.s. c 213 § 1; 1972 ex.s. c 143 § 2.]

70.30.072 Payment for care of patients. Upon admission of a patient to a tuberculosis hospital, the secretary or the hospital director, as appropriate, or their designees, shall determine the patient's ability to pay for his care in whole or in part. If the patient or said relatives are not financially able to contribute in whole or in part to his care in the facility, said patient shall be admitted free of charge, or upon the payment of a portion of the charges. [1972 ex.s. c 143 § 3.]

70.30.081 Annual inspections. All hospitals established or maintained for the treatment of persons suffering from tuberculosis shall be subject to annual inspection, or more frequently if required by federal law, by agents of the department of social and health services, and the medical director shall admit such agents into every part of the facility and its buildings, and give them access on demand to all records, reports, books, papers, and accounts pertaining to the facility. [1972 ex.s. c 143 § 4.]

Chapter 70.32

COUNTY AND STATE TUBERCULOSIS FUNDS

Sections

- 70.32.010 Expenditures for tuberculosis control directed—Standards.
- 70.32.050 Responsibility of local health officer.
- 70.32.060 Medical reports on patients.

Reviser's note: Powers and duties of the department of social and health services and the secretary of social and health services transferred to the department of health and the secretary of health. See RCW 43.70.060.

Definitions applying to this chapter: RCW 70.33.010.

State administered tuberculosis hospital facilities: Chapter 70.33 RCW.

70.32.010 Expenditures for tuberculosis control directed—Standards. Tuberculosis is a communicable disease and tuberculosis control, case finding, prevention and follow up of known cases of tuberculosis represents the basic step in the conquest of this major health problem. In order to carry on such work effectively in accordance with the standards set by the secretary pursuant to RCW 70.33.020, the legislative authority of each county shall budget a sum to be used for the control of tuberculosis, including case finding, prevention and follow up of known cases of tuberculosis. [1975 1st ex.s. c 291 § 3; 1973 1st ex.s. c 195 § 79; 1971 ex.s. c 277 § 21; 1970 ex.s. c 47 § 7; 1967 ex.s. c 110 § 11; 1959 c 117 § 1; 1945 c 66 § 1; 1943 c 162 § 1; Rem. Supp. 1945 § 6113-1.]

Effective dates—Severability—1975 1st ex.s. c 291: See notes following RCW 82.04.050.

Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195: See notes following RCW 84.52.043.

County budget for tuberculosis facilities—State services: RCW 70.33.040.

County treasurer: Chapter 36.29 RCW.

70.32.050 Responsibility of local health officer. All arrangements for hospital care, tuberculosis case finding and post hospital public health follow-up of known cases of tuberculosis of any county enumerated in RCW 70.33.040 shall be the responsibility of the local health officer and shall be carried out pursuant to rules and regulations adopted by the state board of health. [1971 ex.s. c 277 § 22; 1967 c 54 § 16; 1945 c 66 § 5; 1943 c 162 § 5; Rem. Supp. 1945 § 6113-5.]

Definitions: RCW 70.33.010.

70.32.060 Medical reports on patients. Medical reports on the condition of all patients shall be submitted to the health department of any county of the patient's residence by the hospital medical director at such times, on such forms and in accordance with such procedure as may be prescribed by the secretary. [1971 ex.s. c 277 § 23; 1967 c 54 § 17; 1945 c 66 § 6; 1943 c 162 § 6; Rem. Supp. 1945 § 6113-6.]

Definitions: RCW 70.33.010.

Chapter 70.33

STATE ADMINISTERED TUBERCULOSIS HOSPITAL FACILITIES

Sections

- 70.33.010 Definitions.
- 70.33.020 Secretary's administrative responsibility—Scope.
- 70.33.030 Medical director—Qualifications—Powers and duties.
- 70.33.040 County budget for tuberculosis facilities—State services.
- 70.33.060 Transfer of assets and liabilities to department, when.

70.33.010 Definitions. The following words and phrases shall have the designated meanings in this chapter and RCW 70.32.010, 70.32.050, and 70.32.060 unless the context clearly indicated otherwise:

- (1) **"Department"** means the department of social and health services;
- (2) **"Secretary"** means the secretary of the department of social and health services or his designee;
- (3) **"Tuberculosis hospital"** and **"tuberculosis hospital facility"** refer to hospitals for the care of persons suffering from tuberculosis;
- (4) **"Tuberculosis control"** refers to the procedures administered in the counties for the control and prevention of tuberculosis, but does not include hospitalization. [1983 c 3 § 171; 1971 ex.s. c 277 § 15.]

***Reviser's note:** Powers and duties of the department of social and health services and the secretary of social and health services transferred to the department of health and the secretary of health. See RCW 43.70.060.

70.33.020 Secretary's administrative responsibility—Scope. From and after August 9, 1971, the secretary shall have responsibility for establishing standards for the control, prevention and treatment of tuberculosis and shall have administrative responsibility and control for all tuberculosis hospital facilities in the state operated pursuant to this chapter and RCW 70.32.010, 70.32.050, and 70.32.060 and for providing, either directly or through agreement, contract or purchase, hospital, nursing home and other appropriate facilities and services including laboratory services for persons who are, or may be suffering from tuberculosis except as otherwise provided by RCW 70.30.061, 70.33.020, 70.33.030, and 70.33.040.

Pursuant to that responsibility, the secretary shall have the following powers and duties:

(1) To develop and enter into such agreements, contracts or purchase arrangements with counties and public and private agencies or institutions to provide for hospitalization, nursing home or other appropriate facilities and services for persons who are or may be suffering from tuberculosis, or to provide for and maintain any tuberculosis hospital facility which the secretary determines is necessary to meet the needs of the state, to determine where such hospitals shall be located and to adequately staff such hospitals to meet patient care needs;

(2) To appoint a medical director for each tuberculosis hospital facility operated pursuant to this chapter and RCW 70.32.010, 70.32.050, and 70.32.060;

(3) Adopt such rules and regulations as are necessary to assure effective patient care and treatment, and to provide for the general administration of tuberculosis hospital facilities operated pursuant to this chapter and RCW 70.32.010, 70.32.050, and 70.32.060. [1983 c 3 § 172; 1973 1st ex.s. c 213 § 2; 1971 ex.s. c 277 § 16.]

70.33.030 Medical director—Qualifications—Powers and duties. The medical director of any tuberculosis hospital facility operated pursuant to this chapter and RCW 70.32.010, 70.32.050, and 70.32.060 and RCW 70.30.061, 70.33.020, 70.33.030, and 70.33.040 shall be a qualified and licensed practitioner of medicine and shall have the following powers and duties:

(1) To provide for the administration of the hospital according to the rules and regulations adopted by the department;

(2) To adopt and publish such rules and regulations governing the administration of the hospital as are deemed necessary: *Provided*, That such rules and regulations are not in conflict with those adopted by the department and have the written approval of the secretary. [1983 c 3 § 173; 1973 1st ex.s. c 213 § 3; 1971 ex.s. c 277 § 17.]

70.33.040 County budget for tuberculosis facilities—State services. In order to maintain adequate tuberculosis hospital facilities and to provide for adequate hospitalization, nursing home and other appropriate facilities and services for the residents of the state of

Washington who are or may be suffering from tuberculosis and to assure their proper care, the standards set by the secretary pursuant to RCW 70.33.020 and 70.32.050 and 70.32.060, the legislative authority of each county shall budget annually a sum to provide such services in the county.

If such counties desire to receive state services, they may elect to utilize funds pursuant to this section for the purpose of contracting with the state upon agreement by the state for the cost of providing tuberculosis hospitalization and/or outpatient treatment including laboratory services, or such funds may be retained by the county for operating its own services for the prevention and treatment of tuberculosis or any other community health purposes authorized by law. None of such counties shall be required to make any payments to the state or any other agency from these funds except upon the express consent of the county legislative authority: *Provided*, That if the counties do not comply with the promulgated standards of the department the secretary shall take action to provide such required services and to charge the affected county directly for the provision of these services by the state. [1975 1st ex.s. c 291 § 4. Prior: 1973 1st ex.s. c 213 § 4; 1973 1st ex.s. c 195 § 81; 1971 ex.s. c 277 § 18.]

Effective dates—Severability—1975 1st ex.s. c 291: See notes following RCW 82.04.050.

Expenditures for tuberculosis control directed—Standards: RCW 70.32.010.

70.33.060 Transfer of assets and liabilities to department, when. From August 9, 1971 in any county enumerated in RCW 70.33.040 currently maintaining a tuberculosis hospital facility, the department will assume all assets and liabilities relating to such hospitals and the counties and the department are authorized and directed to take all steps required by law to effect such transfer. [1971 ex.s. c 277 § 20.]

Chapter 70.37

HEALTH CARE FACILITIES

Sections	
70.37.010	Declaration of public policies—Purpose.
70.37.020	Definitions.
70.37.030	Washington health care facilities authority established—Members—Chairman—Terms—Quorum—Vacancies—Compensation and travel expenses—Governor's designee to act in governor's absence.
70.37.040	Washington health care facilities authority—Powers—Special fund bonds—Revenue bonds.
70.37.050	Requests for financing—Financing plan—Bond issue, special fund authorized.
70.37.060	Bond issues—Terms—Payment—Legal investment, etc.
70.37.070	Bond issues—Special trust fund—Payments—Status—Administration of fund.
70.37.080	Bond issues—Disposition of proceeds—Special fund.
70.37.090	Payment of authority for expenses incurred in investigating and financing projects.
70.37.100	Powers of authority.
70.37.110	Advancements and contributions by political subdivisions.

70.37.900 Severability—1974 ex.s. c 147.

70.37.010 Declaration of public policies—Purpose.

The good health of the people of our state is a most important public concern. The state has a direct interest in seeing to it that health care facilities adequate for good public health are established and maintained in sufficient numbers and in proper locations. The rising costs of care of the infirm constitute a grave challenge not only to health care providers but to our state and the people of our state who will seek such care. It is hereby declared to be the public policy of the state of Washington to assist and encourage the building, providing and utilization of modern, well equipped and reasonably priced health care facilities, and the improvement, expansion and modernization of health care facilities in a manner that will minimize the capital costs of construction, financing and use thereof and thereby the costs to the public of the use of such facilities, and to contribute to improving the quality of health care available to our citizens. In order to accomplish these and related purposes this chapter is adopted and shall be liberally construed to carry out its purposes and objects. [1974 ex.s. c 147 § 1.]

70.37.020 Definitions. As used in this chapter, the following words and terms have the following meanings, unless the context indicates or requires another or different meaning or intent and the singular of any term shall encompass the plural and the plural the singular unless the context indicates otherwise:

(1) "Authority" means the Washington health care facilities authority created by RCW 70.37.030 or any board, body, commission, department or officer succeeding to the principal functions thereof or to whom the powers conferred upon the authority shall be given by law.

(2) "Bonds" mean bonds, notes or other evidences of indebtedness of the authority issued pursuant hereto.

(3) "Health care facility" means any land, structure, system, machinery, equipment or other real or personal property or appurtenances useful for or associated with delivery of inpatient or outpatient health care service or support for such care or any combination thereof which is operated or undertaken in connection with hospital, clinic, health maintenance organization, diagnostic or treatment center, extended care facility, or any facility providing or designed to provide therapeutic, convalescent or preventive health care services, and shall include research and support facilities of a comprehensive cancer center, but excluding, however, any facility which is maintained by a participant primarily for rental or lease to self-employed health care professionals or as an independent nursing home or other facility primarily offering domiciliary care.

(4) "Participant" means any city, county or other municipal corporation or agency or political subdivision of the state or any corporation, hospital, comprehensive cancer center, or health maintenance organization authorized by law to operate nonprofit health care facilities, or any affiliate, as defined by regulations promulgated

by the director of the department of licensing pursuant to RCW 21.20.450, which is a nonprofit corporation acting for the benefit of any entity described in this subsection.

(5) "Project" means a specific health care facility or any combination of health care facilities, constructed, purchased, acquired, leased, used, owned or operated by a participant, and alterations, additions to, renovations, enlargements, betterments and reconstructions thereof. [1989 c 65 § 1; 1983 c 210 § 3; 1974 ex.s. c 147 § 2.]

70.37.030 Washington health care facilities authority established—Members—Chairman—Terms—Quorum—Vacancies—Compensation and travel expenses—Governor's designee to act in governor's absence. There is hereby established a public body corporate and politic, with perpetual corporate succession, to be known as the Washington health care facilities authority. The authority shall constitute a political subdivision of the state established as an instrumentality exercising essential governmental functions. The authority is a "public body" within the meaning of RCW 39.53.010, as now or hereafter amended. The authority shall consist of the governor who shall serve as chairman, the lieutenant governor, the insurance commissioner, the secretary of health, and one member of the public who shall be appointed by the governor, subject to confirmation by the senate, on the basis of the member's interest or expertise in health care delivery, for a term expiring on the fourth anniversary of the date of appointment. In the event that any of the offices referred to shall be abolished the resulting vacancy on the authority shall be filled by the officer who shall succeed substantially to the powers and duties thereof. The members of the authority shall be compensated in accordance with RCW 43.03.240 and shall be entitled to reimbursement, solely from the funds of the authority, for travel expenses incurred in the discharge of their duties under this chapter, subject to the provisions of RCW 43.03.050 and 43.03.060. A majority shall constitute a quorum.

The governor may designate an employee of the governor's office to act on behalf of the governor during the absence of the governor at one or more of the meetings of the authority. The vote of the designee shall have the same effect as if cast by the governor if the designation is in writing and is presented to the person presiding at the meetings included within the designation.

The governor may designate a member to preside during the governor's absence. [1989 1st ex.s. c 9 § 261; 1984 c 287 § 103; 1983 c 210 § 1; 1975-'76 2nd ex.s. c 34 § 157; 1974 ex.s. c 147 § 3.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

Legislative findings—Severability—Effective date—1984 c 287: See notes following RCW 43.03.220.

Effective date—Severability—1975-'76 2nd ex.s. c 34: See notes following RCW 2.08.115.

70.37.040 Washington health care facilities authority—Powers—Special fund bonds—Revenue bonds. (1) The authority is hereby empowered to issue

bonds for the construction, purchase, acquisition, rental, leasing or use by participants of projects for which bonds to provide funds therefor have been approved by the authority. Such bonds shall be issued in the name of the authority. They shall not be obligations of the state of Washington or general obligations of the authority but shall be payable only from the special funds created by the authority for their payment. They shall contain a recital on their face that their payment and the payment of interest thereon shall be a valid claim only as against the special fund relating thereto derived by the authority in whole or in part from the revenues received by the authority from the operation by the participant of the health care facilities for which the bonds are issued but that they shall constitute a prior charge over all other charges or claims whatever against such special fund. The lien of any such pledge on such revenues shall attach thereto immediately on their receipt by the authority and shall be valid and binding as against parties having claims of any kind in tort, contract or otherwise against the participant, without recordation thereof and whether or not they have notice thereof. For inclusion in such special funds and for other uses in or for such projects of participants the authority is empowered to accept and receive funds, grants, gifts, pledges, guarantees, mortgages, trust deeds and other security instruments, and property from the federal government or the state of Washington or other public body, entity or agency and from any public or private institution, association, corporation or organization, including participants, except that it shall not accept or receive from the state or any taxing agency any money derived from taxes save money to be devoted to the purposes of a project of the state or taxing agency.

(2) For the purposes outlined in subsection (1) of this section the authority is empowered to provide for the issuance of its special fund bonds and other limited obligation security instruments subordinate to the first and prior lien bonds, if any, relating to a project or projects of a participant and to create special funds relating thereto against which such subordinate securities shall be liens, but the authority shall not have power to incur general obligations with respect thereto.

(3) The authority may also issue special fund bonds to redeem or to fund or refund outstanding bonds or any part thereof at maturity, or before maturity if subject to prior redemption, with the right in the authority to include various series and issues of such outstanding special fund bonds in a single issue of funding or refunding special fund bonds and to pay any redemption premiums out of the proceeds thereto. Such funding or refunding bonds shall be limited special fund bonds issued in accordance with the provisions of this chapter, including this section and shall not be general obligations of the authority.

(4) Such special fund bonds of either first lien or subordinate lien nature may also be issued by the authority, the proceeds of which may be used to refund already existing mortgages or other obligations on health care facilities already constructed and operating incurred by

a participant in the construction, purchase or acquisition thereof.

(5) The authority may also lease to participants, lease to them with option to purchase, or sell to them, facilities which it has acquired by construction, purchase, devise, gift, or leasing: *Provided*, That the terms thereof shall at least fully reimburse the authority for its costs with respect to such facilities, including costs of financing, and provide fully for the debt service on any bonds issued by the authority to finance acquisition by it of the facilities. To pay the cost of acquiring or improving such facilities or to refund any bonds issued for such purpose, the authority may issue its revenue bonds secured solely by revenues derived from the sale or lease of the facility, but which may additionally be secured by mortgage, lease, pledge or assignment, trust agreement or other security device. Such bonds and such security devices shall not be obligations of the state of Washington or general obligations of the authority but shall be payable only from the special funds created by the authority for their payment. Such health care facilities may be acquired, constructed, reconstructed, and improved and may be leased, sold or otherwise disposed of in the manner determined by the authority in its sole discretion and any requirement of competitive bidding, lease performance bonds or other restriction imposed on the procedure for award of contracts for such purpose or the lease, sale or other disposition of property of the state, or any agency thereof, is not applicable to any action so taken by the authority. [1974 ex.s. c 147 § 4.]

70.37.050 Requests for financing—Financing plan—Bond issue, special fund authorized. The authority shall establish rules concerning its exercise of the powers authorized by this chapter. The authority shall receive from applicants requests for the providing of bonds for financing of health care facilities and shall investigate and determine the need and the feasibility of providing such bonds. Whenever the authority deems it necessary or advisable for the benefit of the public health to provide financing for a health care facility, it shall adopt a financing plan therefor and shall declare the estimated cost thereof, as near as may be, including as part of such cost funds necessary for the expenses incurred in the financing as well as in the construction or purchase or other acquisition or in connection with the rental or other payment for the use thereof, interest during construction, reserve funds and any funds necessary for initial start-up costs, and shall issue and sell its bonds for the purposes of carrying out the proposed financing plan: *Provided*, That if a certificate of need is required for the proposed project, no such financing plan shall be adopted until such certificate has been issued pursuant to chapter 70.38 RCW by the secretary of the department of social and health services. The authority shall have power as a part of such plan to create a special fund or funds for the purpose of defraying the cost of such project and for other projects of the same participant subsequently or at the same time approved by it and for their maintenance, improvement, reconstruction, remodeling and rehabilitation, into which special fund or

funds it shall obligate and bind the participant to set aside and pay from the gross revenues of the project or from other sources an amount sufficient to pay the principal and interest of the bonds being issued, reserves and other requirements of the special fund and to issue and sell bonds payable as to both principal and interest out of such fund or funds relating to the project or projects of such participant.

Such bonds shall bear such date or dates, mature at such time or times, be in such denominations, be in such form, either coupon or registered, or both, as provided in RCW 39.46.030, carry such registration privileges, be made transferable, exchangeable, and interchangeable, be payable in such medium of payment, at such place or places, be subject to such terms of redemption, bear such fixed or variable rate or rates of interest, and be sold in such manner, at such price, as the authority shall determine. Such bonds shall be executed by the chairman, by either its duly elected secretary or its executive director, and by the trustee if the authority determines to utilize a trustee for the bonds. Execution of the bonds may be by manual or facsimile signature: *Provided*, That at least one signature placed thereon shall be manually subscribed. Any interest coupons appurtenant to the bonds shall be executed by facsimile or manual signature or signatures, as the authority shall determine. [1983 c 210 § 2; 1983 c 167 § 171; 1981 c 121 § 1; 1974 ex.s. c 147 § 5.]

Reviser's note: This section was amended by 1983 c 167 § 171 and 1983 c 210 § 2, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

70.37.060 Bond issues—Terms—Payment—Legal investment, etc. The bonds of the authority shall be subject to such terms, conditions and covenants and protective provisions as shall be found necessary or desirable by the authority, which may include but shall not be limited to provisions for the establishment and maintenance by the participant of rates for health services of the project, fees and other charges of every kind and nature sufficient in amount and adequate, over and above costs of operation and maintenance and all other costs other than costs and expenses of capital, associated with the project, to pay the principal of and interest on the bonds payable out of the special fund or funds of the project, to set aside and maintain reserves as determined by the authority to secure the payment of such principal and interest, to set aside and maintain reserves for repairs and replacement, to maintain coverage which may be agreed upon over and above the requirements of payment of principal and interest, and for other needs found by the authority to be required for the security of the bonds. When issuing bonds the authority may provide for the future issuance of additional bonds on a parity with outstanding bonds, and the terms and conditions of their issuance.

All bonds issued under the authority of this chapter shall constitute legal investments for trustees and other fiduciaries and for savings and loan associations, banks,

and insurance companies doing business in this state. All such bonds and all coupons appertaining thereto shall be negotiable instruments within the meaning of and for all purposes of the negotiable instruments law of this state. [1974 ex.s. c 147 § 6.]

70.37.070 Bond issues—Special trust fund—Payments—Status—Administration of fund. All revenues received by the authority from a participant derived from a particular project of such participant to be applied on principal and interest of bonds or for other bond requirements such as reserves and all other funds for the bond requirements of a particular project received from contributions or grants or in any other form shall be deposited by the authority in qualified public depositories to the credit of a special trust fund to be designated as the authority special bond fund for the particular project or projects producing such revenue or to which the contribution or grant relates. Such fund shall not be or constitute funds of the state of Washington but at all times shall be kept segregated and set apart from other funds. From such funds, the authority shall make payment of principal and interest of the bonds of the particular project or projects; and the authority may set up subaccounts in the bond fund for reserve accounts for payment of principal and interest, for repairs and replacement and for other special requirements of the bonds of the project or projects as determined by the authority. In lieu of itself receiving and handling these moneys as here outlined the authority may appoint trustees, depositories and paying agents to perform the functions outlined and to receive, hold, disburse, invest and reinvest such funds on its behalf and for the protection of the bondholders. [1974 ex.s. c 147 § 7.]

70.37.080 Bond issues—Disposition of proceeds—Special fund. Proceeds from the sale of all bonds of a project issued under the provisions of this chapter received by the authority shall be deposited forthwith by the authority in qualified public depositories in a special fund for the particular project for which the bonds were issued and sold, which money shall not be funds of the state of Washington. Such fund shall at all times be segregated and set apart from all other funds and in trust for the purposes of purchase, construction, acquisition, leasing, or use of a project or projects, and for other special needs of the project declared by the authority, including the manner of disposition of any money not finally needed in the construction, purchase, or other acquisition. Money other than bond sale proceeds received by the authority for these same purposes, such as contributions from a participant or a grant from the federal government may be deposited in the same project fund. Proceeds received from the sale of the bonds may also be used to defray the expenses of the authority in connection with and incidental to the issuance and sale of bonds for the project, as well as expenses for studies, surveys, estimates, inspections and examinations of or relating to the particular project, and other costs advanced therefor by the participant or by

the authority. In lieu of itself receiving and handling these moneys in the manner here outlined the authority may appoint trustees, depositaries and paying agents to perform the functions outlined and to receive, hold, disburse, invest and reinvest such funds on its behalf and for the protection of the participants and of bondholders. [1974 ex.s. c 147 § 8.]

70.37.090 Payment of authority for expenses incurred in investigating and financing projects. The authority shall have power to require persons applying for its assistance in connection with the investigation and financing of projects to pay fees and charges to provide the authority with funds for investigation, financial feasibility studies, expenses of issuance and sale of bonds and other charges for services provided by the authority in connection with such projects. All other expenses of the authority including compensation of its employees and consultants, expenses of administration and conduct of its work and business and other expenses shall be paid out of such fees and charges, out of contributions and grants to it, out of the proceeds of bonds issued for projects of participants or out of revenues of such projects; none by the state of Washington. The authority shall have power to establish special funds into which such money shall be received and out of which it may be disbursed by the persons and with the procedure and in the manner established by the authority. [1974 ex.s. c 147 § 9.]

70.37.100 Powers of authority. The authority may make contracts, employ or engage engineers, architects, attorneys, an executive director, and other technical or professional assistants, and such other personnel as are necessary. It may delegate to the executive director or other appropriate persons the power to execute legal instruments on its behalf. It may enter into contracts with the United States, accept gifts for its purposes, and exercise any other power reasonably required to implement the principal powers granted in this chapter. No provision of this chapter shall be construed so as to limit the power of the authority to provide bond financing to more than one participant and/or project by means of a single issue of revenue bonds utilizing a single bond fund and/or a single special fund into which proceeds of such bonds are deposited. The authority shall have no power to levy any taxes of any kind or nature and no power to incur obligations on behalf of the state of Washington. [1982 c 10 § 14. Prior: 1981 c 121 § 2; 1981 c 31 § 1; 1974 ex.s. c 147 § 10.]

Severability—1982 c 10: See note following RCW 6.13.080.

70.37.110 Advancements and contributions by political subdivisions. Any city, county or other political subdivision of this state and any public health care facility is hereby authorized to advance or contribute to the authority real property, money, and other personal property of any kind towards the expense of preliminary surveys and studies and other preliminary expenses of projects which they are by other statutes of this state authorized to own or operate which are a part of a plan

or system which has been submitted by them and is under consideration by the authority for assistance under the provisions of this chapter. [1974 ex.s. c 147 § 11.]

70.37.900 Severability—1974 ex.s. c 147. If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1974 ex.s. c 147 § 12.]

Chapter 70.38

HEALTH PLANNING AND DEVELOPMENT

Sections

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70.38.015 Declaration of public policy. It is declared to be the public policy of this state:

(1) That health planning to promote, maintain, and assure the health of all citizens in the state, to provide accessible health services, health manpower, health facilities, and other resources while controlling excessive increases in costs, and to recognize prevention as a high priority in health programs, is essential to the health, safety, and welfare of the people of the state. Health planning should be responsive to changing health and social needs and conditions. Involvement in health planning from both consumers and providers throughout the state should be encouraged;

(2) That the development of health services and resources, including the construction, modernization, and conversion of health facilities, should be accomplished in a planned, orderly fashion, consistent with identified priorities and without unnecessary duplication or fragmentation;

(3) That the development and maintenance of adequate health care information, statistics and projections of need for health facilities and services is essential to effective health planning and resources development;

(4) That the development of nonregulatory approaches to health care cost containment should be considered, including the strengthening of price competition; and

(5) That health planning should be concerned with public health and health care financing, access, and quality, recognizing their close interrelationship and emphasizing cost control of health services, including cost-effectiveness and cost-benefit analysis. [1989 1st ex.s. c 9 § 601; 1983 c 235 § 1; 1980 c 139 § 1; 1979 ex.s. c 161 § 1.]

70.38.025 Definitions. When used in this chapter, the terms defined in this section shall have the meanings indicated.

(1) "Board of health" means the state board of health created pursuant to chapter 43.20 RCW.

(2) "Capital expenditure" is an expenditure, including a force account expenditure (i.e., an expenditure for a construction project undertaken by a nursing home facility as its own contractor) which, under generally accepted accounting principles, is not properly chargeable as an expense of operation or maintenance. Where a person makes an acquisition under lease or comparable arrangement, or through donation, which would have required review if the acquisition had been made by purchase, such expenditure shall be deemed a capital expenditure. Capital expenditures include donations of equipment or facilities to a nursing home facility which if acquired directly by such facility would be subject to certificate of need review under the provisions of this chapter and transfer of equipment or facilities for less than fair market value if a transfer of the equipment or facilities at fair market value would be subject to such review. The cost of any studies, surveys, designs, plans, working drawings, specifications, and other activities essential to the acquisition, improvement, expansion, or replacement of any plant or equipment with respect to which such expenditure is made shall be included in determining the amount of the expenditure.

(3) "Continuing care retirement community" means an entity which provides shelter and services under continuing care contracts with its members and which sponsors or includes a health care facility or a health service. A "continuing care contract" means a contract to provide a person, for the duration of that person's life or for a term in excess of one year, shelter along with nursing, medical, health-related, or personal care services, which is conditioned upon the transfer of property, the payment of an entrance fee to the provider of such services, or the payment of periodic charges for the care and services involved. A continuing care contract is not excluded from this definition because the contract is mutually terminable or because shelter and services are not provided at the same location.

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

(5) "Expenditure minimum" means, for the purposes of the certificate of need program, one million dollars adjusted by the department by rule to reflect changes in the United States department of commerce composite construction cost index; or a lesser amount required by federal law and established by the department by rule.

(6) "Health care facility" means hospices, hospitals, psychiatric hospitals, nursing homes, kidney disease treatment centers, ambulatory surgical facilities, continuing care retirement communities, and home health agencies, and includes such facilities when owned and operated by a political subdivision or instrumentality of the state and such other facilities as required by federal law and implementing regulations, but does not include Christian Science sanatoriums operated, listed, or certified by the First Church of Christ Scientist, Boston, Massachusetts. In addition, the term does not include any nonprofit hospital: (a) Which is operated exclusively to provide health care services for children; (b) which does not charge fees for such services; and (c) if not contrary to federal law as necessary to the receipt of federal funds by the state. In addition, the term does not include a continuing care retirement community which: (i) Offers services only to contractual members; and (ii) provides its members a contractually guaranteed range of services from independent living through skilled nursing, including some form of assistance with activities of daily living; and (iii) contractually assumes responsibility for costs of services exceeding the member's financial responsibility as stated in contract, so that, with the exception of insurance purchased by the retirement community or its members, no third party, including the medicaid program, is liable for costs of care even if the member depletes his or her personal resources; and (iv) has offered continuing care contracts and operated a nursing home continuously since January 1, 1988, or has obtained a certificate of need to establish a nursing home; and (v) maintains a binding agreement with the department of social and health services assuring that financial liability for services to members, including nursing home services, shall not fall upon the department of social and health services; and (vi) does not operate, and has not undertaken, a project which would result in a number of nursing home beds in excess of one for every four living units operated by the continuing care retirement community, exclusive of nursing home beds; and (vii) has undertaken no increase in the total number of nursing home beds after January 1, 1988, unless a professional review of pricing and long-term solvency was obtained by the retirement community within the prior five years and fully disclosed to members.

(7) "Health maintenance organization" means a public or private organization, organized under the laws of the state, which:

(a) Is a qualified health maintenance organization under Title XIII, section 1310(d) of the Public Health Services Act; or

(b)(i) Provides or otherwise makes available to enrolled participants health care services, including at least the following basic health care services: Usual physician

services, hospitalization, laboratory, x-ray, emergency, and preventive services, and out-of-area coverage; (ii) is compensated (except for copayments) for the provision of the basic health care services listed in (b)(i) to enrolled participants by a payment which is paid on a periodic basis without regard to the date the health care services are provided and which is fixed without regard to the frequency, extent, or kind of health service actually provided; and (iii) provides physicians' services primarily (A) directly through physicians who are either employees or partners of such organization, or (B) through arrangements with individual physicians or one or more groups of physicians (organized on a group practice or individual practice basis).

(8) "Health services" means clinically related (i.e., preventive, diagnostic, curative, rehabilitative, or palliative) services and includes alcoholism, drug abuse, and mental health services and as defined in federal law.

(9) "Health service area" means a geographic region appropriate for effective health planning which includes a broad range of health services.

(10) "Person" means an individual, a trust or estate, a partnership, a corporation (including associations, joint stock companies, and insurance companies), the state, or a political subdivision or instrumentality of the state, including a municipal corporation or a hospital district.

(11) "Provider" generally means a health care professional or an organization, institution, or other entity providing health care but the precise definition for this term shall be established by rule of the department, consistent with federal law.

(12) "Public health" means the level of well-being of the general population; those actions in a community necessary to preserve, protect, and promote the health of the people for which government is responsible; and the governmental system developed to guarantee the preservation of the health of the people.

(13) "Secretary" means the secretary of health or the secretary's designee.

(14) "Tertiary health service" means a specialized service that meets complicated medical needs of people and requires sufficient patient volume to optimize provider effectiveness, quality of service, and improved outcomes of care.

(15) "Hospital" means any health care institution which is required to qualify for a license under RCW 70.41.020(2); or as a psychiatric hospital under chapter 71.12 RCW. [1989 1st ex.s. c 9 § 602; 1988 c 20 § 1; 1983 1st ex.s. c 41 § 43; 1983 c 235 § 2; 1982 c 119 § 1; 1980 c 139 § 2; 1979 ex.s. c 161 § 2.]

Severability—1983 1st ex.s. c 41: See note following RCW 26.09.060.

70.38.095 Public disclosure. Public accessibility to records shall be accorded by health systems agencies pursuant to Public Law 93-641 and RCW 42.17.250 through 42.17.340. A health systems agency shall be considered a "public agency" for the sole purpose of complying with the "Open Public Meetings Act of 1971", chapter 42.30 RCW. [1979 ex.s. c 161 § 9.]

70.38.105 Health services and facilities requiring certificate of need—Fees. (1) The department is authorized and directed to implement the certificate of need program in this state pursuant to the provisions of this chapter.

(2) There shall be a state certificate of need program which is administered consistent with the requirements of federal law as necessary to the receipt of federal funds by the state.

(3) No person shall engage in any undertaking which is subject to certificate of need review under subsection (4) of this section without first having received from the department either a certificate of need or an exception granted in accordance with this chapter.

(4) The following shall be subject to certificate of need review under this chapter:

(a) The construction, development, or other establishment of a new health care facility;

(b) The sale, purchase, or lease of part or all of any existing hospital as defined in RCW 70.38.025;

(c) Any capital expenditure for the construction, renovation, or alteration of a nursing home which substantially changes the services of the facility after January 1, 1981, provided that the substantial changes in services are specified by the department in rule;

(d) Any capital expenditure for the construction, renovation, or alteration of a nursing home which exceeds the expenditure minimum as defined by RCW 70.38-.025. However, a capital expenditure which is not subject to certificate of need review under (a), (b), (c), or (e) of this subsection and which is solely for any one or more of the following is not subject to certificate of need review except to the extent required by the federal government as a condition to receipt of federal assistance and does not substantially affect patient charges:

(i) Communications and parking facilities;

(ii) Mechanical, electrical, ventilation, heating, and air conditioning systems;

(iii) Energy conservation systems;

(iv) Repairs to, or the correction of, deficiencies in existing physical plant facilities which are necessary to maintain state licensure;

(v) Acquisition of equipment, including data processing equipment, which is not or will not be used in the direct provision of health services;

(vi) Construction which involves physical plant facilities, including administrative and support facilities, which are not or will not be used for the provision of health services;

(vii) Acquisition of land; and

(viii) Refinancing of existing debt;

(e) A change in bed capacity of a health care facility which increases the total number of licensed beds or redistributes beds among acute care, skilled nursing, intermediate care, and boarding home care if the bed redistribution is to be effective for a period in excess of six months;

(f) Any new tertiary health services which are offered in or through a health care facility, and which were not offered on a regular basis by, in, or through such health

care facility within the twelve-month period prior to the time such services would be offered;

(g) Any expenditure for the construction, renovation, or alteration of a nursing home or change in nursing home services in excess of the expenditure minimum made in preparation for any undertaking under subsection (4) of this section and any arrangement or commitment made for financing such undertaking. Expenditures of preparation shall include expenditures for architectural designs, plans, working drawings, and specifications. The department may issue certificates of need permitting predevelopment expenditures, only, without authorizing any subsequent undertaking with respect to which such predevelopment expenditures are made; and

(h) Any increase in the number of dialysis stations in a kidney disease center.

(5) The department is authorized to charge fees for the review of certificate of need applications and requests for exemptions from certificate of need review. The fees shall be sufficient to cover the full cost of review and exemption, which may include the development of standards, criteria, and policies.

(6) No person may divide a project in order to avoid review requirements under any of the thresholds specified in this section. [1989 1st ex.s. c 9 § 603; 1984 c 288 § 21; 1983 c 235 § 7; 1982 c 119 § 2; 1980 c 139 § 7; 1979 ex.s. c 161 § 10.]

Severability—1984 c 288: See note following RCW 70.39.010.

Effective date—1980 c 139: See RCW 70.38.916.

Effective dates—1979 ex.s. c 161: See RCW 70.38.915.

70.38.111 Certificates of need—Exemptions. (1) The department shall not require a certificate of need for the offering of an inpatient tertiary health service by:

(a) A health maintenance organization or a combination of health maintenance organizations if (i) the organization or combination of organizations has, in the service area of the organization or the service areas of the organizations in the combination, an enrollment of at least fifty thousand individuals, (ii) the facility in which the service will be provided is or will be geographically located so that the service will be reasonably accessible to such enrolled individuals, and (iii) at least seventy-five percent of the patients who can reasonably be expected to receive the tertiary health service will be individuals enrolled with such organization or organizations in the combination;

(b) A health care facility if (i) the facility primarily provides or will provide inpatient health services, (ii) the facility is or will be controlled, directly or indirectly, by a health maintenance organization or a combination of health maintenance organizations which has, in the service area of the organization or service areas of the organizations in the combination, an enrollment of at least fifty thousand individuals, (iii) the facility is or will be geographically located so that the service will be reasonably accessible to such enrolled individuals, and (iv) at least seventy-five percent of the patients who can reasonably be expected to receive the tertiary health service will be individuals enrolled with such organization or organizations in the combination; or

(c) A health care facility (or portion thereof) if (i) the facility is or will be leased by a health maintenance organization or combination of health maintenance organizations which has, in the service area of the organization or the service areas of the organizations in the combination, an enrollment of at least fifty thousand individuals and, on the date the application is submitted under subsection (2) of this section, at least fifteen years remain in the term of the lease, (ii) the facility is or will be geographically located so that the service will be reasonably accessible to such enrolled individuals, and (iii) at least seventy-five percent of the patients who can reasonably be expected to receive the tertiary health service will be individuals enrolled with such organization;

if, with respect to such offering or obligation by a nursing home, the department has, upon application under subsection (2) of this section, granted an exemption from such requirement to the organization, combination of organizations, or facility.

(2) A health maintenance organization, combination of health maintenance organizations, or health care facility shall not be exempt under subsection (1) of this section from obtaining a certificate of need before offering a tertiary health service unless:

(a) It has submitted at least thirty days prior to the offering of services reviewable under RCW 70.38.105(4)(d) an application for such exemption; and

(b) The application contains such information respecting the organization, combination, or facility and the proposed offering or obligation by a nursing home as the department may require to determine if the organization or combination meets the requirements of subsection (1) of this section or the facility meets or will meet such requirements; and

(c) The department approves such application. The department shall approve or disapprove an application for exemption within thirty days of receipt of a completed application. In the case of a proposed health care facility (or portion thereof) which has not begun to provide tertiary health services on the date an application is submitted under this subsection with respect to such facility (or portion), the facility (or portion) shall meet the applicable requirements of subsection (1) of this section when the facility first provides such services. The department shall approve an application submitted under this subsection if it determines that the applicable requirements of subsection (1) of this section are met.

(3) A health care facility (or any part thereof) with respect to which an exemption was granted under subsection (1) of this section may not be sold or leased and a controlling interest in such facility or in a lease of such facility may not be acquired and a health care facility described in (1)(c) which was granted an exemption under subsection (1) of this section may not be used by any person other than the lessee described in (1)(c) unless:

(a) The department issues a certificate of need approving the sale, lease, acquisition, or use; or

(b) The department determines, upon application, that (i) the entity to which the facility is proposed to be sold

or leased, which intends to acquire the controlling interest, or which intends to use the facility is a health maintenance organization or a combination of health maintenance organizations which meets the requirements of (1)(a)(i), and (ii) with respect to such facility, meets the requirements of (1)(a) (ii) or (iii) or the requirements of (1)(b) (i) and (ii).

(4) In the case of a health maintenance organization, an ambulatory care facility, or a health care facility, which ambulatory or health care facility is controlled, directly or indirectly, by a health maintenance organization or a combination of health maintenance organizations, the department may under the program apply its certificate of need requirements only to the offering of inpatient tertiary health services and then only to the extent that such offering is not exempt under the provisions of this section. [1989 1st ex.s. c 9 § 604; 1982 c 119 § 3; 1980 c 139 § 9.]

70.38.115 Certificates of need—Procedures—Rules—Criteria for review—Conditional certificates of need—Concurrent review—Review periods—Hearing—Adjudicative proceeding—Amended certificates of need. (1) Certificates of need shall be issued, denied, suspended, or revoked by the designee of the secretary in accord with the provisions of this chapter and rules of the department which establish review procedures and criteria for the certificate of need program.

(2) Criteria for the review of certificate of need applications, except as provided in subsection (3) of this section for health maintenance organizations, shall include but not be limited to consideration of the following:

(a) Until June 30, 1990, the relationship of the health services being reviewed to the applicable health plans;

(b) The need that the population served or to be served by such services has for such services;

(c) The availability of less costly or more effective alternative methods of providing such services;

(d) The financial feasibility and the probable impact of the proposal on the cost of and charges for providing health services in the community to be served;

(e) In the case of health services to be provided, (i) the availability of alternative uses of project resources for the provision of other health services, (ii) the extent to which such proposed services will be accessible to all residents of the area to be served, and (iii) the need for and the availability in the community of services and facilities for osteopathic and allopathic physicians and their patients. The department shall consider the application in terms of its impact on existing and proposed institutional training programs for doctors of osteopathy and medicine at the student, internship, and residency training levels;

(f) In the case of a construction project, the costs and methods of the proposed construction, including the cost and methods of energy provision, and the probable impact of the construction project reviewed (i) on the cost of providing health services by the person proposing such construction project and (ii) on the cost and charges to the public of providing health services by other persons;

(g) The special needs and circumstances of osteopathic hospitals, nonallopathic services and children's hospitals;

(h) Improvements or innovations in the financing and delivery of health services which foster cost containment and serve to promote quality assurance and cost-effectiveness;

(i) In the case of health services proposed to be provided, the efficiency and appropriateness of the use of existing services and facilities similar to those proposed;

(j) In the case of existing services or facilities, the quality of care provided by such services or facilities in the past; and

(k) In the case of hospital certificate of need applications, whether the hospital meets or exceeds the regional average level of charity care, as determined by the secretary.

(3) A certificate of need application of a health maintenance organization or a health care facility which is controlled, directly or indirectly, by a health maintenance organization, shall be approved by the department if the department finds:

(a) Approval of such application is required to meet the needs of the members of the health maintenance organization and of the new members which such organization can reasonably be expected to enroll; and

(b) The health maintenance organization is unable to provide, through services or facilities which can reasonably be expected to be available to the organization, its health services in a reasonable and cost-effective manner which is consistent with the basic method of operation of the organization and which makes such services available on a long-term basis through physicians and other health professionals associated with it.

A health care facility, or any part thereof, with respect to which a certificate of need was issued under this subsection may not be sold or leased and a controlling interest in such facility or in a lease of such facility may not be acquired unless the department issues a certificate of need approving the sale, acquisition, or lease.

(4) Until the final expiration of the state health plan as provided under RCW 70.38.919, the decision of the department on a certificate of need application shall be consistent with the state health plan in effect, except in emergency circumstances which pose a threat to the public health. The department in making its final decision may issue a conditional certificate of need if it finds that the project is justified only under specific circumstances. The conditions shall directly relate to the project being reviewed. The conditions may be released if it can be substantiated that the conditions are no longer valid and the release of such conditions would be consistent with the purposes of this chapter.

(5) Criteria adopted for review in accordance with subsection (2) of this section may vary according to the purpose for which the particular review is being conducted or the type of health service reviewed.

(6) The department shall specify information to be required for certificate of need applications. Within fifteen days of receipt of the application, the department shall request additional information considered necessary

to the application or start the review process. Applicants may decline to submit requested information through written notice to the department, in which case review starts on the date of receipt of the notice. Applications may be denied or limited because of failure to submit required and necessary information.

(7) Concurrent review is for the purpose of comparative analysis and evaluation of competing or similar projects in order to determine which of the projects may best meet identified needs. Categories of projects subject to concurrent review include at least new health care facilities, new services, and expansion of existing health care facilities. The department shall specify time periods for the submission of applications for certificates of need subject to concurrent review, which shall not exceed ninety days. Review of concurrent applications shall start fifteen days after the conclusion of the time period for submission of applications subject to concurrent review. Concurrent review periods shall be limited to one hundred fifty days, except as provided for in rules adopted by the department authorizing and limiting amendment during the course of the review, or for an unresolved pivotal issue declared by the department.

(8) Review periods for certificate of need applications other than those subject to concurrent review shall be limited to ninety days. Review periods may be extended up to thirty days if needed by a review agency, and for unresolved pivotal issues the department may extend up to an additional thirty days. A review may be extended in any case if the applicant agrees to the extension.

(9) The department or its designee, shall conduct a public hearing on a certificate of need application if requested unless the review is expedited or subject to emergency review. The department by rule shall specify the period of time within which a public hearing must be requested and requirements related to public notice of the hearing, procedures, recordkeeping and related matters.

(10) Any applicant denied a certificate of need or whose certificate of need has been suspended or revoked has the right to an adjudicative proceeding. The proceeding is governed by chapter 34.05 RCW, the Administrative Procedure Act.

(11) An amended certificate of need shall be required for the following modifications of an approved project:

- (a) A new service requiring review under this chapter;
- (b) An expansion of a service subject to review beyond that originally approved;
- (c) An increase in bed capacity;
- (d) A significant reduction in the scope of a nursing home project without a commensurate reduction in the cost of the nursing home project, or a cost increase (as represented in bids on a nursing home construction project or final cost estimates acceptable to the person to whom the certificate of need was issued) if the total of such increases exceeds twelve percent or fifty thousand dollars, whichever is greater, over the maximum capital expenditure approved. The review of reductions or cost increases shall be restricted to the continued conformance of the nursing home project with the review criteria pertaining to financial feasibility and cost containment.

(12) An application for a certificate of need for a nursing home capital expenditure which is determined by the department to be required to eliminate or prevent imminent safety hazards or correct violations of applicable licensure and accreditation standards shall be approved. [1989 1st ex.s. c 9 § 605; 1989 c 175 § 126; 1984 c 288 § 22; 1983 c 235 § 8; 1980 c 139 § 8; 1979 ex.s. c 161 § 11.]

Reviser's note: This section was amended by 1989 c 175 § 126 and by 1989 1st ex.s. c 9 § 605, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—1989 c 175: See note following RCW 34.05.010.

Severability—1984 c 288: See note following RCW 70.39.010.

Effective date—1980 c 139: See RCW 70.38.916.

Effective dates—1979 ex.s. c 161: See RCW 70.38.915.

70.38.125 Certificates of need—Issuance—Duration—Penalties for violations. (1) A certificate of need shall be valid for two years. One six-month extension may be made if it can be substantiated that substantial and continuing progress toward commencement of the project has been made as defined by regulations to be adopted pursuant to this chapter.

(2) A project for which a certificate of need has been issued shall be commenced during the validity period for the certificate of need.

(3) The department shall monitor the approved projects to assure conformance with certificates of need that have been issued. Rules and regulations adopted shall specify when changes in the project require reevaluation of the project. The department may require applicants to submit periodic progress reports on approved projects or other information as may be necessary to effectuate its monitoring responsibilities.

(4) The secretary, in the case of a new health facility, shall not issue any license unless and until a prior certificate of need shall have been issued by the department for the offering or development of such new health facility.

(5) Any person who engages in any undertaking which requires certificate of need review without first having received from the department either a certificate of need or an exception granted in accordance with this chapter shall be liable to the state in an amount not to exceed one hundred dollars a day for each day of such unauthorized offering or development. Such amounts of money shall be recoverable in an action brought by the attorney general on behalf of the state in the superior court of any county in which the unauthorized undertaking occurred. Any amounts of money so recovered by the attorney general shall be deposited in the state general fund.

(6) The department may bring any action to enjoin a violation or the threatened violation of the provisions of this chapter or any rules and regulations adopted pursuant to this chapter, or may bring any legal proceeding authorized by law, including but not limited to the special proceedings authorized in Title 7 RCW, in the superior court in the county in which such violation occurs or is about to occur, or in the superior court of Thurston

county. [1989 1st ex.s. c 9 § 606; 1983 c 235 § 9; 1980 c 139 § 10; 1979 ex.s. c 161 § 12.]

Effective date—1980 c 139: See RCW 70.38.916.

Effective date—1979 ex.s. c 161: See RCW 70.38.915.

70.38.135 Services and surveys—Rules. The secretary shall have authority to:

(1) Provide when needed temporary or intermittent services of experts or consultants or organizations thereof, by contract, when such services are to be performed on a part time or fee-for-service basis;

(2) Make or cause to be made such on-site surveys of health care or medical facilities as may be necessary for the administration of the certificate of need program;

(3) Upon review of recommendations, if any, from the board of health:

(a) Promulgate rules under which health care facilities providers doing business within the state shall submit to the department such data related to health and health care as the department finds necessary to the performance of its functions under this chapter;

(b) Promulgate rules pertaining to the maintenance and operation of medical facilities which receive federal assistance under the provisions of Title XVI;

(c) Promulgate rules in implementation of the provisions of this chapter, including the establishment of procedures for public hearings for predecisions and post-decisions on applications for certificate of need;

(d) Promulgate rules providing circumstances and procedures of expedited certificate of need review if there has not been a significant change in existing health facilities of the same type or in the need for such health facilities and services;

(4) Grant allocated state funds to qualified entities, as defined by the department, to fund not more than seventy-five percent of the costs of regional planning activities, excluding costs related to review of applications for certificates of need, provided for in this chapter or approved by the department; and

(5) Contract with and provide reasonable reimbursement for qualified entities to assist in determinations of certificates of need. [1989 1st ex.s. c 9 § 607; 1983 c 235 § 10; 1979 ex.s. c 161 § 13.]

70.38.155 Certificates of need—Savings—1979 ex.s. c 161. The enactment of this chapter shall not have the effect of terminating, or in any way modifying the validity of any certificate of need which shall already have been issued prior to *the effective date of this act. [1979 ex.s. c 161 § 15.]

***Reviser's note:** For "the effective date of this act", see RCW 70.38.915.

70.38.156 Certificates of need—Savings—1980 c 139. The enactment of this chapter as amended shall not have the effect of terminating, or in any way modifying the validity of any certificate of need which shall already have been issued prior to *the effective date of this 1980 act. [1980 c 139 § 11.]

***Reviser's note:** For "the effective date of this 1980 act", see RCW 70.38.916.

70.38.157 Certificates of need—Savings—1983 c 235. The enactment of amendments to chapter 70.38 RCW by *this 1983 act shall not have the effect of terminating or in any way modifying the validity of a certificate of need which was issued prior to **the effective date of this 1983 act. [1983 c 235 § 11.]

Reviser's note: *(1) "this 1983 act" [1983 c 235] consists of the 1983 amendments to RCW 70.38.015, 70.38.025, 70.38.035, 70.38.045, 70.38.065, 70.38.085, 70.38.105, 70.38.115, 70.38.125, 70.38.135, 70.38.905, 70.38.910, 43.131.213, and 43.131.214, and the enactment of RCW 70.38.157, 70.38.914, and two uncodified sections.

***(2) "the effective date of this 1983 act" [1983 c 235] for sections 16 and 17 of that act was May 17, 1983. For all other sections of that act the effective date was July 24, 1983.

70.38.158 Certificates of need—Savings—1989 1st ex.s. c 9 §§ 601 through 607. The enactment of *sections 601 through 607 of this act shall not have the effect of terminating, or in any way modifying, the validity of any certificate of need which shall already have been issued prior to July 1, 1989. [1989 1st ex.s. c 9 § 608.]

***Reviser's note:** "Sections 601 through 607 of this act" consist of the 1989 1st ex.s. c 9 amendments to RCW 70.38.015, 70.38.025, 70.38.105, 70.38.111, 70.38.115, 70.38.125, and 70.38.135.

70.38.905 Conflict with federal law—Construction. In any case where the provisions of this chapter may directly conflict with federal law, or regulations promulgated thereunder, the federal law shall supersede and be paramount as necessary to the receipt of federal funds by the state. [1983 c 235 § 12; 1979 ex.s. c 161 § 16.]

70.38.910 Severability—1983 c 235; 1979 ex.s. c 161. If any provision of this chapter or its application to any person or circumstance is held invalid, the remainder of the chapter or the application of the provision to other persons or circumstances is not affected. [1983 c 235 § 13; 1979 ex.s. c 161 § 17.]

70.38.911 Severability—1980 c 139. If any provision of this 1980 act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1980 c 139 § 12.]

70.38.912 Severability—1989 1st ex.s. c 9. See RCW 43.70.920.

70.38.914 Pending certificates of need—1983 c 235. A certificate of need application which was submitted and declared complete, but upon which final action had not been taken prior to *the effective date of this act, shall be reviewed and action taken based on chapter 70.38 RCW, as in effect prior to *the effective date of this act, and the rules adopted thereunder. [1983 c 235 § 14.]

***Reviser's note:** For "the effective date of this act", see note following RCW 70.38.157.

70.38.915 Effective dates—Pending certificates of need—1979 ex.s. c 161. (1) *Sections 10, 11, 12, and 21 shall take effect on January 1, 1980.

(2) Any certificate of need application which was submitted and declared complete, but upon which final action had not been taken prior to January 1, 1980, shall be reviewed and action taken based on chapter 70.38 RCW, as in effect prior to ****the effective date of this 1979 act, and the regulations adopted thereunder.** [1979 ex.s. c 161 § 19.]

Reviser's note: *(1) Sections 10, 11, and 12 are codified as RCW 70.38.105, 70.38.115, and 70.38.125. Section 21 was a repealer which repealed RCW 70.38.020, 70.38.110 through 70.38.190, and 70.38.210.

******(2) The effective date of those remaining sections of 1979 ex.s. c 161 which do not have a specific effective date indicated in this section is September 1, 1979.

70.38.916 Effective date—1980 c 139. *Sections 7, 8, and 10 of this 1980 act shall take effect January 1, 1981. [1980 c 139 § 14.]

Reviser's note: *(1) "Sections 7, 8, and 10 of this 1980 act" consist of amendments to RCW 70.38.105, 70.38.115, and 70.38.125.

(2) The effective date of those remaining sections of 1980 c 139 is June 12, 1980.

70.38.917 Effective date—1989 1st ex.s. c 9. See RCW 43.70.910.

70.38.918 Effective dates—Pending certificates of need—1989 1st ex.s. c 9. Any certificate of need application which was submitted and declared complete, but upon which final action had not been taken prior to July 1, 1989, shall be reviewed and action taken based on chapter 70.38 RCW, as in effect prior to July 1, 1989, and the rules adopted thereunder. [1989 1st ex.s. c 9 § 609.]

70.38.919 Effective date—State health plan—1989 1st ex.s. c 9. For the purpose of supporting the certificate of need process, the state health plan developed in accordance with *RCW 70.38.065 and in effect on July 1, 1989, shall remain effective until June 30, 1990, or until superseded by rules adopted by the department of health for this purpose. The governor may amend the state health plan, as the governor finds appropriate, until the final expiration of the plan. [1989 1st ex.s. c 9 § 610.]

***Reviser's note:** RCW 70.38.065 was repealed by 1989 1st ex.s. c 9 § 819, effective July 1, 1989.

70.38.920 Short title. This act may be cited as the "State Health Planning and Resources Development Act". [1979 ex.s. c 161 § 22.]

Chapter 70.39

**HOSPITAL HEALTH CARE SERVICES—
HOSPITAL COMMISSION**

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70.39.010 Purpose of chapter—Intent of 1984 amendments. The primary purpose of this chapter is to promote the economic delivery of high quality, necessary, and effective health care services to the people by establishing a *hospital commission with authority over financial disclosure, budget, prospective rate approval, and other related matters, including authority to develop a hospital reimbursement control system, which will assure all purchasers of health care services that total hospital costs are reasonably related to total services, that costs do not exceed those that are necessary for prudently and reasonably managed hospitals, that hospital rates are reasonably related to aggregate costs, and that such rates are set equitably among all purchasers of these services without undue discrimination.

The legislature finds and declares that rising hospital costs are a vital concern to the people of this state because of the danger which is posed that hospital and health care services are fast becoming out of the economic reach of the majority of our population. It is further declared that health care is a right of the people and one of the primary purposes for which governments

are established, and it is, therefore, essential that an effective cost control program be established. It is the legislative intent, in pursuance of this declared public policy, to provide for uniform measures on a state-wide basis to control hospital rates without the sacrifice of quality of service or reasonable access to necessary health care.

The legislature further finds and declares that: (1) There is an increased need for comprehensive public oversight of the costs of and expenditures for health care services; (2) no one should be denied access to necessary health care because of poverty or unemployment; (3) access to necessary health care in rural areas must be assured; (4) the *hospital commission and the public need additional information to make better-informed decisions about health care costs and charges; (5) there is a need to encourage market penetration of alternative health care delivery systems that have internal incentives to control costs and stimulate market competition, and that some regulatory policies have impeded health care cost containment by unduly restricting competition; (6) there is a need for more effective assessment of the impact of technology on the cost and delivery of health care services so that appropriate public policies may be adopted; and (7) the *hospital commission should be more representative of a diversity of public interests so that it can more effectively carry out its mission.

It is the intent of the 1984 amendments to this chapter to strengthen certain regulatory policies which have had limited success in containing hospital costs since this chapter was enacted, and to promote constructive competition among health care delivery systems. [1984 c 288 § 1; 1973 1st ex.s. c 5 § 2.]

***Reviser's note:** All references to hospital commission shall be construed to mean department of health; see RCW 43.70.902.

Sunset Act application: See note following RCW 70.39.030.

Severability—1984 c 288: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1984 c 288 § 27.]

70.39.020 Definitions. As used in this chapter:

(1) "Commission" means the *hospital commission of the state of Washington as created by this chapter;

(2) "Consumer" means any person whose occupation is other than the administration of health activities or the providing of health services, who has no fiduciary obligation to a health facility or other health agency, and who has no material financial interest in the rendering of health services;

(3) "Hospital" means any health care institution which is required to qualify for a license under RCW 70.41.020(2); or as a psychiatric hospital under chapter 71.12 RCW, but shall not include beds utilized by a comprehensive cancer center for cancer research, or any health care institution conducted for those who rely primarily upon treatment by prayer or spiritual means in accordance with the creed or tenets of any church or denomination.

(4) "Diagnosis-related groups" is a classification system that groups hospital patients according to principal

and secondary diagnosis, presence or absence of a surgical procedure, age, presence or absence of significant comorbidities or complications, and other relevant criteria, an example of which has been adopted as the basis for prospective payment under the federal medicare program by the social security amendments of 1983, Public Law 98-21.

(5) "Medical technology" means the drugs, devices, and medical or surgical procedures used in the delivery of health care, and the organizational or supportive systems within which such care is provided.

(6) "Technology assessment" means a comprehensive form of policy research that examines the technical, economic, and social consequences of technological applications, including the indirect, unintended, or delayed social or economic impacts. In health care, such analysis must evaluate efficacy and safety as well as efficiency.

(7) "Charity care" means necessary hospital health care rendered to indigent persons, to the extent that the persons are unable to pay for the care or to pay deductibles or co-insurance amounts required by a third-party payer, as determined by the commission.

(8) "Rate" means the maximum revenue which a hospital may receive for each unit of service, as determined by the commission.

(9) "Comprehensive cancer center" means an institution and its research programs as recognized by the National Cancer Institute prior to April 20, 1983.

(10) "Region" means one of the health service areas established pursuant to **RCW 70.38.085, except that King county shall be considered a separate region for the purposes of this chapter. [1984 c 288 § 2; 1973 1st ex.s. c 5 § 3.]

Reviser's note: *(1) All references to hospital commission shall be construed to mean department of health; see RCW 43.70.902.

** (2) RCW 70.38.085 was repealed by 1989 1st ex.s. c 9 § 819, effective July 1, 1989.

Sunset Act application: See note following RCW 70.39.030.

Severability—1984 c 288: See note following RCW 70.39.010.

70.39.030 *Hospital commission—Created—Membership. (1) There is hereby created a *hospital commission, which shall be a separate and independent commission of the state. The commission shall be composed of nine members appointed by the governor as follows:

(a) Three members representing consumers of health care services, at least one of whom represents the interests of low-income persons;

(b) One member representing private employers;

(c) One member representing labor;

(d) One member representing hospitals, but in cases in which rates for an osteopathic hospital are to be considered, the representative of osteopathic hospitals on the technical advisory committee shall replace the hospital representative on the commission;

(e) One member representing health care professionals licensed under Title 18 RCW;

(f) One member representing commercial health insurers or health care service contractors; and

(g) The secretary of social and health services, representing the interests of the state as a major purchaser of health care services. The secretary may delegate a permanent designee in the secretary's absence.

(2) Except for the members designated in subsection (1) (d) and (e) of this section, members shall not have any fiduciary obligation to any health care facility or any material financial interest in the provision of health care services. [1984 c 288 § 3; 1973 1st ex.s. c 5 § 4.]

Reviser's note: (1) Sunset Act application. The *hospital commission is subject to review, termination, and possible extension under chapter 43.131 RCW, the Sunset Act. See RCW 43.131.253. RCW 70.39.010, 70.39.020, 70.39.030, 70.39.040, 70.39.050, 70.39.060, 70.39.070, 70.39.080, 70.39.090, 70.39.100, 70.39.110, 70.39.120, 70.39.125, 70.39.130, 70.39.140, 70.39.150, 70.39.160, 70.39.165, 70.39.170, 70.39.180, 70.39.190, 70.39.195, 70.39.200, 70.39.900, and 70.39.910 are scheduled for future repeal under RCW 43.131.254.

*(2) All references to hospital commission shall be construed to mean department of health; see RCW 43.70.902.

Severability—1984 c 288: See note following RCW 70.39.010.

70.39.040 *Hospital commission—Terms—Vacancies. Except for the secretary of social and health services or the secretary's designee, members of the commission shall serve for four-year terms. Appointments shall require senate confirmation. No member shall serve on the commission for more than two consecutive terms. A vacancy shall be filled by appointment for the remainder of the unexpired term and the initial appointments and vacancies shall not require senate confirmation until the legislature next convenes. Of the three additional members, other than the secretary, appointed after June 7, 1984, two shall initially be appointed for two-year terms and one for a three-year term. [1984 c 288 § 4; 1977 c 36 § 1; 1973 1st ex.s. c 5 § 5.]

***Reviser's note:** All references to hospital commission shall be construed to mean department of health; see RCW 43.70.902.

Sunset Act application: See note following RCW 70.39.030.

Severability—1984 c 288: See note following RCW 70.39.010.

70.39.050 *Hospital commission—Officers—Meetings—Compensation and travel expenses (as amended by 1984 c 287). The member representing consumers of health care services shall serve as chairman. The commission shall elect from its members a vice-chairman biennially. Meetings of the commission shall be held as frequently as its duties require. The commission shall keep minutes of its meetings and adopt procedures for the governing of its meetings, minutes, and transactions.

Three members shall constitute a quorum, but a vacancy on the commission shall not impair its power to act. No action of the commission shall be effective unless three members concur therein.

The members of the commission shall be compensated in accordance with RCW 43.03.250 and shall be reimbursed for their travel expenses in accordance with RCW 43.03.050 and 43.03.060. [1984 c 287 § 104; 1973 1st ex.s. c 5 § 6.]

***Reviser's note:** All references to hospital commission shall be construed to mean department of health; see RCW 43.70.902.

Sunset Act application: See note following RCW 70.39.030.

Legislative findings—Severability—Effective date—1984 c 287: See notes following RCW 43.03.220.

70.39.050 *Hospital commission—Officers—Meetings—Expenses (as amended by 1984 c 288). A member representing consumers of health care services and designated by the governor shall serve as chairman. The commission shall elect from its members a

vice-chairman biennially. Meetings of the commission shall be held as frequently as its duties require. The commission shall keep minutes of its meetings and adopt procedures for the governing of its meetings, minutes, and transactions.

Five members shall constitute a quorum, but a vacancy on the commission shall not impair its power to act. No action of the commission shall be effective unless five members concur therein.

The members of the commission shall receive no compensation for their service as members but, with the exception of the secretary of social and health services or the secretary's designee, the members shall be reimbursed for their expenses while attending meetings of the commission in the same manner as legislators engaged in interim committee business as in RCW 44.04.120. [1984 c 288 § 5; 1973 1st ex.s. c 5 § 6.]

Reviser's note: (1) RCW 70.39.050 was amended twice during the 1984 regular session of the legislature, each without reference to the other.

For rule of construction concerning sections amended more than once at any session of the same legislature, see RCW 1.12.025.

*(2) All references to hospital commission shall be construed to mean department of health; see RCW 43.70.902.

Sunset Act application: See note following RCW 70.39.030.

Severability—1984 c 288: See note following RCW 70.39.010.

70.39.060 *Hospital commission—Exempt staff—Other staff—Services. The commission may employ a full time executive director, a deputy director, an associate director for budget and rate review, an associate director for program planning and research, and a confidential secretary who shall be exempt from the civil service law, chapter 41.06 RCW and who shall perform the duties delegated by the commission. The executive director shall be the chief administrative officer of the commission and shall be subject to its direction.

The commission shall employ such other staff as are necessary to fulfill the responsibilities and duties of the commission, such staff to be subject to the civil service law, chapter 41.06 RCW, and under the supervision of the executive director. In addition, the commission may contract with third parties for services necessary to carry out its activities where this will promote economy, avoid duplication of effort, and make best use of available expertise.

Any such contractor or consultant shall be prohibited from releasing, publishing, or otherwise using any information made available to it under its contractual responsibility, without specific permission of the commission.

The commission may apply for and receive and accept grants, gifts, and other payments, including property and service, from any governmental or other public or private entity or person, and may make arrangements as to the use of these receipts, including the undertaking of special studies and other projects relating to hospital health care costs. [1984 c 288 § 6; 1977 c 35 § 1; 1973 1st ex.s. c 5 § 7.]

***Reviser's note:** All references to hospital commission shall be construed to mean department of health; see RCW 43.70.902.

Sunset Act application: See note following RCW 70.39.030.

Severability—1984 c 288: See note following RCW 70.39.010.

70.39.070 Technical advisory committee—Members—Terms—Officers—Meetings—Expenses (as amended by 1984 c 125). In order to assist the commission in carrying out its duties, the

governor shall appoint a technical advisory committee, hereinafter referred to as "committee", which shall consist of ten members as follows:

(1) One member who shall be a certified public accountant licensed pursuant to chapter 18.04 RCW and who shall be knowledgeable in the financial affairs of hospitals.

(2) One member who shall be a health care practitioner licensed under the laws of this state and who shall be knowledgeable in hospital administration.

(3) Five members who shall be representative of the interest of investor-owned, district, not-for-profit, osteopathic, and university hospitals.

(4) One member who shall be representative of consumers of health care.

(5) One member who shall be the secretary of social and health services, or his designee, to provide continuing liaison, data and support from those functions of the department which may affect the responsibilities of the commission.

(6) One member of the commission, elected by the commission.

The members shall serve concurrently and shall have four-year terms. Any vacancy shall be filled by appointment by the governor and an appointee selected to fill such vacancy shall hold office for the balance of the term for which his predecessor was appointed. The committee shall elect from its members a chairman and a vice-chairman to serve concurrently with the chairman. The executive director of the commission shall act as executive secretary to the committee, and the commission shall otherwise offer such staff services and supplies as the committee may require to carry out its responsibilities.

The committee shall meet on call of the chairman of the commission, or on request of a majority of the commission. Members of the committee shall serve without compensation but shall be reimbursed for their expenses in the same manner as members of the commission. [1984 c 125 § 17; 1973 1st ex.s. c 5 § 8.]

Sunset Act application: See note following RCW 70.39.030.

Severability—Headings—Effective date—1984 c 125: See RCW 43.63A.901 through 43.63A.903.

70.39.070 Technical advisory committee—Members—Terms—Officers—Meetings—Expenses (as amended by 1984 c 288). In order to assist the commission in carrying out its duties, the governor shall appoint a technical advisory committee, hereinafter referred to as "committee", which shall consist of seventeen members as follows:

(1) One member who shall be a certified public accountant licensed pursuant to chapter 18.04 RCW and who shall be knowledgeable in the financial affairs of hospitals.

(2) Two members who shall be health care practitioners, one of whom shall be a physician, licensed under the laws of this state and who shall be knowledgeable in hospital administration.

(3) Six members who shall be representative of the interest of investor-owned, district, not-for-profit, osteopathic, university, and rural hospitals.

(4) One member who shall be representative of consumers of health care.

(5) One member who shall be the secretary of the department of social and health services, or the secretary's designee, to provide continuing liaison, data and support from those functions of the department which may affect the responsibilities of the commission and to represent the department as a purchaser of health care services.

(6) One member who shall be the executive director of the state health coordinating council established under *RCW 70.38.055.

(7) One member of the commission, elected by the commission.

(8) One member who shall be representative of private employers.

(9) One member who shall be representative of commercial health insurers registered and doing business in the state under Title 48 RCW.

(10) One member who shall be representative of health care service contractors, as defined in RCW 48.44.010.

(11) One member who shall be representative of health maintenance organizations, as defined in RCW 48.46.030.

Except for the members designated in subsections (2), (3), (10), and (11) of this section, members of the committee shall not have any fiduciary obligation to any health care facility or any material financial interest in the provision of health care services.

With the exception of members designated in subsections (5) and (6) of this section, the members shall serve concurrently and shall have four-year terms. Any vacancy shall be filled by appointment by the governor and an appointee selected to fill such vacancy shall hold office for the balance of the term for which his predecessor was appointed. The committee shall elect from its members a chairman and a vice-chairman to serve concurrently with the chairman. The executive director of the commission shall act as executive secretary to the committee, and the commission shall otherwise offer such staff services and supplies as the committee may require to carry out its responsibilities.

The committee shall meet on call of the chairman of the commission, or on request of a majority of the commission. Members of the committee shall serve without compensation for their service as members but, except for those designated in subsections (5) and (6) of this section, shall be reimbursed for their expenses in the same manner as members of the commission. [1984 c 288 § 7; 1973 1st ex.s. c 5 § 8.]

Reviser's note: (1) RCW 70.39.070 was amended twice during the 1984 regular session of the legislature, each without reference to the other.

For rule of construction concerning sections amended more than once at any session of the same legislature, see RCW 1.12.025.

* (2) RCW 70.38.055 was repealed by 1989 1st ex.s. c 9 § 819, effective July 1, 1989.

Sunset Act application: See note following RCW 70.39.030.

Severability—1984 c 288: See note following RCW 70.39.010.

70.39.080 Technical advisory committee—Duties.

The committee shall have the duty upon the request of the commission to consult with and make recommendations to the commission:

(1) On matters of public policy related to the delivery of health care services;

(2) On rules and regulations proposed by the commission to implement this chapter;

(3) On analyses and studies of hospital health care costs and related matters which may be undertaken by the commission;

(4) On any issue related to medical technology or technology assessment in the area of health care; and

(5) On such other matters as the commission may refer. [1984 c 288 § 8; 1973 1st ex.s. c 5 § 9.]

Sunset Act application: See note following RCW 70.39.030.

Severability—1984 c 288: See note following RCW 70.39.010.

70.39.090 *Hospital commission—Subcommittees.

To further the purposes of this chapter, the commission may create committees from its membership, and may create such ad hoc advisory committees in specialized fields, related to the functions of hospitals, the delivery of health care services, economic issues concerning health care, technology assessment, and such other subjects as it deems necessary, to supplement the resources provided by the technical advisory committee. [1984 c 288 § 9; 1973 1st ex.s. c 5 § 10.]

***Reviser's note:** All references to hospital commission shall be construed to mean department of health; see RCW 43.70.902.

Sunset Act application: See note following RCW 70.39.030.

Severability—1984 c 288: See note following RCW 70.39.010.

70.39.100 Uniform system of hospital accounting and reporting—Collection of patient discharge data. (1)

The commission, after study and in consultation with advisory committees, if any, shall establish by the promulgation of rules and regulations pursuant to the Administrative Procedure Act, chapter 34.05 RCW, a

uniform system of accounting and financial reporting, including such cost allocation methods as it may prescribe, by which hospitals shall record and report to the commission their revenues, expenses, other income, other outlays, assets and liabilities, and units of service. All hospitals shall adopt the system for their fiscal year period to be effective at such time and date as the commission shall direct. In determining the effective date for reporting requirements, the commission shall be mindful both of the immediate need for uniform hospital reporting information to effectuate the purposes of this chapter and the administrative and economic difficulties which hospitals may encounter in conversion, but in no event shall such effective date be later than two and one-half years from the date of the formation of the commission.

(2) In establishing such accounting systems and uniform reporting procedures, the commission shall take into consideration:

(a) Existing systems of accounting and reporting presently utilized by hospitals;

(b) Differences among hospitals according to size; financial structure; methods of payment for services; and scope, type, and method of providing services; and

(c) Other pertinent distinguishing factors.

(3) The commission shall, where appropriate, provide for modification, consistent with the purposes of this chapter, of reporting requirements to correctly reflect these differences among hospitals, and to avoid otherwise unduly burdensome costs in meeting the requirements of the uniform system of accounting and financial reporting.

(4) The accounting system, where appropriate, shall be structured so as to establish and differentiate costs incurred for patient-related services rendered by hospitals, as distinguished from those incurred with reference to educational research and other nonpatient-related activities including but not limited to charitable activities of such hospitals.

(5) The commission shall collect and maintain patient discharge data, including data necessary for identification of discharges by diagnosis-related groups. So far as possible, the data collection procedures shall be coordinated with any similar procedures or requirements of the federal department of health and human services for the medicare program and the needs of the department of social and health services in gathering public health statistics, in order to minimize any unduly burdensome reporting requirements imposed on hospitals. [1984 c 288 § 10; 1973 1st ex.s. c 5 § 11.]

Sunset Act application: See note following RCW 70.39.030.

Severability—1984 c 288: See note following RCW 70.39.010.

70.39.110 Annual reports by hospitals. (1) Each hospital shall file annually, at such time as the commission may prescribe, its proposed budget for the next fiscal year, showing projected revenues and expenses and including such further information as the commission may require to implement the purposes of this chapter.

(2) Each hospital shall file annually with the commission after the close of the fiscal year:

(a) A balance sheet detailing the assets, liabilities, and net worth of the hospital;

(b) A statement of income and expenses; and

(c) Such other reports of the costs incurred in rendering services as the commission may prescribe.

(3) Where more than one licensed hospital is operated by the reporting organization, the information required by this section shall be reported for each hospital separately.

(4) The commission shall require certification of specified financial reports by the hospital's certified public accountant, and may require attestation as to such statements from responsible officials of the hospital that such reports have to the best of their knowledge and belief been prepared in accordance with the prescribed system of accounting and reporting.

(5) All reports, except privileged medical information, filed under this chapter shall be available for public inspection and copying under RCW 42.17.250 through 42.17.340.

(6) The commission shall inspect hospital books, audits, and records as reasonably necessary to implement the policies and purposes of this chapter. [1984 c 288 § 11; 1973 1st ex.s. c 5 § 12.]

Sunset Act application: See note following RCW 70.39.030.

Severability—1984 c 288: See note following RCW 70.39.010.

70.39.120 Hospital costs and finances—Analyses and studies—Reports. (1) The commission shall from time to time undertake analyses and studies relating to the need for and delivery of health care services, the availability of such services, hospital rates, health care costs, and the financial status of any hospital or hospitals subject to the provisions of this chapter, and may publish and disseminate such information as it deems desirable in the public interest. It shall further publish information concerning the need for health care services identified by area-wide and state comprehensive health planning agencies under chapter 70.38 RCW and the extent to which such needs are being met.

(2) The commission shall also prepare and file such summaries and compilations or other supplementary reports based on the information filed with the commission hereunder as will advance the purposes of this chapter.

(3) The commission shall furnish a copy of any report regarding any hospital to the chief executive officer of the hospital and the presiding officer of the hospital's governing body. [1984 c 288 § 12; 1973 1st ex.s. c 5 § 13.]

Sunset Act application: See note following RCW 70.39.030.

Severability—1984 c 288: See note following RCW 70.39.010.

70.39.125 Entities to furnish information to commission. Every commercial health insurer registered and doing business in the state under Title 48 RCW, every health care service contractor as defined in RCW 48.44-.010, and the department of social and health services shall, upon request by the commission but not more frequently than annually, furnish to the commission such information as is readily available which may assist the commission in developing cost containment proposals

with respect to the fees of licensed health care practitioners. The commission may request such information from the entities identified in this section, and from the federal department of health and human services, if and when the commission deems appropriate to accord with any requirements of federal law which may be imposed. [1984 c 288 § 24.]

Sunset Act application: See note following RCW 70.39.030.

Severability—1984 c 288: See note following RCW 70.39.010.

70.39.130 Report to governor and legislature. Subject to RCW 40.07.040, the commission shall prepare and transmit each biennium to the governor and to the legislature a report of commission operations and activities for the preceding fiscal period. This report shall include such findings and recommendations as the commission believes will further the legislative goal of cost containment in the delivery of good quality health care services, including cost-containment programs that have been or might be adopted, and issues of access to good quality care. The report shall also include data on the amount and proportion of charity care provided by each hospital. The commission's report for 1986, to be submitted in January 1987, shall include an analysis of the impacts of RCW 70.39.165 on (1) the use by indigent persons of health care settings other than hospitals and (2) the caseloads and costs associated with the limited casualty program for medical indigents under RCW 74.09.700. The department of social and health services and the health systems agencies established under chapter 70.38 RCW shall provide such information and assistance as the commission may reasonably require in preparing the report on the impact of RCW 70.39.165. [1987 c 505 § 58; 1984 c 288 § 13; 1977 c 75 § 82; 1973 1st ex.s. c 5 § 14.]

Sunset Act application: See note following RCW 70.39.030.

Severability—1984 c 288: See note following RCW 70.39.010.

70.39.140 Hospital rates—Negotiated rates—Requirements—Review and investigation—Costs—Establishment of rates—Expression of rates—Hospital reimbursement control system—Certain admission practices or policies barred—Coordination with federal programs. (1)(a) From and after a date not less than twelve months but not more than twenty-four months after the adoption of the uniform system of accounting and financial reporting required by RCW 70.39.100, as the commission may direct, the commission shall have the power to initiate such reviews or investigations as may be necessary to assure all purchasers of health care services that the total costs of a hospital are reasonably related to the total services offered by that hospital, that costs do not exceed those that are necessary for prudently and reasonably managed hospitals, that the hospital's rates are reasonably related to the hospital's aggregate costs; and that rates are set equitably among all purchasers or classes of purchasers of services without undue discrimination or preference. Effective July 1, 1985, this chapter does not

preclude any hospital from negotiating with and charging any particular payer or purchaser rates that are less than those approved by the commission, if:

(i) The rates are cost justified and do not result in any shifting of costs to other payers or purchasers in the current or any subsequent year; and

(ii) All the terms of such negotiated rates are filed with the commission within ten working days and made available for public inspection.

(b) The commission may retrospectively disapprove such negotiated rates in accordance with procedures established by the commission if such rates are found to contravene any provision of this section.

(c) Any hospital may charge rates as negotiated with or established by the department of social and health services. Rates negotiated or established under this subsection (c) are not subject to (a) or (b) of this subsection. Rates negotiated or established under this subsection (c) are not subject to any review or approval by the commission under this chapter.

(2) In order to properly discharge these obligations, the commission shall have full power to review projected annual revenues and approve the reasonableness of rates proposed to generate that revenue established or requested by any hospital subject to the provisions of this chapter. No hospital shall charge for services at rates exceeding those established in accordance with the procedures established hereunder. After June 30, 1985, rates for inpatient care shall be expressed using an appropriate measure of hospital efficiency, such as that based on diagnosis-related groups, and, if necessary for federal medicare participation in a hospital reimbursement control system, hospitals shall charge for such care at rates prospectively established and expressed in terms of a comparable unit of total payment, such as diagnosis-related groups. In the event any hospital reimbursement control system is implemented, children's hospitals shall be exempted until such time as a pediatric based classification system which reflects the unique resource consumption by patients of a children's hospital is perfected. For the purposes of this exemption, children's hospitals are defined as hospitals whose patients are predominantly under eighteen years of age.

(3) In the interest of promoting the most efficient and effective use of health care service, and providing greater promise of hospital cost containment, the commission may develop a hospital reimbursement control system in which all payers or purchasers participate, that includes procedures for establishing prospective rates, that deals equitably with the costs of providing charity care, and that shall include the participation of the federal medicare program under the social security amendments of 1983, Public Law 98-21. The commission shall have the authority to require utilization reviews of patient care to ensure that hospital admissions and services provided are medically justified. The commission may seek approval, concurrence, or participation in such a system from any federal agency, such as the department of health and human services, prior to securing legislative approval pursuant to concurrent resolution for implementation of any hospital reimbursement control system developed

pursuant to this section. The commission shall involve the legislature in the development of any plan for a hospital reimbursement control system.

(4) The commission shall assure that no hospital or its medical staff either adopts or maintains admission practices or policies which result in:

(a) A significant reduction in the proportion of patients who have no third-party coverage and who are unable to pay for hospital services;

(b) A significant reduction in the proportion of individuals admitted for inpatient hospital services for which payment is or is likely to be less than the anticipated charges for or costs of such services; or

(c) The refusal to admit patients who would be expected to require unusually costly or prolonged treatment for reasons other than those related to the appropriateness of the care available at the hospital.

(5) The commission shall serve as the state agency responsible for coordinating state actions and otherwise responding and relating to the efforts of the federal department of health and human services in planning and implementing federal cost containment programs with respect to hospitals and related health care institutions as authorized by the social security amendments of 1983, as now or hereafter amended, or other federal law, and any rules or regulations promulgated thereto. In carrying out this responsibility, the commission may assume any function or role authorized by appropriate federal regulations implementing the social security amendments of 1983; or assume any combination of such roles or functions as it may determine will most effectively contain the rising costs of the varying kinds of hospitals and related health care institutions in Washington state. In determining its functions or roles in relation to federal efforts, the commission shall seek to ensure coordination, and the reduction of duplicatory cost containment efforts, by the state and federal governments, as well as the diligent fulfillment of the purposes of this chapter and declared public policy and legislative intent herein.

Nothing in this chapter limits the ability of the department of social and health services to establish or negotiate hospital payment rates pursuant to RCW 74.09.120 or in accord with a federally approvable state plan under Title XIX of the federal social security act. [1988 c 118 § 1; 1984 c 288 § 14; 1974 ex.s. c 163 § 1; 1973 1st ex.s. c 5 § 15.]

Sunset Act application: See note following RCW 70.39.030.

Severability—1984 c 288: See note following RCW 70.39.010.

70.39.144 Exemption from RCW 70.39.140—Effect. (Expires June 30, 1991.) (1) The commission shall exempt a hospital from the rate review and approval provisions of RCW 70.39.140 if:

(a) The hospital is located within fifteen miles of one or more hospitals located in a jurisdiction that is not subject to RCW 70.39.140; and

(b) The hospital or hospitals not subject to RCW 70.39.140 have the existing capacity to absorb twenty-five percent or more of the patients served by the hospital exempted under this section.

(2) The exemption provided by this section shall not affect the exempted hospital's responsibility to make on a timely basis all filings required by the commission pursuant to this chapter. In addition, an exempted hospital shall provide on a timely basis other pertinent data that may be requested from time to time by the commission.

(3) This section shall expire June 30, 1991. [1988 c 262 § 1.]

70.39.150 Powers and duties of commission. To properly carry out its authority the commission shall:

(1) Compile and maintain all relevant financial, accounting, and patient discharge data in order to have available the statistical information necessary to properly conduct rate review and approval. Such data shall include necessary operating expenses, appropriate expenses incurred for charity care and for rendering services to patients who do not pay, all properly incurred interest charges, and reasonable depreciation expenses based on the expected useful life of the property and equipment involved. The commission shall define and prescribe by rule and regulation the types and classes of charges which cannot be changed except as provided by the procedure contained in RCW 70.39.160 and it shall also obtain from each such hospital a current rate schedule as well as any subsequent amendments or modifications of that schedule as it may require. So far as possible, the commission shall compile and maintain the same patient discharge data with respect to all patients as that required under the federal medicare program and the uniform billing procedures applicable to third-party payers.

(2) Permit any hospital subject to the provisions of this chapter to charge reasonable rates which will permit the hospital to render necessary, effective, and efficient service in the public interest.

(3) Take into account, in the determination of reasonable rates under this section, that it is its obligation to assure access to necessary, effective, economically viable, and efficient hospital health care capability throughout the state, rather than the solvency or profitability of any individual hospital subject to this chapter except where the insolvency of a hospital would seriously threaten the access of the rural public to basic health care services.

(4) Take into account, in the determination of reasonable rates under this section for each hospital, the recommendations of appropriate area-wide and state comprehensive health planning agencies to ensure compliance with Washington comprehensive health planning law, chapter 70.38 RCW.

(5) Permit any hospital, whether proprietary, district, public, or not-for-profit, to retain the excess of its revenues, if any, that exceed the actual cost of providing services, generated as a result of cost-effective practices, if the hospital charges do not exceed rates permitted by the commission.

(6) On or before October 1 of each year, after notice and public hearing, and in full consideration of the intent and purpose of this chapter as expressed in RCW 70.39.010, adopt a target dollar amount of total state-

wide hospital revenue for the ensuing calendar year. To set the target amount, the commission shall develop a standard methodology that considers such factors as changes in the economy, affordability of hospital care, cost of hospital-purchased goods, numbers and age of the population, technology, and severity of illness of hospital patients. The commission shall endeavor, in establishing rates, to assure that total hospital revenues do not exceed the target amount for the applicable year. [1984 c 288 § 18; 1977 ex.s. c 154 § 1; 1973 1st ex.s. c 5 § 16.]

Sunset Act application: See note following RCW 70.39.030.

Severability—1984 c 288: See note following RCW 70.39.010.

70.39.160 Changes in rates—Procedure. From and after the date determined by the commission pursuant to RCW 70.39.140, no hospital subject to the provisions of this chapter shall change or amend that schedule of rates and charges of the type and class which cannot be changed without prior approval of the commission, except in accordance with the following procedure:

(1) Any request for a change in rate schedules or other charges must be filed in writing in the form and content prescribed by the commission and with such supporting data as the hospital seeking the change deems appropriate. Unless the commission orders otherwise as provided for in subsection (4) of this section, no hospital shall establish such changes except after publication and notice to the commission of at least thirty days from the time the rate is intended to go into effect. All proposed changes shall be plainly indicated on the schedule effective at that time and shall be open to public inspection. Upon receipt of notice, the commission may suspend the effective date of any proposed change. In any such case a formal written statement of the reasons for the suspension will be promptly submitted to the hospital. Unless suspended, any proposed change shall go into effect upon the date specified in the application.

(2) In any case where such action is deemed necessary, the commission shall promptly, but in any event within thirty days, institute proceedings as to the reasonableness of the proposed changes. The suspension may extend for a period of not more than thirty days beyond the date the change would otherwise go into effect: *Provided*, That should it be necessary, the commission may extend the suspension for an additional thirty days. After the expiration of ninety days from the date the rate is intended to go into effect the new rate will go into effect, if the commission does not approve, disapprove, or modify the request by that time.

(3) Such proposed changes shall be considered at a public hearing, the time and place of which shall be determined by the commission. The hearing shall be conducted by the commission. Evidence for and against the requested change may be introduced at the time of the hearing by any interested party and witnesses may be heard. The hearing may be conducted without compliance with formal rules of evidence.

(4) The commission may, in its discretion, permit any hospital to make a temporary change in rates which shall be effective immediately upon filing and in advance

of any review procedure when it deems it in the public interest to do so. Notwithstanding such temporary change in rates, the review procedures set out in this section shall be conducted by the commission as soon thereafter as is practicable.

(5) Every decision and order of the commission in any contested proceeding shall be in writing and shall state the grounds for the commission's conclusions. The effects of such orders shall be prospective in nature. [1984 c 288 § 19; 1973 1st ex.s. c 5 § 17.]

Sunset Act application: See note following RCW 70.39.030.

Severability—1984 c 288: See note following RCW 70.39.010.

70.39.165 Identification of charity care patients—Definition of residual bad debt. Within six months of June 7, 1984, the commission shall establish by rule, consistent with the definition of charity care under RCW 70.39.020, the following:

(1) Uniform procedures, data requirements, and criteria for identifying patients receiving charity care;

(2) A definition of residual bad debt as a component of hospital rate-setting and budget review, including reasonable and uniform standards for collection procedures to be used in efforts to collect the unpaid portions of hospital charges that are the patient's responsibility. [1984 c 288 § 15.]

Sunset Act application: See note following RCW 70.39.030.

Severability—1984 c 288: See note following RCW 70.39.010.

70.39.170 Budget—Expenses—Assessments—*Hospital commission account—Earnings. The commission shall biennially prepare a budget which shall include its estimated income and expenditures for administration and operation for the biennium, to be submitted to the governor for transmittal to the legislature for approval.

Expenses of the commission shall be financed by assessment against hospitals in an amount to be determined biennially by the commission, but not to exceed four one-hundredths of one percent of each hospital's gross operating costs to be levied and collected from and after July 1, 1973 for the provision of hospital services for its last fiscal year ending on or before June 30th of the preceding calendar year. Budgetary requirements in excess of that limit may be financed by a general fund appropriation by the legislature. All moneys collected are to be deposited by the state treasurer in the *hospital commission account which is hereby created in the state treasury. All earnings of investments of balances in the *hospital commission account shall be credited to the general fund.

Any amounts raised by the collection of assessments from hospitals provided for in this section which are not required to meet appropriations in the budget act for the current fiscal year shall be available to the commission in succeeding years. [1985 c 57 § 67; 1973 1st ex.s. c 5 § 18.]

***Reviser's note:** All references to hospital commission shall be construed to mean department of health; see RCW 43.70.902.

Sunset Act application: See note following RCW 70.39.030.

Effective date—1985 c 57: See note following RCW 15.52.320.

70.39.180 Rules and regulations—Public hearings—Investigations—Subpoena power. In addition to the powers granted to the commission elsewhere in this chapter, the commission may:

(1) Adopt, amend, and repeal rules and regulations respecting the exercise of the powers conferred by this chapter, subject to the provisions of the Administrative Procedure Act, chapter 34.05 RCW applicable to the promulgation of rules and regulations.

(2) Hold public hearings, conduct investigations, and subpoena witnesses, papers, records, and documents in connection therewith. The commission may administer oaths or affirmations in any hearing or investigation.

(3) Exercise, subject to the limitations and restrictions herein imposed, all other powers which are reasonably necessary or essential to carry out the expressed objects and purposes of this chapter. [1973 1st ex.s. c 5 § 19.]

Sunset Act application: See note following RCW 70.39.030.

70.39.190 Review. Any person aggrieved by a final determination of the commission as to any rule, regulation, or determination under the provisions of this chapter shall be entitled to an administrative hearing and judicial review in accordance with the Administrative Procedure Act, chapter 34.05 RCW. [1973 1st ex.s. c 5 § 20.]

Sunset Act application: See note following RCW 70.39.030.

70.39.195 Schedule of hospital rates. Each hospital under this chapter shall print and make available for public inspection as prescribed by the commission by rule a schedule of its rates as approved by the commission. [1984 c 288 § 23.]

Sunset Act application: See note following RCW 70.39.030.

Severability—1984 c 288: See note following RCW 70.39.010.

70.39.200 Penalties for violations. Every person who shall violate or knowingly aid and abet the violation of this chapter or any valid orders, rules, or regulations thereunder, or who fails to perform any act which it is herein made his duty to perform shall be guilty of a misdemeanor. Following official notice to the accused by the commission of the existence of an alleged violation, each day upon which a violation occurs shall constitute a separate violation. Any person violating the provisions of this chapter may be enjoined from continuing such violation. The commission has authority to levy civil penalties not exceeding one thousand dollars for violations of this chapter. [1984 c 288 § 20; 1973 1st ex.s. c 5 § 21.]

Sunset Act application: See note following RCW 70.39.030.

Severability—1984 c 288: See note following RCW 70.39.010.

70.39.900 Severability—1973 1st ex.s. c 5. If any provision of this 1973 act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1973 1st ex.s. c 5 § 22.]

Sunset Act application: See note following RCW 70.39.030.

70.39.910 Liberal construction—1973 1st ex.s. c 5. Consistent with the purposes enumerated in RCW 70.39.010, the provisions of this chapter shall be liberally construed, and shall not be limited by any rule of strict construction. [1973 1st ex.s. c 5 § 23.]

Sunset Act application: See note following RCW 70.39.030.

70.39.920 References—1989 1st ex.s. c 9. See RCW 43.70.902.

Chapter 70.40

HOSPITAL AND MEDICAL FACILITIES SURVEY AND CONSTRUCTION ACT

Sections

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70.40.005 Transfer of duties to the department of health. The powers and duties of the department of social and health services and the secretary of social and health services under this chapter shall be performed by the department of health and the secretary of health. [1989 1st ex.s. c 9 § 248.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

70.40.010 Short title. This chapter may be cited as the "Washington Hospital and Medical Facilities Survey and Construction Act." [1959 c 252 § 1; 1949 c 197 § 1; Rem. Supp. 1949 § 6090–60.]

70.40.020 Definitions. As used in this chapter:

(1) "Secretary" means the secretary of the state department of social and health services;

(2) "The federal act" means Title VI of the public health service act, as amended, or as hereafter amended by congress;

(3) "The surgeon general" means the surgeon general of the public health service of the United States;

(4) "Hospital" includes public health centers and general, tuberculosis, mental, chronic disease, and other

types of hospitals, and related facilities, such as laboratories, outpatient departments, nurses' home and training facilities, and central service facilities operated in connection with hospitals;

(5) "Public health center" means a publicly owned facility for the provision of public health services, including related facilities such as laboratories, clinics, and administrative offices operated in connection with public health centers;

(6) "Nonprofit hospital" and "nonprofit medical facility" means any hospital or medical facility owned and operated by a corporation or association, no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual;

(7) "Medical facilities" means diagnostic or diagnostic and treatment centers, rehabilitation facilities and nursing homes as those terms are defined in the federal act. [1979 c 141 § 96; 1959 c 252 § 2; 1949 c 197 § 2; Rem. Supp. 1949 § 6090-61.]

70.40.030 Section of hospital and medical facility survey and construction established—Duties. There is hereby established in the state department of social and health services a "section of hospital and medical facility survey and construction" which shall be administered by a full time salaried head under the supervision and direction of the secretary. The state department of social and health services, through such section, shall constitute the sole agency of the state for the purpose of:

(1) Making an inventory of existing hospitals and medical facilities, surveying the need for construction of hospitals and medical facilities, and developing a program of hospital and medical facility construction; and

(2) Developing and administering a state plan for the construction of public and other nonprofit hospitals and medical facilities as provided in this chapter. [1979 c 141 § 97; 1959 c 252 § 3; 1949 c 197 § 3; Rem. Supp. 1949 § 6090-62.]

70.40.040 General duties of the secretary. In carrying out the purposes of the chapter the secretary is authorized and directed:

(1) To require such reports, make such inspections and investigations and prescribe such regulations as he deems necessary;

(2) To provide such methods of administration, appoint a head and other personnel of the section and take such other action as may be necessary to comply with the requirements of the federal act and the regulations thereunder;

(3) To procure in his discretion the temporary or intermittent services of experts or consultants or organizations thereof, by contract, when such services are to be performed on a part time or fee for service basis and do not involve the performance of administrative duties;

(4) To the extent that he considers desirable to effectuate the purposes of this chapter, to enter into agreements for the utilization of the facilities and services of other departments, agencies, and institutions public or private;

(5) To accept on behalf of the state and to deposit with the state treasurer, any grant, gift, or contribution made to assist in meeting the cost of carrying out the purposes of this chapter, and to expend the same for such purpose; and

(6) To make an annual report to the governor on activities pursuant to this chapter, including recommendations for such additional legislation as the secretary considers appropriate to furnish adequate hospital and medical facilities to the people of this state. [1979 c 141 § 98; 1977 c 75 § 83; 1959 c 252 § 4; 1949 c 197 § 4; Rem. Supp. 1949 § 6090-63.]

70.40.060 Development of program for construction of facilities needed. The secretary is authorized and directed to make an inventory of existing hospitals and medical facilities, including public nonprofit and proprietary hospitals and medical facilities, to survey the need for construction of hospitals and medical facilities, and, on the basis of such inventory and survey, to develop a program for the construction of such public and other nonprofit hospitals and medical facilities as will, in conjunction with existing facilities, afford the necessary physical facilities for furnishing adequate hospital and medical facility services to all the people of the state. [1979 c 141 § 99; 1959 c 252 § 6; 1949 c 197 § 6; Rem. Supp. 1949 § 6090-65.]

70.40.070 Distribution of facilities. The construction program shall provide, in accordance with regulations prescribed under the federal act, for adequate hospital and medical facilities for the people residing in this state and insofar as possible shall provide for their distribution throughout the state in such manner as to make all types of hospital and medical facility service reasonably accessible to all persons in the state. [1959 c 252 § 7; 1949 c 197 § 7; Rem. Supp. 1949 § 6090-66.]

70.40.080 Federal funds—Application for—Deposit, use. The secretary is authorized to make application to the surgeon general for federal funds to assist in carrying out the survey and planning activities herein provided. Such funds shall be deposited with the state treasurer and shall be available to the secretary for expenditure in carrying out the purposes of this part. Any such funds received and not expended for such purposes shall be repaid to the treasurer of the United States. [1979 c 141 § 100; 1949 c 197 § 8; Rem. Supp. 1949 § 6090-67.]

70.40.090 State plan—Publication—Hearing—Approval by surgeon general—Modifications. The secretary shall prepare and submit to the surgeon general a state plan which shall include the hospital and medical facility construction program developed under this chapter and which shall provide for the establishment, administration, and operation of hospital and medical facility construction activities in accordance with the requirements of the federal act and the regulations thereunder. The secretary shall, prior to the submission of such plan to the surgeon general, give

adequate publicity to a general description of all the provisions proposed to be included therein, and hold a public hearing at which all persons or organizations with a legitimate interest in such plan may be given an opportunity to express their views. After approval of the plan by the surgeon general, the secretary shall publish a general description of the provisions thereof in at least one newspaper having general circulation in the state, and shall make the plan, or a copy thereof, available upon request to all interested persons or organizations. The secretary shall from time to time review the hospital and medical facility construction program and submit to the surgeon general any modifications thereof which he may find necessary and may submit to the surgeon general such modifications of the state plan, not inconsistent with the requirements of the federal act, as he may deem advisable. [1979 c 141 § 101; 1959 c 252 § 8; 1949 c 197 § 9; Rem. Supp. 1949 § 6090-68.]

70.40.100 Plan shall provide for construction in order of relative needs. The state plan shall set forth the relative need for the several projects included in the construction program determined in accordance with regulations prescribed pursuant to the federal act, and provide for the construction, insofar as financial resources available therefor and for maintenance and operations make possible, in the order of such relative need. [1949 c 197 § 11; Rem. Supp. 1949 § 6090-70.]

70.40.110 Minimum standards for maintenance and operation. The secretary shall by regulation prescribe minimum standards for the maintenance and operation of hospitals and medical facilities which receive federal aid for construction under the state plan. [1979 c 141 § 102; 1959 c 252 § 9; 1949 c 197 § 10; Rem. Supp. 1949 § 6090-69.]

70.40.120 Applications for construction projects—Diagnostic, treatment centers. Applications for hospital and medical facility construction projects for which federal funds are requested shall be submitted to the secretary and may be submitted by the state or any political subdivision thereof or by any public or nonprofit agency authorized to construct and operate a hospital or medical facility: *Provided*, That except as may be permitted by federal law no application for a diagnostic or treatment center shall be approved unless the applicant is (1) a state, political subdivision, or public agency, or (2) a corporation or association which owns and operates a nonprofit hospital. Each application for a construction project shall conform to federal and state requirements. [1979 c 141 § 103; 1959 c 252 § 10; 1949 c 197 § 12; Rem. Supp. 1949 § 6090-71.]

70.40.130 Hearing—Approval. The secretary shall afford to every applicant for a construction project an opportunity for a fair hearing. If the secretary, after affording reasonable opportunity for development and presentation of applications in the order of relative need,

finds that a project application complies with the requirements of RCW 70.40.120 and is otherwise in conformity with the state plan, he shall approve such application and shall recommend and forward it to the surgeon general. [1979 c 141 § 104; 1949 c 197 § 13; Rem. Supp. 1949 § 6090-72.]

70.40.140 Inspection of project under construction—Certification as to federal funds due. From time to time the secretary shall inspect each construction project approved by the surgeon general, and, if the inspection so warrants, the secretary shall certify to the surgeon general that work has been performed upon the project, or purchases have been made, in accordance with the approved plans and specifications, and that payment of an installment of federal funds is due to the applicant. [1979 c 141 § 105; 1949 c 197 § 14; Rem. Supp. 1949 § 6090-73.]

70.40.150 Hospital and medical facility construction fund—Deposits, use. The secretary is hereby authorized to receive federal funds in behalf of, and transmit them to, such applicants or to approve applicants for federal funds and authorize the payment of such funds directly to such applicants as may be allowed by federal law. To achieve that end there is hereby established, separate and apart from all public moneys and funds of this state, a trust fund to be known as the "hospital and medical facility construction fund", of which the state treasurer shall ex officio be custodian. Moneys received from the federal government for construction projects approved by the surgeon general shall be deposited to the credit of this fund, shall be used solely for payments due applicants for work performed, or purchases made, in carrying out approved projects. Vouchers covering all payments from the hospital and medical facility construction fund shall be prepared by the department of social and health services and shall bear the signature of the secretary or his duly authorized agent for such purpose, and warrants therefor shall be signed by the state treasurer. [1973 c 106 § 31; 1959 c 252 § 11; 1949 c 197 § 15; Rem. Supp. 1949 § 6090-74.]

70.40.900 Severability—1949 c 197. If any provision of this chapter or the application thereof to any person or circumstance shall be held invalid, such invalidity shall not affect the provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of the chapter are declared to be severable. [1949 c 197 § 16; no RRS.]

Chapter 70.41

HOSPITAL LICENSING AND REGULATION

Sections	
70.41.005	Transfer of duties to the department of health.
70.41.010	Declaration of purpose.
70.41.020	Definitions.
70.41.030	Standards and rules.

- 70.41.040 Enforcement of chapter—Personnel—Merit system.
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- 70.41.130 Denial, suspension, revocation, modification of license—Procedure.
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Records of hospital committee or board, immunity from process: RCW 4.24.250.

Rendering emergency care, immunity from civil liability—Exclusion: RCW 4.24.300, 18.71.220.

Standards and procedures for hospital staff membership or privileges: Chapter 70.43 RCW.

70.41.005 Transfer of duties to the department of health. The powers and duties of the department of social and health services under this chapter shall be performed by the department of health. [1989 1st ex.s. c 9 § 249.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

70.41.010 Declaration of purpose. The primary purpose of this chapter is to promote safe and adequate care of individuals in hospitals through the development, establishment and enforcement of minimum hospital standards for maintenance and operation. To accomplish these purposes, this chapter provides for:

- (1) The licensing and inspection of hospitals;
- (2) The establishment of a Washington state hospital advisory council;
- (3) The establishment by the department of standards, rules and regulations for the construction, maintenance and operation of hospitals;

(4) The enforcement by the department of the standards, rules, and regulations established under this chapter. [1985 c 213 § 15; 1979 c 141 § 106; 1955 c 267 § 1.]

Savings—Effective date—1985 c 213: See notes following RCW 43.20.050.

70.41.020 Definitions. Unless the context clearly indicates otherwise, the following terms, whenever used in this chapter, shall be deemed to have the following meanings:

(1) "Department" means the Washington state department of social and health services;

(2) "Hospital" means any institution, place, building, or agency which provides accommodations, facilities and services over a continuous period of twenty-four hours or more, for observation, diagnosis, or care, of two or more individuals not related to the operator who are suffering from illness, injury, deformity, or abnormality, or from any other condition for which obstetrical, medical, or surgical services would be appropriate for care or diagnosis. "Hospital" as used in this chapter does not include hotels, or similar places furnishing only food and lodging, or simply domiciliary care; nor does it include clinics, or physician's offices where patients are not regularly kept as bed patients for twenty-four hours or more; nor does it include nursing homes, as defined and which come within the scope of chapter 18.51 RCW; nor does it include maternity homes, which come within the scope of chapter 18.46 RCW; nor does it include psychiatric hospitals, which come within the scope of chapter 71.12 RCW; nor any other hospital, or institution specifically intended for use in the diagnosis and care of those suffering from mental illness, mental retardation, convulsive disorders, or other abnormal mental condition. Furthermore, nothing in this chapter or the rules and regulations adopted pursuant thereto shall be construed as authorizing the supervision, regulation, or control of the remedial care or treatment of residents or patients in any hospital conducted for those who rely primarily upon treatment by prayer or spiritual means in accordance with the creed or tenets of any well recognized church or religious denominations;

(3) "Person" means any individual, firm, partnership, corporation, company, association, or joint stock association, and the legal successor thereof. [1985 c 213 § 16; 1971 ex.s. c 189 § 8; 1955 c 267 § 2.]

Savings—Effective date—1985 c 213: See notes following RCW 43.20.050.

70.41.030 Standards and rules. The department shall establish and adopt such minimum standards and rules pertaining to the construction, maintenance, and operation of hospitals, and rescind, amend, or modify such rules from time to time, as are necessary in the public interest, and particularly for the establishment and maintenance of standards of hospitalization required for the safe and adequate care and treatment of patients. [1989 c 175 § 127; 1985 c 213 § 17; 1971 ex.s. c 189 § 9; 1955 c 267 § 3.]

Effective date—1989 c 175: See note following RCW 34.05.010.

Savings—Effective date—1985 c 213: See notes following RCW 43.20.050.

70.41.040 Enforcement of chapter—Personnel—Merit system. The enforcement of the provisions of this chapter and the standards, rules and regulations established under this chapter, shall be the responsibility of the department which shall cooperate with the joint commission on the accreditation of hospitals. The department shall advise on the employment of personnel and the personnel shall be under the merit system or its successor. [1985 c 213 § 18; 1955 c 267 § 4.]

Savings—Effective date—1985 c 213: See notes following RCW 43.20.050.

70.41.080 Fire protection. Standards for fire protection and the enforcement thereof, with respect to all hospitals to be licensed hereunder shall be the responsibility of the director of community development, through the director of fire protection, who shall adopt, after approval by the department, such recognized standards as may be applicable to hospitals for the protection of life against the cause and spread of fire and fire hazards. The department upon receipt of an application for a license, shall submit to the *state fire marshal in writing, a request for an inspection, giving the applicant's name and the location of the premises to be licensed. Upon receipt of such a request, the director of community development, through the director of fire protection, or his or her deputy, shall make an inspection of the hospital to be licensed, and if it is found that the premises do not comply with the required safety standards and fire regulations as adopted pursuant to this chapter, he or she shall promptly make a written report to the hospital and to the department listing the corrective actions required and the time allowed for accomplishing such corrections. The applicant or licensee shall notify the director of community development, through the director of fire protection, upon completion of any corrections required by him or her, and the director of community development, through the director of fire protection, or his or her deputy, shall make a reinspection of such premises. Whenever the hospital to be licensed meets with the approval of the director of community development, through the director of fire protection, he or she shall submit to the department a written report approving the hospital with respect to fire protection, and such report is required before a full license can be issued. The director of community development, through the director of fire protection, shall make or cause to be made inspections of such hospitals at least once a year.

In cities which have in force a comprehensive building code, the provisions of which are determined by the director of community development, through the director of fire protection, to be equal to the minimum standards of the code for hospitals adopted by the director of community development, through the director of fire protection, the chief of the fire department, provided the latter is a paid chief of a paid fire department, shall make the inspection with the director of community development,

through the director of fire protection, or his or her deputy and they shall jointly approve the premises before a full license can be issued. [1986 c 266 § 94; 1985 c 213 § 19; 1955 c 267 § 8.]

***Reviser's note:** The "state fire marshal" was changed to the "director of fire protection" by 1986 c 266. See RCW 43.63A.340.

Severability—1986 c 266: See note following RCW 38.52.005.

Savings—Effective date—1985 c 213: See notes following RCW 43.20.050.

State fire protection: Chapter 48.48 RCW.

70.41.090 Hospital license required—Certificate of need required. (1) No person or governmental unit of the state of Washington, acting separately or jointly with any other person or governmental unit, shall establish, maintain, or conduct a hospital in this state, or use the word "hospital" to describe or identify an institution, without a license under this chapter: *Provided*, That the provisions of this section shall not apply to state mental institutions and psychiatric hospitals which come within the scope of chapter 71.12 RCW.

(2) After June 30, 1989, no hospital shall initiate a tertiary health service as defined in RCW 70.38.025(14) unless it has received a certificate of need as provided in RCW 70.38.105 and 70.38.115. [1989 1st ex.s. c 9 § 611; 1955 c 267 § 9.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

70.41.100 Applications for licenses and renewals—Fees. An application for license shall be made to the department upon forms provided by it and shall contain such information as the department reasonably requires which may include affirmative evidence of ability to comply with the standards, rules, and regulations as are lawfully prescribed hereunder. An application for renewal of license shall be made to the department upon forms provided by it and submitted thirty days prior to the date of expiration of the license. Each application for a license or renewal thereof by a hospital as defined by this chapter shall be accompanied by a fee as established by the department under RCW 43.20B.110. [1987 c 75 § 8; 1982 c 201 § 9; 1955 c 267 § 10.]

Savings—Severability—1987 c 75: See RCW 43.20B.900 and 43.20B.901.

70.41.110 Licenses, provisional licenses—Issuance, duration, assignment, posting. Upon receipt of an application for license and the license fee, the department shall issue a license or a provisional license if the applicant and the hospital facilities meet the requirements of this chapter and the standards, rules and regulations established by the department. All licenses issued under the provisions of this chapter shall expire on a date to be set by the department: *Provided*, That no license issued pursuant to this chapter shall exceed thirty-six months in duration. Each license shall be issued only for the premises and persons named in the application, and no license shall be transferable or assignable except with the written approval of the department. Licenses shall be posted in a conspicuous place on the licensed premises.

If there be a failure to comply with the provisions of this chapter or the standards, rules and regulations promulgated pursuant thereto, the department may in its discretion issue to an applicant for a license, or for the renewal of a license, a provisional license which will permit the operation of the hospital for a period to be determined by the department. [1985 c 213 § 20; 1982 c 201 § 12; 1971 ex.s. c 247 § 3; 1955 c 267 § 11.]

Savings—Effective date—1985 c 213: See notes following RCW 43.20.050.

70.41.120 Inspection of hospitals—Alterations or additions, new facilities. The department shall make or cause to be made at least yearly an inspection of all hospitals. Every inspection of a hospital may include an inspection of every part of the premises. The department may make an examination of all phases of the hospital operation necessary to determine compliance with the law and the standards, rules and regulations adopted thereunder. Any licensee or applicant desiring to make alterations or additions to its facilities or to construct new facilities shall, before commencing such alteration, addition or new construction, comply with the regulations prescribed by the department.

No hospital licensed pursuant to the provisions of this chapter shall be required to be inspected or licensed under other state laws or rules and regulations promulgated thereunder, or local ordinances, relative to hotels, restaurants, lodging houses, boarding houses, places of refreshment, nursing homes, maternity homes, or psychiatric hospitals. [1985 c 213 § 21; 1955 c 267 § 12.]

Savings—Effective date—1985 c 213: See notes following RCW 43.20.050.

70.41.130 Denial, suspension, revocation, modification of license—Procedure. The department is authorized to deny, suspend, revoke, or modify a license or provisional license in any case in which it finds that there has been a failure or refusal to comply with the requirements of this chapter or the standards or rules adopted under this chapter. RCW 43.20A.205 governs notice of a license denial, revocation, suspension, or modification and provides the right to an adjudicative proceeding. [1989 c 175 § 128; 1985 c 213 § 22; 1955 c 267 § 13.]

Effective date—1989 c 175: See note following RCW 34.05.010.

Savings—Effective date—1985 c 213: See notes following RCW 43.20.050.

70.41.150 Denial, suspension, revocation of license—Disclosure of information. Information received by the department through filed reports, inspection, or as otherwise authorized under this chapter, shall not be disclosed publicly in such manner as to identify individuals or hospitals, except in a proceeding involving the question of licensure. Such records of the department shall at all times be available to the council and the members thereof. [1985 c 213 § 24; 1955 c 267 § 15.]

Savings—Effective date—1985 c 213: See notes following RCW 43.20.050.

70.41.160 Remedies available to department—Duty of attorney general. Notwithstanding the existence or pursuit of any other remedy, the department may, in the manner provided by law, upon the advice of the attorney general who shall represent the department in the proceedings, maintain an action in the name of the state for an injunction or other process against any person or governmental unit to restrain or prevent the establishment, conduct, or operation of a hospital without a license under this law. [1985 c 213 § 25; 1955 c 267 § 16.]

Savings—Effective date—1985 c 213: See notes following RCW 43.20.050.

70.41.170 Operating or maintaining unlicensed hospital or unapproved tertiary health service—Penalty. Any person operating or maintaining a hospital without a license under this chapter, or, after June 30, 1989, initiating a tertiary health service as defined in RCW 70.38.025(14) that is not approved under RCW 70.38.105 and 70.38.115, shall be guilty of a misdemeanor, and each day of operation of an unlicensed hospital or unapproved tertiary health service, shall constitute a separate offense. [1989 1st ex.s. c 9 § 612; 1955 c 267 § 17.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

70.41.180 Physicians' services. Nothing contained in this chapter shall in any way authorize the department to establish standards, rules and regulations governing the professional services rendered by any physician. [1985 c 213 § 26; 1955 c 267 § 18.]

Savings—Effective date—1985 c 213: See notes following RCW 43.20.050.

70.41.190 Medical records of patients—Retention and preservation. Unless specified otherwise by the department, a hospital shall retain and preserve all medical records which relate directly to the care and treatment of a patient for a period of no less than ten years following the most recent discharge of the patient; except the records of minors, which shall be retained and preserved for a period of no less than three years following attainment of the age of eighteen years, or ten years following such discharge, whichever is longer.

If a hospital ceases operations, it shall make immediate arrangements, as approved by the department, for preservation of its records.

The department shall by regulation define the type of records and the information required to be included in the medical records to be retained and preserved under this section; which records may be retained in photographic form pursuant to chapter 5.46 RCW. [1985 c 213 § 27; 1975 1st ex.s. c 175 § 1.]

Savings—Effective date—1985 c 213: See notes following RCW 43.20.050.

70.41.200 Medical malpractice prevention program—Quality assurance committee—Sanction and

grievance procedures—Information collection and reporting. (1) Every hospital shall maintain a coordinated program for the identification and prevention of medical malpractice. The program shall include at least the following:

(a) The establishment of a quality assurance committee with the responsibility to review the services rendered in the hospital in order to improve the quality of medical care of patients and to prevent medical malpractice. The committee shall oversee and coordinate the medical malpractice prevention program and shall insure that information gathered pursuant to the program is used to review and to revise hospital policies and procedures. At least one member of the committee shall be a member of the governing board of the hospital who is not otherwise affiliated with the hospital in an employment or contractual capacity;

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

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

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

(e) The maintenance and continuous collection of information concerning the hospital's experience with negative health care outcomes and incidents injurious to patients, patient grievances, professional liability premiums, settlements, awards, costs incurred by the hospital for patient injury prevention, and safety improvement activities;

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

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

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

(2) Any person who, in substantial good faith, provides information to further the purposes of the medical malpractice prevention program or who, in substantial good faith, participates on the quality assurance committee shall not be subject to an action for civil damages or other relief as a result of such activity.

(3) Information and documents, including complaints and incident reports, created, collected, and maintained about health care providers arising out of the matters that are under review or have been evaluated by a review committee conducting quality assurance reviews are not

subject to discovery or introduction into evidence in any civil action, and no person who was in attendance at a meeting of such committee or board shall be permitted or required to testify in any civil action as to the content of such proceedings. This subsection does not preclude:

(a) In any civil action, the testimony of any person concerning the facts which form the basis for the institution of such proceedings of which the person had personal knowledge acquired independently of such proceedings; (b) in any civil action by a health care provider regarding the restriction or revocation of that individual's clinical or staff privileges, introduction into evidence information collected and maintained by quality assurance committees regarding such health care provider; (c) in any civil action, disclosure of the fact that staff privileges were terminated or restricted, including the specific restrictions imposed, if any; or (d) in any civil action, discovery and introduction into evidence of the patient's medical records required by regulation of the department of social and health services to be made regarding the care and treatment received.

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

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

(6) Violation of this section shall not be considered negligence per se. [1987 c 269 § 5; 1986 c 300 § 4.]

Legislative findings—Severability—1986 c 300: See notes following RCW 18.72.040.

70.41.210 Duty to report restrictions on physicians' privileges based on unprofessional conduct—Penalty.

The chief administrator or executive officer of a hospital shall report to the *board when a physician's clinical privileges are terminated or are restricted based on a determination, in accordance with an institution's by-laws, that a physician has either committed an act or acts which may constitute unprofessional conduct. The officer shall also report if a physician accepts voluntary termination in order to foreclose or terminate actual or possible hospital action to suspend, restrict, or terminate a physician's clinical privileges. Such a report shall be made within sixty days of the date action was taken by the hospital's peer review committee or the physician's acceptance of voluntary termination or restriction of privileges. Failure of a hospital to comply with this section is punishable by a civil penalty not to exceed two hundred fifty dollars. [1986 c 300 § 7.]

*Reviser's note: "board" apparently refers to the medical disciplinary board under chapter 18.72 RCW.

Legislative findings—Severability—1986 c 300: See notes following RCW 18.72.040.

70.41.220 Duty to keep records of restrictions on practitioners' privileges—Penalty. Each hospital shall keep written records of decisions to restrict or terminate privileges of practitioners. Copies of such records shall be made available to the board within thirty days of a request and all information so gained shall remain confidential in accordance with RCW 70.41.200 and 70.41.230 and shall be protected from the discovery process. Failure of a hospital to comply with this section is punishable by [a] civil penalty not to exceed two hundred fifty dollars. [1986 c 300 § 8.]

Legislative findings—Severability—1986 c 300: See notes following RCW 18.72.040.

70.41.230 Duty of hospital to request information on physicians granted privileges. (1) Prior to granting or renewing clinical privileges or association of any physician or hiring a physician, a hospital or facility approved pursuant to this chapter shall request from the physician and the physician shall provide the following information:

(a) The name of any hospital or facility with or at which the physician had or has any association, employment, privileges, or practice;

(b) If such association, employment, privilege, or practice was discontinued, the reasons for its discontinuation;

(c) Any pending professional medical misconduct proceedings or any pending medical malpractice actions in this state or another state, the substance of the allegations in the proceedings or actions, and any additional information concerning the proceedings or actions as the physician deems appropriate;

(d) The substance of the findings in the actions or proceedings and any additional information concerning the actions or proceedings as the physician deems appropriate;

(e) A waiver by the physician of any confidentiality provisions concerning the information required to be provided to hospitals pursuant to this subsection; and

(f) A verification by the physician that the information provided by the physician is accurate and complete.

(2) Prior to granting privileges or association to any physician or hiring a physician, a hospital or facility approved pursuant to this chapter shall request from any hospital with or at which the physician had or has privileges, was associated, or was employed, the following information concerning the physician:

(a) Any pending professional medical misconduct proceedings or any pending medical malpractice actions, in this state or another state;

(b) Any judgment or settlement of a medical malpractice action and any finding of professional misconduct in this state or another state by a licensing or disciplinary board; and

(c) Any information required to be reported by hospitals pursuant to RCW 18.72.265.

(3) The medical disciplinary board shall be advised within thirty days of the name of any physician denied staff privileges, association, or employment on the basis of adverse findings under subsection (1) of this section.

(4) A hospital or facility that receives a request for information from another hospital or facility pursuant to subsections (1) and (2) of this section shall provide such information concerning the physician in question to the extent such information is known to the hospital or facility receiving such a request, including the reasons for suspension, termination, or curtailment of employment or privileges at the hospital or facility. A hospital, facility, or other person providing such information in good faith is not liable in any civil action for the release of such information.

(5) Information and documents, including complaints and incident reports, created, collected, and maintained about health care providers arising out of the matters that are under review or have been evaluated by a review committee conducting quality assurance reviews are not subject to discovery or introduction into evidence in any civil action, and no person who was in attendance at a meeting of such committee or board shall be permitted or required to testify in any civil action as to the content of such proceedings. This subsection does not preclude: (a) In any civil action, the testimony of any person concerning the facts which form the basis for the institution of such proceedings of which the person had personal knowledge acquired independently of such proceedings; (b) in any civil action by a health care provider regarding the restriction or revocation of that individual's clinical or staff privileges, introduction into evidence information collected and maintained by quality assurance committees regarding such health care provider; (c) in any civil action, disclosure of the fact that staff privileges were terminated or restricted, including the specific restrictions imposed, if any; or (d) in any civil action, discovery and introduction into evidence of the patient's medical records required by regulation of the department of social and health services to be made regarding the care and treatment received.

(6) Hospitals shall be granted access to information held by the medical disciplinary board and the board of osteopathic medicine and surgery pertinent to decisions of the hospital regarding credentialing and recredentialing of practitioners.

(7) Violation of this section shall not be considered negligence per se. [1987 c 269 § 6; 1986 c 300 § 11.]

Legislative findings—Severability—1986 c 300: See notes following RCW 18.72.040.

70.41.240 Information regarding conversion of hospitals to nonhospital health care facilities. The department of social and health services shall compile and make available to the public information regarding medicare health care facility certification options available to hospitals licensed under this title that desire to convert to nonhospital health care facilities. The information provided shall include standards and requirements for certification and procedures for acquiring certification. [1988 c 207 § 3.]

Reviser's note: 1988 c 207 directed that this section be added to chapter 70.14 RCW. The placement appears inappropriate and the section has been codified as part of chapter 70.41 RCW.

Resources and staffing—1988 c 207: "The department of community development, department of trade and economic development, department of employment security, and department of social and health services are expected to use their present resources and staffing to carry out the requirements of this act." [1988 c 207 § 4.] For codification of "this act" see Codification Tables, Volume 0.

70.41.900 Severability—1955 c 267. If any part, or parts, of this chapter shall be held unconstitutional, the remaining provisions shall be given full force and effect, as completely as if the part held unconstitutional had not been included herein, if any such remaining part can then be administered for the purpose of establishing and maintaining standards for hospitals. [1955 c 267 § 21.]

**Chapter 70.42
MEDICAL TEST SITES**

Sections	
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70.42.030	Waiver of license—Conditions.
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70.42.070	Proficiency testing program.
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70.42.090	Fees—Account.
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70.42.180	Operating without a license—Injunctions or other remedies—Penalty.
70.42.190	Petition of superior court for review of disciplinary action.
70.42.200	Persons who may not own or operate test site.
70.42.210	Confidentiality of certain information.
70.42.220	Rules.
70.42.900	Effective dates—1989 c 386.

70.42.005 Intent—Construction. (Effective July 1, 1990.) The legislature intends that medical test sites meet criteria known to promote accurate and reliable analysis, thus improving health care through uniform test site licensure and regulation including quality control, quality assurance, and proficiency testing. The legislature also intends to meet the requirements of federal laws licensing and regulating medical testing.

The legislature intends that nothing in this chapter shall be interpreted to place any liability whatsoever on the state for the action or inaction of test sites or test site personnel. The legislature further intends that nothing in this chapter shall be interpreted to expand the state's role regarding medical testing beyond the provisions of this chapter. [1989 c 386 § 1.]

70.42.010 Definitions. (Effective July 1, 1990.) Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Department" means the *department of health if enacted, otherwise the department of social and health services.

(2) "Designated test site supervisor" means the available individual who is responsible for the technical functions of the test site and who meets the department's qualifications set out in rule by the department.

(3) "Person" means any individual, or any public or private organization, agent, agency, corporation, firm, association, partnership, or business.

(4) "Proficiency testing program" means an external service approved by the department which provides samples to evaluate the accuracy, reliability and performance of the tests at each test site.

(5) "Quality assurance" means a comprehensive set of policies, procedures, and practices to assure that a test site's results are accurate and reliable. Quality assurance means a total program of internal and external quality control, equipment preventative maintenance, calibration, recordkeeping, and proficiency testing evaluation, including a written quality assurance plan.

(6) "Quality control" means internal written procedures and day-to-day analysis of laboratory reference materials at each test site to insure precision and accuracy of test methodology, equipment, and results.

(7) "Test" means any examination or procedure conducted on a sample taken from the human body, including screening.

(8) "Test site" means any facility or site, public or private, which analyzes materials derived from the human body for the purposes of health care, treatment, or screening. A test site does not mean a facility or site, including a residence, where a test approved for home use by the federal food and drug administration is used by an individual to test himself or herself without direct supervision or guidance by another and where this test is not part of a commercial transaction. [1989 c 386 § 2.]

***Reviser's note:** 1989 1st ex.s. c 14 created the department of health.

70.42.020 License required. (Effective July 1, 1990.) After July 1, 1990, no person may advertise, operate, manage, own, conduct, open, or maintain a test site without first obtaining a license for the tests to be performed, except as provided in RCW 70.42.030. [1989 c 386 § 3.]

70.42.030 Waiver of license—Conditions. (Effective July 1, 1990.) (1) As a part of the application for licensure, a test site may request a waiver from licensure under this chapter if the test site performs only examinations which are determined to have insignificant risk of an erroneous result, including those which (a) are approved by the federal food and drug administration for home use; (b) are so simple and accurate as to render the likelihood of erroneous results negligible; or (c) pose no reasonable risk of harm to the patient if performed incorrectly.

(2) The department shall determine by rule which tests meet the criteria in subsection (1) of this section and shall be exempt from coverage of this chapter. The standards applied in developing the list shall be consistent with federal law and regulations.

(3) The department shall grant a waiver from licensure for two years for a valid request based on subsections (1) and (2) of this section.

(4) Any test site which has received a waiver under subsection (3) of this section shall report to the department any changes in the type of tests it intends to perform thirty days in advance of the changes. In no case shall a test site with a waiver perform tests which require a license under this chapter. [1989 c 386 § 4.]

70.42.040 Sites approved under federal law—Automatic licensure. (Effective July 1, 1990.) Test sites accredited, certified, or licensed by an organization or agency approved by the department consistent with federal law and regulations shall receive a license under RCW 70.42.110. [1989 c 386 § 5.]

70.42.050 Permission to perform tests not covered by license—License amendment. (Effective July 1, 1990.) A licensee that desires to perform tests for which it is not currently licensed shall notify the department. To the extent allowed by federal law and regulations, upon notification and pending the department's determination, the department shall grant the licensee temporary permission to perform the additional tests. The department shall amend the license if it determines that the licensee meets all applicable requirements. [1989 c 386 § 6.]

70.42.060 Quality control, quality assurance, recordkeeping, and personnel standards. (Effective July 1, 1990.) The department shall adopt standards established in rule governing test sites for quality control, quality assurance, recordkeeping, and personnel consistent with federal laws and regulations. "Recordkeeping" for purposes of this chapter means books, files, or records necessary to show compliance with the quality control and quality assurance requirements adopted by the department. [1989 c 386 § 7.]

70.42.070 Proficiency testing program. (Effective July 1, 1990.) (1) Except where there is no reasonable proficiency test, each licensed test site must participate in a department-approved proficiency testing program appropriate to the test or tests which it performs. The department may approve proficiency testing programs offered by private or public organizations when the program meets the standards set by the department. Testing shall be conducted quarterly except as otherwise provided for in rule.

(2) The department shall establish proficiency testing standards by rule which include a measure of acceptable performance for tests, and a system for grading proficiency testing performance for tests. The standards may include an evaluation of the personnel performing tests. [1989 c 386 § 8.]

70.42.080 Test site supervisor. (Effective July 1, 1990.) A test site shall have a designated test site supervisor who shall meet the qualifications determined by the department in rule. The designated test site supervisor shall be responsible for the testing functions of the test site. [1989 c 386 § 9.]

70.42.090 Fees—Account. (Effective July 1, 1990.) (1) The department shall establish a schedule of fees for license applications, renewals, amendments, and waivers. In fixing said fees, the department shall set the fees at a sufficient level to defray the cost of administering the licensure program. All such fees shall be fixed by rule adopted in accordance with the provisions of the administrative procedure act, chapter 34.05 RCW. In determining the fee schedule, the department shall consider the following: (a) Complexity of the license required; (b) number and type of tests performed at the test site; (c) degree of supervision required from the department staff; (d) whether the license is granted under RCW 70.42.040; and (e) general administrative costs of the test site licensing program established under this chapter. For each category of license, fees charged shall be related to program costs.

(2) The medical test site licensure account is created in the state treasury. The state treasurer shall transfer into the medical test site licensure account all revenue received from medical test site license fees. Funds for this account may only be appropriated for the support of the activities defined under this chapter.

(3) The department may establish separate fees for repeat inspections and repeat audits it performs under RCW 70.42.170. [1989 c 386 § 10.]

70.42.100 Applicants—Requirements. (Effective July 1, 1990.) An applicant for issuance or renewal of a medical test site license shall:

(1) File a written application on a form provided by the department;

(2) Demonstrate ability to comply with this chapter and the rules adopted under this chapter;

(3) Cooperate with any on-site review which may be conducted by the department prior to licensure or renewal. [1989 c 386 § 11.]

70.42.110 Issuance of license—Renewal. (Effective July 1, 1990.) Upon receipt of an application for a license and the license fee, the department shall issue a license if the applicant meets the requirements established under this chapter. All persons operating test sites before July 1, 1990, shall submit applications by July 1, 1990. A license issued under this chapter shall not be transferred or assigned without thirty days' prior notice to the department and the department's timely approval. A license, unless suspended or revoked, shall be effective for a period of two years. The department may establish penalty fees or take other appropriate action pursuant to this chapter for failure to apply for licensure or renewal as required by this chapter. [1989 c 386 § 12.]

70.42.120 Denial of license. (Effective July 1, 1990.) Under this chapter, and chapter 34.05 RCW, the department may deny a license to any applicant who:

(1) Refuses to comply with the requirements of this chapter or the standards or rules adopted under this chapter;

(2) Was the holder of a license under this chapter which was revoked for cause and never reissued by the department;

(3) Has knowingly or with reason to know made a false statement of a material fact in the application for a license or in any data attached thereto or in any record required by the department;

(4) Refuses to allow representatives of the department to examine any book, record, or file required by this chapter to be maintained;

(5) Willfully prevented, interfered with, or attempted to impede in any way the work of a representative of the department; or

(6) Misrepresented, or was fraudulent in, any aspect of the applicant's business. [1989 c 386 § 13.]

70.42.130 Conditions upon license. (Effective July 1, 1990.) Under this chapter, and chapter 34.05 RCW, the department may place conditions on a license which limit or cancel a test site's authority to conduct any of the tests or groups of tests of any licensee who:

(1) Fails or refuses to comply with the requirements of this chapter or the rules adopted under this chapter;

(2) Has knowingly or with reason to know made a false statement of a material fact in the application for a license or in any data attached thereto or in any record required by the department;

(3) Refuses to allow representatives of the department to examine any book, record, or file required by this chapter to be maintained;

(4) Willfully prevented, interfered with, or attempted to impede in any way the work of a representative of the department;

(5) Willfully prevented or interfered with preservation of evidence of a known violation of this chapter or the rules adopted under this chapter; or

(6) Misrepresented, or was fraudulent in, any aspect of the licensee's business. [1989 c 386 § 14.]

70.42.140 Suspension of license. (Effective July 1, 1990.) Under this chapter, and chapter 34.05 RCW, the department may suspend the license of any licensee who:

(1) Fails or refuses to comply with the requirements of this chapter or the rules adopted under this chapter;

(2) Has knowingly or with reason to know made a false statement of a material fact in the application for a license or in any data attached thereto or in any record required by the department;

(3) Refuses to allow representatives of the department to examine any book, record, or file required by this chapter to be maintained;

(4) Willfully prevented, interfered with, or attempted to impede in any way the work of a representative of the department;

(5) Willfully prevented or interfered with preservation of evidence of a known violation of this chapter or the rules adopted under this chapter;

(6) Misrepresented, or was fraudulent in, any aspect of the licensee's business;

(7) Used false or fraudulent advertising; or

(8) Failed to pay any civil monetary penalty assessed by the department under this chapter within twenty-eight days after the assessment becomes final. [1989 c 386 § 15.]

70.42.150 Revocation of license. (Effective July 1, 1990.) Under this chapter, and chapter 34.05 RCW, the department may revoke the license of any licensee who:

(1) Fails or refuses to comply with the requirements of this chapter or the rules adopted under this chapter;

(2) Has knowingly or with reason to know made a false statement of a material fact in the application for a license or in any data attached thereto or in any record required by the department;

(3) Refuses to allow representatives of the department to examine any book, record, or file required by this chapter to be maintained;

(4) Willfully prevented, interfered with, or attempted to impede in any way the work of a representative of the department;

(5) Willfully prevented or interfered with preservation of evidence of a known violation of this chapter or the rules adopted under this chapter;

(6) Misrepresented, or was fraudulent in, any aspect of the licensee's business;

(7) Used false or fraudulent advertising; or

(8) Failed to pay any civil monetary penalty assessed by the department pursuant to this chapter within twenty-eight days after the assessment becomes final.

The department may summarily revoke a license when it finds continued licensure of a test site immediately jeopardizes the public health, safety, or welfare. [1989 c 386 § 16.]

70.42.160 Penalties—Acts constituting violations. (Effective July 1, 1990.) Under this chapter, and chapter 34.05 RCW, the department may assess monetary penalties of up to ten thousand dollars per violation in addition to or in lieu of conditioning, suspending, or revoking a license. A violation occurs when a licensee:

(1) Fails or refuses to comply with the requirements of this chapter or the standards or rules adopted under this chapter;

(2) Has knowingly or with reason to know made a false statement of a material fact in the application for a license or in any data attached thereto or in any record required by the department;

(3) Refuses to allow representatives of the department to examine any book, record, or file required by this chapter to be maintained;

(4) Willfully prevents, interferes with, or attempts to impede in any way the work of any representative of the department;

(5) Willfully prevents or interferes with preservation of evidence of any known violation of this chapter or the rules adopted under this chapter;

(6) Misrepresents or was fraudulent in any aspect of the applicant's business; or

(7) Uses advertising which is false or fraudulent.

Each day of a continuing violation is a separate violation. [1989 c 386 § 17.]

70.42.170 On-site reviews. (Effective July 1, 1990.)

The department may at any time conduct an on-site review of a licensee or applicant in order to determine compliance with this chapter. When the department has reason to believe a waived site is conducting tests requiring a license, the department may conduct an on-site review of the waived site in order to determine compliance. The department may also examine and audit records necessary to determine compliance with this chapter. The right to conduct an on-site review and audit and examination of records shall extend to any premises and records of persons whom the department has reason to believe are opening, owning, conducting, maintaining, managing, or otherwise operating a test site without a license.

Following an on-site review, the department shall give written notice of any violation of this chapter or the rules adopted under this chapter. The notice shall describe the reasons for noncompliance and inform the licensee or applicant or test site operator that it shall comply within a specified reasonable time. If the licensee or applicant or test site operator fails to comply, the department may take disciplinary action under RCW 70.42.120 through 70.42.150, or further action as authorized by this chapter. [1989 c 386 § 18.]

70.42.180 Operating without a license—Injunctions or other remedies—Penalty. (Effective July 1, 1990.) Notwithstanding the existence or use of any other remedy, the department may, in the manner provided by law and upon the advice of the attorney general, who shall represent the department in the proceedings, maintain an action in the name of the state for an injunction or other process against any person to restrain or prevent the advertising, operating, maintaining, managing, or opening of a test site without a license under this chapter. It is a misdemeanor to own, operate, or maintain a test site without a license. [1989 c 386 § 19.]

70.42.190 Petition of superior court for review of disciplinary action. (Effective July 1, 1990.) Any test site which has had a denial, condition, suspension, or revocation of its license, or a civil monetary penalty upheld after administrative review under chapter 34.05 RCW, may, within sixty days of the administrative determination, petition the superior court for review of the decision. [1989 c 386 § 20.]

70.42.200 Persons who may not own or operate test site. (Effective July 1, 1990.) No person who has owned or operated a test site that has had its license revoked may own or operate a test site within two years of the

final adjudication of a license revocation. [1989 c 386 § 21.]

70.42.210 Confidentiality of certain information. (Effective July 1, 1990.) All information received by the department through filed reports, audits, or on-site reviews, as authorized under this chapter shall not be disclosed publicly in any manner that would identify persons who have specimens of material from their bodies at a test site, absent a written release from the person, or a court order. [1989 c 386 § 22.]

70.42.220 Rules. The department shall adopt rules under chapter 34.05 RCW necessary to implement the purposes of this chapter. [1989 c 386 § 23.]

70.42.900 Effective dates—1989 c 386. (1) RCW 70.42.005 through 70.42.210 shall take effect July 1, 1990.

(2) RCW 70.42.220 is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1989. [1989 c 386 § 25.]

Chapter 70.43

HOSPITAL STAFF MEMBERSHIP OR PRIVILEGES

Sections

70.43.010	Applications for membership or privileges—Standards and procedures.
70.43.020	Applications for membership or privileges—Discrimination based on type of license prohibited—Exception.
70.43.030	Violations of RCW 70.43.010 or 70.43.020—Injunctive relief.

70.43.010 Applications for membership or privileges—Standards and procedures. Within one hundred eighty days of June 11, 1986, the governing body of every hospital licensed under chapter 70.41 RCW shall set standards and procedures to be applied by the hospital and its medical staff in considering and acting upon applications for staff membership or professional privileges. [1986 c 205 § 1.]

70.43.020 Applications for membership or privileges—Discrimination based on type of license prohibited—Exception. The governing body of any hospital, except any hospital which employs its medical staff, in considering and acting upon applications for staff membership or professional privileges within the scope of the applicants' respective licenses, shall not discriminate against a qualified person solely on the basis of whether such person is licensed under chapters 18.71, 18.57, or 18.22 RCW. [1986 c 205 § 2.]

70.43.030 Violations of RCW 70.43.010 or 70.43.020—Injunctive relief. Any person may apply to superior court for a preliminary or permanent injunction restraining a violation of RCW 70.43.010 or 70.43.020. This action is an additional remedy not dependent on the

adequacy of the remedy at law. Nothing in this chapter shall require a hospital to grant staff membership or professional privileges until a final determination is made upon the merits by the hospital governing body. [1986 c 205 § 3.]

Chapter 70.44

PUBLIC HOSPITAL DISTRICTS

Sections

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70.44.350	Dividing a district.
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70.44.400	Withdrawal of territory from public hospital district.
70.44.900	Severability—Construction—1945 c 264.
70.44.901	Severability—Construction—1974 ex.s. c 165.
70.44.902	Severability—1982 c 84.
70.44.903	Savings—1982 c 84.
70.44.910	Construction—1945 c 264.

County hospitals: Chapter 36.62 RCW.

Limitation of indebtedness prescribed: RCW 39.36.020.

Tortious conduct of political subdivisions, municipal corporations and quasi municipal corporations, liability for damages: Chapter 4.96 RCW.

70.44.003 Purpose. The purpose of chapter 70.44 RCW is to authorize the establishment of public hospital districts to own and operate hospitals and other health care facilities and to provide hospital services and other health care services for the residents of such districts and other persons. [1982 c 84 § 1.]

70.44.007 Definitions. As used in this chapter, the following words shall have the meanings indicated:

(1) The words "other health care facilities" shall mean nursing home, extended care, long-term care, outpatient and rehabilitative facilities, ambulances, and such other facilities as are appropriate to the health needs of the population served.

(2) The words "other health care services" shall mean nursing home, extended care, long-term care, outpatient, rehabilitative, health maintenance, and ambulance services and such other services as are appropriate to the health needs of the population served. [1982 c 84 § 12; 1974 ex.s. c 165 § 5.]

70.44.010 Districts authorized. Municipal corporations, to be known as public hospital districts, are hereby authorized and may be established within the several counties of the state as hereinafter provided. [1947 c 225 § 1; 1945 c 264 § 2; Rem. Supp. 1947 § 6090-31. FORMER PART OF SECTION: 1945 c 264 § 1 now codified as RCW 70.44.005.]

70.44.015 Validation of existing districts. Each and all of the respective areas of land heretofore attempted to be organized into public hospital districts under the provisions of this chapter are validated and declared to be duly existing hospital districts having the respective boundaries set forth in their organization proceedings as shown by the files in the office of the board of county commissioners of the county in question, and by the files of such districts. [1955 c 135 § 2.]

70.44.016 Validation of districts. Each and all of the respective areas of land attempted to be organized into public hospital districts prior to June 10, 1982, under the provisions of chapter 70.44 RCW where the canvass of the election on the proposition of creating a public hospital district shows the passage of the proposition are validated and declared to be duly existing public hospital districts having the respective boundaries set forth in

their organization proceedings as shown by the files in the office of the legislative authority of the county in question, and by the files of such districts. [1982 c 84 § 10.]

70.44.020 Resolution—Petition for county-wide district—Conduct of elections. At any general election or at any special election which may be called for that purpose the board of county commissioners of a county may, or on petition of ten percent of the electors of the county based on the total vote cast in the last general county election, shall, by resolution, submit to the voters of the county the proposition of creating a public hospital district coextensive with the limits of the county. The petition shall be filed with the county auditor, who shall within fifteen days examine the signatures thereon and certify to the sufficiency thereof, and for that purpose he shall have access to all registration books in the possession of election officers in the county. If the petition is found to be insufficient, it shall be returned to the persons filing it, who may amend or add names thereto for ten days, when it shall be returned to the auditor, who shall have an additional fifteen days to examine it and attach his certificate thereto. No person signing the petition may withdraw his name therefrom after filing. When the petition is certified as sufficient, the auditor shall forthwith transmit it, together with his certificate of sufficiency attached thereto, to the commissioners, who shall immediately transmit the proposition to the supervisor of elections or other election officer of the county, and he shall submit the proposition to the voters at the next general election or if such petition so requests, he shall call a special election on such proposition not less than thirty nor more than ninety days from the date of said certificate. The notice of the election shall state the boundaries of the proposed district and the object of the election, and shall in other respects conform to the requirements of law governing the time and manner of holding elections. In submitting the question to the voters, the proposition shall be expressed on the ballot substantially in the following terms:

For public hospital district No. -----

Against public hospital district No. -----

[1955 c 135 § 1; 1945 c 264 § 3; Rem. Supp. 1945 § 6090–32.]

70.44.028 Limitation on legal challenges. Unless commenced within thirty days after the date of the filing of the certificate of the canvass of an election on the proposition of creating a new public hospital district pursuant to chapter 70.44 RCW, no lawsuit whatever may be maintained challenging in any way the legal existence of such district or the validity of the proceedings had for the organization and creation thereof. If the creation of a district is not challenged within the period specified in this section, the district conclusively shall be deemed duly and regularly organized under the laws of this state. [1982 c 84 § 9.]

70.44.030 Petition for lesser district—Procedure. Any petition for the formation of a public hospital district may describe a less area than the entire county in which the petition is filed, the boundaries of which shall follow the then existing precinct boundaries and not divide any voting precinct; and in the event that such a petition is filed containing not less than ten percent of the voters of the proposed district who voted at the last general election, certified by the auditor in like manner as for a county-wide district, the board of county commissioners shall fix a date for a hearing on such petition, and shall publish the petition, without the signatures thereto appended, for two weeks prior to the date of the hearing, together with a notice stating the time of the meeting when such petition will be heard. Such publications required by this chapter shall be in a newspaper published in the proposed or established public hospital district, or, if there be no such newspaper, then in a newspaper published in the county in which such district is situated, and of general circulation in such county. The hearing on such petition may be adjourned from time to time, not exceeding four weeks in all. If upon the final hearing the board of county commissioners shall find that any lands have been unjustly or improperly included within the proposed public hospital district the said board shall change and fix the boundary lines in such manner as it shall deem reasonable and just and conducive to the welfare and convenience, and make and enter an order establishing and defining the boundary lines of the proposed public hospital district: *Provided*, That no lands shall be included within the boundaries so fixed lying outside the boundaries described in the petition, except upon the written request of the owners of such lands. Thereafter the same procedure shall be followed as prescribed in this chapter for the formation of a public hospital district including an entire county, except that the petition and election shall be confined solely to the lesser public hospital district. [1945 c 264 § 4; Rem. Supp. 1945 § 6090–33.]

70.44.035 Petition for district lying in more than one county—Procedure. Any petition for the formation of a public hospital district may describe an area lying in more than one county, the boundaries of which shall follow the then existing precinct boundaries and not divide a voting precinct; and if a petition is filed with the county auditor of the respective counties in which a portion of the proposed district is located, containing not less than ten percent of the voters of that area of each county of the proposed district who voted at the last general election, certified by the said respective auditors in like manner as for a county-wide district, the board of county commissioners of each of the counties in which a portion of the proposed district is located shall fix a date for a hearing on the petition, and shall publish the petition, without the signatures thereto appended, for two weeks prior to the hearing, together with a notice stating the time of the meeting when the petition will be heard. The publication required by this chapter shall be in a newspaper published in the portion of each county lying within the proposed district, or if there be no such

newspaper published in any such portion of a county, then in one published in the county wherein such portion of said district is situated, and of general circulation in the county. The hearing before the respective county commissioners may be adjourned from time to time not exceeding four weeks in all. If upon the final hearing the respective boards of county commissioners find that any land has been unjustly or improperly included within the proposed district they may change and fix the boundary lines of the portion of said district located within their respective counties in such manner as they deem reasonable and just and conducive to the welfare and convenience, and enter an order establishing and defining the boundary lines of the proposed district located within their respective counties: *Provided*, That no lands shall be included within the boundaries so fixed lying outside the boundaries described in the petition, except upon the written request of the owners of the land to be so included. Thereafter the same procedure shall be followed as prescribed for the formation of a district including an entire county, except that the petition and election shall be confined solely to the portions of each county lying within the proposed district. [1953 c 267 § 1.]

70.44.040 Elections—Vacancies—Procedure—Boundaries—Consolidations—Terms of commissioners. The provisions of Title 54 RCW relating to elections and procedure of the commission and boundaries and consolidation of public utility districts shall govern public hospital districts, except that: (1) Vacancies in hospital commissions shall be governed by chapter 70.44 RCW as now or hereafter amended; (2) elections in hospital districts shall be in odd-numbered years as provided in RCW 29.13.020; (3) the total vote cast upon the proposition to form a hospital district shall exceed forty percent of the total number of votes cast in the precincts comprising the proposed district at the preceding general and county election; and (4) hospital district commissioners shall hold office for the term of six years and until their successors are elected and qualified, each term to commence on the first day in January following the election. At the election at which the proposition is submitted to the voters as to whether a district shall be formed, three commissioners shall be elected to hold office, respectively, for the terms of two, four, and six years. All candidates shall be voted upon by the entire district, and the candidate residing in commissioner district No. 1 receiving the highest number of votes in the hospital district shall hold office for the term of six years; the candidate residing in commissioner district No. 2 receiving the highest number of votes in the hospital district shall hold office for the term of four years; and the candidate residing in commissioner district No. 3 receiving the highest number of votes in the hospital district shall hold office for the term of two years. The first commissioners to be elected shall take office immediately when qualified in accordance with RCW 29.01.135. Each term of the initial commissioners shall date from the time above specified following the organizational election, but shall also include the period intervening between the organizational election and the

first day of January following the next district general election: *Provided*, That in public hospital districts encompassing portions of more than one county, the total vote cast upon the proposition to form the district shall exceed forty percent of the total number of votes cast in each portion of each county lying within the proposed district at the next preceding general county election. The portion of said proposed district located within each county shall constitute a separate commissioner district. There shall be three district commissioners whose terms shall be six years. Each district shall be designated by the name of the county in which it is located. All candidates for commissioners shall be voted upon by the entire district. Not more than one commissioner shall reside in any one district: *Provided further*, That in the event there are only two districts then two commissioners may reside in one district. The term of each commissioner shall commence on the first day in January in each year following his election. At the election at which the proposition is submitted to the voters as to whether a district shall be formed, three commissioners shall be elected to hold office, respectively, for the terms of two, four, and six years. The candidate receiving the highest number of votes within the district, as constituted by said election, shall serve a term of six years; the candidate receiving the next highest number of votes shall hold office for a term of four years; and the candidate receiving the next highest number of votes shall hold office for a term of two years: *Provided further*, That the holding of each such term of office shall be subject to the residential requirements for district commissioners hereinbefore set forth in this section. [1979 ex.s. c 126 § 41; 1957 c 11 § 1; 1955 c 82 § 1; 1953 c 267 § 2; 1947 c 229 § 1; 1945 c 264 § 5; Rem. Supp. 1947 § 6090–34.]

Purpose—1979 ex.s. c 126: See RCW 29.04.170(1).

70.44.042 Commissioner districts may be abolished—Residence of candidates for positions. Notwithstanding any provision in RCW 70.44.040 to the contrary, any board of public hospital district commissioners may, by resolution, abolish commissioner districts and permit candidates for any position on the board to reside anywhere in the public hospital district. [1967 c 227 § 2.]

70.44.045 Commissioners—Vacancies. A vacancy in the office of commissioner shall occur by death, resignation, removal, conviction of felony, nonattendance at meetings of the commission for sixty days, unless excused by the commission, by any statutory disqualification, by any permanent disability preventing the proper discharge of his duty, or by creation of positions pursuant to RCW 70.44.051, et seq. A vacancy or vacancies on the board shall be filled by appointment by the remaining commissioner or commissioners until the next regular election for commissioners as provided by RCW 70.44.040: *Provided*, That if there is only one remaining commissioner, one vacancy shall be filled by appointment by the remaining commissioner and the remaining vacancy or vacancies shall be filled by appointment by

the then two commissioners and the appointed commissioners shall serve until the next regular election for commissioners: *Provided further*, That if there is a vacancy of the entire board, a new board may be appointed by the board of county commissioners or county council. [1982 c 84 § 13; 1955 c 82 § 2.]

70.44.050 Commissioners—Compensation—Waiver of compensation—Expenses—Insurance—Resolutions by majority vote—Officers—Rules—Seal—Records. A district shall provide by resolution for the payment of compensation to each of its commissioners at a rate of fifty dollars for each day or portion thereof devoted to the business of the district, and days upon which he or she attends meetings of the commission of his or her own district, or meetings attended by one or more commissioners of two or more districts called to consider business common to them, except that the total compensation paid to such commissioner during any one year shall not exceed four thousand eight hundred dollars: *Provided*, That commissioners may not be compensated for services performed of a ministerial or professional nature.

Any commissioner may waive all or any portion of his or her compensation payable under this section as to any month or months during his or her term of office, by a written waiver filed with the district as provided in this section. The waiver, to be effective, must be filed any time after the commissioner's election and prior to the date on which the compensation would otherwise be paid. The waiver shall specify the month or period of months for which it is made.

Any district providing group insurance for its employees, covering them, their immediate family, and dependents, may provide insurance for its commissioners with the same coverage. Each commissioner shall be reimbursed for reasonable expenses actually incurred in connection with such business and meetings, including his subsistence and lodging and travel while away from his place of residence. No resolution shall be adopted without a majority vote of the whole commission. The commission shall organize by election of its own members of a president and secretary, shall by resolution adopt rules governing the transaction of its business and shall adopt an official seal. All proceedings of the commission shall be by motion or resolution recorded in a book or books kept for such purpose, which shall be public records. [1985 c 330 § 7; 1982 c 84 § 14; 1975 c 42 § 1; 1965 c 157 § 1; 1945 c 264 § 15; Rem. Supp. 1945 § 6090-44.]

70.44.051 Increase in number of commissioners—Authorized. In addition to the procedures enumerated in RCW 70.44.020, 70.44.030 and 70.44.035, the board of public hospital district commissioners in an existing intracounty or intercounty district may be increased to five or to seven members; and any district created after June 8, 1967 may have three, five or seven commissioners. [1967 c 77 § 1.]

70.44.053 Increase in number of commissioners—Proposition to be submitted to voters. At any general or

special election which may be called for that purpose the board of public hospital district commissioners may, or on petition of ten percent of the electors based on the total vote cast in the last general election in the district shall, by resolution, submit to the voters of the district the proposition increasing the number of commissioners to any number authorized in RCW 70.44.051. [1967 c 77 § 2.]

70.44.055 Increase in number of commissioners—Number to be elected from commissioner districts, at large positions. (1) (a) In intracounty districts having five commissioners, one shall be elected from each commissioner district as provided in RCW 70.44.040, and two shall be elected at large from the hospital district by positions No. 4 and No. 5.

(b) In intercounty districts having five commissioners, two shall be elected from each commissioner district by positions No. 1 and No. 2, and one shall be elected at large from the hospital district.

(2) (a) In intracounty districts having seven commissioners, two shall be elected from each commissioner district by positions No. 1 and No. 2, and one shall be elected at large from the entire hospital district.

(b) In intercounty districts having seven commissioners, three shall be elected from each commissioner district by positions No. 1, No. 2 and No. 3, and one shall be elected at large from the entire hospital district. [1967 c 77 § 3.]

70.44.057 Increase in number of commissioners—Staggering terms of additional commissioners in existing districts—New districts. (1) In all existing public hospital districts in which an increase in membership of the board of hospital district commissioners is proposed, the district commissioners shall, by resolution adopted in advance of any elections therefor, provide for the staggering of terms of the additional commissioner positions so that, as nearly as is mathematically possible, one-third of the expanded board shall be elected every two years.

(2) When a new district is proposed with more than three commissioners, the county commissioners of the counties affected shall adopt the resolution prescribed in subsection (1) of this section. [1967 c 77 § 4.]

70.44.060 Powers and duties. All public hospital districts organized under the provisions of this chapter shall have power:

(1) To make a survey of existing hospital and other health care facilities within and without such district.

(2) To construct, condemn and purchase, purchase, acquire, lease, add to, maintain, operate, develop and regulate, sell and convey all lands, property, property rights, equipment, hospital and other health care facilities and systems for the maintenance of hospitals, buildings, structures, and any and all other facilities, and to exercise the right of eminent domain to effectuate the foregoing purposes or for the acquisition and damaging of the same or property of any kind appurtenant thereto, and such right of eminent domain shall be exercised and

instituted pursuant to a resolution of the commission and conducted in the same manner and by the same procedure as in or may be provided by law for the exercise of the power of eminent domain by incorporated cities and towns of the state of Washington in the acquisition of property rights: *Provided*, That no public hospital district shall have the right of eminent domain and the power of condemnation against any health care facility.

(3) To lease existing hospital and other health care facilities and equipment and/or other property used in connection therewith, including ambulances, and to pay such rental therefor as the commissioners shall deem proper; to provide hospital and other health care services for residents of said district by facilities located outside the boundaries of said district, by contract or in any other manner said commissioners may deem expedient or necessary under the existing conditions; and said hospital district shall have the power to contract with other communities, corporations, or individuals for the services provided by said hospital district; and they may further receive in said hospitals and other health care facilities and furnish proper and adequate services to all persons not residents of said district at such reasonable and fair compensation as may be considered proper: *Provided*, That it must at all times make adequate provision for the needs of the district and residents of said district shall have prior rights to the available hospital and other health care facilities of said district, at rates set by the district commissioners.

(4) For the purpose aforesaid, it shall be lawful for any district so organized to take, condemn and purchase, lease, or acquire, any and all property, and property rights, including state and county lands, for any of the purposes aforesaid, and any and all other facilities necessary or convenient, and in connection with the construction, maintenance, and operation of any such hospitals and other health care facilities, subject, however, to the applicable limitations provided in subsection (2) of this section.

(5) To contract indebtedness or borrow money for corporate purposes on the credit of the corporation or the revenues of the hospitals thereof, and the revenues of any other facilities or services that the district is or hereafter may be authorized by law to provide, and to issue and sell: (a) Revenue bonds, revenue warrants, or other revenue obligations therefor payable solely out of a special fund or funds into which the district may pledge such amount of the revenues of the hospitals thereof, and the revenues of any other facilities or services that the district is or hereafter may be authorized by law to provide, to pay the same as the commissioners of the district may determine, such revenue bonds, warrants, or other obligations to be issued and sold in the same manner and subject to the same provisions as provided for the issuance of revenue bonds, warrants, or other obligations by cities or towns under the Municipal Revenue Bond Act, chapter 35.41 RCW, as may hereafter be amended; (b) general obligation bonds therefor in the manner and form as provided in RCW 70.44.110 and 70.44.130, as may hereafter be amended; or (c) interest-bearing warrants to be drawn on a fund pending deposit

in such fund of money sufficient to redeem such warrants and to be issued and paid in such manner and upon such terms and conditions as the board of commissioners may deem to be in the best interest of the district; and to assign or sell hospital accounts receivable, and accounts receivable for the use of other facilities or services that the district is or hereafter may be authorized by law to provide, for collection with or without recourse. General obligation bonds shall be issued and sold in accordance with chapter 39.46 RCW. Revenue bonds, revenue warrants, or other revenue obligations may be issued and sold in accordance with chapter 39.46 RCW.

(6) To raise revenue by the levy of an annual tax on all taxable property within such public hospital district not to exceed seventy-five cents per thousand dollars of assessed value or such further amount as has been or shall be authorized by a vote of the people: *Provided further*, That the public hospital districts are hereby authorized to levy such a general tax in excess of said seventy-five cents per thousand dollars of assessed value when authorized so to do at a special election conducted in accordance with and subject to all of the requirements of the Constitution and the laws of the state of Washington now in force or hereafter enacted governing the limitation of tax levies. The said board of district commissioners is hereby authorized and empowered to call a special election for the purpose of submitting to the qualified voters of the hospital district a proposition to levy a tax in excess of the seventy-five cents per thousand dollars of assessed value herein specifically authorized. The superintendent shall prepare a proposed budget of the contemplated financial transactions for the ensuing year and file the same in the records of the commission on or before the first Monday in September. Notice of the filing of said proposed budget and the date and place of hearing on the same shall be published for at least two consecutive weeks in a newspaper printed and of general circulation in said county. On the first Monday in October the commission shall hold a public hearing on said proposed budget at which any taxpayer may appear and be heard against the whole or any part of the proposed budget. Upon the conclusion of said hearing, the commission shall, by resolution, adopt the budget as finally determined and fix the final amount of expenditures for the ensuing year. Taxes levied by the commission shall be certified to and collected by the proper county officer of the county in which such public hospital district is located in the same manner as is or may be provided by law for the certification and collection of port district taxes. The commission is authorized, prior to the receipt of taxes raised by levy, to borrow money or issue warrants of the district in anticipation of the revenue to be derived by such district from the levy of taxes for the purpose of such district, and such warrants shall be redeemed from the first money available from such taxes when collected, and such warrants shall not exceed the anticipated revenues of one year, and shall bear interest at a rate or rates as authorized by the commission.

(7) To enter into any contract with the United States government or any state, municipality, or other hospital

district, or any department of those governing bodies, for carrying out any of the powers authorized by this chapter.

(8) To sue and be sued in any court of competent jurisdiction: *Provided*, That all suits against the public hospital district shall be brought in the county in which the public hospital district is located.

(9) To pay actual necessary travel expenses and living expenses incurred while in travel status for (a) qualified physicians who are candidates for medical staff positions, and (b) other qualified persons who are candidates for superintendent or other managerial and technical positions, when the district finds that hospitals or other health care facilities owned and operated by it are not adequately staffed and determines that personal interviews with said candidates to be held in the district are necessary or desirable for the adequate staffing of said facilities.

(10) To make contracts, employ superintendents, attorneys, and other technical or professional assistants and all other employees; to make contracts with private or public institutions for employee retirement programs; to print and publish information or literature; and to do all other things necessary to carry out the provisions of this chapter. [1984 c 186 § 59; 1983 c 167 § 172; 1982 c 84 § 15; 1979 ex.s. c 155 § 1; 1979 ex.s. c 143 § 4; 1977 ex.s. c 211 § 1; 1974 ex.s. c 165 § 2; 1973 1st ex.s. c 195 § 83; 1971 ex.s. c 218 § 2; 1970 ex.s. c 56 § 85; 1969 ex.s. c 65 § 1; 1967 c 164 § 7; 1965 c 157 § 2; 1949 c 197 § 18; 1945 c 264 § 6; Rem. Supp. 1949 § 6090-35.]

Purpose—1984 c 186: See note following RCW 39.46.110.

Liberal construction—**Severability**—1983 c 167: See RCW 39.46.010 and note following.

Severability—1979 ex.s. c 155: "If any provision of this amendatory act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1979 ex.s. c 155 § 3.]

Severability—1979 ex.s. c 143: See note following RCW 70.44.200.

Severability—**Effective dates and termination dates**—**Construction**—1973 1st ex.s. c 195: See notes following RCW 84.52.043.

Purpose—1970 ex.s. c 56: See note following RCW 39.52.020.

Purpose—**Severability**—1967 c 164: See notes following RCW 4.96.010.

Eminent domain

by cities: Chapter 8.12 RCW.

generally: State Constitution Art. 1 § 16.

Limitation on levies: State Constitution Art. 7 § 2; RCW 84.52.050.

Port districts, collection of taxes: RCW 53.36.020.

Tortious conduct of political subdivisions, municipal corporations and quasi municipal corporations, liability for damages: Chapter 4.96 RCW.

70.44.062 Commissioners' meetings, proceedings, and deliberations concerning health care providers' clinical or staff privileges to be confidential—Final action in public session. All meetings, proceedings, and deliberations of the board of commissioners, its staff or agents, concerning the granting, denial, revocation, restriction, or other consideration of the status of the clinical or staff privileges of a physician or other health care provider as that term is defined in RCW 7.70.020, if such other providers at the discretion of the district's commissioners are considered for such privileges, shall be confidential

and may be conducted in executive session: *Provided*, That the final action of the board as to the denial, revocation, or restriction of clinical or staff privileges of a physician or other health care provider as defined in RCW 7.70.020 shall be done in public session. [1985 c 166 § 1.]

70.44.065 Levy for emergency medical care and services. See RCW 84.52.069.

70.44.070 Superintendent—Appointment—Removal—Compensation. (1) The public hospital district commission shall appoint a superintendent, who shall be appointed for an indefinite time and be removable at the will of the commission. Appointments and removals shall be by resolution, introduced at a regular meeting and adopted at a subsequent regular meeting by a majority vote. The superintendent shall receive such compensation as the commission shall fix by resolution.

(2) Where a public hospital district operates more than one hospital, the commission may in its discretion appoint up to one superintendent per hospital and assign among the superintendents the powers and duties set forth in RCW 70.44.080 and 70.44.090 as deemed appropriate by the commission. [1987 c 58 § 1; 1982 c 84 § 16; 1945 c 264 § 7; Rem. Supp. 1945 § 6090-36.]

70.44.080 Superintendent—Powers. (1) The superintendent shall be the chief administrative officer of the public district hospital and shall have control of administrative functions of the district. The superintendent shall be responsible to the commission for the efficient administration of all affairs of the district. In case of the absence or temporary disability of the superintendent a competent person shall be appointed by the commission. The superintendent shall be entitled to attend all meetings of the commission and its committees and to take part in the discussion of any matters pertaining to the district, but shall have no vote.

(2) Where the commission has appointed more than one superintendent as provided in RCW 70.44.070, the commission shall assign among the superintendents the powers set forth in this section as deemed appropriate by the commission. [1987 c 58 § 2; 1982 c 84 § 17; 1945 c 264 § 9; Rem. Supp. 1945 § 6090-38.]

70.44.090 Superintendent—Duties. (1) The public hospital district superintendent shall have the power, and duty:

(a) To carry out the orders of the commission, and to see that all the laws of the state pertaining to matters within the functions of the district are duly enforced.

(b) To keep the commission fully advised as to the financial condition and needs of the district. To prepare, each year, an estimate for the ensuing fiscal year of the probable expenses of the district, and to recommend to the commission what development work should be undertaken, and what extensions and additions, if any, should be made, during the ensuing fiscal year, with an estimate of the costs of such development work, extensions and additions. To certify to the commission all the

bills, allowances and payrolls, including claims due contractors of public works. To recommend to the commission a range of salaries to be paid to district employees.

(2) Where the commission has appointed more than one superintendent as provided in RCW 70.44.070, the commission shall assign among the superintendents the duties set forth in this section as deemed appropriate by the commission. [1987 c 58 § 3; 1982 c 84 § 18; 1945 c 264 § 11; Rem. Supp. 1945 § 6090-40.]

70.44.110 Plan to construct or improve—General obligation bonds. Whenever the commission deems it advisable that the district acquire or construct a public hospital, or other health care facilities, or make additions or betterments thereto, or extensions thereof, it shall provide therefor by resolution, which shall specify and adopt the plan proposed, declare the estimated cost thereof, and specify the amount of indebtedness to be incurred therefor. General indebtedness may be incurred by the issuance of general obligation bonds or short-term obligations in anticipation of such bonds. General obligation bonds shall mature in not to exceed thirty years. The incurring of such indebtedness shall be subject to the applicable limitations and requirements provided in section 1, chapter 143, Laws of 1917, as last amended by section 4, chapter 107, Laws of 1967, and RCW 39.36.020, as now or hereafter amended. Such general obligation bonds shall be issued and sold in accordance with chapter 39.46 RCW. [1984 c 186 § 60; 1974 ex.s. c 165 § 3; 1969 ex.s. c 65 § 2; 1955 c 56 § 1; 1945 c 264 § 12; Rem. Supp. 1945 § 6090-41.]

Purpose—1984 c 186: See note following RCW 39.46.110.

70.44.130 Bonds—Payment—Security for deposits. The principal and interest of such general bonds shall be paid by levying each year a tax upon the taxable property within the district sufficient, together with other revenues of the district available for such purpose, to pay said interest and principal of said bonds, which tax shall be due and collectible as any other tax. All bonds and warrants issued under the authority of this chapter shall be legal securities, which may be used by any bank or trust company for deposit with the state treasurer, or any county or city treasurer, as security for deposits, in lieu of a surety bond, under any law relating to deposits of public moneys. [1984 c 186 § 61; 1971 ex.s. c 218 § 3; 1945 c 264 § 14; Rem. Supp. 1945 § 6090-43.]

Purpose—1984 c 186: See note following RCW 39.46.110.

70.44.140 Contracts for material and work—Call for bids. All materials purchased and work ordered, the estimated cost of which is in excess of five thousand dollars, shall be by contract. Before awarding any such contract, the commission shall cause to be published a notice at least thirty days before the letting of said contract, inviting sealed proposals for such work, plans and specifications which must at the time of the publication of such notice be on file at the office of the public hospital district, subject to public inspection: *Provided, however,* That the commission may at the same time,

and as part of the same notice, invite tenders for said work or materials upon plans and specifications to be submitted by bidders. Such notice shall state generally the work to be done, and shall call for proposals for doing the same, to be sealed and filed with the commission on or before the day and hour named therein. Each bid shall be accompanied by bid proposal security in the form of a certified check, cashier's check, postal money order, or surety bond made payable to the order of the commission, for a sum not less than five percent of the amount of the bid, and no bid shall be considered unless accompanied by such bid proposal security. At the time and place named, such bids shall be publicly opened and read, and the commission shall proceed to canvass the bids, and may let such contract to the lowest responsible bidder upon plans and specifications on file, or to the best bidder submitting his own plans and specifications: *Provided, however,* That no contract shall be let in excess of the estimated cost of said materials or work, or if, in the opinion of the commission, all bids are unsatisfactory, they may reject all of them and readvertise, and in such case all bid proposal security shall be returned to the bidders; but if such contract be let, then and in such case all bid proposal security shall be returned to the bidders, except that of the successful bidder, which shall be retained until a contract shall be entered into for the purchase of such materials for doing such work, and a bond to perform such work furnished, with sureties satisfactory to the commission, in an amount to be fixed by the commission, not less than twenty-five percent of contract price in any case, between the bidder and commission, in accordance with the bid. If such bidder fails to enter into said contract in accordance with said bid and furnish such bond within ten days from the date at which he is notified that he is the successful bidder, the said bid proposal security and the amount thereof shall be forfeited to the public hospital district. [1965 c 83 § 1; 1945 c 264 § 17; Rem. Supp. 1945 § 6090-46.]

Contractor's bond: Chapter 39.08 RCW.

Lien on public works, retained percentage of contractor's earnings: Chapter 60.28 RCW.

70.44.171 Treasurer—Duties—Funds—Depositories—Surety bonds, cost. The treasurer of the county in which a public hospital district is located shall be treasurer of the district, except that the commission by resolution may designate some other person having experience in financial or fiscal matters as treasurer of the district. If the treasurer is not the county treasurer, the commission shall require a bond, with a surety company authorized to do business in the state of Washington, in an amount and under the terms and conditions which the commission by resolution from time to time finds will protect the district against loss. The premium on any such bond shall be paid by the district.

All district funds shall be paid to the treasurer and shall be disbursed by him only on warrants issued by an auditor appointed by the commission, upon orders or vouchers approved by it. The treasurer shall establish a public hospital district fund, into which shall be paid all district funds, and he shall maintain such special funds

as may be created by the commission, into which he shall place all money as the commission may, by resolution, direct.

If the treasurer of the district is the treasurer of the county all district funds shall be deposited with the county depositories under the same restrictions, contracts, and security as provided for county depositories. If the treasurer of the district is some other person, all funds shall be deposited in such bank or banks authorized to do business in this state as the commission by resolution shall designate, and with surety bond to the district or securities in lieu thereof of the kind, no less in amount, as provided in *RCW 36.48.020 for deposit of county funds. Such surety bond or securities in lieu thereof shall be filed or deposited with the treasurer of the district, and approved by resolution of the commission.

All interest collected on district funds shall belong to the district and be deposited to its credit in the proper district funds.

A district may provide and require a reasonable bond of any other person handling moneys or securities of the district. The district may pay the premium on such bond. [1967 c 227 § 1.]

*Reviser's note: RCW 36.48.020 was repealed by 1984 c 177 § 21.

70.44.185 Change of district boundary lines to allow farm units to be wholly within one hospital district—

Notice. Notwithstanding any other provision of law, including RCW 70.44.040, whenever the boundary line between contiguous hospital districts bisects an irrigation block unit placing part of the unit in one hospital district and the balance thereof in another such district, the county auditor, upon his approval of a request therefor after public hearing thereon, shall change the hospital district boundary lines so that the entire farm unit of the person so requesting shall be wholly in one of such hospital districts and give notice thereof to those hospital district and county officials as he shall deem appropriate therefor. [1971 ex.s. c 218 § 4.]

70.44.190 Consolidation of districts. Two or more contiguous hospital districts, whether the territory therein lies in one or more counties, may consolidate by following the procedure outlined in chapter 35.10 RCW with reference to consolidation of cities and towns. [1953 c 267 § 3.]

70.44.200 Annexation of territory. (1) A public hospital district may annex territory outside the existing boundaries of such district and contiguous thereto, whether the territory lies in one or more counties, in accordance with this section.

(2) A petition for annexation of territory contiguous to a public hospital district may be filed with the commission of the district to which annexation is proposed. The petition must be signed by the owners, as prescribed by RCW 35A.01.040(9) (a) through (e), of not less than sixty percent of the area of land within the territory proposed to be annexed. Such petition shall describe the boundaries of the territory proposed to be annexed and

shall be accompanied by a map which outlines the boundaries of such territory.

(3) Whenever such a petition for annexation is filed with the commission of a public hospital district, the commission may entertain the same, fix a date for public hearing thereon, and cause notice of the hearing to be published once a week for at least two consecutive weeks in a newspaper of general circulation within the territory proposed to be annexed. The notice shall also be posted in three public places within the territory proposed to be annexed, shall contain a description of the boundaries of such territory, and shall specify the time and place of hearing and invite interested persons to appear and voice approval or disapproval of the annexation.

(4) Following the hearing, if the commission of the district determines to accomplish the annexation, it shall do so by resolution. The resolution may annex all or any portion of the proposed territory but may not include in the annexation any property not described in the petition. Upon passage of the annexation resolution, the territory annexed shall become part of the district and a certified copy of such resolution shall be filed with the legislative authority of the county or counties in which the annexed property is located.

(5) If the petition for annexation and the annexation resolution so provide, as the commission may require, and such petition has been signed by the owners of all the land within the boundaries of the territory being annexed, the annexed property shall assume and be assessed and taxed to pay for all or any portion of the outstanding indebtedness of the district to which it is annexed at the same rates as other property within such district. Unless so provided in the petition and resolution, property within the boundaries of the territory annexed shall not be assessed or taxed to pay for all or any portion of the indebtedness of the district to which it is annexed that was contracted prior to or which existed at the date of annexation. In no event shall any such annexed property be released from any assessments or taxes previously levied against it or from its existing liability for the payment of outstanding bonds or warrants issued prior to such annexation.

(6) The annexation procedure provided for in RCW 70.44.200 shall be an alternative method applicable only when at the time a petition is filed pursuant to RCW 70.44.200 there are no qualified electors residing in the territory to be annexed. [1979 ex.s. c 143 § 1; 1953 c 267 § 4.]

Severability—1979 ex.s. c 143: "If any provision of this amendatory act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1979 ex.s. c 143 § 3.]

70.44.210 Alternate method of annexation—Contents of resolution calling for election. As an alternate method of annexation to public hospital districts, any territory adjacent to a public hospital district may be annexed thereto by vote of the qualified electors residing in the territory to be annexed, in the manner provided in RCW 70.44.210 through 70.44.230. An election to annex such territory may be called pursuant to a resolution

calling for such an election adopted by the district commissioners.

Any resolution calling for such an election shall describe the boundaries of the territory to be annexed, state that the annexation of such territory to the public hospital district will be conducive to the welfare and benefit of the persons or property within the district and within the territory proposed to be annexed, and fix the date, time and place for a public hearing thereon which date shall be not more than sixty nor less than forty days following the adoption of such resolution. [1967 c 227 § 6.]

70.44.220 Alternate method of annexation—Publication and contents of notice of hearing—Hearing—Resolution—Special election. Notice of such hearing shall be published once a week for at least two consecutive weeks in one or more newspapers of general circulation within the territory proposed to be annexed. The notice shall contain a description of the boundaries of the territory proposed to be annexed and shall state the time and place of the hearing thereon and the fact that any changes in the boundaries of such territory will be considered at such time and place. At such hearing or any continuation thereof, any interested person may appear and be heard on all matters relating to the proposed annexation. The district commissioners may make such changes in the boundaries of the territory proposed to be annexed as it shall deem reasonable and proper, but may not delete any portion of the proposed area which will create an island of included or excluded lands. If the district commissioners shall determine that any additional territory should be included in the territory to be annexed, a second hearing shall be held and notice given in the same manner as for the original hearing. The district commissioners may adjourn the hearing on the proposed annexation from time to time not exceeding thirty days in all. At the next regular meeting following the conclusion of such hearing, the district commissioners shall, if it finds that the annexation of such territory will be conducive to the welfare and benefit of the persons and property therein and the welfare and benefit of the persons and property within the public hospital district, adopt a resolution fixing the boundaries of the territory to be annexed and causing to be called a special election on such annexation to be held not more than one hundred twenty days nor less than sixty days following the adoption of such resolution. [1967 c 227 § 7.]

70.44.230 Alternate method of annexation—Conduct and canvass of election—Notice—Ballot. An election on the annexation of territory to a public hospital district shall be conducted and canvassed in the same manner as provided for the conduct of an election on the formation of a public hospital district except that notice of such election shall be published in one or more newspapers of general circulation in the territory proposed to be annexed and the ballot proposition shall be in substantially the following form:

ANNEXATION TO (herein insert name of public hospital district)

"Shall the territory described in a resolution of the public hospital district commissioners of (here insert name of public hospital district) adopted on -----, -----, 19--, be annexed to such district?

YES
NO

If a majority of those voting on such proposition vote in favor thereof, the territory shall thereupon be annexed to the public hospital district. [1967 c 227 § 8.]

70.44.235 Withdrawal or reannexation of areas. (1) As provided in this section, a public hospital district may withdraw areas from its boundaries, or reannex areas into the public hospital district that previously had been withdrawn from the public hospital district under this section.

(2) The withdrawal of an area shall be authorized upon: (a) Adoption of a resolution by the hospital district commissioners requesting the withdrawal and finding that, in the opinion of the commissioners, inclusion of this area within the public hospital district will result in a reduction of the district's tax levy rate under the provisions of RCW 84.52.010; and (b) adoption of a resolution by the city or town council approving the withdrawal, if the area is located within the city or town, or adoption of a resolution by the county legislative authority of the county within which the area is located approving the withdrawal, if the area is located outside of a city or town. A withdrawal shall be effective at the end of the day on the thirty-first day of December in the year in which the resolutions are adopted, but for purposes of establishing boundaries for property tax purposes, the boundaries shall be established immediately upon the adoption of the second resolution.

The withdrawal of an area from the boundaries of a public hospital district shall not exempt any property therein from taxation for the purpose of paying the costs of redeeming any indebtedness of the public hospital district existing at the time of the withdrawal.

(3) An area that has been withdrawn from the boundaries of a public hospital district under this section may be reannexed into the public hospital district upon: (a) Adoption of a resolution by the hospital district commissioners proposing the reannexation; and (b) adoption of a resolution by the city or town council approving the reannexation, if the area is located within the city or town, or adoption of a resolution by the county legislative authority of the county within which the area is located approving the reannexation, if the area is located outside of a city or town. The reannexation shall be effective at the end of the day on the thirty-first day of December in the year in which the adoption of the second resolution occurs, but for purposes of establishing boundaries for property tax purposes, the boundaries shall be established immediately upon the adoption of the second resolution. Referendum action on the proposed reannexation may be taken by

the voters of the area proposed to be reannexed if a petition calling for a referendum is filed with the city or town council, or county legislative authority, within a thirty-day period after the adoption of the second resolution, which petition has been signed by registered voters of the area proposed to be reannexed equal in number to ten percent of the total number of the registered voters residing in that area.

If a valid petition signed by the requisite number of registered voters has been so filed, the effect of the resolutions shall be held in abeyance and a ballot proposition to authorize the reannexation shall be submitted to the voters of the area at the next special election date specified in *RCW 29.13.020 that occurs forty-five or more days after the petitions have been validated. Approval of the ballot proposition authorizing the reannexation by a simple majority vote shall authorize the reannexation. [1987 c 138 § 4.]

***Reviser's note:** As enacted by 1987 c 138 § 4, this section contained an apparently erroneous reference to RCW 29.13.030, a section repealed in 1965. Pursuant to RCW 1.08.015, this reference has been changed to RCW 29.13.020, a later enactment of the section repealed.

70.44.240 Contracting or joining with other districts, hospitals, corporations, or individuals to provide services or facilities. Any public hospital district may contract or join with any other public hospital district, any publicly owned hospital, any nonprofit hospital, any corporation, or individual to acquire or provide services or facilities to be used by individuals, districts, hospitals, or others, including the providing of health maintenance services. [1982 c 84 § 19; 1974 ex.s. c 165 § 4; 1967 c 227 § 3.]

70.44.260 Contracts for purchase of real or personal property. Any public hospital district may execute an executory conditional sales contract with any other municipal corporation, the state, or any of its political subdivisions, the government of the United States, or any private party for the purchase of any real or personal property, or property rights, in connection with the exercise of any powers or duties which such districts now or hereafter are authorized to exercise, if the entire amount of the purchase price specified in such contract does not result in a total indebtedness in excess of the limitation imposed by RCW 39.36.020, as now or hereafter amended, to be incurred without the assent of the voters of the district: *Provided*, That if such a proposed contract would result in a total indebtedness in excess of three-fourths of one percent of the value of taxable property in such public hospital district, a proposition in regard to whether or not such a contract may be executed shall be submitted to the voters for approval or rejection in the same manner that bond issues for capital purposes are submitted to the voters. The term "value of taxable property" shall have the meaning set forth in RCW 39.36.015. [1975-'76 2nd ex.s. c 78 § 1.]

70.44.300 Sale of surplus real property. (1) The board of commissioners of any public hospital district may sell and convey at public or private sale real property of the district which the board has determined by

resolution is no longer required for public hospital district purposes. Such sale and conveyance may be by deed or real estate contract.

(2) Any sale of district real property authorized pursuant to this section shall be preceded, not more than one year prior to the date of sale, by market value appraisals by three licensed real estate brokers or professionally designated real estate appraisers as defined in RCW 74.46.020 selected by the board of commissioners, and no sale shall take place if the sale price would be less than ninety percent of the average of such appraisals.

(3) When the board of commissioners of any public hospital district proposes a sale of district real property pursuant to this section and the value of the property exceeds one hundred thousand dollars, the board shall publish a notice of its intention to sell the property. The notice shall be published at least once each week during two consecutive weeks in a legal newspaper of general circulation within the public hospital district. The notice shall describe the property to be sold and designate the place where and the day and hour when a hearing will be held. The board shall hold a public hearing upon the proposal to dispose of the public hospital district property at the place and the day and hour fixed in the notice and consider evidence offered for and against the propriety and advisability of the proposed sale.

(4) If in the judgment of the board of commissioners of any district the sale of any district real property not needed for public hospital district purposes would be facilitated and greater value realized through use of the services of licensed real estate brokers, a contract for such services may be negotiated and concluded. The fee or commissions charged for any broker service shall not exceed seven percent of the resulting sale price for a single parcel. No licensed real estate broker or professionally designated real estate appraisers as defined in RCW 74.46.020 selected by the board to appraise the market value of a parcel of property to be sold may be a party to any contract with the public hospital district to sell such property for a period of three years after the appraisal. [1984 c 103 § 4; 1982 c 84 § 2.]

70.44.310 Lease of surplus real property. The board of commissioners of any public hospital district may lease or rent out real property of the district which the board has determined by resolution presently is not required for public hospital district purposes in such manner and upon such terms and conditions as the board in its discretion finds to be in the best interest of the district. [1982 c 84 § 3.]

70.44.320 Disposal of surplus personal property. The board of commissioners of any public hospital district may sell or otherwise dispose of surplus personal property of the district which the board has determined by resolution is no longer required for public hospital district purposes in such manner and upon such terms and conditions as the board in its discretion finds to be in the best interest of the district. [1982 c 84 § 4.]

70.44.350 Dividing a district. An existing public hospital district upon resolution of its board of commissioners may be divided into two new public hospital districts, in the manner provided in RCW 70.44.350 through 70.44.380, subject to the approval of the plan therefor by the superior court in the county where such district is located and by a majority of the voters voting on the proposition for such approval at a special election to be held in each of the proposed new districts. The board of commissioners of an existing district shall by resolution or resolutions find that such division is in the public interest; adopt and approve a plan of division; authorize the filing of a petition in the superior court in the county in which the district is located to obtain court approval of the plan of division; request the calling of a special election to be held, following such court approval, for the purpose of submitting to the voters in each of the proposed new districts the proposition of whether the plan of division should be approved and carried out; and direct all officers and employees of the existing district to take whatever actions are reasonable and necessary in order to carry out the division, subject to the approval of the plan therefor by the court and the voters. [1982 c 84 § 5.]

70.44.360 Dividing a district—Plan. The plan of division authorized by RCW 70.44.350 shall include: Proposed names for the new districts; a description of the boundaries of the new districts, which boundaries shall follow insofar as reasonably possible the then-existing precinct boundaries and include all of the territory encompassed by the existing district; a division of all the assets of the existing district between the resulting new districts, including funds, rights, and property, both real and personal; the assumption of all the outstanding obligations of the existing district by the resulting new districts, including general obligation and revenue bonds, contracts, and any other liabilities or indebtedness; the establishing and constituting of new boards of three commissioners for each of the new districts, including fixing the boundaries of commissioner districts within such new districts following insofar as reasonably possible the then-existing precinct boundaries; and such other matters as the board of commissioners of the existing district may deem appropriate. Unless the plan of division provides otherwise, all the area and property of the existing district shall remain subject to the outstanding obligations of that district, and the boards of commissioners of the new districts shall make such levies or charges for services as may be necessary to pay such outstanding obligations in accordance with their terms from the sources originally pledged or otherwise liable for that purpose. [1982 c 84 § 6.]

70.44.370 Dividing a district—Petition to court, hearing, order. After adoption of a resolution approving the plan of division by the board of commissioners of an existing district pursuant to RCW 70.44.350 through 70.44.380, the district shall petition the superior court in the county where such district is located requesting court approval of the plan. The court shall conduct a hearing

on the plan of division, after reasonable and proper notice of such hearing (including notice to bondholders) is given in the manner fixed and directed by such court. At the conclusion of the hearing, the court may enter its order approving the division of the existing district and of its assets and outstanding obligations in the manner provided by the plan after finding such division to be fair and equitable and in the public interest. [1982 c 84 § 7.]

70.44.380 Dividing a district—Election—Creation of new districts—Challenges. Following the entry of the court order pursuant to RCW 70.44.370, the county officer authorized to call and conduct elections in the county in which the existing district is located shall call a special election as provided by the resolution of the board of commissioners of such district for the purpose of submitting to the voters in each of the proposed new districts the proposition of whether the plan of division should be approved and carried out. Notice of the election describing the boundaries of the proposed new districts and stating the objects of the election shall be given and the election conducted in accordance with the general election laws. The proposition expressed on the ballots at such election shall be substantially as follows:

"Shall the plan of division of public hospital district No. -----, approved by the Superior Court on ----- (insert date), be approved and carried out?

Yes

No

At such election three commissioners for each of the proposed new districts nominated by petition pursuant to RCW 54.12.010 shall be elected to hold office pursuant to RCW 70.44.040. If at such election a majority of the voters voting on the proposition in each of the proposed new districts shall vote in favor of the plan of division, the county canvassing board shall so declare in its canvass of the returns of such election and upon the filing of the certificate of such canvass: The division of the existing district shall be effective; such original district shall cease to exist; the creation of the two new public hospital districts shall be complete; all assets of the original district shall vest in and become the property of the new districts, respectively, pursuant to the plan of division; all the outstanding obligations of the original district shall be assumed by the new districts, respectively, pursuant to such plan; the commissioners of the original district shall cease to hold office; and the affairs of the new districts shall be governed by the newly elected commissioners of such respective new districts. Unless commenced within thirty days after the date of the filing of the certificate of the canvass of such election, no lawsuit whatever may be maintained challenging in any way the legal existence of the resulting new districts, the validity of the proceedings had for the organization and creation thereof, or the lawfulness of the plan of division. Upon the petition of either or both new districts, the superior court in the county where they are located may take whatever actions are reasonable and necessary to

complete or confirm the carrying out of such plan. [1982 c 84 § 8.]

70.44.400 Withdrawal of territory from public hospital district. Territory within a public hospital district may be withdrawn therefrom in the same manner provided by law for withdrawal of territory from water districts, as provided by chapter 57.28 RCW. For purposes of conforming with such procedure, the public hospital district shall be deemed to be the water district and the public hospital board of commissioners shall be deemed to be the water district board of commissioners. [1984 c 100 § 1.]

70.44.900 Severability—Construction—1945 c 264. Adjudication of invalidity of any section, clause or part of a section of this act [1945 c 264] shall not impair or otherwise affect the validity of the act as a whole or any other part thereof. The rule of strict construction shall have no application to this act, but the same shall be liberally construed, in order to carry out the purposes and objects for which this act is intended. When this act comes in conflict with any provisions, limitation or restriction in any other law, this act shall govern and control. [1945 c 264 § 21; no RRS.]

70.44.901 Severability—Construction—1974 ex.s. c 165. If any section, clause, or other provision of this 1974 amendatory act, or its application to any person or circumstance, is held invalid, the remainder of such 1974 amendatory act, or the application of such section, clause, or provision to other persons or circumstances, shall not be affected. The rule of strict construction shall have no application to this 1974 amendatory act, but the same shall be liberally construed, in order to carry out the purposes and objects for which this 1974 amendatory act is intended. When this 1974 amendatory act comes in conflict with any provision, limitation, or restriction in any other law, this 1974 amendatory act shall govern and control. [1974 ex.s. c 165 § 6.]

70.44.902 Severability—1982 c 84. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1982 c 84 § 21.]

70.44.903 Savings—1982 c 84. All debts, contracts, and obligations made or incurred prior to June 10, 1982, by or in favor of any public hospital district, and all bonds, warrants, or other obligations issued by such district, and all other actions and proceedings relating thereto done or taken by such public hospital districts or by their respective officers within their authority are hereby declared to be legal and valid and of full force and effect from the date thereof. [1982 c 84 § 11.]

70.44.910 Construction—1945 c 264. This act [1945 c 264 § 22] shall not be deemed or construed to

repeal or affect any existing act, or any part thereof, relating to the construction, operation and maintenance of public hospitals, but shall be supplemental thereto and concurrent therewith. [1945 c 264 § 22; no RRS.]

Chapter 70.46 HEALTH DISTRICTS

Sections

70.46.020	Districts of two or more counties—Health board—Membership—Chairman.
70.46.030	Districts of one county—Board of health—Membership—Chairman.
70.46.040	Inclusion of a city over 100,000 population.
70.46.050	Representation on the district health board.
70.46.060	District health board—Powers and duties.
70.46.080	Treasurer—District funds—Contributions by counties and cities.
70.46.085	Expenses of providing public health services—Payment by counties, cities, and towns—Procedure on failure to pay.
70.46.090	Withdrawal of county, city, or town.
70.46.100	Power to acquire, maintain, or dispose of property—Contracts.
70.46.110	Disincorporation of district located in class A or AA county and inactive for five years.
70.46.120	License or permit fees.
70.46.130	Contracts for sale or purchase of health services authorized.

Local health departments, provisions relating to health districts: Chapter 70.05 RCW.

70.46.020 Districts of two or more counties—Health board—Membership—Chairman. Health districts consisting of two or more counties may be created whenever two or more boards of county commissioners shall by resolution establish a district for such purpose. Such a district shall consist of all the area of the combined counties including all cities and towns except cities of over one hundred thousand population. The district board of health of such a district shall consist of not less than seven members, including two representatives from each county who are members of the board of county commissioners and who are appointed by the board of county commissioners of each county within the district. The remaining members shall be representatives of the cities and towns in the district selected by mutual agreement of the legislative bodies of the cities and towns concerned from their membership, taking into consideration the financial contribution of such cities and towns and representation from the several classifications of cities and towns.

At the first meeting of a district board of health the members shall elect a chairman to serve for a period of one year. [1967 ex.s. c 51 § 6; 1945 c 183 § 2; Rem. Supp. 1945 § 6099–11.]

Severability—1967 ex.s. c 51: See note following RCW 70.05.010.

70.46.030 Districts of one county—Board of health—Membership—Chairman. A health district to consist of one county only and including all cities and towns therein except cities having a population of over one hundred thousand may be created whenever the board of county commissioners of the county shall pass a

resolution to organize such a health district under chapter 70.05 RCW and RCW 70.46.020 through 70.46.090. The district board of health of such district shall consist of not less than five members, including the three members of the board of county commissioners of the county: *Provided*, That if such health district consists of a county of the second class, the district board of health shall consist of not less than six members, including the three members of the board of county commissioners of the county and one person who is a qualified voter of an unincorporated rural area of the county and who is appointed by the legislative authority of the county. The remaining members shall be representatives of the cities and towns in the district selected by mutual agreement of the legislative bodies of the cities and towns concerned from their membership, taking into consideration the respective populations and financial contributions of such cities and towns.

At the first meeting of a district board of health, the members shall elect a chairman to serve for a period of one year. [1969 ex.s. c 70 § 1; 1967 ex.s. c 51 § 5; 1945 c 183 § 3; Rem. Supp. 1945 § 6099-12.]

Severability—1967 ex.s. c 51: See note following RCW 70.05.010.

70.46.040 Inclusion of a city over 100,000 population. Whenever a city of over one hundred thousand population desires to be included in a health district and shall through its legislative authority petition the district board of health to be included and the district board of health and the city legislative authority agree as to the functions to be performed for the city by the health district and the amount of financial contributions to be made by the city to the health district such city shall be included in the health district. [1967 ex.s. c 51 § 7; 1945 c 183 § 4; Rem. Supp. 1945 § 6099-13.]

Severability—1967 ex.s. c 51: See note following RCW 70.05.010.

70.46.050 Representation on the district health board. Whenever a city of over one hundred thousand population is included in a health district it shall have equal representation with the board of county commissioners of the county in which said city is located, the city's representatives to be selected by the legislative body of the city from among its membership. All appointments to the district board of health shall be made within thirty days after the formation of the district. Vacancies on the district board of health shall be filled by appointment within thirty days and made in the same manner as was the original appointment. Representatives on the district board of the various units of the district shall continue at the pleasure of the legislative body of the unit: *Provided*, That the representation on the local boards of health in existence at the time of the enactment of chapter 70.05 RCW and RCW 70.46.020 through 70.46.090 may be continued without change in the discretion of the board. [1967 ex.s. c 51 § 8; 1957 c 100 § 1; 1945 c 183 § 5; Rem. Supp. 1945 § 6099-14.]

Severability—1967 ex.s. c 51: See note following RCW 70.05.010.

70.46.060 District health board—Powers and duties. The district board of health shall constitute the local board of health for all the territory included in the health district, and shall supersede and exercise all the powers and perform all the duties by law vested in the county or city or town board of health of any county, city or town included in the health district, except as otherwise in chapter 70.05 RCW and RCW 70.46.020 through 70.46.090 provided. [1967 ex.s. c 51 § 11; 1945 c 183 § 6; Rem. Supp. 1945 § 6099-15.]

Severability—1967 ex.s. c 51: See note following RCW 70.05.010.

70.46.080 Treasurer—District funds—Contributions by counties and cities. Each health district shall establish a fund to be designated as the "district health fund", in which shall be placed all sums received by the district from any source, and out of which shall be expended all sums disbursed by the district. The county treasurer of the county in the district embracing only one county; or, in a district composed of more than one county the county treasurer of the county having the largest population shall be the custodian of the fund, and the county auditor of said county shall keep the record of the receipts and disbursements, and shall draw and the county treasurer shall honor and pay all warrants, which shall be approved before issuance and payment as directed by the board: *Provided*, That in local health departments wherein a city of over one hundred thousand population is a part of said department, the local board of health may pool the funds available for public health purposes in the office of the city treasurer in a special pooling fund to be established and which shall be expended as set forth above.

Each county, city or town which is included in the district shall contribute such sums towards the expense for maintaining and operating the district as shall be agreed upon between it and the local board of health in accordance with guidelines established by the state board of health after consultation with the Washington state association of counties and the association of Washington cities. In the event that no agreement can be reached between the district board of health and the county, city or town, the matter shall be resolved by a board of arbitrators to consist of a representative of the district board of health, a representative from the county, city or town involved, and a third representative to be appointed by the two representatives, but if they are unable to agree, a representative shall be appointed by a judge in the county in which the city or town is located. The determination of the proportionate share to be paid by a county, city or town shall be binding on all parties. Payments into the fund of the district may be made by the county or city or town members during the first year of membership in said district from any funds of the respective county, city or town as would otherwise be available for expenditures for health facilities and services, and thereafter the members shall include items in their respective budgets for payments to finance the health district. [1971 ex.s. c 85 § 10; 1967 ex.s. c 51 § 19; 1945 c 183 § 8; Rem. Supp. 1945 § 6099-17.]

Severability—1967 ex.s. c 51: See note following RCW 70.05.010.

70.46.085 Expenses of providing public health services—Payment by counties, cities, and towns—Procedure on failure to pay. The expense of providing public health services shall be borne by each county, city or town within the health district, and the local health officer shall certify the amount agreed upon or as determined pursuant to RCW 70.46.080, and remaining unpaid by each county, city or town to the fiscal or warrant issuing officer of such county, city or town.

If the expense as certified is not paid by any county, city or town within thirty days after the end of the fiscal year, the local health officer shall certify the amount due to the auditor of the county in which the governmental unit is situated who shall promptly issue his warrant on the county treasurer payable out of the current expense fund of the county, which fund shall be reimbursed by the county auditor out of the money due said governmental unit at the next monthly settlement or settlements of the collection of taxes and shall be transferred to the current expense fund. [1967 ex.s. c 51 § 20.]

Severability—1967 ex.s. c 51: See note following RCW 70.05.010.
Expenses of enforcing health laws and regulations: RCW 70.05.130.

70.46.090 Withdrawal of county, city, or town. Any county or any city or town may withdraw from membership in said health district any time after it has been within the district for a period of two years, but no withdrawal shall be effective except at the end of the calendar year in which the county, city or town gives at least six months' notice of its intention to withdraw at the end of the calendar year. No withdrawal shall entitle any member to a refund of any moneys paid to the district nor relieve it of any obligations to pay to the district all sums for which it obligated itself due and owing by it to the district for the year at the end of which the withdrawal is to be effective: *Provided*, That any county, city or town which withdraws from membership in said health district shall immediately establish a health department or provide health services which shall meet the standards for health services promulgated by the state board of health: *Provided further*, That no local health department shall be deemed to provide adequate public health services unless there is at least one full time professionally trained and qualified physician as set forth in RCW 70.05.050. [1967 ex.s. c 51 § 21; 1945 c 183 § 9; Rem. Supp. 1945 § 6099-18.]

Severability—1967 ex.s. c 51: See note following RCW 70.05.010.

70.46.100 Power to acquire, maintain, or dispose of property—Contracts. In addition to all other powers and duties, a health district shall have the power to own, construct, purchase, lease, add to, and maintain any real and personal property or property rights necessary for the conduct of the affairs of the district. A health district may sell, lease, convey or otherwise dispose of any district real or personal property no longer necessary for

the conduct of the affairs of the district. A health district may enter into contracts to carry out the provisions of this section. [1957 c 100 § 2.]

70.46.110 Disincorporation of district located in class A or AA county and inactive for five years. See chapter 57.90 RCW.

70.46.120 License or permit fees. In addition to all other powers and duties, health districts shall have the power to charge fees in connection with the issuance or renewal of a license or permit required by law: *Provided*, That the fees charged shall not exceed the actual cost involved in issuing or renewing the license or permit: *Provided further*, That no fees shall be charged pursuant to this section within the corporate limits of any city or town which prior to the enactment of this section charged fees in connection with the issuance or renewal of a license or permit pursuant to city or town ordinance and where said city or town makes a direct contribution to said health district, unless such city or town expressly consents thereto. [1963 c 121 § 1.]

70.46.130 Contracts for sale or purchase of health services authorized. See RCW 70.05.150.

Chapter 70.47

HEALTH CARE ACCESS ACT

Sections

70.47.010	Legislative findings—Purpose.
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70.47.040	Basic health plan—Administrator—Staff—Committees.
70.47.050	Rules.
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70.47.070	Benefits from other coverages not reduced.
70.47.080	Enrollment of applicants—Limitations.
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70.47.100	Participation by managed health care systems.
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70.47.120	Administrator—Contracts for services.
70.47.130	Exemption from insurance code.
70.47.140	Reservation of legislative power.
70.47.900	Short title.
70.47.901	Severability—1987 1st ex.s. c 5.

Reviser's note—Sunset Act Application: The basic health plan is subject to review, termination, and possible extension under chapter 43.131 RCW, the Sunset Act. See RCW 43.131.355. RCW 70.47.010 through 70.47.140, 70.47.900, 50.20.210, 51.28.090, and 74.04.033 are scheduled for future repeal under RCW 43.131.356.

70.47.010 Legislative findings—Purpose. (1) The legislature finds that:

(a) A significant percentage of the population of this state does not have reasonably available insurance or other coverage of the costs of necessary basic health care services;

(b) This lack of basic health care coverage is detrimental to the health of the individuals lacking coverage and to the public welfare, and results in substantial expenditures for emergency and remedial health care, often at the expense of health care providers, health care

facilities, and all purchasers of health care, including the state; and

(c) The use of managed health care systems has significant potential to reduce the growth of health care costs incurred by the people of this state generally, and by low-income pregnant women who are an especially vulnerable population, along with their children, and who need greater access to managed health care.

(2) The purpose of this chapter is to provide necessary basic health care services in an appropriate setting to working persons and others who lack coverage, at a cost to these persons that does not create barriers to the utilization of necessary health care services. To that end, this chapter establishes a program to be made available to those residents under sixty-five years of age not otherwise eligible for medicare with gross family income at or below two hundred percent of the federal poverty guidelines who share in the cost of receiving basic health care services from a managed health care system.

(3) It is not the intent of this chapter to provide health care services for those persons who are presently covered through private employer-based health plans, nor to replace employer-based health plans. Further, it is the intent of the legislature to expand, wherever possible, the availability of private health care coverage and to discourage the decline of employer-based coverage.

(4) The program authorized under this chapter is strictly limited in respect to the total number of individuals who may be allowed to participate and the specific areas within the state where it may be established. All such restrictions or limitations shall remain in full force and effect until quantifiable evidence based upon the actual operation of the program, including detailed cost benefit analysis, has been presented to the legislature and the legislature, by specific act at that time, may then modify such limitations. [1987 1st ex.s. c 5 § 3.]

Sunset Act application: See note following chapter digest.

70.47.020 Definitions. As used in this chapter:

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

(2) "Administrator" means the Washington basic health plan administrator.

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

(4) "Enrollee" means an individual, or an individual plus the individual's spouse and/or dependent children, all under the age of sixty-five and not otherwise eligible for medicare, who resides in an area of the state served by a managed health care system participating in the

plan, whose gross family income at the time of enrollment does not exceed twice the federal poverty level as adjusted for family size and determined annually by the federal department of health and human services, who chooses to obtain basic health care coverage from a particular managed health care system in return for periodic payments to the plan.

(5) "Subsidy" means the difference between the amount of periodic payment the administrator makes, from funds appropriated from the basic health plan trust account, to a managed health care system on behalf of an enrollee and the amount determined to be the enrollee's responsibility under RCW 70.47.060(2).

(6) "Premium" means a periodic payment, based upon gross family income and determined under RCW 70.47.060(2), which an enrollee makes to the plan as consideration for enrollment in the plan.

(7) "Rate" means the per capita amount, negotiated by the administrator with and paid to a participating managed health care system, that is based upon the enrollment of enrollees in the plan and in that system. [1987 1st ex.s. c 5 § 4.]

Sunset Act application: See note following chapter digest.

70.47.030 Basic health plan trust account. The basic health plan trust account is hereby established in the state treasury. All funds appropriated for this chapter shall be deposited in the basic health plan trust account and may be expended without further appropriation. Disbursements from other moneys in the account shall be made pursuant to appropriation and upon warrants drawn by the Washington basic health plan administrator. Moneys in the account shall be used exclusively for the purposes of this chapter, including payments to participating managed health care systems on behalf of enrollees in the plan and payment of costs of administering the plan. The earnings on any surplus balances in the basic health plan trust account shall be credited to the account, notwithstanding RCW 43.84.090. After January 1, 1988, the administrator shall not expend or encumber for an ensuing fiscal period amounts exceeding ninety percent of the amounts anticipated to accrue in the account during the fiscal period. [1987 1st ex.s. c 5 § 5.]

Sunset Act application: See note following chapter digest.

70.47.040 Basic health plan—Administrator—Staff—Committees. (1) The Washington basic health plan is created as an independent agency of the state. The administrative head and appointing authority of the plan shall be the administrator who shall be appointed by the governor, with the consent of the senate, and shall serve at the pleasure of the governor. The salary for this office shall be set by the governor pursuant to RCW 43.03.040. The administrator shall appoint a medical director. The administrator, medical director, and up to five other employees shall be exempt from the civil service law, chapter 41.06 RCW.

(2) The administrator shall employ such other staff as are necessary to fulfill the responsibilities and duties of

the administrator, such staff to be subject to the civil service law, chapter 41.06 RCW. In addition, the administrator may contract with third parties for services necessary to carry out its activities where this will promote economy, avoid duplication of effort, and make best use of available expertise. Any such contractor or consultant shall be prohibited from releasing, publishing, or otherwise using any information made available to it under its contractual responsibility without specific permission of the plan. The administrator may call upon other agencies of the state to provide available information as necessary to assist the administrator in meeting its responsibilities under this chapter, which information shall be supplied as promptly as circumstances permit.

(3) The administrator may appoint such technical or advisory committees as he or she deems necessary. The administrator shall appoint a standing technical advisory committee that is representative of health care professionals, health care providers, and those directly involved in the purchase, provision, or delivery of health care services, as well as consumers and those knowledgeable of the ethical issues involved with health care public policy. Individuals appointed to any technical or other advisory committee shall serve without compensation for their services as members, but may be reimbursed for their travel expenses pursuant to RCW 43.03.050 and 43.03.060.

(4) The administrator may apply for, receive, and accept grants, gifts, and other payments, including property and service, from any governmental or other public or private entity or person, and may make arrangements as to the use of these receipts, including the undertaking of special studies and other projects relating to health care costs and access to health care.

(5) In the design, organization, and administration of the plan under this chapter, the administrator shall consider the report of the Washington health care project commission established under chapter 303, Laws of 1986. Nothing in this chapter requires the administrator to follow any specific recommendation contained in that report except as it may also be included in this chapter or other law. [1987 1st ex.s. c 5 § 6.]

Sunset Act application: See note following chapter digest.

70.47.050 Rules. The administrator may promulgate and adopt rules consistent with this chapter to carry out the purposes of this chapter. All rules shall be adopted in accordance with chapter 34.05 RCW. [1987 1st ex.s. c 5 § 7.]

Sunset Act application: See note following chapter digest.

70.47.060 Powers and duties of administrator. The administrator has the following powers and duties:

(1) To design and from time to time revise a schedule of covered basic health care services, including physician services, inpatient and outpatient hospital services, and other services that may be necessary for basic health care, which enrollees in any participating managed health care system under the Washington basic health plan shall be entitled to receive in return for premium

payments to the plan. The schedule of services shall emphasize proven preventive and primary health care, shall include all services necessary for prenatal, postnatal, and well-child care, and shall include a separate schedule of basic health care services for children, eighteen years of age and younger, for those enrollees who choose to secure basic coverage through the plan only for their dependent children. In designing and revising the schedule of services, the administrator shall consider the guidelines for assessing health services under the mandated benefits act of 1984, RCW 48.42.080, and such other factors as the administrator deems appropriate.

(2) To design and implement a structure of periodic premiums due the administrator from enrollees that is based upon gross family income, giving appropriate consideration to family size as well as the ages of all family members. The enrollment of children shall not require the enrollment of their parent or parents who are eligible for the plan.

(3) To design and implement a structure of nominal copayments due a managed health care system from enrollees. The structure shall discourage inappropriate enrollee utilization of health care services, but shall not be so costly to enrollees as to constitute a barrier to appropriate utilization of necessary health care services.

(4) To design and implement, in concert with a sufficient number of potential providers in a discrete area, an enrollee financial participation structure, separate from that otherwise established under this chapter, that has the following characteristics:

(a) Nominal premiums that are based upon ability to pay, but not set at a level that would discourage enrollment;

(b) A modified fee-for-services payment schedule for providers;

(c) Coinsurance rates that are established based on specific service and procedure costs and the enrollee's ability to pay for the care. However, coinsurance rates for families with incomes below one hundred twenty percent of the federal poverty level shall be nominal. No coinsurance shall be required for specific proven prevention programs, such as prenatal care. The coinsurance rate levels shall not have a measurable negative effect upon the enrollee's health status; and

(d) A case management system that fosters a provider-enrollee relationship whereby, in an effort to control cost, maintain or improve the health status of the enrollee, and maximize patient involvement in her or his health care decision-making process, every effort is made by the provider to inform the enrollee of the cost of the specific services and procedures and related health benefits.

The potential financial liability of the plan to any such providers shall not exceed in the aggregate an amount greater than that which might otherwise have been incurred by the plan on the basis of the number of enrollees multiplied by the average of the prepaid capitated rates negotiated with participating managed health care systems under RCW 70.47.100 and reduced by any sums charged enrollees on the basis of the coinsurance rates that are established under this subsection.

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

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

In the selection of any area of the state for the initial operation of the plan, the administrator shall take into account the levels and rates of unemployment in different areas of the state, the need to provide basic health care coverage to a population reasonably representative of the portion of the state's population that lacks such coverage, and the need for geographic, demographic, and economic diversity.

Before July 1, 1988, the administrator shall endeavor to secure participation contracts with managed health care systems in discrete geographic areas within at least five congressional districts.

(7) To solicit and accept applications from managed health care systems, as defined in this chapter, for inclusion as eligible basic health care providers under the plan. The administrator shall endeavor to assure that covered basic health care services are available to any enrollee of the plan from among a selection of two or more participating managed health care systems. In adopting any rules or procedures applicable to managed health care systems and in its dealings with such systems, the administrator shall consider and make suitable allowance for the need for health care services and the differences in local availability of health care resources, along with other resources, within and among the several areas of the state.

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

(9) To accept applications from individuals residing in areas served by the plan, on behalf of themselves and their spouses and dependent children, for enrollment in the Washington basic health plan, to establish appropriate minimum-enrollment periods for enrollees as may be necessary, and to determine, upon application and at least annually thereafter, or at the request of any enrollee, eligibility due to current gross family income for sliding scale premiums. An enrollee who remains current in payment of the sliding-scale premium, as determined under subsection (2) of this section, and whose gross family income has risen above twice the federal poverty level, may continue enrollment unless and until the enrollee's gross family income has remained above twice the poverty level for six consecutive months, by making payment at the unsubsidized rate required for the managed health care system in which he or she may be enrolled. No subsidy may be paid with respect to any

enrollee whose current gross family income exceeds twice the federal poverty level or, subject to RCW 70.47.110, who is a recipient of medical assistance or medical care services under chapter 74.09 RCW. If a number of enrollees drop their enrollment for no apparent good cause, the administrator may establish appropriate rules or requirements that are applicable to such individuals before they will be allowed to re-enroll in the plan.

(10) To require that prospective enrollees who may be eligible for categorically needy medical coverage under RCW 74.09.510 or whose income does not exceed the medically needy income level under RCW 74.09.700 apply for such coverage, but the administrator shall enroll the individuals in the plan pending the determination of eligibility under chapter 74.09 RCW.

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

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

(13) To monitor the access that state residents have to adequate and necessary health care services, determine the extent of any unmet needs for such services or lack of access that may exist from time to time, and make such reports and recommendations to the legislature as the administrator deems appropriate.

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

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

(16) To provide, consistent with available resources, technical assistance for rural health activities that endeavor to develop needed health care services in rural parts of the state. [1987 1st ex.s. c 5 § 8.]

***Reviser's note:** All references to hospital commission shall be construed to mean department of health; see RCW 43.70.902.

Sunset Act application: See note following chapter digest.

70.47.070 Benefits from other coverages not reduced.

The benefits available under the plan shall be subject to RCW 48.21.200 and shall be excess to the benefits payable under the terms of any insurance policy issued to or on the behalf of an enrollee that provides payments toward medical expenses without a determination of liability for the injury. [1987 1st ex.s. c 5 § 9.]

Sunset Act application: See note following chapter digest.

70.47.080 Enrollment of applicants—Limitations.

On and after July 1, 1988, the administrator shall accept for enrollment applicants eligible to receive covered basic health care services from the respective managed health care systems which are then participating in the plan. The administrator shall not allow the total enrollment of those eligible for subsidies to exceed thirty thousand.

Thereafter, total enrollment shall not exceed the number established by the legislature in any act appropriating funds to the plan.

Before July 1, 1988, the administrator shall endeavor to secure participation contracts from managed health care systems in discrete geographic areas within at least five congressional districts of the state and in such manner as to allow residents of both urban and rural areas access to enrollment in the plan. The administrator shall make a special effort to secure agreements with health care providers in one such area that meets the requirements set forth in RCW 70.47.060(4).

The administrator shall at all times closely monitor growth patterns of enrollment so as not to exceed that consistent with the orderly development of the plan as a whole, in any area of the state or in any participating managed health care system. [1987 1st ex.s. c 5 § 10.]

Sunset Act application: See note following chapter digest.

70.47.090 Removal of enrollees. Any enrollee whose premium payments to the plan are delinquent or who moves his or her residence out of an area served by the plan may be dropped from enrollment status. An enrollee whose premium is the responsibility of the department of social and health services under RCW 70.47.110 may not be dropped solely because of nonpayment by the department. The administrator shall provide delinquent enrollees with advance written notice of their removal from the plan and shall provide for a hearing under chapters 34.05 and 34.12 RCW for any enrollee who contests the decision to drop the enrollee from the plan. Upon removal of an enrollee from the plan, the administrator shall promptly notify the managed health care system in which the enrollee has been enrolled, and

shall not be responsible for payment for health care services provided to the enrollee (including, if applicable, members of the enrollee's family) after the date of notification. A managed health care system may contest the denial of payment for coverage of an enrollee through a hearing under chapters 34.05 and 34.12 RCW. [1987 1st ex.s. c 5 § 11.]

Sunset Act application: See note following chapter digest.

70.47.100 Participation by managed health care systems. Managed health care systems participating in the plan shall do so by contract with the administrator and shall provide, directly or by contract with other health care providers, covered basic health care services to each enrollee as long as payments from the administrator on behalf of the enrollee are current. A participating managed health care system may offer, without additional cost, health care benefits or services not included in the schedule of covered services under the plan. A participating managed health care system shall not give preference in enrollment to enrollees who accept such additional health care benefits or services. Managed health care systems participating in the plan shall not discriminate against any potential or current enrollee based upon health status, sex, race, ethnicity, or religion. The administrator may receive and act upon complaints from enrollees regarding failure to provide covered services or efforts to obtain payment, other than authorized copayments, for covered services directly from enrollees, but nothing in this chapter empowers the administrator to impose any sanctions under Title 18 RCW or any other professional or facility licensing statute.

The plan shall allow, at least annually, an opportunity for enrollees to transfer their enrollments among participating managed health care systems serving their respective areas. The administrator shall establish a period of at least twenty days in a given year when this opportunity is afforded enrollees, and in those areas served by more than one participating managed health care system the administrator shall endeavor to establish a uniform period for such opportunity. The plan shall allow enrollees to transfer their enrollment to another participating managed health care system at any time upon a showing of good cause for the transfer.

Any contract between a hospital and a participating managed health care system under this chapter is subject to the requirements of RCW 70.39.140(1) regarding negotiated rates.

Prior to negotiating with any managed health care system, the administrator shall determine, on an actuarially sound basis, the reasonable cost of providing the schedule of basic health care services, expressed in terms of upper and lower limits, and recognizing variations in the cost of providing the services through the various systems and in different areas of the state. In negotiating with managed health care systems for participation in the plan, the administrator shall adopt a uniform procedure that includes at least the following:

(1) The administrator shall issue a request for proposals, including standards regarding the quality of services to be provided; financial integrity of the responding

systems; and responsiveness to the unmet health care needs of the local communities or populations that may be served;

(2) The administrator shall then review responsive proposals and may negotiate with respondents to the extent necessary to refine any proposals;

(3) The administrator may then select one or more systems to provide the covered services within a local area; and

(4) The administrator may adopt a policy that gives preference to respondents, such as nonprofit community health clinics, that have a history of providing quality health care services to low-income persons. [1987 1st ex.s. c 5 § 12.]

Sunset Act application: See note following chapter digest.

70.47.110 Enrollment of certain public assistance recipients. The department of social and health services shall make periodic payments to the administrator as an agent for the participating managed health care systems on behalf of any enrollee who is a recipient of medical assistance, medical care—limited casualty program, or medical care services under chapter 74.09 RCW, at the maximum rate allowable for federal matching purposes under Title XIX of the social security act, but not to exceed the rate negotiated by the administrator with the participating managed health care system for the services covered by the plan, and no premium or copayment may be charged to such an enrollee. Any enrollee on whose behalf the department of social and health services makes payments to the administrator under this section and chapter 74.09 RCW may continue as an enrollee, making premium payments based on the enrollee's own income as determined under the sliding scale, after eligibility for coverage under chapter 74.09 RCW has ended, as long as the enrollee remains eligible under this chapter. Nothing in this section affects the right of any person eligible for coverage under chapter 74.09 RCW to receive the services offered to other persons under that chapter but not included in the schedule of basic health care services covered by the plan. The administrator and the department of social and health services shall cooperatively adopt procedures to facilitate the transition of plan enrollees and payments on their behalf between the plan and the programs established under chapter 74.09 RCW. [1987 1st ex.s. c 5 § 13.]

Sunset Act application: See note following chapter digest.

70.47.120 Administrator—Contracts for services. In addition to the powers and duties specified in RCW 70.47.040 and 70.47.060, the administrator has the power to enter into contracts for the following functions and services:

(1) With public or private agencies, to assist the administrator in her or his duties to design or revise the schedule of covered basic health care services, and/or to monitor or evaluate the performance of participating managed health care systems.

(2) With public or private agencies, to provide technical or professional assistance to health care providers,

particularly public or private nonprofit organizations and providers serving rural areas, who show serious intent and apparent capability to participate in the plan as managed health care systems.

(3) With public or private agencies, including health care service contractors registered under RCW 48.44-.015, and doing business in the state, for marketing and administrative services in connection with participation of managed health care systems, enrollment of enrollees, billing and collection services to the administrator, and other administrative functions ordinarily performed by health care service contractors, other than insurance. Any activities of a health care service contractor pursuant to a contract with the administrator under this section shall be exempt from the provisions and requirements of Title 48 RCW. [1987 1st ex.s. c 5 § 14.]

Sunset Act application: See note following chapter digest.

70.47.130 Exemption from insurance code. The activities and operations of the Washington basic health plan under this chapter, including those of managed health care systems to the extent of their participation in the plan, are exempt from the provisions and requirements of Title 48 RCW, except as provided in RCW 70.47.070. [1987 1st ex.s. c 5 § 15.]

Sunset Act application: See note following chapter digest.

70.47.140 Reservation of legislative power. The legislature reserves the right to amend or repeal all or any part of this chapter at any time and there shall be no vested private right of any kind against such amendment or repeal. All the rights, privileges, or immunities conferred by this chapter or any acts done pursuant thereto shall exist subject to the power of the legislature to amend or repeal this chapter at any time. [1987 1st ex.s. c 5 § 2.]

Sunset Act application: See note following chapter digest.

70.47.900 Short title. This chapter shall be known and may be cited as the health care access act of 1987. [1987 1st ex.s. c 5 § 1.]

Sunset Act application: See note following chapter digest.

70.47.901 Severability—1987 1st ex.s. c 5. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1987 1st ex.s. c 5 § 26.]

Chapter 70.48

CITY AND COUNTY JAILS ACT

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70.48.020 Definitions. As used in this chapter the words and phrases in this section shall have the meanings indicated unless the context clearly requires otherwise.

(1) "Holding facility" means a facility operated by a governing unit primarily designed, staffed, and used for the temporary housing of adult persons charged with a criminal offense prior to trial or sentencing and for the temporary housing of such persons during or after trial and/or sentencing, but in no instance shall the housing exceed thirty days.

(2) "Detention facility" means a facility operated by a governing unit primarily designed, staffed, and used for the temporary housing of adult persons charged with a criminal offense prior to trial or sentencing and for the housing of adult persons for purposes of punishment and correction after sentencing or persons serving terms not to exceed ninety days.

(3) "Special detention facility" means a minimum security facility operated by a governing unit primarily designed, staffed, and used for the housing of special populations of sentenced persons who do not require the level of security normally provided in detention and correctional facilities including, but not necessarily limited

to, persons convicted of offenses under RCW 46.61.502 or 46.61.504.

(4) "Correctional facility" means a facility operated by a governing unit primarily designed, staffed, and used for the housing of adult persons serving terms not exceeding one year for the purposes of punishment, correction, and rehabilitation following conviction of a criminal offense.

(5) "Jail" means any holding, detention, special detention, or correctional facility as defined in this section.

(6) "Health care" means preventive, diagnostic, and rehabilitative services provided by licensed health care professionals and/or facilities; such care to include providing prescription drugs where indicated.

(7) "Governing unit" means the city and/or county or any combinations of cities and/or counties responsible for the operation, supervision, and maintenance of a jail.

(8) "Major urban" means a county or combination of counties which has a city having a population greater than twenty-six thousand based on the 1978 projections of the office of financial management.

(9) "Medium urban" means a county or combination of counties which has a city having a population equal to or greater than ten thousand but less than twenty-six thousand based on the 1978 projections of the office of financial management.

(10) "Rural" means a county or combination of counties which has a city having a population less than ten thousand based on the 1978 projections of the office of financial management.

(11) "Office" means the office of financial management. [1987 c 462 § 6; 1986 c 118 § 1; 1983 c 165 § 34; 1981 c 136 § 25; 1979 ex.s. c 232 § 11; 1977 ex.s. c 316 § 2.]

Effective dates—1987 c 462: See note following RCW 13.04.116.

Legislative finding, intent—Effective dates—Severability—1983 c 165: See notes following RCW 46.20.308.

Effective date—1981 c 136: See RCW 72.09.900.

Severability—1977 ex.s. c 316: "If any provision of this 1977 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1977 ex.s. c 316 § 26.] For codification of 1977 ex.s. c 316, see Codification Tables, Volume 0.

70.48.060 Capital construction—Financial assistance—Rules—Oversight—Cost estimates.

Reviser's note: RCW 70.48.060 was both amended and repealed during the 1987 legislative session, each without reference to the other. It has been decodified for publication purposes pursuant to RCW 1.12.025.

Severability—1977 ex.s. c 316: See note following RCW 70.48.020.

70.48.061 Jail construction and remodeling funding program—Continuation—Expiration of section. The office of financial management shall complete the jail construction and remodeling funding program previously administered by the corrections standards board. The office shall use and may modify the physical plant standards adopted by the board. This section shall expire on July 1, 1990. [1987 c 462 § 16.]

Effective dates—1987 c 462: See note following RCW 13.04.116.

70.48.071 Standards for operation—Adoption by units of local government. All units of local government that own or operate adult correctional facilities shall, individually or collectively, adopt standards for the operation of those facilities no later than January 1, 1988. Cities and towns shall adopt the standards after considering guidelines established collectively by the cities and towns of the state; counties shall adopt the standards after considering guidelines established collectively by the counties of the state. These standards shall be the minimums necessary to meet federal and state constitutional requirements relating to health, safety, and welfare of inmates and staff, and specific state and federal statutory requirements, and to provide for the public's health, safety, and welfare. Local correctional facilities shall be operated in accordance with these standards. [1987 c 462 § 17.]

Effective dates—1987 c 462: See note following RCW 13.04.116.

70.48.090 Interlocal contracts for jail services—Responsibility for operation of jail—Departments of corrections authorized. (1) Contracts for jail services may be made between a county and city located within the boundaries of a county, and among counties. The contracts shall: Be in writing, give one governing unit the responsibility for the operation of the jails, specify the responsibilities of each governing unit involved, and include the applicable charges for custody of the prisoners as well as the basis for adjustments in the charges. The contracts may be terminated only by ninety days written notice to the governing units involved and to the office. The notice shall state the grounds for termination and the specific plans for accommodating the affected jail population.

(2) The contract authorized in subsection (1) of this section shall be for a minimum term of ten years when state funds are provided to construct or remodel a jail in one governing unit that will be used to house prisoners of other governing units. The contract may not be terminated prior to the end of the term without the office's approval. If the contract is terminated, or upon the expiration and nonrenewal of the contract, the governing unit whose jail facility was built or remodeled to hold the prisoners of other governing units shall pay to the state treasurer the amount set by the corrections standards board or office when it authorized disbursement of state funds for the remodeling or construction under RCW 70.48.120. This amount shall be deposited in the local jail improvement and construction account and shall fairly represent the construction costs incurred in order to house prisoners from other governing units. The office may pay the funds to the governing units which had previously contracted for jail services under rules which the office may adopt. The acceptance of state funds for constructing or remodeling consolidated jail facilities constitutes agreement to the proportionate amounts set by the office. Notice of the proportionate amounts shall be given to all governing units involved.

(3) A city or county primarily responsible for the operation of a jail or jails may create a department of corrections to be in charge of such jail and of all persons confined therein by law, subject to the authority of the governing unit. If such department is created, it shall have charge of jails and persons confined therein. If no such department of corrections is created, the chief law enforcement officer of the city or county primarily responsible for the operation of said jail shall have charge of the jail and of all persons confined therein. [1987 c 462 § 7; 1986 c 118 § 6; 1979 ex.s. c 232 § 15; 1977 ex.s. c 316 § 9.]

Effective dates—1987 c 462: See note following RCW 13.04.116.

Severability—1977 ex.s. c 316: See note following RCW 70.48.020.

70.48.100 Jail register, open to the public—Records confidential. (1) A department of corrections or chief law enforcement officer responsible for the operation of a jail shall maintain a jail register, open to the public, into which shall be entered in a timely basis:

(a) The name of each person confined in the jail with the hour, date and cause of the confinement; and

(b) The hour, date and manner of each person's discharge.

(2) The records of a person confined in jail shall be held in confidence and shall be made available only to criminal justice agencies as defined in RCW 43.43.705; or

(a) For use in inspections made pursuant to *RCW 70.48.070;

(b) In jail certification proceedings;

(c) For use in court proceedings upon the written order of the court in which the proceedings are conducted; or

(d) Upon the written permission of the person. [1977 ex.s. c 316 § 10.]

*Reviser's note: RCW 70.48.070 was repealed by 1987 c 462 § 23, effective January 1, 1988.

Severability—1977 ex.s. c 316: See note following RCW 70.48.020.

70.48.120 Local jail improvement and construction account. There is hereby established in the state treasury a fund to be known as the local jail improvement and construction account in which shall be deposited such sums as are appropriated by law for the purpose of providing funds to units of local government for new construction and the substantial remodeling of detention and correctional facilities so as to obtain compliance with the physical plant standards for such facilities. Funds in the local jail improvement and construction account shall be invested in the same manner as other funds in other accounts within the state treasury, and such earnings shall accrue to the local jail improvement and construction account. Funds shall be remitted to the governing units in a reasonably timely fashion to meet their contractual obligations. Funds in this account shall be disbursed by the state treasurer to units of local government, subject to biennial legislative appropriation, at

the direction of the office. [1987 c 462 § 8; 1986 c 118 § 8; 1981 c 276 § 2; 1977 ex.s. c 316 § 12.]

Effective dates—1987 c 462: See note following RCW 13.04.116.

Severability—1977 ex.s. c 316: See note following RCW 70.48.020.

70.48.130 Emergency or necessary health care for confined persons—Reimbursement procedures—Conditions—Limitations. Payment for emergency or necessary health care shall be by the governing unit, except that the department of social and health services shall reimburse the governing unit for the cost thereof if the confined person requires treatment for which such person is eligible under the department of social and health services' public assistance medical program.

The governing unit may obtain reimbursement from the confined person for the cost of emergency and other health care to the extent that such person is reasonably able to pay for such care, including reimbursement from any insurance program or from other medical benefit programs available to such person. To the extent that a confined person is unable to be financially responsible for medical care and is ineligible for financial assistance from the department or from a private source, the governing unit may obtain reimbursement for the cost of such services from the unit of government whose law enforcement officers initiated the charges on which the person is being held in the jail: *Provided*, That reimbursement for the cost of such services shall be by the state for state prisoners being held in a jail who are accused of either escaping from a state facility or of committing an offense in a state facility.

There shall be no right of reimbursement to the governing unit from units of government whose law enforcement officers initiated the charges for which a person is being held in the jail for care provided after the charges are disposed of by sentencing or otherwise, unless by intergovernmental agreement pursuant to chapter 39.34 RCW.

This section is not intended to limit or change any existing right of any party, governing unit, or unit of government against the person receiving the care for the cost of the care provided or paid for.

Under no circumstance shall necessary medical services be denied or delayed pending a determination of financial responsibility. [1986 c 118 § 9; 1977 ex.s. c 316 § 13.]

Severability—1977 ex.s. c 316: See note following RCW 70.48.020.

70.48.140 Confinement pursuant to authority of the United States. A person having charge of a jail shall receive and keep in such jail, when room is available, all persons confined or committed thereto by process or order issued under authority of the United States until discharged according to law, the same as if such persons had been committed under process issued under authority of the state, if provision is made by the United States for the support of such persons confined, and for any additional personnel required. [1977 ex.s. c 316 § 14.]

Severability—1977 ex.s. c 316: See note following RCW 70.48.020.

70.48.160 Post-approval limitation on funding. Having received approval pursuant to *RCW 70.48.060, a governing unit shall not be eligible for further funding for physical plant standards for a period of ten years from the date of the completion of the approved project. A jail shall not be closed for noncompliance to physical plant standards within this same ten year period. This section does not apply if:

(1) The state elects to fund phased components of a jail project for which a governing unit has applied. In that instance, initially funded components do not constitute full funding within the meaning of *RCW 70.48.060(1) and **70.48.070(2) and the state may fund subsequent phases of the jail project;

(2) There is destruction of the facility because of an act of God or the result of a negligent and/or criminal act. [1987 c 462 § 9; 1986 c 118 § 10; 1981 c 276 § 3; 1977 ex.s. c 316 § 16.]

Reviser's note: *(1) RCW 70.48.060 was repealed by 1987 c 462 § 23, effective January 1, 1988.

***(2) RCW 70.48.070 was repealed by 1987 c 462 § 23, effective January 1, 1988.

Effective dates—1987 c 462: See note following RCW 13.04.116.

Severability—1977 ex.s. c 316: See note following RCW 70.48.020.

70.48.170 Short title. This chapter shall be known and may be cited as the City and County Jails Act. [1977 ex.s. c 316 § 17.]

Severability—1977 ex.s. c 316: See note following RCW 70.48.020.

70.48.180 Authority to locate and operate jail facilities—Counties. Counties may acquire, build, operate, and maintain holding, detention, special detention, and correctional facilities as defined in RCW 70.48.020 at any place designated by the county legislative authority within the territorial limits of the county. The facilities shall comply with chapter 70.48 RCW and the rules adopted thereunder. [1983 c 165 § 37; 1979 ex.s. c 232 § 16.]

Legislative finding, intent—Effective dates—Severability—1983 c 165: See notes following RCW 46.20.308.

70.48.190 Authority to locate and operate jail facilities—Cities and towns. Cities and towns may acquire, build, operate, and maintain holding, detention, special detention, and correctional facilities as defined in RCW 70.48.020 at any place within the territorial limits of the county in which the city or town is situated, as may be selected by the legislative authority of the municipality. The facilities comply with the provisions of chapter 70.48 RCW and rules adopted thereunder. [1983 c 165 § 38; 1977 ex.s. c 316 § 19; 1965 c 7 § 35.21.330. Prior: 1917 c 103 § 1; RRS § 10204. Formerly RCW 35.21.330.]

Legislative finding, intent—Effective dates—Severability—1983 c 165: See notes following RCW 46.20.308.

Severability—1977 ex.s. c 316: See note following RCW 70.48.020.

70.48.210 Farms, camps, work release programs, and special detention facilities. (1) All cities and counties are authorized to establish and maintain farms, camps, and work release programs and facilities, as well as special detention facilities. The facilities shall meet the requirements of chapter 70.48 RCW and any rules adopted thereunder.

(2) Farms and camps may be established either inside or outside the territorial limits of a city or county. A sentence of confinement in a city or county jail may include placement in a farm or camp. Unless directed otherwise by court order, the chief law enforcement officer or department of corrections, may transfer the prisoner to a farm or camp. The sentencing court, chief law enforcement officer, or department of corrections may not transfer to a farm or camp a greater number of prisoners than can be furnished with constructive employment and can be reasonably accommodated.

(3) The city or county may establish a city or county work release program and housing facilities for the prisoners in the program. In such regard, factors such as employment conditions and the condition of jail facilities should be considered. When a work release program is established the following provisions apply:

(a) A person convicted of a felony and placed in a city or county jail is eligible for the work release program. A person sentenced to a city or county jail is eligible for the work release program. The program may be used as a condition of probation for a criminal offense. Good conduct is a condition of participation in the program.

(b) The court may permit a person who is currently, regularly employed to continue his or her employment. The chief law enforcement officer or department of corrections shall make all necessary arrangements if possible. The court may authorize the person to seek suitable employment and may authorize the chief law enforcement officer or department of corrections to make reasonable efforts to find suitable employment for the person. A person participating in the work release program may not work in an establishment where there is a labor dispute.

(c) The work release prisoner shall be confined in a work release facility or jail unless authorized to be absent from the facility for program-related purposes, unless the court directs otherwise.

(d) Each work release prisoner's earnings may be collected by the chief law enforcement officer or a designee. The chief law enforcement officer or a designee may deduct from the earnings moneys for the payments for the prisoner's board, personal expenses inside and outside the jail, a share of the administrative expenses of this section, court-ordered victim compensation, and court-ordered restitution. Support payments for the prisoner's dependents, if any, shall be made as directed by the court. With the prisoner's consent, the remaining funds may be used to pay the prisoner's preexisting debts. Any remaining balance shall be returned to the prisoner.

(e) The prisoner's sentence may be reduced by earned early release time in accordance with procedures that shall be developed and promulgated by the work release facility. The earned early release time shall be for good behavior and good performance as determined by the facility. In no case may the aggregate earned early release time exceed one-third of the total sentence.

(f) If the work release prisoner violates the conditions of custody or employment, the prisoner shall be returned to the sentencing court. The sentencing court may require the prisoner to spend the remainder of the sentence in actual confinement and may cancel any earned reduction of the sentence.

(4) A special detention facility may be operated by a noncorrectional agency or by noncorrectional personnel by contract with the governing unit. The employees shall meet the standards of training and education established by the criminal justice training commission as authorized by RCW 43.101.080. The special detention facility may use combinations of features including, but not limited to, low-security or honor prisoner status, work farm, work release, community review, prisoner facility maintenance and food preparation, training programs, or alcohol or drug rehabilitation programs. Special detention facilities may establish a reasonable fee schedule to cover the cost of facility housing and programs. The schedule shall be on a sliding basis that reflects the person's ability to pay. [1989 c 248 § 3; 1985 c 298 § 1; 1983 c 165 § 39; 1979 ex.s. c 232 § 17.]

Application—1989 c 248: See note following RCW 9.92.151.

Legislative finding, intent—Effective dates—Severability—1983 c 165: See notes following RCW 46.20.308.

70.48.220 Confinement may be wherever jail services are contracted. A person convicted of an offense punishable by imprisonment in a city or county jail may be confined in the jail of any city or county contracting with the prosecuting city or county for jail services. [1979 ex.s. c 232 § 19.]

70.48.230 Transportation and temporary confinement of prisoners. The jurisdiction having immediate authority over a prisoner is responsible for the transportation expenses. The transporting officer shall have custody of the prisoner within any Washington county while being transported. Any jail within the state may be used for the temporary confinement of the prisoner with the only charge being for the reasonable cost of board. [1979 ex.s. c 232 § 18.]

70.48.240 Transfer of felons from jail to state institution—Time limit. A person imprisoned in a jail and sentenced to a state institution for a felony conviction shall be transferred to a state institution before the forty-first day from the date of sentencing.

This section does not apply to persons sentenced for a felony who are held in the facility as a condition of probation or who are specifically sentenced to confinement in the facility.

Payment for persons sentenced to state institutions and remaining in a jail from the eighth through the fortieth days following sentencing shall be in accordance with the procedure prescribed under this chapter. [1984 c 235 § 8; 1979 ex.s. c 232 § 20.]

Effective dates—1984 c 235: See note following RCW 70.48.400.

70.48.270 Disposition of proceeds from sale of bonds. The proceeds from the sale of bonds authorized by this chapter shall be deposited in the local jail improvement and construction account hereby created in the general fund and shall be used exclusively for the purpose specified in this chapter and for payment of the expenses incurred in the issuance and sale of the bonds. [1979 ex.s. c 232 § 3.]

70.48.280 Proceeds of bond sale—Deposits—Administration. The proceeds from the sale of the bonds deposited in the local jail improvement and construction account of the general fund under the terms of this chapter shall be administered by the office subject to legislative appropriation. [1987 c 462 § 10; 1986 c 118 § 13; 1979 ex.s. c 232 § 4.]

Effective dates—1987 c 462: See note following RCW 13.04.116.

70.48.310 Jail renovation bond retirement fund. The jail renovation bond retirement fund is hereby created in the state treasury. This fund shall be used for the payment of interest on and retirement of the bonds and notes authorized by this chapter. The state finance committee shall, on or before June 30th of each year, certify to the state treasurer the amount required in the next succeeding twelve months for the payment of the principal of and the interest coming due on the bonds. Not less than thirty days prior to the date on which any interest or principal and interest payment is due, the state treasurer shall withdraw from any general state revenues received in the state treasury and deposit in the jail renovation bond retirement fund an amount equal to the amount certified by the state finance committee to be due on the payment date. The owner and holder of each of the bonds or the trustee for any of the bonds may by mandamus or other appropriate proceeding require the transfer and payment of funds as directed in this section.

If a state general obligation bond retirement fund is created in the state treasury by chapter 230, Laws of 1979 ex. sess., and becomes effective by statute prior to the issuance of any of the bonds authorized by this chapter, the retirement fund shall be used for purposes of this chapter in lieu of the jail renovation bond retirement fund, and the jail renovation bond retirement fund shall cease to exist. [1979 ex.s. c 232 § 7.]

70.48.320 Bonds legal investments for public funds. The bonds authorized in this chapter shall be a legal investment for all state funds or for funds under state control and for all funds of any other public body. [1979 ex.s. c 232 § 8.]

70.48.380 Special detention facilities—Fees for cost of housing. The legislative authority of a county or

city that establishes a special detention facility as defined in RCW 70.48.020 for persons convicted of violating RCW 46.61.502 or 46.61.504 may establish a reasonable fee schedule to cover the cost of housing in the facility. The schedule shall be on a sliding basis that reflects the person's ability to pay. [1983 c 165 § 36.]

Legislative finding, intent—Effective dates—Severability—1983 c 165: See notes following RCW 46.20.308.

70.48.400 Sentences to be served in state institutions—When—Sentences that may be served in jail—Financial responsibility of city or county. Persons sentenced to felony terms or a combination of terms of more than three hundred sixty-five days of incarceration shall be committed to state institutions under the authority of the department of corrections. Persons serving sentences of three hundred sixty-five consecutive days or less may be sentenced to a jail as defined in RCW 70.48.020. All persons convicted of felonies or misdemeanors and sentenced to jail shall be the financial responsibility of the city or county. [1987 c 462 § 11; 1984 c 235 § 1.]

Effective dates—1987 c 462: See note following RCW 13.04.116.

Effective dates—1984 c 235: "Section 5 of this act [RCW 70.48.440] is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately [March 27, 1984]. The remainder of this act shall take effect July 1, 1984." [1984 c 235 § 10.]

70.48.410 Financial responsibility for convicted felons. Persons convicted of a felony as defined by chapter 9A.20 RCW and committed to the care and custody of the department of corrections shall be the financial responsibility of the department of corrections not later than the eighth day, excluding weekends and holidays, following sentencing for the felony and notification that the prisoner is available for movement to a state correctional institution. However, if good cause is shown, a superior court judge may order the prisoner detained in the jail beyond the eight-day period for an additional period not to exceed ten days. If a superior court orders a convicted felon to be detained beyond the eighth day following sentencing, the county or city shall retain financial responsibility for that ten-day period or portion thereof ordered by the court. [1984 c 235 § 2.]

Effective dates—1984 c 235: See note following RCW 70.48.400.

70.48.420 Financial responsibility for persons detained on parole hold. A person detained in jail solely by reason of a parole hold is the financial responsibility of the city or the county detaining the person until the sixteenth day, at which time the person shall become the financial responsibility of the department of corrections. Persons who are detained in a jail on a parole hold and for whom the prosecutor has filed a felony charge remain the responsibility of the city or county. [1984 c 235 § 3.]

Effective dates—1984 c 235: See note following RCW 70.48.400.

70.48.430 Financial responsibility for work release inmates detained in jail. Inmates, as defined by RCW 72.09.020, who reside in a work release facility and who are detained in a city or county jail are the financial responsibility of the department of corrections. [1984 c 235 § 4.]

Effective dates—1984 c 235: See note following RCW 70.48.400.

70.48.440 Office of financial management to establish reimbursement rate for cities and counties—Rate until June 30, 1985—Re-establishment of rates. The office of financial management shall establish a uniform equitable rate for reimbursing cities and counties for the care of sentenced felons who are the financial responsibility of the department of corrections and are detained or incarcerated in a city or county jail.

Until June 30, 1985, the rate for the care of sentenced felons who are the financial responsibility of the department of corrections shall be ten dollars per day. Cost of extraordinary emergency medical care incurred by prisoners who are the financial responsibility of the department of corrections under this chapter shall be reimbursed. The department of corrections shall be advised as far in advance as practicable by competent medical authority of the nature and course of treatment required to ensure the most efficient use of state resources to address the medical needs of the offender. In the event emergency medical care is needed, the department of corrections shall be advised as soon as practicable after the offender is treated.

Prior to June 30, 1985, the office of financial management shall meet with the corrections standards board to establish criteria to determine equitable rates regarding variable costs for sentenced felons who are the financial responsibility of the department of corrections after June 30, 1985. The office of financial management shall re-establish these rates each even-numbered year beginning in 1986. [1984 c 235 § 5.]

Effective dates—1984 c 235: See note following RCW 70.48.400.

70.48.450 Local jail reporting form—Information to be provided by city or county requesting payment for prisoners from state. The department of corrections is responsible for developing a reporting form for the local jails. The form shall require sufficient information to identify the person, type of state responsibility, method of notification for availability for movement, and the number of days for which the state is financially responsible. The information shall be provided by the city or county requesting payment for prisoners who are the financial responsibility of the department of corrections. [1984 c 235 § 6.]

Effective dates—1984 c 235: See note following RCW 70.48.400.

70.48.460 Contracts for incarceration services for prisoners not covered by RCW 70.48.400 through 70.48.450. Nothing in RCW 70.48.400 through 70.48.450

precludes the establishment of mutually agreeable contracts between the department of corrections and counties for incarceration services of prisoners not covered by RCW 70.48.400 through 70.48.450. [1984 c 235 § 7.]

Effective dates—1984 c 235: See note following RCW 70.48.400.

Chapter 70.48A

JAIL IMPROVEMENT AND CONSTRUCTION— BOND ISSUE

Sections

70.48A.010	Legislative declaration.
70.48A.020	Bond issue authorized—Appropriations.
70.48A.030	Proceeds from bond sale—Deposit, use.
70.48A.040	Proceeds from bond sale—Administration.
70.48A.050	Bonds—Minimum sale price.
70.48A.060	Bonds—State's full faith and credit pledged.
70.48A.070	Bonds—Payment of interest, retirement.
70.48A.080	Bonds legal investment for public funds.
70.48A.090	Legislative intent.
70.48A.900	Severability—1981 c 131.

70.48A.010 Legislative declaration. In order for the state to provide safe and humane detention and correctional facilities, its long range development goals must include the renovation of jail buildings and facilities. [1981 c 131 § 1.]

70.48A.020 Bond issue authorized—Appropriations. For the purpose of providing funds for the planning, acquisition, construction, and improvement of jail buildings and necessary supporting facilities within the state, and the office of financial management's operational costs related to the review of physical plant funding applications, award of grants, and construction monitoring, the state finance committee is authorized to issue general obligation bonds of the state of Washington in the sum of one hundred forty-four million three hundred thousand dollars, or so much thereof as may be required, to finance the improvements defined in RCW 70.48A.010 through 70.48A.080 and all costs incidental thereto, including administration, but not including acquisition or preparation of sites. Appropriations for administration shall be determined by the legislature. No bonds authorized by this section may be offered for sale without prior legislative appropriation of the proceeds of the bonds to be sold: *Provided*, That the reappropriation of previously authorized bond moneys and this new appropriation shall constitute full funding of each approved project within the meaning of *RCW 70.48.070 and 70.48.110. [1987 c 462 § 13; 1986 c 118 § 16; 1983 1st ex.s. c 63 § 1; 1981 c 131 § 2.]

***Reviser's note:** RCW 70.48.070 and 70.48.110 were repealed by 1987 c 462 § 23, effective January 1, 1988.

Effective dates—1987 c 462: See note following RCW 13.04.116.

70.48A.030 Proceeds from bond sale—Deposit, use. The proceeds from the sale of bonds authorized by RCW 70.48A.010 through 70.48A.080 shall be deposited in the local jail improvement and construction account in the general fund and shall be used exclusively for the purpose specified in RCW 70.48A.010 through

70.48A.080 and for payment of the expenses incurred in the issuance and sale of the bonds. [1981 c 131 § 3.]

70.48A.040 Proceeds from bond sale—Administration. The proceeds from the sale of the bonds deposited in the local jail improvement and construction account in the general fund under the terms of RCW 70.48A.010 through 70.48A.080 shall be administered by the office of financial management subject to legislative appropriation. [1987 c 462 § 14; 1986 c 118 § 17; 1981 c 131 § 4.]

Effective dates—1987 c 462: See note following RCW 13.04.116.

70.48A.050 Bonds—Minimum sale price. None of the bonds authorized in RCW 70.48A.010 through 70.48A.080 may be sold for less than their par value. [1981 c 131 § 5.]

70.48A.060 Bonds—State's full faith and credit pledged. The bonds shall pledge the full faith and credit of the state of Washington and shall contain an unconditional promise to pay the principal and interest when due. [1981 c 131 § 6.]

70.48A.070 Bonds—Payment of interest, retirement. The state general obligation bond retirement fund shall be used for the payment of interest on and retirement of the bonds authorized by RCW 70.48A.010 through 70.48A.080.

The state finance committee shall, on or before June 30th of each year, certify to the state treasurer the amount required in the next succeeding twelve months for the payment of the principal of and the interest coming due on the bonds. Not less than thirty days prior to the date on which any interest or principal and interest payment is due, the state treasurer shall withdraw from any general state revenues received in the state treasury and deposit in the general obligation bond retirement fund an amount equal to the amount certified by the state finance committee to be due on the payment date.

The owner and holder of each of the bonds or the trustee for any of the bonds may by mandamus or other appropriate proceeding require the transfer and payment of funds as directed in this section. [1981 c 131 § 7.]

70.48A.080 Bonds legal investment for public funds. The bonds authorized in RCW 70.48A.010 through 70.48A.080 shall be a legal investment for all state funds or for funds under state control and for all funds of any other public body. [1981 c 131 § 8.]

70.48A.090 Legislative intent. It is the intent of the legislature that the construction and remodeling of jails proceed without further delay, and the jail commission's review and funding procedures are to reflect this intent. Neither the jail commission nor local governments should order or authorize capital expenditures to improve jails now in use which are scheduled for replacement. Capital expenditures which relate directly to life

safety of inmates or jail personnel may be ordered. [1981 c 131 § 9.]

70.48A.900 Severability—1981 c 131. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1981 c 131 § 11.]

Chapter 70.50 STATE OTOLOGIST

Sections

70.50.010 Appointment—Salary.
70.50.020 Duties.

Reviser's note: Powers and duties of the department of social and health services and the secretary of social and health services transferred to the department of health and the secretary of health. See RCW 43.70.060.

Hearing tests for public school children: RCW 28A.31.030.

70.50.010 Appointment—Salary. The secretary of social and health services shall appoint and employ an otologist skilled in diagnosis of diseases of the ear and defects in hearing, especially for school children with an impaired sense of hearing, and shall fix the salary of such otologist in a sum not exceeding the salary of the secretary. [1979 c 141 § 108; 1945 c 23 § 1; Rem. Supp. 1945 § 6010–10.]

70.50.020 Duties. The otologist shall cooperate with the state department of public instruction, and with the state, county and city health officers, seeking for the children in the schools who are hard of hearing, or have an impaired sense of hearing, and making otological inspections and examinations of children referred to him by such departments and officers. Where necessary or proper he shall make recommendations to parents or guardians of such children, and urge them to submit such recommendations to physicians to be selected by such parents or guardians. [1945 c 23 § 2; Rem. Supp. 1945 § 6010–11.]

Chapter 70.54 MISCELLANEOUS HEALTH AND SAFETY PROVISIONS

Sections

70.54.005 Transfer of duties to the department of health.
70.54.010 Polluting water supply—Penalty.
70.54.020 Furnishing impure water—Penalty.
70.54.030 Pollution of watershed of city in adjoining state—Penalty.
70.54.040 Secretary to advise local authorities on sanitation.
70.54.050 Exposing contagious disease—Penalty.
70.54.060 Ambulances and drivers.
70.54.065 Ambulances and drivers—Penalty.
70.54.070 Door of public buildings to swing outward—Penalty.
70.54.080 Liability of person handling steamboat or steam boiler.
70.54.090 Attachment of objects to utility poles.
70.54.100 Penalty for violation of RCW 70.54.090.
70.54.110 New housing for agricultural workers to comply with board of health regulations.

- 70.54.120 Immunity from implied warranties and civil liability relating to blood, blood products, tissues, organs, or bones—Scope—Effective date.
- 70.54.130 Laetrile—Legislative declaration.
- 70.54.140 Laetrile—Interference with physician/patient relationship by health facility—Board of pharmacy, duties.
- 70.54.150 Physicians not subject to disciplinary action for prescribing or administering laetrile—Conditions.
- 70.54.160 Public restrooms—Pay facilities.
- 70.54.170 Penalty for violation of RCW 70.54.160.
- 70.54.180 Telecommunication devices.
- 70.54.190 DMSO (dimethyl sulfoxide)—Use—Liability.
- 70.54.200 Fees for repository of vaccines, biologics.
- 70.54.220 Practitioners to provide information on prenatal testing.

Control of cities and towns over water pollution: Chapter 35.88 RCW.
Council for the prevention of child abuse and neglect: Chapter 43.121 RCW.

Nuisances, generally: Chapters 7.48 and 9.66 RCW.

Water pollution control: Chapter 90.48 RCW.

70.54.005 Transfer of duties to the department of health. The powers and duties of the secretary of social and health services under this chapter shall be performed by the secretary of health. [1989 1st ex.s. c 9 § 250.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

70.54.010 Polluting water supply—Penalty. Every person who shall deposit or suffer to be deposited in any spring, well, stream, river or lake, the water of which is or may be used for drinking purposes, or on any property owned, leased or otherwise controlled by any municipal corporation, corporation or person as a watershed or drainage basin for a public or private water system, any matter or thing whatever, dangerous or deleterious to health, or any matter or thing which may or could pollute the waters of such spring, well, stream, river, lake or water system, shall be guilty of a gross misdemeanor. [1909 c 249 § 290; RRS § 2542.]

70.54.020 Furnishing impure water—Penalty. Every owner, agent, manager, operator or other person having charge of any waterworks furnishing water for public or private use, who shall knowingly permit any act or omit any duty or precaution by reason whereof the purity or healthfulness of the water supplied shall become impaired, shall be guilty of a gross misdemeanor. [1909 c 249 § 291; RRS § 2543.]

70.54.030 Pollution of watershed of city in adjoining state—Penalty. Any person who shall place or cause to be placed within any watershed from which any city or municipal corporation of any adjoining state obtains its water supply, any substance which either by itself or in connection with other matter will corrupt, pollute or impair the quality of said water supply, or the owner of any dead animal who shall knowingly leave or cause to be left the carcass or any portion thereof within any such watershed in such condition as to in any way corrupt or pollute such water supply shall be deemed guilty of a misdemeanor and upon conviction shall be punished

by fine in any sum not exceeding five hundred dollars. [1909 c 16 § 2; RRS § 9281.]

70.54.040 Secretary to advise local authorities on sanitation. The commissioners of any county or the mayor of any city may call upon the secretary of social and health services for advice relative to improving sanitary conditions or disposing of garbage and sewage or obtaining a pure water supply, and when so called upon the secretary of social and health services shall either personally or by an assistant make a careful examination into the conditions existing and shall make a full report containing his advice thereon to the county or city making such request. [1979 c 141 § 109; 1909 c 208 § 3; RRS § 6006.]

70.54.050 Exposing contagious disease—Penalty. Every person who shall wilfully expose himself to another, or any animal affected with any contagious or infectious disease, in any public place or thoroughfare, except upon his or its necessary removal in a manner not dangerous to the public health; and every person so affected who shall expose any other person thereto without his knowledge, shall be guilty of a misdemeanor. [1909 c 249 § 287; RRS § 2539.]

70.54.060 Ambulances and drivers. (1) The drivers of all ambulances shall be required to take the advanced first aid course as prescribed by the American Red Cross.

(2) All ambulances must be at all times equipped with first aid equipment consisting of leg and arm splints and standard twenty-four unit first aid kit as prescribed by the American Red Cross. [1945 c 65 § 1; Rem. Supp. 1945 § 6131-1. FORMER PART OF SECTION: 1945 c 65 § 2 now codified as RCW 70.54.060, part.]

70.54.065 Ambulances and drivers—Penalty. Any person violating any of the provisions herein shall be guilty of a misdemeanor. [1945 c 65 § 2; Rem. Supp. 1945 § 6131-2. Formerly RCW 70.54.060, part.]

70.54.070 Door of public buildings to swing outward—Penalty. The doors of all theatres, opera houses, school buildings, churches, public halls, or places used for public entertainments, exhibitions or meetings, which are used exclusively or in part for admission to or egress from the same, or any part thereof, shall be so hung and arranged as to open outwardly, and during any exhibition, entertainment or meeting, shall be kept unlocked and unfastened, and in such condition that in case of danger or necessity, immediate escape from such building shall not be prevented or delayed; and every agent or lessee of any such building who shall rent the same or allow it to be used for any of the aforesaid public purposes without having the doors thereof hung and arranged as hereinbefore provided, shall, for each violation of any provision of this section, be guilty of a misdemeanor. [1909 c 249 § 273; RRS § 2525.]

70.54.080 Liability of person handling steamboat or steam boiler. Every person who shall apply, or cause to

be applied to a steam boiler a higher pressure of steam than is allowed by law, or by any inspector, officer or person authorized to limit the same; every captain or other person having charge of the machinery or boiler in a steamboat used for the conveyance of passengers on the waters of this state, who, from ignorance or gross neglect, or for the purpose of increasing the speed of such boat, shall create or cause to be created an undue or unsafe pressure of steam; and every engineer or other person having charge of a steam boiler, steam engine or other apparatus for generating or employing steam, who shall wilfully or from ignorance or gross neglect, create or allow to be created such an undue quantity of steam as to burst the boiler, engine or apparatus, or cause any other accident, whereby human life is endangered, shall be guilty of a gross misdemeanor. [1909 c 249 § 280; RRS § 2532.]

*Boilers and unfired pressure vessels: Chapter 70.79 RCW.
Industrial safety and health: Chapter 43.22 RCW.*

70.54.090 Attachment of objects to utility poles. It shall be unlawful to attach to utility poles any of the following: Advertising signs, posters, vending machines, or any similar object which presents a hazard to, or endangers the lives of, electrical workers. Any attachment to utility poles shall only be made with the permission of the utility involved, and shall be placed not less than twelve feet above the surface of the ground. [1953 c 185 § 1.]

70.54.100 Penalty for violation of RCW 70.54.090. Every person violating the provisions of RCW 70.54.090 shall be guilty of a misdemeanor. [1953 c 185 § 2.]

70.54.110 New housing for agricultural workers to comply with board of health regulations. All new housing and new construction together with the land areas appurtenant thereto which shall be started on and after May 3, 1969, and is to be provided by employers, growers, management, or any other persons, for occupancy by workers or by workers and their dependents, in agriculture, shall comply with the rules and regulations of the state board of health pertaining to labor camps, filed with the office of the code reviser on November 20, 1968 and future amendments and revisions thereof. [1969 ex.s. c 231 § 1.]

70.54.120 Immunity from implied warranties and civil liability relating to blood, blood products, tissues, organs, or bones—Scope—Effective date. The procurement, processing, storage, distribution, administration, or use of whole blood, plasma, blood products and blood derivatives for the purpose of injecting or transfusing the same, or any of them, or of tissues, organs, or bones for the purpose of transplanting them, or any of them, into the human body is declared to be, for all purposes whatsoever, the rendition of a service by each and every person, firm, or corporation participating therein, and is declared not to be covered by any implied warranty under the Uniform Commercial Code, Title 62A RCW, or otherwise, and no civil liability shall be

incurred as a result of any of such acts, except in the case of wilful or negligent conduct: *Provided, however,* That this section shall apply only to liability alleged in the contraction of hepatitis, malaria, and acquired immune deficiency disease and shall not apply to any transaction in which the donor receives compensation: *Provided further,* That this section shall only apply where the person, firm or corporation rendering the above service shall have maintained records of donor suitability and donor identification: *Provided further,* That nothing in this section shall be considered by the courts in determining or applying the law to any blood transfusion occurring before June 10, 1971 and the court shall decide such case as though this section had not been passed. [1987 c 84 § 1; 1985 c 321 § 1; 1971 c 56 § 1.]

Severability—1971 c 56: "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1971 c 56 § 2.]

70.54.130 Laetrile—Legislative declaration. It is the intent of the legislature that passage of RCW 70.54.130 through 70.54.150 shall not constitute any endorsement whatever of the efficacy of amygdalin (Laetrile) in the treatment of cancer, but represents only the legislature's endorsement of a patient's freedom of choice, so long as the patient has been given sufficient information in writing to make an informed decision regarding his/her treatment and the substance is not proven to be directly detrimental to health. [1977 ex.s. c 122 § 1.]

70.54.140 Laetrile—Interference with physician/patient relationship by health facility—Board of pharmacy, duties. No hospital or health facility may interfere with the physician/patient relationship by restricting or forbidding the use of amygdalin (Laetrile) when prescribed or administered by a physician licensed pursuant to chapter 18.57 or 18.71 RCW and requested by a patient under his/her care who has requested the substance after having been given sufficient information in writing to make an informed decision.

For the purposes of RCW 70.54.130 through 70.54.150, the state board of pharmacy shall provide for the certification as to the identity of amygdalin (Laetrile) by random sample testing or other testing procedures, and shall promulgate rules and regulations necessary to implement and enforce its authority under this section. [1977 ex.s. c 122 § 2.]

70.54.150 Physicians not subject to disciplinary action for prescribing or administering laetrile—Conditions. No physician may be subject to disciplinary action by any entity of either the state of Washington or a professional association for prescribing or administering amygdalin (Laetrile) to a patient under his/her care who has requested the substance after having been given sufficient information in writing to make an informed decision.

It is not the intent of this section to shield a physician from acts or omissions which otherwise would constitute

unprofessional conduct. [1986 c 259 § 150; 1977 ex.s. c 122 § 3.]

Severability—1986 c 259: See note following RCW 18.130.010.

70.54.160 Public restrooms—Pay facilities. (1) Every establishment which maintains restrooms for use by the public shall not discriminate in charges required between facilities used by men and facilities used by women.

(2) When coin lock controls are used, the controls shall be so allocated as to allow for a proportionate equality of free toilet units available to women as compared with those units available to men, and at least one-half of the units in any restroom shall be free of charge. As used in this section, toilet units are defined as constituting commodes and urinals.

(3) In situations involving coin locks placed on restroom entry doors, admission keys shall be readily provided without charge when requested, and notice as to the availability of the keys shall be posted on the restroom entry door. [1977 ex.s. c 97 § 1.]

70.54.170 Penalty for violation of RCW 70.54.160. Any owner, agent, manager, or other person charged with the responsibility of the operation of an establishment who operates such establishment in violation of RCW 70.54.160 shall be guilty of a misdemeanor. [1977 ex.s. c 97 § 2.]

70.54.180 Telecommunication devices. (1) For the purpose of this section "telecommunication device" means an instrument for telecommunication in which speaking or hearing is not required for communicators.

(2) The county legislative authority of each fourth class or larger county and the governing body of each city with a population in excess of ten thousand shall provide by July 1, 1980 for a telecommunication device in their jurisdiction or through a central dispatch office that will assure access to police, fire, or other emergency services.

(3) The county legislative authority of each fifth class or smaller county shall by July 1, 1980 make a determination of whether sufficient need exists with their respective counties to require installation of a telecommunication device. Reconsideration of such determination will be made at any future date when a deaf individual indicates a need for such an instrument. [1979 ex.s. c 63 § 2.]

Purpose—1979 ex.s. c 63: "The legislature finds that many citizens of this state who are unable to utilize telephone services in a regular manner due to hearing defects are able to communicate by teletypewriters where hearing is not required for communication. Hence, it is the purpose of section 2 of this act [RCW 70.54.180] to require that telecommunication devices for the deaf be installed." [1979 ex.s. c 63 § 1.]

70.54.190 DMSO (dimethyl sulfoxide)—Use—Liability. No hospital or health facility may interfere with the physician/patient relationship by restricting or forbidding the use of DMSO (dimethyl sulfoxide) when prescribed or administered by a physician licensed pursuant to chapter 18.57 or 18.71 RCW and requested by

a patient under his/her care who has requested the substance after having been given sufficient information in writing to make an informed decision.

No physician may be subject to disciplinary action by any entity of either the state of Washington or a professional association for prescribing or administering DMSO (dimethyl sulfoxide) to a patient under his/her care who has requested the substance after having been given sufficient information in writing to make an informed decision.

It is not the intent of this section to shield a physician from acts or omissions which otherwise would constitute unprofessional conduct. [1986 c 259 § 151; 1981 c 50 § 2.]

Severability—1986 c 259: See note following RCW 18.130.010.
DMSO authorized: RCW 69.04.565.

70.54.200 Fees for repository of vaccines, biologics. The department shall prescribe by rule a schedule of fees predicated on the cost of providing a repository of emergency vaccines and other biologics. [1981 c 284 § 2.]

Reviser's note: Although 1981 c 284 directs this section be added to chapter 74.04 RCW, codification here is considered more appropriate. The "department" referred to is apparently the department of social and health services.

70.54.220 Practitioners to provide information on prenatal testing. All persons licensed or certified by the state of Washington to provide prenatal care or to practice medicine shall provide information regarding the use and availability of prenatal tests to all pregnant women in their care within the time limits prescribed by department rules and in accordance with standards established by those rules. [1988 c 276 § 5.]

Effective date—1988 c 276 § 5: "Section 5 of this act shall take effect December 31, 1989." [1988 c 276 § 10.]

Chapter 70.58

VITAL STATISTICS

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70.58.005 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

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

(2) "Vital records" means records of birth, death, fetal death, marriage, dissolution, annulment, and legal separation, as maintained under the supervision of the state registrar of vital statistics. [1987 c 223 § 1.]

***Reviser's note:** Powers and duties of the department of social and health services and the secretary of social and health services transferred to the department of health and the secretary of health. See RCW 43.70.060.

70.58.010 Registration districts. Each city of the first class shall constitute a primary registration district and each county and the territory of counties jointly comprising a health district, exclusive of the portion included within cities of the first class, shall constitute a primary registration area. All other counties and municipal areas not included in the foregoing shall be divided into registration areas by the state registrar as he may

deem essential to obtain the most efficient registration of vital events as provided by law. [1979 ex.s. c 52 § 2; 1951 c 106 § 4; 1915 c 180 § 1; 1907 c 83 § 2; RRS § 6019.]

70.58.020 Local registrars—Deputies. Under the direction and control of the state registrar, the health officer of each city of the first class shall be the local registrar in and for the primary registration district under his supervision as health officer and the health officer of each county and district health department shall be the local registrar in and for the registration area which he supervises as health officer and shall serve as such as long as he performs the registration duties as prescribed by law. He may be removed as local registrar of the registration area which he serves by the state board of health upon its finding of evidence of neglect in the performance of his duties as such registrar. The state registrar shall appoint local registrars for those registration areas not included in the foregoing and also in areas where the state board of health has removed the health officer from this position as registrar.

Each local registrar, subject to the approval of the state registrar, shall appoint in writing a sufficient number of deputy registrars to administer the laws relating to vital statistics, and shall certify the appointment of such deputies to the state registrar. Deputy registrars shall act in the case of absence, death, illness or disability of the local registrar, or such other conditions as may be deemed sufficient cause to require their services. [1979 ex.s. c 52 § 3; 1961 ex.s. c 5 § 5; 1951 c 106 § 5; 1915 c 180 § 2; 1907 c 83 § 3; RRS § 6020.]

Director of combined city-county health department as registrar: RCW 70.08.060.

70.58.030 Duties of local registrars. The local registrar shall supply blank forms of certificates to such persons as require them. He shall carefully examine each certificate of birth, death, and fetal death when presented for record, and see that it has been made out in accordance with the provisions of law and the instructions of the state registrar. If any certificate of death is incomplete or unsatisfactory, he shall call attention to the defects in the return, and withhold issuing the burial-transit permit until it is corrected. If the certificate of death is properly executed and complete, he shall issue a burial-transit permit to the funeral director or person acting as such. If a certificate of a birth is incomplete, he shall immediately notify the informant, and require him to supply the missing items if they can be obtained. He shall sign his name as local registrar to each certificate filed in attest of the date of filing in his office. He shall make a record of each birth, death, and fetal death certificate registered by him in such manner as directed by the state registrar. He shall on or before the tenth day of each month, transmit to the state registrar all original certificates registered by him during the preceding month. If no births or no deaths occurred in any month, he shall, on the tenth day of the following month, report that fact to the state registrar, on a card provided for this purpose: *Provided*, That in cities of the

first class the city health officer may require the filing of two original certificates and may retain one of the duplicate original certificates as the city record. [1961 ex.s. c 5 § 6; 1907 c 83 § 18; RRS § 6035.]

70.58.040 Compensation of local registrars. A local registrar shall be paid the sum of one dollar for each birth, death, or fetal death certificate registered for his district which sum shall cover making out the burial-transit permit and record of the certificate to be filed and preserved in his office. If no births or deaths were registered during any month, the local registrar shall be paid the sum of one dollar for each report to that effect: *Provided*, That all local health officers who are by statute required to serve as local registrars shall not be entitled to the fee of one dollar. Neither shall any members of their staffs be entitled to the above fee of one dollar when such persons serve as deputy registrars. All fees payable to local registrars shall be paid by the treasurer of the county or city, properly chargeable therewith, out of the funds of the county or city, upon warrants drawn by the auditor, or other proper officer of the county or city. No warrant shall be issued to a local registrar except upon a statement, signed by the state registrar, stating the names and addresses respectively of the local registrars entitled to fees from the county or city, and the number of certificates and reports of births, deaths, and fetal deaths, properly returned to the state registrar, by each local registrar, during three preceding calendar months prior to the date of the statement, and the amount of fees to which each local registrar is entitled, which statement the state registrar shall file with the proper officers during the months of January, April, July, and October of each year. Upon filing of the statement the auditor or other proper officer of the county or city shall issue warrants for the amount due each local registrar. [1961 ex.s. c 5 § 7; 1951 c 106 § 8; 1915 c 180 § 10; 1907 c 83 § 19; RRS § 6036.]

70.58.050 Duty to enforce law. The local registrars are hereby charged with the strict and thorough enforcement of the provisions of *this act in their districts, under the supervision and direction of the state registrar. And they shall make an immediate report to the state registrar of any violations of this law coming to their notice by observation or upon the complaint of any person, or otherwise. The state registrar is hereby charged with the thorough and efficient execution of the provisions of *this act in every part of the state, and with supervisory power over local registrars, to the end that all of the requirements shall be uniformly complied with. He shall have authority to investigate cases of irregularity or violation of law, personally or by accredited representative, and all local registrars shall aid him, upon request, in such investigation. When he shall deem it necessary he shall report cases of violation of any of the provisions of *this act to the prosecuting attorney of the proper county with a statement of the fact and circumstances; and when any such case is reported to them by the state registrar, all prosecuting attorneys or officials acting in such capacity shall forthwith initiate and

promptly follow up the necessary court proceedings against the parties responsible for the alleged violations of law. And upon request of the state registrar the attorney general shall likewise assist in the enforcement of the provisions of *this act. [1907 c 83 § 22; RRS § 6039.]

***Reviser's note:** "this act" appears in 1907 c 83 codified as RCW 70.58.010 through 70.58.100, 70.58.230 through 70.58.280, and 43.20A.620 through 43.20A.630.

70.58.070 Registration of births required. All births that occur in the state shall be immediately registered in the districts in which they occur, as hereinafter provided. [1907 c 83 § 11; RRS § 6028.]

70.58.080 Birth certificates—Filing—Establishing paternity—Surname of child. (1) Within ten days after the birth of any child, the attending physician, midwife, or his or her agent shall:

(a) Fill out a certificate of birth, giving all of the particulars required, including: (i) The mother's name and date of birth, and (ii) if the mother and father are married at the time of birth or the father has signed an acknowledgement of paternity, the father's name and date of birth; and

(b) File the certificate of birth together with the mother's and father's social security numbers with the local registrar of the district in which the birth occurred.

(2) The local registrar shall forward the birth certificate, any signed affidavit acknowledging paternity, and the mother's and father's social security numbers to the state office of vital statistics pursuant to RCW 70.58.030.

(3) The state office of vital statistics shall make available to the office of support enforcement the birth certificates, the mother's and father's social security numbers and paternity affidavits.

(4) Upon the birth of a child to an unmarried woman, the attending physician, midwife, or his or her agent shall:

(a) Provide an opportunity for the child's mother and natural father to complete an affidavit acknowledging paternity. The completed affidavit shall be filed with the local registrar. The affidavit shall contain or have attached:

(i) A sworn statement by the mother consenting to the assertion of paternity and stating that this is the only possible father;

(ii) A statement by the father that he is the natural father of the child;

(iii) Written information, furnished by the department of social and health services, explaining the implications of signing, including parental rights and responsibilities; and

(iv) The social security numbers of both parents.

(b) Provide written information, furnished by the department of social and health services, to the mother regarding the benefits of having her child's paternity established and of the availability of paternity establishment services, including a request for support enforcement services.

(5) The physician or midwife is entitled to reimbursement for reasonable costs, which the department shall establish by rule, when an affidavit acknowledging paternity is filed with the state office of vital statistics.

(6) If there is no attending physician or midwife, the father or mother of the child, householder or owner of the premises, manager or superintendent of the public or private institution in which the birth occurred, shall notify the local registrar, within ten days after the birth, of the fact of the birth, and the local registrar shall secure the necessary information and signature to make a proper certificate of birth.

(7) When an infant is found for whom no certificate of birth is known to be on file, a birth certificate shall be filed within the time and in the form prescribed by the state board of health.

(8) When no putative father is named on a birth certificate of a child born to an unwed mother the mother may give any surname she so desires to her child but shall designate in space provided for father's name on the birth certificate "None Named". [1989 c 55 § 2; 1961 ex.s. c 5 § 8; 1951 c 106 § 6; 1907 c 83 § 12; RRS § 6029.]

70.58.085 Birth certificates suitable for display—Issuance—Fee—Disposition of funds. (1) In addition to the original birth certificate, the state registrar shall issue upon request and upon payment of a fee of twenty-five dollars a birth certificate representing that the birth of the person named thereon is recorded in the office of the registrar. The certificate issued under this section shall be in a form consistent with the need to protect the integrity of vital records but shall be suitable for display. It may bear the seal of the state printed thereon and may be signed by the governor. It shall have the same status as evidence as the original birth certificate.

(2) Of the funds received under subsection (1) of this section, the amount needed to reimburse the registrar for expenses incurred in administering this section shall be credited to the state registrar account. The remainder shall be credited to the children's trust fund established under RCW 43.121.100. [1987 c 351 § 6.]

Legislative findings—1987 c 351: "The legislature finds that children are society's most valuable resource and that child abuse and neglect is a threat to the physical, mental, and emotional health of children. The legislature further finds that assisting community-based private nonprofit and public organizations, agencies, or school districts in identifying and establishing needed primary prevention programs will reduce the incidence of child abuse and neglect, and the necessity for costly subsequent intervention in family life by the state. Child abuse and neglect prevention programs can be most effectively and economically administered through the use of trained volunteers and the cooperative efforts of the communities, citizens, and the state. The legislature finds that the Washington council for prevention of child abuse is an effective counsel for reducing child abuse but limited resources have prevented the council from funding promising prevention concepts state-wide.

It is the intent of the legislature to establish a cost-neutral revenue system for the children's trust fund which is designed to fund primary prevention programs and innovative prevention related activities such as research or public awareness campaigns. The fund shall be supported through revenue created by the sale of heirloom birth certificates. This concept has proven to be a cost-effective approach to

funding child abuse prevention in the state of Oregon. The legislature believes that this is an innovative way of using private dollars to supplement our public dollars to reduce child abuse and neglect." [1987 c 351 § 1.]

70.58.095 New certificate of birth—Legitimation, paternity—Substitution for original—Inspection of original, when—When delayed registration required.

The state registrar of vital statistics shall establish a new certificate of birth for a person born in this state when he receives a request that a new certificate be established and such evidence as required by regulation of the state board of health proving that such person has been acknowledged, or that a court of competent jurisdiction has determined the paternity of such person. When a new certificate of birth is established, the actual place and date of birth shall be shown. It shall be substituted for the original certificate of birth. Thereafter, the original certificate and the evidence of paternity, or acknowledgment shall not be subject to inspection except upon order of a court of competent jurisdiction, or upon written request of the department of social and health services, the attorney general, or a prosecuting attorney, stating that the documents are being sought in furtherance of an action to enforce a duty of support. If no certificate of birth is on file for the person for whom a new certificate is to be established under this section, a delayed registration of birth shall be filed with the state registrar of vital statistics as provided in RCW 70.58-.120. [1983 1st ex.s. c 41 § 14; 1975-'76 2nd ex.s. c 42 § 38; 1961 ex.s. c 5 § 21.]

Severability—1983 1st ex.s. c 41: See note following RCW 26.09.060.

Severability—Construction—1975-'76 2nd ex.s. c 42: See RCW 26.26.900, 26.26.905.

70.58.100 Supplemental report on name of child. It shall be the duty of every local registrar when any certificate of birth of a living child is presented without statement of the given name, to make out and deliver to the parents of such child a special blank for the supplemental report of the given name of the child, which shall be filled out as directed and returned to the registrar as soon as the child has been named. [1915 c 180 § 8; 1907 c 83 § 14; RRS § 6031.]

70.58.104 Reproductions of vital records—Disclosure of information for research purposes—Issuance of birth and death records by local registrars. (1) The state registrar may prepare typewritten, photographic, electronic, or other reproductions of records of birth, death, fetal death, marriage, or decrees of divorce, annulment, or legal separation registered under law or that portion of the record of any birth which shows the child's full name, sex, date of birth, and date of filing of the certificate. Such reproductions, when certified by the state registrar, shall be considered for all purposes the same as the original and shall be prima facie evidence of the facts stated therein.

(2) The department may authorize by regulation the disclosure of information contained in vital records for

research purposes. All research proposals must be submitted to the department and must be reviewed and approved as to scientific merit and to ensure that confidentiality safeguards are provided in accordance with department policy.

(3) Local registrars may, upon request, furnish certified copies of the records of birth, death, and fetal death, subject to all provisions of state law applicable to the state registrar. Local registrars in health districts or departments that have within their jurisdiction cities of the first class may issue certified copies only if they have an original certificate in their possession at the time of issuance of a certified copy or have a copy of the original certificate transmitted to the state registrar which was produced by a photographic or other exact reproduction method. Local registrars of all counties or districts may, upon request, furnish certified copies of the records of birth, death, and fetal death during the period that the original certificates are in their possession prior to transmittal of the original certificates to the state registrar. Certified copy forms used by local registrars furnishing certified copies while the original records are in their possession shall be supplied or approved by the state registrar and no other forms shall be used. [1987 c 223 § 2.]

70.58.107 Fees charged by department and local registrars. The department of social and health services shall charge a fee of eleven dollars for certified copies of records and for copies or information provided for research, statistical, or administrative purposes, and eight dollars for a search of the files or records when no copy is made. The department shall prescribe by regulation fees to be paid for preparing sealed files and for opening sealed files.

No fee may be demanded or required for furnishing certified copies of a birth, death, fetal death, marriage, divorce, annulment, or legal separation record for use in connection with a claim for compensation or pension pending before the veterans administration.

The state department of social and health services shall keep a true and correct account of all fees received and turn the fees over to the state treasurer on a weekly basis.

Local registrars shall charge the same fees as the state as hereinabove provided and as prescribed by department regulation, except that local registrars shall charge eleven dollars for the first copy of a death certificate and six dollars for each additional copy of the same death certificate when the additional copies are ordered at the same time as the first copy. All such fees collected, except for three dollars of each fee for the issuance of a certified copy, shall be paid to the jurisdictional health department.

All local registrars in cities and counties shall keep a true and correct account of all fees received under this section for the issuance of certified copies and shall turn three dollars of the fee over to the state treasurer on or before the first day of January, April, July, and October.

Three dollars of each fee imposed for the issuance of certified copies, except for copies suitable for display issued under RCW 70.58.085, at both the state and local levels shall be held by the state treasurer in the death investigations account established by RCW 43.79.445. [1988 c 40 § 1; 1987 c 223 § 3.]

70.58.110 Delayed registration of births—Authorized. Whenever a birth which occurred in this state on or after July 1, 1907, is not on record in the office of the state registrar or in the office of the auditor of the county in which the birth occurred if the birth was prior to July 1, 1907, application for the registration of the birth may be made by the interested person to the state registrar: *Provided*, That if the person whose birth is to be recorded be a child under four years of age the attending physician, if available, shall make the registration. [1953 c 90 § 2; 1943 c 176 § 1; 1941 c 167 § 1; Rem. Supp. 1943 § 6011-1.]

70.58.120 Delayed registration of births—Application—Evidence required. The delayed registration of birth form shall be provided by the state registrar and shall be signed by the registrant if of legal age, or by the attendant at birth, parent, or guardian if the registrant is not of legal age. In instances of delayed registration of birth where the person whose birth is to be recorded is four years of age or over but under twelve years of age and in instances where the person whose birth is to be recorded is less than four years of age and the attending physician is not available to make the registration, the facts concerning date of birth, place of birth, and parentage shall be established by at least one piece of documentary evidence. In instances of delayed registration of birth where the person whose birth is to be recorded is twelve years of age or over, the facts concerning date of birth and place of birth shall be established by at least three documents of which only one may be an affidavit. The facts concerning parentage shall be established by at least one document. Documents, other than affidavits, or documents established prior to the fourth birthday of the registrant, shall be at least five years old or shall have been made from records established at least five years prior to the date of application. [1961 ex.s. c 5 § 9; 1953 c 90 § 3; 1943 c 176 § 2; 1941 c 167 § 2; Rem. Supp. 1943 § 6011-2.]

70.58.130 Delayed registration of births—Where registered—Copy as evidence. The birth shall be registered in the records of the state registrar. A certified copy of the record shall be prima facie evidence of the facts stated therein. [1961 ex.s. c 5 § 10; 1953 c 90 § 4; 1951 c 106 § 2; 1943 c 176 § 4; 1941 c 167 § 4; Rem. Supp. 1943 § 6011-4.]

70.58.145 Order establishing record of birth when delayed registration not available—Procedure. When a person alleged to be born in this state is unable to meet the requirements for a delayed registration of birth in accordance with RCW 70.58.120, he may petition the superior court of the county of residence or of the county

of birth for an order establishing a record of the date and place of his birth, and his parentage. The court shall fix a time for hearing the petition, and the state registrar shall be given notice at least twenty days prior to the date set for hearing in order that he may present at the hearing any information he believes will be useful to the court. If the court from the evidence presented to it finds that the petitioner was born in this state, the court shall issue an order to establish a record of birth. This order shall include the birth data to be registered. If the court orders the birth of a person born in this state registered, it shall be registered in the records of the state registrar. [1961 ex.s. c 5 § 20.]

70.58.150 "Fetal death", "evidence of life", defined.

A fetal death means any product of conception that shows no evidence of life after complete expulsion or extraction from its mother. The words "evidence of life" include breathing, beating of the heart, pulsation of the umbilical cord, or definite movement of voluntary muscles. [1961 ex.s. c 5 § 11; 1945 c 159 § 5; Rem. Supp. 1945 § 6024-5.]

70.58.160 Certificate of death or fetal death required.

A certificate of every death or fetal death shall be filed with the local registrar of the district in which the death or fetal death occurred within three days after the occurrence is known, or if the place of death or fetal death is not known, then with the local registrar of the district in which the body is found within twenty-four hours thereafter. In every instance a certificate shall be filed prior to the interment or other disposition of the body: *Provided*, That a certificate of fetal death shall not be required if the period of gestation is less than twenty weeks. [1961 ex.s. c 5 § 12; 1945 c 159 § 1; Rem. Supp. 1945 § 6024-1. Prior: 1915 c 180 § 4; 1907 c 83 § 5.]

70.58.170 Certificate of death or fetal death—By whom filed.

The funeral director or person in charge of interment shall file the certificate of death or fetal death. In preparing such certificate, the funeral director or person in charge of interment shall obtain and enter on the certificate such personal data as the certificate requires from the person or persons best qualified to supply them. He shall present the certificate of death to the physician last in attendance upon the deceased, or, if the deceased died without medical attendance, to the health officer, coroner, or prosecuting attorney having jurisdiction, who shall thereupon certify the cause of death according to his best knowledge and belief and shall sign the certificate of death or fetal death within two days after being presented with the certificate unless good cause for not signing the certificate within the two days can be established. He shall present the certificate of fetal death to the physician, midwife, or other person in attendance at the fetal death, who shall certify the fetal death and such medical data pertaining thereto as he can furnish. [1979 ex.s. c 162 § 1; 1961 ex.s. c 5 § 13; 1945 c 159 § 2; Rem. Supp. 1945 § 6024-2.]

70.58.180 Certificate when no physician in attendance—Legally accepted cause of death.

If the death occurred without medical attendance, the funeral director or person in charge of interment shall notify the coroner, or prosecuting attorney if there is no coroner in the county. If the circumstances suggest that the death or fetal death was caused by unlawful or unnatural causes or if there is no local health officer with jurisdiction, the coroner, or if none, the prosecuting attorney shall complete and sign the certification, noting upon the certificate that no physician was in attendance at the time of death. In case of any death without medical attendance in which there is no suspicion of death from unlawful or unnatural causes, the local health officer or his deputy, the coroner and if none, the prosecuting attorney, shall complete and sign the certification, noting upon the certificate that no physician was in attendance at the time of death, and noting the cause of death without the holding of an inquest or performing of an autopsy or post mortem, but from statements of relatives, persons in attendance during the last sickness, persons present at the time of death or other persons having adequate knowledge of the facts.

The cause of death, the manner and mode in which death occurred, as noted by the coroner or if none, the prosecuting attorney or the health officer and incorporated in the death certificate filed with the bureau of vital statistics of the board of health shall be the legally accepted manner and mode by which the deceased came to his or her death and shall be the legally accepted cause of death. [1961 ex.s. c 5 § 14; 1953 c 188 § 5; 1945 c 159 § 3; Rem. Supp. 1945 § 6024-3. Prior: 1915 c 180 § 5; 1907 c 83 § 7.]

70.58.190 Permit to dispose of body when cause of death undetermined.

If the cause of death cannot be determined within three days, the certification of its cause may be filed after the prescribed period, but the attending physician, coroner, or prosecuting attorney shall give the local registrar of the district in which the death occurred written notice of the reason for the delay, in order that a permit for the disposition of the body may be issued if required. [1945 c 159 § 4; Rem. Supp. 1945 § 6024-4.]

70.58.200 Forms of birth, death, marriage, and decrees of divorce, annulment, or separate maintenance certificates—Contents—Confidentiality.

The forms of birth, death, fetal death, marriage, and decrees of divorce, annulment, or separate maintenance certificates filed with the state registrar of vital statistics shall include the items required by the respective standard certificate as recommended by the federal agency responsible for national vital statistics, except that no information shall be required on the certificate of divorce relative to the date the couple separated or the number of children under eighteen years of age: *Provided*, That none of the information contained in the confidential section of the forms of marriage, divorce, annulment or separate maintenance shall be required: *Provided further*, That no information shall be required

on the certificate of live birth relative to the education of the parents of the child. The Washington state board of health by regulation may require additional pertinent information relative to the birth and manner of delivery as it may deem necessary for statistical study. This information shall be placed in a confidential section of the birth certificate form and shall not be subject to the view of the public or for certification purposes except upon order of a court: *Provided*, That the state board of health may eliminate from the forms any such items that it determines are not necessary for statistical study. [1979 ex.s. c 162 § 2; 1975-'76 2nd ex.s. c 42 § 39; 1969 ex.s. c 279 § 2; 1967 c 26 § 10; 1961 ex.s. c 5 § 15; 1945 c 159 § 6; Rem. Supp. 1945 § 6024-6. Prior: 1907 c 83 § 6.]

Severability—Construction—1975-'76 2nd ex.s. c 42: See RCW 26.26.900, 26.26.905.

Effective date—1967 c 26: See note following RCW 43.70.150.

70.58.210 Birth certificate upon adoption. (1) Whenever a decree of adoption has been entered declaring a child, born in the state of Washington, adopted in any court of competent jurisdiction in the state of Washington or any other state or any territory of the United States, a certified copy of the decree of adoption shall be recorded with the proper department of registration of births in the state of Washington and a certificate of birth shall issue upon request, bearing the new name of the child as shown in the decree of adoption, the names of the adoptive parents of the child and the age, sex, and date of birth of the child, but no reference in any birth certificate shall have reference to the adoption of the child. However, original registration of births shall remain a part of the record of the board of health.

(2) Whenever a decree of adoption has been entered declaring a child, born outside of the United States and its territories, adopted in any court of competent jurisdiction in the state of Washington, a certified copy of the decree of adoption together with evidence as to the child's birth date and birth place provided by the original birth certificate, or by a certified copy, extract, or translation thereof or by a certified copy of some other document essentially equivalent thereto, shall be recorded with the proper department of registration of births in the state of Washington. The records of the United States immigration and naturalization service or of the United States department of state are essentially equivalent to the birth certificate. A certificate of birth shall issue upon request, bearing the new name of the child as shown in the decree of adoption, the names of the adoptive parents of the child and the age, sex, and date of birth of the child, but no reference in any birth certificate shall have reference to the adoption of the child. Unless the court orders otherwise, the certificate of birth shall have the same overall appearance as the certificate which would have been issued if the adopted child had been born in the state of Washington.

A person born outside of the United States and its territories for whom a decree of adoption has been entered in a court of this state before September 1, 1979,

may apply for a certificate of birth under this subsection by furnishing the proper department of registration of births with a certified copy of the decree of adoption together with the other evidence required by this subsection as to the date and place of birth. Upon receipt of the decree and evidence, a certificate of birth shall be issued in accordance with this subsection. [1979 ex.s. c 101 § 2; 1975-'76 2nd ex.s. c 42 § 40; 1943 c 12 § 1; 1939 c 133 § 1; Rem. Supp. 1943 § 6013-1.]

Severability—1979 ex.s. c 101: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1979 ex.s. c 101 § 3.]

Severability—Construction—1975-'76 2nd ex.s. c 42: See RCW 26.26.900, 26.26.905.

Adoption: Chapter 26.33 RCW.

Decree of adoption—Duties of state registrar of vital statistics: RCW 26.33.290.

Uniform parentage act: Chapter 26.26 RCW.

70.58.230 Permits for burial, removal, etc., required—Removal to another district without permit, notice to registrar, fee. It shall be unlawful for any person to inter, deposit in a vault, grave, or tomb, cremate or otherwise dispose of, or disinter or remove from one registration district to another, or hold for more than seventy-two hours after death, the body or remains of any person whose death occurred in this state or any body which shall be found in this state, without obtaining, from the local registrar of the district in which the death occurred or in which the body was found, a permit for the burial, disinterment, or removal of such body: *Provided*, That a licensed funeral director or embalmer of this state may remove a body from the district where the death occurred to another registration district without having obtained a permit but in such cases the funeral director or embalmer shall at the time of removing a body file with or mail to the local registrar of the district where the death occurred a notice of removal upon a blank to be furnished by the state registrar. The notice of removal shall be signed by the funeral director or embalmer and shall contain the name and address of the local registrar with whom the certificate of death will be filed and the burial-transit permit secured. Every local registrar, accepting a death certificate and issuing a burial-transit permit for a death that occurred outside his district, shall be entitled to a fee of one dollar to be paid by the funeral director or embalmer at the time the death certificate is accepted and the permit is secured. It shall be unlawful for any person to bring into or transport within the state or inter, deposit in a vault, grave, or tomb, or cremate or otherwise dispose of the body or remains of any person whose death occurred outside this state unless such body or remains be accompanied by a removal or transit permit issued in accordance with the law and health regulations in force where the death occurred, or unless a special permit for bringing such body into this state shall be obtained from the state registrar. [1961 ex.s. c 5 § 16; 1915 c 180 § 3; 1907 c 83 § 4; RRS § 6021.]

Cemeteries and human remains: Title 68 RCW.

70.58.240 Duties of funeral directors. Each funeral director or person acting as such shall obtain a certificate of death and file the same with the local registrar, and secure a burial-transit permit, prior to any permanent disposition of the body. He shall obtain the personal and statistical particulars required, from the person best qualified to supply them. He shall present the certificate to the attending physician or in case the death occurred without any medical attendance, to the proper official for certification for the medical certificate of the cause of death and other particulars necessary to complete the record. He shall supply the information required relative to the date and place of disposition and he shall present the completed certificate to the local registrar, for the issuance of a burial-transit permit. He shall deliver the burial permit to the sexton, or person in charge of the place of burial, before interring the body; or shall attach the transit permit to the box containing the corpse, when shipped by any transportation company, and the permit shall accompany the corpse to its destination. [1961 ex.s. c 5 § 17; 1915 c 180 § 6; 1907 c 83 § 8; RRS § 6025.]

70.58.250 Burial-transit permit—Requisites. The burial-transit permit shall contain a statement by the local registrar and over his signature, that a satisfactory certificate of death having been filed with him, as required by law, permission is granted to inter, remove, or otherwise dispose of the body; stating the name of the deceased and other necessary details upon the form prescribed by the state registrar. [1961 ex.s. c 5 § 18; 1907 c 83 § 9; RRS § 6026.]

70.58.260 Burial grounds—Duties of sexton. It shall be unlawful for any person in charge of any premises in which bodies of deceased persons are interred, cremated or otherwise permanently disposed of, to permit the interment, cremation or other disposition of any body upon such premises unless it is accompanied by a burial, removal or transit permit as hereinabove provided. It shall be the duty of the person in charge of any such premises to, in case of the interment, cremation or other disposition of a body therein, endorse upon the permit the date and character of such disposition, over his signature, to return all permits so endorsed to the local registrar of his district within ten days from the date of such disposition, and to keep a record of all bodies disposed of on the premises under his charge, stating, in each case, the name of the deceased person, if known, the place of death, the date of burial or other disposition, and the name and address of the undertaker, which record shall at all times be open to public inspection, and it shall be the duty of every undertaker, or person acting as such, when burying a body in a cemetery or burial grounds having no person in charge, to sign the burial, removal or transit permit, giving the date of burial, write across the face of the permit the words "no person in charge", and file the burial, removal or transit permit within ten days with the registrar of the district in which the cemetery is located. [1915 c 180 § 7; 1907 c 83 § 10; RRS § 6027.]

70.58.270 Data on inmates of hospitals, etc. All superintendents or managers, or other persons in charge of hospitals, almshouses, lying-in or other institutions, public or private, to which persons resort for treatment of disease, confinement, or are committed by process of law, are hereby required to make a record of all the personal and statistical particulars relative to the inmates in their institutions, at the date of approval of *this act, that are required in the form of the certificate provided for by this act, as directed by the state registrar; and thereafter such record shall be by them made for all future inmates at the time of their admission. And in case of persons admitted or committed for medical treatment of contagious disease, the physician in charge shall specify, for entry in the record, the nature of the disease, and where, in his opinion, it was contracted. The personal particulars and information required by this section shall be obtained from the individual himself, if it is practicable to do so; and when they cannot be so obtained, they shall be secured in as complete a manner as possible from the relatives, friends, or other persons acquainted with the facts. [1907 c 83 § 16; RRS § 6033.]

*Reviser's note: For "this act," see note following RCW 70.58.050.

70.58.280 Penalty. Every person who shall violate or wilfully fail, neglect or refuse to comply with any provisions of *this act shall be guilty of a misdemeanor and for a second offense shall be punished by a fine of not less than twenty-five dollars, and for a third and each subsequent offense shall be punished by a fine of not less than fifty dollars or more than two hundred and fifty dollars or by imprisonment for not more than ninety days, or by both fine and imprisonment, and every person who shall wilfully furnish any false information for any certificate required by *this act or who shall make any false statement in any such certificate shall be guilty of a gross misdemeanor. [1915 c 180 § 12; 1907 c 83 § 21; RRS § 6038.]

*Reviser's note: For "this act," see note following RCW 70.58.050.

70.58.290 Local registrar to furnish list of deceased voters. See RCW 29.10.095.

70.58.300 Registry for handicapped children—Purpose. The purpose of this enactment is to provide a registry for handicapped children as an aid to their timely treatment and care. [1959 c 177 § 1.]

70.58.310 Registry for handicapped children—To be established and maintained. The secretary of social and health services, through the state registrar of vital statistics, shall establish and maintain a registry for handicapped children. [1979 c 141 § 110; 1959 c 177 § 2.]

70.58.320 Registry for handicapped children—Reports by physician of sentinel defects or disabling conditions—Reports by persons filling out birth certificate. Whenever the attending physician discovers that a newborn child has a sentinel defect, and whenever a

physician discovers upon treating a child under the age of fourteen years that such child has a partial or complete disability or a condition which may lead to partial or complete disability, such fact shall be reported to the local registrar and to the parents, or legal guardians of the child, upon a form to be provided by the secretary of social and health services. No report shall be required if the disabling condition has been previously reported or the condition is not one required to be reported by the secretary of social and health services. Sentinel defects shall be reported at the same time as birth certificates are required to be filed. Each physician shall make a report as to disabling conditions within thirty days after discovery thereof. If a child with sentinel birth defects is born outside the hospital, the person filling out the birth certificate shall make a report to the department.

The forms to be provided by the secretary of social and health services for this purpose shall require such information as the secretary deems necessary to carry out the purpose of RCW 70.58.300 through 70.58.350. [1984 c 156 § 1; 1979 c 141 § 111; 1959 c 177 § 3.]

70.58.322 Registry for handicapped children—"Sentinel birth defects" defined. Sentinel birth defect shall mean a birth defect whose occurrence signals the possible presence of environmental hazards, genetic disease, poor quality health care, or some other factor determined by the users of the data to be present when a certain birth defect occurs.

Sentinel birth defects include, but are not limited to:

- (1) Anencephaly;
- (2) Spina bifida;
- (3) Hydrocephaly;
- (4) Cleft palate;
- (5) Total cleft palate;
- (6) Esophageal atresia and stenosis;
- (7) Rectal and anal atresia;
- (8) Hypospadias;
- (9) Reduction and deformity of the upper limb;
- (10) Reduction and deformity of the lower limb;
- (11) Congenital dislocation of the hip; and
- (12) Down's syndrome. [1984 c 156 § 2.]

70.58.324 Registry for handicapped children—Disclosure of children's identity—Requirements. (1) The department shall not disclose the identity of a sentinel birth defect child from reports required under RCW 70.58.320 unless:

(a) There is a demonstrated public health need for the individual identity;

(b) The department obtains written consent of the parent or guardian of the child; and

(c) The department assures that the identity of the child shall not be released without the written consent of the parent or guardian.

(2) If there is a demonstrated need for the individual identity of children without sentinel birth defects to conduct a case-control investigation, subsection (1) (a), (b), and (c) of this section shall apply. [1984 c 156 § 3.]

70.58.330 Registry for handicapped children—Reports of physicians confidential—Exceptions. Except compilations of statistical data furnished by the department, the information furnished in the reports required by RCW 70.58.320 shall be secret and shall not be revealed except upon order of the superior court or by the process established by RCW 70.58.324. A parent or legal guardian of a child who is the subject of a report required by RCW 70.58.320 shall have access to such report or reports. [1984 c 156 § 4; 1959 c 177 § 4.]

70.58.332 Information on sentinel birth defects and services for disabled. The department shall assure that information is prepared and periodically updated on:

(1) Sentinel birth defects; and

(2) Public and private services for the disabled with sentinel birth defects. [1984 c 156 § 5.]

70.58.334 Committee to determine information to be prepared on sentinel birth defects and services. The secretary shall appoint a committee of physicians, educators, social service specialists, representatives of the department, representatives of the state board of health, representatives of the superintendent of public instruction, and parents of children with sentinel birth defects. The committee shall determine what information is to be prepared and furnished on sentinel birth defects and public and private services as required by RCW 70.58.332. [1984 c 156 § 6.]

70.58.338 Monitoring of sentinel birth defect trends. The department shall develop procedures to monitor the data on sentinel birth defect trends which may be caused by environmental hazards. [1984 c 156 § 7.]

70.58.340 Registry for handicapped children—Cooperation with private or public organizations or agencies—Contributions. The secretary of social and health services and any local health officer is authorized to cooperate with and to promote the aid of any medical, health, nursing, welfare, or other private groups or organizations, and with any state agency or political subdivision to furnish statistical data in furtherance of the purpose of RCW 70.58.300 through 70.58.350. The secretary or any local health officer may accept contributions or gifts in cash or otherwise from any person, group, or governmental agency to further the purpose of RCW 70.58.300 through 70.58.350. [1979 c 141 § 112; 1959 c 177 § 5.]

70.58.350 Registry for handicapped children—Rules and regulations. The state board of health is authorized to make such rules and regulations as are necessary to carry out the purpose of RCW 70.58.300 through 70.58.350. [1959 c 177 § 6.]

70.58.380 Certificates for out-of-state marriage license requirements. The department shall prescribe by rule a schedule of fees for providing certificates necessary to meet marriage license requirements of other

states. The fees shall be predicated on the costs of conducting premarital blood screening tests and issuing certificates. [1981 c 284 § 1.]

Reviser's note: Although 1981 c 284 directs this section be added to chapter 74.04 RCW, codification here is considered more appropriate. The department of social and health services is apparently the department referred to.

70.58.390 Certificates of presumed death incident to accidents, disasters. A county coroner, medical examiner, or the prosecuting attorney having jurisdiction may issue a certificate of presumed death when the official issuing the certificate determines to the best of the official's knowledge and belief that there is sufficient circumstantial evidence to indicate that a person has in fact died in the county or in waters contiguous to the county as a result of an accident or natural disaster, such as a drowning, flood, earthquake, volcanic eruption, or similar occurrence, and that it is unlikely that the body will be recovered. The certificate shall recite, to the extent possible, the date, circumstances, and place of the death, and shall be the legally accepted fact of death.

In the event that the county in which the death occurred cannot be determined with certainty, the county coroner, medical examiner, or prosecuting attorney in the county in which the events occurred and in which the decedent was last known to be alive may issue a certificate of presumed death under this section.

The official issuing the certificate of presumed death shall file the certificate with the state registrar of vital statistics, and thereafter all persons and parties acting in good faith may rely thereon with acquittance. [1981 c 176 § 1.]

Chapter 70.62

TRANSIENT ACCOMMODATIONS— LICENSING—INSPECTIONS

Sections

70.62.200	Purpose.
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70.62.220	License required—Fee—Display.
70.62.230	Inspection fee.
70.62.240	Rules and regulations.
70.62.250	Powers and duties of department.
70.62.260	Licenses—Applications—Expiration—Renewal.
70.62.270	Suspension or revocation of licenses.
70.62.280	Violations—Penalty.
70.62.290	Fire and safety rules and regulations—Duties of director of community development.
70.62.900	Severability—1971 ex.s. c 239.

Reviser's note: Throughout this chapter, the terms "this 1971 amendatory act" or "this act" have been changed to "this chapter". "This 1971 amendatory act" and "this act" consist of this chapter, the amendment of RCW 43.22.050 and the repeal of RCW 70.62.010 through 70.62.130 and 43.22.060 through 43.22.110 by 1971 ex.s. c 239.

Hotels: Chapter 19.48 RCW.

Lien of hotels, lodging and boarding houses: Chapter 60.64 RCW.

70.62.200 Purpose. The purpose of this chapter is to provide for the development, establishment, and enforcement of standards for the maintenance and operation of

hotels and motels through a licensing program to promote the protection of the health and welfare of individuals using such accommodations in this state. [1971 ex.s. c 239 § 1.]

70.62.210 Definitions. The following terms whenever used or referred to in this chapter shall have the following respective meanings for the purposes of this chapter, except in those instances where the context clearly indicates otherwise:

(1) The term "transient accommodation" shall mean any facility such as a hotel, motel, condominium, resort, or any other facility or place offering three or more lodging units to travelers and transient guests.

(2) The term "person" shall mean any individual, firm, partnership, corporation, company, association or joint stock association, and the legal successor thereof.

(3) The term "secretary" shall mean the secretary of the Washington state department of social and health services and any duly authorized representative thereof.

(4) The term "board" shall mean the Washington state board of health.

(5) The term "department" shall mean the Washington state department of social and health services.

(6) The term "lodging unit" shall mean one self-contained unit designated by number, letter or some other method of identification. [1971 ex.s. c 239 § 2.]

***Reviser's note:** Powers and duties of the department of social and health services and the secretary of social and health services transferred to the department of health and the secretary of health. See RCW 43.70.060.

70.62.220 License required—Fee—Display. The person operating a transient accommodation as defined in this chapter shall secure each year an annual operating license and shall pay a fee therefor as established by the department under RCW 43.20B.110. The annual licensure period shall run from January 1st through December 31st of each year. The license fee shall be paid to the department prior to the time the license is issued and such license shall be conspicuously displayed in the lobby or office of the facility for which it is issued. [1987 c 75 § 9; 1982 c 201 § 10; 1971 ex.s. c 239 § 3.]

Savings—Severability—1987 c 75: See RCW 43.20B.900 and 43.20B.901.

70.62.230 Inspection fee. In addition to the annual license fee, the person operating a transient accommodation shall pay an annual inspection fee for any inspection made during the course of the year. Fees for inspection shall be as established by the department under RCW 43.20B.110. [1987 c 75 § 10; 1982 c 201 § 11; 1971 ex.s. c 239 § 4.]

Savings—Severability—1987 c 75: See RCW 43.20B.900 and 43.20B.901.

70.62.240 Rules and regulations. The board shall promulgate such rules and regulations, to be effective no sooner than February 1, 1972, as may be necessary to

assure that each transient accommodation will be operated and maintained in a manner consistent with the health and welfare of the members of the public using such facilities. Such rules and regulations shall provide for adequate light, heat, ventilation, cleanliness, and sanitation and shall include provisions to assure adequate maintenance. All rules and regulations and amendments thereto shall be adopted in conformance with the provisions of chapter 34.05 RCW. [1971 ex.s. c 239 § 5.]

70.62.250 Powers and duties of department. The department is hereby granted and shall have and exercise, in addition to the powers herein granted, all the powers necessary and appropriate to carry out and execute the purposes of this chapter, including but not limited to the power:

(1) To develop such rules and regulations for proposed adoption by the board as may be necessary to implement the purposes of this chapter;

(2) To enter and inspect at any reasonable time any transient accommodation and to make such investigations as are reasonably necessary to carry out the provisions of this chapter and any rules and regulations promulgated thereunder: *Provided*, That no room or suite shall be entered for inspection unless said room or suite is not occupied by any patron or guest of the transient accommodation at the time of entry;

(3) To perform such other duties and employ such personnel as may be necessary to carry out the provisions of this chapter; and

(4) To administer and enforce the provisions of this chapter and the rules and regulations promulgated thereunder by the board. [1971 ex.s. c 239 § 6.]

70.62.260 Licenses—Applications—Expiration—Renewal. No person shall operate a transient accommodation as defined in this chapter without having a valid license issued by the department. Applications for a license to operate a transient accommodation shall be filed with the department prior to July 1, 1971, and one-half of the annual license fee shall be included with the application. All licenses issued under the provisions of this chapter shall expire on the first day of January next succeeding the date of issue. All applications for renewal of licenses shall be made not later than thirty days prior to the date of expiration of the license. Each license shall be issued only for the premises and persons named in the application. [1971 ex.s. c 239 § 7.]

70.62.270 Suspension or revocation of licenses. Licenses issued under this chapter may be suspended or revoked upon the failure or refusal of the person operating a transient accommodation to comply with the provisions of this chapter, or of any rules and regulations adopted by the board hereunder. All such proceedings shall be governed by the provisions of chapter 34.05 RCW. [1971 ex.s. c 239 § 8.]

70.62.280 Violations—Penalty. Any violation of this chapter or the rules and regulations promulgated

hereunder by any person operating a transient accommodation shall be a misdemeanor and shall be punished as such. Each day of operation of a transient accommodation in violation of this chapter shall constitute a separate offense. [1971 ex.s. c 239 § 10.]

70.62.290 Fire and safety rules and regulations—Duties of director of community development. Rules and regulations establishing fire and life safety requirements, not inconsistent with the provisions of this chapter, shall continue to be promulgated and enforced by the director of community development, through the director of fire protection. [1986 c 266 § 95; 1971 ex.s. c 239 § 11.]

Severability—1986 c 266: See note following RCW 38.52.005.

70.62.900 Severability—1971 ex.s. c 239. If any section or any portion of any section of this 1971 amendatory act is found to be unconstitutional, the finding shall be to the individual section or portion of section specifically found to be unconstitutional and the balance of the act shall remain in full force and effect. [1971 ex.s. c 239 § 12.]

Chapter 70.74

WASHINGTON STATE EXPLOSIVES ACT

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70.74.360	Licenses—Fingerprint and criminal record checks—Fee—Licenses prohibited for certain persons—License fees.
70.74.370	License revocation, nonrenewal, or suspension.
70.74.380	Licenses—Expiration—Extension of storage licenses.
70.74.390	Implementation of chapter and rules pursuant to chapter 49.17 RCW.

70.74.010 Definitions. As used in this chapter, unless a different meaning is plainly required by the context:

The terms "authorized", "approved" or "approval" shall be held to mean authorized, approved, or approval by the department of labor and industries.

The term "blasting agent" shall be held to mean and include any material or mixture consisting of a fuel and oxidizer, intended for blasting, not otherwise classified as an explosive, and in which none of the ingredients are classified as an explosive, provided that the finished product, as mixed and packaged for use or shipment, cannot be detonated when unconfined by means of a No. 8 test blasting cap.

The term "explosive" or "explosives" whenever used in this chapter, shall be held to mean and include any chemical compound or mechanical mixture that is commonly used or intended for the purpose of producing an explosion, that contains any oxidizing and combustible units, or other ingredients, in such proportions, quantities or packing, that an ignition by fire, by friction, by concussion, by percussion, or by detonation of any part of the compound or mixture may cause such a sudden generation of highly heated gases that the resultant gaseous pressures are capable of producing destructive effects on contiguous objects or of destroying life or limb. In addition, the term "explosives" shall include all material which is classified as class A, class B, and class C explosives by the federal department of transportation: *Provided*, That for the purposes of this chapter small arms ammunition, small arms ammunition primers, smokeless powder not exceeding fifty pounds, and black powder not exceeding five pounds shall not be defined as explosives.

Classification of explosives shall include but not be limited to the following:

CLASS A EXPLOSIVES: (Possessing detonating hazard) dynamite, nitroglycerin, picric acid, lead azide, fulminate of mercury, black powder exceeding five pounds, blasting caps in quantities of 1001 or more, and detonating primers.

CLASS B EXPLOSIVES: (Possessing flammable hazard) propellant explosives, including smokeless propellants exceeding fifty pounds.

CLASS C EXPLOSIVES: (Including certain types of manufactured articles which contain class A or class B explosives, or both, as components but in restricted quantities) blasting caps in quantities of 1000 or less.

The term "explosive-actuated power devices" shall be held to mean any tool or special mechanized device which is actuated by explosives, but not to include propellant-actuated power devices.

The term "magazine", shall be held to mean and include any building or other structure, other than a factory building, used for the storage of explosives.

The term "inhabited building", shall be held to mean and include only a building regularly occupied in whole or in part as a habitation for human beings, or any church, schoolhouse, railroad station, store, or other building where people are accustomed to assemble, other than any building or structure occupied in connection with the manufacture, transportation, storage, or use of explosives.

The term "explosives manufacturing plant" shall be held to mean and include all lands, with the buildings situated thereon, used in connection with the manufacturing or processing of explosives or in which any process involving explosives is carried on, or the storage of explosives thereat, as well as any premises where explosives are used as a component part or ingredient in the manufacture of any article or device.

The term "explosives manufacturing building", shall be held to mean and include any building or other structure (excepting magazines) containing explosives, in which the manufacture of explosives, or any processing involving explosives, is carried on, and any building where explosives are used as a component part or ingredient in the manufacture of any article or device.

The term "railroad" shall be held to mean and include any steam, electric, or other railroad which carries passengers for hire.

The term "highway" shall be held to mean and include any public street, public alley, or public road.

The term "efficient artificial barricade" shall be held to mean an artificial mound or properly revetted wall of earth of a minimum thickness of not less than three feet or such other artificial barricade as approved by the department of labor and industries.

The term "person" shall be held to mean and include any individual, firm, copartnership, corporation, company, association, joint stock association, and including any trustee, receiver, assignee, or personal representative thereof.

The term "dealer" shall be held to mean and include any person who purchases explosives or blasting agents for the sole purpose of resale, and not for use or consumption.

The term "forbidden or not acceptable explosives" shall be held to mean and include explosives which are forbidden or not acceptable for transportation by common carriers by rail freight, rail express, highway, or

water in accordance with the regulations of the federal department of transportation.

The term "handloader" shall be held to mean and include any person who engages in the noncommercial assembling of small arms ammunition for his own use, specifically the operation of installing new primers, powder, and projectiles into cartridge cases.

The term "handloader components" means small arms ammunition, small arms ammunition primers, smokeless powder not exceeding fifty pounds, and black powder as used in muzzle loading firearms not exceeding five pounds.

The term "fuel" shall be held to mean and include a substance which may react with the oxygen in the air or with the oxygen yielded by an oxidizer to produce combustion.

The term "motor vehicle" shall be held to mean and include any self-propelled automobile, truck, tractor, semi-trailer or full trailer, or other conveyance used for the transportation of freight.

The term "natural barricade" shall be held to mean and include any natural hill, mound, wall, or barrier composed of earth or rock or other solid material of a minimum thickness of not less than three feet.

The term "oxidizer" shall be held to mean a substance that yields oxygen readily to stimulate the combustion of organic matter or other fuel.

The term "propellant-actuated power device" shall be held to mean and include any tool or special mechanized device or gas generator system which is actuated by a propellant or which releases and directs work through a propellant charge.

The term "public conveyance" shall be held to mean and include any railroad car, streetcar, ferry, cab, bus, airplane, or other vehicle which is carrying passengers for hire.

The term "public utility transmission system" shall mean power transmission lines over 10 KV, telephone cables, or microwave transmission systems, or buried or exposed pipelines carrying water, natural gas, petroleum, or crude oil, or refined products and chemicals, whose services are regulated by the utilities and transportation commission, municipal, or other publicly owned systems.

The term "purchaser" shall be held to mean any person who buys, accepts, or receives any explosives or blasting agents.

The term "pyrotechnics" shall be held to mean and include any combustible or explosive compositions or manufactured articles designed and prepared for the purpose of producing audible or visible effects which are commonly referred to as fireworks.

The term "small arms ammunition" shall be held to mean and include any shotgun, rifle, pistol, or revolver cartridge, and cartridges for propellant-actuated power devices and industrial guns. Military-type ammunition containing explosive bursting charges, incendiary, tracer, spotting, or pyrotechnic projectiles is excluded from this definition.

The term "small arms ammunition primers" shall be held to mean small percussion-sensitive explosive

charges encased in a cup, used to ignite propellant powder and shall include percussion caps as used in muzzle loaders.

The term "smokeless propellants" shall be held to mean and include solid chemicals or solid chemical mixtures in excess of fifty pounds which function by rapid combustion.

The term "user" shall be held to mean and include any natural person, manufacturer, or blaster who acquires, purchases, or uses explosives as an ultimate consumer or who supervises such use.

Words used in the singular number shall include the plural, and the plural the singular. [1972 ex.s. c 88 § 5; 1970 ex.s. c 72 § 1; 1969 ex.s. c 137 § 3; 1931 c 111 § 1; RRS § 5440-1.]

Severability—1931 c 111: "In case any provision of this act shall be adjudged unconstitutional, or void for any other reason, such adjudication shall not affect any of the other provisions of this act." [1931 c 111 § 19.]

70.74.020 Restrictions on manufacture, sale, or storage—Users—Reports on storage—Waiver. (1) No person shall manufacture, possess, store, sell, purchase, transport, or use explosives or blasting agents except in compliance with this chapter.

(2) The director of the department of labor and industries shall make and promulgate rules and regulations concerning qualifications of users of explosives and shall have the authority to issue licenses for users of explosives to effectuate the purpose of this chapter: *Provided*, That where there is a finding by the director that the use or disposition of explosives in any class of industry presents no unusual hazard to the safety of life or limb of persons employed therewith, and where the users are supervised by a superior in an employment relationship who is sufficiently experienced in the use of explosives, and who possesses a license for such use under this chapter, the director in his discretion may exclude said users in those classes of industry from individual licensing.

(3) The director of the department of labor and industries shall make and promulgate rules and regulations concerning the manufacture, sale, purchase, use, transportation, storage, and disposal of explosives, and shall have the authority to issue licenses for the manufacture, purchase, sale, use, transportation, and storage of explosives to effectuate the purpose of this chapter. The director of the department of labor and industries is hereby delegated the authority to grant written waiver of this chapter whenever it can be shown that the manufacturing, handling, or storing of explosives are in compliance with applicable national or federal explosive safety standards: *Provided*, That any resident of this state who is qualified to purchase explosives in this state and who has complied with the provisions of this chapter applicable to him may purchase explosives from an authorized dealer of a bordering state and may transport said explosives into this state for use herein: *Provided further*, That residents of this state shall, within ten days of the date of purchase, present to the department of labor and industries a report signed by both vendor and

vendee of every purchase from an out of state dealer, said report indicating the date of purchase, name of vendor, vendor's license number, vendor's business address, amount and kind of explosives purchased, the name of the purchaser, the purchaser's license number, and the name of receiver if different than purchaser.

(4) It shall be unlawful to sell, give away or otherwise dispose of, or deliver to any person under twenty-one years of age any explosives including black powder, and blasting caps or other explosive igniters, whether said person is acting for himself or for any other person: *Provided*, That small arms ammunition and handloader components shall not be considered explosives for the purposes of this section: *Provided further*, That if there is a finding by the director that said use or disposition of explosives poses no unusual hazard to the safety of life or limb in any class of industry, where persons eighteen years of age or older are employed as users, and where said persons are adequately trained and adequately supervised by a superior in an employment relationship who is sufficiently experienced in the use of explosives, and who possesses a valid license for such use under this chapter, the director in his discretion may exclude said persons in that class of industry from said minimum age requirement.

(5) All persons engaged in keeping, using, or storing any compound, mixture, or material, in wet condition, or otherwise, which upon drying out or undergoing other physical changes, may become an explosive within the definition of RCW 70.74.010, shall report in writing subscribed to by such person or his agent, to the department of labor and industries, report blanks to be furnished by such department, and such reports to require:

(a) The kind of compound, mixture, or material kept or stored, and maximum quantity thereof;

(b) Condition or state of compound, mixture, or material;

(c) Place where kept or stored.

The department of labor and industries may at any time cause an inspection to be made to determine whether the condition of the compound, mixture, or material is as reported. [1982 c 111 § 1; 1972 ex.s. c 88 § 6; 1969 ex.s. c 137 § 4; 1967 c 99 § 1; 1931 c 111 § 2; RRS § 5440-2.]

70.74.022 License required to manufacture, purchase, sell, use, or store explosives—Penalty—Surrender of explosives by unlicensed person—Other relief. (1) It is unlawful for any person to manufacture, purchase, sell, use, or store any explosive without having a validly issued license from the department of labor and industries, which license has not been revoked or suspended. Violation of this section is a gross misdemeanor.

(2) Upon notice from the department of labor and industries or any law enforcement agency having jurisdiction, a person manufacturing, purchasing, selling, using,

or storing any explosive without a license shall immediately surrender any and all such explosives to the department or to the respective law enforcement agency.

(3) At any time that the director of labor and industries requests the surrender of explosives from any person pursuant to subsection (2) of this section, the director may in addition request the attorney general to make application to the superior court of the county in which the unlawful practice exists for a temporary restraining order or such other relief as appears to be appropriate under the circumstances. [1988 c 198 § 10.]

70.74.025 Magazines—Classification, location and construction—Standards—Use. The director of the department of labor and industries shall establish by rule or regulation requirements for classification, location and construction of magazines for storage of explosives in compliance with accepted applicable explosive safety standards. All explosives shall be kept in magazines which meet the requirements of this chapter. [1969 ex.s. c 137 § 9.]

70.74.030 Quantity and distance tables for storage—Adoption by rule. All explosive manufacturing buildings and magazines in which explosives or blasting agents except small arms ammunition and smokeless powder are had, kept, or stored, must be located at distances from inhabited buildings, railroads, highways, and public utility transmission systems in conformity with the quantity and distance tables adopted by the department of labor and industries by rule. The department of labor and industries shall adopt the quantity and distance tables promulgated by the federal bureau of alcohol, tobacco, and firearms unless the department determines the tables to be inappropriate. The tables shall be the basis on which applications for storage license[s] are made and storage licenses issued as provided in RCW 70.74.110 and 70.74.120. [1988 c 198 § 1; 1972 ex.s. c 88 § 7; 1969 ex.s. c 137 § 10; 1931 c 111 § 5; RRS § 5440-5.]

70.74.040 Limit on storage quantity. No quantity in excess of three hundred thousand pounds, or the equivalent in blasting caps shall be had, kept or stored in any factory building or magazine in this state. [1970 ex.s. c 72 § 2; 1931 c 111 § 4; RRS § 5440-4.]

70.74.050 Quantity and distance table for explosives manufacturing buildings. All explosives manufacturing buildings shall be located one from the other and from other buildings on explosives manufacturing plants in which persons are regularly employed, and all magazines shall be located from factory buildings and buildings on explosives plants in which persons are regularly employed, in conformity with the intraexplosives plant quantity and distance table below set forth:

EXPLOSIVES		Distance Feet
Pounds Over	Pounds Not Over	
	10	
.....	10	40
10	25	60
25	50	80
50	100	100
100	200	120
200	300	130
300	400	140
400	500	160
500	750	180
750	1,000	210
1,000	1,500	230
1,500	2,000	260
2,000	3,000	280
3,000	4,000	300
4,000	5,000	320
5,000	6,000	340
6,000	7,000	360
7,000	8,000	380
8,000	9,000	400
9,000	10,000	420
10,000	12,500	450
12,500	15,000	470
15,000	17,500	490
17,500	20,000	530
20,000	25,000	560
25,000	30,000	590
30,000	35,000	620
35,000	40,000	640
40,000	45,000	660
45,000	50,000	680
50,000	55,000	700
55,000	60,000	720
60,000	65,000	740
65,000	70,000	770
70,000	75,000	780
75,000	80,000	790
80,000	85,000	800
85,000	90,000	820
90,000	95,000	830
95,000	100,000	900
100,000	125,000	950
125,000	150,000	1,000
150,000	175,000	1,050
175,000	200,000	1,100
200,000	225,000	1,150
225,000	250,000	

[1972 ex.s. c 88 § 8; 1931 c 111 § 5; RRS § 5440-5.]

70.74.061 Quantity and distance tables for separation between magazines—Adoption by rule. Magazines containing blasting caps and electric blasting caps shall be separated from other magazines containing like contents, or from magazines containing explosives by distances set in the quantity and distance tables adopted by the department of labor and industries by rule. The department of labor and industries shall adopt the quantity and distance tables promulgated by the federal bureau of alcohol, tobacco, and firearms unless the department determines the tables to be inappropriate. The tables shall be the basis on which applications for storage

license[s] are made and storage licenses issued as provided in RCW 70.74.110 and 70.74.120. [1988 c 198 § 2; 1969 ex.s. c 137 § 11.]

70.74.100 Storage of caps with explosives prohibited. No blasting caps, or other detonating or fulminating caps, or detonators, or flame-producing devices shall be kept or stored in any magazine in which other explosives are kept or stored. [1969 ex.s. c 137 § 12; 1931 c 111 § 10; RRS § 5440-10.]

70.74.110 Manufacturer's report—Inspection—License. All persons engaged in the manufacture of explosives, or any process involving explosives, or where explosives are used as a component part in the manufacture of any article or device, on the date when this 1969 amendatory act takes effect, shall within sixty days thereafter, and all persons engaging in the manufacture of explosives, or any process involving explosives, or where explosives are used as a component part in the manufacture of any article or device after this act takes effect shall, before so engaging, make an application in writing, subscribed to by such person or his agent, to the department of labor and industries, the application stating:

- (1) Location of place of manufacture or processing;
- (2) Kind of explosives manufactured, processed or used;
- (3) The distance that such explosives manufacturing building is located or intended to be located from the other factory buildings, magazines, inhabited buildings, railroads and highways and public utility transmission systems;
- (4) The name and address of the applicant;
- (5) The reason for desiring to manufacture explosives;
- (6) The applicant's citizenship, if the applicant is an individual;
- (7) If the applicant is a partnership, the names and addresses of the partners, and their citizenship;
- (8) If the applicant is an association or corporation, the names and addresses of the officers and directors thereof, and their citizenship; and
- (9) Such other pertinent information as the director of labor and industries shall require to effectuate the purpose of this chapter.

There shall be kept in the main office on the premises of each explosives manufacturing plant a plan of said plant showing the location of all explosives manufacturing buildings and the distance they are located from other factory buildings where persons are employed and from magazines, and these plans shall at all times be open to inspection by duly authorized inspectors of the department of labor and industries. The superintendent of each plant shall upon demand of said inspector furnish the following information:

- (a) The maximum amount and kind of explosive material which is or will be present in each building at one time.
- (b) The nature and kind of work carried on in each building and whether or not said buildings are surrounded by natural or artificial barricades.

The department of labor and industries shall as soon as possible after receiving such application cause an inspection to be made of the explosives manufacturing plant, and if found to be in accordance with RCW 70.74.030 and 70.74.050 and RCW 70.74.061, such department shall issue a license to the person applying therefor showing compliance with the provisions of this chapter if the applicant demonstrates that either the applicant or the officers, agents or employees of the applicant are sufficiently experienced in the manufacture of explosives and the applicant meets the qualifications for a license under RCW 70.74.360. Such license shall continue in full force and effect until expired, suspended, or revoked by the department pursuant to this chapter. [1988 c 198 § 5; 1969 ex.s. c 137 § 13; 1941 c 101 § 1; 1931 c 111 § 11; Rem. Supp. 1941 § 5440-1.]

Effective date—1969 ex.s. c 137: The effective date of 1969 ex.s. c 137 was August 11, 1969.

70.74.120 Storage report—Inspection—License—Cancellation. All persons engaged in keeping or storing and all persons having in their possession explosives on the date when this 1969 amendatory act takes effect shall within sixty days thereafter, and all persons engaging in keeping or storing explosives or coming into possession thereof after this act takes effect, shall before engaging in the keeping or storing of explosives or taking possession thereof, make an application in writing subscribed to by such person or his agent, to the department of labor and industries stating:

(1) The location of the magazine, if any, if then existing, or in case of a new magazine, the proposed location of such magazine;

(2) The kind of explosives that are kept or stored or possessed or intended to be kept or stored or possessed and the maximum quantity that is intended to be kept or stored or possessed thereat;

(3) The distance that such magazine is located or intended to be located from other magazines, inhabited buildings, explosives manufacturing buildings, railroads, highways and public utility transmission systems;

(4) The name and address of the applicant;

(5) The reason for desiring to store or possess explosives;

(6) The citizenship of the applicant if the applicant is an individual;

(7) If the applicant is a partnership, the names and addresses of the partners and their citizenship;

(8) If the applicant is an association or corporation, the names and addresses of the officers and directors thereof and their citizenship;

(9) And such other pertinent information as the director of the department of labor and industries shall require to effectuate the purpose of this chapter.

The department of labor and industries shall, as soon as may be after receiving such application, cause an inspection to be made of the magazine, if then constructed, and, in the case of a new magazine, as soon as may be after same is found to be constructed in accordance with the specification provided in RCW 70.74.025,

such department shall determine the amount of explosives that may be kept and stored in such magazine by reference to the quantity and distance tables specified in or adopted under this chapter and shall issue a license to the person applying therefor if the applicant demonstrates that either the applicant or the officers, agents, or employees of the applicant are sufficiently experienced in the handling of explosives and possess suitable storage facilities therefor, and that the applicant meets the qualifications for a license under RCW 70.74.360. Said license shall set forth the maximum quantity of explosives that may be had, kept or stored by said person. Such license shall be valid until canceled for one or more of the causes hereinafter provided. Whenever by reason of change in the physical conditions surrounding said magazine at the time of the issuance of the license therefor, such as:

(a) The erection of buildings nearer said magazine;

(b) The construction of railroads nearer said magazine;

(c) The opening for public travel of highways nearer said magazine; or

(d) The construction of public utilities transmission systems near said magazine; then the amounts of explosives which may be lawfully had, kept or stored in said magazine must be reduced to conform to such changed conditions in accordance with the quantity and distance table notwithstanding the license, and the department of labor and industries shall modify or cancel such license in accordance with the changed conditions. Whenever any person to whom a license has been issued, keeps or stores in the magazine or has in his possession, any quantity of explosives in excess of the maximum amount set forth in said license, or whenever any person fails for thirty days to pay the annual license fee hereinafter provided after the same becomes due, the department is authorized to cancel such license. Whenever a license is canceled by the department for any cause herein specified, the department shall notify the person to whom such license is issued of the fact of such cancellation and shall in said notice direct the removal of all explosives stored in said magazine within ten days from the giving of said notice, or, if the cause of cancellation be the failure to pay the annual license fee, or the fact that explosives are kept for an unlawful purpose, the department of labor and industries shall order such person to dispossess himself of said explosives within ten days from the giving of said notice. Failure to remove the explosives stored in said magazine or to dispossess oneself of the explosives as herein provided within the time specified in said notice shall constitute a violation of this chapter. [1988 c 198 § 6; 1969 ex.s. c 137 § 14; 1941 c 101 § 2; 1931 c 111 § 12; Rem. Supp. 1941 § 5440-12.]

Effective date—1969 ex.s. c 137: The effective date of 1969 ex.s. c 137 was August 11, 1969.

70.74.130 Dealer in explosives—Application—License. Every person desiring to engage in the business of dealing in explosives shall apply to the department of labor and industries for a license therefor. Said application shall state, among other things:

- (1) The name and address of applicant;
- (2) The reason for desiring to engage in the business of dealing in explosives;
- (3) Citizenship, if an individual applicant;
- (4) If a partnership, the names and addresses of the partners and their citizenship;
- (5) If an association or corporation, the names and addresses of the officers and directors thereof and their citizenship; and
- (6) Such other pertinent information as the director of labor and industries shall require to effectuate the purpose of this chapter.

The department of labor and industries shall issue the license if the applicant demonstrates that either the applicant or the principal officers, agents, or employees of the applicant are experienced in the business of dealing in explosives, possess suitable facilities therefor, have not been convicted of any crime that would warrant revocation or nonrenewal of a license under this chapter, and have never had an explosives-related license revoked under this chapter or under similar provisions of any other state. [1988 c 198 § 7; 1969 ex.s. c 137 § 16; 1941 c 101 § 3; Rem. Supp. 1941 § 5440-12a.]

70.74.135 Purchaser of explosives—Application—License. All persons desiring to purchase explosives except handloader components shall apply to the department of labor and industries for a license. Said application shall state, among other things:

- (1) The location where explosives are to be used;
- (2) The kind and amount of explosives to be used;
- (3) The name and address of the applicant;
- (4) The reason for desiring to use explosives;
- (5) The citizenship of the applicant if the applicant is an individual;
- (6) If the applicant is a partnership, the names and addresses of the partners and their citizenship;
- (7) If the applicant is an association or corporation, the names and addresses of the officers and directors thereof and their citizenship; and
- (8) Such other pertinent information as the director of the department of labor and industries shall require to effectuate the purpose of this chapter.

The department of labor and industries shall issue the license if the applicant demonstrates that either the applicant or the officers, agents or employees of the applicant are sufficiently experienced in the use of explosives to authorize a purchase license. However, no purchaser's license may be issued to any person who cannot document proof of possession or right to use approved and licensed storage facilities unless the person signs a statement certifying that explosives will not be stored. [1988 c 198 § 8; 1971 ex.s. c 302 § 7; 1970 ex.s. c 72 § 3; 1969 ex.s. c 137 § 18.]

Severability—1971 ex.s. c 302: See note following RCW 9.41.010.

70.74.137 Purchaser's license fee. Every person applying for a purchaser's license, or renewal thereof, shall pay an annual license fee of five dollars. The director of

labor and industries may adjust the amount of the license fee to reflect the administrative costs of the department. The fee shall not exceed fifteen dollars.

Said license fee shall accompany the application and shall be transmitted by the department to the state treasurer: *Provided*, That if the applicant is denied a purchaser's license the license fee shall be returned to said applicant by registered mail. [1988 c 198 § 12; 1972 ex.s. c 88 § 2.]

70.74.140 Storage license fee. Every person engaging in the business of keeping or storing of explosives shall pay an annual license fee for each magazine maintained, to be graduated by the department of labor and industries according to the quantity kept or stored therein, of ten dollars. The director of labor and industries may adjust the amount of the license fee to reflect the administrative costs of the department. The fee shall not exceed one hundred dollars.

Said license fee shall accompany the application and shall be transmitted by the department to the state treasurer. [1988 c 198 § 13; 1969 ex.s. c 137 § 15; 1931 c 111 § 13; RRS § 5440-13.]

70.74.142 User's license or renewal—Fee. Every person applying for a user's license, or renewal thereof, under this chapter shall pay an annual license fee of five dollars. The director of labor and industries may adjust the amount of the license fee to reflect the administrative costs of the department. The fee shall not exceed fifteen dollars.

Said license fee shall accompany the application, and be turned over by the department to the state treasurer: *Provided*, That if the applicant is denied a user's license the license fee shall be returned to said applicant by registered mail. [1988 c 198 § 14; 1972 ex.s. c 88 § 1.]

70.74.144 Manufacturer's license fee—Manufacturers to comply with dealer requirements when selling. Every person engaged in the business of manufacturing explosives shall pay an annual license fee of twenty-five dollars. The director of labor and industries may adjust the amount of the license fee to reflect the administrative costs of the department. The fee shall not exceed fifty dollars.

Businesses licensed to manufacture explosives are not required to have a dealer's license, but must comply with all of the dealer requirements of this chapter when they sell explosives.

The license fee shall accompany the application and shall be transmitted by the department to the state treasurer. [1988 c 198 § 15.]

70.74.146 Seller's license fee—Sellers to comply with dealer requirements. Every person engaged in the business of selling explosives shall pay an annual license fee of twenty-five dollars. The director of labor and industries may adjust the amount of the license fee to reflect the administrative costs of the department. The fee shall not exceed fifty dollars.

Businesses licensed to sell explosives must comply with all of the dealer requirements of this chapter.

The license fee shall accompany the application and shall be transmitted by the department to the state treasurer. [1988 c 198 § 16.]

70.74.150 Annual inspection. The department of labor and industries shall make, or cause to be made, at least one inspection during every year, of each licensed explosives plant or magazine. [1931 c 111 § 14; RRS § 5440-14.]

70.74.160 Unlawful access to explosives. No person, except an official as authorized herein or a person authorized to do so by the owner thereof, or his agent, shall enter any explosives manufacturing building, magazine or car, vehicle or other common carrier containing explosives in this state. [1969 ex.s. c 137 § 19; 1931 c 111 § 15; RRS § 5440-15.]

70.74.170 Discharge of firearms or igniting flame near explosives. No person shall discharge any firearms at or against any magazine or explosives manufacturing buildings or ignite any flame or flame-producing device nearer than two hundred feet from said magazine or explosives manufacturing building. [1969 ex.s. c 137 § 20; 1931 c 111 § 16; RRS § 5440-16.]

70.74.180 Explosive devices prohibited—Penalty. Any person who has in his possession or control any shell, bomb, or similar device, charged or filled with one or more explosives, intending to use it or cause it to be used for an unlawful purpose, is guilty of a felony, and upon conviction shall be punished by imprisonment in a state prison for a term of not more than twenty years. [1984 c 55 § 1; 1969 ex.s. c 137 § 21; 1931 c 111 § 18; RRS § 5440-18.]

70.74.191 Exemptions. The laws contained in this chapter and the ensuing regulations prescribed by the department of labor and industries shall not apply to:

(1) Explosives or blasting agents in the course of transportation by way of railroad, water, highway or air under the jurisdiction of, and in conformity with, regulations adopted by the federal department of transportation, the Washington state utilities and transportation commission and the Washington state patrol;

(2) The laboratories of schools, colleges and similar institutions if confined to the purpose of instruction or research and if not exceeding the quantity of one pound;

(3) Explosives in the forms prescribed by the official United States Pharmacopoeia;

(4) The transportation, storage and use of explosives or blasting agents in the normal and emergency operations of federal agencies and departments including the regular United States military departments on military reservations, or the duly authorized militia of any state or territory, or to emergency operations of any state department or agency, any police, or any municipality or county;

(5) The sale and use of fireworks, signaling devices, flares, fuses, and torpedoes;

(6) The transportation, storage, and use of explosives or blasting agents in the normal and emergency avalanche control procedures as conducted by trained and licensed ski area operator personnel. However, the storage, transportation, and use of explosives and blasting agents for such use shall meet the requirements of regulations adopted by the director of labor and industries; and

(7) Any violation under this chapter if any existing ordinance of any city, municipality or county is more stringent than this chapter. [1985 c 191 § 2; 1969 ex.s. c 137 § 5.]

Purpose—1985 c 191: "It is the purpose of this 1985 act to protect the public by enabling ski area operators to exercise appropriate avalanche control measures. The legislature finds that avalanche control is of vital importance to safety in ski areas and that the provisions of the Washington state explosives act contain restrictions which do not reflect special needs for the use of explosives as a means of clearing an area of serious avalanche risks. This 1985 act recognizes these needs while providing for a system of regulations designed to ensure that the use of explosives for avalanche control conforms to fundamental safety requirements." [1985 c 191 § 1.]

70.74.201 Municipal or county ordinances unaffected—State preemption. This chapter shall not affect, modify or limit the power of a city, municipality or county in this state to make an ordinance that is more stringent than this chapter which is applicable within their respective corporate limits or boundaries: *Provided*, That the state shall be deemed to have preempted the field of regulation of small arms ammunition and hand-loader components. [1970 ex.s. c 72 § 5; 1969 ex.s. c 137 § 6.]

70.74.210 Coal mining code unaffected. All acts and parts of acts inconsistent with this act are hereby repealed: *Provided, however*, That nothing in this act shall be construed as amending, limiting, or repealing any provision of chapter 36, session laws of 1917, known as the coal mining code. [1931 c 111 § 22; RRS § 5440-22.]

Coal mining code: Chapter 78.40 RCW.

70.74.230 Shipments out of state—Dealer's records. If any manufacturer of explosives or dealer therein shall have shipped any explosives into another state, and the laws of such other state shall designate an officer or agency to regulate the possession, receipt or storage of explosives, and such officer or agency shall so require, such manufacturer shall, at least once each calendar month, file with such officer or agency of such other state a report giving the names of all purchasers and the amount and description of all explosives sold or delivered in such other state. Dealers in explosives shall keep a record of all explosives purchased or sold by them, which record shall include the name and address of each vendor and vendee, the date of each sale or purchase, and the amount and kind of explosives sold or purchased. Such records shall be open for inspection by the duly authorized agents of the department of labor

and industries and by all federal, state and local law enforcement officers at all times, and a copy of such record shall be furnished once each calendar month to the department of labor and industries in such form as said department shall prescribe. [1941 c 101 § 4; Rem. Supp. 1941 § 5440–23.]

70.74.240 Sale to unlicensed person prohibited. No dealer shall sell, barter, give or dispose of explosives to any person who does not hold a license to purchase explosives issued under the provisions of this chapter. [1970 ex.s. c 72 § 4; 1969 ex.s. c 137 § 17; 1941 c 101 § 5; Rem. Supp. 1941 § 5440–24.]

70.74.250 Blasting near fur farms and hatcheries. Between the dates of January 15th and June 15th of each year it shall be unlawful for any person to do, or cause to be done, any blasting within fifteen hundred feet from any fur farm or commercial hatchery except in case of emergency without first giving to the person in charge of such farm or hatchery twenty-four hours notice: *Provided, however,* That in the case of an established quarry and sand and gravel operations, and where it is necessary for blasting to be done continually, the notice required in this section may be made at the beginning of the period each year when blasting is to be done. [1941 c 107 § 1; Rem. Supp. 1941 § 5440–25.]

70.74.270 Endangering life and property by explosives—Penalties. Every person who maliciously places any explosive substance or material in, upon, under, against, or near any building, car, vessel, railroad track, airplane, public utility transmission system, or structure, in such manner or under such circumstances as to destroy or injure it if exploded, shall be punished as follows:

(1) If the circumstances and surroundings are such that the safety of any person might be endangered by the explosion, by imprisonment in the state penitentiary for not more than twenty years;

(2) In every other case by imprisonment in the state penitentiary for not more than five years. [1984 c 55 § 2; 1971 ex.s. c 302 § 8; 1969 ex.s. c 137 § 23; 1909 c 249 § 400; RRS § 2652.]

70.74.280 Damaging building, etc., by explosion—Penalty. Every person who shall maliciously, by the explosion of gunpowder or any other explosive substance or material, destroy or damage any building, car, airplane, vessel, common carrier, railroad track, public utility transmission system or structure, shall be punished as follows:

(1) If thereby the life or safety of a human being is endangered, by imprisonment in the state penitentiary for not more than twenty-five years;

(2) In every other case by imprisonment in the state penitentiary for not more than five years. [1971 ex.s. c 302 § 9; 1969 ex.s. c 137 § 24; 1909 c 249 § 401; RRS § 2653.]

Severability—1971 ex.s. c 302: See note following RCW 9.41.010.

70.74.295 Abandonment of explosives. It shall be unlawful for any person to abandon explosives or explosive substances. [1972 ex.s. c 88 § 3.]

70.74.297 Separate storage of components capable of detonation when mixed. Any two components which, when mixed, become capable of detonation by a No. 6 cap must be stored in separate locked containers or in a licensed, approved magazine. [1972 ex.s. c 88 § 4.]

70.74.300 Explosive containers to be marked—Penalty. Every person who shall put up for sale, or who shall deliver to any warehouseman, dock, depot, or common carrier any package, cask or can containing any explosive, nitroglycerin, dynamite, or powder, without having been properly labeled thereon to indicate its explosive classification, shall be guilty of a gross misdemeanor. [1969 ex.s. c 137 § 26; 1909 c 249 § 254; RRS § 2506.]

Reviser's note: Caption for 1909 c 249 § 254 reads as follows: "Sec. 254. *Transporting Explosives.*"

70.74.310 Gas bombs, explosives, stink bombs, etc. Any person other than a lawfully constituted peace officer of this state who shall deposit, leave, place, spray, scatter, spread or throw in any building, or any place, or who shall counsel, aid, assist, encourage, incite or direct any other person or persons to deposit, leave, place, spray, scatter, spread or throw, in any building or place, or who shall have in his possession for the purpose of, and with the intent of depositing, leaving, placing, spraying, scattering, spreading or throwing, in any building or place, or of counseling, aiding, assisting, encouraging, inciting or directing any other person or persons to deposit, leave, place, spray, scatter, spread or throw, any stink bomb, stink paint, tear bomb, tear shell, explosive or flame-producing device, or any other device, material, chemical or substance, which, when exploded or opened, or without such exploding or opening, by reason of its offensive and pungent odor, does or will annoy, injure, endanger or inconvenience any person or persons, shall be guilty of a gross misdemeanor: *Provided,* That this section shall not apply to persons in the military service, actually engaged in the performance of military duties, pursuant to orders from competent authority nor to any property owner or person acting under his authority in providing protection against the commission of a felony. [1969 ex.s. c 137 § 27; 1927 c 245 § 1; RRS § 2504–1.]

70.74.320 Small arms ammunition, primers and propellants—Transportation regulations. The federal regulations of the United States department of transportation on the transportation of small arms ammunition, of small arms ammunition primers, and of small arms smokeless propellants are hereby adopted in this chapter by reference.

The director of the department of labor and industries has the authority to issue future regulations in accordance with amendments and additions to the federal regulations of the United States department of

transportation on the transportation of small arms ammunition, of small arms ammunition primers, and of small arms smokeless propellants. [1969 ex.s. c 137 § 28.]

70.74.330 Small arms ammunition, primers and propellants—Separation from flammable materials. Small arms ammunition shall be separated from flammable liquids, flammable solids and oxidizing materials by a fire-resistant wall of one-hour rating or by a distance of twenty-five feet. [1969 ex.s. c 137 § 29.]

70.74.340 Small arms ammunition, primers and propellants—Transportation, storage and display requirements. Quantities of small arms smokeless propellant (class B) in shipping containers approved by the federal department of transportation not in excess of fifty pounds may be transported in a private vehicle.

Quantities in excess of twenty-five pounds but not to exceed fifty pounds in a private passenger vehicle shall be transported in an approved magazine as specified by the department of labor and industries rules and regulations.

Transportation of quantities in excess of fifty pounds is prohibited in passenger vehicles: *Provided*, That this requirement shall not apply to duly licensed dealers.

Transportation of quantities in excess of fifty pounds shall be in accordance with federal department of transportation regulations.

Small arms smokeless propellant intended for personal use in quantities not to exceed twenty-five pounds may be stored without restriction in residences; quantities over twenty-five pounds but not to exceed fifty pounds shall be stored in a strong box or cabinet constructed with three-fourths inch plywood (minimum), or equivalent, on all sides, top, and bottom.

Black powder as used in muzzle loading firearms may be transported in a private vehicle or stored without restriction in private residences in quantities not to exceed five pounds.

Not more than seventy-five pounds of small arms smokeless propellant, in containers of one pound maximum capacity may be displayed in commercial establishments.

Not more than twenty-five pounds of black powder as used in muzzle loading firearms may be stored in commercial establishments of which not more than four pounds in containers of one pound maximum capacity may be displayed.

Quantities in excess of one hundred fifty pounds of smokeless propellant or twenty-five pounds of black powder as used in muzzle loading firearms shall be stored in magazines constructed as specified in the rules and regulations for construction of magazines, and located in compliance with this chapter.

All small arms smokeless propellant when stored shall be packed in federal department of transportation approved containers. [1970 ex.s. c 72 § 6; 1969 ex.s. c 137 § 30.]

70.74.350 Small arms ammunition, primers and propellants—Primers, transportation and storage requirements. Small arms ammunition primers shall not be transported or stored except in the original shipping container approved by the federal department of transportation.

Truck or rail transportation of small arms ammunition primers shall be in accordance with the federal regulation of the United States department of transportation.

No more than twenty-five thousand small arms ammunition primers shall be transported in a private passenger vehicle: *Provided*, That this requirement shall not apply to duly licensed dealers.

Quantities not to exceed ten thousand small arms ammunition primers may be stored in a residence.

Small arms ammunition primers shall be separate from flammable liquids, flammable solids, and oxidizing materials by a fire-resistant wall of one-hour rating or by a distance of twenty-five feet.

Not more than seven hundred fifty thousand small arms ammunition primers shall be stored in any one building except as next provided; no more than one hundred thousand shall be stored in any one pile, and piles shall be separated by at least fifteen feet.

Quantities of small arms ammunition primers in excess of seven hundred fifty thousand shall be stored in magazines in accordance with RCW 70.74.025. [1969 ex.s. c 137 § 31.]

70.74.360 Licenses—Fingerprint and criminal record checks—Fee—Licenses prohibited for certain persons—License fees. (1) The director of labor and industries shall require, as a condition precedent to the original issuance or renewal of any explosive license, fingerprinting and criminal history record information checks of every applicant. In the case of a corporation, fingerprinting and criminal history record information checks shall be required for the management officials directly responsible for the operations where explosives are used if such persons have not previously had their fingerprints recorded with the department of labor and industries. In the case of a partnership, fingerprinting and criminal history record information checks shall be required of all general partners. Such fingerprints as are required by the department of labor and industries shall be submitted on forms provided by the department to the identification section of the Washington state patrol and to the identification division of the federal bureau of investigation in order that these agencies may search their records for prior convictions of the individuals fingerprinted. The Washington state patrol shall provide to the director of labor and industries such criminal record information as the director may request. The applicant shall give full cooperation to the department of labor and industries and shall assist the department of labor and industries in all aspects of the fingerprinting and criminal history record information check. The applicant may be required to pay a fee not to exceed twenty dollars to the agency that performs the fingerprinting and criminal history process.

(2) The director of labor and industries shall not issue a license to manufacture, purchase, store, use, or deal with explosives to:

- (a) Any person under twenty-one years of age;
- (b) Any person whose license is suspended or whose license has been revoked, except as provided in RCW 70.74.370;
- (c) Any person who has been convicted in this state or elsewhere of a violent offense as defined in RCW 9.94A.030, perjury, false swearing, or bomb threats or a crime involving a schedule I or II controlled substance, or any other drug or alcohol related offense, unless such other drug or alcohol related offense does not reflect a drug or alcohol dependency. However, the director of labor and industries may issue a license if the person suffering a drug or alcohol related dependency is participating in or has completed an alcohol or drug recovery program acceptable to the department of labor and industries and has established control of their alcohol or drug dependency. The director of labor and industries shall require the applicant to provide proof of such participation and control; or
- (d) Any person who has previously been adjudged to be mentally ill or insane, or to be incompetent due to any mental disability or disease and who has not at the time of application been restored to competency.

(3) The director of labor and industries may establish reasonable licensing fees for the manufacture, dealing, purchase, use, and storage of explosives. [1988 c 198 § 3.]

70.74.370 License revocation, nonrenewal, or suspension. (1) The department of labor and industries shall revoke and not renew the license of any person holding a manufacturer, dealer, purchaser, user, or storage license upon conviction of any of the following offenses, which conviction has become final:

- (a) A violent offense as defined in RCW 9.94A.030;
- (b) A crime involving perjury or false swearing, including the making of a false affidavit or statement under oath to the department of labor and industries in an application or report made pursuant to this title;
- (c) A crime involving bomb threats;
- (d) A crime involving a schedule I or II controlled substance, or any other drug or alcohol related offense, unless such other drug or alcohol related offense does not reflect a drug or alcohol dependency. However, the department of labor and industries may condition renewal of the license to any convicted person suffering a drug or alcohol dependency who is participating in an alcoholism or drug recovery program acceptable to the department of labor and industries and has established control of their alcohol or drug dependency. The department of labor and industries shall require the licensee to provide proof of such participation and control;
- (e) A crime relating to possession, use, transfer, or sale of explosives under this chapter or any other chapter of the Revised Code of Washington.

(2) The department of labor and industries shall revoke the license of any person adjudged to be mentally ill or insane, or to be incompetent due to any mental

disability or disease. The director shall not renew the license until the person has been restored to competency.

(3) The department of labor and industries is authorized to suspend, for a period of time not to exceed six months, the license of any person who has violated this chapter or the rules promulgated pursuant to this chapter.

(4) The department of labor and industries may revoke the license of any person who has repeatedly violated this chapter or the rules promulgated pursuant to this chapter, or who has twice had his or her license suspended under this chapter.

(5) Upon receipt of notification by the department of labor and industries of revocation or suspension, a licensee must surrender immediately to the department any or all such licenses revoked or suspended. [1988 c 198 § 4.]

70.74.380 Licenses—Expiration—Extension of storage licenses. With the exception of storage licenses for permanent facilities, every license issued under the authority of this chapter shall expire after one year from the date issued unless suspended or revoked. The director of labor and industries may extend the duration of storage licenses for permanent facilities to two years provided the location, distances, and use of the facilities remain unchanged. The fee for the two-year storage license shall be twice the annual fee. [1988 c 198 § 9.]

70.74.390 Implementation of chapter and rules pursuant to chapter 49.17 RCW. Unless specifically provided otherwise by statute, this chapter and the rules adopted thereunder shall be implemented and enforced, including penalties, violations, citations, appeals, and other administrative procedures, pursuant to the Washington industrial safety and health act, chapter 49.17 RCW. [1988 c 198 § 11.]

Chapter 70.75

FIRE FIGHTING EQUIPMENT—STANDARDIZATION

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70.75.010	Standard thread specified—Exceptions.
70.75.020	Duties of director of community development.
70.75.030	Duties of director of community development—Notification of industrial establishments and property owners having equipment.
70.75.040	Sale of nonstandard equipment as misdemeanor—Exceptions.
70.75.900	Severability—1967 c 152.

70.75.010 Standard thread specified—Exceptions. All equipment for fire protection purposes, other than for forest fire fighting, purchased by state and municipal authorities, or any other authorities having charge of public property, shall be equipped with the standard threads designated as the national standard thread as adopted by the American Insurance Association and defined in its pamphlet No. 194, dated 1963: *Provided*, That this section shall not apply to steamer connections on fire hydrants. [1967 c 152 § 1.]

70.75.020 Duties of director of community development. The standardization of existing fire protection equipment in this state shall be arranged for and carried out by or under the direction of the director of community development, through the director of fire protection. He or she shall provide the appliances necessary for carrying on this work, shall proceed with such standardization as rapidly as possible, and shall require the completion of such work within a period of five years from June 8, 1967: *Provided*, That the director of community development, through the director of fire protection, may exempt special purpose fire equipment and existing fire protection equipment from standardization when it is established that such equipment is not essential to the coordination of public fire protection operations. [1986 c 266 § 96; 1967 c 152 § 2.]

Severability—1986 c 266: See note following RCW 38.52.005.
State fire protection: Chapter 48.48 RCW.

70.75.030 Duties of director of community development—Notification of industrial establishments and property owners having equipment. The director of community development, through the director of fire protection, shall notify industrial establishments and property owners having equipment, which may be necessary for fire department use in protecting the property or putting out fire, of any changes necessary to bring their equipment up to the requirements of the standard established by RCW 70.75.020, and shall render such assistance as may be available for converting substandard equipment to meet standard specifications and requirements. [1986 c 266 § 97; 1967 c 152 § 3.]

Severability—1986 c 266: See note following RCW 38.52.005.

70.75.040 Sale of nonstandard equipment as misdemeanor—Exceptions. Any person who, without approval of the director of community development, through the director of fire protection, sells or offers for sale in Washington any fire hose, fire engine or other equipment for fire protection purposes which is fitted or equipped with other than the standard thread is guilty of a misdemeanor: *Provided*, That fire equipment for special purposes, research, programs, forest fire fighting, or special features of fire protection equipment found appropriate for uniformity within a particular protection area may be specifically exempted from this requirement by order of the director of community development, through the director of fire protection. [1986 c 266 § 98; 1967 c 152 § 4.]

Severability—1986 c 266: See note following RCW 38.52.005.

70.75.900 Severability—1967 c 152. If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1967 c 152 § 5.]

Chapter 70.77

STATE FIREWORKS LAW

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70.77.900	Effective date—1961 c 228.
70.77.910	Severability—1961 c 228.
70.77.911	Severability—1982 c 230.
70.77.912	Severability—1984 c 249.

Sale or gift of pistol or toy pistol to minors under eighteen years of age is misdemeanor: RCW 26.28.080.

State building code: Chapter 19.27 RCW.

70.77.120 Definitions—To govern chapter. The definitions set forth in this chapter shall govern the construction of this chapter, unless the context otherwise requires. [1961 c 228 § 1.]

70.77.126 Definitions—"Fireworks." "Fireworks" means any composition or device, in a finished state, containing any combustible or explosive substance for the purpose of producing a visible or audible effect by combustion, explosion, deflagration, or detonation, and classified as common or special fireworks. [1984 c 249 § 1; 1982 c 230 § 1.]

70.77.131 Definitions—"Special fireworks." "Special fireworks" means any fireworks designed primarily for exhibition display by producing visible or audible effects. The term includes (1) fireworks commonly known as skyrockets, missile-type rockets, firecrackers, salutes, and chasers; and (2) fireworks not classified as common fireworks. [1984 c 249 § 2; 1982 c 230 § 2.]

70.77.136 Definitions—"Common fireworks." "Common fireworks" means any fireworks designed primarily to produce visual or audible effects by combustion.

(1) The term includes:

(a) Ground and hand-held sparkling devices, including items commonly known as dipped sticks, sparklers, cylindrical fountains, cone fountains, illuminating torches, wheels, ground spinners, and flitter sparklers;

(b) Smoke devices;

(c) Fireworks commonly known as helicopters, aeri-als, spinners, roman candles, mines, and shells;

(d) Class C explosives classified on January 1, 1984, as common fireworks by the United States department of transportation.

(2) The term does not include fireworks commonly known as firecrackers, salutes, chasers, skyrockets, and missile-type rockets. [1984 c 249 § 3; 1982 c 230 § 3.]

70.77.141 Definitions—"Agricultural and wildlife fireworks." "Agricultural and wildlife fireworks" includes fireworks devices distributed to farmers, ranchers, and growers through a wildlife management program administered by the United States department of the interior. [1982 c 230 § 4.]

70.77.146 Definitions—"Special effects." "Special effects" means any combination of chemical elements or chemical compounds capable of burning independently of the oxygen of the atmosphere, and designed and intended to produce an audible, visual, mechanical, or thermal effect as a necessary part of a motion picture, radio or television production, theatrical, or opera. [1984 c 249 § 4; 1982 c 230 § 5.]

70.77.160 Definitions—"Public display of fireworks." "Public display of fireworks" means an entertainment feature where the public is admitted or permitted to view the display or discharge of special fireworks. [1982 c 230 § 6; 1961 c 228 § 9.]

70.77.165 Definitions—"Fire nuisance." "Fire nuisance" means anything or any act which increases, or may cause an increase of, the hazard or menace of fire to a greater degree than customarily recognized as normal by persons in the public service of preventing, suppressing, or extinguishing fire; or which may obstruct, delay, or hinder, or may become the cause of any obstruction, delay, or a hindrance to the prevention or extinguishment of fire. [1961 c 228 § 10.]

70.77.170 Definitions—"License." "License" means a nontransferable formal authorization which the director of community development and the director of fire protection are permitted to issue under this chapter to engage in the act specifically designated therein. [1986 c 266 § 99; 1982 c 230 § 7; 1961 c 228 § 11.]

Severability—1986 c 266: See note following RCW 38.52.005.

70.77.175 Definitions—"Licensee." "Licensee" means any person holding a fireworks license in conformance with this chapter. [1961 c 228 § 12.]

70.77.177 Definitions—"Local fire official." "Local fire official" means the chief of a local fire department or fire protection district, a chief fire protection officer or such other person as may be designated by the governing body of a city, county, or district to act as a local fire official under this chapter. [1984 c 249 § 6.]

70.77.180 Definitions—"Permit." "Permit" means the official permission granted by a local public agency for the purpose of establishing and maintaining a place within the jurisdiction of the local agency where fireworks are manufactured, constructed, produced, packaged, stored, sold, exchanged, discharged or used. [1984 c 249 § 5; 1982 c 230 § 8; 1961 c 228 § 13.]

70.77.190 Definitions—"Person." "Person" includes any individual, firm, partnership, joint venture, association, concern, corporation, estate, trust, business trust, receiver, syndicate, or any other group or combination acting as a unit. [1961 c 228 § 15.]

70.77.200 Definitions—"Importer." "Importer" includes any person who for any purpose:

- (1) Brings fireworks into this state or causes fireworks to be brought into this state;
- (2) Procures the delivery or receives shipments of any fireworks into this state; or
- (3) Buys or contracts to buy fireworks for shipment into this state. [1961 c 228 § 17.]

70.77.205 Definitions—"Manufacturer." "Manufacturer" includes any person who manufactures, makes, constructs, fabricates, or produces any fireworks article or device but does not include persons who assemble or fabricate sets or mechanical pieces in public displays of fireworks. [1961 c 228 § 18.]

70.77.210 Definitions—"Wholesaler." "Wholesaler" includes any person who sells fireworks to a retailer or any other person for resale and any person who sells special fireworks to public display licensees. [1982 c 230 § 9; 1961 c 228 § 19.]

70.77.215 Definitions—"Retailer." "Retailer" includes any person who, at a fixed location or place of business, sells, transfers, or gives common fireworks to a consumer or user. [1982 c 230 § 10; 1961 c 228 § 20.]

70.77.230 Definitions—"Pyrotechnic operator." "Pyrotechnic operator" includes any individual who by experience and training has demonstrated the required skill and ability for safely setting up and discharging public displays of special fireworks. [1982 c 230 § 11; 1961 c 228 § 23.]

70.77.250 Director of community development to enforce and administer—Powers and duties. (1) The director of community development, through the director of fire protection, shall enforce and administer this chapter.

(2) The director of community development, through the director of fire protection, shall appoint such deputies and employees as may be necessary and required to carry out the provisions of this chapter.

(3) The director of community development, through the director of fire protection, may prescribe such rules relating to fireworks as may be necessary for the protection of life and property and for the implementation of this chapter.

(4) The director of community development, through the director of fire protection, shall prescribe such rules as may be necessary to ensure state-wide minimum standards for the enforcement of this chapter. Counties, cities, and towns shall comply with such state rules. Any local rules adopted by local authorities that are more restrictive than state law as to the types of fireworks that may be sold shall have an effective date no sooner than one year after their adoption.

(5) The director of community development, through the director of fire protection, may exercise the necessary police powers to enforce the criminal provisions of this chapter. This grant of police powers does not prevent any other state agency or local government agency having general law enforcement powers from enforcing this chapter within the jurisdiction of the agency or local government. [1986 c 266 § 100; 1984 c 249 § 7; 1982 c 230 § 12; 1961 c 228 § 27.]

Severability—1986 c 266: See note following RCW 38.52.005.

70.77.255 Acts prohibited without a license—Minimum age for license or permit—Activities permitted without license or permit. (1) Except as otherwise provided in this chapter, no person, without an appropriate state license may:

- (a) Manufacture, import, possess, or sell any fireworks at wholesale or retail for any use;
- (b) Make a public display of fireworks; or
- (c) Transport fireworks, except as a public carrier delivering to a licensee.

(2) Except as authorized by a license and permit under subsection (1)(b) of this section, no person may discharge special fireworks at any place.

(3) No person less than eighteen years of age may apply for or receive a license or permit under this chapter.

(4) No license or permit is required for the possession or use of common fireworks lawfully purchased at retail. [1984 c 249 § 10; 1982 c 230 § 14; 1961 c 228 § 28.]

70.77.260 Application for permit. (1) Any person desiring to do any act mentioned in RCW 70.77.255(1) (a) or (c) shall apply in writing to a local fire official for a permit.

(2) Any person desiring to put on a public display of fireworks under RCW 70.77.255(1)(b) shall apply in writing to a local fire official for a permit. Application shall be made at least ten days in advance of the proposed display. [1984 c 249 § 11; 1982 c 230 § 15; 1961 c 228 § 29.]

General license holders to file license certificate with application for permit for public display of fireworks: RCW 70.77.355.

70.77.265 Investigation, report on permit application. The local fire official receiving an application for a permit under RCW 70.77.260(1) shall investigate the application and submit a report of findings and a recommendation for or against the issuance of the permit, together with reasons, to the governing body of the city, county, or fire protection district. [1984 c 249 § 12; 1961 c 228 § 30.]

70.77.270 Governing body may grant or deny permit—Conditions. The governing body of a city, county, or fire protection district may grant or deny an application for a permit under RCW 70.77.260(1). The governing body may place reasonable conditions on any permit it issues. [1984 c 249 § 13; 1961 c 228 § 31.]

70.77.280 Public display permit—Investigation—Governing body may grant or deny—Conditions. The local fire official receiving an application for a permit under RCW 70.77.260(2) for a public display of fireworks shall investigate whether the character and location of the display as proposed would be hazardous to property or dangerous to any person. Based on the investigation, the official shall submit a report of findings and a recommendation for or against the issuance of the permit, together with reasons, to the governing body of the city, county, or fire protection district. The governing body may grant or deny the application and may place reasonable conditions on any permit it issues. [1984 c 249 § 14; 1961 c 228 § 33.]

70.77.285 Public display permit—Bond or insurance for liability. Except as provided in RCW 70.77.355, the applicant for a permit under RCW 70.77.260(2) for a public display of fireworks shall include with the application evidence of a bond issued by an authorized surety company. The bond shall be in the amount required by RCW 70.77.295 and shall be conditioned upon the applicant's payment of all damages to persons or property resulting from or caused by such public display of fireworks, or any negligence on the part of the applicant or its agents, servants, employees, or subcontractors in the presentation of the display. Instead of a bond, the applicant may include a certificate of insurance evidencing the carrying of appropriate public liability insurance in the amount required by RCW 70.77.295 for the benefit of the person named therein as assured, as evidence of ability to respond in damages. The local fire official receiving the application shall approve the bond or insurance if it meets the requirements of this section. [1984 c 249 § 15; 1982 c 230 § 16; 1961 c 228 § 34.]

70.77.290 Public display permit—Granted for exclusive purpose—Nontransferable. If a permit under RCW 70.77.260(2) for the public display of fireworks is granted, the sale, possession and use of fireworks for the public display is lawful for that purpose only. The permit granted is not transferable. [1984 c 249 § 16; 1961 c 228 § 35.]

70.77.295 Public display permit—Amount of bond or insurance. In the case of an application for a permit under RCW 70.77.260(2) for the public display of fireworks, the amount of the surety bond or certificate of insurance required under RCW 70.77.285 shall be not less than fifty thousand dollars and one million dollars for bodily injury liability for each person and event, respectively, and not less than twenty-five thousand dollars for property damage liability for each event. [1984 c 249 § 17; 1982 c 230 § 17; 1961 c 228 § 36.]

70.77.305 Director of community development to issue licenses—Registration of in-state agents. The director of community development, through the director of fire protection, has the power to issue licenses for the manufacture, importation, sale, and use of all fireworks in this state. A person may be licensed as a manufacturer, importer, or wholesaler under this chapter only if the person has a designated agent in this state who is registered with the director of community development, through the director of fire protection. [1986 c 266 § 101; 1984 c 249 § 18; 1982 c 230 § 18; 1961 c 228 § 38.]

Severability—1986 c 266: See note following RCW 38.52.005.

70.77.311 Exemptions from licensing—Purchase of certain agricultural and wildlife fireworks by government agencies—Purchase of common fireworks by religious or private organizations. (1) No license is required for the purchase of agricultural and wildlife fireworks by government agencies if:

(a) The agricultural and wildlife fireworks are used for wildlife control or are distributed to farmers, ranchers, or growers through a wildlife management program administered by the United States department of the interior or an equivalent state or local governmental agency;

(b) The distribution is in response to a written application describing the wildlife management problem that requires use of the devices;

(c) It is of no greater quantity than necessary to control the described problem; and

(d) It is limited to situations where other means of control are unavailable or inadequate.

(2) No license is required for religious organizations or private organizations or persons to purchase or use common fireworks and such audible ground devices as firecrackers, salutes, and chasers if:

(a) Purchased from a licensed manufacturer, importer, or wholesaler;

(b) For use on prescribed dates and locations;

(c) For religious or specific purposes; and

(d) A permit is obtained from the local fire official. [1984 c 249 § 19; 1982 c 230 § 19.]

70.77.315 Application for license. Any person who desires to engage in the manufacture, importation, sale, or use of fireworks shall make a written application to the director of community development, through the director of fire protection, on forms provided by him or her. Such application shall be accompanied by the annual license fee as prescribed in this chapter. [1986 c 266 § 102; 1982 c 230 § 20; 1961 c 228 § 40.]

Severability—1986 c 266: See note following RCW 38.52.005.

70.77.320 Application for license to be signed. The application for a license shall be signed by the applicant. If application is made by a partnership, it shall be signed by each partner of the partnership, and if application is made by a corporation, it shall be signed by an officer of the corporation and bear the seal of the corporation. [1961 c 228 § 41.]

70.77.325 Annual application for a license—Dates.

(1) Application for a license shall be made annually by every person holding an existing license who wishes to continue the activity requiring the license. The application shall be accompanied by the annual license fee as prescribed in RCW 70.77.340.

(2) A person applying for an annual license as a retailer under this chapter shall file an application by June 10 of the current year. The director of community development, through the director of fire protection, shall grant or deny the license within fifteen days of receipt of the application.

(3) A person applying for an annual license as a manufacturer, importer, or wholesaler under this chapter shall file an application by January 31 of the current year. The director of community development, through the director of fire protection, shall grant or deny the license within ninety days of receipt of the application. [1986 c 266 § 103; 1984 c 249 § 20; 1982 c 230 § 21; 1961 c 228 § 42.]

Severability—1986 c 266: See note following RCW 38.52.005.

70.77.330 License to engage in particular act to be issued if not contrary to public safety or welfare—

Transportation of fireworks authorized. If the director of community development, through the director of fire protection, finds that the granting of such license would not be contrary to public safety or welfare, he or she shall issue a license authorizing the applicant to engage in the particular act or acts upon the payment of the license fee specified in this chapter. Licensees may transport the class of fireworks for which they hold a valid license. [1986 c 266 § 104; 1982 c 230 § 22; 1961 c 228 § 43.]

Severability—1986 c 266: See note following RCW 38.52.005.

70.77.335 License authorizes activities of salesmen, employees.

The authorization to engage in the particular act or acts conferred by a license to a person shall extend to salesmen and other employees of such person. [1982 c 230 § 23; 1961 c 228 § 44.]

70.77.340 Annual license fees. The original and annual license fee shall be as follows:

Manufacturer	\$ 500.00
Importer	100.00
Wholesaler	1,000.00
Retailer (for each separate retail outlet)	10.00
Public display for special fireworks ..	10.00
Pyrotechnic operator for special fireworks	5.00

[1982 c 230 § 24; 1961 c 228 § 45.]

70.77.345 Duration of licenses. The license fee shall be for the calendar year from January 1st to December 31st or for the remaining portion thereof. [1982 c 230 § 25; 1961 c 228 § 46.]

70.77.355 General license for public display—Surety bond or insurance—Filing of license certificate with local permit application.

(1) Any adult person may secure a general license from the director of community development, through the director of fire protection, for the public display of fireworks within the state of Washington. A general license is subject to the provisions of this chapter relative to the securing of local permits for the public display of fireworks in any city, county, or fire protection district, except that in lieu of filing the bond or certificate of public liability insurance with the appropriate local official under RCW 70.77.260 as required in RCW 70.77.285, the same bond or certificate shall be filed with the director of community development, through the director of fire protection. The bond or certificate of insurance for a general license in addition shall provide that: (a) The insurer will not cancel the insured's coverage without fifteen days prior written notice to the director of community development, through the director of fire protection; (b) the duly licensed pyrotechnic operator required by law to supervise and discharge the public display, acting either as an employee of the insured or as an independent contractor and the state of Washington, its officers, agents, employees, and servants are included as additional insureds, but only insofar as any operations under contract are concerned; and (c) the state is not responsible for any premium or assessments on the policy.

(2) The director of community development, through the director of fire protection, may issue such general licenses. The holder of a general license shall file a certificate from the director of community development, through the director of fire protection, evidencing the license with any application for a local permit for the public display of fireworks under RCW 70.77.260. [1986 c 266 § 105; 1984 c 249 § 21; 1982 c 230 § 26; 1961 c 228 § 48.]

Severability—1986 c 266: See note following RCW 38.52.005.

70.77.360 Denial of license for material misrepresentation or if contrary to public safety or welfare.

If the director of community development, through the director of fire protection, finds that an application for any license under this chapter contains a material misrepresentation or that the granting of any license would be contrary to the public safety or welfare, the director of community development, through the director of fire protection, may deny the application for the license. [1986 c 266 § 106; 1984 c 249 § 22; 1982 c 230 § 27; 1961 c 228 § 49.]

Severability—1986 c 266: See note following RCW 38.52.005.

70.77.365 Denial of license for failure to meet qualifications or conditions.

A written report by the director of community development, through the director of fire protection, or a local fire official, or any of their authorized representatives, disclosing that the applicant for a license, or the premises for which a license is to apply, do not meet the qualifications or conditions for a license constitutes grounds for the denial by the director of

community development, through the director of fire protection, of any application for a license. [1986 c 266 § 107; 1984 c 249 § 23; 1982 c 230 § 28; 1961 c 228 § 50.]

Severability—1986 c 266: See note following RCW 38.52.005.

70.77.370 Hearing on denial of license. Any applicant who has been denied a license is entitled to a hearing in accordance with the provisions of chapter 34.05 RCW, the Administrative Procedure Act. [1989 c 175 § 129; 1982 c 230 § 29; 1961 c 228 § 51.]

Effective date—1989 c 175: See note following RCW 34.05.010.

70.77.375 Mandatory revocation of license. The director of community development, through the director of fire protection, upon reasonable opportunity to be heard, shall revoke any license issued pursuant to this chapter, if he or she finds that:

(1) The licensee has violated any provisions of this chapter or any rule or regulations made by the director of community development, through the director of fire protection, under and with the authority of this chapter;

(2) The licensee has created or caused a fire nuisance;

(3) Any licensee has failed or refused to file any required reports; or

(4) Any fact or condition exists which, if it had existed at the time of the original application for such license, reasonably would have warranted the director of community development, through the director of fire protection, in refusing originally to issue such license. [1986 c 266 § 108; 1982 c 230 § 30; 1961 c 228 § 52.]

Severability—1986 c 266: See note following RCW 38.52.005.

70.77.395 Dates and times common fireworks may be sold or discharged. Except as provided in RCW 70.77.311, no common fireworks shall be sold or discharged within this state except from twelve o'clock noon on the twenty-eighth of June to twelve o'clock noon on the sixth of July of each year. No common fireworks may be sold or discharged between the hours of eleven o'clock p.m. and nine o'clock a.m. [1984 c 249 § 24; 1982 c 230 § 31; 1961 c 228 § 56.]

70.77.405 Authorized sales of toy caps, tricks, and novelties. Toy paper caps containing not more than twenty-five hundredths grain of explosive compound for each cap and trick or novelty devices not classified as common fireworks may be sold at all times unless prohibited by local ordinance. [1982 c 230 § 32; 1961 c 228 § 58.]

70.77.410 Public displays not to be hazardous. All public displays of fireworks shall be of such a character and so located, discharged, or fired as not to be hazardous or dangerous to persons or property. [1961 c 228 § 59.]

70.77.415 Supervision of public displays. Every public display of fireworks shall be handled or supervised by

a pyrotechnic operator licensed by the director of community development, through the director of fire protection, under RCW 70.77.255. [1986 c 266 § 109; 1984 c 249 § 25; 1982 c 230 § 33; 1961 c 228 § 60.]

Severability—1986 c 266: See note following RCW 38.52.005.

70.77.420 Storage permit required—Application—Investigation—Grant or denial—Conditions. It is unlawful for any person to store fireworks of any class without a permit for such storage from the local fire official in the jurisdiction in which the storage is to be made. A person proposing to store fireworks shall apply in writing to a local fire official at least ten days prior to the date of the proposed storage. The official receiving the application for a storage permit shall investigate whether the character and location of the storage as proposed would constitute a hazard to property or be dangerous to any person. Based on the investigation, the official may grant or deny the application. The official may place reasonable conditions on any permit granted. [1984 c 249 § 26; 1982 c 230 § 34; 1961 c 228 § 61.]

70.77.425 Approved storage facilities required. It is unlawful for any person to store unsold stocks of fireworks remaining unsold after the lawful period of sale as provided in the person's permit except in such places of storage as the local fire official issuing the permit approves. Unsold stocks of common fireworks remaining after the authorized retail sales period from twelve o'clock noon on June 28th to twelve o'clock noon on July 6th shall be returned on or before July 31st of the same year to the approved storage facilities of a licensed fireworks wholesaler, to a magazine or storage place approved by a local fire official. [1984 c 249 § 27; 1982 c 230 § 35; 1961 c 228 § 62.]

70.77.430 Sale of stock after revocation or expiration of license. Notwithstanding RCW 70.77.255, following the revocation or expiration of a license, a licensee in lawful possession of a lawfully acquired stock of fireworks may sell such fireworks, but only under supervision of the director of community development, through the director of fire protection. Any sale under this section shall be solely to persons who are authorized to buy, possess, sell, or use such fireworks. [1986 c 266 § 110; 1984 c 249 § 28; 1982 c 230 § 36; 1961 c 228 § 63.]

Severability—1986 c 266: See note following RCW 38.52.005.

70.77.435 Seizure of fireworks. Any fireworks which are illegally sold, offered for sale, used, discharged, possessed or transported in violation of the provisions of this chapter or the rules or regulations of the director of community development, through the director of fire protection, shall be subject to seizure by the director of community development, through the director of fire protection, or his or her deputy. Any fireworks seized under this section may be disposed of by the director of community development, through the director of fire

protection, by summary destruction at any time subsequent to thirty days from such seizure or ten days from the final termination of proceedings under the provisions of RCW 70.77.440, whichever is later. [1986 c 266 § 111; 1982 c 230 § 37; 1961 c 228 § 64.]

Severability—1986 c 266: See note following RCW 38.52.005.

70.77.440 Seizure of fireworks—Petition for return—Hearing—Decision—Judicial action for recovery—Sale of confiscated fireworks. (1) Any person whose fireworks are seized under the provisions of RCW 70.77.435 may within ten days after such seizure petition the director of community development, through the director of fire protection, to return the fireworks seized upon the ground that such fireworks were illegally or erroneously seized. Any petition filed hereunder shall be considered by the director of community development, through the director of fire protection, within fifteen days after filing and an oral hearing granted the petitioner, if requested. Notice of the decision of the director of community development, through the director of fire protection, shall be served upon the petitioner. The director of community development, through the director of fire protection, may order the fireworks seized under this chapter disposed of or returned to the petitioner if illegally or erroneously seized. The determination of the director of community development, through the director of fire protection, is final unless within sixty days an action is commenced in a court of competent jurisdiction in the state of Washington for the recovery of the fireworks seized by the director of community development, through the director of fire protection.

(2) If the fireworks are not returned to the petitioner or destroyed pursuant to RCW 70.77.435, the director of community development, through the director of fire protection, may sell confiscated common fireworks and special fireworks that are legal for use and possession under this chapter to wholesalers licensed by the director of community development, through the director of fire protection. Sale shall be by public auction after publishing a notice of the date, place, and time of the auction in a newspaper of general circulation in the county in which the auction is to be held, at least three days before the date of the auction. The proceeds of the sale of the seized fireworks under this section shall be deposited in the general fund. Fireworks that are not legal for use and possession in this state shall be destroyed by the director of community development, through the director of fire protection. [1986 c 266 § 112; 1984 c 249 § 29; 1961 c 228 § 65.]

Severability—1986 c 266: See note following RCW 38.52.005.

70.77.450 Examination, inspection of books and premises. The director of community development, through the director of fire protection, may make an examination of the books and records of any licensee, or other person relative to fireworks, and may visit and inspect the premises of any licensee he may deem at any

time necessary for the purpose of enforcing the provisions of this chapter. The licensee, owner, lessee, manager, or operator of any such building or premises shall permit the director of community development, through the director of fire protection, his or her deputies, his or her salaried assistants and the chief of any city or county fire department or fire protection district and their authorized representatives to enter and inspect the premises at the time and for the purpose stated in this section. [1986 c 266 § 113; 1961 c 228 § 67.]

Severability—1986 c 266: See note following RCW 38.52.005.

70.77.455 Licensees to maintain and make available complete records. All licensees shall maintain and make available to the director of community development, through the director of fire protection, full and complete records showing all production, imports, exports, purchases, sales, and consumption of fireworks items by kind and class. [1986 c 266 § 114; 1982 c 230 § 38; 1961 c 228 § 68.]

Severability—1986 c 266: See note following RCW 38.52.005.

70.77.460 Reports, payments deemed made when filed or paid or date mailed. When reports on fireworks transactions or the payments of license fees or penalties are required to be made on or by specified dates, they shall be deemed to have been made at the time they are filed with or paid to the director of community development, through the director of fire protection, or, if sent by mail, on the date shown by the United States postmark on the envelope containing the report or payment. [1986 c 266 § 115; 1961 c 228 § 69.]

Severability—1986 c 266: See note following RCW 38.52.005.

70.77.465 Additional and supplemental reports. In addition to any other reports required under this chapter, the director of community development, through the director of fire protection, may, by rule or otherwise, require additional, other, or supplemental reports from licensees and other persons and prescribe the form, including verification, of the information to be given when filing such additional, other or supplemental reports. [1986 c 266 § 116; 1961 c 228 § 70.]

Severability—1986 c 266: See note following RCW 38.52.005.

70.77.480 Prohibited transfers of fireworks. The transfer of fireworks ownership whether by sale at wholesale or retail, by gift or other means of conveyance of title, or by delivery of any fireworks to any person in the state who does not possess and present to the carrier for inspection at the time of delivery a valid license, where such license is required to purchase, possess, transport, or use fireworks, is prohibited. [1982 c 230 § 39; 1961 c 228 § 73.]

70.77.485 Unlawful possession of fireworks—Penalties. It is unlawful to possess any class or kind of fireworks in violation of this chapter. A violation of this section is:

(1) A misdemeanor if involving less than one pound of fireworks, exclusive of external packaging; or

(2) A gross misdemeanor if involving one pound or more of fireworks, exclusive of external packaging.

For the purposes of this section, "external packaging" means any materials that are not an integral part of the operative unit of fireworks. [1984 c 249 § 30; 1961 c 228 § 74.]

70.77.488 Unlawful discharge or use of fireworks—Penalty. It is unlawful for any person to discharge or use fireworks in a reckless manner which creates a substantial risk of death or serious physical injury to another person or damage to the property of another. A violation of this section is a gross misdemeanor. [1984 c 249 § 37.]

70.77.495 Forestry permit to set off fireworks in forest, brush, fallow, etc. Nothing in this chapter shall be construed as permitting any person to set off fireworks of any kind in forest, fallows, grass or brush covered land, either on his own land or the property of another, between April 15th and December 1st of any year, unless it is done under a written permit from the department of natural resources or its duly authorized agent, and in strict accordance with the terms of the permit and any other applicable law. [1988 c 128 § 11; 1961 c 228 § 76.]

70.77.510 Unlawful sales or transfers of special fireworks—Penalty. It is unlawful for any person knowingly to sell, transfer, or agree to sell or transfer any special fireworks to any person who is not a fireworks licensee as provided for by this chapter. A violation of this section is a gross misdemeanor. [1984 c 249 § 31; 1982 c 230 § 40; 1961 c 228 § 79.]

70.77.515 Unlawful sales or transfers of common fireworks—Penalty. It is unlawful for any person to sell or transfer any common fireworks to a consumer or user other than at a fixed place of business of a retailer for which a license and permit have been issued. A violation of this section is a gross misdemeanor. [1984 c 249 § 32; 1982 c 230 § 41; 1961 c 228 § 80.]

70.77.517 Unlawful transportation of fireworks—Penalty. It is unlawful for any person, except in the course of continuous interstate transportation through any state, to transport fireworks from this state into any other state, or deliver them for transportation into any other state, or attempt so to do, knowing that such fireworks are to be delivered, possessed, stored, transhipped, distributed, sold, or otherwise dealt with in a manner or for a use prohibited by the laws of such other state specifically prohibiting or regulating the use of fireworks. A violation of this section is a gross misdemeanor.

This section does not apply to a common or contract carrier or to international or domestic water carriers engaged in interstate commerce or to the transportation of

fireworks into a state for the use of federal agencies in the carrying out or the furtherance of their operations.

In the enforcement of this section, the definitions of fireworks contained in the laws of the respective states shall be applied.

As used in this section, the term "state" includes the several states, territories, and possessions of the United States, and the District of Columbia. [1984 c 249 § 34.]

70.77.520 Unlawful to permit fire nuisance where fireworks kept—Penalty. It is unlawful for any person to allow any rubbish to accumulate in any premises in which fireworks are stored or sold or permit a fire nuisance to exist in such a premises. A violation of this section is a misdemeanor. [1984 c 249 § 33; 1961 c 228 § 81.]

70.77.525 Manufacture or sale of fireworks for out-of-state shipment. This chapter does not prohibit any manufacturer, wholesaler, dealer, or jobber, having a license and a permit secured under the provisions of this chapter, from manufacturing or selling any kind of fireworks for direct shipment out of this state. [1982 c 230 § 42; 1961 c 228 § 82.]

70.77.530 Nonprohibited acts—Signal purposes, forest protection. This chapter does not prohibit the use of torpedoes, flares, or fuses by motor vehicles, railroads, or other transportation agencies for signal purposes or illumination or for use in forest protection activities. [1961 c 228 § 83.]

70.77.535 Special effects for entertainment media. This chapter does not prohibit the assembling, compounding, use, and display of special effects of whatever nature by any person engaged in the production of motion pictures, radio or television productions, theatricals, or operas when such use and display is a necessary part of the production and such person possesses a valid permit from the local fire official. [1984 c 249 § 35; 1982 c 230 § 43; 1961 c 228 § 84.]

70.77.540 Penalty. Except as otherwise provided in this chapter, any person violating any of the provisions of this chapter or any rules issued thereunder is guilty of a misdemeanor. [1984 c 249 § 36; 1961 c 228 § 85.]

70.77.545 Violation a separate, continuing offense. A person is guilty of a separate offense for each day during which he commits, continues, or permits a violation of any provision of, or any order, rule, or regulation made pursuant to this chapter. [1961 c 228 § 86.]

70.77.550 Short title. This chapter shall be known and may be cited as the state fireworks law. [1961 c 228 § 87.]

70.77.555 Local permit fee—Limit. A local public agency may provide by ordinance for a permit fee in an amount sufficient to cover legitimate administrative costs for permit processing and inspection, but in no case

to exceed one hundred dollars for any one year. [1982 c 230 § 44; 1961 c 228 § 88.]

70.77.575 Director of community development to provide list of fireworks which may be sold to public. (1) The director of community development, through the director of fire protection, shall adopt by rule a list of the fireworks that may be sold to the public in this state pursuant to this chapter. The director of community development, through the director of fire protection, shall file the list by October 1st of each year with the code reviser for publication, unless the previously published list has remained current.

(2) The director of community development, through the director of fire protection, shall provide the list adopted under subsection (1) of this section by November 1st of each year to all manufacturers, wholesalers, and importers licensed under this chapter, unless the previously distributed list has remained current. [1986 c 266 § 117; 1984 c 249 § 8.]

Severability—1986 c 266: See note following RCW 38.52.005.

70.77.580 Retailers to post list of fireworks. Retailers required to be licensed under this chapter shall post prominently at each retail outlet a list of the fireworks that may be sold to the public in this state pursuant to this chapter. The posted list shall be in a form approved by the director of community development, through the director of fire protection. The director of community development, through the director of fire protection, shall make available the list. [1986 c 266 § 118; 1984 c 249 § 9.]

Severability—1986 c 266: See note following RCW 38.52.005.

70.77.900 Effective date—1961 c 228. This act shall take effect on January 1, 1962. [1961 c 228 § 90.]

70.77.910 Severability—1961 c 228. If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1961 c 228 § 91.]

70.77.911 Severability—1982 c 230. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1982 c 230 § 45.]

70.77.912 Severability—1984 c 249. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1984 c 249 § 41.]

Chapter 70.79

BOILERS AND UNFIRED PRESSURE VESSELS

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Excessive steam in boilers, penalty: RCW 70.54.080.

State building code: Chapter 19.27 RCW.

70.79.010 Board of boiler rules—Members—Terms—Meetings. There is hereby created within this state a board of boiler rules, which shall hereafter be referred to as the board, consisting of five members who shall be appointed to the board by the governor, one for a term of one year, one for a term of two years, one for a term of three years, and two for a term of four years. At the expiration of their respective terms of office, they, or their successors identifiable with the same interests respectively as hereinafter provided, shall be appointed for terms of four years each. The governor may at any time remove any member of the board for inefficiency or neglect of duty in office. Upon the death or incapacity of any member the governor shall fill the vacancy for the remainder of the vacated term with a representative of the same interests with which his

predecessor was identified. Of these five appointed members, one shall be representative of owners and users of boilers and unfired pressure vessels within the state, one shall be representative of the boiler or unfired pressure vessel manufacturers within the state, one shall be a representative of a boiler insurance company licensed to do business within the state, one shall be a mechanical engineer on the faculty of a recognized engineering college or a graduate mechanical engineer having equivalent experience, and one shall be representative of the boilermakers or practical steam operating engineers. The board shall elect one of its members to serve as chairman and, at the call of the chairman, the board shall meet at least four times each year at the state capitol or other place designated by the board. [1951 c 32 § 1.]

70.79.020 Compensation and travel expenses. The members of the board shall be compensated in accordance with RCW 43.03.240 and shall receive travel expenses incurred while in the performance of their duties as members of the board, in accordance with RCW 43.03.050 and 43.03.060. [1984 c 287 § 105; 1975-'76 2nd ex.s. c 34 § 159; 1951 c 32 § 2.]

Legislative findings—Severability—Effective date—1984 c 287: See notes following RCW 43.03.220.

Effective date—Severability—1975-'76 2nd ex.s. c 34: See notes following RCW 2.08.115.

70.79.030 Duties of board—Make definitions, rules and regulations—Boiler construction code. The board shall formulate definitions, rules, and regulations for the safe and proper construction, installation, repair, use, and operation of boilers and for the safe and proper construction, installation, and repair of unfired pressure vessels in this state. The definitions, rules, and regulations so formulated shall be based upon, and, at all times, follow the generally accepted nationwide engineering standards, formulae, and practices established and pertaining to boiler and unfired pressure vessel construction and safety, and the board may by resolution adopt an existing published codification thereof, known as "The Boiler Construction Code of the American Society of Mechanical Engineers", with the amendments and interpretations thereto made and approved by the council of the society, and may likewise adopt the amendments and interpretations subsequently made and published by the same authority; and when so adopted the same shall be deemed incorporated into, and to constitute a part or the whole of the definitions, rules, and regulations of the board. Amendments and interpretations to the code so adopted shall be adopted immediately upon being promulgated, to the end that the definitions, rules, and regulations shall at all times follow the generally accepted nationwide engineering standards: *Provided, however,* That all rules and regulations promulgated by the board, including any or all of the boiler construction code of the American society of mechanical engineers with amendments and interpretations thereof, shall be adopted in compliance with the Administrative Procedure Act, chapter 34.05 RCW, as now or

hereafter amended. All boilers and unfired pressure vessels subject to the jurisdiction of the board, which have been constructed or installed in accordance with the code of the American society of mechanical engineers shall be prima facie evidence of compliance with those provisions of this chapter and the rules of the board. [1972 ex.s. c 86 § 1; 1951 c 32 § 3.]

70.79.040 Rules and regulations—Scope. The board shall promulgate rules and regulations for the safe and proper installation, repair, use and operation of boilers, and for the safe and proper installation and repair of unfired pressure vessels which were in use or installed ready for use in this state prior to the date upon which the first rules and regulations under this chapter pertaining to existing installations became effective, or during the twelve months period immediately thereafter. [1951 c 32 § 4.]

70.79.050 Rules and regulations—Effect. (1) The rules and regulations formulated by the board shall have the force and effect of law, except that the rules applying to the construction of new boilers and unfired pressure vessels shall not be construed to prevent the installation thereof until twelve months after their approval by the director of the department of labor and industries.

(2) Subsequent amendments to the rules and regulations adopted by the board shall be permissive immediately and shall become mandatory twelve months after such approval. [1951 c 32 § 5.]

70.79.060 Construction, installation must conform to rules—Special installation and operating permits. (1) Except as provided in subsection (2) of this section, no power boiler, low pressure boiler, or unfired pressure vessel which does not conform to the rules and regulations formulated by the board governing new construction and installation shall be installed and operated in this state after twelve months from the date upon which the first rules and regulations under this chapter pertaining to new construction and installation shall have become effective, unless the boiler or unfired pressure vessel is of special design or construction, and is not covered by the rules and regulations, nor is in any way inconsistent with such rules and regulations, in which case a special installation and operating permit may at its discretion be granted by the board.

(2) A special permit may also be granted for boilers and pressure vessels manufactured before 1951 which do not comply with the code requirements of the American Society of Mechanical Engineers adopted under this chapter, if the boiler or pressure vessel is operated exclusively for the purposes of public exhibition, and the board finds, upon inspection, that operation of the boiler or pressure vessel for such purposes is not unsafe. [1984 c 93 § 1; 1951 c 32 § 6.]

70.79.070 Existing installations—Conformance required. (1) All boilers and unfired pressure vessels which were in use, or installed ready for use in this state prior

to the date upon which the first rules and regulations under this chapter pertaining to existing installations became effective, or during the twelve months period immediately thereafter, shall be made to conform to the rules and regulations of the board governing existing installations, and the formulae prescribed therein shall be used in determining the maximum allowable working pressure for such boilers and unfired pressure vessels.

(2) This chapter shall not be construed as in any way preventing the use or sale of boilers or unfired vessels as referred to in subsection (1) of this section, provided they have been made to conform to the rules and regulations of the board governing existing installations, and provided, further, they have not been found upon inspection to be in an unsafe condition. [1951 c 32 § 7.]

70.79.080 Exemptions from chapter. This chapter shall not apply to the following boilers, unfired pressure vessels and domestic hot water tanks:

(1) Boilers and unfired pressure vessels under federal regulation or operated by any railroad subject to the provisions of the interstate commerce act;

(2) Unfired pressure vessels meeting the requirements of the interstate commerce commission for shipment of liquids or gases under pressure;

(3) Air tanks located on vehicles operating under the rules of other state authorities and used for carrying passengers, or freight;

(4) Air tanks installed on the right of way of railroads and used directly in the operation of trains;

(5) Unfired pressure vessels having a volume of five cubic feet or less when not located in places of public assembly;

(6) Unfired pressure vessels designed for a pressure not exceeding fifteen pounds per square inch gauge when not located in place of public assembly;

(7) Tanks used in connection with heating water for domestic and/or residential purposes;

(8) Boilers and unfired pressure vessels in cities having ordinances which are enforced and which have requirements equal to or higher than those provided for under this chapter, covering the installation, operation, maintenance and inspection of boilers and unfired pressure vessels;

(9) Tanks containing water with no air cushion and no direct source of energy that operate at ambient temperature. [1986 c 97 § 1; 1951 c 32 § 8.]

70.79.090 Exemptions from certain provisions. The following boilers and unfired pressure vessels shall be exempt from the requirements of RCW 70.79.220 and 70.79.240 through 70.79.330:

(1) Boilers or unfired pressure vessels located on farms and used solely for agricultural purposes;

(2) Unfired pressure vessels that are part of fertilizer applicator rigs designed and used exclusively for fertilization in the conduct of agricultural operations;

(3) Steam boilers used exclusively for heating purposes carrying a pressure of not more than fifteen pounds per square inch gauge and which are located in

private residences or in apartment houses of less than six families;

(4) Hot water heating boilers carrying a pressure of not more than thirty pounds per square inch and which are located in private residences or in apartment houses of less than six families;

(5) Approved pressure vessels (hot water heaters listed by a nationally recognized testing agency), with approved safety devices including a pressure relief valve, with a nominal water containing capacity of one hundred twenty gallons or less having a heat input of two hundred thousand b.t.u.'s per hour or less, used for hot water supply at pressure of one hundred sixty pounds per square inch or less, and at temperatures of two hundred degrees Fahrenheit or less: *Provided, however,* That such pressure vessels are not installed in schools, child care centers, public and private hospitals, nursing and boarding homes, churches, public buildings owned or leased and maintained by the state or any political subdivision thereof, and assembly halls;

(6) Unfired pressure vessels containing only water under pressure for domestic supply purposes, including those containing air, the compression of which serves only as a cushion or airlift pumping systems, when located in private residences or in apartment houses of less than six families;

(7) Unfired pressure vessels containing liquified petroleum gases. [1988 c 254 § 20; 1983 c 3 § 174; 1972 ex.s. c 86 § 2; 1951 c 32 § 9.]

70.79.100 Chief inspector—Qualifications—Appointment, removal. (1) Within sixty days after the effective date of this chapter, and at any time thereafter that the office of the chief inspector may become vacant, the director of the department of labor and industries shall appoint a chief inspector who shall have had at the time of such appointment not less than ten years practical experience in the construction, maintenance, repair, or operation of high pressure boilers and unfired pressure vessels, as a mechanical engineer, steam engineer, boilermaker, or boiler inspector, and who shall have passed the same kind of examination as that prescribed for deputy or special inspectors in RCW 70.79.170 to be chief inspector until his successor shall have been appointed and qualified. Such chief inspector may be removed for cause after due investigation by the board and its recommendation to the director of the department of labor and industries. [1951 c 32 § 10.]

70.79.110 Chief inspector—Duties in general. The chief inspector, if authorized by the director of the department of labor and industries is hereby charged, directed and empowered:

(1) To cause the prosecution of all violators of the provisions of this chapter;

(2) To issue, or to suspend, or revoke for cause, inspection certificates as provided for in RCW 70.79.290;

(3) To take action necessary for the enforcement of the laws of the state governing the use of boilers and unfired pressure vessels and of the rules and regulations of the board;

(4) To keep a complete record of the type, dimensions, maximum allowable working pressure, age, condition, location, and date of the last recorded internal inspection of all boilers and unfired pressure vessels to which this chapter applies;

(5) To publish and distribute, among manufacturers and others requesting them, copies of the rules and regulations adopted by the board. [1951 c 32 § 11.]

70.79.120 Deputy inspectors—Qualifications—Employment. The chief inspector shall employ deputy inspectors who shall be responsible to the chief inspector and who shall have had at time of appointment not less than five years practical experience in the construction, maintenance, repair, or operation of high pressure boilers and unfired pressure vessels as a mechanical engineer, steam engineer, boilermaker, or boiler inspector, and who shall have passed the examination provided for in RCW 70.79.170. [1951 c 32 § 12.]

70.79.130 Special inspectors—Qualifications—Commission. In addition to the deputy boiler inspectors authorized by RCW 70.79.120, the chief inspector shall, upon the request of any company authorized to insure against loss from explosion of boilers and unfired pressure vessels in this state, or upon the request of any company operating unfired pressure vessels in this state, issue to any inspectors of said company commissions as special inspectors, provided that each such inspector before receiving his commission shall satisfactorily pass the examination provided for in RCW 70.79.170, or, in lieu of such examination, shall hold a certificate of competency as an inspector of boilers and unfired pressure vessels for a state that has a standard of examination substantially equal to that of this state or a certificate as an inspector of boilers from the national board of boiler and pressure vessel inspectors. A commission as a special inspector for a company operating unfired pressure vessels in this state shall be issued only if, in addition to meeting the requirements stated herein, the inspector is continuously employed by the company for the purpose of making inspections of unfired pressure vessels used, or to be used, by such company. [1951 c 32 § 13.]

70.79.140 Special inspectors—Compensation—Continuance of commission. Special inspectors shall receive no salary from, nor shall any of their expenses be paid by the state, and the continuance of a special inspector's commission shall be conditioned upon his continuing in the employ of a boiler insurance company duly authorized as aforesaid or upon continuing in the employ of a company operating unfired pressure vessels in this state and upon his maintenance of the standards imposed by this chapter. [1951 c 32 § 14.]

70.79.150 Special inspectors—Inspections—Exempts from inspection fees. Special inspectors shall inspect all boilers and unfired pressure vessels insured or all unfired pressure vessels operated by their respective companies and, when so inspected, the owners and users of such insured boilers and unfired pressure vessels shall

be exempt from the payment to the state of the inspection fees as provided for in RCW 70.79.330. [1951 c 32 § 15.]

70.79.160 Report of inspection by special inspector—Filing. Each company employing special inspectors shall within thirty days following each internal boiler or unfired pressure vessel inspection made by such inspectors, file a report of such inspection with the chief inspector upon appropriate forms as promulgated by the American society of mechanical engineers. Reports of external inspections shall not be required except when such inspections disclose that the boiler or unfired pressure vessel is in dangerous condition. [1951 c 32 § 16.]

70.79.170 Examinations for inspector's appointment or commission—Reexamination. Examinations for chief, deputy, or special inspectors shall be in writing and shall be held by the board, or by at least two members of the board. Such examinations shall be confined to questions the answers to which will aid in determining the fitness and competency of the applicant for the intended service. In case an applicant for an inspector's appointment or commission fails to pass the examination, he may appeal to the board for another examination which shall be given by the board within ninety days. The record of an applicant's examination shall be accessible to said applicant and his employer. [1951 c 32 § 18.]

70.79.180 Suspension, revocation of inspector's commission—Grounds—Reinstatement. A commission may be suspended or revoked after due investigation and recommendation by the board to the director of the department of labor and industries for the incompetence or untrustworthiness of the holder thereof, or for wilful falsification of any matter or statement contained in his application or in a report of any inspection. A person whose commission has been suspended or revoked, except for untrustworthiness, shall be entitled to apply to the board for reinstatement or, in the case of a revocation, for a new examination and commission after ninety days from such revocation. [1951 c 32 § 19.]

70.79.190 Suspension, revocation of commission—Appeal. A person whose commission has been suspended or revoked shall be entitled to an appeal as provided in RCW 70.79.360 and to be present in person and/or represented by counsel on the hearing of the appeal. [1951 c 32 § 20.]

70.79.200 Lost or destroyed certificate or commission. If a certificate or commission is lost or destroyed, a new certificate or commission shall be issued in its place without another examination. [1951 c 32 § 21.]

70.79.210 Inspectors—Performance bond required. The chief inspector shall furnish a bond in the sum of five thousand dollars and each of the deputy inspectors, employed and paid by the state, shall furnish a bond in the sum of two thousand dollars conditioned upon the

faithful performance of their duties and upon a true account of moneys handled by them respectively and the payment thereof to the proper recipient. The cost of said bonds shall be paid by the state. [1951 c 32 § 35.]

70.79.220 Inspections—Who shall make. The inspections herein required shall be made by the chief inspector, by a deputy inspector, or by a special inspector provided for in this chapter. [1951 c 32 § 25.]

70.79.230 Access to premises by inspectors. The chief inspector, or any deputy or special inspector, shall have free access, during reasonable hours, to any premises in the state where a boiler or unfired pressure vessel is being constructed, or is being installed or operated, for the purpose of ascertaining whether such boiler or unfired pressure vessel is constructed, installed and operated in accordance with the provisions of this chapter. [1951 c 32 § 17.]

70.79.240 Inspection of boilers, etc.—Scope—Frequency. Each boiler and unfired pressure vessel used or proposed to be used within this state, except boilers or unfired pressure vessels exempt in RCW 70.79.080 and 70.79.090, shall be thoroughly inspected as to their construction, installation, condition and operation, as follows:

(1) Power boilers shall be inspected annually both internally and externally while not under pressure and shall also be inspected annually externally while under pressure if possible;

(2) Low pressure heating boilers shall be inspected both internally and externally biennially where construction will permit;

(3) Unfired pressure vessels subject to internal corrosion shall be inspected both internally and externally biennially where construction will permit, except that the board may, in its discretion, provide for longer periods between inspections;

(4) Unfired pressure vessels not subject to internal corrosion shall be inspected externally at intervals set by the board, but internal inspections shall not be required of unfired pressure vessels, the contents of which are known to be noncorrosive to the material of which the shell, head, or fittings are constructed, either from the chemical composition of the contents or from evidence that the contents are adequately treated with a corrosion inhibitor, provided that such vessels are constructed in accordance with the rules and regulations of the board or in accordance with standards substantially equivalent to the rules and regulations of the board, in effect at the time of manufacture. [1951 c 32 § 22.]

70.79.250 Inspection—Frequency—Grace period. In the case of power boilers a grace period of two months longer than the twelve months period may elapse between internal inspections of a boiler while not under pressure or between external inspections of a boiler while under pressure; in the case of low pressure heating boilers not more than twenty-six months shall elapse between inspections, and in the case of unfired pressure

vessels not more than two months longer than the period between inspections prescribed by the board shall elapse between internal inspections. [1951 c 32 § 23.]

70.79.260 Inspection—Frequency—Modification by rules. The rules and regulations formulated by the board applying to the inspection of unfired pressure vessels may be modified by the board to reduce or extend the interval between required inspections where the contents of the vessel or the material of which it is constructed warrant special consideration. [1951 c 32 § 24.]

70.79.270 Hydrostatic test. If at any time a hydrostatic test shall be deemed necessary to determine the safety of a boiler or unfired pressure vessel, [the] same shall be made, at the discretion of the inspector, by the owner or user thereof. [1951 c 32 § 26.]

70.79.280 Inspection during construction. All boilers and all unfired pressure vessels to be installed in this state after the twelve months period from the date upon which the rules and regulations of the board shall become effective shall be inspected during construction as required by the applicable rules and regulations of the board by an inspector authorized to inspect boilers in this state, or, if constructed outside of the state, by an inspector holding a certificate from the national board of boiler and pressure vessel inspectors, or a certificate of competency as an inspector of boilers for a state that has a standard of examination substantially equal to that of this state as provided in RCW 70.79.170. [1951 c 32 § 27.]

70.79.290 Inspection certificate—Contents—Posting—Fee. If, upon inspection, a boiler or pressure vessel is found to comply with the rules and regulations of the board, and upon the appropriate fee payment made directly to the chief inspector, as required by RCW 70.79.160 or 70.79.330, the chief inspector shall issue to the owner or user of such a boiler or pressure vessel an inspection certificate bearing the date of inspection and specifying the maximum pressure under which the boiler or pressure vessel may be operated. Such inspection certificate shall be valid for not more than fourteen months from its date in the case of power boilers and twenty-six months in the case of low pressure heating boilers, and for not more than two months longer than the authorized inspection period in the case of pressure vessels. Certificates shall be posted under glass in the room containing the boiler or pressure vessel inspected. If the boiler or pressure vessel is not located within a building, the certificate shall be posted in a location convenient to the boiler or pressure vessel inspected or, in the case of a portable boiler or pressure vessel, the certificate shall be kept in a protective container to be fastened to the boiler or pressure vessel or in a tool box accompanying the boiler or pressure vessel. [1977 ex.s. c 175 § 1; 1970 ex.s. c 21 § 1; 1951 c 32 § 28.]

70.79.300 Inspection certificate invalid on termination of insurance. No inspection certificate issued for an insured boiler or unfired pressure vessel inspected by a special inspector shall be valid after the boiler or unfired pressure vessel, for which it was issued, shall cease to be insured by a company duly authorized by this state to carry such insurance. [1951 c 32 § 29.]

70.79.310 Inspection certificate—Suspension—Reinstatement. The chief inspector, or his authorized representative, may at any time suspend an inspection certificate when, in his opinion, the boiler or unfired pressure vessel for which it was issued, cannot be operated without menace to the public safety, or when the boiler or unfired pressure vessel is found not to comply with the rules and regulations herein provided. A special inspector shall have corresponding powers with respect to inspection certificates for boilers or unfired pressure vessels insured or unfired pressure vessels operated by the company employing him. Such suspension of an inspection certificate shall continue in effect until such boiler or unfired pressure vessel shall have been made to conform to the rules and regulations of the board, and until said inspection certificate shall have been reinstated. [1951 c 32 § 30.]

70.79.320 Operating without inspection certificate prohibited—Penalty. (1) It shall be unlawful for any person, firm, partnership, or corporation to operate under pressure in this state a boiler or unfired pressure vessel, to which this chapter applies, without a valid inspection certificate as provided for in this chapter.

(2) The department may assess a penalty against a person violating a provision of this chapter. The penalty shall be not more than five hundred dollars. Each day that the violation continues is a separate violation and is subject to a separate penalty.

(3) The department may not assess a penalty until it adopts rules describing the method it will use to calculate penalties for various violations.

(4) The department shall notify the violator of its action, and the reasons for its action, in writing. The department shall send the notice by certified mail to the violator that a hearing may be requested under RCW 70.79.360. The hearing shall not stay the effect of the penalty. [1986 c 97 § 2; 1951 c 32 § 31.]

70.79.330 Inspection fees—Expenses—Schedules. The owner or user of a boiler or pressure vessel required by this chapter to be inspected by the chief inspector, or his deputy inspector, shall pay directly to the chief inspector, upon completion of inspection, fees and expenses in accordance with a schedule adopted by the board and approved by the director of the department of labor and industries in accordance with the requirements of the Administrative Procedure Act, chapter 34.05 RCW. [1977 ex.s. c 175 § 2; 1970 ex.s. c 21 § 2; 1963 c 217 § 1; 1951 c 32 § 32.]

70.79.350 Inspection fees—Receipts for—Pressure systems safety fund. The chief inspector shall

give an official receipt for all fees required by chapter 70.79 RCW and shall transfer all sums so received to the treasurer of the state of Washington as ex officio custodian thereof and by him, as such custodian, shall place said sums in a special fund hereby created and designated as the "pressure systems safety fund". Said funds by him shall be paid out upon vouchers duly and regularly issued therefor and approved by the director of the department of labor and industries. The treasurer, as ex officio custodian of said fund, shall keep an accurate record of any payments into said fund, and of all disbursements therefrom. Said fund shall be used exclusively to defray only the expenses of administering chapter 70.79 RCW by the chief inspector as authorized by law and the expenses incident to the maintenance of his office. The fund shall be charged with its pro rata share of the cost of administering said fund which is to be determined by the director of financial management and by the director of the department of labor and industries. [1979 c 151 § 171; 1977 ex.s. c 175 § 3; 1951 c 32 § 34.]

70.79.360 Appeal from orders or acts. Any person aggrieved by an order or act of the director of the department of labor and industries, the chief inspector, under this chapter, may, within fifteen days after notice thereof, appeal from such order or act to the board which shall, within thirty days thereafter, hold a hearing after having given at least ten days written notice to all interested parties. The board shall, within thirty days after such hearing, issue an appropriate order either approving or disapproving said order or act. A copy of such order by the board shall be given to all interested parties. Within thirty days after any order or act of the board, any person aggrieved thereby may file a petition in the superior court of the county of Thurston for a review thereof. The court shall summarily hear the petition and may make any appropriate order or decree. [1951 c 32 § 36.]

70.79.900 Severability—1951 c 32. The fact that any section, subsection, sentence, clause, or phrase of this chapter is declared unconstitutional or invalid for any reason shall not affect the remaining portions of this chapter. [1951 c 32 § 37.]

Chapter 70.82

CEREBRAL PALSY PROGRAM

Sections	
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70.82.022	Cerebral palsy fund—Appropriations to be paid from general fund.
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70.82.030	Eligibility.
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70.82.010 Purpose and aim of program. It is hereby declared to be of vital concern to the state of Washington that all persons who are bona fide residents of the state of Washington and who are afflicted with cerebral palsy in any degree be provided with facilities and a program of service for medical care, education, treatment and training to enable them to become normal individuals. In order to effectively accomplish such purpose the department of social and health services, hereinafter called the department, is authorized and instructed and it shall be its duty to establish and administer facilities and a program of service for the discovery, care, education, hospitalization, treatment and training of educable persons afflicted with cerebral palsy, and to provide in connection therewith nursing, medical, surgical and corrective care, together with academic, occupational and related training. Such program shall extend to developing, extending and improving service for the discovery of such persons and for diagnosis and hospitalization and shall include cooperation with other agencies of the state charged with the administration of laws providing for any type of service or aid to handicapped persons, and with the United States government through any appropriate agency or instrumentality in developing, extending and improving such service, program and facilities. Such facilities shall include field clinics, diagnosis and observation centers, boarding schools, special classes in day schools, research facilities and such other facilities as shall be required to render appropriate aid to such persons. Existing facilities, buildings, hospitals and equipment belonging to or operated by the state of Washington shall be made available for these purposes when use therefor does not conflict with the primary use of such existing facilities. Existing buildings, facilities and equipment belonging to private persons, firms or corporations or to the United States government may be acquired or leased. [1974 ex.s. c 91 § 2; 1947 c 240 § 1; Rem. Supp. 1947 § 5547-1.]

Severability—1974 ex.s. c 91: "If any provision of this 1974 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1974 ex.s. c 91 § 8.]

Effective date—1974 ex.s. c 91: "This 1974 amendatory act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect immediately: *Provided*, That sections 2 through 5 of this 1974 amendatory act shall not take effect until July 1, 1974." [1974 ex.s. c 91 § 7.]

Severability—1947 c 240: "If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provisions or application." [1947 c 240 § 5.] This applies to RCW 70.82.010, 70.82.030 and 70.82.040.

70.82.021 Cerebral palsy fund—Moneys transferred to general fund. All moneys in the state treasury to the credit of the state cerebral palsy fund on the first day of May, 1955, and all moneys thereafter paid into the state treasury for or to the credit of the state cerebral palsy fund, shall be and are hereby transferred to and placed in the general fund. [1955 c 326 § 1.]

70.82.022 Cerebral palsy fund—Appropriations to be paid from general fund. From and after the first day of April, 1955, all appropriations made by the thirty-fourth legislature from the state cerebral palsy fund shall be paid out of moneys in the general fund. [1955 c 326 § 2.]

70.82.023 Cerebral palsy fund—Abolished. From and after the first day of May, 1955, the state cerebral palsy fund is abolished. [1955 c 326 § 3.]

70.82.024 Cerebral palsy fund—Warrants to be paid from general fund. From and after the first day of May, 1955, all warrants drawn on the state cerebral palsy fund and not presented for payment shall be paid from the general fund, and it shall be the duty of the state treasurer and he is hereby directed to pay such warrants when presented from the general fund. [1955 c 326 § 4.]

70.82.030 Eligibility. Any resident of this state who is educable but so severely handicapped as the result of cerebral palsy that he is unable to take advantage of the regular system of free education of this state may be admitted to or be eligible for any service and facilities provided hereunder, provided such resident has lived in this state continuously for more than one year before his application for such admission or eligibility. [1947 c 240 § 3; Rem. Supp. 1947 § 5547-2.]

70.82.040 Diagnosis. Persons shall be admitted to or be eligible for the services and facilities provided herein only after diagnosis according to procedures and regulations established and approved for this purpose by the department of social and health services. [1974 ex.s. c 91 § 3; 1947 c 240 § 4; Rem. Supp. 1947 § 5547-3.]

Severability—Effective date—1974 ex.s. c 91: See notes following RCW 70.82.010.

70.82.050 Powers, duties, functions, unallocated funds, transferred. All powers, duties and functions of the superintendent of public instruction or the state board of education relating to the Cerebral Palsy Center as referred to in chapter 39, Laws of 1973 2nd ex. sess. shall be transferred to the department of social and health services as created in chapter 43.20A RCW, and all unallocated funds within any account to the credit of the superintendent of public instruction or the state board of education for purposes of such Cerebral Palsy Center shall be transferred effective July 1, 1974 to the credit of the department of social and health services, which department shall hereafter expend such funds for such Cerebral Palsy Center purposes as contemplated in the appropriations therefor. All employees of the Cerebral Palsy Center on July 1, 1974 who are classified employees under chapter 41.06 RCW, the state civil service law, shall be assigned and transferred to the department of social and health services to perform their usual duties upon the same terms as formerly, without any loss of rights, subject to any action that may be appropriate thereafter in accordance with the laws and

rules governing the state civil service law. [1974 ex.s. c 91 § 4.]

Severability—Effective date—1974 ex.s. c 91: See notes following RCW 70.82.010.

Chapter 70.83

PHENYLKETONURIA AND OTHER PREVENTABLE HERITABLE DISORDERS

Sections

70.83.010	Declaration of policy and purpose.
70.83.020	Screening tests of newborn infants.
70.83.030	Report of positive test to department of social and health services.
70.83.040	Services and facilities of state agencies made available to families and physicians.
70.83.050	Rules and regulations to be adopted by state board of health.

Reviser's note: Powers and duties of the department of social and health services and the secretary of social and health services transferred to the department of health and the secretary of health. See RCW 43.70.060.

70.83.010 Declaration of policy and purpose. It is hereby declared to be the policy of the state of Washington to make every effort to detect as early as feasible and to prevent where possible phenylketonuria and other preventable heritable disorders leading to developmental disabilities or physical defects. [1977 ex.s. c 80 § 40; 1967 c 82 § 1.]

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.

70.83.020 Screening tests of newborn infants. It shall be the duty of the department of social and health services to require screening tests of all newborn infants before they are discharged from the hospital for the detection of phenylketonuria and other heritable or metabolic disorders leading to mental retardation or physical defects as defined by the state board of health: *Provided*, That no such tests shall be given to any newborn infant whose parents or guardian object thereto on the grounds that such tests conflict with their religious tenets and practices. [1975-'76 2nd ex.s. c 27 § 1; 1967 c 82 § 2.]

70.83.030 Report of positive test to department of social and health services. Laboratories, attending physicians, hospital administrators, or other persons performing or requesting the performance of tests for phenylketonuria shall report to the department of social and health services all positive tests. The state board of health by rule and regulation shall, when it deems appropriate, require that positive tests for other heritable and metabolic disorders covered by this chapter be reported to the state department of social and health services by such persons or agencies requesting or performing such tests. [1979 c 141 § 113; 1967 c 82 § 3.]

70.83.040 Services and facilities of state agencies made available to families and physicians. When notified of positive screening tests, the state department of social

and health services shall offer the use of its services and facilities, designed to prevent mental retardation or physical defects in such children, to the attending physician, or the parents of the newborn child if no attending physician can be identified.

The services and facilities of the state department of social and health services, and other state and local agencies cooperating with the department of social and health services in carrying out programs of detection and prevention of mental retardation and physical defects shall be made available to the family and physician to the extent required in order to carry out the intent of this chapter and within the availability of funds. [1979 c 141 § 114; 1967 c 82 § 4.]

70.83.050 Rules and regulations to be adopted by state board of health. The state board of health shall adopt rules and regulations necessary to carry out the intent of this chapter. [1967 c 82 § 5.]

Chapter 70.83B

PRENATAL TESTING

Sections

70.83B.010	Legislative findings.
70.83B.020	Definitions.
70.83B.030	Rules—Consultation.
70.83B.040	Advisory committee—Recommendations—Appointment.
70.83B.900	Expiration date—1988 c 276.

70.83B.010 Legislative findings. The legislature finds that the availability and competent utilization of certain prenatal tests for congenital and heritable disorders is crucial to protect the health of both mothers and infants. The legislature further finds that the public health, safety, and welfare will be protected by promoting the performance of these tests and the obtaining of data on the utilization of these tests. [1988 c 276 § 1.]

70.83B.020 Definitions. Unless the context clearly requires otherwise the definitions in this section apply throughout this chapter.

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

(2) **"Laboratory"** means a private or public agency or organization performing prenatal tests for congenital and heritable disorders.

(3) **"Prenatal tests"** means any test that predicts congenital or heritable disorders which: (a) As determined by the state board of health can be by improper utilization clearly harm or endanger the health, safety, or welfare of the public, and the potential harm is easily recognizable and not remote or dependent upon tenuous argument, and (b) are enumerated by the department by rule.

(4) **"Secretary"** means the secretary of social and health services. [1988 c 276 § 2.]

***Reviser's note:** Powers and duties of the department of social and health services and the secretary of social and health services transferred to the department of health and the secretary of health. See RCW 43.70.060.

70.83B.030 Rules—Consultation. The department shall adopt rules establishing requirements for the reporting and other activities required by this chapter. The department shall adopt rules in accordance with the administrative procedure act, chapter 34.05 RCW. In adopting rules the department shall consult with the prenatal test advisory committee. [1988 c 276 § 3.]

70.83B.040 Advisory committee—Recommendations—Appointment. (1) The prenatal test advisory committee is formed to advise the department on developing prenatal test reporting rules. The advisory committee shall develop recommendations to address:

(a) Obtaining of data on availability of prenatal tests to all pregnant women without regard to age, race, socio-economic status and geographic location;

(b) Obtaining of data on utilization of prenatal tests by pregnant women in relation to age, race, socio-economic status and geographic location;

(c) Obtaining of data from laboratories performing prenatal tests on volume of tests performed, abnormal test results obtained and fees charged;

(d) Obtaining of data on standardization of prenatal tests offered to pregnant women in regard to laboratory procedures, test result reporting and recommendations for follow-up of abnormal results;

(e) Suggested guidelines to facilitate coordination with existing prenatal testing programs of the department; and

(f) Provision of educational materials to physicians or others licensed to provide prenatal care to women for distribution to women at appropriate times in their pregnancies.

(2) The prenatal test advisory committee shall be appointed by the secretary whose members shall be representative of the following groups:

(a) Obstetricians;

(b) Radiologists;

(c) Medical geneticists;

(d) Pediatricians;

(e) The developmentally disabled; and

(f) Laboratories performing prenatal tests.

(3) The prenatal test advisory committee shall serve at the pleasure of the secretary. Advisory committee members shall be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060. [1988 c 276 § 4.]

70.83B.900 Expiration date—1988 c 276. RCW 70.83B.010 through 70.83B.040 shall expire June 30, 1993, unless extended by law for an additional fixed period of time. [1988 c 276 § 12.]

Chapter 70.84

BLIND, HANDICAPPED, AND DISABLED PERSONS—"WHITE CANE LAW"

Sections

70.84.010 Declaration—Policy.

70.84.020 "Guide dog" defined.

70.84.021 "Service dog" defined.

70.84.030	Guide or service dog—Extra charge or refusing service because of prohibited.
70.84.040	Precautions for drivers of motor vehicles approaching pedestrian who is carrying white cane or using guide or service dog.
70.84.050	Handicapped pedestrians not carrying white cane or using guide or service dog—Rights and privileges.
70.84.060	Unauthorized use of white cane or guide or service dog.
70.84.070	Penalty for violations.
70.84.080	Employment of blind or other handicapped persons in public service.
70.84.090	Refueling services for disabled drivers—Violation—Investigation—Intentional display of plate, decal, or card invalid or not legally issued prohibited—Fine—Notice to disabled persons.
70.84.100	Liability for killing or injuring guide or service dog—Penalty in addition to other remedies or penalties.
70.84.110	Liability for killing or injuring guide or service dog—Recovery of attorneys' fees and costs.
70.84.120	License waiver for guide and service dogs.
70.84.900	Short title.

70.84.010 Declaration—Policy. The legislature declares:

(1) It is the policy of this state to encourage and enable the blind, the visually handicapped, the hearing impaired, and the otherwise physically disabled to participate fully in the social and economic life of the state, and to engage in remunerative employment.

(2) As citizens, the blind, the visually handicapped, the hearing impaired, and the otherwise physically disabled have the same rights as the able-bodied to the full and free use of the streets, highways, walkways, public buildings, public facilities, and other public places.

(3) The blind, the visually handicapped, the hearing impaired, and the otherwise physically disabled are entitled to full and equal accommodations, advantages, facilities, and privileges on common carriers, airplanes, motor vehicles, railroad trains, motor buses, street cars, boats, and all other public conveyances, as well as in hotels, lodging places, places of public resort, accommodation, assemblage or amusement, and all other places to which the general public is invited, subject only to the conditions and limitations established by law and applicable alike to all persons. [1980 c 109 § 1; 1969 c 141 § 1.]

70.84.020 "Guide dog" defined. For the purpose of this chapter, the term "guide dog" shall mean a dog which is in working harness and is trained or approved by an accredited school engaged in training dogs for the purpose of guiding blind persons or a dog which is trained or approved by an accredited school engaged in training dogs for the purpose of assisting hearing impaired persons. [1980 c 109 § 2; 1969 c 141 § 2.]

70.84.021 "Service dog" defined. For the purpose of this chapter, "service dog" means a dog that is trained or approved by an accredited school, or state institution of higher education, engaged in training dogs for the purposes of assisting or accommodating a physically disabled person related to the person's physical disability. [1985 c 90 § 1.]

70.84.030 Guide or service dog—Extra charge or refusing service because of prohibited. Every totally or

partially blind, hearing impaired, or otherwise physically disabled person shall have the right to be accompanied by a guide dog or service dog in any of the places listed in RCW 70.84.010(3) without being required to pay an extra charge for the guide dog or service dog. It shall be unlawful to refuse service to a blind, hearing impaired, or otherwise physically disabled person in any such place solely because the person is accompanied by a guide dog or service dog. [1985 c 90 § 2; 1980 c 109 § 3; 1969 c 141 § 3.]

70.84.040 Precautions for drivers of motor vehicles approaching pedestrian who is carrying white cane or using guide or service dog. The driver of a vehicle approaching a totally or partially blind pedestrian who is carrying a cane predominantly white in color (with or without a red tip), a totally or partially blind or hearing impaired pedestrian using a guide dog, or an otherwise physically disabled person using a service dog shall take all necessary precautions to avoid injury to such pedestrian. Any driver who fails to take such precaution shall be liable in damages for any injury caused such pedestrian. It shall be unlawful for the operator of any vehicle to drive into or upon any crosswalk while there is on such crosswalk, such pedestrian, crossing or attempting to cross the roadway, if such pedestrian indicates his intention to cross or of continuing on, with a timely warning by holding up or waving a white cane, using a guide dog, or using a service dog. The failure of any such pedestrian so to signal shall not deprive him of the right of way accorded him by other laws. [1985 c 90 § 3; 1980 c 109 § 4; 1971 ex.s. c 77 § 1; 1969 c 141 § 4.]

70.84.050 Handicapped pedestrians not carrying white cane or using guide dog—Rights and privileges. A totally or partially blind pedestrian not carrying a white cane or a totally or partially blind or hearing impaired pedestrian not using a guide dog in any of the places, accommodations, or conveyances listed in RCW 70.84.010, shall have all of the rights and privileges conferred by law on other persons. [1980 c 109 § 5; 1969 c 141 § 5.]

70.84.060 Unauthorized use of white cane or guide or service dog. It shall be unlawful for any pedestrian who is not totally or partially blind to use a white cane or any pedestrian who is not totally or partially blind or is not hearing impaired to use a guide dog or any pedestrian who is not otherwise physically disabled to use a service dog in any of the places, accommodations, or conveyances listed in RCW 70.84.010 for the purpose of securing the rights and privileges accorded by the chapter to totally or partially blind, hearing impaired, or otherwise physically disabled people. [1985 c 90 § 4; 1980 c 109 § 6; 1969 c 141 § 6.]

70.84.070 Penalty for violations. Any person or persons, firm or corporation, or the agent of any person or persons, firm or corporation, who denies or interferes with admittance to or enjoyment of the public facilities enumerated in RCW 70.84.010, or otherwise interferes

with the rights of a totally or partially blind, hearing impaired, or otherwise physically disabled person as set forth in RCW 70.84.010 shall be guilty of a misdemeanor. [1985 c 90 § 5; 1980 c 109 § 7; 1969 c 141 § 7.]

70.84.080 Employment of blind or other handicapped persons in public service. In accordance with the policy set forth in RCW 70.84.010, the blind, the visually handicapped, the hearing impaired, and the otherwise physically disabled shall be employed in the state service, in the service of the political subdivisions of the state, in the public schools, and in all other employment supported in whole or in part by public funds on the same terms and conditions as the able-bodied, unless it is shown that the particular disability prevents the performance of the work involved. [1980 c 109 § 8; 1969 c 141 § 9.]

70.84.090 Refueling services for disabled drivers—Violation—Investigation—Intentional display of plate, decal, or card invalid or not legally issued prohibited—Fine—Notice to disabled persons. (1) Every person, firm, partnership, association, trustee, or corporation which operates a gasoline service station, or other facility which offers gasoline or other motor vehicle fuel for sale to the public from such a facility, shall provide, upon request, refueling service to disabled drivers, unaccompanied by passengers capable of safely providing refueling service, of vehicles which display a disabled person's license plate, decal, or special card issued by the department of licensing. The price charged for the motor vehicle fuel in such a case shall be no greater than that which the facility otherwise would charge the public generally to purchase motor vehicle fuel without refueling service. This section does not require a facility to provide disabled drivers with services, including but not limited to checking oil or cleaning windshields, other than refueling services.

(2) This section does not apply to:

(a) Exclusive self-service gas stations which have remotely controlled gas pumps and which never provide pump island service; and

(b) Convenience stores which sell gasoline, which have remotely controlled gas pumps and which never provide pump island service.

(3) Any person who, as a responsible managing individual setting service policy of a station or facility or as an employee acting independently against set service policy, acts in violation of this section is guilty of a misdemeanor. This subsection shall be enforced by the prosecuting attorney.

(4) The human rights commission shall, upon the filing of a verified written complaint by any person, investigate the actions of any person, firm, partnership, association, trustee, or corporation alleged to have violated this section. The complaint shall be in the form prescribed by the commission. The commission may, upon its own motion, issue complaints and conduct investigations of alleged violations of this section.

RCW 49.60.240 through 49.60.280 shall apply to complaints under this section.

(5) In addition to those matters referred pursuant to subsection (3) of this section, the prosecuting attorney may investigate and prosecute alleged violations of this section.

(6) Any person who intentionally displays a license plate, decal, or special card which is invalid, or which was not lawfully issued to that person, for the purpose of obtaining refueling service under subsection (1) of this section shall be subject to a civil fine of one hundred dollars for each such violation.

(7) A notice setting forth the provisions of this section shall be provided by the department of licensing to every person, firm, partnership, association, trustee, or corporation which operates a gasoline service station, or other facility which offers gasoline or other motor vehicle fuel for sale to the public from such a facility.

(8) A notice setting forth the provisions of this section shall be provided by the department of licensing to every person who is issued a disabled person's license plate, decal, or special card.

(9) For the purposes of this section, "refueling service" means the service of pumping motor vehicle fuel into the fuel tank of a motor vehicle.

(10) Nothing in this section limits or restricts the rights or remedies provided under chapter 49.60 RCW. [1985 c 309 § 1.]

70.84.100 Liability for killing or injuring guide or service dog—Penalty in addition to other remedies or penalties. A person who negligently or maliciously kills or injures a guide or service dog is liable for a penalty of one thousand dollars, to be paid to the user of the dog. The penalty shall be in addition to and not in lieu of any other remedies or penalties, civil or criminal, provided by law. [1988 c 89 § 1.]

70.84.110 Liability for killing or injuring guide or service dog—Recovery of attorneys' fees and costs. A user or owner of a guide or service dog, whose dog is negligently or maliciously injured or killed, is entitled to recover reasonable attorneys' fees and costs incurred in pursuing any civil remedy. [1988 c 89 § 2.]

70.84.120 License waiver for guide and service dogs. A county, city, or town shall honor a request by a blind person or hearing impaired person not to be charged a fee to license his or her guide dog, or a request by a physically disabled person not to be charged a fee to license his or her service dog. [1989 c 41 § 1.]

70.84.900 Short title. This chapter shall be known and may be cited as the "White Cane Law." [1969 c 141 § 11.]

Chapter 70.85

EMERGENCY PARTY LINE TELEPHONE CALLS—LIMITING TELEPHONE COMMUNICATION IN HOSTAGE SITUATIONS

Sections

70.85.010	Definitions.
70.85.020	Refusal to yield line—Penalty.
70.85.030	Request for line on pretext of emergency—Penalty.
70.85.040	Telephone directories—Notice.
70.85.100	Authority to isolate telephones in barricade or hostage situation—Definitions.
70.85.110	Telephone companies to provide contacting information.
70.85.120	Liability of telephone company.
70.85.130	Applicability.

Call to operator without charge or coin insertion be provided: RCW 80.36.225.

Fraud in operating coin-box telephone: RCW 9.45.180.

Telecommunications companies: Chapter 80.36 RCW.

70.85.010 Definitions. "Party line" means a subscribers' line telephone circuit, consisting of two or more main telephone stations connected therewith, each station with a distinctive ring or telephone number.

"Emergency" means a situation in which property or human life are in jeopardy and the prompt summoning of aid is essential. [1953 c 25 § 1.]

70.85.020 Refusal to yield line—Penalty. Any person who shall wilfully refuse to yield or surrender the use of a party line to another person for the purpose of permitting such other person to report a fire or summon police, medical or other aid in case of emergency, shall be deemed guilty of a misdemeanor. [1953 c 25 § 2.]

70.85.030 Request for line on pretext of emergency—Penalty. Any person who shall ask for or request the use of a party line on pretext that an emergency exists, knowing that no emergency in fact exists, shall be deemed guilty of a misdemeanor. [1953 c 25 § 3.]

70.85.040 Telephone directories—Notice. After September 9, 1953, every telephone directory thereafter distributed to the members of the general public shall contain a notice which explains this chapter, such notice to be printed in type which is no smaller than any other type on the same page and to be preceded by the word "warning": *Provided*, That the provisions of this section shall not apply to those directories distributed solely for business advertising purposes, commonly known as classified directories. [1953 c 25 § 4.]

70.85.100 Authority to isolate telephones in barricade or hostage situation—Definitions. (1) The supervising law enforcement official having jurisdiction in a geographical area who reasonably believes that a person is barricaded, or one or more persons are holding another person or persons hostage within that area may order a telephone company employee designated pursuant to RCW 70.85.110 to arrange to cut, reroute, or divert telephone lines for the purpose of preventing

telephone communications between the barricaded person or hostage holder and any person other than a peace officer or a person authorized by the peace officer.

(2) As used in this section:

(a) A "hostage holder" is one who commits or attempts to commit any of the offenses described in RCW 9A.40.020, 9A.40.030, or 9A.40.040; and

(b) A "barricaded person" is one who establishes a perimeter around an area from which others are excluded and either:

(i) Is committing or is immediately fleeing from the commission of a violent felony; or

(ii) Is threatening or has immediately prior threatened a violent felony or suicide; or

(iii) Is creating or has created the likelihood of serious harm within the meaning of chapter 71.05 RCW relating to mental illness. [1985 c 260 § 1; 1979 c 28 § 1.]

70.85.110 Telephone companies to provide contacting information. The telephone company providing service within the geographical jurisdiction of a law enforcement unit shall inform law enforcement agencies of the address and telephone number of its security office or other designated office to provide all required assistance to law enforcement officials to carry out the purpose of RCW 70.85.100 through 70.85.130. The designation shall be in writing and shall provide the telephone number or numbers through which the security representative or other telephone company official can be reached at any time. This information shall be served upon all law enforcement units having jurisdiction in a geographical area. Any change in address or telephone number or identity of the telephone company office to be contacted to provide required assistance shall be served upon all law enforcement units in the affected geographical area. [1979 c 28 § 2.]

70.85.120 Liability of telephone company. Good faith reliance on an order given under RCW 70.85.100 through 70.85.130 by a supervising law enforcement official shall constitute a complete defense to any civil or criminal action arising out of such ordered cutting, re-routing or diverting of telephone lines. [1979 c 28 § 3.]

70.85.130 Applicability. RCW 70.85.100 through 70.85.120 will govern notwithstanding the provisions of any other section of this chapter and notwithstanding the provisions of chapter 9.73 RCW. [1979 c 28 § 4.]

Chapter 70.86

EARTHQUAKE STANDARDS FOR CONSTRUCTION

(Formerly: Earthquake resistance standards)

Sections

70.86.010	Definitions.
70.86.020	Buildings to resist earthquake intensities.
70.86.030	Standards for design and construction.
70.86.040	Penalty.

70.86.010 Definitions. The word "person" includes any individual, corporation, or group of two or more individuals acting together for a common purpose, whether acting in an individual, representative, or official capacity. [1955 c 278 § 1.]

70.86.020 Buildings to resist earthquake intensities. Hospitals, schools, except one story, portable, frame school buildings, buildings designed or constructed as places of assembly accommodating more than three hundred persons; and all structures owned by the state, county, special districts, or any municipal corporation within the state of Washington shall hereafter be designed and constructed to resist probable earthquake intensities at the location thereof in accordance with RCW 70.86.030, unless other standards of design and construction for earthquake resistance are prescribed by enactments of the legislative authority of counties, special districts, and/or municipal corporations in which the structure is constructed. [1955 c 278 § 2.]

70.86.030 Standards for design and construction. Structural frames, exterior walls, and all appendages of the buildings described in RCW 70.86.020, whose collapse will endanger life and property shall be designed and constructed to withstand horizontal forces from any direction of not less than the following fractions of the weight of the structure and its parts acting at the centers of gravity:

Western Washington 0.05. [1955 c 278 § 3.]

70.86.040 Penalty. Any person violating any provision of this chapter shall be guilty of a misdemeanor: *Provided*, That any person causing such a building to be built shall be entitled to rely on the certificate of a licensed professional engineer and/or registered architect that the standards of design set forth above have been met. [1955 c 278 § 4.]

Chapter 70.87

ELEVATORS, LIFTING DEVICES, AND MOVING WALKS

Sections

70.87.010	Definitions.
70.87.020	Conveyances to be safe and in conformity with law.
70.87.030	Department to administer—Rules.
70.87.034	Additional powers of department.
70.87.036	Powers of attorney general.
70.87.040	Privately and publicly owned conveyances are subject to chapter.
70.87.050	Conveyances in buildings occupied by state, county or political subdivision.
70.87.060	Responsibility for operation and maintenance of equipment and for periodic tests.
70.87.070	Serial numbers.
70.87.080	Installation permits—When required—Application for—Posting.
70.87.090	Operating permits—Limited permits—Duration—Posting.
70.87.100	Acceptance tests.
70.87.110	Exceptions authorized.

70.87.120	Inspectors—Inspections and reinspections—Suspension or revocation of permit—Order to discontinue use—Investigation by department.
70.87.125	Suspension or revocation of permit—Grounds—Notice—Stay of suspension or revocation—Removal of suspension or reinstatement of permit.
70.87.140	Operation without permit enjoinable.
70.87.145	Order to discontinue operation—Notice—Conditions—Contents of order—Rescission of order—Violation—Penalty.
70.87.170	Review of department action in accordance with administrative procedure act.
70.87.180	Violations.
70.87.185	Penalty for violation of chapter—Rules—Notice.
70.87.190	Accidents—Report and investigation—Cessation of use—Removal of damaged parts.
70.87.200	Exemptions.
70.87.205	Resolution of disputes by arbitration—Appointment of arbitrators—Procedure—Decision—Enforcement.
70.87.210	Disposition of revenue.
70.87.900	Severability.

State building code: Chapter 19.27 RCW.

70.87.010 Definitions. For the purposes of this chapter, except where a different interpretation is required by the context:

(1) "Owner" means any person having title to or control of a conveyance, as guardian, trustee, lessee, or otherwise;

(2) "Conveyance" means an elevator, escalator, dumbwaiter, belt manlift, automobile parking elevator, or moving walk, all as defined in this section;

(3) "Existing installations" means all conveyances for which plans were completed and accepted by the owner, or for which the plans and specifications have been filed with and approved by the department before June 13, 1963, and work on the erection of which was begun not more than twelve months thereafter;

(4) "Elevator" means a hoisting or lowering machine equipped with a car or platform that moves in guides and serves two or more floors or landings of a building or structure;

(a) "Passenger elevator" means an elevator (i) on which passengers are permitted to ride and (ii) that may be used to carry freight or materials when the load carried does not exceed the capacity of the elevator;

(b) "Freight elevator" means an elevator (i) used primarily for carrying freight and (ii) on which only the operator, the persons necessary for loading and unloading, and other employees approved by the department are permitted to ride;

(c) "Sidewalk elevator" means a freight elevator that: (i) Operates between a sidewalk or other area outside the building and floor levels inside the building below the outside area, (ii) has no landing opening into the building at its upper limit of travel, and (iii) is not used to carry automobiles;

(5) "Escalator" means a power-driven, inclined, continuous stairway used for raising and lowering passengers;

(6) "Dumbwaiter" means a hoisting and lowering mechanism equipped with a car (a) that moves in guides

in a substantially vertical direction, (b) the floor area of which does not exceed nine square feet, (c) the inside height of which does not exceed four feet, (d) the capacity of which does not exceed five hundred pounds, and (e) that is used exclusively for carrying materials;

(7) "Automobile parking elevator" means an elevator: (a) Located in either a stationary or horizontally moving hoistway; (b) used exclusively for parking automobiles where, during the parking process, each automobile is moved either under its own power or by means of a power-driven transfer device onto and off the elevator directly into parking spaces or cubicles in line with the elevator; and (c) in which no persons are normally stationed on any level except the receiving level;

(8) "Moving walk" means a passenger carrying device (a) on which passengers stand or walk and (b) on which the passenger carrying surface remains parallel to its direction of motion;

(9) "Belt manlift" means a power driven endless belt provided with steps or platforms and a hand hold for the transportation of personnel from floor to floor;

(10) "Department" means the department of labor and industries;

(11) "Director" means the director of the department or his or her representative;

(12) "Inspector" means an elevator inspector of the department or an elevator inspector of a municipality having in effect an elevator ordinance pursuant to RCW 70.87.200;

(13) "Permit" means a permit issued by the department to construct, install, or operate a conveyance;

(14) "Person" means this state, a political subdivision, any public or private corporation, any firm, or any other entity as well as an individual;

(15) "One-man capacity manlift" means a single passenger, hand-powered counterweighted device, or electric-powered device, that travels vertically in guides and serves two or more landings. [1983 c 123 § 1; 1973 1st ex.s. c 52 § 9; 1969 ex.s. c 108 § 1; 1963 c 26 § 1.]

Effective date—1973 1st ex.s. c 52: See note following RCW 43.22.010.

70.87.020 Conveyances to be safe and in conformity with law. The purpose of this chapter is to provide for the safe mechanical and electrical operation, erection, installation, alteration, inspection, and repair of conveyances, and all such operation, erection, installation, alteration, inspection, and repair subject to the provisions of this chapter shall be reasonably safe to persons and property and in conformity with the provisions of this chapter and the applicable statutes of the state of Washington, and all orders, rules, and regulations of the department. In any suit for damages allegedly caused by a failure or malfunction of the conveyance, conformity with the rules of the department is prima facie evidence that the operation, erection, installation, alteration, inspection, and repair of the conveyance is reasonably safe to persons and property. [1983 c 123 § 2; 1963 c 26 § 2.]

70.87.030 Department to administer—Rules. The department shall administer this chapter through the division of building and construction safety inspection services. However, except for the new construction thereof, all hand-powered elevators, belt manlifts, and one-man capacity manlifts installed in or on grain elevators are the responsibility of the division of industrial safety and health of the department. The department shall adopt rules governing the mechanical and electrical operation, erection, installation, alterations, inspection, acceptance tests, and repair of conveyances that are necessary and appropriate and shall also adopt minimum standards governing existing installations. In the execution of this rule-making power and before the adoption of rules, the department shall consider the rules for the safe mechanical operation, erection, installation, alteration, inspection, and repair of conveyances, including the American Standard Safety Code for Elevators, Dumbwaiters, and Escalators, and any amendatory or supplemental provisions thereto. The department by rule shall establish a schedule of fees to pay the costs incurred by the department for the work related to administration and enforcement of this chapter. Nothing in this chapter limits the authority of the department to prescribe or enforce general or special safety orders as provided by law. [1983 c 123 § 3; 1973 1st ex.s. c 52 § 10; 1971 c 66 § 1; 1970 ex.s. c 22 § 1; 1963 c 26 § 3.]

Effective date—1973 1st ex.s. c 52: See note following RCW 43.22.010.

70.87.034 Additional powers of department. The department also has the following powers:

(1) The department may adopt any rules necessary or helpful for the department to implement and enforce this chapter.

(2) The director may issue subpoenas for the production of persons, papers, or information in all proceedings and investigations within the scope of this chapter. If a person refuses to obey a subpoena, the director, through the attorney general, may ask the superior court to order the person to obey the subpoena.

(3) The director may take the oral or written testimony of any person. The director has the power to administer oaths.

(4) The director may make specific decisions, cease and desist orders, other orders, and rulings, including demands and findings. [1983 c 123 § 19.]

70.87.036 Powers of attorney general. On request of the department, the attorney general may:

(1) File suit to collect a penalty assessed by the department;

(2) Seek a civil injunction, show cause order, or contempt order against the person who repeatedly violates a provision of this chapter;

(3) Seek an ex parte inspection warrant if the person refuses to allow the department to inspect a conveyance;

(4) File suit asking the court to enforce a cease and desist order or a subpoena issued by the director under this chapter; and

(5) Take any other legal action appropriate and necessary for the enforcement of the provisions of this chapter.

All suits shall be brought in the district or superior court of the district or county in which the defendant resides or transacts business. In any suit or other legal action, the department may ask the court to award costs and attorney's fees. If the department prevails, the court shall award the appropriate costs and attorney's fees. [1983 c 123 § 20.]

70.87.040 Privately and publicly owned conveyances are subject to chapter. All privately owned and publicly owned conveyances are subject to the provisions of this chapter except as specifically excluded by this chapter. [1983 c 123 § 4; 1963 c 26 § 4.]

70.87.050 Conveyances in buildings occupied by state, county or political subdivision. The operation, erection, installation, alteration, inspection, and repair of any conveyance located in, or used in connection with, any building owned by the state, a county, or a political subdivision, other than those located within and owned by a city having an elevator code, shall be under the jurisdiction of the department. [1983 c 123 § 5; 1969 ex.s. c 108 § 2; 1963 c 26 § 5.]

70.87.060 Responsibility for operation and maintenance of equipment and for periodic tests. (1) The person installing, relocating, or altering a conveyance is responsible for its operation and maintenance until the department has issued an operating permit for the conveyance, except during the period when a limited operating permit in accordance with RCW 70.87.090(2) is in effect, and is also responsible for all tests of a new, relocated, or altered conveyance until the department has issued an operating permit for the conveyance.

(2) The owner or his or her duly appointed agent shall be responsible for the safe operation and proper maintenance of the conveyance after the department has issued the operating permit and also during the period of effectiveness of any limited operating permit in accordance with RCW 70.87.090(2). The owner shall be responsible for all periodic tests required by the department. [1983 c 123 § 6; 1963 c 26 § 6.]

70.87.070 Serial numbers. All new and existing conveyances shall have a serial number painted on or attached as directed by the department. This serial number shall be assigned by the department and shown on all required permits. [1983 c 123 § 7; 1963 c 26 § 7.]

70.87.080 Installation permits—When required—Application for—Posting. (1) An installation permit shall be obtained from the department before erecting, installing, relocating, or altering a conveyance.

(2) The installer of the conveyance shall submit an application for the permit in duplicate, in a form that the department may prescribe.

(3) The permit issued by the department shall be kept posted conspicuously at the site of installation.

(4) No permit is required for repairs and replacement normally necessary for maintenance and made with parts of equivalent materials, strength, and design. [1983 c 123 § 8; 1963 c 26 § 8.]

70.87.090 Operating permits—Limited permits—Duration—Posting. (1) An operating permit is required for each conveyance operated in the state of Washington except during its erection by the person or firm responsible for its installation. A permit issued by the department shall be kept conspicuously posted near the conveyance.

(2) The department may permit the temporary use of a conveyance during its installation or alteration, under the authority of a limited permit issued by the department for each class of service. Limited permits shall be issued for a period not to exceed thirty days and may be renewed at the discretion of the department. Where a limited permit is issued, a notice bearing the information that the equipment has not been finally approved shall be conspicuously posted. [1983 c 123 § 9; 1963 c 26 § 9.]

70.87.100 Acceptance tests. (1) The person or firm installing, relocating, or altering a conveyance shall notify the department in writing, at least seven days before completion of the work, and shall subject the new, moved, or altered portions of the conveyance to the acceptance tests.

(2) All new, altered, or relocated conveyances for which a permit has been issued, shall be inspected for compliance with the requirements of this chapter by an authorized representative of the department. The authorized representative shall also witness the test specified. [1983 c 123 § 11; 1963 c 26 § 10.]

70.87.110 Exceptions authorized. The requirements of this chapter are intended to apply to all conveyances except as modified or waived by the department. They are intended to be modified or waived whenever any requirements are shown to be impracticable, such as involving expense not justified by the protection secured. However, the department shall not allow the modification or waiver unless equivalent or safer construction is secured in other ways. An exception applies only to the installation covered by the application for waiver. [1983 c 123 § 12; 1963 c 26 § 11.]

70.87.120 Inspectors—Inspections and reinspections—Suspension or revocation of permit—Order to discontinue use—Investigation by department. (1) The department shall appoint and employ inspectors, as may be necessary to carry out the provisions of this chapter, under the provisions of the rules adopted by the state personnel board in accordance with chapter 41.06 RCW.

(2) The department shall cause all conveyances to be inspected and tested at least once each year. Inspectors have the right during reasonable hours to enter into and

upon any building or premises in the discharge of their official duties, for the purpose of making any inspection or testing any conveyance contained thereon or therein. Inspections and tests shall conform with the rules adopted by the department. The department shall inspect all installations before it issues any initial permit for operation. Permits shall not be issued until the fees required by this chapter have been paid.

(3) If inspection shows a conveyance to be in an unsafe condition, the department shall issue an inspection report in writing requiring the repairs or alterations to be made to the conveyance that are necessary to render it safe and may also suspend or revoke a permit pursuant to RCW 70.87.125 or order the operation of a conveyance discontinued pursuant to RCW 70.87.145.

(4) The department may investigate accidents and alleged or apparent violations of this chapter. [1983 c 123 § 13; 1970 ex.s. c 22 § 2; 1963 c 26 § 12.]

70.87.125 Suspension or revocation of permit—Grounds—Notice—Stay of suspension or revocation—Removal of suspension or reinstatement of permit. (1) The department may suspend or revoke a permit if:

(a) The permit was obtained through fraud or by error if, in the absence of error, the department would not have issued the permit;

(b) The conveyance for which the permit was issued has not been constructed, installed, maintained, or repaired in accordance with the requirements of this chapter; or

(c) The conveyance has become unsafe.

(2) The department shall notify in writing the owner or person installing the conveyance, of its action and the reason for the action. The department shall send the notice by certified mail to the last known address of the owner or person. The notice shall inform the owner or person that a hearing may be requested pursuant to RCW 70.87.170.

(3) If the department has suspended or revoked a permit because of fraud or error, and a hearing is requested, the suspension or revocation shall be stayed until the hearing is concluded and a decision is issued.

If the department has revoked or suspended a permit because the conveyance is unsafe or is not constructed, installed, maintained, or repaired in accordance with this chapter, the suspension or revocation is effective immediately and shall not be stayed by a request for a hearing.

(4) The department shall remove a suspension or reinstate a revoked permit if a conveyance is repaired or modified to bring it into compliance with this chapter. [1983 c 123 § 10.]

70.87.140 Operation without permit enjoined. Whenever any conveyance is being operated without a permit required by this chapter, the attorney general or the prosecuting attorney of the county may apply to the superior court of the county in which the conveyance is located for a temporary restraining order or a temporary or permanent injunction restraining the operation of the

conveyance until the department issues a permit for the conveyance. No bond may be required from the department in such proceedings. [1983 c 123 § 14; 1963 c 26 § 14.]

70.87.145 Order to discontinue operation—Notice—Conditions—Contents of order—Recision of order—Violation—Penalty. (1) An authorized representative of the department may order the owner or person operating a conveyance to discontinue the operation of a conveyance, and may place a notice that states that the conveyance may not be operated on a conspicuous place in the conveyance, if the conveyance:

(a) Has not been constructed, installed, maintained, or repaired in accordance with the requirements of this chapter; or

(b) Has otherwise become unsafe.

The order is effective immediately, and shall not be stayed by a request for a hearing.

(2) The department shall prescribe a form for the order to discontinue operation. The order shall specify why the conveyance violates this chapter or is otherwise unsafe, and shall inform the owner or operator that he or she may request a hearing pursuant to RCW 70.87.170. A request for a hearing does not stay the effect of the order.

(3) The department shall rescind the order to discontinue operation if the conveyance is fixed or modified to bring it into compliance with this chapter.

(4) An owner or a person that knowingly operates or allows the operation of a conveyance in contravention of an order to discontinue operation, or removes a notice not to operate, is:

(a) Guilty of a misdemeanor; and

(b) Subject to a civil penalty under RCW 70.87.185. [1983 c 123 § 15.]

70.87.170 Review of department action in accordance with administrative procedure act. (1) Any person aggrieved by an order or action of the department denying, suspending, revoking, or refusing to renew a permit; assessing a penalty for a violation of this chapter; or ordering the operation of a conveyance to be discontinued, may request a hearing within fifteen days after notice the department's order or action is received. The date the hearing was requested shall be the date the request for hearing was postmarked. The party requesting the hearing must accompany the request with a certified or cashier's check for two hundred dollars payable to the department. The department shall refund the two hundred dollars if the party requesting the hearing prevails at the hearing; otherwise, the department shall retain the two hundred dollars.

If the department does not receive a timely request for hearing, the department's order or action is final and may not be appealed.

(2) If the aggrieved party requests a hearing, the department shall ask an administrative law judge to preside over the hearing. The hearing shall be conducted in accordance with chapter 34.05 RCW. [1983 c 123 § 16; 1963 c 26 § 17.]

70.87.180 Violations. The construction, installation, relocation, alteration, or operation of a conveyance without a permit by any person owning or having the custody, management, or operation thereof, except as provided in RCW 70.87.080 and 70.87.090, is a misdemeanor. Each day of violation is a separate offense. No prosecution may be maintained where the issuance or renewal of a permit has been requested but upon which no action has been taken by the department. [1983 c 123 § 17; 1963 c 26 § 18.]

70.87.185 Penalty for violation of chapter—Rules—Notice. (1) The department may assess a penalty against a person violating a provision of this chapter. The penalty shall be not more than five hundred dollars. Each day that the violation continues is a separate violation and is subject to a separate penalty.

(2) The department may not assess a penalty until it adopts rules describing the method it will use to calculate penalties for various violations.

(3) The department shall notify the violator of its action, and the reasons for its action, in writing. The department shall send the notice by certified mail to the violator's last known address. The notice shall inform the violator that a hearing may be requested under RCW 70.87.170. The hearing shall not stay the effect of the penalty. [1983 c 123 § 18.]

70.87.190 Accidents—Report and investigation—Cessation of use—Removal of damaged parts. The owner or the owner's duly authorized agent shall promptly notify the department of each accident to a person requiring the service of a physician or resulting in a disability exceeding one day, and shall afford the department every facility for investigating and inspecting the accident. The department shall without delay, after being notified, make an inspection and shall place on file a full and complete report of the accident. The report shall give in detail all material facts and information available and the cause or causes, so far as they can be determined. The report shall be open to public inspection at all reasonable hours. When an accident involves the failure or destruction of any part of the construction or the operating mechanism of a conveyance, the use of the conveyance is forbidden until it has been made safe; it has been reinspected and any repairs, changes, or alterations have been approved by the department; and a permit has been issued by the department. The removal of any part of the damaged construction or operating mechanism from the premises is forbidden until the department grants permission to do so. [1983 c 123 § 21; 1963 c 26 § 19.]

70.87.200 Exemptions. (1) The provisions of this chapter do not apply where:

(a) A conveyance is permanently removed from service or made effectively inoperative; or

(b) Lifts, man hoists, or material hoists are erected temporarily for use during construction work only and are of such a design that they must be operated by a workman stationed at the hoisting machine.

(2) Except as limited by RCW 70.87.050, municipalities having in effect an elevator code prior to June 13, 1963 may continue to assume jurisdiction over the operation, erection, installation, alteration, or repair of elevators, escalators, dumbwaiters, moving walks, manlifts, and parking elevators and may inspect, issue permits, collect fees, and prescribe minimum requirements for the construction, design, use, and maintenance of conveyances if the requirements are equal to the requirements of this chapter and to all rules pertaining to conveyances adopted and administered by the department. Upon the failure of a municipality having jurisdiction over conveyances to carry out the provisions of this chapter with regard to a conveyance, the department may assume jurisdiction over the conveyance. If a municipality elects not to maintain jurisdiction over certain conveyances located therein, it may enter into a written agreement with the department transferring exclusive jurisdiction of the conveyances to the department. The city may not reassume jurisdiction after it enters into such an agreement with the department. [1983 c 123 § 22; 1969 ex.s. c 108 § 4; 1963 c 26 § 20.]

70.87.205 Resolution of disputes by arbitration—Appointment of arbitrators—Procedure—Decision—Enforcement. (1) Disputes arising under RCW 70.87.200(2) shall be resolved by arbitration. The request shall be sent by certified mail.

(2) The department shall appoint one arbitrator; the municipality shall appoint one arbitrator; and the arbitrators chosen by the department and the municipality shall appoint the third arbitrator. If the two arbitrators cannot agree on the third arbitrator, the presiding judge of the Thurston county superior court, or his or her designee, shall appoint the third arbitrator.

(3) The arbitration shall be held pursuant to the procedures in chapter 7.04 RCW, except that RCW 7.04.220 shall not apply. The decision of the arbitrators is final and binding on the parties. Neither party may appeal a decision to any court.

(4) A party may petition the Thurston county superior court to enforce a decision of the arbitrators. [1983 c 123 § 23.]

70.87.210 Disposition of revenue. All moneys received or collected under the terms of this chapter shall be deposited in the general fund. [1963 c 26 § 21.]

70.87.900 Severability. If any provision of this chapter or its application to any person or circumstance is held invalid, the remainder of the chapter, or the application of the provision to other persons or circumstances, is not affected. [1983 c 123 § 24; 1963 c 26 § 22.]

Chapter 70.88

CONVEYANCES FOR PERSONS IN RECREATIONAL ACTIVITIES

Sections

70.88.010 Safe and adequate facilities and equipment required of owner and operator—Operator not common carrier.

70.88.020 Plans, specifications to be submitted to state parks and recreation commission—Approval—Penalty.

70.88.030 Orders directing repairs, improvements, changes, etc.—Notice—Forbidding operation.

70.88.040 Penalty for violation of chapter or rules, etc., of parks and recreation commission.

70.88.050 Inspector of recreational devices—Employees.

70.88.060 Powers and duties of inspector—Condemnation of equipment—Annual inspection.

70.88.070 Costs of inspection—Lien—Disposition of funds.

70.88.080 State immunity from liability—Actions deemed exercise of police power.

70.88.090 Rules, regulations, and codes.

70.88.100 Judicial review.

70.88.010 Safe and adequate facilities and equipment required of owner and operator—Operator not common carrier. Every owner or operator of any recreational device designed and operated for the conveyance of persons which aids in promoting entertainment, pleasure, play, relaxation, or instruction, specifically including devices generally associated with winter sports activities such as ski lifts, ski tows, j-bars, t-bars, ski mobiles, chair lifts, and similar devices and equipment, shall construct, furnish, maintain, and provide safe and adequate facilities and equipment with which safely and properly to receive and transport all persons offered to and received by the owner or operator of such devices, and to promote the safety of such owner's or operator's patrons, employees and the public. The owner or operator of the devices and equipment covered by this section shall be deemed not to be a common carrier. [1965 ex.s. c 85 § 1; 1961 c 253 § 1; 1959 c 327 § 1.]

70.88.020 Plans, specifications to be submitted to state parks and recreation commission—Approval—Penalty. It shall be unlawful after June 10, 1959, to construct or install any such recreational device as set forth in RCW 70.88.010 without first submitting plans and specifications for such device to the state parks and recreation commission and receiving the approval of the commission for such construction or installation. Violation of this section shall be a misdemeanor. [1959 c 327 § 2.]

70.88.030 Orders directing repairs, improvements, changes, etc.—Notice—Forbidding operation. The state parks and recreation commission shall have the authority and the responsibility for the inspection of the devices set forth in RCW 70.88.010 and in addition shall have the following powers and duties:

(1) Whenever the commission, after hearing called upon its own motion or upon complaint, finds that additional apparatus, equipment, facilities or devices for use or in connection with the transportation or conveyance of persons upon the devices set forth in RCW 70.88.010, ought reasonably to be provided, or any repairs or improvements to, or changes in, any theretofore in use ought reasonably to be made, or any additions or changes in construction should reasonably be made thereto, in order to promote the security and safety of the public or employees, it may make and serve an order directing such repairs, improvements, changes, or additions to be made.

(2) If the commission finds that the equipment, or appliances in connection therewith, or the apparatus, or other structures of the recreational device set forth in RCW 70.88.010 are defective, and that the operation thereof is dangerous to the employees of the owner or operator of such device or to the public, it shall immediately give notice to the owner or operator of such device of the repairs or reconstruction necessary to place the same in a safe condition, and may prescribe the time within which they shall be made. If, in its opinion, it is needful or proper, the commission may forbid the operation of the device until it is repaired and placed in a safe condition. [1959 c 327 § 3.]

70.88.040 Penalty for violation of chapter or rules, etc., of parks and recreation commission. Any violation of this chapter or the rules, regulations and codes of the state parks and recreation commission relating to public safety in the construction, operation and maintenance of the recreational devices provided for in this chapter shall be a misdemeanor. [1965 ex.s. c 85 § 2; 1959 c 327 § 4.]

70.88.050 Inspector of recreational devices—Employees. The state parks and recreation commission shall employ or retain a person qualified in engineering experience and training who shall be designated as the inspector of recreational devices, and may employ such additional employees as are necessary to properly administer this chapter. The inspector and such additional employees may be hired on a temporary basis or borrowed from other state departments, or the commission may contract with individuals or firms for such inspecting service on an independent basis. The commission shall prescribe the salary or other remuneration for such service. [1959 c 327 § 5.]

70.88.060 Powers and duties of inspector—Condemnation of equipment—Annual inspection. The inspector of recreational devices and his assistants shall inspect all equipment and appliances connected with the recreational devices set forth in RCW 70.88.010 and make such reports of his inspection to the commission as may be required. He shall, on discovering any defective equipment, or appliances connected therewith, rendering the use of the equipment dangerous, immediately report the same to the owner or operator of the device on which it is found, and in addition report it to the commission. If in the opinion of the inspector the continued operation of the defective equipment constitutes an immediate danger to the safety of the persons operating or being conveyed by such equipment, the inspector may condemn such equipment and shall immediately notify the commission of his action in this respect: *Provided*, That inspection required by this chapter must be conducted at least once each year. [1959 c 327 § 6.]

70.88.070 Costs of inspection—Lien—Disposition of funds. The expenses incurred in connection with making inspections under this chapter shall be paid by the owner or operator of such recreational devices either by reimbursing the commission for the costs incurred or

by paying directly such individuals or firms that may be engaged by the commission to accomplish the inspection service. Payment shall be made only upon notification by the commission of the amount due. The commission shall maintain accurate and complete records of the costs incurred for each inspection and shall assess the respective owners or operators of said recreational devices only for the actual costs incurred by the commission for such safety inspections. The costs as assessed by the commission shall be a lien on the equipment of the owner or operator of the recreational devices so inspected. Such moneys collected by the commission hereunder shall be paid into the parks and parkways account of the general fund. [1975 1st ex.s. c 74 § 1; 1961 c 253 § 2; 1959 c 327 § 7.]

Parks and parkways account abolished: RCW 43.79.405.

70.88.080 State immunity from liability—Actions deemed exercise of police power. Inspections, rules, and orders of the department resulting from the exercise of the provisions of this chapter shall not in any manner be deemed to impose liability upon the state for any injury or damage resulting from the operation of the facilities regulated by this chapter, and all actions of the department and its personnel shall be deemed to be an exercise of the police power of the state. [1959 c 327 § 8.]

70.88.090 Rules, regulations, and codes. The state parks and recreation commission is empowered to adopt reasonable rules, regulations, and codes relating to public safety in the construction, operation and maintenance of the recreational devices provided for in this chapter. The rules, regulations and codes authorized hereunder shall be in accordance with established standards, if any, and shall not be discriminatory in their application. [1959 c 327 § 9.]

70.88.100 Judicial review. The procedure for review of the orders or actions of the state parks and recreation commission, its agents or employees, shall be the same as that contained in RCW 81.04.170, 81.04.180, and 81.04.190. [1959 c 327 § 10.]

Chapter 70.89

SAFETY GLASS

(Formerly: Safety glazing material)

Sections	
70.89.005	Purpose.
70.89.010	Safety glazing material defined—Types—Tests—Definitions.
70.89.021	Safety glazing material for use in hazardous locations—Labeling requirements.
70.89.031	Sale, fabrication, assembly, installation of other than safety glazing materials in hazardous locations unlawful.
70.89.040	Penalty.
70.89.050	Employees not liable.
70.89.060	Local ordinances superseded.
70.89.070	Enforcement of chapter.
70.89.900	Severability—1963 c 128.
70.89.910	Construction, effective date, prospective application—1973 1st ex.s. c 2.

70.89.005 Purpose. The purpose of this chapter is to protect the consumer by reducing the high incidence of accidental injuries and deaths resulting from the use of ordinary annealed glass or substitutes therefor in hazardous locations. The legislature intends to provide to the homeowner, his family and guests, and to the general public, greater safety by prescribing the labeling and use of safety glazing material in hazardous locations in residential, commercial, industrial, and public buildings. [1973 1st ex.s. c 2 § 1.]

Effective date—1973 1st ex.s. c 2: See RCW 70.89.910.

70.89.010 Safety glazing material defined—Types—Tests—Definitions. As used in this chapter, unless the context otherwise requires:

(1) "Safety glazing material" means glazing materials, such as tempered glass, laminated glass, or wire glass which meet the test requirements of the American national standards institute standard ANSI-97.1-1972 and such additional requirements as may be prescribed by the director of the department of labor and industries after notice and hearing as required by chapter 34.05 RCW (the administrative procedure act), and which are so constructed, treated or combined with other materials as to minimize the likelihood of injury to persons by these safety glazing materials when they may be cracked or broken.

Materials other than glass which have properties supported by performance data may be approved by the director for use as glazing material.

(2) "Hazardous locations" means those structural elements, glazed or to be glazed in industrial, commercial and public buildings, known as framed or unframed glass entrance doors; and those structural elements, glazed or to be glazed in residential buildings and other structures used as dwellings, industrial buildings, commercial buildings, and public buildings, known as sliding glass doors, storm doors, shower doors, bathtub enclosures, and those fixed glazed panels immediately adjacent to entrance and exit doors which may be mistaken for doors; and any other structural elements, glazed or to be glazed, wherein the use of other than safety glazing materials would constitute an unreasonable hazard as the director of the department of labor and industries may determine after notice and hearings as required by chapter 34.05 RCW (the administrative procedure act); whether or not the glazing in such doors, panels, enclosures and other structural elements is transparent: *Provided, however,* That the replacement of opaque, nontransparent panels in buildings which are completed prior to January 1, 1974, shall not be subject to the provisions of *the act.

(3) "Commercial buildings" means buildings known as wholesale and retail stores and storerooms, and office buildings.

(4) "Public buildings" means buildings known as hotels, hospitals, motels, sanitariums, nursing homes, theatres, stadiums, gymnasiums, amusement park buildings, schools and other buildings used for educational purposes, museums, restaurants, bars, and other buildings of public assembly.

(5) "Residential buildings" means buildings, known as homes, apartments, and dormitories used as dwellings for one or more families or persons.

(6) "Other structures used as dwellings" means mobile homes, manufactured or industrialized housing and lodging homes.

(7) "Industrial buildings" means buildings known as factories.

(8) "Commercial entrance and exit door" means a hinged, pivoting, revolving, or sliding door which is glazed or to be glazed and used alone or in combination with other doors on the interior or exterior wall of a commercial or public building as a means of ingress or egress.

(9) "Primary residential entrance and exit door" means a door (other than doors covered by subsection (10) of this section) which is glazed or to be glazed and used in the exterior wall of a residential building as a means of ingress or egress.

(10) "Storm or combination door" means a door which is glazed or to be glazed, and used in tandem with a primary residential or commercial entrance and exit door to protect the primary residential or commercial entrance or exit door against weather elements and to improve indoor climate control.

(11) "Bathtub enclosure" means a sliding, pivoting, or hinged door and fixed panels which are glazed or to be glazed and used to form a barrier between the bathtub and the rest of the room areas.

(12) "Shower enclosure" means a hinged, pivoting, or sliding door and fixed panels which are glazed or to be glazed and used to form a barrier between the shower stall and the rest of the room area.

(13) "Sliding glass door units" means an assembly of glazed or to be glazed panels contained in an overall frame installed in residential, commercial or public buildings, and which assembly is so designed that one or more of the panels is movable in a horizontal direction to produce or close off an opening for use as a means of ingress or egress.

(14) "Fixed flat glazed panels immediately adjacent to entrance or exit doors" means the first fixed flat glazed panel on either or both sides of interior or exterior doors, between eighteen and forty-eight inches in width, within six feet horizontally of the nearest vertical edge of the door, but shall not include any glass panel more than eighteen inches above the finished floor walking surface.

(15) "Glazing" means the act of installing and securing glass or other glazing material into prepared openings in structural elements such as doors, enclosures, and panels.

(16) "Glazed" means the accomplished act of glazing.

(17) "Director" means the director of the department of labor and industries of the state of Washington. [1973 1st ex.s. c 2 § 2; 1963 c 128 § 1.]

*Reviser's note: "the act" apparently refers to 1973 1st ex.s. c 2 which consists of RCW 70.89.005, 70.89.021, 70.89.031, 70.89.050 through 70.89.070 and 70.89.910, the amendments to RCW 70.89.010 and 70.89.040, and to the repeal of RCW 70.89.020 and 70.89.030.

Effective date—1973 1st ex.s. c 2: See RCW 70.89.910.

70.89.021 Safety glazing material for use in hazardous locations—Labeling requirements. (1) All safety glazing material manufactured, distributed, imported, or sold for use in hazardous locations or installed in such a location within the state of Washington shall be permanently labeled by such means as etching, sandblasting, firing of ceramic material, hot-die stamping, on the safety glazing material, or by other suitable means. Each light of safety glazing material installed in a hazardous location within the state, shall have attached a transparent label which shall identify the labeler, whether the manufacturer or installer, and state that "safety glazing material" has been utilized in such installation. The label shall be legible and visible from the inside of the building after installation and shall specify that the label shall not be removed.

The label must be legible and visible after installation.

(2) Such safety glazing labeling shall not be used on other than safety glazing materials.

(3) Permanent labeling of wire glass shall not be required where the seller or installer of such wire glass furnishes to each buyer thereof a certificate stating that such wire glass meets the test requirements set forth in RCW 70.89.010, as now or hereafter amended, when such alternate method is approved by the director of the department of labor and industries. [1973 1st ex.s. c 2 § 3.]

Effective date—1973 1st ex.s. c 2: See RCW 70.89.910.

70.89.031 Sale, fabrication, assembly, installation of other than safety glazing materials in hazardous locations unlawful. It shall be unlawful within the state of Washington to knowingly sell, fabricate, assemble, glaze or install glazing materials other than safety glazing materials in, or for use in, any hazardous location. [1973 1st ex.s. c 2 § 4.]

Effective date—1973 1st ex.s. c 2: See RCW 70.89.910.

70.89.040 Penalty. The violation of any provision of this chapter shall constitute a misdemeanor. [1973 1st ex.s. c 2 § 8; 1963 c 128 § 4.]

Effective date—1973 1st ex.s. c 2: See RCW 70.89.910.

70.89.050 Employees not liable. No liability under this chapter shall be created as to workers who are employees of a contractor, subcontractor, or other employer responsible for compliance with this chapter. [1989 c 12 § 19; 1973 1st ex.s. c 2 § 5.]

Effective date—1973 1st ex.s. c 2: See RCW 70.89.910.

70.89.060 Local ordinances superseded. This chapter shall supersede any local, municipal or county ordinance or parts thereof relating to the subject matter hereof. [1973 1st ex.s. c 2 § 6.]

Effective date—1973 1st ex.s. c 2: See RCW 70.89.910.

70.89.070 Enforcement of chapter. Each city, county, or department, agency, or other authority of the state of Washington which inspects the new construction or remodeling of residential, commercial, industrial, or

public structures shall in their respective jurisdictions be responsible for the enforcement of this chapter and any regulations made pursuant thereto. [1973 1st ex.s. c 2 § 7.]

Effective date—1973 1st ex.s. c 2: See RCW 70.89.910.

70.89.900 Severability—1963 c 128. If any provision of this chapter, or its application to any person or circumstance is held to be invalid, the remainder of the chapter, or the application of the provision to other persons or circumstances is not affected. [1963 c 128 § 5.]

70.89.910 Construction, effective date, prospective application—1973 1st ex.s. c 2. It is the intent of the legislature that the application of *this act shall be prospective only. The provisions of *this 1973 amendatory act shall not take effect until January 1, 1974, and shall not apply to contracts awarded on or before the effective date of *this act: *Provided*, That except for replacement or new installations of materials *this 1973 amendatory act shall not apply to buildings or construction completed prior to the effective date of *this act. [1973 1st ex.s. c 2 § 10.]

***Reviser's note:** "this act", "this 1973 amendatory act", see note following RCW 70.89.010.

Chapter 70.90

WATER RECREATION FACILITIES

(Formerly: Swimming pools)

Sections

70.90.101	Legislative findings.
70.90.110	Definitions.
70.90.120	Adoption of rules governing safety, sanitation, and water quality—Exceptions.
70.90.125	Regulation by local boards of health.
70.90.130	Recreational water contact facility advisory committee—Established—Powers and duties.
70.90.140	Enforcement.
70.90.150	Fees.
70.90.160	Modification or construction of facility—Permit required—Submission of plans.
70.90.170	Operating permit—Renewal.
70.90.180	State and local health jurisdictions—Chapter not basis for liability.
70.90.190	Reporting of injury, disease, or death.
70.90.200	Civil penalties.
70.90.205	Criminal penalties.
70.90.210	Adjudicative proceeding—Notice.
70.90.230	Insurance required.
70.90.240	Sale of spas, pools, and tubs—Operating instructions and health caution required.
70.90.250	Application of chapter.
70.90.902	Termination of recreational water contact facility advisory committee.
70.90.910	Severability—1986 c 236.
70.90.911	Severability—1987 c 222.

70.90.101 Legislative findings. The legislature finds that water recreation facilities are an important source of recreation for the citizens of this state. To promote the public health, safety, and welfare, the legislature finds it necessary to continue to regulate these facilities. [1987 c 222 § 1.]

70.90.110 Definitions. Unless the context clearly requires otherwise the definitions in this section apply throughout this chapter.

(1) "Water recreation facility" means any artificial basin or other structure containing water used or intended to be used for recreation, bathing, relaxation, or swimming, where body contact with the water occurs or is intended to occur and includes auxiliary buildings and appurtenances. The term includes, but is not limited to:

(a) Conventional swimming pools, wading pools, and spray pools;

(b) Recreational water contact facilities as defined in this chapter;

(c) Spa pools and tubs using hot water, cold water, mineral water, air induction, or hydrojets; and

(d) Any area designated for swimming in natural waters with artificial boundaries within the waters.

(2) "Recreational water contact facility" means an artificial water associated facility with design and operational features that provide patron recreational activity which is different from that associated with a conventional swimming pool and purposefully involves immersion of the body partially or totally in the water, and that includes but is not limited to, water slides, wave pools, and water lagoons.

(3) "Local health officer" means the health officer of the city, county, or city-county department or district or a representative authorized by the local health officer.

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

(5) "Person" means an individual, firm, partnership, co-partnership, corporation, company, association, club, government entity, or organization of any kind.

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

(7) "Board" means the state board of health. [1987 c 222 § 2; 1986 c 236 § 2.]

***Reviser's note:** Powers and duties of the department of social and health services and the secretary of social and health services transferred to the department of health and the secretary of health. See RCW 43.70.060.

70.90.120 Adoption of rules governing safety, sanitation, and water quality—Exceptions. (1) The board shall adopt rules under the administrative procedure act, chapter 34.05 RCW, governing safety, sanitation, and water quality for water recreation facilities. The rules shall include but not be limited to requirements for design; operation; injury and illness reporting; biological and chemical contamination standards; water quality monitoring; inspection; permit application and issuance; and enforcement procedures. However, a water recreation facility intended for the exclusive use of residents of any apartment house complex or of a group of rental housing units of less than fifteen living units, or of a mobile home park, or of a condominium complex or any group or association of less than fifteen home owners shall not be subject to preconstruction design review, routine inspection, or permit or fee requirements; and water treatment of hydroelectric reservoirs or natural

streams, creeks, lakes, or irrigation canals shall not be required.

(2) In adopting rules under subsection (1) of this section regarding the operation or design of a recreational water contact facility, the board shall review and consider any recommendations made by the recreational water contact facility advisory committee. [1987 c 222 § 5; 1986 c 236 § 3.]

70.90.125 Regulation by local boards of health. Nothing in this chapter shall prohibit any local board of health from establishing and enforcing any provisions governing safety, sanitation, and water quality for any water recreation facility, regardless of ownership or use, in addition to those rules established by the state board of health under this chapter. [1987 c 222 § 6.]

70.90.130 Recreational water contact facility advisory committee—Established—Powers and duties. (Expires June 30, 1991.) (1) A recreational water contact facility advisory committee is established and shall be appointed by the board which shall consist of the following members:

(a) A representative of the board of health;

(b) A private operator of a recreational water contact facility;

(c) A public operator of a recreational water contact facility;

(d) A representative from the department of social and health services;

(e) A representative of the county health departments;

(f) A representative from those who engage in the construction or design of recreational water contact facilities; and

(g) A representative from those who engage in the manufacturing or design of goods or services for recreational water contact facilities.

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

(a) To assist in reviewing and drafting proposed rules regarding the design or operation of any recreational water contact facility which recommendations shall be transmitted to the board;

(b) To provide technical assistance regarding the review of new products, equipment and procedures, and periodic program review; and

(c) To provide recommendations upon request in the settlement of grievances.

(3) The committee may appoint subcommittees as it deems necessary. [1986 c 236 § 4.]

Expiration date—1986 c 236 § 4: See RCW 70.90.902.

70.90.140 Enforcement. The secretary shall enforce the rules adopted under this chapter. The secretary may develop joint plans of responsibility with any local health jurisdiction to administer this chapter. [1986 c 236 § 5.]

70.90.150 Fees. (1) Local health officers may establish and collect fees sufficient to cover their costs incurred in carrying out their duties under this chapter and the rules adopted under this chapter.

(2) The department may establish and collect fees sufficient to cover its costs incurred in carrying out its duties under this chapter. The fees shall be deposited in the state general fund.

(3) A person shall not be required to submit fees at both the state and local levels. [1986 c 236 § 6.]

70.90.160 Modification or construction of facility—Permit required—Submission of plans. A permit is required for any modification to or construction of any recreational water contact facility after June 11, 1986, and for any other water recreation facility after July 26, 1987. Water recreation facilities existing on July 26, 1987, which do not comply with the design and construction requirements established by the state board of health under this chapter may continue to operate without modification to or replacement of the existing physical plant, provided the water quality, sanitation, and life saving equipment are in compliance with the requirements established under this chapter. However, if any modifications are made to the physical plant of an existing water recreation facility the modifications shall comply with the requirements established under this chapter. The plans and specifications for the modification or construction shall be submitted to the applicable local authority or the department as applicable, but a person shall not be required to submit plans at both the state and local levels or apply for both a state and local permit. The plans shall be reviewed and may be approved or rejected or modifications or conditions imposed consistent with this chapter as the public health or safety may require, and a permit shall be issued or denied within thirty days of submittal. [1987 c 222 § 7; 1986 c 236 § 7.]

70.90.170 Operating permit—Renewal. An operating permit from the department or local health officer, as applicable, is required for each water recreation facility operated in this state. The permit shall be renewed annually. The permit shall be conspicuously displayed at the water recreation facility. [1987 c 222 § 8; 1986 c 236 § 8.]

70.90.180 State and local health jurisdictions—Chapter not basis for liability. Nothing in this chapter or the rules adopted under this chapter creates or forms the basis for any liability: (1) On the part of the state and local health jurisdictions, or their officers, employees, or agents, for any injury or damage resulting from the failure of the owner or operator of water recreation facilities to comply with this chapter or the rules adopted under this chapter; or (2) by reason or in consequence of any act or omission in connection with the implementation or enforcement of this chapter or the rules adopted under this chapter on the part of the state and local health jurisdictions, or by their officers, employees, or agents.

All actions of local health officers and the secretary shall be deemed an exercise of the state's police power. [1987 c 222 § 9; 1986 c 236 § 9.]

70.90.190 Reporting of injury, disease, or death. Any person operating a water recreation facility shall report to the local health officer or the department any serious injury, communicable disease, or death occurring at or caused by the water recreation facility. [1987 c 222 § 10; 1986 c 236 § 10.]

70.90.200 Civil penalties. County, city, or town legislative authorities and the secretary, as applicable, may establish civil penalties for a violation of this chapter or the rules adopted under this chapter not to exceed five hundred dollars. Each day upon which a violation occurs constitutes a separate violation. A person violating this chapter may be enjoined from continuing the violation. [1986 c 236 § 11.]

70.90.205 Criminal penalties. The violation of any provisions of this chapter and any rules adopted under this chapter shall be a misdemeanor punishable by a fine of not more than five hundred dollars. [1987 c 222 § 11.]

70.90.210 Adjudicative proceeding—Notice. (1) Any person aggrieved by an order of the department or by the imposition of a civil fine by the department has the right to an adjudicative proceeding. RCW 43.20A.215 governs department notice of a civil fine and a person's right to an adjudicative proceeding.

(2) Any person aggrieved by an order of a local health officer or by the imposition of a civil fine by the officer has the right to appeal. The hearing is governed by the local health jurisdiction's administrative appeals process. Notice shall be provided by the local health jurisdiction consistent with its due process requirements. [1989 c 175 § 130; 1986 c 236 § 12.]

Effective date—1989 c 175: See note following RCW 34.05.010.

70.90.230 Insurance required. (1) A recreational water contact facility shall not be operated within the state unless the owner or operator has purchased insurance in an amount not less than one hundred thousand dollars against liability for bodily injury to or death of one or more persons in any one accident arising out of the use of the recreational water contact facility.

(2) The board may require a recreational water contact facility to purchase insurance in addition to the amount required in subsection (1) of this section. [1986 c 236 § 14.]

70.90.240 Sale of spas, pools, and tubs—Operating instructions and health caution required. Every seller of spas, pools and tubs under RCW 70.90.110(1) (a) and (c) shall furnish to the purchaser a complete set of operating instructions which shall include detailed instructions on the safe use of the spa, pool, or tub and for the proper treatment of water to reduce health risks to the purchaser. Included in the instructions shall be information about the health effects of hot water and a specific caution and explanation of the health effects of hot water on pregnant women. [1987 c 222 § 4.]

70.90.250 Application of chapter. This chapter applies to all water recreation facilities regardless of whether ownership is public or private and regardless of whether the intended use is commercial or private, except that this chapter shall not apply to:

- (1) Any water recreation facility for the sole use of residents and invited guests at a single family dwelling;
- (2) Therapeutic water facilities operated exclusively for physical therapy; and
- (3) Steam baths and saunas. [1987 c 222 § 3.]

70.90.902 Termination of recreational water contact facility advisory committee. The recreational water contact facility advisory committee shall be reviewed under the process provided in chapter 43.131 RCW before December 1, 1989. Unless extended by law, the committee shall be terminated on June 30, 1990, and RCW 70.90.130 shall expire June 30, 1991. [1986 c 236 § 15.]

70.90.910 Severability—1986 c 236. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1986 c 236 § 17.]

70.90.911 Severability—1987 c 222. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1987 c 222 § 13.]

Chapter 70.92

PROVISIONS IN BUILDINGS FOR AGED AND HANDICAPPED PERSONS

Sections

70.92.100	Legislative intent.
70.92.110	Buildings and structures to which standards and specifications apply—Exemptions.
70.92.120	Handicap symbol—Display—Signs showing location of entrance for handicapped.
70.92.130	Definitions.
70.92.140	Minimum standards for facilities—Adoption—Facilities to be included.
70.92.150	Standards adopted by other states to be considered—Majority vote.
70.92.160	Waiver from compliance with standards.

Making buildings and facilities accessible to and usable by handicapped persons: RCW 19.27A.010(5) and 19.27.031(5).

70.92.100 Legislative intent. It is the intent of the legislature that, notwithstanding any law to the contrary, plans and specifications for the erection of buildings through the use of public or private funds shall make special provisions for elderly or physically disabled persons. [1975 1st ex.s. c 110 § 1.]

70.92.110 Buildings and structures to which standards and specifications apply—Exemptions. The standards and specifications adopted under this chapter shall, as provided in this section, apply to buildings, structures, or portions thereof used primarily for group A-1 through group R-1 occupancies, except for group M occupancies, as defined in the Uniform Building Code, 1988 edition, published by the International Conference of Building Officials. All such buildings, structures, or portions thereof, which are constructed, substantially remodeled, or substantially rehabilitated after July 1, 1976, shall conform to the standards and specifications adopted under this chapter: *Provided*, That the following buildings, structures, or portions thereof shall be exempt from this chapter:

(1) Buildings, structures, or portions thereof for which construction contracts have been awarded prior to July 1, 1976;

(2) Any building, structure, or portion thereof in respect to which the administrative authority deems, after considering all circumstances applying thereto, that full compliance is impracticable: *Provided*, That, such a determination shall be made no later than at the time of issuance of the building permit for the construction, remodeling, or rehabilitation: *Provided further*, That the board of appeals provided for in section 204 of the Uniform Building Code shall have jurisdiction to hear and decide appeals from any decision by the administrative authority regarding a waiver or failure to grant a waiver from compliance with the standards adopted pursuant to RCW 70.92.100 through 70.92.160. The provisions of the Uniform Building Code regarding the appeals process shall govern the appeals herein;

(3) Any building or structure used solely for dwelling purposes and which contains not more than two dwelling units;

(4) Any building or structure not used primarily for group A-1 through group R-1 occupancies, except for group M occupancies, as set forth in the Uniform Building Code, 1988 edition, published by the International Conference of Building Officials; or

(5) Apartment houses with ten or fewer units. [1989 c 14 § 9; 1975 1st ex.s. c 110 § 2.]

70.92.120 Handicap symbol—Display—Signs showing location of entrance for handicapped. All buildings built in accordance with the standards and specifications provided for in this chapter, and containing facilities that are in compliance therewith, shall display the following symbol which is known as the international symbol of access.



Such symbol shall be white on a blue background and shall indicate the location of facilities designed for the physically disabled or elderly. When a building contains an entrance other than the main entrance which is ramped or level for use by physically disabled or elderly persons, a sign with the symbol showing its location shall be posted at or near the main entrance which shall be visible from the adjacent public sidewalk or way. [1975 1st ex.s. c 110 § 3.]

70.92.130 Definitions. As used in this chapter the following words and phrases shall have the following meanings unless the context clearly requires otherwise:

- (1) "Administrative authority" means the building department of each county, city, or town of this state;
- (2) "Substantially remodeled or substantially rehabilitated" means any alteration or restoration of a building or structure within any twelve-month period, the cost of which exceeds sixty percent of the currently appraised value of the particular building or structure;
- (3) "Council" means the *state building code advisory council. [1975 1st ex.s. c 110 § 4.]

*Reviser's note: The "state building code advisory council" redesignated "state building code council" by 1985 c 360 § 11. See RCW 19.27.070.

70.92.140 Minimum standards for facilities—Adoption—Facilities to be included. The *state building code advisory council shall adopt minimum standards by rule and regulation for the provision of facilities in buildings and structures to accommodate the elderly, as well as physically disabled persons, which shall include but not be limited to standards for:

- (1) Ramps;
- (2) Doors and doorways;
- (3) Stairs;
- (4) Floors;
- (5) Entrances;
- (6) Toilet rooms and paraphernalia therein;
- (7) Water fountains;
- (8) Public telephones;

- (9) Elevators;
- (10) Switches and levers for the control of light, ventilation, windows, mirrors, etc.;
- (11) Plaques identifying such facilities;
- (12) Turnstiles and revolving doors;
- (13) Kitchen facilities, where appropriate;
- (14) Grading of approaches to entrances;
- (15) Parking facilities;
- (16) Seating facilities, where appropriate, in buildings where people normally assemble. [1975 1st ex.s. c 110 § 5.]

*Reviser's note: The "state building code advisory council" redesignated "state building code council" by 1985 c 360 § 11. See RCW 19.27.070.

70.92.150 Standards adopted by other states to be considered—Majority vote. The council in adopting these minimum standards shall consider minimum standards adopted by both law and rule and regulation in other states: *Provided*, That no standards adopted by the council pursuant to RCW 70.92.100 through 70.92.160 shall take effect until July 1, 1976. The council shall adopt such standards by majority vote pursuant to the provisions of chapter 34.05 RCW. [1975 1st ex.s. c 110 § 6.]

70.92.160 Waiver from compliance with standards. The administrative authority of any jurisdiction may grant a waiver from compliance with any standard adopted hereunder for a particular building or structure if it determines that compliance with the particular standard is impractical: *Provided*, That such a determination shall be made no later than at the time of issuance of the building permit for the construction, remodeling, or rehabilitation: *Provided further*, That the board of appeals provided for in section 204 of the Uniform Building Code shall have jurisdiction to hear and decide appeals from any decision by the administrative authority regarding a waiver or failure to grant a waiver from compliance with the standards adopted pursuant to RCW 70.92.100 through 70.92.160. The provisions of the Uniform Building Code regarding the appeals process shall govern the appeals herein. [1975 1st ex.s. c 110 § 7.]

Chapter 70.93

MODEL LITTER CONTROL AND RECYCLING ACT

Sections	
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70.93.200	Department of ecology—Administration of anti-litter and recycling programs—Guidelines.
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70.93.900	Severability—1971 ex.s. c 307.
70.93.910	Alternative to Initiative 40—Placement on ballot—Force and effect of chapter.
70.93.920	Severability—1979 c 94.

Reviser's note: Throughout chapter 70.93 RCW, the term "this 1971 amendatory act" has been changed to "this chapter"; "this 1971 amendatory act" [1971 ex.s. c 307] consists of this chapter, the 1971 amendment to RCW 46.61.655 and the repeal of RCW 9.61.120, 9.66.060, 9.66.070 and 46.61.650.

Automotive oil recycling: Chapter 19.114 RCW.

Solid waste management, recovery and recycling: Chapter 70.95 RCW.

70.93.010 Legislative findings. Recognizing the rapid population growth of the state of Washington and the ever increasing mobility of its people, as well as the fundamental need for a healthful, clean and beautiful environment; and further recognizing that the proliferation and accumulation of litter discarded throughout this state impairs this need and constitutes a public health hazard; and further recognizing the need to conserve energy and natural resources; and further recognizing that there is an imperative need to anticipate, plan for, and accomplish effective litter control and recover and recycle waste materials related to litter with the subsequent conservation of resources and energy, there is hereby enacted this "Model Litter Control and Recycling Act". [1979 c 94 § 1; 1971 ex.s. c 307 § 1.]

70.93.020 Declaration of purpose. The purpose of this chapter is to accomplish litter control and stimulate private recycling programs throughout this state by delegating to the department of ecology the authority to: (1) Conduct a permanent and continuous program to control and remove litter from this state to the maximum practical extent possible; (2) recover and recycle waste materials related to litter and littering; (3) foster private recycling; and (4) increase public awareness of the need for recycling and litter control. It is further the intent and purpose of this chapter to create jobs for employment of youth in litter cleanup and related activities and to stimulate and encourage small, private recycling centers. This program shall include the compatible goal of recovery of recyclable materials to conserve energy and natural resources wherever practicable. Every other department of state government and all local governmental units and agencies of this state shall cooperate

with the department of ecology in the administration and enforcement of this chapter. The intent of this chapter is to add to and to coordinate existing recycling and litter control and removal efforts and not terminate or supplant such efforts. [1979 c 94 § 2; 1975-'76 2nd ex.s. c 41 § 7; 1971 ex.s. c 307 § 2.]

Severability—1975-'76 2nd ex.s. c 41: See RCW 70.95.911.

Solid waste disposal, recovery and recycling: Chapter 70.95 RCW.

70.93.030 Definitions. As used in this chapter unless the context indicates otherwise:

- (1) "Department" means the department of ecology;
- (2) "Director" means the director of the department of ecology;
- (3) "Disposable package or container" means all packages or containers defined as such by rules and regulations adopted by the department of ecology;
- (4) "Litter" means all waste material including but not limited to disposable packages or containers thrown or deposited as herein prohibited but not including the wastes of the primary processes of mining, logging, sawmilling, farming, or manufacturing;
- (5) "Litter bag" means a bag, sack, or other container made of any material which is large enough to serve as a receptacle for litter inside the vehicle or watercraft of any person. It is not necessarily limited to the state approved litter bag but must be similar in size and capacity;
- (6) "Litter receptacle" means those containers adopted by the department of ecology and which may be standardized as to size, shape, capacity, and color and which shall bear the state anti-litter symbol, as well as any other receptacles suitable for the depositing of litter;
- (7) "Person" means any political subdivision, government agency, municipality, industry, public or private corporation, copartnership, association, firm, individual, or other entity whatsoever;
- (8) "Recycling" means the process of separating, cleansing, treating, and reconstituting used or discarded litter-related materials for the purpose of recovering and reusing the resources contained therein;
- (9) "Recycling center" means a central collection point for recyclable materials;
- (10) "Vehicle" includes every device capable of being moved upon a public highway and in, upon, or by which any persons or property is or may be transported or drawn upon a public highway, excepting devices moved by human or animal power or used exclusively upon stationary rails or tracks;
- (11) "Watercraft" means any boat, ship, vessel, barge, or other floating craft;
- (12) "Public place" means any area that is used or held out for use by the public whether owned or operated by public or private interests. [1979 c 94 § 3; 1971 ex.s. c 307 § 3.]

70.93.040 Administrative procedure act—Application to chapter. In addition to his other powers and duties, the director shall have the power to propose and

to adopt pursuant to chapter 34.05 RCW rules and regulations necessary to carry out the provisions, purposes, and intent of this chapter. [1971 ex.s. c 307 § 4.]

70.93.050 Enforcement of chapter. The director shall designate trained employees of the department to be vested with police powers to enforce and administer the provisions of this chapter and all rules and regulations adopted thereunder. The director shall also have authority to contract with other state and local governmental agencies having law enforcement capabilities for services and personnel reasonably necessary to carry out the enforcement provisions of this chapter. In addition, state patrol officers, wildlife agents, fire wardens, deputy fire wardens and forest rangers, sheriffs and marshals and their deputies, and police officers, and those employees of the department of ecology and the parks and recreation commission vested with police powers all shall enforce the provisions of this chapter and all rules and regulations adopted thereunder and are hereby empowered to issue citations to and/or arrest without warrant, persons violating any provision of this chapter or any of the rules and regulations adopted hereunder. All of the foregoing enforcement officers may serve and execute all warrants, citations, and other process issued by the courts in enforcing the provisions of this chapter and rules and regulations adopted hereunder. In addition, mailing by registered mail of such warrant, citation, or other process to his last known place of residence shall be deemed as personal service upon the person charged. [1980 c 78 § 132; 1979 c 94 § 4; 1971 ex.s. c 307 § 5.]

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

70.93.060 Littering prohibited—Penalties. No person shall throw, drop, deposit, discard, or otherwise dispose of litter upon any public property in the state or upon private property in this state not owned by him or in the waters of this state whether from a vehicle or otherwise including but not limited to any public highway, public park, beach, campground, forest land, recreational area, trailer park, highway, road, street, or alley except:

(1) When such property is designated by the state or by any of its agencies or political subdivisions for the disposal of garbage and refuse, and such person is authorized to use such property for such purpose;

(2) Into a litter receptacle in such a manner that the litter will be prevented from being carried away or deposited by the elements upon any part of said private or public property or waters.

Any person violating the provisions of this section shall be guilty of a misdemeanor and the fine for such violation shall not be less than fifty dollars for each offense. In addition thereto, except where infirmity or age or other circumstance would create a hardship, such person shall be directed by the court in which conviction is obtained to pick up and remove litter from public property and/or private property, with prior permission of the legal owner, for not less than eight hours nor more

than sixteen hours for each separate offense. The court shall schedule the time to be spent on such activities in such a manner that it does not interfere with the person's employment and does not interfere substantially with the person's family responsibilities. [1983 c 277 § 1; 1979 ex.s. c 39 § 1; 1971 ex.s. c 307 § 6.]

70.93.070 Collection of fines and forfeitures—Distribution of fines. The director shall prescribe the procedures for the collection of fines and bail forfeitures including the imposition of additional penalty charges for late payment of fines. Included in the procedures shall be provisions requiring the distribution of one-half of the amount of fines collected under the enforcement provisions of this chapter by a local governmental agency to that local governmental agency. [1983 c 277 § 2; 1971 ex.s. c 307 § 7.]

70.93.080 Notice to public—Contents of chapter—Required. Pertinent portions of this chapter shall be posted along the public highways of this state and in all campgrounds and trailer parks, at all entrances to state parks, forest lands, and recreational areas, at all public beaches, and at other public places in this state where persons are likely to be informed of the existence and content of this chapter and the penalties for violating its provisions. [1971 ex.s. c 307 § 8.]

70.93.090 Litter receptacles—Use of anti-litter symbol—Distribution—Placement—Grants to small cities—Violations—Penalties. The department shall design and the director shall adopt by rule or regulation one or more types of litter receptacles which are reasonably uniform as to size, shape, capacity and color, for wide and extensive distribution throughout the public places of this state. Each such litter receptacle shall bear an anti-litter symbol as designed and adopted by the department. In addition, all litter receptacles shall be designed to attract attention and to encourage the depositing of litter.

Litter receptacles of the uniform design shall be placed along the public highways of this state and at all parks, campgrounds, trailer parks, drive-in restaurants, gasoline service stations, tavern parking lots, shopping centers, grocery store parking lots, parking lots of major industrial firms, marinas, boat launching areas, boat moorage and fueling stations, public and private piers, beaches and bathing areas, and such other public places within this state as specified by rule or regulation of the director adopted pursuant to chapter 34.05 RCW. The number of such receptacles required to be placed as specified herein shall be determined by a formula related to the need for such receptacles.

It shall be the responsibility of any person owning or operating any establishment or public place in which litter receptacles of the uniform design are required by this section to procure and place such receptacles at their own expense on the premises in accord with rules and regulations adopted by the department.

The department shall establish a system of grants to aid cities, towns, and counties with populations under

twenty-five thousand in procuring and placing such litter receptacles. Such grants shall be on a matching basis under which the local government involved electing to participate in this program shall be required to pay at least fifty percent of the total costs of procurement of receptacles sufficient in number to meet departmental guidelines established by rule pursuant to this section. The amount of the grant shall be determined on a case-by-case basis by the director after consideration of need, available departmental and local government funds, degree of prior compliance by the local government involved in placement of receptacles, and other relevant criteria. The responsibility for maintaining and emptying such receptacles shall remain with the unit of local government.

Any person, other than a political subdivision, government agency, or municipality, who fails to place such litter receptacles on the premises in the numbers required by rule or regulation of the department, violating the provisions of this section or rules or regulations adopted thereunder shall be subject to a fine of ten dollars for each day of violation. [1979 c 94 § 5; 1971 ex.s. c 307 § 9.]

70.93.100 Litter bags—Design and distribution by department authorized—Violations—Penalties. The department shall design and produce a litter bag bearing the state-wide anti-litter symbol and a statement of the penalties prescribed herein for littering in this state. Such litter bags shall be distributed by the department of licensing at no charge to the owner of every licensed vehicle in this state at the time and place of license renewal. The department of ecology shall make such litter bags available to the owners of water craft in this state and shall also provide such litter bags at no charge at points of entry into this state and at visitor centers to the operators of incoming vehicles and watercraft. The owner of any vehicle or watercraft who fails to keep and use a litter bag in his vehicle or watercraft shall be guilty of a violation of this section and shall be subject to a fine as provided in this chapter. [1981 c 260 § 15. Prior: 1979 c 158 § 219; 1979 c 94 § 6; 1971 ex.s. c 307 § 10.]

70.93.110 Removal of litter—Responsibility. Responsibility for the removal of litter from receptacles placed at parks, beaches, campgrounds, trailer parks, and other public places shall remain upon those state and local agencies performing litter removal. Removal of litter from litter receptacles placed on private property which is used by the public shall remain the responsibility of the owner of such private property. [1971 ex.s. c 307 § 11.]

70.93.120 Litter assessment—Imposed—Amount—Collection. There is hereby levied and there shall be collected by the department of revenue from every person engaging within this state in business as a manufacturer and/or making sales at wholesale and/or making sales at retail, an annual litter assessment equal

to the value of products manufactured and sold within this state, including by-products, multiplied by one and one-half hundredths of one percent in the case of manufacturers, and equal to the gross proceeds of the sales of the business within this state multiplied by one and one-half hundredths of one percent in the case of sales at wholesale and/or at retail. [1971 ex.s. c 307 § 12.]

70.93.130 Litter assessment—Application to certain products. Because it is the express purpose of this chapter to accomplish effective litter control within the state of Washington and because it is a further purpose of this chapter to allocate a portion of the cost of administering it to those industries whose products including the packages, wrappings, and containers thereof, are reasonably related to the litter problem, in arriving at the amount upon which the assessment is to be calculated only the value of products or the gross proceeds of sales of products falling into the following categories shall be included:

- (1) Food for human or pet consumption.
- (2) Groceries.
- (3) Cigarettes and tobacco products.
- (4) Soft drinks and carbonated waters.
- (5) Beer and other malt beverages.
- (6) Wine.
- (7) Newspapers and magazines.
- (8) Household paper and paper products.
- (9) Glass containers.
- (10) Metal containers.
- (11) Plastic or fiber containers made of synthetic material.
- (12) Cleaning agents and toiletries.
- (13) Nondrug drugstore sundry products. [1971 ex.s. c 307 § 13.]

70.93.140 Litter assessment—Powers and duties of department of revenue—Guidelines. The department of revenue by rule and regulation made pursuant to chapter 34.05 RCW may, if such is required, define the categories (1) through (13) as set forth in RCW 70.93.130. In making any such definitions, the department of revenue shall be guided by the following standards:

- (1) It is the purpose of this chapter to accomplish effective control of litter within this state;
- (2) It is the purpose of this chapter to allocate a portion of the cost of administration of this chapter to those industries manufacturing and/or selling products and the packages, wrappings, or containers thereof which are reasonably related to the litter problem within this state. [1971 ex.s. c 307 § 14.]

70.93.150 "Sold within this state"—"Sales of the business within this state"—Defined. "Sold within this state" or "sales of the business within this state" as used in RCW 70.93.120 shall mean all sales of retailers engaged in business within this state and all sales of products for use or consumption within this state in the case of manufacturers and wholesalers. [1971 ex.s. c 307 § 15.]

70.93.160 Application of chapters 82.04 and 82.32 RCW to this chapter—Exceptions. All of the provisions of chapters 82.04 and 82.32 RCW such as they apply are incorporated herein except RCW 82.04.220 through 82.04.290, and 82.04.330. [1971 ex.s. c 307 § 16.]

70.93.170 Litter assessment—Exemptions. The litter assessment herein provided for shall not be applied to the value of products or gross proceeds of the sales of any animal, bird, or insect or the milk, eggs, wool, fur, meat, honey, or other substance obtained therefrom, if the person performs only the growing or raising function of such animal, bird, or insect. In all other instances, the assessment shall be applied. [1971 ex.s. c 307 § 17.]

70.93.180 Litter control account—Composition—Earnings. There is hereby created an account within the state treasury to be known as the "litter control account". All assessments, fines, bail forfeitures, and other funds collected or received pursuant to this chapter shall be deposited in the litter control account and used for the administration and implementation of this chapter except as required to be otherwise distributed under RCW 70.93.070. All earnings of investments of balances in the litter control account shall be credited to the general fund. [1985 c 57 § 68; 1983 c 277 § 3; 1971 ex.s. c 307 § 18.]

Effective date—1985 c 57: See note following RCW 15.52.320.

70.93.194 Litter control account—Distribution of funds. The department shall allocate and distribute funds annually from the litter control account as follows:

(1) Not less than forty percent nor more than fifty percent for a litter patrol program to employ youth from the state to remove litter from places and areas that are most visible to the public;

(2) Not less than twenty percent nor more than thirty percent to accomplish the litter control purposes of this chapter other than as specified in subsection (1) of this section. A substantial part of this portion shall be used for public education and awareness programs to control litter and to promote awareness of the Model Litter Control and Recycling Act; and

(3) Not less than twenty percent nor more than thirty percent to accomplish the recycling purposes of this chapter. A substantial part of this portion shall be used for public education and awareness programs to foster private local recycling efforts and to promote awareness of the Model Litter Control and Recycling Act. [1979 c 94 § 9.]

70.93.200 Department of ecology—Administration of anti-litter and recycling programs—Guidelines. In addition to the foregoing, the department of ecology shall:

(1) Serve as the coordinating agency between the various industry organizations seeking to aid in the anti-litter and recycling efforts;

(2) Recommend to the governing bodies of all local governments that they adopt ordinances similar to the provisions of this chapter;

(3) Cooperate with all local governments to accomplish coordination of local anti-litter and recycling efforts;

(4) Encourage, organize, and coordinate all voluntary local anti-litter and recycling campaigns seeking to focus the attention of the public on the programs of this state to control and remove litter and to foster recycling;

(5) Investigate the availability of, and apply for funds available from any private or public source to be used in the program outlined in this chapter;

(6) Develop state-wide programs to increase public awareness of and participation in recycling and to stimulate and encourage local private recycling centers, public participation in recycling and research and development in the field of litter control, and recycling, removal, and disposal of litter-related recycling materials. [1979 c 94 § 7; 1971 ex.s. c 307 § 20.]

70.93.210 Anti-litter and recycling campaign—Industrial cooperation requested. To aid in the state-wide anti-litter and recycling campaign, the state legislature requests that the various industry organizations which are active in anti-litter and recycling efforts provide active cooperation with the department of ecology so that additional effect may be given to the anti-litter and recycling campaign of the state of Washington. [1979 c 94 § 8; 1971 ex.s. c 307 § 21.]

70.93.230 Violations of chapter—Penalties. Every person convicted of a violation of this chapter for which no penalty is specially provided for shall be punished by a fine of not more than fifty dollars for each such violation. [1983 c 277 § 4; 1971 ex.s. c 307 § 23.]

70.93.900 Severability—1971 ex.s. c 307. If any provision of this 1971 amendatory act or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provisions to other persons or circumstances is not affected. [1971 ex.s. c 307 § 25.]

70.93.910 Alternative to Initiative 40—Placement on ballot—Force and effect of chapter. This 1971 amendatory act constitutes an alternative to Initiative 40. The secretary of state is directed to place this 1971 amendatory act on the ballot in conjunction with Initiative 40 at the next general election.

This 1971 amendatory act shall continue in force and effect until the secretary of state certifies the election results on this 1971 amendatory act. If affirmatively approved at the general election, this 1971 amendatory act shall continue in effect thereafter. [1971 ex.s. c 307 § 27.]

Reviser's note: Chapter 70.93 RCW [1971 ex.s. c 307] was approved and validated at the November 7, 1972, general election as Alternative Initiative Measure 40B.

70.93.920 Severability—1979 c 94. If any provision of this 1979 act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1979 c 94 § 11.]

Chapter 70.94

WASHINGTON CLEAN AIR ACT

Sections

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Transfer of powers, duties, and functions with respect to air pollution under chapter 70.94 RCW to department of ecology: RCW 43.21A.060.

Washington clean indoor air act: Chapter 70.160 RCW.

70.94.011 Declaration of public policies and purpose—Division of state into two major areas. It is declared to be the public policy of the state to secure and maintain such levels of air quality as will protect human health and safety and comply with the requirements of the federal clean air act, and, to the greatest degree practicable, prevent injury to plant and animal life and property, foster the comfort and convenience of its inhabitants, promote the economic and social development of the state, and facilitate the enjoyment of the natural attractions of the state. The problems and effects of air pollution are frequently regional and interjurisdictional in nature, and are dependent upon the existence of urbanization and industrialization in areas having common topography and recurring weather conditions conducive to the buildup of air contaminants.

It is also declared as public policy that regional air pollution control programs are to be encouraged and supported to the extent practicable as essential instruments for the securing and maintenance of appropriate levels of air quality.

It is also declared to be the public policy of the state to provide for the people of the populous metropolitan regions in the state the means of obtaining air pollution control not adequately provided by existing agencies of local government. For reasons of the present and potential dramatic growth in population, urbanization, and industrialization, the special problem of air resource management, encompassing both corrective and preventive measures for the control of air pollution cannot be adequately met by the individual towns, cities, and counties of many metropolitan regions.

In addition, the state is divided into two major areas, each having unique characteristics as to natural climatic and topographic features which may result in the different potentials for the accumulation and buildup of air contaminant concentrations. These two major areas are the area lying west of the Cascade Mountain crest and the area lying east of the Cascade Mountain crest. Within each of these major areas are regions which, because of the climate and topography and present and potential urbanization and industrial development may, through definitive evaluation be classed as regional air pollution areas.

To these ends it is the purpose of this chapter to provide for a coordinated state-wide program of air pollution prevention and control, for an appropriate distribution of responsibilities between the state, regional, and local units of government, and for cooperation across jurisdictional lines in dealing with problems of air pollution. [1973 1st ex.s. c 193 § 1; 1969 ex.s. c 168 § 1; 1967 c 238 § 1.]

70.94.025 Pollution control hearings board of the state of Washington as affecting chapter 70.94 RCW. See chapter 43.21B RCW.

70.94.030 Definitions. Unless a different meaning is plainly required by the context, the following words and phrases as hereinafter used in this chapter shall have the following meanings:

(1) "Air contaminant" means dust, fumes, mist, smoke, other particulate matter, vapor, gas, odorous substance, or any combination thereof.

(2) "Air pollution" is presence in the outdoor atmosphere of one or more air contaminants in sufficient quantities and of such characteristics and duration as is, or is likely to be, injurious to human health, plant or animal life, or property, or which unreasonably interfere with enjoyment of life and property.

(3) "Person" means and includes an individual, firm, public or private corporation, association, partnership, political subdivision, municipality or government agency.

(4) "Authority" means any air pollution control agency whose jurisdictional boundaries are coextensive with the boundaries of one or more counties.

(5) "Board" means the board of directors of an authority.

(6) "Control officer" means the air pollution control officer of any authority.

(7) "Emission" means a release into the outdoor atmosphere of air contaminants.

(8) "Department" means the state department of ecology.

(9) "Ambient air" means the surrounding outside air.

(10) "Multicounty authority" means an authority which consists of two or more counties.

(11) "Emission standard" means a limitation on the release of a contaminant or multiple contaminants into the ambient air.

(12) "Air quality standard" means an established concentration, exposure time and frequency of occurrence of a contaminant or multiple contaminants in the ambient air which shall not be exceeded.

(13) "Air quality objective" means the concentration and exposure time of a contaminant or multiple contaminants in the ambient air below which undesirable effects will not occur. [1987 c 109 § 33; 1979 c 141 § 119; 1969 ex.s. c 168 § 2; 1967 ex.s. c 61 § 1; 1967 c 238 § 2; 1957 c 232 § 3.]

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

70.94.040 Causing or permitting air pollution unlawful—Exception. Except where specified in a variance permit, as provided in RCW 70.94.181, it shall be unlawful for any person to cause air pollution or permit it to be caused in violation of this chapter, or of any ordinance, resolution, rule or regulation validly promulgated hereunder. [1980 c 175 § 2; 1967 c 238 § 3; 1957 c 232 § 4.]

70.94.041 Exception—Burning wood at historic structure. Except as otherwise provided in this section, any building or structure listed on the national register of historic sites, structures, or buildings established pursuant to 80 Stat. 915, 16 U.S.C. Sec. 470a, or on the

state register established pursuant to *RCW 43.51A-.080, shall be permitted to burn wood as it would have when it was a functioning facility as an authorized exception to the provisions of this chapter. Such burning of wood shall not be exempted from the provisions of RCW 70.94.710 through 70.94.730. [1983 c 3 § 175; 1977 ex.s. c 38 § 1.]

*Reviser's note: RCW 43.51A.080 was repealed by 1983 c 91 § 25, effective June 30, 1983. Later enactment, see RCW 27.34.220.

70.94.053 Air pollution control authorities created—Activated authorities, composition, meetings—Delineation of air pollution regions, considerations. (1) In each county of the state there is hereby created an air pollution control authority, which shall bear the name of the county within which it is located. The boundaries of each authority shall be coextensive with the boundaries of the county within which it is located. An authority shall include all incorporated and unincorporated areas of the county within which it is located.

(2) All authorities which are presently or may hereafter be within counties of the first class, class A or class AA, are hereby designated as activated authorities and shall carry out the duties and exercise the powers provided in this chapter. Those authorities hereby activated which encompass contiguous counties located in one or the other of the two major areas determined in RCW 70.94.011 are declared to be and directed to function as a multicounty authority.

(3) Except as provided in RCW 70.94.232, all other air pollution control authorities are hereby designated as inactive authorities.

(4) The boards of those authorities designated as activated authorities by this chapter shall be comprised of such appointees and/or county commissioners or other officers as is provided in RCW 70.94.100. The first meeting of the boards of those authorities designated as activated authorities by this chapter shall be on or before sixty days after June 8, 1967.

(5) The department is directed to conduct the necessary evaluations and delineate appropriate air pollution regions throughout the state, taking into consideration:

(a) The natural climatic and topographic features affecting the potential for buildup of air contaminant concentrations.

(b) The degree of urbanization and industrialization and the existence of activities which are likely to cause air pollution.

(c) The county boundaries as related to the air pollution regions and the practicality of administering air pollution control programs. [1987 c 505 § 60; 1987 c 109 § 34; 1979 c 141 § 120; 1967 c 238 § 4.]

Reviser's note: This section was amended by 1987 c 109 § 34 and by 1987 c 505 § 60, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

70.94.055 Air pollution control authority may be activated by certain counties, when. The board of county commissioners of any county other than a first class, class A or class AA county may activate an air pollution control authority following a public hearing on its own motion, or upon a filing of a petition signed by one hundred property owners within the county. If the board of county commissioners determines as a result of the public hearing that:

- (1) Air pollution exists or is likely to occur; and
- (2) The city or town ordinances or county resolutions, or their enforcement, are inadequate to prevent or control air pollution, they shall by resolution activate an air pollution control authority or combine with a contiguous county or counties to form a multicounty air pollution control authority. [1967 c 238 § 5.]

70.94.057 Multicounty authority may be formed by contiguous counties—Name. The boards of county commissioners of two or more contiguous counties may, by joint resolution, combine to form a multicounty air pollution control authority. Boundaries of such authority shall be coextensive with the boundaries of the counties forming the authority.

The name of the multicounty authority shall bear the names of the counties making up such multicounty authority or a name adopted by the board of such multicounty authority. [1967 c 238 § 6.]

70.94.068 Merger of active and inactive authorities to form multicounty or regional authority—Procedure. The respective boards of county commissioners of two or more contiguous counties may merge any combination of their several inactive or activated authorities to form one activated multicounty authority. Upon a determination that the purposes of this chapter will be served by such merger, each board of county commissioners may adopt the resolution providing for such merger. Such resolution shall become effective only when a similar resolution is adopted by the other contiguous county or counties comprising the proposed authority. The boundaries of such authority shall be coextensive with the boundaries of the counties within which it is located. [1969 ex.s. c 168 § 3; 1967 c 238 § 11.]

70.94.069 Merger of active and inactive authorities to form multicounty or regional authority—Reorganization of board of directors—Rules and regulations. Whenever there occurs a merger of an inactive authority with an activated authority or authorities, or of two activated authorities to form a multicounty authority, the board of directors shall be reorganized as provided in RCW 70.94.100, 70.94.110, and 70.94.120.

In the case of the merger of two or more activated authorities the rules and regulations of each authority shall continue in effect and shall be enforced within the jurisdiction of each until such time as the board of directors adopts rules and regulations applicable to the newly formed multicounty authority.

In the case of the merger of an inactive authority with an activated authority or authorities, upon approval of

such merger by the board or boards of county commissioners of the county or counties comprising the existing activated authority or authorities, the rules and regulations of the activated authority or authorities shall remain in effect until superseded by the rules and regulations of the multicounty authority as provided in RCW 70.94.230. [1969 ex.s. c 168 § 4; 1967 c 238 § 12.]

70.94.070 Resolutions activating authorities—Contents—Filings—Effective date of operation. The resolution or resolutions activating an air pollution authority shall specify the name of the authority and participating political bodies; the authority's principal place of business; the territory included within it; and the effective date upon which such authority shall begin to transact business and exercise its powers. In addition, such resolution or resolutions may specify the amount of money to be contributed annually by each political subdivision, or a method of dividing expenses of the air pollution control program. Upon the adoption of a resolution or resolutions calling for the activation of an authority or the merger of an inactive or activated authority or several activated authorities to form a multicounty authority, the governing body of each shall cause a certified copy of each such ordinance or resolution to be filed in the office of the secretary of state of the state of Washington. From and after the date of filing with the secretary of state a certified copy of each such resolution, or resolutions, or the date specified in such resolution or resolutions, whichever is later, the authority may begin to function and may exercise its powers.

Any authority activated by the provisions of this chapter shall cause a certified copy of all information required by this section to be filed in the office of the secretary of state of the state of Washington. [1969 ex.s. c 168 § 5; 1967 c 238 § 13; 1957 c 232 § 7.]

70.94.081 Powers and duties of authorities. An activated authority shall be deemed a municipal corporation; have right to perpetual succession; adopt and use a seal; may sue and be sued in the name of the authority in all courts and in all proceedings; and, may receive, account for, and disburse funds, employ personnel, and acquire or dispose of any interest in real or personal property within or without the authority in the furtherance of its purposes. [1969 ex.s. c 168 § 6; 1967 c 238 § 14.]

70.94.091 Excess tax levy authorized—Election, procedure, expense. An activated authority shall have the power to levy additional taxes in excess of the constitutional and/or statutory tax limitations for any of the authorized purposes of such activated authority, not in excess of twenty-five cents per thousand dollars of assessed value a year when authorized so to do by the electors of such authority by a three-fifths majority of those voting on the proposition at a special election, to be held in the year in which the levy is made, in the manner set forth in Article VII, section 2 (a) of the Constitution of this state, as amended by Amendment 59

and as thereafter amended. Nothing herein shall be construed to prevent holding the foregoing special election at the same time as that fixed for a general election. The expense of all special elections held pursuant to this section shall be paid by the authority. [1973 1st ex.s. c 195 § 84; 1969 ex.s. c 168 § 7; 1967 c 238 § 15.]

Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195: See notes following RCW 84.52.043.

70.94.092 Fiscal year—Adoption of budget—Contents—"Supplemental income"—Emergency expenditures. Notwithstanding the provisions of RCW 1.16.030, the budget year of each activated authority shall be the fiscal year beginning July 1st and ending on the following June 30th. The current budget year shall be terminated June 30, 1975, and a budget for the fiscal year beginning July 1, 1975, shall be adopted pursuant to this section as now or hereafter amended. On or before the fourth Monday in June of each year, each activated authority shall adopt a budget for the following fiscal year. The budget shall contain an estimate of all revenues to be collected during the following budget year, including any surplus funds remaining unexpended from the preceding year. The remaining funds required to meet budget expenditures, if any, shall be designated as "supplemental income" and shall be obtained from the component cities, towns, and counties in the manner provided in this chapter. The affirmative vote of three-fourths of all members of the board shall be required to authorize emergency expenditures. [1975 1st ex.s. c 106 § 1; 1969 ex.s. c 168 § 8; 1967 c 238 § 16.]

70.94.093 Methods for determining proportion of supplemental income to be paid by component cities, towns and counties—Payment. (1) Each component city or town shall pay such proportion of the supplemental income to the authority as determined by either one of the following prescribed methods or by a combination of fifty percent of one and fifty percent of the other as provided in subsection (1)(c) of this section:

(a) Each component city or town shall pay such proportion of the supplemental income as the assessed valuation of property within its limits bears to the total assessed valuation of taxable property within the activated authority.

(b) Each component city or town shall pay such proportion of the supplemental income as the total population of such city or town bears to the total population of the activated authority. The population of the city or town shall be determined by the most recent census, estimate or survey by the federal bureau of census or any state board or commission authorized to make such a census, estimate or survey.

(c) A combination of the methods prescribed in (a) and (b) of this subsection: *Provided*, That such combination shall be of fifty percent of the method prescribed in (a) of this subsection and fifty percent of the method prescribed in (b) of this subsection.

(2) Each component county shall pay such proportion of such supplemental income to the authority as determined by either one of the following prescribed methods

or by a combination of fifty percent of one and fifty percent of the other as prescribed in subsection (2)(c) of this section:

(a) Each component county shall pay such proportion of such supplemental income as the assessed valuation of the property within the unincorporated area of such county lying within the activated authority bears to the total assessed valuation of taxable property within the activated authority.

(b) Each component county shall pay such proportion of the supplemental income as the total population of the unincorporated area of such county bears to the total population of the activated authority. The population of the county shall be determined by the most recent census, estimate or survey by the federal bureau of census or any state board or commission authorized to make such a census, estimate or survey.

(c) A combination of the methods prescribed in (a) and (b) of this subsection: *Provided*, That such combination shall be of fifty percent of the method prescribed in (a) of this subsection and fifty percent of the method prescribed in (b) of this subsection.

(3) In making such determination of the assessed valuation of property in the component cities, towns and counties, the board shall use the last available assessed valuations. The board shall certify to each component city, town and county, prior to the fourth Monday in June of each year, the share of the supplemental income to be paid by such component city, town or county for the next calendar year. The latter shall then include such amount in its budget for the ensuing calendar year, and during such year shall pay to the activated authority, in equal quarterly installments, the amount of its supplemental share. [1969 ex.s. c 168 § 9; 1967 c 238 § 17.]

70.94.0935 Limitation on revenues collected from sources of air pollution—Exemption. Revenues collected from sources of air pollution for services rendered on a periodic basis for any authority shall not exceed in any fiscal year fifty percent of the "supplemental income" paid by component cities, towns, and counties as defined in RCW 70.94.092 for the same fiscal year. Fees collected under RCW 70.94.152 are exempt from this limitation. [1984 c 88 § 1.]

70.94.094 Designation of authority treasurer and auditor—Duties. The treasurer of each component city, town or county shall create a separate fund into which shall be paid all money collected from taxes or from any other available sources, levied by or obtained for the activated authority on property or on any other available sources in such city, town or county and such money shall be forwarded quarterly by the treasurer of each such city, town or county to the treasurer of the county designated by the board as the authority treasurer. The treasurer of the county so designated to serve as treasurer of the authority shall establish and maintain such funds as may be authorized by the board. Money shall be disbursed from such funds upon warrants drawn by the auditor of the county designated by the board as the

authority auditor as authorized by the board. The respective county shall be reimbursed by the board for services rendered by the treasurer and auditor of the respective county in connection with the receipt and disbursement of such funds. [1969 ex.s. c 168 § 10; 1967 c 238 § 18.]

70.94.095 Assessed valuation of taxable property, certification by county assessors. It shall be the duty of the assessor of each component county to certify annually to the board the aggregate assessed valuation of all taxable property in all incorporated and unincorporated areas situated in any activated authority as the same appears from the last assessment roll of his county. [1969 ex.s. c 168 § 11; 1967 c 238 § 19.]

70.94.096 Authorization to borrow money. An activated authority shall have the power when authorized by a majority of all members of the board to borrow money from any component city, town or county and such cities, towns and counties are hereby authorized to make such loans or advances on such terms as may be mutually agreed upon by the board and the legislative bodies of any such component city, town or county to provide funds to carry out the purposes of the activated authority. [1969 ex.s. c 168 § 12; 1967 c 238 § 20.]

70.94.097 Special air pollution studies—Contracts for conduct of. In addition to paying its share of the supplemental income of the activated authority, each component city, town, or county shall have the power to contract with such authority and expend funds for the conduct of special studies, investigations, plans, research, advice, or consultation relating to air pollution and its causes, effects, prevention, abatement, and control as such may affect any area within the boundaries of the component city, town, or county, and which could not be performed by the authority with funds otherwise available to it. Any component city, town or county which contracts for the conduct of such special air pollution studies, investigations, plans, research, advice or consultation with any entity other than the activated authority shall require that such an entity consult with the activated authority. [1975 1st ex.s. c 106 § 2.]

70.94.100 Board of directors of authority—Composition—Term. (1) The governing body of each authority shall be known as the board of directors.

(2) In the case of an authority comprised of one county the board shall be comprised of two appointees of the city selection committee as hereinafter provided, at least one of whom shall represent the city having the most population in the county, and two representatives to be designated by the board of county commissioners. In the case of an authority comprised of two or three counties, the board shall be comprised of one appointee of the city selection committee of each county as hereinafter provided, who shall represent the city having the most population in such county, and one representative from each county to be designated by the board of

county commissioners of each county making up the authority. In the case of an authority comprised of four or five counties, the board shall be comprised of one appointee of the city selection committee of each county as hereinafter provided who shall represent the city having the most population in such county, and one representative from each county to be designated by the board of county commissioners of each county making up the authority. In the case of an authority comprised of six or more counties, the board shall be comprised of one representative from each county to be designated by the board of county commissioners of each county making up the authority, and one appointee from each city with over one hundred thousand population to be appointed by the mayor and city council of such city.

(3) If the board of an authority otherwise would consist of an even number, the members selected as above provided shall agree upon and elect an additional member who shall be either a member of the governing body of one of the towns, cities or counties comprising the authority, or a private citizen residing in the authority. All board members shall hold office at the pleasure of the appointing body. [1989 c 150 § 1; 1969 ex.s. c 168 § 13; 1967 c 238 § 21; 1957 c 232 § 10.]

70.94.110 City selection committees. There shall be a separate and distinct city selection committee for each county making up an authority. The membership of such committee shall consist of the mayor of each incorporated city and town within such county. A majority of the members of each city selection committee shall constitute a quorum. [1967 c 238 § 22; 1963 c 27 § 1; 1957 c 232 § 11.]

70.94.120 City selection committees—Meetings, notice—Recording officer. The city selection committee of each county which is included within an authority shall meet within one month after the activation of such authority for the purpose of making its initial appointments to the board of such authority and thereafter whenever necessary for the purpose of making succeeding appointments. All meetings shall be held upon at least two weeks written notice given by the county auditor to each member of the city selection committee of each county and he shall give such notice upon request of any member of such committee. A similar notice shall be given to the general public by a publication of such notice in a newspaper of general circulation in such authority. The county auditor shall act as recording officer, maintain its records and give appropriate notice of its proceedings and actions. [1969 ex.s. c 168 § 14; 1967 c 238 § 23; 1957 c 232 § 12.]

70.94.130 Board of directors—Powers, quorum, officers, compensation. The board shall exercise all powers of the authority except as otherwise provided. The board shall conduct its first meeting within thirty days after all of its members have been appointed or designated as provided in RCW 70.94.100. A majority of the board shall constitute a quorum for the transaction of business and shall be necessary for any action taken by

the board. The board shall elect from its members a chairman and such other officers as may be necessary. Any member of the board may designate a regular alternate to serve on the board in his place with the same authority as the member when he is unable to attend. Each member of the board, or his representative, shall receive from the authority twenty-five dollars per day compensation (but not to exceed one thousand dollars per year) for each full day spent in the performance of his duties under this chapter, plus the actual and necessary expenses incurred by him in such performance. The board may appoint an executive director, and any other personnel, and shall determine their salaries, and pay same, together with any other proper indebtedness, from authority funds. [1969 ex.s. c 168 § 15; 1967 c 238 § 24; 1957 c 232 § 13.]

70.94.141 Powers and duties of city, town, county or board of activated authority. The board of any activated authority in addition to any other powers vested in them by law, shall have power to:

(1) Adopt, amend and repeal its own ordinances, resolutions, or rules and regulations, as the case may be, implementing this chapter and consistent with it, after consideration at a public hearing held in accordance with *chapter 42.32 RCW.

(2) Hold hearings relating to any aspect of or matter in the administration of this chapter not prohibited by the provisions of chapter 62, Laws of 1970 ex. sess. and in connection therewith issue subpoenas to compel the attendance of witnesses and the production of evidence, administer oaths and take the testimony of any person under oath.

(3) Issue such orders as may be necessary to effectuate the purposes of this chapter and enforce the same by all appropriate administrative and judicial proceedings subject to the rights of appeal as provided in chapter 62, Laws of 1970 ex. sess.

(4) Require access to records, books, files and other information specific to the control, recovery or release of air contaminants into the atmosphere.

(5) Secure necessary scientific, technical, administrative and operational services, including laboratory facilities, by contract or otherwise.

(6) Prepare and develop a comprehensive plan or plans for the prevention, abatement and control of air pollution within its jurisdiction.

(7) Encourage voluntary cooperation by persons or affected groups to achieve the purposes of this chapter.

(8) Encourage and conduct studies, investigation and research relating to air pollution and its causes, effects, prevention, abatement and control.

(9) Collect and disseminate information and conduct educational and training programs relating to air pollution.

(10) Advise, consult, cooperate and contract with agencies and departments and the educational institutions of the state, other political subdivisions, industries, other states, interstate or interlocal agencies, and the United States government, and with interested persons or groups.

(11) Consult, upon request, with any person proposing to construct, install, or otherwise acquire an air contaminant source or device or system for the control thereof, concerning the efficacy of such device or system, or the air pollution problems which may be related to the source, device or system. Nothing in any such consultation shall be construed to relieve any person from compliance with this chapter, ordinances, resolutions, rules and regulations in force pursuant thereto, or any other provision of law.

(12) Accept, receive, disburse and administer grants or other funds or gifts from any source, including public and private agencies and the United States government for the purpose of carrying out any of the functions of this chapter. [1970 ex.s. c 62 § 56; 1969 ex.s. c 168 § 16; 1967 c 238 § 25.]

***Reviser's note:** RCW 42.32.010 and 42.32.020 were repealed by 1971 ex.s. c 250 § 15; later enactment, see chapter 42.30 RCW.

Savings—Effective date—Severability—1970 ex.s. c 62: See notes following RCW 43.21A.010.

70.94.142 Subpoena powers—Witnesses, expenses and mileage—Rules and regulations. In connection with the subpoena powers given in RCW 70.94.141(2):

(1) In any hearing held under RCW 70.94.181 and 70.94.221, the board or the department, and their authorized agents:

(a) Shall issue a subpoena upon the request of any party and, to the extent required by rule or regulation, upon a statement or showing of general relevance and reasonable scope of the evidence sought;

(b) May issue a subpoena upon their own motion.

(2) The subpoena powers given in RCW 70.94.141(2) shall be state-wide in effect.

(3) Witnesses appearing under the compulsion of a subpoena in a hearing before the board or the department shall be paid the same fees and mileage that are provided for witnesses in the courts of this state. Such fees and mileage, and the cost of duplicating records required to be produced by subpoena issued upon the motion of the board or department, shall be paid by the board or department. Such fees and mileage, and the cost of producing records required to be produced by subpoena issued upon the request of a party, shall be paid by that party.

(4) If an individual fails to obey the subpoena, or obeys the subpoena but refuses to testify when required concerning any matter under examination or investigation or the subject of the hearing, the board or department shall file its written report thereof and proof of service of its subpoena, in any court of competent jurisdiction in the county where the examination, hearing or investigation is being conducted. Thereupon, the court shall forthwith cause the individual to be brought before it and, upon being satisfied that the subpoena is within the jurisdiction of the board or department and otherwise in accordance with law, shall punish him as if the failure or refusal related to a subpoena from or testimony in that court.

(5) The department may make such rules and regulations as to the issuance of its own subpoenas as are not

inconsistent with the provisions of this chapter. [1987 c 109 § 35; 1969 ex.s. c 168 § 17; 1967 c 238 § 26.]

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

70.94.143 Federal aid. Any authority exercising the powers and duties prescribed in this chapter may make application for, receive, administer, and expend any federal aid, under federal legislation from any agency of the federal government, for the prevention and control of air pollution or the development and administration of programs related to air pollution control and prevention, as permitted by RCW 70.94.141(12): *Provided*, That any such application shall be submitted to and approved by the department. The department shall adopt rules and regulations establishing standards for such approval and shall approve any such application, if it is consistent with this chapter, and any other applicable requirements of law. [1987 c 109 § 36; 1969 ex.s. c 168 § 18; 1967 c 238 § 27.]

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

70.94.151 Classification of air contaminant sources—Registration—Fee—Registration program defined. (1) The board of any activated authority or the department, may classify air contaminant sources, by ordinance, resolution, rule or regulation, which in its judgment may cause or contribute to air pollution, according to levels and types of emissions and other characteristics which cause or contribute to air pollution, and may require registration or reporting or both for any such class or classes. Classifications made pursuant to this section may be for application to the area of jurisdiction of such authority, or the state as a whole or to any designated area within the jurisdiction, and shall be made with special reference to effects on health, economic and social factors, and physical effects on property.

(2) Any person operating or responsible for the operation of air contaminant sources of any class for which the ordinances, resolutions, rules or regulations of the department or board of the authority, require registration and reporting shall register therewith and make reports containing information as may be required by such department or board concerning location, size and height of contaminant outlets, processes employed, nature of the contaminant emission and such other information as is relevant to air pollution and available or reasonably capable of being assembled. The department or board may require that such registration be accompanied by a fee and may determine the amount of such fee for such class or classes: *Provided*, That the amount of the fee shall only be to compensate for the costs of administering such registration program which shall be defined as initial registration and annual or other periodic reports from the source owner providing information directly related to air pollution registration, on-site inspections

necessary to verify compliance with registration requirements, data storage and retrieval systems necessary for support of the registration program, emission inventory reports and emission reduction credits computed from information provided by sources pursuant to registration program requirements, staff review, including engineering analysis for accuracy and currentness, of information provided by sources pursuant to registration program requirements, clerical and other office support provided in direct furtherance of the registration program, and administrative support provided in directly carrying out the registration program: *Provided further*, That any such registration made with either the board or the department shall preclude a further registration with any other board or the department. [1987 c 109 § 37; 1984 c 88 § 2; 1969 ex.s. c 168 § 19; 1967 c 238 § 28.]

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

70.94.152 Notice may be required of construction of new contaminant source—Submission of plans—Approval, disapproval—Emission control. (1) The department of ecology or board of any authority may require notice of the construction, installation, or establishment of any new air contaminant sources except single family and duplex dwellings. The department of ecology or board may require such notice to be accompanied by a fee and determine the amount of such fee: *Provided*, That the amount of the fee may not exceed the cost of reviewing the plans, specifications, and other information and administering such notice: *Provided further*, That any such notice given to either the board or to the department of ecology shall preclude a further notice to be given to any other board or to the department of ecology. Within thirty days of its receipt of such notice, the department of ecology or board may require, as a condition precedent to the construction, installation, or establishment of the air contaminant source or sources covered thereby, the submission of plans, specifications, and such other information as it deems necessary in order to determine whether the proposed construction, installation, or establishment will be in accord with applicable rules and regulations in force pursuant to this chapter, and will provide all known available and reasonable methods of emission control. If on the basis of plans, specifications, or other information required pursuant to this section the department of ecology or board determines that the proposed construction, installation, or establishment will not be in accord with this chapter or the applicable ordinances, resolutions, rules, and regulations adopted pursuant thereto, or will not provide all known available and reasonable means of emission control, it shall issue an order for the prevention of the construction, installation, or establishment of the air contaminant source or sources. If on the basis of plans, specifications, or other information required pursuant to this section, the department of ecology or board determines that the proposed construction, installation, or establishment will be in accord with this chapter, and

the applicable ordinances, resolutions, rules, and regulations adopted pursuant thereto and will provide all known available and reasonable methods of emission control, it shall issue an order of approval of the construction, installation, and establishment of the air contaminant source or sources, which order may provide such conditions of operation as are reasonably necessary to assure the maintenance of compliance with this chapter and the applicable ordinances, resolutions, rules, and regulations adopted pursuant thereto.

(2) For the purposes of this chapter, addition to or enlargement or replacement of an air contaminant source, or any major alteration therein, shall be construed as construction or installation or establishment of a new air contaminant source. The determination, under subsection (1) of this section, of whether a proposed construction, installation, or establishment will be in accord with this chapter and the applicable ordinances, resolutions, rules, and regulations adopted pursuant thereto shall include a determination of whether the operation of the new air contaminant source at the location proposed will cause any ambient air quality standard to be exceeded.

(3) Nothing in this section shall be construed to authorize the department of ecology or board to require the use of emission control equipment or other equipment, machinery, or devices of any particular type, from any particular supplier, or produced by any particular manufacturer.

(4) Any features, machines, and devices constituting parts of or called for by plans, specifications, or other information submitted pursuant to subsection (1) hereof shall be maintained in good working order.

(5) The absence of an ordinance, resolution, rule, or regulation, or the failure to issue an order pursuant to this section shall not relieve any person from his obligation to comply with any emission control requirements or with any other provision of law. [1973 1st ex.s. c 193 § 2; 1969 ex.s. c 168 § 20; 1967 c 238 § 29.]

Use of emission credits to be consistent with new source review program: RCW 70.94.850.

70.94.155 Control of emissions—Bubble concept—Schedules of compliance. (1) As used in subsection (3) of this section, the term "bubble" means an air pollution control system which permits aggregate measurements of allowable emissions, for a single category of pollutant, for emissions points from a specified emissions-generating facility or facilities. Individual point source emissions levels from such specified facility or facilities may be modified provided that the aggregate limit for the specified sources is not exceeded.

(2) Whenever any regulation relating to emission standards or other requirements for the control of emissions is adopted which provides for compliance with such standards or requirements no later than a specified time after the date of adoption of the regulation, the appropriate activated air pollution control authority or, if there be none, the department of ecology shall, by regulatory order, issue to air contaminant sources subject to the standards or requirements, schedules of compliance

setting forth timetables for the achievement of compliance as expeditiously as practicable, but in no case later than the time specified in the regulation. Interim dates in such schedules for the completion of steps of progress toward compliance shall be as enforceable as the final date for full compliance therein.

(3) Wherever requirements necessary for the attainment of air quality standards or, where such standards are not exceeded, for the maintenance of air quality can be achieved through the use of a control program involving the bubble concept, such program may be authorized by a regulatory order or orders issued to the air contaminant source or sources involved. Any such order shall restrict total emissions within the bubble to no more than would otherwise be allowed in the aggregate for all emitting processes covered. The orders provided for by this subsection shall be issued by the department or the authority with jurisdiction. If the bubble involves interjurisdictional approval, concurrence in the total program must be secured from each regulatory entity concerned. [1981 c 224 § 1; 1973 1st ex.s. c 193 § 3.]

Use of emission credits to be consistent with bubble program: RCW 70.94.850.

70.94.170 Control officer. Any activated authority which has adopted an ordinance, resolution, or valid rules and regulations as provided herein for the control and prevention of air pollution shall appoint a control officer, who shall observe and enforce the provisions of this chapter and all orders, ordinances, resolutions, or rules and regulations of such activated authority pertaining to the control and prevention of air pollution. [1969 ex.s. c 168 § 21; 1967 c 238 § 30; 1957 c 232 § 17.]

70.94.181 Variances—Application for—Considerations—Limitations—Renewals—Review.

(1) Any person who owns or is in control of any plant, building, structure, establishment, process or equipment may apply to the department of ecology where it has regulatory authority under RCW 70.94.390, 70.94.395, 70.94.410, and 70.94.420, or board for a variance from rules or regulations governing the quality, nature, duration or extent of discharges of air contaminants. The application shall be accompanied by such information and data as the department of ecology or board may require. The department of ecology or board may grant such variance, but only after public hearing or due notice, if it finds that:

(a) The emissions occurring or proposed to occur do not endanger public health or safety; and

(b) Compliance with the rules or regulations from which variance is sought would produce serious hardship without equal or greater benefits to the public.

(2) No variance shall be granted pursuant to this section until the department of ecology or board has considered the relative interests of the applicant, other owners of property likely to be affected by the discharges, and the general public.

(3) Any variance or renewal thereof shall be granted within the requirements of subsection (1) and for time

periods and under conditions consistent with the reasons therefor, and within the following limitations:

(a) If the variance is granted on the ground that there is no practicable means known or available for the adequate prevention, abatement or control of the pollution involved, it shall be only until the necessary means for prevention, abatement or control become known and available, and subject to the taking of any substitute or alternate measures that the department of ecology or board may prescribe.

(b) If the application for variance shows that there is no automobile fragmentizer within a reasonable distance of the wrecking yard for which the variance is sought, a variance will be granted for a period not to exceed three years for commercial burning of automobile hulks, subject to such conditions as the department of ecology may impose as to climatic conditions and hours during which burning of such hulks may be carried out: *Provided, however,* That any variance granted hereunder shall be of no force and effect after July 1, 1970.

(c) If the variance is granted on the ground that compliance with the particular requirement or requirements from which variance is sought will require the taking of measures which, because of their extent or cost, must be spread over a considerable period of time, it shall be for a period not to exceed such reasonable time as, in the view of the department of ecology or board is requisite for the taking of the necessary measures. A variance granted on the ground specified herein shall contain a timetable for the taking of action in an expeditious manner and shall be conditioned on adherence to such timetable.

(d) If the variance is granted on the ground that it is justified to relieve or prevent hardship of a kind other than that provided for in item (a), (b) and (c) of this subparagraph, it shall be for not more than one year.

(4) Any variance granted pursuant to this section may be renewed on terms and conditions and for periods which would be appropriate on initial granting of a variance. If complaint is made to the department of ecology or board on account of the variance, no renewal thereof shall be granted unless following a public hearing on the complaint on due notice the state board or board finds that renewal is justified. No renewal shall be granted except on application therefor. Any such application shall be made at least sixty days prior to the expiration of the variance. Immediately upon receipt of an application for renewal, the department of ecology or board shall give public notice of such application in accordance with rules and regulations of the department of ecology or board.

(5) A variance or renewal shall not be a right of the applicant or holder thereof but shall be granted at the discretion of the department of ecology or board. However, any applicant adversely affected by the denial or the terms and conditions of the granting of an application for a variance or renewal of a variance by the department of ecology or board may obtain judicial review thereof under the provisions of chapter 34.05 RCW as now or hereafter amended.

(6) Nothing in this section and no variance or renewal granted pursuant hereto shall be construed to prevent or limit the application of the emergency provisions and procedures of RCW 70.94.710 through 70.94.730 to any person or his property.

(7) An application for a variance, or for the renewal thereof, submitted to the department of ecology or board pursuant to this section shall be approved or disapproved by the department or board within sixty-five days of receipt unless the applicant and the department of ecology or board agree to a continuance. [1983 c 3 § 176; 1974 ex.s. c 59 § 1; 1969 ex.s. c 168 § 22; 1967 c 238 § 31.]

70.94.200 Investigation of conditions by control officer or department—Entering private, public property. For the purpose of investigating conditions specific to the control, recovery or release of air contaminants into the atmosphere, a control officer, the department, or their duly authorized representatives, shall have the power to enter at reasonable times upon any private or public property, excepting nonmultiple unit private dwellings housing two families or less. No person shall refuse entry or access to any control officer, the department, or their duly authorized representatives, who requests entry for the purpose of inspection, and who presents appropriate credentials; nor shall any person obstruct, hamper or interfere with any such inspection. [1987 c 109 § 38; 1979 c 141 § 121; 1967 c 238 § 32; 1957 c 232 § 20.]

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

70.94.205 Confidentiality of records and information. Whenever any records or other information, other than ambient air quality data or emission data, furnished to or obtained by the department of ecology or the board of any authority pursuant to any sections in chapter 70.94 RCW, relate to processes or production unique to the owner or operator, or is likely to affect adversely the competitive position of such owner or operator if released to the public or to a competitor, and the owner or operator of such processes or production so certifies, such records or information shall be only for the confidential use of the department of ecology or board. Nothing herein shall be construed to prevent the use of records or information by the department of ecology or board in compiling or publishing analyses or summaries relating to the general condition of the outdoor atmosphere: *Provided,* That such analyses or summaries do not reveal any information otherwise confidential under the provisions of this section: *Provided further,* That emission data furnished to or obtained by the department of ecology or board shall be correlated with applicable emission limitations and other control measures and shall be available for public inspection during normal business hours at offices of the department of ecology or board. [1973 1st ex.s. c 193 § 4; 1969 ex.s. c 168 § 23; 1967 c 238 § 33.]

70.94.211 Violations—Notice—Action by governing body, board or control officer—Hearing—Action by board. Whenever the board or the control officer has reason to believe that any provision of this chapter or any ordinance, resolution, rule or regulation relating to the control or prevention of air pollution has been violated, such board or control officer may cause written notice to be served upon the alleged violator or violators. The notice shall specify the provision of this chapter or the ordinance, resolution, rule or regulation alleged to be violated, and the facts alleged to constitute a violation thereof, and may include an order that necessary corrective action be taken within a reasonable time. In lieu of an order, the board or the control officer may require that the alleged violator or violators appear before the board for a hearing, or in addition to or in place of an order or hearing, the board may initiate action pursuant to RCW 70.94.425, 70.94.430, and 70.94.435. [1974 ex.s. c 69 § 4; 1970 ex.s. c 62 § 57; 1969 ex.s. c 168 § 24; 1967 c 238 § 34.]

Savings—Effective date—Severability—1970 ex.s. c 62: See notes following RCW 43.21A.010.

Appeal of orders under RCW 70.94.211: RCW 43.21B.310.

70.94.221 Order final unless appealed to pollution control hearings board. Any order issued by the board or by the control officer, shall become final unless such order is appealed to the hearings board as provided in chapter 43.21B RCW. [1970 ex.s. c 62 § 58; 1969 ex.s. c 168 § 25; 1967 c 238 § 35.]

Savings—Effective date—Severability—1970 ex.s. c 62: See notes following RCW 43.21A.010.

70.94.222 Order—Finality—Review (as amended by 1970 ex.s. c 41 § 2). Any order issued by the board after a hearing shall become final unless no later than thirty days after the issuance of such order, a petition requesting judicial review is filed in accordance with the provisions of chapter 34.05 RCW as now or hereafter amended. When such a petition is filed, the superior court shall initiate a hearing pursuant to *RCW 34.05.570 within ninety days after the receipt of the petition requesting judicial review. Every appeal from a decision of the superior court shall be heard by the appropriate appellate court as soon as possible. Such appeal shall be considered a case involving issues of broad public import requiring prompt and ultimate determination. [1970 ex.s. c 41 § 2; 1969 ex.s. c 168 § 26; 1967 c 238 § 36.]

***Reviser's note:** Pursuant to 1988 c 288 § 706 (noted after RCW 34.05.902), a previous reference to RCW 34.04.130 was changed to RCW 34.05.570; but cf. RCW 34.05.510 through 34.05.594.

70.94.222 Order—Finality—Review (as amended by 1970 ex.s. c 62 § 59). Any order issued by the board after a hearing shall become final unless no later than thirty days after the issuance of such order, a notice of appeal is filed with the hearings board as provided in chapter 43.21B RCW. [1970 ex.s. c 62 § 59; 1969 ex.s. c 168 § 26; 1967 c 238 § 36.]

Reviser's note: RCW 70.94.222 was amended twice during the 1970 extraordinary session of the legislature, each without reference to the other.

For rule of construction concerning sections amended more than once at any session of the same legislature, see RCW 1.12.025.

Savings—Effective date—Severability—1970 ex.s. c 62: See notes following RCW 43.21A.010.

70.94.230 Rules of authority supersede local rules, regulations, etc.—Exceptions. The rules and regulations hereafter adopted by an authority under the provisions of this chapter shall supersede the existing rules, regulations, resolutions and ordinances of any of the component bodies included within said authority in all matters relating to the control and enforcement of air pollution as contemplated by this chapter: *Provided, however,* That existing rules, regulations, resolutions and ordinances shall remain in effect until such rules, regulations, resolutions and ordinances are superseded as provided in this section: *Provided further,* That nothing herein shall be construed to supersede any local county, or city ordinance or resolution, or any provision of the statutory or common law pertaining to nuisance; nor to affect any aspect of employer–employee relationship relating to conditions in a place of work, including without limitation, statutes, rules or regulations governing industrial health and safety standards or performance standards incorporated in zoning ordinances or resolutions of the component bodies where such standards relating to air pollution control or air quality containing requirements not less stringent than those of the authority. [1969 ex.s. c 168 § 28; 1967 c 238 § 38; 1957 c 232 § 23.]

70.94.231 Dissolution of prior districts—Continuation of rules and regulations until superseded. Upon the date that an authority begins to exercise its powers and functions, all districts formed as a district under chapter 70.94 RCW prior to June 8, 1967 which previously were wholly or partially composed of one or more cities or towns located within such activated authority shall be considered to be dissolved but its rules and regulations in force on such date shall remain in effect until superseded by the rules and regulations of the authority as provided in RCW 70.94.230. In such event, the board of any such district shall proceed to wind up the affairs of the district in the same manner as if the district were dissolved as provided in RCW 70.94.260. [1969 ex.s. c 168 § 29; 1967 c 238 § 39.]

70.94.232 Local or regional control program considered activated authority—Construction of prior ordinances, resolutions, rules or regulations. (1) Any local or regional air pollution control program formed as a district under chapter 70.94 RCW prior to June 8, 1967 which is composed of one or more counties and the cities and towns therein, and whose boundaries are coextensive with the boundaries of one or more counties, shall, upon June 8, 1967, be considered an activated authority, provided that within six months of June 8, 1967 the board of directors shall be reorganized to conform to the provisions of RCW 70.94.100, 70.94.110 and 70.94.120.

(2) Nothing in this chapter except those sections which do so expressly shall be construed to supersede or nullify the ordinances, resolutions, rules or regulations of any local or regional air pollution control program in operation on June 8, 1967, but such local or regional

programs shall be subject to the provisions of RCW 70.94.230, 70.94.231, 70.94.232, 70.94.380, 70.94.395, 70.94.400 and 70.94.710 through 70.94.730. [1983 c 3 § 177; 1967 c 238 § 40.]

70.94.240 Air pollution control advisory council. The board of any authority shall appoint an air pollution control advisory council to advise and consult with such board, and the control officer in effectuating the purposes of this chapter. The council shall consist of five appointed members who are residents of the authority and who are preferably skilled and experienced in the field of air pollution control, two of whom shall serve as representatives of industry. The chairman of the board of any such authority shall serve as ex officio member of the council and be its chairman. Each member of the council shall receive from the authority per diem and travel expenses in an amount not to exceed that provided for the state board in this chapter (but not to exceed one thousand dollars per year) for each full day spent in the performance of his duties under this chapter. [1969 ex.s. c 168 § 30; 1967 c 238 § 41; 1957 c 232 § 24.]

70.94.260 Dissolution of authority—Deactivation of authority. An air pollution control authority may be deactivated prior to the term provided in the original or subsequent agreement by the county or counties comprising such authority upon the adoption by the board, following a hearing held upon ten days notice, to said counties, of a resolution for dissolution or deactivation and upon the approval by the legislative authority of each county comprising the authority. In such event, the board shall proceed to wind up the affairs of the authority and pay all indebtedness thereof. Any surplus of funds shall be paid over to the counties comprising the authority in proportion to their last contribution. Upon the completion of the process of closing the affairs of the authority, the board shall by resolution entered in its minutes declare the authority deactivated and a certified copy of such resolution shall be filed with the secretary of state and the authority shall be deemed inactive. [1979 ex.s. c 30 § 12; 1969 ex.s. c 168 § 31; 1967 c 238 § 43; 1957 c 232 § 26.]

70.94.305 Powers, duties and functions of state air pollution control board, executive director thereof, transferred to department of ecology. See RCW 43.21A.060.

70.94.331 Powers and duties of department. (1) The department shall have all the powers as provided in RCW 70.94.141.

(2) The department, in addition to any other powers vested in it by law after consideration at a public hearing held in accordance with chapter 42.30 RCW and chapter 34.05 RCW shall:

(a) Adopt rules and regulations establishing air quality objectives and air quality standards;

(b) Adopt emission standards which shall constitute minimum emission standards throughout the state. An authority may enact more stringent emission standards, except for emission performance standards for new wood

stoves and opacity levels for residential solid fuel burning devices which shall be state-wide, but in no event may less stringent standards be enacted by an authority without the prior approval of the department after public hearing and due notice to interested parties;

(c) Adopt by rule and regulation air quality standards and emission standards for the control or prohibition of emissions to the outdoor atmosphere of radionuclides, dust, fumes, mist, smoke, other particulate matter, vapor, gas, odorous substances, or any combination thereof. Such requirements may be based upon a system of classification by types of emissions or types of sources of emissions, or combinations thereof, which it determines most feasible for the purposes of this chapter. However, an industry, or the air pollution control authority having jurisdiction, can choose, subject to the submittal of appropriate data that the industry has quantified, to have any limit on the opacity of emissions from a source whose emission standard is stated in terms of a weight of particulate per unit volume of air (e.g., grains per dry standard cubic foot) be based on the applicable particulate emission standard for that source, such that any violation of the opacity limit accurately indicates a violation of the applicable particulate emission standard. A reasonable fee may be assessed to the industry to which the alternate opacity standard would apply. The fee shall cover only those costs to the air pollution control authority which are directly related to the determination on the acceptability of the alternate opacity standard, including testing, oversight and review of data.

(3) The air quality standards and emission standards may be for the state as a whole or may vary from area to area, except that emission performance standards for new wood stoves and opacity levels for residential solid fuel burning devices shall be state-wide, as may be appropriate to facilitate the accomplishment of the objectives of this chapter and to take necessary or desirable account of varying local conditions of population concentration, the existence of actual or reasonable foreseeable air pollution, topographic and meteorologic conditions and other pertinent variables.

(4) The department is directed to cooperate with the appropriate agencies of the United States or other states or any interstate agencies or international agencies with respect to the control of air pollution and air contamination, or for the formulation for the submission to the legislature of interstate air pollution control compacts or agreements.

(5) The department is directed to conduct or cause to be conducted a continuous surveillance program to monitor the quality of the ambient atmosphere as to concentrations and movements of air contaminants.

(6) The department shall enforce the air quality standards and emission standards throughout the state except where a local authority is enforcing the state regulations or its own regulations which are more stringent than those of the state.

(7) The department shall encourage local units of government to handle air pollution problems within their

respective jurisdictions; and, on a cooperative basis provide technical and consultative assistance therefor.

(8) The department shall have the power to require the addition to or deletion of a county from an existing authority in order to carry out the purposes of this chapter: *Provided, however,* That no such addition or deletion shall be made without the concurrence of any existing authority involved. Such action shall only be taken after a public hearing held pursuant to the provisions of chapter 34.05 RCW. [1988 c 106 § 1. Prior: 1987 c 405 § 13; 1987 c 109 § 39; 1985 c 372 § 4; 1969 ex.s. c 168 § 34; 1967 c 238 § 46.]

Severability—1987 c 405: See note following RCW 70.94.450.

Purpose—**Short title**—**Construction**—**Rules**—**Severability**—**Captions**—1987 c 109: See notes following RCW 43.21B.001.

Severability—1985 c 372: See note following RCW 70.98.050.

70.94.332 Violations—**Notice**—**Action by department.** Whenever the department of ecology has reason to believe that any provision of this chapter or any rule or regulation adopted by it or being enforced by it under RCW 70.94.410 relating to the control or prevention of air pollution has been violated, it may cause written notice to be served upon the alleged violator or violators. The notice shall specify the provision of this chapter or the rule or regulation alleged to be violated, and the facts alleged to constitute a violation thereof, and may include an order that necessary corrective action be taken within a reasonable time. In lieu of an order, the department may require that the alleged violator or violators appear before it for the purpose of providing the department information pertaining to the violation or the charges complained of. In addition to or in place of an order or hearing, the department may initiate action pursuant to RCW 70.94.425, 70.94.430, and 70.94.435. [1987 c 109 § 18; 1967 c 238 § 47.]

Purpose—**Short title**—**Construction**—**Rules**—**Severability**—**Captions**—1987 c 109: See notes following RCW 43.21B.001.

Appeal of orders under RCW 70.94.332: RCW 43.21B.310.

70.94.350 Contracts, agreements for use of personnel by department—**Reimbursement**—**Merit system regulations waived.** The department is authorized to contract for or otherwise agree to the use of personnel of municipal corporations or other agencies or private persons; and the department is further authorized to reimburse such municipal corporations or agencies for the employment of such personnel. Merit system regulations or standards for the employment of personnel may be waived for personnel hired under contract as provided for in this section. The department shall provide, within available appropriations, for the scientific, technical, legal, administrative, and other necessary services and facilities for performing the functions under this chapter. [1987 c 109 § 40; 1979 c 141 § 122; 1967 c 238 § 45; 1961 c 188 § 6.]

Purpose—**Short title**—**Construction**—**Rules**—**Severability**—**Captions**—1987 c 109: See notes following RCW 43.21B.001.

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70.94.370 Powers and rights of governmental units and persons are not limited by act or recommendations. No provision of this chapter or any recommendation of the state board or of any local or regional air pollution program is a limitation:

(1) On the power of any city, town or county to declare, prohibit and abate nuisances.

(2) On the power of the secretary of social and health services to provide for the protection of the public health under any authority presently vested in that office or which may be hereafter prescribed by law.

(3) On the power of a state agency in the enforcement, or administration of any provision of law which it is specifically permitted or required to enforce or administer.

(4) On the right of any person to maintain at any time any appropriate action for relief against any air pollution. [1979 c 141 § 123; 1967 c 238 § 59; 1961 c 188 § 8.]

70.94.380 Emission control requirements. (1) Every activated authority operating an air pollution control program shall have requirements for the control of emissions which are no less stringent than those adopted by the department of ecology for the geographic area in which such air pollution control program is located. Less stringent requirements than compelled by this section may be included in a local or regional air pollution control program only after approval by the department of ecology following demonstration to the satisfaction of the department of ecology that the proposed requirements are consistent with the purposes of this chapter: *Provided,* That such approval shall be preceded by public hearing, of which notice has been given in accordance with chapter 42.30 RCW. The department of ecology, upon receiving evidence that conditions have changed or that additional information is relevant to a decision with respect to the requirements for emission control, may, after public hearing on due notice, withdraw any approval previously given to a less stringent local or regional requirement.

[2] Nothing in this chapter shall be construed to prevent a local or regional air pollution control authority from adopting and enforcing more stringent emission control requirements than those adopted by the department of ecology and applicable within the jurisdiction of the local or regional air pollution control authority, except that the emission performance standards for new wood stoves and the opacity levels for residential solid fuel burning devices shall be state-wide. [1987 c 405 § 14; 1979 ex.s. c 30 § 13; 1969 ex.s. c 168 § 36; 1967 c 238 § 50.]

Severability—1987 c 405: See note following RCW 70.94.450.

70.94.385 State financial aid—**Application for**—**Requirements.** (1) Any authority may apply to the department for state financial aid. The department shall by rule and regulation establish the ratio of state funds to the local funds taking into consideration available federal and state funds. Any such aid shall be expended from the general fund from such appropriations

as the legislature may provide for this purpose: *Provided*, That federal funds shall be utilized to the maximum unless otherwise approved by the department: *Provided further*, That the ratio of state funds to local funds of the previous year shall not be changed without a public hearing held by the department.

(2) Before any such application is approved and financial aid is given or approved by the department, the authority shall demonstrate to the satisfaction of the department that it is fulfilling the requirements of RCW 70.94.380, or, if the department has not adopted ambient air quality standards and objectives as permitted by RCW 70.94.331, the authority shall demonstrate to the satisfaction of the department that it is acting in good faith and doing all that is possible and reasonable to control and prevent air pollution within its jurisdictional boundaries and to carry out the purposes of this chapter.

(3) The department shall adopt rules and regulations requiring the submission of such information by each authority including the submission of its proposed budget and a description of its program in support of the application for state financial aid as necessary to enable the department to determine the need for state aid. [1987 c 109 § 41; 1969 ex.s. c 168 § 37; 1967 c 238 § 51.]

Purpose—**Short title**—**Construction**—**Rules**—**Severability**—**Captions**—1987 c 109: See notes following RCW 43.21B.001.

70.94.390 Hearing upon activation of authority—**Finding**—**Assumption of jurisdiction by department**—**Expenses**. The department may, at any time and on its own motion, hold a hearing to determine if the activation of an authority is necessary for the prevention, abatement and control of air pollution which exists or is likely to exist in any area of the state. Notice of such hearing shall be conducted in accordance with chapter 42.30 RCW and chapter 34.05 RCW. If at such hearing the department finds that air pollution exists or is likely to occur in a particular area, and that the purposes of this chapter and the public interest will be best served by the activation of an authority it shall designate the boundaries of such area and set forth in a report to the appropriate county or counties recommendations for the activation of an authority: *Provided*, That if at such hearing the department determines that the activation of an authority is not practical or feasible for the reason that a local or regional air pollution control program cannot be successfully established or operated due to unusual circumstances and conditions, but that the control and/or prevention of air pollution is necessary for the purposes of this chapter and the public interest, it may assume jurisdiction and so declare by order. Such order shall designate the geographic area in which, and the effective date upon which, the department will exercise jurisdiction for the control and/or prevention of air pollution. The department shall exercise its powers and duties in the same manner as if it had assumed authority under RCW 70.94.410.

All expenses incurred by the department in the control and prevention of air pollution in any county pursuant to

the provisions of RCW 70.94.390 and 70.94.410 shall constitute a claim against such county. The department shall certify the expenses to the auditor of the county, who promptly shall issue his warrant on the county treasurer payable out of the current expense fund of the county. In the event that the amount in the current expense fund of the county is not adequate to meet the expenses incurred by the department, the department shall certify to the state treasurer that they have a prior claim on any money in the "liquor excise tax fund" that is to be apportioned to that county by the state treasurer as provided in RCW 82.08.170. In the event that the amount in the "liquor excise tax fund" that is to be apportioned to that county by the state treasurer is not adequate to meet the expenses incurred by the department, the department shall certify to the state treasurer that they have a prior claim on any excess funds from the liquor revolving fund that are to be distributed to that county as provided in RCW 66.08.190 through 66.08.220. All moneys that are collected as provided in this section shall be placed in the general fund in the account of the office of air programs of the department. [1987 c 109 § 42; 1969 ex.s. c 168 § 38; 1967 c 238 § 52.]

Purpose—**Short title**—**Construction**—**Rules**—**Severability**—**Captions**—1987 c 109: See notes following RCW 43.21B.001.

70.94.395 Control of particular types or classes of air contaminant sources—**Assumption by department**—**Hearing**—**Standards**. If the department finds, after public hearing upon due notice to all interested parties, that the emissions from a particular type or class of air contaminant source should be regulated on a state-wide basis in the public interest and for the protection of the welfare of the citizens of the state, it may adopt and enforce rules and regulations to control and/or prevent the emission of air contaminants from such source: *Provided*, That an authority may, after public hearing and a finding by the board of a need for more stringent rules and regulations than those adopted by the department under this section, propose the adoption of such rules and regulations by the department for the control of emissions from the particular type or class or air contaminant source within the geographical area of the authority. The department shall hold a public hearing and shall adopt the proposed rules and regulations within the area of the requesting authority, unless it finds that the proposed rules and regulations are inconsistent with the rules and regulations adopted by the department under this section: *Provided further*, That when such standards are adopted by the department it shall delegate to the authority all powers necessary for their enforcement at the request of the authority: *Provided*, That the department may delegate the responsibility for the enforcement of such rules and regulations to any authority which it deems capable of enforcing such regulations: *Provided further*, That if after public hearing the department finds that the regulation on a state-wide basis of a particular type of class of air contaminant source is no longer required for the public interest and the protection of the welfare of the citizens of

the state, the department may relinquish exclusive jurisdiction over such source. [1987 c 109 § 43; 1969 ex.s. c 168 § 39; 1967 c 238 § 53.]

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

70.94.400 Order activating authority—Filing—Hearing—Amendment of order. If, at the end of ninety days after the department issues a report as provided for in RCW 70.94.390, to appropriate county or counties recommending the activation of an authority such county or counties have not performed those actions recommended by the department, and the department is still of the opinion that the activation of an authority is necessary for the prevention, abatement and control of air pollution which exists or is likely to exist, then the department may, at its discretion, issue an order activating an authority. Such order, a certified copy of which shall be filed with the secretary of state, shall specify the participating county or counties and the effective date by which the authority shall begin to function and exercise its powers. Any authority activated by order of the department shall choose the members of its board as provided in RCW 70.94.100 and begin to function in the same manner as if it had been activated by resolutions of the county or counties included within its boundaries. The department may, upon due notice to all interested parties, conduct a hearing in accordance with chapter 42.30 RCW and chapter 34.05 RCW within six months after the order was issued to review such order and to ascertain if such order is being carried out in good faith. At such time the department may amend any such order issued if it is determined by the department that such order is being carried out in bad faith or the department may take the appropriate action as is provided in RCW 70.94.410. [1987 c 109 § 44; 1969 ex.s. c 168 § 40; 1967 c 238 § 54.]

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

70.94.405 Hearing on effectiveness of prevention and control program—Report. At any time after an authority has been activated for no less than one year, the department may, on its own motion, conduct a hearing held in accordance with chapter 42.30 RCW and chapter 34.05 RCW, as now or hereafter amended to determine whether or not the air pollution prevention and control program of such authority is being carried out in good faith and is as effective as possible under the circumstances. If at such hearing the department finds that such authority is not carrying out its air pollution control or prevention program in good faith, or is not doing all that is possible and reasonable to control and/or prevent air pollution within the geographical area over which it has jurisdiction, it shall set forth in a report to the appropriate authority: (1) Its recommendations as to how air pollution prevention and/or control might be more effectively accomplished; and (2) guidelines which

will assist the authority in carrying out the recommendations of the department. [1987 c 109 § 45; 1969 ex.s. c 168 § 41; 1967 c 238 § 55.]

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

70.94.410 Assumption of control by department, when—Reestablishment of program—Withdrawal of department. (1) If, after thirty days from the time that the department issues a report or order to an authority under RCW 70.94.400 and 70.94.405, such authority has not taken any action which indicates that it is attempting in good faith to implement the recommendations or actions of the department as set forth in the report or order, the department may, by order, declare as null and void any or all ordinances, resolutions, rules or regulations of such authority relating to the control and/or prevention of air pollution, and at such time the department shall become the sole body with authority to make and enforce rules and regulations for the control and/or prevention of air pollution within the geographical area of such authority. In this connection the department may assume all those powers which are given to it by law to effectuate the purposes of this chapter. The department may, by order, continue in effect and enforce those provisions of the ordinances, resolutions, or rules and regulations of such authority which are not less stringent than those requirements which the department may have found applicable to the area under RCW 70.94.331 until such time as the department adopts its own rules and regulations. Any rules and regulations promulgated by the department shall be subject to the provisions of chapter 34.05 RCW as it now appears or may hereinafter be amended. Any enforcement actions shall be subject to RCW 43.21B.300 or 43.21B.310.

(2) No provision of this chapter is intended to prohibit any authority from reestablishing its air pollution control program which meets with the approval of the department and which complies with the purposes of this chapter and with applicable rules and regulations and orders of the department.

(3) Nothing in this chapter shall prevent the department from withdrawing the exercise of its jurisdiction over an authority upon its own motion: *Provided*, That the department has found at a hearing held in accordance with chapter 42.30 RCW and chapter 34.05 RCW as now or hereafter amended, that the air pollution prevention and control program of such authority will be carried out in good faith or that such program will do all that is possible and reasonable to control and/or prevent air pollution within the geographical area over which it has jurisdiction. Upon the withdrawal of the department, the department shall prescribe certain recommendations as to how air pollution prevention and/or control is to be effectively accomplished and guidelines which will assist the authority in carrying out the recommendations of the department. [1987 c 109 § 46; 1969 ex.s. c 168 § 42; 1967 c 238 § 56.]

~~Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.~~

70.94.420 Cooperation by state departments and agencies—Potential pollution sources—Permits. (1) It is declared to be the intent of the legislature of the state of Washington that any state department or agency having jurisdiction over any building, installation, or other property shall cooperate with the department and with air pollution control agencies in preventing and/or controlling the pollution of the air in any area insofar as the discharge of the matter from or by such building, installation, or other property may cause or contribute to pollution of the air in such area. Such state department or agency shall comply with the provisions of this chapter and with any ordinance, resolution, rule or regulation issued hereunder in the same manner as any other person subject to such laws, rules or regulations.

(2) In addition to its other powers and duties prescribed by law, the department may establish classes of potential pollution sources for which any state department or agency having jurisdiction over any building, installation, or other property, which is not located within the geographical boundaries of any authority which has an air pollution control and/or prevention program in effect, shall, before discharging any matter into the air, obtain a permit from the department for such discharge, such permits to be issued for a specified period of time to be determined by the department and subject to revocation if the department finds that such discharge is endangering the health and welfare of any persons. Such permits may also be required for any such building, installation, or other property which is located within the geographical boundaries of any authority which has an air pollution control and prevention program in effect if the standards set by the department for state departments and agencies are more stringent than those of the authority. In connection with the issuance of any permits under this section, there shall be submitted to the department such plans, specifications, and other information as it deems relevant thereto and under such other conditions as it may prescribe. [1987 c 109 § 47; 1969 ex.s. c 168 § 44; 1967 c 238 § 58.]

~~Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.~~

70.94.425 Restraining orders—Injunctions. Notwithstanding the existence or use of any other remedy, whenever any person has engaged in, or is about to engage in, any acts or practices which constitute or will constitute a violation of any provision of this chapter, or any rule, regulation or order issued thereunder, the governing body or board or the department, after notice to such person and an opportunity to comply, may petition the superior court of the county wherein the violation is alleged to be occurring or to have occurred for a restraining order or a temporary or permanent injunction or another appropriate order. [1987 c 109 § 48; 1967 c 238 § 60.]

~~Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.~~

70.94.430 Penalties. Any person who violates any of the provisions of this chapter, or any ordinance, resolution, rule or regulation in force pursuant thereto shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than one thousand dollars, or by imprisonment for not more than ninety days, or by both fine and imprisonment for each separate violation.

Any person who wilfully violates any of the provisions of this chapter or any ordinance, resolution, rule or regulation in force pursuant thereto shall be guilty of a gross misdemeanor. Upon conviction the offender shall be punished by a fine of not less than one hundred dollars for each offense or by imprisonment for a term of not more than one year or by both fine and imprisonment.

In case of a continuing violation, whether or not wilfully committed, each day's continuance shall be a separate and distinct violation. [1984 c 255 § 1; 1973 1st ex.s. c 176 § 1; 1967 c 238 § 61.]

70.94.431 Civil penalties. (1) In addition to or as an alternate to any other penalty provided by law, any person who violates any of the provisions of chapter 70.94 RCW or any of the rules and regulations of the department or the board shall incur a civil penalty in an amount not to exceed one thousand dollars per day for each violation. Each such violation shall be a separate and distinct offense, and in case of a continuing violation, each day's continuance shall be a separate and distinct violation. For the purposes of this subsection, the maximum daily fine imposed by a local board for violations of standards by a specific emissions unit is one thousand dollars.

(2) Further, the person is subject to a fine of up to five thousand dollars to be levied by the director of the department of ecology if requested by the board of a local authority or if the director determines that the penalty is needed for effective enforcement of this chapter. A local board shall not make such a request until notice of violation and compliance order procedures have been exhausted, if such procedures are applicable. For the purposes of this subsection, the maximum daily fine imposed by the department of ecology for violations of standards by a specific emissions unit is five thousand dollars.

(3) Each act of commission or omission which procures, aids or abets in the violation shall be considered a violation under the provisions of this section and subject to the same penalty. The penalties provided in this section shall be imposed pursuant to RCW 43.21B.300.

(4) All penalties recovered under this section by the department shall be paid into the state treasury and credited to the general fund or, if recovered by the authority, fifty percent shall be paid into the treasury of the authority and credited to its funds and fifty percent shall be distributed to the cities, towns and counties

within the authority, on a pro rata basis, as each contributes to support the authority pursuant to RCW 70.94.093. If a prior penalty for the same violation has been paid to a local authority, the penalty imposed under subsection (2) of this section shall be reduced by the amount of the payment. Notwithstanding any other provisions of this chapter, no penalty may be levied for the violation of any opacity standard in an amount exceeding four hundred dollars per day.

(5) To secure the penalty incurred under this section, the state or the authority shall have a lien on any vessel used or operated in violation of this chapter which shall be enforced as provided in RCW 60.36.050. [1987 c 109 § 19; 1984 c 255 § 2; 1973 1st ex.s. c 176 § 2; 1969 ex.s. c 168 § 53.]

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

70.94.435 Additional means for enforcement of chapter. As an additional means of enforcing this chapter, the governing body or board may accept an assurance of discontinuance of any act or practice deemed in violation of this chapter or of any ordinance, resolution, rule or regulation adopted pursuant hereto, from any person engaging in, or who has engaged in, such act or practice. Any such assurance shall specify a time limit during which such discontinuance is to be accomplished. Failure to perform the terms of any such assurance shall constitute prima facie proof of a violation of this chapter or the ordinances, resolutions, rules or regulations, or order issued pursuant thereto, which make the alleged act or practice unlawful for the purpose of securing any injunction or other relief from the superior court as provided in RCW 70.94.425. [1967 c 238 § 62.]

70.94.440 Short title. This chapter may be known and cited as the "Washington Clean Air Act". [1967 c 238 § 63.]

70.94.445 Air pollution control facilities—Tax exemptions and credits. See chapter 82.34 RCW.

70.94.450 Wood stoves—Policy. In the interest of the public health and welfare and in keeping with the objectives of RCW 70.94.011, the legislature declares it to be the public policy of the state to control, reduce, and prevent air pollution caused by wood stove emissions. It is the state's policy to reduce wood stove emissions by encouraging the department of ecology to continue efforts to educate the public about the effects of wood stove emissions, other heating alternatives, and the desirability of achieving better emission performance and heating efficiency from wood stoves. The legislature further declares that: (1) The purchase of certified wood stoves will not solve the problem of pollution caused by wood stove emissions; and (2) the reduction of air pollution caused by wood stove emissions will only occur when wood stove users adopt proper methods of wood burning. [1987 c 405 § 1.]

Severability—1987 c 405: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1987 c 405 § 18.]

70.94.453 Wood stoves—Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout RCW 70.94.453 through *70.94.487:

(1) "Department" means the department of ecology.

(2) "Wood stove" means a solid fuel burning device other than a fireplace not meeting the requirements of RCW 70.94.457, including any fireplace insert, wood stove, wood burning heater, wood stick boiler, coal-fired furnace, coal stove, or similar device burning any solid fuel used for aesthetic or space-heating purposes in a private residence or commercial establishment, which has a heat input less than one million British thermal units per hour. The term "wood stove" does not include wood cook stoves.

(3) "Fireplace" means: (a) Any permanently installed masonry fireplace; or (b) any factory-built metal solid fuel burning device designed to be used with an open combustion chamber and without features to control the air to fuel ratio.

(4) "New wood stove" means: (a) A wood stove that is sold at retail, bargained, exchanged, or given away for the first time by the manufacturer, the manufacturer's dealer or agency, or a retailer; and (b) has not been so used to have become what is commonly known as "second hand" within the ordinary meaning of that term.

(5) "Solid fuel burning device" means any device for burning wood, coal, or any other nongaseous and nonliquid fuel, including a wood stove and fireplace.

(6) "Authority" means any air pollution control agency whose jurisdictional boundaries are coextensive with the boundaries of one or more counties.

(7) "Opacity" means the degree to which an object seen through a plume is obscured, stated as a percentage. The methods approved by the department in accordance with RCW 70.94.331 shall be used to establish opacity for the purposes of this chapter. [1987 c 405 § 2.]

*Reviser's note: RCW 70.94.487 was repealed by 1988 c 186 § 16, effective June 30, 1988.

Severability—1987 c 405: See note following RCW 70.94.450.

70.94.457 Wood stoves and solid fuel burning devices—Emission performance standards. Before January 1, 1988, the department of ecology shall establish by rule under chapter 34.05 RCW:

(1) State-wide emission performance standards for new wood stoves. Notwithstanding any other provision of this chapter which allows an authority to adopt more stringent emission standards, no authority shall adopt any emission standard for new wood stoves other than the state-wide standard adopted by the department under this section.

(a) For new wood stoves sold after July 1, 1988, the state-wide performance standard, by rule, shall be the equivalent of and consistent with state-wide emission

standards in effect in bordering states on or before January 1, 1987. For solid fuel burning devices for which bordering states have not established emission standards, the department may temporarily exempt or establish, by rule, state-wide standards including emission levels and test procedures for such devices and such emission levels and test procedures shall be equivalent to emission levels per pound per hour burned for other new wood stoves regulated by this subsection.

(b) Notwithstanding (a) of this subsection, the department is authorized to adopt, by rule, emission standards adopted by the United States environmental protection agency for new wood stoves sold at retail. For solid fuel burning devices for which the United States environmental protection agency has not established emission standards, the department may temporarily exempt or establish, by rule, state-wide standards including emission levels and test procedures for such devices and such emission levels and test procedures shall be equivalent to emission levels per pound per hour burned for other new wood stoves regulated under this subsection.

(2) A program to:

(a) Determine whether a new wood stove complies with the state-wide emission performance standards established in subsection (1) of this section; and

(b) Approve the sale of stoves that comply with the state-wide emission performance standards. [1987 c 405 § 4.]

Severability—1987 c 405: See note following RCW 70.94.450.

70.94.460 Sale of unapproved wood stoves—Prohibited. After July 1, 1988, no person shall sell, offer to sell, or knowingly advertise to sell a new wood stove in this state unless the wood stove has been approved by the department under the program established under RCW 70.94.457. [1987 c 405 § 7.]

Severability—1987 c 405: See note following RCW 70.94.450.

70.94.463 Sale of unapproved wood stoves—Penalty. After July 1, 1988, any person who sells, offers to sell, or knowingly advertises to sell a new wood stove in this state in violation of RCW 70.94.460 shall be subject to the penalties and enforcement actions under this chapter. [1987 c 405 § 8.]

Severability—1987 c 405: See note following RCW 70.94.450.

70.94.467 Sale of unapproved wood stoves—Application of law to advertising media. Nothing in RCW 70.94.460 or 70.94.463 shall apply to a radio station, television station, publisher, printer, or distributor of a newspaper, magazine, billboard, or other advertising medium that accepts advertising in good faith and without knowledge of its violation of RCW 70.94.453 through *70.94.487. [1987 c 405 § 12.]

***Reviser's note:** RCW 70.94.487 was repealed by 1988 c 186 § 16, effective June 30, 1988.

Severability—1987 c 405: See note following RCW 70.94.450.

70.94.470 Residential solid fuel burning devices—Opacity levels. (1) Before January 1, 1988, the department shall establish, by rule under chapter 34.05 RCW, state-wide opacity levels for residential solid fuel burning devices as follows:

(a) A state-wide opacity level of twenty percent for the purpose of public education;

(b) Until July 1, 1990, a state-wide opacity level of forty percent for the purpose of enforcement on a complaint basis; and

(c) After July 1, 1990, a state-wide opacity level of twenty percent for the purpose of enforcement on a complaint basis.

(2) Notwithstanding any other provision of this chapter which may allow an authority to adopt a more stringent opacity level, no authority shall adopt or enforce an opacity level:

(a) Lower than forty percent until July 1, 1990; and

(b) Lower than twenty percent after July 1, 1990. [1987 c 405 § 5.]

Severability—1987 c 405: See note following RCW 70.94.450.

70.94.473 Limitations on burning wood for heat. Any person in a residence or commercial establishment which has an adequate source of heat without burning wood shall:

(1) Not burn wood in any solid fuel heating device whenever the department has determined under RCW 70.94.715 that any air pollution episode exists in that area;

(2) Not burn wood in any solid fuel heating device, except wood stoves which meet the standards set forth in RCW 70.94.457, in the geographical area and for the period of time that impaired air quality has been determined, by the department or any authority, for that area. For the purposes of this section, impaired air quality shall mean air contaminant concentrations nearing unhealthful levels concurrent with meteorological conditions that are conducive to an accumulation of air contamination. If, after July 1, 1990, the department determines that there is quantitative evidence that wood stoves meeting the requirements of RCW 70.94.457 are contributing to impaired air quality, the department or any authority may prohibit burning of all solid fuel burning devices as provided by this section including those meeting the requirements of RCW 70.94.457. [1987 c 405 § 6.]

Severability—1987 c 405: See note following RCW 70.94.450.

70.94.477 Limitations on use of solid fuel burning devices. Unless allowed by rule, under chapter 34.05 RCW, a person shall not cause or allow any of the following materials to be burned in any residential solid fuel burning device:

(1) Garbage;

(2) Treated wood;

(3) Plastics;

(4) Rubber products;

(5) Animals;

(6) Asphaltic products;

- (7) Waste petroleum products;
- (8) Paints; or
- (9) Any substance, other than properly seasoned fuel wood, which normally emits dense smoke or obnoxious odors. [1987 c 405 § 9.]

Severability—1987 c 405: See note following RCW 70.94.450.

70.94.480 Wood stove education program. The department of ecology shall establish a program to educate wood stove dealers and the public about:

- (1) The effects of wood stove emissions on health and air quality;
- (2) Methods of achieving better efficiency and emission performance from wood stoves;
- (3) Wood stoves that have been approved by the department;
- (4) The benefits of replacing inefficient wood stoves with stoves approved under RCW 70.94.457. [1987 c 405 § 3.]

Severability—1987 c 405: See note following RCW 70.94.450.

70.94.483 Wood stove education program—Account created—Fee imposed on wood stove sales. (1) The wood stove education account is hereby created in the general fund. Money placed in the account shall include all money received under subsection (2) of this section and any other money appropriated by the legislature. Money in the account shall be spent for the purposes of the wood stove education program established under RCW 70.94.480 and shall be subject to legislative appropriation.

(2) The department of ecology, with the advice of the advisory committee, shall set a flat fee, not to exceed five dollars, on the retail sale, as defined in RCW 82.04.050, of each solid fuel burning device, excepting masonry fireplaces, after January 1, 1988. The fee shall be imposed upon the consumer and shall not be subject to the retail sales tax provisions of chapters 82.08 and 82.12 RCW. The fee may be adjusted annually above five dollars according to changes in the consumer price index after January 1, 1989. The fee shall be collected by the department of revenue in conjunction with the retail sales tax under chapter 82.08 RCW. If the seller fails to collect the fee herein imposed or fails to remit the fee to the department of revenue in the manner prescribed in chapter 82.08 RCW, the seller shall be personally liable to the state for the amount of the fee. The collection provisions of chapter 82.32 RCW shall apply. The department of revenue shall transmit the moneys to the wood stove education account. [1987 c 405 § 10.]

Severability—1987 c 405: See note following RCW 70.94.450.

70.94.510 Policy to cooperate with federal government. It is declared to be the policy of the state of Washington through the department of ecology to cooperate with the federal government in order to insure the coordination of the provisions of the federal and state clean air acts, and the department is authorized and directed to implement and enforce the provisions of this chapter in carrying out this policy as follows:

(1) To accept and administer grants from the federal government for carrying out the provisions of this chapter.

(2) To take all action necessary to secure to the state the benefits of the federal clean air act. [1987 c 109 § 49; 1969 ex.s. c 168 § 45.]

Purpose—**Short title**—**Construction**—**Rules**—**Severability**—**Captions**—1987 c 109: See notes following RCW 43.21B.001.

70.94.600 Reports of authorities to department of ecology—Contents. All authorities in the state shall submit quarterly reports to the department of ecology detailing the current status of air pollution control regulations in the authority and, by county, the progress made toward bringing all sources in the authority into compliance with authority standards. [1979 ex.s. c 30 § 14; 1969 ex.s. c 168 § 52.]

70.94.640 Odors caused by agricultural activities consistent with good agricultural practices exempt from chapter. (1) Odors caused by agricultural activity consistent with good agricultural practices on agricultural land are exempt from the requirements of this chapter unless they have a substantial adverse effect on public health. In determining whether agricultural activity is consistent with good agricultural practices, the department of ecology or board of any authority shall consult with a recognized third-party expert in the activity prior to issuing any notice of violation.

(2) Any notice of violation issued under this chapter pertaining to odors caused by agricultural activity shall include a statement as to why the activity is inconsistent with good agricultural practices, or a statement that the odors have substantial adverse effect on public health.

(3) In any appeal to the pollution control hearings board or any judicial appeal, the agency issuing a final order pertaining to odors caused by agricultural activity shall prove the activity is inconsistent with good agricultural practices or that the odors have a substantial adverse impact on public health.

(4) If a person engaged in agricultural activity on a contiguous piece of agricultural land sells or has sold a portion of that land for residential purposes, the exemption of this section shall not apply.

(5) As used in this section:

(a) "Agricultural activity" means the growing, raising, or production of horticultural or viticultural crops, berries, poultry, livestock, grain, mint, hay, and dairy products.

(b) "Good agricultural practices" means economically feasible practices which are customary among or appropriate to farms and ranches of a similar nature in the local area.

(c) "Agricultural land" means at least five acres of land devoted primarily to the commercial production of livestock or agricultural commodities. [1981 c 297 § 30.]

Legislative finding, intent—1981 c 297: "The legislature finds that agricultural land is essential to providing citizens with food and fiber and to insuring aesthetic values through the preservation of open spaces in our state. The legislature further finds that government regulations can cause agricultural land to be converted to nonagricultural

uses. The legislature intends that agricultural activity consistent with good practices be protected from government over-regulation." [1981 c 297 § 29.]

Reviser's note: The above legislative finding and intent section apparently applies to sections 30 and 31 of chapter 297, Laws of 1981, which sections have been codified pursuant to legislative direction as RCW 70.94.640 and 90.48.450, respectively.

Severability—1981 c 297: See note following RCW 15.36.110.

70.94.650 Burning permits for weed abatement, instruction or agriculture activities—Issuance—Activities exempted from requirement. Any person who proposes to set fires in the course of the following:

- (1) Weed abatement,
- (2) Instruction in methods of fire fighting (except forest fires), or
- (3) Disease prevention relating to agricultural activities, shall, prior to carrying out the same, obtain a permit from an air pollution control authority or the department of ecology, as appropriate. Each such authority and the department of ecology shall, by rule or ordinance, establish a permit system to carry out the provisions of this section except as provided in RCW 70.94.660. General criteria of state-wide applicability for ruling on such permits shall be established by the department, by rule or regulation, after consultation with the various air pollution control authorities. Permits shall be issued under this section based on seasonal operations or by individual operations, or both: *Provided*, That all permits so issued shall be conditioned to insure that the public interest in air, water, and land pollution and safety to life and property is fully considered. In addition to any other requirements established by the department to protect air quality pursuant to other laws, applicants for permits must show that the setting of fires as requested is the most reasonable procedure to follow in safeguarding life or property under all circumstances or is otherwise reasonably necessary to successfully carry out the enterprise the applicant is engaged in. All burning permits will be designed to minimize air pollution insofar as practical. Nothing in this section shall relieve the applicant from obtaining permits, licenses or other approvals required by any other law: *Provided further*, That an application for a permit to set fires in the course of agricultural burning for controlling diseases, insects, and development of physiological conditions conducive to increased crop yield, shall be granted within fourteen days from the date such application is filed: *Provided*, That nothing herein shall prevent a householder from setting fire in the course of burning leaves, clippings or trash when otherwise permitted locally. Nothing contained herein shall prohibit Indian campfires or the sending of smoke signals if part of a religious ritual. [1971 ex.s. c 232 § 1.]

70.94.654 Delegation of permit issuance and enforcement to counties. Whenever the department of ecology shall find that any county which is outside the jurisdictional boundaries of an activated air pollution control authority is capable of effectively administering the issuance and enforcement of permits for any or all of the kinds of burning identified in RCW 70.94.650(1)

and (3) and desirous of doing so, the department of ecology may delegate all powers necessary for the issuance and enforcement of permits for any or all of the kinds of burning to the county: *Provided*, That such delegation may be withdrawn by the department of ecology upon a finding that the county is not effectively administering the permit program. [1973 1st ex.s. c 193 § 6.]

70.94.656 Open burning of grasses grown for seed—Alternatives—Studies—Deposit of permit fees in special grass seed burning account—Earnings—Procedures—Limitations. It is hereby declared to be the policy of this state that strong efforts should be made to minimize adverse effects on air quality from the open burning of field and turf grasses grown for seed. To such end this section is intended to promote the development of economical and practical alternate agricultural practices to such burning, and to provide for interim regulation of such burning until practical alternates are found.

(1) The department shall approve of a study or studies for the exploration and identification of economical and practical alternate agricultural practices to the open burning of field and turf grasses grown for seed. Prior to the issuance of any permit for such burning under RCW 70.94.650, there shall be collected a fee not to exceed fifty cents per acre of crop to be burned. Any such fees received by any authority shall be transferred to the department of ecology. The department of ecology shall deposit all such acreage fees in a special grass seed burning research account, hereby created, in the state treasury. All earnings of investments of balances in the special grass seed burning research account shall be credited to the general fund. The department shall allocate moneys annually from this account for the support of any approved study or studies as provided for in this subsection. For the conduct of any such study or studies, the department may contract with public or private entities: *Provided*, That whenever the department of ecology shall conclude that sufficient reasonably available alternates to open burning have been developed, and at such time as all costs of any studies have been paid, the grass seed burning research account shall be dissolved, and any money remaining therein shall revert to the general fund.

(2) Whenever on the basis of information available to it, the department after public hearings have been conducted wherein testimony will be received and considered from interested parties wishing to testify shall conclude that any procedure, program, technique, or device constitutes a practical alternate agricultural practice to the open burning of field or turf grasses grown for seed, the department shall, by order, certify approval of such alternate. Thereafter, in any case which any such approved alternate is reasonably available, the open burning of field and turf grasses grown for seed shall be disallowed and no permit shall issue therefor.

(3) Until approved alternates become available, the department or the authority may limit the number of acres on a pro rata basis among those affected for which

permits to burn will be issued in order to effectively control emissions from this source.

(4) Permits issued for burning of field and turf grasses may be conditioned to minimize emissions insofar as practical, including denial of permission to burn during periods of adverse meteorological conditions. [1985 c 57 § 69; 1973 1st ex.s. c 193 § 7.]

Effective date—1985 c 57: See note following RCW 15.52.320.
Grass burning research advisory committee: Chapter 43.21E RCW.

70.94.660 Burning permits for abating or prevention of forest fire hazards, instruction or silvicultural operations—Issuance. The department of natural resources shall have the responsibility for issuing and regulating burning permits required by it relating to the following activities declared to be for the protection of life or property and/or in the public welfare:

- (1) Abating a forest fire hazard;
- (2) Prevention of a fire hazard;
- (3) Instruction of public officials in methods of forest fire fighting; and
- (4) Any silvicultural operation to improve the forest lands of the state. [1971 ex.s. c 232 § 2.]

Burning permits, issuance, air pollution a factor: RCW 76.04.205.
Disposal of forest debris: RCW 76.04.650.

70.94.670 Burning permits for abating or prevention of forest fire hazards, instruction or silvicultural operations—Conditions for issuance and use of permits—Air quality standards to be met—Alternate methods to lessen forest debris. The department of natural resources in granting burning permits for fires for the purposes set forth in RCW 70.94.660 shall condition the issuance and use of such permits to comply with air quality standards established by the department of ecology after full consultation with the department of natural resources. Such burning shall not cause the state air quality standards for suspended particulate matter to be exceeded in the ambient air up to two thousand feet above ground level over critical areas designated by the department of ecology, otherwise subject to air pollution from other sources. Air quality standards for suspended particulate matter shall be established and published by the department of ecology which shall also establish a procedure for advising the department of natural resources when the air exceeds or threatens to exceed the standards over such critical areas. The suspended particulate matter shall be quantitatively measured by the department of ecology or the appropriate local air pollution control authority at established primary air mass stations or primary ground level monitoring stations over such designated areas. The department of natural resources shall set forth smoke dispersal objectives designed to minimize any air pollution from smoke from such burning and the procedures necessary to meet those objectives.

The department of natural resources shall encourage more intense utilization in logging to reduce forest fire hazards and shall encourage development and use of procedures and equipment to burn forest debris in a

manner that will produce less smoke. The department of natural resources shall, whenever practical, encourage development and use of alternative acceptable disposal methods. Such alternative methods shall be evaluated as to the relative impact on air, water and land pollution, and their financial feasibility. [1971 ex.s. c 232 § 3.]

70.94.680 Extension of burning permit requirements. The department of natural resources may extend burning permit requirements to cover the types of burning set forth in RCW 70.94.650 through 70.94.700 during the period from October 15 through March 15 in order to protect the air quality, and shall extend such requirements if the department of ecology deems such action necessary to avoid an air pollution emergency where there is a high danger that normal operations at air contaminant sources in the area will be detrimental to the public health or safety. [1971 ex.s. c 232 § 4.]

70.94.690 Cooperation between department of natural resources and state, local, or regional air pollution authorities—Withholding of permits. In the regulation of outdoor burning not included in RCW 70.94.660 requiring permits from the department of natural resources, said department and the state, local, or regional air pollution control authorities will cooperate in regulating such burning so as to minimize insofar as possible duplicate inspections and separate permits while still accomplishing the objectives and responsibilities of the respective agencies.

Permits shall be withheld by the department of natural resources when so requested by the department of ecology if a forecast, alert, warning or emergency condition exists as defined in the episode criteria of the department of ecology. [1971 ex.s. c 232 § 5.]

70.94.700 Rules and regulations. The department of natural resources and the department of ecology may adopt rules and regulations necessary to implement their respective responsibilities under the provisions of RCW 70.94.650 through 70.94.700. [1971 ex.s. c 232 § 6.]

70.94.710 Air pollution episodes—Legislative finding—Declaration of policy. The legislature finds that whenever meteorological conditions occur which reduce the effective volume of air into which air contaminants are introduced, there is a high danger that normal operations at air contaminant sources in the area affected will be detrimental to public health or safety. Whenever such conditions, herein denominated as air pollution episodes, are forecast, there is a need for rapid short-term emission reduction in order to avoid adverse health or safety consequences.

Therefore, it is declared to be the policy of this state that an episode avoidance plan should be developed and implemented for the temporary reduction of emissions during air pollution episodes.

It is further declared that power should be vested in the governor to issue emergency orders for the reduction or discontinuance of emissions when such emissions and

weather combine to create conditions imminently dangerous to public health and safety. [1971 ex.s. c 194 § 1.]

70.94.715 Air pollution episodes—Episode avoidance plan—Contents—Source emission reduction plans—Authority—Considered orders. The department of ecology is hereby authorized to develop an episode avoidance plan providing for the phased reduction of emissions wherever and whenever an air pollution episode is forecast. Such an episode avoidance plan shall conform with any applicable federal standards and shall be effective state-wide. The episode avoidance plan may be implemented on an area basis in accordance with the occurrence of air pollution episodes in any given area.

The department of ecology may delegate authority to adopt source emission reduction plans and authority to implement all stages of occurrence up to and including the warning stage, and all intermediate stages up to the warning stage, in any area of the state, to the air pollution control authority with jurisdiction therein.

The episode avoidance plan, which shall be established by regulation in accordance with chapter 34.05 RCW, shall include, but not be limited to the following:

(1) The designation of episode criteria and stages, the occurrence of which will require the carrying out of pre-planned episode avoidance procedures. The stages of occurrence shall be (a) forecast, (b) alert, (c) warning, (d) emergency, and such intermediate stages as the department shall designate. "Forecast" means the presence of meteorological conditions that are conducive to accumulation of air contaminants and is the first stage of an episode. "Alert" means concentration of air contaminants at levels at which short-term health effects may occur, and is the second stage of an episode. "Warning" means concentrations are continuing to degrade, contaminant concentrations have reached a level which, if maintained, can result in damage to health, and additional control actions are needed and is the third level of an episode. "Emergency" means the air quality is posing an imminent and substantial endangerment to public health and is the fourth level of an episode;

(2) The requirement that persons responsible for the operation of air contaminant sources prepare and obtain approval from the director of source emission reduction plans, consistent with good operating practice and safe operating procedures, for reducing emissions during designated episode stages;

(3) Provision for the director of the department of ecology or his authorized representative, or the air pollution control officer if implementation has been delegated, on the satisfaction of applicable criteria, to declare and terminate the forecast, alert, warning and all intermediate stages, up to the warning episode stage, such declarations constituting orders for action in accordance with applicable source emission reduction plans;

(4) Provision for the governor to declare and terminate the emergency stage and all intermediate stages

above the warning episode stage, such declarations constituting orders in accordance with applicable source emission reduction plans;

(5) Provisions for enforcement by state and local police, personnel of the departments of ecology and social and health services, and personnel of local air pollution control agencies; and

(6) Provisions for reduction or discontinuance of emissions immediately, consistent with good operating practice and safe operating procedures, under an air pollution emergency as provided in RCW 70.94.720.

Source emission reduction plans shall be considered orders of the department and shall be subject to appeal to the pollution control hearings board according to the procedure in chapter 43.21B RCW. [1971 ex.s. c 194 § 2.]

70.94.720 Air pollution episodes—Declaration of air pollution emergency by governor. Whenever the governor finds that emissions from the operation of one or more air contaminant sources is causing imminent danger to public health or safety, he may declare an air pollution emergency and may order the person or persons responsible for the operation of such air contaminant source or sources to reduce or discontinue emissions consistent with good operating practice, safe operating procedures and source emission reduction plans, if any, adopted by the department of ecology or any local air pollution control authority to which the department of ecology has delegated authority to adopt emission reduction plans. Orders authorized by this section shall be in writing and may be issued without prior notice or hearing. In the absence of the governor, any findings, declarations and orders authorized by this section may be made and issued by his authorized representative. [1971 ex.s. c 194 § 3.]

70.94.725 Air pollution episodes—Restraining orders, temporary injunctions to enforce orders—Procedure. Whenever any order has been issued pursuant to RCW 70.94.710 through 70.94.730, the attorney general, upon request from the governor, the director of the department of ecology, an authorized representative of either, or the attorney for a local air pollution control authority upon request of the control officer, shall petition the superior court of the county in which is located the air contaminant source for which such order was issued for a temporary restraining order requiring the immediate reduction or discontinuance of emissions from such source.

Upon request of the party to whom a temporary restraining order is directed, the court shall schedule a hearing thereon at its earliest convenience, at which time the court may withdraw the restraining order or grant such temporary injunction as is reasonably necessary to prevent injury to the public health or safety. [1971 ex.s. c 194 § 4.]

70.94.730 Air pollution episodes—Orders to be effective immediately. Orders issued to declare any stage of an air pollution episode avoidance plan under RCW

70.94.715, and to declare an air pollution emergency, under RCW 70.94.720, and orders to persons responsible for the operation of an air contaminant source to reduce or discontinue emissions, according to RCW 70.94.715 and 70.94.720 shall be effective immediately and shall not be stayed pending completion of review. [1971 ex.s. c 194 § 5.]

70.94.740 Outdoor burning—Policy. It is the policy of the state to achieve and maintain high levels of air quality and to this end to minimize to the greatest extent reasonably possible the burning of outdoor fires. Consistent with this policy, the legislature declares that such fires should be allowed only on a limited basis under strict regulation and close control. [1972 ex.s. c 136 § 1.]

70.94.745 Limited outdoor burning—Program. It shall be the responsibility and duty of the department of natural resources, department of ecology, fire districts and local air pollution control authorities to establish, through regulations, ordinances or policy, a limited burning program for the people of this state, consisting of a one-permit system, until such time as an alternate technology or method of disposing of the organic refuse described in this chapter shall have been developed which is reasonably economical and less harmful to the environment. It is the policy of this state to encourage the fostering and development of such alternate method or technology. [1972 ex.s. c 136 § 2.]

70.94.750 Limited outdoor burning—Fires permitted. The following outdoor fires described in this section may be burned subject to the provisions of the program established pursuant to RCW 70.94.755 for any area and subject to city ordinances, county resolutions, and rules and regulations of fire districts and laws and rules and regulations enforced by the department of natural resources:

(1) Fires consisting of leaves, clippings, prunings and other yard and gardening refuse originating on lands immediately adjacent and in close proximity to a human dwelling and burned on such lands by the property owner or his designee.

(2) Fires consisting of residue of a natural character such as trees, stumps, shrubbery or other natural vegetation arising from land clearing projects or agricultural pursuits for pest or disease control; provided the fires described in this subsection may be prohibited in those areas having a general population density of one thousand or more persons per square mile. [1972 ex.s. c 136 § 3.]

70.94.755 Limited outdoor burning—Establishment of program. Each activated air pollution control authority, and the department of ecology in those areas outside the jurisdictional boundaries of an activated air pollution control authority, shall establish, through regulations, ordinances or policy, a program implementing the limited burning policy authorized by RCW 70.94.740 through 70.94.765. [1972 ex.s. c 136 § 4.]

70.94.760 Limited outdoor burning—Construction. Nothing contained in RCW 70.94.740 through 70.94.765 is intended to alter or change the provisions of RCW 70.94.660, 70.94.710 through 70.94.730, and 76.04.205. [1986 c 100 § 55; 1972 ex.s. c 136 § 5.]

70.94.765 Limited outdoor burning—Authority of local air pollution control authority or department of ecology to allow outdoor fires not restricted. Nothing in RCW 70.94.740 through 70.94.765 shall be construed as prohibiting a local air pollution control authority or the department of ecology in those areas outside the jurisdictional boundaries of an activated pollution control authority from allowing the burning of outdoor fires. [1972 ex.s. c 136 § 6.]

70.94.775 Outdoor burning—Fires prohibited—Exceptions. No person shall cause or allow any outdoor fire:

(1) Containing garbage, dead animals, asphalt, petroleum products, paints, rubber products, plastics, or any substance other than natural vegetation which normally emits dense smoke or obnoxious odors except as provided in RCW 70.94.650: *Provided*, That agricultural heating devices which otherwise meet the requirements of this chapter shall not be considered outdoor fires under this section;

(2) During a forecast, alert, warning or emergency condition as defined in RCW 70.94.715;

(3) In any area which has been designated by the department of ecology or board of an activated authority as an area exceeding or threatening to exceed state or federal ambient air quality standards, or after July 1, 1976, state ambient air quality goals for particulates, except instructional fires permitted by RCW 70.94.650(2). [1974 ex.s. c 164 § 1; 1973 2nd ex.s. c 11 § 1; 1973 1st ex.s. c 193 § 9.]

70.94.780 Outdoor burning—Regulation and prohibition. In addition to any other powers granted to them by law, the fire protection agency authorized to issue burning permits may regulate or prohibit outdoor burning in order to prevent or abate the nuisances caused by such burning. [1973 1st ex.s. c 193 § 10.]

70.94.785 Plans approved pursuant to federal clean air act—Enforcement authority. Notwithstanding any provision of the law to the contrary, except RCW 70.94.660 through 70.94.690, the department of ecology, upon its approval of any plan (or part thereof) required or permitted under the federal clean air act, shall have the authority to enforce all regulatory provisions within such plan (or part thereof): *Provided*, That departmental enforcement of any such provision which is within the power of an activated authority to enforce shall be initiated only, when with respect to any source, the authority is not enforcing the provisions and then only after written notice is given the authority. [1973 1st ex.s. c 193 § 11.]

70.94.800 Legislative declaration—Intent. The legislature recognizes that:

(1) Acid deposition resulting from commercial, industrial or other emissions of sulphur dioxide and nitrogen oxides pose a threat to the delicate balance of the state's ecological systems, particularly in alpine lakes that are known to be highly sensitive to acidification;

(2) Failure to act promptly and decisively to mitigate or eliminate this danger may soon result in untold and irreparable damage to the fish, forest, wildlife, agricultural, water, and recreational resources of this state;

(3) There is a direct correlation between emissions of sulphur dioxides and nitrogen oxides and increases in acid deposition;

(4) Acidification is cumulative; and

(5) Once an environment is acidified, it is difficult, if not impossible, to restore the natural balance.

It is therefore the intent of the legislature to provide for early detection of acidification and the resulting environmental degradation through continued monitoring of acid deposition levels and trends, and major source changes, so that the legislature can take any necessary action to prevent environmental degradation resulting from acid deposition. [1985 c 456 § 1; 1984 c 277 § 1.]

70.94.805 Definitions. As used in RCW 70.94.800 through 70.94.825, the following terms have the following meanings.

(1) "Acid deposition" means wet or dry deposition from the atmosphere of chemical compounds with a pH of less than 5.6.

(2) "Critical level of acid deposition and lake, stream, and soil acidification" means the level at which irreparable damage may occur unless corrective action is taken. [1985 c 456 § 2; 1984 c 277 § 2.]

70.94.810 Joint legislative committee on science and technology—Establishment of consultant selection committee—Duties of consultant—Interagency agreement to assist evaluation of acid rain—Amount of assistance. (1) The joint legislative committee on science and technology is directed to establish a consultant selection committee that includes the chairs of the senate parks and ecology committee and the house environmental affairs committee and one member appointed by the department of ecology. A consultant shall be selected to:

(a) Evaluate existing information and research on acid deposition in the Pacific Northwest region;

(b) Identify data gaps that need to be filled to provide sound base-line information on acid deposition in the region; and

(c) Coordinate with the department of ecology the evaluations specified under subsections (a) and (b) of this section.

(2) In addition to the consultant selected under subsection (1) of this section, the joint committee on science and technology may execute an interagency agreement with the department of ecology for the purpose of providing financial assistance for the department's comprehensive evaluation of the phenomenon known as acid

rain. The amount of financial assistance to be provided under this subsection shall not exceed fifty thousand dollars or be less than twenty-five thousand dollars. [1984 c 277 § 3.]

70.94.815 Application for money to finance evaluation. The joint legislative committee on science and technology is authorized to apply for and receive moneys from the federal government or other sources, public or private, to finance any of the activities authorized or mandated by RCW 70.94.800 through 70.94.815. [1984 c 277 § 5.]

70.94.820 Monitoring by department of ecology. The department of ecology shall maintain a program of periodic monitoring of acid rain deposition and lake, stream, and soil acidification to ensure early detection of acidification and environmental degradation. [1987 c 505 § 61; 1985 c 456 § 5; 1984 c 277 § 6.]

70.94.825 Department of ecology to initiate comprehensive evaluation of acid rain. The department of ecology shall initiate in consultation with the joint science and technology committee a comprehensive evaluation of the phenomenon known as acid deposition or acid rain. The study shall evaluate the:

(1) Scope and extent of acid rain, if any, that is present within the various geographic areas of the state, including lakes and other water bodies;

(2) Present and potential effects on the state's land and water bodies;

(3) Present and potential impacts of acid rain upon the economic and environmental welfare of the state;

(4) Factors which contribute to creation of acid rain now existing in the state;

(5) Means and methods for controlling, reducing, and eliminating acid rain now in place within the state as well as preventing its recurrence in the future;

(6) Range of funds needed, on a continuing basis, to implement the means and methods set forth in subsection (5) of this section together with the proposed funding sources as well as the economic impacts associated with these means and methods; and

(7) Sufficiency of existing pollution control laws of the state to resolve satisfactorily the problems of the state associated with acid rain. [1984 c 277 § 7.]

70.94.850 Emission credits banking program—Amount of credit. The department of ecology and the local boards may implement an emission credits banking program. For the purposes of this section, an emission credits banking program means a program whereby an air contaminant source which reduces emissions of a given air contaminant by an amount greater than that required by applicable law, regulation, or order is granted credit for a given amount, which credit shall be administered by a credit bank operated by the appropriate agency. The amount of the credit shall be determined by the department or local board with jurisdiction, but it shall be less than the amount of the emissions reduction. The credit may be used, traded,

sold, or otherwise expended for purposes established by regulation of state or local agencies consistent with the provisions of the prevention of significant deterioration program under RCW 70.94.860, the bubble program under RCW 70.94.155, and the new source review program under RCW 70.94.152, if there will be no net adverse impact on air quality. [1984 c 164 § 1.]

70.94.860 Department of ecology may accept, delegate the prevention of significant deterioration program. The department of ecology may accept delegation of the prevention of significant deterioration program pursuant to Part C, Subpart 1 of the federal Clean Air Act. The department may, in turn, delegate this program to the local authority with jurisdiction in a given area. [1984 c 164 § 2.]

70.94.870 Report to legislature on emission credits banking program. The department of ecology shall study the emission credits banking program and report to the legislature on its effectiveness by January 1, 1986. The report shall include a recommendation as to whether the program should be continued. [1984 c 164 § 3.]

70.94.875 Evaluation of information on acid deposition in Pacific Northwest—Establishment of critical levels—Notification of legislature. The department of ecology, in consultation with the joint legislative committee on science and technology or the appropriate committees of the house of representatives and of the senate, shall:

- (1) Continue evaluation of information and research on acid deposition in the Pacific Northwest region;
- (2) Establish critical levels of acid deposition and lake, stream, and soil acidification; and
- (3) Notify the legislature if acid deposition or lake, stream, and soil acidification reaches the levels established under subsection (2) of this section. [1985 c 456 § 3.]

70.94.880 Establishment of critical deposition and acidification levels—Considerations. In establishing critical levels of acid deposition and lake, stream, and soil acidification, the department of ecology shall consider:

- (1) Current acid deposition and lake, stream, and soil acidification levels;
- (2) Changes in acid deposition and lake, stream, and soil acidification levels;
- (3) Effects of acid deposition and lake, stream, and soil acidification on the environment; and
- (4) The need to prevent environmental degradation. [1985 c 456 § 4.]

70.94.901 Construction—1967 c 238. This 1967 amendatory act shall not be construed to create in any way nor to enlarge, diminish or otherwise affect in any way any private rights in any civil action for damages. Any determination that there has been a violation of the provisions of this 1967 amendatory act or of any ordinance, rule, regulation or order issued pursuant thereto,

shall not create by reason thereof any presumption or finding of fact or of law for use in any lawsuit brought by a private citizen. [1967 c 238 § 65.]

70.94.902 Construction, repeal of RCW 70.94.061 through 70.94.066—Saving. The following acts or parts of acts are each repealed:

- (1) Section 7, chapter 238, Laws of 1967, and RCW 70.94.061;
- (2) Section 8, chapter 238, Laws of 1967, and RCW 70.94.062;
- (3) Section 9, chapter 238, Laws of 1967, and RCW 70.94.064; and
- (4) Section 10, chapter 238, Laws of 1967, and RCW 70.94.066.

Such repeals shall not be construed as affecting any authority in existence on April 24, 1969, nor as affecting any action, activities or proceedings initiated by such authority prior hereto, nor as affecting any civil or criminal proceedings instituted by such authority, nor any rule, regulation, resolution, ordinance, or order promulgated by such authority, nor any administrative action taken by such authority, nor the term of office, or appointment or employment of any person appointed or employed by such authority. [1969 ex.s. c 168 § 46.]

70.94.911 Severability—1967 c 238. If any phrase, clause, subsection or section of this 1967 amendatory act shall be declared unconstitutional or invalid by any court of competent jurisdiction, it shall be conclusively presumed that the legislature would have enacted this act without the phrase, clause, subsection or section so held unconstitutional or invalid and the remainder of the act shall not be affected as a result of said part being held unconstitutional or invalid. [1967 c 238 § 64.]

70.94.950 Disincorporation of district located in class A or AA county and inactive for five years. See chapter 57.90 RCW.

Chapter 70.95

SOLID WASTE MANAGEMENT—REDUCTION AND RECYCLING

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70.95.010 Legislative finding—Priorities—Goal.
The legislature finds:

(1) Continuing technological changes in methods of manufacture, packaging, and marketing of consumer products, together with the economic and population growth of this state, the rising affluence of its citizens, and its expanding industrial activity have created new and ever-mounting problems involving disposal of garbage, refuse, and solid waste materials resulting from domestic, agricultural, and industrial activities.

(2) Traditional methods of disposing of solid wastes in this state are no longer adequate to meet the ever-increasing problem. Improper methods and practices of handling and disposal of solid wastes pollute our land, air and water resources, blight our countryside, adversely affect land values, and damage the overall quality of our environment.

(3) Considerations of natural resource limitations, energy shortages, economics and the environment make necessary the development and implementation of solid waste recovery and/or recycling plans and programs.

(4) Waste reduction must become a fundamental strategy of solid waste management. It is therefore necessary to change manufacturing and purchasing practices and waste generation behaviors to reduce the amount of waste that becomes a governmental responsibility.

(5) Source separation of waste must become a fundamental strategy of solid waste management. Collection and handling strategies should have, as an ultimate goal, the source separation of all materials with resource value or environmental hazard.

(6) (a) It is the responsibility of every person to minimize his or her production of wastes and to separate recyclable or hazardous materials from mixed waste.

(b) It is the responsibility of state, county, and city governments to provide for a waste management infrastructure to fully implement waste reduction and source separation strategies and to process and dispose of remaining wastes in a manner that is environmentally safe and economically sound. It is further the responsibility of state, county, and city governments to monitor the cost-effectiveness and environmental safety of combusting separated waste, processing mixed waste, and recycling programs.

(c) It is the responsibility of county and city governments to assume primary responsibility for solid waste management and to develop and implement aggressive and effective waste reduction and source separation strategies.

(d) It is the responsibility of state government to ensure that local governments are providing adequate source reduction and separation opportunities and incentives to all, including persons in both rural and urban areas, and nonresidential waste generators such as commercial, industrial, and institutional entities, recognizing the need to provide flexibility to accommodate differing population densities, distances to and availability of recycling markets, and collection and disposal costs in each community; and to provide county and city governments with adequate technical resources to accomplish this responsibility.

(7) Environmental and economic considerations in solving the state's solid waste management problems requires strong consideration by local governments of regional solutions and intergovernmental cooperation.

(8) The following priorities for the collection, handling, and management of solid waste are necessary and should be followed in descending order as applicable:

(a) Waste reduction;

(b) Recycling, with source separation of recyclable materials as the preferred method;

(c) Energy recovery, incineration, or landfill of separated waste;

(d) Energy recovery, incineration, or landfilling of mixed wastes.

(9) It is the state's goal to achieve a fifty percent recycling rate by 1995.

(10) Steps should be taken to make recycling at least as affordable and convenient to the ratepayer as mixed waste disposal.

(11) It is necessary to compile and maintain adequate data on the types and quantities of solid waste that are being generated and to monitor how the various types of solid waste are being managed.

(12) Vehicle batteries should be recycled and the disposal of vehicle batteries into landfills or incinerators should be discontinued.

(13) Excessive and nonrecyclable packaging of products should be avoided.

(14) Comprehensive education should be conducted throughout the state so that people are informed of the need to reduce, source separate, and recycle solid waste.

(15) All governmental entities in the state should set an example by implementing aggressive waste reduction and recycling programs at their workplaces and by purchasing products that are made from recycled materials and are recyclable.

(16) To ensure the safe and efficient operations of solid waste disposal facilities, it is necessary for operators and regulators of landfills and incinerators to receive training and certification.

(17) It is necessary to provide adequate funding to all levels of government so that successful waste reduction and recycling programs can be implemented.

(18) The development of stable and expanding markets for recyclable materials is critical to the long-term success of the state's recycling goals. Market development must be encouraged on a state, regional, and national basis to maximize its effectiveness. The state shall assume primary responsibility for the development of a multifaceted market development program to carry out the purposes of *this act.

(19) There is an imperative need to anticipate, plan for, and accomplish effective storage, control, recovery, and recycling of discarded tires and other problem wastes with the subsequent conservation of resources and energy. [1989 c 431 § 1; 1985 c 345 § 1; 1984 c 123 § 1; 1975-'76 2nd ex.s. c 41 § 1; 1969 ex.s. c 134 § 1.]

*Reviser's note: For codification of "this act" [1989 c 431], see Codification Tables, Volume 0.

70.95.020 Purpose. The purpose of this chapter is to establish a comprehensive state-wide program for solid waste handling, and solid waste recovery and/or recycling which will prevent land, air, and water pollution and conserve the natural, economic, and energy resources of this state. To this end it is the purpose of this chapter:

(1) To assign primary responsibility for adequate solid waste handling to local government, reserving to the state, however, those functions necessary to assure effective programs throughout the state;

(2) To provide for adequate planning for solid waste handling by local government;

(3) To provide for the adoption and enforcement of basic minimum performance standards for solid waste handling;

(4) To provide technical and financial assistance to local governments in the planning, development, and conduct of solid waste handling programs;

(5) To encourage storage, proper disposal, and recycling of discarded vehicle tires and to stimulate private recycling programs throughout the state.

It is the intent of the legislature that local governments be encouraged to use the expertise of private industry and to contract with private industry to the fullest extent possible to carry out solid waste recovery and/or recycling programs. [1985 c 345 § 2; 1975-'76 2nd ex.s. c 41 § 2; 1969 ex.s. c 134 § 2.]

70.95.030 Definitions. As used in this chapter, unless the context indicates otherwise:

(1) "City" means every incorporated city and town.

(2) "Commission" means the utilities and transportation commission.

(3) "Committee" means the state solid waste advisory committee.

(4) "Department" means the department of ecology.

(5) "Director" means the director of the department of ecology.

(6) "Disposal site" means the location where any final treatment, utilization, processing, or deposit of solid waste occurs.

(7) "Energy recovery" means a process operating under federal and state environmental laws and regulations for converting solid waste into usable energy and for reducing the volume of solid waste.

(8) "Functional standards" means criteria for solid waste handling expressed in terms of expected performance or solid waste handling functions.

(9) "Incineration" means a process of reducing the volume of solid waste operating under federal and state environmental laws and regulations by use of an enclosed device using controlled flame combustion.

(10) "Jurisdictional health department" means city, county, city-county, or district public health department.

(11) "Landfill" means a disposal facility or part of a facility at which solid waste is placed in or on land and which is not a land treatment facility.

(12) "Local government" means a city, town, or county.

(13) "Person" means individual, firm, association, co-partnership, political subdivision, government agency, municipality, industry, public or private corporation, or any other entity whatsoever.

(14) "Recyclable materials" means those solid wastes that are separated for recycling or reuse, such as papers, metals, and glass, that are identified as recyclable material pursuant to a local comprehensive solid waste plan. Prior to the adoption of the local comprehensive solid waste plan, adopted pursuant to RCW 70.95.110(2), local governments may identify recyclable materials by ordinance from July 23, 1989.

(15) "Recycling" means transforming or remanufacturing waste materials into usable or marketable materials for use other than landfill disposal or incineration.

(16) "Solid waste" or "wastes" means all putrescible and nonputrescible solid and semisolid wastes including, but not limited to, garbage, rubbish, ashes, industrial wastes, swill, demolition and construction wastes, abandoned vehicles or parts thereof, and recyclable materials.

(17) "Solid waste handling" means the management, storage, collection, transportation, treatment, utilization, processing, and final disposal of solid wastes, including the recovery and recycling of materials from solid wastes, the recovery of energy resources from solid wastes or the conversion of the energy in solid wastes to more useful forms or combinations thereof.

(18) "Source separation" means the separation of different kinds of solid waste at the place where the waste originates.

(19) "Vehicle" includes every device physically capable of being moved upon a public or private highway,

road, street, or watercourse and in, upon, or by which any person or property is or may be transported or drawn upon a public or private highway, road, street, or watercourse, except devices moved by human or animal power or used exclusively upon stationary rails or tracks.

(20) "Waste reduction" means reducing the amount or toxicity of waste generated or reusing materials. [1989 c 431 § 2; 1985 c 345 § 3; 1984 c 123 § 2; 1975-'76 2nd ex.s. c 41 § 3; 1970 ex.s. c 62 § 60; 1969 ex.s. c 134 § 3.]

Solid waste disposal—Powers and duties of state board of health as to environmental contaminants: RCW 43.20.050.

70.95.040 Solid waste advisory committee—Members—Meetings—Travel expenses—Governor's award of excellence. (1) There is created a solid waste advisory committee to provide consultation to the department of ecology concerning matters covered by this chapter. The committee shall advise on the development of programs and regulations for solid and dangerous waste handling, resource recovery, and recycling, and shall supply recommendations concerning methods by which existing solid and dangerous waste handling, resource recovery, and recycling practices and the laws authorizing them may be supplemented and improved.

(2) The committee shall consist of eleven members, including the assistant director for the division of solid waste management within the department. The director shall appoint ten members with due regard to the interests of the public, local government, agriculture, industry, public health, and the refuse removal and resource recovery industries. The director shall include among his ten appointees representatives of activities from which dangerous wastes arise and the Washington state patrol's hazardous materials technical advisory committee. The term of appointment shall be determined by the director. The committee shall elect its own chairman and meet at least four times a year, in accordance with such rules of procedure as it shall establish. Members shall receive no compensation for their services but shall be reimbursed their travel expenses while engaged in business of the committee in accordance with RCW 43.03-.050 and 43.03.060 as now existing or hereafter amended.

(3) The committee shall each year recommend to the governor a recipient for a "governor's award of excellence" which the governor shall award for outstanding achievement by an industry, company, or individual in the area of hazardous waste or solid waste management. [1987 c 115 § 1; 1982 c 108 § 1; 1977 c 10 § 1. Prior: 1975-'76 2nd ex.s. c 41 § 9; 1975-'76 2nd ex.s. c 34 § 160; 1969 ex.s. c 134 § 4.]

Effective date—Severability—1975-'76 2nd ex.s. c 34: See notes following RCW 2.08.115.

70.95.050 Solid waste advisory committee—Staff services and facilities. The department shall furnish necessary staff services and facilities required by the solid waste advisory committee. [1969 ex.s. c 134 § 5.]

70.95.060 Standards for solid waste handling—Areas. The department in accordance with procedures prescribed by the Administrative Procedure Act, chapter 34.05 RCW, as now or hereafter amended, may adopt such minimum functional standards for solid waste handling as it deems appropriate. The department in adopting such standards may classify areas of the state with respect to population density, climate, geology, and other relevant factors bearing on solid waste disposal standards. [1969 ex.s. c 134 § 6.]

70.95.070 Review of standards prior to adoption—Revisions, additions and modifications—Factors. The solid waste advisory committee shall review prior to adoption and shall recommend revisions, additions, and modifications to the minimum functional standards governing solid waste handling relating, but not limited to, the following:

- (1) Vector production and sustenance.
- (2) Air pollution (coordinated with regulations of the department of ecology).
- (3) Pollution of surface and ground waters (coordinated with the regulations of the department of ecology).
- (4) Hazards to service or disposal workers or to the public.
- (5) Prevention of littering.
- (6) Adequacy and adaptability of disposal sites to population served.
- (7) Design and operation of disposal sites.
- (8) Recovery and/or recycling of solid waste. [1975-'76 2nd ex.s. c 41 § 4; 1969 ex.s. c 134 § 7.]

70.95.075 Implementation of standards—Assessment—Analyses—Proposals. In order to implement the minimum functional standards for solid waste handling, evaluate the effectiveness of the minimum functional standards, evaluate the cost of implementation, and develop a mechanism to finance the implementation, the department shall prepare:

- (1) An assessment of local health agencies' information on all existing permitted landfill sites, including (a) measures taken and facilities installed at each landfill to mitigate surface water and ground water contamination, (b) proposed measures taken and facilities to be constructed at each landfill to mitigate surface water and ground water contamination, and (c) the costs of such measures and facilities;
- (2) An analysis of the effectiveness of the minimum functional standards for new landfills in lessening surface water and ground water contamination, and a comparison with the effectiveness of the prior standards;
- (3) An analysis of the costs of conforming with the new functional standards for new landfills compared with the costs of conforming to the prior standards; and
- (4) Proposals for methods of financing the costs of conforming with the new functional standards. [1986 c 81 § 1.]

70.95.080 County comprehensive solid waste management plan—Joint plans—Duties of cities. Each

county within the state, in cooperation with the various cities located within such county, shall prepare a coordinated, comprehensive solid waste management plan. Such plan may cover two or more counties.

Each city shall:

(1) Prepare and deliver to the county auditor of the county in which it is located its plan for its own solid waste management for integration into the comprehensive county plan; or

(2) Enter into an agreement with the county pursuant to which the city shall participate in preparing a joint city-county plan for solid waste management; or

(3) Authorize the county to prepare a plan for the city's solid waste management for inclusion in the comprehensive county plan.

Two or more cities may prepare a plan for inclusion in the county plan. With prior notification of its home county of its intent, a city in one county may enter into an agreement with a city in an adjoining county, or with an adjoining county, or both, to prepare a joint plan for solid waste management to become part of the comprehensive plan of both counties.

After consultation with representatives of the cities and counties, the department shall establish a schedule for the development of the comprehensive plans for solid waste management. In preparing such a schedule, the department shall take into account the probable cost of such plans to the cities and counties.

Local governments shall not be required to include a hazardous waste element in their solid waste management plans. [1985 c 448 § 17; 1969 ex.s. c 134 § 8.]

Severability—1985 c 448: See note following RCW 70.105.005.

70.95.090 County and city comprehensive solid waste management plans—Contents. Each county and city comprehensive solid waste management plan shall include the following:

(1) A detailed inventory and description of all existing solid waste handling facilities including an inventory of any deficiencies in meeting current solid waste handling needs.

(2) The estimated long-range needs for solid waste handling facilities projected twenty years into the future.

(3) A program for the orderly development of solid waste handling facilities in a manner consistent with the plans for the entire county which shall:

(a) Meet the minimum functional standards for solid waste handling adopted by the department and all laws and regulations relating to air and water pollution, fire prevention, flood control, and protection of public health;

(b) Take into account the comprehensive land use plan of each jurisdiction;

(c) Contain a six year construction and capital acquisition program for solid waste handling facilities; and

(d) Contain a plan for financing both capital costs and operational expenditures of the proposed solid waste management system.

(4) A program for surveillance and control.

(5) A current inventory and description of solid waste collection needs and operations within each respective jurisdiction which shall include:

(a) Any franchise for solid waste collection granted by the utilities and transportation commission in the respective jurisdictions including the name of the holder of the franchise and the address of his or her place of business and the area covered by the franchise;

(b) Any city solid waste operation within the county and the boundaries of such operation;

(c) The population density of each area serviced by a city operation or by a franchised operation within the respective jurisdictions;

(d) The projected solid waste collection needs for the respective jurisdictions for the next six years.

(6) A comprehensive waste reduction and recycling element that, in accordance with the priorities established in RCW 70.95.010, provides programs that (a) reduce the amount of waste generated, (b) provide incentives and mechanisms for source separation, and (c) establish recycling opportunities for the source separated waste.

(7) The waste reduction and recycling element shall include the following:

(a) Waste reduction strategies;

(b) Source separation strategies, including:

(i) Programs for the collection of source separated materials from residences in urban and rural areas. In urban areas, these programs shall include collection of source separated recyclable materials from residential dwellings, unless the department approves an alternative program, according to the criteria in the planning guidelines. Such criteria shall include: Anticipated recovery rates and levels of public participation, availability of environmentally sound disposal capacity, access to markets for recyclable materials, unreasonable cost impacts on the ratepayer over the six-year planning period, utilization of environmentally sound waste reduction and recycling technologies, and other factors as appropriate. In rural areas, these programs shall include but not be limited to drop-off boxes, buy-back centers, or a combination of both, at each solid waste transfer, processing, or disposal site, or at locations convenient to the residents of the county. The drop-off boxes and buy-back centers may be owned or operated by public, nonprofit, or private persons;

(ii) Programs to monitor the collection of source separated waste at nonresidential sites where there is sufficient density to sustain a program;

(iii) Programs to collect yard waste, if the county or city submitting the plan finds that there are adequate markets or capacity for composted yard waste within or near the service area to consume the majority of the material collected; and

(iv) Programs to educate and promote the concepts of waste reduction and recycling;

(c) Recycling strategies, including a description of markets for recyclables, a review of waste generation trends, a description of waste composition, a discussion and description of existing programs and any additional

programs needed to assist public and private sector recycling, and an implementation schedule for the designation of specific materials to be collected for recycling, and for the provision of recycling collection services;

(d) Other information the county or city submitting the plan determines is necessary.

(8) An assessment of the plan's impact on the costs of solid waste collection. The assessment shall be prepared in conformance with guidelines established by the utilities and transportation commission. The commission shall cooperate with the Washington state association of counties and the association of Washington cities in establishing such guidelines.

(9) A review of potential areas that meet the criteria as outlined in RCW 70.95.165. [1989 c 431 § 3; 1984 c 123 § 5; 1971 ex.s. c 293 § 1; 1969 ex.s. c 134 § 9.]

Certain provisions not to detract from utilities and transportation commission powers, duties, and functions: RCW 80.01.300.

70.95.092 County and city comprehensive solid waste management plans—Levels of service, reduction and recycling. Levels of service shall be defined in the waste reduction and recycling element of each local comprehensive solid waste management plan and shall include the services set forth in RCW 70.95.090. In determining which service level is provided to residential and nonresidential waste generators in each community, counties and cities shall develop clear criteria for designating areas as urban or rural. In designating urban areas, local governments shall consider the planning guidelines adopted by the department, total population, population density, and any applicable land use or utility service plans. [1989 c 431 § 4.]

70.95.094 County and city comprehensive solid waste management plans—Review and approval process. (1) The department and local governments preparing plans are encouraged to work cooperatively during plan development. Each county and city preparing a comprehensive solid waste management plan shall submit a preliminary draft plan to the department for technical review. The department shall review and comment on the draft plan within one hundred twenty days of receipt. The department's comments shall state specific actions or revisions that must be completed for plan approval.

(2) Each final draft solid waste management plan shall be submitted to the department for approval. The department will limit its comments on the final draft plans to those issues identified during its review of the draft plan and any other changes made between submittal of the preliminary draft and final draft plans. Disapproval of the local comprehensive solid waste management plan shall be supported by specific findings. A final draft plan shall be deemed approved if the department does not disapprove it within forty-five days of receipt.

(3) If the department disapproves a plan or any plan amendments, the submitting entity may appeal the decision under the procedures of Part IV of chapter 34.05 RCW. An administrative law judge shall preside over

the appeal. The appeal shall be limited to review of the specific findings which supported the disapproval under subsection (2) of this section. [1989 c 431 § 8.]

70.95.096 Utilities and transportation commission to review local plan's assessment of cost impacts on rates. Upon receipt, the department shall immediately provide the utilities and transportation commission with a copy of each preliminary draft local comprehensive solid waste management plan. Within forty-five days after receiving a plan, the commission shall have reviewed the plan's assessment of solid waste collection cost impacts on rates charged by solid waste collection companies regulated under chapter 81.77 RCW and shall advise the county or city submitting the plan and the department of the probable effect of the plan's recommendations on those rates. [1989 c 431 § 12.]

70.95.100 Technical assistance for plan preparation—Guidelines—Informational materials and programs. (1) The department or the commission, as appropriate, shall provide to counties and cities technical assistance including, but not limited to, planning guidelines, in the preparation, review, and revision of solid waste management plans required by this chapter. Guidelines prepared under this section shall be consistent with the provisions of this chapter. Guidelines for the preparation of the waste reduction and recycling element of the comprehensive solid waste management plan shall be completed by the department by March 15, 1990. These guidelines shall provide recommendations to local government on materials to be considered for designation as recyclable materials. The state solid waste management plan prepared pursuant to RCW 70.95.260 shall be consistent with these guidelines.

(2) The department shall be responsible for development and implementation of a comprehensive state-wide public information program designed to encourage waste reduction, source separation, and recycling by the public. The department shall operate a toll free hotline to provide the public information on waste reduction and recycling.

(3) The department shall provide technical assistance to local governments in the development and dissemination of informational materials and related activities to assure recognition of unique local waste reduction and recycling programs.

(4) Local governments shall make all materials and information developed with the assistance grants provided under RCW 70.95.130 available to the department for potential use in other areas of the state. [1989 c 431 § 6; 1984 c 123 § 6; 1969 ex.s. c 134 § 10.]

70.95.110 Maintenance of plans—Review, revisions—Implementation of source separation programs. (1) The comprehensive county solid waste management plans and any comprehensive city solid waste management plans prepared in accordance with RCW 70.95.080 shall be maintained in a current condition and reviewed and revised periodically by counties and cities as may be required by the department. Upon each review such

plans shall be extended to show long-range needs for solid waste handling facilities for twenty years in the future, and a revised construction and capital acquisition program for six years in the future. Each revised solid waste management plan shall be submitted to the department.

Each plan shall be reviewed and revised within five years of July 1, 1984, and thereafter shall be reviewed, and revised if necessary according to the schedule provided in subsection (2) of this section.

(2) Cities and counties preparing solid waste management plans shall submit the waste reduction and recycling element required in RCW 70.95.090 and any revisions to other elements of its comprehensive solid waste management plan to the department no later than:

- (a) July 1, 1991, for class one areas;
- (b) July 1, 1992, for class two areas; and
- (c) July 1, 1994, for class three areas.

Thereafter, each plan shall be reviewed and revised, if necessary, at least every five years. Nothing in *this act shall prohibit local governments from submitting a plan prior to the dates listed in this subsection.

(3) The classes of areas are defined as follows:

(a) Class one areas are the counties of Spokane, Snohomish, King, Pierce, and Kitsap and all the cities therein.

(b) Class two areas are all other counties located west of the crest of the Cascade mountains and all the cities therein.

(c) Class three areas are the counties east of the crest of the Cascade mountains and all the cities therein, except for Spokane county.

(4) Cities and counties shall begin implementing the programs to collect source separated materials no later than one year following the adoption and approval of the waste reduction and recycling element and these programs shall be fully implemented within two years of approval. [1989 c 431 § 5; 1984 c 123 § 7; 1969 ex.s. c 134 § 11.]

***Reviser's note:** For codification of "this act" [1989 c 431], see Codification Tables, Volume 0.

70.95.130 Financial aid to counties and cities. Any county may apply to the department on a form prescribed thereby for financial aid for the preparation of the comprehensive county plan for solid waste management required by RCW 70.95.080. Any city electing to prepare an independent city plan, a joint city plan, or a joint county-city plan for solid waste management for inclusion in the county comprehensive plan may apply for financial aid for such purpose through the county. Every city application for financial aid for planning shall be filed with the county auditor and shall be included as a part of the county's application for financial aid. Any city preparing an independent plan shall provide for disposal sites wholly within its jurisdiction.

The department shall allocate to the counties and cities applying for financial aid for planning, such funds as may be available pursuant to legislative appropriations or from any federal grants for such purpose.

The department shall determine priorities and allocate available funds among the counties and cities applying for aid according to criteria established by regulations of the department considering population, urban development, environmental effects of waste disposal, existing waste handling practices, and the local justification of their proposed expenditures. [1969 ex.s. c 134 § 13.]

70.95.140 Matching requirements. Counties and cities shall match their planning aid allocated by the director by an amount not less than twenty-five percent of the estimated cost of such planning. Any federal planning aid made directly to a county or city shall not be considered either a state or local contribution in determining local matching requirements. Counties and cities may meet their share of planning costs by cash and contributed services. [1969 ex.s. c 134 § 14.]

70.95.150 Contracts with counties to assure proper expenditures. Upon the allocation of planning funds as provided in RCW 70.95.130, the department shall enter into a contract with each county receiving a planning grant. The contract shall include such provisions as the director may deem necessary to assure the proper expenditure of such funds including allocations made to cities. The sum allocated to a county shall be paid to the treasurer of such county. [1969 ex.s. c 134 § 15.]

70.95.160 Local board of health regulations to implement the comprehensive plan—Section not to be construed to authorize counties to operate system. Each county, or any city, or jurisdictional board of health shall adopt regulations or ordinances governing solid waste handling implementing the comprehensive solid waste management plan covering storage, collection, transportation, treatment, utilization, processing and final disposal including but not limited to the issuance of permits and the establishment of minimum levels and types of service for any aspect of solid waste handling. County regulations or ordinances adopted regarding levels and types of service shall not apply within the limits of any city where the city has by local ordinance determined that the county shall not exercise such powers within the corporate limits of the city. Such regulations or ordinances shall assure that solid waste storage and disposal facilities are located, maintained, and operated in a manner so as properly to protect the public health, prevent air and water pollution, are consistent with the priorities established in RCW 70.95.010, and avoid the creation of nuisances. Such regulations or ordinances may be more stringent than the minimum functional standards adopted by the department. Regulations or ordinances adopted by counties, cities, or jurisdictional boards of health shall be filed with the department.

Nothing in this section shall be construed to authorize the operation of a solid waste collection system by counties. [1989 c 431 § 10; 1988 c 127 § 29; 1969 ex.s. c 134 § 16.]

70.95.163 Local health departments may contract with the department of ecology. Any jurisdictional health

department and the department of ecology may enter into an agreement providing for the exercise by the department of ecology of any power that is specified in the contract and that is granted to the jurisdictional health department under this chapter. However, the jurisdictional health department shall have the approval of the legislative authority or authorities it serves before entering into any such agreement with the department of ecology. [1989 c 431 § 16.]

70.95.165 Solid waste disposal facility siting—Site review—Local solid waste advisory committees—Membership. (1) Each county or city siting a solid waste disposal facility shall review each potential site for conformance with the standards as set by the department for:

- (a) Geology;
- (b) Ground water;
- (c) Soil;
- (d) Flooding;
- (e) Surface water;
- (f) Slope;
- (g) Cover material;
- (h) Capacity;
- (i) Climatic factors;
- (j) Land use;
- (k) Toxic air emissions; and
- (l) Other factors as determined by the department.

(2) The standards in subsection (1) of this section shall be designed to use the best available technology to protect the environment and human health, and shall be revised periodically to reflect new technology and information.

(3) Each county shall establish a local solid waste advisory committee to assist in the development of programs and policies concerning solid waste handling and disposal and to review and comment upon proposed rules, policies, or ordinances prior to their adoption. Such committees shall consist of a minimum of nine members and shall represent a balance of interests including, but not limited to, citizens, public interest groups, business, the waste management industry, and local elected public officials. The members shall be appointed by the county legislative authority. A county or city shall not apply for funds from the state and local improvements revolving account, Waste Disposal Facilities, 1980, under chapter 43.99F RCW, for the preparation, update, or major amendment of a comprehensive solid waste management plan unless the plan or revision has been prepared with the active assistance and participation of a local solid waste advisory committee. [1989 c 431 § 11; 1984 c 123 § 4.]

70.95.170 Permit for solid waste disposal site or facilities—Required. After approval of the comprehensive solid waste plan by the department no solid waste disposal site or disposal site facilities shall be maintained, established, substantially altered, expanded, or

improved until the county, city, or other person operating such site has obtained a permit from the jurisdictional health department pursuant to the provisions of RCW 70.95.180. [1969 ex.s. c 134 § 17.]

70.95.180 Permit for solid waste disposal site or facilities—Applications, fee. (1) Applications for permits to operate new or existing solid waste disposal sites shall be on forms prescribed by the department and shall contain a description of the proposed and existing facilities and operations at the site, plans and specifications for any new or additional facilities to be constructed, and such other information as the jurisdictional health department may deem necessary in order to determine whether the site and solid waste disposal facilities located thereon will comply with local and state regulations.

(2) Upon receipt of an application for a permit to establish, alter, expand, improve, or continue in use a solid waste disposal site, the jurisdictional health department shall refer one copy of the application to the department which shall report its findings to the jurisdictional health department.

(3) The jurisdictional health department shall investigate every application as may be necessary to determine whether an existing or proposed site and facilities meet all applicable laws and regulations, and conforms with the approved comprehensive solid waste handling plan, and complies with all zoning requirements.

(4) When the jurisdictional health department finds that the permit should be issued, it shall issue such permit. Every application shall be approved or disapproved within ninety days after its receipt by the jurisdictional health department.

(5) The jurisdictional board of health may establish reasonable fees for permits and renewal of permits. All permit fees collected by the health department shall be deposited in the treasury and to the account from which the health department's operating expenses are paid. [1988 c 127 § 30; 1969 ex.s. c 134 § 18.]

70.95.185 Permit for solid waste disposal site or facilities—Review by department—Appeal of issuance—Validity of permits issued after June 7, 1984. Every permit issued by a jurisdictional health department under RCW 70.95.180 shall be reviewed by the department to ensure that the proposed site or facility conforms with:

(1) All applicable laws and regulations including the minimal functional standards for solid waste handling; and

(2) The approved comprehensive solid waste management plan.

The department shall review the permit within thirty days after the issuance of the permit by the jurisdictional health department. The department may appeal the issuance of the permit by the jurisdictional health department to the pollution control hearings board, as described in chapter 43.21B RCW, for noncompliance with subsection (1) or (2) of this section.

No permit issued pursuant to RCW 70.95.180 after June 7, 1984, shall be considered valid unless it has been reviewed by the department. [1984 c 123 § 8.]

70.95.190 Permit for solid waste disposal site or facilities—Renewal—Appeal—Validity of renewal. Every permit for a solid waste disposal site shall be renewed annually on a date to be established by the jurisdictional health department having jurisdiction of the site. Prior to renewing a permit, the health department shall conduct such inspections as it deems necessary to assure that the solid waste disposal site and facilities located on the site meet minimum functional standards of the department, applicable local regulations, and are not in conflict with the approved solid waste management plan. The department shall review and may appeal the renewal as set forth for the approval of permits in RCW 70.95.185.

A renewal issued under this section shall not be considered valid unless it has been reviewed by the department. [1984 c 123 § 9; 1969 ex.s. c 134 § 19.]

70.95.200 Permit for solid waste disposal site or facilities—Suspension. Any permit for a solid waste disposal site issued as provided herein shall be subject to suspension at any time the jurisdictional health department determines that the site or the solid waste disposal facilities located on the site are being operated in violation of this chapter, or the regulations of the department or local laws and regulations. [1969 ex.s. c 134 § 20.]

70.95.210 Hearing—Appeal. Whenever the jurisdictional health department denies a permit or suspends a permit for a solid waste disposal site, it shall, upon request of the applicant or holder of the permit, grant a hearing on such denial or suspension within thirty days after the request therefor is made. Notice of the hearing shall be given all interested parties including the county or city having jurisdiction over the site and the department. Within thirty days after the hearing, the health officer shall notify the applicant or the holder of the permit in writing of his determination and the reasons therefor. Any party aggrieved by such determination may appeal to the pollution control hearings board by filing with the hearings board a notice of appeal within thirty days after receipt of notice of the determination of the health officer. The hearings board shall hold a hearing in accordance with the provisions of the Administrative Procedure Act, chapter 34.05 RCW, as now or hereafter amended. [1987 c 109 § 21; 1969 ex.s. c 134 § 21.]

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

70.95.215 Landfill disposal facilities—Reserve accounts required by July 1, 1987—Exception—Rules. (1) By July 1, 1987, each holder or applicant of a permit for a landfill disposal facility issued under this chapter shall establish a reserve account to cover the costs of closing the facility in accordance with state and federal

regulations. The account shall be designed to ensure that there will be adequate revenue available by the projected date of closure. Landfill disposal facilities maintained on private property for the sole use of the entity owning the site shall not be required to establish a reserve account if, to the satisfaction of the department, they provide another form of financial assurance adequate to comply with the requirements of this section.

(2) By July 1, 1986, the department shall adopt rules under chapter 34.05 RCW to implement subsection (1) of this section. The rules shall include but not be limited to:

(a) Methods to estimate closure costs, including postclosure monitoring, pollution prevention measures, and any other procedures required under state and federal regulations;

(b) Methods to ensure that reserve accounts receive adequate funds, including:

(i) Requirements that the reserve account be generated by user fees. However, the department may waive this requirement for existing landfills if user fees would be prohibitively high;

(ii) Requirements that moneys be placed in the reserve account on a regular basis and that the reserve account be kept separate from all other accounts; and

(iii) Procedures for the department to verify that adequate sums are deposited in the reserve account; and

(c) Methods to ensure that other types of financial assurance provided in accordance with subsection (1) of this section are adequate to cover the costs of closing the facility. [1985 c 436 § 1.]

70.95.220 Financial aid to jurisdictional health departments—Applications—Allocations. Any jurisdictional health department may apply to the department for financial aid for the enforcement of rules and regulations promulgated under this chapter. Such application shall contain such information, including budget and program description, as may be prescribed by regulations of the department.

After receipt of such applications the department may allocate available funds according to criteria established by regulations of the department considering population, urban development, the number of the disposal sites, and geographical area.

The sum allocated to a jurisdictional health department shall be paid to the treasury from which the operating expenses of the health department are paid, and shall be used exclusively for inspections and administrative expenses necessary to enforce applicable regulations. [1969 ex.s. c 134 § 22.]

70.95.230 Financial aid to jurisdictional health departments—Matching funds requirements. The jurisdictional health department applying for state assistance for the enforcement of this chapter shall match such aid allocated by the department in an amount not less than twenty-five percent of the total amount spent for such enforcement activity during the year. The local share of enforcement costs may be met by cash and contributed services. [1969 ex.s. c 134 § 23.]

70.95.240 Unlawful to dump or deposit solid waste without permit. After the adoption of regulations or ordinances by any county, city, or jurisdictional board of health providing for the issuance of permits as provided in RCW 70.95.160, it shall be unlawful for any person to dump or deposit or permit the dumping or depositing of any solid waste onto or under the surface of the ground or into the waters of this state except at a solid waste disposal site for which there is a valid permit: *Provided*, That nothing herein shall prohibit a person from dumping or depositing solid waste resulting from his own activities onto or under the surface of ground owned or leased by him when such action does not violate statutes or ordinances, or create a nuisance. Any person violating this section shall be guilty of a misdemeanor. [1969 ex.s. c 134 § 24.]

70.95.250 Name appearing on waste material—Presumption. Whenever solid wastes dumped in violation of RCW 70.95.240 contain three or more items bearing the name of one individual, there shall be a rebuttable presumption that the individual whose name appears on such items committed the unlawful act of dumping. [1969 ex.s. c 134 § 25.]

70.95.255 Disposal of municipal sewage sludge or septic tank sludge prohibited—Exemptions—Uses of sludge material permitted. After January 1, 1988, the department of ecology may prohibit disposal of municipal sewage sludge or septic tank sludge (septage) in landfills for final disposal, except on a temporary, emergency basis, if the jurisdictional health department determines that a potentially unhealthful circumstance exists. Beneficial uses of sludge in landfill reclamation is acceptable utilization and not considered disposal.

The department of ecology shall adopt rules that provide exemptions from this section on a case-by-case basis. Exemptions shall be based on the economic infeasibility of using or disposing of the sludge material other than in a landfill.

The department of ecology, after consulting with representatives from cities, counties, special purpose districts, and operators of septic tank pump-out services, shall adopt rules for the environmentally safe use of municipal sewage sludge and septage in this state.

The department of ecology, after consulting with representatives from the pulp and paper industry and the food processing industry, may adopt rules for the environmentally safe use of appropriate industrial sludges, such as pulp and paper sludges or food processing wastes, used to improve the texture or nutrient content of soils.

The department of ecology, in conjunction with the department of social and health services and the department of agriculture, shall adopt rules establishing labeling and notification requirements for sludge material sold commercially or given away to the public. The department shall specify mandatory wording for labels and notification to warn the public against improper use of the material. [1986 c 297 § 1.]

70.95.260 Duties of department—State solid waste management plan—Assistance—Coordination—Tire recycling. The department shall in addition to its other powers and duties:

(1) Cooperate with the appropriate federal, state, interstate and local units of government and with appropriate private organizations in carrying out the provisions of this chapter.

(2) Coordinate the development of a solid waste management plan for all areas of the state in cooperation with local government, the department of community development, and other appropriate state and regional agencies. The plan shall relate to solid waste management for twenty years in the future and shall be reviewed biennially, revised as necessary, and extended so that perpetually the plan shall look to the future for twenty years as a guide in carrying out a state coordinated solid waste management program. The plan shall be developed into a single integrated document and shall be adopted no later than October 1990. The plan shall be revised regularly after its initial completion so that local governments revising local comprehensive solid waste management plans can take advantage of the data and analysis in the state plan.

(3) Provide technical assistance to any person as well as to cities, counties, and industries.

(4) Initiate, conduct, and support research, demonstration projects, and investigations, and coordinate research programs pertaining to solid waste management systems.

(5) Develop state-wide programs to increase public awareness of and participation in tire recycling, and to stimulate and encourage local private tire recycling centers and public participation in tire recycling.

(6) May, under the provisions of the Administrative Procedure Act, chapter 34.05 RCW, as now or hereafter amended, from time to time promulgate such rules and regulations as are necessary to carry out the purposes of this chapter. [1989 c 431 § 9. Prior: 1985 c 345 § 8; 1985 c 6 § 23; 1969 ex.s. c 134 § 26.]

Study—1989 c 431: "The institute for urban and local studies at Eastern Washington State University shall conduct a study of enforcement of solid waste management laws and regulations as a component of the 1990 state solid waste management plan. This study shall include, but shall not be limited to:

(1) A review of current state and local solid waste rules, requirements, policies, and resources devoted to state and local solid waste enforcement, and of the effectiveness of these programs in promoting environmental health and public safety;

(2) An examination of federal regulations and the latest proposed amendments to the Resource Conservation and Recovery Act, in subtitle D of the code of federal regulations;

(3) A review of regulatory approaches used by other states;

(4) A review and evaluation of educational and technical assistance programs related to enforcement;

(5) An inventory of regulatory compliance for all processing and disposal facilities handling mixed solid waste;

(6) A review of the role and effectiveness of other enforcement jurisdictions;

(7) An evaluation of the need for redefining institutional roles and responsibilities for enforcement of solid waste management laws and regulations in order to establish public confidence in solid waste management systems and ensure public protection; and

(8) An evaluation of possible benefits in separating the solid waste planning and technical assistance responsibilities from the enforcement responsibilities within the department." [1989 c 431 § 96.]

70.95.263 Additional powers and duties of department. The department shall in addition to its other duties and powers under this chapter:

(1) Prepare the following:

(a) a management system for recycling waste paper generated by state offices and institutions in cooperation with such offices and institutions;

(b) an evaluation of existing and potential systems for recovery of energy and materials from solid waste with recommendations to affected governmental agencies as to those systems which would be the most appropriate for implementation;

(c) a data management system to evaluate and assist the progress of state and local jurisdictions and private industry in resource recovery;

(d) identification of potential markets, in cooperation with private industry, for recovered resources and the impact of the distribution of such resources on existing markets;

(e) studies on methods of transportation, collection, reduction, separation, and packaging which will encourage more efficient utilization of existing waste recovery facilities;

(f) recommendations on incentives, including state grants, loans, and other assistance, to local governments which will encourage the recovery and recycling of solid wastes.

(2) Provide technical information and assistance to state and local jurisdictions, the public, and private industry on solid waste recovery and/or recycling.

(3) Procure and expend funds available from federal agencies and other sources to assist the implementation by local governments of solid waste recovery and/or recycling programs, and projects.

(4) Conduct necessary research and studies to carry out the purposes of this chapter.

(5) Encourage and assist local governments and private industry to develop pilot solid waste recovery and/or recycling projects.

(6) Monitor, assist with research, and collect data for use in assessing feasibility for others to develop solid waste recovery and/or recycling projects.

(7) Make periodic recommendations to the governor and the legislature on actions and policies which would further implement the objectives of *this 1976 amendatory act. [1975-'76 2nd ex.s. c 41 § 5.]

***Reviser's note:** "this 1976 amendatory act" [1975-'76 2nd ex.s. c 41] consists of amendments to RCW 70.93.020, 70.93.190, 70.95.010, 70.95.020, 70.95.030, 70.95.040, 70.95.070, and to RCW 70.95.263, 70.95.265 and 70.95.267.

70.95.265 Department to cooperate with public and private departments, agencies and associations. The department shall work closely with the department of trade and economic development, the department of general administration, and with other state departments and agencies, the Washington state association of counties, the association of Washington cities, and business associations, to carry out the objectives and purposes of *this 1976 amendatory act. [1985 c 466 § 69; 1975-'76 2nd ex.s. c 41 § 6.]

*Reviser's note: For "this 1976 amendatory act," see note following RCW 70.95.263.

Effective date—Severability—1985 c 466: See notes following RCW 43.31.005.

70.95.267 Department authorized to disburse referendum 26 (chapter 43.83A RCW) fund for local government solid waste projects. The department is authorized to use referendum 26 (chapter 43.83A RCW) funds of the Washington futures account to disburse to local governments in developing solid waste recovery and/or recycling projects. [1975-'76 2nd ex.s. c 41 § 10.]

70.95.268 Department authorized to disburse funds under chapter 43.99F RCW for local government solid waste projects. The department is authorized to use funds under chapter 43.99F RCW to disburse to local governments in developing solid waste recovery or recycling projects. Priority shall be given to those projects that use incineration of solid waste to produce energy and to recycling projects. [1984 c 123 § 10.]

70.95.280 Determination of best solid waste management practices—Department to develop method to monitor waste stream—Collectors to report quantity and quality of waste—Confidentiality of proprietary information. The department of ecology shall determine the best management practices for categories of solid waste in accordance with the priority solid waste management methods established in RCW 70.95.010. In order to make this determination, the department shall conduct a comprehensive solid waste stream analysis and evaluation. Following establishment of baseline data resulting from an initial in-depth analysis of the waste stream, the department shall develop a less intensive method of monitoring the disposed waste stream including, but not limited to, changes in the amount of waste generated and waste type. The department shall monitor curbside collection programs and other waste segregation and disposal technologies to determine, to the extent possible, the effectiveness of these programs in terms of cost and participation, their applicability to other locations, and their implications regarding rules adopted under this chapter. Persons who collect solid waste shall annually report to the department the types and quantities of solid waste that are collected and where it is delivered. The department shall adopt guidelines for reporting and for keeping proprietary information confidential. [1989 c 431 § 13; 1988 c 184 § 1.]

70.95.285 Solid waste stream analysis. The comprehensive, state-wide solid waste stream analysis under RCW 70.95.280 shall be based on representative solid waste generation areas and solid waste generation sources within the state. The following information and evaluations shall be included:

- (1) Solid waste generation rates for each category;
- (2) The rate of recycling being achieved within the state for each category of solid waste;
- (3) The current and potential rates of solid waste reduction within the state;

(4) A technological assessment of current solid waste reduction and recycling methods and systems, including cost/benefit analyses;

(5) An assessment of the feasibility of segregating solid waste at: (a) The original source, (b) transfer stations, and (c) the point of final disposal;

(6) A review of methods that will increase the rate of solid waste reduction; and

(7) An assessment of new and existing technologies that are available for solid waste management including an analysis of the associated environmental risks and costs.

The data required by the analysis under this section shall be kept current and shall be available to local governments and the waste management industry. [1988 c 184 § 2.]

70.95.290 Solid waste stream evaluation. (1) The evaluation of the solid waste stream required in RCW 70.95.280 shall include the following elements:

(a) The department shall determine which management method for each category of solid waste will have the least environmental impact; and

(b) The department shall evaluate the costs of various management options for each category of solid waste, including a review of market availability, and shall take into consideration the economic impact on affected parties;

(c) Based on the results of (a) and (b) of this subsection, the department shall determine the best management for each category of solid waste. Different management methods for the same categories of waste may be developed for different parts of the state.

(2) The department shall give priority to evaluating categories of solid waste that, in relation to other categories of solid waste, comprise a large volume of the solid waste stream or present a high potential of harm to human health. At a minimum the following categories of waste shall be evaluated:

(a) By January 1, 1989, yard waste and other biodegradable materials, paper products, disposable diapers, and batteries; and

(b) By January 1, 1990, metals, glass, plastics, styrofoam or rigid lightweight cellular polystyrene, and tires. [1988 c 184 § 3.]

70.95.295 Analysis and evaluation to be incorporated in state solid waste management plan. The department shall incorporate the information from the analysis and evaluation conducted under RCW 70.95.280 through 70.95.290 to the state solid waste management plan under RCW 70.95.260. The plan shall be revised periodically as the evaluation and analysis is updated. [1988 c 184 § 4.]

70.95.500 Disposal of vehicle tires outside designated area prohibited—Penalty—Exemption. (1) No person may drop, deposit, discard, or otherwise dispose of vehicle tires on any public property or private property in this state or in the waters of this state whether from a vehicle or otherwise, including, but not limited to, any

public highway, public park, beach, campground, forest land, recreational area, trailer park, highway, road, street, or alley unless:

(a) The property is designated by the state, or by any of its agencies or political subdivisions, for the disposal of discarded vehicle tires; and

(b) The person is authorized to use the property for such purpose.

(2) A violation of this section is punishable by a civil penalty, which shall not be less than two hundred dollars nor more than two thousand dollars for each offense.

(3) This section does not apply to the storage or deposit of vehicle tires in quantities deemed exempt under rules adopted by the department of ecology under its functional standards for solid waste. [1985 c 345 § 4.]

70.95.510 Fee on the retail sale of new replacement vehicle tires. There is levied a one dollar per tire fee on the retail sale of new replacement vehicle tires for a period of five years, beginning October 1, 1989. The fee imposed in this section shall be paid by the buyer to the seller, and each seller shall collect from the buyer the full amount of the fee. The fee collected from the buyer by the seller less the ten percent amount retained by the seller as provided in RCW 70.95.535 shall be paid to the department of revenue in accordance with RCW 82.32-.045. All other applicable provisions of chapter 82.32 RCW have full force and application with respect to the fee imposed under this section. The department of revenue shall administer this section.

For the purposes of this section, "new replacement vehicle tires" means tires that are newly manufactured for vehicle purposes and does not include retreaded vehicle tires. [1989 c 431 § 92; 1985 c 345 § 5.]

70.95.520 Vehicle tire recycling account—Deposit of funds. There is created an account within the state treasury to be known as the vehicle tire recycling account. All assessments and other funds collected or received under this chapter shall be deposited in the vehicle tire recycling account and used by the department of ecology for administration and implementation of this chapter. After October 1, 1989, the department of revenue shall deduct two percent from funds collected pursuant to RCW 70.95.510 for the purpose of administering and collecting the fee from new replacement vehicle tire retailers. [1989 c 431 § 94; 1985 c 345 § 6.]

70.95.530 Vehicle tire recycling account—Use. Moneys in the account may be appropriated to the department of ecology:

(1) To provide for funding to state and local governments for the removal of discarded vehicle tires from unauthorized tire dump sites;

(2) To accomplish the other purposes of RCW 70.95.020(5); and

(3) To fund the study authorized in section 2, chapter 250, Laws of 1988.

In spending funds in the account under this section, the department of ecology shall identify communities

with the most severe problems with waste tires and provide funds first to those communities to remove accumulations of waste tires. [1988 c 250 § 1; 1985 c 345 § 7.]

70.95.535 Disposition of fee. (1) Every person engaged in making retail sales of new replacement vehicle tires in this state shall retain ten percent of the collected one dollar fee. The moneys retained may be used for costs associated with the proper management of the waste vehicle tires by the retailer.

(2) The department of ecology will administer the funds for the purposes specified in RCW 70.95.020(5) including, but not limited to:

(a) Making grants to local governments for pilot demonstration projects for on-site shredding and recycling of tires from unauthorized dump sites;

(b) Grants to local government for enforcement programs;

(c) Implementation of a public information and education program to include posters, signs, and informational materials to be distributed to retail tire sales and tire service outlets;

(d) Product marketing studies for recycled tires and alternatives to land disposal. [1989 c 431 § 93.]

70.95.540 Cooperation with department to aid tire recycling. To aid in the state-wide tire recycling campaign, the legislature strongly encourages various industry organizations which are active in resource recycling efforts to provide active cooperation with the department of ecology so that additional technology can be developed for the tire recycling campaign. [1985 c 345 § 9.]

70.95.550 Waste tires—Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout RCW 70.95.555 through 70.95.565.

(1) "Storage" or "storing" means the placing of more than eight hundred waste tires in a manner that does not constitute final disposal of the waste tires.

(2) "Transportation" or "transporting" means picking up or transporting waste tires for the purpose of storage or final disposal.

(3) "Waste tires" means tires that are no longer suitable for their original intended purpose because of wear, damage, or defect. [1988 c 250 § 3.]

70.95.555 Waste tires—License for transport or storage business—Requirements. Any person engaged in the business of transporting or storing waste tires shall be licensed by the department. To obtain a license, each applicant must:

(1) Provide assurances that the applicant is in compliance with this chapter and the rules regarding waste tire storage and transportation; and

(2) Post a bond in the sum of ten thousand dollars in favor of the state of Washington. In lieu of the bond, the applicant may submit financial assurances acceptable to the department. [1988 c 250 § 4.]

70.95.560 Waste tires—Violation of RCW 70.95.555—Penalty. Any person who transports or stores waste tires without a license in violation of RCW 70.95.555 shall be guilty of a gross misdemeanor and upon conviction shall be punished under RCW 9A.20.021(2). [1989 c 431 § 95; 1988 c 250 § 5.]

70.95.565 Waste tires—Contracts with unlicensed persons prohibited. No business may enter into a contract for:

- (1) Transportation of waste tires with an unlicensed waste tire transporter; or
- (2) Waste tire storage with an unlicensed owner or operator of a waste tire storage site. [1988 c 250 § 6.]

70.95.600 Educational material promoting household waste reduction and recycling. The department of ecology, at the request of a local government jurisdiction, may periodically provide educational material promoting household waste reduction and recycling to public and private refuse haulers. The educational material shall be distributed to households receiving refuse collection service by local governments or the refuse hauler providing service. The refuse hauler may distribute the educational material by any means that assures timely delivery.

Reasonable expenses incurred in the distribution of this material shall be considered, for rate-making purposes, as legitimate operating expenses of garbage and refuse haulers regulated under chapter 81.77 RCW. [1988 c 175 § 3.]

Effective date—1988 c 175: See note following RCW 43.19.537.

70.95.610 Battery disposal—Restrictions—Violators subject to fine—"Vehicle battery" defined. (1) No person may knowingly dispose of a vehicle battery except by delivery to: A person or entity selling lead acid batteries, a person or entity authorized by the department to accept the battery, or to a secondary lead smelter.

(2) No owner or operator of a solid waste disposal site shall knowingly accept for disposal used vehicle batteries except when authorized to do so by the department or by the federal government.

(3) Any person who violates this section shall be subject to a fine of up to one thousand dollars. Each battery will constitute a separate violation. Nothing in this section and RCW 70.95.620 through 70.95.660 shall supersede the provisions under chapter 70.105 RCW.

(4) For purposes of this section and RCW 70.95.620 through 70.95.660, "vehicle battery" means batteries capable for use in any vehicle, having a core consisting of elemental lead, and a capacity of six or more volts. [1989 c 431 § 37.]

70.95.620 Identification procedure for persons accepting used vehicle batteries. The department shall establish a procedure to identify, on an annual basis, those persons accepting used vehicle batteries from retail establishments. [1989 c 431 § 38.]

70.95.630 Requirements for accepting used batteries by retailers of vehicle batteries—Notice. A person selling vehicle batteries at retail in the state shall:

(1) Accept, at the time of purchase of a replacement battery, in the place where the new batteries are physically transferred to the purchasers, and in a quantity at least equal to the number of new batteries purchased, used vehicle batteries from the purchasers, if offered by the purchasers. When a purchaser fails to provide an equivalent used battery or batteries, the purchaser may reclaim the core charge paid under RCW 70.95.640 by returning, to the point of purchase within thirty days, a used battery or batteries and a receipt showing proof of purchase from the establishment where the replacement battery or batteries were purchased; and

(2) Post written notice which must be at least eight and one-half inches by eleven inches in size and must contain the universal recycling symbol and the following language:

(a) "It is illegal to put a motor vehicle battery or other vehicle battery in your garbage."

(b) "State law requires us to accept used motor vehicle batteries or other vehicle batteries for recycling, in exchange for new batteries purchased."

(c) "When you buy a battery, state law also requires us to include a core charge of five dollars or more if you do not return your old battery for exchange." [1989 c 431 § 39.]

70.95.640 Retail core charge. Each retail sale of a vehicle battery shall include, in the price of the battery for sale, a core charge of not less than five dollars. When a purchaser offers the seller a used battery of equivalent size, the seller shall omit the core charge from the price of the battery. [1989 c 431 § 40.]

70.95.650 Vehicle battery wholesalers—Obligations regarding used batteries—Noncompliance procedure. (1) A person selling vehicle batteries at wholesale to a retail establishment in this state shall accept, at the time and place of transfer, used vehicle batteries in a quantity at least equal to the number of new batteries purchased, if offered by the purchaser.

(2) When a battery wholesaler, or agent of the wholesaler, fails to accept used vehicle batteries as provided in this section, a retailer may file a complaint with the department and the department shall investigate any such complaint.

(3) (a) The department shall issue an order suspending any of the provisions of RCW 70.95.630 through 70.95.660 whenever it finds that the market price of lead has fallen to the extent that new battery wholesalers' estimated state-wide average cost of transporting used batteries to a smelter or other person or entity in the business of purchasing used batteries is clearly greater than the market price paid for used lead batteries by such smelter or person or entity.

(b) The order of suspension shall only apply to batteries that are sold at retail during the period in which the suspension order is effective.

(c) The department shall limit its suspension order to a definite period not exceeding six months, but shall revoke the order prior to its expiration date should it find that the reasons for its issuance are no longer valid. [1989 c 431 § 41.]

70.95.660 Department to distribute printed notice—Issuance of warnings and citations—Fines. The department shall produce, print, and distribute the notices required by RCW 70.95.630 to all places where vehicle batteries are offered for sale at retail and in performing its duties under this section the department may inspect any place, building, or premise governed by RCW 70.95.640. Authorized employees of the agency may issue warnings and citations to persons who fail to comply with the requirements of RCW 70.95.610 through 70.95.670. Failure to conform to the notice requirements of RCW 70.95.630 shall subject the violator to a fine imposed by the department not to exceed one thousand dollars. However, no such fine shall be imposed unless the department has issued a warning of infraction for the first offense. Each day that a violator does not comply with the requirements of *this act following the issuance of an initial warning of infraction shall constitute a separate offense. [1989 c 431 § 42.]

*Reviser's note: For codification of "this act" [1989 c 431], see Codification Tables, Volume 0.

70.95.670 Rules. The department shall adopt rules providing for the implementation and enforcement of RCW 70.95.610 through 70.95.660. [1989 c 431 § 43.]

70.95.700 Solid waste incineration or energy recovery facility—Environmental impact statement requirements. No solid waste incineration or energy recovery facility shall be operated prior to the completion of an environmental impact statement containing the considerations required under RCW 43.21C.030(2)(c) and prepared pursuant to the procedures of chapter 43.21C RCW. This section does not apply to a facility operated prior to January 1, 1989, as a solid waste incineration facility or energy recovery facility burning solid waste. [1989 c 431 § 55.]

70.95.710 Incineration of medical waste. Incineration of medical waste shall be conducted under sufficient burning conditions to reduce all combustible material to a form such that no portion of the combustible material is visible in its uncombusted state. [1989 c 431 § 77.]

70.95.800 Solid waste management account. The solid waste management account is created in the state treasury. Moneys in the account may only be spent after appropriation. Expenditures from the account may only be used to carry out the purposes of *this act. All earnings from the investment of balances in the solid waste management account except as provided in RCW 43.84-.090, shall be deposited into the solid waste management account. [1989 c 431 § 90.]

*Reviser's note: For codification of "this act" [1989 c 431], see Codification Tables, Volume 0.

70.95.810 Composting food and yard wastes—Grants and study. (1) In order to establish the feasibility of composting food and yard wastes, the department shall provide funds, as available, to local governments submitting a proposal to compost such wastes.

(2) The department, in cooperation with the department of trade and economic development, may approve an application if the project can demonstrate the essential parameters for successful composting, including, but not limited to, cost-effectiveness, handling and safety requirements, and current and potential markets.

(3) The department shall periodically report to the appropriate standing committees of the legislature on the need for, and feasibility of, composting systems for food and yard wastes. [1989 c 431 § 97.]

70.95.900 Authority and responsibility of utilities and transportation commission not changed. Nothing in this act shall be deemed to change the authority or responsibility of the Washington utilities and transportation commission to regulate all intrastate carriers. [1969 ex.s. c 134 § 27.]

70.95.901 Severability—1989 c 431. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1989 c 431 § 107.]

70.95.902 Section captions not law—1989 c 431. Captions and headings used in this act do not constitute any part of the law. [1989 c 431 § 108.]

70.95.903 Application of chapter—Collection and transportation of recyclable materials by recycling companies or nonprofit entities—Reuse or reclamation. Nothing in this chapter shall prevent a recycling company or nonprofit entity from collecting and transporting recyclable materials from a buy-back center, drop-box, or from a commercial or industrial generator of recyclable materials, or upon agreement with a solid waste collection company.

Nothing in this chapter shall be construed as prohibiting a commercial or industrial generator of commercial recyclable materials from selling, conveying, or arranging for transportation of such material to a recycler for reuse or reclamation. [1989 c 431 § 32.]

70.95.910 Severability—1969 ex.s. c 134. If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provisions to other persons or circumstances is not affected. [1969 ex.s. c 134 § 28.]

70.95.911 Severability—1975-'76 2nd ex.s. c 41. If any provision of this 1976 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1975-'76 2nd ex.s. c 41 § 11.]

Chapter 70.95A
POLLUTION CONTROL—MUNICIPAL
BONDING AUTHORITY

Sections

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70.95A.930	Acquisitions by port districts under RCW 53.08-.040—Prior rights or obligations.
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70.95A.010 Legislative declaration—Liberal construction. The legislature finds:

(1) That environmental damage seriously endangers the public health and welfare;

(2) That such environmental damage results from air, water, and other resources pollution and from solid waste disposal, noise and other environmental problems;

(3) That to abate or control such environmental damage antipollution devices, equipment, and facilities must be acquired, constructed and installed;

(4) That the tax exempt financing permitted by Section 103 of the Internal Revenue Code of 1954, as amended, and authorized by this chapter results in lower costs of installation of pollution control facilities;

(5) That such lower costs benefit the public with no measurable cost impact;

(6) That the method of financing provided in this chapter is in the public interest and its use serves a public purpose in (a) protecting and promoting the health and welfare of the citizens of the cities, towns, counties, and port districts and of this state by encouraging and accelerating the installation of facilities for abating or controlling and preventing environmental damage and (b) in attracting and retaining environmentally sound industry in this state which reduces unemployment and provides a more diversified tax base.

(7) For the reasons set forth in subsection (6) of this section, the provisions of this chapter relating to port districts and all proceedings heretofore or hereafter taken by port districts pursuant thereto are, and shall be deemed to be, for industrial development as authorized by Article 8, section 8 of the Washington state Constitution.

This chapter shall be liberally construed to accomplish the intentions expressed in this section. [1975 c 6 § 1; 1973 c 132 § 2.]

70.95A.020 Definitions. As used in this chapter, unless the context otherwise requires:

(1) "Municipality" shall mean any city, town, county, or port district in the state;

(2) "Facility" or "facilities" shall mean any land, building, structure, machinery, system, fixture, appurtenance, equipment or any combination thereof, or any interest therein, and all real and personal properties deemed necessary in connection therewith whether or not now in existence, which is used or to be used by any person, corporation or municipality in furtherance of the purpose of abating, controlling or preventing pollution;

(3) "Pollution" shall mean any form of environmental pollution, including but not limited to water pollution, air pollution, land pollution, solid waste disposal, thermal pollution, radiation contamination, or noise pollution;

(4) "Governing body" shall mean the body or bodies in which the legislative powers of the municipality are vested;

(5) "Mortgage" shall mean a mortgage or a mortgage and deed of trust or other security device; and

(6) "Department" shall mean the state department of ecology. [1973 c 132 § 3.]

70.95A.030 Municipalities—Powers. In addition to any other powers which it may now have, each municipality shall have the following powers:

(1) To acquire, whether by construction, purchase, devise, gift or lease, or any one or more of such methods, one or more facilities which shall be located within, or partially within the municipality;

(2) To lease, lease with option to purchase, sell or sell by installment sale, any or all of the facilities upon such terms and conditions as the governing body may deem advisable but which shall at least fully reimburse the municipality for all debt service on any bonds issued to finance the facilities and for all costs incurred by the municipality in financing and operating the facilities and as shall not conflict with the provisions of this chapter;

(3) To issue revenue bonds for the purpose of defraying the cost of acquiring or improving any facility or facilities or refunding any bonds issued for such purpose and to secure the payment of such bonds as provided in this chapter. Revenue bonds may be issued in one or more series or issues where deemed advisable, and each such series or issue may have the same or different maturity dates, interest rates, priorities on revenues available for payment of such bonds and priorities on security available for assuring payment thereof, and such other differing terms and conditions as are deemed necessary and are not in conflict with the provisions of this chapter. [1973 c 132 § 4.]

70.95A.035 Actions by municipalities validated. All actions heretofore taken by any municipality in conformity with the provisions of this chapter and the provisions of *this 1975 amendatory act hereby made applicable thereto relating to pollution control facilities, including but not limited to all bonds issued for such

purposes, are hereby declared to be valid, legal and binding in all respects. [1975 c 6 § 4.]

***Reviser's note:** "this 1975 amendatory act" [1975 c 6] consists of amendments to RCW 70.95A.010 and 70.95A.040 and the enactment of RCW 53.08.040, 70.95A.035, 70.95A.045, 70.95A.912, 70.95A.940, and an uncodified section declaring an emergency and providing an effective date.

Port districts—Pollution control facilities or other industrial development—Validation: RCW 53.08.041.

70.95A.040 Municipalities—Revenue bonds for pollution control facilities—Authorized—Construction—Sale, conditions—Form, terms. (1) All bonds issued by a municipality under the authority of this chapter shall be secured solely by revenues derived from the lease or sale of the facility. Bonds and any interest coupons issued under the authority of this chapter shall not constitute nor give rise to a pecuniary liability of the municipality or a charge against its general credit or taxing powers. Such limitation shall be plainly stated upon the face of each of such bonds. The use of the municipality's name on revenue bonds authorized hereunder shall not be construed to be the giving or lending of the municipality's financial guarantee or pledge, i.e. credit to any private person, firm, or corporation as the term credit is used in Article 8, section 7 of the Washington state Constitution.

(2) The bonds referred to in subsection (1) of this section, may (a) be executed and delivered at any time and from time to time, (b) be in such form and denominations, (c) be of such tenor, (d) be in bearer or registered form either as to principal or interest or both, as provided in RCW 39.46.030, and may provide for conversion between registered and coupon bonds of varying denominations, (e) be payable in such installments and at such time or times not exceeding forty years from their date, (f) be payable at such place or places, (g) bear interest at such rate or rates as may be determined by the governing body, payable at such place or places within or without this state and evidenced in such manner, (h) be redeemable prior to maturity, with or without premium, and (i) contain such provisions not inconsistent herewith, as shall be deemed for the best interest of the municipality and provided for in the proceedings of the governing body whereunder the bonds shall be authorized to be issued.

(3) Any bonds issued under the authority of this chapter, may be sold at public or private sale in such manner and at such time or times as may be determined by the governing body to be most advantageous. The municipality may pay all expenses, premiums and commissions which the governing body may deem necessary or advantageous in connection with the authorization, sale and issuance thereof from the proceeds of the sale of said bonds or from the revenues of the facilities.

(4) All bonds issued under the authority of this chapter, and any interest coupons applicable thereto shall be investment securities within the meaning of the uniform commercial code and shall be deemed to be issued by a political subdivision of the state.

(5) The proceeds from any bonds issued under this chapter shall be used only for purposes qualifying under

Section 103(c)(4)(f) of the Internal Revenue Code of 1954, as amended.

(6) Notwithstanding subsections (2) and (3) of this section, such bonds may be issued and sold in accordance with chapter 39.46 RCW. [1983 c 167 § 174; 1975 c 6 § 3; 1973 c 132 § 5.]

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

Port districts—Pollution control facilities or other industrial development—Validation: RCW 53.08.041.

70.95A.045 Proceeds of bonds are separate trust funds—Municipal treasurer, compensation. The proceeds of any bonds heretofore or hereafter issued in conformity with the authority of this chapter, together with interest and premiums thereon, and any revenues used to pay or redeem any of such bonds, together with interest and any premiums thereon, shall be separate trust funds and used only for the purposes permitted herein and shall not be considered to be money of the municipality. The services of the treasurer of a municipality, if such treasurer is or has been used, were and are intended to be for the administrative convenience of receipt and payment of nonpublic moneys only for which reasonable compensation may be charged by such treasurer or municipality. [1975 c 6 § 2.]

Port districts—Pollution control facilities or other industrial development—Validation: RCW 53.08.041.

70.95A.050 Revenue bonds—Security—Scope—Default—Authorization proceedings. (1) The principal of and interest on any bonds issued under the authority of this chapter (a) shall be secured by a pledge of the revenues derived from the sale or lease of the facilities out of which such bonds shall be made payable, (b) may be secured by a mortgage covering all or any part of the facilities, (c) may be secured by a pledge or assignment of the lease of such facilities, or (d) may be secured by a trust agreement or such other security device as may be deemed most advantageous by the governing body.

(2) The proceedings under which the bonds are authorized to be issued under the provisions of this chapter, and any mortgage given to secure the same may contain any agreements and provisions customarily contained in instruments securing bonds, including, without limiting the generality of the foregoing, provisions respecting (a) the fixing and collection of rents for any facilities covered by such proceedings or mortgage, (b) the terms to be incorporated in the lease of such facilities, (c) the maintenance and insurance of such facilities, (d) the creation and maintenance of special funds from the revenues of such facilities, and (e) the rights and remedies available in the event of a default to the bond owners or to the trustee under a mortgage or trust agreement, all as the governing body shall deem advisable and as shall not be in conflict with the provisions of this chapter: *Provided*, That in making any such agreements or provisions a municipality shall not have the power to obligate itself except with respect to the facilities and the application of the revenues therefrom, and shall not have the

power to incur a pecuniary liability or a charge upon its general credit or against its taxing powers.

(3) The proceedings authorizing any bonds under the provisions of this chapter and any mortgage securing such bonds may provide that, in the event of a default in the payment of the principal of or the interest on such bonds or in the performance of any agreement contained in such proceedings or mortgage, such payment and performance may be enforced by mandamus or by the appointment of a receiver in equity with power to charge and collect rents and to apply the revenues from the facilities in accordance with such proceedings or the provisions of such mortgage.

(4) Any mortgage made under the provisions of this chapter, to secure bonds issued thereunder, may also provide that, in the event of a default in the payment thereof or the violation of any agreement contained in the mortgage, the mortgage may be foreclosed and the mortgaged property sold under proceedings in equity or in any other manner now or hereafter permitted by law. Such mortgage may also provide that any trustee under such mortgage or the owner of any of the bonds secured thereby may become the purchaser at any foreclosure sale if the highest bidder therefor. No breach of any such agreement shall impose any pecuniary liability upon a municipality or any charge upon their general credit or against their taxing powers.

(5) The proceedings authorizing the issuance of bonds hereunder may provide for the appointment of a trustee or trustees for the protection of the owners of the bonds, whether or not a mortgage is entered into as security for such bonds. Any such trustee may be a bank with trust powers or a trust company and shall be located in the United States, within or without the state of Washington, shall have the immunities, powers and duties provided in said proceedings, and may, to the extent permitted by such proceedings, hold and invest funds deposited with it in direct obligations of the United States, obligations guaranteed by the United States or certificates of deposit of a bank (including the trustee) which are continuously secured by such obligations of or guaranteed by the United States. Any bank acting as such trustee may, to the extent permitted by such proceedings, buy bonds issued hereunder to the same extent as if it were not such trustee. Said proceedings may provide for one or more co-trustees, and any co-trustee may be any competent individual over the age of twenty-one years or a bank having trust powers or trust company within or without the state. The proceedings authorizing the bonds may provide that some or all of the proceeds of the sale of the bonds, the revenues of any facilities, the proceeds of the sale of any part of a facility, of any insurance policy or of any condemnation award be deposited with the trustee or a co-trustee and applied as provided in said proceedings. [1983 c 167 § 175; 1973 c 132 § 6.]

Liberal construction—Severability—1983 c 167: See RCW 39-46.010 and note following.

70.95A.060 Facilities—Leases authorized. Prior to the issuance of the bonds authorized by this chapter, the

municipality may lease the facilities to a lessee or lessees under an agreement providing for payment to the municipality of such rentals as will be sufficient (a) to pay the principal of and interest on the bonds issued to finance the facilities, (b) to pay the taxes on the facilities, (c) to build up and maintain any reserves deemed by the governing body to be advisable in connection therewith, and (d) unless the agreement of lease obligates the lessees to pay for the maintenance and insurance of the facilities, to pay the costs of maintaining the facilities in good repair and keeping the same properly insured. Subject to the limitations of this chapter, the lease or extensions or modifications thereof may contain such other terms and conditions as may be mutually acceptable to the parties, and notwithstanding any other provisions of law relating to the sale of property owned by municipalities, such lease may contain an option for the lessees to purchase the facilities on such terms and conditions with or without consideration as may be mutually acceptable to the parties. [1973 c 132 § 7.]

70.95A.070 Facilities—Revenue bonds—Refunding provisions. Any bonds issued under the provisions of this chapter and at any time outstanding may at any time and from time to time be refunded by a municipality by the issuance of its refunding bonds in such amount as the governing body may deem necessary but not exceeding an amount sufficient to refund the principal of the bonds to be so refunded, together with any unpaid interest thereon and any premiums and commissions necessary to be paid in connection therewith: *Provided*, That an issue of refunding bonds may be combined with an issue of additional revenue bonds on any facilities. Any such refunding may be effected whether the bonds to be refunded shall have then matured or shall thereafter mature, either by sale of the refunding bonds and the application of the proceeds thereof for the payment of the bonds to be refunded thereby, or by exchange of the refunding bonds for the bonds to be refunded thereby: *Provided further*, That the owners of any bonds to be so refunded shall not be compelled without their consent to surrender their bonds for payment or exchange except on the terms expressed on the face thereof. Any refunding bonds issued under the authority of this chapter shall be subject to the provisions contained in RCW 70.95A.040 and may be secured in accordance with the provisions of RCW 70.95A.050. [1983 c 167 § 176; 1973 c 132 § 8.]

Liberal construction—Severability—1983 c 167: See RCW 39-46.010 and note following.

70.95A.080 Revenue bonds—Disposition of proceeds. The proceeds from the sale of any bonds issued under authority of this chapter shall be applied only for the purpose for which the bonds were issued: *Provided*, That any accrued interest and premium received in any such sale shall be applied to the payment of the principal of or the interest on the bonds sold: *And provided further*, That if for any reason any portion of such proceeds shall not be needed for the purpose for which the bonds were issued, then such unneeded portion of said proceeds

shall be applied to the payment of the principal of or the interest on said bonds. The cost of acquiring or improving any facilities shall be deemed to include the following: The actual cost of acquiring or improving real estate for any facilities; the actual cost of construction of all or any part of the facilities which may be constructed, including architects' and engineers' fees, all expenses in connection with the authorization, sale and issuance of the bonds to finance such acquisition or improvements; and the interest on such bonds for a reasonable time prior to construction, during construction, and for a time not exceeding six months after completion of construction. [1973 c 132 § 9.]

70.95A.090 Facilities—Sale or lease—Certain restrictions on municipalities not applicable. The facilities shall be constructed, reconstructed, and improved and shall be leased, sold or otherwise disposed of in the manner determined by the governing body in its sole discretion and any requirement of competitive bidding, lease performance bonds or other restriction imposed on the procedure for award of contracts for such purpose or the lease, sale or other disposition of property of a municipality is not applicable to any action taken under authority of this chapter. [1973 c 132 § 10.]

70.95A.100 Facilities—Department of ecology certification. Upon request by a municipality or by a user of the facilities the department of ecology may in relation to chapter 54, Laws of 1972 ex. sess. and this chapter issue its certificate stating that the facilities (1) as designed are in furtherance of the purpose of abating, controlling or preventing pollution, and/or (2) as designed or as operated meet state and local requirements for the control of pollution. This section shall not be construed as modifying the provisions of RCW 82.34-.030; chapter 70.94 RCW; or chapter 90.48 RCW. [1973 c 132 § 11.]

70.95A.910 Construction—1973 c 132. Nothing in this chapter shall be construed as a restriction or limitation upon any powers which a municipality might otherwise have under any laws of this state, but shall be construed as cumulative. [1973 c 132 § 12.]

70.95A.912 Construction—1975 c 6. *This 1975 amendatory act shall be liberally construed to accomplish the intention expressed herein. [1975 c 6 § 6.]

***Reviser's note:** "This 1975 amendatory act" [1975 c 6] see note following RCW 70.95A.035.

Port districts—Pollution control facilities or other industrial development—Validation: RCW 53.08.041.

70.95A.920 Severability—1973 c 132. If any provision of this 1973 act or the application thereof to any person or circumstance, is held invalid, such invalidity shall not affect other provisions or applications of this 1973 act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable. [1973 c 132 § 13.]

70.95A.930 Acquisitions by port districts under RCW 53.08.040—Prior rights or obligations. All acquisitions by port districts pursuant to RCW 53.08.040 may, at the option of a port commission, be deemed to be made under this chapter, or under both: *Provided*, That nothing contained in this chapter shall impair rights or obligations under contracts entered into before March 19, 1973. [1973 c 132 § 14.]

70.95A.940 Severability—1975 c 6. If any provision of *this 1975 amendatory act or the application thereof to any person or circumstance, is held invalid, such invalidity shall not affect other provisions or applications of *this 1975 amendatory act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable. [1975 c 6 § 7.]

***Reviser's note:** "this 1975 amendatory act" [1975 c 6] see note following RCW 70.95A.035.

Chapter 70.95B

DOMESTIC WASTE TREATMENT PLANTS— CERTIFICATION AND REGULATION OF OPERATORS

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70.95B.110	Administration of chapter—Powers and duties of director.
70.95B.120	Violations.
70.95B.130	Certificates—Reciprocity with other states.
70.95B.140	Penalties for violations—Injunctions.
70.95B.150	Administration of chapter—Receipts—Payment to general fund.
70.95B.900	Effective date—1973 c 139.

Reviser's note: Chapter 139, Laws of 1973 has been codified as chapter 70.95B RCW to conform with code organization. Section 16 of chapter 139 had directed that the chapter be added to Title 43 RCW.

Public water supply systems—Certification and regulation of operators: Chapter 70.119 RCW.

70.95B.010 Legislative declaration. The legislature declares that competent operation of waste treatment plants plays an important part in the protection of the environment of the state and therefore it is of vital interest to the public. In order to protect the public health and to conserve and protect the water resources of the state, it is necessary to provide for the classifying of all domestic wastewater treatment plants; to require the examination and certification of the persons responsible for

the supervision and operation of such systems; and to provide for the promulgation of rules and regulations to carry out this chapter. [1973 c 139 § 1.]

70.95B.020 Definitions. As used in this chapter unless context requires another meaning:

(1) "Director" means the director of the department of ecology.

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

(3) "Board" means the water and wastewater operator certification board of examiners established by RCW 70.95B.070.

(4) "Certificate" means a certificate of competency issued by the director stating that the operator has met the requirements for the specified operator classification of the certification program.

(5) "Wastewater treatment plant" means a facility used to treat any liquid or waterborne waste of domestic origin or a combination of domestic, commercial or industrial origin, and which by its design requires the presence of an operator for its operation. It shall not include any facility used exclusively by a single family residence, septic tanks with subsoil absorption, industrial wastewater treatment plants, or wastewater collection systems.

(6) "Operator in responsible charge" means an individual who is designated by the owner as the person on-site in responsible charge of the routine operation of a wastewater treatment plant.

(7) "Nationally recognized association of certification authorities" shall mean that organization which serves as an information center for certification activities, recommends minimum standards and guidelines for classification of potable water treatment plants, water distribution systems and wastewater facilities and certification of operators, facilitates reciprocity between state programs and assists authorities in establishing new certification programs and updating existing ones.

(8) "Wastewater collection system" means any system of lines, pipes, manholes, pumps, liftstations, or other facilities used for the purpose of collecting and transporting wastewater.

(9) "Operating experience" means routine performance of duties, on-site in a wastewater treatment plant, that affects plant performance or effluent quality.

(10) "Owner" means in the case of a town or city, the city or town acting through its chief executive officer or the lessee if operated pursuant to a lease or contract; in the case of a county, the chairman of the county legislative authority or the chairman's designee; in the case of a sewer district, board of public utilities, association, municipality or other public body, the president or chairman of the body or the president's or chairman's designee; in the case of a privately owned wastewater treatment plant, the legal owner.

(11) "Wastewater certification program coordinator" means an employee of the department who is appointed by the director to serve on the board and who administers the wastewater treatment plant operators' certification program. [1987 c 357 § 1; 1973 c 139 § 2.]

70.95B.030 Wastewater treatment plant operators—Certification required. As provided for in this chapter, the individual on-site at a wastewater treatment plant who is designated by the owner as the operator in responsible charge of the operation and maintenance of the plant on a routine basis shall be certified at a level equal to or higher than the classification rating of the plant being operated.

If a wastewater treatment plant is operated on more than one daily shift, the operator in charge of each shift shall be certified at a level no lower than one level lower than the classification rating of the plant being operated and shall be subordinate to the operator in responsible charge who is certified at a level equal to or higher than the plant. This requirement for shift operator certification shall be met by January 1, 1989.

Operators not required to be certified by this chapter are encouraged to become certified on a voluntary basis. [1987 c 357 § 2; 1973 c 139 § 3.]

70.95B.040 Administration of chapter—Rules and regulations—Director's duties. The director, with the approval of the board, shall adopt and enforce such rules and regulations as may be necessary for the administration of this chapter. The rules and regulations shall include, but not be limited to, provisions for the qualification and certification of operators for different classifications of wastewater treatment plants. [1987 c 357 § 3; 1973 c 139 § 4.]

70.95B.050 Wastewater treatment plants—Classification. The director shall classify all wastewater treatment plants with regard to the size, type, and other conditions affecting the complexity of such treatment plants and the skill, knowledge, and experience required of an operator to operate such facilities to protect the public health and the state's water resources. [1987 c 357 § 4; 1973 c 139 § 5.]

70.95B.060 Criteria and guidelines. The director is authorized when taking action pursuant to RCW 70.95B.040 and 70.95B.050 to consider generally applicable criteria and guidelines developed by a nationally recognized association of certification authorities. [1973 c 139 § 6.]

70.95B.070 Board of examiners for wastewater operator certification—Created—Members—Qualifications—Terms—Powers and duties—Compensation and travel expenses. For the purpose of carrying out the provisions of this chapter, a board of examiners for wastewater operator certification shall be appointed. This board may serve in a common capacity for the certification of both water and wastewater plant and system operators. One member shall be named from the department of ecology, by its director to serve at his pleasure, and one member from the department of social and health services by its secretary, to serve at his pleasure, and one member who is required to employ a certified operator and who holds the position of city

manager, city engineer, director of public works, superintendent of utilities, or an equivalent position who will be appointed by the governor. The governor shall also appoint two members who are operators holding a certificate of at least the second highest operator classification for wastewater plant operators established by regulation of the director, and if authorized in a water supply system operator certification act, two members who are operators holding a certificate of at least the second highest classification for waterworks operators established pursuant to such act.

The employer representative shall be appointed for an initial one-year term and the operators for initial terms of two and three years respectively. Thereafter, the members appointed by the governor shall serve for a three-year period. Vacancies shall be filled for the remainder for an unexpired term by the appointing authorities.

This board shall assist in the development of rules and regulations, shall prepare, administer, and evaluate examinations of operator competency as required in this chapter, and shall recommend the issuance or revocation of certificates. The board shall determine when and where the examinations shall be held. The examination shall be held at least three times annually.

Each member appointed by the governor shall be compensated in accordance with RCW 43.03.240 and shall be reimbursed for travel expenses while engaged in the business of the board as prescribed in RCW 43.03-.050 and 43.03.060. [1984 c 287 § 106; 1975-'76 2nd ex.s. c 34 § 161; 1973 c 139 § 7.]

Legislative findings—Severability—Effective date—1984 c 287: See notes following RCW 43.03.220.

Effective date—Severability—1975-'76 2nd ex.s. c 34: See notes following RCW 2.08.115.

Water and wastewater operator certification board of examiners: RCW 70.119.080.

70.95B.080 Certificates—When examination not required. Certificates shall be issued without examination under the following conditions:

(1) Certificates, in appropriate classifications, shall be issued without application fee to operators who, on July 1, 1973, hold certificates of competency attained by examination under the voluntary certification program sponsored jointly by the state department of social and health services, health services division, and the Pacific Northwest pollution control association.

(2) Certificates, in appropriate classifications, shall be issued to persons certified by a governing body or owner to have been the operator in responsible charge of a waste treatment plant on July 1, 1973. A certificate so issued will be valid only for the existing plant.

(3) A nonrenewable certificate, temporary in nature, may be issued for a period not to exceed twelve months, to an operator who fills a vacated position required to be filled by a certified operator. Only one such certificate may be issued subsequent to each instance of vacation of any such position. [1987 c 357 § 5; 1973 c 139 § 8.]

70.95B.090 Certificates—Issuance and renewal conditions. The issuance and renewal of a certificate shall be subject to the following conditions:

(1) A certificate shall be issued if the operator has satisfactorily passed a written examination, or has met the requirements of RCW 70.95B.080, and has met the requirements specified in the rules and regulations as authorized by this chapter, and has paid the department an application fee. Such application fee shall not exceed fifty dollars.

(2) The term for all certificates shall be from the first of January of the year of issuance until the thirty-first of December of the renewal year. The renewal period, not to exceed three years, shall be set by agency rule. Every certificate shall be renewed upon the payment of a renewal fee and satisfactory evidence presented to the director that the operator demonstrates continued professional growth in the field. Such renewal fee shall not exceed thirty dollars.

(3) Individuals who fail to renew their certificates before December 31 of the renewal year, upon notice by the director shall have their certificates suspended for sixty days. If, during the suspension period, the renewal is not completed, the director shall give notice of revocation to the employer and to the operator and the certificate will be revoked ten days after such notice is given. An operator whose certificate has been revoked must reapply for certification and will be requested to meet the requirements of a new applicant. [1987 c 357 § 6; 1973 c 139 § 9.]

70.95B.095 Certificates—Fees. Effective January 1, 1988, the department shall establish rules for the collection of fees for the issuance and renewal of certificates as provided for in RCW 70.95B.090. Beginning January 1, 1992, these fees shall be sufficient to recover the costs of the certification program. [1987 c 357 § 9.]

70.95B.100 Certificates—Revocation procedures. The director may, with the recommendation of the board and after a hearing before the same, revoke a certificate found to have been obtained by fraud or deceit, or for gross negligence in the operation of a waste treatment plant, or for violating the requirements of this chapter or any lawful rule, order or regulation of the department. No person whose certificate is revoked under this section shall be eligible to apply for a certificate for one year from the effective date of this final order or revocation. [1973 c 139 § 10.]

70.95B.110 Administration of chapter—Powers and duties of director. To carry out the provisions and purposes of this chapter, the director is authorized and empowered to:

(1) Enter into agreements, contracts, or cooperative arrangements, under such terms and conditions as the director deems appropriate with other state, federal, or interstate agencies, municipalities, education institutions, or other organizations or individuals.

(2) Receive financial and technical assistance from the federal government and other public or private agencies.

(3) Participate in related programs of the federal government, other states, interstate agencies, or other public or private agencies or organizations.

(4) Upon request, furnish reports, information, and materials relating to the certification program authorized by this chapter to federal, state, or interstate agencies, municipalities, education institutions, and other organizations and individuals.

(5) Establish adequate fiscal controls and accounting procedures to assure proper disbursement of and accounting for funds appropriated or otherwise provided for the purpose of carrying out the provisions of this chapter. [1987 c 357 § 7; 1973 c 139 § 11.]

70.95B.120 Violations. On and after one year following July 1, 1973, it shall be unlawful for any person, firm, corporation, municipal corporation, or other governmental subdivision or agency to operate a wastewater treatment plant unless the individuals identified in RCW 70.95B.030 are duly certified by the director under the provisions of this chapter or any lawful rule, order, or regulation of the department. It shall also be unlawful for any person to perform the duties of an operator as defined in this chapter, or in any lawful rule, order, or regulation of the department, without being duly certified under the provisions of this chapter. [1987 c 357 § 8; 1973 c 139 § 12.]

70.95B.130 Certificates—Reciprocity with other states. On or after July 1, 1973, certification of operators by any state which, as determined by the director, accepts certifications made or certification requirements deemed satisfied pursuant to the provisions of this chapter, shall be accorded reciprocal treatment and shall be recognized as valid and sufficient within the purview of this chapter, if in the judgment of the director the certification requirements of such state are substantially equivalent to the requirements of this chapter or any rules or regulations promulgated hereunder.

In making determinations pursuant to this section, the director shall consult with the board and may consider any generally applicable criteria and guidelines developed by the nationally recognized association of certification authorities. [1973 c 139 § 13.]

70.95B.140 Penalties for violations—Injunctions. Any person, including any firm, corporation, municipal corporation, or other governmental subdivision or agency violating any provisions of this chapter or the rules and regulations adopted hereunder, is guilty of a misdemeanor. Each day of operation in such violation of this chapter or any rules or regulations adopted hereunder shall constitute a separate offense. Upon conviction, violators shall be fined an amount not exceeding one hundred dollars for each offense. It shall be the duty of the prosecuting attorney or the attorney general, as appropriate, to secure injunctions of continuing violations of

any provisions of this chapter or the rules and regulations adopted hereunder. [1973 c 139 § 14.]

70.95B.150 Administration of chapter—Receipts—Payment to general fund. All receipts realized in the administration of this chapter shall be paid into the general fund. [1973 c 139 § 15.]

70.95B.900 Effective date—1973 c 139. This 1973 act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect on July 1, 1973. [1973 c 139 § 17.]

Chapter 70.95C WASTE REDUCTION

Sections

70.95C.010	Legislative findings.
70.95C.020	Definitions.
70.95C.030	Office of waste reduction—Duties.
70.95C.040	Waste reduction consultation program.
70.95C.050	Waste reduction techniques—Workshops and seminars.
70.95C.060	Waste reduction hotline—Data base system.
70.95C.070	Waste reduction research and development program—Contracts.
70.95C.080	Director's authority.
70.95C.090	Product packaging task force—Duties—Termination of task force.
70.95C.100	Products and product packaging—State preemption of prohibitions on sale or distribution—Expiration of section.
70.95C.110	Waste reduction and recycling program to promote activities by state agencies—Recycled paper goal.
70.95C.120	Waste reduction and recycling awards program in K–12 public schools.

70.95C.010 Legislative findings. The legislature finds that land disposal and incineration of solid and hazardous waste can be both harmful to the environment and costly to those who must dispose of the waste. In order to address this problem in the most cost-effective and environmentally sound manner, and to implement the highest waste management priority as articulated in RCW 70.95.010 and 70.105.150, public and private efforts should focus on reducing the generation of waste. Waste reduction can be achieved by encouraging voluntary efforts to redesign industrial, commercial, production, and other processes to result in the reduction or elimination of waste byproducts and to maximize the in-process reuse or reclamation of valuable spent material. [1988 c 177 § 1.]

70.95C.020 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

- (1) "Department" means the department of ecology.
- (2) "Director" means the director of the department of ecology or the director's designee.
- (3) "Office" means the office of waste reduction.
- (4) "Process" means all industrial, commercial, production, and other processes that result in the generation of waste.

(5) "Waste" means any solid waste as defined under RCW 70.95.030, any hazardous waste as defined under RCW 70.105.010(15), any hazardous substance as defined under RCW 70.105.010(14), any air contaminant as defined under RCW 70.94.030, and any organic or inorganic matter that shall cause or tend to cause water pollution as defined under RCW 90.48.020.

(6) "Waste generator" means any individual, business, government agency, or any other organization that generates waste.

(7) "Waste reduction" means all in-plant practices that reduce, avoid, or eliminate the amount or toxicity of waste generated. [1988 c 177 § 2.]

70.95C.030 Office of waste reduction—Duties. (1) There is established in the department an office of waste reduction. The office shall use its authorities to encourage the voluntary reduction of waste by waste generators. The office shall prepare and submit a quarterly progress report to the director and the director shall submit an annual progress report to the appropriate environmental standing committees of the legislature beginning December 31, 1988.

(2) The office shall be the coordinating center for all state agency programs that provide technical assistance to waste generators and shall serve as the state's lead agency and promoter for such programs. In addition to this coordinating function, the office shall encourage waste reduction by:

(a) Providing for the rendering of advice and consultation to waste generators on waste reduction techniques;

(b) Sponsoring or co-sponsoring with public or private organizations technical workshops and seminars on waste reduction;

(c) Administering a waste reduction data base and hotline providing comprehensive referral services to waste generators;

(d) Administering a waste reduction research and development program;

(e) Coordinating a waste reduction public education program that includes the utilization of existing publications from public and private sources, as well as publishing necessary new materials on waste reduction;

(f) Recommending to institutions of higher education in the state courses and curricula in areas related to waste reduction; and

(g) Requiring energy and incineration facilities to retain records of monitoring and operating data for a minimum of ten years after permanent closure of the facility. [1988 c 177 § 3.]

70.95C.040 Waste reduction consultation program. (1) The office shall establish a waste reduction consultation program to be coordinated with other state waste reduction consultation programs.

(2) The director may grant a request by any waste generator for advice and consultation on waste reduction techniques. Pursuant to a request, the director may visit any business, governmental entity, or other process site in the state for the purposes of observing the waste-

generating process, obtaining information relevant to waste reduction, rendering advice, and making recommendations. No such visit may be regarded as an inspection or investigation, and no notices or citations may be issued, or civil penalty be assessed, upon such a visit. No representative of the director designated to render advisory or consultative services may have any enforcement authority.

(3) Consultation and advice given under this section shall be limited to the matters specified in the request and shall include specific techniques of waste reduction tailored to the relevant process. In granting any request for advisory or consultative services, the director may provide for an alternative means of affording consultation and advice other than on-site consultation.

(4) Any proprietary information obtained by the director while carrying out the duties required under this section shall remain confidential and shall not become part of the data base established under RCW 70.95C.060. [1988 c 177 § 4.]

70.95C.050 Waste reduction techniques—Workshops and seminars. The office, in coordination with all other state waste reduction technical assistance programs, shall sponsor technical workshops and seminars on waste reduction techniques that have been successfully used to eliminate or reduce substantially the amount of waste or toxicity of hazardous waste generated, or that use in-process reclamation or reuse of spent material. [1988 c 177 § 5.]

70.95C.060 Waste reduction hotline—Data base system. (1) The office shall establish a state-wide waste reduction hotline with the capacity to refer waste generators and the public to sources of information on specific waste reduction techniques and procedures. The hotline shall coordinate with all other state waste hotlines.

(2) The director shall work with the state library to establish a data base system that shall include proven waste reduction techniques and case studies of effective waste reduction. The data base system shall be: (a) Coordinated with all other state agency data bases on waste reduction; (b) administered in conjunction with the state-wide waste reduction hotline; and (c) readily accessible to the public. [1988 c 177 § 6.]

70.95C.070 Waste reduction research and development program—Contracts. (1) The office may administer a waste reduction research and development program. The director may contract with any public or private organization for the purpose of developing methods and technologies that achieve waste reduction. All research performed and all methods or technologies developed as a result of a contract entered into under this section shall become the property of the state and shall be incorporated into the data base system established under RCW 70.95C.060.

(2) Any contract entered into under this section shall be awarded only after requests for proposals have been circulated to persons, firms, or organizations who have requested that their names be placed on a proposal list.

The director shall establish a proposal list and shall review and evaluate all proposals received. [1988 c 177 § 7.]

70.95C.080 Director's authority. (1) The director may solicit and accept gifts, grants, conveyances, bequests, and devises, in trust or otherwise, to be directed to the office of waste reduction.

(2) The director may enter into contracts with any public or private organization to carry out the purposes of this chapter. [1988 c 177 § 8.]

70.95C.090 Product packaging task force—Duties—Termination of task force. (1) The office shall establish a product packaging task force. The purpose of the task force shall be to investigate and evaluate methods to:

- (a) Reduce the volume or weight, or both, of product packaging entering the waste stream;
- (b) Reduce the toxicity of product packaging entering the waste stream;
- (c) Reduce the reliance on single use, disposable packaging;
- (d) Increase product packaging recycling; and
- (e) Increase public awareness of the contribution of packaging to the solid waste problem.

In fulfilling the purpose of this subsection, the task force shall consider all applicable federal and state packaging standards and requirements. The task force shall coordinate with regional or national groups, or both, engaged in evaluating packaging issues. Any standards recommended by this task force must consider available packaging materials, packaging weight or volume, or both, and educational package labeling.

The task force shall involve representatives from the department of trade and economic development, the department of ecology, the public, local governments, environmental associations, and industry, including but not limited to, product and packaging manufacturers, retail businesses, solid waste collection companies, and recycling businesses. However, fifty percent of the task force appointees shall be representative of industry.

The task force shall submit an action plan, including short and long-range recommendations, to achieve the purposes of this subsection to the legislature by January 2, 1991. The task force shall be terminated upon submittal of the plan to the legislature.

(2) The task force shall submit guidelines on product packaging to the environmental excellence product award subcommittee for purposes of the environmental excellence product award program by January 2, 1990. [1989 c 431 § 48.]

Severability—Section captions not law—1989 c 431: See RCW 70.95.901 and 70.95.902.

70.95C.100 Products and product packaging—State preemption of prohibitions on sale or distribution—Expiration of section. (1) After April 1, 1989, the state preempts the field of imposing prohibitions on

the sale or distribution of products and product packaging for the purpose of affecting the disposal of the product or product packaging. The state shall have exclusive authority to impose such prohibitions or bans. No local or regional subdivision of the state shall have any authority to impose such a prohibition or ban on products or product packaging unless specifically granted such authority by the state legislature. This section shall not apply to an ordinance or resolution adopted prior to April 1, 1989.

[(2)] This section shall expire July 1, 1993. [1989 c 431 § 50.]

Effective date—1989 c 431 §§ 49, 50: See note following RCW 82.02.025.

Severability—Section captions not law—1989 c 431: See RCW 70.95.901 and 70.95.902.

70.95C.110 Waste reduction and recycling program to promote activities by state agencies—Recycled paper goal. The legislature finds and declares that the buildings and facilities owned and leased by state government produce significant amounts of solid and hazardous wastes, and actions must be taken to reduce and recycle these wastes and thus reduce the costs associated with their disposal. In order for the operations of state government to provide the citizens of the state an example of positive waste management, the legislature further finds and declares that state government should undertake an aggressive program designed to reduce and recycle solid and hazardous wastes produced in the operations of state buildings and facilities to the maximum extent possible.

The office of waste reduction, in cooperation with the department of general administration, shall establish an intensive waste reduction and recycling program to promote the reduction of waste produced by state agencies and to promote the source separation and recovery of recyclable and reusable materials.

All state agencies, including but not limited to, colleges, community colleges, universities, offices of elected and appointed officers, the supreme court, court of appeals, and administrative departments of state government shall fully cooperate with the office of waste reduction and recycling in all phases of implementing the provisions of this section. The office shall establish a coordinated state plan identifying each agency's participation in waste reduction and recycling. The office shall develop the plan in cooperation with a multi-agency committee on waste reduction and recycling. Appointments to the committee shall be made by the director of the department of general administration. The director shall notify each agency of the committee, which shall implement the applicable waste reduction and recycling plan elements. All state agencies are to use maximum efforts to achieve a goal of increasing the use of recycled paper by fifty percent by July 1, 1993. [1989 c 431 § 53.]

Severability—Section captions not law—1989 c 431: See RCW 70.95.901 and 70.95.902.

70.95C.120 Waste reduction and recycling awards program in K-12 public schools. The office of waste reduction shall develop, in consultation with the superintendent of public instruction, an awards program to achieve waste reduction and recycling in the public schools, grades kindergarten through high school. The office shall develop guidelines for program development and implementation. Each public school shall implement a waste reduction and recycling program conforming to guidelines developed by the office.

For the purpose of granting awards, the office may group schools into not more than three classes, based upon student population, distance to markets for recyclable materials, and other criteria, as deemed appropriate by the office. Awards shall be granted each year to the schools that achieve the greatest levels of waste reduction and recycling. Each award shall be of a sum not less than ten thousand dollars. The office shall also develop recommendations for an awards program for waste reduction in the public schools. The office shall submit these recommendations to the appropriate standing committees in the house of representatives and senate on or before November 30, 1989.

The superintendent of public instruction shall distribute guidelines and other materials developed by the office to implement programs to reduce and recycle waste generated in administrative offices, classrooms, laboratories, cafeterias, and maintenance operations. [1989 c 431 § 54.]

Severability—Section captions not law—1989 c 431: See RCW 70.95.901 and 70.95.902.

Chapter 70.95D

SOLID WASTE INCINERATOR AND LANDFILL OPERATORS

Sections

70.95D.010	Definitions.
70.95D.020	Incineration facilities—Owner and operator certification requirements.
70.95D.030	Landfills—Owner and operator certification requirements.
70.95D.040	Certification process.
70.95D.050	Board of advisors.
70.95D.060	Revocation of certification.
70.95D.070	Certification of inspectors.
70.95D.080	Authority of director.
70.95D.090	Unlawful acts—Variance from requirements.
70.95D.100	Penalties.
70.95D.110	Deposit of receipts.
70.95D.900	Severability—1989 c 431.
70.95D.901	Section captions not law—1989 c 431.

70.95D.010 Definitions. Unless the context clearly requires otherwise the definitions in this section apply throughout this chapter.

(1) "Board" means the board of advisors for solid waste incinerator and landfill operator certification established by RCW 70.95D.050.

(2) "Certificate" means a certificate of competency issued by the director stating that the operator has met the requirements for the specified operator classification of the certification program.

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

(4) "Director" means the director of ecology.

(5) "Incinerator" means a facility which has the primary purpose of burning or which is designed with the primary purpose of burning solid waste or solid waste derived fuel, but excludes facilities that have the primary purpose of burning hog fuel.

(6) "Landfill" means a landfill as defined under RCW 70.95.030.

(7) "Owner" means, in the case of a town or city, the city or town acting through its chief executive officer or the lessee if operated pursuant to a lease or contract; in the case of a county, the chief elected official of the county legislative authority or the chief elected official's designee; in the case of a board of public utilities, association, municipality, or other public body, the president or chief elected official of the body or the president's or chief elected official's designee; in the case of a privately owned landfill or incinerator, the legal owner.

(8) "Solid waste" means solid waste as defined under RCW 70.95.030. [1989 c 431 § 65.]

70.95D.020 Incineration facilities—Owner and operator certification requirements. (1) By January 1, 1992, the owner or operator of a solid waste incineration facility shall employ a certified operator. At a minimum, the individual on-site at a solid waste incineration facility who is designated by the owner as the operator in responsible charge of the operation and maintenance of the facility on a routine basis shall be certified by the department.

(2) If a solid waste incinerator is operated on more than one daily shift, the operator in charge of each shift shall be certified.

(3) Operators not required to be certified are encouraged to become certified on a voluntary basis.

(4) The department shall adopt and enforce such rules as may be necessary for the administration of this section. [1989 c 431 § 66.]

70.95D.030 Landfills—Owner and operator certification requirements. (1) By January 1, 1992, the owner or operator of a landfill shall employ a certified landfill operator.

(2) For each of the following types of landfills defined in existing regulations: Inert, demolition waste, problem waste, and municipal solid waste, the department shall adopt rules classifying all landfills in each class. The factors to be considered in the classification shall include, but not be limited to, the type and amount of waste in place and projected to be disposed of at the site, whether the landfill currently meets state and federal operating criteria, the location of the landfill, and such other factors as may be determined to affect the skill, knowledge, and experience required of an operator to operate the landfill in a manner protective of human health and the environment.

(3) The rules shall identify the landfills in each class in which the owner or operator will be required to employ a certified landfill operator who is on-site at all times the landfill is operating. At a minimum, the rule

shall require that owners and operators of landfills are required to employ a certified landfill operator who is on call at all times the landfill is operating. [1989 c 431 § 67.]

70.95D.040 Certification process. (1) The department shall establish a process to certify incinerator and landfill operators. To the greatest extent possible, the department shall rely on the certification standards and procedures developed by national organizations and the federal government.

(2) Operators shall be certified if they:

- (a) Attend the required training sessions;
- (b) Successfully complete required examinations; and
- (c) Pay the prescribed fee.

(3) By January 1, 1991, the department shall adopt rules to require incinerator and appropriate landfill operators to:

(a) Attend a training session concerning the operation of the relevant type of landfill or incinerator;

(b) Demonstrate sufficient skill and competency for proper operation of the incinerator or landfill by successfully completing an examination prepared by the department; and

(c) Renew the certificate of competency at reasonable intervals established by the department.

(4) The department shall provide for the collection of fees for the issuance and renewal of certificates. These fees shall be sufficient to recover the costs of the certification program.

(5) The department shall establish an appeals process for the denial or revocation of a certificate.

(6) The department shall establish a process to automatically certify operators who have received comparable certification from another state, the federal government, a local government, or a professional association.

(7) Upon July 23, 1989, and prior to January 1, 1992, the owner or operator of an incinerator or landfill may apply to the department for interim certification. Operators shall receive interim certification if they:

(a) Have received training provided by a recognized national organization, educational institution, or the federal government that is acceptable to the department; or

(b) Have received individualized training in a manner approved by the department; and

(c) Have successfully completed any required examinations.

(8) No interim certification shall be valid after January 1, 1992, and interim certification shall not automatically qualify operators for certification pursuant to subsections (2) through (4) of this section. [1989 c 431 § 68.]

70.95D.050 Board of advisors. (1) A board of advisors for solid waste incinerator and landfill operator certification shall be established. The board shall be a subcommittee of the solid waste advisory committee created under RCW 70.95.040 and shall be comprised of five members appointed by the director. The members

shall be knowledgeable about solid waste handling technologies including but not limited to combustion boiler and pollution control technologies and their potential environmental impacts such as air emissions and ash residues. Collectively, the committee shall include at least two members who are knowledgeable about the operation and management of landfills and are certified by a national organization or the federal government as landfill operators.

(2) This board shall act as an advisory committee to the department and shall review and comment on the rules adopted under this chapter. [1989 c 431 § 69.]

70.95D.060 Revocation of certification. (1) The director may, with the recommendation of the board and after a hearing before the board, revoke a certificate:

(a) If it were found to have been obtained by fraud or deceit;

(b) For gross negligence in the operation of a solid waste incinerator or landfill;

(c) For violating the requirements of this chapter or any lawful rule or order of the department; or

(d) If the facility operated by the certified employee is operated in violation of state or federal environmental laws.

(2) A person whose certificate is revoked under this section shall not be eligible to apply for a certificate for one year from the effective date of the final order or [of] revocation. [1989 c 431 § 70.]

70.95D.070 Certification of inspectors. Any person who is employed by a public agency to inspect the operation of a landfill or a solid waste incinerator to determine the compliance of the facility with state or local laws or rules shall be required to be certified in the same manner as an operator under this chapter. [1989 c 431 § 71.]

70.95D.080 Authority of director. To carry out the provisions and purposes of this chapter, the director may:

(1) Enter into agreements, contracts, or cooperative arrangements, under such terms and conditions as the director deems appropriate, with other state, federal, or interstate agencies, municipalities, educational institutions, or other organizations or individuals.

(2) Receive financial and technical assistance from the federal government, other public agencies, and private agencies.

(3) Participate in related programs of the federal government, other states, interstate agencies, other public agencies, or private agencies or organizations.

(4) Upon request, furnish reports, information, and materials relating to the certification program authorized by this chapter to federal, state, or interstate agencies, municipalities, educational institutions, and other organizations and individuals.

(5) Establish adequate fiscal controls and accounting procedures to assure proper disbursement of and accounting for funds appropriated or otherwise provided for the purpose of carrying out this chapter.

(6) Adopt rules under chapter 34.05 RCW. [1989 c 431 § 72.]

70.95D.090 Unlawful acts—Variance from requirements. After January 1, 1992, it is unlawful for any person, firm, corporation, municipal corporation, or other governmental subdivision or agency to operate a solid waste incineration or landfill facility unless the operators are duly certified by the director under this chapter or any lawful rule or order of the department. It is unlawful for any person to perform the duties of an operator without being duly certified under this chapter. The department shall adopt rules that allow the owner or operator of a landfill or solid waste incineration facility to request a variance from this requirement under emergency conditions. The department may impose such conditions as may be necessary to protect human health and the environment during the term of the variance. [1989 c 431 § 73.]

70.95D.100 Penalties. Any person, including any firm, corporation, municipal corporation, or other governmental subdivision or agency, with the exception of incinerator operators, violating any provision of this chapter or the rules adopted under this chapter, is guilty of a misdemeanor. Incinerator operators who violate any provision of this chapter shall be guilty of a gross misdemeanor. Each day of operation in violation of this chapter or any rules adopted under this chapter shall constitute a separate offense. The prosecuting attorney or the attorney general, as appropriate, shall secure injunctions of continuing violations of any provisions of this chapter or the rules adopted under this chapter. [1989 c 431 § 74.]

70.95D.110 Deposit of receipts. All receipts realized in the administration of this chapter shall be paid into the general fund. [1989 c 431 § 75.]

70.95D.900 Severability—1989 c 431. See RCW 70.95.901.

70.95D.901 Section captions not law—1989 c 431. See RCW 70.95.902.

Chapter 70.96 ALCOHOLISM

Sections

70.96.150 Inability to contribute to cost no bar to admission—
Department may limit admissions.

Alcoholism and drug addiction and support act: Chapter 74.50 RCW.

Chemical dependency benefit provisions

group disability contracts: RCW 48.21.160 through 48.21.190.
health care services contracts: RCW 48.44.240.

70.96.150 Inability to contribute to cost no bar to admission. [1959 c 85 § 15.] Repealed by 1989 c 270 § 35.

Reviser's note: This section was amended by 1989 c 271 § 308, without cognizance of the repeal thereof.

[Title 70 RCW—p 192]

70.96.150 Inability to contribute to cost no bar to admission—
Department may limit admissions. The department shall not refuse admission for diagnosis, evaluation, guidance or treatment to any applicant because it is determined that the applicant is financially unable to contribute fully or in part to the cost of any services or facilities available under the program on alcoholism.

The department may limit admissions of such applicants or modify its programs in order to ensure that expenditures for services or programs do not exceed amounts appropriated by the legislature and are allocated by the department for such services or programs. The department may establish admission priorities in the event that the number of eligible applicants exceeds the limits set by the department. [1989 c 271 § 308; 1959 c 85 § 15.]

Reviser's note: This section was also repealed by 1989 c 270 § 35, without cognizance of its amendment by 1989 c 271 § 308. For rule of construction concerning sections amended and repealed in the same legislative session, see RCW 1.12.025.

Severability—1989 c 271: See note following RCW 9.94A.310.

Chapter 70.96A

TREATMENT FOR ALCOHOLISM, INTOXICATION, AND DRUG ADDICTION

(Formerly: Uniform alcoholism and intoxication treatment)

Sections

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70.96A.060 Interdepartmental coordinating committee.
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70.96A.320 Alcoholism and other drug addiction program—
Generally.
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- 70.96A.420 State-wide treatment and operating standards for methadone programs.
 70.96A.910 Application and construction.
 70.96A.915 Department allocation of funds—Construction.
 70.96A.920 Severability—1972 ex.s. c 122.
 70.96A.930 Section, subsection headings not part of law.

Reviser's note: Throughout this chapter "this act" has been translated to "this chapter". This act [1972 ex.s. c 122] consists of chapter 70.96A RCW, the amendment of RCW 9.87.010, 71.24.030 and the repeal of RCW 9.68.040, 70.96.010–70.96.030, 70.96.040–70.96.080, 70.96.090, 70.96.100–70.96.140, 70.96.900, and 71.08.010–71.08.090.

Alcoholism and drug addiction and support act: Chapter 74.50 RCW.

70.96A.010 Declaration of policy. It is the policy of this state that alcoholics and intoxicated persons may not be subjected to criminal prosecution solely because of their consumption of alcoholic beverages but rather should, within available funds, be afforded a continuum of treatment in order that they may lead normal lives as productive members of society. Within available funds, treatment should also be provided for drug addicts. [1989 c 271 § 304; 1972 ex.s. c 122 § 1.]

Severability—1989 c 271: See note following RCW 9.94A.310.

Effective date—1972 ex.s. c 122. "Chapter 122, Laws of 1972 extraordinary session shall be effective January 1, 1975." [1973 c 92 § 1; 1972 ex.s. c 122 § 31.] This applies to chapter 70.96A RCW, to the amendment of RCW 9.87.010 and 71.24.030, and to the repeal of RCW 9.68.040, 70.96.010–70.96.030, 70.96.040–70.96.080, 70.96.090, 70.96.100–70.96.140, 70.96.900, and 71.08.010–71.08.090.

Chemical dependency benefit provisions

group disability contracts: RCW 48.21.160–48.21.190.

health care services contracts: RCW 48.44.240.

70.96A.011 Legislative finding and intent—Purpose of chapter. The legislature finds that the use of alcohol and other drugs has become a serious threat to the health of the citizens of the state of Washington. The use of psychoactive chemicals has been found to be a prime factor in the current AIDS epidemic. Therefore, a comprehensive statute to deal with alcoholism and other drug addiction is necessary.

The legislature agrees with the 1987 resolution of the American Medical Association that endorses the proposition that all chemical dependencies, including alcoholism, are diseases. It is the intent of the legislature to end the sharp distinctions between alcoholism services and other drug addiction services, to recognize that chemical dependency is a disease, and to insure that prevention and treatment services are available and are of high quality. It is the purpose of this chapter to provide the financial assistance necessary to enable the department of social and health services to provide a discrete program of alcoholism and other drug addiction services. [1989 c 270 § 1.]

70.96A.020 Definitions (as amended by 1989 c 270). For the purposes of this chapter the following words and phrases shall have the following meanings unless the context clearly requires otherwise:

(1) "Alcoholic" means a person who (~~habitually lacks self-control as to the use of alcoholic beverages, or uses alcoholic beverages to the extent that his health is substantially impaired or endangered or his social or economic function is substantially disrupted;~~) suffers from the disease of alcoholism.

(2) "Alcoholism" means a disease, characterized by a dependency on alcoholic beverages, loss of control over the amount and circumstances of use, symptoms of tolerance, physiological or psychological

withdrawal, or both, if use is reduced or discontinued, and impairment of health or disruption of social or economic functioning.

(3) "Approved treatment (~~(facility))~~ program" means a discrete program of chemical dependency treatment provided by a treatment (~~(agency operating under the direction and control of))~~ program certified by the department of social and health services (~~(or providing treatment))~~ as meeting standards adopted under this chapter (~~(through a contract with the department under RCW 70.96A.080(6) and meeting the standards prescribed in RCW 70.96A.090(1) and approved under RCW 70.96A.090(3);)~~).

(~~(3)~~) "Secretary" means the secretary of the department of social and health services;)

(4) "Chemical dependency" means alcoholism or drug addiction, or dependence on alcohol and one or more other psychoactive chemicals, as the context requires.

(5) "Chemical dependency program" means expenditures and activities of the department designed and conducted to prevent or treat alcoholism and other drug addiction, including reasonable administration and overhead.

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

(~~(5)~~) (7) "Director" means the (~~(director of the division of alcoholism;))~~ person administering the chemical dependency program within the department.

(~~(6)~~) (8) "Drug addict" means a person who suffers from the disease of drug addiction.

(9) "Drug addiction" means a disease characterized by a dependency on psychoactive chemicals, loss of control over the amount and circumstances of use, symptoms of tolerance, physiological or psychological withdrawal, or both, if use is reduced or discontinued, and impairment of health or disruption of social or economic functioning.

(10) "Emergency service patrol" means a patrol established under RCW 70.96A.170(;;).

(~~(7)~~) (11) "Incapacitated by alcohol or other psychoactive chemicals" means that a person, as a result of the use of alcohol or other psychoactive chemicals, has his or her judgment so impaired that he or she is incapable of realizing and making a rational decision with respect to his or her need for treatment and constitutes a danger to himself or herself, to any other person, or to property(;;).

(~~(8)~~) (12) "Incompetent person" means a person who has been adjudged incompetent by the superior court(;;).

(~~(9)~~) (13) "Intoxicated person" means a person whose mental or physical functioning is substantially impaired as a result of the use of alcohol(;;) or other psychoactive chemicals.

(~~(10)~~) (14) "Secretary" means the department of social and health services.

(15) "Treatment" means the broad range of emergency, detoxification, residential, and outpatient(~~(, intermediate, and inpatient and emergency))~~ services and care, including diagnostic evaluation, chemical dependency education and counseling, medical, psychiatric, psychological, and social service care, vocational rehabilitation and career counseling, which may be extended to alcoholics and other drug addicts and their families, persons incapacitated by alcohol or other psychoactive chemicals, and intoxicated persons.

(16) "Treatment program" means an organization, institution, or corporation, public or private, engaged in the care, treatment, or rehabilitation of alcoholics or other drug addicts. [1989 c 270 § 3; 1972 ex.s. c 122 § 2.]

70.96A.020 Definitions (as amended by 1989 c 271). For the purposes of this chapter the following words and phrases shall have the following meanings unless the context clearly requires otherwise:

(1) "Alcoholic" means a person who (~~habitually lacks self-control as to the use of alcoholic beverages, or uses alcoholic beverages to the extent that his health is substantially impaired or endangered or his social or economic function is substantially disrupted;~~) suffers from the disease of alcoholism, characterized by a physiological dependency on alcoholic beverages, loss of control over the amount and circumstances of use, symptoms of tolerance, physiological and/or psychological withdrawal if use is reduced or discontinued, and impairment of health or disruption of social or economic functioning;

(2) "Drug addict" means a person who uses drugs other than alcohol in a chronic, compulsive, or uncontrollable manner, to the extent that it is seriously interfering with the individual's health, economic, or social functioning. Drug addiction is characterized by a compulsive

desire for one or more drugs, loss of control when exposed to one or more drugs, and continued use in spite of adverse consequences;

(3) "Approved treatment facility" means a treatment agency operating under the direction and control of the department of social and health services or providing treatment under this chapter through a contract with the department under *RCW 70.96A.080(6) and meeting the standards prescribed in RCW 70.96A.090(1) and approved under **RCW 70.96A.090(3) or meeting the standards prescribed in and approved under ***RCW 69.54.030;

((+3)) (4) "Secretary" means the secretary of the department of social and health services;

((+4)) (5) "Department" means the department of social and health services;

((+5) "Director" means the director of the division of alcoholism;)

(6) "Emergency service patrol" means a patrol established under RCW 70.96A.170;

(7) "Incapacitated by alcohol or other drugs" means that a person, as a result of the use of alcohol or other drugs, has his or her judgment so impaired that he or she is incapable of realizing and making a rational decision with respect to ~~((+8))~~ the need for treatment or care and constitutes a danger to himself or herself, to any other person, or to property;

(8) "Gravely disabled by alcohol or other drugs" means that a person, as a result of the use of alcohol or other drugs: (a) Is in danger of serious physical harm resulting from a failure to provide for his or her essential human needs of health or safety; or (b) manifests severe deterioration in routine functioning evidenced by a repeated and escalating loss of cognition or volitional control over his or her actions and is not receiving care as essential for his or her health or safety;

(9) "Incompetent person" means a person who has been adjudged incompetent by the superior court;

((+9)) (10) "Intoxicated person" means a person whose mental or physical functioning is substantially impaired as a result of the use of alcohol or other drugs;

((+10)) (11) "Treatment" means the broad range of emergency, outpatient, intermediate, and inpatient and emergency services and care, including diagnostic evaluation, medical, psychiatric, psychological, and social service care, vocational rehabilitation and career counseling, which may be extended to alcoholics, drug addicts, persons incapacitated by alcohol or other drugs, and intoxicated persons;

(12) "Peace officer" means a law enforcement official of a public agency or governmental unit, and includes persons specifically given peace officer powers by any state law, local ordinance, or judicial order of appointment;

(13) "Licensed physician" means a person licensed to practice medicine or osteopathy in the state of Washington. [1989 c 271 § 305; 1972 ex.s. c 122 § 2.]

Reviser's note: (1) RCW 70.96A.020 was amended twice during the 1989 legislative session, each without reference to the other. For rule of construction concerning sections amended more than once during the same legislative session, see RCW 1.12.025.

* (2) RCW 70.96A.080(6) was renumbered as RCW 70.96A.080(4) by 1989 c 270 § 18.

** (3) RCW 70.96A.090(3) was renumbered as RCW 70.96A.090(7) by 1989 c 270 § 19.

*** (4) RCW 69.54.030 was repealed by 1989 c 270 § 35; for later enactment, cf. RCW 70.96A.090.

Severability—1989 c 271: See note following RCW 9.94A.310.

70.96A.030 Chemical dependency program. A discrete program of chemical dependency is established within the department of social and health services, to be administered by a qualified person who has training and experience in handling alcoholism and other drug addiction problems or the organization or administration of treatment services for persons suffering from alcoholism or other drug addiction problems. [1989 c 270 § 4; 1972 ex.s. c 122 § 3.]

70.96A.040 Program authority. The department, in the operation of the chemical dependency program may:

(1) Plan, establish, and maintain prevention and treatment programs as necessary or desirable;

(2) Make contracts necessary or incidental to the performance of its duties and the execution of its powers, including contracts with public and private agencies, organizations, and individuals to pay them for services rendered or furnished to alcoholics or other drug addicts, persons incapacitated by alcohol or other psychoactive chemicals, or intoxicated persons;

(3) Enter into agreements for monitoring of verification of qualifications of counselors employed by approved treatment programs;

(4) Adopt rules under chapter 34.05 RCW to carry out the provisions and purposes of this chapter and contract, cooperate, and coordinate with other public or private agencies or individuals for those purposes;

(5) Solicit and accept for use any gift of money or property made by will or otherwise, and any grant of money, services, or property from the federal government, the state, or any political subdivision thereof or any private source, and do all things necessary to cooperate with the federal government or any of its agencies in making an application for any grant;

(6) Administer or supervise the administration of the provisions relating to alcoholics, other drug addicts, and intoxicated persons of any state plan submitted for federal funding pursuant to federal health, welfare, or treatment legislation;

(7) Coordinate its activities and cooperate with chemical dependency programs in this and other states, and make contracts and other joint or cooperative arrangements with state, local, or private agencies in this and other states for the treatment of alcoholics and other drug addicts and their families, persons incapacitated by alcohol or other psychoactive chemicals, and intoxicated persons and for the common advancement of chemical dependency programs;

(8) Keep records and engage in research and the gathering of relevant statistics;

(9) Do other acts and things necessary or convenient to execute the authority expressly granted to it;

(10) Acquire, hold, or dispose of real property or any interest therein, and construct, lease, or otherwise provide treatment programs. [1989 c 270 § 5; 1988 c 193 § 2; 1972 ex.s. c 122 § 4.]

70.96A.043 Agreements authorized under the Interlocal Cooperation Act. Pursuant to the Interlocal Cooperation Act, chapter 39.34 RCW, the department may enter into agreements to accomplish the purposes of this chapter. [1989 c 270 § 7.]

70.96A.045 Funding prerequisites, facilities, plans, or programs receiving financial assistance. All facilities, plans, or programs receiving financial assistance under RCW 70.96A.040 must be approved by the department before any state funds may be used to provide the financial assistance. If the facilities, plans, or programs have not been approved as required or do not receive the required approval, the funds set aside for the facility, plan, or program shall be made available for allocation

to facilities, plans, or programs that have received the required approval of the department. In addition, whenever there is an excess of funds set aside for a particular approved facility, plan, or program, the excess shall be made available for allocation to other approved facilities, plans, or programs. [1989 c 270 § 10.]

70.96A.047 Local funding and donative funding requirements—Facilities, plans, programs. Except as provided in this chapter, the secretary shall not approve any facility, plan, or program for financial assistance under RCW 70.96A.040 unless at least ten percent of the amount spent for the facility, plan, or program is provided from local public or private sources. When deemed necessary to maintain public standards of care in the facility, plan, or program, the secretary may require the facility, plan, or program to provide up to fifty percent of the total spent for the program through fees, gifts, contributions, or volunteer services. The secretary shall determine the value of the gifts, contributions, and volunteer services. [1989 c 270 § 11.]

70.96A.050 Duties of department. The department shall:

(1) Develop, encourage, and foster state-wide, regional, and local plans and programs for the prevention of alcoholism and other drug addiction, treatment of alcoholics and other drug addicts and their families, persons incapacitated by alcohol or other psychoactive chemicals, and intoxicated persons in cooperation with public and private agencies, organizations, and individuals and provide technical assistance and consultation services for these purposes;

(2) Coordinate the efforts and enlist the assistance of all public and private agencies, organizations, and individuals interested in prevention of alcoholism and drug addiction, and treatment of alcoholics and other drug addicts and their families, persons incapacitated by alcohol or other psychoactive chemicals, and intoxicated persons;

(3) Cooperate with public and private agencies in establishing and conducting programs to provide treatment for alcoholics and other drug addicts and their families, persons incapacitated by alcohol or other psychoactive chemicals, and intoxicated persons who are clients of the correctional system;

(4) Cooperate with the superintendent of public instruction, state board of education, schools, police departments, courts, and other public and private agencies, organizations and individuals in establishing programs for the prevention of alcoholism and other drug addiction, treatment of alcoholics or other drug addicts and their families, persons incapacitated by alcohol and other psychoactive chemicals, and intoxicated persons, and preparing curriculum materials thereon for use at all levels of school education;

(5) Prepare, publish, evaluate, and disseminate educational material dealing with the nature and effects of alcohol and other psychoactive chemicals and the consequences of their use;

(6) Develop and implement, as an integral part of treatment programs, an educational program for use in the treatment of alcoholics or other drug addicts, persons incapacitated by alcohol and other psychoactive chemicals, and intoxicated persons, which program shall include the dissemination of information concerning the nature and effects of alcohol and other psychoactive chemicals, the consequences of their use, the principles of recovery, and HIV and AIDS;

(7) Organize and foster training programs for persons engaged in treatment of alcoholics or other drug addicts, persons incapacitated by alcohol and other psychoactive chemicals, and intoxicated persons;

(8) Sponsor and encourage research into the causes and nature of alcoholism and other drug addiction, treatment of alcoholics and other drug addicts, persons incapacitated by alcohol and other psychoactive chemicals, and intoxicated persons, and serve as a clearing house for information relating to alcoholism or other drug addiction;

(9) Specify uniform methods for keeping statistical information by public and private agencies, organizations, and individuals, and collect and make available relevant statistical information, including number of persons treated, frequency of admission and readmission, and frequency and duration of treatment;

(10) Advise the governor in the preparation of a comprehensive plan for treatment of alcoholics and other drug addicts, persons incapacitated by alcohol or other psychoactive chemicals, and intoxicated persons for inclusion in the state's comprehensive health plan;

(11) Review all state health, welfare, and treatment plans to be submitted for federal funding under federal legislation, and advise the governor on provisions to be included relating to alcoholism and other drug addiction, persons incapacitated by alcohol or other psychoactive chemicals, and intoxicated persons;

(12) Assist in the development of, and cooperate with, programs for alcohol and other psychoactive chemical education and treatment for employees of state and local governments and businesses and industries in the state;

(13) Use the support and assistance of interested persons in the community to encourage alcoholics and other drug addicts voluntarily to undergo treatment;

(14) Cooperate with public and private agencies in establishing and conducting programs designed to deal with the problem of persons operating motor vehicles while intoxicated;

(15) Encourage general hospitals and other appropriate health facilities to admit without discrimination alcoholics and other drug addicts, persons incapacitated by alcohol or other psychoactive chemicals, and intoxicated persons and to provide them with adequate and appropriate treatment;

(16) Encourage all health and disability insurance programs to include alcoholism and other drug addiction as a covered illness; and

(17) Organize and sponsor a state-wide program to help court personnel, including judges, better understand the disease of alcoholism and other drug addiction and the uses of chemical dependency treatment programs.

[1989 c 270 § 6; 1979 ex.s. c 176 § 7; 1972 ex.s. c 122 § 5.]

Severability—1979 ex.s. c 176: See note following RCW 46.61.502.

70.96A.060 Interdepartmental coordinating committee. (1) An interdepartmental coordinating committee is established, composed of the superintendent of public instruction or his or her designee, the director of licensing or his or her designee, the executive secretary of the Washington state law enforcement training commission or his or her designee, and one or more designees (not to exceed three) of the secretary, one of whom shall be the director of the chemical dependency program. The committee shall meet at least twice annually at the call of the secretary, or his or her designee, who shall be its chair. The committee shall provide for the coordination of, and exchange of information on, all programs relating to alcoholism and other drug addiction, and shall act as a permanent liaison among the departments engaged in activities affecting alcoholics and other drug addicts, persons incapacitated by alcohol or other psychoactive chemicals, and intoxicated persons. The committee shall assist the secretary and director in formulating a comprehensive plan for prevention of alcoholism and other drug addiction, for treatment of alcoholics and other drug addicts, persons incapacitated by alcohol or other psychoactive chemicals, and intoxicated persons.

(2) In exercising its coordinating functions, the committee shall assure that:

(a) The appropriate state agencies provide or assure all necessary medical, social, treatment, and educational services for alcoholics and other drug addicts and their families, persons incapacitated by alcohol or other psychoactive chemicals, and intoxicated persons and for the prevention of alcoholism and other chemical dependency, without unnecessary duplication of services;

(b) The several state agencies cooperate in the use of facilities and in the treatment of alcoholics and other drug addicts, persons incapacitated by alcohol or other psychoactive chemicals, and intoxicated persons; and

(c) All state agencies adopt approaches to the prevention of alcoholism and other drug addiction, the treatment of alcoholics and other drug addicts and their families, persons incapacitated by alcohol or other psychoactive chemicals, and intoxicated persons consistent with the policy of this chapter. [1989 c 270 § 8; 1979 c 158 § 220; 1972 ex.s. c 122 § 6.]

70.96A.070 Citizens advisory council—Qualifications—Duties. Pursuant to the provisions of RCW 43.20A.360, there shall be a citizens advisory council composed of not less than seven nor more than fifteen members, at least two of whom shall be recovered alcoholics or other recovered drug addicts and two of whom shall be members of recognized organizations involved with problems of alcoholism and other drug addiction. The remaining members shall be broadly representative of the community, shall include representation from business and industry, organized labor, the judiciary,

and minority groups, chosen for their demonstrated concern with alcoholism and other drug addiction problems. Members shall be appointed by the secretary. In addition to advising the department in carrying out the purposes of this chapter, the council shall develop and propose to the secretary for his or her consideration the rules for the implementation of the chemical dependency program of the department. The secretary shall thereafter adopt such rules that, in his or her judgment properly implement the chemical dependency program of the department consistent with the welfare of those to be served, the legislative intent, and the public good. [1989 c 270 § 9; 1973 1st ex.s. c 155 § 1; 1972 ex.s. c 122 § 7.]

Effective date—1972 ex.s. c 122: See note following RCW 70.96A.010.

70.96A.080 Comprehensive program for treatment—Regional facilities. (1) The department shall establish by all appropriate means, including contracting for services, a comprehensive and coordinated discrete program for the treatment of alcoholics and other drug addicts and their families, persons incapacitated by alcohol or other psychoactive chemicals, and intoxicated persons.

(2) The program shall include, but not necessarily be limited to:

- (a) Detoxification;
- (b) Residential treatment; and
- (c) Outpatient treatment.

(3) All appropriate public and private resources shall be coordinated with and used in the program when possible.

(4) The department may contract for the use of an approved treatment program or other individual or organization if the secretary considers this to be an effective and economical course to follow. [1989 c 270 § 18; 1972 ex.s. c 122 § 8.]

70.96A.085 City, town, or county without facility—Contribution of liquor taxes prerequisite to use of another's facility. A city, town, or county that does not have its own facility or program for the treatment and rehabilitation of alcoholics and other drug addicts may share in the use of a facility or program maintained by another city or county so long as it contributes no less than two percent of its share of liquor taxes and profits to the support of the facility or program. [1989 c 270 § 12.]

70.96A.087 Liquor taxes and profits—City and county eligibility conditioned. To be eligible to receive its share of liquor taxes and profits, each city and county shall devote no less than two percent of its share of liquor taxes and profits to the support of a program of alcoholism and other drug addiction approved by the alcoholism and other drug addiction board authorized by RCW 70.96A.300 and the secretary. [1989 c 270 § 13.]

70.96A.090 Standards for public and private treatment facilities—Enforcement procedures—Penalties (as amended by 1989 c 175). (1) The department shall establish standards for approved treatment facilities that must be met for a treatment facility to be approved

as a public or private treatment facility, and fix the fees to be charged by the department for the required inspections. The standards may concern the health standards to be met and standards of services and treatment to be afforded patients.

(2) The department periodically shall inspect approved public and private treatment facilities at reasonable times and in a reasonable manner.

(3) The department shall maintain a list of approved public and private treatment facilities at reasonable times and in a reasonable manner.

(4) Each approved public and private treatment facility shall file with the department on request, data, statistics, schedules, and information the department reasonably requires. An approved public or private treatment facility that without good cause fails to furnish any data, statistics, schedules, or information as requested, or files fraudulent returns thereof, may be removed from the list of approved treatment facilities, and its approval revoked or suspended.

(5) The ~~((division, after holding a hearing,))~~ department may suspend, revoke, limit, ~~((or))~~ restrict, or modify an approval, or ~~((without hearing,))~~ refuse to grant an approval, for failure to meet the provisions of this chapter, or the standards established thereunder. RCW 43.20A.205 governs notice of a license denial, revocation, suspension, or modification and provides the right to an adjudicative proceeding.

~~((The superior court may restrain any violation of this section, review any denial, restriction, or revocation of approval, and grant other relief required to enforce its provisions:))~~

~~((7))~~ Upon petition of the department and after a hearing held upon reasonable notice to the facility, the superior court may issue a warrant to an officer or employee of the department authorizing him to enter and inspect at reasonable times, and examine the books and accounts of, any approved public or private treatment facility refusing to consent to inspection or examination by the department or which the department has reasonable cause to believe is operating in violation of this chapter. [1989 c 175 § 131; 1972 ex.s. c 122 § 9.]

Effective date—1989 c 175: See note following RCW 34.05.010.

70.96A.090 Standards for treatment programs—Enforcement procedures—Penalties (as amended by 1989 c 270). (1) The department shall adopt rules establishing standards for approved treatment ~~((facilities that must be met for a treatment facility to be))~~ programs, the process for the review and inspection program applying to the department for certification as an approved ~~((as a public or private))~~ treatment ~~((facility))~~ program, and fixing the fees to be charged by the department for the required inspections. The standards may concern the health standards to be met and standards of services and treatment to be afforded patients.

(2) The department may either grant or deny a certification of approval or revoke or suspend certification previously granted after investigation to ascertain whether or not the treatment program meets the standards adopted under this chapter.

(3) No treatment program may advertise or represent itself as an approved treatment program if approval has not been granted, has been denied, suspended, revoked, or canceled.

(4) Certification as an approved treatment program is effective for one calendar year from the date of issuance of the certificate. The certification shall specify the types of services provided by the approved treatment program that meet the standards adopted under this chapter. Renewal of certification shall be made in accordance with this section for initial approval and in accordance with the standards set forth in rules adopted by the secretary.

(5) Approved treatment programs shall not provide alcoholism or other drug addiction treatment services for which the approved treatment program has not been certified. Approved treatment programs may provide services for which approval has been sought and is pending, if approval for the services has not been previously revoked or denied.

(6) The department periodically shall inspect approved public and private treatment ~~((facilities))~~ programs at reasonable times and in a reasonable manner.

~~((3))~~ (7) The department shall maintain and periodically publish a current list of approved ~~((public and private))~~ treatment ~~((facilities at reasonable times and in a reasonable manner))~~ programs.

~~((4))~~ (8) Each approved ~~((public and private))~~ treatment ~~((facility))~~ program shall file with the department on request, data, statistics, schedules, and information the department reasonably requires. An approved ~~((public or private))~~ treatment ~~((facility))~~ program that

without good cause fails to furnish any data, statistics, schedules, or information as requested, or files fraudulent returns thereof, may be removed from the list of approved treatment ~~((facilities))~~ programs, and its ~~((approval))~~ certification revoked or suspended.

~~((5))~~ The division, after holding a hearing, may suspend, revoke, limit, or restrict an approval, or without hearing, refuse to grant an approval, for failure to meet the provisions of this chapter, or the standards established thereunder.

~~((6))~~ (9) The superior court may restrain any violation of this section, review any denial, restriction, or revocation of approval, and grant other relief required to enforce its provisions.

~~((7))~~ (10) Upon petition of the department and after a hearing held upon reasonable notice to the facility, the superior court may issue a warrant to an officer or employee of the department authorizing him or her to enter and inspect at reasonable times, and examine the books and accounts of, any approved public or private treatment ~~((facility))~~ program refusing to consent to inspection or examination by the department or which the department has reasonable cause to believe is operating in violation of this chapter. [1989 c 270 § 19; 1972 ex.s. c 122 § 9.]

Reviser's note: RCW 70.96A.090 was amended twice during the 1989 legislative session, each without reference to the other. For rule of construction concerning sections amended more than once during the same legislative session, see RCW 1.12.025.

70.96A.095 Age of consent for treatment program.

Any person fourteen years of age or older may give consent for himself or herself to the furnishing of counseling, care, treatment, or rehabilitation by a treatment program or by any person. Consent of the parent, parents, or legal guardian of a person less than eighteen years of age is not necessary to authorize the care, except that the person shall not become a resident of the treatment program without such permission except as provided in RCW 70.96A.120. The parent, parents, or legal guardian of a person less than eighteen years of age are not liable for payment of care for such persons pursuant to this chapter, unless they have joined in the consent to the counseling, care, treatment, or rehabilitation. [1989 c 270 § 24.]

70.96A.100 Acceptance for approved treatment—Rules. The secretary shall adopt and may amend and repeal rules for acceptance of persons into the approved treatment program, considering available treatment resources and facilities, for the purpose of early and effective treatment of alcoholics and other drug addicts, persons incapacitated by alcohol or other psychoactive chemicals, and intoxicated persons. In establishing the rules, the secretary shall be guided by the following standards:

(1) If possible a patient shall be treated on a voluntary rather than an involuntary basis.

(2) A patient shall be initially assigned or transferred to outpatient treatment, unless he or she is found to require residential treatment.

(3) A person shall not be denied treatment solely because he or she has withdrawn from treatment against medical advice on a prior occasion or because he or she has relapsed after earlier treatment.

(4) An individualized treatment plan shall be prepared and maintained on a current basis for each patient.

(5) Provision shall be made for a continuum of coordinated treatment services, so that a person who leaves a

facility or a form of treatment will have available and use other appropriate treatment. [1989 c 270 § 23; 1972 ex.s. c 122 § 10.]

70.96A.110 Voluntary treatment of alcoholics or other drug addicts. (1) An alcoholic or other drug addict may apply for voluntary treatment directly to an approved treatment program. If the proposed patient is a minor or an incompetent person, he or she, a parent, a legal guardian, or other legal representative may make the application.

(2) Subject to rules adopted by the secretary, the administrator in charge of an approved treatment program may determine who shall be admitted for treatment. If a person is refused admission to an approved treatment program, the administrator, subject to rules adopted by the secretary, shall refer the person to another approved treatment program for treatment if possible and appropriate.

(3) If a patient receiving inpatient care leaves an approved treatment program, he or she shall be encouraged to consent to appropriate outpatient treatment. If it appears to the administrator in charge of the treatment program that the patient is an alcoholic or other drug addict who requires help, the department may arrange for assistance in obtaining supportive services and residential facilities.

(4) If a patient leaves an approved public treatment program, with or against the advice of the administrator in charge of the facility, the department may make reasonable provisions for his or her transportation to another facility or to his or her home. If the patient has no home he or she should be assisted in obtaining shelter. If the patient is less than fourteen years of age or an incompetent person the request for discharge from an inpatient facility shall be made by a parent, legal guardian, or other legal representative or by the minor or incompetent if he or she was the original applicant. [1989 c 270 § 25; 1972 ex.s. c 122 § 11.]

70.96A.120 Treatment and services for intoxicated persons and persons incapacitated by alcohol or other drugs. (1) An intoxicated person may come voluntarily to an approved treatment facility for treatment. A person who appears to be intoxicated in a public place and to be in need of help, if he or she consents to the proffered help, may be assisted to his or her home, an approved treatment facility or other health facility.

(2) Except for a person who may be apprehended for possible violation of laws not relating to alcoholism, drug addiction, or intoxication and except for a person who may be apprehended for possible violation of laws relating to driving or being in physical control of a vehicle while intoxicated and except for a person who may wish to avail himself or herself of the provisions of RCW 46.20.308, a person who appears to be incapacitated or gravely disabled by alcohol or other drugs and who is in a public place or who has threatened, attempted, or inflicted physical harm on himself, herself, or another, shall be taken into protective custody by a peace officer

or staff designated by the county and as soon as practicable, but in no event beyond eight hours brought to an approved treatment facility for treatment. If no approved treatment facility is readily available he or she shall be taken to an emergency medical service customarily used for incapacitated persons. The peace officer or staff designated by the county, in detaining the person and in taking him or her to an approved treatment facility, is taking him or her into protective custody and shall make every reasonable effort to protect his or her health and safety. In taking the person into protective custody, the detaining peace officer or staff designated by the county may take reasonable steps including reasonable force if necessary to protect himself or herself or effect the custody. A taking into protective custody under this section is not an arrest. No entry or other record shall be made to indicate that the person has been arrested or charged with a crime.

(3) A person who comes voluntarily or is brought to an approved treatment facility shall be examined by a qualified person. He or she may then be admitted as a patient or referred to another health facility, which provides emergency medical treatment, where it appears that such treatment may be necessary. The referring approved treatment facility shall arrange for his or her transportation.

(4) A person who is found to be incapacitated or gravely disabled by alcohol or other drugs at the time of his or her admission or to have become incapacitated or gravely disabled at any time after his or her admission, may not be detained at the facility for more than seventy-two hours after admission as a patient, unless a petition is filed under RCW 70.96A.140, as now or hereafter amended: *Provided*, That the treatment personnel at an approved treatment facility are authorized to use such reasonable physical restraint as may be necessary to retain an incapacitated or gravely disabled person for up to seventy-two hours from the time of admission. The seventy-two hour periods specified in this section shall be computed by excluding Saturdays, Sundays, and holidays. A person may consent to remain in the facility as long as the physician in charge believes appropriate.

(5) A person who is not admitted to an approved treatment facility, is not referred to another health facility, and has no funds, may be taken to his or her home, if any. If he or she has no home, the approved treatment facility shall provide him or her with information and assistance to access available community shelter resources.

(6) If a patient is admitted to an approved treatment facility, his or her family or next of kin shall be notified as promptly as possible by the treatment facility. If an adult patient who is not incapacitated requests that there be no notification, his or her request shall be respected.

(7) The peace officer, staff designated by the county, or treatment facility personnel, who act in compliance with this chapter and are performing in the course of their official duty are not criminally or civilly liable therefor.

(8) If the person in charge of the approved treatment facility determines that appropriate treatment is available, the patient shall be encouraged to agree to further diagnosis and appropriate voluntary treatment. [1989 c 271 § 306; 1987 c 439 § 13; 1977 ex.s. c 62 § 1; 1974 ex.s. c 175 § 1; 1972 ex.s. c 122 § 12.]

Severability—1989 c 271: See note following RCW 9.94A.310.

70.96A.140 Involuntary commitment of alcoholics.

(1) When the person in charge of a treatment facility, or his or her designee, receives information alleging that a person is incapacitated as a result of alcoholism, the person in charge, or his or her designee, after investigation and evaluation of the specific facts alleged and of the reliability and credibility of the information, may file a petition for commitment of such person with the superior court or district court. If the person in charge, or his or her designee, finds that the initial needs of such person would be better served by placement within the mental health system, the person shall be referred to an evaluation and treatment facility as defined in RCW 71.05.020. If placement in an alcohol treatment facility is available and deemed appropriate, the petition shall allege that: The person is an alcoholic who is incapacitated by alcohol, or that the person has twice before in the preceding twelve months been admitted for detoxification or treatment for alcoholism pursuant to RCW 70.96A.110 and is in need of a more sustained treatment program, or that the person is an alcoholic who has threatened, attempted, or inflicted physical harm on another and is likely to inflict physical harm on another unless committed. A refusal to undergo treatment, by itself, does not constitute evidence of lack of judgment as to the need for treatment. The petition shall be accompanied by a certificate of a licensed physician who has examined the person within five days before submission of the petition, unless the person whose commitment is sought has refused to submit to a medical examination, in which case the fact of refusal shall be alleged in the petition. The certificate shall set forth the licensed physician's findings in support of the allegations of the petition. A physician employed by the petitioning facility or the department is eligible to be the certifying physician.

(2) Upon filing the petition, the court shall fix a date for a hearing no less than two and no more than seven days after the date the petition was filed unless the person petitioned against is presently being detained in a facility, pursuant to RCW 70.96A.120 or 71.05.210, as now or hereafter amended, in which case the hearing shall be held within seventy-two hours of the filing of the petition: *Provided, however,* That the above specified seventy-two hours shall be computed by excluding Saturdays, Sundays, and holidays: *Provided further,* That, the court may, upon motion of the person whose commitment is sought, or upon motion of petitioner with written permission of the person whose commitment is sought, or his or her counsel and, upon good cause shown, extend the date for the hearing. A copy of the petition and of the notice of the hearing, including the

date fixed by the court, shall be served by the treatment facility on the person whose commitment is sought, his or her next of kin, a parent or his or her legal guardian if he or she is a minor, and any other person the court believes advisable. A copy of the petition and certificate shall be delivered to each person notified.

(3) At the hearing the court shall hear all relevant testimony, including, if possible, the testimony, which may be telephonic, of at least one licensed physician who has examined the person whose commitment is sought. Communications otherwise deemed privileged under the laws of this state are deemed to be waived in proceedings under this chapter when a court of competent jurisdiction in its discretion determines that the waiver is necessary to protect either the detained person or the public. The waiver of a privilege under this section is limited to records or testimony relevant to evaluation of the detained person for purposes of a proceeding under this chapter. Upon motion by the detained person, or on its own motion, the court shall examine a record or testimony sought by a petitioner to determine whether it is within the scope of the waiver.

The record maker shall not be required to testify in order to introduce medical, nursing, or psychological records of detained persons so long as the requirements of RCW 5.45.020 are met, except that portions of the record that contain opinions as to whether the detained person is an alcoholic must be deleted from the records unless the person offering the opinions is available for cross-examination. The person shall be present unless the court believes that his or her presence is likely to be injurious to him or her; in this event the court may deem it appropriate to appoint a guardian ad litem to represent him or her throughout the proceeding. If deemed advisable, the court may examine the person out of courtroom. If the person has refused to be examined by a licensed physician, he or she shall be given an opportunity to be examined by a court appointed licensed physician. If he or she refuses and there is sufficient evidence to believe that the allegations of the petition are true, or if the court believes that more medical evidence is necessary, the court may make a temporary order committing him or her to the department for a period of not more than five days for purposes of a diagnostic examination.

(4) If after hearing all relevant evidence, including the results of any diagnostic examination, the court finds that grounds for involuntary commitment have been established by clear, cogent, and convincing proof, it shall make an order of commitment to an approved treatment facility. It shall not order commitment of a person unless it determines that an approved treatment facility is available and able to provide adequate and appropriate treatment for him or her.

(5) A person committed under this section shall remain in the facility for treatment for a period of sixty days unless sooner discharged. At the end of the sixty-day period, he or she shall be discharged automatically unless the facility, before expiration of the period, files a petition for his or her recommitment upon the grounds set forth in subsection (1) of this section for a further

period of ninety days unless sooner discharged. If a person has been committed because he or she is an alcoholic likely to inflict physical harm on another, the facility shall apply for recommitment if after examination it is determined that the likelihood still exists.

(6) Upon the filing of a petition for recommitment under subsection (5) of this section, the court shall fix a date for hearing no less than two and no more than seven days after the date the petition was filed: *Provided*, That, the court may, upon motion of the person whose commitment is sought and upon good cause shown, extend the date for the hearing. A copy of the petition and of the notice of hearing, including the date fixed by the court, shall be served by the treatment facility on the person whose commitment is sought, his or her next of kin, the original petitioner under subsection (1) of this section if different from the petitioner for recommitment, one of his or her parents or his or her legal guardian if he or she is a minor, and his or her attorney and any other person the court believes advisable. At the hearing the court shall proceed as provided in subsection (3) of this section.

(7) The approved treatment facility shall provide for adequate and appropriate treatment of a person committed to its custody. A person committed under this section may be transferred from one approved public treatment facility to another if transfer is medically advisable.

(8) A person committed to the custody of a facility for treatment shall be discharged at any time before the end of the period for which he or she has been committed and he or she shall be discharged by order of the court if either of the following conditions are met:

(a) In case of an alcoholic committed on the grounds of likelihood of infliction of physical harm upon himself, herself, or another, the likelihood no longer exists; or further treatment will not be likely to bring about significant improvement in the person's condition, or treatment is no longer adequate or appropriate.

(b) In case of an alcoholic committed on the grounds of the need of treatment and incapacity, that the incapacity no longer exists.

(9) The court shall inform the person whose commitment or recommitment is sought of his or her right to contest the application, be represented by counsel at every stage of any proceedings relating to his or her commitment and recommitment, and have counsel appointed by the court or provided by the court, if he or she wants the assistance of counsel and is unable to obtain counsel. If the court believes that the person needs the assistance of counsel, the court shall require, by appointment if necessary, counsel for him or her regardless of his or her wishes. The person shall, if he or she is financially able, bear the costs of such legal service; otherwise such legal service shall be at public expense. The person whose commitment or recommitment is sought shall be informed of his or her right to be examined by a licensed physician of his or her choice. If the person is unable to obtain a licensed physician and requests examination by a physician, the court shall employ a licensed physician.

(10) A person committed under this chapter may at any time seek to be discharged from commitment by writ of habeas corpus in a court of competent jurisdiction.

(11) The venue for proceedings under this section is the county in which person to be committed resides or is present.

(12) When in the opinion of the professional person in charge of the facility providing involuntary treatment under this chapter, the committed patient can be appropriately served by less restrictive treatment before expiration of the period of commitment, then the less restrictive care may be required as a condition for early release for a period which, when added to the initial treatment period, does not exceed the period of commitment. If the facility designated to provide the less restrictive treatment is other than the facility providing the initial involuntary treatment, the facility so designated must agree in writing to assume such responsibility. A copy of the conditions for early release shall be given to the patient, the designated county alcoholism specialist, and the court of original commitment. The facility designated to provide less restrictive care may modify the conditions for continued release when the modifications are in the best interests of the patient. If the facility providing less restrictive care and the designated county alcoholism specialist determine that a conditionally released patient is failing to adhere to the terms and conditions of his or her release, or that substantial deterioration in the patient's functioning has occurred, then the designated county alcoholism specialist shall notify the court of original commitment and request a hearing to be held no less than two and no more than seven days after the date of the request to determine whether or not the person should be returned to more restrictive care. The designated alcoholism specialist shall file a petition with the court stating the facts substantiating the need for the hearing along with the treatment recommendations. The patient shall have the same rights with respect to notice, hearing, and counsel as for the original involuntary treatment proceedings. The issues to be determined at the hearing are whether the conditionally released patient did or did not adhere to the terms and conditions of his or her release to less restrictive care or that substantial deterioration of the patient's functioning has occurred and whether the conditions of release should be modified or the person should be returned to a more restrictive facility. The hearing may be waived by the patient and his or her counsel and his or her guardian or conservator, if any, but may not be waived unless all such persons agree to the waiver. Upon waiver, the person may be returned for involuntary treatment or continued on conditional release on the same or modified conditions. [1989 c 271 § 307; 1987 c 439 § 14; 1977 ex.s. c 129 § 1; 1974 ex.s. c 175 § 2; 1972 ex.s. c 122 § 14.]

Severability—1989 c 271: See note following RCW 9.94A.310.

70.96A.150 Records of alcoholics and intoxicated persons. (1) The registration and other records of treatment facilities shall remain confidential. Records may be

disclosed (a) in accordance with the prior written consent of the patient with respect to whom such record is maintained, (b) if authorized by an appropriate order of a court of competent jurisdiction granted after application showing good cause, (c) to comply with state laws mandating the reporting of suspected child abuse or neglect, or (d) when a patient commits a crime on program premises or against program personnel, or threatens to do so.

(2) Notwithstanding subsection (1) of this section, the secretary may receive information from patients' records for purposes of research into the causes and treatment of alcoholism, and the evaluation of alcoholism and treatment programs. Information under this subsection shall not be published in a way that discloses patients' names or otherwise discloses their identities. [1989 c 162 § 1; 1972 ex.s. c 122 § 15.]

70.96A.160 Visitation and communication with patients. (1) Subject to reasonable rules regarding hours of visitation which the secretary may adopt, patients in any approved treatment program shall be granted opportunities for adequate consultation with counsel, and for continuing contact with family and friends consistent with an effective treatment program.

(2) Neither mail nor other communication to or from a patient in any approved treatment program may be intercepted, read, or censored. The secretary may adopt reasonable rules regarding the use of telephone by patients in approved treatment programs. [1989 c 270 § 29; 1972 ex.s. c 122 § 16.]

70.96A.170 Emergency service patrol—Establishment—Rules. (1) The state and counties, cities, and other municipalities may establish or contract for emergency service patrols which are to be under the administration of the appropriate jurisdiction. A patrol consists of persons trained to give assistance in the streets and in other public places to persons who are intoxicated. Members of an emergency service patrol shall be capable of providing first aid in emergency situations and may transport intoxicated persons to their homes and to and from treatment programs.

(2) The secretary shall adopt rules pursuant to chapter 34.05 RCW for the establishment, training, and conduct of emergency service patrols. [1989 c 270 § 30; 1972 ex.s. c 122 § 17.]

70.96A.180 Payment for treatment—Financial ability of patients. (1) If treatment is provided by an approved treatment program or emergency treatment is provided by a program under *RCW 70.96A.080(2)(a), and the patient has not paid or is unable to pay the charge therefor, the program is entitled to any payment (a) received by the patient or to which he may be entitled because of the services rendered, and (b) from any public or private source available to the program because of the treatment provided to the patient.

(2) A patient in a program, or the estate of the patient, or a person obligated to provide for the cost of treatment and having sufficient financial ability, is liable

to the program for cost of maintenance and treatment of the patient therein in accordance with rates established.

(3) The secretary shall adopt rules governing financial ability that take into consideration the income, savings, and other personal and real property of the person required to pay, and any support being furnished by him to any person he is required by law to support. [1989 c 270 § 31; 1972 ex.s. c 122 § 18.]

*Reviser's note: RCW 70.96A.080(2)(a) was amended by 1989 c 270 § 18 eliminating the reference to emergency treatment.

70.96A.190 Criminal laws limitations. (1) No county, municipality, or other political subdivision may adopt or enforce a local law, ordinance, resolution, or rule having the force of law that includes drinking, being an alcoholic or drug addict, or being found in an intoxicated condition as one of the elements of the offense giving rise to a criminal or civil penalty or sanction.

(2) No county, municipality, or other political subdivision may interpret or apply any law of general application to circumvent the provision of subsection (1) of this section.

(3) Nothing in this chapter affects any law, ordinance, resolution, or rule against drunken driving, driving under the influence of alcohol or other psychoactive chemicals, or other similar offense involving the operation of a vehicle, aircraft, boat, machinery, or other equipment, or regarding the sale, purchase, dispensing, possessing, or use of alcoholic beverages or other psychoactive chemicals at stated times and places or by a particular class of persons; nor shall evidence of intoxication affect, other than as a defense, the application of any law, ordinance, resolution, or rule to conduct otherwise establishing the elements of an offense. [1989 c 270 § 32; 1972 ex.s. c 122 § 19.]

70.96A.300 Counties may create alcoholism and other drug addiction board—Generally. (1) A county or combination of counties acting jointly by agreement, referred to as "county" in this chapter, may create an alcoholism and other drug addiction board. This board may also be designated as a board for other related purposes.

(2) The board shall be composed of not less than seven nor more than fifteen members, who shall be chosen for their demonstrated concern for alcoholism and other drug addiction problems. Members of the board shall be representative of the community, shall include at least one-quarter recovered alcoholics or other recovered drug addicts, and shall include minority group representation. No member may be a provider of alcoholism and other drug addiction treatment services. No more than four elected or appointed city or county officials may serve on the board at the same time. Members of the board shall serve three-year terms and hold office until their successors are appointed and qualified. They shall not be compensated for the performance of their duties as members of the board, but may be reimbursed for travel expenses.

(3) The alcoholism and other drug addiction board shall:

(a) Conduct public hearings and other investigations to determine the needs and priorities of county citizens;

(b) Prepare and recommend to the county legislative authority for approval, all plans, budgets, and applications by the county to the department and other state agencies on behalf of the county alcoholism and other drug addiction program;

(c) Monitor the implementation of the alcoholism and other drug addiction plan and evaluate the performance of the alcoholism and drug addiction program at least annually;

(d) Advise the county legislative authority and county alcoholism and other drug addiction program coordinator on matters relating to the alcoholism and other drug addiction program, including prevention and education;

(e) Nominate individuals to the county legislative authority for the position of county alcoholism and other drug addiction program coordinator. The nominees should have training and experience in the administration of alcoholism and other drug addiction services and shall meet the minimum qualifications established by rule of the department;

(f) Carry out other duties that the department may prescribe by rule. [1989 c 270 § 15.]

70.96A.310 County alcoholism and other drug addiction program—Chief executive officer of program to be program coordinator. (1) The chief executive officer of the county alcoholism and other drug addiction program shall be the county alcoholism and other drug addiction program coordinator. The coordinator shall:

(a) In consultation with the county alcoholism and other drug addiction board, provide general supervision over the county alcoholism and other drug addiction program;

(b) Prepare plans and applications for funds to support the alcoholism and other drug addiction program in consultation with the county alcoholism and other drug addiction board;

(c) Monitor the delivery of services to assure conformance with plans and contracts and, at the discretion of the board, but at least annually, report to the alcoholism and other drug addiction board the results of the monitoring;

(d) Provide staff support to the county alcoholism and other drug addiction board.

(2) The county alcoholism and other drug addiction program coordinator shall be appointed by the county legislative authority from nominations by the alcoholism and other drug addiction program board. The coordinator may serve on either a full-time or part-time basis. Only with the prior approval of the secretary may the coordinator be an employee of a government or private agency under contract with the department to provide alcoholism or other drug addiction services. [1989 c 270 § 16.]

70.96A.320 Alcoholism and other drug addiction program—Generally. (1) A county legislative authority, or two or more counties acting jointly, may establish an alcoholism and other drug addiction program. If two

or more counties jointly establish the program, they shall designate one county to provide administrative and financial services.

(2) To be eligible for funds from the department for the support of the county alcoholism and other drug addiction program, the county legislative authority shall establish a county alcoholism and other drug addiction board under RCW 70.96A.300 and appoint a county alcoholism and other drug addiction program coordinator under RCW 70.96A.310.

(3) The county legislative authority may apply to the department for financial support for the county program of alcoholism and other drug addiction. To receive financial support, the county legislative authority shall submit a plan that meets the following conditions:

(a) It shall describe the services and activities to be provided;

(b) It shall include anticipated expenditures and revenues;

(c) It shall be prepared by the county alcoholism and other drug addiction program board and be adopted by the county legislative authority;

(d) It shall reflect maximum effective use of existing services and facilities; and

(e) It shall meet other conditions that the secretary may require.

(4) The county may accept and spend gifts, grants, and fees, from public and private sources, to implement its program of alcoholism and other drug addiction.

(5) The county may subcontract for detoxification, residential treatment, or outpatient treatment with treatment programs that are approved treatment programs. The county may subcontract for other services with individuals or organizations approved by the department.

(6) To continue to be eligible for financial support from the department for the county alcoholism and other drug addiction program, an increase in state financial support shall not be used to supplant local funds from a source that was used to support the county alcoholism and other drug addiction program before the effective date of the increase. [1989 c 270 § 17.]

70.96A.400 Methadone treatment—Declaration of regulation by state. The state of Washington declares that there is no fundamental right to methadone treatment. The state of Washington further declares that while methadone is an addictive substance, that it nevertheless has several legal, important, and justified uses and that one of its appropriate and legal uses is, in conjunction with other required therapeutic procedures, in the treatment of persons addicted to or habituated to opioids.

Because methadone is addictive and is listed as a schedule II controlled substance in chapter 69.50 RCW, the state of Washington and authorizing counties on behalf of their citizens have the legal obligation and right to regulate the use of methadone. The state of Washington declares its authority to control and regulate carefully, in cooperation with the authorizing counties, all clinical uses of methadone in the treatment of

opium addiction. Further, the state declares that the goal of methadone treatment is drug-free living for the individuals who participate in the treatment program. [1989 c 270 § 20.]

70.96A.410 Methadone treatment—Counties may restrict or limit. (1) A county legislative authority may prohibit methadone treatment in that county. The department shall not certify a methadone treatment program in a county where the county legislative authority has prohibited methadone treatment. If a county legislative authority authorizes methadone treatment programs, it shall limit by ordinance the number of methadone treatment programs operating in that county by limiting the number of licenses granted in that county. If a county has authorized methadone treatment programs in that county, it shall only license methadone treatment programs that comply with the department's operating and treatment standards under this section and RCW 70.96A.420. A county that authorizes methadone treatment may operate the programs directly or through a local health department or health district or it may authorize certified methadone treatment programs that the county licenses to provide the services within the county. Counties shall monitor methadone treatment programs for compliance with the department's operating and treatment regulations under this section and RCW 70.96A.420.

(2) A county that authorizes methadone treatment programs shall develop and enact by ordinance licensing standards, consistent with this chapter and the operating and treatment standards adopted under this chapter, that govern the application for, issuance of, renewal of, and revocation of the licenses. Certified programs existing before May 18, 1987, applying for renewal of licensure in subsequent years, that maintain certification and meet all other requirements for licensure, shall be given preference.

(3) In certifying programs, the department shall not discriminate against a methadone program on the basis of its corporate structure. In licensing programs, the county shall not discriminate against a methadone program on the basis of its corporate structure.

(4) A program applying for certification from the department and a program applying for a contract from a state agency that has been denied the certification or contract shall be provided with a written notice specifying the rationale and reasons for the denial. A program applying for a license or a contract from a county that has been denied the license or contract shall be provided with a written notice specifying the rationale and reasons for the denial.

(5) A license is effective for one calendar year from the date of issuance. The license shall be renewed in accordance with the provisions of this section for initial approval and in accordance with the standards set forth in rules adopted by the secretary. [1989 c 270 § 21.]

70.96A.420 State-wide treatment and operating standards for methadone programs. (1) The department,

in consultation with methadone treatment service providers and counties authorizing methadone treatment programs, shall establish state-wide treatment standards for methadone treatment programs. The department and counties that authorize methadone treatment programs shall enforce these treatment standards. The treatment standards shall include, but not be limited to, reasonable provisions for all appropriate and necessary medical procedures, counseling requirements, urinalysis, and other suitable tests as needed to ensure compliance with this chapter and the treatment standard authorized by this chapter. A methadone treatment program shall not have a caseload in excess of three hundred fifty persons.

(2) The department, in consultation with methadone treatment programs and counties authorizing methadone treatment programs, shall establish state-wide operating standards for methadone treatment programs. The department and counties that authorize methadone treatment programs shall enforce these operating standards. The operating standards shall include, but not be limited to, reasonable provisions necessary to enable the department and authorizing counties to monitor certified and licensed methadone treatment programs for compliance with this chapter and the treatment standards authorized by this chapter and to minimize the impact of the methadone treatment programs upon the business and residential neighborhoods in which the program is located. [1989 c 270 § 22.]

70.96A.910 Application and construction. This act shall be so applied and construed as to effectuate its general purpose to make uniform the law with respect to the subject of this act among those states which enact it. [1972 ex.s. c 122 § 22.]

70.96A.915 Department allocation of funds—Construction. The department is authorized to allocate appropriated funds in the manner that it determines best meets the purposes of this chapter. Nothing in this chapter shall be construed to entitle any individual to services authorized in this chapter, or to require the department or its contractors to reallocate funds in order to ensure that services are available to any eligible person upon demand. [1989 c 271 § 309.]

Severability—1989 c 271: See note following RCW 9.94A.310.

70.96A.920 Severability—1972 ex.s. c 122. If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable. [1972 ex.s. c 122 § 20.]

70.96A.930 Section, subsection headings not part of law. Section or subsection headings as used in this chapter do not constitute any part of the law. [1972 ex.s. c 122 § 27.]

Chapter 70.98

NUCLEAR ENERGY AND RADIATION

Sections

70.98.010	Declaration of policy.
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70.98.920	Section headings not part of law.

Reviser's note: Powers and duties of the department of social and health services and the secretary of social and health services transferred to the department of health and the secretary of health. See RCW 43.70.060.

Nuclear, thermal power facilities, joint city, public utility district, electrical companies development: Chapter 54.44 RCW.

Radioactive and hazardous waste emergency response programs, state coordinator: RCW 38.52.030.

70.98.010 Declaration of policy. It is the policy of the state of Washington in furtherance of its responsibility to protect the public health and safety and to encourage, insofar as consistent with this responsibility, the industrial and economic growth of the state and to institute and maintain a regulatory and inspection program for sources and uses of ionizing radiation so as to provide for (1) compatibility with the standards and regulatory programs of the federal government, (2) a single, effective system of regulation within the state, and (3) a system consonant insofar as possible with those of other states. [1975-'76 2nd ex.s. c 108 § 12; 1961 c 207 § 1.]

Severability—Effective date—1975-'76 2nd ex.s. c 108: See notes following RCW 43.21F.010.

70.98.020 Purpose. It is the purpose of this chapter to effectuate the policies set forth in RCW 70.98.010 as now or hereafter amended by providing for:

(1) A program of effective regulation of sources of ionizing radiation for the protection of the occupational and public health and safety;

(2) A program to promote an orderly regulatory pattern within the state, among the states and between the federal government and the state and facilitate intergovernmental cooperation with respect to use and regulation of sources of ionizing radiation to the end that duplication of regulation may be minimized;

(3) A program to establish procedures for assumption and performance of certain regulatory responsibilities with respect to byproduct, source, and special nuclear materials. [1975-'76 2nd ex.s. c 108 § 13; 1965 c 88 § 1; 1961 c 207 § 2.]

Severability—Effective date—1975-'76 2nd ex.s. c 108: See notes following RCW 43.21F.010.

70.98.030 Definitions. (1) "Byproduct material" means any radioactive material (except special nuclear material) yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material.

(2) "Ionizing radiation" means gamma rays and x-rays, alpha and beta particles, high-speed electrons, neutrons, protons, and other atomic or subatomic particles; but not sound or radio waves, or visible, infrared, or ultraviolet light.

(3) (a) "General license" means a license effective pursuant to regulations promulgated by the state radiation control agency, without the filing of an application, to transfer, acquire, own, possess, or use quantities of, or devices or equipment utilizing, byproduct, source, special nuclear materials, or other radioactive material occurring naturally or produced artificially.

(b) "Specific license" means a license, issued after application to use, manufacture, produce, transfer, receive, acquire, own, or possess quantities of, or devices or equipment utilizing byproduct, source, special nuclear materials, or other radioactive materials occurring naturally or produced artificially.

(4) "Person" means any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, agency, political subdivision of this state, any other state or political subdivision or agency thereof, and any legal successor, representative, agent, or agency of the foregoing, other than the United States Atomic Energy Commission, or any successor thereto, and other than federal government agencies licensed by the United States Atomic Energy Commission, or any successor thereto.

(5) "Source material" means (a) uranium, thorium, or any other material which is determined by the United States Nuclear Regulatory Commission or its successor pursuant to the provisions of section 61 of the United States Atomic Energy Act of 1954, as amended (42 U.S.C. Sec. 209) to be source material; or (b) ores containing one or more of the foregoing materials, in such concentration as the commission may by regulation determine from time to time.

(6) "Special nuclear material" means (a) plutonium, uranium enriched in the isotope 233 or in the isotope 235, and any other material which the United States Nuclear Regulatory Commission or its successor, pursuant to the provisions of section 51 of the United States

Atomic Energy Act of 1954, as amended (42 U.S.C. Sec. 2071), determines to be special nuclear material, but does not include source material; or (b) any material artificially enriched by any of the foregoing, but does not include source material.

(7) "Registration" means registration with the state department of social and health services by any person possessing a source of ionizing radiation in accordance with rules, regulations and standards adopted by the department of social and health services.

(8) "Radiation source" means any type of device or substance which is capable of producing or emitting ionizing radiation. [1983 1st ex.s. c 19 § 9; 1979 c 141 § 125; 1965 c 88 § 2; 1961 c 207 § 3.]

Construction—Conflict with federal requirements—Severability—1983 1st ex.s. c 19: See RCW 43.200.900 through 43.200.902.

70.98.050 State radiation control agency. (1) The department of social and health services is designated as the state radiation control agency, hereinafter referred to as the agency, and shall be the state agency having sole responsibility for administration of the regulatory, licensing, and radiation control provisions of this chapter.

(2) The secretary of social and health services shall be director of the agency, hereinafter referred to as the secretary, who shall perform the functions vested in the agency pursuant to the provisions of this chapter.

(3) The agency shall appoint a state radiological control officer, and in accordance with the laws of the state, fix his compensation and prescribe his powers and duties.

(4) The agency shall for the protection of the occupational and public health and safety:

(a) Develop programs for evaluation of hazards associated with use of ionizing radiation;

(b) Develop a state-wide radiological baseline beginning with the establishment of a baseline for the Hanford reservation;

(c) Implement an independent state-wide program to monitor ionizing radiation emissions from radiation sources within the state;

(d) Develop programs with due regard for compatibility with federal programs for regulation of byproduct, source, and special nuclear materials;

(e) Conduct environmental radiation monitoring programs which will determine the presence and significance of radiation in the environment and which will verify the adequacy and accuracy of environmental radiation monitoring programs conducted by the federal government at its installations in Washington and by radioactive materials licensees at their installations;

(f) Formulate, adopt, promulgate, and repeal codes, rules and regulations relating to control of sources of ionizing radiation;

(g) Advise, consult, and cooperate with other agencies of the state, the federal government, other states and interstate agencies, political subdivisions, and with groups concerned with control of sources of ionizing radiation;

(h) Have the authority to accept and administer loans, grants, or other funds or gifts, conditional or otherwise,

in furtherance of its functions, from the federal government and from other sources, public or private;

(i) Encourage, participate in, or conduct studies, investigations, training, research, and demonstrations relating to control of sources of ionizing radiation, including the collection of statistical data and epidemiological research, where available, on diseases that result from exposure to sources of ionizing radiation;

(j) Collect and disseminate information relating to control of sources of ionizing radiation; including:

(i) Maintenance of a file of all license applications, issuances, denials, amendments, transfers, renewals, modifications, suspensions, and revocations;

(ii) Maintenance of a file of registrants possessing sources of ionizing radiation requiring registration under the provisions of this chapter and any administrative or judicial action pertaining thereto; and

(iii) Maintenance of a file of all rules and regulations relating to regulation of sources of ionizing radiation, pending or promulgated, and proceedings thereon;

(k) In connection with any adjudicative proceeding as defined by RCW 34.05.010 or any other administrative proceedings as provided for in this chapter, have the power to issue subpoenas in order to compel the attendance of necessary witnesses and/or the production of records or documents.

(5) In order to avoid duplication of efforts, the agency may acquire the data requested under this section from public and private entities that possess this information. [1989 c 175 § 132; 1985 c 383 § 1; 1985 c 372 § 1; 1971 ex.s. c 189 § 10; 1970 ex.s. c 18 § 16; 1965 c 88 § 3; 1961 c 207 § 5.]

Effective date—1989 c 175: See note following RCW 34.05.010.

Severability—1985 c 372: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1985 c 372 § 5.]

Effective date—Severability—1970 ex.s. c 18: See notes following RCW 43.20A.010.

70.98.080 Rules and regulations—Licensing requirements and procedure—Notice of license application—Objections—Notice upon granting of license—Registration of sources of ionizing radiation—Exemptions from registration or licensing. (1) The agency shall provide by rule or regulation for general or specific licensing of byproduct, source, special nuclear materials, or devices or equipment utilizing such materials, or other radioactive material occurring naturally or produced artificially. Such rule or regulation shall provide for amendment, suspension, or revocation of licenses. Such rule or regulation shall provide that:

(a) Each application for a specific license shall be in writing and shall state such information as the agency, by rule or regulation, may determine to be necessary to decide the technical, insurance, and financial qualifications, or any other qualification of the applicant as the agency may deem reasonable and necessary to protect the occupational and public health and safety. The agency may at any time after the filing of the application, and before the expiration of the license, require

further written statements and shall make such inspections as the agency deems necessary in order to determine whether the license should be granted or denied or whether the license should be modified, suspended, or revoked. In no event shall the agency grant a specific license to any applicant who has never possessed a specific license issued by a recognized state or federal authority until the agency has conducted an inspection which insures that the applicant can meet the rules, regulations and standards adopted pursuant to this chapter. All applications and statements shall be signed by the applicant or licensee. The agency may require any applications or statements to be made under oath or affirmation;

(b) Each license shall be in such form and contain such terms and conditions as the agency may by rule or regulation prescribe;

(c) No license issued under the authority of this chapter and no right to possess or utilize sources of ionizing radiation granted by any license shall be assigned or in any manner disposed of; and

(d) The terms and conditions of all licenses shall be subject to amendment, revision, or modification by rules, regulations or orders issued in accordance with the provisions of this chapter.

(2) Before the agency issues a license to an applicant under this section, it shall give notice of such application to the chief executive officer of the incorporated city or town, if the application is for a license within an incorporated city or town, or to the county legislative authority, if the application is for a license outside the boundaries of incorporated cities or towns. The incorporated city or town, through the official or employee selected by it, or the county legislative authority or the official or employee selected by it, shall have the right to file with the agency within twenty days after date of transmittal of such notice, written objections against the applicant or against the activity for which the license is sought, and shall include with such objections a statement of all facts upon which such objections are based, and in case written objections are filed, may request and the agency may in its discretion hold a formal hearing under chapter 34.05 RCW. Upon the granting of a license under this section the agency shall send a duplicate of the license or written notification to the chief executive officer of the incorporated city or town in which the license is granted, or to the county legislative authority if the license is granted outside the boundaries of incorporated cities or towns.

This subsection shall not apply to activities conducted within the boundaries of the Hanford reservation.

(3) The agency may require registration of all sources of ionizing radiation.

(4) The agency may exempt certain sources of ionizing radiation or kinds of uses or users from the registration or licensing requirements set forth in this section when the agency makes a finding after approval of the technical advisory board that the exemption of such sources of ionizing radiation or kinds of uses or users will not constitute a significant risk to the health and safety of the public.

(5) In promulgating rules and regulations pursuant to this chapter the agency shall, insofar as practical, strive to avoid requiring dual licensing, and shall provide for such recognition of other state or federal licenses as the agency shall deem desirable, subject to such registration requirements as the agency may prescribe. [1984 c 96 § 1; 1965 c 88 § 5; 1961 c 207 § 8.]

70.98.085 Suspension and reinstatement of site use permits—Surveillance fee. (1) The agency is empowered to suspend and reinstate site use permits consistent with current regulatory practices and in coordination with the department of ecology, for generators, packagers, or brokers using the Hanford low-level radioactive waste disposal facility.

(2) The agency shall collect a surveillance fee as an added charge on each cubic foot of low level radioactive waste disposed of at the disposal site in this state which shall be set at a level that is sufficient to fund completely the radiation control activities of the agency directly related to the disposal site, including but not limited to the management, licensing, monitoring, and regulation of the site. The surveillance fee shall not exceed four percent of the basic minimum fee charged by an operator of a low-level radioactive waste disposal site in this state. The basic minimum fee consists of the disposal fee for the site operator, the fee for the perpetual care and maintenance fund administered by the state, the fee for the state closure fund, and the tax collected pursuant to chapter 82.04 RCW. Site use permit fees and surcharges collected under chapter 43.200 RCW are not part of the basic minimum fee. The fee shall also provide funds to the Washington state patrol for costs incurred from inspection of low-level radioactive waste shipments entering this state. Disbursements for this purpose shall be by authorization of the secretary of the department of social and health services or the secretary's designee.

The agency may adopt such rules as are necessary to carry out its responsibilities under this section. [1989 c 106 § 1; 1986 c 2 § 2; 1985 c 383 § 3.]

Issuance of site use permits: RCW 43.200.080.

70.98.090 Inspection. The agency or its duly authorized representative shall have the power to enter at all reasonable times upon any private or public property for the purpose of determining whether or not there is compliance with or violation of the provisions of this chapter and rules and regulations issued thereunder. [1985 c 372 § 2; 1961 c 207 § 9.]

Severability—1985 c 372: See note following RCW 70.98.050.

70.98.095 Immunity of state—Demonstration of liability coverage—Suspension of license or permit. (1) The radiation control agency shall require that any person who holds or applies for a license or permit under this chapter (a) indemnify and hold harmless the state from claims, suits, damages, or expenses on account of injuries to or death of persons and property, arising or growing out of any operations or activities for which the person holds the license or permit, and any necessary or

incidental operations, and (b) demonstrate that the person has and maintains liability coverage for the operations for which the state has been indemnified and held harmless pursuant to this section. The agency shall require coverage in an amount determined by the director of the department of ecology pursuant to RCW 43.200.200.

(2) The radiation control agency shall suspend the license or permit of any person required by this section to hold and maintain liability coverage who fails to demonstrate compliance with this section. The license or permit shall not be reinstated until the person demonstrates compliance with this section.

(3) The radiation control agency shall require (a) that any person required to maintain liability coverage maintain with the agency current copies of any insurance policies, certificates of insurance, or any other documents used to comply with this section, (b) that the agency be notified of any changes in the insurance coverage or financial condition of the person, and (c) that the state be named as an insured party on any insurance policy used to comply with this section. [1986 c 191 § 3.]

Construction—Severability—1986 c 191: See RCW 43.200.905 and 43.200.906.

70.98.100 Records. (1) The agency shall require each person who possesses or uses a source of ionizing radiation to maintain necessary records relating to its receipt, use, storage, transfer, or disposal and such other records as the agency may require which will permit the determination of the extent of occupational and public exposure from the radiation source. Copies of these records shall be submitted to the agency on request. These requirements are subject to such exemptions as may be provided by rules.

(2) The agency may by rule and regulation establish standards requiring that personnel monitoring be provided for any employee potentially exposed to ionizing radiation and may provide for the reporting to any employee of his radiation exposure record. [1961 c 207 § 10.]

70.98.110 Federal-state agreements—Authorized—Effect as to federal licenses. (1) The governor, on behalf of this state, is authorized to enter into agreements with the federal government providing for discontinuance of certain of the federal government's responsibilities with respect to sources of ionizing radiation and the assumption thereof by this state pursuant to this chapter.

(2) Any person who, on the effective date of an agreement under subsection (1) above, possesses a license issued by the federal government shall be deemed to possess the same pursuant to a license issued under this chapter which shall expire either ninety days after the receipt from the state radiation control agency of a notice of expiration of such license or on the date of expiration specified in the federal license, whichever is earlier. [1965 c 88 § 6; 1961 c 207 § 11.]

70.98.120 Inspection agreements and training programs. (1) The agency is authorized to enter into an agreement or agreements with the federal government, other states, or interstate agencies, whereby this state will perform on a cooperative basis with the federal government, other states, or interstate agencies, inspections or other functions relating to control of sources of ionizing radiation.

(2) The agency may institute training programs for the purpose of qualifying personnel to carry out the provisions of this chapter and may make said personnel available for participation in any program or programs of the federal government, other states, or interstate agencies in furtherance of the purposes of this chapter. [1961 c 207 § 12.]

70.98.122 Department of ecology to seek federal funding for environmental radiation monitoring. The department of ecology shall seek federal funding, such as is available under the clean air act (42 U.S.C. Sec. 1857 et seq.) and the nuclear waste policy act (42 U.S.C. Sec. 10101 et seq.) to carry out the purposes of *RCW 70.98.050(4)(c). [1985 c 372 § 3.]

*Reviser's note: The subparagraph "(c)" in this reference has been redesignated "(c)[(e)]" in the published version of RCW 70.98.050.

Severability—1985 c 372: See note following RCW 70.98.050.

70.98.125 Federal assistance to be sought for high-level radioactive waste program. (1) The agency shall seek federal financial assistance as authorized by the nuclear waste policy act of 1982, P.L. 97-425 section 116(c), for activities related to the high-level radioactive waste program in the state of Washington. The activities for which federal funding is sought shall include, but are not limited to, the development of a radiological baseline for the Hanford reservation; the implementation of a program to monitor ionizing radiation emissions on the Hanford reservation; the collection of statistical data and epidemiological research, where available, on diseases that result from exposure to sources of ionizing radiation on the Hanford reservation.

(2) In the event the federal government refuses to grant financial assistance for the activities under subsection (1) of this section, the agency is directed to investigate potential legal action. [1985 c 383 § 2.]

70.98.130 Administrative procedure. In any proceeding under this chapter for the issuance or modification or repeal of rules relating to control of sources of ionizing radiation, the agency shall comply with the requirements of chapter 34.05 RCW, the Administrative Procedure Act.

Notwithstanding any other provision of this chapter, whenever the agency finds that an emergency exists requiring immediate action to protect the public health, safety, or general welfare, the agency may, in accordance with RCW 34.05.350 without notice or hearing, adopt a rule reciting the existence of such emergency and require that such action be taken as is necessary to meet the emergency. As specified in RCW 34.05.350,

such rules are effective immediately. [1989 c 175 § 133; 1961 c 207 § 13.]

Effective date—1989 c 175: See note following RCW 34.05.010.

70.98.140 Injunction proceedings. Notwithstanding the existence or use of any other remedy, whenever any person has engaged in, or is about to engage in, any acts or practices which constitute or will constitute a violation of any provision of this chapter, or any rule, regulation, or order issued thereunder, the attorney general upon the request of the agency, after notice to such person and opportunity to comply, may make application to the appropriate court for an order enjoining such acts or practices, or for an order directing compliance, and upon a showing by the agency that such person has engaged in, or is about to engage in, any such acts or practices, a permanent or temporary injunction, restraining order, or other order may be granted. [1961 c 207 § 14.]

70.98.150 Prohibited uses. It shall be unlawful for any person to use, manufacture, produce, transport, transfer, receive, acquire, own, or possess any source of ionizing radiation unless licensed by or registered with, or exempted by the agency in accordance with the provisions of this chapter. [1965 c 88 § 7; 1961 c 207 § 15.]

70.98.160 Impounding of materials. The agency shall have the authority in the event of an emergency to impound or order the impounding of sources of ionizing radiation in the possession of any person who is not equipped to observe or fails to observe the provisions of this chapter or any rules or regulations issued thereunder. [1961 c 207 § 16.]

70.98.170 Prohibition—Fluoroscopic x-ray shoe-fitting devices. The operation or maintenance of any x-ray, fluoroscopic, or other equipment or apparatus employing roentgen rays, in the fitting of shoes or other footwear or in the viewing of bones in the feet is prohibited. This prohibition does not apply to any licensed physician, surgeon, podiatrist, or any person practicing a licensed healing art, or any technician working under the direct and immediate supervision of such persons. [1973 c 77 § 27; 1961 c 207 § 17.]

70.98.180 Exemptions. This chapter shall not apply to the following sources or conditions:

(1) Radiation machines during process of manufacture, or in storage or transit: *Provided*, That this exclusion shall not apply to functional testing of such machines.

(2) Any radioactive material while being transported in conformity with regulations adopted by any federal agency having jurisdiction therein, and specifically applicable to the transportation of such radioactive materials.

(3) No exemptions under this section are granted for those quantities or types of activities which do not comply with the established rules and regulations promulgated by the Atomic Energy Commission, or any successor thereto. [1965 c 88 § 8; 1961 c 207 § 18.]

70.98.190 Professional uses. Nothing in this chapter shall be construed to limit the kind or amount of radiation that may be intentionally applied to a person for diagnostic or therapeutic purposes by or under the immediate direction of a licensed practitioner of the healing arts acting within the scope of his professional license. [1961 c 207 § 19.]

70.98.200 Penalties. Any person who violates any of the provisions of this chapter or rules, regulations, or orders in effect pursuant thereto shall be guilty of a gross misdemeanor. [1961 c 207 § 20.]

70.98.210 Recommended legislation. The agency shall study, formulate, and recommend to the legislature from time to time specific recommendations to further the purposes of this chapter. [1975-'76 2nd ex.s. c 108 § 14; 1961 c 207 § 24.]

Severability—Effective date—1975-'76 2nd ex.s. c 108: See notes following RCW 43.21F.010.

70.98.900 Severability—1961 c 207. If any part, or parts, of this act shall be held unconstitutional, the remaining provisions shall be given full force and effect, as completely as if the part held unconstitutional had not been included herein, if any such remaining part or parts can then be administered for the declared purposes of this act. [1961 c 207 § 21.]

70.98.910 Effective date—1961 c 207. The provisions of this act relating to the control of byproduct, source and special nuclear materials shall become effective on the effective date of the agreement between the federal government and this state as authorized in RCW 70.98.110. All other provisions of this act shall become effective on the 30th day of June, 1961. [1961 c 207 § 23.]

70.98.920 Section headings not part of law. Section headings as used in this chapter do not constitute any part of the law. [1961 c 207 § 25.]

Chapter 70.99

RADIOACTIVE WASTE STORAGE AND TRANSPORTATION ACT OF 1980

Sections

70.99.010	Finding.
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70.99.030	Storage of radioactive waste from outside the state prohibited—Exceptions.
70.99.040	Transportation of radioactive waste from outside the state for storage within the state prohibited—Exception.
70.99.050	Violations—Penalties—Injunctions—Jurisdiction and venue—Fees and costs.
70.99.060	Interstate compact for regional storage.
70.99.900	Construction—1981 c 1.
70.99.905	Severability—1981 c 1.
70.99.910	Short title.

Nuclear energy and radiation: Chapter 70.98 RCW.

Radioactive and hazardous waste emergency response programs, state coordinator: RCW 38.52.030.

*Uranium and thorium mill tailings—Licensing and perpetual care:
Chapter 70.121 RCW.*

70.99.010 Finding. The people of the state of Washington find that:

(1) Radioactive wastes are highly dangerous, in that releases of radioactive materials and emissions to the environment are inimical to the health and welfare of the people of the state of Washington, and contribute to the occurrences of harmful diseases, including excessive cancer and leukemia. The dangers posed by the transportation and presence of radioactive wastes are increased further by the long time periods that the wastes remain radioactive and highly dangerous;

(2) Transporting, handling, storing, or otherwise caring for radioactive waste presents a hazard to the health, safety, and welfare of the individual citizens of the state of Washington because of the ever-present risk that an accident or incident will occur while the wastes are being cared for;

(3) The likelihood that an accident will occur in this state involving the release of radioactive wastes to the environment becomes greater as the volume of wastes transported, handled, stored, or otherwise cared for in this state increases;

(4) The effects of unplanned releases of radioactive wastes into the environment, especially into the air and water of the state, are potentially both widespread and harmful to the health, safety, and welfare of the citizens of this state.

The burdens and hazards posed by increasing the volume of radioactive wastes transported, handled, stored, or otherwise cared for in this state by the importation of such wastes from outside this state is not a hazard the state government may reasonably ask its citizens to bear. The people of the state of Washington believe that the principles of federalism do not require the sacrifice of the health, safety, and welfare of the people of one state for the convenience of other states or nations. [1981 c 1 § 1 (Initiative Measure No. 383, approved November 4, 1980).]

70.99.020 Definitions. The definitions set forth in this section apply throughout this chapter.

(1) "Radioactive waste" means unwanted radioactive material, including radioactive residues produced as a result of electric power generation or other reactor operation.

(2) "Medical waste" means radioactive waste from all therapy, diagnosis, or research in medical fields and radioactive waste which results from the production and manufacture of radioactive material used for therapy, diagnosis, or research in medical fields, except that "medical waste" does not include spent fuel or waste from the fuel of an isotope production reactor.

(3) "Radioactive waste generated or otherwise produced outside the geographic boundaries of the state of Washington" means radioactive waste which was located outside the state of Washington at the time of removal from a reactor vessel. [1981 c 1 § 2 (Initiative Measure No. 383, approved November 4, 1980).]

70.99.030 Storage of radioactive waste from outside the state prohibited—Exceptions. Notwithstanding any law, order, or regulation to the contrary, after July 1, 1981, no area within the geographic boundaries of the state of Washington may be used by any person or entity as a temporary, interim, or permanent storage site for radioactive waste, except medical waste, generated or otherwise produced outside the geographic boundaries of the state of Washington. This section does not apply to radioactive waste stored within the state of Washington prior to July 1, 1981. [1981 c 1 § 3 (Initiative Measure No. 383, approved November 4, 1980).]

70.99.040 Transportation of radioactive waste from outside the state for storage within the state prohibited—Exception. Notwithstanding any law, order, or regulation to the contrary, after July 1, 1981, no person or entity may transport radioactive waste, except medical waste, generated or otherwise produced outside the geographic boundaries of the state of Washington to any site within the geographic boundaries of the state of Washington for temporary, interim, or permanent storage. [1981 c 1 § 4 (Initiative Measure No. 383, approved November 4, 1980).]

70.99.050 Violations—Penalties—Injunctions—Jurisdiction and venue—Fees and costs. (1) A violation of or failure to comply with the provisions of RCW 70.99.030 or 70.99.040 is a gross misdemeanor.

(2) Any person or entity that violates or fails to comply with the provisions of RCW 70.99.030 or 70.99.040 is subject to a civil penalty of one thousand dollars for each violation or failure to comply.

(3) Each day upon which a violation occurs constitutes a separate violation for the purposes of subsections (1) and (2) of this section.

(4) Any person or entity violating this chapter may be enjoined from continuing the violation. The attorney general or any person residing in the state of Washington may bring an action to enjoin violations of this chapter, on his or her own behalf and on the behalf of all persons similarly situated. Such action may be maintained in the person's own name or in the name of the state of Washington. No bond may be required as a condition to obtaining any injunctive relief. The superior courts have jurisdiction over actions brought under this section, and venue shall lie in the county of the plaintiff's residence, in the county in which the violation is alleged to occur, or in Thurston county. In addition to other relief, the court in its discretion may award attorney's and expert witness fees and costs of the suit to a party who demonstrates that a violation of this chapter has occurred. [1981 c 1 § 5 (Initiative Measure No. 383, approved November 4, 1980).]

70.99.060 Interstate compact for regional storage. Notwithstanding the other provisions of this chapter, the state of Washington may enter into an interstate compact, which will become effective upon ratification by a majority of both houses of the United States Congress, to provide for the regional storage of radioactive wastes.

[1981 c 1 § 6 (Initiative Measure No. 383, approved November 4, 1980).]

Northwest Interstate Compact on Low-Level Radioactive Waste Management: Chapter 43.145 RCW.

70.99.900 Construction—1981 c 1. This chapter shall be liberally construed to protect the health, safety, and welfare of the individual citizens of the state of Washington. [1981 c 1 § 7 (Initiative Measure No. 383, approved November 4, 1980).]

70.99.905 Severability—1981 c 1. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1981 c 1 § 8 (Initiative Measure No. 383, approved November 4, 1980).]

70.99.910 Short title. This act may be known as the Radioactive Waste Storage and Transportation Act of 1980. [1981 c 1 § 9 (Initiative Measure No. 383, approved November 4, 1980).]

Chapter 70.100

EYE PROTECTION—PUBLIC AND PRIVATE EDUCATIONAL INSTITUTIONS

Sections

70.100.010	"Eye protection areas" defined.
70.100.020	Wearing of eye protection devices required—Furnishing of—Costs.
70.100.030	Standard requirement for eye protection devices.
70.100.040	Superintendent of public instruction to circulate instruction manual to public and private educational institutions.

70.100.010 "Eye protection areas" defined. As used in this chapter:

"Eye protection areas" means areas within vocational or industrial arts shops, science or other school laboratories, or schools within state institutional facilities as designated by the state superintendent of public instruction in which activities take place involving:

- (1) Hot molten metals or other molten materials;
- (2) Milling, sawing, turning, shaping, cutting, grinding, or stamping of any solid materials;
- (3) Heat treatment, tempering or kiln firing of any metal or other materials;
- (4) Gas or electric arc welding, or other forms of welding processes;
- (5) Corrosive, caustic, or explosive materials;
- (6) Custodial or other service activity potentially hazardous to the eye: *Provided*, That nothing in this chapter shall supersede regulations heretofore or hereafter established by the department of labor and industries respecting such activity; or
- (7) Any other activity or operation involving mechanical or manual work in any area that is potentially hazardous to the eye. [1969 ex.s. c 179 § 1.]

70.100.020 Wearing of eye protection devices required—Furnishing of—Costs. Every person shall

wear eye protection devices when participating in, observing, or performing any function in connection with any courses or activities taking place in eye protection areas of any private or public school, college, university, or other public or private educational institution in this state, as designated by the superintendent of public instruction. The governing board or authority of any public school shall furnish the eye protection devices prescribed in RCW 70.100.030 without cost to all teachers and students in grades K–12 engaged in activities potentially dangerous to the human eye, and the governing body of each institution of higher education and vocational technical institute shall furnish such eye protection devices free or at cost to all teachers and students similarly engaged at the institutions of higher education and vocational technical institutes. Eye protection devices shall be furnished on a loan basis to all visitors observing activities hazardous to the eye. [1969 ex.s. c 179 § 2.]

70.100.030 Standard requirement for eye protection devices. Eye protection devices, which shall include plano safety spectacles, plastic face shields or goggles, shall comply with the U.S.A. Standard Practice for Occupational and Educational Eye and Face Protection, Z87.1–1968 or later revisions thereof. [1969 ex.s. c 179 § 3.]

70.100.040 Superintendent of public instruction to circulate instruction manual to public and private educational institutions. The superintendent of public instruction, after consulting with the department of labor and industries, and the division of vocational education shall prepare and circulate to each public and private educational institution in this state within six months of the date of passage of this chapter, a manual containing instructions and recommendations for the guidance of such institutions in implementing the eye safety provisions of this chapter. [1969 ex.s. c 179 § 4.]

Chapter 70.102

HAZARDOUS SUBSTANCE INFORMATION

Sections

70.102.010	Definitions.
70.102.020	Hazardous substance information and education of—Duties.

Radioactive and hazardous waste emergency response programs, state coordinator: RCW 38.52.030.

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

- (1) "Agency" means any state agency or local government entity.
- (2) "Hazardous household substances" means those substances identified by the department as hazardous household substances in the guidelines developed by the department.
- (3) "Department" means the department of ecology.
- (4) "Director" means the director of the department.

(5) "Hazardous substances" or "hazardous materials" means those substances or materials identified as such under regulations adopted pursuant to the federal hazardous materials transportation act, the toxic substances control act, the resource recovery and conservation act, the comprehensive environmental response compensation and liability act, the federal insecticide, fungicide, and rodenticide act, the occupational safety and health act hazardous communications standards, and the state hazardous waste act.

(6) "Moderate risk waste" means any waste that exhibits any of the properties of dangerous waste but is exempt from regulation under this chapter solely because the waste is generated in quantities below the threshold for regulation and any household wastes that are generated from the disposal of substances identified by the department as hazardous household substances. [1985 c 410 § 2.]

70.102.020 Hazardous substance information and education office—Duties. There is hereby created the hazardous substance information and education office. Through this office the department shall:

(1) Facilitate access to existing information on hazardous substances within a community;

(2) Request and obtain information about hazardous substances at specified locations and facilities from agencies that regulate those locations and facilities. The department shall review, approve, and provide confidentiality as provided by statute. Upon request of the department, each agency shall provide the information within forty-five days;

(3) At the request of citizens or public health or public safety organizations, compile existing information about hazardous substance use at specified locations and facilities. This information shall include but not be limited to:

(a) Point and nonpoint air and water emissions;

(b) Extremely hazardous, moderate risk wastes and dangerous wastes as defined in chapter 70.105 RCW produced, used, stored, transported from, or disposed of by any facility;

(c) A list of the hazardous substances present at a given site and data on their acute and chronic health and environmental effects;

(d) Data on governmental pesticide use at a given site;

(e) Data on commercial pesticide use at a given site if such data is only given to individuals who are chemically sensitive; and

(f) Compliance history of any facility.

(4) Provide education to the public on the proper production, use, storage, and disposal of hazardous substances, including but not limited to:

(a) A technical resource center on hazardous substance management for industry and the public;

(b) Programs, in cooperation with local government, to educate generators of moderate risk waste, and provide information regarding the potential hazards to human health and the environment resulting from improper use and disposal of the waste and proper

methods of handling, reducing, recycling, and disposing of the waste;

(c) Public information and education relating to the safe handling and disposal of hazardous household substances; and

(d) Guidelines to aid counties in developing and implementing a hazardous household substances program.

Requests for information from the hazardous substance information and education office may be made by letter or by a toll-free telephone line, if one is established by the department. Requests shall be responded to in accordance with chapter 42.17 RCW.

This section shall not require any agency to compile information that is not required by existing laws or regulations. [1985 c 410 § 1.]

Worker and community right to know fund, use to provide hazardous substance information under chapter 70.102 RCW: RCW 49.70.175.

Chapter 70.104

PESTICIDES—HEALTH HAZARDS

Sections

70.104.010	Declaration.
70.104.020	"Pesticide" defined.
70.104.030	Powers and duties of department of social and health services.
70.104.040	Pesticide emergencies—Authority of department of agriculture not infringed upon.
70.104.050	Investigation of human exposure to pesticides.
70.104.055	Pesticide poisonings—Reports.
70.104.057	Pesticide poisonings—Medical education program.
70.104.060	Technical assistance, consultations and services to physicians and agencies authorized.
70.104.070	Pesticide incident reporting and tracking review panel—Intent.
70.104.080	Panel—Generally.
70.104.090	Panel—Responsibilities.
70.104.100	Industrial insurance statutes not affected.

Reviser's note: Powers and duties of the department of social and health services and the secretary of social and health services transferred to the department of health and the secretary of health. See RCW 43.70.060.

70.104.010 Declaration. The department of social and health services has responsibility to protect and enhance the public health and welfare. As a consequence, it must be concerned with both natural and artificial environmental factors which may adversely affect the public health and welfare. Dangers to the public health and welfare related to the use of pesticides require specific legislative recognition of departmental authority and responsibility in this area. [1971 ex.s. c 41 § 1.]

70.104.020 "Pesticide" defined. For the purposes of this chapter pesticide means, but is not limited to:

(1) Any substance or mixture of substances intended to prevent, destroy, control, repel, or mitigate any insect, rodent, nematode, snail, slug, fungus, weed and any other form of plant or animal life or virus, except virus on or in living man or other animal, which is normally considered to be a pest or which the director of agriculture may declare to be a pest; or

(2) Any substance or mixture of substances intended to be used as a plant regulator, defoliant or desiccant; or

(3) Any spray adjuvant, such as a wetting agent, spreading agent, deposit builder, adhesive, emulsifying agent, deflocculating agent, water modifier, or similar agent with or without toxic properties of its own intended to be used with any other pesticide as an aid to the application or effect thereof, and sold in a package or container separate from that of the pesticide with which it is to be used; or

(4) Any fungicide, rodenticide, herbicide, insecticide, and nematocide. [1971 ex.s. c 41 § 2.]

70.104.030 Powers and duties of department of social and health services. (1) The department of social and health services shall investigate all suspected human cases of pesticide poisoning and such cases of suspected pesticide poisoning of animals that may relate to human illness. The department shall establish time periods by rule to determine investigation response time. Time periods shall range from immediate to forty-eight hours to initiate an investigation, depending on the severity of the case or suspected case of pesticide poisoning.

In order to adequately investigate such cases, the department of social and health services shall have the power to:

(a) Take all necessary samples and human or animal tissue specimens for diagnostic purposes: *Provided*, That tissue, if taken from a living human, shall be taken from a living human only with the consent of a person legally qualified to give such consent;

(b) Secure any and all such information as may be necessary to adequately determine the nature and causes of any case of pesticide poisoning.

(2) The state department of social and health services shall, by rule and regulation adopted pursuant to the Administrative Procedure Act, chapter 34.05 RCW, as it now exists or is hereafter amended, and, in any event, with due notice and a hearing for the adoption of permanent rules, establish procedures for the prevention of any recurrence of poisoning and the department shall immediately notify the department of agriculture, the department of labor and industries, and other appropriate agencies of the results of its investigation for such action as the other departments or agencies deem appropriate. The notification of such investigations and their results may include recommendations for further action by the appropriate department or agency. [1989 c 380 § 71; 1971 ex.s. c 41 § 3.]

Effective date—1989 c 380 §§ 69 and 71 through 73: See note following RCW 70.104.090.

Severability—1989 c 380: See RCW 15.58.942.

70.104.040 Pesticide emergencies—Authority of department of agriculture not infringed upon. (1) In any case where an emergency relating to pesticides occurs that represents a hazard to the public due to toxicity of the material, the quantities involved or the environment in which the incident takes place, such emergencies including but not limited to fires, spillage, and accidental

contamination, the person or agent of such person having actual or constructive control of the pesticides involved shall immediately notify the department of social and health services by telephone or the fastest available method.

(2) Upon notification or discovery of any pesticide emergency the department of social and health services shall:

(a) Make such orders and take such actions as are appropriate to assume control of the property and to dispose of hazardous substances, prevent further contamination, and restore any property involved to a non-hazardous condition. In the event of failure of any individual to obey and carry out orders pursuant to this section, the department of social and health services shall have all power and authority to accomplish those things necessary to carry out such order. Any expenses incurred by the department of social and health services as a result of intentional failure of any individual to obey its lawful orders shall be charged as a debt against such individual.

(3) In any case where the department of social and health services has assumed control of property pursuant to this chapter, such property shall not be reoccupied or used until such time as written notification of its release for use is received from the secretary of the department of social and health services or his designee. Such action shall take into consideration the economic hardship, if any, caused by having the department assume control of property, and release shall be accomplished as expeditiously as possible. Nothing in this chapter shall prevent a farmer from continuing to process his crops and/or animals provided that it does not endanger the public health.

(4) The department shall recognize the pesticide industry's responsibility and active role in minimizing the effect of pesticide emergencies and shall provide for maximum utilization of these services.

(5) Nothing in this chapter shall be construed in any way to infringe upon or negate the authority and responsibility of the department of agriculture in its application and enforcement of the Washington Pesticide Control Act, chapter 15.58 RCW and the Washington Pesticide Application Act, chapter 17.21 RCW. The department of social and health services shall work closely with the department of agriculture in the enforcement of this chapter and shall keep it appropriately advised. [1983 c 3 § 178; 1971 ex.s. c 41 § 4.]

70.104.050 Investigation of human exposure to pesticides. The department of social and health services shall investigate human exposure to pesticides, and in order to carry out such investigations shall have authority to secure and analyze appropriate specimens of human tissue and samples representing sources of possible exposure. [1971 ex.s. c 41 § 5.]

70.104.055 Pesticide poisonings—Reports. (1) Any attending physician or other health care provider recognized as primarily responsible for the diagnosis and treatment of a patient or, in the absence of a primary

health care provider, the health care provider initiating diagnostic testing or therapy for a patient shall report a case or suspected case of pesticide poisoning to the department of social and health services in the manner prescribed by, and within the reasonable time periods established by, rules of the state board of health. Time periods established by the board shall range from immediate reporting to reporting within seven days depending on the severity of the case or suspected case of pesticide poisoning. The reporting requirements shall be patterned after other board rules establishing requirements for reporting of diseases or conditions. Confidentiality requirements shall be the same as the confidentiality requirements established for other reportable diseases or conditions. The board rules shall determine what information shall be reported. Reports shall be made on forms provided to health care providers by the department of social and health services. For purposes of any oral reporting, the department of social and health services shall make available a toll-free telephone number.

(2) Within a reasonable time period as established by board rules, the department of social and health services shall investigate the report of a case or suspected case of pesticide poisoning to document the incident. The department shall report the results of the investigation to the health care provider submitting the original report.

(3) Cases or suspected cases of pesticide poisoning shall be reported by the department of social and health services to the pesticide reporting and tracking review panel within the time periods established by state board of health rules.

(4) Upon request of the primary health care provider, pesticide applicators or employers shall make available to that provider any available information on pesticide applications which may have affected the health of the provider's patient. This information is to be used only for the purposes of providing health care services to the patient.

(5) Any failure of the primary health care provider to make the reports required under this section may be cause for the department of social and health services to submit information about such nonreporting to the applicable disciplining authority for the provider under RCW 18.130.040.

(6) No cause of action shall arise as the result of: (a) The failure to report under this section; or (b) any report submitted to the department of social and health services under this section.

(7) For the purposes of this section, a suspected case of pesticide poisoning is a case in which the diagnosis is thought more likely than not to be pesticide poisoning. [1989 c 380 § 72.]

Effective date—1989 c 380 §§ 69 and 71 through 73: See note following RCW 70.104.090.

Severability—1989 c 380: See RCW 15.58.942.

70.104.057 Pesticide poisonings—Medical education program. The department of social and health services, after seeking advice from the state board of health, local health officers, and state and local medical

associations, shall develop a program of medical education to alert physicians and other health care providers to the symptoms, diagnosis, treatment, and reporting of pesticide poisonings. [1989 c 380 § 73.]

Effective date—1989 c 380 §§ 69 and 71 through 73: See note following RCW 70.104.090.

Severability—1989 c 380: See RCW 15.58.942.

70.104.060 Technical assistance, consultations and services to physicians and agencies authorized. In order effectively to prevent human illness due to pesticides and to carry out the requirements of this chapter, the department of social and health services is authorized to provide technical assistance and consultation regarding health effects of pesticides to physicians and other agencies, and is authorized to operate an analytical chemical laboratory and may provide analytical and laboratory services to physicians and other agencies to determine pesticide levels in human and other tissues, and appropriate environmental samples. [1971 ex.s. c 41 § 6.]

70.104.070 Pesticide incident reporting and tracking review panel—Intent. The legislature finds that heightened concern regarding health and environmental impacts from pesticide use and misuse has resulted in an increased demand for full-scale health investigations, assessment of resource damages, and health effects information. Increased reporting, comprehensive unbiased investigation capability, and enhanced community education efforts are required to maintain this state's responsibilities to provide for public health and safety.

It is the intent of the legislature that the various state agencies responsible for pesticide regulation coordinate their activities in a timely manner to ensure adequate monitoring of pesticide use and protection of workers and the public from the effects of pesticide misuse. [1989 c 380 § 67.]

Severability—1989 c 380: See RCW 15.58.942.

70.104.080 Panel—Generally. (1) There is hereby created a pesticide incident reporting and tracking review panel consisting of the following members:

(a) The directors, secretaries, or designees of the departments of labor and industries, agriculture, natural resources, wildlife, and ecology;

(b) The director of the department of social and health services or his or her designee, who shall serve as the coordinating agency for the review panel;

(c) The chair of the department of environmental health of the University of Washington, or his or her designee;

(d) The pesticide coordinator and specialist of the cooperative extension at Washington State University or his or her designee;

(e) A representative of the Washington poison control center network;

(f) A practicing toxicologist and a member of the general public, who shall each be appointed by the governor for terms of two years and may be appointed for a maximum of four terms at the discretion of the governor. The governor may remove either member prior

to the expiration of his or her term of appointment for cause. Upon the death, resignation, or removal for cause of a member of the review panel, the governor shall fill such vacancy, within thirty days of its creation, for the remainder of the term in the manner herein prescribed for appointment to the review panel.

(2) The review panel shall be chaired by the secretary of the department of social and health services, or designee. The members of the review panel shall meet at least monthly at a time and place specified by the chair, or at the call of a majority of the review panel. [1989 c 380 § 68.]

Severability—1989 c 380: See RCW 15.58.942.

70.104.090 Panel—Responsibilities. The responsibilities of the review panel shall include, but not be limited to:

(1) Establishing guidelines for centralizing the receipt of information relating to actual or alleged health and environmental incidents involving pesticides;

(2) Reviewing and making recommendations for procedures for investigation of pesticide incidents, which shall be implemented by the appropriate agency unless a written statement providing the reasons for not adopting the recommendations is provided to the review panel;

(3) Monitoring the time periods required for response to reports of pesticide incidents by the departments of agriculture, social and health services, and labor and industries;

(4) At the request of the chair or any panel member, reviewing pesticide incidents of unusual complexity or those that cannot be resolved;

(5) Identifying inadequacies in state and/or federal law that result in insufficient protection of public health and safety, with specific attention to advising the appropriate agencies on the adequacy of pesticide reentry intervals established by the federal environmental protection agency and registered pesticide labels to protect the health and safety of farmworkers. The panel shall establish a priority list for reviewing reentry intervals, which considers the following criteria:

(a) Whether the pesticide is being widely used in labor-intensive agriculture in Washington;

(b) Whether another state has established a reentry interval for the pesticide that is longer than the existing federal reentry interval;

(c) The toxicity category of the pesticide under federal law;

(d) Whether the pesticide has been identified by a federal or state agency or through a scientific review as presenting a risk of cancer, birth defects, genetic damage, neurological effects, blood disorders, sterility, menstrual dysfunction, organ damage, or other chronic or subchronic effects; and

(e) Whether reports or complaints of ill effects from the pesticide have been filed following worker entry into fields to which the pesticide has been applied; and

(6) Reviewing and approving an annual report prepared by the department of social and health services to

the governor, agency heads, and members of the legislature, with the same available to the public. The report shall include, at a minimum:

(a) A summary of the year's activities;

(b) A synopsis of the cases reviewed;

(c) A separate descriptive listing of each case in which adverse health or environmental effects due to pesticides were found to occur;

(d) A tabulation of the data from each case;

(e) An assessment of the effects of pesticide exposure in the workplace;

(f) The identification of trends, issues, and needs; and

(g) Any recommendations for improved pesticide use practices. [1989 c 380 § 69.]

Effective date—1989 c 380 §§ 69 and 71 through 73: "Sections 69 and 71 through 73 of this act shall take effect on January 1, 1990." [1989 c 380 § 90.]

Severability—1989 c 380: See RCW 15.58.942.

70.104.100 Industrial insurance statutes not affected. Nothing in RCW 70.104.070 through 70.104.090 shall be construed to affect in any manner the administration of Title 51 RCW by the department of labor and industries. [1989 c 380 § 70.]

Severability—1989 c 380: See RCW 15.58.942.

Chapter 70.105

HAZARDOUS WASTE MANAGEMENT

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Hazardous waste fees: Chapter 70.105B RCW.

Radioactive and hazardous waste emergency response programs, state coordinator: RCW 38.52.030.

Transport of hazardous materials, state patrol authority over: Chapter 46.48 RCW.

70.105.005 Legislative declaration. The legislature hereby finds and declares:

(1) The health and welfare of the people of the state depend on clean and pure environmental resources unaffected by hazardous waste contamination. At the same time, the quality of life of the people of the state is in part based upon a large variety of goods produced by the economy of the state. The complex industrial processes that produce these goods also generate waste byproducts, some of which are hazardous to the public health and the environment if improperly managed.

(2) Safe and responsible management of hazardous waste is necessary to prevent adverse effects on the environment and to protect public health and safety.

(3) The availability of safe, effective, economical, and environmentally sound facilities for the management of hazardous waste is essential to protect public health and the environment and to preserve the economic strength of the state.

(4) Strong and effective enforcement of federal and state hazardous waste laws and regulations is essential to protect the public health and the environment and to meet the public's concerns regarding the acceptance of needed new hazardous waste management facilities.

(5) Negotiation, mediation, and similar conflict resolution techniques are useful in resolving concerns over the local impacts of siting hazardous waste management facilities.

(6) Safe and responsible management of hazardous waste requires an effective planning process that involves local and state governments, the public, and industry.

(7) Public acceptance and successful siting of needed new hazardous waste management facilities depends on several factors, including:

(a) Public confidence in the safety of the facilities;

(b) Assurance that the hazardous waste management priorities established in this chapter are being carried out to the maximum degree practical;

(c) Recognition that all state citizens benefit from certain products whose manufacture results in the generation of hazardous byproducts, and that all state citizens must, therefore, share in the responsibility for finding safe and effective means to manage this hazardous waste; and

(d) Provision of adequate opportunities for citizens to meet with facility operators and resolve concerns about local hazardous waste management facilities.

(8) Due to the controversial and regional nature of facilities for the disposal and incineration of hazardous waste, the facilities have had difficulty in obtaining necessary local approvals. The legislature finds that there is a state-wide interest in assuring that such facilities can be sited.

It is therefore the intent of the legislature to preempt local government's authority to approve, deny, or otherwise regulate disposal and incineration facilities, and to vest in the department of ecology the sole authority among state, regional, and local agencies to approve, deny, and regulate preempted facilities, as defined in this chapter.

In addition, it is the intent of the legislature that such complete preemptive authority also be vested in the department for treatment and storage facilities, in addition to disposal and incineration facilities, if a local government fails to carry out its responsibilities established in RCW 70.105.225.

It is further the intent of the legislature that no local ordinance, permit requirement, other requirement, or decision shall prohibit on the basis of land use considerations the construction of a hazardous waste management facility within any zone designated and approved in accordance with this chapter, provided that the proposed site for the facility is consistent with applicable state siting criteria.

(9) With the exception of the disposal site authorized for acquisition under this chapter, the private sector has had the primary role in providing hazardous waste management facilities and services in the state. It is the intent of the legislature that this role be encouraged and continue into the future to the extent feasible. Whether

privately or publicly owned and operated, hazardous waste management facilities and services should be subject to strict governmental regulation as provided under this chapter.

(10) Wastes that are exempt or excluded from full regulation under this chapter due to their small quantity or household origin have the potential to pose significant risk to public health and the environment if not properly managed. It is the intent of the legislature that the specific risks posed by such waste be investigated and assessed and that programs be carried out as necessary to manage the waste appropriately. In addition, the legislature finds that, because local conditions vary substantially in regard to the quantities, risks, and management opportunities available for such wastes, local government is the appropriate level of government to plan for and carry out programs to manage moderate-risk waste, with assistance and coordination provided by the department. [1985 c 448 § 2.]

Severability—1985 c 448: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1985 c 448 § 19.]

70.105.007 Purpose. The purpose of this chapter is to establish a comprehensive state-wide framework for the planning, regulation, control, and management of hazardous waste which will prevent land, air, and water pollution and conserve the natural, economic, and energy resources of the state. To this end it is the purpose of this chapter:

- (1) To provide broad powers of regulation to the department of ecology relating to management of hazardous wastes and releases of hazardous substances;
- (2) To promote waste reduction and to encourage other improvements in waste management practices;
- (3) To promote cooperation between state and local governments by assigning responsibilities for planning for hazardous wastes to the state and planning for moderate-risk waste to local government;
- (4) To provide for prevention of problems related to improper management of hazardous substances before such problems occur; and
- (5) To assure that needed hazardous waste management facilities may be sited in the state, and to ensure the safe operation of the facilities. [1985 c 448 § 3.]

Severability—1985 c 448: See note following RCW 70.105.005.

70.105.010 Definitions. The words and phrases defined in this section shall have the meanings indicated when used in this chapter unless the context clearly requires otherwise.

- (1) "Department" means the department of ecology.
- (2) "Director" means the director of the department of ecology or the director's designee.
- (3) "Disposal site" means a geographical site in or upon which hazardous wastes are disposed of in accordance with the provisions of this chapter.

(4) "Dispose or disposal" means the discarding or abandoning of hazardous wastes or the treatment, decontamination, or recycling of such wastes once they have been discarded or abandoned.

(5) "Dangerous wastes" means any discarded, useless, unwanted, or abandoned substances, including but not limited to certain pesticides, or any residues or containers of such substances which are disposed of in such quantity or concentration as to pose a substantial present or potential hazard to human health, wildlife, or the environment because such wastes or constituents or combinations of such wastes:

(a) Have short-lived, toxic properties that may cause death, injury, or illness or have mutagenic, teratogenic, or carcinogenic properties; or

(b) Are corrosive, explosive, flammable, or may generate pressure through decomposition or other means.

(6) "Extremely hazardous waste" means any dangerous waste which

(a) will persist in a hazardous form for several years or more at a disposal site and which in its persistent form

(i) presents a significant environmental hazard and may be concentrated by living organisms through a food chain or may affect the genetic make-up of man or wildlife, and

(ii) is highly toxic to man or wildlife

(b) if disposed of at a disposal site in such quantities as would present an extreme hazard to man or the environment.

(7) "Person" means any person, firm, association, county, public or municipal or private corporation, agency, or other entity whatsoever.

(8) "Pesticide" shall have the meaning of the term as defined in RCW 15.58.030 as now or hereafter amended.

(9) "Solid waste advisory committee" means the same advisory committee as per RCW 70.95.040 through 70.95.070.

(10) "Designated zone facility" means any facility that requires an interim or final status permit under rules adopted under this chapter and that is not a preempted facility as defined in this section.

(11) "Facility" means all contiguous land and structures, other appurtenances, and improvements on the land used for recycling, storing, treating, incinerating, or disposing of hazardous waste.

(12) "Preempted facility" means any facility that includes as a significant part of its activities any of the following operations: (a) Landfill, (b) incineration, (c) land treatment, (d) surface impoundment to be closed as a landfill, or (e) waste pile to be closed as a landfill.

(13) "Hazardous household substances" means those substances identified by the department as hazardous household substances in the guidelines developed under RCW 70.105.220.

(14) "Hazardous substances" means any liquid, solid, gas, or sludge, including any material, substance, product, commodity, or waste, regardless of quantity, that exhibits any of the characteristics or criteria of

hazardous waste as described in rules adopted under this chapter.

(15) "Hazardous waste" means and includes all dangerous and extremely hazardous waste, including substances composed of both radioactive and hazardous components.

(16) "Local government" means a city, town, or county.

(17) "Moderate-risk waste" means (a) any waste that exhibits any of the properties of hazardous waste but is exempt from regulation under this chapter solely because the waste is generated in quantities below the threshold for regulation, and (b) any household wastes which are generated from the disposal of substances identified by the department as hazardous household substances.

(18) "Service charge" means an assessment imposed under RCW 70.105.280 against those facilities that store, treat, incinerate, or dispose of dangerous or extremely hazardous waste that contains both a nonradioactive hazardous component and a radioactive component. Service charges shall also apply to facilities undergoing closure under this chapter in those instances where closure entails the physical characterization of remaining wastes which contain both a nonradioactive hazardous component and a radioactive component or the management of such wastes through treatment or removal, except any commercial low-level radioactive waste facility. [1989 c 376 § 1; 1987 c 488 § 1; 1985 c 448 § 1; 1975-'76 2nd ex.s. c 101 § 1.]

Severability—1989 c 376: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1989 c 376 § 4.]

Severability—1985 c 448: See note following RCW 70.105.005.

70.105.020 Standards and regulations—Adoption—Notice and hearing—Consultation with other agencies. The department after notice and public hearing shall:

(1) Adopt regulations designating as extremely hazardous wastes subject to the provisions of this chapter those substances which exhibit characteristics consistent with the definition provided in RCW 70.105.010(6);

(2) Adopt and may revise when appropriate, minimum standards and regulations for disposal of extremely hazardous wastes to protect against hazards to the public, and to the environment. Before adoption of such standards and regulations, the department shall consult with appropriate agencies of interested local governments and secure technical assistance from the department of agriculture, the department of social and health services, the department of wildlife, the department of natural resources, the department of fisheries, the department of labor and industries, and the department of community development, through the director of fire protection. [1988 c 36 § 28; 1986 c 266 § 119; 1975-'76 2nd ex.s. c 101 § 2.]

Severability—1986 c 266: See note following RCW 38.52.005.

70.105.030 List and information to be furnished by depositor of hazardous waste—Rules and regulations.

(1) After the effective date of the regulations adopted by the department designating extremely hazardous wastes, any person planning to dispose of extremely hazardous waste as designated by the department shall provide the operator of the disposal site with a list setting forth the extremely hazardous wastes for disposal, the amount of such wastes, the general chemical and mineral composition of such waste listed by approximate maximum and minimum percentages, and the origin of any such waste. Such list, when appropriate, shall include information on antidotes, first aid, or safety measures to be taken in case of accidental contact with the particular extremely hazardous waste being disposed.

(2) The department shall adopt and enforce all rules and regulations including the form and content of the list, necessary and appropriate to accomplish the purposes of subsection (1) of this section. [1975-'76 2nd ex.s. c 101 § 3.]

70.105.040 Disposal site or facility—Acquisition—Disposal fee schedule.

(1) The department through the department of general administration, is authorized to acquire interests in real property from the federal government on the Hanford Reservation by gift, purchase, lease, or other means, to be used for the purpose of developing, operating, and maintaining an extremely hazardous waste disposal site or facility by the department, either directly or by agreement with public or private persons or entities: *Provided*, That lands acquired under this section shall not be inconsistent with a local comprehensive plan approved prior to January 1, 1976: *And provided further*, That no lands acquired under this section shall be subject to land use regulation by a local government.

(2) The department may establish an appropriate fee schedule for use of such disposal facilities to offset the cost of administration of this chapter and the cost of development, operation, maintenance, and perpetual management of the disposal site. If operated by a private entity, the disposal fee may be such as to provide a reasonable profit. [1975-'76 2nd ex.s. c 101 § 4.]

70.105.050 Disposal at other than approved site prohibited—Disposal of radioactive wastes.

(1) No person shall dispose of designated extremely hazardous wastes at any disposal site in the state other than the disposal site established and approved for such purpose under provisions of this chapter, except when such wastes are going to a processing facility which will result in the waste being reclaimed, treated, detoxified, neutralized, or otherwise processed to remove its harmful properties or characteristics.

(2) Extremely hazardous wastes that contain radioactive components may be disposed at a radioactive waste disposal site that is (a) owned by the United States department of energy or a licensee of the nuclear regulatory commission and (b) permitted by the department and operated in compliance with the provisions of this

chapter. However, prior to disposal, or as a part of disposal, all reasonable methods of treatment, detoxification, neutralization, or other waste management methodologies designed to mitigate hazards associated with these wastes shall be employed, as required by applicable federal and state laws and regulations. [1987 c 488 § 4; 1975-'76 2nd ex.s. c 101 § 5.]

70.105.060 Review of rules, regulations, criteria and fee schedules. All rules, regulations, criteria, and fee schedules adopted by the department to implement the provisions of this chapter shall be reviewed by the solid waste advisory committee for the purpose of recommending revisions, additions, or modifications thereto as provided for the review of solid waste regulations and standards pursuant to chapter 70.95 RCW. [1975-'76 2nd ex.s. c 101 § 6.]

70.105.070 Criteria for receiving waste at disposal site. The department may elect to receive dangerous waste at the site provided under this chapter, provided

(1) it is upon request of the owner, producer, or person having custody of the waste, and

(2) upon the payment of a fee to cover disposal

(3) it can be reasonably demonstrated that there is no other disposal sites in the state that will handle such dangerous waste, and

(4) the site is designed to handle such a request or can be modified to the extent necessary to adequately dispose of the waste, or

(5) if a demonstrable emergency and potential threat to the public health and safety exists. [1975-'76 2nd ex.s. c 101 § 7.]

70.105.080 Violations—Civil penalties. (1) Every person who fails to comply with any provision of this chapter or of the rules adopted thereunder shall be subjected to a penalty in an amount of not more than ten thousand dollars per day for every such violation. Each and every such violation shall be a separate and distinct offense. In case of continuing violation, every day's continuance shall be a separate and distinct violation. Every person who, through an act of commission or omission, procures, aids, or abets in the violation shall be considered to have violated the provisions of this section and shall be subject to the penalty herein provided.

(2) The penalty provided for in this section shall be imposed pursuant to the procedures in RCW 43.21B-.300. [1987 c 109 § 12; 1983 c 172 § 2; 1975-'76 2nd ex.s. c 101 § 8.]

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

Severability—1983 c 172: See note following RCW 70.105.097.

70.105.085 Violations—Criminal penalties. Any person who knowingly transports, treats, stores, handles, disposes of, or exports a hazardous substance in violation of this chapter is guilty of: (1) A class B felony if the person knows at the time that the conduct constituting the violation places another person in imminent danger

of death or serious bodily injury; or (2) a class C felony if the person knows that the conduct constituting the violation places any property of another person or any natural resources owned by the state of Washington or any of its local governments in imminent danger of harm. As used in this section, "imminent danger" means that there is a substantial likelihood that harm will be experienced within a reasonable period of time should the danger not be eliminated. As used in this section, "knowingly" refers to an awareness of facts, not awareness of law. Violators shall be punished as provided under RCW 9A.20.021. [1989 c 2 § 15 (Initiative Measure No. 97, approved November 8, 1988).]

Short title—Captions—Construction—Existing agreements—Effective date—Severability—1989 c 2: See RCW 70.105D.900 through 70.105D.921, respectively.

70.105.090 Violations—Gross misdemeanor. In addition to the penalties imposed pursuant to RCW 70.105.080, any person who violates any provisions of this chapter, or of the rules implementing this chapter, and any person who knowingly aids or abets another in conducting any violation of any provisions of this chapter, or of the rules implementing this chapter, shall be guilty of a gross misdemeanor and upon conviction thereof shall be punished by a fine of not less than one hundred dollars nor more than ten thousand dollars, and/or by imprisonment in the county jail for not more than one year, for each separate violation. Each and every such violation shall be a separate and distinct offense. In case of continuing violation, every day's continuance shall be a separate and distinct offense. [1984 c 237 § 1; 1983 c 172 § 3; 1975-'76 2nd ex.s. c 101 § 9.]

Severability—1983 c 172: See note following RCW 70.105.097.

70.105.095 Violations—Orders—Penalty for noncompliance—Appeal. (1) Whenever on the basis on any information the department determines that a person has violated or is about to violate any provision of this chapter, the department may issue an order requiring compliance either immediately or within a specified period of time. The order shall be delivered by registered mail or personally to the person against whom the order is directed.

(2) Any person who fails to take corrective action as specified in a compliance order shall be liable for a civil penalty of not more than ten thousand dollars for each day of continued noncompliance. In addition, the department may suspend or revoke any permits and/or certificates issued under the provisions of this chapter to a person who fails to comply with an order directed against him.

(3) Any order may be appealed pursuant to RCW 43.21B.310. [1987 c 109 § 16; 1983 c 172 § 4.]

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

Severability—1983 c 172: See note following RCW 70.105.097.

70.105.097 Action for damages resulting from violation—Attorneys' fees. A person injured as a result of a

violation of this chapter or the rules adopted thereunder may bring an action in superior court for the recovery of the damages. A conviction or imposition of a penalty under this chapter is not a prerequisite to an action under this section.

The court may award reasonable attorneys' fees to a prevailing injured party in an action under this section. [1983 c 172 § 1.]

Severability—1983 c 172: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1983 c 172 § 5.]

70.105.100 Powers and duties of department. The department in performing its duties under this chapter may:

(1) Conduct studies and coordinate research programs pertaining to extremely hazardous waste management;

(2) Render technical assistance to generators of dangerous and extremely hazardous wastes and to state and local agencies in the planning and operation of hazardous waste programs;

(3) Encourage and provide technical assistance to waste generators to form and operate a "waste exchange" for the purpose of finding users for dangerous and extremely hazardous wastes that would otherwise be disposed of: *Provided*, That such technical assistance shall not violate the confidentiality of manufacturing processes; and

(4) Provide for appropriate surveillance and monitoring of extremely hazardous waste disposal practices in the state. [1975-'76 2nd ex.s. c 101 § 10.]

70.105.105 Duty of department to regulate PCB waste. The department of ecology shall regulate under chapter 70.105 RCW, wastes generated from the salvaging, rebuilding, or discarding of transformers or capacitors that have been sold or otherwise transferred for salvage or disposal after the completion or termination of their useful lives and which contain polychlorinated biphenyls (PCB's) and whose disposal is not regulated under 40 CFR part 761. Nothing in this section shall prohibit such wastes from being incinerated or disposed of at facilities permitted to manage PCB wastes under 40 CFR part 761. [1985 c 65 § 1.]

70.105.109 Regulation of wastes with radioactive and hazardous components. The department of ecology may regulate all hazardous wastes, including those composed of both radioactive and hazardous components, to the extent it is not preempted by federal law. [1987 c 488 § 2.]

70.105.110 Regulation of dangerous wastes associated with energy facilities. (1) Nothing in this chapter shall alter, amend, or supersede the provisions of chapter 80.50 RCW, except that, notwithstanding any provision of chapter 80.50 RCW, regulation of dangerous wastes associated with energy facilities from generation to disposal shall be solely by the department pursuant to chapter 70.105 RCW. In the implementation of said section, the department shall consult and cooperate with

the energy facility site evaluation council and, in order to reduce duplication of effort and to provide necessary coordination of monitoring and on-site inspection programs at energy facility sites, any on-site inspection by the department that may be required for the purposes of this chapter shall be performed pursuant to an interagency coordination agreement with the council.

(2) To facilitate the implementation of this chapter, the energy facility site evaluation council may require certificate holders to remove from their energy facility sites any dangerous wastes, controlled by this chapter, within ninety days of their generation. [1987 c 488 § 3; 1984 c 237 § 3; 1975-'76 2nd ex.s. c 101 § 11.]

70.105.111 Radioactive wastes—Authority of department of social and health services. Nothing in this chapter diminishes the authority of the department of social and health services to regulate the radioactive portion of mixed wastes pursuant to chapter 70.98 RCW. [1987 c 488 § 5.]

70.105.112 Application of chapter to special incinerator ash. This chapter does not apply to special incinerator ash regulated under chapter 70.138 RCW except that, for purposes of RCW 4.22.070(3)(a), special incinerator ash shall be considered hazardous waste. [1987 c 528 § 9.]

Severability—1987 c 528: See RCW 70.138.902.

70.105.120 Authority of attorney general. At the request of the department, the attorney general is authorized to bring such injunctive, declaratory, or other actions to enforce any requirement of this chapter. [1980 c 144 § 2.]

70.105.130 Department's powers as designated agency under federal act. (1) The department is designated as the state agency for implementing the federal resource conservation and recovery act (42 U.S.C. Sec. 6901 et seq.).

(2) The power granted to the department by this section is the authority to:

(a) Establish a permit system for owners or operators of facilities which treat, store, or dispose of dangerous wastes: *Provided*, That spent containers of pesticides or herbicides which have been used in normal farm operations and which are not extremely hazardous wastes, shall not be subject to the permit system;

(b) Establish standards for the safe transport, treatment, storage, and disposal of dangerous wastes as may be necessary to protect human health and the environment;

(c) Establish, to implement this section:

(i) A manifest system to track dangerous wastes;

(ii) Reporting, monitoring, recordkeeping, labeling, sampling requirements; and

(iii) Owner, operator, and transporter responsibility;

(d) Enter at reasonable times establishments regulated under this section for the purposes of inspection, monitoring, and sampling; and

(e) Adopt rules necessary to implement this section. [1980 c 144 § 1.]

70.105.135 Copies of notification forms or annual reports to officials responsible for fire protection. Any person who generates, treats, stores, disposes, or otherwise handles dangerous or extremely hazardous wastes shall provide copies of any notification forms, or annual reports that are required pursuant to RCW 70.105.130 to the fire departments or fire districts that service the areas in which the wastes are handled upon the request of the fire departments or fire districts. In areas that are not serviced by a fire department or fire district, the forms or reports shall be provided to the sheriff or other county official designated pursuant to RCW 48.48.060 upon the request of the sheriff or other county official. This section shall not apply to the transportation of hazardous wastes. [1986 c 82 § 1.]

70.105.140 Rules implemented under RCW 70.105.130—Review. Rules implementing RCW 70.105.130 shall be submitted to the house and senate committees on ecology for review prior to being adopted in accordance with chapter 34.05 RCW. [1980 c 144 § 3.]

70.105.145 Department's authority to participate in and administer federal act. Notwithstanding any other provision of chapter 70.105 RCW, the department of ecology is empowered to participate fully in and is empowered to administer all aspects of the programs of the federal Resource Conservation and Recovery Act, as it exists on June 7, 1984, (42 U.S.C. Sec. 6901 et seq.), contemplated for participation and administration by a state under that act. [1984 c 237 § 2; 1983 c 270 § 2.]

Severability—1983 c 270: See note following RCW 90.48.260.

70.105.150 Declaration—Management of hazardous waste—Priorities—Definitions. The legislature hereby declares that:

(1) The health and welfare of the people of the state depend on clean and pure environmental resources unaffected by hazardous waste contamination. Management and regulation of hazardous waste disposal should encourage practices which result in the least amount of waste being produced. Towards that end, the legislature finds that the following priorities in the management of hazardous waste are necessary and should be followed in order of descending priority as applicable:

- (a) Waste reduction;
- (b) Waste recycling;
- (c) Physical, chemical, and biological treatment;
- (d) Incineration;
- (e) Solidification/stabilization treatment;
- (f) Landfill.

(2) As used in this section:

- (a) "Waste reduction" means reducing waste so that hazardous byproducts are not produced;
- (b) "Waste recycling" means reusing waste materials and extracting valuable materials from a waste stream;

(c) "Physical, chemical, and biological treatment" means processing the waste to render it completely innocuous, produce a recyclable byproduct, reduce toxicity, or substantially reduce the volume of material requiring disposal;

(d) "Incineration" means reducing the volume or toxicity of wastes by use of an enclosed device using controlled flame combustion;

(e) "Solidification/stabilization treatment" means the use of encapsulation techniques to solidify wastes and make them less permeable or leachable; and

(f) "Landfill" means a disposal facility, or part of a facility, at which waste is placed in or on land and which is not a land treatment facility, surface impoundment, or injection well. [1983 1st ex.s. c 70 § 1.]

70.105.160 Waste management study—Public hearings—Adoption or modification of rules—Recommendations to legislature. The department shall conduct a study to determine the best management practices for categories of waste for the priority waste management methods established in RCW 70.105.150, with due consideration in the course of the study to sound environmental management and available technology. As an element of the study, the department shall review methods that will help achieve the priority of RCW 70.105.150(1)(a), waste reduction. Before issuing any proposed regulations, the department shall conduct public hearings regarding the best management practices for the various waste categories studied by the department. After conducting the study, the department shall prepare new rules or modify existing rules as appropriate to promote implementation of the priorities established in RCW 70.105.150 for management practices which assure use of sound environmental management techniques and available technology. The preliminary study shall be completed by July 1, 1986, and the rules shall be adopted by July 1, 1987. The solid waste advisory committee shall review the studies and the new or modified rules and submit recommendations to the legislature by January 1, 1988, regarding policy options (such as fee incentives, disposal bans, etc.) that will be used to reduce the production of dangerous and extremely hazardous waste in Washington state.

The studies shall be updated at least once every five years. The funding for these studies shall be from the hazardous waste control and elimination account, subject to legislative appropriation. [1984 c 254 § 2; 1983 1st ex.s. c 70 § 2.]

Severability—1984 c 254: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1984 c 254 § 3.]

70.105.165 Disposal of dangerous wastes at commercial off-site land disposal facilities—Limitations. (1) Independent of the processing or issuance of any or all federal, state, and local permits for disposal of dangerous wastes, no disposal of dangerous wastes at a commercial off-site land disposal facility may be undertaken prior to July 1, 1986, unless:

(a) The disposal results from actions taken under RCW 70.105A.060 (2) and (3), or results from other emergency situations; or

(b) Studies undertaken by the department under RCW 70.105.160 to determine the best management practices for various waste categories under the priority waste management methods established in RCW 70.105.150 are completed for the particular wastes or waste categories to be disposed of and any regulatory revisions deemed necessary by the department are proposed and do not prohibit land disposal of such wastes; or

(c) Final regulations have been adopted by the department that allow for such disposal.

(2) Construction of facilities used solely for the purpose of disposal of wastes that have not met the requirements of subsection (1) of this section shall not be undertaken by any developer of a dangerous waste disposal facility.

(3) The department shall prioritize the studies of waste categories undertaken under RCW 70.105.160 to provide initial consideration of those categories most likely to be suitable for land disposal. Any regulatory changes deemed necessary by the department shall be proposed and subjected to the rule-making process by category as the study of each waste category is completed. All of the study shall be completed, and implementing regulations proposed, by July 1, 1986.

(4) Any final permit issued by the department before the adoption of rules promulgated as a result of the study conducted under RCW 70.105.160 shall be modified as necessary to be consistent with such rules. [1984 c 254 § 1.]

Severability—1984 c 254: See note following RCW 70.105.160.

70.105.170 Waste management—Consultative services—Technical assistance—Confidentiality. Consistent with the purposes of RCW 70.105.150 and 70.105.160, the department is authorized to promote the priority waste management methods listed in RCW 70.105.150 by establishing or assisting in the establishment of: (1) Consultative services which, in conjunction with any business or industry requesting such service, study and recommend alternative waste management practices; and (2) technical assistance, such as a toll-free telephone service, to persons interested in waste management alternatives. Any person receiving such service or assistance may, in accordance with state law, request confidential treatment of information about their manufacturing or business practices. [1983 1st ex.s. c 70 § 3.]

70.105.180 Disposition of fines and penalties—Earnings. All fines and penalties collected under this chapter shall be deposited in the hazardous waste control and elimination account, which is hereby created in the state treasury. Moneys in the account collected from fines and penalties shall be expended exclusively by the department of ecology for the purposes of *this act, subject to legislative appropriation. Other sources of funds

deposited in this account may also be used for the purposes of *this act. All earnings of investments of balances in the hazardous waste control and elimination account shall be credited to the general fund. [1985 c 57 § 70; 1983 1st ex.s. c 70 § 4.]

***Reviser's note:** "This act" [1983 1st ex.s. c 70] consists of RCW 70.105.150, 70.105.160, 70.105.170, and 70.105.180.

Effective date—1985 c 57: See note following RCW 15.52.320.

70.105.200 Hazardous waste management plan. (1) The department shall develop, and shall update at least once every five years, a state hazardous waste management plan. The plan shall include, but shall not be limited to, the following elements:

(a) A state inventory and assessment of the capacity of existing facilities to treat, store, dispose, or otherwise manage hazardous waste;

(b) A forecast of future hazardous waste generation;

(c) A description of the plan or program required by RCW 70.105.160 to promote the waste management priorities established in RCW 70.105.150;

(d) Siting criteria as appropriate for hazardous waste management facilities, including such criteria as may be appropriate for the designation of eligible zones for designated zone facilities. However, these criteria shall not prevent the continued operation, at or below the present level of waste management activity, of existing facilities on the basis of their location in areas other than those designated as eligible zones pursuant to RCW 70.105.225;

(e) Siting policies as deemed appropriate by the department; and

(f) A plan or program to provide appropriate public information and education relating to hazardous waste management. The department shall ensure to the maximum degree practical that these plans or programs are coordinated with public education programs carried out by local government under RCW 70.105.220.

(2) The department shall seek, encourage, and assist participation in the development, revision, and implementation of the state hazardous waste management plan by interested citizens, local government, business and industry, environmental groups, and other entities as appropriate.

(3) Siting criteria shall be completed by December 31, 1986. Other plan components listed in subsection (1) of this section shall be completed by June 30, 1987.

(4) The department shall incorporate into the state hazardous waste management plan those elements of the local hazardous waste management plans that it deems necessary to assure effective and coordinated programs throughout the state. [1985 c 448 § 4.]

Severability—1985 c 448: See note following RCW 70.105.005.

70.105.210 Hazardous waste management facilities—Department to develop criteria for siting. By May 31, 1990, the department shall develop and adopt criteria for the siting of hazardous waste management facilities. These criteria will be part of the state hazardous waste management plan as described in RCW 70.105.200. To the extent practical, these criteria shall be

designed to minimize the short-term and long-term risks and costs that may result from hazardous waste management facilities. These criteria may vary by type of facilities and may consider natural site characteristics and engineered protection. Criteria may be established for:

- (1) Geology;
 - (2) Surface and groundwater hydrology;
 - (3) Soils;
 - (4) Flooding;
 - (5) Climatic factors;
 - (6) Unique or endangered flora and fauna;
 - (7) Transportation routes;
 - (8) Site access;
 - (9) Buffer zones;
 - (10) Availability of utilities and public services;
 - (11) Compatibility with existing uses of land;
 - (12) Shorelines and wetlands;
 - (13) Sole-source aquifers;
 - (14) Natural hazards; and
 - (15) Other factors as determined by the department.
- [1989 1st ex.s. c 13 § 2; 1985 c 448 § 5.]

Severability—1985 c 448: See note following RCW 70.105.005.

70.105.215 Department to adopt rules for permits for hazardous substances treatment facilities. The legislature recognizes the need for new, modified, or expanded facilities to treat, incinerate, or otherwise process or dispose of hazardous substances safely. In order to encourage the development of such facilities, the department shall adopt rules as necessary regarding the permitting of such facilities to ensure the most expeditious permit processing possible consistent with the substantive requirements of applicable law. If owners and operators are not the same entity, the operator shall be the permit applicant and responsible for the development of the permit application and all accompanying materials, as long as the owner also signs the application and certifies its ownership of the real property described in the application, and acknowledges its awareness of the contents of the application and receipt of a copy thereof. [1986 c 210 § 3.]

70.105.220 Local governments to prepare local hazardous waste plans—Basis—Elements required. (1) Each local government, or combination of contiguous local governments, is directed to prepare a local hazardous waste plan which shall be based on state guidelines and include the following elements:

(a) A plan or program to manage moderate-risk wastes that are generated or otherwise present within the jurisdiction. This element shall include an assessment of the quantities, types, generators, and fate of moderate-risk wastes in the jurisdiction. The purpose of this element is to develop a system of managing moderate-risk waste, appropriate to each local area, to ensure protection of the environment and public health;

(b) A plan or program to provide for ongoing public involvement and public education in regard to the management of moderate-risk waste. This element shall provide information regarding:

(i) The potential hazards to human health and the environment resulting from improper use and disposal of the waste; and

(ii) Proper methods of handling, reducing, recycling, and disposing of the waste;

(c) An inventory of all existing generators of hazardous waste and facilities managing hazardous waste within the jurisdiction. This inventory shall be based on data provided by the department;

(d) A description of the public involvement process used in developing the plan;

(e) A description of the eligible zones designated in accordance with RCW 70.105.225. However, the requirement to designate eligible zones shall not be considered part of the local hazardous waste planning requirements; and

(f) Other elements as deemed appropriate by local government.

(2) To the maximum extent practicable, the local hazardous waste plan shall be coordinated with other hazardous materials-related plans and policies in the jurisdiction.

(3) In recognition of the role of the private sector in providing hazardous and moderate-risk waste management facilities and transportation services, and in addition to other public involvement activities that may be required, local governments shall coordinate with those persons involved in providing such facilities and services.

(4) (a) The department shall prepare guidelines for the development of local hazardous waste plans. The guidelines shall be prepared in consultation with local governments and shall be completed by December 31, 1986. The guidelines shall include a list of substances identified as hazardous household substances.

(b) In preparing the guidelines under (a) of this subsection, the department shall review and assess information on pilot projects that have been conducted for moderate-risk waste management. The department shall encourage additional pilot projects as needed to provide information to improve and update the guidelines.

(5) The department shall consult with retailers, trade associations, public interest groups, and appropriate units of local government to encourage the development of voluntary public education programs on the proper handling of hazardous household substances.

(6) Local hazardous waste plans shall be completed and submitted to the department no later than June 30, 1990. Local governments may from time to time amend the local plan.

(7) Each local government, or combination of contiguous local governments, shall submit its local hazardous waste plan or amendments thereto to the department. The department shall approve or disapprove local hazardous waste plans or amendments by December 31, 1990, or within ninety days of submission, whichever is later. The department shall approve a local hazardous waste plan if it determines that the plan is consistent with this chapter and the guidelines under subsection (4) of this section. If approval is denied, the department shall submit its objections to the local government within ninety days of submission. However, for plans submitted

between January 1, 1990, and June 30, 1990, the department shall have one hundred eighty days to submit its objections. No local government is eligible for grants under RCW 70.105.235 for implementing a local hazardous waste plan unless the plan for that jurisdiction has been approved by the department.

(8) Each local government, or combination of contiguous local governments, shall implement the local hazardous waste plan for its jurisdiction by December 31, 1991.

(9) The department may waive the specific requirements of this section for any local government if such local government demonstrates to the satisfaction of the department that the objectives of the planning requirements have been met. [1986 c 210 § 1; 1985 c 448 § 6.]

Severability—1985 c 448: See note following RCW 70.105.005.

70.105.225 Local governments to designate zones—Departmental guidelines—Approval of local government zone designations or amendments—Exemption. (1) Each local government, or combination of contiguous local governments, is directed to: (a) Demonstrate to the satisfaction of the department that existing zoning allows designated zone facilities as permitted uses; or (b) designate land use zones within its jurisdiction in which designated zone facilities are permitted uses. The zone designations shall be consistent with the state siting criteria adopted in accordance with RCW 70.105.210, except as may be approved by the department in accordance with subsection (6) of this section.

(2) Local governments shall not prohibit the processing or handling of hazardous waste in zones in which the processing or handling of hazardous substances is not prohibited. This subsection does not apply in residential zones.

(3) The department shall prepare guidelines, as appropriate, for the designation of zones under this section. The guidelines shall be prepared in consultation with local governments and shall be completed by December 31, 1986.

(4) The initial designation of zones shall be completed or revised, and submitted to the department within eighteen months after the enactment of siting criteria in accordance with RCW 70.105.210. Local governments that do not comply with this submittal deadline shall be subject to the preemptive provisions of RCW 70.105.240(4) until such time as zone designations are completed and approved by the department. Local governments may from time to time amend their designated zones.

(5) Local governments without land use zoning provisions shall designate eligible geographic areas within their jurisdiction, based on siting criteria adopted in accordance with RCW 70.105.210. The area designation shall be subject to the same requirements as if they were zone designations.

(6) Each local government, or combination of contiguous local governments, shall submit its designation of zones or amendments thereto to the department. The department shall approve or disapprove zone designations or amendments within ninety days of submission.

The department shall approve eligible zone designations if it determines that the proposed zone designations are consistent with this chapter, the applicable siting criteria, and guidelines for developing designated zones: *Provided*, That the department shall consider local zoning in place as of January 1, 1985, or other special situations or conditions which may exist in the jurisdiction. If approval is denied, the department shall state within ninety days from the date of submission the facts upon which that decision is based and shall submit the statement to the local government together with any other comments or recommendations it deems appropriate. The local government shall have ninety days after it receives the statement from the department to make modifications designed to eliminate the inconsistencies and resubmit the designation to the department for approval. Any designations shall take effect when approved by the department.

(7) The department may exempt a local government from the requirements of this section if:

(a) Regulated quantities of hazardous waste have not been generated within the jurisdiction during the two calendar years immediately preceding the calendar year during which the exemption is requested; and

(b) The local government can demonstrate to the satisfaction of the department that no significant portion of land within the jurisdiction can meet the siting criteria adopted in accordance with RCW 70.105.210. [1989 1st ex.s. c 13 § 1; 1985 c 448 § 7.]

Severability—1985 c 448: See note following RCW 70.105.005.

70.105.230 Local governments to submit letter of intent to identify or designate zones and submit management plans—Department to prepare plan in event of failure to act. (1) Each local government is directed to submit to the director of the department by October 31, 1987, a letter of intent stating that it intends to (a) identify, or designate if necessary, eligible zones for designated zone facilities no later than June 30, 1988, and (b) submit a complete local hazardous waste management plan to the department no later than June 30, 1990. The letters shall also indicate whether these requirements will be completed in conjunction with other local governments.

(2) If any local government fails to submit a letter as provided in subsection (1)(b) of this section, or fails to adopt a local hazardous waste plan for its jurisdiction in accordance with the time schedule provided in this chapter, or fails to secure approval from the department for its local hazardous waste plan in accordance with the time schedule provided in this chapter, the department shall prepare a hazardous waste plan for the local jurisdiction. [1985 c 448 § 8.]

Severability—1985 c 448: See note following RCW 70.105.005.

70.105.235 Grants to local governments for plan preparation, implementation, and designation of zones—Matching funds—Qualifications. (1) Subject to legislative appropriations, the department may make and administer grants to local governments for (a)

preparing and updating local hazardous waste plans, (b) implementing approved local hazardous waste plans, and (c) designating eligible zones for designated zone facilities as required under this chapter.

(2) Local governments shall match the funds provided by the department for planning or designating zones with an amount not less than twenty-five percent of the estimated cost of the work to be performed. Local governments may meet their share of costs with cash or contributed services. Local governments, or combination of contiguous local governments, conducting pilot projects pursuant to RCW 70.105.220(4) may subtract the cost of those pilot projects conducted for hazardous household substances from their share of the cost. If a pilot project has been conducted for all moderate-risk wastes, only the portion of the cost that applies to hazardous household substances shall be subtracted. The matching funds requirement under this subsection shall be waived for local governments, or combination of contiguous local governments, that complete and submit their local hazardous waste plans under RCW 70.105.220(6) prior to June 30, 1988.

(3) Recipients of grants shall meet such qualifications and follow such procedures in applying for and using grants as may be established by the department. [1986 c 210 § 2; 1985 c 448 § 9.]

Severability—1985 c 448: See note following RCW 70.105.005.

70.105.240 State preemption—Department sole authority—Local requirements superseded—State authority over designated zone facilities. (1) As of July 28, 1985, the state preempts the field of state, regional, or local permitting and regulating of all preempted facilities as defined in this chapter. The department of ecology is designated the sole decision-making authority with respect to permitting and regulating such facilities and no other state agency, department, division, bureau, commission, or board, or any local or regional political subdivision of the state, shall have any permitting or regulatory authority with respect to such facilities including, but not limited to, the location, construction, and operation of such facilities. Permits issued by the department shall be in lieu of any and all permits, approvals, certifications, or conditions of any other state, regional, or local governmental authority which would otherwise apply.

(2) The department shall ensure that any permits issued under this chapter invoking the preemption authority of this section meet the substantive requirements of existing state laws and regulations to the extent such laws and regulations are not inconsistent or in conflict with any of the provisions of this chapter. In the event that any of the provisions of this chapter, or any of the regulations promulgated hereunder, are in conflict with any other state law or regulations, such other law or regulations shall be deemed superseded for purposes of this chapter.

(3) As of July 28, 1985, any ordinances, regulations, requirements, or restrictions of regional or local governmental authorities regarding the location, construction,

or operation of preempted facilities shall be deemed superseded. However, in issuing permits under this section, the department shall consider local fire and building codes and condition such permits as appropriate in compliance therewith.

(4) Effective July 1, 1988, the department shall have the same preemptive authority as defined in subsections (1) through (3) of this section in regard to any designated zone facility that may be proposed in any jurisdiction where the designation of eligible zones pursuant to RCW 70.105.225 has not been completed and approved by the department. Unless otherwise preempted by this subsection, designated zone facilities shall be subject to all applicable state and local laws, regulations, plans, and other requirements. [1985 c 448 § 10.]

Severability—1985 c 448: See note following RCW 70.105.005.

70.105.245 Department may require notice of intent for management facility permit. The department may adopt rules to require any person who intends to file an application for a permit for a hazardous waste management facility to file a notice of intent with the department prior to submitting the application. [1985 c 448 § 11.]

Severability—1985 c 448: See note following RCW 70.105.005.

70.105.250 Appeals to pollution control hearings board. Any disputes between the department and the governing bodies of local governments in regard to the local planning requirements under RCW 70.105.220 and the designation of zones under RCW 70.105.225 may be appealed by the department or the governing body of the local government to the pollution control hearings board established under chapter 43.21B RCW. [1985 c 448 § 12.]

Severability—1985 c 448: See note following RCW 70.105.005.

70.105.255 Department to provide technical assistance with local plans. The department shall provide technical assistance to local governments in the preparation, review, revision, and implementation of local hazardous waste plans. [1985 c 448 § 13.]

Severability—1985 c 448: See note following RCW 70.105.005.

70.105.260 Department to assist conflict resolution activities related to siting facilities—Agreements may constitute conditions for permit. (1) In order to promote identification, discussion, negotiation, and resolution of issues related to siting of hazardous waste management facilities, the department:

(a) Shall compile and maintain information on the use and availability of conflict resolution techniques and make this information available to industries, state and local government officials, and other citizens;

(b) Shall encourage and assist in facilitating conflict resolution activities, as appropriate, between facility proponents, host communities, and other interested persons;

(c) May adopt rules specifying procedures for facility proponents, host communities, and citizens to follow in

providing opportunities for conflict resolution activities, including the use of dispute resolution centers established pursuant to chapter 7.75 RCW; and

(d) May expend funds to support such conflict resolution activities, and may adopt rules as appropriate to govern the support.

(2) Any agreements reached under the processes described in subsection (1) of this section and deemed valid by the department may be written as conditions binding on a permit issued under this chapter. [1985 c 448 § 14.]

Severability—1985 c 448: See note following RCW 70.105.005.

70.105.270 Requirements of RCW 70.105.200 through 70.105.230 and 70.105.240(4) not mandatory without legislative appropriation. The requirements of RCW 70.105.200 through 70.105.230 and 70.105.240(4) shall not become mandatory until funding is appropriated by the legislature. [1985 c 448 § 15.]

Severability—1985 c 448: See note following RCW 70.105.005.

70.105.280 Service charges. (1) The department may assess reasonable service charges against those facilities that store, treat, incinerate, or dispose of dangerous or extremely hazardous waste that contains both a nonradioactive hazardous component and a radioactive component or which are undergoing closure under this chapter in those instances where closure entails the physical characterization of remaining wastes which contain both a nonradioactive hazardous component and a radioactive component or the management of such wastes through treatment or removal, except any commercial low-level radioactive waste facility. Service charges may not exceed the costs to the department in carrying out the duties of this section.

(2) Program elements or activities for which service charges may be assessed include:

(a) Office, staff, and staff support for the purposes of facility or unit permit development, review, and issuance; and

(b) Actions taken to determine and ensure compliance with the state's hazardous waste management act.

(3) Moneys collected through the imposition of such service charges shall be deposited in the state toxics control account.

(4) The department shall adopt rules necessary to implement this section. Facilities that store, treat, incinerate, or dispose of dangerous or extremely hazardous waste that contains both a nonradioactive hazardous component and a radioactive component shall not be subject to service charges prior to such rule making. Facilities undergoing closure under this chapter in those instances where closure entails the physical characterization of remaining wastes which contain both a nonradioactive hazardous component and a radioactive component or the management of such wastes through treatment or removal shall not be subject to service charges prior to such rule making. [1989 c 376 § 2.]

Severability—1989 c 376: See note following RCW 70.105.010.

70.105.900 Short title—1985 c 448. This chapter shall be known and may be cited as the hazardous waste management act. [1985 c 448 § 16.]

Severability—1985 c 448: See note following RCW 70.105.005.

Chapter 70.105A HAZARDOUS WASTE FEES

Sections

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Hazardous waste management: Chapter 70.105 RCW.

70.105A.010 Policy—Purposes. (1) It is the policy of the state of Washington to protect the public health and welfare of all its citizens against the dangers arising from the generation, transport, treatment, storage, and disposal of hazardous wastes and from releases of hazardous substances. In order to reach that policy objective, it is not only necessary to provide state government with broad powers of regulation, control, and removal of these hazardous wastes and substances, including the power to fashion and effectuate remedial directives, but it is imperative that adequate funds are also provided to carry out these powers in a vigorous manner. In the implementation of the provisions of this chapter, the state shall, when appropriate, cooperate with and support federal agencies in their implementation of counterpart federal hazardous waste and substances programs, while pursuing independent state actions whenever it appears they will provide more efficient or effective alternative programs to achieve the policies and purposes of this chapter.

(2) The purposes of this chapter are, among others: (a) To supplement the powers already vested in the department of ecology relating to hazardous wastes and to releases of substances which are hazardous to the environment or public health, (b) to provide moneys necessary for the full, sufficient, and efficient implementation of the hazardous waste and substances regulation control and removal program of the state, (c) to encourage reduction of hazardous wastes through recycling and improvement of manufacturing processes, (d) to provide for

the cleanup and restoration of those sites within the state at which improper disposal of hazardous waste has occurred, resulting in the potential for deleterious impacts on the health and welfare of the citizens of the state, as well as on the state's natural, environmental, and biological systems, (e) to provide for funding to study, plan, and undertake the rehabilitation, removal, and cleanup of hazardous waste deposited improperly at sites located within the state, and (f) to provide funds for matching purposes for participation in the federal Comprehensive Environmental Response, Compensation and Liability Act of 1980. [1983 1st ex.s. c 65 § 1.]

70.105A.020 Definitions. As used in this chapter, the following terms have the meanings indicated unless the context clearly requires otherwise.

(1) "Dangerous waste" shall have the same definition as set forth in RCW 70.105.010(5) and shall specifically include those wastes designated as dangerous by rules adopted pursuant to chapter 70.105 RCW;

(2) "Department" means the department of ecology;

(3) "Extremely hazardous waste" shall have the same definition as set forth in RCW 70.105.010(6) and shall specifically include those wastes designated as extremely hazardous by rules adopted pursuant to chapter 70.105 RCW;

(4) "Hazardous waste" means and includes all dangerous and extremely hazardous wastes;

(5) "Person" means an individual, trust, firm, joint stock company, partnership, association, state, public or private or municipal corporation, commission, political subdivision of a state, interstate body, the federal government including any agency or officer thereof, and any Indian tribe or authorized tribal organization;

(6) "Identified site" means the same or geographically contiguous property, which may be divided by a public or private right of way, provided that access between the properties occurs at an intersection and crosses, as opposed to goes along, the right of way. Noncontiguous properties owned by the same person but connected by a right of way will be considered a single identified site if the person controls the right of way and can prevent public access;

(7) "Fee" means the annual hazardous waste control and elimination assessment fee imposed under RCW 70.105A.030 and the fee for treatment, storage, and disposal facilities imposed under RCW 70.105A.040;

(8) "Annual gross income" of a business means the value proceeding or accruing during a calendar year by reason of the transaction of the business or service engaged in and includes gross proceeds of sales, compensation for the rendition of services, gains realized from trading in stocks, bonds, or other evidences of indebtedness, interest, discount, rents, royalties, fees, commissions, dividends, and other emoluments however designated, all without any deduction on account of the cost of tangible property sold, the cost of materials used, labor costs, interest, discount, delivery costs, taxes, or any other expense whatsoever paid or accrued and without any deduction on account of losses; and

(9) "Generate" means any act or process which produces hazardous waste or first causes a hazardous waste to become subject to regulation. [1983 1st ex.s. c 65 § 2.]

70.105A.030 Annual fee—When due—Graduation of fees—Rules—Apportionment of income—Exemption—Fee limitation—Adjustment. (1) In addition to all other fees and taxes, there is hereby imposed and the department of revenue shall collect an annual fee from every person identified by the department of ecology for the privilege of utilizing or operating an identified site, other than as described in RCW 70.105A.040(1), in connection with any of the following business activities within this state:

(a) Exploring for, extracting, beneficiating, processing, or selling metallic or nonmetallic minerals;

(b) Exploring for, extracting, processing, or selling coal;

(c) Producing, distributing, or selling electricity;

(d) Industrial or nonresidential contracting or heavy construction;

(e) Painting or sandblasting;

(f) Producing, processing, or selling rubber or plastics;

(g) Producing, processing, or selling glass, cement, or concrete;

(h) Cutting, milling, producing, preparing, or selling lumber or wood products, including wooden furniture or fixtures;

(i) Producing, preparing, or selling paper or allied products;

(j) Printing or publishing;

(k) Synthesizing, producing, processing, preparing, or selling chemicals or allied products;

(l) Exploring for, extracting, producing, processing, distributing, or selling petroleum or gas;

(m) Fabricating rubber or plastic products;

(n) Beneficiating, processing, or selling primary or secondary metals;

(o) Fabricating metal products, including metal furniture or fixtures;

(p) Fabricating, constructing, preparing, installing, or selling machinery or supplies;

(q) Fabricating, constructing, installing, preparing, or selling electrical or electronic equipment, machinery, or supplies;

(r) Fabricating, producing, preparing, or selling transportation equipment;

(s) Transporting by railroad, motor vehicle, or water vessel;

(t) Telephone communication;

(u) Drycleaning, photofinishing, or furniture refinishing;

(v) Transferring, treating, storing, or disposing of solid, dangerous, or extremely hazardous wastes; and

(w) Repairing or servicing motor vehicles, railroad equipment, or water vessels.

When determining the particular business activity at an identified site, the department of ecology shall consider the major purpose of the activity or activities occurring at the identified site. Under this section, each

identified site shall be required to pay only one fee annually, but no fee shall be assessed on any person at an identified site engaged solely in making retail sales as defined in RCW 82.04.050, except for those identified sites which generate hazardous waste.

(2) The fee imposed by this section shall be due and payable on June 30 of the year next succeeding the calendar year in which a person has engaged at any time in the business activities listed in subsection (1) of this section. The amount of the fee for an identified site shall be graduated by reference to the annual gross income of the business apportioned to the site as provided in subsection (3) of this section in accordance with the following schedule:

(a) For annual gross income not in excess of one million dollars, a fee of not more than one hundred fifty dollars;

(b) For annual gross income in excess of one million dollars but not exceeding ten million dollars, a fee of not more than seven hundred fifty dollars;

(c) For annual gross income in excess of ten million dollars, a fee of not more than seven thousand five hundred dollars.

The department of ecology shall further graduate the fees set forth in (a), (b), and (c) of this subsection in accordance with criteria including but not limited to the quantity of hazardous waste generated and the health and environmental risks associated with the waste. The department of ecology shall publish by rule a schedule of these graduated fees.

(3) For purposes of this section, annual gross income of the business shall mean gross proceeds of sales as defined in RCW 82.04.070 or gross income of the business as defined in RCW 82.04.080; and shall mean gross income, as defined in RCW 82.16.010 (12). Annual gross income of the business of a person rendering services taxable under RCW 82.04.290 and maintaining places of business within and without this state shall be apportioned in accordance with the provisions of RCW 82.04-.460. The total annual gross income of the business taxable in this state under chapters 82.04 and 82.16 RCW shall be apportioned equally by the department of ecology among the identified sites utilized by such business in this state without regard to the amount or nature of the use: *Provided*, That the person subject to the fee may request, and the department of ecology shall grant, apportionment among identified sites utilized in this state according to each site's share of annual gross income of the business apportioned to this state. The person subject to the fee shall bear the burden of supporting the allocation among sites with appropriate data as reasonably requested by the department of ecology.

(4) If an identified site does not generate hazardous wastes regulated by chapter 70.105 RCW, the person owning or controlling the site is exempt from the fee imposed by this section.

(5) Notwithstanding subsection (1) or (2) of this section or RCW 70.105A.040, no person who owns or operates a combined identified site and hazardous waste treatment, storage or disposal site shall be required to

pay more than seven thousand five hundred dollars annually to the hazardous waste control and elimination account.

(6) The fees imposed by this section and the limitation on total payment of subsection (5) of this section shall be adjusted by five percent whenever the consumer price index of the United States department of labor increases or decreases by a five percent increment from the index figure in existence on January 1, 1983, and such fee and limitation adjustments shall be published in rules by the department of ecology.

(7) Fees shall not be required under this section for solid wastes generated primarily from the combustion of coal or other fossil fuels, until at least six months after the date of submission of the study required by section 8002 of the federal resource conservation and recovery act.

(8) For purposes of this section "manufacturer," "wholesaler," "retailer," and "person engaging in service activities" shall have the meaning attributed to such terms in chapter 82.04 RCW. "Business activities" shall mean activities of any person subject to the fees imposed in subsection (1) of this section engaging in business as defined in chapters 82.04 and 82.16 RCW.

(9) In the administration of this section and in addition to other provisions in this chapter for the enforcement and collection of fees due and owing under this section, the department of revenue is authorized to apply the provisions of chapter 82.32 RCW, provided that the provisions of RCW 82.32.050 and 82.32.090 shall not be applied. If the annual gross income of the business of any person subject to the fee imposed under this section is finally determined to be greater or less than that reported to the department of revenue for the year in question, the department of revenue shall, if necessary, recompute the fee due and shall refund or assess the outstanding balance, as the case may be. [1985 c 7 § 129; 1983 1st ex.s. c 65 § 3.]

70.105A.035 Revision of fees to provide a waste reduction and recycling incentive. The legislature is encouraged to revise the hazardous waste fees prescribed in RCW 70.105A.030 in a manner which provides an incentive for waste reduction and recycling. If prior to March 1, 1989, RCW 70.105A.030 as it existed on August 1, 1987, has not been amended in a manner which specifically provides an incentive for hazardous waste reduction and recycling, then (1) the requirement to pay the fees prescribed in that section is eliminated solely for fees due and payable on June 30, 1989; and (2) the department of ecology shall prepare, and submit to the legislature by January 1, 1990, a proposed revision designed to provide an incentive for hazardous waste reduction and recycling. [1989 c 2 § 16 (Initiative Measure No. 97, approved November 8, 1988).]

Short title—Captions—Construction—Existing agreements—Effective date—Severability—1989 c 2: See RCW 70.105D.900 through 70.105D.921, respectively.

70.105A.040 Annual fee for operation of facility for treating, storing, or disposing hazardous wastes—

Rules—Fee limitation—Adjustment. (1) Every person who operates a facility for the purpose of treating, storing, or disposing of hazardous wastes, that is subject to a permit issued under authority of RCW 70.105.130 or 70.105A.060(4) (including a permit issued in satisfaction of the requirements of 42 U.S.C. section 6925 of the federal Resource Conservation and Recovery Act, as amended) shall, on or before September 1, 1984, and on or before May 15 of each year thereafter, pay to the state a fee relating to the operation of such treatment, storage, or disposal facilities.

In relation to these annual fees, the department is empowered to adopt rules relating to: (a) Establishment of classes of facilities subject to fees, taking into account the size and type of facility and the risks of detrimental impacts associated therewith; and (b) the setting of a fee schedule pertaining to these classes with those classes presenting a greater risk having a higher dollar amount than those classes presenting a lesser risk: *Provided*, That the annual fee for any class shall not be greater than seven thousand five hundred dollars.

The department shall prepare a list of all such hazardous waste facilities and the fee for each such facility or type of facility and shall provide a statement to each operator of a facility specifying the fee that is owed and the basis for the fee.

(2) Notwithstanding the provisions of RCW 70.105A.030 (1) through (5) or this section, no person who operates a combined identified site and hazardous waste treatment, storage, or disposal site shall be required to pay more than seven thousand five hundred dollars annually to the hazardous waste control and elimination account.

(3) The department of ecology is required to increase or decrease the fees of subsection (1) of this section and the limitation on total payment of subsection (2) of this section, by five percent on each occasion when the consumer price index of the United States department of labor increases or decreases by a five percent increment from the index figure as it existed on January 1, 1983. Each such fee and limitation increase or decrease shall be set forth in rules adopted by the department of ecology. [1983 1st ex.s. c 65 § 4.]

70.105A.050 Disposition of fees. All fees paid to the state as provided in RCW 70.105A.030 and 70.105A.040 shall be placed in a hazardous waste control and elimination account of the general fund, and subject to legislative appropriation, be expended by the department of ecology solely to carry out the powers set forth in RCW 70.105A.060. [1983 1st ex.s. c 65 § 5.]

70.105A.060 Use of funds in the hazardous waste control and elimination account—Additional departmental powers—Actions by attorney general authorized. (1) The department of ecology may use funds in the hazardous waste control and elimination account in the implementation of the powers vested under RCW 70.105.020, 70.105.030, 70.105.080, 70.105.100, 70.105.120, and 70.105.130, 70.105.160 and 70.105.170 and

subsections (3) and (4) of this section as well as the administrative costs relating to the implementation of subsection (2) of this section.

(2) The department is authorized to participate in and is empowered to carry out all programs of the federal Comprehensive Environmental Response, Compensation and Liability Act of 1980 contemplated for state participation or administration under that act.

(3) In relation or addition to the powers set forth in this section and any other provisions of this code, the department is empowered, with regard to the regulation, control, or removal of hazardous substances and wastes, as follows:

(a) To coordinate responses to hazardous substances accident and spill incidents;

(b) To respond to, direct, or initiate cleanup of hazardous substances, accidents and spills, and hazardous waste sites;

(c) To conduct or contract for professional technical data gathering and analysis and damage assessment; and

(d) To conduct or contract for the removal of hazardous substances and wastes where there has been or is a potential for release, regardless of quantity or concentration, which could pose a threat to public health or the environment.

(4) The department is empowered to participate in and carry out all programs of the federal Resource Conservation and Recovery Act, as amended, contemplated for implementation by a state under that act and may use funds in the hazardous waste control and elimination account in the implementation thereof.

(5) The attorney general, at the request of the department, is empowered to recover moneys expended by the department from the hazardous waste control and elimination account under authority of this section when these funds were utilized to respond to an unpermitted spill or discharge or to control the release or threatened release of hazardous substances or wastes. Recovery authorized by this section shall be from any person owning or controlling the material spilled or discharged. Actions to recover moneys may be initiated in the superior court of Thurston county or any county in which the hazardous waste site or activity is located. Moneys recovered under this section shall be paid into the hazardous waste control and elimination account. [1983 1st ex.s. c 65 § 6.]

70.105A.070 Review of fee—Procedure. Any person aggrieved by a determination of the department of ecology pertaining to the fee imposed under RCW 70.105A.030(1) or to a specific fee contained in a statement issued under RCW 70.105A.040(1) may obtain review thereof by the pollution control hearings board in the same manner as review may be obtained of permits issued by the department pursuant to RCW 90.48.160, if a petition requesting review is filed with the board within thirty days of the day of service of the determination or of the statement of fees due. There shall be no increase in an amount set forth in a statement, as provided in RCW 70.105A.080(1), during any period of time when a review proceeding is pending before the

board or a reviewing court. This section shall have no applicability to the adoption of rules by the department pursuant to RCW 70.105A.040(1). [1983 1st ex.s. c 65 § 7.]

70.105A.080 Unpaid fees—Interest—Civil penalties—Maximum—Actions by attorney general authorized. (1) The fees required by RCW 70.105A.030(2) or 70.105A.040(1), when due and payable, shall bear interest at the rate of nine percent per annum for each month (or portion thereof) that the fee is not paid.

(2) The department of ecology may levy civil penalties in the amount of up to five hundred dollars for each day fees and interest due and owing under RCW 70.105A.040 or 70.105A.080(1) are unpaid. The procedures relating to levying and collection of penalties set forth in RCW 90.48.144 shall be applied to penalties levied under this section. Moneys collected under this subsection shall be placed in the hazardous waste control and elimination account.

(3) The attorney general is authorized to initiate such actions in the courts as are necessary and appropriate to insure compliance with the provisions of this chapter. [1983 1st ex.s. c 65 § 8.]

70.105A.090 Revenue for general fund reimbursement for site cleanup and restoration. The state treasurer is authorized to use revenue collected pursuant to RCW 70.105A.010 through 70.105A.090, to the extent this revenue exceeds any legislative appropriation of the revenue to the department of ecology for purposes of RCW 70.105A.010(2) (a) through (c) to reimburse general fund expenditures for cleanup and restoration of those sites pursuant to RCW 70.105A.010(2) (d) through (f). [1983 1st ex.s. c 65 § 13.]

70.105A.900 Severability—Construction of chapter—Implementation. (1) If any provision of this chapter or a portion thereof or its application to any person or legal entity or circumstances is held invalid, the remainder of the chapter, or the application of the provision or a portion thereof to other persons or legal entities or circumstances, shall not be affected.

(2) This chapter is exempted from the rule of strict construction, and it shall be liberally construed to give full effect to the objectives and purposes for which it was enacted.

(3) Nothing in this chapter relates to radioactive wastes, however characterized, and the department is precluded from using the funds of the hazardous waste control and elimination account for the regulation and control of such wastes.

(4) Consistent with subsection (2) of this section and taking into account the ambiguities of federal law relating to possible preemption of exercise of powers provided to the department in this chapter, the department shall implement this chapter, to the maximum extent reasonably attainable, to insure that no conflict with those preemptive aspects takes place. [1983 1st ex.s. c 65 § 9.]

70.105A.905 Effective dates—Proration of 1983 fee—1983 1st ex.s. c 65. (1) This act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect as follows:

(a) The powers provided to the department of ecology relating to the adoption of rules under RCW 70.105A.030(2) and 70.105A.040(1) shall take effect immediately; and

(b) The remainder of this act shall take effect on July 1, 1983.

(2) The annual fee due and payable under RCW 70.105A.030 on June 30, 1984, shall, following computation of the annual gross income of the business for the calendar year 1983, be prorated for the period July 1, 1983, through December 31, 1983. [1983 1st ex.s. c 65 § 15.]

Chapter 70.105D

HAZARDOUS WASTE CLEANUP—MODEL TOXICS CONTROL ACT

Sections

70.105D.010	Declaration of policy.
70.105D.020	Definitions.
70.105D.030	Department's powers and duties.
70.105D.040	Standard of liability.
70.105D.050	Enforcement.
70.105D.060	Timing of review.
70.105D.070	Toxics control accounts.
70.105D.900	Short title—1989 c 2.
70.105D.905	Captions—1989 c 2.
70.105D.910	Construction—1989 c 2.
70.105D.915	Existing agreements—1989 c 2.
70.105D.920	Effective date—1989 c 2.
70.105D.921	Severability—1989 c 2.

70.105D.010 Declaration of policy. (1) Each person has a fundamental and inalienable right to a healthful environment, and each person has a responsibility to preserve and enhance that right. The beneficial stewardship of the land, air, and waters of the state is a solemn obligation of the present generation for the benefit of future generations.

(2) A healthful environment is now threatened by the irresponsible use and disposal of hazardous substances. There are hundreds of hazardous waste sites in this state, and more will be created if current waste practices continue. Hazardous waste sites threaten the state's water resources, including those used for public drinking water. Many of our municipal landfills are current or potential hazardous waste sites and present serious threats to human health and environment. The costs of eliminating these threats in many cases are beyond the financial means of our local governments and ratepayers. The main purpose of *this act is to raise sufficient funds to clean up all hazardous waste sites and to prevent the creation of future hazards due to improper disposal of toxic wastes into the state's land and waters.

(3) Many farmers and small business owners who have followed the law with respect to their uses of pesticides and other chemicals nonetheless may face devastating economic consequences because their uses have contaminated the environment or the water supplies of their neighbors. With a source of funds, the state may assist these farmers and business owners, as well as those persons who sustain damages, such as the loss of their drinking water supplies, as a result of the contamination.

(4) Because it is often difficult or impossible to allocate responsibility among persons liable for hazardous waste sites and because it is essential that sites be cleaned up well and expeditiously, each responsible person should be liable jointly and severally. [1989 c 2 § 1 (Initiative Measure No. 97, approved November 8, 1988).]

***Reviser's note:** For codification of "this act" [1989 c 2], see Codification Tables, Volume 0.

70.105D.020 Definitions. (1) "Department" means the department of ecology.

(2) "Director" means the director of ecology or the director's designee.

(3) "Facility" means (a) any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, vessel, or aircraft, or (b) any site or area where a hazardous substance, other than a consumer product in consumer use, has been deposited, stored, disposed of, or placed, or otherwise come to be located.

(4) "Federal cleanup law" means the federal comprehensive environmental response, compensation, and liability act of 1980, 42 U.S.C. Sec. 9601 et seq., as amended by Public Law 99-499.

(5) "Hazardous substance" means:

(a) Any dangerous or extremely hazardous waste as defined in RCW 70.105.010 (5) and (6), or any dangerous or extremely dangerous waste designated by rule pursuant to chapter 70.105 RCW;

(b) Any hazardous substance as defined in RCW 70.105.010(14) or any hazardous substance as defined by rule pursuant to chapter 70.105 RCW;

(c) Any substance that, on March 1, 1989, is a hazardous substance under section 101(14) of the federal cleanup law, 42 U.S.C. Sec. 9601(14);

(d) Petroleum or petroleum products; and

(e) Any substance or category of substances, including solid waste decomposition products, determined by the director by rule to present a threat to human health or the environment if released into the environment.

The term hazardous substance does not include any of the following when contained in an underground storage tank from which there is not a release: Crude oil or any fraction thereof or petroleum, if the tank is in compliance with all applicable federal, state, and local law.

(6) "Owner or operator" means:

(a) Any person with any ownership interest in the facility or who exercises any control over the facility; or

(b) In the case of an abandoned facility, any person who had owned, or operated, or exercised control over the facility any time before its abandonment;

The term does not include:

(i) An agency of the state or unit of local government which acquired ownership or control involuntarily through bankruptcy, tax delinquency, abandonment, or circumstances in which the government involuntarily acquires title. This exclusion does not apply to an agency of the state or unit of local government which has caused or contributed to the release or threatened release of a hazardous substance from the facility; or

(ii) A person who, without participating in the management of a facility, holds indicia of ownership primarily to protect the person's security interest in the facility.

(7) "Person" means an individual, firm, corporation, association, partnership, consortium, joint venture, commercial entity, state government agency, unit of local government, federal government agency, or Indian tribe.

(8) "Potentially liable person" means any person whom the department finds, based on credible evidence, to be liable under RCW 70.105D.040. The department shall give notice to any such person and allow an opportunity for comment before making the finding, unless an emergency requires otherwise.

(9) "Public notice" means, at a minimum, adequate notice mailed to all persons who have made timely request of the department and to persons residing in the potentially affected vicinity of the proposed action; mailed to appropriate news media; published in the newspaper of largest circulation in the city or county of the proposed action; and opportunity for interested persons to comment.

(10) "Release" means any intentional or unintentional entry of any hazardous substance into the environment, including but not limited to the abandonment or disposal of containers of hazardous substances.

(11) "Remedy" or "remedial action" means any action or expenditure consistent with the purposes of this chapter to identify, eliminate, or minimize any threat or potential threat posed by hazardous substances to human health or the environment including any investigative and monitoring activities with respect to any release or threatened release of a hazardous substance and any health assessments or health effects studies conducted in order to determine the risk or potential risk to human health. [1989 c 2 § 2 (Initiative Measure No. 97, approved November 8, 1988).]

70.105D.030 Department's powers and duties. (1) The department may exercise the following powers in addition to any other powers granted by law:

(a) Investigate, provide for investigating, or require potentially liable persons to investigate any releases or threatened releases of hazardous substances, including but not limited to inspecting, sampling, or testing to determine the nature or extent of any release or threatened release. If there is a reasonable basis to believe that a release or threatened release of a hazardous substance may exist, the department's authorized employees, agents, or contractors may enter upon any property and

conduct investigations. The department shall give reasonable notice before entering property unless an emergency prevents such notice. The department may by subpoena require the attendance or testimony of witnesses and the production of documents or other information that the department deems necessary;

(b) Conduct, provide for conducting, or require potentially liable persons to conduct remedial actions (including investigations under (a) of this subsection) to remedy releases or threatened releases of hazardous substances. In carrying out such powers, the department's authorized employees, agents, or contractors may enter upon property. The department shall give reasonable notice before entering property unless an emergency prevents such notice. In conducting, providing for, or requiring remedial action, the department shall give preference to permanent solutions to the maximum extent practicable and shall provide for or require adequate monitoring to ensure the effectiveness of the remedial action;

(c) Indemnify contractors retained by the department for carrying out investigations and remedial actions, but not for any contractor's reckless or wilful misconduct;

(d) Carry out all state programs authorized under the federal cleanup law and the federal resource, conservation, and recovery act, 42 U.S.C. Sec. 6901 et seq., as amended;

(e) Classify substances as hazardous substances for purposes of RCW 70.105D.020(5) and classify substances and products as hazardous substances for purposes of RCW 82.21.020(1); and

(f) Take any other actions necessary to carry out the provisions of this chapter, including the power to adopt rules under chapter 34.05 RCW.

(2) The department shall immediately implement all provisions of this chapter to the maximum extent practicable, including investigative and remedial actions where appropriate. The department, within nine months after March 1, 1989, shall adopt, and thereafter enforce, rules under chapter 34.05 RCW to:

(a) Provide for public participation, including at least (i) the establishment of regional citizen's advisory committees, (ii) public notice of the development of investigative plans or remedial plans for releases or threatened releases, and (iii) concurrent public notice of all compliance orders, enforcement orders, or notices of violation;

(b) Establish a hazard ranking system for hazardous waste sites;

(c) Establish reasonable deadlines not to exceed ninety days for initiating an investigation of a hazardous waste site after the department receives information that the site may pose a threat to human health or the environment and other reasonable deadlines for remedying releases or threatened releases at the site; and

(d) Publish and periodically update minimum cleanup standards for remedial actions at least as stringent as the cleanup standards under section 121 of the federal cleanup law, 42 U.S.C. Sec. 9621, and at least as stringent as all applicable state and federal laws, including health-based standards under state and federal law.

(3) Before November 1st of each even-numbered year, the department shall develop, with public notice and hearing, and submit to the ways and means and appropriate standing environmental committees of the senate and house of representatives a ranked list of projects and expenditures recommended for appropriation from both the state and local toxics control accounts. The department shall also provide the legislature and the public each year with an accounting of the department's activities supported by appropriations from the state toxics control account, including a list of known hazardous waste sites and their hazard rankings, actions taken and planned at each site, how the department is meeting its top two management priorities under RCW 70.105.150, and all funds expended under this chapter.

(4) The department shall establish a scientific advisory board to render advice to the department with respect to the hazard ranking system, cleanup standards, remedial actions, deadlines for remedial actions, monitoring, the classification of substances as hazardous substances for purposes of RCW 70.105D.020(5) and the classification of substances or products as hazardous substances for purposes of RCW 82.21.020(1). The board shall consist of five independent members to serve staggered three-year terms. No members may be employees of the department. Members shall be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060.

(5) The department shall establish a program to identify potential hazardous waste sites and to encourage persons to provide information about hazardous waste sites. [1989 c 2 § 3 (Initiative Measure No. 97, approved November 8, 1988).]

70.105D.040 Standard of liability. (1) Except as provided in subsection (3) of this section, the following persons are liable with respect to a facility:

(a) The owner or operator of the facility;

(b) Any person who owned or operated the facility at the time of disposal or release of the hazardous substances;

(c) Any person who owned or possessed a hazardous substance and who by contract, agreement, or otherwise arranged for disposal or treatment of the hazardous substance at the facility, or arranged with a transporter for transport for disposal or treatment of the hazardous substances at the facility, or otherwise generated hazardous wastes disposed of or treated at the facility;

(d) Any person (i) who accepts or accepted any hazardous substance for transport to a disposal, treatment, or other facility selected by such person from which there is a release or a threatened release for which remedial action is required, unless such facility, at the time of disposal or treatment, could legally receive such substance; or (ii) who accepts a hazardous substance for transport to such a facility and has reasonable grounds to believe that such facility is not operated in accordance with chapter 70.105 RCW; and

(e) Any person who both sells a hazardous substance and is responsible for written instructions for its use if (i) the substance is used according to the instructions

and (ii) the use constitutes a release for which remedial action is required at the facility.

(2) Each person who is liable under this section is strictly liable, jointly and severally, for all remedial action costs and for all natural resource damages resulting from the releases or threatened releases of hazardous substances. The attorney general, at the request of the department, is empowered to recover all costs and damages from persons liable therefor.

(3) The following persons are not liable under this section:

(a) Any person who can establish that the release or threatened release of a hazardous substance for which the person would be otherwise responsible was caused solely by:

(i) An act of God;

(ii) An act of war; or

(iii) An act or omission of a third party (including but not limited to a trespasser) other than (A) an employee or agent of the person asserting the defense, or (B) any person whose act or omission occurs in connection with a contractual relationship existing, directly or indirectly, with the person asserting this defense to liability. This defense only applies where the person asserting the defense has exercised the utmost care with respect to the hazardous substance, the foreseeable acts or omissions of the third party, and the foreseeable consequences of those acts or omissions;

(b) Any person who is an owner, past owner, or purchaser of a facility and who can establish by a preponderance of the evidence that at the time the facility was acquired by the person, the person had no knowledge or reason to know that any hazardous substance, the release or threatened release of which has resulted in or contributed to the need for the remedial action, was released or disposed of on, in, or at the facility. This subsection (b) is limited as follows:

(i) To establish that a person had no reason to know, the person must have undertaken, at the time of acquisition, all appropriate inquiry into the previous ownership and uses of the property, consistent with good commercial or customary practice in an effort to minimize liability. Any court interpreting this subsection (b) shall take into account any specialized knowledge or experience on the part of the person, the relationship of the purchase price to the value of the property if uncontaminated, commonly known or reasonably ascertainable information about the property, the obviousness of the presence or likely presence of contamination at the property, and the ability to detect such contamination by appropriate inspection;

(ii) The defense contained in this subsection (b) is not available to any person who had actual knowledge of the release or threatened release of a hazardous substance when the person owned the real property and who subsequently transferred ownership of the property without first disclosing such knowledge to the transferee;

(iii) The defense contained in this subsection (b) is not available to any person who, by any act or omission, caused or contributed to the release or threatened release of a hazardous substance at the facility;

(c) Any natural person who uses a hazardous substance lawfully and without negligence for any personal or domestic purpose in or near a dwelling or accessory structure when that person is: (i) A resident of the dwelling; (ii) a person who, without compensation, assists the resident in the use of the substance; or (iii) a person who is employed by the resident, but who is not an independent contractor;

(d) Any person who, for the purpose of growing food crops, applies pesticides or fertilizers without negligence and in accordance with all applicable laws and regulations.

(4) There may be no settlement by the state with any person potentially liable under this chapter except in accordance with this subsection.

(a) The attorney general may agree to a settlement with any potentially liable person only if the department finds, after public notice and hearing, that the proposed settlement would lead to a more expeditious cleanup of hazardous substances in compliance with cleanup standards under RCW 70.105D.030(2)(d) and with any remedial orders issued by the department. Whenever practicable and in the public interest, the attorney general may expedite such a settlement with persons whose contribution is insignificant in amount and toxicity.

(b) A settlement agreement under this subsection shall be entered as a consent decree issued by a court of competent jurisdiction.

(c) A settlement agreement may contain a covenant not to sue only of a scope commensurate with the settlement agreement in favor of any person with whom the attorney general has settled under this section. Any covenant not to sue shall contain a reopener clause which requires the court to amend the covenant not to sue if factors not known at the time of entry of the settlement agreement are discovered and present a previously unknown threat to human health or the environment.

(d) A party who has resolved its liability to the state under this subsection shall not be liable for claims for contribution regarding matters addressed in the settlement. The settlement does not discharge any of the other liable parties but it reduces the total potential liability of the others to the state by the amount of the settlement.

(5) Nothing in this chapter affects or modifies in any way any person's right to seek or obtain relief under other statutes or under common law, including but not limited to damages for injury or loss resulting from a release or threatened release of a hazardous substance. No settlement by the department or remedial action ordered by a court or the department affects any person's right to obtain a remedy under common law or other statutes. [1989 c 2 § 4 (Initiative Measure No. 97, approved November 8, 1988).]

70.105D.050 Enforcement. (1) With respect to any release, or threatened release, for which the department does not conduct or contract for conducting remedial action and for which the department believes remedial action is in the public interest, the director shall issue orders requiring potentially liable persons to provide the remedial action. Any liable person who refuses, without

sufficient cause, to comply with an order of the director is liable in an action brought by the attorney general for:

(a) Up to three times the amount of any costs incurred by the state as a result of the party's refusal to comply; and

(b) A civil penalty of up to twenty-five thousand dollars for each day the party refuses to comply.

The treble damages and civil penalty under this subsection apply to all recovery actions filed on or after March 1, 1989.

(2) Any person who incurs costs complying with an order issued under subsection (1) of this section may petition the department for reimbursement of those costs. If the department refuses to grant reimbursement, the person may within thirty days thereafter file suit and recover costs by proving that he or she was not a liable person under RCW 70.105D.040 and that the costs incurred were reasonable.

(3) The attorney general shall seek, by filing an action if necessary, to recover the amounts spent by the department for investigative and remedial actions and orders, including amounts spent prior to March 1, 1989.

(4) The attorney general may bring an action to secure such relief as is necessary to protect human health and the environment under this chapter.

(5) (a) Any person may commence a civil action to compel the department to perform any nondiscretionary duty under this chapter. At least thirty days before commencing the action, the person must give notice of intent to sue, unless a substantial endangerment exists. The court may award attorneys' fees and other costs to the prevailing party in the action.

(b) Civil actions under this section and RCW 70.105D.060 may be brought in the superior court of Thurston county or of the county in which the release or threatened release exists. [1989 c 2 § 5 (Initiative Measure No. 97, approved November 8, 1988).]

70.105D.060 Timing of review. The department's investigative and remedial decisions under RCW 70.105D.030 and 70.105D.050 and its decisions regarding liable persons under RCW 70.105D.020(8) and 70.105D.040 shall be reviewable exclusively in superior court and only at the following times: (1) In a cost recovery suit under RCW 70.105D.050(3); (2) in a suit by the department to enforce an order or seek a civil penalty under this chapter; (3) in a suit for reimbursement under RCW 70.105D.050(2); (4) in a suit by the department to compel investigative or remedial action; and (5) in a citizen's suit under RCW 70.105D.050(5). The court shall uphold the department's actions unless they were arbitrary and capricious. [1989 c 2 § 6 (Initiative Measure No. 97, approved November 8, 1988).]

70.105D.070 Toxics control accounts. (1) The state toxics control account and the local toxics control account are hereby created in the state treasury.

(2) The following moneys shall be deposited into the state toxics control account: (a) Those revenues which are raised by the tax imposed under RCW 82.21.030 and which are attributable to that portion of the rate

equal to thirty-three one-hundredths of one percent; (b) the costs of remedial actions recovered under this chapter or chapter 70.105A RCW after March 1, 1989; (c) penalties collected or recovered under this chapter; and (d) any other money appropriated or transferred to the account by the legislature. Moneys in the account may be used only to carry out the purposes of this chapter, including but not limited to the following activities:

(i) The state's responsibility for hazardous waste planning, management, regulation, enforcement, technical assistance, and public education required under chapter 70.105 RCW;

(ii) The state's responsibility for solid waste planning, management, regulation, enforcement, technical assistance, and public education required under chapter 70.95 RCW;

(iii) The hazardous waste cleanup program required under this chapter;

(iv) State matching funds required under the federal cleanup law;

(v) Financial assistance for local programs in accordance with RCW 70.95.130, 70.95.140, 70.95.220, 70.95.230, 70.95.530, 70.105.220, 70.105.225, 70.105.235, and 70.105.260;

(vi) State government programs for the safe reduction, recycling, or disposal of hazardous wastes from households, small businesses, and agriculture;

(vii) Hazardous materials emergency response training;

(viii) Water and environmental health protection and monitoring programs;

(ix) Programs authorized under chapter 70.146 RCW;

(x) A public participation program, including regional citizen advisory committees;

(xi) Public funding to assist potentially liable persons to pay for the costs of remedial action in compliance with cleanup standards under RCW 70.105D.030(2)(d) but only when the amount and terms of such funding are established under a settlement agreement under RCW 70.105D.040(4) and when the director has found that the funding will achieve both (A) a substantially more expeditious or enhanced cleanup than would otherwise occur, and (B) the prevention or mitigation of unfair economic hardship; and

(xii) Development and demonstration of alternative management technologies designed to carry out the top two hazardous waste management priorities of RCW 70.105.150.

(3) The following moneys shall be deposited into the local toxics control account: Those revenues which are raised by the tax imposed under RCW 82.21.030 and which are attributable to that portion of the rate equal to thirty-seven one-hundredths of one percent. Moneys deposited in the local toxics control account shall be used by the department for grants to local governments for the following purposes in descending order of priority: (a) Remedial actions; (b) hazardous waste plans and programs under RCW 70.105.220, 70.105.225, 70.105.235, and 70.105.260; and (c) solid waste plans and programs under RCW 70.95.130, 70.95.140, 70.95.220, and

70.95.230. Funds for plans and programs shall be allocated consistent with the priorities and matching requirements established in chapters 70.105 and 70.95 RCW.

(4) Except for unanticipated receipts under RCW 43.79.260 through 43.79.282, moneys in the state and local toxics control accounts may be spent only after appropriation by statute. All earnings from investment of balances in the accounts, except as provided in RCW 43.84.090, shall be credited to the accounts.

(5) One percent of the moneys deposited into the state and local toxics control accounts shall be allocated only for public participation grants to persons who may be adversely affected by a release or threatened release of a hazardous substance and to not-for-profit public interest organizations. The primary purpose of these grants is to facilitate the participation by persons and organizations in the investigation and remedying of releases or threatened releases of hazardous substances and to implement the state's solid and hazardous waste management priorities. No grant may exceed fifty thousand dollars though it may be renewed annually. Moneys appropriated for public participation from either account which are not expended at the close of any biennium shall revert to the state toxics control account.

(6) No moneys deposited into either the state or local toxics control account may be used for solid waste incinerator feasibility studies, construction, maintenance, or operation.

(7) The department shall adopt rules for grant issuance and performance. [1989 c 2 § 7 (Initiative Measure No. 97, approved November 8, 1988).]

70.105D.900 Short title—1989 c 2. This act shall be known as "the model toxics control act." [1989 c 2 § 22 (Initiative Measure No. 97, approved November 8, 1988).]

70.105D.905 Captions—1989 c 2. As used in this act, captions constitute no part of the law. [1989 c 2 § 21 (Initiative Measure No. 97, approved November 8, 1988).]

70.105D.910 Construction—1989 c 2. The provisions of this act are to be liberally construed to effectuate the policies and purposes of this act. In the event of conflict between the provisions of this act and any other act, the provisions of this act shall govern. [1989 c 2 § 19 (Initiative Measure No. 97, approved November 8, 1988).]

70.105D.915 Existing agreements—1989 c 2. The consent orders and decrees in effect on March 1, 1989, shall remain valid and binding. [1989 c 2 § 20 (Initiative Measure No. 97, approved November 8, 1988).]

70.105D.920 Effective date—1989 c 2. (1) Sections 1 through 24 of this act shall take effect March 1,

1989, except that the director of ecology and the director of revenue may take whatever actions may be necessary to ensure that sections 1 through 24 of this act are implemented on their effective date.

* (2) This section does not apply and shall have no force or effect if (a) this act is passed by the legislature in the 1988 regular session or (b) no bill is enacted by the legislature involving hazardous substance cleanup (along with any other subject matter) between August 15, 1987, and January 1, 1988. [1989 c 2 § 26 (Initiative Measure No. 97, approved November 8, 1988).]

*Reviser's note: Neither condition contained in subsection (2) was met.

70.105D.921 Severability—1989 c 2. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1989 c 2 § 18 (Initiative Measure No. 97, approved November 8, 1988).]

Chapter 70.106

HAZARDOUS SUBSTANCES AND ARTICLES (WASHINGTON POISON PREVENTION ACT OF 1974)

Sections

70.106.010	Purpose.
70.106.020	Short title.
70.106.030	Definitions—Construction.
70.106.040	"Director" defined.
70.106.050	"Sale" defined.
70.106.060	"Household substance" defined.
70.106.070	"Package" defined.
70.106.080	"Special packaging" defined.
70.106.090	"Labeling" defined.
70.106.100	Standards for packaging.
70.106.110	Exceptions from packaging standards.
70.106.120	Adoption of rules and regulations under federal poison prevention packaging act.
70.106.140	Penalties.
70.106.150	Authority to adopt regulations—Delegation of authority to board of pharmacy.
70.106.900	Severability—1974 ex.s. c 49.
70.106.905	Saving—1974 ex.s. c 49.
70.106.910	Chapter cumulative and nonexclusive.

Radioactive and hazardous waste emergency response programs, state coordinator: RCW 38.52.030.

70.106.010 Purpose. The purpose of this chapter is to provide for special packaging to protect children from personal injury, serious illness or death resulting from handling, using or ingesting household substances, and to provide penalties. [1974 ex.s. c 49 § 1.]

70.106.020 Short title. This chapter shall be cited as the Washington Poison Prevention Act of 1974. [1974 ex.s. c 49 § 2.]

70.106.030 Definitions—Construction. The definitions in RCW 70.106.040 through 70.106.090 unless the context otherwise requires shall govern the construction of this chapter. [1974 ex.s. c 49 § 3.]

70.106.040 "Director" defined. "Director" means the director of the department of agriculture of the state of Washington, or his duly authorized representative. [1974 ex.s. c 49 § 4.]

70.106.050 "Sale" defined. "Sale" means to sell, offer for sale, hold for sale, handle or use as an inducement in the promotion of a household substance or the sale of another article or product. [1974 ex.s. c 49 § 5.]

70.106.060 "Household substance" defined. "Household substance" means any substance which is customarily produced or distributed for sale for consumption or use, or customarily stored, by individuals in or about the household and which is:

(1) A "hazardous substance", which means (a) any substance or mixture of substances or product which (i) is toxic, (ii) is corrosive, (iii) is an irritant, (iv) is a strong sensitizer, (v) is flammable or combustible, or (vi) generates pressure through decomposition, heat, or other means, if such substance or mixture of substances may cause substantial personal injury or substantial illness during or as a proximate result of any customary or reasonably foreseeable handling or use, including reasonably foreseeable ingestion by children; (b) any substances which the director by regulation finds to meet the requirements of subsection (1)(a) of this section; (c) any radioactive substance, if, with respect to such substance as used in a particular class of article or as packaged, the director determines by regulation that the substance is sufficiently hazardous to require labeling in accordance with this chapter in order to protect the public health, safety or welfare; and (d) any toy or other article intended for use by children which the director by regulation determines presents an electrical, mechanical or thermal hazard.

(2) A pesticide as defined in the Washington Pesticide Control Act, chapter 15.58 RCW as now or hereafter amended;

(3) A food, drug, or cosmetic as those terms are defined in the Uniform Washington Food, Drug and Cosmetic Act, chapter 69.04 RCW as now or hereafter amended; or

(4) A substance intended for use as fuel when stored in portable containers and used in the heating, cooking, or refrigeration system of a house; or

(5) Any other substance which the director may declare to be a household substance subsequent to a hearing as provided for under the provisions of chapter 34.05 RCW, Administrative Procedure Act, for the adoption of rules. [1974 ex.s. c 49 § 6.]

70.106.070 "Package" defined. "Package" means the immediate container or wrapping in which any household substance is contained for consumption, use, or storage by individuals in or about the household, and, for purposes of RCW 70.106.110(1)(b), also means any outer container or wrapping used in the retail display of any such substance to consumers. Such term does not include:

(1) Any shipping container or wrapping used solely for the transportation of any household substance in bulk or in quantity to manufacturers, packers, or processors, or to wholesale or retail distributors thereof; or

(2) Any shipping container or outer wrapping used by retailers to ship or deliver any household substance to consumers unless it is the only such container or wrapping. [1974 ex.s. c 49 § 7.]

70.106.080 "Special packaging" defined. "Special packaging" means packaging that is designed or constructed to be significantly difficult for children under five years of age to open or obtain a toxic or harmful amount of the substance contained therein within a reasonable time and not difficult for normal adults to use properly, but does not mean packaging which all such children cannot open or obtain a toxic or harmful amount within a reasonable time. [1974 ex.s. c 49 § 8.]

70.106.090 "Labeling" defined. "Labeling" means all labels and other written, printed, or graphic matter upon any household substance or its package, or accompanying such substance. [1974 ex.s. c 49 § 9.]

70.106.100 Standards for packaging. (1) The director may establish in accordance with the provisions of this chapter, by regulation, standards for the special packaging of any household substance if he finds that:

(a) The degree or nature of the hazard to children in the availability of such substance, by reason of its packaging is such that special packaging is required to protect children from serious personal injury or serious illness resulting from handling, using or ingesting such substance; and

(b) The special packaging to be required by such standard is technically feasible, practicable, and appropriate for such substance.

(2) In establishing a standard under this section, the director shall consider:

(a) The reasonableness of such standard;

(b) Available scientific, medical, and engineering data concerning special packaging and concerning childhood accidental ingestions, illness, and injury caused by household substances;

(c) The manufacturing practices of industries affected by this chapter; and

(d) The nature and use of the household substance.

(3) In carrying out the provisions of this chapter, the director shall publish his findings, his reasons therefor, and citation of the sections of statutes which authorize his action.

(4) Nothing in this chapter authorizes the director to prescribe specific packaging designs, product content, package quantity, or, with the exception of authority granted in RCW 70.106.110(1)(b), labeling. In the case of a household substance for which special packaging is required pursuant to a regulation under this section, the director may in such regulation prohibit the packaging of such substance in packages which he determines are unnecessarily attractive to children.

(5) The director shall cause the regulations promulgated under this chapter to conform with the requirements or exemptions of the Federal Hazardous Substances Act and with the regulations or interpretations promulgated pursuant thereto. [1974 ex.s. c 49 § 10.]

70.106.110 Exceptions from packaging standards.

(1) For the purpose of making any household substance which is subject to a standard established under RCW 70.106.100 readily available to elderly or handicapped persons unable to use such substance when packaged in compliance with such standard, the manufacturer or packer, as the case may be, may package any household substance, subject to such a standard, in packaging of a single size which does not comply with such standard if:

(a) The manufacturer or packer also supplies such substance in packages which comply with such standard; and

(b) The packages of such substance which do not meet such standard bear conspicuous labeling stating: "This package for households without young children"; except that the director may by regulation prescribe a substitute statement to the same effect for packaging too small to accommodate such labeling.

(2) In the case of a household substance which is subject to such a standard and which is dispensed pursuant to an order of a physician, dentist, or other licensed medical practitioner authorized to prescribe, such substance may be dispensed in noncomplying packages only when directed in such order or when requested by the purchaser.

(3) In the case of a household substance subject to such a standard which is packaged under subsection (1) of this section in a noncomplying package, if the director determines that such substance is not also being supplied by a manufacturer or packer in popular size packages which comply with such standard, he may, after giving the manufacturer or packer an opportunity to comply with the purposes of this chapter, by order require such substance to be packaged by such manufacturer or packer exclusively in special packaging complying with such standard if he finds, after opportunity for hearing, that such exclusive use of special packaging is necessary to accomplish the purposes of this chapter. [1974 ex.s. c 49 § 11.]

70.106.120 Adoption of rules and regulations under federal poison prevention packaging act. One of the purposes of this chapter is to promote uniformity with the Poison Prevention Packaging Act of 1970 and rules and regulations adopted thereunder. In accordance with such declared purpose, all of the special packaging rules and regulations adopted under the Poison Prevention Packaging Act of 1970 (84 Stat. 1670; 7 U.S.C. Sec. 135; 15 U.S.C. Sec. 1261, 1471-1476; 21 U.S.C. Sec. 343, 352, 353, 362) on July 24, 1974, are hereby adopted as rules and regulations applicable to this chapter. In addition, any rule or regulation adopted hereafter under said Federal Poison Prevention Act of 1970 concerning special packaging and published in the federal register shall be

deemed to have been adopted under the provisions of this chapter. The director may, however, within thirty days of the publication of the adoption of any such rule or regulation under the Federal Poison Prevention Packaging Act of 1970, give public notice that a hearing will be held to determine if such regulations shall not be applicable under the provisions of this chapter. Such hearing shall be conducted in accord with the provisions of chapter 34.05 RCW, Administrative Procedure Act, as now enacted or hereafter amended. [1974 ex.s. c 49 § 12.]

70.106.140 Penalties. Any person violating the provisions of this chapter or rules adopted hereunder is guilty of a misdemeanor and is guilty of a gross misdemeanor for any subsequent offense, however, any offense committed more than five years after a previous conviction shall be considered a first offense. [1974 ex.s. c 49 § 16.]

70.106.150 Authority to adopt regulations—Delegation of authority to board of pharmacy. The authority to promulgate regulations for the efficient enforcement of this chapter is hereby vested in the director. However, the director shall designate the Washington state board of pharmacy to carry out all the provisions of this chapter pertaining to drugs and cosmetics, with authority to promulgate regulations for the efficient enforcement thereof. [1987 c 236 § 1.]

70.106.900 Severability—1974 ex.s. c 49. If any provision of this 1974 act is declared unconstitutional, or the applicability thereof to any person or circumstance is held invalid, the constitutionality of the remainder of the act and the applicability thereof to other persons and circumstances shall not be affected thereby. [1974 ex.s. c 49 § 14.]

70.106.905 Saving—1974 ex.s. c 49. The enactment of this 1974 act shall not have the effect of terminating, or in any way modifying any liability, civil or criminal, which shall already be in existence on July 24, 1974. [1974 ex.s. c 49 § 15.]

70.106.910 Chapter cumulative and nonexclusive. The provisions of this chapter shall be cumulative and nonexclusive and shall not affect any other remedy. [1974 ex.s. c 49 § 17.]

**Chapter 70.107
NOISE CONTROL**

Sections	
70.107.010	Purpose.
70.107.020	Definitions.
70.107.030	Powers and duties of department.
70.107.040	Technical advisory committee.
70.107.050	Civil penalties.
70.107.060	Other rights, remedies, powers, duties and functions—Local regulation—Approval—Procedure.

70.107.070	Rules relating to motor vehicles—Violations— Penalty.
70.107.080	Exemptions.
70.107.900	Construction—Severability—1974 ex.s. c 183.
70.107.910	Short title.

70.107.010 Purpose. The legislature finds that inadequately controlled noise adversely affects the health, safety and welfare of the people, the value of property, and the quality of the environment. Antinoise measures of the past have not adequately protected against the invasion of these interests by noise. There is a need, therefore, for an expansion of efforts state-wide directed toward the abatement and control of noise, considering the social and economic impact upon the community and the state. The purpose of this chapter is to provide authority for such an expansion of efforts, supplementing existing programs in the field. [1974 ex.s. c 183 § 1.]

70.107.020 Definitions. As used in this chapter, unless the context clearly indicates otherwise:

- (1) "Department" means the department of ecology.
- (2) "Director" means director of the department of ecology.
- (3) "Local government" means county or city government or any combination of the two.
- (4) "Noise" means the intensity, duration and character of sounds from any and all sources.
- (5) "Person" means any individual, corporation, partnership, association, governmental body, state, or other entity whatsoever. [1974 ex.s. c 183 § 2.]

70.107.030 Powers and duties of department. The department is empowered as follows:

(1) The department, after consultation with state agencies expressing an interest therein, shall adopt, by rule, maximum noise levels permissible in identified environments in order to protect against adverse affects of noise on the health, safety and welfare of the people, the value of property, and the quality of environment: *Provided*, That in so doing the department shall take also into account the economic and practical benefits to be derived from the use of various products in each such environment, whether the source of the noise or the use of such products in each environment is permanent or temporary in nature, and the state of technology relative to the control of noise generated by all such sources of the noise or the products.

(2) At any time after the adoption of maximum noise levels under subsection (1) of this section the department shall, in consultation with state agencies and local governments expressing an interest therein, adopt rules, consistent with the Federal Noise Control Act of 1972 (86 Stat. 1234; 42 U.S.C. Sec. 4901-4918 and 49 U.S.C. Sec. 1431), for noise abatement and control in the state designed to achieve compliance with the noise level adopted in subsection (1) of this section, including reasonable implementation schedules where appropriate, to insure that the maximum noise levels are not exceeded and that application of the best practicable noise control technology and practice is provided. These rules may include, but shall not be limited to:

(a) Performance standards setting allowable noise limits for the operation of products which produce noise;

(b) Use standards regulating, as to time and place, the operation of individual products which produce noise above specified levels considering frequency spectrum and duration: *Provided*, The rules shall provide for temporarily exceeding those standards for stated purposes; and

(c) Public information requirements dealing with disclosure of levels and characteristics of noise produced by products.

(3) The department may, as desirable in the performance of its duties under this chapter, conduct surveys, studies and public education programs, and enter into contracts.

(4) The department is authorized to apply for and accept moneys from the federal government and other sources to assist in the implementation of this chapter.

(5) The legislature recognizes that the operation of motor vehicles on public highways as defined in RCW 46.09.020 contributes significantly to environmental noise levels and directs the department, in exercising the rule-making authority under the provisions of this section, to give first priority to the adoption of motor vehicle noise performance standards.

(6) Noise levels and rules adopted by the department pursuant to this chapter shall not be effective prior to March 31, 1975. [1974 ex.s. c 183 § 3.]

70.107.040 Technical advisory committee. The director shall name a technical advisory committee to assist the department in the implementation of this chapter. Committee members shall be entitled to reimbursement for travel expenses as provided in RCW 43.03.050 and 43.03.060, as now existing or hereafter amended. [1975-'76 2nd ex.s. c 34 § 164; 1974 ex.s. c 183 § 4.]

Effective date—Severability—1975-'76 2nd ex.s. c 34: See notes following RCW 2.08.115.

70.107.050 Civil penalties. (1) Any person who violates any rule adopted by the department under this chapter shall be subject to a civil penalty not to exceed one hundred dollars imposed by local government pursuant to this section. An action under this section shall not preclude enforcement of any provisions of the local government noise ordinance.

Penalties shall become due and payable thirty days from the date of receipt of a notice of penalty unless within such time said notice is appealed in accordance with the administrative procedures of the local government, or if it has no such administrative appeal, to the pollution control hearings board pursuant to the provisions of chapter 43.21B RCW and procedural rules adopted thereunder. In cases in which appeals are timely filed, penalties sustained by the local administrative agency or the pollution control hearings board shall become due and payable on the issuance of said agency or board's final order in the appeal.

(2) Whenever penalties incurred pursuant to this section have become due and payable but remain unpaid,

the attorney for the local government may bring an action in the superior court of the county in which the violation occurred for recovery of penalties incurred. In all such actions the procedures and rules of evidence shall be the same as in any other civil action. [1987 c 103 § 2; 1974 ex.s. c 183 § 5.]

70.107.060 Other rights, remedies, powers, duties and functions—Local regulation—Approval—Procedure. (1) Nothing in this chapter shall be construed to deny, abridge or alter alternative rights of action or remedies in equity or under common law or statutory law, criminal or civil.

(2) Nothing in this chapter shall deny, abridge or alter any powers, duties and functions relating to noise abatement and control now or hereafter vested in any state agency, nor shall this chapter be construed as granting jurisdiction over the industrial safety and health of employees in work places of the state, as now or hereafter vested in the department of labor and industries.

(3) Standards and other control measures adopted by the department under this chapter shall be exclusive except as hereinafter provided. A local government may impose limits or control sources differing from those adopted or controlled by the department upon a finding that such requirements are necessitated by special conditions. Noise limiting requirements of local government which differ from those adopted or controlled by the department shall be invalid unless first approved by the department. If the department of ecology fails to approve or disapprove standards submitted by local governmental jurisdictions within ninety days of submittal, such standards shall be deemed approved. If disapproved, the local government may appeal the decision to the pollution control hearings board which shall decide the appeal on the basis of the provisions of this chapter, and the applicable regulations, together with such briefs, testimony, and oral argument as the hearings board in its discretion may require. The department determination of whether to grant approval shall depend on the reasonableness and practicability of compliance. Particular attention shall be given to stationary sources located near jurisdictional boundaries, and temporary noise producing operations which may operate across one or more jurisdictional boundaries.

(4) In carrying out the rule-making authority provided in this chapter, the department shall follow the procedures of the administrative procedure act, chapter 34.05 RCW, and shall take care that no rules adopted purport to exercise any powers preempted by the United States under federal law. [1987 c 103 § 1; 1974 ex.s. c 183 § 6.]

70.107.070 Rules relating to motor vehicles—Violations—Penalty. Any rule adopted under this chapter relating to the operation of motor vehicles on public highways shall be administered according to testing and inspection procedures adopted by rule by the state patrol. Violation of any motor vehicle performance standard adopted pursuant to this chapter shall be a

misdemeanor, enforced by such authorities and in such manner as violations of chapter 46.37 RCW. Violations subject to the provisions of this section shall be exempt from the provisions of RCW 70.107.050. [1987 c 330 § 749; 1974 ex.s. c 183 § 7.]

Construction—Application of rules—Severability—1987 c 330: See notes following RCW 28B.12.050.

70.107.080 Exemptions. The department shall, in the exercise of rule-making power under this chapter, provide exemptions or specially limited regulations relating to recreational shooting and emergency or law enforcement equipment where appropriate in the interests of public safety.

The department in the development of rules under this chapter, shall consult and take into consideration the land use policies and programs of local government. [1974 ex.s. c 183 § 8.]

70.107.900 Construction—Severability—1974 ex.s. c 183. (1) This chapter shall be liberally construed to carry out its broad purposes.

(2) If any provision of this chapter, or its application to any person or circumstance is held invalid, the remainder of the chapter, or the application of the provision to other persons or circumstances is not affected. [1974 ex.s. c 183 § 11.]

70.107.910 Short title. This chapter shall be known and may be cited as the "Noise Control Act of 1974". [1974 ex.s. c 183 § 12.]

Chapter 70.108

OUTDOOR MUSIC FESTIVALS

Sections

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70.108.170	Local regulations and ordinances not precluded.

Reviser's note: Throughout chapter 70.108 RCW the references to "this act" have been changed to "this chapter". "This act" [1971 ex.s. c 302] consists of this chapter, the 1971 amendments to RCW 9.40.110-9.40.130, 9.41.010, 9.41.070, 26.44.050, 70.74.135, 70.74.270, 70.74.280, and to RCW 9.27.015 and 9.91.110.

70.108.010 Legislative declaration. The legislature hereby declares it to be the public interest, and for the protection of the health, welfare and property of the

residents of the state of Washington to provide for the orderly and lawful conduct of outdoor music festivals by assuring that proper sanitary, health, fire, safety, and police measures are provided and maintained. This invocation of the police power is prompted by and based upon prior experience with outdoor music festivals where the enforcement of the existing laws and regulations on dangerous and narcotic drugs, indecent exposure, intoxicating liquor, and sanitation has been rendered most difficult by the flagrant violations thereof by a large number of festival patrons. [1971 ex.s. c 302 § 19.]

Severability—1971 ex.s. c 302: See note following RCW 9.41.010.

70.108.020 Definitions. For the purposes of this chapter the following words and phrases shall have the indicated meanings:

(1) "Outdoor music festival" or "music festival" or "festival" means an assembly of persons gathered primarily for outdoor, live or recorded musical entertainment, where the predicted attendance is two thousand persons or more and where the duration of the program is five hours or longer: *Provided*, That this definition shall not be applied to any regularly established permanent place of worship, stadium, athletic field, arena, auditorium, coliseum, or other similar permanently established places of assembly for assemblies which do not exceed by more than two hundred fifty people the maximum seating capacity of the structure where the assembly is held: *Provided, further*, That this definition shall not apply to government sponsored fairs held on regularly established fairgrounds nor to assemblies required to be licensed under other laws or regulations of the state.

(2) "Promoter" means any person or other legal entity issued a permit to conduct an outdoor music festival.

(3) "Applicant" means the promoter who has the right of control of the conduct of an outdoor music festival who applies to the appropriate legislative authority for a license to hold an outdoor music festival.

(4) "Issuing authority" means the legislative body of the local governmental unit where the site for an outdoor music festival is located.

(5) "Participate" means to knowingly provide or deliver to the festival site supplies, materials, food, lumber, beverages, sound equipment, generators, or musical entertainment and/or to attend a music festival. A person shall be presumed to have knowingly provided as that phrase is used herein after he has been served with a court order. [1971 ex.s. c 302 § 21.]

70.108.030 Permits—Required—Compliance with rules and regulations. No person or other legal entity shall knowingly allow, conduct, hold, maintain, cause to be advertised or permit an outdoor music festival unless a valid permit has been obtained from the issuing authority for the operation of such music festival as provided for by this chapter. One such permit shall be required for each outdoor music festival. A permit may be granted for a period not to exceed sixteen consecutive days and a festival may be operated during any or all of

the days within such period. Any person, persons, partnership, corporation, association, society, fraternal or social organization, failing to comply with the rules, regulations or conditions contained in this chapter shall be subject to the appropriate penalties as prescribed by this chapter. [1971 ex.s. c 302 § 22.]

70.108.040 Application for permit—Contents—

Filing. Application for an outdoor music festival permit shall be in writing and filed with the clerk of the issuing authority wherein the festival is to be held. Said application shall be filed not less than ninety days prior to the first scheduled day of the festival and shall be accompanied with a permit fee in the amount of two thousand five hundred dollars. Said application shall include:

(1) The name of the person or other legal entity on behalf of whom said application is made: *Provided*, That a natural person applying for such permit shall be eighteen years of age or older;

(2) A financial statement of the applicant;

(3) The nature of the business organization of the applicant;

(4) Names and addresses of all individuals or other entities having a ten percent or more proprietary interest in the festival;

(5) The principal place of business of applicant;

(6) A legal description of the land to be occupied, the name and address of the owner thereof, together with a document showing the consent of said owner to the issuance of a permit, if the land be owned by a person other than the applicant;

(7) The scheduled performances and program;

(8) Written confirmation from the local health officer that he or she has reviewed and approved plans for site and development in accordance with rules, regulations and standards adopted by the state board of health. Such rules and regulations shall include criteria as to the following and such other matters as the state board of health deems necessary to protect the public's health:

(a) Submission of plans

(b) Site

(c) Water supply

(d) Sewage disposal

(e) Food preparation facilities

(f) Toilet facilities

(g) Solid waste

(h) Insect and rodent control

(i) Shelter

(j) Dust control

(k) Lighting

(l) Emergency medical facilities

(m) Emergency air evacuation

(n) Attendant physicians

(o) Communication systems

(9) A written confirmation from the appropriate law enforcement agency from the area where the outdoor music festival is to take place, showing that traffic control and crowd protection policing have been contracted for or otherwise provided by the applicant meeting the following conditions:

(a) One person for each two hundred persons reasonably expected to be in attendance at any time during the event for purposes of traffic and crowd control.

(b) The names and addresses of all traffic and crowd control personnel shall be provided to the appropriate law enforcement authority: *Provided*, That not less than twenty percent of the traffic and crowd control personnel shall be commissioned police officers or deputy sheriffs: *Provided further*, That on and after February 25, 1972 any commissioned police officer or deputy sheriff who is employed and compensated by the promoter of an outdoor music festival shall not be eligible and shall not receive any benefits whatsoever from any public pension or disability plan of which he or she is a member for the time he is so employed or for any injuries received during the course of such employment.

(c) During the hours that the festival site shall be open to the public there shall be at least one regularly commissioned police officer employed by the jurisdiction wherein the festival site is located for every one thousand persons in attendance and said officer shall be on duty within the confines of the actual outdoor music festival site.

(d) All law enforcement personnel shall be charged with enforcing the provisions of this chapter and all existing statutes, ordinances and regulations.

(10) A written confirmation from the appropriate law enforcement authority that sufficient access roads are available for ingress and egress to the parking areas of the outdoor music festival site and that parking areas are available on the actual site of the festival or immediately adjacent thereto which are capable of accommodating one auto for every four persons in estimated attendance at the outdoor music festival site.

(11) A written confirmation from the department of natural resources, where applicable, and the director of community development, through the director of fire protection, that all fire prevention requirements have been complied with.

(12) A written statement of the applicant that all state and local law enforcement officers, fire control officers and other necessary governmental personnel shall have free access to the site of the outdoor music festival.

(13) A statement that the applicant will abide by the provisions of this chapter.

(14) The verification of the applicant warranting the truth of the matters set forth in the application to the best of the applicant's knowledge, under the penalty of perjury. [1986 c 266 § 120; 1972 ex.s. c 123 § 1; 1971 ex.s. c 302 § 23.]

Severability—1986 c 266: See note following RCW 38.52.005.

70.108.050 Approval or denial of permit—Corrections—Procedure—Judicial review. Within fifteen days after the filing of the application the issuing authority shall either approve or deny the permit to the applicant. Any denial shall set forth in detail the specific grounds therefor. The applicant shall have fifteen days after the receipt of such denial or such additional time as the issuing authority shall grant to correct the deficiencies set forth and the issuing authority shall within

fifteen days after receipt of such corrections either approve or deny the permit. Any denial shall set forth in detail the specific grounds therefor.

After the applicant has filed corrections and the issuing authority has thereafter again denied the permit, the applicant may within five days after receipt of such second denial seek judicial review of such denial by filing a petition in the superior court for the county of the issuing authority. The review shall take precedence over all other civil actions and shall be conducted by the court without a jury. The court shall, upon request, hear oral argument and receive written briefs and shall either affirm the denial or order that the permit be issued. An applicant may not use any other procedure to obtain judicial review of a denial. [1972 ex.s. c 123 § 2; 1971 ex.s. c 302 § 24.]

70.108.060 Reimbursement of expenses incurred in reviewing request. Any local agency requested by an applicant to give written approval as required by RCW 70.108.040 may within fifteen days after the applicant has filed his application apply to the issuing authority for reimbursement of expenses reasonably incurred in reviewing such request. Upon a finding that such expenses were reasonably incurred the issuing authority shall reimburse the local agency therefor from the funds of the permit fee. The issuing authority shall prior to the first scheduled date of the festival return to the applicant that portion of the permit fee remaining after all such reimbursements have been made. [1971 ex.s. c 302 § 25.]

70.108.070 Cash deposit—Surety bond—Insurance. After the application has been approved the promoter shall deposit with the issuing authority, a cash deposit or surety bond. The bond or deposit shall be used to pay any costs or charges incurred to regulate health or to clean up afterwards outside the festival grounds or any extraordinary costs or charges incurred to regulate traffic or parking. The bond or other deposit shall be returned to the promoter when the issuing authority is satisfied that no claims for damage or loss will be made against said bond or deposit, or that the loss or damage claimed is less than the amount of the deposit, in which case the uncommitted balance thereof shall be returned: *Provided*, That the bond or cash deposit or the uncommitted portion thereof shall be returned not later than thirty days after the last day of the festival.

In addition, the promoter shall be required to furnish evidence that he has in full force and effect a liability insurance policy in an amount of not less than one hundred thousand dollars bodily injury coverage per person covering any bodily injury negligently caused by any officer or employee of the festival while acting in the performance of his or her duties. The policy shall name the issuing authority of the permit as an additional named insured.

In addition, the promoter shall be required to furnish evidence that he has in full force and effect a one hundred thousand dollar liability property damage insurance policy covering any property damaged due to negligent failure by any officer or employee of the festival to carry

out duties imposed by this chapter. The policy shall have the issuing authority of the permit as an additional named insured. [1972 ex.s. c 123 § 3; 1971 ex.s. c 302 § 26.]

70.108.080 Revocation of permits. Revocation of any permit granted pursuant to this chapter shall not preclude the imposition of penalties as provided for in this chapter and the laws of the state of Washington. Any permit granted pursuant to the provisions of this chapter to conduct a music festival shall be summarily revoked by the issuing authority when it finds that by reason of emergency the public peace, health, safety, morals or welfare can only be preserved and protected by such revocation.

Any permit granted pursuant to the provisions of this chapter to conduct a music festival may otherwise be revoked for any material violation of this chapter or the laws of the state of Washington after a hearing held upon not less than three days notice served upon the promoter personally or by certified mail.

Every permit issued under the provisions of this chapter shall state that such permit is issued as a measure to protect and preserve the public peace, health, safety, morals and welfare, and that the right of the appropriate authority to revoke such permit is a consideration of its issuance. [1971 ex.s. c 302 § 27.]

70.108.090 Drugs prohibited. No person, persons, partnership, corporation, association, society, fraternal or social organization to whom a music festival permit has been granted shall, during the time an outdoor music festival is in operation, knowingly permit or allow any person to bring upon the premises of said music festival, any narcotic or dangerous drug as defined by chapters *69.33 or 69.40 RCW, or knowingly permit or allow narcotic or dangerous drug to be consumed on the premises, and no person shall take or carry onto said premises any narcotic or dangerous drug. [1971 ex.s. c 302 § 28.]

*Reviser's note: Chapter 69.33 RCW was repealed by 1971 ex.s. c 308 § 69.50.606.

70.108.100 Proximity to schools, churches, homes. No music festival shall be operated in a location which is closer than one thousand yards from any schoolhouse or church, or five hundred yards from any house, residence or other human habitation unless waived by occupants. [1971 ex.s. c 302 § 29.]

70.108.110 Age of patrons. No person under the age of sixteen years shall be admitted to any outdoor music festival without the escort of his or her parents or legal guardian and proof of age shall be provided upon request. [1971 ex.s. c 302 § 30.]

70.108.120 Permits—Posting—Transferability. Any permit granted pursuant to this chapter shall be posted in a conspicuous place on the site of the outdoor music festival and such permit shall be not transferable

or assignable without the consent of the issuing authority. [1971 ex.s. c 302 § 31.]

70.108.130 Penalty. Any person who shall wilfully fail to comply with the rules, regulations, and conditions set forth in this chapter or who shall aid or abet such a violation or failure to comply, shall be deemed guilty of a gross misdemeanor: *Provided*, That violation of a rule, regulation, or condition relating to traffic including parking, standing, stopping, and pedestrian offenses is a traffic infraction, except that violation of a rule, regulation, or condition equivalent to those provisions of Title 46 RCW set forth in RCW 46.63.020 is a misdemeanor. [1979 ex.s. c 136 § 104; 1971 ex.s. c 302 § 32.]

Effective date—Severability—1979 ex.s. c 136: See notes following RCW 46.63.010.

70.108.140 Inspection of books and records. The department of revenue shall be allowed to inspect the books and records of any outdoor music festival during the period of operation of the festival and after the festival has concluded for the purpose of determining whether or not the tax laws of this state are complied with. [1972 ex.s. c 123 § 4.]

70.108.150 Firearms—Penalty. It shall be unlawful for any person, except law enforcement officers, to carry, transport or convey, or to have in his possession or under his control any firearm while on the site of an outdoor music festival.

Any person violating the provisions of this section shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than one hundred dollars and not more than two hundred dollars or by imprisonment in the county jail for not less than ten days and not more than ninety days or by both such fine and imprisonment. [1972 ex.s. c 123 § 5.]

70.108.160 Preparations—Completion requirements. All preparations required to be made by the provisions of this chapter on the music festival site shall be completed thirty days prior to the first day scheduled for the festival. Upon such date or such earlier date when all preparations have been completed, the promoter shall notify the issuing authority thereof, and the issuing authority shall make an inspection of the festival site to determine if such preparations are in reasonably full compliance with plans submitted pursuant to RCW 70.108.040. If a material violation exists the issuing authority shall move to revoke the music festival permit in the manner provided by RCW 70.108.080. [1972 ex.s. c 123 § 6.]

70.108.170 Local regulations and ordinances not precluded. Nothing in this chapter shall be construed as precluding counties, cities and other political subdivisions of the state of Washington from enacting ordinances or regulations for the control and regulation of outdoor music festivals nor shall this chapter repeal any existing ordinances or regulations. [1972 ex.s. c 123 § 7.]

Chapter 70.110

FLAMMABLE FABRICS—CHILDREN'S
SLEEPWEAR

Sections

70.110.010	Short title.
70.110.020	Legislative finding.
70.110.030	Definitions.
70.110.040	Compliance required.
70.110.050	Attorney general or prosecuting attorneys authorized to bring actions to restrain or prevent violations.
70.110.060	Penalties.
70.110.070	Strict liability.
70.110.080	Personal service of process—Jurisdiction of courts.
70.110.900	Provisions additional.
70.110.910	Severability—1973 1st ex.s. c 211.

70.110.010 Short title. This chapter may be known and cited as the "Flammable Fabrics Act". [1973 1st ex.s. c 211 § 1.]

70.110.020 Legislative finding. The legislature hereby finds and declares that fabric related burns from children's sleepwear present an immediate and serious danger to the infants and children of this state. The legislature therefore declares it to be in the public interest, and for the protection of the health, property, and welfare of the residents of this state to herein provide for flammability standards for children's sleepwear. [1973 1st ex.s. c 211 § 2.]

70.110.030 Definitions. As used in this chapter the following words and phrases shall have the following meanings unless the context clearly requires otherwise:

(1) "Person" means an individual, partnership, corporation, association, or any other form of business enterprise, and every officer thereof.

(2) "Children's sleepwear" means any product of wearing apparel from infant size up to and including size fourteen which is sold or intended for sale for the primary use of sleeping or activities related to sleeping, such as nightgowns, pajamas, and similar or related items such as robes, but excluding diapers and underwear.

(3) "Fabric" means any material (except fiber, filament, or yarn for other than retail sale) woven, knitted, felted, or otherwise produced from or in combination with any material or synthetic fiber, film, or substitute therefor which is intended for use, or which may reasonably be expected to be used, in children's sleepwear.

(4) The term "infant size up to and including size six-x" means the sizes defined as infant through and including six-x in Department of Commerce Voluntary Standards, Commercial Standard 151-50, "Body Measurements for the Sizing of Apparel for Infants, Babies, Toddlers, and Children", Commercial Standard 153, "Body Measurements for the Sizing of Apparel for Girls", and Commercial Standard 155, "Body Measurements for the Sizing of Boys' Apparel".

(5) "Fabric related burns" means burns that would not have been incurred but for the fact that sleepwear worn at the time of the burns did not comply with commercial standards promulgated by the secretary of commerce of the United States in March, 1971, identified as Standard for the Flammability of Children's Sleepwear (DOC FF 3-71) 36 F.R. 14062 and by the Flammable Fabrics Act 15 U.S.C. 1193. [1973 1st ex.s. c 211 § 3.]

70.110.040 Compliance required. It shall be unlawful to manufacture for sale, sell, or offer for sale any new and unused article of children's sleepwear which does not comply with the standards established in the Standard for the Flammability of Children's Sleepwear (DOC FF 3-71), 36 F.R. 14062 and the Flammable Fabrics Act, 15 U.S.C. 1191-1204. [1973 1st ex.s. c 211 § 4.]

70.110.050 Attorney general or prosecuting attorneys authorized to bring actions to restrain or prevent violations. The attorney general or the prosecuting attorney of any county within the state may bring an action in the name of the state against any person to restrain and prevent any violation of this chapter. [1973 1st ex.s. c 211 § 5.]

70.110.060 Penalties. Any violation of this chapter is punishable, upon conviction, by a fine not exceeding five thousand dollars or by confinement in the county jail for not exceeding one year, or both. [1973 1st ex.s. c 211 § 6.]

70.110.070 Strict liability. Any person who violates RCW 70.110.040 shall be strictly liable for fabric-related burns. [1973 1st ex.s. c 211 § 7.]

70.110.080 Personal service of process—Jurisdiction of courts. Personal service of any process in an action under this chapter may be made upon any person outside the state if such person has violated any provision of this chapter. Such person shall be deemed to have thereby submitted himself to the jurisdiction of the courts of this state within the meaning of RCW 4.28.180 and 4.28.185, as now or hereafter amended. [1973 1st ex.s. c 211 § 8.]

70.110.900 Provisions additional. The provisions of this chapter shall be in addition to and not a substitution for or limitation of any other law. [1973 1st ex.s. c 211 § 9.]

70.110.910 Severability—1973 1st ex.s. c 211. If any provision of this chapter, or its application to any person or circumstance is held invalid the remainder of the chapter, or the application of the provision to other persons or circumstances is not affected. [1973 1st ex.s. c 211 § 10.]

Chapter 70.112

FAMILY MEDICINE—EDUCATION AND
RESIDENCY PROGRAMS

Sections

70.112.010	Definitions.
70.112.020	Education in family medical practice—Department in school of medicine—Residency programs—Financial support.
70.112.030	Family practice education advisory board—Chairman—Membership.
70.112.040	Advisory board—Terms of members—Filling vacancies.
70.112.050	Advisory board—Duties—Annual report.
70.112.060	Funding of residency programs.

Council for the prevention of child abuse and neglect: Chapter 43.121 RCW.

70.112.010 Definitions. (1) "School of medicine" means the University of Washington school of medicine located in Seattle, Washington;

(2) "Residency programs" mean community based family practice residency educational programs either in existence or established under this chapter;

(3) "Affiliated" means established or developed in cooperation with the school of medicine;

(4) "Family practice unit" means the community facility or classroom used for training of ambulatory health skills within a residency training program; and

(5) "Advisory board" means the family practice education advisory board created by this chapter. [1975 1st ex.s. c 108 § 1.]

70.112.020 Education in family medical practice—Department in school of medicine—Residency programs—Financial support. There is established a state-wide medical education system for the purpose of training resident physicians in family practice. The dean of the school of medicine shall be responsible for implementing the development and expansion of residency programs in cooperation with the medical profession, hospitals, and clinics located throughout the state. The chairman of the department of family medicine in the school of medicine, with the consent of the advisory board, shall determine where affiliated residency programs shall exist; giving consideration to communities in the state where the population, hospital facilities, number of physicians, and interest in medical education indicate the potential success of the residency program. The medical education system shall provide financial support for residents in training for those programs which are affiliated with the school of medicine and shall establish positions for appropriate faculty to staff these programs. The number of programs shall be determined by the board and be in keeping with the needs of the state. [1975 1st ex.s. c 108 § 2.]

70.112.030 Family practice education advisory board—Chairman—Membership. There is created a family practice education advisory board which shall consist of eight members with the dean of the school of medicine serving as chairman. Other members of the board will be:

(1) Chairman, department of family medicine, school of medicine;

(2) Two public members to be appointed by the governor;

(3) A member appointed by the Washington state medical association;

(4) A member appointed by the Washington state academy of family physicians;

(5) A hospital administrator representing those Washington hospitals with family practice residency programs, appointed by the governor; and

(6) A director representing the directors of community based family practice residency programs, appointed by the governor. [1975 1st ex.s. c 108 § 3.]

70.112.040 Advisory board—Terms of members—Filling vacancies. The dean and chairman of the department of family medicine at the University of Washington school of medicine shall be permanent members of the advisory board. Other members will be initially appointed as follows: Terms of the two public members shall be two years; the member from the medical association and the hospital administrator, three years; and the remaining two members, four years. Thereafter, terms for the nonpermanent members shall be four years; members may serve two consecutive terms; and new appointments shall be filled in the same manner as for original appointments. Vacancies shall be filled for an unexpired term in the manner of the original appointment. [1975 1st ex.s. c 108 § 4.]

70.112.050 Advisory board—Duties—Annual report. The advisory board shall advise the dean and the chairman of the department of family medicine in the implementation of the educational programs provided for in this chapter; including, but not limited to, the selection of the areas within the state where affiliate residency programs shall exist, the allocation of funds appropriated under this chapter, and the procedures for review and evaluation of the residency programs. On or before January 15 of each year the advisory board shall provide the governor and the legislature with the report on the status of the state-wide family practice residency program. [1975 1st ex.s. c 108 § 5.]

70.112.060 Funding of residency programs. (1) The moneys appropriated for these state-wide family medicine residency programs shall be in addition to all the income of the University of Washington and its school of medicine and shall not be used to supplant funds for other programs under the administration of the school of medicine.

(2) The allocation of state funds for the residency programs shall not exceed fifty percent of the total cost of the program.

(3) No more than twenty-five percent of the appropriation for each fiscal year for the affiliated programs shall be authorized for expenditures made in support of the faculty and staff of the school of medicine who are associated with the affiliated residency programs and are located at the school of medicine.

(4) No funds for the purposes of this chapter shall be used to subsidize the cost of care incurred by patients. [1975 1st ex.s. c 108 § 6.]

Chapter 70.114

MIGRANT LABOR HOUSING

Sections

- 70.114.010 Legislative declaration—Fees for use of housing.
70.114.020 Migrant labor housing facility—Employment security department authorized to contract for continued operation.

70.114.010 Legislative declaration—Fees for use of housing. The legislature finds that the migrant labor housing project constructed on property purchased by the state in Yakima county should be continued until June 30, 1981. The employment security department is authorized to set day use or extended period use fees, consistent with those established by the department of parks and recreation. [1979 ex.s. c 79 § 1; 1977 ex.s. c 287 § 1; 1975 1st ex.s. c 50 § 1; 1974 ex.s. c 125 § 1.]

70.114.020 Migrant labor housing facility—Employment security department authorized to contract for continued operation. The employment security department is authorized to enter into such agreements and contracts as may be necessary to provide for the continued operation of the facility by a state agency, an appropriate local governmental body, or by such other entity as the commissioner may deem appropriate and in the state's best interest. [1979 ex.s. c 79 § 2; 1977 ex.s. c 287 § 2; 1975 1st ex.s. c 50 § 3; 1974 ex.s. c 125 § 4.]

Chapter 70.115

DRUG INJECTION DEVICES

Sections

- 70.115.050 Retail sale of hypodermic syringes, needles—Duty of retailer.

70.115.050 Retail sale of hypodermic syringes, needles—Duty of retailer. On the sale at retail of any hypodermic syringe, hypodermic needle, or any device adapted for the use of drugs by injection, the retailer shall satisfy himself or herself that the device will be used for the legal use intended. [1981 c 147 § 5.]

Chapter 70.116

PUBLIC WATER SYSTEM COORDINATION ACT OF 1977

Sections

- 70.116.010 Legislative declaration.
70.116.020 Declaration of purpose.
70.116.030 Definitions.
70.116.040 Critical water supply service area—Designation—Establishment or amendment of external boundaries—Procedures.
70.116.050 Development of water system plans for critical water supply service areas.

- 70.116.060 Approval of coordinated water system plan—Limitations following approval.
70.116.070 Service area boundaries within critical water supply area.
70.116.080 Performance standards relating to fire protection.
70.116.090 Assumption of jurisdiction or control of public water system by city, town, or code city.
70.116.100 Bottled water exempt.
70.116.110 Rate making authority preserved.
70.116.120 Short title.
70.116.900 Severability—1977 ex.s. c 142.

Reviser's note: Powers and duties of the department of social and health services and the secretary of social and health services transferred to the department of health and the secretary of health. See RCW 43.70.060.

70.116.010 Legislative declaration. The legislature hereby finds that an adequate supply of potable water for domestic, commercial, and industrial use is vital to the health and well-being of the people of the state. Readily available water for use in public water systems is limited and should be developed and used efficiently with a minimum of loss or waste.

In order to maximize efficient and effective development of the state's public water supply systems, the department of social and health services shall assist water purveyors by providing a procedure to coordinate the planning of the public water supply systems. [1977 ex.s. c 142 § 1.]

70.116.020 Declaration of purpose. The purposes of this chapter are:

(1) To provide for the establishment of critical water supply service areas related to water utility planning and development;

(2) To provide for the development of minimum planning and design standards for critical water supply service areas to insure that water systems developed in these areas are consistent with regional needs;

(3) To assist in the orderly and efficient administration of state financial assistance programs for public water systems; and

(4) To assist public water systems to meet reasonable standards of quality, quantity and pressure. [1977 ex.s. c 142 § 2.]

70.116.030 Definitions. Unless the context clearly requires otherwise, the following terms when used in this chapter shall be defined as follows:

(1) "Coordinated water system plan" means a plan for public water systems within a critical water supply service area which identifies the present and future needs of the systems and sets forth means for meeting those needs in the most efficient manner possible. Such a plan shall include provisions for subsequently updating the plan. In areas where more than one water system exists, a coordinated plan may consist of either: (a) A new plan developed for the area following its designation as a critical water supply service area; or (b) a compilation of compatible water system plans existing at the time of such designation and containing such supplementary provisions as are necessary to satisfy the requirements of this chapter. Any such coordinated plan must include provisions regarding: Future service area

designations; assessment of the feasibility of shared source, transmission, and storage facilities; emergency inter-ties; design standards; and other concerns related to the construction and operation of the water system facilities.

(2) "Critical water supply service area" means a geographical area which is characterized by a proliferation of small, inadequate water systems, or by water supply problems which threaten the present or future water quality or reliability of service in such a manner that efficient and orderly development may best be achieved through coordinated planning by the water utilities in the area.

(3) "Public water system" means any system providing water intended for, or used for, human consumption or other domestic uses. It includes, but is not limited to, the source, treatment for purifying purposes only, storage, transmission, pumping, and distribution facilities where water is furnished to any community, or number of individuals, or is made available to the public for human consumption or domestic use, but excluding water systems serving one single family residence. However, systems existing on September 21, 1977 which are owner operated and serve less than ten single family residences or which serve only one industrial plant shall be excluded from this definition and the provisions of this chapter.

(4) "Purveyor" means any agency or subdivision of the state or any municipal corporation, firm, company, mutual or cooperative association, institution, partnership, or person or any other entity, that owns or operates for wholesale or retail service a public water system. It also means the authorized agents of any such entities.

(5) "Secretary" means the secretary of the department of social and health services or the secretary's authorized representative.

(6) "Service area" means a specific geographical area serviced or for which service is planned by a purveyor. [1977 ex.s. c 142 § 3.]

*Reviser's note: See note following chapter digest.

70.116.040 Critical water supply service area—
Designation—Establishment or amendment of external boundaries—Procedures. (1) The secretary and the appropriate local planning agencies and purveyors, shall study geographical areas where water supply problems related to uncoordinated planning, inadequate water quality or unreliable service appear to exist. If the results of the study indicate that such water supply problems do exist, the secretary or the county legislative authority shall designate the area involved as being a critical water supply service area, consult with the appropriate local planning agencies and purveyors, and appoint a committee of not less than three representatives therefrom solely for the purpose of establishing the proposed external boundaries of the critical water supply service area. The committee shall include a representative from each purveyor serving more than fifty customers, the county legislative authority, county planning agency, and health agencies. Such proposed boundaries

shall be established within six months of the appointment of the committee.

During the six month period following the establishment of the proposed external boundaries of the critical water supply services areas, the county legislative authority shall conduct public hearings on the proposed boundaries and shall modify or ratify the proposed boundaries in accordance with the findings of the public hearings. The boundaries shall reflect the existing land usage, and permitted densities in county plans, ordinances, and/or growth policies. If the proposed boundaries are not modified during the six month period, the proposed boundaries shall be automatically ratified and be the critical water supply service area.

After establishment of the external boundaries of the critical water supply service area, no new public water systems may be approved within the boundary area unless an existing water purveyor is unable to provide water service.

(2) At the time a critical water supply service area is established, the external boundaries for such area shall not include any fractional part of a purveyor's existing contiguous service area.

(3) The external boundaries of the critical water supply service area may be amended in accordance with procedures prescribed in subsection (1) of this section for the establishment of the critical water supply service areas when such amendment is necessary to accomplish the purposes of this chapter. [1977 ex.s. c 142 § 4.]

70.116.050 Development of water system plans for critical water supply service areas. (1) Each purveyor within the boundaries of a critical water supply service area shall develop a water system plan for the purveyor's future service area if such a plan has not already been developed: *Provided*, That nonmunicipally owned public water systems are exempt from the planning requirements of this chapter, except for the establishment of service area boundaries if they: (a) Were in existence as of September 21, 1977; and (b) have no plans for water service beyond their existing service area, and (c) meet minimum quality and pressure design criteria established by the state board of health: *Provided further*, That if the county legislative authority permits a change in development that will increase the demand for water service of such a system beyond the existing system's ability to provide minimum water service, the purveyor shall develop a water system plan in accordance with this section. The establishment of future service area boundaries shall be in accordance with RCW 70.116.070.

(2) After the boundaries of a critical water supply service area have been established pursuant to RCW 70.116.040, the committee established in RCW 70.116.040 shall participate in the development of a coordinated water system plan for the designated area. Such a plan shall incorporate all water system plans developed pursuant to subsection (1) of this section. The plan shall provide for maximum integration and coordination of public water system facilities consistent with the protection and enhancement of the public health and well-being.

(3) Those portions of a critical water supply service area not yet served by a public water system shall have a coordinated water system plan developed by existing purveyors based upon permitted densities in county plans, ordinances, and/or growth policies for a minimum of five years beyond the date of establishment of the boundaries of the critical water supply service area.

(4) To insure that the plan incorporates the proper designs to protect public health, the secretary shall adopt regulations pursuant to chapter 34.05 RCW concerning the scope and content of coordinated water system plans, and shall ensure, as minimum requirements, that such plans:

(a) Are reviewed by the appropriate local governmental agency to insure that the plan is not inconsistent with the land use plans, shoreline master programs, and/or developmental policies of the general purpose local government or governments whose jurisdiction the water system plan affects.

(b) Recognize all water resource plans, water quality plans, and water pollution control plans which have been adopted by units of local, regional, and state government.

(c) Incorporate the fire protection standards developed pursuant to RCW 70.116.080.

(d) Identify the future service area boundaries of the public water system or systems included in the plan within the critical water supply service area.

(e) Identify feasible emergency inter-ties between adjacent purveyors.

(5) If a "water general plan" for a critical water supply service area or portion thereof has been prepared pursuant to chapter 36.94 RCW and such a plan meets the requirements of subsections (1) and (4) of this section, such a plan shall constitute the coordinated water system plan for the applicable geographical area.

(6) Prior to the submission of a coordinated water system plan to the secretary for approval of the design of the proposed facilities pursuant to RCW 70.116.060, the plan shall be reviewed for consistency with subsection (4) of this section by the legislative authorities of the counties in which the critical water supply service area is located. If within sixty days of receipt of the plan, the legislative authorities find any segment of a proposed service area of a purveyor's plan or any segment of the coordinated water system plan to be inconsistent with any current land use plans, shoreline master programs, and/or developmental policies of the general purpose local government or governments whose jurisdiction the water system plan affects, the secretary shall not approve that portion of the plan until the inconsistency is resolved between the local government and the purveyor. If no comments have been received from the legislative authorities within sixty days of receipt of the plan, the secretary may consider the plan for approval. [1977 ex.s. c 142 § 5.]

70.116.060 Approval of coordinated water system plan—Limitations following approval. (1) A coordinated water system plan shall be submitted to the secretary for design approval within two years of the

establishment of the boundaries of a critical water supply service area.

(2) The secretary shall not approve those portions of a coordinated water system plan which fail to meet the requirements for future service area boundaries as set forth in RCW 70.116.070.

(3) Following the approval of a coordinated water system plan by the secretary:

(a) All purveyors constructing or proposing to construct public water system facilities within the area covered by the plan shall comply with the plan.

(b) No other purveyor shall establish a public water system within the area covered by the plan, unless the secretary determines that existing purveyors are unable to provide the service. If such a determination is made, the secretary may require the new public water system to be constructed in accordance with the construction standards and specifications embodied in the coordinated water system plan approved for the area.

(4) The secretary may deny proposals to establish or to expand any public water system within a critical water supply service area for which there is not an approved coordinated water system plan at any time after two years of the establishment of the critical water supply service area: *Provided*, That service connections shall not be considered expansions. [1977 ex.s. c 142 § 6.]

70.116.070 Service area boundaries within critical water supply area. (1) The service area boundaries of public water systems within the critical water supply service area shall be determined by written agreement among the purveyors and with the approval of the appropriate legislative authority. Failure of the legislative authority to file with the secretary objections to the proposed service area boundaries within sixty days of receipt of the proposed boundary agreement may be construed as approval of the agreement.

(2) If no service area boundary agreement has been established within a reasonable period of time, or if the legislative authority has filed with the secretary objections in writing as provided in subsection (1) of this section, the secretary shall hold a public hearing thereon. The secretary shall provide notice of the hearing by certified mail to each purveyor providing service in the critical water supply service area, to each county legislative authority having jurisdiction in the area and to the public. The secretary shall provide public notice pursuant to the provisions of chapter 65.16 RCW. Such notice shall be given at least twenty days prior to the hearing. The hearing may be continued from time to time and, at the termination thereof, the secretary may restrict the expansion of service of any purveyor within the area if the secretary finds such restriction is necessary to provide the greatest protection of the public health and well-being. [1977 ex.s. c 142 § 7.]

70.116.080 Performance standards relating to fire protection. The secretary shall adopt performance standards relating to fire protection to be incorporated into the design and construction of public water systems. The standards shall be consistent with recognized national

standards. The secretary shall adopt regulations pertaining to the application and enforcement of the standards: *Provided*, That the regulations shall require the application of the standards for new and expanding systems only. The standards shall apply in critical water supply service areas unless the approved coordinated plan provides for nonfire flow systems. [1977 ex.s. c 142 § 8.]

70.116.090 Assumption of jurisdiction or control of public water system by city, town, or code city. The assumption of jurisdiction or control of any public water system or systems by a city, town, or code city, shall be subject to the provisions of chapter 35.13A RCW, and the provisions of this chapter shall be superseded by the provisions of chapter 35.13A RCW regarding such an assumption of jurisdiction. [1977 ex.s. c 142 § 9.]

70.116.100 Bottled water exempt. Nothing in this chapter shall apply to water which is bottled or otherwise packaged in a container for human consumption or domestic use, or to the treatment, storage and transportation facilities used in the processing of the bottled water or the distribution of the bottles or containers of water. [1977 ex.s. c 142 § 10.]

70.116.110 Rate making authority preserved. Nothing in this chapter shall be construed to alter in any way the existing authority of purveyors and municipal corporations to establish, administer and apply water rates and rate provisions. [1977 ex.s. c 142 § 11.]

70.116.120 Short title. This chapter shall be known and may be cited as the "Public Water System Coordination Act of 1977". [1977 ex.s. c 142 § 12.]

70.116.900 Severability—1977 ex.s. c 142. If any provision of this chapter, or its application to any person or circumstance is held invalid, the remainder of the chapter, or the application of the provision to other persons or circumstances is not affected. [1977 ex.s. c 142 § 13.]

Chapter 70.117

SKIING AND COMMERCIAL SKI ACTIVITY

Sections

70.117.010	Ski area sign requirements.
70.117.015	"Trails" or "runs" defined.
70.117.020	Standard of conduct—Prohibited acts—Responsibility.
70.117.025	Skiing outside of trails or boundaries—Notice of skier responsibility.
70.117.030	Leaving scene of skiing accident—Penalty—Notice.
70.117.040	Insurance requirements for operators.

Ski lifts, tows, etc.: Chapter 70.88 RCW.

70.117.010 Ski area sign requirements. (1) The operator of any ski area shall maintain a sign system based on international or national standards.

All signs for instruction of the public shall be bold in design with wording short, simple, and to the point. All such signs shall be prominently placed.

Entrances to all machinery, operators', and attendants' rooms shall be posted to the effect that unauthorized persons are not permitted therein.

The sign "Working on Lift" or a similar warning sign shall be hung on the main disconnect switch and at control points for starting the auxiliary or prime mover when a person is working on the passenger tramway.

(2) The interior of each reversible aerial tramway and gondola lift shall be prominently posted to show:

(a) The maximum capacity of each reversible aerial tramway and gondola lift in pounds and number of passengers (which shall also be posted at each loading area); and

(b) Instructions for procedure in emergencies.

(3) The following signs shall be posted at all aerial lifts except gondola lifts:

(a) "Prepare to Unload" (not less than fifty feet ahead of unloading area);

(b) "Keep Ski Tips Up" (ahead of any point where skis may come in contact with a platform or the snow surface);

(c) "Unload Here";

(d) "Safety Gate" (if applicable);

(e) "Remove Pole Straps from Wrists" (at loading area); and

(f) Sign visible at all points of downhill loading, listing downhill capacity of lift.

(4) The following signs shall be posted at all surface lifts:

(a) "Prepare to Unload" (not less than fifty feet ahead of unloading area);

(b) "Stay in Track";

(c) "Unload Here";

(d) "Safety Gate"; and

(e) "Remove Pole Straps from Wrists" (at loading area).

(5) The following signs shall be posted at all tows:

(a) "No Loose Scarves

No Loose Clothing

No Long Hair Exposed"

(at loading area);

(b) "Stay in Track";

(c) "Unload Here"; and

(d) "Safety Gate".

(6) All signs required for normal daytime operation shall be in place, and those pertaining to the tramway, lift, or tow operations shall be adequately lighted for night skiing.

(7) If a particular trail or run has been closed to the public by an operator, the operator shall place a notice thereof at the top of the trail or run involved, and no person shall ski on a run or trail which has been designated "Closed".

(8) An operator shall place a notice at the embarking terminal or terminals of a lift or tow which has been closed that the lift or tow has been closed and that a person embarking on such a lift or tow shall be considered to be a trespasser.

(9) Any snow making machines or equipment shall be clearly visible and clearly marked. Snow grooming equipment or any other vehicles shall be equipped with a yellow flashing light at any time the vehicle is moving on or in the vicinity of a ski run; however, low profile vehicles, such as snowmobiles, may be identified in the alternative with a flag on a mast of not less than six feet in height.

(10) The operator of any ski area shall maintain a readily visible sign on each rope tow, wire rope tow, j-bar, t-bar, ski lift, or other similar device, advising the users of the device that:

(a) Any person not familiar with the operation of the lift shall ask the operator thereof for assistance and/or instruction; and

(b) The skiing-ability level recommended for users of the lift and the runs served by the device shall be classified "easiest", "more difficult", and "most difficult". [1989 c 81 § 2; 1977 ex.s. c 139 § 1.]

Severability—1989 c 81: See note following RCW 70.117.015.

70.117.015 "Trails" or "runs" defined. As used in this chapter, the following terms have the meanings indicated unless the context clearly requires otherwise.

"Trails" or "runs" means those trails or runs that have been marked, signed, or designated by the ski area operator as ski trails or ski runs within the ski area boundary. [1989 c 81 § 1.]

Severability—1989 c 81: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1989 c 81 § 6.]

70.117.020 Standard of conduct—Prohibited acts—Responsibility. (1) In addition to the specific requirements of this section, all skiers shall conduct themselves within the limits of their individual ability and shall not act in a manner that may contribute to the injury of themselves or any other person.

(2) No person shall:

(a) Embark or disembark upon a ski lift except at a designated area;

(b) Throw or expel any object from any tramway, ski lift, commercial skimobile, or other similar device while riding on the device;

(c) Act in any manner while riding on a rope tow, wire rope tow, j-bar, t-bar, ski lift, or similar device that may interfere with the proper or safe operation of the lift or tow;

(d) Wilfully engage in any type of conduct which may injure any person, or place any object in the uphill ski track which may cause another to fall, while traveling uphill on a ski lift; or

(e) Cross the uphill track of a j-bar, t-bar, rope tow, wire rope tow, or other similar device except at designated locations.

(3) Every person shall maintain control of his or her speed and course at all times, and shall stay clear of any snowgrooming equipment, any vehicle, any lift tower, and any other equipment on the mountain.

(4) A person shall be the sole judge of his or her ability to negotiate any trail, run, or uphill track and no action shall be maintained against any operator by reason of the condition of the track, trail, or run unless the condition results from the negligence of the operator.

(5) Any person who boards a rope tow, wire rope tow, j-bar, t-bar, ski lift, or other similar device shall be presumed to have sufficient abilities to use the device. No liability shall attach to any operator or attendant for failure to instruct the person on the use of the device, but a person shall follow any written or verbal instructions that are given regarding the use.

(6) Because of the inherent risks in the sport of skiing all persons using the ski hill shall exercise reasonable care for their own safety. However, the primary duty shall be on the person skiing downhill to avoid any collision with any person or object below him or her.

(7) Any person skiing outside the confines of trails open for skiing or runs open for skiing within the ski area boundary shall be responsible for any injuries or losses resulting from his or her action.

(8) Any person on foot or on any type of sliding device shall be responsible for any collision whether the collision is with another person or with an object.

(9) A person embarking on a lift or tow without authority shall be considered to be a trespasser. [1989 c 81 § 3; 1977 ex.s. c 139 § 2.]

Severability—1989 c 81: See note following RCW 70.117.015.

70.117.025 Skiing outside of trails or boundaries—Notice of skier responsibility. Ski area operators shall place a notice of the provisions of RCW 70.117.020(7) on their trail maps, at or near the ticket booth, and at the bottom of each ski lift or similar device. [1989 c 81 § 5.]

Severability—1989 c 81: See note following RCW 70.117.015.

70.117.030 Leaving scene of skiing accident—Penalty—Notice. (1) Any person who is involved in a skiing accident and who departs from the scene of the accident without leaving personal identification or otherwise clearly identifying himself or herself before notifying the proper authorities or obtaining assistance, knowing that any other person involved in the accident is in need of medical or other assistance, shall be guilty of a misdemeanor.

(2) An operator shall place a prominent notice containing the substance of this section in such places as are necessary to notify the public. [1989 c 81 § 4; 1977 ex.s. c 139 § 3.]

Severability—1989 c 81: See note following RCW 70.117.015.

70.117.040 Insurance requirements for operators. (1) Every tramway, ski lift, or commercial skimobile operator shall maintain liability insurance of not less than one hundred thousand dollars per person per accident and of not less than two hundred thousand dollars per accident.

(2) Every operator of a rope tow, wire rope tow, j-bar, t-bar, or similar device shall maintain liability insurance of not less than twenty-five thousand dollars per

person per accident and of not less than fifty thousand dollars per accident.

(3) This section shall not apply to operators of tramways that are not open to the general public and that are operated without charge, except that this section shall apply to operators of tramways that are operated by schools, ski clubs, or similar organizations. [1977 ex.s. c 139 § 4.]

Chapter 70.118

ON-SITE SEWAGE DISPOSAL SYSTEMS

Sections

70.118.010	Legislative declaration.
70.118.020	Definitions.
70.118.030	Local boards of health—Duties.
70.118.040	Local boards of health—Authority to waive sections of local plumbing and/or building codes.
70.118.050	Adoption of more restrictive standards.

Reviser's note: Powers and duties of the department of social and health services and the secretary of social and health services transferred to the department of health and the secretary of health. See RCW 43.70.060.

70.118.010 Legislative declaration. The legislature finds that over one million, two hundred thousand persons in the state are not served by sanitary sewers and that they must rely on septic tank systems. The failure of large numbers of such systems has resulted in significant health hazards, loss of property values, and water quality degradation. The legislature further finds that failure of such systems could be reduced by utilization of nonwater-carried sewage disposal systems, or other alternative methods of effluent disposal, as a correctional measure. Waste water volume diminution and disposal of most of the high bacterial waste through composting or other alternative methods of effluent disposal would result in restorative improvement or correction of existing substandard systems. [1977 ex.s. c 133 § 1.]

70.118.020 Definitions. As used in this chapter, the terms defined in this section shall have the meanings indicated unless the context clearly indicates otherwise.

(1) "Nonwater-carried sewage disposal devices" means any device that stores and treats nonwater-carried human urine and feces.

(2) "Alternative methods of effluent disposal" means systems approved by the department of social and health services, including at least, mound systems, alternating drain fields, anaerobic filters, evapotranspiration systems, and aerobic systems.

(3) "Failure" means: (a) Effluent has been discharged on the surface of the ground prior to approved treatment; or (b) effluent has percolated to the surface of the ground; or (c) effluent has contaminated or threatens to contaminate a ground water supply. [1977 ex.s. c 133 § 2.]

70.118.030 Local boards of health—Duties. Local boards of health shall identify failing septic tank drain-field systems in the normal manner and will use reasonable effort to determine new failures. Discretionary

judgment will be made in implementing corrections by specifying nonwater-carried sewage disposal devices or other alternative methods of treatment and effluent disposal as a measure of ameliorating existing substandard conditions. Local regulations shall be consistent with the intent and purposes stated herein. [1977 ex.s. c 133 § 3.]

70.118.040 Local boards of health—Authority to waive sections of local plumbing and/or building codes. With the advice of the secretary of the department of social and health services, local boards of health are hereby authorized to waive applicable sections of local plumbing and/or building codes that might prohibit the use of an alternative method for correcting a failure. [1977 ex.s. c 133 § 4.]

70.118.050 Adoption of more restrictive standards. If the legislative authority of a county or city finds that more restrictive standards than those contained in *section 2 of this act or those adopted by the state board of health for systems allowed under *section 2 of this act or limitations on expansion of a residence are necessary to ensure protection of the public health, attainment of state water quality standards, and the protection of shellfish and other public resources, the legislative authority may adopt ordinances or resolutions setting standards as they may find necessary for implementing their findings. The legislative authority may identify the geographic areas where it is necessary to implement the more restrictive standards. In addition, the legislative authority may adopt standards for the design, construction, maintenance, and monitoring of sewage disposal systems. [1989 c 349 § 3.]

***Reviser's note:** "Section 2 of this act" did not become law. See effective date note following.

Effective date—1989 c 349: "(1) Except as provided in subsection (2) of this section, this act shall take effect November 1, 1989.

(2) *Section 2 of this act shall not take effect if the state board of health adopts standards for the replacement and repair of existing on-site sewage disposal systems located on property adjacent to marine waters by October 31, 1989." [1989 c 349 § 4.]

***Reviser's note:** Section 2 of this act did not take effect. See chapter 248-96 WAC.

Chapter 70.119

PUBLIC WATER SUPPLY SYSTEMS— CERTIFICATION AND REGULATION OF OPERATORS

Sections

70.119.010	Legislative declaration.
70.119.020	Definitions.
70.119.030	Certified operators required for certain public water supply systems.
70.119.040	Exclusions from chapter.
70.119.050	Rules and regulations—Secretary to adopt.
70.119.060	Public water supply systems—Secretary to categorize.
70.119.070	Secretary—Consideration of guidelines.
70.119.080	Water and wastewater operator certification board of examiners—Additional members—Additional powers and duties.
70.119.090	Certificates without examination—Conditions.
70.119.100	Certificates—Issuance and renewal—Conditions.
70.119.110	Certificates—Grounds for revocation.

70.119.120	Secretary—Powers and duties.
70.119.130	Violations—Penalties.
70.119.140	Certificates—Reciprocity with other states.
70.119.150	Disposition of receipts.
70.119.900	Effective date—1977 ex.s. c 99.

70.119.010 Legislative declaration. The legislature declares that competent operation of a public water supply system is necessary for the protection of the consumers' health, and therefore it is of vital interest to the public. In order to protect the public health and conserve and protect the water resources of the state, it is necessary to provide for the classifying of all public water supply systems; to require the examination and certification of the persons responsible for the technical operation of such systems; and to provide for the promulgation of rules and regulations to carry out this chapter. [1983 c 292 § 1; 1977 ex.s. c 99 § 1.]

70.119.020 Definitions. As used in this chapter unless context requires another meaning:

(1) "Board" means the board established pursuant to RCW 70.95B.070 which shall be known as the water and waste water operator certification board of examiners.

(2) "Certificate" means a certificate of competency issued by the secretary stating that the operator has met the requirements for the specified operator classification of the certification program.

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

(4) "Distribution system" means that portion of a public water supply system which stores, transmits, pumps and distributes water to consumers.

(5) "Nationally recognized association of certification authorities" shall mean an organization which serves as an information center for certification activities, recommends minimum standards and guidelines for classification of potable water treatment plants, water distribution systems and waste water facilities and certification of operators, facilitates reciprocity between state programs and assists authorities in establishing new certification programs and updating existing ones.

(6) "Certified operator" means an individual employed or appointed by any county, water district, municipality, public or private corporation, company, institution, person, or the state of Washington who is designated by the employing or appointing officials as the person responsible for active daily technical operation.

(7) "Public water supply system" means any water supply system intended or used for human consumption or other domestic uses, including source, treatment, storage, transmission and distribution facilities where water is furnished to any community or group of individuals, or is made available to the public for human consumption or domestic use, but excluding all water supply systems serving one single family residence.

(8) "Purification plant" means that portion of a public water supply system which treats or improves the

physical, chemical or bacteriological quality of the system's water to bring the water into compliance with state board of health standards.

(9) *"Secretary" means the secretary of the department of social and health services. [1983 c 292 § 2; 1977 ex.s. c 99 § 2.]

***Reviser's note:** Powers and duties of the department of social and health services and the secretary of social and health services transferred to the department of health and the secretary of health. See RCW 43.70.060.

Public water supply systems to comply with water quality standards:
RCW 70.142.050.

70.119.030 Certified operators required for certain public water supply systems. (1) All public water supply systems which serve either:

(a) One hundred services in use at any one time; or

(b) Twenty-five or more persons which are supplied from a stream, lake or other surface water supply source and which are required by law to use a water filtration system;

are required to have a certified operator. The certified operators shall be in charge of the technical direction of a water system's operation, or an operating shift of such a system, or a major segment of a system necessary for monitoring or improving the quality of water. The operator shall be certified as provided in RCW 70.119.050.

(2) The amount of time that a certified operator shall be required to be present shall be based upon the time required to properly operate and maintain the public water supply system as designed and constructed in accordance with RCW 43.20.050. The employing or appointing officials shall designate the position or positions requiring mandatory certification within their individual systems and shall assure that such certified operators are responsible for the system's technical operation.

(3) Operators not required to be certified by this chapter are encouraged to become certified on a voluntary basis. [1983 c 292 § 3; 1977 ex.s. c 99 § 3.]

70.119.040 Exclusions from chapter. Nothing in this chapter shall apply to:

(1) Industrial water supply systems which do not supply water to residences for domestic use and are under the jurisdictional requirements of the Washington Industrial Safety and Health Act of 1973, chapter 49.17 RCW, as now or hereafter amended; or

(2) The preparation, distribution, or sale of bottled water or water similarly packaged. [1977 ex.s. c 99 § 4.]

70.119.050 Rules and regulations—Secretary to adopt. The secretary shall adopt, with the approval of the board, such rules and regulations as may be necessary for the administration of this chapter and shall enforce such rules and regulations. The rules and regulations shall include provisions establishing minimum qualifications and procedures for the certification of operators, criteria for determining the kind and nature of continuing educational requirements for renewal of certification under RCW 70.119.100(2), and provisions for classifying water purification plants and distribution systems.

Rules and regulations adopted under the provisions of this section shall be adopted in accordance with the provisions of chapter 34.05 RCW. [1983 c 292 § 4; 1977 ex.s. c 99 § 5.]

70.119.060 Public water supply systems—Secretary to categorize. The secretary shall further categorize all public water supply systems with regard to the size, type, source of water, and other relevant physical conditions affecting purification plants and distribution systems to assist in identifying the skills, knowledge and experience required for the certification of operators for each category of such systems. [1977 ex.s. c 99 § 6.]

70.119.070 Secretary—Consideration of guidelines. The secretary is authorized, when taking action pursuant to RCW 70.119.050 and 70.119.060, to consider generally applicable criteria and guidelines developed by a nationally recognized association of certification authorities and commonly accepted national guidelines and standards. [1983 c 292 § 5; 1977 ex.s. c 99 § 7.]

70.119.080 Water and wastewater operator certification board of examiners—Additional members—Additional powers and duties. For the purpose of carrying out the provisions of this chapter, the membership of the water and wastewater operator certification board of examiners established under RCW 70.95B.070, shall, pursuant to RCW 70.95B.070:

- (1) Be expanded to include two waterworks operators;
- (2) Serve in a common capacity for the certification of both water and wastewater plant and system operators; and
- (3) Be expanded to include one commissioner from a water district and one commissioner from a sewer district operating under Title 56 or 57 RCW.

In addition to the powers and duties in RCW 70.95B.070, the board shall assist in the development of rules and regulations implementing this chapter, shall prepare, administer and evaluate examinations of operator competency as required in this chapter, and shall recommend the issuance or revocation of certificates. The board shall determine where and when the examinations shall be held. Such examinations shall be held at least three times annually. [1983 c 292 § 6; 1977 ex.s. c 99 § 8.]

70.119.090 Certificates without examination—Conditions. Certificates shall be issued without examination under the following conditions:

- (1) Certificates shall be issued without application fee to operators who, on the effective date of this act, hold certificates of competency attained under the voluntary certification program sponsored jointly by the state department of social and health services, health services division, and the Pacific Northwest section of the American water works association.
- (2) Certification shall be issued to persons certified by a governing body or owner of a public water supply system to have been the operators of a purification plant or

distribution system on the effective date of this chapter but only to those who are required to be certified under RCW 70.119.030(1). A certificate so issued shall be valid for operating any plant or system of the same classification and same type of water source.

(3) A nonrenewable certificate, temporary in nature, may be issued to an operator for a period not to exceed twelve months to fill a vacated position required to have a certified operator. Only one such certificate may be issued subsequent to each instance of vacation of any such position. [1983 c 292 § 7; 1977 ex.s. c 99 § 9.]

Effective date—1977 ex.s. c 99: See RCW 70.119.900.

70.119.100 Certificates—Issuance and renewal—Conditions. The issuance and renewal of a certificate shall be subject to the following conditions:

(1) Except as provided in RCW 70.119.090, a certificate shall be issued if the operator has satisfactorily passed a written examination, has paid the department an application fee as established by the department under RCW 43.20B.110, and has met the requirements specified in the rules and regulations as authorized by this chapter.

(2) The terms for all certificates shall be for one year from the date of issuance. Every certificate shall be renewed annually upon the payment of a fee as established by the department under RCW 43.20B.110 and satisfactory evidence is presented to the secretary that the operator has fulfilled the continuing education requirements as prescribed by rule of the department.

(3) The secretary shall notify operators who fail to renew their certificates before the end of the certificate year that their certificates are temporarily valid for two months following the end of the certificate year. Certificates not renewed during the two month period shall be invalid and the secretary shall so notify the holders of such certificates.

(4) An operator who has failed to renew a certificate pursuant to the provisions of this section, may reapply for certification and the secretary may require the operator to meet the requirements established for new applicants. [1987 c 75 § 11; 1983 c 292 § 8; 1982 c 201 § 13; 1977 ex.s. c 99 § 10.]

Savings—Severability—1987 c 75: See RCW 43.20B.900 and 43.20B.901.

70.119.110 Certificates—Grounds for revocation. The secretary may, with the recommendation of the board and after hearing before the same, revoke a certificate found to have been obtained by fraud or deceit; or for gross negligence in the operation of a purification plant or distribution system; or for an intentional violation of the requirements of this chapter or any lawful rules, order, or regulation of the department. No person whose certificate is revoked under this section shall be eligible to apply for a certificate for six months from the effective date of the final order of revocation. [1983 c 292 § 9; 1977 ex.s. c 99 § 11.]

70.119.120 Secretary—Powers and duties. To carry out the provisions and purposes of this chapter, the secretary is authorized and empowered to:

(1) Receive financial and technical assistance from the federal government and other public or private agencies.

(2) Participate in related programs of the federal government, other state, interstate agencies, or other public or private agencies or organizations. [1977 ex.s. c 99 § 12.]

70.119.130 Violations—Penalties. On or after one year following the effective date of this act, any person, including any operator or any firm, association, corporation, municipal corporation, or other governmental subdivision or agency who, after thirty days' written notice, operates a public water supply system which is not in compliance with RCW 70.119.030(1), shall be guilty of a misdemeanor. Each month of such operation out of compliance with RCW 70.119.030(1) shall constitute a separate offense. Upon conviction, violators shall be fined an amount not exceeding one hundred dollars for each offense. It shall be the duty of the prosecuting attorney or the attorney general, as appropriate to secure injunctions of continuing violations of any provisions of this chapter or the rules and regulations adopted hereunder: *Provided*, That, except in the case of fraud, deceit, or gross negligence under RCW 70.119.110, no revocation, citation or charge shall be made under RCW 70.119.110 and 70.119.130 until a proper written notice of violation is received and a reasonable opportunity for correction has been given. [1983 c 292 § 10; 1977 ex.s. c 99 § 13.]

Effective date—1977 ex.s. c 99: See RCW 70.119.900.

70.119.140 Certificates—Reciprocity with other states. Operators certified by any state under provisions that, in the judgment of the secretary, are substantially equivalent to the requirements of this chapter and any rules and regulations promulgated hereunder, may be issued, upon application, a certificate without examination.

In making determinations pursuant to this section, the secretary shall consult with the board and may consider any generally applicable criteria and guidelines developed by a nationally recognized association of certification authorities. [1977 ex.s. c 99 § 14.]

70.119.150 Disposition of receipts. All receipts realized in the administration of this chapter shall be paid into the general fund. [1977 ex.s. c 99 § 15.]

70.119.900 Effective date—1977 ex.s. c 99. This act shall take effect on January 1, 1978. [1977 ex.s. c 99 § 17.]

Chapter 70.119A

PUBLIC WATER SYSTEMS—PENALTIES AND COMPLIANCE

Sections

- 70.119A.020 Definitions.
- 70.119A.030 Public health emergencies—Violations—Failure to comply with departmental order—Penalty.
- 70.119A.040 Penalty—Notice—Payment of fine—Action in superior court.
- 70.119A.050 Enforcement of regulations by local boards of health—Civil penalties.
- 70.119A.060 Public water systems—Mandate—Department and local health jurisdiction duties.
- 70.119A.070 Department contracting authority.
- 70.119A.080 Drinking water program.
- 70.119A.900 Short title—1989 c 422.

70.119A.020 Definitions. Unless the context clearly requires otherwise, the following definitions apply throughout this chapter:

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

(2) "Local board of health" means the city, town, county, or district board of health.

(3) "Local health jurisdiction" means an entity created under chapter 70.05, 70.08, or 70.46 RCW which provides public health services to persons within the area.

(4) "Public water system" means any system, excluding a system serving only one single-family residence, which provides piped water for human consumption, including:

(a) Any collection, treatment, storage, and distribution facilities under control of the purveyor and used primarily in connection with such system; and

(b) Any collection or pretreatment storage facilities not under control of the purveyor which are primarily used in connection with such system.

(5) "Order" means a written direction to comply with a provision of the regulations adopted under RCW 43.20.050(2)(a) or 70.119.050 or to take an action or a series of actions to comply with the regulations.

(6) "Purveyor" means any agency or subdivision of the state or any municipal corporation, firm, company, mutual, or cooperative association, institution, partnership, or person or any other entity, that owns or operates a public water system. It also means the authorized agents of any such entities.

(7) "Regulations" means rules adopted to carry out the purposes of this chapter.

(8) "Federal safe drinking water act" means the federal safe drinking water act, 42 U.S.C. Sec. 300f et seq., as now in effect or hereafter amended.

(9) "Local health officer" means the legally qualified physician who has been appointed as the health officer for the city, town, county, or district public health department.

(10) "Person" includes, but is not limited to, natural persons, municipal corporations, governmental agencies, firms, companies, mutual or cooperative associations, institutions, and partnerships. It also means the authorized agents of any such entities.

(11) "Public health emergency" means a declaration by an authorized health official of a situation in which either illness, or exposure known to cause illness, is occurring or is imminent.

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

(13) "State board of health" is the board created by RCW 43.20.030. [1989 c 422 § 2; 1986 c 271 § 2.]

***Reviser's note:** Powers and duties of the department of social and health services and the secretary of social and health services transferred to the department of health and the secretary of health. See RCW 43.70.060.

70.119A.030 Public health emergencies—Violations—Failure to comply with departmental order—Penalty. (1) The secretary or his or her designee or the local health officer may declare a public health emergency. As limited by RCW 70.119A.040, the department may impose penalties for violations of laws or regulations that are determined to be a public health emergency.

(2) As limited by RCW 70.119A.040, the department may impose penalties for failure to comply with an order of the department, or of an authorized local board of health, when the order:

(a) Directs any person to stop work on the construction or alteration of a public water system when plans and specifications for the construction or alteration have not been approved as required by the regulations, or when the work is not being done in conformity with approved plans and specifications;

(b) Requires any person to eliminate a cross-connection to a public water system by a specified time; or

(c) Requires any person to cease violating any regulation relating to public water systems, or to take specific actions within a specified time to place a public water system in compliance with regulations adopted under chapters 43.20 and 70.119 RCW. [1989 c 422 § 6; 1986 c 271 § 3.]

70.119A.040 Penalty—Notice—Payment of fine—Action in superior court. (1) In addition to or as an alternative to any other penalty provided by law, every person who commits any of the acts or omissions in RCW 70.119A.030 shall be subjected to a penalty in an amount of not more than five thousand dollars per day for every such violation. Every such violation shall be a separate and distinct offense. The amount of fine shall reflect the health significance of the violation and the previous record of compliance on the part of the public water supplier. In case of continuing violation, every day's continuance shall be a separate and distinct violation. Every person who, through an act of commission or omission, procures, aids, or abets in the violation shall be considered to have violated the provisions of this section and shall be subject to the penalty provided in this section.

(2) The penalty provided for in this section shall be imposed by a notice in writing to the person against whom the civil fine is assessed and shall describe the violation. The notice shall be personally served in the

manner of service of a summons in a civil action or in a manner that shows proof of receipt. A penalty imposed by this section is due twenty-eight days after receipt of notice unless application for remission or mitigation is made as provided in subsection (3) of this section or unless application for an adjudicative proceeding is filed as provided in subsection (4) of this section.

(3) Within fourteen days after the notice is received, the person incurring the penalty may apply in writing to the department for the remission or mitigation of such penalty. Upon receipt of the application, the department may remit or mitigate the penalty upon whatever terms the department in its discretion deems proper, giving consideration to the degree of hazard associated with the violation, provided the department deems such remission or mitigation to be in the best interests of carrying out the purposes of this chapter. The department shall have authority to ascertain the facts regarding all such applications in such reasonable manner as it may deem proper. When an application for remission or mitigation is made, a penalty incurred under this section is due twenty-eight days after receipt of the notice setting forth the disposition of the application, unless an application for an adjudicative proceeding to contest the disposition is filed as provided in subsection (4) of this section.

(4) Within twenty-eight days after notice is received, the person incurring the penalty may file an application for an adjudicative proceeding and may pursue subsequent review as provided in chapter 34.05 RCW and applicable rules of the department or board of health.

(5) A penalty imposed by a final order after an adjudicative proceeding is due upon service of the final order.

(6) The attorney general may bring an action in the name of the department in the superior court of Thurston county, or of any county in which such violator may do business, to collect a penalty.

(7) All penalties imposed under this section shall be payable to the state treasury and credited to the general fund. [1989 c 175 § 135; 1986 c 271 § 4.]

Effective date—1989 c 175: See note following RCW 34.05.010.

70.119A.050 Enforcement of regulations by local boards of health—Civil penalties. Each local board of health that is enforcing the regulations under an agreement with the department allocating state and local responsibility is authorized to impose civil penalties for violations within the area of its responsibility under the same limitations and requirements imposed upon the department by RCW 70.119A.030 and 70.119A.040, except that penalties shall be placed into the general fund of the county, city, or town operating the local board of health, and the prosecuting attorney, or city, or town attorney shall bring the actions to collect the unpaid penalties. [1989 c 422 § 8; 1986 c 271 § 5.]

70.119A.060 Public water systems—Mandate—Department and local health jurisdiction duties. (1) In order to assure safe and reliable public drinking water and to protect the public health, public water systems shall:

- (a) Protect the water sources used for drinking water;
- (b) Provide treatment adequate to assure that the public health is protected;
- (c) Provide and effectively operate and maintain public water system facilities;
- (d) Plan for future growth and assure the availability of safe and reliable drinking water;
- (e) Take whatever investigative or corrective action is necessary to assure that a safe and reliable drinking water supply is continuously available to users.
- (2) The department and local health jurisdictions shall carry out the rules and regulations of the state board of health adopted pursuant to RCW 43.20.050(2)(a) and other rules adopted by the department relating to public water systems. [1989 c 422 § 3.]

70.119A.070 Department contracting authority. The department may enter into contracts to carry out the purposes of this chapter. [1989 c 422 § 4.]

70.119A.080 Drinking water program. (1) The department shall administer a drinking water program which includes, but is not limited to, those program elements necessary to assume primary enforcement responsibility for part B, and section 1428 of part C of the federal safe drinking water act. No rule or regulation promulgated or implemented by the department of social and health services or the state board of health for the purpose of compliance with the requirements of the federal safe drinking water act, 42 U.S.C. Sec. 300f et seq., shall be applicable to public water systems to which that federal law is not applicable, unless the department or the state board determines that such rule or regulation is necessary for the protection of public health.

(2) The department shall enter into an agreement of administration with the department of ecology and any other appropriate agencies, to administer the federal safe drinking water act.

(3) The department is authorized to accept federal grants for the administration of a primary program. [1989 c 422 § 5.]

70.119A.900 Short title—1989 c 422. This act shall be known and cited as the "Washington state safe drinking water act." [1989 c 422 § 1.]

Chapter 70.120

MOTOR VEHICLE EMISSION CONTROL

Sections

70.120.010	Definitions.
70.120.020	Programs.
70.120.070	Vehicle inspections—Failed—Certificate of acceptance.
70.120.080	Vehicle inspections—Fleets.
70.120.100	Vehicle inspections—Complaints.
70.120.110	Vehicle inspections—Violations—Penalty.
70.120.120	Rules.
70.120.130	Authority.
70.120.140	Ambient air monitoring in Portland-Vancouver metropolitan area.
70.120.150	Vehicle emission standards—Designation of noncompliance areas and emission contributing areas.

70.120.160	Noncompliance areas—Annual review.
70.120.170	Motor vehicle inspections required—Fees—Results—Certificate of compliance.
70.120.180	Studies.
70.120.900	Expiration date of chapter.
70.120.901	Captions not law.
70.120.902	Effective date—1989 c 240.

70.120.010 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Department" means the department of ecology.

(2) "Director" means the director of the department of ecology.

(3) "Fleet" means a group of twenty-five or more motor vehicles owned or leased concurrently by one person.

(4) "Motor vehicle" means any self-propelled vehicle required to be licensed pursuant to chapter 46.16 RCW.

(5) "Motor vehicle dealer" means a motor vehicle dealer, as defined in RCW 46.70.011, that is licensed pursuant to chapter 46.70 RCW.

(6) "Person" means an individual, firm, public or private corporation, association, partnership, political subdivision of the state, municipality, or governmental agency.

(7) The terms "air contaminant," "air pollution," "air quality standard," "ambient air," "emission," and "emission standard" have the meanings given them in RCW 70.94.030. [1979 ex.s. c 163 § 1.]

Severability—1979 ex.s. c 163: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1979 ex.s. c 163 § 19.]

70.120.020 Programs. (1) The department shall conduct the following programs in a manner that will enhance the successful implementation of the air pollution control system established for motor vehicles by this chapter:

(a) A voluntary motor vehicle emissions inspection program;

(b) A public educational program regarding the health effects of air pollution emitted by motor vehicles; the purpose, operation, and effect of emission control devices and systems; and the effect that proper maintenance of motor vehicle engines has on fuel economy and air pollution emission; and

(c) A public notification program identifying the geographic areas of the state that are designated as being noncompliance areas and emission contributing areas and describing the requirements imposed under this chapter for those areas.

(2)(a) The department, the superintendent of public instruction, and the state board for community college education shall develop cooperatively, after consultation with automotive trades joint apprenticeship committees approved in accordance with RCW 49.04.040, a program for granting certificates of instruction to persons who successfully complete a course of study, under general requirements established by the director, in the maintenance of motor vehicle engines, the use of engine and exhaust analysis equipment, and the repair and

maintenance of emission control devices. The director may establish and implement procedures for granting certification to persons who successfully complete other training programs or who have received certification from private organizations which meet the requirements established in this subsection.

(b) The department shall make available to the public a list of those persons who have received certificates of instruction under subsection (2)(a) of this section. [1989 c 240 § 5; 1979 ex.s. c 163 § 2.]

Severability—1979 ex.s. c 163: See note following RCW 70.120.010.

70.120.070 Vehicle inspections—Failed—Certificate of acceptance. (1) Any person:

(a) Whose motor vehicle is tested pursuant to this chapter and fails to comply with the emission standards established for the vehicle; and

(b) Who, following such a test, expends more than fifty dollars on a 1980 or earlier model year motor vehicle or expends more than one hundred fifty dollars on a 1981 or later model year motor vehicle for repairs solely devoted to meeting the emission standards and that are performed by a certified emission specialist authorized by RCW 70.120.020(2)(a); and

(c) Whose vehicle fails a retest, may be issued a certificate of acceptance if (i) the vehicle has been in use for more than five years or fifty thousand miles, and (ii) any component of the vehicle installed by the manufacturer for the purpose of reducing emissions, or its appropriate replacement, is installed and operative.

(d) To receive the certificate, the person must document compliance with (b) and (c) of this subsection to the satisfaction of the department.

(2) Persons who fail the initial tests shall be provided with information regarding the availability of federal warranties and certified emission specialists. [1989 c 240 § 6; 1980 c 176 § 4; 1979 ex.s. c 163 § 7.]

Severability—1979 ex.s. c 163: See note following RCW 70.120.010.

70.120.080 Vehicle inspections—Fleets. The director may authorize an owner or lessee of a fleet of motor vehicles, or the owner's or lessee's agent, to inspect the vehicles in the fleet and issue certificates of compliance for the vehicles in the fleet if the director determines that: (1) The director's emission and inspection standards will be complied with; and (2) certificates will be issued only to vehicles in the fleet and only when appropriate. [1979 ex.s. c 163 § 8.]

Severability—1979 ex.s. c 163: See note following RCW 70.120.010.

70.120.100 Vehicle inspections—Complaints. The department shall investigate complaints received regarding the operation of emission testing stations and shall require corrections or modifications in those operations when deemed necessary.

The department shall also review complaints received regarding the maintenance or repairs secured by owners

of motor vehicles for the purpose of complying with the requirements of this chapter. When possible, the department shall assist such owners in determining the merits of the complaints. [1979 ex.s. c 163 § 10.]

Severability—1979 ex.s. c 163: See note following RCW 70.120.010.

70.120.110 Vehicle inspections—Violations—Penalty. (1)(a) Certificates of compliance and acceptance constitute official forms. False statements made thereon or made to secure such certificates are punishable pursuant to RCW 9A.72.040 and the certificates shall bear notice to that effect.

(b) Certificates of compliance and certificates of acceptance may be issued only in the manner authorized by this chapter.

(2) A person who avoids inspection requirements as provided for in RCW 70.120.170(1) is subject to a civil penalty not to exceed one hundred dollars. [1989 c 240 § 7; 1985 c 7 § 131; 1979 ex.s. c 163 § 12.]

Severability—1979 ex.s. c 163: See note following RCW 70.120.010.

70.120.120 Rules. The director shall adopt rules implementing and enforcing this chapter and RCW 46.16.015(2)(g) in accordance with chapter 34.05 RCW. Notwithstanding the provisions of chapter 34.05 RCW, any rule implementing and enforcing RCW 70.120.150(5) may not be adopted until it has been submitted to the standing committees on ecology of the house of representatives and senate for review and approval. The standing committees shall take into account when considering proposed modifications of emission contributing boundaries, as provided for in RCW 70.120.150(5), alternative plans for traffic rerouting and traffic bans that may have been prepared by local municipal corporations for the purpose of satisfying federal emission guidelines. [1989 c 240 § 8; 1979 ex.s. c 163 § 13.]

Severability—1979 ex.s. c 163: See note following RCW 70.120.010.

70.120.130 Authority. The authority granted by this chapter to the director and the department for controlling vehicle emissions is supplementary to the department's authority to control air pollution pursuant to chapter 70.94 RCW. [1979 ex.s. c 163 § 14.]

Severability—1979 ex.s. c 163: See note following RCW 70.120.010.

70.120.140 Ambient air monitoring in Portland-Vancouver metropolitan area. The department shall establish and maintain in the Washington portion of the Portland-Vancouver metropolitan area not less than three ambient air monitoring devices for ozone, not less than three ambient air monitoring devices for hydrocarbons, and not less than two ambient air monitoring devices for oxides of nitrogen. [1987 c 505 § 62; 1980 c 176 § 5.]

70.120.150 Vehicle emission standards—Designation of noncompliance areas and emission contributing areas. The director:

(1) Shall adopt motor vehicle emission standards to ensure that no less than seventy percent of the vehicles tested comply with the standards.

(2) Shall designate a geographic area as being a "noncompliance area" for motor vehicle emissions if (a) the department's analysis of the data, recorded for a period of no less than one year, at the monitoring sites indicates that the standard has or will probably be exceeded, and (b) the department determines that the primary source of the contaminant being monitored at the sites is motor vehicle emissions.

(3) Shall reevaluate noncompliance areas if the United States environmental protection agency modifies the relevant air quality standards, and shall discontinue the program if compliance is indicated and if the department determines that the area would continue to be in compliance after the program is discontinued. The director shall notify persons residing in noncompliance areas of the reevaluation.

(4) Shall analyze information regarding the motor vehicle traffic in a noncompliance area to determine the smallest land area within whose boundaries are present registered motor vehicles that contribute significantly to the violation of motor vehicle-related air quality standards in the noncompliance area. The director shall declare the area to be an "emission contributing area." An emission contributing area established for a carbon monoxide or oxides of nitrogen noncompliance area must contain the noncompliance area within its boundaries. An emission contributing area established for an ozone noncompliance area located in this state need not contain the ozone noncompliance area within its boundaries if it can be proven that vehicles registered in the area contribute significantly to violations of the ozone air quality standard in the noncompliance area. An emission contributing area may be established in this state for violations of federal air quality standards for ozone in an adjacent state if (a) the United States environmental protection agency designates an area to be a "nonattainment area for ozone" under the provisions of the federal Clean Air Act (42 U.S.C. 7401 et. seq.), (b) the nonattainment area encompasses portions of both Washington and the adjacent state, and (c) it can be proven that vehicles registered in this state contribute significantly to the violation of the federal air quality standards for ozone in the adjacent state's portion of the nonattainment area.

(5) Shall designate areas as being noncompliance areas or emission contributing areas, and shall establish the boundaries of such areas by rule. The director may also modify boundaries. In establishing the external boundaries of an emission contributing area, the director shall use the boundaries established for ZIP code service areas by the United States postal service.

(6) May make grants to units of government in support of planning efforts to reduce motor vehicle emissions in areas where emission control inspections are not required. [1989 c 240 § 2.]

70.120.160 Noncompliance areas—Annual review.

(1) The director shall review annually the air quality and forecasted air quality of each area in the state designated as a noncompliance area for motor vehicle emissions.

(2) An area shall no longer be designated as a noncompliance area if the director determines that:

(a) Air quality standards for contaminants derived from motor vehicle emissions are no longer being violated in the noncompliance area; and

(b) The standards would not be violated if the emission inspection system in the emission contributing area was discontinued and the requirements of RCW 46.16-.015 no longer applied. [1989 c 240 § 3.]

70.120.170 Motor vehicle inspections required—Fees—Results—Certificate of compliance.

(1) The department shall administer a system for biennial inspection of emissions of all motor vehicles registered within the boundaries of each emission contributing area. Persons residing within the boundaries of an emission contributing area shall register their motor vehicle within that area, unless business reasons require registration outside the area. Requests for exemption from inspection for business reasons shall be reviewed and approved by the director.

(2) The director shall:

(a) Adopt procedures for conducting emission tests for motor vehicles. The tests shall include idle and high revolution per minute tests.

(b) Adopt criteria for calibrating emission testing equipment. Electronic equipment used to test for emissions standards provided for in this chapter shall be properly calibrated. The department shall examine frequently the calibration of the emission testing equipment used at the stations.

(c) Authorize, through contracts, the establishment and operation of inspection stations for conducting the vehicle emission tests authorized in this chapter. No person contracted to inspect motor vehicles may perform for compensation repairs on any vehicles. No public body may establish or operate contracted inspection stations. Any contracts must be let in accordance with the procedures established for competitive bids in chapter 43.19 RCW.

(3) Subsection (2)(c) of this section does not apply to volunteer motor vehicle inspections under RCW 70.120.020(1)(a) if the inspections are conducted for the following purposes:

(a) Auditing;

(b) Contractor evaluation;

(c) Collection of data for establishing calibration and performance standards; or

(d) Public information and education.

(4)(a) The director shall establish by rule the fee to be charged for emission inspections. The inspection fee shall be a standard fee applicable state-wide or throughout an emission contributing area and shall be no greater than eighteen dollars. Surplus moneys collected from fees over the amount due the contractor shall be paid to the state and deposited in the general

fund. Fees shall be set at the minimum whole dollar amount required to (i) compensate the contractor, and (ii) offset the general fund appropriation to the department to cover the administrative costs of the motor vehicle emission inspection program.

(b) Before each inspection, a person whose motor vehicle is to be inspected shall pay to the inspection station the fee established under this section. The person whose motor vehicle is inspected shall receive the results of the inspection test. If the inspected vehicle's emissions comply with the standards established by the director, the person shall receive a dated certificate of compliance. If the inspected vehicle's emissions do not comply with those standards, one retest of the vehicle's emission shall be afforded without charge.

(5) All units of local government and agencies of the state with motor vehicles garaged or regularly operated in an emissions contributing area shall test the emissions of those vehicles biennially to ensure that the vehicle's emissions comply with the emission standards established by the director. A report of the results of the tests shall be submitted to the department. [1989 c 240 § 4.]

70.120.180 Studies. (1) The department shall identify expected carbon monoxide emission trends over the next five years after January 1, 1990, without the motor vehicle emission program and report to the appropriate standing committees of the legislature by January 1, 1991.

(2) The department shall examine available testing data to determine vehicle subpopulations and incremental emission increases associated with subpopulations failing the emission test. This information shall be reported to the appropriate standing committees of the legislature by January 1, 1992. [1989 c 240 § 10.]

70.120.900 Expiration date of chapter. This chapter expires January 1, 1993, unless extended by law for an additional fixed period of time. [1989 c 240 § 9.]

70.120.901 Captions not law. Section headings as used in this act do not constitute any part of law. [1989 c 240 § 11.]

70.120.902 Effective date—1989 c 240. This act shall take effect January 1, 1990. [1989 c 240 § 14.]

Chapter 70.121

MILL TAILINGS—LICENSING AND PERPETUAL CARE

Sections

70.121.010	Legislative findings.
70.121.020	Definitions.
70.121.030	Licenses—Renewal—Hearings.
70.121.040	Facility operations and decommissioning—Monitoring.
70.121.050	Radiation perpetual maintenance fund—Licensee contributions—Disposition.
70.121.060	State authority to acquire property for surveillance sites.
70.121.070	Status of acquired state property for surveillance sites.
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70.121.090	Authority for on-site inspections and monitoring.
70.121.100	Licensees' bond requirements.
70.121.110	Acceptable bonds.
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70.121.130	Exemptions from bonding requirements.
70.121.140	Amounts owed to state—Lien created.
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70.121.900	Construction.
70.121.905	Short title.
70.121.910	Severability—1979 ex.s. c 110.

Nuclear energy and radiation: Chapter 70.98 RCW.
Radioactive waste storage and transportation act of 1980: Chapter 70.99 RCW.

70.121.010 Legislative findings. The legislature finds that:

(1) The milling of uranium and thorium creates potential hazards to the health of the citizens of the state of Washington in that potentially hazardous radioactive isotopes, decay products of uranium and thorium, naturally occurring in relatively dispersed geologic formations, are brought to one location on the surface and pulverized in the process of mining and milling uranium and thorium.

(2) These radioactive isotopes, in addition to creating a field of gamma radiation in the vicinity of the tailings area, also exude potentially hazardous radioactive gas and particulates into the atmosphere from the tailings areas, and contaminate the milling facilities, thereby creating hazards which will be present for many generations.

(3) The public health and welfare of the citizens demands that the state assure that the public health be protected by requiring that: (a) prior to the termination of any radioactive materials license, all milling facilities and associated tailings piles will be decommissioned in such a manner as to bring the potential public health hazard to a minimum; and (b) such environmental radiation monitoring as is necessary to verify the status of decommissioned facilities will be conducted. [1979 ex.s. c 110 § 1.]

Effective date—1979 ex.s. c 110: "This act shall take effect on January 1, 1980." [1979 ex.s. c 110 § 18.]

70.121.020 Definitions. Unless the context clearly requires a different meaning, the definitions in this section apply throughout this chapter.

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

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

(3) "Site" means the restricted area as defined by the United States nuclear regulatory commission.

(4) "Tailings" means the residue remaining after extraction of uranium or thorium from the ore whether or not the residue is left in piles, but shall not include ore bodies nor ore stock piles.

(5) "License" means a radioactive materials license issued under chapter 70.98 RCW and the rules adopted under chapter 70.98 RCW.

(6) "Termination of license" means the cancellation of the license after permanent cessation of operations.

Temporary interruptions or suspensions of production due to economic or other conditions are not a permanent cessation of operations.

(7) "Milling" means grinding, cutting, working, or concentrating ore which has been extracted from the earth by mechanical (conventional) or chemical (in situ) processes.

(8) "Obligor—licensee" means any person who obtains a license to operate a uranium or thorium mill in the state of Washington or any person who owns the property on which the mill operates and who owes money to the state for the licensing fee, for reclamation of the site, for perpetual surveillance and maintenance of the site, or for any other obligation owed the state under this chapter.

(9) "Statement of claim" means the document recorded or filed pursuant to this chapter, which names an obligor—licensee, names the state as obligee, describes the obligation owed to the state, and describes property owned by the obligor—licensee on which a lien will attach for the benefit of the state, and which creates the lien when filed. [1987 c 184 § 1; 1982 c 78 § 1; 1979 ex.s. c 110 § 2.]

***Reviser's note:** Powers and duties of the department of social and health services and the secretary of social and health services transferred to the department of health and the secretary of health. See RCW 43.70.060.

Effective date—1979 ex.s. c 110: See note following RCW 70.121.010.

70.121.030 Licenses—Renewal—Hearings. (1) Any person who proposes to operate a uranium or thorium mill within the state of Washington after January 1, 1980, shall obtain a license from the department to mill thorium and uranium. The period of the license shall be determined by the secretary and shall be initially valid for not more than two years and renewable thereafter for periods of not more than five years. No license may be granted unless:

(a) The owner or operator of the mill submits to the department a plan for reclamation and disposal of tailings and for decommissioning the site that conforms to the criteria and standards then in effect for the protection of the public safety and health; and

(b) The owner of the mill agrees to transfer or revert to the appropriate state or federal agency upon termination of the license all lands, buildings, and grounds, and any interests therein, necessary to fulfill the purposes of this chapter except where the lands are held in trust for or are owned by any Indian tribe.

(2) Any person operating a uranium or thorium mill on January 1, 1980, shall, at the time of application for renewal of his license to mill thorium or uranium, comply with the following conditions for continued operation of the mill:

(a) The owner or operator of the mill shall submit to the department a plan for reclamation and disposal of tailings and for decommissioning the site that conforms to the criteria and standards then in effect for the protection of the public safety and health; and

(b) The owner of the mill shall agree to transfer or revert to the appropriate state or federal agency upon

termination of the license all lands, buildings, and grounds, and any interests therein, necessary to fulfill the purposes of this chapter except where the lands are held in trust for or are owned by any Indian tribe.

(3) The department shall, after public notice and opportunity for written comment, hold a public hearing to consider the adequacy of the proposed plan to protect the safety and health of the public required by subsections (1) and (2) of this section. The proceedings shall be recorded and transcribed. The public hearing shall provide the opportunity for cross-examination by both the department and the person proposing the plan required under this section. The department shall make a written determination as to the licensing of the mill which is based upon the findings included in the determination and upon the evidence presented during the public comment period. The determination is subject to judicial review. If a declaration of nonsignificance is issued for a license renewal application under rules adopted under chapter 43.21C RCW, the public hearing is not required.

(4) The department shall set a schedule of license and amendment fees predicated on the cost of reviewing the license application and of monitoring for compliance with the conditions of the license. A permit for construction of a uranium or thorium mill may be granted by the secretary prior to licensing. [1979 ex.s. c 110 § 3.]

Effective date—1979 ex.s. c 110: See note following RCW 70.121.010.

70.121.040 Facility operations and decommissioning—Monitoring. The secretary or his representative shall monitor the operations of the mill for compliance with the conditions of the license by the owner or operator. The mill owner or operator shall be responsible for compliance, both during the lifetime of the facility and at shutdown, including but not limited to such requirements as fencing and posting the site; contouring, covering, and stabilizing the pile; and for decommissioning the facility. [1979 ex.s. c 110 § 4.]

Effective date—1979 ex.s. c 110: See note following RCW 70.121.010.

70.121.050 Radiation perpetual maintenance fund—Licensee contributions—Disposition. On a quarterly basis on and after January 1, 1980, there shall be levied and the department shall collect a charge of five cents per pound on each pound of uranium or thorium compound milled out of the raw ore. All moneys paid to the department from these charges shall be deposited in a special security fund in the treasury of the state of Washington to be known as the "radiation perpetual maintenance fund". This security fund shall be used by the department when a licensee has ceased to operate and the site may still contain, or have associated with the site at which the licensed activity was conducted in spite of full compliance with RCW 70.121-.030, radioactive material which will require further maintenance, surveillance, or other care. If, with respect

to a licensee, the department determines that the estimated total of these charges will be less than or greater than that required to defray the estimated cost of administration of this responsibility, the department may prescribe such an increased or decreased charge as is considered necessary for this purpose. If, at termination of the license, the department determines that by the applicable standards and practices then in effect, the charges which have been collected from the licensee and earnings generated therefrom are in excess of the amount required to defray the cost of this responsibility, the department may refund the excess portion to the licensee. If, at termination of the license or cessation of operation, the department determines, by the applicable standards and practices then in effect, that the charges which have been collected from the licensee and earnings generated therefrom are together insufficient to defray the cost of this responsibility, the department may collect the excess portion from the licensee.

Moneys in the radiation perpetual maintenance fund shall be invested by the state investment board in the manner as other state moneys. [1987 c 184 § 2; 1979 ex.s. c 110 § 5.]

Effective date—1979 ex.s. c 110: See note following RCW 70.121.010.

70.121.060 State authority to acquire property for surveillance sites. In order to provide for the proper care and surveillance of sites under RCW 70.121.050, the state may acquire by gift or transfer from any government agency, corporation, partnership, or person, all lands, buildings, and grounds necessary to fulfill the purposes of this chapter. Any such gift or transfer shall be subject to approval by the department. In exercising the authority of this section, the department shall take into consideration the status of the ownership of the land and interests therein and the ability of the licensee to transfer title and custody thereof to the state. [1979 ex.s. c 110 § 6.]

Effective date—1979 ex.s. c 110: See note following RCW 70.121.010.

70.121.070 Status of acquired state property for surveillance sites. Recognizing the uncertainty of the existence of a person or corporation in perpetuity, and recognizing that ultimate responsibility to protect the public health and safety must be reposed in a solvent government, without regard to the existence of any particular agency or department thereof, all lands, buildings, and grounds acquired by the state under RCW 70.121.060 shall be owned in fee simple by the state and dedicated in perpetuity to the purposes stated in RCW 70.121.060. All radioactive material received at a site and located therein at the time of acquisition of ownership by the state shall become the property of the state. [1979 ex.s. c 110 § 7.]

Effective date—1979 ex.s. c 110: See note following RCW 70.121.010.

70.121.080 Payment for transferred sites for surveillance. If a person licensed by any governmental agency

other than the state or if any other governmental agency desires to transfer a site to the state for the purpose of administering or providing perpetual care, a lump sum payment shall be made to the radiation perpetual maintenance fund. The amount of the deposit shall be determined by the department taking into consideration the factors stated in RCW 70.121.050. [1979 ex.s. c 110 § 8.]

Effective date—1979 ex.s. c 110: See note following RCW 70.121.010.

70.121.090 Authority for on-site inspections and monitoring. Each licensee under this chapter, as a condition of his license, shall submit to whatever reasonable on-site inspections and on-site monitoring as required in order for the department to carry out its responsibilities and duties under this chapter. Such on-site inspections and monitoring shall be conducted without the necessity of any further approval or any permit or warrant therefor. [1979 ex.s. c 110 § 9.]

Effective date—1979 ex.s. c 110: See note following RCW 70.121.010.

70.121.100 Licensees' bond requirements. The secretary or the secretary's duly authorized representative shall require the posting of a bond by licensees to be used exclusively to provide funds in the event of abandonment, default, or other inability of the licensee to meet the requirements of the department. The secretary may establish bonding requirements by classes of licensees and by range of monetary amounts. In establishing these requirements, the secretary shall consider the potential for contamination, injury, cost of disposal, and reclamation of the property. The amount of the bond shall be sufficient to pay the costs of reclamation and perpetual maintenance. [1987 c 184 § 5; 1979 ex.s. c 110 § 10.]

Effective date—1979 ex.s. c 110: See note following RCW 70.121.010.

70.121.110 Acceptable bonds. A bond shall be accepted by the department if it is a bond issued by a fidelity or surety company admitted to do business in the state of Washington and the fidelity or surety company is found by the state finance commission to be financially secure at licensing and licensing renewals, if it is a personal bond secured by such collateral as the secretary deems satisfactory and in accordance with RCW 70.121.100, or if it is a cash bond. [1987 c 184 § 6; 1979 ex.s. c 110 § 11.]

Effective date—1979 ex.s. c 110: See note following RCW 70.121.010.

70.121.120 Forfeited bonds—Use of fund. All bonds forfeited shall be paid to the department for deposit in the radiation perpetual maintenance fund. All moneys in this fund may only be expended by the department as necessary for the protection of the public health and safety and shall not be used for normal operating expenses of the department. [1979 ex.s. c 110 § 12.]

Effective date—1979 ex.s. c 110: See note following RCW 70.121.010.

70.121.130 Exemptions from bonding requirements. All state, local, or other governmental agencies, or subdivisions thereof, are exempt from the bonding requirements of this chapter. [1987 c 184 § 7; 1979 ex.s. c 110 § 13.]

Effective date—1979 ex.s. c 110: See note following RCW 70.121.010.

70.121.140 Amounts owed to state—Lien created. If a licensee fails to pay the department within a reasonable time money owed to the state under this chapter, the obligation owed to the state shall constitute a lien on all property, both real and personal, owned by the obligor–licensee when the department records or files, pursuant to this section, a statement of claim against the obligor–licensee. The statement of claim against the obligor–licensee shall name the obligor–licensee, name the state as obligee, describe the obligation, and describe the property to be held in security for the obligation.

Statements of claim creating a lien on real property, fixtures, timber, agricultural products, oil, gas, or minerals shall be recorded with the county auditor in each county where the property is located. Statements of claim creating a lien in personal property, whether tangible or intangible, shall be filed with the department of licensing.

A lien recorded or filed pursuant to this section has priority over any lien, interest, or other encumbrance previously or thereafter recorded or filed concerning any property described in the statement of claim, to the extent allowed by federal law.

A lien created pursuant to this section shall continue in force until extinguished by foreclosure or bankruptcy proceedings or until a release of the lien signed by the secretary is recorded or filed in the place where the statement of claim was recorded or filed. The secretary shall sign and record or file a release only after the obligation owed to the state under this chapter, together with accrued interest and costs of collection has been paid. [1987 c 184 § 3.]

70.121.150 Amounts owed to the state—Collection by attorney general. The attorney general shall use all available methods of obtaining funds owed to the state under this chapter. The attorney general shall foreclose on liens made pursuant to this section, obtain judgments against obligor–licensees and pursue assets of the obligor–licensees found outside the state, consider pursuing the assets of parent corporations and shareholders where an obligor–licensee corporation is an underfinanced corporation, and pursue any other legal remedy available. [1987 c 184 § 4.]

70.121.900 Construction. This chapter is cumulative and not exclusive, and no part of this chapter shall be construed to repeal any existing law specifically enacted

for the protection of the public health and safety. [1979 ex.s. c 110 § 14.]

Effective date—1979 ex.s. c 110: See note following RCW 70.121.010.

70.121.905 Short title. This chapter may be known as the "Mill Tailings Licensing and Perpetual Care Act of 1979". [1979 ex.s. c 110 § 15.]

Effective date—1979 ex.s. c 110: See note following RCW 70.121.010.

70.121.910 Severability—1979 ex.s. c 110. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1979 ex.s. c 110 § 16.]

Effective date—1979 ex.s. c 110: See note following RCW 70.121.010.

Chapter 70.122

NATURAL DEATH ACT

Sections

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70.122.030	Directive to withhold or withdraw life-sustaining procedures.
70.122.040	Revocation of directive.
70.122.050	Liability of health personnel, facilities.
70.122.060	Procedures by physician.
70.122.070	Effects of carrying out directive—Insurance.
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70.122.090	Criminal conduct—Penalties.
70.122.100	Mercy killing not authorized.
70.122.900	Short title.
70.122.905	Severability—1979 c 112.

70.122.010 Legislative findings. The legislature finds that adult persons have the fundamental right to control the decisions relating to the rendering of their own medical care, including the decision to have life-sustaining procedures withheld or withdrawn in instances of a terminal condition.

The legislature further finds that modern medical technology has made possible the artificial prolongation of human life beyond natural limits.

The legislature further finds that, in the interest of protecting individual autonomy, such prolongation of life for persons with a terminal condition may cause loss of patient dignity, and unnecessary pain and suffering, while providing nothing medically necessary or beneficial to the patient.

The legislature further finds that there exists considerable uncertainty in the medical and legal professions as to the legality of terminating the use or application of life-sustaining procedures where the patient has voluntarily and in sound mind evidenced a desire that such procedures be withheld or withdrawn.

In recognition of the dignity and privacy which patients have a right to expect, the legislature hereby declares that the laws of the state of Washington shall recognize the right of an adult person to make a written

directive instructing such person's physician to withhold or withdraw life-sustaining procedures in the event of a terminal condition. [1979 c 112 § 2.]

70.122.020 Definitions. Unless the context clearly requires otherwise, the definitions contained in this section shall apply throughout this chapter.

(1) "Attending physician" means the physician selected by, or assigned to, the patient who has primary responsibility for the treatment and care of the patient.

(2) "Directive" means a written document voluntarily executed by the declarer in accordance with the requirements of RCW 70.122.030.

(3) "Health facility" means a hospital as defined in *RCW 70.38.020(7) or a nursing home as defined in *RCW 70.38.020(8).

(4) "Life-sustaining procedure" means any medical or surgical procedure or intervention which utilizes mechanical or other artificial means to sustain, restore, or supplant a vital function, which, when applied to a qualified patient, would serve only to artificially prolong the moment of death and where, in the judgment of the attending physician, death is imminent whether or not such procedures are utilized. "Life-sustaining procedure" shall not include the administration of medication or the performance of any medical procedure deemed necessary to alleviate pain.

(5) "Physician" means a person licensed under chapters 18.71 or 18.57 RCW.

(6) "Qualified patient" means a patient diagnosed and certified in writing to be afflicted with a terminal condition by two physicians one of whom shall be the attending physician, who have personally examined the patient.

(7) "Terminal condition" means an incurable condition caused by injury, disease, or illness, which, regardless of the application of life-sustaining procedures, would, within reasonable medical judgment, produce death, and where the application of life-sustaining procedures serve only to postpone the moment of death of the patient.

(8) "Adult person" means a person attaining the age of majority as defined in RCW 26.28.010 and 26.28.015. [1979 c 112 § 3.]

*Reviser's note: RCW 70.38.020 was repealed by 1979 ex.s. c 161 § 21.

70.122.030 Directive to withhold or withdraw life-sustaining procedures. (1) Any adult person may execute a directive directing the withholding or withdrawal of life-sustaining procedures in a terminal condition. The directive shall be signed by the declarer in the presence of two witnesses not related to the declarer by blood or marriage and who would not be entitled to any portion of the estate of the declarer upon declarer's decease under any will of the declarer or codicil thereto then existing or, at the time of the directive, by operation of law then existing. In addition, a witness to a directive shall not be the attending physician, an employee of the attending physician or a health facility in which the declarer is a patient, or any person who has a claim against any portion of the estate of the declarer upon declarer's

decease at the time of the execution of the directive. The directive, or a copy thereof, shall be made part of the patient's medical records retained by the attending physician, a copy of which shall be forwarded to the health facility upon the withdrawal of life-sustaining procedures. The directive shall be essentially in the following form, but in addition may include other specific directions:

DIRECTIVE TO PHYSICIANS

Directive made this ____ day of _____ (month, year).

I _____, being of sound mind, wilfully, and voluntarily make known my desire that my life shall not be artificially prolonged under the circumstances set forth below, and do hereby declare that:

(a) If at any time I should have an incurable injury, disease, or illness certified to be a terminal condition by two physicians, and where the application of life-sustaining procedures would serve only to artificially prolong the moment of my death and where my physician determines that my death is imminent whether or not life-sustaining procedures are utilized, I direct that such procedures be withheld or withdrawn, and that I be permitted to die naturally.

(b) In the absence of my ability to give directions regarding the use of such life-sustaining procedures, it is my intention that this directive shall be honored by my family and physician(s) as the final expression of my legal right to refuse medical or surgical treatment and I accept the consequences from such refusal.

(c) If I have been diagnosed as pregnant and that diagnosis is known to my physician, this directive shall have no force or effect during the course of my pregnancy.

(d) I understand the full import of this directive and I am emotionally and mentally competent to make this directive.

Signed _____

City, County, and State of Residence

The declarer has been personally known to me and I believe him or her to be of sound mind.

Witness _____

Witness _____

(2) Prior to effectuating a directive the diagnosis of a terminal condition by two physicians shall be verified in writing, attached to the directive, and made a permanent part of the patient's medical records. [1979 c 112 § 4.]

70.122.040 Revocation of directive. (1) A directive may be revoked at any time by the declarer, without regard to declarer's mental state or competency, by any of the following methods:

(a) By being canceled, defaced, obliterated, burned, torn, or otherwise destroyed by the declarer or by some person in declarer's presence and by declarer's direction.

(b) By a written revocation of the declarer expressing declarer's intent to revoke, signed, and dated by the declarer. Such revocation shall become effective only upon communication to the attending physician by the declarer or by a person acting on behalf of the declarer.

The attending physician shall record in the patient's medical record the time and date when said physician received notification of the written revocation.

(c) By a verbal expression by the declarer of declarer's intent to revoke the directive. Such revocation shall become effective only upon communication to the attending physician by the declarer or by a person acting on behalf of the declarer. The attending physician shall record in the patient's medical record the time, date, and place of the revocation and the time, date, and place, if different, of when said physician received notification of the revocation.

(2) There shall be no criminal or civil liability on the part of any person for failure to act upon a revocation made pursuant to this section unless that person has actual or constructive knowledge of the revocation.

(3) If the declarer becomes comatose or is rendered incapable of communicating with the attending physician, the directive shall remain in effect for the duration of the comatose condition or until such time as the declarer's condition renders declarer able to communicate with the attending physician. [1979 c 112 § 5.]

70.122.050 Liability of health personnel, facilities. No physician or health facility which, acting in good faith in accordance with the requirements of this chapter, causes the withholding or withdrawal of life-sustaining procedures from a qualified patient, shall be subject to civil liability therefrom. No licensed health personnel, acting under the direction of a physician, who participates in good faith in the withholding or withdrawal of life-sustaining procedures in accordance with the provisions of this chapter shall be subject to any civil liability. No physician, or licensed health personnel acting under the direction of a physician, who participates in good faith in the withholding or withdrawal of life-sustaining procedures in accordance with the provisions of this chapter shall be guilty of any criminal act or of unprofessional conduct. [1979 c 112 § 6.]

70.122.060 Procedures by physician. (1) Prior to effectuating a withholding or withdrawal of life-sustaining procedures from a qualified patient pursuant to the directive, the attending physician shall make a reasonable effort to determine that the directive complies with RCW 70.122.030 and, if the patient is mentally competent, that the directive and all steps proposed by the attending physician to be undertaken are currently in accord with the desires of the qualified patient.

(2) The directive shall be conclusively presumed, unless revoked, to be the directions of the patient regarding the withholding or withdrawal of life-sustaining procedures. No physician, and no licensed health personnel acting in good faith under the direction of a physician, shall be criminally or civilly liable for failing to effectuate the directive of the qualified patient pursuant to this subsection. If the physician refuses to effectuate the directive, such physician shall make a good faith effort to transfer the qualified patient to another physician who will effectuate the directive of the qualified patient. [1979 c 112 § 7.]

70.122.070 Effects of carrying out directive—Insurance. (1) The withholding or withdrawal of life-sustaining procedures from a qualified patient pursuant to the patient's directive in accordance with the provisions of this chapter shall not, for any purpose, constitute a suicide.

(2) The making of a directive pursuant to RCW 70.122.030 shall not restrict, inhibit, or impair in any manner the sale, procurement, or issuance of any policy of life insurance, nor shall it be deemed to modify the terms of an existing policy of life insurance. No policy of life insurance shall be legally impaired or invalidated in any manner by the withholding or withdrawal of life-sustaining procedures from an insured qualified patient, notwithstanding any term of the policy to the contrary.

(3) No physician, health facility, or other health provider, and no health care service plan, insurer issuing disability insurance, self-insured employee welfare benefit plan, or nonprofit hospital service plan, shall require any person to execute a directive as a condition for being insured for, or receiving, health care services. [1979 c 112 § 8.]

70.122.080 Effects of carrying out directive on cause of death. The act of withholding or withdrawing life-sustaining procedures when done pursuant to a directive described in RCW 70.122.030 and which causes the death of the declarer, shall not be construed to be an intervening force or to affect the chain of proximate cause between the conduct of any person that placed the declarer in a terminal condition and the death of the declarer. [1979 c 112 § 10.]

70.122.090 Criminal conduct—Penalties. Any person who wilfully conceals, cancels, defaces, obliterates, or damages the directive of another without such declarer's consent shall be guilty of a gross misdemeanor. Any person who falsifies or forges the directive of another, or wilfully conceals or withholds personal knowledge of a revocation as provided in RCW 70.122.040 with the intent to cause a withholding or withdrawal of life-sustaining procedures contrary to the wishes of the declarer, and thereby, because of any such act, directly causes life-sustaining procedures to be withheld or withdrawn and death to thereby be hastened, shall be subject to prosecution for murder in the first degree as defined in RCW 9A.32.030. [1979 c 112 § 9.]

70.122.100 Mercy killing not authorized. Nothing in this chapter shall be construed to condone, authorize, or approve mercy killing, or to permit any affirmative or deliberate act or omission to end life other than to permit the natural process of dying. [1979 c 112 § 11.]

70.122.900 Short title. This act shall be known and may be cited as the "Natural Death Act". [1979 c 112 § 1.]

70.122.905 Severability—1979 c 112. If any provision of this act or the application thereof to any person

or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provisions or application, and to this end the provisions of this act are severable. [1979 c 112 § 13.]

Chapter 70.123
SHELTERS FOR VICTIMS OF DOMESTIC VIOLENCE

Sections

70.123.010	Legislative findings.
70.123.020	Definitions.
70.123.030	Departmental duties and responsibilities.
70.123.040	Minimum standards to provide basic survival needs.
70.123.050	Contracts with nonprofit organizations—Purposes.
70.123.060	Report to the legislature.
70.123.070	Duties and responsibilities of shelters.
70.123.080	Department to consult.
70.123.090	Contracts for shelter services.
70.123.100	Half of funding for shelters from local sources.
70.123.110	Aid to families in shelters.
70.123.120	Liability for withholding services.
70.123.900	Severability—1979 ex.s. c 245.

Domestic violence prevention: Chapter 26.50 RCW.

70.123.010 Legislative findings. The legislature finds that domestic violence is an issue of growing concern at all levels of government and that there is a present and growing need to develop innovative strategies and services which will ameliorate and reduce the trauma of domestic violence. Research findings show that domestic violence constitutes a significant percentage of homicides, aggravated assaults, and assaults and batteries in the United States. Domestic violence is a disruptive influence on personal and community life and is often interrelated with a number of other family problems and stresses. Shelters for victims of domestic violence are essential to provide protection to victims from further abuse and physical harm and to help the victim find long-range alternative living situations, if requested. Shelters provide safety, refuge, advocacy, and helping resources to victims who may not have access to such things if they remain in abusive situations.

The legislature therefore recognizes the need for the state-wide development and expansion of shelters for victims of domestic violence. [1979 ex.s. c 245 § 1.]

70.123.020 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Shelter" means a place of temporary refuge, offered on a twenty-four hour, seven day per week basis to victims of domestic violence and their children.

(2) "Domestic violence" is a categorization of offenses, as defined in RCW 10.99.020, committed by one cohabitant against another.

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

(4) "Victim" means a cohabitant who has been subjected to domestic violence.

(5) "Cohabitant" means a person who is married or who is cohabiting with a person of the opposite sex like

husband and wife at the present or at sometime in the past. Any person who has one or more children in common with another person, regardless of whether they have been married or lived together at any time, shall be treated as a cohabitant. [1979 ex.s. c 245 § 2.]

70.123.030 Departmental duties and responsibilities. The department of social and health services, in consultation with the state department of health, and individuals or groups having experience and knowledge of the problems of victims of domestic violence, shall:

(1) Establish minimum standards for shelters applying for grants from the department under this chapter. Classifications may be made dependent upon size, geographic location, and population needs;

(2) Receive grant applications for the development and establishment of shelters for victims of domestic violence;

(3) Distribute funds, within forty-five days after approval, to those shelters meeting departmental standards;

(4) Evaluate biennially each shelter receiving departmental funds for compliance with the established minimum standards; and

(5) Review the minimum standards each biennium to ensure applicability to community and client needs. [1989 1st ex.s. c 9 § 235; 1979 ex.s. c 245 § 3.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

70.123.040 Minimum standards to provide basic survival needs. Minimum standards established by the department under RCW 70.123.030 shall ensure that shelters receiving grants under this chapter provide services meeting basic survival needs, where not provided by other means, such as, but not limited to, food, clothing, housing, safety, security, client advocacy, and counseling. These services shall be problem-oriented and designed to provide necessary assistance to the victims of domestic violence and their children. [1979 ex.s. c 245 § 4.]

70.123.050 Contracts with nonprofit organizations—Purposes. The department shall contract, where appropriate, with public or private nonprofit groups or organizations with experience and expertise in the field of domestic violence to:

(1) Develop and implement an educational program designed to promote public and professional awareness of the problems of domestic violence and of the availability of services for victims of domestic violence. Particular emphasis should be given to the education needs of law enforcement agencies, the legal system, the medical profession, and other relevant professions that are engaged in the prevention, identification, and treatment of domestic violence;

(2) Maintain a directory of temporary shelters and other direct service facilities for the victims of domestic violence which is current, complete, detailed, and available, as necessary, to provide useful referral services to persons seeking help on an emergency basis;

(3) Create a state-wide toll-free telephone number that would provide information and referral to victims of domestic violence;

(4) Provide opportunities to persons working in the area of domestic violence to exchange information; and

(5) Provide training opportunities for both volunteer workers and staff personnel. [1979 ex.s. c 245 § 5.]

70.123.060 Report to the legislature. Subject to RCW 40.07.040, the department shall prepare a biennial report through 1991 to the legislature which shall include but not be limited to:

(1) Data reflecting the geographic incidence of domestic violence in the state, indicating the number of cases officially reported as well as an assessment of the degree of unreported cases;

(2) The number of persons and relevant statistical data, where possible, of persons treated or assisted by shelters receiving state funds; and

(3) A listing of potential and feasible prevention efforts, the estimated cost of providing the prevention services, and the projected benefits of providing the services.

The department may contract, where applicable, for the information required by this section. [1987 c 505 § 63; 1979 ex.s. c 245 § 6.]

70.123.070 Duties and responsibilities of shelters. Shelters receiving state funds under this chapter shall:

(1) Make available shelter services to any person who is a victim of domestic violence and to that person's children;

(2) Encourage victims, with the financial means to do so, to reimburse the shelter for the services provided;

(3) Recruit, to the extent feasible, persons who are former victims of domestic violence to work as volunteers or staff personnel. An effort shall also be made to provide bilingual services;

(4) Provide prevention and treatment programs to victims of domestic violence, their children and, where possible, the abuser;

(5) Provide a day program or drop-in center to assist victims of domestic violence who have found other shelter but who have a need for support services. [1979 ex.s. c 245 § 7.]

70.123.080 Department to consult. The department shall consult in all phases with persons and organizations having experience and expertise in the field of domestic violence. [1979 ex.s. c 245 § 8.]

70.123.090 Contracts for shelter services. The department is authorized, under this chapter and the rules adopted to effectuate its purposes, to make available grants awarded on a contract basis to public or private nonprofit agencies, organizations, or individuals providing shelter services meeting minimum standards established by the department. Consideration as to need, geographic location, population ratios, and the extent of existing services shall be made in the award of grants.

The department shall provide technical assistance to any nonprofit organization desiring to apply for the contracts if the organization does not possess the resources and expertise necessary to develop and transmit an application without assistance. [1979 ex.s. c 245 § 9.]

70.123.100 Half of funding for shelters from local sources. Fifty percent of the funding for shelters receiving grants under this chapter must be provided by one or more local, municipal, or county source, either public or private. Contributions in-kind, whether materials, commodities, transportation, office space, other types of facilities, or personal services, may be evaluated and counted as part of the required local funding.

The department shall seek, receive, and make use of any funds which may be available from federal or other sources in order to augment state funds appropriated for the purpose of this chapter, and shall make every effort to qualify for federal funding. [1979 ex.s. c 245 § 10.]

70.123.110 Aid to families in shelters. General assistance or aid to families with dependent children payments shall be made to otherwise eligible individuals who are residing in a secure shelter, a housing network or other shelter facility which provides shelter services to persons who are victims of domestic violence. Provisions shall be made by the department for the confidentiality of the shelter addresses where victims are residing. [1979 ex.s. c 245 § 11.]

70.123.120 Liability for withholding services. A shelter shall not be held liable in any civil action for denial or withdrawal of services provided pursuant to the provisions of this chapter. [1979 ex.s. c 245 § 12.]

70.123.900 Severability—1979 ex.s. c 245. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1979 ex.s. c 245 § 15.]

Chapter 70.124

ABUSE OF PATIENTS—NURSING HOMES, STATE HOSPITALS

Sections

70.124.010	Legislative findings.
70.124.020	Definitions.
70.124.030	Reports of abuse or neglect.
70.124.040	Reports to department or law enforcement agency— Action required.
70.124.050	Investigations required—Seeking restraining orders authorized.
70.124.060	Liability of persons making reports.
70.124.070	Failure to report is misdemeanor.
70.124.080	Department reports of abused or neglected patients.
70.124.090	Publicizing objectives.
70.124.900	Severability—1979 ex.s. c 228.

Adult dependent or developmentally disabled persons, abuse: Chapter 26.44 RCW.

Persons over sixty, abuse: Chapter 74.34 RCW.

70.124.010 Legislative findings. (1) The Washington state legislature finds and declares that a reporting system is needed to protect nursing home and state hospital patients from abuse. Instances of nonaccidental injury, neglect, death, sexual abuse, and cruelty to such patients have occurred, and in the instance where such a patient is deprived of his or her right to conditions of minimal health and safety, the state is justified in emergency intervention based upon verified information. Therefore the Washington state legislature hereby provides for the reporting of such cases to the appropriate public authorities.

(2) It is the intent of the legislature that: (a) As a result of such reports, protective services shall be made available in an effort to prevent further abuses, and to safeguard the general welfare of the patients; and (b) such reports shall be maintained and disseminated with strictest regard for the privacy of the subjects of such reports and so as to safeguard against arbitrary, malicious, or erroneous information or actions. [1981 c 174 § 1; 1979 ex.s. c 228 § 1.]

70.124.020 Definitions. Unless the context requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Court" means the superior court of the state of Washington.

(2) "Law enforcement agency" means the police department, the director of public safety, or the office of the sheriff.

(3) "Practitioner of the healing arts" or "practitioner" means a person licensed by this state to practice podiatry, optometry, pharmacy, physical therapy, chiropractic, nursing, dentistry, osteopathy and surgery, or medicine and surgery. The term "practitioner" shall include a nurses aide, a nursing home administrator licensed under chapter 18.52 RCW, and a duly accredited Christian Science practitioner: *Provided, however,* That a nursing home patient who is being furnished Christian Science treatment by a duly accredited Christian Science practitioner shall not be considered, for that reason alone, a neglected patient for the purposes of this chapter.

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

(5) "Nursing home" has the meaning prescribed by RCW 18.51.010.

(6) "Social worker" means anyone engaged in a professional capacity during the regular course of employment in encouraging or promoting the health, welfare, support, or education of nursing home patients, or providing social services to nursing home patients, whether in an individual capacity or as an employee or agent of any public or private organization or institution.

(7) "Psychologist" means any person licensed to practice psychology under chapter 18.83 RCW, whether acting in an individual capacity or as an employee or agent of any public or private organization or institution.

(8) "Pharmacist" means any registered pharmacist under chapter 18.64 RCW, whether acting in an individual capacity or as an employee or agent of any public or private organization or institution.

(9) "Abuse or neglect" or "patient abuse or neglect" means the nonaccidental physical injury or condition, sexual abuse, or negligent treatment of a nursing home or state hospital patient under circumstances which indicate that the patient's health, welfare, and safety is harmed thereby.

(10) "Negligent treatment" means an act or omission which evinces a serious disregard of consequences of such magnitude as to constitute a clear and present danger to the patient's health, welfare, and safety.

(11) "State hospital" means any hospital operated and maintained by the state for the care of the mentally ill under chapter 72.23 RCW. [1981 c 174 § 2; 1979 ex.s. c 228 § 2.]

70.124.030 Reports of abuse or neglect. (1) When any practitioner, social worker, psychologist, pharmacist, employee of a nursing home, employee of a state hospital, or employee of the department has reasonable cause to believe that a nursing home or state hospital patient has suffered abuse or neglect, the person shall report such incident, or cause a report to be made, to either a law enforcement agency or to the department as provided in RCW 70.124.040.

(2) Any other person who has reasonable cause to believe that a nursing home or state hospital patient has suffered abuse or neglect may report such incident to either a law enforcement agency or to the department as provided in RCW 70.124.040.

(3) The department or any law enforcement agency receiving a report of an incident of abuse or neglect involving a nursing home or state hospital patient who has died or has had physical injury or injuries inflicted other than by accidental means or who has been subjected to sexual abuse shall report the incident to the proper county prosecutor for appropriate action. [1981 c 174 § 3; 1979 ex.s. c 228 § 3.]

70.124.040 Reports to department or law enforcement agency—Action required. (1) Where a report is deemed warranted under RCW 70.124.030, an immediate oral report shall be made by telephone or otherwise to either a law enforcement agency or to the department and, upon request, shall be followed by a report in writing. The reports shall contain the following information, if known:

(a) The name and address of the person making the report;

(b) The name and address of the nursing home or state hospital patient;

(c) The name and address of the patient's relatives having responsibility for the patient;

(d) The nature and extent of the injury or injuries;

(e) The nature and extent of the neglect;

(f) The nature and extent of the sexual abuse;

(g) Any evidence of previous injuries, including their nature and extent; and

(h) Any other information which may be helpful in establishing the cause of the patient's death, injury, or injuries, and the identity of the perpetrator or perpetrators.

(2) Each law enforcement agency receiving such a report shall, in addition to taking the action required by RCW 70.124.050, immediately relay the report to the department and to other law enforcement agencies, as appropriate. For any report it receives, the department shall likewise take the required action and in addition relay the report to the appropriate law enforcement agency or agencies. The appropriate law enforcement agency or agencies shall receive immediate notification when the department, upon receipt of such report, has reasonable cause to believe that a criminal act has been committed. [1981 c 174 § 4; 1979 ex.s. c 228 § 4.]

70.124.050 Investigations required—Seeking restraining orders authorized. Upon the receipt of a report concerning the possible occurrence of abuse or neglect, it is the duty of the law enforcement agency and the department to commence an investigation within twenty-four hours of such receipt and, where appropriate, submit a report to the appropriate prosecuting attorney. The local prosecutor may seek a restraining order to prohibit continued patient abuse. In all cases investigated by the department a report to the complainant shall be made by the department. [1983 1st ex.s. c 41 § 24; 1979 ex.s. c 228 § 5.]

Severability—1983 1st ex.s. c 41: See note following RCW 26.09.060.

70.124.060 Liability of persons making reports. (1) A person participating in good faith in the making of a report pursuant to this chapter or testifying as to alleged patient abuse or neglect in a judicial proceeding shall in so doing be immune from any liability, civil or criminal, arising out of such reporting or testifying under any law of this state or its political subdivisions, and if such person is an employee of a nursing home or state hospital it shall be an unfair practice under chapter 49.60 RCW for the employer to dismiss said employee for such activity.

(2) Conduct conforming with the reporting requirements of this chapter shall not be deemed a violation of the confidential communication privilege of RCW 5.60-.060 (3) or (4) or 18.83.110. Nothing in this chapter shall be construed as to supersede or abridge remedies provided in chapter 4.92 RCW. [1981 c 174 § 5; 1979 ex.s. c 228 § 6.]

70.124.070 Failure to report is misdemeanor. A person who is required to make or to cause to be made a report pursuant to RCW 70.124.030 or 70.124.040 and who knowingly fails to make such report or fails to cause such report to be made is guilty of a misdemeanor. [1979 ex.s. c 228 § 7.]

70.124.080 Department reports of abused or neglected patients. The department shall forward to the appropriate state licensing authority a copy of any report

received pursuant to this chapter which alleges that a person who is professionally licensed by this state has abused or neglected a patient. [1979 ex.s. c 228 § 8.]

70.124.090 Publicizing objectives. In the adoption of rules under the authority of this chapter, the department shall provide for the publication and dissemination to nursing homes, state hospitals, and nursing home and state hospital employees and the posting where appropriate by nursing homes and state hospitals of informational, educational, or training materials calculated to aid and assist in achieving the objectives of this chapter. [1981 c 174 § 6; 1979 ex.s. c 228 § 9.]

70.124.900 Severability—1979 ex.s. c 228. If any provision of this 1979 act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1979 ex.s. c 228 § 12.]

Chapter 70.125

VICTIMS OF SEXUAL ASSAULT ACT

Sections

70.125.010	Short title.
70.125.020	Legislative findings—Program objectives.
70.125.030	Definitions.
70.125.040	Coordinating office—Biennial state-wide plan.
70.125.050	State-wide program services.
70.125.055	Financial assistance to rape crisis centers.
70.125.060	Personal representative may accompany victim during treatment or proceedings.
70.125.065	Records of rape crisis centers not available as part of discovery—Exceptions.

Victims of crimes

*compensation, assistance: Chapter 7.68 RCW.
survivors, witnesses: Chapter 7.69 RCW.*

70.125.010 Short title. This chapter may be known and cited as the Victims of Sexual Assault Act. [1979 ex.s. c 219 § 1.]

Severability—1979 ex.s. c 219: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1979 ex.s. c 219 § 22.]

70.125.020 Legislative findings—Program objectives. (1) The legislature hereby finds and declares that:

(a) Sexual assault has become one of the most rapidly increasing violent crimes over the last decade;

(b) There is a lack of essential information and data concerning sexual assault;

(c) There is a lack of adequate training for law enforcement officers concerning sexual assault, the victim, the offender, and the investigation;

(d) There is a lack of community awareness and knowledge concerning sexual assault and the physical and psychological impact upon the victim;

(e) There is a lack of public information concerning sexual assault prevention and personal self-protection;

(f) Because of the lack of information, training, and services, the victims of sexual assault are not receiving

the assistance they require in dealing with the physical and psychological trauma of a sexual assault;

(g) The criminal justice system and health care system should maintain close contact and cooperation with each other and with community rape crisis centers to expedite the disposition of sexual assault cases; and

(h) Persons who are victims of sexual assault will benefit directly from increased public awareness and education, increased prosecutions, and a criminal justice system which treats them in a humane manner.

(2) Therefore, a state-wide sexual assault education, training, and consultation program should be developed. Such a state-wide program should seek to improve treatment of victims through information-gathering, education, training, community awareness programs, and by increasing the efficiency of the criminal justice and health care systems as they relate to sexual assault. Such a program should serve a consultative and facilitative function for organizations which provide services to victims and potential victims of sexual assault. [1979 ex.s. c 219 § 2.]

Severability—1979 ex.s. c 219: See note following RCW 70.125.010.

70.125.030 Definitions. As used in this chapter and unless the context indicates otherwise:

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

(2) "Law enforcement agencies" means police and sheriff's departments of this state.

(3) "Personal representative" means a friend, relative, attorney, or employee or volunteer from a rape crisis center.

(4) "Rape crisis center" means a community-based social service agency which provides services to victims of sexual assault.

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

(6) "Sexual assault" means one or more of the following:

- (a) Rape or rape of a child;
- (b) Assault with intent to commit rape;
- (c) Incest or indecent liberties; or
- (d) An attempt to commit any of the aforementioned offenses.

(7) "Victim" means any person who suffers physical and/or mental anguish as a proximate result of a sexual assault. [1988 c 145 § 19; 1979 ex.s. c 219 § 3.]

Effective date—Savings—Application—1988 c 145: See notes following RCW 9A.44.010.

Severability—1979 ex.s. c 219: See note following RCW 70.125.010.

70.125.040 Coordinating office—**Biennial state-wide plan.** The department shall establish a centralized office within the department to coordinate activities of programs relating to sexual assault and to facilitate coordination and dissemination of information to personnel in fields relating to sexual assault.

The department shall develop, with the cooperation of the criminal justice training commission, the medical

profession, and existing rape crisis centers, a biennial state-wide plan to aid organizations which provide services to victims of sexual assault. [1985 c 34 § 1; 1979 ex.s. c 219 § 4.]

Effective date—1985 c 34: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect June 30, 1985." [1985 c 34 § 4.]

Severability—1979 ex.s. c 219: See note following RCW 70.125.010.

70.125.050 State-wide program services. The state-wide program established under RCW 70.125.040 shall include but not be limited to provision of the following services: *Provided*, That the department shall utilize existing rape crisis centers and contract, where appropriate, with these centers to provide the services identified in this section:

(1) Assistance to the criminal justice training commission in developing and offering training and education programs for criminal justice personnel on the scope and nature of the sexual assault problem;

(2) Assistance to health care personnel in training for the sensitive handling and correct legal procedures of sexual assault cases;

(3) Development of public education programs to increase public awareness concerning sexual assault in coordination with the activities of the attorney general's crime prevention efforts; and

(4) Technical assistance and advice to rape crisis centers, including the organization of existing community resources, volunteer training, identification of potential funding sources, evaluation, and education. Assistance shall be given for the development of additional programs in areas of the state where such services do not exist. [1979 ex.s. c 219 § 5.]

Severability—1979 ex.s. c 219: See note following RCW 70.125.010.

70.125.055 Financial assistance to rape crisis centers. The department may distribute financial assistance to rape crisis centers to supplement crisis, advocacy, and counseling services provided directly to victims. [1985 c 34 § 2.]

Effective date—1985 c 34: See note following RCW 70.125.040.

70.125.060 Personal representative may accompany victim during treatment or proceedings. If the victim of a sexual assault so desires, a personal representative of the victim's choice may accompany the victim to the hospital or other health care facility, and to proceedings concerning the alleged assault, including police and prosecution interviews and court proceedings. [1979 ex.s. c 219 § 6.]

Severability—1979 ex.s. c 219: See note following RCW 70.125.010.

70.125.065 Records of rape crisis centers not available as part of discovery—**Exceptions.** Records maintained by rape crisis centers shall not be made available

to any defense attorney as part of discovery in a sexual assault case unless:

(1) A written pretrial motion is made by the defendant to the court stating that the defendant is requesting discovery of the rape crisis center's records;

(2) The written motion is accompanied by an affidavit or affidavits setting forth specifically the reasons why the defendant is requesting discovery of the rape crisis center's records;

(3) The court reviews the rape crisis center's records in camera to determine whether the rape crisis center's records are relevant and whether the probative value of the records is outweighed by the victim's privacy interest in the confidentiality of such records taking into account the further trauma that may be inflicted upon the victim by the disclosure of the records to the defendant; and

(4) The court enters an order stating whether the records or any part of the records are discoverable and setting forth the basis for the court's findings. [1981 c 145 § 9.]

Chapter 70.126

HOME HEALTH CARE AND HOSPICE CARE

Sections

70.126.001	Legislative finding.
70.126.010	Definitions.
70.126.020	Home health care—Services and supplies included, not included.
70.126.030	Hospice care—Provider, plan, services included.
70.126.060	Application of chapter.

Optional coverage required by certain insurers: RCW 48.21.220, 48.21A.090, 48.44.320.

70.126.001 Legislative finding. The legislature finds that the cost of medical care in general and hospital care in particular has risen dramatically in recent years, and that in 1981, such costs rose faster than in any year since World War II. The purpose of RCW 70.126.001 through *70.126.050 is to support the provision of less expensive and more appropriate levels of care, home health care and hospice care, in order to avoid hospitalization or shorten hospital stays. [1983 c 249 § 4.]

*Reviser's note: RCW 70.126.040 and 70.126.050 were repealed by 1988 c 245 § 34, effective July 1, 1989.

Effective date—Implementation—1983 c 249: "This act shall take effect on July 1, 1984. The department of social and health services shall immediately take such steps as are necessary to insure that this act is implemented on its effective date." [1983 c 249 § 11.]

70.126.010 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Hospice" means a private or public agency or organization that administers and provides hospice care and is licensed by the department of social and health services as a hospice care agency.

(2) "Hospice care" means care prescribed and supervised by the attending physician and provided by the hospice to the terminally ill in accordance with the standards of RCW 70.126.030.

(3) "Home health agency" means a private or public agency or organization that administers and provides home health care and is licensed by the department of social and health services as a home health care agency.

(4) "Home health care" means services, supplies, and medical equipment that meet the standards of RCW 70.126.020, prescribed and supervised by the attending physician, and provided through a home health agency and rendered to members in their residences when hospitalization would otherwise be required.

(5) "Home health aide" means a person employed by a home health agency or a hospice who is providing part-time or intermittent care under the supervision of a registered nurse, a physical therapist, occupational therapist, or speech therapist. Such care includes ambulation and exercise, assistance with self-administered medications, reporting changes in patients' conditions and needs, completing appropriate records, and personal care or household services that are needed to achieve the medically desired results.

(6) "Home health care plan of treatment" means a written plan of care established and periodically reviewed by a physician that describes medically necessary home health care to be provided to a patient for treatment of illness or injury.

(7) "Hospice plan of care" means a written plan of care established and periodically reviewed by a physician that describes hospice care to be provided to a terminally ill patient for palliation or medically necessary treatment of an illness or injury.

(8) "Physician" means a physician licensed under chapter 18.57 or 18.71 RCW. [1988 c 245 § 29; 1984 c 22 § 4; 1983 c 249 § 5.]

Effective date—Implementation—Severability—1988 c 245: See RCW 70.127.900 and 70.127.902.

Effective date—1984 c 22: See note following RCW 48.21.220.

Effective date—1983 c 249: See note following RCW 70.126.001.

70.126.020 Home health care—Services and supplies included, not included. (1) Home health care shall be provided by a home health agency and shall:

(a) Be delivered by a registered nurse, physical therapist, occupational therapist, speech therapist, or home health aide on a part-time or intermittent basis;

(b) Include, as applicable under the written plan, supplies and equipment such as:

(i) Drugs and medicines that are legally obtainable only upon a physician's written prescription, and insulin;

(ii) Rental of durable medical apparatus and medical equipment such as wheelchairs, hospital beds, respirators, splints, trusses, braces, or crutches needed for treatment;

(iii) Supplies normally used for hospital inpatients and dispensed by the home health agency such as oxygen, catheters, needles, syringes, dressings, materials used in aseptic techniques, irrigation solutions, and intravenous fluids.

(2) The following services may be included when medically necessary, ordered by the attending physician, and included in the approved plan of treatment:

(a) Licensed practical nurses;

- (b) Respiratory therapists;
 - (c) Social workers holding a master's degree;
 - (d) Ambulance service that is certified by the physician as necessary in the approved plan of treatment because of the patient's physical condition or for unexpected emergency situations.
- (3) Services not included in home health care include:
- (a) Nonmedical, custodial, or housekeeping services except by home health aides as ordered in the approved plan of treatment;
 - (b) "Meals on Wheels" or similar food services;
 - (c) Nutritional guidance;
 - (d) Services performed by family members;
 - (e) Services not included in an approved plan of treatment;
 - (f) Supportive environmental materials such as handrails, ramps, telephones, air conditioners, and similar appliances and devices. [1984 c 22 § 5; 1983 c 249 § 6.]

Effective date—1984 c 22: See note following RCW 48.21.220.

Effective date—1983 c 249: See note following RCW 70.126.001.

70.126.030 Hospice care—Provider, plan, services included. (1) Hospice care shall be provided by a hospice and shall meet the standards of RCW 70.126.020 (1)(a) and (b)(ii) and (iii).

(2) A written hospice care plan shall be approved by a physician and shall be reviewed at designated intervals.

(3) The following services for necessary medical or palliative care shall be included when ordered by the attending physician and included in the approved plan of treatment:

- (a) Short-term care as an inpatient;
- (b) Care of the terminally ill in an individual's home on an outpatient basis as included in the approved plan of treatment;
- (c) Respite care that is continuous care in the most appropriate setting for a maximum of five days per three-month period of hospice care. [1984 c 22 § 6; 1983 c 249 § 7.]

Effective date—1984 c 22: See note following RCW 48.21.220.

Effective date—1983 c 249: See note following RCW 70.126.001.

70.126.060 Application of chapter. The provisions of this chapter apply only for the purposes of determining benefits to be included in the offering of optional coverage for home health and hospice care services, as provided in RCW 48.21.220, 48.21A.090, and 48.44.320 and do not apply for the purposes of licensure. [1988 c 245 § 30.]

Effective date—Implementation—Severability—1988 c 245: See RCW 70.127.900 and 70.127.902.

Chapter 70.127

HOME HEALTH, HOSPICE, AND HOME CARE AGENCIES—LICENSURE

Sections

- 70.127.005 Legislative intent.
- 70.127.010 Definitions.
- 70.127.020 Licenses required after July 1, 1990.

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- 70.127.030 Use of certain terms limited to licensees.
- 70.127.040 Persons, activities, or entities not subject to regulation under chapter.
- 70.127.050 Volunteer organizations—Use of phrase "volunteer hospice."
- 70.127.060 Nursing homes—Application of chapter.
- 70.127.070 Hospitals—Application of chapter.
- 70.127.080 Licenses—Application procedure and requirements.
- 70.127.090 License or renewal—Fees—Surcharge.
- 70.127.100 Licenses—Issuance—Prerequisites—Transfer or assignment—Penalty fees.
- 70.127.110 Licenses—Combination—Rules.
- 70.127.120 Rules.
- 70.127.130 Standards—Legend drugs—Controlled substances.
- 70.127.140 Bill of rights—Billing statements.
- 70.127.150 Durable power of attorney—Prohibition for licensees or employees.
- 70.127.160 Continued certification under chapter 70.126 RCW—Rules.
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- 70.127.210 Violation of RCW 70.127.020—Misdemeanor.
- 70.127.220 Agency registry.
- 70.127.230 Hospice agencies—Exemption for certain activities.
- 70.127.240 Home health or hospice agencies—Exemption for certain activities.
- 70.127.250 Home health agencies—Rules.
- 70.127.260 Hospice agencies—Rules.
- 70.127.270 Home care agencies—Rules.
- 70.127.900 Effective date—Implementation—1988 c 245.
- 70.127.901 Expiration of chapter—Review.
- 70.127.902 Severability—1988 c 245.

70.127.005 Legislative intent. The legislature finds that the availability of home health, hospice, and home care services has improved the quality of life for Washington's citizens. However, the delivery of these services bring risks because the in-home location of services makes their actual delivery virtually invisible. Also, the complexity of products, services, and delivery systems in today's health care delivery system challenges even informed and healthy individuals. The fact that these services are delivered to the state's most vulnerable population, the ill or disabled who are frequently also elderly, adds to these risks.

It is the intent of the legislature to protect the citizens of Washington state by licensing home health, hospice, and home care agencies. This legislation is not intended to unreasonably restrict entry into the in-home service marketplace. Standards established are intended to be the minimum necessary to ensure safe and competent care, and should be demonstrably related to patient safety and welfare. [1988 c 245 § 1.]

70.127.010 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Branch office" means a location or site from which a home health, hospice, or home care agency provides services within a portion of the total geographic area served by the parent agency. The branch office is part of the agency and is located sufficiently close to share administration, supervision, and services.

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

(3) "Home care agency" means a private or public agency or organization that administers or provides home care services directly or through a contract arrangement to ill, disabled, or infirm persons in places of temporary or permanent residence.

(4) "Home care services" means personal care services, homemaker services, respite care services, or any other nonmedical services provided to ill, disabled, or infirm persons which services enable these persons to remain in their own residences consistent with their desires, abilities, and safety.

(5) "Home health agency" means a private or public agency or organization that administers or provides home health aide services or two or more home health services directly or through a contract arrangement to ill, disabled, or infirm persons in places of temporary or permanent residence.

(6) "Home health services" means health or medical services provided to ill, disabled, or infirm persons. These services may be of an acute or maintenance care nature, and include but are not limited to nursing services, home health aide services, physical therapy services, occupational therapy services, speech therapy services, respiratory therapy services, nutritional services, medical social services, and medical supplies or equipment services.

(7) "Home health aide services" means services provided by a home health agency or a hospice under the supervision of a registered nurse, physical therapist, occupational therapist, or speech therapist. Such care includes ambulation and exercise, assistance with self-administered medications, reporting changes in patients' conditions and needs, completing appropriate records, and personal care or homemaker services needed to achieve medically desired results.

(8) "Homemaker services" means services that assist ill, disabled, or infirm persons with household tasks essential to achieving adequate household and family management.

(9) "Hospice agency" means a private or public agency or organization administering or providing hospice care directly or through a contract arrangement to terminally ill persons in places of temporary or permanent residence by using an interdisciplinary team composed of at least nursing, social work, physician, and pastoral or spiritual counseling.

(10) "Hospice care" means: (a) Palliative care provided to a terminally ill person in a place of temporary or permanent residence that alleviates physical symptoms, including pain, as well as alleviates the emotional and spiritual discomfort associated with dying; and (b) bereavement care provided to the family of a terminally ill person that alleviates the emotional and spiritual discomfort associated with the death of a family member. Hospice care may include health and medical services and personal care, respite, or homemaker services. Family means individuals who are important to and designated by the patient, and who need not be relatives.

(11) "Ill, disabled, or infirm persons" means persons who need home health, hospice, or home care services in order to maintain themselves in their places of temporary or permanent residence.

(12) "Personal care services" means services that assist ill, disabled, or infirm persons with dressing, feeding, and personal hygiene to facilitate self-care.

(13) "Respite care services" means services that assist or support the primary care giver on a scheduled basis. [1988 c 245 § 2.]

*Reviser's note: Powers and duties of the department of social and health services and the secretary of social and health services transferred to the department of health and the secretary of health. See RCW 43.70.060.

70.127.020 Licenses required after July 1, 1990. (1) After July 1, 1990, no private or public agency or organization may advertise, operate, manage, conduct, open, or maintain a home health agency without first obtaining a home health agency license from the department.

(2) After July 1, 1990, no private or public agency or organization may advertise, operate, manage, conduct, open, or maintain a hospice agency without first obtaining a hospice agency license from the department.

(3) After July 1, 1990, no public or private agency or organization may advertise, operate, manage, conduct, open, or maintain a home care agency without first obtaining a home care agency license from the department. [1988 c 245 § 3.]

70.127.030 Use of certain terms limited to licensees. (1) No person may use the words "home health agency," "home health care services," or "visiting nurse services" in its corporate or business name, or advertise using such words unless licensed as a home health agency under this chapter.

(2) No person may use the words "hospice agency" or "hospice care" in its corporate or business name, or advertise using such words unless licensed as a hospice agency under this chapter.

(3) No person may use the words "home care agency" or "home care services" in its corporate or business name, or advertise using such words unless licensed as a home care agency under this chapter. [1988 c 245 § 4.]

70.127.040 Persons, activities, or entities not subject to regulation under chapter. The following are not subject to regulation for the purposes of this chapter:

- (1) A family member;
- (2) An organization that provides only meal services in a person's residence;
- (3) Entities furnishing durable medical equipment that does not involve the delivery of professional services beyond those necessary to set up and monitor the proper functioning of the equipment and educate the user on its proper use;
- (4) A person who provides services through a contract with a licensed agency;
- (5) An employee or volunteer of a licensed agency who provides services only as an employee or volunteer;

(6) Facilities and institutions, including but not limited to nursing homes under chapter 18.51 RCW, hospitals under chapter 70.41 RCW, boarding homes under chapter 18.20 RCW, developmental disability residential programs under chapter 71.12 RCW, or other facilities and institutions, only when providing services to persons residing within the facility or institution if the delivery of the services is regulated by the state;

(7) Persons providing care to disabled persons through a contract with the department;

(8) Nursing homes, hospitals, or other institutions, agencies, organizations, or persons that contract with licensed home health, hospice, or home care agencies for the delivery of services;

(9) In-home assessments of an ill, disabled, or infirm person's ability to adapt to the home environment that does not result in regular ongoing care at home;

(10) Services conducted by and for the adherents of a church or religious denomination that rely upon spiritual means alone through prayer for healing in accordance with the tenets and practices of such church or religious denomination and the bona fide religious beliefs genuinely held by such adherents;

(11) A medicare-approved dialysis center operating a medicare-approved home dialysis program;

(12) Case management services which do not include the direct delivery of home health, hospice, or home care services. [1988 c 245 § 5.]

70.127.050 Volunteer organizations—Use of phrase "volunteer hospice." Notwithstanding RCW 70.127.020(2) and 70.127.030(2), a volunteer organization that provides hospice care without receiving compensation for delivery of services that does not meet the licensure requirements of this chapter for a hospice agency may use the phrase "volunteer hospice" if the volunteer organization was formed prior to January 1, 1988, and the organization notifies the department prior to July 1, 1989. This section shall not be considered an exemption from the home health agency or home care agency license provisions of this chapter. [1988 c 245 § 6.]

70.127.060 Nursing homes—Application of chapter. Except as exempt under RCW 70.127.040 (6) and (8) a nursing home licensed under chapter 18.51 RCW is not exempt from the requirements of this chapter when the nursing home is functioning as a home health, hospice, or home care agency. [1988 c 245 § 7.]

70.127.070 Hospitals—Application of chapter. Except as exempt under RCW 70.127.040 (6) and (8), a hospital licensed under chapter 70.41 RCW is not exempt from the requirements of this chapter when the hospital is functioning as a home health, hospice, or home care agency. [1988 c 245 § 8.]

70.127.080 Licenses—Application procedure and requirements. (1) An applicant for a home health, hospice, or home care agency license shall:

(a) File a written application on a form provided by the department;

(b) Demonstrate ability to comply with this chapter and the rules adopted under this chapter;

(c) Cooperate with on-site review conducted by the department prior to licensure or renewal;

(d) Provide evidence of and maintain professional liability insurance in the amount of one hundred thousand dollars per occurrence or adequate self-insurance as approved by the department. This subsection shall not apply to hospice agency applicants that provide hospice care without receiving compensation for delivery of services;

(e) Provide evidence of and maintain public liability and property damage insurance coverage in the sum of fifty thousand dollars for injury or damage to property per occurrence and fifty thousand dollars for injury or damage, including death, to any one person and one hundred thousand dollars for injury or damage, including death, to more than one person, or evidence of adequate self-insurance for public liability and property damage as approved by the department. This subsection shall not apply to hospice agency applicants that provide hospice care without receiving compensation for delivery of services;

(f) Provide such proof as the department may require concerning organizational and governance structure, and the identity of the applicant, officers, directors, partners, managing employees, or owners of ten percent or more of the applicant's assets;

(g) File with the department a list of the counties in which the applicant will operate;

(h) File with the department a list of the services offered;

(i) Pay to the department a license fee as provided in RCW 70.127.090; and

(j) Provide any other information that the department may reasonably require.

(2) A certificate of need under chapter 70.38 RCW is not required for licensure.

(3) A license or renewal shall not be granted pursuant to this chapter if the applicant, officers, directors, partners, managing employees, or owners of ten percent or more of the applicant's assets, within the last five years have been found in a civil or criminal proceeding to have committed any act which reasonably relates to the person's fitness to establish, maintain, or administer an agency or to provide care in the home of another.

(4) A separate license is not required for a branch office. [1988 c 245 § 9.]

70.127.090 License or renewal—Fees—Surcharge. An application for a license or any renewal shall be accompanied by a fee as established by the department under RCW 43.20B.110. A surcharge no greater than fifty dollars per year may be assessed for the period of time necessary to repay the cost of implementing this chapter. [1988 c 245 § 10.]

70.127.100 Licenses—Issuance—Prerequisites—Transfer or assignment—Penalty fees. Upon

receipt of an application under RCW 70.127.080 for a license and the license fee, the department shall issue a license if the applicant meets the requirements established under this chapter. All persons operating as home health, hospice, or home care agencies before July 1, 1989, shall submit their applications and application fees by July 1, 1989. In addition, issuance of a license is conditioned on the department conducting an on-site review. A license issued under this chapter shall not be transferred or assigned without thirty days prior notice to the department and the department's approval. A license, unless suspended or revoked, may be effective for a period of up to two years, at the discretion of the department. The department may establish penalty fees for failure to apply for licensure or renewal as required by this chapter. [1988 c 245 § 11.]

70.127.110 Licenses—Combination—Rules. The department shall adopt rules providing for the combination of applications and licenses, and the reduction of individual license fees if an applicant applies for more than one category of license under this chapter. The department shall provide for combined licensure inspections and audits for licensees holding more than one license under this chapter. [1988 c 245 § 12.]

70.127.120 Rules. The department shall adopt rules consistent with RCW 70.127.005 necessary to implement this chapter under chapter 34.05 RCW. In order to ensure safe and adequate care, the rules shall address at a minimum the following:

- (1) Maintenance and preservation of all records relating directly to the care and treatment of persons by licensees;
- (2) Establishment of a procedure for the receipt, investigation, and disposition of complaints by the department regarding services provided by licensees;
- (3) Establishment and implementation of a plan for on-going care of persons and preservation of records if the licensee ceases operations;
- (4) Supervision of services;
- (5) Maintenance of written policies regarding response to referrals and access to services at all times;
- (6) Maintenance of written personnel policies and procedures and personnel records that provide for pre-hire screening, minimum qualifications, regular performance evaluations, including observation in the home, participation in orientation and in-service training, and involvement in quality assurance activities. The department may not establish qualifications for licensed professionals other than those required for licensure; and
- (7) Maintenance of written policies on obtaining regular reports on patient satisfaction. [1988 c 245 § 13.]

70.127.130 Standards—Legend drugs—Controlled substances. Licensees shall conform to the standards of RCW 69.41.030 and 69.50.308. [1988 c 245 § 14.]

70.127.140 Bill of rights—Billing statements. (1) A licensee shall provide each person or designated representative with a written bill of rights affirming each person's right to:

- (a) A listing of the services offered by the agency and those being provided;
- (b) The name of the person supervising the care and the manner in which that person may be contacted;
- (c) A description of the process for submitting and addressing complaints;
- (d) A statement advising the person or representative of the right to participate in the development of the plan of care;
- (e) A statement providing that the person or representative is entitled to information regarding access to the department's registry of providers and to select any licensee to provide care, subject to the patient's reimbursement mechanism or other relevant contractual obligations;
- (f) Be treated with courtesy, respect, privacy, and freedom from abuse and discrimination;
- (g) Refuse treatment or services;
- (h) Have patient records be confidential; and
- (i) Have properly trained staff and coordination of services.

(2) Upon request, a licensee shall provide each person or designated representative with a fully itemized billing statement at least monthly, including the date of each service and the charge. Licensees providing services through a managed care plan shall not be required to provide itemized billing statements. [1988 c 245 § 15.]

70.127.150 Durable power of attorney—Prohibition for licensees or employees. No licensee or employee may hold a durable power of attorney on behalf of any person who is receiving care from the licensee. [1988 c 245 § 16.]

70.127.160 Continued certification under chapter 70.126 RCW—Rules. In order to assist in the administration of this chapter, the department may adopt rules under chapter 34.05 RCW to provide that a home health or hospice agency certified pursuant to chapter 70.126 RCW immediately before July 1, 1989, continues to operate under that certification through the expiration date of the certificate without obtaining a license under this chapter. [1988 c 245 § 17.]

70.127.170 Licenses—Denial, suspension, revocation—Civil penalties. Pursuant to chapter 34.05 RCW, the department may deny, suspend, or revoke a license under this chapter or, in lieu thereof or in addition thereto, assess monetary penalties of a civil nature not to exceed one thousand dollars per violation in any case in which it finds that the licensee, or any applicant, officer, director, partner, managing employee, or owner of ten percent or more of the applicant's or licensee's assets:

- (1) Failed or refused to comply with the requirements of this chapter or the standards or rules adopted under this chapter;

(2) Was the holder of a license issued pursuant to this chapter that was revoked for cause and never reissued by the department, or that was suspended for cause and the terms of the suspension have not been fulfilled and the licensee has continued to operate;

(3) Has knowingly or with reason to know made a false statement of a material fact in the application for the license or any data attached thereto or in any record required by this chapter or matter under investigation by the department;

(4) Refused to allow representatives of the department to inspect any book, record, or file required by this chapter to be maintained or any portion of the licensee's premises;

(5) Wilfully prevented, interfered with, or attempted to impede in any way the work of any representative of the department and the lawful enforcement of any provision of this chapter;

(6) Wilfully prevented or interfered with any representative of the department in the preservation of evidence of any violation of this chapter or the rules adopted under this chapter;

(7) Failed to pay any civil monetary penalty assessed by the department pursuant to this chapter within ten days after the assessment becomes final;

(8) Used advertising that is false, fraudulent, or misleading;

(9) Has repeated incidents of personnel performing services beyond their authorized scope of practice; or

(10) Misrepresented or was fraudulent in any aspect of the conduct of the licensee's business. [1988 c 245 § 18.]

70.127.180 On-site reviews, in-home visits, or audits—Notice of violations—Disciplinary action. The department may at any time conduct an on-site review of a licensee or conduct in-home visits in order to determine compliance with this chapter. The department may also examine and audit records necessary to determine compliance with this chapter. The right to conduct an on-site review and audit and examination of records shall extend to any premises and records of persons whom the department has reason to believe are providing home health, hospice, or home care without a license.

Following an on-site review, in-home visit, or audit, the department shall give written notice of any violation of this chapter or the rules adopted under this chapter. The notice shall describe the reasons for noncompliance and inform the licensee that it must comply within a specified reasonable time, not to exceed sixty days. If the licensee fails to comply, the licensee is subject to disciplinary action under RCW 70.127.170. [1988 c 245 § 19.]

70.127.190 Disclosure of compliance information. All information received by the department through filed reports, audits, on-site reviews, in-home visits, or as

otherwise authorized under this chapter shall not be disclosed publicly in any manner that would identify persons receiving care under this chapter. [1988 c 245 § 20.]

70.127.200 Unlicensed agencies—Department may seek injunctive or other relief. Notwithstanding the existence or use of any other remedy, the department may, in the manner provided by law and upon the advice of the attorney general, who shall represent the department in the proceedings, maintain an action in the name of the state for an injunction or other process against any person to restrain or prevent the advertising, operating, maintaining, managing, or opening of a home health, hospice, or home care agency without a license under this chapter. [1988 c 245 § 21.]

70.127.210 Violation of RCW 70.127.020—Misdemeanor. Any person violating RCW 70.127.020 is guilty of a misdemeanor. Each day of a continuing violation is a separate violation. [1988 c 245 § 22.]

70.127.220 Agency registry. The department shall compile a registry of all licensed home health, hospice, and home care agencies, both alphabetically and by county. Copies of the registry shall be made available to members of the general public at a nominal printing charge. [1988 c 245 § 23.]

70.127.230 Hospice agencies—Exemption for certain activities. In addition to the exemptions in RCW 70.127.040, a hospice agency delivering home health care integrally related to the delivery of hospice care or a health care practitioner who provides a single home health service that is not a part of a coordinated delivery of more than one service is not a home health agency for the purposes of this chapter. [1988 c 245 § 24.]

70.127.240 Home health or hospice agencies—Exemption for certain activities. In addition to the exemptions in RCW 70.127.040, a home health or hospice agency delivering home care as an integral part of the delivery of home health or hospice care, an individual providing home care through a direct agreement with the recipient of care, an individual providing home care through a direct agreement with a third party payor where comparable services are not readily available through a home care agency, or a volunteer organization that provides home care without compensation, is not a home care agency for the purposes of this chapter. [1988 c 245 § 27.]

70.127.250 Home health agencies—Rules. (1) In addition to the rules consistent with RCW 70.127.005 adopted under RCW 70.127.120, the department shall adopt rules for home health agencies which address the following:

(a) Establishment of case management guidelines for acute and maintenance care patients;

(b) Establishment of guidelines for periodic review of the home health care plan of care and plan of treatment by appropriate health care professionals; and

(c) Maintenance of written policies regarding the delivery and supervision of patient care and clinical consultation as necessary by appropriate health care professionals.

(2) As used in this section:

(a) "Acute care" means care provided by a home health agency for patients who are not medically stable or have not attained a satisfactory level of rehabilitation. These patients require frequent monitoring by a health care professional in order to maintain their health status.

(b) "Maintenance care" means care provided by home health agencies that is necessary to support an existing level of health and to preserve a patient from further failure or decline.

(c) "Home health plan of care" means a written plan of care established by a home health agency by appropriate health care professionals that describes maintenance care to be provided. A patient or his or her representative shall be allowed to participate in the development of the plan of care to the extent [extent] practicable.

(d) "Home health plan of treatment" means a written plan of care established by a physician licensed under chapter 18.57 or 18.71 RCW, a podiatrist licensed under chapter 18.22 RCW, or an advanced registered nurse practitioner as authorized by the board of nursing under chapter 18.88 RCW, in consultation with appropriate health care professionals within the agency that describes medically necessary acute care to be provided for treatment of illness or injury. [1988 c 245 § 25.]

70.127.260 Hospice agencies—Rules. (1) In addition to the rules consistent with RCW 70.127.005 adopted under RCW 70.127.120, the department shall adopt rules for hospice agencies which address the following:

(a) Establishment of guidelines for periodic review of the hospice plan of care;

(b) Written policies requiring availability of twenty-four hour seven days a week hospice registered nurse consultation and in-home services as appropriate;

(c) Quality assurance activities to include the involvement of interdisciplinary professionals;

(d) Maintenance of written policies regarding interdisciplinary team communication as appropriate and necessary; and

(e) Written policies regarding the use and availability of volunteers to provide family support and respite when requested.

(2) As used in this section "hospice plan of care" means a written plan of care established by a physician and reviewed by other members of the interdisciplinary team describing hospice care to be provided. [1988 c 245 § 26.]

70.127.270 Home care agencies—Rules. In addition to the rules adopted under RCW 70.127.120, the department shall adopt rules consistent with RCW 70.127.005 for home care agencies which address delivery of services according to a home care plan of care.

As used in this section, "home care plan of care" means a written plan of care that is established and periodically reviewed by a home care agency that describes the home care to be provided. [1988 c 245 § 28.]

70.127.900 Effective date—Implementation—1988 c 245. This act shall take effect July 1, 1989. The department may, beginning on July 1, 1988, take such steps as are necessary to insure that this act is implemented on its effective date. [1988 c 245 § 37.]

70.127.901 Expiration of chapter—Review. RCW 70.127.010 through 70.127.270 shall expire on July 1, 1993. The legislative budget committee shall conduct a program and fiscal review of the implementation of RCW 70.127.010 through 70.127.270 by December 31, 1992. The review shall contain recommendations regarding continuation, modification, or elimination of RCW 70.127.010 through 70.127.270. [1988 c 245 § 38.]

70.127.902 Severability—1988 c 245. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1988 c 245 § 39.]

Chapter 70.128

ADULT FAMILY HOMES

Sections

70.128.005	Finding.
70.128.007	Purpose.
70.128.010	Definitions.
70.128.030	Exemptions.
70.128.040	Adoption of rules and standards.
70.128.050	License—Required as of July 1, 1990.
70.128.060	License—Generally.
70.128.070	License—Renewal—Inspections—Correction of violations.
70.128.080	License and inspection report—Review.
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70.128.100	Immediate suspension of license when conditions warrant.
70.128.110	Prohibition against recommending unlicensed home—Report and investigation of unlicensed home.
70.128.120	Adult family home provider—Minimum qualifications.
70.128.130	Adult family home—Maintenance, safety—Care of residents.
70.128.140	Compliance with local codes and state and local fire safety regulations.
70.128.150	Adult family homes to work with local quality assurance projects.
70.128.160	Department authority to take actions in response to noncompliance or violations.
70.128.170	Homes relying on prayer for healing—Application of chapter.
70.128.175	Definitions.
70.128.180	Report to legislature on siting review—Model ordinance.
70.128.900	Severability—1989 c 427.

70.128.005 Finding. The legislature finds that adult family homes are an important part of the state's long-

term care system. Adult family homes provide an alternative to institutional care and promote a high degree of independent living for residents. [1989 c 427 § 14.]

70.128.007 Purpose. The purposes of this chapter are to:

(1) Encourage the establishment and maintenance of adult family homes that provide a humane, safe, and homelike environment for persons with functional limitations who need personal and special care;

(2) Establish standards for regulating adult family homes that adequately protect residents, but are consistent with the abilities and resources of an adult family home so as not to discourage individuals from serving as adult family home providers; and

(3) Encourage consumers, families, providers, and the public to become active in assuring their full participation in development of adult family homes that provide high quality care. [1989 c 427 § 15.]

70.128.010 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Adult family home" means a regular family abode of a person or persons who are providing personal care, room, and board to more than one but not more than four adults who are not related by blood or marriage to the person or persons providing the services; except that a maximum of six adults may be permitted if the department determines that the home is of adequate size and that the home and the provider are capable of meeting standards and qualifications as provided for in *this act.

(2) "Provider" means any person who is licensed under this chapter to operate an adult family home. The provider shall reside at the adult family home, except that exceptions may be authorized by the department for good cause, as defined in rule.

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

(4) "Resident" means an adult in need of personal or special care in an adult family home who is not related to the provider.

(5) "Adults" means persons who have attained the age of eighteen years.

(6) "Home" means an adult family home.

(7) "Imminent danger" means serious physical harm to or death of a resident has occurred, or there is a serious threat to resident life, health, or safety.

(8) "Special care" means care beyond personal care as defined by the department, in rule. [1989 c 427 § 16.]

*Reviser's note: For codification of "this act" [1989 c 427], see Codification Tables, Volume 0.

70.128.030 Exemptions. The following residential facilities shall be exempt from the operation of this chapter:

(1) Nursing homes licensed under chapter 18.51 RCW;

(2) Boarding homes licensed under chapter 18.20 RCW;

(3) Facilities approved and certified under chapter 71A.22 RCW;

(4) Residential treatment centers for the mentally ill licensed under chapter 71.24 RCW;

(5) Hospitals licensed under chapter 70.41 RCW;

(6) Homes for the developmentally disabled licensed under chapter 74.15 RCW. [1989 c 427 § 17.]

70.128.040 Adoption of rules and standards. (1) The department shall adopt rules and standards with respect to all adult family homes and the operators thereof to be licensed under this chapter to carry out the purposes and requirements of this chapter. In developing rules and standards the department shall recognize the residential family-like nature of adult family homes and not develop rules and standards which by their complexity serve as an overly restrictive barrier to the development of the adult family homes in the state. Procedures and forms established by the department shall be developed so they are easy to understand and comply with. Paper work requirements shall be minimal. Easy to understand materials shall be developed for homes explaining licensure requirements and procedures.

(2) During the initial stages of development of proposed rules, the department shall provide notice of development of the rules to organizations representing adult family homes and their residents, and other groups that the department finds appropriate. The notice shall state the subject of the rules under consideration and solicit written recommendations regarding their form and content.

(3) Except where provided otherwise, chapter 34.05 RCW shall govern all department rule-making and adjudicative activities under this chapter. [1989 c 427 § 18.]

70.128.050 License—Required as of July 1, 1990. After July 1, 1990, no person shall operate or maintain an adult family home in this state without a license under this chapter. [1989 c 427 § 19.]

70.128.060 License—Generally. (1) An application for license shall be made to the department upon forms provided by it and shall contain such information as the department reasonably requires.

(2) The department shall issue a license to an adult family home if the department finds that the applicant and the home are in compliance with this chapter and the rules adopted under this chapter; and that the applicant has no prior violations of this chapter relating to the adult family home subject to the application or any other adult family home, or of any other law regulating residential care facilities within the past five years that resulted in revocation or nonrenewal of a license.

(3) The license fee shall be submitted with the application.

(4) The department shall serve upon the applicant a copy of the decision granting or denying an application for a license. An applicant shall have the right to contest denial of his or her application for a license as provided

in chapter 34.05 RCW by requesting a hearing in writing within ten days after receipt of the notice of denial.

(5) A provider shall not be licensed for more than one adult family home. Exceptions may be authorized by the department for good cause, as defined in rule. The department shall submit to appropriate committees of the legislature, by December 1, 1991, a report on the number and type of good cause exceptions granted.

(6) The license fee shall be set at fifty dollars per year for each home. A fifty dollar processing fee shall also be charged each home when the home is initially licensed. [1989 c 427 § 20.]

70.128.070 License—Renewal—Inspections—Correction of violations. (1) A license shall be valid for one year.

(2) At least ninety days prior to expiration of the license, the provider shall submit an application for renewal of a license. The department shall send the provider an application for renewal prior to this time. The department shall have the authority to investigate any information included in the application for renewal of a license.

(3) (a) Homes applying for a license shall be inspected at the time of licensure.

(b) Homes licensed by the department shall be inspected every eighteen months subject to available funds.

(c) Licensed homes where a complaint has been received by the department may be inspected at any time.

(4) If the department finds that the home is not in compliance with this chapter, it shall require the home to correct any violations as provided in this chapter. If the department finds that the home is in compliance with this chapter and the rules adopted under this chapter, the department shall renew the license of the home. [1989 c 427 § 22.]

70.128.080 License and inspection report—Review. An adult family home shall have readily available for review:

- (1) Its license to operate; and
- (2) A copy of each inspection report received by the home from the department for the past three years. [1989 c 427 § 21.]

70.128.090 Inspections—Generally. (1) During inspections of an adult family home, the department shall have access and authority to examine areas and articles in the home used to provide care or support to residents, including residents' records, accounts, and the physical premises, including the buildings, grounds, and equipment. The department also shall have the authority to interview the provider and residents of an adult family home.

(2) Whenever an inspection is conducted, the department shall prepare a written report that summarizes all information obtained during the inspection, and if the home is in violation of this chapter, serve a copy of the inspection report upon the provider at the same time as a notice of violation. If the home is not in violation of this chapter, a copy of the inspection report shall be

mailed to the provider within ten days of the inspection of the home. All inspection reports shall be made available to the public at the department during business hours.

(3) The inspection report shall describe any corrective measures on the part of the provider necessary to pass a reinspection. If the department finds upon reinspection of the home that the corrective measures have been satisfactorily implemented, the department shall cease any actions taken against the home. Nothing in this section shall require the department to license or renew the license of a home where serious physical harm or death has occurred to a resident. [1989 c 427 § 30.]

70.128.100 Immediate suspension of license when conditions warrant. The department has the authority to immediately suspend a license if it finds that conditions there constitute an imminent danger to residents. [1989 c 427 § 32.]

70.128.110 Prohibition against recommending unlicensed home—Report and investigation of unlicensed home. (1) No public agency contractor or employee shall place, refer, or recommend placement of a person into an adult family home that is operating without a license.

(2) Any public agency contractor or employee who knows that an adult family home is operating without a license shall report the name and address of the home to the department. The department shall investigate any report filed under this section. [1989 c 427 § 23.]

70.128.120 Adult family home provider—Minimum qualifications. An adult family home provider shall have the following minimum qualifications:

- (1) Twenty-one years of age or older;
- (2) Good moral and responsible character and reputation;
- (3) Literacy; and
- (4) Management and administrative ability to carry out the requirements of this chapter. [1989 c 427 § 24.]

70.128.130 Adult family home—Maintenance, safety—Care of residents. (1) Adult family homes shall be maintained internally and externally in good repair and condition. Such homes shall have safe and functioning systems for heating, cooling, hot and cold water, electricity, plumbing, garbage disposal, sewage, cooking, laundry, artificial and natural light, ventilation, and any other feature of the home.

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

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

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

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

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

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

(b) Adult family home providers may administer medications and deliver special care only to the extent that the provider is a licensed health care professional for whom the administration of medications is within the scope of practice under Washington law. [1989 c 427 § 26.]

70.128.140 Compliance with local codes and state and local fire safety regulations. Each adult family home shall meet applicable local licensing, zoning, building, and housing codes, and state and local fire safety regulations. It is the responsibility of the home to check with local authorities to ensure all local codes are met. [1989 c 427 § 27.]

70.128.150 Adult family homes to work with local quality assurance projects. Whenever possible adult family homes are encouraged to contact and work with local quality assurance projects such as the volunteer ombudsman with the goal of assuring high quality care is provided in the home. [1989 c 427 § 28.]

70.128.160 Department authority to take actions in response to noncompliance or violations. (1) The department is authorized to take one or more of the actions listed in subsection (2) of this section in any case in which the department finds that an adult family home provider has:

(a) Failed or refused to comply with the requirements of this chapter or the rules adopted under this chapter;

(b) Operated an adult family home without a license or under a revoked license;

(c) Knowingly or with reason to know made a false statement of material fact on his or her application for license or any data attached thereto, or in any matter under investigation by the department; or

(d) Willfully prevented or interfered with any inspection or investigation by the department.

(2) When authorized by subsection (1) of this section, the department may take one or more of the following actions:

(a) Refuse to issue a license;

(b) Suspend, revoke, or refuse to renew a license; or

(c) Suspend admissions to the adult family home. [1989 c 427 § 31.]

70.128.170 Homes relying on prayer for healing—Application of chapter. Nothing in this chapter or the rules adopted under it may be construed as authorizing the supervision, regulation, or control of the remedial care or treatment of residents in any adult family home conducted by and for the adherents of a church or religious denomination who rely upon spiritual means alone

through prayer for healing in accordance with the tenets and practices of such church or religious denomination and the bona fide religious beliefs genuinely held by such adherents. [1989 c 427 § 33.]

70.128.175 Definitions. (1) Unless the context clearly requires otherwise, these definitions shall apply throughout this section and RCW 35.63.140, 35A.63.149, 36.70.755, 35.22.680, 36.32.560, and 70.128.180:

(a) "Adult family home" means a facility licensed pursuant to chapter 70.128 RCW or the regular family abode of a person or persons who are providing personal care, room, and board to one adult not related by blood or marriage to the person providing the services.

(b) "Residential care facility" means a facility that cares for at least five, but not more than fifteen functionally disabled persons, that is not licensed pursuant to chapter 70.128 RCW.

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

(2) An adult family home shall be considered a residential use of property for zoning purposes. Adult family homes shall be a permitted use in all areas zoned for residential or commercial purposes, including areas zoned for single family dwellings. [1989 1st ex.s. c 9 § 81.5.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

70.128.180 Report to legislature on siting review—Model ordinance. The department of community development shall:

(1) Report to the appropriate committees of the legislature the results of the local reviews provided for in RCW 35.63.140, 35A.63.149, 36.70.755, 35.22.680, and 36.32.560 by December 31, 1990.

(2) In consultation with the association of Washington cities, the Washington association of counties, and the long-term care commission, develop a model ordinance for the siting of residential care facilities. The model ordinance shall be developed by December 31, 1990. [1989 c 427 § 41.]

70.128.900 Severability—1989 c 427. See RCW 74.39.900.

Chapter 70.132

BEVERAGE CONTAINERS

Sections

70.132.010	Legislative findings.
70.132.020	Definitions.
70.132.030	Sale of containers with detachable metal rings or tabs prohibited.
70.132.040	Enforcement—Rules.
70.132.050	Penalty.
70.132.900	Effective date—Implementation—1982 c 113.

70.132.010 Legislative findings. The legislature finds that beverage containers designed to be opened through the use of detachable metal rings or tabs are hazardous

to the health and welfare of the citizens of this state and detrimental to certain wildlife. The detachable parts are susceptible to ingestion by human beings and wildlife. The legislature intends to eliminate the danger posed by these unnecessary containers by prohibiting their retail sale in this state. [1982 c 113 § 1.]

70.132.020 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter:

(1) "Beverage" means beer or other malt beverage or mineral water, soda water, or other drink in liquid form and intended for human consumption. The term does not include milk-based, soy-based, or similar products requiring heat and pressure in the canning process.

(2) "Beverage container" means a separate and sealed can containing a beverage.

(3) "Department" means the department of ecology created under chapter 43.21A RCW. [1983 c 257 § 1; 1982 c 113 § 2.]

70.132.030 Sale of containers with detachable metal rings or tabs prohibited. No person may sell or offer to sell at retail in this state any beverage container so designed and constructed that a metal part of the container is detachable in opening the container through use of a metal ring or tab. Nothing in this section prohibits the sale of a beverage container which container's only detachable part is a piece of pressure sensitive or metallic tape. [1982 c 113 § 3.]

70.132.040 Enforcement—Rules. The department shall administer and enforce this chapter. The department shall adopt rules interpreting and implementing this chapter. Any rule adopted under this section shall be adopted under the administrative procedure act, chapter 34.05 RCW. [1982 c 113 § 4.]

70.132.050 Penalty. Any person who violates any provision of this chapter or any rule adopted under this chapter is subject to a civil penalty not exceeding five hundred dollars for each violation. Each day of a continuing violation is a separate violation. [1982 c 113 § 5.]

70.132.900 Effective date—Implementation—1982 c 113. This act shall take effect on July 1, 1983. The director of the department of ecology is authorized to take such steps prior to such date as are necessary to ensure that this act is implemented on its effective date. [1982 c 113 § 7.]

Chapter 70.136

HAZARDOUS MATERIALS INCIDENTS

Sections

70.136.010	Legislative intent.
70.136.020	Definitions.
70.136.030	Incident command agencies—Designation by political subdivisions.
70.136.035	Incident command agencies—Assistance from state patrol.

70.136.040	Incident command agencies—Emergency assistance agreements.
70.136.050	Persons and agencies rendering emergency aid in hazardous materials incidents—Immunity from liability—Limitations.
70.136.055	Person causing hazardous materials incident—Responsibility for incident clean-up—Liability.
70.136.060	Written emergency assistance agreements—Terms and conditions—Records.
70.136.070	Verbal emergency assistance agreements—Good Samaritan law—Notification—Form.

Emergency management: Chapter 38.52 RCW.

Hazardous waste disposal: Chapter 70.105 RCW.

Radioactive and hazardous waste emergency response programs, state coordinator: RCW 38.52.030.

Transport of hazardous materials, state patrol authority over: Chapter 46.48 RCW.

70.136.010 Legislative intent. It is the intent of the legislature to promote and encourage advance planning, cooperation, and mutual assistance between applicable political subdivisions of the state and persons with equipment, personnel, and expertise in the handling of hazardous materials incidents, by establishing limitations on liability for those persons responding in accordance with the provisions of RCW 70.136.020 through 70.136.070. [1982 c 172 § 1.]

Reviser's note: Although 1982 c 172 directed that sections 1 through 7 of that enactment be added to chapter 4.24 RCW, codification of these sections as a new chapter in Title 70 RCW appears more appropriate.

70.136.020 Definitions. The definitions set forth in this section apply throughout RCW 70.136.010 through 70.136.070.

(1) "Hazardous materials" means:

(a) Materials which, if not contained may cause unacceptable risks to human life within a specified area adjacent to the spill, seepage, fire, explosion, or other release, and will, consequently, require evacuation;

(b) Materials that, if spilled, could cause unusual risks to the general public and to emergency response personnel responding at the scene;

(c) Materials that, if involved in a fire will pose unusual risks to emergency response personnel;

(d) Materials requiring unusual storage or transportation conditions to assure safe containment; or

(e) Materials requiring unusual treatment, packaging, or vehicles during transportation to assure safe containment.

(2) "Applicable political subdivisions of the state" means cities, towns, counties, fire districts, and those port authorities with emergency response capabilities.

(3) "Person" means an individual, partnership, corporation, or association.

(4) "Public agency" means any agency, political subdivision, or unit of local government of this state including, but not limited to, municipal corporations, quasi-municipal corporations, special purpose districts, and local service districts; any agency of the state government; any agency of the United States; any Indian tribe recognized as such by the federal government; and any political subdivision of another state.

(5) "Hazardous materials incident" means an incident creating a danger to persons, property, or the environment as a result of spillage, seepage, fire, explosion, or release of hazardous materials, or the possibility thereof.

(6) "Governing body" means the elected legislative council, board, or commission or the chief executive of the applicable political subdivision of the state with public safety responsibility.

(7) "Incident command agency" means the pre-designated or appointed agency charged with coordinating all activities and resources at the incident scene.

(8) "Representative" means an agent from the designated hazardous materials incident command agency with the authority to secure the services of persons with hazardous materials expertise or equipment.

(9) "Profit" means compensation for rendering care, assistance, or advice in excess of expenses actually incurred. [1987 c 238 § 1; 1982 c 172 § 2.]

70.136.030 Incident command agencies—Designation by political subdivisions. The governing body of each applicable political subdivision of this state shall designate a hazardous materials incident command agency within its respective boundaries, and file this designation with the director of community development. In designating an incident command agency, the political subdivision shall consider the training, manpower, expertise, and equipment of various available agencies as well as the Uniform Fire Code and other existing codes and regulations. Along state and interstate highway corridors, the Washington state patrol shall be the designated incident command agency unless by mutual agreement that role has been assumed by another designated incident command agency. If a political subdivision has not designated an incident command agency within six months after July 26, 1987, the Washington state patrol shall then assume the role of incident command agency by action of the chief until a designation has been made. [1987 c 238 § 2; 1986 c 266 § 50; 1985 c 7 § 132; 1984 c 165 § 1; 1982 c 172 § 4.]

Severability—1986 c 266: See note following RCW 38.52.005.

70.136.035 Incident command agencies—Assistance from state patrol. In political subdivisions where an incident command agency has been designated, the Washington state patrol shall continue to respond with a supervisor to provide assistance to the incident command agency. [1987 c 238 § 3.]

70.136.040 Incident command agencies—Emergency assistance agreements. Hazardous materials incident command agencies, so designated by all applicable political subdivisions of the state, are authorized and encouraged, prior to a hazardous materials incident, to enter individually or jointly into written hazardous materials emergency assistance agreements with any person whose knowledge or expertise is deemed potentially useful. [1982 c 172 § 3.]

70.136.050 Persons and agencies rendering emergency aid in hazardous materials incidents—Immunity

from liability—Limitations. An incident command agency in the good faith performance of its duties, is not liable for civil damages resulting from any act or omission in the performance of its duties, other than acts or omissions constituting gross negligence or wilful or wanton misconduct.

Any person or public agency whose assistance has been requested by an incident command agency, who has entered into a written hazardous materials assistance agreement before or at the scene of the incident pursuant to RCW 70.136.060 and 70.136.070, and who, in good faith, renders emergency care, assistance, or advice with respect to a hazardous materials incident, is not liable for civil damages resulting from any act or omission in the rendering of such care, assistance, or advice, other than acts or omissions constituting gross negligence or wilful or wanton misconduct. [1987 c 238 § 4; 1984 c 165 § 2; 1982 c 172 § 5.]

70.136.055 Person causing hazardous materials incident—Responsibility for incident clean-up—Liability. See RCW 4.24.314.

70.136.060 Written emergency assistance agreements—Terms and conditions—Records. Hazardous materials emergency assistance agreements which are executed prior to a hazardous materials incident shall include the following terms and conditions:

(1) The person or public agency requested to assist shall not be obligated to assist;

(2) The person or public agency requested to assist may act only under the direction of the incident command agency or its representative;

(3) The person or public agency requested to assist may withdraw its assistance if it deems the actions or directions of the incident command agency to be contrary to accepted hazardous materials response practices;

(4) The person or public agency requested to assist shall not profit from rendering the assistance;

(5) Any person responsible for causing the hazardous materials incident shall not be covered by the liability standard defined in RCW 70.136.050.

It is the responsibility of both parties to ensure that mutually agreeable procedures are established for identifying the incident command agency when assistance is requested, for recording the name of the person or public agency whose assistance is requested, and the time and date of the request, which records shall be retained for three years by the incident command agency. A copy of the official incident command agency designation shall be a part of the assistance agreement specified in this section. [1987 c 238 § 5; 1982 c 172 § 6.]

70.136.070 Verbal emergency assistance agreements—Good Samaritan law—Notification—Form. (1) Verbal hazardous materials emergency assistance agreements may be entered into at the scene of an incident where execution of a written agreement prior to the incident is not possible. A notification of the terms of this section shall be presented at the scene by the incident command agency or its representative to the person

Chapter 70.138

INCINERATOR ASH RESIDUE

or public agency whose assistance is requested. The incident command agency and the person or public agency whose assistance is requested shall both sign the notification which appears in subsection (2) of this section, indicating the date and time of signature. If a requesting incident command agency deliberately misrepresents individual or agency status, that agency shall assume full liability for any damages resulting from the actions of the person or public agency whose assistance is requested, other than those damages resulting from gross negligence or wilful or wanton misconduct.

(2) The notification required by subsection (1) of this section shall be in substantially the following form:

NOTIFICATION OF "GOOD SAMARITAN" LAW

You have been requested to provide emergency assistance by a representative of a hazardous materials incident command agency. To encourage your assistance, the Washington state legislature has passed "Good Samaritan" legislation (RCW 70.136.050) to protect you from potential liability. The law reads, in part:

"Any person or public agency whose assistance has been requested by an incident command agency, who has entered into a written hazardous materials assistance agreement . . . at the scene of the incident pursuant to . . . RCW 70.136.070, and who, in good faith, renders emergency care, assistance, or advice with respect to a hazardous materials incident, is not liable for civil damages resulting from any act or omission in the rendering of such care, assistance, or advice, other than acts or omissions constituting gross negligence or wilful or wanton misconduct."

The law requires that you be advised of certain conditions to ensure your protection:

- 1. You are not obligated to assist and you may withdraw your assistance at any time.
2. You cannot profit from assisting.
3. You must agree to act under the direction of the incident command agency.
4. You are not covered by this law if you caused the initial accident.

I have read and understand the the above.
(Name) _____
Date _____ Time _____
I am a representative of a designated hazardous materials incident command agency and I am authorized to make this request for assistance.
(Name) _____
(Agency) _____
Date _____ Time _____

[1987 c 238 § 6; 1982 c 172 § 7.]

Sections

- 70.138.010 Legislative findings.
70.138.020 Definitions.
70.138.030 Review and approval of management plans—Disposal permits.
70.138.040 Civil penalties.
70.138.050 Violations—Orders.
70.138.060 Enforcement—Injunctive relief.
70.138.070 Criminal penalties.
70.138.900 Application of chapter to certain incinerators.
70.138.901 Short title.
70.138.902 Severability—1987 c 528.

70.138.010 Legislative findings. The legislature finds:

(1) Solid wastes generated in the state are to be managed in the following order of descending priority: (a) Waste reduction; (b) recycling; (c) treatment; (d) energy recovery or incineration; (e) solidification/stabilization; and (f) landfill.

(2) Special incinerator ash residues from the incineration of municipal solid waste that would otherwise be regulated as hazardous wastes need a separate regulatory scheme in order to (a) ease the permitting and reporting requirements of chapter 70.105 RCW, the state hazardous waste management act, and (b) supplement the environmental protection provisions of chapter 70.95 RCW, the state solid waste management act.

(3) Raw garbage poses significant environmental and public health risks. Municipal solid waste incineration constitutes a higher waste management priority than the land disposal of untreated municipal solid waste due to its reduction of waste volumes and environmental health risks.

It is therefore the purpose of this chapter to establish management requirements for special incinerator ash that otherwise would be regulated as hazardous waste under chapter 70.105 RCW, the hazardous waste management act. [1987 c 528 § 1.]

70.138.020 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

- (1) "Department" means the department of ecology.
(2) "Director" means the director of the department of ecology or the director's designee.
(3) "Dispose" or "disposal" means the treatment, utilization, processing, or final deposit of special incineration ash.
(4) "Generate" means any act or process which produces special incinerator ash or which first causes special incinerator ash to become subject to regulation.
(5) "Management" means the handling, storage, collection, transportation, and disposal of special incinerator ash.
(6) "Person" means any person, firm, association, county, public or municipal or private corporation, agency, or other entity whatsoever.

(7) "Facility" means all structures, other appurtenances, improvements, and land used for recycling, storing, treating, or disposing of special incinerator ash.

(8) "Special incinerator ash" means ash residues resulting from the operation of incinerator or energy recovery facilities managing municipal solid waste, including solid waste from residential, commercial, and industrial establishments, if the ash residues (a) would otherwise be regulated as hazardous wastes under chapter 70.105 RCW; and (b) are not regulated as a hazardous waste under the federal resource conservation and recovery act, 42 U.S.C. Sec. 6901 et seq. [1987 c 528 § 2.]

70.138.030 Review and approval of management plans—Disposal permits. (1) Prior to managing special incinerator ash, persons who generate special incinerator ash shall develop plans for managing the special incinerator ash. These plans shall:

(a) Identify procedures for all aspects relating to the management of the special incinerator ash that are necessary to protect employees, human health, and the environment;

(b) Identify alternatives for managing solid waste prior to incineration for the purpose of (i) reducing the toxicity of the special incinerator ash; and (ii) reducing the quantity of the special incinerator ash;

(c) Establish a process for submittal of an annual report to the department disclosing the results of a testing program to identify the toxic properties of the special incinerator ash as necessary to ensure that the procedures established in the plans submitted pursuant to this chapter are adequate to protect employees, human health, and the environment; and

(d) Comply with the rules established by the department in accordance with this section.

(2) Prior to managing any special incinerator ash, any person required to develop a plan pursuant to subsection (1) of this section shall submit the plan to the department for review and approval. Prior to approving a plan, the department shall find that the plan complies with the provisions of this chapter, including any rules adopted under this chapter. Approval may be conditioned upon additional requirements necessary to protect employees, human health, and the environment, including special management requirements, waste segregation, or treatment techniques such as neutralization, detoxification, and solidification/stabilization.

(3) The department shall give notice of receipt of a proposed plan to interested persons and the public and shall accept public comment for a minimum of thirty days. The department shall approve, approve with conditions, or reject the plan submitted pursuant to this section within ninety days of submittal.

(4) Prior to accepting any special incinerator ash for disposal, persons owning or operating facilities for the disposal of the incinerator ash shall apply to the department for a permit. The department shall issue a permit if the disposal will provide adequate protection of human health and the environment. Prior to issuance of any permit, the department shall find that the facility meets

the requirements of chapter 70.95 RCW and any rules adopted under this chapter. The department may place conditions on the permit to include additional requirements necessary to protect employees, human health, and the environment, including special management requirements, waste segregation, or treatment techniques such as neutralization, detoxification, and solidification/stabilization.

(5) The department shall give notice of its receipt of a permit application to interested persons and the public and shall accept public comment for a minimum of thirty days. The department shall issue, issue with conditions, or deny the permit within ninety days of submittal.

(6) The department shall adopt rules to implement the provisions of this chapter. The rules shall (a) establish minimum requirements for the management of special incinerator ash as necessary to protect employees, human health, and the environment, (b) clearly define the elements of the plans required by this chapter, and (c) require special incinerator ash to be disposed at facilities that are operating in compliance with this chapter. [1987 c 528 § 3.]

70.138.040 Civil penalties. (1) Any person who violates any provision of a department regulation or regulatory order relating to the management of special incinerator ash shall incur in addition to any other penalty provided by law, a penalty in an amount up to ten thousand dollars a day for every such violation. Each and every such violation shall be a separate and distinct offense. If [In] case of continuing violation, every day's continuance shall be a separate and distinct violation. Every person who, through an act of commission or omission, procures, aids, or abets in the violation shall be considered to have violated the provisions of this section and shall be subject to the penalty herein provided.

(2) The penalty provided for in this section shall be imposed by a notice in writing, either by certified mail with return receipt requested or by personal service, to the person incurring the same from the department, describing the violation with reasonable particularity. Within fifteen days after the notice is received, the person incurring the penalty may apply in writing to the department for the remission or mitigation of such penalty. Upon receipt of the application, the department may remit or mitigate the penalty upon whatever terms the department in its discretion deems proper, giving consideration to the degree of hazard associated with the violation, provided the department deems such remission or mitigation to be in the best interests of carrying out the purposes of this chapter. The department shall have authority to ascertain the facts regarding all such applications in such reasonable manner and under such rules as it may deem proper.

(3) Any penalty imposed by this section shall become due and payable thirty days after receipt of a notice imposing the same unless application for remission or mitigation is made or petition for review by the hearings board is filed. When such an application for remission or mitigation is made, any penalty incurred pursuant to this

section shall become due and payable thirty days after receipt of notice setting forth the disposition of such application.

(4) If the amount of any penalty is not paid to the department within thirty days after it becomes due and payable, the attorney general, upon the request of the director, shall bring an action in the name of the state of Washington in the superior court of Thurston county, or any county in which such violator may do business, to recover such penalty. In all such actions, the procedure and rules of evidence shall be the same as an ordinary civil action except as otherwise provided in this chapter. [1987 c 528 § 4.]

70.138.050 Violations—Orders. Whenever a person violates any provision of this chapter or any permit or regulation the department may issue an order appropriate under the circumstances to assure compliance with the chapter, permit, or regulation. Such an order must be served personally or by registered mail upon any person to whom it is directed. [1987 c 528 § 5.]

70.138.060 Enforcement—Injunctive relief. The department, with the assistance of the attorney general, may bring any appropriate action at law or in equity, including action for injunctive relief as may be necessary to enforce the provisions of this chapter or any permit or regulation issued thereunder. [1987 c 528 § 6.]

70.138.070 Criminal penalties. Any person found guilty of wilfully violating, without sufficient cause, any of the provisions of this chapter, or permit or order issued pursuant to this chapter is guilty of a gross misdemeanor and upon conviction shall be punished by a fine of up to ten thousand dollars and costs of prosecution, or by imprisonment for up to one year, or by both. Each day of violation may be deemed a separate violation. [1987 c 528 § 7.]

70.138.900 Application of chapter to certain incinerators. This chapter shall not apply to municipal solid waste incinerators that are in operation on May 19, 1987, until a special incinerator waste disposal permit is issued in the county where the municipal solid waste incinerator is located, or July 1, 1989, whichever is sooner. [1987 c 528 § 12.]

70.138.901 Short title. This chapter shall be known as the special incinerator ash disposal act. [1987 c 528 § 11.]

70.138.902 Severability—1987 c 528. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1987 c 528 § 14.]

Chapter 70.142

CHEMICAL CONTAMINANTS AND WATER QUALITY

Sections

70.142.010	Establishment of standards for chemical contaminants in drinking water by state board of health.
70.142.020	Establishment of monitoring requirements for chemical contaminants in public water supplies by state board of health.
70.142.030	Monitoring requirements—Considerations.
70.142.040	Establishment of water quality standards by local health department in county of first class or larger.
70.142.050	Noncomplying public water supply systems—Submission of corrective plan—Notification to system's customers.

Reviser's note: Powers and duties of the department of social and health services and the secretary of social and health services transferred to the department of health and the secretary of health. See RCW 43.70.060.

70.142.010 Establishment of standards for chemical contaminants in drinking water by state board of health.

(1) In order to protect public health from chemical contaminants in drinking water, the state board of health shall conduct public hearings and, where technical data allow, establish by rule standards for allowable concentrations. For purposes of this chapter, the words "chemical contaminants" are limited to synthetic organic chemical contaminants and to any other contaminants which in the opinion of the board constitute a threat to public health. If adequate data to support setting of a standard is available, the state board of health shall adopt by rule a maximum contaminant level for water provided to consumers' taps. Standards set for contaminants known to be toxic shall consider both short-term and chronic toxicity. Standards set for contaminants known to be carcinogenic shall be consistent with risk levels established by the state board of health.

(2) The board shall consider the best available scientific information in establishing the standards. The board may review and revise the standards. State and local standards for chemical contaminants may be more strict than the federal standards. [1984 c 187 § 1.]

70.142.020 Establishment of monitoring requirements for chemical contaminants in public water supplies by state board of health. The state board of health shall conduct public hearings and establish by rule monitoring requirements for chemical contaminants in public water supplies. Results of tests conducted pursuant to such requirements shall be submitted to the department of social and health services and to the local health department. The state board of health may review and revise monitoring requirements for chemical contaminants. [1984 c 187 § 2.]

70.142.030 Monitoring requirements—Considerations. The state board of health in determining monitoring requirements for public water supply systems shall take into consideration economic impacts as well as public health risks. [1984 c 187 § 5.]

70.142.040 Establishment of water quality standards by local health department in county of first class or larger. Each local health department serving a county of the first class or larger may establish water quality standards for its jurisdiction more stringent than standards established by the state board of health. Each local health department establishing such standards shall base the standards on the best available scientific information. [1984 c 187 § 3.]

70.142.050 Noncomplying public water supply systems—Submission of corrective plan—Notification to system's customers. Public water supply systems as defined by RCW 70.119.020 that the state board of health or local health department determines do not comply with the water quality standards applicable to the system shall immediately initiate preparation of a corrective plan designed to meet or exceed the minimum standards for submission to the department of social and health services. The owner of such system shall within one year take any action required to bring the water into full compliance with the standards: *Provided*, That the department of social and health services may require compliance as promptly as necessary to abate an immediate public health threat or may extend the period of compliance if substantial new construction is required: *Provided further*, That the extension shall be granted only upon a determination by the department, after a public hearing, that the extension will not pose an imminent threat to public health. Each such system shall include a notice identifying the water quality standards exceeded, and the amount by which the water tested exceeded the standards, in all customer bills mailed after such determination. The notification shall continue until water quality tests conducted in accordance with this chapter establish that the system meets or exceeds the minimum standards. [1984 c 187 § 4.]

Chapter 70.146

WATER POLLUTION CONTROL FACILITIES FINANCING

Sections

70.146.010	Purpose—Legislative intent.
70.146.020	Definitions.
70.146.030	Water quality account—Progress report.
70.146.040	Level of grant or loan not precedent.
70.146.050	Compliance schedule for secondary treatment.
70.146.060	Water quality account distributions—Limitations.
70.146.070	Grants or loans for water pollution control facilities—Considerations.
70.146.075	Extended grant payments.
70.146.080	Determination of tax receipts in water quality account—Transfer of sufficient moneys from general revenues.
70.146.900	Severability—1986 c 3.

70.146.010 Purpose—Legislative intent. The long-range health and environmental goals for the state of Washington require the protection of the state's surface and underground waters for the health, safety, use, enjoyment, and economic benefit of its people. It is the purpose of this chapter to provide financial assistance to

the state and to local governments for the planning, design, acquisition, construction, and improvement of water pollution control facilities and related activities in the achievement of state and federal water pollution control requirements for the protection of the state's waters.

It is the intent of the legislature that distribution of moneys for water pollution control facilities under this chapter be made on an equitable basis taking into consideration legal mandates, local effort, ratepayer impacts, and past distributions of state and federal moneys for water pollution control facilities.

It is the intent of this chapter that the cost of any water pollution control facility attributable to increased or additional capacity that exceeds one hundred ten percent of existing needs at the time of application for assistance under this chapter shall be entirely a local or private responsibility. It is the intent of this chapter that industrial pretreatment be paid by industries and that the water quality account shall not be used for such purposes. [1986 c 3 § 1.]

Effective dates—1986 c 3: See note following RCW 82.24.027.

70.146.020 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Account" means the water quality account in the state treasury.

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

(3) "Eligible cost" means the cost of that portion of a water pollution control facility that can be financed under this chapter excluding any portion of a facility's cost attributable to capacity that is in excess of that reasonably required to address one hundred ten percent of the applicant's needs for water pollution control existing at the time application is submitted for assistance under this chapter.

(4) "Water pollution control facility" or "facilities" means any facilities or systems for the control, collection, storage, treatment, disposal, or recycling of wastewater, including but not limited to sanitary sewage, storm water, residential, commercial, industrial, and agricultural wastes, which are causing water quality degradation due to concentrations of conventional, nonconventional, or toxic pollutants. Water pollution control facilities include all equipment, utilities, structures, real property, and interests in and improvements on real property necessary for or incidental to such purpose. Water pollution control facilities also include such facilities, equipment, and collection systems as are necessary to protect federally designated sole source aquifers.

(5) "Water pollution control activities" means actions taken by a public body for the following purposes: (a) To prevent or mitigate pollution of underground water; (b) to control nonpoint sources of water pollution; (c) to restore the water quality of fresh water lakes; and (d) to maintain or improve water quality through the use of water pollution control facilities or other means.

(6) "Public body" means the state of Washington or any agency, county, city or town, conservation district, other political subdivision, municipal corporation, quasi-

municipal corporation, and those Indian tribes now or hereafter recognized as such by the federal government.

(7) "Water pollution" means such contamination, or other alteration of the physical, chemical, or biological properties of any waters of the state, including change in temperature, taste, color, turbidity, or odor of the waters, or such discharge of any liquid, gaseous, solid, radioactive, or other substance into any waters of the state as will or is likely to create a nuisance or render such waters harmful, detrimental, or injurious to the public health, safety, or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish, or other aquatic life.

(8) "Nonpoint source water pollution" means pollution that enters any waters of the state from any dispersed water-based or land-use activities, including, but not limited to, atmospheric deposition, surface water runoff from agricultural lands, urban areas, and forest lands, subsurface or underground sources, and discharges from boats or other marine vessels.

(9) "Sole source aquifer" means the sole or principal source of public drinking water for an area designated by the administrator of the environmental protection agency pursuant to Public Law 93-523, Sec. 1424(b). [1987 c 436 § 5; 1986 c 3 § 2.]

Effective dates—1986 c 3: See note following RCW 82.24.027.

70.146.030 Water quality account—Progress report. (1) The water quality account is hereby created in the state treasury. Moneys in the account may be used only in a manner consistent with this chapter. Moneys deposited in the account shall be administered by the department of ecology and shall be subject to legislative appropriation. Moneys placed in the account shall include tax receipts as provided in RCW 82.24.027, 82.26.025, and 82.32.390, principal and interest from the repayment of any loans granted pursuant to this chapter, and any other moneys appropriated to the account by the legislature. All earnings from investment of balances in the water quality account, except as provided in RCW 43.84.090, shall be credited to the water quality account.

(2) The department may use or permit the use of any moneys in the account to make grants or loans to public bodies, including grants to public bodies as cost-sharing moneys in any case where federal, local, or other funds are made available on a cost-sharing basis, for water pollution control facilities and activities, or for purposes of assisting a public body to obtain an ownership interest in water pollution control facilities and/or to defray a part of the payments made by a public body to a service provider under a service agreement entered into pursuant to RCW 70.150.060, within the purposes of this chapter and for related administrative expenses. No more than three percent of the moneys deposited in the account may be used by the department to pay for the administration of the grant and loan program authorized by this chapter.

(3) The department shall present a progress report each biennium on the use of moneys from the account to the chairs of the committees on ways and means of the

senate and house of representatives, including one copy to the staff of each of the committees. [1987 c 505 § 64; 1987 c 436 § 6; 1986 c 3 § 3.]

Reviser's note: This section was amended by 1987 c 436 § 6 and by 1987 c 505 § 64, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective dates—1986 c 3: See note following RCW 82.24.027.

70.146.040 Level of grant or loan not precedent. No grant or loan made in this chapter for fiscal year 1987 shall be construed to establish a precedent for levels of grants or loans made from the water quality account thereafter. [1986 c 3 § 6.]

Effective dates—1986 c 3: See note following RCW 82.24.027.

70.146.050 Compliance schedule for secondary treatment. The department of ecology may provide for a phased in compliance schedule for secondary treatment which addresses local factors that may impede compliance with secondary treatment requirements of the federal clean water act.

In determining the length of time to be granted for compliance, the department shall consider the criteria specified in the federal clean water act. [1986 c 3 § 8.]

Effective dates—1986 c 3: See note following RCW 82.24.027.

70.146.060 Water quality account distributions—Limitations. During the period from July 1, 1987, until June 30, 1995, the following limitations shall apply to the department's total distribution of funds appropriated from the water quality account:

(1) Not more than fifty percent for water pollution control facilities which discharge directly into marine waters;

(2) Not more than twenty percent for water pollution control activities that prevent or mitigate pollution of underground waters and facilities that protect federally designated sole source aquifers with at least two-thirds for the Spokane-Rathdrum Prairie Aquifer;

(3) Not more than ten percent for water pollution control activities that protect freshwater lakes and rivers including but not limited to Lake Chelan and the Yakima and Columbia rivers;

(4) Not more than ten percent for activities which control nonpoint source water pollution;

(5) Ten percent and such sums as may be remaining from the categories specified in subsections (1) through (4) of this section for water pollution control activities or facilities as determined by the department; and

(6) Two and one-half percent of the total amounts of moneys under subsections (1) through (5) of this section from February 21, 1986, until December 31, 1995, shall be appropriated biennially to the state conservation commission for the purposes of this chapter. Not less than ten percent of the moneys received by the state conservation commission under the provisions of this section shall be expended on research activities.

The distribution under this section shall not be required to be met in any single fiscal year.

Funds provided for facilities and activities under this chapter may be used for payments to a service provider under a service agreement pursuant to RCW 70.150.060. If funds are to be used for such payments, the department may make periodic disbursements to a public body or may make a single lump sum disbursement. Disbursements of funds with respect to a facility owned or operated by a service provider shall be equivalent in value to disbursements that would otherwise be made if that facility were owned or operated by a public body. Payments under this chapter for waste disposal and management facilities made to public bodies entering into service agreements pursuant to RCW 70.150.060 shall not exceed amounts paid to public bodies not entering into service agreements. [1987 c 527 § 1; 1987 c 436 § 7; 1986 c 3 § 9.]

Reviser's note: This section was amended by 1987 c 436 § 7 and by 1987 c 527 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective dates—1986 c 3: See note following RCW 82.24.027.

70.146.070 Grants or loans for water pollution control facilities—Considerations. When making grants or loans for water pollution control facilities, the department shall consider the following:

(1) The protection of water quality and public health;
 (2) The cost to residential ratepayers if they had to finance water pollution control facilities without state assistance;

(3) Actions required under federal and state permits and compliance orders;

(4) The level of local fiscal effort by residential ratepayers since 1972 in financing water pollution control facilities;

(5) The extent to which the applicant county or city, or if the applicant is another public body, the extent to which the county or city in which the applicant public body is located, has established programs to mitigate nonpoint pollution of the surface or subterranean water sought to be protected by the water pollution control facility named in the application for state assistance; and

(6) The recommendations of the Puget Sound water quality authority and any other board, council, commission, or group established by the legislature or a state agency to study water pollution control issues in the state. [1986 c 3 § 10.]

Effective dates—1986 c 3: See note following RCW 82.24.027.

70.146.075 Extended grant payments. (1) The department of ecology may enter into contracts with local jurisdictions which provide for extended grant payments under which eligible costs may be paid on an advanced or deferred basis.

(2) Extended grant payments shall be in equal annual payments, the total of which does not exceed, on a net present value basis, fifty percent of the total eligible cost of the project incurred at the time of design and construction. The duration of such extended grant payments

shall be for a period not to exceed twenty years. The total of federal and state grant moneys received for the eligible costs of the project shall not exceed fifty percent of the eligible costs.

(3) Any moneys appropriated by the legislature from the water quality account shall be first used by the department of ecology to satisfy the conditions of the extended grant payment contracts. [1987 c 516 § 1.]

70.146.080 Determination of tax receipts in water quality account—Transfer of sufficient moneys from general revenues. Within thirty days after June 30, 1987, and within thirty days after each succeeding fiscal year thereafter, the state treasurer shall determine the tax receipts deposited into the water quality account for the preceding fiscal year. If the tax receipts deposited into the account in each of the fiscal years 1988 and 1989 are less than forty million dollars, the state treasurer shall transfer sufficient moneys from general state revenues into the water quality account to bring the total receipts in each fiscal year up to forty million dollars.

After June 30, 1989, if the tax receipts deposited into the water quality account for the preceding fiscal year are less than forty-five million dollars, the state treasurer shall transfer sufficient moneys from general state revenues into the water quality account to bring the total receipts up to forty-five million dollars. [1986 c 3 § 11.]

Effective dates—1986 c 3: See note following RCW 82.24.027.

70.146.900 Severability—1986 c 3. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1986 c 3 § 16.]

Chapter 70.148

UNDERGROUND PETROLEUM STORAGE TANKS

Sections

70.148.005	Finding—Intent.
70.148.010	Definitions.
70.148.020	Pollution liability reinsurance program trust account.
70.148.030	Pollution liability reinsurance program—Generally.
70.148.040	Rules.
70.148.050	Powers and duties of administrator.
70.148.060	Disclosure of reports and information—Penalty.
70.148.070	Insurer selection process and criteria.
70.148.080	Cancellation or refusal by insurer—Appeal.
70.148.090	Exemptions from Title 48 RCW—Exceptions.
70.148.100	Full implementation prohibited pending further legislation.
70.148.110	Reservation of legislative power.
70.148.900	Expiration of chapter.
70.148.901	Severability—1989 c 383.

70.148.005 Finding—Intent. (1) The legislature finds that:

(a) Final regulations adopted by the United States environmental protection agency (EPA) require owners and operators of underground petroleum storage tanks to demonstrate financial responsibility for accidental releases of petroleum as a precondition to continued ownership and operation of such tanks;

(b) Financial responsibility is demonstrated through the purchase of pollution liability insurance or an acceptable alternative such as coverage under a state financial responsibility program, in the amount of at least five hundred thousand dollars per occurrence and one million dollars annual aggregate depending upon the nature, use, and number of tanks owned or operated;

(c) Many owners and operators of underground petroleum storage tanks cannot purchase pollution liability insurance either because private insurance is unavailable at any price or because owners and operators cannot meet the rigid underwriting standards of existing insurers, nor can many owners and operators meet the strict regulatory standards imposed for alternatives to the purchase of insurance; and

(d) Without a state financial responsibility program for owners and operators of underground petroleum storage tanks, many tank owners and operators will be forced to discontinue the ownership and operation of these tanks.

(2) The purpose of this chapter is to create a state financial responsibility program meeting EPA standards for owners and operators of underground petroleum storage tanks in a manner that:

(a) Minimizes state involvement in pollution liability claims management and insurance administration;

(b) Protects the state of Washington from unwanted and unanticipated liability for accidental release claims;

(c) Creates incentives for private insurers to provide needed liability insurance; and

(d) Parallels generally accepted principles of insurance and risk management.

To that end, this chapter establishes a program to provide pollution liability reinsurance at a price that will encourage a private insurance company or risk retention group to sell pollution liability insurance in accordance with the requirements of this chapter to owners and operators of underground petroleum storage tanks, thereby allowing the owners and operators to comply with the financial responsibility regulations of the EPA.

(3) It is not the intent of this chapter to permit owners and operators of underground petroleum storage tanks to obtain pollution liability insurance without regard to the quality or condition of their storage tanks or without regard to the risk management practices of tank owners and operators, nor is it the intent of this chapter to provide coverage or funding for past or existing petroleum releases. Further, it is the intent of the legislature that the program follow generally accepted insurance underwriting and actuarial principles and to deviate from those principles only to the extent necessary to make pollution liability insurance reasonably affordable and available to owners and operators who meet the requirements of this chapter. [1989 c 383 § 1.]

70.148.010 Definitions. Unless the context requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Accidental release" means any sudden or nonsudden release of petroleum arising from operating an underground storage tank that results in a need for

corrective action, bodily injury, or property damage neither expected nor intended by the owner or operator.

(2) "Administrator" means the Washington pollution liability reinsurance program administrator.

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

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

"Corrective action" does not include:

(a) Replacement or repair of storage tanks or other receptacles;

(b) Replacement or repair of piping, connections, and valves of storage tanks or other receptacles;

(c) Excavation or backfilling done in conjunction with (a) or (b) of this subsection; or

(d) Testing for a suspected accidental release if the results of the testing indicate that there has been no accidental release.

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

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

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

(6) "Washington pollution liability reinsurance program" or "program" means the excess of loss reinsurance program created by this chapter.

(7) "Insured" means the owner or operator who is provided insurance coverage in accordance with this chapter.

(8) "Insurer" means the insurance company or risk retention group licensed or qualified to do business in Washington and authorized by the administrator to provide insurance coverage in accordance with this chapter.

(9) "Occurrence" means an accident, including continuous or repeated exposure to conditions, that results in a release from an underground storage tank.

(10) "Operator" means a person in control of, or having responsibility for, the daily operation of an underground storage tank.

(11) "Owner" means a person who owns an underground storage tank.

(12) "Person" means an individual, trust, firm, joint stock company, corporation (including government corporation), partnership, association, consortium, joint venture, commercial entity, state, municipality, commission, political subdivision of a state, interstate body, the federal government, or any department or agency of the federal government.

(13) "Petroleum" means crude oil or any fraction of crude oil that is liquid at standard conditions of temperature and pressure, which means at sixty degrees Fahrenheit and 14.7 pounds per square inch absolute and includes gasoline, kerosene, heating oils, and diesel fuels.

(14) "Property damage" means:

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

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

(15) "Release" means the emission, discharge, disposal, dispersal, seepage, or escape of petroleum from an underground storage tank into or upon land, ground water, surface water, subsurface soils, or the atmosphere.

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

(17) "Underground storage tank" means any one or a combination of tanks including underground pipes connected to the tank, that is used to contain an accumulation of petroleum and the volume of which (including the volume of the underground pipes connected to the tank) is ten percent or more beneath the surface of the ground. [1989 c 383 § 2.]

70.148.020 Pollution liability reinsurance program trust account. The pollution liability reinsurance program trust account is established in the custody of the state treasurer. All funds appropriated for this chapter and all premiums collected for reinsurance shall be deposited in the account. Expenditures from the account shall be used exclusively for the purposes of this chapter including payment of costs of administering the program. The account is subject to allotment procedures under chapter 43.88 RCW. Expenditures for payment of the costs of administering the program may be made only after appropriation by statute. No appropriation is required for other expenditures from the account. The earnings on any surplus balances in the pollution liability reinsurance program trust account shall be credited to the account notwithstanding RCW 43.84.090. [1989 c 383 § 3.]

70.148.030 Pollution liability reinsurance program—Generally. (1) The Washington pollution liability reinsurance program is created as an independent

agency of the state. The administrative head and appointing authority of the program shall be the administrator who shall be appointed by the governor, with the consent of the senate, and shall serve at the pleasure of the governor. The salary for this office shall be set by the governor pursuant to RCW 43.03.040. The administrator shall appoint an assistant administrator. The administrator, assistant administrator, and up to three other employees are exempt from the civil service law, chapter 41.06 RCW.

(2) The administrator shall employ such other staff as are necessary to fulfill the responsibilities and duties of the administrator. The staff is subject to the civil service law, chapter 41.06 RCW. In addition, the administrator may contract with third parties for services necessary to carry out its activities where this will promote economy, avoid duplication of effort, and make best use of available expertise. Any such contractor or consultant is prohibited from releasing, publishing, or otherwise using any information made available to it under its contractual responsibility without specific permission of the program administrator. The administrator may call upon other agencies of the state to provide technical support and available information as necessary to assist the administrator in meeting the administrator's responsibilities under this chapter. Agencies shall supply this support and information as promptly as circumstances permit.

(3) The governor shall appoint a standing technical advisory committee that is representative of the public, the petroleum marketing industry, business and local government owners of underground storage tanks, and insurance professionals. Individuals appointed to the technical advisory committee shall serve at the pleasure of the governor and without compensation for their services as members, but may be reimbursed for their travel expenses in accordance with RCW 43.03.050 and 43.03.060.

(4) A member of the technical advisory committee of the program is not civilly liable for any act or omission in the course and scope of his or her official capacity unless the act or omission constitutes gross negligence. [1989 c 383 § 4.]

70.148.040 Rules. The administrator may adopt rules consistent with this chapter to carry out the purposes of this chapter. All rules shall be adopted in accordance with chapter 34.05 RCW. [1989 c 383 § 5.]

70.148.050 Powers and duties of administrator. The administrator has the following powers and duties:

(1) To design and from time to time revise an excess of loss reinsurance contract providing coverage to an insurer meeting the requirements of this chapter. In designing the reinsurance contract the administrator shall consider common insurance industry excess of loss reinsurance contract provisions and shall design the contract in accordance with the following guidelines:

(a) The contract shall provide coverage to the insurer for the liability risks of owners and operators of underground storage tanks for third party bodily injury and

property damage and corrective action that are underwritten by the insurer.

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

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

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

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

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

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

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

(6) To monitor the success of the program and periodically make such reports and recommendations to the legislature as the administrator deems appropriate.

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

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

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

(10) To examine the affairs, transactions, accounts, records, documents, and assets of insurers as the administrator deems advisable. [1989 c 383 § 6.]

70.148.060 Disclosure of reports and information—Penalty. (1) All examination and proprietary reports and information obtained by the administrator

and the administrator's staff in soliciting bids from insurers and in monitoring the insurer selected by the administrator shall not be made public or otherwise disclosed to any person, firm, corporation, agency, association, governmental body, or other entity.

(2) Subsection (1) of this section notwithstanding, the administrator may furnish all or part of examination reports prepared by the administrator or by any person, firm, corporation, association, or other entity preparing the reports on behalf of the administrator to:

(a) The Washington state insurance commissioner;

(b) A person or organization officially connected with the insurer as officer, director, attorney, auditor, or independent attorney or independent auditor; and

(c) The attorney general in his or her role as legal advisor to the administrator.

(3) Subsection (1) of this section notwithstanding, the administrator may furnish all or part of the examination or proprietary reports or information obtained by the administrator to:

(a) The Washington state insurance commissioner; and

(b) A person, firm, corporation, association, governmental body, or other entity with whom the administrator has contracted for services necessary to perform his or her official duties.

(4) Examination reports and proprietary information obtained by the administrator and the administrator's staff are not subject to public disclosure under chapter 42.17 RCW.

(5) A person who violates any provision of this section is guilty of a gross misdemeanor. [1989 c 383 § 7.]

70.148.070 Insurer selection process and criteria. (1) In selecting an insurer to provide pollution liability insurance coverage to owners and operators of underground storage tanks, the administrator shall evaluate bids based upon criteria established by the administrator that shall include:

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

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

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

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

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

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

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

(2) The successful bidder shall agree to provide liability insurance coverage to owners and operators of underground storage tanks for third party bodily injury

and property damage and corrective action consistent with the following minimum standards:

(a) The insurer shall provide coverage for defense costs.

(b) The insurer shall collect a deductible from the insured for corrective action in an amount approved by the administrator.

(c) The insurer shall provide coverage for accidental releases in the amount of five hundred thousand dollars per occurrence and one million dollars annual aggregate but no more than one million dollars per occurrence and two million dollars annual aggregate exclusive of defense costs.

(d) The insurer shall require insurance applicants to meet at least the following underwriting standards before issuing coverage to the applicant:

(i) The applicant must be in compliance with statutes, ordinances, rules, regulations, and orders governing the ownership and operation of underground storage tanks as identified by the administrator by rule; and

(ii) The applicant must exercise adequate underground storage tank risk management as specified by the administrator by rule.

(e) The insurer may exclude coverage for losses arising before the effective date of coverage, and the administrator may adopt rules establishing standards for determining whether a loss was incurred before the effective date of coverage.

(f) The insurer may exclude coverage for bodily injury, property damage, and corrective action as permitted by the administrator by rule.

(g) The insurer shall use a variable rate schedule approved by the administrator taking into account tank type, tank age, and other factors specified by the administrator.

(3) The administrator shall adopt all rules necessary to implement this section. In developing and adopting rules governing rates, deductibles, underwriting standards, and coverage conditions, limitations, and exclusions, the administrator shall balance the owner and operator's need for coverage with the need to maintain the actuarial integrity of the program and shall consult with the standing technical advisory committee established under RCW 70.148.030(3). In developing and adopting rules governing coverage exclusions affecting corrective action, the administrator shall consult with the Washington state department of ecology.

(4) Notwithstanding the definitions contained in RCW 70.148.010, the administrator may permit an insurer to use different words or phrases describing the coverage provided under the program. In permitting such deviations from the definitions contained in RCW 70.148.010, the administrator shall consider the regulations adopted by the United States environmental protection agency requiring financial responsibility by owners and operators of underground petroleum storage tanks.

(5) Owners and operators of underground storage tanks or sites containing underground storage tanks where a preexisting release has been identified or where the owner or operator knows of a preexisting release are

eligible for coverage under the program subject to the following conditions:

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

(b) If the owner or operator files a claim with the insurer, the owner or operator has the burden of proving that the claim is not related to a preexisting release until the owner or operator demonstrates to the satisfaction of the administrator that corrective action has been completed. [1989 c 383 § 8.]

70.148.080 Cancellation or refusal by insurer—Appeal. If the insurer cancels or refuses to issue or renew a policy, the affected owner or operator may appeal the insurer's decision to the administrator. The administrator shall conduct a brief adjudicative proceeding under chapter 34.05 RCW. [1989 c 383 § 9.]

70.148.090 Exemptions from Title 48 RCW—Exceptions. (1) The activities and operations of the program are exempt from the provisions and requirements of Title 48 RCW and to the extent of their participation in the program, the activities and operations of the insurer selected by the administrator to provide liability insurance coverage to owners and operators of underground storage tanks are exempt from the requirements of Title 48 RCW except for:

(a) Chapter 48.03 RCW pertaining to examinations;

(b) RCW 48.05.250 pertaining to annual reports;

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

(d) Chapter 48.13 RCW pertaining to investments;

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

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

(2) To the extent of their participation in the program, the insurer selected by the administrator to provide liability insurance coverage to owners and operators of underground storage tanks shall not participate in the Washington insurance guaranty association nor shall the association be liable for coverage provided to owners and operators of underground storage tanks issued in connection with the program. [1989 c 383 § 10.]

70.148.100 Full implementation prohibited pending further legislation. (1) The administrator shall report to the legislature by January 1, 1990, on the estimated costs to the insured and the state of implementing the program including proposed coverage, rates, and underwriting the insurer recommended by the administrator. The administrator shall seek advice from the department of revenue on the tax rate imposed under RCW 82.23A.020 and include a recommendation in the report on any necessary tax rate adjustments.

(2) Until and unless the legislature enacts legislation authorizing the administrator to fully implement the program, the administrator shall take no action nor enter into any contract that binds the state to providing pollution liability insurance or reinsurance as provided in this chapter.

(3) Nothing contained in this section shall prohibit the administrator from entering into contracts to assist in the development or analysis of information necessary to complete the report to the legislature nor shall this section prohibit the administrator from entering into contracts to analyze and design insurance and reinsurance policies to the extent necessary to develop the probable costs of full program implementation. [1989 c 383 § 11.]

70.148.110 Reservation of legislative power. The legislature reserves the right to amend or repeal all or any part of this chapter at any time, and there is no vested right of any kind against such amendment or repeal. All the rights, privileges, or immunities conferred by this chapter or any acts done under it exist subject to the power of the legislature to amend or repeal this chapter at any time. [1989 c 383 § 12.]

70.148.900 Expiration of chapter. This chapter shall expire June 1, 1995. [1989 c 383 § 13.]

70.148.901 Severability—1989 c 383. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1989 c 383 § 20.]

Chapter 70.150

WATER QUALITY JOINT DEVELOPMENT ACT

Sections

70.150.010	Purpose—Legislative intent.
70.150.020	Definitions.
70.150.030	Agreements with service providers—Contents—Sources of funds for periodic payments under agreements.
70.150.040	Service agreements and related agreements—Procedural requirements.
70.150.050	Sale, lease, or assignment of public property to service provider—Use for services to public body.
70.150.060	Public body eligible for grants or loans—Use of grants or loans.
70.150.070	RCW 70.150.030 through 70.150.060 to be additional method of providing services.
70.150.080	Application of other chapters to service agreements under this chapter—Prevailing wages.
70.150.900	Short title.
70.150.905	Severability—1986 c 244.

70.150.010 Purpose—Legislative intent. The long-range health and economic and environmental goals for the state of Washington require the protection of the state's surface and underground waters for the health, safety, use, and enjoyment of its people. It is the purpose of this chapter to provide public bodies an additional means by which to provide for financing, development, and operation of water pollution control facilities needed for achievement of state and federal water pollution control requirements for the protection of the state's waters.

It is the intent of the legislature that public bodies be authorized to provide service from water pollution control facilities by means of service agreements with public

or private parties as provided in this chapter. [1986 c 244 § 1.]

70.150.020 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Water pollution control facilities" or "facilities" means any facilities, systems, or subsystems owned or operated by a public body, or owned or operated by any person or entity for the purpose of providing service to a public body, for the control, collection, storage, treatment, disposal, or recycling of wastewater, including but not limited to sanitary sewage, storm water, residential wastes, commercial wastes, industrial wastes, and agricultural wastes, that are causing or threatening the degradation of subterranean or surface bodies of water due to concentrations of conventional, nonconventional, or toxic pollutants. Water pollution control facilities do not include dams or water supply systems.

(2) "Public body" means the state of Washington or any agency, county, city or town, political subdivision, municipal corporation, or quasi-municipal corporation.

(3) "Water pollution" means such contamination, or other alteration of the physical, chemical, or biological properties of any surface or subterranean waters of the state, including change in temperature, taste, color, turbidity, or odor of the waters, or such discharge of any liquid, gaseous, solid, radioactive, or other substance into any waters of the state as will or is likely to create a nuisance or render such waters harmful, detrimental, or injurious to the public health, safety, or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish, or other aquatic life.

(4) "Agreement" means any agreement to which a public body and a service provider are parties by which the service provider agrees to deliver service to such public body in connection with its design, financing, construction, ownership, operation, or maintenance of water pollution control facilities in accordance with this chapter.

(5) "Service provider" means any privately owned or publicly owned profit or nonprofit corporation, partnership, joint venture, association, or other person or entity that is legally capable of contracting for and providing service with respect to the design, financing, ownership, construction, operation, or maintenance of water pollution control facilities in accordance with this chapter. [1986 c 244 § 2.]

70.150.030 Agreements with service providers—Contents—Sources of funds for periodic payments under agreements. (1) Public bodies may enter into agreements with service providers for the furnishing of service in connection with water pollution control facilities pursuant to the process set forth in RCW 70.150.040. The agreements may provide that a public body pay a minimum periodic fee in consideration of the service actually available without regard to the amount of service actually used during all or any part of the contractual period. Agreements may be for a term not to exceed forty

years or the life of the facility, whichever is longer, and may be renewable.

(2) The source of funds to meet periodic payment obligations assumed by a public body pursuant to an agreement permitted under this section may be paid from taxes, or solely from user fees, charges, or other revenues pledged to the payment of the periodic obligations, or any of these sources. [1986 c 244 § 3.]

70.150.040 Service agreements and related agreements—Procedural requirements. The legislative authority of a public body may secure services by means of an agreement with a service provider. Such an agreement may obligate a service provider to design, finance, construct, own, operate, or maintain water pollution control facilities by which services are provided to the public body. Service agreements and related agreements under this chapter shall be entered into in accordance with the following procedure:

(1) The legislative authority of the public body shall publish notice that it is seeking to secure certain specified services by means of entering into an agreement with a service provider. The notice shall be published in the official newspaper of the public body, or if there is no official newspaper then in a newspaper in general circulation within the boundaries of the public body, at least once each week for two consecutive weeks. The final notice shall appear not less than sixty days before the date for submission of proposals. The notice shall state (a) the nature of the services needed, (b) the location in the public body's offices where the requirements and standards for construction, operation, or maintenance of projects needed as part of the services are available for inspection, and (c) the final date for the submission of proposals. The legislative authority may undertake a prequalification process by the same procedure set forth in this subsection.

(2) The request for proposals shall (a) indicate the time and place responses are due, (b) include evaluation criteria to be considered in selecting a service provider, (c) specify minimum requirements or other limitations applying to selection, (d) insofar as practicable, set forth terms and provisions to be included in the service agreement, and (e) require the service provider to demonstrate in its proposal that a public body's annual costs will be lower under its proposal than they would be if the public body financed, constructed, owned, operated, and maintained facilities required for service.

(3) The criteria set forth in the request for proposals shall be those determined to be relevant by the legislative authority of the public body, which may include but shall not be limited to: The respondent's prior experience, including design, construction, or operation of other similar facilities; respondent's management capability, schedule availability, and financial resources; cost of the service; nature of facility design proposed by respondents; system reliability; performance standards required for the facilities; compatibility with existing service facilities operated by the public body or other

providers of service to the public body; project performance warranties; penalty and other enforcement provisions; environmental protection measures to be used; and allocation of project risks. The legislative authority shall designate persons or entities (a) to assist it in issuing the request for proposals to ensure that proposals will be responsive to its needs, and (b) to assist it in evaluating the proposals received. The designee shall not be a member of the legislative authority.

(4) After proposals under subsections (1) through (3) of this section have been received, the legislative authority's designee shall determine, on the basis of its review of the proposals, whether one or more proposals have been received from respondents which are (a) determined to be qualified to provide the requested services, and (b) responsive to the notice and evaluation criteria, which shall include, but not be limited to, cost of services. These chosen respondents shall be referred to as the selected respondents in this section. The designee shall conduct a bidder's conference to include all these selected respondents to assure a full understanding of the proposals. The bidder's conference shall also allow the designee to make these selected respondents aware of any changes in the request for proposal. Any information related to revisions in the request for proposal shall be made available to all these selected respondents. Any selected respondent shall be accorded a reasonable opportunity for revision of its proposal prior to commencement of the negotiation provided in subsection (5) of this section, for the purpose of obtaining best and final proposals.

(5) After such conference is held, the designee may negotiate with the selected respondent whose proposal it determines to be the most advantageous to the public body, considering the criteria set forth in the request for proposals. If the negotiation is unsuccessful, the legislative authority may authorize the designee to commence negotiations with any other selected respondent. On completion of this process, the designee shall report to the legislative authority on his or her recommendations and the reasons for them.

(6) Any person aggrieved by the legislative authority's approval of a contract may appeal the determination to an appeals board selected by the public body, which shall consist of not less than three persons determined by the legislative authority to be qualified for such purposes. Such board shall promptly hear and determine whether the public body entered into the agreement in accordance with this chapter and other applicable law. The hearing shall be conducted in the same manner as an adjudicative proceeding under chapter 34.05 RCW. The board shall have the power only to affirm or void the agreement.

(7) Notwithstanding the foregoing, where contracting for design services by the public body is done separately from contracting for other services permitted under this chapter, the contracting for design of water pollution control facilities shall be done in accordance with chapter 39.80 RCW.

(8) A service agreement shall include provision for an option by which a public body may acquire at fair market value facilities dedicated to such service.

(9) Before any service agreement is entered into by the public body, it shall be reviewed and approved by the department of ecology to ensure that the purposes of chapter 90.48 RCW are implemented.

(10) Prior to entering into any service agreement under this chapter, the public body must have made written findings, after holding a public hearing on the proposal, that it is in the public interest to enter into the service agreement and that the service agreement is financially sound and advantageous compared to other methods.

(11) Each service agreement shall include project performance bonds or other security by the service provider which in the judgment of the public body is sufficient to secure adequate performance by the service provider. [1989 c 175 § 136; 1986 c 244 § 4.]

Effective date—1989 c 175: See note following RCW 34.05.010.

Competitive bids—*Inapplicability to certain agreements: RCW 35.22.625 and 36.32.265.*

70.150.050 Sale, lease, or assignment of public property to service provider—Use for services to public body. A public body may sell, lease, or assign public property for fair market value to any service provider as part of a service agreement entered into under the authority of this chapter. The property sold or leased shall be used by the provider, directly or indirectly, in providing services to the public body. Such use may include demolition, modification, or other use of the property as may be necessary to execute the purposes of the service agreement. [1986 c 244 § 5.]

70.150.060 Public body eligible for grants or loans—Use of grants or loans. A public body that enters into a service agreement pursuant to this chapter, under which a facility is owned wholly or partly by a service provider, shall be eligible for grants or loans to the extent permitted by law or regulation as if the entire portion of the facility dedicated to service to such public body were publicly owned. The grants or loans shall be made to and shall inure to the benefit of the public body and not the service provider. Such grants or loans shall be used by the public body for all or part of its ownership interest in the facility, and/or to defray a part of the payments it makes to the service provider under a service agreement if such uses are permitted under the grant or loan program. [1986 c 244 § 6.]

70.150.070 RCW 70.150.030 through 70.150.060 to be additional method of providing services. RCW 70.150.030 through 70.150.060 shall be deemed to provide an additional method for the provision of services from and in connection with facilities and shall be regarded as supplemental and additional to powers conferred by other state laws and by federal laws. [1986 c 244 § 7.]

70.150.080 Application of other chapters to service agreements under this chapter—Prevailing wages. (1)

The provisions of chapters 39.12, 39.19, and 39.25 RCW shall apply to a service agreement entered into under this chapter to the same extent as if the facilities dedicated to such service were owned by a public body.

(2) Subsection (1) of this section shall not be construed to apply to agreements or actions by persons or entities which are not undertaken pursuant to this chapter.

(3) Except for RCW 39.04.175, this chapter shall not be construed as a limitation or restriction on the application of Title 39 RCW to public bodies.

(4) Prevailing wages shall be established as the prevailing wage in the largest city of the county in which facilities are built. [1986 c 244 § 8.]

70.150.900 Short title. This chapter may be cited as the water quality joint development act. [1986 c 244 § 9.]

70.150.905 Severability—1986 c 244. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1986 c 244 § 18.]

Chapter 70.160

WASHINGTON CLEAN INDOOR AIR ACT

Sections

70.160.010	Legislative intent.
70.160.020	Definitions.
70.160.030	Smoking in public places except designated smoking areas prohibited.
70.160.040	Designation of smoking areas in public places—Exceptions—Restaurant smoking areas—Entire facility or area may be designated as nonsmoking.
70.160.050	Owners, lessees to post signs prohibiting or permitting smoking—Boundaries to be clearly designated.
70.160.060	Intent of chapter as applied to certain private workplaces.
70.160.070	Intentional violation of chapter—Removing, defacing, or destroying required sign—Fine—Notice of infraction—Exceptions—Violations of RCW 70.160.040 or 70.160.050—Subsequent violations—Fine—Enforcement by fire officials.
70.160.080	Local regulations authorized.
70.160.100	Penalty assessed under this chapter paid to jurisdiction bringing action.
70.160.900	Short title—1985 c 236.

Smoking in municipal transit vehicle, unlawful bus conduct: RCW 9.91.025.

70.160.010 Legislative intent. The legislature recognizes the increasing evidence that tobacco smoke in closely confined places may create a danger to the health of some citizens of this state. In order to protect the health and welfare of those citizens, it is necessary to prohibit smoking in public places except in areas designated as smoking areas. [1985 c 236 § 1.]

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

(1) "Smoke" or "smoking" means the carrying or smoking of any kind of lighted pipe, cigar, cigarette, or any other lighted smoking equipment.

(2) "Public place" means that portion of any building or vehicle used by and open to the public, regardless of whether the building or vehicle is owned in whole or in part by private persons or entities, the state of Washington, or other public entity, and regardless of whether a fee is charged for admission.

Public places include, but are not limited to: Elevators, public conveyances or transportation facilities, museums, concert halls, theaters, auditoriums, exhibition halls, indoor sports arenas, hospitals, nursing homes, health care facilities or clinics, enclosed shopping centers, retail stores, retail service establishments, financial institutions, educational facilities, ticket areas, public hearing facilities, state legislative chambers and immediately adjacent hallways, public restrooms, libraries, restaurants, waiting areas, lobbies, and reception areas. A public place does not include a private residence. This chapter is not intended to restrict smoking in private facilities which are occasionally open to the public except upon the occasions when the facility is open to the public.

(3) "Restaurant" means any building, structure, or area used, maintained, or advertised as, or held out to the public to be, an enclosure where meals are made available to be consumed on the premises, for consideration of payment. [1985 c 236 § 2.]

70.160.030 Smoking in public places except designated smoking areas prohibited. No person may smoke in a public place except in designated smoking areas. [1985 c 236 § 3.]

70.160.040 Designation of smoking areas in public places—Exceptions—Restaurant smoking areas—Entire facility or area may be designated as non-smoking. (1) A smoking area may be designated in a public place by the owner or, in the case of a leased or rented space, by the lessee or other person in charge except in:

(a) Elevators; buses, except for private hire; streetcars; taxis, except those clearly and visibly designated by the owner to permit smoking; public areas of retail stores and lobbies of financial institutions; office reception areas and waiting rooms of any building owned or leased by the state of Washington or by any city, county, or other municipality in the state of Washington; museums; public meetings or hearings; classrooms and lecture halls of schools, colleges, and universities; and the seating areas and aisle ways which are contiguous to seating areas of concert halls, theaters, auditoriums, exhibition halls, and indoor sports arenas; and

(b) Hallways of health care facilities, with the exception of nursing homes, and lobbies of concert halls, theaters, auditoriums, exhibition halls, and indoor sports arenas, if the area is not physically separated. Owners or other persons in charge are not required to incur any expense to make structural or other physical modifications in providing these areas.

Except as provided in other provisions of this chapter, no public place, other than a bar, tavern, bowling alley, tobacco shop, or restaurant, may be designated as a smoking area in its entirety. If a bar, tobacco shop, or restaurant is designated as a smoking area in its entirety, this designation shall be posted conspicuously on all entrances normally used by the public.

(2) Where smoking areas are designated, existing physical barriers and ventilation systems shall be used to minimize the toxic effect of smoke in adjacent non-smoking areas.

(3) Managers of restaurants who choose to provide smoking areas shall designate an adequate amount of seating to meet the demands of restaurant patrons who wish to smoke. Owners of restaurants are not required to incur any expense to make structural or other physical modifications in providing these areas. Restaurant patrons shall be informed that separate smoking and non-smoking sections are available.

(4) Except as otherwise provided in this chapter, a facility or area may be designated in its entirety as a non-smoking area by the owner or other person in charge. [1985 c 236 § 4.]

70.160.050 Owners, lessees to post signs prohibiting or permitting smoking—Boundaries to be clearly designated. Owners, or in the case of a leased or rented space the lessee or other person in charge, of a place regulated under this chapter shall make every reasonable effort to prohibit smoking in public places by posting signs prohibiting or permitting smoking as appropriate under this chapter. Signs shall be posted conspicuously at each building entrance. In the case of retail stores and retail service establishments, signs shall be posted conspicuously at each entrance and in prominent locations throughout the place. The boundary between a non-smoking area and a smoking permitted area shall be clearly designated so that persons may differentiate between the two areas. [1985 c 236 § 5.]

70.160.060 Intent of chapter as applied to certain private workplaces. This chapter is not intended to regulate smoking in a private enclosed workplace, within a public place, even though such workplace may be visited by nonsmokers, excepting places in which smoking is prohibited by the director of community development, through the director of fire protection, or by other law, ordinance, or regulation. [1986 c 266 § 121; 1985 c 236 § 6.]

Severability—1986 c 266: See note following RCW 38.52.005.

70.160.070 Intentional violation of chapter—Removing, defacing, or destroying required sign—Fine—Notice of infraction—Exceptions—Violations of RCW 70.160.040 or 70.160.050—Subsequent violations—Fine—Enforcement by fire officials. (1) Any person intentionally violating this chapter by smoking in a public place not designated as a smoking area or any person removing, defacing, or destroying a sign required by this chapter is subject to a civil fine of up to one hundred dollars. Local law enforcement agencies

shall enforce this section by issuing a notice of infraction to be assessed in the same manner as traffic infractions. The provisions contained in chapter 46.63 RCW for the disposition of traffic infractions apply to the disposition of infractions for violation of this subsection except as follows:

(a) The provisions in chapter 46.63 RCW relating to the provision of records to the department of licensing in accordance with RCW 46.20.270 are not applicable to this chapter; and

(b) The provisions in chapter 46.63 RCW relating to the imposition of sanctions against a person's driver's license or vehicle license are not applicable to this chapter.

The form for the notice of infraction for a violation of this subsection shall be prescribed by rule of the supreme court.

(2) When violations of RCW 70.160.040 or 70.160.050 occur, a warning shall first be given to the owner or other person in charge. Any subsequent violation is subject to a civil fine of up to one hundred dollars. Each day upon which a violation occurs or is permitted to continue constitutes a separate violation.

(3) Local fire departments or fire districts shall enforce RCW 70.160.040 or 70.160.050 regarding the duties of owners or persons in control of public places, and local health departments shall enforce RCW 70.160.040 or 70.160.050 regarding the duties of owners of restaurants by either of the following actions:

(a) Serving notice requiring the correction of any violation; or

(b) Calling upon the city or town attorney or county prosecutor to maintain an action for an injunction to enforce RCW 70.160.040 and 70.160.050, to correct a violation, and to assess and recover a civil penalty for the violation. [1985 c 236 § 7.]

70.160.080 Local regulations authorized. Local fire departments or fire districts and local health departments may adopt regulations as required to implement this chapter. [1985 c 236 § 9.]

70.160.100 Penalty assessed under this chapter paid to jurisdiction bringing action. Any penalty assessed and recovered in an action brought under this chapter shall be paid to the city or county bringing the action. [1985 c 236 § 8.]

70.160.900 Short title—1985 c 236. This chapter shall be known as the Washington clean indoor air act. [1985 c 236 § 10.]

Chapter 70.162

INDOOR AIR QUALITY IN PUBLIC BUILDINGS

Sections

70.162.005	Finding—Intent.
70.162.010	Definitions.
70.162.020	Department duties.
70.162.030	State building code council duties.
70.162.040	Public agencies—Directive.

70.162.050	Superintendent of public instruction—Model program.
70.162.900	Severability—1989 c 315.

70.162.005 Finding—Intent. The legislature finds that many Washington residents spend a significant amount of their time working indoors and that exposure to indoor air pollutants may occur in public buildings, schools, work places, and other indoor environments. Scientific studies indicate that pollutants common in the indoor air may include radon, asbestos, volatile organic chemicals including formaldehyde and benzene, combustion byproducts including carbon monoxide, nitrogen oxides, and carbon dioxide, metals and gases including lead, chlorine, and ozone, respirable particles, tobacco smoke, biological contaminants, micro-organisms, and other contaminants. In some circumstances, exposure to these substances may cause adverse health effects, including respiratory illnesses, multiple chemical sensitivities, skin and eye irritations, headaches, and other related symptoms. There is inadequate information about indoor air quality within the state of Washington, including the sources and nature of indoor air pollution.

The intent of the legislature is to develop a control strategy that will improve indoor air quality, provide for the evaluation of indoor air quality in public buildings, and encourage voluntary measures to improve indoor air quality. [1989 c 315 § 1.]

70.162.010 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Department" means the department of labor and industries.

(2) "Public agency" means a state office, commission, committee, bureau, or department.

(3) "Industry standard" means the 62-1981R standard established by the American society of heating, refrigerating, and air conditioning engineers as codified in M-1602 of the building officials and code administrators international manual as of January 1, 1990. [1989 c 315 § 2.]

70.162.020 Department duties. The department shall, in coordination with other appropriate state agencies:

(1) Recommend a policy for evaluation and prioritization of state-owned or leased buildings with respect to indoor air quality;

(2) Recommend stronger workplace regulation of indoor air quality under the Washington industrial safety and health act;

(3) Review indoor air quality programs in public schools administered by the superintendent of public instruction and the department of social and health services;

(4) Provide educational and informational pamphlets or brochures to state agencies on indoor air quality standards; and

(5) Recommend to the legislature measures to implement the recommendations, if any, for the improvement

of indoor air quality in public buildings within a reasonable period of time. [1989 c 315 § 3.]

70.162.030 State building code council duties. The state building code council is directed to:

(1) Review the state building code to determine the adequacy of current mechanical ventilation and filtration standards prescribed by the state compared to the industry standard; and

(2) Make appropriate changes in the building code to bring the state prescribed standards into conformity with the industry standard. [1989 c 315 § 4.]

70.162.040 Public agencies—Directive. Public agencies are encouraged to:

(1) Evaluate the adequacy of mechanical ventilation and filtration systems in light of the recommendations of the American society of heating, refrigerating, and air conditioning engineers and the building officials and code administrators international; and

(2) Maintain and operate any mechanical ventilation and filtration systems in a manner that allows for maximum operating efficiency consistent with the recommendations of the American society of heating, refrigerating, and air conditioning engineers and the building officials and code administrators international. [1989 c 315 § 5.]

70.162.050 Superintendent of public instruction—Model program. (1) The superintendent of public instruction may implement a model indoor air quality program in a school district selected by the superintendent.

(2) The superintendent shall ensure that the model program includes:

(a) An initial evaluation by an indoor air quality expert of the current indoor air quality in the school district. The evaluation shall be completed within ninety days after the beginning of the school year;

(b) Establishment of procedures to ensure the maintenance and operation of any ventilation and filtration system used. These procedures shall be implemented within thirty days of the initial evaluation;

(c) A reevaluation by an indoor air quality expert, to be conducted approximately two hundred seventy days after the initial evaluation; and

(d) The implementation of other procedures or plans that the superintendent deems necessary to implement the model program.

(3) The superintendent shall make a report by December 1, 1990, to the appropriate committees of the legislature that includes:

(a) A summary and evaluation of the model program;

(b) An evaluation of the adequacy of mechanical ventilation and filtration systems used in public schools; and

(c) Recommendations to ensure acceptable indoor air quality in all public schools. [1989 c 315 § 6.]

70.162.900 Severability—1989 c 315. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or

the application of the provision to other persons or circumstances is not affected. [1989 c 315 § 7.]

Chapter 70.164

LOW-INCOME RESIDENTIAL WEATHERIZATION PROGRAM

Sections

70.164.010	Legislative findings.
70.164.020	Definitions.
70.164.030	Low-income weatherization assistance account.
70.164.040	Proposals for low-income weatherization programs— Matching funds.
70.164.050	Program compliance with laws and rules—Energy assessment required.
70.164.060	Weatherization of leased or rented residences— Limitations.
70.164.070	Payments to low-income weatherization assistance account.
70.164.900	Severability—1987 c 36.

70.164.010 Legislative findings. The legislature finds and declares that weatherization of the residences of low-income households will help conserve energy resources in this state and can reduce the need to obtain energy from more costly conventional energy resources. The legislature also finds that rising energy costs have made it difficult for low-income citizens of the state to afford adequate fuel for residential space heat. Weatherization of residences will lower energy consumption, making space heat more affordable for persons in low-income households. It will also reduce the uncollectible accounts of fuel suppliers resulting from low-income customers not being able to pay fuel bills.

The program implementing the policy of this chapter is necessary to support the poor and infirm and also to benefit the health, safety, and general welfare of all citizens of the state. [1987 c 36 § 1.]

70.164.020 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Department" means the department of community development.

(2) "Energy assessment" means an analysis of a dwelling unit to determine the need for cost-effective energy conservation measures as determined by the department.

(3) "Household" means an individual or group of individuals living in a dwelling unit as defined by the department.

(4) "Low income" means household income that is at or below one hundred twenty-five percent of the federally established poverty level.

(5) "Nonutility sponsor" means any sponsor other than a public service company, municipality, public utility district, mutual or cooperative, furnishing gas or electricity used to heat low-income residences.

(6) "Residence" means a dwelling unit as defined by the department.

(7) "Sponsor" means any entity that submits a proposal under RCW 70.164.040, including but not limited

to any local community action agency, community service agency, or any other participating agency or any public service company, municipality, public utility district, mutual or cooperative, or any combination of such entities that jointly submits a proposal.

(8) "Sponsor match" means the share, if any, of the cost of weatherization to be paid by the sponsor.

(9) "Weatherization" means materials or measures, and their installation, that are used to improve the thermal efficiency of a residence.

(10) "Weatherizing agency" means any approved department grantee or any public service company, municipality, public utility district, mutual or cooperative, or other entity that bears the responsibility for ensuring the performance of weatherization of residences under this chapter and has been approved by the department. [1987 c 36 § 2.]

70.164.030 Low-income weatherization assistance account. (1) The low-income weatherization assistance account is created in the state treasury. All moneys from the money distributed to the state pursuant to Exxon v. United States, 561 F.Supp. 816 (1983), affirmed 773 F.2d 1240 (1985), or any other oil overcharge settlements or judgments distributed by the federal government, that are allocated to the low-income weatherization assistance account shall be deposited in the account. The department may accept such gifts, grants, and endowments from public or private sources as may be made from time to time, in trust or otherwise, and shall deposit such funds in the account. Any moneys received from sponsor match payments shall be deposited in the account. The legislature may also appropriate moneys to the account. Moneys in the account shall be spent pursuant to appropriation and only for the purposes and in the manner provided in RCW 70.164.040. Any moneys appropriated that are not spent by the department shall return to the account.

(2) Notwithstanding RCW 43.84.090, all earnings of investments of balances in the low-income weatherization assistance account shall be credited to the account. [1987 c 36 § 3.]

70.164.040 Proposals for low-income weatherization programs—Matching funds. (1) The department shall solicit proposals for low-income weatherization programs from potential sponsors. A proposal shall state the amount of the sponsor match, the amount requested from the low-income weatherization assistance account, the name of the weatherizing agency, and any other information required by the department.

(2)(a) A sponsor may use its own moneys, including corporate or ratepayer moneys, or moneys provided by landlords, charitable groups, government programs, the Bonneville Power Administration, or other sources to pay the sponsor match.

(b) Moneys provided by a sponsor pursuant to requirements in this section shall be in addition to and shall not supplant any funding for low-income weatherization that would otherwise have been provided by the

sponsor or any other entity enumerated in (a) of this subsection.

(c) No proposal may require any contribution as a condition of weatherization from any household whose residence is weatherized under the proposal.

(d) Proposals shall provide that full levels of all cost-effective structurally feasible measures, as determined by the department, shall be installed when a low-income residence is weatherized.

(3) The department may in its discretion accept, accept in part, or reject proposals submitted. The department shall allocate funds appropriated from the low-income weatherization assistance account among proposals accepted or accepted in part so as to achieve the greatest possible expected monetary and energy savings by low-income households and other energy consumers and shall, to the extent feasible, ensure a balance of participation in proportion to population among low-income households for: (a) Geographic regions in the state; (b) types of fuel used for heating; (c) owner-occupied and rental residences; and (d) single-family and multifamily dwellings. The department may allocate funds to a nonutility sponsor without requiring a sponsor match if the department determines that such an allocation is necessary to provide the greatest benefits to low-income residents of the state.

(4) (a) A sponsor may elect to: (i) Pay a sponsor match as a lump sum at the time of weatherization, or (ii) make yearly payments to the low-income weatherization assistance account over a period not to exceed ten years. If a sponsor elects to make yearly payments, the value of the payments shall not be less than the value of the lump sum payment that would have been made under (i) of this subsection.

(b) The department may permit a sponsor to meet its match requirement in whole or in part through providing labor, materials, or other in-kind expenditures.

(5) The department shall adopt rules to carry out this section. [1987 c 36 § 4.]

70.164.050 Program compliance with laws and rules—Energy assessment required. (1) The department is responsible for ensuring that sponsors and weatherizing agencies comply with the state laws, the department's rules, and the sponsor's proposal in carrying out proposals.

(2) Before a residence is weatherized, the department shall require that an energy assessment be conducted. [1987 c 36 § 5.]

70.164.060 Weatherization of leased or rented residences—Limitations. Before a leased or rented residence is weatherized, written permission shall be obtained from the owner of the residence for the weatherization. The department shall adopt rules to ensure that: (1) The benefits of weatherization assistance in connection with a leased or rented residence accrue primarily to low-income tenants; (2) as a result of weatherization provided under this chapter, the rent on the residence is not increased and the tenant is not evicted; and (3) as a result of weatherization provided under this

chapter, no undue or excessive enhancement occurs in the value of the residence. This section is in the public interest and any violation by a landlord of the rules adopted under this section shall be an act in trade or commerce violating chapter 19.86 RCW, the consumer protection act. [1987 c 36 § 6.]

70.164.070 Payments to low-income weatherization assistance account. Payments to the low-income weatherization assistance account shall be treated, for purposes of state law, as payments for energy conservation and shall be eligible for any tax credits or deductions, equity returns, or other benefits for which conservation investments are eligible. [1987 c 36 § 7.]

70.164.900 Severability—1987 c 36. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1987 c 36 § 9.]

Chapter 70.168

STATE-WIDE TRAUMA CARE SYSTEM

Sections

70.168.010	Legislative finding.
70.168.020	Steering committee—Composition—Appointment.
70.168.030	Analysis of state's trauma system—Plan—Results to legislative committees.
70.168.040	Trauma care system trust account—Creation—Appropriations—Termination.

70.168.010 Legislative finding. The legislature finds and declares that:

(1) Trauma is a severe health problem in the state of Washington and a major cause of death;

(2) Presently, trauma care is very limited in many parts of the state, and rural area health care is in transition with the danger that some communities will be without emergency medical care; and

(3) It is in the best interest of the citizens of Washington state to establish a state-wide trauma care system to reduce costs of inappropriate and inadequate emergency service and minimize the human suffering and costs associated with preventable mortality and morbidity. [1988 c 183 § 1.]

70.168.020 Steering committee—Composition—Appointment. There is hereby created a steering committee composed of representatives of emergency medical providers such as physicians, nurses, hospital personnel, emergency medical technicians, paramedics, and ambulance operators, and local government officials, state officials, and persons affiliated professionally with health science schools. The governor shall appoint members of the steering committee. [1988 c 183 § 2.]

70.168.030 Analysis of state's trauma system—Plan—Results to legislative committees. (1) Upon the recommendation of the steering committee, the director of the office of financial management shall contract with

an independent party for an analysis of the state's trauma system.

(2) The analysis shall contain at a minimum, the following:

(a) The identification of components of a functional state-wide trauma care system, including standards; and
(b) An assessment of the current trauma care program compared with the functional state-wide model identified in subsection (a) of this section, including an analysis of deficiencies and reasons for the deficiencies.

(3) The analysis shall provide a design for a state-wide trauma care system based on the findings of the committee under subsection (2) of this section, with a plan for phased-in implementation. The plan shall include, at a minimum, the following:

(a) Responsibility for implementation;
(b) Administrative authority at the state, regional, and local levels;
(c) Facility, equipment, and personnel standards;
(d) Triage and care criteria;
(e) Data collection and use;
(f) Cost containment strategies;
(g) System evaluation; and
(h) Projected costs.

(4) The steering committee shall submit to the appropriate committees of the legislature the results of the identification and assessment phase of the analysis by July 1, 1989, and the design plan by January 1, 1990. [1988 c 183 § 3.]

70.168.040 Trauma care system trust account—Creation—Appropriations—Termination. (1) The trauma care system trust account is hereby created in the state treasury. Moneys shall be transferred to the trauma care system trust account from the public safety education account or other sources as appropriated. Disbursements shall be made by the office of financial management subject to legislative appropriation.

(2) If a state-wide trauma care system is not established by June 30, 1992, funds in the account shall transfer to the highway safety fund and the account shall terminate. [1988 c 183 § 4.]

Chapter 70.170

HEALTH DATA AND CHARITY CARE

Sections

70.170.010	Intent.
70.170.020	Definitions.
70.170.030	Council—Members—Compensation—Quorum.
70.170.040	Council—Reports—Advisory function—Studies.
70.170.050	Requested studies—Costs.
70.170.060	Charity care—Prohibited and required hospital practices and policies—Rules—Department to monitor and report.
70.170.070	Penalties.
70.170.080	Assessments—Costs.
70.170.090	Confidentiality.
70.170.100	State-wide hospital data system—Design requirements—Reporting requirements—Data available upon request.
70.170.110	Department to provide hospital analyses and reports—Contents.

70.170.900 Effective date—1989 1st ex.s. c 9.
 70.170.905 Severability—1989 1st ex.s. c 9.

70.170.010 Intent. (1) The legislature finds and declares that there is a need for health care information that helps the general public understand health care issues and how they can be better consumers and that is useful to purchasers, payers, and providers in making health care choices and negotiating payments. It is the purpose and intent of this chapter to establish a hospital data collection, storage, and retrieval system which supports these data needs and which also provides public officials and others engaged in the development of state health policy the information necessary for the analysis of health care issues.

(2) The legislature finds that rising health care costs and access to health care services are of vital concern to the people of this state. It is, therefore, essential that strategies be explored that moderate health care costs and promote access to health care services.

(3) The legislature further finds that access to health care is among the state's goals and the provision of such care should be among the purposes of health care providers and facilities. Therefore, the legislature intends that charity care requirements and related enforcement provisions for hospitals be explicitly established.

(4) The lack of reliable statistical information about the delivery of charity care is a particular concern that should be addressed. It is the purpose and intent of this chapter to require hospitals to provide, and report to the state, charity care to persons with acute care needs, and to have a state agency both monitor and report on the relative commitment of hospitals to the delivery of charity care services, as well as the relative commitment of public and private purchasers or payers to charity care funding. [1989 1st ex.s. c 9 § 501.]

70.170.020 Definitions. As used in this chapter:

(1) "Council" means the health care access and cost control council created by this chapter.

(2) "Department" means department of health.

(3) "Hospital" means any health care institution which is required to qualify for a license under RCW 70.41.020(2); or as a psychiatric hospital under chapter 71.12 RCW.

(4) "Secretary" means secretary of health.

(5) "Charity care" means necessary hospital health care rendered to indigent persons, to the extent that the persons are unable to pay for the care or to pay deductibles or co-insurance amounts required by a third-party payer, as determined by the department.

(6) "Sliding fee schedule" means a hospital-determined, publicly available schedule of discounts to charges for persons deemed eligible for charity care; such schedules shall be established after consideration of guidelines developed by the department.

(7) "Special studies" means studies which have not been funded through the department's biennial or other legislative appropriations. [1989 1st ex.s. c 9 § 502.]

70.170.030 Council—Members—Compensation—Quorum. (1) There is created the health care

access and cost control council within the department of health consisting of the following: The director of the department of labor and industries; the administrator of the health care authority; the secretary of social and health services; the administrator of the basic health plan; a person representing the governor on matters of health policy; the secretary of health; and one member from the public-at-large to be selected by the governor who shall represent individual consumers of health care. The public member shall not have any fiduciary obligation to any health care facility or any financial interest in the provision of health care services. Members employed by the state shall serve without pay and participation in the council's work shall be deemed performance of their employment. The public member shall be compensated in accordance with RCW 43.03-.240 and shall be reimbursed for related travel expenses in accordance with RCW 43.03.050 and 43.03.060.

(2) A member of the council designated by the governor shall serve as chairman. The council shall elect a vice-chairman from its members biennially. Meetings of the council shall be held as frequently as its duties require. The council shall keep minutes of its meetings and adopt procedures for the governing of its meetings, minutes, and transactions.

(3) Four members shall constitute a quorum, but a vacancy on the council shall not impair its power to act. No action of the council shall be effective unless four members concur therein. [1989 1st ex.s. c 9 § 503.]

70.170.040 Council—Reports—Advisory function—Studies. (1) In order to advise the department and the board of health in preparing executive request legislation and the state health report according to RCW 43.20.050, and, in order to represent the public interest, the council shall monitor and evaluate hospital and related health care services consistent with RCW 70.170.010. In fulfilling its responsibilities, the council shall have complete access to all the department's data and information systems.

(2) The council shall advise the department on the hospital data collection system required by this chapter.

(3) The council, in addition to participation in the development of the state health report, shall, from time to time, report to the governor and the appropriate committees of the legislature with proposed changes in hospital and related health care services, consistent with the findings in RCW 70.170.010.

(4) The department may undertake, with advice from the council and within available funds, the following studies:

(a) Recommendations regarding health care cost containment, and the assurance of access and maintenance of adequate standards of care;

(b) Analysis of the effects of various payment methods on health care access and costs;

(c) The utility of the certificate of need program and related health planning process;

(d) Methods of permitting the inclusion of advance medical technology on the health care system, while controlling inappropriate use;

(e) The appropriateness of allocation of health care services;

(f) Professional liabilities on health care access and costs, to include:

(i) Quantification of the financial effects of professional liability on health care reimbursement;

(ii) Determination of the effects, if any, of nonmonetary factors upon the availability of, and access to, appropriate and necessary basic health services such as, but not limited to, prenatal and obstetrical care; and

(iii) Recommendation of proposals that would mitigate cost and access impacts associated with professional liability.

The department shall report its findings and recommendations to the governor and the appropriate committees of the legislature not later than July 1, 1991. [1989 1st ex.s. c 9 § 504.]

70.170.050 Requested studies—Costs. The department shall have the authority to respond to requests of others for special studies or analysis. The department may require such sponsors to pay any or all of the reasonable costs associated with such requests that might be approved, but in no event may costs directly associated with any such special study be charged against the funds generated by the assessment authorized under RCW 70.170.080. [1989 1st ex.s. c 9 § 505.]

70.170.060 Charity care—Prohibited and required hospital practices and policies—Rules—Department to monitor and report. (1) No hospital or its medical staff shall adopt or maintain admission practices or policies which result in:

(a) A significant reduction in the proportion of patients who have no third-party coverage and who are unable to pay for hospital services;

(b) A significant reduction in the proportion of individuals admitted for inpatient hospital services for which payment is, or is likely to be, less than the anticipated charges for or costs of such services; or

(c) The refusal to admit patients who would be expected to require unusually costly or prolonged treatment for reasons other than those related to the appropriateness of the care available at the hospital.

(2) No hospital shall adopt or maintain practices or policies which would deny access to emergency care based on ability to pay. No hospital which maintains an emergency department shall transfer a patient with an emergency medical condition or who is in active labor unless the transfer is performed at the request of the patient or is due to the limited medical resources of the transferring hospital. Hospitals must follow reasonable procedures in making transfers to other hospitals including confirmation of acceptance of the transfer by the receiving hospital.

(3) The department shall develop definitions by rule, as appropriate, for subsection (1) of this section and, with reference to federal requirements, subsection (2) of this section. The department shall monitor hospital compliance with subsections (1) and (2) of this section. The

department shall report to the legislature and the governor on hospital compliance with these requirements and shall report individual instances of possible noncompliance to the state attorney general or the appropriate federal agency.

(4) The department shall establish and maintain by rule, consistent with the definition of charity care in RCW 70.170.020, the following:

(a) Uniform procedures, data requirements, and criteria for identifying patients receiving charity care;

(b) A definition of residual bad debt including reasonable and uniform standards for collection procedures to be used in efforts to collect the unpaid portions of hospital charges that are the patient's responsibility.

(5) For the purpose of providing charity care, each hospital shall develop, implement, and maintain a charity care policy which, consistent with subsection (1) of this section, shall enable people below the federal poverty level access to appropriate hospital-based medical services, and a sliding fee schedule for determination of discounts from charges for persons who qualify for such discounts by January 1, 1990. The department shall develop specific guidelines to assist hospitals in setting sliding fee schedules required by this section. All persons with family income below one hundred percent of the federal poverty standard shall be deemed charity care patients for the full amount of hospital charges, provided that such persons are not eligible for other private or public health coverage sponsorship. Persons who may be eligible for charity care shall be notified by the hospital.

(6) Each hospital shall make every reasonable effort to determine the existence or nonexistence of private or public sponsorship which might cover in full or part the charges for care rendered by the hospital to a patient; the family income of the patient as classified under federal poverty income guidelines; and the eligibility of the patient for charity care as defined in this chapter and in accordance with hospital policy. An initial determination of sponsorship status shall precede collection efforts directed at the patient.

(7) The department shall monitor the distribution of charity care among hospitals, with reference to factors such as relative need for charity care in hospital service areas and trends in private and public health coverage. The department shall report to the legislature and executive any problems in distribution which are in contradiction of the intent of this chapter. The report shall include an assessment of the effects of the provisions of this chapter on access to hospital and health care services, as well as an evaluation of the contribution of all purchasers of care to hospital charity care.

(8) The department shall issue a report on the subjects addressed in this section at least annually, with the first report due on July 1, 1990. [1989 1st ex.s. c 9 § 506.]

70.170.070 Penalties. (1) Every person who shall violate or knowingly aid and abet the violation of RCW 70.170.060 (5) or (6), 70.170.080, or 70.170.100, or any valid orders or rules adopted pursuant to these sections, or who fails to perform any act which it is herein made

his or her duty to perform, shall be guilty of a misdemeanor. Following official notice to the accused by the department of the existence of an alleged violation, each day of noncompliance upon which a violation occurs shall constitute a separate violation. Any person violating the provisions of this chapter may be enjoined from continuing such violation. The department has authority to levy civil penalties not exceeding one thousand dollars for violations of this chapter and determined pursuant to this section.

(2) Every person who shall violate or knowingly aid and abet the violation of RCW 70.170.060 (1) or (2), or any valid orders or rules adopted pursuant to such section, or who fails to perform any act which it is herein made his or her duty to perform, shall be subject to the following criminal and civil penalties:

(a) For any initial violations: The violating person shall be guilty of a misdemeanor, and the department may impose a civil penalty not to exceed one thousand dollars as determined pursuant to this section.

(b) For a subsequent violation of RCW 70.170.060 (1) or (2) within five years following a conviction: The violating person shall be guilty of a misdemeanor, and the department may impose a penalty not to exceed three thousand dollars as determined pursuant to this section.

(c) For a subsequent violation with intent to violate RCW 70.170.060 (1) or (2) within five years following a conviction: The criminal and civil penalties enumerated in (a) of this subsection; plus up to a three-year prohibition against the issuance of tax exempt bonds under the authority of the Washington health care facilities authority; and up to a three-year prohibition from applying for and receiving a certificate of need.

(d) For a violation of RCW 70.170.060 (1) or (2) within five years of a conviction under (c) of this subsection: The criminal and civil penalties and prohibition enumerated in (a) and (b) of this subsection; plus up to a one-year prohibition from participation in the state medical assistance or medical care services authorized under chapter 74.09 RCW.

(3) The provisions of chapter 34.05 RCW shall apply to all noncriminal actions undertaken by the department of health, the department of social and health services, and the Washington health care facilities authority pursuant to *this act. [1989 1st ex.s. c 9 § 507.]

*Reviser's note: For codification of "this act" [1989 1st ex.s. c 9], see Codification Tables, Volume 0.

70.170.080 Assessments—Costs. The basic expenses for the hospital data collection and reporting activities of this chapter shall be financed by an assessment against hospitals of no more than four one-hundredths of one percent of each hospital's gross operating costs, to be levied and collected from and after that date, upon which the similar assessment levied under chapter 70.39 RCW is terminated, for the provision of hospital services for its last fiscal year ending on or before June 30th of the preceding calendar year. Budgetary requirements in excess of that limit must be financed by a general fund appropriation by the legislature. All moneys collected

under this section shall be deposited by the state treasurer in the hospital data collection account which is hereby created in the state treasury. All earnings on investments of balances in the hospital data collection account shall be credited to the general fund. The department may also charge, receive, and dispense funds or authorize any contractor or outside sponsor to charge for and reimburse the costs associated with special studies as specified in RCW 70.170.050.

Any amounts raised by the collection of assessments from hospitals provided for in this section which are not required to meet appropriations in the budget act for the current fiscal year shall be available to the department in succeeding years. [1989 1st ex.s. c 9 § 508.]

70.170.090 Confidentiality. The department and any of its contractors or agents shall maintain the confidentiality of any information which may, in any manner, identify individual patients. [1989 1st ex.s. c 9 § 509.]

70.170.100 State-wide hospital data system—Design requirements—Reporting requirements—Data available upon request. (1) The department is responsible for the development, implementation, and custody of a state-wide hospital data system. As part of the design stage for development of the system, the department shall undertake a needs assessment of the types of, and format for, hospital data needed by consumers, purchasers, payers, hospitals, and state government as consistent with the intent of this chapter. The department shall identify a set of hospital data elements and report specifications which satisfy these needs. The council shall review the design of the data system and may direct the department to contract with a private vendor for assistance in the design of the data system. The data elements, specifications, and other design features of this data system shall be made available for public review and comment and shall be published, with comments, as the department's first data plan by January 1, 1990.

(2) Subsequent to the initial development of the data system as published as the department's first data plan, revisions to the data system shall be considered through the department's development of a biennial data plan, as proposed to, and funded by, the legislature through the biennial appropriations process. Costs of data activities outside of these data plans except for special studies shall be funded through legislative appropriations.

(3) In designing the state-wide hospital data system and any data plans, the department shall identify hospital data elements relating to both hospital finances and the use of services by patients. Data elements relating to hospital finances shall be reported by hospitals in conformance with a uniform system of reporting as specified by the department and shall include data elements identifying each hospital's revenues, expenses, contractual allowances, charity care, bad debt, other income, total units of inpatient and outpatient services, and other financial information reasonably necessary to fulfill the purposes of this chapter, for hospital activities as a whole and, as feasible and appropriate, for specified classes of hospital purchasers and payers. Data elements

relating to use of hospital services by patients shall, at least initially, be the same as those currently compiled by hospitals through inpatient discharge abstracts and reported to the Washington state hospital commission.

(4) The state-wide hospital data system shall be uniform in its identification of reporting requirements for hospitals across the state to the extent that such uniformity is necessary to fulfill the purposes of this chapter. Data reporting requirements may reflect differences in hospital size; urban or rural location; scope, type, and method of providing service; financial structure; or other pertinent distinguishing factors. So far as possible, the data system shall be coordinated with any requirements of the federal department of health and human services in its administration of the medicare program and the state in its role of gathering public health statistics, so as to minimize any unduly burdensome reporting requirements imposed on hospitals.

(5) In identifying financial reporting requirements under the state-wide hospital data system, the department may require both annual reports and condensed quarterly reports, so as to achieve both accuracy and timeliness in reporting.

(6) In designing the initial state-wide hospital data system as published in the department's first data plan, the department shall review all existing systems of hospital financial and utilization reporting used in this state to determine their usefulness for the purposes of this chapter, including their potential usefulness as revised or simplified.

(7) Until such time as the state-wide hospital data system and first data plan are developed and implemented and hospitals are able to comply with reporting requirements, the department shall require hospitals to continue to submit the hospital financial and patient discharge information previously required to be submitted to the Washington state hospital commission. Upon publication of the first data plan, hospitals shall have a reasonable period of time to comply with any new reporting requirements and, even in the event that new reporting requirements differ greatly from past requirements, shall comply within two years of July 1, 1989.

(8) The hospital data collected and maintained by the department shall be available for retrieval in original or processed form to public and private requestors within a reasonable period of time after the date of request. The cost of retrieving data for state officials and agencies shall be funded through the state general appropriation. The cost of retrieving data for individuals and organizations engaged in research or private use of data shall be funded by a fee schedule developed by the department which reflects the direct cost of retrieving the data in the requested form. [1989 1st ex.s. c 9 § 510.]

70.170.110 Department to provide hospital analyses and reports—Contents. The department shall provide, or may contract with a private entity to provide, hospital analyses and reports consistent with the purposes of this chapter. Prior to release, the department shall provide affected hospitals with an opportunity to review and

comment on reports which identify individual hospital data with respect to accuracy and completeness, and otherwise shall focus on aggregate reports of hospital performance. These reports shall include:

(1) Consumer guides on purchasing hospital care services and publications providing verifiable and useful comparative information to consumers on hospitals and hospital services;

(2) Reports for use by classes of purchasers, payers, and providers as specified for content and format in the state-wide data system and data plan; and

(3) Reports on relevant hospital policy issues including the distribution of hospital charity care obligations among hospitals; absolute and relative rankings of Washington and other states, regions, and the nation with respect to expenses, net revenues, and other key indicators; hospital efficiencies; and the effect of medicare, medicaid, and other public health care programs on rates paid by other purchasers of hospital care. [1989 1st ex.s. c 9 § 511.]

70.170.900 Effective date—1989 1st ex.s. c 9. See RCW 43.70.910.

70.170.905 Severability—1989 1st ex.s. c 9. See RCW 43.70.920.

Chapter 70.175

RURAL HEALTH SYSTEM PROJECT

Sections

70.175.010	Legislative findings.
70.175.020	Definitions.
70.175.030	Project established—Implementation.
70.175.040	Rules.
70.175.050	Secretary's powers and duties.
70.175.060	Duties and responsibilities of participating communities.
70.175.070	Cooperation of state agencies.
70.175.080	Powers and duties of secretary—Contracting.
70.175.090	Participants authorized to contract—Penalty—Secretary and state exempt from liability.
70.175.100	Licensure—Rules—Report.
70.175.110	Licensure—Rules—Duties of department.
70.175.120	Rural health care facility not a hospital.
70.175.900	Effective date—1989 1st ex.s. c 9.
70.175.910	Severability—1989 1st ex.s. c 9.

70.175.010 Legislative findings. (1) The legislature declares that availability of health services to rural citizens is an issue on which a state policy is needed.

The legislature finds that changes in the demand for health care, in reimbursement policies of public and private purchasers, [and] in the economic and demographic conditions in rural areas threaten the availability of care services.

In addition, many factors inhibit needed changes in the delivery of health care services to rural areas which include inappropriate and outdated regulatory laws, aging and inefficient health care facilities, the absence of local planning and coordination of rural health care services, the lack of community understanding of the real costs and benefits of supporting rural hospitals, the lack of regional systems to assure access to care that cannot

be provided in every community, and the absence of state health care policy objectives.

The legislature further finds that the creation of effective health care delivery systems that assure access to health care services provided in an affordable manner will depend on active local community involvement. It further finds that it is the duty of the state to create a regulatory environment and health care payment policy that promotes innovation at the local level to provide such care.

It further declares that it is the responsibility of the state to develop policy that provides direction to local communities with regard to such factors as a definition of health care services, identification of state-wide health status outcomes, clarification of state, regional, [and] community responsibilities and interrelationships for assuring access to affordable health care and continued assurances that quality health care services are provided.

(2) The legislature further finds that many rural communities do not operate hospitals in a cost-efficient manner. The cost of operating the rural hospital often exceeds the revenues generated. Some of these hospitals face closure, which may result in the loss of health care services for the community. Many communities are struggling to retain health care services by operating a cost-efficient facility located in the community. Current regulatory laws do not provide for the facilities licensure option that is appropriate for rural areas. A major barrier to the development of an appropriate rural licensure model is federal medicare approval to guarantee reimbursement for the costs of providing care and operating the facility. Medicare certification typically elaborates upon state licensure requirements. Medicare approval of reimbursement is more likely if the state has developed legal criteria for a rural-appropriate health facility. Medicare has begun negotiations with other states facing similar problems to develop exceptions with the goal of allowing reimbursement of rural alternative health care facilities. It is in the best interests of rural citizens for Washington state to begin negotiations with the federal government with the objective of designing a medicare eligible rural health care facility structured to meet the health care needs of rural Washington and be eligible for federal and state financial support for its development and operation. [1989 1st ex.s. c 9 § 701.]

70.175.020 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Administrative structure" means a system of contracts or formal agreements between organizations and persons providing health services in an area that establishes the roles and responsibilities each will assume in providing the services of the rural health care facility.

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

(3) "Health care delivery system" means services and personnel involved in providing health care to a population in a geographic area.

(4) "Health care facility" means any land, structure, system, machinery, equipment, or other real or personal

property or appurtenances useful for or associated with delivery of inpatient or outpatient health care service or support for such care or any combination thereof which is operated or undertaken in connection with a hospital, clinic, health maintenance organization, diagnostic or treatment center, extended care facility, or any facility providing or designed to provide therapeutic, convalescent or preventive health care services.

(5) "Health care system strategic plan" means a plan developed by the participant and includes identification of health care service needs of the participant, services and personnel necessary to meet health care service needs, identification of health status outcomes and outcome measures, identification of funding sources, and strategies to meet health care needs including measures of effectiveness.

(6) "Institutions of higher education" means educational institutions as defined in RCW 28B.10.016.

(7) "Local administrator" means an individual or organization representing the participant who may enter into legal agreements on behalf of the participant.

(8) "Participant" means communities, counties, and regions that serve as a health care catchment area where the project site is located.

(9) "Project" means the Washington rural health system project.

(10) "Project site" means a site selected to participate in the project.

(11) "Rural health care facility" means a facility, group, or other formal organization or arrangement of facilities, equipment, and personnel capable of providing or assuring availability of health services in a rural area. The services to be provided by the rural health care facility may be delivered in a single location or may be geographically dispersed in the community health service catchment area so long as they are organized under a common administrative structure or through a mechanism that provides appropriate referral, treatment, and follow-up.

(12) "Secretary" means the secretary of health. [1989 1st ex.s. c 9 § 702.]

70.175.030 Project established—Implementation.

(1) The department shall establish the Washington rural health system project to provide financial and technical assistance to participants. The goal of the project is to help assure access to affordable health care services to citizens in the rural areas of Washington state.

(2) Administrative costs necessary to implement this project shall be kept at a minimum to insure the maximum availability of funds for participants.

(3) The secretary may appoint such technical or advisory committees as he or she deems necessary consistent with the provisions of RCW 43.70.040. In appointing an advisory committee the secretary should assure representation by health care professionals, health care providers, and those directly involved in the purchase, provision, or delivery of health care services as well as consumers, rural community leaders, and those knowledgeable of the issues involved with health care public policy. Individuals appointed to any technical advisory

committee shall serve without compensation for their services as members, but may be reimbursed for their travel expenses pursuant to RCW 43.03.050 and 43.03.060.

(4) The secretary may contract with third parties for services necessary to carry out activities to implement this chapter where this will promote economy, avoid duplication of effort, and make the best use of available expertise.

(5) The secretary may apply for, receive, and accept gifts and other payments, including property and service, from any governmental or other public or private entity or person, and may make arrangements as to the use of these receipts, including the undertaking of special studies and other projects related to the delivery of health care in rural areas.

(6) In designing and implementing the project the secretary shall consider the report of the Washington rural health care commission established under chapter 207, Laws of 1988. Nothing in this chapter requires the secretary to follow any specific recommendation contained in that report except as it may also be included in this chapter. [1989 1st ex.s. c 9 § 703.]

70.175.040 Rules. The department shall adopt rules consistent with this chapter to carry out the purpose of this chapter. All rules shall be adopted in accordance with chapter 34.05 RCW. All rules and procedures adopted by the department shall minimize paperwork and compliance requirements for participants and should not be complex in nature so as to serve as a barrier or disincentive for prospective participants applying for the project. [1989 1st ex.s. c 9 § 704.]

70.175.050 Secretary's powers and duties. The secretary shall have the following powers and duties:

(1) To design the project application and selection process, including a program to advertise the project to rural communities and encourage prospective applicants to apply. Up to six project sites shall be selected which are eligible to receive seed grant funding. Funding shall be used to hire consultants and perform other activities necessary to meet participant requirements defined in this chapter. In considering selection of participants eligible for seed grant funding, the secretary should consider project sites where (a) existing access to health care is severely inadequate, (b) where a financially vulnerable health care facility is present, (c) where a financially vulnerable health care facility is present and an adjoining community in the same catchment area has a competing facility, or (d) where improvements in the delivery of primary care services, including preventive care services, is needed.

Up to six additional project sites shall be selected which receive no funding. The secretary shall select unfunded project sites based upon merit and to the extent possible, based upon the desire to address specific health status outcomes;

(2) To design acceptable outcome measures which are based upon health status outcomes and are to be part of the community plan, to work with communities to set

acceptable local outcome targets in the health care delivery system strategic plan, and to serve as a general resource to participants in the planning, administration, and evaluation of project sites;

(3) To assess and approve community strategic plans developed by participants, including an assessment of the technical and financial feasibility of implementing the plan and whether adequate local support for the plan is demonstrated;

(4) To define health care catchment areas, identify financially vulnerable health care facilities, and to identify rural populations which are not receiving adequate health care services;

(5) To identify existing private and public resources which may serve as eligible consultants, identify technical assistance resources for communities in the project, create a register of public and private technical resource services available and provide the register to participants. The secretary shall screen consultants to determine their qualifications prior to including them on the register;

(6) To work with other state agencies, institutions of higher education, and other public and private organizations to coordinate technical assistance services for participants;

(7) To administer available funds for community use while participating in the project and establish procedures to assure accountability in the use of seed grant funds by participants;

(8) To define data and other minimum requirements for adequate evaluation of projects and to develop and implement an overall monitoring and evaluation mechanism for the projects;

(9) To act as facilitator for multiple applicants and entrants to the project;

(10) To report to the appropriate legislative committees and others from time to time on the progress of the projects including the identification of statutory and regulatory barriers to successful completion of rural health care delivery goals and an ongoing evaluation of the project. [1989 1st ex.s. c 9 § 705.]

70.175.060 Duties and responsibilities of participating communities. The duties and responsibilities of participating communities shall include:

(1) To involve major health care providers, businesses, public officials, and other community leaders in project design, administration, and oversight;

(2) To identify an individual or organization to serve as the local administrator of the project. The secretary may require the local administrator to maintain acceptable accountability of seed grant funding;

(3) To coordinate and avoid duplication of public health and other health care services;

(4) To assess and analyze community health care needs;

(5) To identify services and providers necessary to meet needs;

(6) To develop outcome measures to assess the long-term effectiveness of modifications initiated through the project;

(7) To write a health care delivery system strategic plan including to the extent possible, identification of outcome measures needed to achieve health status outcomes identified in the plan. New organizational structures created should integrate existing programs and activities of local health providers so as to maximize the efficient planning and delivery of health care by local providers and promote more accessible and affordable health care services to rural citizens. Participants should create health care delivery system strategic plans which promote health care services which the participant can financially sustain;

(8) To screen and contract with consultants for technical assistance if the project site was selected to receive funding and assistance is needed;

(9) To monitor and evaluate the project in an ongoing manner;

(10) To implement necessary changes as defined in the plans such as converting existing facilities, developing or modifying services, recruiting providers, or obtaining agreements with other communities to provide some or all health care services; and

(11) To provide data and comply with other requirements of the administrator that are intended to evaluate the effectiveness of the projects. [1989 1st ex.s. c 9 § 706.]

70.175.070 Cooperation of state agencies. (1) The secretary may call upon other agencies of the state to provide available information to assist the secretary in meeting the responsibilities under this chapter. This information shall be supplied as promptly as circumstances permit.

(2) The secretary may call upon other state agencies including institutions of higher education as authorized under Title 28B RCW to identify and coordinate the delivery of technical assistance services to participants in meeting the responsibilities of this chapter. The state agencies and institutions of higher education shall cooperate and provide technical assistance to the secretary to the extent that current funding for these agencies and institutions of higher education permits. [1989 1st ex.s. c 9 § 707.]

70.175.080 Powers and duties of secretary—Contracting. In addition to the powers and duties specified in RCW 70.175.050 the secretary has the power to enter into contracts for the following functions and services:

(1) With public or private agencies, to assist the secretary in the secretary's duties to design or revise the health status outcomes, or to monitor or evaluate the performance of participants.

(2) With public or private agencies, to provide technical or professional assistance to project participants. [1989 1st ex.s. c 9 § 708.]

70.175.090 Participants authorized to contract—Penalty—Secretary and state exempt from liability.

(1) Participants are authorized to use funding granted to them by the secretary for the purpose of contracting for technical assistance services. Participants shall use only

consultants identified by the secretary for consulting services unless the participant can show that an alternative consultant is qualified to provide technical assistance and is approved by the secretary. Adequate records shall be kept by the participant showing project site expenditures from grant moneys. Inappropriate use of grant funding shall be a gross misdemeanor.

(2) In providing a list of qualified consultants the secretary and the state shall not be held responsible for assuring qualifications of consultants and shall be held harmless for the actions of consultants. Furthermore, the secretary and the state shall not be held liable for the failure of participants to meet contractual obligations established in connection with project participation. [1989 1st ex.s. c 9 § 709.]

70.175.100 Licensure—Rules—Report. (1) The department shall establish and adopt such standards and regulations pertaining to the construction, maintenance, and operation of a rural health care facility and the scope of health care services, and rescind, amend, or modify such regulations from time to time as necessary in the public interest. In developing the regulations, the department shall consult with representatives of rural hospitals, community mental health centers, public health departments, community and migrant health clinics, and other providers of health care in rural communities. The department shall also consult with third-party payers, consumers, local officials, and others to insure broad participation in defining regulatory standards and requirements that are appropriate for a rural health care facility.

(2) When developing the rural health care facility licensure rules, the department shall consider the report of the Washington rural health care commission established under chapter 207, Laws of 1988. Nothing in this chapter requires the department to follow any specific recommendation contained in that report except as it may also be included in this chapter.

(3) Upon developing rules, the department shall enter into negotiations with appropriate federal officials to seek medicare approval of the facility and financial participation of medicare and other federal programs in developing and operating the rural health care facility.

(4) The department shall report periodically to the appropriate committees of the legislature on the progress of rule development and negotiations with the federal government. [1989 1st ex.s. c 9 § 710.]

70.175.110 Licensure—Rules—Duties of department. In developing the rural health care facility licensure regulations, the department shall:

(1) Minimize regulatory requirements to permit local flexibility and innovation in providing services;

(2) Promote the cost-efficient delivery of health care and other social services as is appropriate for the particular local community;

(3) Promote the delivery of services in a coordinated and nonduplicative manner;

(4) Maximize the use of existing health care facilities in the community;

(5) Permit regionalization of health care services when appropriate;

(6) Provide for linkages with hospitals, tertiary care centers, and other health care facilities to provide services not available in the facility; and

(7) Achieve health care outcomes defined by the community through a community planning process. [1989 1st ex.s. c 9 § 711.]

70.175.120 Rural health care facility not a hospital.

The rural health care facility is not considered a hospital for building occupancy purposes. [1989 1st ex.s. c 9 § 712.]

70.175.900 Effective date—1989 1st ex.s. c 9. See RCW 43.70.910.

70.175.910 Severability—1989 1st ex.s. c 9. See RCW 43.70.920.

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Title 71

MENTAL ILLNESS

Chapters

- 71.02** Mental illness—Reimbursement of costs for treatment.
- 71.05** Mental illness.
- 71.06** Sexual psychopaths.
- 71.12** Private establishments.
- 71.20** Local funds for community services.
- 71.24** Community mental health services act.
- 71.28** Mental health and developmental disabilities services—Interstate contracts.
- 71.34** Mental health services for minors.
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Alcoholism, intoxication, and drug addiction treatment: Chapters 70-.96 and 70.96A RCW.

Children's center for research and training in mental retardation: RCW 28B.20.410 through 28B.20.414.

County hospitals: Chapter 36.62 RCW.

Harrison Memorial Hospital: RCW 72.29.010.

Interstate compact on mental health: Chapter 72.27 RCW.

Jurisdiction over Indians concerning mental illness: Chapter 37.12 RCW.

Mental health: Chapter 72.06 RCW.

Nonresident mentally ill, sexual psychopaths, and psychopathic delinquents: Chapter 72.25 RCW.

State hospitals for mentally ill: Chapter 72.23 RCW.

Chapter 71.02

MENTAL ILLNESS—REIMBURSEMENT OF COSTS FOR TREATMENT

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- 71.02.490** Authority over patient—Federal agencies, private establishments.
- 71.02.900** Construction and purpose—1959 c 25.
- Commitment to veterans' administration or other federal agency: RCW 73.36.165.*
- Criminally insane—Procedures, rights and responsibilities: Chapter 10.77 RCW.*
- Guardianship of estate or person: Chapters 11.88 and 11.92 RCW.*
- Mental illness: Chapter 71.05 RCW.*
- State hospitals for mentally ill: Chapter 72.23 RCW.*
- Voluntary patients: RCW 72.23.080 through 72.23.120.*

71.02.490 Authority over patient—Federal agencies, private establishments. The United States veterans' administration, or other United States government agency, or the chief officer of a private facility shall have the same powers as are conferred upon the superintendent of a state hospital with reference to retention, transfer, parole, or discharge of mentally ill persons ordered hospitalized in their facilities. [1959 c 25 § 71.02-.490. Prior: 1951 c 139 § 26.]

Commitment to veterans' administration or other federal agency: RCW 73.36.165.

71.02.900 Construction and purpose—1959 c 25. The provisions of this chapter shall be liberally construed so that persons who are in need of care and treatment for mental illness shall receive humane care and treatment and be restored to normal mental condition as rapidly as possible with an avoidance of loss of civil rights where not necessary, and with as little formality as possible, still preserving all rights and all privileges of the person as guaranteed by the Constitution. [1959 c 25 § 71.02.900. Prior: 1951 c 139 § 1; 1949 c 198 § 1; Rem. Supp. 1949 § 6953-1.]

Chapter 71.05

MENTAL ILLNESS

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- 71.05.015** Chapter 71.05 RCW to be construed to accomplish purposes of RCW 71.05.010.
- 71.05.020** Definitions.
- 71.05.025** Integration with chapter 71.24 RCW—Regional support networks.
- 71.05.030** Commitment laws applicable.
- 71.05.035** Findings—Developmentally disabled.
- 71.05.040** Developmentally disabled, senile, chronic alcoholic, or drug abuse impaired persons not to be detained or judicially committed—When.
- 71.05.050** Voluntary application for mental health services—Rights—Review of condition and status—Detention—Person refusing voluntary admission, temporary detention.
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- 71.05.520 Protection of rights—Staff.
- 71.05.525 Transfer of person committed to juvenile correction institution to institution or facility for mentally ill juveniles.
- 71.05.530 Facilities part of comprehensive mental health program.
- 71.05.550 Recognition of county financial necessities.
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- 71.05.610 Treatment records—Definitions.
- 71.05.620 Treatment records—Informed consent for disclosure of information—Court files and records.
- 71.05.630 Treatment records—Confidential—Release.
- 71.05.640 Treatment records—Access procedures.
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- 71.05.660 Treatment records—Privileged communications unaffected.
- 71.05.670 Treatment records—Violations—Civil action.
- 71.05.680 Treatment records—Access under false pretenses, penalty.
- 71.05.690 Treatment records—Rules.
- 71.05.900 Severability—1973 1st ex.s. c 142.
- 71.05.910 Construction—1973 1st ex.s. c 142.
- 71.05.920 Section headings not part of the law.
- 71.05.930 Effective date—1973 1st ex.s. c 142.
- 71.05.940 Equal application of 1989 c 420—Evaluation for developmental disability.

Rules of court: Cf. *Superior Court Mental Proceedings Rules (MPR)*.
Council for the prevention of child abuse and neglect: Chapter 43.121

RCW.

Minors—Mental health services, commitment: Chapter 71.34 RCW.
Regional support networks: RCW 71.24.310.

71.05.010 Legislative intent. The provisions of this chapter are intended by the legislature:

(1) To end inappropriate, indefinite commitment of mentally disordered persons and to eliminate legal disabilities that arise from such commitment;

(2) To provide prompt evaluation and short term treatment of persons with serious mental disorders;

(3) To safeguard individual rights;

(4) To provide continuity of care for persons with serious mental disorders;

(5) To encourage the full use of all existing agencies, professional personnel, and public funds to prevent duplication of services and unnecessary expenditures;

(6) To encourage, whenever appropriate, that services be provided within the community;

(7) To protect the public safety. [1989 c 120 § 1; 1973 1st ex.s. c 142 § 6.]

71.05.015 Chapter 71.05 RCW to be construed to accomplish purposes of RCW 71.05.010. It is the intent of the legislature that chapter 71.05 RCW as amended by *this 1979 act be carefully construed to accomplish the purposes stated in RCW 71.05.010 and hereby reaffirmed. [1979 ex.s. c 215 § 1.]

***Reviser's note:** This 1979 act [1979 ex.s. c 215] amended the following sections of chapter 71.05 RCW: RCW 71.05.020, 71.05.050, 71.05.120, 71.05.130, 71.05.150, 71.05.180, 71.05.190, 71.05.240, 71.05.280, 71.05.320, 71.05.340, 71.05.390, and added new sections codified as RCW 71.05.015, 71.05.155 and 71.05.600. The act also consists of amendments to RCW 5.60.060, 10.77.090, 10.77.110, the enactment of RCW 72.23.125 and an appropriation section.

71.05.020 Definitions. For the purposes of this chapter:

(1) "Gravely disabled" means a condition in which a person, as a result of a mental disorder: (a) Is in danger of serious physical harm resulting from a failure to provide for his essential human needs of health or safety, or (b) manifests severe deterioration in routine functioning evidenced by repeated and escalating loss of cognitive or volitional control over his or her actions and is not receiving such care as is essential for his or her health or safety;

(2) "Mental disorder" means any organic, mental, or emotional impairment which has substantial adverse effects on an individual's cognitive or volitional functions;

(3) "Likelihood of serious harm" means either: (a) A substantial risk that physical harm will be inflicted by an individual upon his or her own person, as evidenced by threats or attempts to commit suicide or inflict physical harm on one's self, (b) a substantial risk that physical harm will be inflicted by an individual upon another, as evidenced by behavior which has caused such harm or which places another person or persons in reasonable fear of sustaining such harm, or (c) a substantial risk that physical harm will be inflicted by an individual upon the property of others, as evidenced by behavior which has caused substantial loss or damage to the property of others;

(4) "Peace officer" means a law enforcement official of a public agency or governmental unit, and includes persons specifically given peace officer powers by any

state law, local ordinance, or judicial order of appointment;

(5) "Judicial commitment" means a commitment by a court pursuant to the provisions of this chapter;

(6) "Public agency" means any evaluation and treatment facility or institution, hospital, or sanitarium which is conducted for, or includes a department or ward conducted for, the care and treatment of persons who are mentally ill or deranged, if the agency is operated directly by, federal, state, county, or municipal government, or a combination of such governments;

(7) "Private agency" means any person, partnership, corporation, or association not defined as a public agency, whether or not financed in whole or in part by public funds, which constitutes an evaluation and treatment facility or private institution, hospital, or sanitarium, which is conducted for, or includes a department or ward conducted for the care and treatment of persons who are mentally ill;

(8) "Attending staff" means any person on the staff of a public or private agency having responsibility for the care and treatment of a patient;

(9) "Department" means the department of social and health services of the state of Washington;

(10) "Resource management services" has the meaning given in chapter 71.24 RCW;

(11) "Secretary" means the secretary of the department of social and health services, or his designee;

(12) "Mental health professional" means a psychiatrist, psychologist, psychiatric nurse, or social worker, and such other mental health professionals as may be defined by rules and regulations adopted by the secretary pursuant to the provisions of this chapter;

(13) "Professional person" shall mean a mental health professional, as above defined, and shall also mean a physician, registered nurse, and such others as may be defined by rules and regulations adopted by the secretary pursuant to the provisions of this chapter;

(14) "Psychiatrist" means a person having a license as a physician and surgeon in this state who has in addition completed three years of graduate training in psychiatry in a program approved by the American medical association or the American osteopathic association and is certified or eligible to be certified by the American board of psychiatry and neurology;

(15) "Psychologist" means a person who has been licensed as a psychologist pursuant to chapter 18.83 RCW;

(16) "Social worker" means a person with a master's or further advanced degree from an accredited school of social work or a degree from a graduate school deemed equivalent under rules and regulations adopted by the secretary;

(17) "Evaluation and treatment facility" means any facility which can provide directly, or by direct arrangement with other public or private agencies, emergency evaluation and treatment, outpatient care, and short term inpatient care to persons suffering from a mental disorder, and which is certified as such by the department of social and health services: *Provided*, That a physically separate and separately operated portion of a

state hospital may be designated as an evaluation and treatment facility: *Provided further*, That a facility which is part of, or operated by, the department of social and health services or any federal agency will not require certification: *And provided further*, That no correctional institution or facility, or jail, shall be an evaluation and treatment facility within the meaning of this chapter;

(18) "Antipsychotic medications," also referred to as "neuroleptics," means that class of drugs primarily used to treat serious manifestations of mental illness associated with thought disorders and currently includes phenothiazines, thioxanthenes, butyrophenone, dihydroindolone, and dibenzoxazipine.

(19) "Developmental disability" means that condition defined in RCW 71A.10.020(2);

(20) "Developmental disabilities professional" means a person who has specialized training and three years of experience in directly treating or working with persons with developmental disabilities and is a psychiatrist or psychologist, or a social worker, and such other developmental disabilities professionals as may be defined by rules adopted by the secretary;

(21) "Habilitative services" means those services provided by program personnel to assist persons in acquiring and maintaining life skills and in raising their levels of physical, mental, social, and vocational functioning. Habilitative services include education, training for employment, and therapy. The habilitative process shall be undertaken with recognition of the risk to the public safety presented by the individual being assisted as manifested by prior charged criminal conduct;

(22) "Psychologist" means a person who has been licensed as a psychologist pursuant to chapter 18.83 RCW;

(23) "Social worker" means a person with a master's or further advanced degree from an accredited school of social work or a degree deemed equivalent under rules adopted by the secretary;

(24) "Individualized service plan" means a plan prepared by a developmental disabilities professional with other professionals as a team, for an individual with developmental disabilities, which shall state:

(a) The nature of the person's specific problems, prior charged criminal behavior, and habilitation needs;

(b) The conditions and strategies necessary to achieve the purposes of habilitation;

(c) The intermediate and long-range goals of the habilitation program, with a projected timetable for the attainment;

(d) The rationale for using this plan of habilitation to achieve those intermediate and long-range goals;

(e) The staff responsible for carrying out the plan;

(f) Where relevant in light of past criminal behavior and due consideration for public safety, the criteria for proposed movement to less-restrictive settings, criteria for proposed eventual discharge from involuntary confinement, and a projected possible date for discharge from involuntary confinement; and

(g) The type of residence immediately anticipated for the person and possible future types of residences. [1989

c 420 § 13; 1989 c 205 § 8; 1989 c 120 § 2; 1979 ex.s. c 215 § 5; 1973 1st ex.s. c 142 § 7.]

Reviser's note: This section was amended by 1989 c 120 § 2, 1989 c 205 § 8, and by 1989 c 420 § 13, each without reference to the other. All amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

71.05.025 Integration with chapter 71.24 RCW—Regional support networks. The legislature intends that the procedures and services authorized in this chapter be integrated with those in chapter 71.24 RCW to the maximum extent necessary to assure a continuum of care to persons who are mentally ill or who have mental disorders, as defined in either or both this chapter and chapter 71.24 RCW. To this end, regional support networks established in accordance with chapter 71.24 RCW shall institute procedures which require timely consultation with resource management services by county-designated mental health professionals and evaluation and treatment facilities to assure that determinations to detain, commit, treat, or release persons with mental disorders under this chapter are made only after appropriate information regarding such person's treatment history and current treatment plan has been sought from resource management services. [1989 c 205 § 9.]

Evaluation of transition to regional systems—1989 c 205: See note following RCW 71.24.015.

71.05.030 Commitment laws applicable. Persons suffering from a mental disorder may not be involuntarily committed for treatment of such disorder except pursuant to provisions of this chapter, chapter 10.77 RCW or its successor, chapter 71.06 RCW, chapter 71.34 RCW, transfer pursuant to RCW 72.68.031 through 72.68.037, or pursuant to court ordered evaluation and treatment not to exceed ninety days pending a criminal trial or sentencing. [1985 c 354 § 31; 1983 c 3 § 179; 1974 ex.s. c 145 § 4; 1973 2nd ex.s. c 24 § 2; 1973 1st ex.s. c 142 § 8.]

Severability—Effective date—1985 c 354: See RCW 71.34.900 and 71.34.901.

71.05.035 Findings—Developmentally disabled. With respect to *this act, the legislature finds that among those persons who endanger the safety of others by committing felony crimes are a small number of persons with developmental disabilities. While their conduct is not typical of the vast majority of persons with developmental disabilities who are responsible citizens, for their own welfare and for the safety of others the state may need to exercise control over those few dangerous individuals who are developmentally disabled, have been charged with felony crimes, and have been found either incompetent to stand trial or not guilty by reason of insanity. The legislature finds, however, that the use of civil commitment procedures under chapter 71.05 RCW to effect state control over dangerous developmentally disabled persons has resulted in their commitment to institutions for the mentally ill. The legislature finds that

existing programs in mental institutions may be inappropriate for persons who are developmentally disabled because the services provided in mental institutions are oriented to persons with mental illness, a condition not necessarily associated with developmental disabilities. Therefore, the legislature believes that, where appropriate, and subject to available funds, persons with developmental disabilities who have been charged with felony crimes and have been found incompetent to stand trial or not guilty by reason of insanity should receive state services addressing their needs, that such services must be provided in conformance with an individual habilitation plan, and that their initial treatment should be separate and discrete from treatment for persons involved in any other treatment or habilitation program in a manner consistent with the needs of public safety. [1989 c 420 § 2.]

***Reviser's note:** For codification of "this act" [1989 c 420], see Codification Tables, Volume 0.

71.05.040 Developmentally disabled, senile, chronic alcoholic, or drug abuse impaired persons not to be detained or judicially committed—When. Persons who are developmentally disabled, impaired by chronic alcoholism or drug abuse, or senile shall not be detained for evaluation and treatment or judicially committed solely by reason of that condition unless such condition causes a person to be gravely disabled or as a result of a mental disorder such condition exists that constitutes a likelihood of serious harm to self or others. [1987 c 439 § 1; 1977 ex.s. c 80 § 41; 1975 1st ex.s. c 199 § 1; 1974 ex.s. c 145 § 5; 1973 1st ex.s. c 142 § 9.]

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.

71.05.050 Voluntary application for mental health services—Rights—Review of condition and status—Detention—Person refusing voluntary admission, temporary detention. Nothing in this chapter shall be construed to limit the right of any person to apply voluntarily to any public or private agency or practitioner for treatment of a mental disorder, either by direct application or by referral. Any person voluntarily admitted for inpatient treatment to any public or private agency shall be released immediately upon his request. Any person voluntarily admitted for inpatient treatment to any public or private agency shall orally be advised of the right to immediate release and further advised of such rights in writing as are secured to them pursuant to this chapter and their rights of access to attorneys, courts, and other legal redress. Their condition and status shall be reviewed at least once each one hundred eighty days for evaluation as to the need for further treatment and/or possible release, at which time they shall again be advised of their right to release upon request: *Provided however,* That if the professional staff of any public or private agency or hospital regards a person voluntarily admitted who requests release as presenting, as a result of a mental disorder, an imminent likelihood of serious harm to himself or others, or is gravely disabled, they may detain such person for sufficient time to

notify the designated county mental health professional of such person's condition to enable such mental health professional to authorize such person being further held in custody or transported to an evaluation and treatment center pursuant to the provisions of this chapter, which shall in ordinary circumstances be no later than the next judicial day: *Provided further*, That if a person is brought to the emergency room of a public or private agency or hospital for observation or treatment, said person refuses voluntary admission, and the professional staff of the public or private agency or hospital regards such person as presenting as a result of a mental disorder an imminent likelihood of serious harm to himself or others or as presenting an imminent danger because of grave disability, they may detain such person for sufficient time to notify the designated county mental health professional of such person's condition to enable such mental health professional to authorize such person being further held in custody or transported to an evaluation treatment center pursuant to the conditions in this chapter, but which time shall be no more than six hours. [1979 ex.s. c 215 § 6; 1975 1st ex.s. c 199 § 2; 1974 ex.s. c 145 § 6; 1973 1st ex.s. c 142 § 10.]

71.05.060 Rights of persons complained against. A person subject to confinement resulting from any petition or proceeding pursuant to the provisions of this chapter shall not forfeit any legal right or suffer any legal disability as a consequence of any actions taken or orders made, other than as specifically provided in this chapter. [1973 1st ex.s. c 142 § 11.]

71.05.070 Prayer treatment. The provisions of this chapter shall not be construed to deny to any person treatment by spiritual means through prayer in accordance with the tenets and practices of a church or religious denomination. [1973 1st ex.s. c 142 § 12.]

71.05.080 Effect on pending proceedings and on persons previously committed. Except as herein provided, the provisions of this chapter shall not in themselves impair any action taken in any proceeding pending under statutes in effect prior to January 1, 1974, nor shall they apply retroactively to terminate the detention of any person previously committed pursuant to statutes in effect prior to January 1, 1974. One hundred twenty days after January 1, 1974, the provisions of RCW 71.05.320(2) shall apply to all persons previously committed pursuant to chapter 71.02 RCW. [1973 1st ex.s. c 142 § 13.]

71.05.090 Choice of physicians. Persons receiving evaluation or treatment under this chapter shall be given a reasonable choice of an available physician or other professional person qualified to provide such services. [1973 2nd ex.s. c 24 § 3; 1973 1st ex.s. c 142 § 14.]

71.05.100 Financial responsibility. In addition to the responsibility provided for by RCW 43.20B.330, any person, or his estate, or his spouse, or the parents of a minor person who is involuntarily detained pursuant to

this chapter for the purpose of treatment and evaluation outside of a facility maintained and operated by the department shall be responsible for the cost of such care and treatment. In the event that an individual is unable to pay for such treatment or in the event payment would result in a substantial hardship upon the individual or his family, then the county of residence of such person shall be responsible for such costs. If it is not possible to determine the county of residence of the person, the cost shall be borne by the county where the person was originally detained. The department shall, pursuant to chapter 34.05 RCW, adopt standards as to (1) inability to pay in whole or in part, (2) a definition of substantial hardship, and (3) appropriate payment schedules. Such standards shall be applicable to all county mental health administrative boards. Financial responsibility with respect to department services and facilities shall continue to be as provided in RCW 43.20B.320 through 43.20B.360 and 43.20B.370. [1987 c 75 § 18; 1973 2nd ex.s. c 24 § 4; 1973 1st ex.s. c 142 § 15.]

Savings—Severability—1987 c 75: See RCW 43.20B.900 and 43.20B.901.

71.05.110 Compensation of appointed counsel. Attorneys appointed for persons pursuant to this chapter shall be compensated for their services as follows: (1) The person for whom an attorney is appointed shall, if he is financially able pursuant to standards as to financial capability and indigency set by the superior court of the county in which the proceeding is held, bear the costs of such legal services; (2) If such person is indigent pursuant to such standards, the costs of such services shall be borne by the county in which the proceeding is held, subject however to the responsibility for costs provided in RCW 71.05.320(2). [1973 1st ex.s. c 142 § 16.]

71.05.120 Exemptions from liability. (1) No officer of a public or private agency, nor the superintendent, professional person in charge, his or her professional designee, or attending staff of any such agency, nor any public official performing functions necessary to the administration of this chapter, nor peace officer responsible for detaining a person pursuant to this chapter, nor any county designated mental health professional, nor the state, a unit of local government, or an evaluation and treatment facility shall be civilly or criminally liable for performing duties pursuant to this chapter with regard to the decision of whether to admit, release, administer antipsychotic medications on an emergency basis, or detain a person for evaluation and treatment: *Provided*, That such duties were performed in good faith and without gross negligence.

(2) This section does not relieve a person from giving the required notices under RCW 71.05.330(2) or 71.05.340(1)(b), or the duty to warn or to take reasonable precautions to provide protection from violent behavior where the patient has communicated an actual threat of physical violence against a reasonably identifiable victim or victims. The duty to warn or to take reasonable precautions to provide protection from violent behavior is discharged if reasonable efforts are made to

communicate the threat to the victim or victims and to law enforcement personnel. [1989 c 120 § 3; 1987 c 212 § 301; 1979 ex.s. c 215 § 7; 1974 ex.s. c 145 § 7; 1973 2nd ex.s. c 24 § 5; 1973 1st ex.s. c 142 § 17.]

71.05.130 Duties of prosecuting attorney and attorney general. In any judicial proceeding for involuntary commitment or detention, or administration of antipsychotic medication, or in any proceeding challenging such commitment or detention, or administration of antipsychotic medication, the prosecuting attorney for the county in which the proceeding was initiated shall represent the individuals or agencies petitioning for commitment or detention or administration of antipsychotic medication and shall defend all challenges to such commitment or detention or administration of antipsychotic medication: *Provided*, That after January 1, 1980, the attorney general shall represent and provide legal services and advice to state hospitals or institutions with regard to all provisions of and proceedings under this chapter except in proceedings initiated by such hospitals and institutions seeking fourteen day detention and administration of antipsychotic medication. [1989 c 120 § 4; 1979 ex.s. c 215 § 8; 1973 1st ex.s. c 142 § 18.]

71.05.135 Mental health commissioners—Appointment. In class A counties and counties of the first through ninth classes, the superior court may appoint the following persons to assist the superior court in disposing of its business: *Provided*, That such positions may not be created without prior consent of the county legislative authority:

- (1) One or more attorneys to act as mental health commissioners; and
- (2) Such investigators, stenographers, and clerks as the court shall find necessary to carry on the work of the mental health commissioners.

The appointments provided for in this section shall be made by a majority vote of the judges of the superior court of the county and may be in addition to all other appointments of commissioners and other judicial attaches otherwise authorized by law. Mental health commissioners and investigators shall serve at the pleasure of the judges appointing them and shall receive such compensation as the county legislative authority shall determine. The appointments may be full or part-time positions. A person appointed as a mental health commissioner may also be appointed to any other commissioner position authorized by law. [1989 c 174 § 1.]

Severability—1989 c 174: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1989 c 174 § 4.]

71.05.137 Mental health commissioners—Authority. The judges of the superior court of the county by majority vote may authorize mental health commissioners, appointed pursuant to RCW 71.05.135, to perform any or all of the following duties:

- (1) Receive all applications, petitions, and proceedings filed in the superior court for the purpose of disposing of them pursuant to this chapter;

- (2) Investigate the facts upon which to base warrants, subpoenas, orders to directions in actions, or proceedings filed pursuant to this chapter;

- (3) For the purpose of this chapter, exercise all powers and perform all the duties of a court commissioner appointed pursuant to RCW 2.24.010;

- (4) Hold hearings in proceedings under this chapter and make written reports of all proceedings under this chapter which shall become a part of the record of superior court;

- (5) Provide such supervision in connection with the exercise of its jurisdiction as may be ordered by the presiding judge; and

- (6) Cause the orders and findings to be entered in the same manner as orders and findings are entered in cases in the superior court. [1989 c 174 § 2.]

Severability—1989 c 174: See note following RCW 71.05.135.

71.05.140 Records maintained. A record of all applications, petitions, and proceedings under this chapter shall be maintained by the county clerk in which the application, petition, or proceeding was initiated. [1973 1st ex.s. c 142 § 19.]

71.05.150 Detention of mentally disordered persons for evaluation and treatment—Procedure. (1) (a) When a mental health professional designated by the county receives information alleging that a person, as a result of a mental disorder, presents a likelihood of serious harm to others or himself, or is gravely disabled, such mental health professional, after investigation and evaluation of the specific facts alleged, and of the reliability and credibility of the person or persons, if any, providing information to initiate detention, may, if satisfied that the allegations are true and that the person will not voluntarily seek appropriate treatment, file a petition for initial detention. Before filing the petition, the county designated mental health professional must personally interview the person, unless the person refuses an interview, and determine whether the person will voluntarily receive appropriate evaluation and treatment at an evaluation and treatment facility.

(b) Whenever it appears, by petition for initial detention, to the satisfaction of a judge of the superior court that a person presents, as a result of a mental disorder, a likelihood of serious harm to others or himself, or is gravely disabled, and that the person has refused or failed to accept appropriate evaluation and treatment voluntarily, the judge may issue an order requiring the person to appear not less than twenty-four hours after service of the order at a designated evaluation and treatment facility for not more than a seventy-two hour evaluation and treatment period. The order shall state the address of the evaluation and treatment facility to which the person is to report and whether the required seventy-two hour evaluation and treatment services may be delivered on an outpatient or inpatient basis and that if the person named in the order fails to appear at the evaluation and treatment facility at or before the date and time stated in the order, such person may be involuntarily taken into custody for evaluation and treatment.

The order shall also designate retained counsel or, if counsel is appointed from a list provided by the court, the name, business address, and telephone number of the attorney appointed to represent the person.

(c) The mental health professional shall then serve or cause to be served on such person, his guardian, and conservator, if any, a copy of the order to appear together with a notice of rights and a petition for initial detention. After service on such person the mental health professional shall file the return of service in court and provide copies of all papers in the court file to the evaluation and treatment facility and the designated attorney. The mental health professional shall notify the court and the prosecuting attorney that a probable cause hearing will be held within seventy-two hours of the date and time of outpatient evaluation or admission to the evaluation and treatment facility. The person shall be permitted to remain in his home or other place of his choosing prior to the time of evaluation and shall be permitted to be accompanied by one or more of his relatives, friends, an attorney, a personal physician, or other professional or religious advisor to the place of evaluation. An attorney accompanying the person to the place of evaluation shall be permitted to be present during the admission evaluation. Any other individual accompanying the person may be present during the admission evaluation. The facility may exclude the individual if his or her presence would present a safety risk, delay the proceedings, or otherwise interfere with the evaluation.

(d) If the person ordered to appear does appear on or before the date and time specified, the evaluation and treatment facility may admit such person as required by RCW 71.05.170 or may provide treatment on an outpatient basis. If the person ordered to appear fails to appear on or before the date and time specified, the evaluation and treatment facility shall immediately notify the mental health professional designated by the county who may notify a peace officer to take such person or cause such person to be taken into custody and placed in an evaluation and treatment facility. Should the mental health professional notify a peace officer authorizing him to take a person into custody under the provisions of this subsection, he shall file with the court a copy of such authorization and a notice of detention. At the time such person is taken into custody there shall commence to be served on such person, his guardian, and conservator, if any, a copy of the original order together with a notice of detention, a notice of rights, and a petition for initial detention.

(2) When a mental health professional designated by the county receives information alleging that a person, as the result of a mental disorder, presents an imminent likelihood of serious harm to himself or others, or is in imminent danger because of being gravely disabled, after investigation and evaluation of the specific facts alleged and of the reliability and credibility of the person or persons providing the information if any, the mental health professional may take such person, or cause by oral or written order such person to be taken into emergency custody in an evaluation and treatment facility for

not more than seventy-two hours as described in RCW 71.05.180.

(3) A peace officer may take such person or cause such person to be taken into custody and placed in an evaluation and treatment facility pursuant to subsection (1)(d) of this section.

(4) A peace officer may, without prior notice of the proceedings provided for in subsection (1) of this section, take or cause such person to be taken into custody and immediately delivered to an evaluation and treatment facility:

(a) Only pursuant to subsections (1)(d) and (2) of this section; or

(b) When he has reasonable cause to believe that such person is suffering from a mental disorder and presents an imminent likelihood of serious harm to others or himself or is in imminent danger because of being gravely disabled.

(5) Persons delivered to evaluation and treatment facilities by peace officers pursuant to subsection (4)(b) of this section may be held by the facility for a period of up to twelve hours: *Provided*, That they are examined by a mental health professional within three hours of their arrival. Within twelve hours of their arrival, the designated county mental health professional must file a supplemental petition for detention, and commence service on the designated attorney for the detained person. [1984 c 233 § 1; 1979 ex.s. c 215 § 9; 1975 1st ex.s. c 199 § 3; 1974 ex.s. c 145 § 8; 1973 1st ex.s. c 142 § 20.]

71.05.155 Request to mental health professional by law enforcement agency for investigation under RCW 71.05.150—Advisory report of results. When a mental health professional is requested by a representative of a law enforcement agency, including a police officer, sheriff, a municipal attorney, or prosecuting attorney to undertake an investigation under RCW 71.05.150, as now or hereafter amended, the mental health professional shall, if requested to do so, advise said representative in writing of the results of the investigation including a statement of reasons for the decision to detain or release the person investigated. Such written report shall be submitted within seventy-two hours of the completion of the investigation or the request from the law enforcement representative, whichever occurs later. [1979 ex.s. c 215 § 10.]

71.05.160 Petition for initial detention. Any facility receiving a person pursuant to RCW 71.05.150 shall require a petition for initial detention stating the circumstances under which the person's condition was made known and stating that such officer or person has evidence, as a result of his personal observation or investigation, that the actions of the person for which application is made constitute a likelihood of serious harm to himself or others, or that he is gravely disabled, and stating the specific facts known to him as a result of his personal observation or investigation, upon which he bases the belief that such person should be detained for the purposes and under the authority of this chapter.

If a person is involuntarily placed in an evaluation and treatment facility pursuant to RCW 71.05.150, on the next judicial day following the initial detention, the mental health professional designated by the county shall file with the court and serve the designated attorney of the detained person the petition or supplemental petition for initial detention, proof of service of notice, and a copy of a notice of emergency detention. [1974 ex.s. c 145 § 9; 1973 1st ex.s. c 142 § 21.]

71.05.170 Acceptance of petition—Notice—Duty of state hospital. Whenever the designated county mental health professional petitions for detention of a person whose actions constitute a likelihood of serious harm to himself or others, or who is gravely disabled, the facility providing seventy-two hour evaluation and treatment must immediately accept on a provisional basis the petition and the person. The facility shall then evaluate the person's condition and admit or release such person in accordance with RCW 71.05.210. The facility shall notify in writing the court and the designated county mental health professional of the date and time of the initial detention of each person involuntarily detained in order that a probable cause hearing shall be held no later than seventy-two hours after detention.

The duty of a state hospital to accept persons for evaluation and treatment under this section shall be limited by chapter 71.24 RCW. [1989 c 205 § 10; 1974 ex.s. c 145 § 10; 1973 1st ex.s. c 142 § 22.]

71.05.180 Detention period for evaluation and treatment. If the evaluation and treatment facility admits the person, it may detain him for evaluation and treatment for a period not to exceed seventy-two hours from the time of acceptance as set forth in RCW 71.05.170. The computation of such seventy-two hour period shall exclude Saturdays, Sundays and holidays. [1979 ex.s. c 215 § 11; 1974 ex.s. c 145 § 11; 1973 1st ex.s. c 142 § 23.]

71.05.190 Persons not admitted—Transportation—Detention of arrested person pending return to custody. If the person is not approved for admission by a facility providing seventy-two hour evaluation and treatment, and the individual has not been arrested, the facility shall furnish transportation, if not otherwise available, for the person to his place of residence or other appropriate place. If the individual has been arrested, the evaluation and treatment facility shall detain the individual for not more than eight hours at the request of the peace officer in order to enable a peace officer to return to the facility and take the individual back into custody. [1979 ex.s. c 215 § 12; 1974 ex.s. c 145 § 12; 1973 1st ex.s. c 142 § 24.]

71.05.200 Notice and statement of rights—Probable cause hearing. (1) Whenever any person is detained for evaluation and treatment pursuant to this chapter, both the person and, if possible, a responsible member of his or her immediate family, guardian, or conservator, if any, shall be advised as soon as possible in writing or

orally, by the officer or person taking him or her into custody or by personnel of the evaluation and treatment facility where the person is detained that unless the person is released or voluntarily admits himself or herself for treatment within seventy-two hours of the initial detention:

(a) That a judicial hearing in a superior court, either by a judge or court commissioner thereof, shall be held not more than seventy-two hours after the initial detention to determine whether there is probable cause to detain the person after the seventy-two hours have expired for up to an additional fourteen days without further automatic hearing for the reason that the person is a mentally ill person whose mental disorder presents a likelihood of serious harm to others or himself or herself or that the person is gravely disabled;

(b) That the person has a right to communicate immediately with an attorney; has a right to have an attorney appointed to represent him or her before and at the probable cause hearing if he or she is indigent; and has the right to be told the name and address of the attorney the mental health professional has designated pursuant to this chapter;

(c) That the person has the right to remain silent and that any statement he or she makes may be used against him or her;

(d) That the person has the right to present evidence and to cross-examine witnesses who testify against him or her at the probable cause hearing; and

(e) That the person has the right to refuse medications, including antipsychotic medication beginning twenty-four hours prior to the probable cause hearing.

(2) When proceedings are initiated under RCW 71.05.150 (2), (3), or (4)(b), no later than twelve hours after such person is admitted to the evaluation and treatment facility the personnel of the evaluation and treatment facility or the designated mental health professional shall serve on such person a copy of the petition for initial detention and the name, business address, and phone number of the designated attorney and shall forthwith commence service of a copy of the petition for initial detention on said designated attorney.

(3) The judicial hearing described in subsection (1) of this section is hereby authorized, and shall be held according to the provisions of subsection (1) of this section and rules promulgated by the supreme court. [1989 c 120 § 5; 1974 ex.s. c 145 § 13; 1973 1st ex.s. c 142 § 25.]

71.05.210 Evaluation—Treatment and care—Release or other disposition. Each person involuntarily admitted to an evaluation and treatment facility shall, within twenty-four hours of his or her admission, be examined and evaluated by a licensed physician who may be assisted by a physician's assistant according to chapter 18.71A RCW or a nurse practitioner according to chapter 18.88 RCW and a mental health professional as defined in this chapter, and shall receive such treatment and care as his or her condition requires including treatment on an outpatient basis for the period that he or she is detained, except that, beginning twenty-four hours

prior to a court proceeding, the individual may refuse all but emergency life-saving treatment, and the individual shall be informed at an appropriate time of his or her right to such refusal of treatment. Such person shall be detained up to seventy-two hours, if, in the opinion of the professional person in charge of the facility, or his or her professional designee, the person presents a likelihood of serious harm to himself or herself or others, or is gravely disabled. A person who has been detained for seventy-two hours shall no later than the end of such period be released, unless referred for further care on a voluntary basis, or detained pursuant to court order for further treatment as provided in this chapter.

If, after examination and evaluation, the licensed physician and mental health professional determine that the initial needs of the person would be better served by placement in an alcohol treatment facility, then the person shall be referred to an approved treatment facility defined under *RCW 70.96A.020.

An evaluation and treatment center admitting any person pursuant to this chapter whose physical condition reveals the need for hospitalization shall assure that such person is transferred to an appropriate hospital for treatment. Notice of such fact shall be given to the court, the designated attorney, and the designated county mental health professional and the court shall order such continuance in proceedings under this chapter as may be necessary, but in no event may this continuance be more than fourteen days. [1989 c 120 § 6; 1987 c 439 § 2; 1975 1st ex.s. c 199 § 4; 1974 ex.s. c 145 § 14; 1973 1st ex.s. c 142 § 26.]

*Reviser's note: RCW 70.96A.020 was amended twice during the 1989 session, by 1989 c 270 and c 271, both changing the definition of "approved treatment facility."

71.05.220 Property of committed person. At the time a person is involuntarily admitted to an evaluation and treatment facility, the professional person in charge or his designee shall take reasonable precautions to inventory and safeguard the personal property of the person detained. A copy of the inventory, signed by the staff member making it, shall be given to the person detained and shall, in addition, be open to inspection to any responsible relative, subject to limitations, if any, specifically imposed by the detained person. For purposes of this section, "responsible relative" includes the guardian, conservator, attorney, spouse, parent, adult child, or adult brother or sister of the person. The facility shall not disclose the contents of the inventory to any other person without the consent of the patient or order of the court. [1973 1st ex.s. c 142 § 27.]

71.05.230 Procedures for additional treatment. A person detained for seventy-two hour evaluation and treatment may be detained for not more than fourteen additional days of involuntary intensive treatment or ninety additional days of a less restrictive alternative to involuntary intensive treatment if the following conditions are met:

(1) The professional staff of the agency or facility providing evaluation services has analyzed the person's

condition and finds that said condition is caused by mental disorder and either results in a likelihood of serious harm to the person detained or to others, or results in the detained person being gravely disabled and are prepared to testify those conditions are met; and

(2) The person has been advised of the need for voluntary treatment and the professional staff of the facility has evidence that he or she has not in good faith volunteered; and

(3) The facility providing intensive treatment is certified to provide such treatment by the department of social and health services; and

(4) The professional staff of the agency or facility or the mental health professional designated by the county has filed a petition for fourteen day involuntary detention or a ninety day less restrictive alternative with the court. The petition must be signed either by two physicians or by one physician and a mental health professional who have examined the person. If involuntary detention is sought the petition shall state facts that support the finding that such person, as a result of mental disorder, presents a likelihood of serious harm to others or himself or herself, or is gravely disabled and that there are no less restrictive alternatives to detention in the best interest of such person or others. The petition shall state specifically that less restrictive alternative treatment was considered and specify why treatment less restrictive than detention is not appropriate. If an involuntary less restrictive alternative is sought, the petition shall state facts that support the finding that such person, as a result of mental disorder, presents a likelihood of serious harm to others or himself or herself, or is gravely disabled and shall set forth the less restrictive alternative proposed by the facility; and

(5) A copy of the petition has been served on the detained person, his or her attorney and his or her guardian or conservator, if any, prior to the probable cause hearing; and

(6) The court at the time the petition was filed and before the probable cause hearing has appointed counsel to represent such person if no other counsel has appeared; and

(7) The court has ordered a fourteen day involuntary intensive treatment or a ninety day less restrictive alternative treatment after a probable cause hearing has been held pursuant to RCW 71.05.240; and

(8) At the conclusion of the initial commitment period, the professional staff of the agency or facility or the mental health professional designated by the county may petition for an additional period of either ninety days of less restrictive alternative treatment or ninety days of involuntary intensive treatment as provided in RCW 71.05.290; and

(9) If the hospital or facility designated to provide outpatient treatment is other than the facility providing involuntary treatment, the outpatient facility so designated has agreed to assume such responsibility. [1987 c 439 § 3; 1975 1st ex.s. c 199 § 5; 1974 ex.s. c 145 § 15; 1973 1st ex.s. c 142 § 28.]

71.05.240 Probable cause hearing. If a petition is filed for fourteen day involuntary treatment or ninety days of less restrictive alternative treatment, the court shall hold a probable cause hearing within seventy-two hours of the initial detention of such person as determined in RCW 71.05.180, as now or hereafter amended. If requested by the detained person or his or her attorney, the hearing may be postponed for a period not to exceed forty-eight hours. The hearing may also be continued subject to the conditions set forth in RCW 71.05.210 or subject to the petitioner's showing of good cause for a period not to exceed twenty-four hours.

At the conclusion of the probable cause hearing, if the court finds by a preponderance of the evidence that such person, as the result of mental disorder, presents a likelihood of serious harm to others or himself or herself, or is gravely disabled, and, after considering less restrictive alternatives to involuntary detention and treatment, finds that no such alternatives are in the best interests of such person or others, the court shall order that such person be detained for involuntary treatment not to exceed fourteen days in a facility certified to provide treatment by the department of social and health services. If the court finds that such person, as the result of a mental disorder, presents a likelihood of serious harm to others or himself or herself, or is gravely disabled, but that treatment in a less restrictive setting than detention is in the best interest of such person or others, the court shall order an appropriate less restrictive course of treatment for not to exceed ninety days.

The court shall specifically state to such person and give such person notice in writing that if involuntary treatment beyond the fourteen day period or beyond the ninety days of less restrictive treatment is to be sought, such person will have the right to a full hearing or jury trial as required by RCW 71.05.310. [1987 c 439 § 5; 1979 ex.s. c 215 § 13; 1974 ex.s. c 145 § 16; 1973 1st ex.s. c 142 § 29.]

71.05.250 Probable cause hearing—Detained person's rights—Waiver of privilege—Limitation—Records as evidence. At the probable cause hearing the detained person shall have the following rights in addition to the rights previously specified:

- (1) To present evidence on his or her behalf;
- (2) To cross-examine witnesses who testify against him or her;
- (3) To be proceeded against by the rules of evidence;
- (4) To remain silent;
- (5) To view and copy all petitions and reports in the court file.

The physician-patient privilege or the psychologist-client privilege shall be deemed waived in proceedings under this chapter relating to the administration of anti-psychotic medications. As to other proceedings under this chapter, the privileges shall be waived when a court of competent jurisdiction in its discretion determines that such waiver is necessary to protect either the detained person or the public.

The waiver of a privilege under this section is limited to records or testimony relevant to evaluation of the detained person for purposes of a proceeding under this chapter. Upon motion by the detained person or on its own motion, the court shall examine a record or testimony sought by a petitioner to determine whether it is within the scope of the waiver.

The record maker shall not be required to testify in order to introduce medical or psychological records of the detained person so long as the requirements of RCW 5.45.020 are met except that portions of the record which contains opinions as to the detained person's mental state must be deleted from such records unless the person making such conclusions is available for cross-examination. [1989 c 120 § 7; 1987 c 439 § 6; 1974 ex.s. c 145 § 17; 1973 1st ex.s. c 142 § 30.]

71.05.260 Release—Exception. (1) Involuntary intensive treatment ordered at the time of the probable cause hearing shall be for no more than fourteen days, and shall terminate sooner when, in the opinion of the professional person in charge of the facility or his or her professional designee, (a) the person no longer constitutes a likelihood of serious harm to himself or herself or others, or (b) no longer is gravely disabled, or (c) is prepared to accept voluntary treatment upon referral, or (d) is to remain in the facility providing intensive treatment on a voluntary basis.

(2) A person who has been detained for fourteen days of intensive treatment shall be released at the end of the fourteen days unless one of the following applies: (a) Such person agrees to receive further treatment on a voluntary basis; or (b) such person is a patient to whom RCW 71.05.280 is applicable. [1987 c 439 § 7; 1974 ex.s. c 145 § 18; 1973 1st ex.s. c 142 § 31.]

71.05.270 Temporary release. Nothing in this chapter shall prohibit the professional person in charge of a treatment facility, or his professional designee, from permitting a person detained for intensive treatment to leave the facility for prescribed periods during the term of the person's detention, under such conditions as may be appropriate. [1973 1st ex.s. c 142 § 32.]

71.05.280 Additional confinement—Grounds—Duration. At the expiration of the fourteen day period of intensive treatment, a person may be confined for further treatment pursuant to RCW 71.05.320 if:

(1) Such person after having been taken into custody for evaluation and treatment has threatened, attempted, or inflicted: (a) Physical harm upon the person of another or himself, or substantial damage upon the property of another, and (b) as a result of mental disorder presents a likelihood of serious harm to others or himself; or

(2) Such person was taken into custody as a result of conduct in which he attempted or inflicted physical harm upon the person of another or himself, and continues to present, as a result of mental disorder, a likelihood of serious harm to others or himself; or

(3) Such person has been determined to be incompetent and criminal charges have been dismissed pursuant to RCW 10.77.090(3), as now or hereafter amended, and has committed acts constituting a felony, and as a result of a mental disorder, presents a substantial likelihood of repeating similar acts. In any proceeding pursuant to this subsection it shall not be necessary to show intent, wilfulness, or state of mind as an element of the felony; or

(4) Such person is gravely disabled.

For the purposes of this chapter "custody" shall mean involuntary detention under the provisions of this chapter or chapter 10.77 RCW, uninterrupted by any period of unconditional release from a facility providing involuntary care and treatment. [1986 c 67 § 3; 1979 ex.s. c 215 § 14; 1974 ex.s. c 145 § 19; 1973 1st ex.s. c 142 § 33.]

71.05.290 Petition—Affidavit. (1) At any time during a person's fourteen day intensive treatment period, the professional person in charge of a treatment facility or his professional designee or the designated county mental health professional may petition the superior court for an order requiring such person to undergo an additional period of treatment. Such petition must be based on one or more of the grounds set forth in RCW 71.05.280.

(2) The petition shall summarize the facts which support the need for further confinement and shall be supported by affidavits signed by two examining physicians, or by one examining physician and examining mental health professional. The affidavits shall describe in detail the behavior of the detained person which supports the petition and shall explain what, if any, less restrictive treatments which are alternatives to detention are available to such person, and shall state the willingness of the affiant to testify to such facts in subsequent judicial proceedings under this chapter.

(3) If a person has been determined to be incompetent pursuant to RCW 10.77.090(3) as now existing or hereafter amended, then the professional person in charge of the treatment facility or his professional designee or the county designated mental health professional may directly file a petition for one hundred eighty day treatment under RCW 71.05.280(3). No petition for initial detention or fourteen day detention is required before such a petition may be filed. [1986 c 67 § 4; 1975 1st ex.s. c 199 § 6; 1974 ex.s. c 145 § 20; 1973 1st ex.s. c 142 § 34.]

71.05.300 Filing of petition—Appearance—Notice—Advice as to rights—Appointment of representative. The petition for ninety day treatment shall be filed with the clerk of the superior court at least three days before expiration of the fourteen-day period of intensive treatment. At the time of filing such petition, the clerk shall set a time for the person to come before the court on the next judicial day after the day of filing unless such appearance is waived by the person's attorney, and the clerk shall notify the designated county mental

health professional. The designated county mental health professional shall immediately notify the person detained, his or her attorney, if any, and his or her guardian or conservator, if any, and the prosecuting attorney, and provide a copy of the petition to such persons as soon as possible.

At the time set for appearance the detained person shall be brought before the court, unless such appearance has been waived and the court shall advise him or her of his or her right to be represented by an attorney and of his or her right to a jury trial. If the detained person is not represented by an attorney, or is indigent or is unwilling to retain an attorney, the court shall immediately appoint an attorney to represent him or her. The court shall, if requested, appoint a reasonably available licensed physician, psychologist, or psychiatrist, designated by the detained person to examine and testify on behalf of the detained person.

The court may, if requested, also appoint a professional person as defined in *RCW 71.05.020(12) to seek less restrictive alternative courses of treatment and to testify on behalf of the detained person. In the case of a developmentally disabled person who has been determined to be incompetent pursuant to RCW 10.77.090(3), then the appointed professional person under this section shall be a developmental disabilities professional.

The court shall also set a date for a full hearing on the petition as provided in RCW 71.05.310. [1989 c 420 § 14; 1987 c 439 § 8; 1975 1st ex.s. c 199 § 7; 1974 ex.s. c 145 § 21; 1973 1st ex.s. c 142 § 35.]

***Reviser's note:** RCW 71.05.020 was amended three times during the 1989 legislative session. Due to the merge of those amendments, subsection (12) was renumbered as subsection (13).

71.05.310 Time for hearing—Due process—Jury trial—Continuation of treatment. The court shall conduct a hearing on the petition for ninety day treatment within five judicial days of the first court appearance after the probable cause hearing. The court may continue the hearing upon the written request of the person named in the petition or the person's attorney, for good cause shown, which continuance shall not exceed five additional judicial days. If the person named in the petition requests a jury trial, the trial shall commence within ten judicial days of the first court appearance after the probable cause hearing. The burden of proof shall be by clear, cogent, and convincing evidence and shall be upon the petitioner. The person shall be present at such proceeding, which shall in all respects accord with the constitutional guarantees of due process of law and the rules of evidence pursuant to RCW 71.05.250.

During the proceeding, the person named in the petition shall continue to be treated until released by order of the superior court. If no order has been made within thirty days after the filing of the petition, not including extensions of time requested by the detained person or his or her attorney, the detained person shall be released. [1987 c 439 § 9; 1975 1st ex.s. c 199 § 8; 1974 ex.s. c 145 § 22; 1973 1st ex.s. c 142 § 36.]

71.05.320 Remand for additional treatment—Duration—Developmentally disabled—Grounds—Hearing. (1) If the court or jury finds that grounds set forth in RCW 71.05.280 have been proven and that the best interests of the person or others will not be served by a less restrictive treatment which is an alternative to detention, the court shall remand him or her to the custody of the department of social and health services or to a facility certified for ninety day treatment by the department of social and health services for a further period of intensive treatment not to exceed ninety days from the date of judgment: *Provided*, That if the grounds set forth in RCW 71.05.280(3) are the basis of commitment, then the period of treatment may be up to but not exceed one hundred eighty days from the date of judgment in a facility certified for one hundred eighty day treatment by the department. If the committed person is developmentally disabled and has been determined incompetent pursuant to RCW 10.77.090(3), and the best interests of the person or others will not be served by a less-restrictive treatment which is an alternative to detention, the court shall remand him or her to the custody of the department of social and health services or to a facility certified for one hundred eighty-day treatment by the department. When appropriate and subject to available funds, treatment and training of such persons must be provided in a program specifically reserved for the treatment and training of developmentally disabled persons. A person so committed shall receive habilitation services pursuant to an individualized service plan specifically developed to treat the behavior which was the subject of the criminal proceedings. Said treatment program shall be administered by developmental disabilities professionals and others trained specifically in the needs of developmentally disabled persons. The department may limit admissions to this specialized program in order to ensure that expenditures for services do not exceed amounts appropriated by the legislature and allocated by the department for such services. The department may establish admission priorities in the event that the number of eligible persons exceeds the limits set by the department. An order for treatment less restrictive than involuntary detention may include conditions, and if such conditions are not adhered to, the designated mental health professional or developmental disabilities professional may order the person apprehended under the terms and conditions of RCW 71.05.340 as now or hereafter amended.

If the court or jury finds that grounds set forth in RCW 71.05.280 have been proven, but finds that treatment less restrictive than detention will be in the best interest of the person or others, then the court shall remand him to the custody of the department of social and health services or to a facility certified for ninety day treatment by the department of social and health services or to a less restrictive alternative for a further period of less restrictive treatment not to exceed ninety days from the date of judgment: *Provided*, That if the grounds set forth in RCW 71.05.280(3) are the basis of commitment, then the period of treatment may be up to

but not exceed one hundred eighty days from the date of judgment.

(2) Said person shall be released from involuntary treatment at the expiration of the period of commitment imposed under subsection (1) of this section unless the superintendent or professional person in charge of the facility in which he is confined, or in the event of a less restrictive alternative, the designated mental health professional or developmental disabilities professional, files a new petition for involuntary treatment on the grounds that the committed person;

(a) During the current period of court ordered treatment: (i) Has threatened, attempted, or inflicted physical harm upon the person of another, or substantial damage upon the property of another, and (ii) as a result of mental disorder or developmental disability presents a likelihood of serious harm to others; or

(b) Was taken into custody as a result of conduct in which he attempted or inflicted serious physical harm upon the person of another, and continues to present, as a result of mental disorder or developmental disability a likelihood of serious harm to others; or

(c) Is in custody pursuant to RCW 71.05.280(3) and as a result of mental disorder or developmental disability presents a substantial likelihood of repeating similar acts considering the charged criminal behavior, life history, progress in treatment, and the public safety; or

(d) Continues to be gravely disabled.

If the conduct required to be proven in subsections (b) and (c) of this section was found by a judge or jury in a prior trial under this chapter, it shall not be necessary to reprove that element. Such new petition for involuntary treatment shall be filed and heard in the superior court of the county of the facility which is filing the new petition for involuntary treatment unless good cause is shown for a change of venue. The cost of the proceedings shall be borne by the state.

The hearing shall be held as provided in RCW 71.05.310, and if the court or jury finds that the grounds for additional confinement as set forth in this subsection are present, the court may order the committed person returned for an additional period of treatment not to exceed one hundred eighty days from the date of judgment. At the end of the one hundred eighty day period of commitment, the committed person shall be released unless a petition for another one hundred eighty day period of continued treatment is filed and heard in the same manner as provided herein above. Successive one hundred eighty day commitments are permissible on the same grounds and pursuant to the same procedures as the original one hundred eighty day commitment. No person committed as herein provided may be detained unless a valid order of commitment is in effect. No order of commitment can exceed one hundred eighty days in length. [1989 c 420 § 15; 1986 c 67 § 5; 1979 ex.s. c 215 § 15; 1975 1st ex.s. c 199 § 9; 1974 ex.s. c 145 § 23; 1973 1st ex.s. c 142 § 37.]

71.05.325 Release from involuntary treatment—Notice to prosecuting attorney. (1) Before a person committed under grounds set forth in RCW 71.05.280(3) is

released from involuntary treatment because a new petition for involuntary treatment has not been filed under RCW 71.05.320(2), the superintendent, professional person, or designated mental health professional responsible for the decision whether to file a new petition shall in writing notify the prosecuting attorney of the county in which the criminal charges against the committed person were dismissed, of the decision not to file a new petition for involuntary treatment. Notice shall be provided at least thirty days before the period of commitment expires.

(2) (a) Before a person committed under grounds set forth in RCW 71.05.280(3) is permitted temporarily to leave a treatment facility pursuant to RCW 71.05.270 for any period of time without constant accompaniment by facility staff, the superintendent, professional person in charge of a treatment facility, or his or her professional designee shall in writing notify the prosecuting attorney of any county to which the person is to be released and the prosecuting attorney of the county in which the criminal charges against the committed person were dismissed, of the decision conditionally to release the person. The notice shall be provided at least thirty days before the anticipated release and shall describe the conditions under which the release is to occur.

(b) The provisions of RCW 71.05.330(2) apply to proposed temporary releases, and either or both prosecuting attorneys receiving notice under this subsection may petition the court under RCW 71.05.330(2).

(3) Nothing in this section shall be construed to authorize detention of a person unless a valid order of commitment is in effect. [1989 c 401 § 1; 1986 c 67 § 2.]

71.05.330 Early release—Notice to court and prosecuting attorney—Petition for hearing. (1) Nothing in this chapter shall prohibit the superintendent or professional person in charge of the hospital or facility in which the person is being involuntarily treated from releasing him prior to the expiration of the commitment period when, in the opinion of the superintendent or professional person in charge, the person being involuntarily treated no longer presents a likelihood of serious harm to others.

Whenever the superintendent or professional person in charge of a hospital or facility providing involuntary treatment pursuant to this chapter releases a person prior to the expiration of the period of commitment, the superintendent or professional person in charge shall in writing notify the court which committed the person for treatment.

(2) Before a person committed under grounds set forth in RCW 71.05.280(3) or 71.05.320(2)(c) is released under this section, the superintendent or professional person in charge shall in writing notify the prosecuting attorney of the county in which the criminal charges against the committed person were dismissed, of the release date. Notice shall be provided at least thirty days before the release date. Within twenty days after

receiving notice, the prosecuting attorney may petition the court in the county in which the person is being involuntarily treated for a hearing to determine whether the person is to be released. The prosecuting attorney shall provide a copy of the petition to the superintendent or professional person in charge of the hospital or facility providing involuntary treatment, the attorney, if any, and the guardian or conservator of the committed person. The court shall conduct a hearing on the petition within ten days of filing the petition. The committed person shall have the same rights with respect to notice, hearing, and counsel as for an involuntary treatment proceeding, except as set forth in this subsection and except that there shall be no right to jury trial. The issue to be determined at the hearing is whether or not the person may be released without substantial danger to other persons, or substantial likelihood of committing felonious acts jeopardizing public safety or security. If the court disapproves of the release, it may do so only on the basis of substantial evidence. Pursuant to the determination of the court upon the hearing, the committed person shall be released or shall be returned for involuntary treatment subject to release at the end of the period for which he or she was committed, or otherwise in accordance with the provisions of this chapter. [1986 c 67 § 1; 1973 1st ex.s. c 142 § 38.]

71.05.335 Modification of order for inpatient treatment—Intervention by prosecuting attorney. In any proceeding under this chapter to modify a commitment order of a person committed to inpatient treatment under grounds set forth in RCW 71.05.280(3) or 71.05.320(2)(c) in which the requested relief includes treatment less restrictive than detention, the prosecuting attorney shall be entitled to intervene. The party initiating the motion to modify the commitment order shall serve the prosecuting attorney of the county in which the criminal charges against the committed person were dismissed with written notice and copies of the initiating papers. [1986 c 67 § 7.]

71.05.340 Outpatient treatment or care—Conditional release—Procedures for revocation. (1) (a) When, in the opinion of the superintendent or the professional person in charge of the hospital or facility providing involuntary treatment, the committed person can be appropriately served by outpatient treatment prior to or at the expiration of the period of commitment, then such outpatient care may be required as a condition for early release for a period which, when added to the inpatient treatment period, shall not exceed the period of commitment. If the hospital or facility designated to provide outpatient treatment is other than the facility providing involuntary treatment, the outpatient facility so designated must agree in writing to assume such responsibility. A copy of the conditions for early release shall be given to the patient, the designated county mental health professional in the county in which the patient is to receive outpatient treatment, and to the court of original commitment.

(b) Before a person committed under grounds set forth in RCW 71.05.280(3) or 71.05.320(2)(c) is conditionally released under (a) of this subsection, the superintendent or professional person in charge of the hospital or facility providing involuntary treatment shall in writing notify the prosecuting attorney of the county in which the criminal charges against the committed person were dismissed, of the decision to conditionally release the person. Notice and a copy of the conditions for early release shall be provided at least thirty days before the person is released from inpatient care. Within twenty days after receiving notice, the prosecuting attorney may petition the court in the county that issued the commitment order to hold a hearing to determine whether the person may be conditionally released and the terms of the conditional release. The prosecuting attorney shall provide a copy of the petition to the superintendent or professional person in charge of the hospital or facility providing involuntary treatment, the attorney, if any, and guardian or conservator of the committed person, and the court of original commitment. If the county in which the committed person is to receive outpatient treatment is the same county in which the criminal charges against the committed person were dismissed, then the court shall, upon the motion of the prosecuting attorney, transfer the proceeding to the court in that county. The court shall conduct a hearing on the petition within ten days of the filing of the petition. The committed person shall have the same rights with respect to notice, hearing, and counsel as for an involuntary treatment proceeding, except as set forth in this subsection and except that there shall be no right to jury trial. The issue to be determined at the hearing is whether or not the person may be conditionally released without substantial danger to other persons, or substantial likelihood of committing felonious acts jeopardizing public safety or security. If the court disapproves of the conditional release, it may do so only on the basis of substantial evidence. Pursuant to the determination of the court upon the hearing, the conditional release of the person shall be approved by the court on the same or modified conditions or the person shall be returned for involuntary treatment on an inpatient basis subject to release at the end of the period for which he or she was committed, or otherwise in accordance with the provisions of this chapter.

(2) The hospital or facility designated to provide outpatient care or the secretary may modify the conditions for continued release when such modification is in the best interest of the person. Notification of such changes shall be sent to all persons receiving a copy of the original conditions.

(3) If the hospital or facility designated to provide outpatient care, the designated county mental health professional or the secretary determines that a conditionally released person is failing to adhere to the terms and conditions of his or her release, or that substantial deterioration in the person's functioning has occurred, then, upon notification by the hospital or facility designated to provide outpatient care, or on his or her own motion, the designated county mental health professional

or the secretary may order that the conditionally released person be apprehended and taken into custody and temporarily detained in an evaluation and treatment facility in or near the county in which he or she is receiving outpatient treatment until such time, not exceeding five days, as a hearing can be scheduled to determine whether or not the person should be returned to the hospital or facility from which he or she had been conditionally released. The designated county mental health professional or the secretary may modify or rescind such order at any time prior to commencement of the court hearing. The court that originally ordered commitment shall be notified within two judicial days of a person's detention under the provisions of this section, and the designated county mental health professional or the secretary shall file his or her petition and order of apprehension and detention with the court and serve them upon the person detained. His or her attorney, if any, and his or her guardian or conservator, if any, shall receive a copy of such papers as soon as possible. Such person shall have the same rights with respect to notice, hearing, and counsel as for an involuntary treatment proceeding, except as specifically set forth in this section and except that there shall be no right to jury trial. The issues to be determined shall be whether the conditionally released person did or did not adhere to the terms and conditions of his or her release or that substantial deterioration in the person's functioning has occurred; and, if he or she failed to adhere to such terms and conditions, or that substantial deterioration in the person's functioning has occurred, whether the conditions of release should be modified or the person should be returned to the facility. Pursuant to the determination of the court upon such hearing, the conditionally released person shall either continue to be conditionally released on the same or modified conditions or shall be returned for involuntary treatment on an inpatient basis subject to release at the end of the period for which he or she was committed for involuntary treatment, or otherwise in accordance with the provisions of this chapter. Such hearing may be waived by the person and his or her counsel and his or her guardian or conservator, if any, but shall not be waivable unless all such persons agree to waive, and upon such waiver the person may be returned for involuntary treatment or continued on conditional release on the same or modified conditions.

(4) The proceedings set forth in subsection (3) of this section may be initiated by the designated county mental health professional or the secretary on the same basis set forth therein without requiring or ordering the apprehension and detention of the conditionally released person, in which case the court hearing shall take place in not less than five days from the date of service of the petition upon the conditionally released person.

Upon expiration of the period of commitment, or when the person is released from outpatient care, notice in writing to the court which committed the person for treatment shall be provided.

(5) The grounds and procedures for revocation of less restrictive alternative treatment shall be the same as those set forth in this section for conditional releases.

(6) In the event of a revocation of a conditional release, the subsequent treatment period may be for no longer than the actual period authorized in the original court order. [1987 c 439 § 10; 1986 c 67 § 6; 1979 ex.s. c 215 § 16; 1974 ex.s. c 145 § 24; 1973 1st ex.s. c 142 § 39.]

71.05.350 Assistance to released persons. No indigent patient shall be conditionally released or discharged from involuntary treatment without suitable clothing, and the superintendent of a state hospital shall furnish the same, together with such sum of money as he shall deem necessary for the immediate welfare of the patient. Such sum of money shall be the same as the amount required by RCW 72.02.100 to be provided to persons in need being released from correctional institutions. As funds are available, the secretary may provide payment to indigent persons conditionally released pursuant to this chapter consistent with the optional provisions of RCW 72.02.100 and 72.02.110, and may adopt rules and regulations to do so. [1973 1st ex.s. c 142 § 40.]

71.05.360 Rights of involuntarily detained persons. (1) Every person involuntarily detained or committed under the provisions of this chapter shall be entitled to all the rights set forth in this chapter and shall retain all rights not denied him under this chapter.

(2) Each person involuntarily detained or committed pursuant to this chapter shall have the right to adequate care and individualized treatment. [1974 ex.s. c 145 § 25; 1973 1st ex.s. c 142 § 41.]

71.05.370 Rights—Posting of list. Insofar as danger to the individual or others is not created, each person involuntarily detained, treated in a less restrictive alternative course of treatment, or committed for treatment and evaluation pursuant to this chapter shall have, in addition to other rights not specifically withheld by law, the following rights, a list of which shall be prominently posted in all facilities, institutions, and hospitals providing such services:

(1) To wear his or her own clothes and to keep and use his or her own personal possessions, except when deprivation of same is essential to protect the safety of the resident or other persons;

(2) To keep and be allowed to spend a reasonable sum of his or her own money for canteen expenses and small purchases;

(3) To have access to individual storage space for his or her private use;

(4) To have visitors at reasonable times;

(5) To have reasonable access to a telephone, both to make and receive confidential calls;

(6) To have ready access to letter writing materials, including stamps, and to send and receive uncensored correspondence through the mails;

(7) Not to consent to the performance of shock treatment, the administration of antipsychotic medications, or surgery, except emergency life-saving surgery, and not to have shock treatment, antipsychotic medications, or nonemergency surgery in such circumstance unless

ordered by a court of competent jurisdiction pursuant to the following standards and procedures:

(a) Shock treatment and the administration of antipsychotic medication shall not be ordered unless the petitioning party proves by clear, cogent, and convincing evidence that there exists a compelling state interest that justifies overriding the patient's lack of consent to shock treatment or the administration of antipsychotic medications, that the proposed treatment is necessary and effective, and that medically acceptable alternative forms of treatment are not available, have not been successful, or are not likely to be effective.

(b) The court shall make specific findings of fact concerning: (i) The existence of one or more compelling state interests; (ii) the necessity and effectiveness of the treatment; and (iii) the person's desires regarding the proposed treatment. If the patient is unable to make a rational and informed decision about consenting to or refusing the proposed treatment, the court shall make a substituted judgment for the patient as if he or she were competent to make such a determination.

(c) The person shall be present at any hearing on a request to administer shock treatment or antipsychotic medications filed pursuant to this subsection. The person has the right: (i) To be represented by an attorney; (ii) to present evidence; (iii) to cross-examine witnesses; (iv) to have the rules of evidence enforced; (v) to remain silent; (vi) to view and copy all petitions and reports in the court file; and (vii) to be given reasonable notice and an opportunity to prepare for the hearing. The court may appoint a psychiatrist, psychologist within their scope of practice, or physician to examine and testify on behalf of such person. The court shall appoint a psychiatrist, psychologist within their scope of practice, or physician designated by such person or the person's counsel to testify on behalf of the person in cases where an order for shock treatment is sought.

(d) An order for the administration of antipsychotic medications entered following a hearing conducted pursuant to this section shall be effective for the period of the current involuntary treatment order, any succeeding order entered pursuant to RCW 71.05.320(1), and any interim period during which the person is awaiting trial or hearing on a new petition for involuntary treatment or involuntary medication. Upon a request timely filed, a review of any such medication order shall be conducted by the court at the hearing on a petition filed pursuant to RCW 71.05.300. If a succeeding involuntary treatment order is entered pursuant to RCW 71.05.320(2), a person who refuses to consent to the administration of antipsychotic medications shall be entitled to an evidentiary hearing in accordance with this section.

(e) Antipsychotic medication may be administered to a nonconsenting person detained or committed pursuant to this chapter without a court order under the following circumstances:

(i) A person presents an imminent likelihood of serious harm to self or others;

(ii) Medically acceptable alternatives to administration of antipsychotic medications are not available, have not been successful, or are not likely to be effective; and

(iii) In the opinion of the physician with responsibility for treatment of the person, or his or her designee, the person's condition constitutes an emergency requiring the treatment be instituted before a judicial hearing as authorized pursuant to this section can be held.

If antipsychotic medications are administered over a person's lack of consent pursuant to this subsection, a petition for an order authorizing the administration of antipsychotic medications shall be filed on the next judicial day. The hearing shall be held within two judicial days. If deemed necessary by the physician with responsibility for the treatment of the person, administration of antipsychotic medications may continue until the hearing is held;

(8) To dispose of property and sign contracts unless such person has been adjudicated an incompetent in a court proceeding directed to that particular issue;

(9) Not to have psychosurgery performed on him or her under any circumstances. [1989 c 120 § 8; 1974 ex.s. c 145 § 26; 1973 1st ex.s. c 142 § 42.]

71.05.380 Rights of voluntarily committed persons.

All persons voluntarily entering or remaining in any facility, institution, or hospital providing evaluation and treatment for mental disorder shall have no less than all rights secured to involuntarily detained persons by RCW 71.05.360 and 71.05.370. [1973 1st ex.s. c 142 § 43.]

71.05.390 Confidential information and records—

Disclosure. The fact of admission and all information and records compiled, obtained, or maintained in the course of providing services to either voluntary or involuntary recipients of services at public or private agencies shall be confidential.

Information and records may be disclosed only:

(1) In communications between qualified professional persons to meet the requirements of this chapter, in the provision of services or appropriate referrals, or in the course of guardianship proceedings. The consent of the patient, or his guardian, must be obtained before information or records may be disclosed by a professional person employed by a facility to a professional person, not employed by the facility, who does not have the medical responsibility for the patient's care or who is not a designated county mental health professional or who is not involved in providing services under the community mental health services act, chapter 71.24 RCW.

(2) When the communications regard the special needs of a patient and the necessary circumstances giving rise to such needs and the disclosure is made by a facility providing outpatient services to the operator of a care facility in which the patient resides.

(3) When the person receiving services, or his guardian, designates persons to whom information or records may be released, or if the person is a minor, when his parents make such designation.

(4) To the extent necessary for a recipient to make a claim, or for a claim to be made on behalf of a recipient for aid, insurance, or medical assistance to which he may be entitled.

(5) For program evaluation and/or research: *Provided*, That the secretary of social and health services adopts rules for the conduct of such evaluation and/or research. Such rules shall include, but need not be limited to, the requirement that all evaluators and researchers must sign an oath of confidentiality substantially as follows:

"As a condition of conducting evaluation or research concerning persons who have received services from (fill in the facility, agency, or person) I, -----, agree not to divulge, publish, or otherwise make known to unauthorized persons or the public any information obtained in the course of such evaluation or research regarding persons who have received services such that the person who received such services is identifiable.

I recognize that unauthorized release of confidential information may subject me to civil liability under the provisions of state law.

/s/ ----- "

(6) To the courts as necessary to the administration of this chapter.

(7) To law enforcement officers, public health officers, or personnel of the department of corrections or the *board of prison terms and paroles for persons who are the subject of the records and who are committed to the custody of the department of corrections or *board of prison terms and paroles which information or records are necessary to carry out the responsibilities of their office: *Provided*, That

(a) Only the fact, place, and date of involuntary admission, the fact and date of discharge, and the last known address shall be disclosed upon request; and

(b) The law enforcement and public health officers or personnel of the department of corrections or *board of prison terms and paroles shall be obligated to keep such information confidential in accordance with this chapter; and

(c) Additional information shall be disclosed only after giving notice to said person and his counsel and upon a showing of clear, cogent and convincing evidence that such information is necessary and that appropriate safeguards for strict confidentiality are and will be maintained: *Provided however*, That in the event the said person has escaped from custody, said notice prior to disclosure is not necessary and that the facility from which the person escaped shall include an evaluation as to whether the person is of danger to persons or property and has a propensity toward violence.

(8) To the attorney of the detained person.

(9) To the prosecuting attorney as necessary to carry out the responsibilities of the office under RCW 71.05.330(2) and 71.05.340(1)(b) and 71.05.335. The prosecutor shall be provided access to records regarding the committed person's treatment and prognosis, medication, behavior problems, and other records relevant to the issue of whether treatment less restrictive than inpatient treatment is in the best interest of the committed person or others. Information shall be disclosed only after giving notice to the committed person and the person's counsel.

(10) To appropriate law enforcement agencies and to a person, when the identity of the person is known to the public or private agency, whose health and safety has been threatened, or who is known to have been repeatedly harassed, by the patient. The person may designate a representative to receive the disclosure. The disclosure shall be made by the professional person in charge of the public or private agency or his or her designee and shall include the dates of admission, discharge, authorized or unauthorized absence from the agency's facility, and only such other information that is pertinent to the threat or harassment. The decision to disclose or not shall not result in civil liability for the agency or its employees so long as the decision was reached in good faith and without gross negligence.

The fact of admission, as well as all records, files, evidence, findings, or orders made, prepared, collected, or maintained pursuant to this chapter shall not be admissible as evidence in any legal proceeding outside this chapter without the written consent of the person who was the subject of the proceeding. The records and files maintained in any court proceeding pursuant to this chapter shall be confidential and available subsequent to such proceedings only to the person who was the subject of the proceeding or his attorney. In addition, the court may order the subsequent release or use of such records or files only upon good cause shown if the court finds that appropriate safeguards for strict confidentiality are and will be maintained. [1986 c 67 § 8; 1985 c 207 § 1; 1983 c 196 § 4; 1979 ex.s. c 215 § 17; 1975 1st ex.s. c 199 § 10; 1974 ex.s. c 145 § 27; 1973 1st ex.s. c 142 § 44.]

***Reviser's note:** The "board of prison terms and paroles" was redesignated the "indeterminate sentence review board" by 1986 c 224, effective July 1, 1986.

71.05.400 Release of information to patient's next of kin, attorney, guardian, etc.—Notification of patient's death. (1) A public or private agency shall release to a patient's next of kin, attorney, guardian, or conservator, if any,

(a) The information that the person is presently a patient in the facility or that the person is seriously physically ill;

(b) A statement evaluating the mental and physical condition of the patient, and a statement of the probable duration of the patient's confinement, if such information is requested by the next of kin, attorney, guardian, or conservator; and such other information requested by the next of kin or attorney as may be necessary to decide whether or not proceedings should be instituted to appoint a guardian or conservator.

(2) Upon the death of a patient, his next of kin, guardian, or conservator, if any, shall be notified.

Next of kin who are of legal age and competent shall be notified under this section in the following order: Spouse, parents, children, brothers and sisters, and other relatives according to the degree of relation. [1974 ex.s. c 115 § 1; 1973 2nd ex.s. c 24 § 6; 1973 1st ex.s. c 142 § 45.]

71.05.410 Notice of disappearance of patient. When a patient would otherwise be subject to the provisions of RCW 71.05.390 and disclosure is necessary for the protection of the patient or others due to his unauthorized disappearance from the facility, and his whereabouts is unknown, notice of such disappearance, along with relevant information, may be made to relatives and governmental law enforcement agencies designated by the physician in charge of the patient or the professional person in charge of the facility, or his professional designee. [1973 2nd ex.s. c 24 § 7; 1973 1st ex.s. c 142 § 46.]

71.05.420 Records of disclosure. When any disclosure of information or records is made as authorized by RCW 71.05.390 through 71.05.410, the physician in charge of the patient or the professional person in charge of the facility shall promptly cause to be entered into the patient's medical record the date and circumstances under which said disclosure was made, the names and relationships to the patient, if any, of the persons or agencies to whom such disclosure was made, and the information disclosed. [1973 1st ex.s. c 142 § 47.]

71.05.430 Statistical data. Nothing in this chapter shall be construed to prohibit the compilation and publication of statistical data for use by government or researchers under standards, including standards to assure maintenance of confidentiality, set forth by the secretary of the department of social and health services. [1973 1st ex.s. c 142 § 48.]

71.05.440 Action for unauthorized release of confidential information—Liquidated damages—Treble damages—Injunction. Any person may bring an action against an individual who has wilfully released confidential information or records concerning him in violation of the provisions of this chapter, for the greater of the following amounts:

(1) One thousand dollars; or

(2) Three times the amount of actual damages sustained, if any. It shall not be a prerequisite to recovery under this section that the plaintiff shall have suffered or be threatened with special, as contrasted with general, damages.

Any person may bring an action to enjoin the release of confidential information or records concerning him or his ward, in violation of the provisions of this chapter, and may in the same action seek damages as provided in this section.

The court may award to the plaintiff, should he prevail in an action authorized by this section, reasonable attorney fees in addition to those otherwise provided by law. [1974 ex.s. c 145 § 28; 1973 1st ex.s. c 142 § 49.]

71.05.450 Competency—Effect—Statement of Washington law. Competency shall not be determined or withdrawn by operation of, or under the provisions of this chapter. No person shall be presumed incompetent or lose any civil rights as a consequence of receiving

evaluation or treatment for mental disorder, either voluntarily or involuntarily, or certification or commitment pursuant to this chapter or any prior laws of this state dealing with mental illness. Any person who leaves a public or private agency following evaluation or treatment for mental disorder shall be given a written statement setting forth the substance of this section. [1973 1st ex.s. c 142 § 50.]

71.05.460 Right to counsel. Every person involuntarily detained shall immediately be informed of his right to a hearing to review the legality of his detention and of his right to counsel, by the professional person in charge of the facility providing evaluation and treatment, or his designee, and, when appropriate, by the court. If the person so elects, the court shall immediately appoint an attorney to assist him. [1973 1st ex.s. c 142 § 51.]

71.05.470 Right to examination. A person challenging his detention or his attorney, shall have the right to designate and have the court appoint a reasonably available independent physician or licensed mental health professional to examine the person detained, the results of which examination may be used in the proceeding. The person shall, if he is financially able, bear the cost of such expert information, otherwise such expert examination shall be at public expense. [1973 1st ex.s. c 142 § 52.]

71.05.480 Petitioning for release—Writ of habeas corpus. Nothing contained in this chapter shall prohibit the patient from petitioning by writ of habeas corpus for release. [1974 ex.s. c 145 § 29; 1973 1st ex.s. c 142 § 53.]

71.05.490 Present rights. Nothing in this chapter shall prohibit a person committed on or prior to January 1, 1974 from exercising a right available to him at or prior to January 1, 1974 for obtaining release from confinement. [1973 1st ex.s. c 142 § 54.]

71.05.500 Liability of applicant. Any person making or filing an application alleging that a person should be involuntarily detained, certified, committed, treated, or evaluated pursuant to this chapter shall not be rendered civilly or criminally liable where the making and filing of such application was in good faith. [1973 1st ex.s. c 142 § 55.]

71.05.510 Damages for excessive detention. Any individual who knowingly, wilfully or through gross negligence violates the provisions of this chapter by detaining a person for more than the allowable number of days shall be liable to the person detained in civil damages. It shall not be a prerequisite to an action under this section that the plaintiff shall have suffered or be threatened with special, as contrasted with general damages. [1974 ex.s. c 145 § 30; 1973 1st ex.s. c 142 § 56.]

71.05.520 Protection of rights—Staff. The department of social and health services shall have the responsibility to determine whether all rights of individuals

recognized and guaranteed by the provisions of this chapter and the Constitutions of the state of Washington and the United States are in fact protected and effectively secured. To this end, the department shall assign appropriate staff who shall from time to time as may be necessary have authority to examine records, inspect facilities, attend proceedings, and do whatever is necessary to monitor, evaluate, and assure adherence to such rights. Such persons shall also recommend such additional safeguards or procedures as may be appropriate to secure individual rights set forth in this chapter and as guaranteed by the state and federal Constitutions. [1973 1st ex.s. c 142 § 57.]

71.05.525 Transfer of person committed to juvenile correction institution to institution or facility for mentally ill juveniles. When, in the judgment of the department of social and health services, the welfare of any person committed to or confined in any state juvenile correctional institution or facility necessitates that such a person be transferred or moved for observation, diagnosis or treatment to any state institution or facility for the care of mentally ill juveniles the secretary, or his designee, is authorized to order and effect such move or transfer: *Provided, however,* That the secretary shall adopt and implement procedures to assure that persons so transferred shall, while detained or confined in such institution or facility for the care of mentally ill juveniles, be provided with substantially similar opportunities for parole or early release evaluation and determination as persons detained or confined in state juvenile correctional institutions or facilities: *Provided, further,* That the secretary shall notify the original committing court of such transfer. [1975 1st ex.s. c 199 § 12.]

71.05.530 Facilities part of comprehensive mental health program. Evaluation and treatment facilities authorized pursuant to this chapter may be part of the comprehensive community mental health services program conducted in counties pursuant to the Community Mental Health Services Act, chapter 71.24 RCW, and may receive funding pursuant to the provisions thereof. [1973 1st ex.s. c 142 § 58.]

71.05.550 Recognition of county financial necessities. The department of social and health services, in planning and providing funding to counties pursuant to chapter 71.24 RCW, shall recognize the financial necessities imposed upon counties by implementation of this chapter and shall consider needs, if any, for additional community mental health services and facilities and reduction in commitments to state hospitals for the mentally ill accomplished by individual counties, in planning and providing such funding. The state shall provide financial assistance to the counties to enable the counties to meet all increased costs, if any, to the counties resulting from their administration of the provisions of *this 1973 amendatory act. [1973 1st ex.s. c 142 § 60.]

***Reviser's note:** "this 1973 amendatory act" consists of this chapter, amendments to RCW 71.12.560, 71.12.570, 72.23.010, 72.23.070 and 72.23.100 by 1973 1st ex.s. c 142, and the repeal of RCW 71.02.010—

71.02.300, 71.02.450, 71.02.650, 71.03.010–71.03.900, 71.12.580, 72-.01.390, 72.01.400, 72.08.110, 72.23.140, 72.23.150, 72.23.220, 72.23-.270 and 72.25.040.

71.05.560 Adoption of rules and regulations. The department of social and health services shall adopt such rules and regulations as may be necessary to effectuate the intent and purposes of this chapter, which shall include but not be limited to evaluation of the quality of the program and facilities operating pursuant to this chapter, evaluation of the effectiveness and cost effectiveness of such programs and facilities, and procedures and standards for certification and other action relevant to evaluation and treatment facilities. [1973 1st ex.s. c 142 § 61.]

71.05.570 Rules of court. The supreme court of the state of Washington shall adopt such rules as it shall deem necessary with respect to the court procedures and proceedings provided for by this chapter. [1973 1st ex.s. c 142 § 62.]

71.05.610 Treatment records—Definitions. (Contingent effective date.) As used in this chapter or chapter 71.24 or 10.77 RCW, the following words and phrases shall have the meanings indicated.

(1) "Registration records" include all the records of the department, regional support networks, treatment facilities, and other persons providing services to the department, county departments, or facilities which identify individuals who are receiving or who at any time have received services for mental illness.

(2) "Treatment records" include registration and all other records concerning individuals who are receiving or who at any time have received services for mental illness, which are maintained by the department, by regional support networks and their staffs, and by treatment facilities. Treatment records do not include notes or records maintained for personal use by an individual providing treatment services for the department, regional support networks, or a treatment facility if the notes or records are not available to others. [1989 c 205 § 11.]

Contingent effective date—1989 c 205 §§ 11 through 19: "**Sections 10 through 19 of this act shall take effect on July 1, 1995, or when regional support networks are established." [1989 c 205 § 24.]

***Reviser's note:** The reference to "sections 10 through 19 of this act" is incorrect. The reference should have been to "sections 11 through 19 of this act," which are codified as RCW 71.05.610 through 71.05.690.

71.05.620 Treatment records—Informed consent for disclosure of information—Court files and records. (Contingent effective date.) (1) Informed consent for disclosure of information from court or treatment records to an individual, agency, or organization must be in writing and must contain the following information:

- (a) The name of the individual, agency, or organization to which the disclosure is to be made;
- (b) The name of the individual whose treatment record is being disclosed;
- (c) The purpose or need for the disclosure;
- (d) The specific type of information to be disclosed;

(e) The time period during which the consent is effective;

(f) The date on which the consent is signed; and

(g) The signature of the individual or person legally authorized to give consent for the individual.

(2) The files and records of court proceedings under chapter 71.05 RCW shall be closed but shall be accessible to any individual who is the subject of a petition and to the individual's attorney, guardian ad litem, resource management services, or service providers authorized to receive such information by resource management services. [1989 c 205 § 12.]

Contingent effective date—1989 c 205 §§ 11 through 19: See note following RCW 71.05.610.

71.05.630 Treatment records—Confidential—Release. (Contingent effective date.) (1) Except as otherwise provided by law, all treatment records shall remain confidential. Treatment records may be released only to the persons designated in this section, or to other persons designated in an informed written consent of the patient.

(2) Treatment records of an individual may be released without informed written consent in the following circumstances:

(a) To an individual, organization, or agency as necessary for management or financial audits, or program monitoring and evaluation. Information obtained under this subsection shall remain confidential and may not be used in a manner that discloses the name or other identifying information about the individual whose records are being released.

(b) To the department, the director of regional support networks, or a qualified staff member designated by the director only when necessary to be used for billing or collection purposes. The information shall remain confidential.

(c) For purposes of research as permitted in chapter 42.48 RCW.

(d) Pursuant to lawful order of a court.

(e) To qualified staff members of the department, to the director of regional support networks, to resource management services responsible for serving a patient, or to service providers designated by resource management services as necessary to determine the progress and adequacy of treatment and to determine whether the person should be transferred to a less restrictive or more appropriate treatment modality or facility. The information shall remain confidential.

(f) Within the treatment facility where the patient is receiving treatment, confidential information may be disclosed to individuals employed, serving in bona fide training programs, or participating in supervised volunteer programs, at the facility when it is necessary to perform their duties.

(g) Within the department as necessary to coordinate treatment for mental illness, developmental disabilities, alcoholism, or drug abuse of individuals who are under the supervision of the department.

(h) To a licensed physician who has determined that the life or health of the individual is in danger and that

treatment without the information contained in the treatment records could be injurious to the patient's health. Disclosure shall be limited to the portions of the records necessary to meet the medical emergency.

(i) To a facility that is to receive an individual who is involuntarily committed under chapter 71.05 RCW, or upon transfer of the individual from one treatment facility to another. The release of records under this subsection shall be limited to the treatment records required by law, a record or summary of all somatic treatments, and a discharge summary. The discharge summary may include a statement of the patient's problem, the treatment goals, the type of treatment which has been provided, and recommendation for future treatment, but may not include the patient's complete treatment record.

(j) Notwithstanding the provisions of RCW 71.05.390(7), to a correctional facility or a corrections officer who is responsible for the supervision of an individual who is receiving inpatient or outpatient evaluation or treatment. Every person who is under the supervision of the department of corrections who receives evaluation or treatment under chapter 9.94A RCW shall be notified of the provisions of this section by the individual's corrections officer. Release of records under this section is limited to:

(i) An evaluation report provided pursuant to a written supervision plan.

(ii) The discharge summary, including a record or summary of all somatic treatments, at the termination of any treatment provided as part of the supervision plan.

(iii) When an individual is returned from a treatment facility to a correctional facility, the information provided under (j)(iv) of this subsection.

(iv) Any information necessary to establish or implement changes in the individual's treatment plan or the level or kind of supervision as determined by resource management services. In cases involving a person transferred back to a correctional facility, disclosure shall be made to clinical staff only. In cases involving a person under supervision of the department of corrections, disclosure shall be made to the supervising corrections officer only.

(k) To the individual's counsel or guardian ad litem, without modification, at any time in order to prepare for involuntary commitment or recommitment proceedings, reexaminations, appeals, or other actions relating to detention, admission, commitment, or patient's rights under chapter 71.05 RCW.

(l) To a corrections officer of the department who has custody of or is responsible for the supervision of an individual who is transferred or discharged from a treatment facility.

(m) To staff members of the protection and advocacy agency or to staff members of a private, nonprofit corporation for the purpose of protecting and advocating the rights of persons with mental illness or developmental disabilities. Resource management services may limit the release of information to the name, birthdate, and county of residence of the patient, information regarding whether the patient was voluntarily admitted, or involuntarily committed, the date and place of admission,

placement, or commitment, the name and address of a guardian of the patient, and the date and place of the guardian's appointment. Any staff member who wishes to obtain additional information shall notify the patient's resource management services in writing of the request and of the resource management services' right to object. The staff member shall send the notice by mail to the guardian's address. If the guardian does not object in writing within fifteen days after the notice is mailed, the staff member may obtain the additional information. If the guardian objects in writing within fifteen days after the notice is mailed, the staff member may not obtain the additional information.

(3) Whenever federal law or federal regulations restrict the release of information contained in the treatment records of any patient who receives treatment for alcoholism or drug dependency, the department may restrict the release of the information as necessary to comply with federal law and regulations. [1989 c 205 § 13.]

Contingent effective date—1989 c 205 §§ 11 through 19: See note following RCW 71.05.610.

71.05.640 Treatment records—Access procedures. (Contingent effective date.) (1) Procedures shall be established by resource management services to provide reasonable and timely access to individual treatment records. However, access may not be denied at any time to records of all medications and somatic treatments received by the individual.

(2) Following discharge, the individual shall have a right to a complete record of all medications and somatic treatments prescribed during admission or commitment and to a copy of the discharge summary prepared at the time of his or her discharge. A reasonable and uniform charge for reproduction may be assessed.

(3) Treatment records may be modified prior to inspection to protect the confidentiality of other patients or the names of any other persons referred to in the record who gave information on the condition that his or her identity remain confidential. Entire documents may not be withheld to protect such confidentiality.

(4) At the time of discharge all individuals shall be informed by resource management services of their rights as provided in *RCW 71.05.610 through 71.05.690. [1989 c 205 § 14.]

***Reviser's note:** The reference in this section to "sections 10 through 19 of this act" is incorrect and should have been "sections 11 through 19 of this act," which is how the reference has been codified.

Contingent effective date—1989 c 205 §§ 11 through 19: See note following RCW 71.05.610.

71.05.650 Treatment records—Notation of and access to released data. (Contingent effective date.) Each time written information is released from a treatment record, the record's custodian shall make a notation in the record including the following: The name of the person to whom the information was released; the identification of the information released; the purpose of the release; and the date of the release. The patient shall have access to this release data. [1989 c 205 § 15.]

Contingent effective date—1989 c 205 §§ 11 through 19: See note following RCW 71.05.610.

71.05.660 Treatment records—Privileged communications unaffected. (Contingent effective date.) Nothing in *this act shall be construed to interfere with communications between physicians or psychologists and patients and attorneys and clients. [1989 c 205 § 16.]

***Reviser's note:** For codification of "this act" [1989 c 205], see Codification Tables, Volume 0.

Contingent effective date—1989 c 205 §§ 11 through 19: See note following RCW 71.05.610.

71.05.670 Treatment records—Violations—Civil action. (Contingent effective date.) Any person, including the state or any political subdivision of the state, violating *RCW 71.05.610 through 71.05.690 shall be subject to the provisions of RCW 71.05.440. [1989 c 205 § 17.]

***Reviser's note:** The reference in this section to "sections 10 through 19 of this act" is incorrect and should have been "sections 11 through 19 of this act," which is how the reference has been codified.

Contingent effective date—1989 c 205 §§ 11 through 19: See note following RCW 71.05.610.

71.05.680 Treatment records—Access under false pretenses, penalty. (Contingent effective date.) Any person who requests or obtains confidential information pursuant to *RCW 71.05.610 through 71.05.690 under false pretenses shall be guilty of a gross misdemeanor. [1989 c 205 § 18.]

***Reviser's note:** The reference in this section to "sections 10 through 19 of this act" is incorrect and should have been "sections 11 through 19 of this act," which is how the reference has been codified.

Contingent effective date—1989 c 205 §§ 11 through 19: See note following RCW 71.05.610.

71.05.690 Treatment records—Rules. (Contingent effective date.) The department shall adopt rules to implement *RCW 71.05.610 through 71.05.680. [1989 c 205 § 19.]

***Reviser's note:** The reference in this section to "sections 10 through 18 of this act" is incorrect and should have been "sections 11 through 18 of this act," which is how the reference has been codified.

Contingent effective date—1989 c 205 §§ 11 through 19: See note following RCW 71.05.610.

71.05.900 Severability—1973 1st ex.s. c 142. If any provision of this 1973 amendatory act, or its application to any person or circumstance is held invalid, the remainder of this act, or the application of the provision to other persons or circumstances is not affected. [1973 1st ex.s. c 142 § 63.]

71.05.910 Construction—1973 1st ex.s. c 142. Sections 6 through 63 of this 1973 amendatory act shall constitute a new chapter in Title 71 RCW, and shall be considered the successor to those sections of chapter 71.02 RCW repealed by this 1973 amendatory act. [1973 1st ex.s. c 142 § 64.]

71.05.920 Section headings not part of the law. Section headings as used in sections 6 through 63 of this

1973 amendatory act shall not constitute any part of law. [1973 1st ex.s. c 142 § 65.]

71.05.930 Effective date—1973 1st ex.s. c 142. This 1973 amendatory act shall take effect on January 1, 1974. [1973 1st ex.s. c 142 § 67.]

71.05.940 Equal application of 1989 c 420—Evaluation for developmental disability. The provisions of *this act shall apply equally to persons *presently in the custody of the department who were found by a court to be not guilty by reason of insanity or incompetent to stand trial, or who have been found to have committed acts constituting a felony pursuant to RCW 71.05.280(3) and present a substantial likelihood of repeating similar acts, and the secretary shall cause such persons to be evaluated to ascertain if such persons are developmentally disabled for placement in a program specifically reserved for the treatment and training of persons with developmental disabilities. [1989 c 420 § 18.]

***Reviser's note:** For meaning of "this act" and "presently" see note following RCW 10.77.940.

Chapter 71.06 SEXUAL PSYCHOPATHS

Sections

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Council for the prevention of child abuse and neglect: Chapter 43.121 RCW.

Nonresident sexual psychopaths and psychopathic delinquents: Chapter 72.25 RCW.

Telephone calls soliciting immoral acts: RCW 9.61.230 through 9.61.250.

71.06.005 Application of chapter. With respect to sexual psychopaths, this chapter applies only to crimes or offenses committed before July 1, 1984. [1984 c 209 § 27.]

Effective dates—1984 c 209: See note following RCW 9.94A.030.

71.06.010 Definitions. As used in this chapter, the following terms shall have the following meanings:

"Psychopathic personality" means the existence in any person of such hereditary, congenital or acquired condition affecting the emotional or volitional rather than the intellectual field and manifested by anomalies of such character as to render satisfactory social adjustment of such person difficult or impossible.

"Sexual psychopath" means any person who is affected in a form of psychoneurosis or in a form of psychopathic personality, which form predisposes such person to the commission of sexual offenses in a degree constituting him a menace to the health or safety of others.

"Sex offense" means one or more of the following: Abduction, incest, rape, assault with intent to commit rape, indecent assault, contributing to the delinquency of a minor involving sexual misconduct, sodomy, indecent exposure, indecent liberties with children, carnal knowledge of children, soliciting or enticing or otherwise communicating with a child for immoral purposes, vagrancy involving immoral or sexual misconduct, or an attempt to commit any of the said offenses.

"Minor" means any person under eighteen years of age.

"Department" means department of social and health services.

"Court" means the superior court of the state of Washington.

"Superintendent" means the superintendent of a state institution designated for the custody, care and treatment of sexual psychopaths or psychopathic delinquents. [1985 c 354 § 32; 1977 ex.s. c 80 § 42; 1971 ex.s. c 292 § 65; 1961 c 65 § 1; 1959 c 25 § 71.06.010. Prior: 1957 c 184 § 1; 1951 c 223 § 2; 1949 c 198 §§ 25 and 40; Rem. Supp. 1949 §§ 6953-25 and 6953-40.]

Severability—Effective date—1985 c 354: See RCW 71.34.900 and 71.34.901.

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.

Severability—1971 ex.s. c 292: See note following RCW 26.28.010.

71.06.020 Sexual psychopaths—Petition. Where any person is charged in the superior court in this state with a sex offense and it appears that such person is a sexual psychopath, the prosecuting attorney may file a petition in the criminal proceeding, alleging that the defendant is a sexual psychopath and stating sufficient facts to support such allegation. Such petition must be filed and served on the defendant or his attorney at least ten days prior to hearing on the criminal charge. [1959 c 25 § 71.06.020. Prior: 1951 c 223 § 3; 1949 c 198 § 26; Rem. Supp. 1949 § 6953-26.]

71.06.030 Procedure on petition—Effect of acquittal on criminal charge. The court shall proceed to hear the criminal charge. If the defendant is convicted or has previously pleaded guilty to such charge, judgment shall be pronounced, but the execution of the sentence may be deferred or suspended, as in other criminal

cases, and the court shall then proceed to hear and determine the allegation of sexual psychopathy. Acquittal on the criminal charge shall not operate to suspend the hearing on the allegation of sexual psychopathy: *Provided*, That the provisions of RCW 71.06.140 authorizing transfer of a committed sexual psychopath to a correctional institution shall not apply to the committed sexual psychopath who has been acquitted on the criminal charge. [1967 c 104 § 1; 1959 c 25 § 71.06.030. Prior: 1951 c 223 § 4.]

71.06.040 Preliminary hearing—Evidence—Detention in hospital for observation. At a preliminary hearing upon the charge of sexual psychopathy, the court may require the testimony of two duly licensed physicians who have examined the defendant. If the court finds that there are reasonable grounds to believe the defendant is a sexual psychopath, the court shall order said defendant confined at the nearest state hospital for observation as to the existence of sexual psychopathy. Such observation shall be for a period of not to exceed ninety days. The defendant shall be detained in the county jail or other county facilities pending execution of such observation order by the department. [1959 c 25 § 71.06.040. Prior: 1951 c 223 § 5.]

71.06.050 Preliminary hearing—Report of findings. Upon completion of said observation period the superintendent of the state hospital shall return the defendant to the court, together with a written report of his findings as to whether or not the defendant is a sexual psychopath and the facts upon which his opinion is based. [1959 c 25 § 71.06.050. Prior: 1951 c 223 § 6.]

71.06.060 Preliminary hearing—Commitment, or other disposition of charge. After the superintendent's report has been filed, the court shall determine whether or not the defendant is a sexual psychopath. If said defendant is found to be a sexual psychopath, the court shall commit him to the secretary of social and health services for designation of the facility for detention, care, and treatment of the sexual psychopath. If the defendant is found not to be a sexual psychopath, the court shall order the sentence to be executed, or may discharge the defendant as the case may merit. [1979 c 141 § 129; 1967 c 104 § 2; 1959 c 25 § 71.06.060. Prior: 1951 c 223 § 7.]

71.06.070 Preliminary hearing—Jury trial. A jury may be demanded to determine the question of sexual psychopathy upon hearing after return of the superintendent's report. Such demand must be in writing and filed with the court within ten days after filing of the petition alleging the defendant to be a sexual psychopath. [1959 c 25 § 71.06.070. Prior: 1951 c 223 § 14; 1949 c 198 § 38; Rem. Supp. 1949 § 6953-38.]

71.06.080 Preliminary hearing—Construction of chapter—Trial, evidence, law relating to criminally insane. Nothing in this chapter shall be construed as to affect the procedure for the ordinary conduct of criminal

trials as otherwise set up by law. Nothing in this chapter shall be construed to prevent the defendant, his attorney or the court of its own motion, from producing evidence and witnesses at the hearing on the probable existence of sexual psychopathy or at the hearing after the return of the superintendent's report. Nothing in this chapter shall be construed as affecting the laws relating to the criminally insane or the insane criminal, nor shall this chapter be construed as preventing the defendant from raising the defense of insanity as in other criminal cases. [1959 c 25 § 71.06.080. Prior: 1951 c 223 § 15.]

Criminally insane: Chapter 10.77 RCW.

71.06.091 Postcommitment proceedings, releases, and further dispositions. A sexual psychopath committed pursuant to RCW 71.06.060 shall be retained by the superintendent of the institution involved until in the superintendent's opinion he is safe to be at large, or until he has received the maximum benefit of treatment, or is not amenable to treatment, but the superintendent is unable to render an opinion that he is safe to be at large. Thereupon, the superintendent of the institution involved shall so inform whatever court committed the sexual psychopath. The court then may order such further examination and investigation of such person as seems necessary, and may at its discretion, summon such person before it for further hearing, together with any witnesses whose testimony may be pertinent, and together with any relevant documents and other evidence. On the basis of such reports, investigation, and possible hearing, the court shall determine whether the person before it shall be released unconditionally from custody as a sexual psychopath, released conditionally, returned to the custody of the institution as a sexual psychopath, or transferred to the department of corrections to serve the original sentence imposed upon him. The power of the court to grant conditional release for any such person before it shall be the same as its power to grant, amend and revoke probation as provided by chapter 9.95 RCW. When the sexual psychopath has entered upon the conditional release, the state *board of prison terms and paroles shall supervise such person pursuant to the terms and conditions of the conditional release, as set by the court: *Provided*, That the superintendent of the institution involved shall never release the sexual psychopath from custody without a court release as herein set forth. [1981 c 136 § 64; 1979 c 141 § 130; 1967 c 104 § 3.]

***Reviser's note:** The "board of prison terms and paroles" was redesignated the "indeterminate sentence review board" by 1986 c 224, effective July 1, 1986.

Effective date—1981 c 136: See RCW 72.09.900.

71.06.100 Post commitment proceedings, releases, and further dispositions—Hospital record to be furnished court, board of prison terms and paroles. Where under RCW 71.06.091 the superintendent renders his opinion to the committing court, he shall provide the committing court, and, in the event of conditional release, the Washington state *board of prison terms and

paroles, with a copy of the hospital medical record concerning the sexual psychopath. [1967 c 104 § 4; 1959 c 25 § 71.06.100. Prior: 1951 c 223 § 10.]

***Reviser's note:** The "board of prison terms and paroles" was redesignated the "indeterminate sentence review board" by 1986 c 224, effective July 1, 1986.

71.06.120 Credit for time served in hospital. Time served by a sexual psychopath in a state hospital shall count as part of his sentence whether such sentence is pronounced before or after adjudication of his sexual psychopathy. [1959 c 25 § 71.06.120. Prior: 1951 c 223 § 13.]

71.06.130 Discharge pursuant to conditional release. Where a sexual psychopath has been conditionally released by the committing court, as provided by RCW 71.06.091 for a period of five years, the court shall review his record and when the court is satisfied that the sexual psychopath is safe to be at large, said sexual psychopath shall be discharged. [1967 c 104 § 5; 1959 c 25 § 71.06.130. Prior: 1951 c 223 § 12; 1949 c 198 § 28, part; Rem. Supp. 1949 § 6953–28, part.]

71.06.140 State hospitals for care of sexual psychopaths—Transfers to correctional institutions—Examinations, reports. The department may designate one or more state hospitals for the care and treatment of sexual psychopaths: *Provided*, That a committed sexual psychopath who has been determined by the superintendent of such mental hospital to be a custodial risk, or a hazard to other patients may be transferred by the secretary of social and health services, with the consent of the secretary of corrections, to one of the correctional institutions within the department of corrections which has psychiatric care facilities. A committed sexual psychopath who has been transferred to a correctional institution shall be observed and treated at the psychiatric facilities provided by the correctional institution. A complete psychiatric examination shall be given to each sexual psychopath so transferred at least twice annually. The examinations may be conducted at the correctional institution or at one of the mental hospitals. The examiners shall report in writing the results of said examinations, including recommendations as to future treatment and custody, to the superintendent of the mental hospital from which the sexual psychopath was transferred, and to the committing court, with copies of such reports and recommendations to the superintendent of the correctional institution. [1981 c 136 § 65; 1979 c 141 § 131; 1967 c 104 § 6; 1959 c 25 § 71.06.140. Prior: 1951 c 223 § 11; 1949 c 198 § 37; Rem. Supp. 1949 § 6953–37.]

Effective date—1981 c 136: See RCW 72.09.900.

71.06.260 Hospitalization costs—Sexual psychopaths—By whom paid. At any time any person is committed as a sexual psychopath the court shall, after reasonable notice of the time, place and purpose of the hearing has been given to persons subject to liability under this section, inquire into and determine the financial ability of said person, or his parents if he is a minor, or

other relatives to pay the cost of care, meals and lodging during his period of hospitalization. Such cost shall be determined by the department of social and health services. Findings of fact shall be made relative to the ability to pay such cost and a judgment entered against the person or persons found to be financially responsible and directing the payment of said cost or such part thereof as the court may direct. The person committed, or his parents or relatives, may apply for modification of said judgment, or the order last entered by the court, if a proper showing of equitable grounds is made therefor. [1985 c 354 § 33; 1979 c 141 § 132; 1959 c 25 § 71.06-.260. Prior: 1957 c 26 § 1; 1951 c 223 § 27.]

Severability—Effective date—1985 c 354: See RCW 71.34.900 and 71.34.901.

71.06.270 Availability of records. The records, files, and other written information prepared by the department of social and health services for individuals committed under this chapter shall be made available upon request to the department of corrections or the *board of prison terms and paroles for persons who are the subject of the records who are committed to the custody of the department of corrections or the board of prison terms and paroles. [1983 c 196 § 5.]

***Reviser's note:** The "board of prison terms and paroles" was redesignated the "indeterminate sentence review board" by 1986 c 224, effective July 1, 1986.

Chapter 71.12

PRIVATE ESTABLISHMENTS

Sections

71.12.455	Definitions.
71.12.460	License to be obtained—Penalty.
71.12.470	License application—Fees.
71.12.480	Examination of premises before granting license.
71.12.485	Fire protection—Duties of director of community development.
71.12.490	Expiration and renewal of license.
71.12.500	Examination of premises as to compliance with license—License changes.
71.12.510	Examination and visitation in general.
71.12.520	Scope of examination.
71.12.530	Conference with management—Improvement.
71.12.540	Recommendations to be kept on file—Records of inmates.
71.12.550	Local authorities may also prescribe standards.
71.12.560	Voluntary patients—Receipt authorized—Application—Report.
71.12.570	Communications by patients—Rights.
71.12.590	Revocation of license for noncompliance—Exemption as to Christian Science establishments.
71.12.640	Prosecuting attorney shall prosecute violations.

Alcoholism, intoxication, and drug addiction treatment: Chapter 70-.96A RCW.

Mentally ill, commitment procedures, rights, etc.: Chapter 71.05 RCW.

Minors—Mental health services, commitment: Chapter 71.34 RCW.

State hospitals for mentally ill: Chapter 72.23 RCW.

71.12.455 Definitions. As used in this chapter, "establishment" and "institution" mean and include every

private hospital, sanitarium, home, or other place receiving or caring for any mentally ill, or mentally incompetent person, or alcoholic. [1977 ex.s. c 80 § 43; 1959 c 25 § 71.12.455. Prior: 1949 c 198 § 53; Rem. Supp. 1949 § 6953-52a. Formerly RCW 71.12.010, part.]

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.

71.12.460 License to be obtained—Penalty. No person, association, or corporation, shall establish or keep, for compensation or hire, an establishment as defined in this chapter without first having obtained a license therefor from the department of health, and having paid the license fee provided in this chapter. Any person who carries on, conducts, or attempts to carry on or conduct an establishment as defined in this chapter without first having obtained a license from the department of health, as in this chapter provided, is guilty of a misdemeanor and on conviction thereof shall be punished by imprisonment in a county jail not exceeding six months, or by a fine not exceeding one thousand dollars, or by both such fine and imprisonment. The managing and executive officers of any corporation violating the provisions of this chapter shall be liable under the provisions of this chapter in the same manner and to the same effect as a private individual violating the same. [1989 1st ex.s. c 9 § 226; 1979 c 141 § 133; 1959 c 25 § 71-.12.460. Prior: 1949 c 198 § 54; Rem. Supp. 1949 § 6953-53.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

71.12.470 License application—Fees. Every application for a license shall be accompanied by a plan of the premises proposed to be occupied, describing the capacities of the buildings for the uses intended, the extent and location of grounds appurtenant thereto, and the number of patients proposed to be received therein, with such other information, and in such form, as the department requires. The application shall be accompanied by the proper license fee. The amount of the license fee shall be established by the department under RCW 43-.20B.110. [1987 c 75 § 19; 1982 c 201 § 14; 1959 c 25 § 71.12.470. Prior: 1949 c 198 § 56; Rem. Supp. 1949 § 6953-55.]

Savings—Severability—1987 c 75: See RCW 43.20B.900 and 43.20B.901.

71.12.480 Examination of premises before granting license. The department of health shall not grant any such license until it has made an examination of the premises proposed to be licensed and is satisfied that they are substantially as described, and are otherwise fit and suitable for the purposes for which they are designed to be used, and that such license should be granted. [1989 1st ex.s. c 9 § 227; 1979 c 141 § 134; 1959 c 25 § 71.12.480. Prior: 1949 c 198 § 57; Rem. Supp. 1949 § 6953-56.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

71.12.485 Fire protection—Duties of director of community development. Standards for fire protection and the enforcement thereof, with respect to all establishments to be licensed hereunder, shall be the responsibility of the director of community development, through the director of fire protection, who shall adopt such recognized standards as may be applicable to such establishments for the protection of life against the cause and spread of fire and fire hazards. The department of health, upon receipt of an application for a license, or renewal of a license, shall submit to the director of community development, through the director of fire protection, in writing, a request for an inspection, giving the applicant's name and the location of the premises to be licensed. Upon receipt of such a request, the director of community development, through the director of fire protection, or his or her deputy shall make an inspection of the establishment to be licensed, and if it is found that the premises do not comply with the required safety standards and fire regulations as promulgated by the director of community development, through the director of fire protection, he or she shall promptly make a written report to the establishment and the department of health as to the manner and time allowed in which the premises must qualify for a license and set forth the conditions to be remedied with respect to fire regulations. The department of health, applicant or licensee shall notify the director of community development, through the director of fire protection, upon completion of any requirements made by him or her, and the *state fire marshal or his or her deputy shall make a reinspection of such premises. Whenever the establishment to be licensed meets with the approval of the director of community development, through the director of fire protection, he or she shall submit to the department of health a written report approving same with respect to fire protection before a full license can be issued. The director of community development, through the director of fire protection, shall make or cause to be made inspections of such establishments at least annually. The department of health shall not license or continue the license of any establishment unless and until it shall be approved by the director of community development, through the director of fire protection, as herein provided.

In cities which have in force a comprehensive building code, the provisions of which are determined by the director of community development, through the director of fire protection, to be equal to the minimum standards of the director of community development, through the director of fire protection, for such establishments, the chief of the fire department, provided the latter is a paid chief of a paid fire department, shall make the inspection with the director of community development, through the director of fire protection, or his or her deputy, and they shall jointly approve the premises before a full license can be issued. [1989 1st ex.s. c 9 § 228; 1986 c 266 § 122; 1979 c 141 § 135; 1959 c 224 § 1.]

*Reviser's note: The "state fire marshal" was changed to the "director of fire protection" by 1986 c 266. See RCW 43.63A.340.

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

Severability—1986 c 266: See note following RCW 38.52.005.

71.12.490 Expiration and renewal of license. All licenses issued under the provisions of this chapter shall expire on a date to be set by the department of health. No license issued pursuant to this chapter shall exceed thirty-six months in duration. Application for renewal of the license, accompanied by the necessary fee as established by the department of health under RCW 43.70.110, shall be filed with that department, not less than thirty days prior to its expiration and if application is not so filed, the license shall be automatically canceled. [1989 1st ex.s. c 9 § 229; 1987 c 75 § 20; 1982 c 201 § 15; 1971 ex.s. c 247 § 4; 1959 c 25 § 71.12.490. Prior: 1949 c 198 § 59; Rem. Supp. 1949 § 6953–58.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

Savings—Severability—1987 c 75: See RCW 43.20B.900 and 43.20B.901.

71.12.500 Examination of premises as to compliance with license—License changes. The department of health may at any time examine and ascertain how far a licensed establishment is conducted in compliance with the license therefor. If the interests of the patients of the establishment so demand, the department may, for just and reasonable cause, suspend, modify, or revoke any such license. RCW 43.20A.205 governs notice of a license denial, revocation, suspension, or modification and provides the right to an adjudicative proceeding. [1989 1st ex.s. c 9 § 230; 1989 c 175 § 137; 1979 c 141 § 136; 1959 c 25 § 71.12.500. Prior: 1949 c 198 § 58; Rem. Supp. 1949 § 6953–57.]

Reviser's note: This section was amended by 1989 c 175 § 137 and by 1989 1st ex.s. c 9 § 230, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

Effective date—1989 c 175: See note following RCW 34.05.010.

71.12.510 Examination and visitation in general. The department may at any time cause any establishment as defined in this chapter to be visited and examined. [1959 c 25 § 71.12.510. Prior: 1949 c 198 § 60; Rem. Supp. 1949 § 6953–59.]

71.12.520 Scope of examination. Each such visit may include an inspection of every part of each establishment. The representatives of the department of health may make an examination of all records, methods of administration, the general and special dietary, the stores and methods of supply, and may cause an examination and diagnosis to be made of any person confined therein. The representatives of the department may examine to determine their fitness for their duties the officers, attendants, and other employees, and may talk with any of the patients apart from the officers and attendants. [1989 1st ex.s. c 9 § 231; 1979 c 141 § 137; 1959 c 25 § 71.12.520. Prior: 1949 c 198 § 61; Rem. Supp. 1949 § 6953–60.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

71.12.530 Conference with management—Improvement. The representatives of the department of health may, from time to time, at times and places designated by the department, meet the managers or responsible authorities of such establishments in conference, and consider in detail all questions of management and improvement of the establishments, and may send to them, from time to time, written recommendations in regard thereto. [1989 1st ex.s. c 9 § 232; 1979 c 141 § 138; 1959 c 25 § 71.12.530. Prior: 1949 c 198 § 62; Rem. Supp. 1949 § 6953–61.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

71.12.540 Recommendations to be kept on file—Records of inmates. The authorities of each establishment as defined in this chapter shall place on file in the office of the establishment the recommendations made by the department of health as a result of such visits, for the purpose of consultation by such authorities, and for reference by the department representatives upon their visits. Every such establishment shall keep records of every person admitted thereto as follows and shall furnish to the department, when required, the following data: Name, age, sex, marital status, date of admission, voluntary or other commitment, name of physician, diagnosis, and date of discharge. [1989 1st ex.s. c 9 § 233; 1979 c 141 § 139; 1959 c 25 § 71.12.540. Prior: 1949 c 198 § 63; Rem. Supp. 1949 § 6953–62.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

71.12.550 Local authorities may also prescribe standards. This chapter shall not prevent local authorities of any city, or city and county, within the reasonable exercise of the police power, from adopting rules and regulations, by ordinance or resolution, prescribing standards of sanitation, health and hygiene for establishments as defined in this chapter, which are not in conflict with the provisions of this chapter, and requiring a certificate by the local health officer, that the local health, sanitation and hygiene laws have been complied with before maintaining or conducting any such institution within such city or city and county. [1959 c 25 § 71.12.550. Prior: 1949 c 198 § 64; Rem. Supp. 1949 § 6953–63.]

71.12.560 Voluntary patients—Receipt authorized—Application—Report. The person in charge of any private institution, hospital, or sanitarium which is conducted for, or includes a department or ward conducted for, the care and treatment of persons who are mentally ill or deranged may receive therein as a voluntary patient any person suffering from mental illness or derangement who is a suitable person for care and treatment in the institution, hospital, or sanitarium, who voluntarily makes a written application to the person in charge for admission into the institution, hospital or

sanitarium. After six months of continuous inpatient treatment as a voluntary patient in a private institution, hospital, or sanitarium, the person in charge shall forward to the office of the department of social and health services a record of the voluntary patient showing the name, residence, age, sex, place of birth, occupation, marital status, date of admission to the institution, hospital, or sanitarium, and such other information as may be required by rule of the department of social and health services. [1974 ex.s. c 145 § 1; 1973 1st ex.s. c 142 § 1; 1959 c 25 § 71.12.560. Prior: 1949 c 198 § 65; Rem. Supp. 1949 § 6953–64.]

Severability—Construction—Effective date—1973 1st ex.s. c 142: See RCW 71.05.900 through 71.05.930.

71.12.570 Communications by patients—Rights. No person in an establishment as defined in this chapter shall be restrained from sending written communications of the fact of his detention in such establishment to a friend, relative, or other person. The physician in charge of such person and the person in charge of such establishment shall send each such communication to the person to whom it is addressed. All persons in an establishment as defined by chapter 71.12 RCW shall have no less than all rights secured to involuntarily detained persons by RCW 71.05.360 and 71.05.370 and to voluntarily admitted or committed persons pursuant to RCW 71.05.050 and 71.05.380. [1973 1st ex.s. c 142 § 2; 1959 c 25 § 71.12.570. Prior: 1949 c 198 § 66; Rem. Supp. 1949 § 6953–65.]

Severability—Construction—Effective date—1973 1st ex.s. c 142: See RCW 71.05.900 through 71.05.930.

71.12.590 Revocation of license for noncompliance—Exemption as to Christian Science establishments. Failure to comply with any of the provisions of RCW 71.12.550 through 71.12.570 shall constitute grounds for revocation of license: *Provided, however,* That nothing in this chapter or the rules and regulations adopted pursuant thereto shall be construed as authorizing the supervision, regulation, or control of the remedial care or treatment of residents or patients in any establishment, as defined in this chapter conducted in accordance with the practice and principles of the body known as Church of Christ, Scientist. [1983 c 3 § 180; 1959 c 25 § 71.12.590. Prior: 1949 c 198 § 68; Rem. Supp. 1949 § 6953–67.]

71.12.640 Prosecuting attorney shall prosecute violations. The prosecuting attorney of every county shall, upon application by the department of social and health services, the department of health, or its authorized representatives, institute and conduct the prosecution of any action brought for the violation within his county of any of the provisions of this chapter. [1989 1st ex.s. c 9 § 234; 1979 c 141 § 140; 1959 c 25 § 71.12.640. Prior: 1949 c 198 § 55; Rem. Supp. 1949 § 6953–54.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

Chapter 71.20

LOCAL FUNDS FOR COMMUNITY SERVICES

(Formerly: State and local services for mentally retarded and developmentally disabled)

Sections

71.20.100	Expenditures of county funds subject to county fiscal laws.
71.20.110	Tax levy directed—Allocation of funds for federal matching funds purposes.

71.20.100 Expenditures of county funds subject to county fiscal laws. Expenditures of county funds under this chapter shall be subject to the provisions of chapter 36.40 RCW and other statutes relating to expenditures by counties. [1967 ex.s. c 110 § 10.]

71.20.110 Tax levy directed—Allocation of funds for federal matching funds purposes. In order to provide additional funds for the coordination and provision of community services for persons with developmental disabilities or mental health services, the county governing authority of each county in the state shall budget and levy annually a tax in a sum equal to the amount which would be raised by a levy of two and one-half cents per thousand dollars of assessed value against the taxable property in the county to be used for such purposes: *Provided*, That all or part of the funds collected from the tax levied for the purposes of this section may be transferred to the state of Washington, department of social and health services, for the purpose of obtaining federal matching funds to provide and coordinate community services for persons with developmental disabilities and mental health services. In the event a county elects to transfer such tax funds to the state for this purpose, the state shall grant these moneys and the additional funds received as matching funds to service-providing community agencies or community boards in the county which has made such transfer, pursuant to the plan approved by the county, as provided by chapters 71.24 and 71.28 RCW and by chapter 71A.14 RCW, all as now or hereafter amended.

The amount of a levy allocated to the purposes specified in this section may be reduced in the same proportion as the regular property tax levy of the county is reduced by chapter 84.55 RCW. [1988 c 176 § 910; 1983 c 3 § 183; 1980 c 155 § 5; 1974 ex.s. c 71 § 8; 1973 1st ex.s. c 195 § 85; 1971 ex.s. c 84 § 1; 1970 ex.s. c 47 § 8; 1967 ex.s. c 110 § 16.]

Severability—1988 c 176: See RCW 71A.10.900.

Effective date—Applicability—1980 c 155: See notes following RCW 84.40.030.

Severability—1974 ex.s. c 71: "If any provision of this amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1974 ex.s. c 71 § 13.] For codification of 1974 ex.s. c 71, see Codification Tables, Volume 0.

Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195: See notes following RCW 84.52.043.

(1989 Ed.)

Chapter 71.24

COMMUNITY MENTAL HEALTH SERVICES ACT

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71.24.011 Short title. This chapter may be known and cited as the community mental health services act. [1982 c 204 § 1.]

71.24.015 Legislative intent and policy. It is the intent of the legislature to establish a community mental health program which shall help people experiencing mental illness to retain a respected and productive position in the community. This will be accomplished through programs which provide for:

(1) Access to mental health services for adults and children of the state who are acutely mentally ill, seriously disturbed, or chronically mentally ill, which services recognize the special needs of underserved populations, including minorities, children, the elderly, disabled, and low-income persons. It is also the purpose of this chapter to ensure that children in need of mental health care and treatment receive the care and treatment appropriate to their developmental level, and to enable treatment decisions to be made in response to clinical needs and in accordance with sound professional judgment while also recognizing parents' rights to participate in treatment decisions for their children;

(2) Accountability of services through state-wide standards for monitoring and reporting of information;

(3) Minimum service delivery standards;

(4) Priorities for the use of available resources for the care of the mentally ill;

[Title 71 RCW—p 27]

(5) Coordination of services within the department, including those divisions within the department that provide services to children, between the department and the office of the superintendent of public instruction, and among state mental hospitals, county authorities, community mental health services, and other support services, which shall to the maximum extent feasible also include the families of the mentally ill, and other service providers; and

(6) Coordination of services aimed at reducing duplication in service delivery and promoting complementary services among all entities that provide mental health services to adults and children.

It is the policy of the state to encourage the provision of a full range of treatment and rehabilitation services in the state for mental disorders. The legislature intends to encourage the development of county-based and county-managed mental health services with adequate local flexibility to assure eligible people in need of care access to the least-restrictive treatment alternative appropriate to their needs, and the availability of treatment components to assure continuity of care. To this end, counties are encouraged to enter into joint operating agreements with other counties to form regional systems of care which integrate planning, administration, and service delivery duties assigned to counties under chapters 71.05 and 71.24 RCW to consolidate administration, reduce administrative layering, and reduce administrative costs.

It is further the intent of the legislature to integrate the provision of services to provide continuity of care through all phases of treatment. To this end the legislature intends to promote active engagement with mentally ill persons and collaboration between families and service providers. [1989 c 205 § 1; 1986 c 274 § 1; 1982 c 204 § 2.]

Evaluation of transition to regional systems—1989 c 205: "(1) In order to determine the effectiveness of this act, it is necessary to have an independent evaluation of the transition to regional systems of care. The legislative budget committee shall prepare a plan to conduct a study of the effectiveness of the change in the mental health system initiated by this act. The primary goal of the study is to evaluate the progress of the regional support networks in meeting the statutory requirement of this act to serve at least eighty-five percent of the short-term commitments within their boundaries by July 1, 1993. A plan for study shall include, but is not limited to, the following considerations:

- (a) Progress in implementing and complying with the intention of this act to create regional support networks;
- (b) Effect on short-term commitments to the state hospitals;
- (c) Effect on residential options in the community;
- (d) Effect on delivery of services, both residential and nonresidential, in the community; and
- (e) Effect on continuity of services to the mentally ill.

(2) The plan for conducting a study, including start and completion dates, general research approaches, potential research problems, data requirements, necessary implementation authority, and cost estimates is to be provided to the appropriate policy and fiscal committees of the house of representatives and the senate by December 1, 1990. The plan may include proposals to use contract evaluators or other options for determining the most appropriate entity to complete the study, and shall identify ways to measure program progress and outcomes. The plan shall take into consideration a study completion date of December 1, 1992.

(3) In order to establish a beginning point for any future study of the effectiveness of the system changes initiated in this act, when the biennial contract is signed by the department of social and health services and a regional support network, the department shall forward a

copy of the contract to the legislative budget committee." [1989 c 205 § 23.]

Effective date—1986 c 274 §§ 1, 2, 3, 5, 9: "Sections 1, 2, 3, 5, and 9 of this act shall take effect on July 1, 1987." [1986 c 274 § 11.] Sections 1, 2, 3, 5, and 9 are the amendments by 1986 c 274 to RCW 71.24.015, 71.24.025, 71.24.035, 71.24.045, and 71.24.155, respectively.

71.24.025 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Acutely mentally ill" means a condition which is limited to a short-term severe crisis episode of:

(a) A mental disorder as defined in RCW 71.05.020(2) or, in the case of a child, as defined in RCW 71.34.020(12);

(b) Being gravely disabled as defined in RCW 71.05.020(1) or, in the case of a child, as defined in RCW 71.34.020(8); or

(c) Presenting a likelihood of serious harm as defined in RCW 71.05.020(3) or, in the case of a child, as defined in RCW 71.34.020(11).

(2) "Available resources" means those funds which shall be appropriated under this chapter by the legislature during any biennium for the purpose of providing community mental health programs under RCW 71.24-.045. When regional support networks are established or after July 1, 1995, "available resources" means federal funds, except those provided according to Title XIX of the social security act, and state funds appropriated under this chapter or chapter 71.05 RCW by the legislature during any biennium for the purpose of providing residential services, resource management services, community support services, and other mental health services. This does not include funds appropriated for the purpose of operating and administering the state psychiatric hospitals, except as negotiated according to RCW 71.24.300(1)(d).

(3) "Licensed service provider" means an entity licensed according to this chapter or chapter 71.05 RCW that meets state minimum standards or individuals licensed under chapter 18.57, 18.71, 18.83, or 18.88 RCW.

(4) "Child" means a person under the age of eighteen years.

(5) "Chronically mentally ill person" means a child or adult who has a mental disorder, in the case of a child as defined by chapter 71.34 RCW, and meets at least one of the following criteria:

(a) Has undergone two or more episodes of hospital care for a mental disorder within the preceding two years or, in the case of a child, has been placed by the department or its designee two or more times outside of the home, where the placements are related to a mental disorder, as defined in chapter 71.34 RCW, and where the placements progress toward a more restrictive setting. Placements by the department include but are not limited to placements by child protective services and child welfare services;

(b) Has experienced a continuous psychiatric hospitalization or residential treatment exceeding six months' duration within the preceding year;

(c) Has been unable to engage in any substantial gainful activity by reason of any mental disorder which has lasted for a continuous period of not less than twelve months. "Substantial gainful activity" shall be defined by the department by rule consistent with Public Law 92-603, as amended, and shall include school attendance in the case of a child; or

(d) In the case of a child, has been subjected to continual distress as indicated by repeated physical or sexual abuse or neglect.

(6) "Community mental health program" means all mental health services established by a county authority. After July 1, 1995, or when the regional support networks are established, "community mental health program" means all activities or programs using available resources.

(7) "Community support services" means services for acutely and chronically mentally ill persons and includes: (a) Discharge planning for clients leaving state mental hospitals, other acute care inpatient facilities, inpatient psychiatric facilities for persons under twenty-one years of age, and other children's mental health residential treatment facilities; (b) sufficient contacts with clients, families, schools, or significant others to provide for an effective program of community maintenance; and (c) medication monitoring. After July 1, 1995, or when regional support networks are established, for adults and children "community support services" means services authorized, planned, and coordinated through resource management services including, at least, assessment, diagnosis, emergency crisis intervention available twenty-four hours, seven days a week, prescreening determinations for mentally ill persons being considered for placement in nursing homes as required by federal law, screening for patients being considered for admission to residential services, investigation, legal, and other nonresidential services under chapter 71.05 RCW, case management services, psychiatric treatment including medication supervision, counseling, psychotherapy, assuring transfer of relevant patient information between service providers, other services determined by regional support networks, and maintenance of a patient tracking system for chronically mentally ill persons.

(8) "County authority" means the board of county commissioners, county council, or county executive having authority to establish a community mental health program, or two or more of the county authorities specified in this subsection which have entered into an agreement to provide a community mental health program.

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

(10) "Mental health services" means community services pursuant to RCW 71.24.035(5)(b) and other services provided by the state for the mentally ill. When regional support networks are established, or after July 1, 1995, "mental health services" shall include all services provided by regional support networks.

(11) "Mentally ill persons" and "the mentally ill" mean persons and conditions defined in subsections (1), (5), and (15) of this section.

(12) "Regional support network" means a county authority or group of county authorities recognized by the secretary that enter into joint operating agreements to contract with the secretary pursuant to this chapter.

(13) "Residential services" means a facility or distinct part thereof which provides food and shelter, and may include treatment services.

When regional support networks are established, or after July 1, 1995, for adults and children "residential services" means a complete range of residences and supports authorized by resource management services and which may involve a facility, a distinct part thereof, or services which support community living, for acutely mentally ill persons, chronically mentally ill persons, or seriously disturbed persons determined by the regional support network to be at risk of becoming acutely or chronically mentally ill. The services shall include at least evaluation and treatment services as defined in chapter 71.05 RCW, acute crisis respite care, long-term adaptive and rehabilitative care, and supervised and supported living services, and shall also include any residential services developed to service mentally ill persons in nursing homes.

(14) "Resource management services" mean the planning, coordination, and authorization of residential services and community support services administered pursuant to an individual service plan for acutely mentally ill adults and children, chronically mentally ill adults and children, or seriously disturbed adults and children determined by the regional support network at their sole discretion to be at risk of becoming acutely or chronically mentally ill. Resource management services include seven day a week, twenty-four hour a day availability of information regarding mentally ill adults' and children's enrollment in services and their individual service plan to county-designated mental health professionals, evaluation and treatment facilities, and others as determined by the regional support network.

(15) "Seriously disturbed person" means a person who:

(a) Is gravely disabled or presents a likelihood of serious harm to oneself or others as a result of a mental disorder as defined in chapter 71.05 RCW;

(b) Has been on conditional release status at some time during the preceding two years from an evaluation and treatment facility or a state mental health hospital;

(c) Has a mental disorder which causes major impairment in several areas of daily living;

(d) Exhibits suicidal preoccupation or attempts; or

(e) Is a child diagnosed by a mental health professional, as defined in RCW 71.05.020, as experiencing a mental disorder which is clearly interfering with the child's functioning in family or school or with peers or is clearly interfering with the child's personality development and learning.

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

(17) "State minimum standards" means: (a) Minimum requirements for delivery of mental health services as established by departmental rules and necessary to

implement this chapter, including but not limited to licensing service providers and services; (b) minimum service requirements for licensed service providers for the provision of mental health services as established by departmental rules pursuant to chapter 34.05 RCW as necessary to implement this chapter, including, but not limited to: Qualifications for staff providing services directly to mentally ill persons; the intended result of each service; and the rights and responsibilities of persons receiving mental health services pursuant to this chapter; (c) minimum requirements for residential services as established by the department in rule based on clients' functional abilities and not solely on their diagnoses, limited to health and safety, staff qualifications, and program outcomes. Minimum requirements for residential services are those developed in collaboration with consumers, families, counties, regulators, and residential providers serving the mentally ill. Minimum requirements encourage the development of broad-range residential programs, including integrated housing and cross-systems programs where appropriate, and do not unnecessarily restrict programming flexibility; and (d) minimum standards for community support services and resource management services, including at least qualifications for resource management services, client tracking systems, and the transfer of patient information between service providers. [1989 c 205 § 2; 1986 c 274 § 2; 1982 c 204 § 3.]

Effective date—1986 c 274 §§ 1, 2, 3, 5, 9: See note following RCW 71.24.015.

71.24.030 Grants to counties for programs. The secretary is authorized, pursuant to this chapter and the rules promulgated to effectuate its purposes, to make grants to counties or combinations of counties in the establishment and operation of community mental health programs. [1982 c 204 § 6; 1973 1st ex.s. c 155 § 5; 1972 ex.s. c 122 § 30; 1971 ex.s. c 304 § 7; 1967 ex.s. c 111 § 3.]

Effective date—1972 ex.s. c 122: See note following RCW 70.96A.010.

71.24.035 Secretary's powers and duties as state mental health authority, county authority. (1) The department is designated as the state mental health authority.

(2) The secretary may provide for public, client, and licensed service provider participation in developing the state mental health program.

(3) The secretary shall provide for participation in developing the state mental health program for children and other underserved populations, by including representatives on any committee established to provide oversight to the state mental health program.

(4) The secretary shall be designated as the county authority if a county fails to meet state minimum standards or refuses to exercise responsibilities under RCW 71.24.045.

(5) The secretary shall:

(a) Develop a biennial state mental health program that incorporates county biennial needs assessments and

county mental health service plans and state services for mentally ill adults and children. The secretary may also develop a six-year state mental health plan;

(b) Assure that any county community mental health program provides access to treatment for the county's residents in the following order of priority: (i) The acutely mentally ill; (ii) the chronically mentally ill; and (iii) the seriously disturbed. Such programs shall provide:

(A) Outpatient services;

(B) Emergency care services for twenty-four hours per day;

(C) Day treatment for mentally ill persons which includes training in basic living and social skills, supported work, vocational rehabilitation, and day activities. Such services may include therapeutic treatment. In the case of a child, day treatment includes age-appropriate basic living and social skills, educational and prevocational services, day activities, and therapeutic treatment;

(D) Screening for patients being considered for admission to state mental health facilities to determine the appropriateness of admission;

(E) Consultation and education services; and

(F) Community support services;

(c) Develop and promulgate rules establishing state minimum standards for the delivery of mental health services including, but not limited to:

(i) Licensed service providers;

(ii) Regional support networks; and

(iii) Residential and inpatient services, evaluation and treatment services and facilities under chapter 71.05 RCW, resource management services, and community support services;

(d) Assure that the special needs of minorities, the elderly, disabled, children, and low-income persons are met within the priorities established in this section;

(e) Establish a standard contract or contracts, consistent with state minimum standards, which shall be used by the counties;

(f) Establish, to the extent possible, a standardized auditing procedure which minimizes paperwork requirements of county authorities and licensed service providers;

(g) Develop and maintain an information system to be used by the state, counties, and regional support networks when they are established which shall include a tracking method which allows the department and regional support networks to identify mental health clients' participation in any mental health service or public program on an immediate basis. The information system shall not include individual patient's case history files. Confidentiality of client information and records shall be maintained as provided in this chapter and in RCW 71.05.390, 71.05.400, 71.05.410, 71.05.420, 71.05.430, and 71.05.440. The system shall be fully operational no later than January 1, 1993: *Provided, however,* That when a regional support network is established, the department shall have an operational interim tracking system for that network that will be adequate for the regional support network to perform its required duties under this chapter;

(h) License service providers who meet state minimum standards;

(i) Certify regional support networks that meet state minimum standards;

(j) Periodically inspect certified regional support networks and licensed service providers at reasonable times and in a reasonable manner; and

(k) Fix fees to be paid by evaluation and treatment centers to the secretary for the required inspections;

(l) Monitor and audit counties, regional support networks, and licensed service providers as needed to assure compliance with contractual agreements authorized by this chapter;

(m) Prior to September 1, 1989, adopt such rules as are necessary to implement the department's responsibilities under this chapter pursuant to chapter 34.05 RCW: *Provided*, That such rules shall be submitted to the appropriate committees of the legislature for review and comment prior to adoption; and

(n) Beginning July 1, 1989, and continuing through July 1, 1993, track by region and county the use and cost of state hospital and local evaluation and treatment facilities for seventy-two hour detention, fourteen, ninety, and one hundred eighty day commitments pursuant to chapter 71.05 RCW, voluntary care in state hospitals, and voluntary community inpatient care covered by the medical assistance program. Service use and cost reports shall be provided to regions in a timely fashion at six-month intervals.

(6) The secretary shall use available resources appropriated specifically for community mental health programs only for programs under RCW 71.24.045. After July 1, 1995, or when regional support networks are established, available resources may be used only for regional support networks.

(7) Each certified regional support network and licensed service provider shall file with the secretary, on request, such data, statistics, schedules, and information as the secretary reasonably requires. A certified regional support network or licensed service provider which, without good cause, fails to furnish any data, statistics, schedules, or information as requested, or files fraudulent reports thereof, may have its certification or license revoked or suspended.

(8) The secretary may suspend, revoke, limit, or restrict a certification or license, or refuse to grant a certification or license for failure to conform to the law, applicable rules and regulations, or applicable standards, or failure to meet the minimum standards established pursuant to this section.

(9) The superior court may restrain any regional support network or service provider from operating without certification or a license or any other violation of this section. The court may also review, pursuant to procedures contained in chapter 34.05 RCW, any denial, suspension, limitation, restriction, or revocation of certification or license, and grant other relief required to enforce the provisions of this chapter.

(10) Upon petition by the secretary, and after hearing held upon reasonable notice to the facility, the superior court may issue a warrant to an officer or employee of

the secretary authorizing him or her to enter at reasonable times, and examine the records, books, and accounts of any regional support network or service provider refusing to consent to inspection or examination by the authority.

(11) The secretary shall adopt such rules as may be necessary to effectuate the intent and purposes of this chapter, which shall include but not be limited to certification and licensing and other action relevant to certifying regional support networks and licensing service providers.

(12) Notwithstanding the existence or pursuit of any other remedy, the secretary may, in the manner provided by law, upon the advice of the attorney general who shall represent the secretary in the proceedings, maintain an action in the name of the state for an injunction or other process against any person or governmental unit to restrain or prevent the establishment, conduct, or operation of a regional support network or service provider without certification or a license under this chapter.

(13) The standards for certification of evaluation and treatment facilities shall include standards relating to maintenance of good physical and mental health and other services to be afforded persons pursuant to this chapter and chapter 71.05 RCW, and shall otherwise assure the effectuation of the purposes and intent of this chapter and chapter 71.05 RCW.

(14)(a) The department, in consultation with affected parties, shall establish a distribution formula that reflects county needs assessments based on the number of persons who are acutely mentally ill, chronically mentally ill, and seriously disturbed as defined in chapter 71.24 RCW. The formula shall take into consideration the impact on counties of demographic factors in counties which result in concentrations of priority populations as defined in subsection (15) of this section. These factors shall include the population concentrations resulting from commitments under the involuntary treatment act, chapter 71.05 RCW, to state psychiatric hospitals, as well as concentration in urban areas, at border crossings at state boundaries, and other significant demographic and workload factors.

(b) The department shall submit a proposed distribution formula in accordance with this section to the ways and means and health care and corrections committees of the senate and to the ways and means and human services committees of the house of representatives by October 1, 1989. The formula shall also include a projection of the funding allocations that will result for each county, which specifies allocations according to priority populations, including the allocation for services to children and other underserved populations.

(15) To supersede duties assigned under subsection (5) (a) and (b) of this section, and to assure a county-based, integrated system of care for acutely mentally ill adults and children, chronically mentally ill adults and children, and seriously disturbed adults and children who are determined by regional support networks at their sole discretion to be at risk of becoming acutely or chronically mentally ill, the secretary shall encourage the development of regional support networks as follows:

By December 1, 1989, the secretary shall recognize regional support networks requested by counties or groups of counties.

All counties wishing to be recognized as a regional support network on December 1, 1989, shall submit their intentions regarding participation in the regional support networks by October 30, 1989, along with preliminary plans. Counties wishing to be recognized as a regional support network by January 1, 1993, shall submit their intentions by November 30, 1992, along with preliminary plans. The secretary shall assume all duties assigned to the nonparticipating counties under chapters 71.05 and 71.24 RCW on July 1, 1995. Such responsibilities shall include those which would have been assigned to the nonparticipating counties under regional support networks.

The implementation of regional support networks, or the secretary's assumption of all responsibilities under chapters 71.05 and 71.24 RCW, shall be included in all state and federal plans affecting the state mental health program including at least those required by this chapter, the medicaid program, and P.L. 99-660. Nothing in these plans shall be inconsistent with the intent and requirements of this chapter.

(16) The secretary shall:

(a) Disburse the first funds for the regional support networks that are ready to begin implementation by January 1, 1990, or within sixty days of approval of the biennial contract. The department must either approve or reject the biennial contract within sixty days of receipt.

(b) Enter into biennial contracts with regional support networks to begin implementation between January 1, 1990, and March 1, 1990, and complete implementation by June 1995. The contracts shall be consistent with available resources. No contract shall be approved that does not include progress toward meeting the goals of *this 1989 act by taking responsibility for: (i) Short-term commitments; (ii) residential care; and (iii) emergency response systems.

(c) By July 1, 1993, allocate one hundred percent of available resources to regional support networks created by January 1, 1990, in a single grant. Regional support networks created by January 1, 1993, shall receive a single block grant by July 1, 1995. The grants shall include funds currently provided for all residential services, all services pursuant to chapter 71.05 RCW, and all community support services and shall be distributed in accordance with a formula submitted to the legislature by January 1, 1993, in accordance with subsection (14) of this section.

(d) By January 1, 1990, allocate available resources to regional support networks for community support services, resource management services, and residential services excluding evaluation and treatment facilities provided pursuant to chapter 71.05 RCW in a single grant using the distribution formula established in subsection (14) of this section.

(e) By March 1, 1990, or within sixty days of approval of the contract continuing through July 1, 1993,

provide grants as specifically appropriated by the legislature to regional support networks for evaluation and treatment facilities for persons detained or committed for periods up to seventeen days according to chapter 71.05 RCW. For regional support networks created by January 1, 1993, provide grants as specifically appropriated by the legislature to regional support networks for evaluation and treatment facilities for persons detained or committed for periods up to seventeen days according to chapter 71.05 RCW through July 1, 1995.

(f) Notify regional support networks of their allocation of available resources at least sixty days prior to the start of a new biennial contract period.

(g) Study and report to the legislature by December 1, 1989, on expanding the use of federal Title XIX funds and the definition of institutions for mental diseases to provide services to persons who are acutely mentally ill, chronically mentally ill, or at risk of becoming so. The study shall also include an assessment of the impact of Title XIX funds and the definition of institutions for mental diseases on the use of state funds to provide needed mental health services to the chronically mentally ill.

(h) Deny funding allocations to regional support networks based solely upon formal findings of noncompliance with the terms of the regional support network's contract with the department. Written notice and at least thirty days for corrective action must precede any such action. In such cases, regional support networks shall have full rights to appeal under chapter 34.05 RCW.

(i) Identify in its departmental biennial operating and capital budget requests the funds requested by regional support networks to implement their responsibilities under this chapter.

(j) Contract to provide or, if requested, make grants to counties to provide technical assistance to county authorities or groups of county authorities to develop regional support networks.

(17) The department of social and health services, in cooperation with the state congressional delegation, shall actively seek waivers of federal requirements and such modifications of federal regulations as are necessary to allow federal medicaid reimbursement for services provided by free-standing evaluation and treatment facilities certified under chapter 71.05 RCW. The department shall periodically report its efforts to the health care and corrections committee of the senate and the human services committee of the house of representatives.

(18) The secretary shall establish a task force to examine the recruitment, training, and compensation of qualified mental health professionals in the community, which shall include the advantages and disadvantages of establishing a training academy, loan forgiveness program, or educational stipends offered in exchange for commitments of employment in mental health. The task force shall report back to the appropriate committees of the legislature by January 1, 1990. [1989 c 205 § 3; 1987 c 105 § 1; 1986 c 274 § 3; 1982 c 204 § 4.]

***Reviser's note:** For codification of "this 1989 act" [1989 c 205], see Codification Tables, Volume 0.

Effective date—1987 c 105: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1987." [1987 c 105 § 2.]

Effective date—1986 c 274 §§ 1, 2, 3, 5, 9: See note following RCW 71.24.015.

71.24.045 County authority powers and duties. The county authority shall:

(1) Submit biennial needs assessments beginning January 1, 1983, and mental health service plans which incorporate all services provided for by the county authority consistent with state minimum standards and which provide access to treatment for the county's residents including children and other underserved populations who are acutely mentally ill, chronically mentally ill, or seriously disturbed. The county program shall provide:

(a) Outpatient services;

(b) Emergency care services for twenty-four hours per day;

(c) Day treatment for mentally ill persons which includes training in basic living and social skills, supported work, vocational rehabilitation, and day activities. Such services may include therapeutic treatment. In the case of a child, day treatment includes age-appropriate basic living and social skills, educational and prevocational services, day activities, and therapeutic treatment;

(d) Screening for patients being considered for admission to state mental health facilities to determine appropriateness of admission;

(e) Consultation and education services;

(f) Residential and inpatient services, if the county chooses to provide such optional services; and

(g) Community support services.

The county shall develop the biennial needs assessment based on clients to be served, services to be provided, and the cost of those services, and may include input from the public, clients, and licensed service providers. Each county authority may appoint a county mental health advisory board which shall review and provide comments on plans and policies developed by the county authority under this chapter. The composition of the board shall be broadly representative of the demographic character of the county and the mentally ill persons served therein. Length of terms of board members shall be determined by the county authority;

(2) Contract as needed with licensed service providers. The county authority may, in the absence of a licensed service provider entity, become a licensed service provider entity pursuant to minimum standards required for licensing by the department for the purpose of providing services not available from licensed service providers;

(3) Operate as a licensed service provider if it deems that doing so is more efficient and cost effective than contracting for services. When doing so, the county authority shall comply with rules promulgated by the secretary that shall provide measurements to determine when a county provided service is more efficient and cost effective.

(4) Monitor and perform biennial fiscal audits of licensed service providers who have contracted with the county to provide services required by this chapter. The monitoring and audits shall be performed by means of a formal process which insures that the licensed service providers and professionals designated in this subsection meet the terms of their contracts, including the minimum standards of service delivery as established by the department;

(5) Assure that the special needs of minorities, the elderly, disabled, children, and low-income persons are met within the priorities established in this chapter;

(6) Maintain patient tracking information in a central location as required for resource management services;

(7) Use not more than two percent of state-appropriated community mental health funds, which shall not include federal funds, to administer community mental health programs under RCW 71.24.155: *Provided*, That county authorities serving a county or combination of counties whose population is equal to or greater than that of a county of the first class may be entitled to sufficient state-appropriated community mental health funds to employ up to one full-time employee or the equivalent thereof in addition to the two percent limit established in this subsection when such employee is providing staff services to a county mental health advisory board;

(8) Coordinate services for individuals who have received services through the community mental health system and who become patients at a state mental hospital. [1989 c 205 § 4; 1986 c 274 § 5; 1982 c 204 § 5.]

Effective date—1986 c 274 §§ 1, 2, 3, 5, 9: See note following RCW 71.24.015.

71.24.049 Identification by county authority—Children's mental health services. By January 1, 1987, and each odd-numbered year thereafter, the county authority shall identify: (1) The number of children in each priority group, as defined by this chapter, who are receiving mental health services funded in part or in whole under this chapter, (2) the amount of funds under this chapter used for children's mental health services, (3) an estimate of the number of unserved children in each priority group, and (4) the estimated cost of serving these additional children and their families. [1986 c 274 § 6.]

71.24.100 Joint agreements of county authorities—Required provisions. Any agreement between two or more county authorities for the establishment of a community mental health program shall provide:

(1) That each county shall bear a share of the cost of mental health services; and

(2) That the treasurer of one participating county shall be the custodian of funds made available for the purposes of such mental health services, and that the treasurer may make payments from such funds upon audit by the appropriate auditing officer of the county for which he is treasurer. [1982 c 204 § 7; 1967 ex.s. c 111 § 10.]

71.24.110 Joint agreements of county authorities—Permissive provisions. Such agreement for the establishment of a community mental health program may also provide:

(1) For the joint supervision or operation of services and facilities or for the supervision or operation of service and facilities by one participating county under contract for the other participating counties; and

(2) For such other matters as are necessary or proper to effectuate the purposes of this chapter. [1982 c 204 § 8; 1967 ex.s. c 111 § 11.]

71.24.155 Grants to counties—Accounting. Grants shall be made by the department to counties for community mental health programs totaling not less than ninety-five percent of available resources. The department may use up to forty percent of the remaining five percent to provide community demonstration projects, including early intervention or primary prevention programs for children, and the remainder shall be for emergency needs and technical assistance under this chapter. [1987 c 505 § 65; 1986 c 274 § 9; 1982 c 204 § 9.]

Effective date—1986 c 274 §§ 1, 2, 3, 5, 9: See note following RCW 71.24.015.

71.24.160 Proof as to uses made of state funds. The county authority shall make satisfactory showing to the secretary that state funds shall in no case be used to replace local funds from any source being used to finance mental health services prior to January 1, 1990. [1989 c 205 § 7; 1982 c 204 § 10; 1967 ex.s. c 111 § 16.]

71.24.200 Expenditures of county funds subject to county fiscal laws. Expenditures of county funds under this chapter shall be subject to the provisions of chapter 36.40 RCW and other statutes relating to expenditures by counties. [1967 ex.s. c 111 § 20.]

71.24.215 Clients to be charged for services. Clients receiving mental health services funded by available resources shall be charged a fee under sliding-scale fee schedules, based on ability to pay, approved by the department. Fees shall not exceed the actual cost of care. [1982 c 204 § 11.]

71.24.220 Reimbursement may be withheld for non-compliance with chapter or regulations. The secretary may withhold state grants in whole or in part for any community mental health program in the event of a failure to comply with this chapter or regulations made by the department pursuant thereto relating to the community mental health program or the administration thereof. [1982 c 204 § 12; 1967 ex.s. c 111 § 22.]

71.24.240 County program plans to be approved by secretary prior to submittal to federal agency. In order to establish eligibility for funding under this chapter, any county or counties seeking to obtain federal funds for the support of any aspect of a community mental health program as defined in this chapter shall submit program

plans to the secretary for prior review and approval before such plans are submitted to any federal agency. [1982 c 204 § 13; 1967 ex.s. c 111 § 24.]

71.24.250 County authority may accept and expend gifts and grants. The county authority may accept and expend gifts and grants received from private, county, state, and federal sources. [1982 c 204 § 14; 1967 ex.s. c 111 § 25.]

71.24.260 Waiver of postgraduate educational requirements. The department shall waive postgraduate educational requirements applicable to mental health professionals under this chapter for those persons who have a bachelor's degree and on June 11, 1986:

(1) Are employed by an agency subject to licensure under this chapter, the community mental health services act, in a capacity involving the treatment of mental illness; and

(2) Have at least ten years of full-time experience in the treatment of mental illness. [1986 c 274 § 10.]

71.24.300 Regional support networks—Generally. A county authority or a group of county authorities whose combined population is no less than forty thousand may enter into a joint operating agreement to form a regional support network. The roles and responsibilities of county authorities shall be determined by the terms of that agreement and the provisions of law. The state mental health authority may not determine the roles and responsibilities of county authorities as to each other under regional support networks by rule, except to assure that all duties required of regional support networks are assigned and that a single authority has final responsibility for all available resources and performance under the regional support network's contract with the secretary.

(1) Regional support networks shall within three months of recognition submit an overall six-year operating and capital plan, timeline, and budget and submit progress reports and an updated two-year plan biennially thereafter, to assume within available resources all of the following duties by July 1, 1995, instead of those presently assigned to counties under RCW 71.24.045(1):

(a) Administer and provide for the availability of all resource management services, residential services, and community support services.

(b) Administer and provide for the availability of all investigation, transportation, court-related, and other services provided by the state or counties pursuant to chapter 71.05 RCW.

(c) By July 1, 1993, provide within the boundaries of each regional support network evaluation and treatment services for at least eighty-five percent of persons detained or committed for periods up to seventeen days according to chapter 71.05 RCW. Regional support networks with populations of less than one hundred fifty thousand may contract to purchase evaluation and treatment services from other networks. For regional support networks that are created after June 30, 1991,

the requirements of (c) of this subsection must be met by July 1, 1995.

(d) By July 1, 1993, administer a portion of funds appropriated by the legislature to house mentally ill persons in state institutions from counties within the boundaries of any regional support network, with the exception of mentally ill offenders, and provide for the care of all persons needing evaluation and treatment services for periods up to seventeen days according to chapter 71.05 RCW in appropriate residential services, which may include state institutions. The regional support networks shall reimburse the state for use of state institutions at a rate equal to that assumed by the legislature when appropriating funds for such care at state institutions during the biennium when reimbursement occurs. The duty of a state hospital to accept persons for evaluation and treatment under chapter 71.05 RCW is limited by the responsibilities assigned to regional support networks under this section. For regional support networks that are created after June 30, 1991, the requirements of (d) of this subsection must be met by July 1, 1995.

(e) Administer and provide for the availability of all other mental health services, which shall include patient counseling, day treatment, consultation, education services, and mental health services to children as provided in this chapter.

(f) Establish standards and procedures for reviewing individual service plans and determining when that person may be discharged from resource management services.

(2) Regional support networks shall assume all duties assigned to county authorities by this chapter and chapter 71.05 RCW.

(3) A regional support network may request that any state-owned land, building, facility, or other capital asset which was ever purchased, deeded, given, or placed in trust for the care of the mentally ill and which is within the boundaries of a regional support network be made available to support the operations of the regional support network. State agencies managing such capital assets shall give first priority to requests for their use pursuant to this chapter.

(4) Each regional support network shall appoint a mental health advisory board which shall review and provide comments on plans and policies developed under this chapter. The composition of the board shall be broadly representative of the demographic character of the region and the mentally ill persons served therein. Length of terms of board members shall be determined by the regional support network.

(5) Regional support networks shall assume all duties specified in their plans and joint operating agreements through biennial contractual agreements with the secretary.

(6) Counties or groups of counties participating in a regional support network are not subject to RCW 71.24.045(7). The office of financial management shall consider information gathered in studies required in this chapter and information about the experience of other states to propose a mental health services administrative

cost lid to the 1991 legislature which shall include administrative costs of licensed service providers, the state psychiatric hospitals and the department.

(7) The first regional support network contract may include a pilot project to: Establish standards and procedures for (a) making referrals for comprehensive medical examinations and treatment programs for those whose mental illness is caused or exacerbated by organic disease, and (b) training staff in recognizing the relationship between mental illness and organic disease. [1989 c 205 § 5.]

Evaluation of transition to regional systems—1989 c 205: See note following RCW 71.24.015.

71.24.310 Implementation of chapters 71.05 and 71.24 RCW through regional support networks. The legislature finds that administration of chapter 71.05 RCW and this chapter can be most efficiently and effectively implemented as part of the regional support network defined in RCW 71.24.025. For this reason, the legislature intends that any enhanced program funding for implementation of chapter 71.05 RCW or this chapter, except for funds allocated for implementation of mandatory state-wide programs as required by federal statute, be made available primarily to those counties participating in regional support networks. [1989 c 205 § 6.]

Evaluation of transition to regional systems—1989 c 205: See note following RCW 71.24.015.

71.24.800 Pilot program—Impact of case management services for certain persons released from state or community hospital—Termination June 30, 1989.

(1) The department shall establish a pilot program to assess the impact on expenditures for involuntary treatment by the provision of case management services for all persons who are conditionally released or committed to less restrictive treatment from a state or community hospital.

(2) The pilot program shall be conducted in at least three counties. Participation in the program shall be contingent upon:

(a) Participation in the state and county client tracking system required by RCW *71.24.035(4)(h) and 71.24.045(6);

(b) Recognition of conditionally released persons and persons on a less restrictive placement as acutely mentally ill or chronically mentally ill, as defined in chapter 71.24 RCW;

(c) Agreement to provide the data necessary to evaluate the outcome of the pilot program.

(3) In pilot counties in conjunction with the county mental health coordinator, a community mental health agency shall be appointed by the court in its order to provide case management services for persons who are conditionally released or committed to less restrictive treatment. The community mental health agency shall assign a case manager, who will be responsible for:

(a) Participation with the court in the formulation of the conditions of the less restrictive or conditional release order;

(b) Participation in the development of an individualized treatment plan with the treatment team;

(c) Providing the person assistance with access to housing, financial management, medication management, nutrition, system advocacy, and mental health services;

(d) Monitoring the person who is receiving treatment to ensure that the person abides by the requirements of his or her individualized treatment plan. If, in the opinion of the case manager, substantial deterioration in the person's functioning has occurred, then the case manager shall request the county designated mental health professional to initiate revocation proceedings.

(4) The community mental health agency shall assure that the case manager being assigned is a mental health professional, as defined in ****RCW 71.05.020(11)**, or is supervised by a mental health professional.

(5) The plan for the pilot program shall be developed by the department in cooperation with the pilot and other counties, mental health providers, and other interested members of the community and submitted to the legislature within sixty days of July 26, 1987.

(6) The plan shall assure that case management services are administered in a manner which recognizes client needs within availability of funds provided for the plan. The implementation of the plan shall begin on January 1, 1988, and terminate on June 30, 1989.

(7) By January 1, 1989, the legislative budget committee shall submit a report to the legislature on the progress of the pilot program, along with its recommendations.

(8) The department shall adopt those rules necessary to carry out this section. [1987 c 439 § 4.]

Reviser's note: *(1) The reference to RCW 71.24.035(4)(h) appears to be erroneous. RCW 71.24.035(5)(g) was apparently intended.

** (2) RCW 71.05.020 was amended three times during the 1989 legislative session. Due to the merge of those amendments, subsection (11) was renumbered as subsection (12).

71.24.900 Effective date—1967 ex.s. c 111. This act shall take effect on July 1, 1967. [1967 ex.s. c 111 § 26.]

71.24.901 Severability—1982 c 204. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1982 c 204 § 28.]

71.24.902 Construction. Nothing in this chapter shall be construed as prohibiting the secretary from consolidating within the department children's mental health services with other departmental services related to children. [1986 c 274 § 7.]

Chapter 71.28

MENTAL HEALTH AND DEVELOPMENTAL DISABILITIES SERVICES—INTERSTATE CONTRACTS

Sections

71.28.010 Contracts by boundary counties or cities therein.

Council for the prevention of child abuse and neglect: Chapter 43.121 RCW.

71.28.010 Contracts by boundary counties or cities therein. Any county, or city within a county which is situated on the state boundaries is authorized to contract for mental health services with a county situated in either the states of Oregon or Idaho, located on the boundaries of such states with the state of Washington. [1988 c 176 § 911; 1977 ex.s. c 80 § 44; 1967 c 84 § 1.]

Severability—1988 c 176: See RCW 71A.10.900.

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.

Chapter 71.34

MENTAL HEALTH SERVICES FOR MINORS

Sections

71.34.010 Purpose.

71.34.020 Definitions.

71.34.030 Outpatient, inpatient treatment of minors— Voluntary admission—Procedures—Release, exception—Renewal of consent—Review of need for treatment—Discharge, exception.

71.34.040 Evaluation of minor thirteen or older brought for immediate mental health services—Temporary detention.

71.34.050 Minor thirteen or older who presents likelihood of serious harm or is gravely disabled—Transport to inpatient facility—Petition for initial detention—Notice of commitment hearing—Facility to evaluate and admit or release minor.

71.34.060 Examination and evaluation of minor approved for inpatient admission—Right to communication, exception—Evaluation and treatment period.

71.34.070 Petition for fourteen-day commitment—Requirements.

71.34.080 Commitment hearing—Requirements—Findings by court—Commitment—Release.

71.34.090 Petition for one hundred eighty-day commitment—Hearing—Requirements—Findings by court—Commitment order—Release—Successive commitments.

71.34.100 Placement of minor in state evaluation and treatment facility—Placement committee—Facility to report to committee.

71.34.110 Minor's failure to adhere to outpatient conditions—Deterioration of minor's functioning—Transport to inpatient facility—Order of apprehension and detention—Revocation of alternative treatment or conditional release—Hearings.

71.34.120 Release of minor—Conditional release—Discharge.

71.34.130 Liability for costs of minor's treatment, etc.—Rules.

71.34.140 Responsibility of counties for evaluation and treatment services for minors.

71.34.150 Transportation for minors committed to state facility for one hundred eighty-day treatment.

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71.34.170 Release of minor—Requirements.

71.34.180 Transferring or moving persons from juvenile correctional institutions or facilities to evaluation and treatment facilities.

71.34.190	No detention of minors after eighteenth birthday— Exceptions.
71.34.200	Information concerning treatment of minors confidential—Disclosure—Admissible as evidence with written consent.
71.34.210	Court records and files confidential—Availability.
71.34.220	Disclosure of information or records—Required entries in minor's clinical record.
71.34.230	Attorneys appointed for minors—Compensation.
71.34.240	Court proceedings under chapter subject to rules of state supreme court.
71.34.250	Jurisdiction over proceedings under chapter—Venue.
71.34.260	Transfer of superior court proceedings to juvenile department.
71.34.270	Liability for performance of duties under this chapter limited.
71.34.280	Mental health commissioners—Authority.
71.34.290	Antipsychotic medication and shock treatment.
71.34.800	Department to adopt rules to effectuate chapter.
71.34.900	Severability—1985 c 354.
71.34.901	Effective date—1985 c 354.

71.34.010 Purpose. It is the purpose of this legislation to ensure that minors in need of mental health care and treatment receive appropriate care and treatment, and to enable treatment decisions to be made in response to clinical needs and in accordance with sound professional judgment while also recognizing parents' rights to participate in treatment decisions for their minor children, and to protect minors against needless hospitalization and deprivations of liberty. [1985 c 354 § 1.]

71.34.020 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Child psychiatrist" means a person having a license as a physician and surgeon in this state, who has had graduate training in child psychiatry in a program approved by the American Medical Association or the American Osteopathic Association, and who is board eligible or board certified in child psychiatry.

(2) "Children's mental health specialist" means:

(a) A mental health professional who has completed a minimum of one hundred actual hours, not quarter or semester hours, of specialized training devoted to the study of child development and the treatment of children; and

(b) A mental health professional who has the equivalent of one year of full-time experience in the treatment of children under the supervision of a children's mental health specialist.

(3) "Commitment" means a determination by a judge or court commissioner, made after a commitment hearing, that the minor is in need of inpatient diagnosis, evaluation, or treatment or that the minor is in need of less restrictive alternative treatment.

(4) "County-designated mental health professional" means a mental health professional designated by one or more counties to perform the functions of a county-designated mental health professional described in this chapter.

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

(6) "Evaluation and treatment facility" means a public or private facility or unit that is certified by the department to provide emergency, inpatient, residential, or outpatient mental health evaluation and treatment services for minors. A physically separate and separately-operated portion of a state hospital may be designated as an evaluation and treatment facility for minors. A facility which is part of or operated by the department or federal agency does not require certification. No correctional institution or facility, juvenile court detention facility, or jail may be an evaluation and treatment facility within the meaning of this chapter.

(7) "Evaluation and treatment program" means the total system of services and facilities coordinated and approved by a county or combination of counties for the evaluation and treatment of minors under this chapter.

(8) "Gravely disabled minor" means a minor who, as a result of a mental disorder, is in danger of serious physical harm resulting from a failure to provide for his or her essential human needs of health or safety, or manifests severe deterioration in routine functioning evidenced by repeated and escalating loss of cognitive or volitional control over his or her actions and is not receiving such care as is essential for his or her health or safety.

(9) "Inpatient treatment" means twenty-four-hour-per-day mental health care provided within a general hospital, psychiatric hospital, or residential treatment facility certified by the department as an evaluation and treatment facility for minors.

(10) "Less restrictive alternative" or "less restrictive setting" means outpatient treatment provided to a minor who is not residing in a facility providing inpatient treatment as defined in this chapter.

(11) "Likelihood of serious harm" means either: (a) A substantial risk that physical harm will be inflicted by an individual upon his or her own person, as evidenced by threats or attempts to commit suicide or inflict physical harm on oneself; (b) a substantial risk that physical harm will be inflicted by an individual upon another, as evidenced by behavior which has caused such harm or which places another person or persons in reasonable fear of sustaining such harm; or (c) a substantial risk that physical harm will be inflicted by an individual upon the property of others, as evidenced by behavior which has caused substantial loss or damage to the property of others.

(12) "Mental disorder" means any organic, mental, or emotional impairment that has substantial adverse effects on an individual's cognitive or volitional functions. The presence of alcohol abuse, drug abuse, juvenile criminal history, antisocial behavior, or mental retardation alone is insufficient to justify a finding of "mental disorder" within the meaning of this section.

(13) "Mental health professional" means a psychiatrist, psychologist, psychiatric nurse, or social worker, and such other mental health professionals as may be defined by rules adopted by the secretary under this chapter.

(14) "Minor" means any person under the age of eighteen years.

(15) "Outpatient treatment" means any of the non-residential services mandated under chapter 71.24 RCW and provided by licensed services providers as identified by RCW 71.24.025(3).

(16) "Parent" means:

(a) A biological or adoptive parent who has legal custody of the child, including either parent if custody is shared under a joint custody agreement; or

(b) A person or agency judicially appointed as legal guardian or custodian of the child.

(17) "Professional person in charge" means a physician or other mental health professional empowered by an evaluation and treatment facility with authority to make admission and discharge decisions on behalf of that facility.

(18) "Psychiatric nurse" means a registered nurse who has a bachelor's degree from an accredited college or university, and who has had, in addition, at least two years' experience in the direct treatment of mentally ill or emotionally disturbed persons, such experience gained under the supervision of a mental health professional. "Psychiatric nurse" shall also mean any other registered nurse who has three years of such experience.

(19) "Psychiatrist" means a person having a license as a physician in this state who has completed residency training in psychiatry in a program approved by the American Medical Association or the American Osteopathic Association, and is board eligible or board certified in psychiatry.

(20) "Psychologist" means a person licensed as a psychologist under chapter 18.83 RCW.

(21) "Responsible other" means the minor, the minor's parent or estate, or any other person legally responsible for support of the minor.

(22) "Secretary" means the secretary of the department or secretary's designee.

(23) "Start of initial detention" means the time of arrival of the minor at the first evaluation and treatment facility offering inpatient treatment if the minor is being involuntarily detained at the time. With regard to voluntary patients, "start of initial detention" means the time at which the minor gives notice of intent to leave under the provisions of this chapter. [1985 c 354 § 2.]

71.34.030 Outpatient, inpatient treatment of minors—Voluntary admission—Procedures—Release, exception—Renewal of consent—Review of need for treatment—Discharge, exception. (1) Any minor thirteen years or older may request and receive outpatient treatment without the consent of the minor's parent. Parental authorization is required for outpatient treatment of a minor under the age of thirteen.

(2) When in the judgment of the professional person in charge of an evaluation and treatment facility there is reason to believe that a minor is in need of inpatient treatment because of a mental disorder, and the facility provides the type of evaluation and treatment needed by the minor, and it is not feasible to treat the minor in any less restrictive setting or the minor's home, the minor may be admitted to an evaluation and treatment facility in accordance with the following requirements:

(a) A minor under thirteen years of age may only be admitted on the application of the minor's parent.

(b) A minor thirteen years or older may be voluntarily admitted by application of the parent. Such application must be accompanied by the written consent, knowingly and voluntarily given, of the minor.

(c) A minor thirteen years or older may, with the concurrence of the professional person in charge of an evaluation and treatment facility, admit himself or herself without parental consent to the evaluation and treatment facility, provided that notice is given by the facility to the minor's parent in accordance with the following requirements:

(i) Notice of the minor's admission shall be in the form most likely to reach the parent within twenty-four hours of the minor's voluntary admission and shall advise the parent that the minor has been admitted to inpatient treatment; the location and telephone number of the facility providing such treatment; and the name of a professional person on the staff of the facility providing treatment who is designated to discuss the minor's need for inpatient treatment with the parent.

(ii) The minor shall be released to the parent at the parent's request for release unless the facility files a petition with the superior court of the county in which treatment is being provided setting forth the basis for the facility's belief that the minor is in need of inpatient treatment and that release would constitute a threat to the minor's health or safety.

(iii) The petition shall be signed by the professional person in charge of the facility or that person's designee.

(iv) The parent may apply to the court for separate counsel to represent the parent if the parent cannot afford counsel.

(v) There shall be a hearing on the petition, which shall be held within three judicial days from the filing of the petition.

(vi) The hearing shall be conducted by a judge, court commissioner, or licensed attorney designated by the superior court as a hearing officer for such hearing. The hearing may be held at the treatment facility.

(vii) At such hearing, the facility must demonstrate by a preponderance of the evidence presented at the hearing that the minor is in need of inpatient treatment and that release would constitute a threat to the minor's health or safety. The hearing shall not be conducted using the rules of evidence, and the admission or exclusion of evidence sought to be presented shall be within the exercise of sound discretion by the judicial officer conducting the hearing.

(d) Written renewal of voluntary consent must be obtained from the applicant and the minor thirteen years or older no less than once every twelve months.

(e) The minor's need for continued inpatient treatments shall be reviewed and documented no less than every one hundred eighty days.

(3) A notice of intent to leave shall result in the following:

(a) Any minor under the age of thirteen must be discharged immediately upon written request of the parent.

(b) Any minor thirteen years or older voluntarily admitted may give notice of intent to leave at any time. The notice need not follow any specific form so long as it is written and the intent of the minor can be discerned.

(c) The staff member receiving the notice shall date it immediately, record its existence in the minor's clinical record, and send copies of it to the minor's attorney, if any, the county-designated mental health professional, and the parent.

(d) The professional person in charge of the evaluation and treatment facility shall discharge the minor, thirteen years or older, from the facility within twenty-four hours after receipt of the minor's notice of intent to leave, unless the county-designated mental health professional files a petition for initial detention within the time prescribed by this chapter. [1985 c 354 § 3.]

71.34.040 Evaluation of minor thirteen or older brought for immediate mental health services—Temporary detention. If a minor, thirteen years or older, is brought to an evaluation and treatment facility or hospital emergency room for immediate mental health services, the professional person in charge of the facility shall evaluate the minor's mental condition, determine whether the minor suffers from a mental disorder, and whether the minor is in need of immediate inpatient treatment. If it is determined that the minor suffers from a mental disorder, inpatient treatment is required, the minor is unwilling to consent to voluntary admission, and the professional person believes that the minor meets the criteria for initial detention set forth herein, the facility may detain or arrange for the detention of the minor for up to twelve hours in order to enable a county-designated mental health professional to evaluate the minor and commence initial detention proceedings under the provisions of this chapter. [1985 c 354 § 4.]

71.34.050 Minor thirteen or older who presents likelihood of serious harm or is gravely disabled—Transport to inpatient facility—Petition for initial detention—Notice of commitment hearing—Facility to evaluate and admit or release minor. (1) When a county-designated mental health professional receives information that a minor, thirteen years or older, as a result of a mental disorder presents a likelihood of serious harm or is gravely disabled, has investigated the specific facts alleged and of the credibility of the person or persons providing the information, and has determined that voluntary admission for inpatient treatment is not possible, the county-designated mental health professional may take the minor, or cause the minor to be taken, into custody and transported to an evaluation and treatment facility providing inpatient treatment.

(2) Within twelve hours of the minor's arrival at the evaluation and treatment facility, the county-designated mental health professional shall serve on the minor a copy of the petition for initial detention, notice of initial detention, and statement of rights. The county-designated mental health professional shall file with the court on the next judicial day following the initial detention the original petition for initial detention, notice of initial

detention, and statement of rights along with an affidavit of service. The county-designated mental health professional shall commence service of the petition for initial detention and notice of the initial detention on the minor's parent and the minor's attorney as soon as possible following the initial detention.

(3) At the time of initial detention, the county-designated mental health professional shall advise the minor both orally and in writing that if admitted to the evaluation and treatment facility for inpatient treatment, a commitment hearing shall be held within seventy-two hours of the minor's provisional acceptance to determine whether probable cause exists to commit the minor for further mental health treatment.

The minor shall be advised that he or she has a right to communicate immediately with an attorney and that he or she has a right to have an attorney appointed to represent him or her before and at the hearing if the minor is indigent.

(4) Whenever the county designated mental health professional petitions for detention of a minor under this chapter, an evaluation and treatment facility providing seventy-two hour evaluation and treatment must immediately accept on a provisional basis the petition and the person. Within twenty-four hours of the minor's arrival, the facility must evaluate the minor's condition and either admit or release the minor in accordance with this chapter.

(5) If a minor is not approved for admission by the inpatient evaluation and treatment facility, the facility shall make such recommendations and referrals for further care and treatment of the minor as necessary. [1985 c 354 § 5.]

71.34.060 Examination and evaluation of minor approved for inpatient admission—Right to communication, exception—Evaluation and treatment period. (1) Each minor approved by the facility for inpatient admission shall be examined and evaluated by a children's mental health specialist as to the child's mental condition and by a physician as to the child's physical condition within twenty-four hours of admission. Reasonable measures shall be taken to ensure medical treatment is provided for any condition requiring immediate medical attention.

(2) The admitting facility shall take reasonable steps to notify immediately the minor's parent of the admission.

(3) During the initial seventy-two hour treatment period, the minor has a right to associate or receive communications from parents or others unless the professional person in charge determines that such communication would be seriously detrimental to the minor's condition or treatment and so indicates in the minor's clinical record, and notifies the minor's parents of this determination. In no event may the minor be denied the opportunity to consult an attorney.

(4) If the evaluation and treatment facility admits the minor, it may detain the minor for evaluation and treatment for a period not to exceed seventy-two hours from the time of provisional acceptance. The computation of

such seventy-two hour period shall exclude Saturdays, Sundays, and holidays. This initial treatment period shall not exceed seventy-two hours except when an application for voluntary inpatient treatment is received or a petition for fourteen-day commitment is filed.

(5) Within twelve hours of the admission, the facility shall advise the minor of his or her rights as set forth in this chapter. [1985 c 354 § 6.]

71.34.070 Petition for fourteen-day commitment—Requirements. (1) The professional person in charge of an evaluation and treatment facility where a minor has been admitted involuntarily for the initial seventy-two hour treatment period under this chapter may petition to have a minor committed to an evaluation and treatment facility for fourteen-day diagnosis, evaluation, and treatment.

(2) A petition for commitment of a minor under this section shall be filed with the superior court in the county where the minor is residing or being detained.

(a) A petition for a fourteen-day commitment shall be signed either by two physicians or by one physician and a mental health professional who have examined the minor and shall contain the following:

- (i) The name and address of the petitioner;
- (ii) The name of the minor alleged to meet the criteria for fourteen-day commitment;
- (iii) The name, telephone number, and address if known of every person believed by the petitioner to be legally responsible for the minor;
- (iv) A statement that the petitioner has examined the minor and finds that the minor's condition meets required criteria for fourteen-day commitment and the supporting facts therefor;
- (v) A statement that the minor has been advised of the need for voluntary treatment but has been unwilling or unable to consent to necessary treatment;
- (vi) A statement recommending the appropriate facility or facilities to provide the necessary treatment; and
- (vii) A statement concerning whether a less restrictive alternative to inpatient treatment is in the best interests of the minor.

(b) A copy of the petition shall be personally delivered to the minor by the petitioner or petitioner's designee. A copy of the petition shall be sent to the minor's attorney and the minor's parent. [1985 c 354 § 7.]

71.34.080 Commitment hearing—Requirements—Findings by court—Commitment—Release. (1) A commitment hearing shall be held within seventy-two hours of the minor's admission, excluding Saturday, Sunday, and holidays, unless a continuance is requested by the minor or the minor's attorney.

(2) The commitment hearing shall be conducted at the superior court or an appropriate place at the facility in which the minor is being detained.

(3) At the commitment hearing, the evidence in support of the petition shall be presented by the county prosecutor.

(4) The minor shall be present at the commitment hearing unless the minor, with the assistance of the minor's attorney, waives the right to be present at the hearing.

(5) If the parents are opposed to the petition, they may be represented at the hearing and shall be entitled to court-appointed counsel if they are indigent.

(6) At the commitment hearing, the minor shall have the following rights:

- (a) To be represented by an attorney;
- (b) To present evidence on his or her own behalf;
- (c) To question persons testifying in support of the petition.

(7) If the minor has received medication within twenty-four hours of the hearing, the court shall be informed of that fact and of the probable effects of the medication.

(8) Rules of evidence shall not apply in fourteen-day commitment hearings.

(9) For a fourteen-day commitment, the court must find by a preponderance of the evidence that:

- (a) The minor has a mental disorder and presents a "likelihood of serious harm" or is "gravely disabled";
- (b) The minor is in need of evaluation and treatment of the type provided by the inpatient evaluation and treatment facility to which continued inpatient care is sought or is in need of less restrictive alternative treatment found to be in the best interests of the minor; and
- (c) The minor is unwilling or unable in good faith to consent to voluntary treatment.

(10) If the court finds that the minor meets the criteria for a fourteen-day commitment, the court shall either authorize commitment of the minor for inpatient treatment or for less restrictive alternative treatment upon such conditions as are necessary. If the court determines that the minor does not meet the criteria for a fourteen-day commitment, the minor shall be released.

(11) Nothing in this section prohibits the professional person in charge of the evaluation and treatment facility from releasing the minor at any time, when, in the opinion of the professional person in charge of the facility, further inpatient treatment is no longer necessary. The release may be subject to reasonable conditions if appropriate.

Whenever a minor is released under this section, the professional person in charge shall within three days, notify the court in writing of the release.

(12) A minor who has been committed for fourteen days shall be released at the end of that period unless a petition for one hundred eighty-day commitment is pending before the court. [1985 c 354 § 8.]

71.34.090 Petition for one hundred eighty-day commitment—Hearing—Requirements—Findings by court—Commitment order—Release—Successive commitments. (1) At any time during the minor's period of fourteen-day commitment, the professional person in charge may petition the court for an order requiring the minor to undergo an additional one hundred eighty-day period of treatment. The evidence in support of the petition shall be presented by the county prosecutor unless

the petition is filed by the professional person in charge of a state-operated facility in which case the evidence shall be presented by the attorney general.

(2) The petition for one hundred eighty-day commitment shall contain the following:

(a) The name and address of the petitioner or petitioners;

(b) The name of the minor alleged to meet the criteria for one hundred eighty-day commitment;

(c) A statement that the petitioner is the professional person in charge of the evaluation and treatment facility responsible for the treatment of the minor;

(d) The date of the fourteen-day commitment order; and

(e) A summary of the facts supporting the petition.

(3) The petition shall be supported by accompanying affidavits signed by two examining physicians, one of whom shall be a child psychiatrist, or by one examining physician and one children's mental health specialist. The affidavits shall describe in detail the behavior of the detained minor which supports the petition and shall state whether a less restrictive alternative to inpatient treatment is in the best interests of the minor.

(4) The petition for one hundred eighty-day commitment shall be filed with the clerk of the court at least three days before the expiration of the fourteen-day commitment period. The petitioner or the petitioner's designee shall within twenty-four hours of filing serve a copy of the petition on the minor and notify the minor's attorney and the minor's parent. A copy of the petition shall be provided to such persons at least twenty-four hours prior to the hearing.

(5) At the time of filing, the court shall set a date within seven days for the hearing on the petition. The court may continue the hearing upon the written request of the minor or the minor's attorney for not more than ten days. The minor or the parents shall be afforded the same rights as in a fourteen-day commitment hearing. Treatment of the minor shall continue pending the proceeding.

(6) For one hundred eighty-day commitment, the court must find by clear, cogent, and convincing evidence that the minor:

(a) Is suffering from a mental disorder;

(b) Presents a likelihood of serious harm or is gravely disabled; and

(c) Is in need of further treatment that only can be provided in a one hundred eighty-day commitment.

(7) If the court finds that the criteria for commitment are met and that less restrictive treatment in a community setting is not appropriate or available, the court shall order the minor committed for further inpatient treatment to the custody of the secretary or to a private treatment and evaluation facility if the minor's parents have assumed responsibility for payment for the treatment. If the court finds that a less restrictive alternative is in the best interest of the minor, the court shall order less restrictive alternative treatment upon such conditions as necessary.

If the court determines that the minor does not meet the criteria for one hundred eighty-day commitment, the minor shall be released.

(8) Successive one hundred eighty-day commitments are permissible on the same grounds and under the same procedures as the original one hundred eighty-day commitment. Such petitions shall be filed at least five days prior to the expiration of the previous one hundred eighty-day commitment order. [1985 c 354 § 9.]

71.34.100 Placement of minor in state evaluation and treatment facility—Placement committee—Facility to report to committee. (1) If a minor is committed for one hundred eighty-day inpatient treatment and is to be placed in a state-supported program, the secretary shall accept immediately and place the minor in a state-funded long-term evaluation and treatment facility.

(2) The secretary's placement authority shall be exercised through a designated placement committee appointed by the secretary and composed of children's mental health specialists, including at least one child psychiatrist who represents the state-funded, long-term, evaluation and treatment facility for minors. The responsibility of the placement committee will be to:

(a) Make the long-term placement of the minor in the most appropriate, available state-funded evaluation and treatment facility, having carefully considered factors including the treatment needs of the minor, the most appropriate facility able to respond to the minor's identified treatment needs, the geographic proximity of the facility to the minor's family, the immediate availability of bed space, and the probable impact of the placement on other residents of the facility;

(b) Approve or deny requests from treatment facilities for transfer of a minor to another facility;

(c) Receive and monitor reports required under this section;

(d) Receive and monitor reports of all discharges.

(3) The secretary may authorize transfer of minors among treatment facilities if the transfer is in the best interests of the minor or due to treatment priorities.

(4) The responsible state-funded evaluation and treatment facility shall submit a report to the department's designated placement committee within ninety days of admission and no less than every one hundred eighty days thereafter, setting forth such facts as the department requires, including the minor's individual treatment plan and progress, recommendations for future treatment, and possible less restrictive treatment. [1985 c 354 § 10.]

71.34.110 Minor's failure to adhere to outpatient conditions—Deterioration of minor's functioning—Transport to inpatient facility—Order of apprehension and detention—Revocation of alternative treatment or conditional release—Hearings. (1) If the professional person in charge of an outpatient treatment program, a county-designated mental health professional, or the secretary determines that a minor is failing to adhere to the conditions of the court order for less restrictive alternative treatment or the conditions for the conditional

release, or that substantial deterioration in the minor's functioning has occurred, the county-designated mental health professional, or the secretary may order that the minor be taken into custody and transported to an inpatient evaluation and treatment facility.

(2) The county-designated mental health professional or the secretary shall file the order of apprehension and detention and serve it upon the minor and notify the minor's parent and the minor's attorney, if any, of the detention within two days of return. At the time of service the minor shall be informed of the right to a hearing and to representation by an attorney. The county-designated mental health professional or the secretary may modify or rescind the order of apprehension and detention at any time prior to the hearing.

(3) A petition for revocation of less restrictive alternative treatment shall be filed by the county-designated mental health professional or the secretary with the court in the county ordering the less restrictive alternative treatment. The court shall conduct the hearing in that county. A petition for revocation of conditional release may be filed with the court in the county ordering inpatient treatment or the county where the minor on conditional release is residing. A petition shall describe the behavior of the minor indicating violation of the conditions or deterioration of routine functioning and a dispositional recommendation. Upon motion for good cause, the hearing may be transferred to the county of the minor's residence or to the county in which the alleged violations occurred. The hearing shall be held within seven days of the minor's return. The issues to be determined are whether the minor did or did not adhere to the conditions of the less restrictive alternative treatment or conditional release, or whether the minor's routine functioning has substantially deteriorated, and, if so, whether the conditions of less restrictive alternative treatment or conditional release should be modified or whether the minor should be returned to inpatient treatment. Pursuant to the determination of the court, the minor shall be returned to less restrictive alternative treatment or conditional release on the same or modified conditions or shall be returned to inpatient treatment. If the minor is returned to inpatient treatment, RCW 71.34.100 regarding the secretary's placement responsibility shall apply. The hearing may be waived by the minor and the minor returned to inpatient treatment or to less restrictive alternative treatment or conditional release on the same or modified conditions. [1985 c 354 § 11.]

71.34.120 Release of minor—Conditional release—Discharge. (1) The professional person in charge of the inpatient treatment facility may authorize release for the minor under such conditions as appropriate. Conditional release may be revoked pursuant to RCW 71.34.110 if leave conditions are not met or the minor's functioning substantially deteriorates.

(2) Minors may be discharged prior to expiration of the commitment period if the treating physician or professional person in charge concludes that the minor no longer meets commitment criteria. [1985 c 354 § 12.]

71.34.130 Liability for costs of minor's treatment, etc.—Rules. (1) A minor receiving treatment under the provisions of this chapter and responsible others shall be liable for the costs of treatment, care, and transportation to the extent of available resources and ability to pay.

(2) The secretary shall establish rules to implement this section and to define income, resources, and exemptions to determine the responsible person's or persons' ability to pay. [1985 c 354 § 13.]

71.34.140 Responsibility of counties for evaluation and treatment services for minors. (1) The county or combination of counties is responsible for development and coordination of the evaluation and treatment program for minors, for incorporating the program into the county mental health plan, and for coordination of evaluation and treatment services and resources with the community mental health program required under chapter 71.24 RCW.

(2) The county shall be responsible for maintaining its support of involuntary treatment services for minors at its 1984 level, adjusted for inflation, with the department responsible for additional costs to the county resulting from this chapter. [1985 c 354 § 14.]

71.34.150 Transportation for minors committed to state facility for one hundred eighty-day treatment. Necessary transportation for minors committed to the secretary under this chapter for one hundred eighty-day treatment shall be provided by the department in the most appropriate and cost-effective means. [1985 c 354 § 15.]

71.34.160 Rights of minors undergoing treatment—Posting. Absent a risk to self or others, minors treated under this chapter have the following rights, which shall be prominently posted in the evaluation and treatment facility:

(1) To wear their own clothes and to keep and use personal possessions;

(2) To keep and be allowed to spend a reasonable sum of their own money for canteen expenses and small purchases;

(3) To have individual storage space for private use;

(4) To have visitors at reasonable times;

(5) To have reasonable access to a telephone, both to make and receive confidential calls;

(6) To have ready access to letter-writing materials, including stamps, and to send and receive uncensored correspondence through the mails;

(7) To discuss treatment plans and decisions with mental health professionals;

(8) To have the right to adequate care and individualized treatment;

(9) Not to consent to the performance of electroconvulsive treatment or surgery, except emergency life-saving surgery, upon him or her, and not to have electroconvulsive treatment or nonemergency surgery in such circumstance unless ordered by a court pursuant to

a judicial hearing in which the minor is present and represented by counsel, and the court shall appoint a psychiatrist, psychologist, or physician designated by the minor or the minor's counsel to testify on behalf of the minor. The minor's parent may exercise this right on the minor's behalf, and must be informed of any impending treatment;

(10) Not to have psychosurgery performed on him or her under any circumstances. [1985 c 354 § 16.]

71.34.170 Release of minor—Requirements. (1) If a minor is not accepted for admission or is released by an inpatient evaluation and treatment facility, the facility shall release the minor to the custody of the minor's parent or other responsible person. If not otherwise available, the facility shall furnish transportation for the minor to the minor's residence or other appropriate place.

(2) If the minor is released to someone other than the minor's parent, the facility shall make every effort to notify the minor's parent of the release as soon as possible.

(3) No indigent minor may be released to less restrictive alternative treatment or setting or discharged from inpatient treatment without suitable clothing, and the department shall furnish this clothing. As funds are available, the secretary may provide necessary funds for the immediate welfare of indigent minors upon discharge or release to less restrictive alternative treatment. [1985 c 354 § 17.]

71.34.180 Transferring or moving persons from juvenile correctional institutions or facilities to evaluation and treatment facilities. When in the judgment of the department the welfare of any person committed to or confined in any state juvenile correctional institution or facility necessitates that the person be transferred or moved for observation, diagnosis, or treatment to an evaluation and treatment facility, the secretary or the secretary's designee is authorized to order and effect such move or transfer for a period of up to fourteen days, provided that the secretary notifies the original committing court of the transfer and the evaluation and treatment facility is in agreement with the transfer. No person committed to or confined in any state juvenile correctional institution or facility may be transferred to an evaluation and treatment facility for more than fourteen days unless that person has been admitted as a voluntary patient or committed for one hundred eighty-day treatment under this chapter or ninety-day treatment under chapter 71.05 RCW if eighteen years of age or older. Underlying jurisdiction of minors transferred or committed under this section remains with the state correctional institution. A voluntary admitted minor or minors committed under this section and no longer meeting the criteria for one hundred eighty-day commitment shall be returned to the state correctional institution to serve the remaining time of the underlying dispositional order or sentence. The time spent by the minor at the

evaluation and treatment facility shall be credited towards the minor's juvenile court sentence. [1985 c 354 § 19.]

71.34.190 No detention of minors after eighteenth birthday—Exceptions. No minor received as a voluntary patient or committed under this chapter may be detained after his or her eighteenth birthday unless the person, upon reaching eighteen years of age, has applied for admission to an appropriate evaluation and treatment facility or unless involuntary commitment proceedings under chapter 71.05 RCW have been initiated: *Provided*, That a minor may be detained after his or her eighteenth birthday for purposes of completing the fourteen-day diagnosis, evaluation, and treatment. [1985 c 354 § 20.]

71.34.200 Information concerning treatment of minors confidential—Disclosure—Admissible as evidence with written consent. The fact of admission and all information obtained through treatment under this chapter is confidential. Confidential information may be disclosed only:

(1) In communications between mental health professionals to meet the requirements of this chapter, in the provision of services to the minor, or in making appropriate referrals;

(2) In the course of guardianship or dependency proceedings;

(3) To persons with medical responsibility for the minor's care;

(4) To the minor, the minor's parent, and the minor's attorney, subject to RCW 13.50.100;

(5) When the minor or the minor's parent designate[s] in writing the persons to whom information or records may be released;

(6) To the extent necessary to make a claim for financial aid, insurance, or medical assistance to which the minor may be entitled or for the collection of fees or costs due to providers for services rendered under this chapter;

(7) To the courts as necessary to the administration of this chapter;

(8) To law enforcement officers or public health officers as necessary to carry out the responsibilities of their office. However, only the fact and date of admission, and the date of discharge, the name and address of the treatment provider, if any, and the last known address shall be disclosed upon request;

(9) To law enforcement officers, public health officers, relatives, and other governmental law enforcement agencies, if a minor has escaped from custody, disappeared from an evaluation and treatment facility, violated conditions of a less restrictive treatment order, or failed to return from an authorized leave, and then only such information as may be necessary to provide for public safety or to assist in the apprehension of the minor. The officers are obligated to keep the information confidential in accordance with this chapter;

(10) To the secretary for assistance in data collection and program evaluation or research, provided that the

secretary adopts rules for the conduct of such evaluation and research. The rules shall include, but need not be limited to, the requirement that all evaluators and researchers sign an oath of confidentiality substantially as follows:

"As a condition of conducting evaluation or research concerning persons who have received services from (fill in the facility, agency, or person) I, -----, agree not to divulge, publish, or otherwise make known to unauthorized persons or the public any information obtained in the course of such evaluation or research regarding minors who have received services in a manner such that the minor is identifiable.

I recognize that unauthorized release of confidential information may subject me to civil liability under state law.

/s/

(11) To appropriate law enforcement agencies and to a person, when the identity of the person is known to the public or private agency, whose health and safety has been threatened, or who is known to have been repeatedly harassed, by the patient. The person may designate a representative to receive the disclosure. The disclosure shall be made by the professional person in charge of the public or private agency or his or her designee and shall include the dates of admission, discharge, authorized or unauthorized absence from the agency's facility, and only such other information that is pertinent to the threat or harassment. The decision to disclose or not shall not result in civil liability for the agency or its employees so long as the decision was reached in good faith and without gross negligence;

(12) To a minor's next of kin, attorney, guardian, or conservator, if any, the information that the minor is presently in the facility or that the minor is seriously physically ill and a statement evaluating the mental and physical condition of the minor as well as a statement of the probable duration of the minor's confinement;

(13) Upon the death of a minor, to the minor's next of kin;

(14) To a facility in which the minor resides or will reside.

This section shall not be construed to prohibit the compilation and publication of statistical data for use by government or researchers under standards, including standards to assure maintenance of confidentiality, set forth by the secretary. The fact of admission and all information obtained pursuant to this chapter are not admissible as evidence in any legal proceeding outside this chapter, except guardianship or dependency, without the written consent of the minor or the minor's parent. [1985 c 354 § 18.]

71.34.210 Court records and files confidential—Availability. The records and files maintained in any court proceeding under this chapter are confidential and available only to the minor, the minor's parent, and the minor's attorney. In addition, the court may order the subsequent release or use of these records or files only

upon good cause shown if the court finds that appropriate safeguards for strict confidentiality will be maintained. [1985 c 354 § 21.]

71.34.220 Disclosure of information or records—Required entries in minor's clinical record. When disclosure of information or records is made, the date and circumstances under which the disclosure was made, the name or names of the persons or agencies to whom such disclosure was made and their relationship if any, to the minor, and the information disclosed shall be entered promptly in the minor's clinical record. [1985 c 354 § 22.]

71.34.230 Attorneys appointed for minors—Compensation. Attorneys appointed for minors under this chapter shall be compensated for their services as follows:

(1) Responsible others shall bear the costs of such legal services if financially able according to standards set by the court of the county in which the proceeding is held.

(2) If all responsible others are indigent as determined by these standards, the costs of these legal services shall be borne by the county in which the proceeding is held. [1985 c 354 § 23.]

71.34.240 Court proceedings under chapter subject to rules of state supreme court. Court procedures and proceedings provided for in this chapter shall be in accordance with rules adopted by the supreme court of the state of Washington. [1985 c 354 § 24.]

71.34.250 Jurisdiction over proceedings under chapter—Venue. (1) The superior court has jurisdiction over proceedings under this chapter.

(2) A record of all petitions and proceedings under this chapter shall be maintained by the clerk of the superior court in the county in which the petition or proceedings was initiated.

(3) Petitions for commitment shall be filed and venue for hearings under this chapter shall be in the county in which the minor is being detained. The court may, for good cause, transfer the proceeding to the county of the minor's residence, or to the county in which the alleged conduct evidencing need for commitment occurred. If the county of detention is changed, subsequent petitions may be filed in the county in which the minor is detained without the necessity of a change of venue. [1985 c 354 § 26.]

71.34.260 Transfer of superior court proceedings to juvenile department. For purposes of this chapter, a superior court may transfer proceedings under this chapter to its juvenile department. [1985 c 354 § 28.]

71.34.270 Liability for performance of duties under this chapter limited. No public or private agency or governmental entity, nor officer of a public or private agency, nor the superintendent, or professional person in charge, his or her professional designee or attending

staff of any such agency, nor any public official performing functions necessary to the administration of this chapter, nor peace officer responsible for detaining a person under this chapter, nor any county designated mental health professional, shall be civilly or criminally liable for performing his or her duties under this chapter with regard to the decision of whether to admit, release, or detain a person for evaluation and treatment: *Provided*, That such duties were performed in good faith and without gross negligence. [1985 c 354 § 27.]

71.34.280 Mental health commissioners—Authority. The judges of the superior court of the county by majority vote may authorize mental health commissioners, appointed pursuant to RCW 71.05.135, to perform any or all of the following duties:

(1) Receive all applications, petitions, and proceedings filed in the superior court for the purpose of disposing of them pursuant to this chapter;

(2) Investigate the facts upon which to base warrants, subpoenas, orders to directions in actions, or proceedings filed pursuant to this chapter;

(3) For the purpose of this chapter, exercise all powers and perform all the duties of a court commissioner appointed pursuant to RCW 2.24.010;

(4) Hold hearings in proceedings under this chapter and make written reports of all proceedings under this chapter which shall become a part of the record of superior court;

(5) Provide such supervision in connection with the exercise of its jurisdiction as may be ordered by the presiding judge; and

(6) Cause the orders and findings to be entered in the same manner as orders and findings are entered in cases in the superior court. [1989 c 174 § 3.]

Severability—1989 c 174: See note following RCW 71.05.135.

71.34.290 Antipsychotic medication and shock treatment. For the purposes of administration of antipsychotic medication and shock treatment, the provisions of *this act apply to minors pursuant to chapter 71.34 RCW. [1989 c 120 § 9.]

***Reviser's note:** For codification of "this act" [1989 c 120], see Codification Tables, Volume 0.

71.34.800 Department to adopt rules to effectuate chapter. The department shall adopt such rules pursuant to chapter 34.05 RCW as may be necessary to effectuate the intent and purposes of this chapter, which shall include but not be limited to evaluation of the quality, effectiveness, efficiency, and use of services and facilities operating under this chapter, procedures and standards for commitment, and other action relevant to evaluation and treatment facilities, and establishment of criteria and procedures for placement and transfer of committed minors. [1985 c 354 § 25.]

71.34.900 Severability—1985 c 354. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or

the application of the provision to other persons or circumstances is not affected. [1985 c 354 § 37.]

71.34.901 Effective date—1985 c 354. This act shall take effect January 1, 1986. [1985 c 354 § 38.]

Chapter 71.98 CONSTRUCTION

Sections

71.98.010	Continuation of existing law.
71.98.020	Title, chapter, section headings not part of law.
71.98.030	Invalidity of part of title not to affect remainder.
71.98.040	Repeals and saving.
71.98.050	Emergency—1959 c 25.

71.98.010 Continuation of existing law. The provisions of this title insofar as they are substantially the same as statutory provisions repealed by this chapter and relating to the same subject matter, shall be construed as restatements and continuations, and not as new enactments. [1959 c 25 § 71.98.010.]

71.98.020 Title, chapter, section headings not part of law. Title headings, chapter headings, and section or subsection headings, as used in this title do not constitute any part of the law. [1959 c 25 § 71.98.020.]

71.98.030 Invalidity of part of title not to affect remainder. If any provision of this title, or its application to any person or circumstance is held invalid, the remainder of the title, or the application of the provision to other persons or circumstances is not affected. [1959 c 25 § 71.98.030.]

71.98.040 Repeals and saving. See 1959 c 25 § 71.98.040.

71.98.050 Emergency—1959 c 25. This act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect immediately. [1959 c 25 § 71.98.050.]

Title 71A

DEVELOPMENTAL DISABILITIES

Chapters

- 71A.10 General provisions.
- 71A.12 State services.
- 71A.14 Local services.
- 71A.16 Eligibility for services.
- 71A.18 Service delivery.
- 71A.20 Residential habilitation centers.
- 71A.22 Training centers and homes.

Chapter 71A.10 GENERAL PROVISIONS

Sections

- 71A.10.010 Legislative finding—Intent—1988 c 176.
- 71A.10.015 Declaration of policy.
- 71A.10.020 Definitions.
- 71A.10.030 Civil and parental rights not affected.
- 71A.10.040 Protection from discrimination.
- 71A.10.050 Appeals—Right to.
- 71A.10.060 Notice by secretary.
- 71A.10.070 Secretary's duty to consult.
- 71A.10.800 Application of Title 71A RCW to matters pending as of June 9, 1988.
- 71A.10.805 Headings in Title 71A RCW not part of law.
- 71A.10.900 Severability—1988 c 176.
- 71A.10.901 Saving—1988 c 176.
- 71A.10.902 Continuation of existing law—1988 c 176.

71A.10.010 Legislative finding—Intent—1988 c 176. The legislature finds that the statutory authority for the programs, policies, and services of the department of social and health services for persons with developmental disabilities often lack[s] clarity and contain[s] internal inconsistencies. In addition, existing authority is in several chapters of the code and frequently contains obsolete language not reflecting current use. The legislature declares that it is in the public interest to unify and update statutes for programs, policies, and services provided to persons with developmental disabilities.

The legislature intends to recodify the authority for the programs, policies, and services for persons with developmental disabilities. This recodification is not intended to affect existing programs, policies, and services, nor to establish any new program, policies, or services not otherwise authorized before June 9, 1988. The legislature intends to provide only those services authorized under state law before June 9, 1988, and only to the extent funds are provided by the legislature. [1988 c 176 § 1.]

71A.10.015 Declaration of policy. The legislature recognizes the capacity of all persons, including those with developmental disabilities, to be personally and socially productive. The legislature further recognizes the

state's obligation to provide aid to persons with developmental disabilities through a uniform, coordinated system of services to enable them to achieve a greater measure of independence and fulfillment and to enjoy all rights and privileges under the Constitution and laws of the United States and the state of Washington. [1988 c 176 § 101.]

71A.10.020 Definitions. As used in this title, the following terms have the meanings indicated unless the context clearly requires otherwise.

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

(2) "Developmental disability" means a disability attributable to mental retardation, cerebral palsy, epilepsy, autism, or another neurological or other condition of an individual found by the secretary to be closely related to mental retardation or to require treatment similar to that required for individuals with mental retardation, which disability originates before the individual attains age eighteen, which has continued or can be expected to continue indefinitely, and which constitutes a substantial handicap to the individual. By January 1, 1989, the department shall promulgate rules which define neurological or other conditions in a way that is not limited to intelligence quotient scores as the sole determinate [determinant] of these conditions, and notify the legislature of this action.

(3) "Eligible person" means a person who has been found by the secretary under RCW 71A.16.040 to be eligible for services.

(4) "Habilitative services" means those services provided by program personnel to assist persons in acquiring and maintaining life skills and to raise their levels of physical, mental, social, and vocational functioning. Habilitative services include education, training for employment, and therapy.

(5) "Legal representative" means a parent of a person who is under eighteen years of age, a person's legal guardian, a person's limited guardian when the subject matter is within the scope of the limited guardianship, a person's attorney at law, a person's attorney in fact, or any other person who is authorized by law to act for another person.

(6) "Notice" or "notification" of an action of the secretary means notice in compliance with RCW 71A.10.060.

(7) "Residential habilitation center" means a state-operated facility for persons with developmental disabilities governed by chapter 71A.20 RCW.

(8) "Secretary" means the secretary of social and health services or the secretary's designee.

(9) "Service" or "services" means services provided by state or local government to carry out this title. [1988 c 176 § 102.]

71A.10.030 Civil and parental rights not affected. (1) The existence of developmental disabilities does not affect the civil rights of the person with the developmental disability except as otherwise provided by law.

(2) The secretary's determination under RCW 71A.16.040 that a person is eligible for services under this title shall not deprive the person of any civil rights or privileges. The secretary's determination alone shall not constitute cause to declare the person to be legally incompetent.

(3) This title shall not be construed to deprive the parent or parents of any parental rights with relation to a child residing in a residential habilitation center, except as provided in this title for the orderly operation of such residential habilitation centers. [1988 c 176 § 103.]

71A.10.040 Protection from discrimination. Persons are protected from discrimination because of a developmental disability as well as other mental or physical handicaps by the law against discrimination, chapter 49.60 RCW, by other state and federal statutes, rules, and regulations, and by local ordinances, when the persons qualify as handicapped under those statutes, rules, regulations, and ordinances. [1988 c 176 § 104.]

71A.10.050 Appeals—Right to. (1) An applicant or recipient or former recipient of a developmental disabilities service under this title from the department of social and health services has the right to appeal the following department actions:

(a) A denial of an application for eligibility under RCW 71A.16.040;

(b) An unreasonable delay in acting on an application for eligibility, for a service, or for an alternative service under RCW 71A.18.040;

(c) A denial, reduction, or termination of a service;

(d) A claim that the person owes a debt to the state for an overpayment;

(e) A disagreement with an action of the secretary under RCW 71A.10.060 or 71A.10.070;

(f) A decision to return a resident of an [a] habilitation center to the community; and

(g) A decision to change a person's placement from one category of residential services to a different category of residential services.

The adjudicative proceeding is governed by the Administrative Procedure Act, chapter 34.05 RCW.

(2) This subsection applies only to an adjudicative proceeding in which the department action appealed is a decision to return a resident of a habilitation center to the community. The resident or his or her representative may appeal on the basis of whether the specific placement decision is in the best interests of the resident. When the resident or his or her representative files an application for an adjudicative proceeding under this section the department has the burden of proving that

the specific placement decision is in the best interests of the resident.

(3) When the department takes any action described in subsection (1) of this section it shall give notice as provided by RCW 71A.10.060. The notice must include a statement advising the recipient of the right to an adjudicative proceeding and the time limits for filing an application for an adjudicative proceeding. Notice of a decision to return a resident of a habilitation center to the community under RCW 71A.20.080 must also include a statement advising the recipient of the right to file a petition for judicial review of an adverse adjudicative order as provided in chapter 34.05 RCW. [1989 c 175 § 138; 1988 c 176 § 105.]

Effective date—1989 c 175: See note following RCW 34.05.010.

71A.10.060 Notice by secretary. (1) Whenever this title requires the secretary to give notice, the secretary shall give notice to the person with a developmental disability and, except as provided in subsection (3) of this section, to at least one other person. The other person shall be the first person known to the secretary in the following order of priority:

(a) A legal representative of the person with a developmental disability;

(b) A parent of a person with a developmental disability who is eighteen years of age or older;

(c) Other kin of the person with a developmental disability, with preference to persons with the closest kinship;

(d) The Washington protection and advocacy system for the rights of persons with developmental disabilities, appointed in compliance with 42 U.S.C. Sec. 6042; or

(e) A person who is not an employee of the department or of a person who contracts with the department under this title who, in the opinion of the secretary, will be concerned with the welfare of the person.

(2) Notice to a person with a developmental disability shall be given in a way that the person is best able to understand. This can include reading or explaining the materials to the person.

(3) A person with a developmental disability may in writing request the secretary to give notice only to that person. The secretary shall comply with that direction unless the secretary denies the request because the person may be at risk of losing rights if the secretary complies with the request. The secretary shall give notice as provided in subsections (1) and (2) of this section. On filing an application with the secretary within thirty days of receipt of the notice, the person who made the request has the right to an adjudicative proceeding under RCW 71A.10.050 on the secretary's decision.

(4) The giving of notice to a person under this title does not empower the person who is given notice to take any action or give any consent. [1989 c 175 § 139; 1988 c 176 § 106.]

Effective date—1989 c 175: See note following RCW 34.05.010.

71A.10.070 Secretary's duty to consult. (1) Whenever this title places on the secretary the duty to consult,

the secretary shall carry out that duty by consulting with the person with a developmental disability and, except as provided in subsection (2) of this section, with at least one other person. The other person shall be in order of priority:

(a) A legal representative of the person with a developmental disability;

(b) A parent of a person with a developmental disability who is eighteen years of age or older;

(c) Other kin of the person with a developmental disability, with preference to persons with the closest kinship;

(d) The Washington protection and advocacy system for the rights of persons with developmental disabilities, appointed in compliance with 42 U.S.C. Sec. 6042; or

(e) Any other person who is not an employee of the department or of a person who contracts with the department under this title who, in the opinion of the secretary, will be concerned with the welfare of the person.

(2) A person with a developmental disability may in writing request the secretary to consult only with that person. The secretary shall comply with that direction unless the secretary denies the request because the person may be at risk of losing rights if the secretary complies with the request. The secretary shall give notice as provided in RCW 71A.10.060 when a request is denied. On filing an application with the secretary within thirty days of receipt of the notice, the person who made the request has the right to an adjudicative proceeding under RCW 71A.10.050 on the secretary's decision.

(3) Consultation with a person under this section does not authorize the person who is consulted to take any action or give any consent. [1989 c 175 § 140; 1988 c 176 § 107.]

Effective date—1989 c 175: See note following RCW 34.05.010.

71A.10.800 Application of Title 71A RCW to matters pending as of June 9, 1988. Except as provided in RCW 71A.10.901, this title shall govern:

(1) The continued provision of services to persons with developmental disabilities who are receiving services on June 9, 1988.

(2) The disposition of hearings, lawsuits, or appeals that are pending on June 9, 1988.

(3) All other questions or matters covered by this title, from June 9, 1988. [1988 c 176 § 1008.]

71A.10.805 Headings in Title 71A RCW not part of law. Title headings, chapter headings, and section headings used in this title do not constitute any part of the law. [1988 c 176 § 1002.]

71A.10.900 Severability—1988 c 176. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1988 c 176 § 1003.]

71A.10.901 Saving—1988 c 176. The repeals made by sections 1005 through 1007, chapter 176, Laws of 1988, shall not be construed as affecting any existing

right, status, or eligibility for services acquired under the provisions of the statutes repealed, nor as affecting the validity of any rule or order promulgated under the prior statutes, nor as affecting the status of any person appointed or employed under the prior statutes. [1988 c 176 § 1004.]

71A.10.902 Continuation of existing law—1988 c 176. Insofar as provisions of this title are substantially the same as provisions of the statutes repealed by sections 1005, 1006, and 1007, chapter 176, Laws of 1988, the provisions of this title shall be construed as restatements and continuations of the prior law, and not as new enactments. [1988 c 176 § 1001.]

Chapter 71A.12 STATE SERVICES

Sections

71A.12.010	State and local program—Coordination—Continuum.
71A.12.020	Objectives of program.
71A.12.030	General authority of secretary.
71A.12.040	Authorized services.
71A.12.050	Payments for nonresidential services.
71A.12.060	Payment authorized for residents in community residential programs.
71A.12.070	Payments under RCW 71A.12.060 supplemental to payments from other resources—Direct payments.
71A.12.080	Rules.
71A.12.090	Eligibility of parent for services.
71A.12.100	Other services.
71A.12.110	Authority to contract for services.
71A.12.120	Authority to participate in federal programs.
71A.12.130	Gifts—Acceptance, use, record.
71A.12.140	Duties of state agencies generally.
71A.12.150	Contracts with United States and other states for developmental disability services.

71A.12.010 State and local program—Coordination—Continuum. It is declared to be the policy of the state to authorize the secretary to develop and coordinate state services for persons with developmental disabilities; to encourage research and staff training for state and local personnel working with persons with developmental disabilities; and to cooperate with communities to encourage the establishment and development of services to persons with developmental disabilities through locally administered and locally controlled programs.

The complexities of developmental disabilities require the services of many state departments as well as those of the community. Services should be planned and provided as a part of a continuum. A pattern of facilities and services should be established, within appropriations designated for this purpose, which is sufficiently complete to meet the needs of each person with a developmental disability regardless of age or degree of handicap, and at each stage of the person's development. [1988 c 176 § 201.]

71A.12.020 Objectives of program. (1) To the extent that state, federal, or other funds designated for services to persons with developmental disabilities are available,

the secretary shall provide every eligible person with habilitative services suited to the person's needs, regardless of age or degree of developmental disability.

(2) The secretary shall provide persons who receive services with the opportunity for integration with non-handicapped and less handicapped persons to the greatest extent possible.

(3) The secretary shall establish minimum standards for habilitative services. Consumers, advocates, service providers, appropriate professionals, and local government agencies shall be involved in the development of the standards. [1988 c 176 § 202.]

71A.12.030 General authority of secretary. The secretary is authorized to provide, or arrange with others to provide, all services and facilities that are necessary or appropriate to accomplish the purposes of this title, and to take all actions that are necessary or appropriate to accomplish the purposes of this title. The secretary shall adopt rules under the administrative procedure act, chapter 34.05 RCW, as are appropriate to carry out this title. [1988 c 176 § 203.]

71A.12.040 Authorized services. Services that the secretary may provide or arrange with others to provide under this title include, but are not limited to:

- (1) Architectural services;
- (2) Case management services;
- (3) Early childhood intervention;
- (4) Employment services;
- (5) Family counseling;
- (6) Family support;
- (7) Information and referral;
- (8) Health services and equipment;
- (9) Legal services;
- (10) Residential services and support;
- (11) Respite care;
- (12) Therapy services and equipment;
- (13) Transportation services; and
- (14) Vocational services. [1988 c 176 § 204.]

71A.12.050 Payments for nonresidential services. The secretary may make payments for nonresidential services which exceed the cost of caring for an average individual at home, and which are reasonably necessary for the care, treatment, maintenance, support, and training of persons with developmental disabilities, upon application pursuant to RCW 71A.18.050. The secretary shall adopt rules determining the extent and type of care and training for which the department will pay all or a portion of the costs. [1988 c 176 § 205.]

71A.12.060 Payment authorized for residents in community residential programs. The secretary is authorized to pay for all or a portion of the costs of care, support, and training of residents of a residential habilitation center who are placed in community residential programs under this section and RCW 71A.12.070 and 71A.12.080. [1988 c 176 § 206.]

71A.12.070 Payments under RCW 71A.12.060 supplemental to payments from other resources—Direct payments. All payments made by the secretary under RCW 71A.12.060 shall, insofar as reasonably possible, be supplementary to payments to be made for the costs of care, support, and training in a community residential program by the estate of such resident of the residential habilitation center, or from any resource which such resident may have, or become entitled to, from any public, federal, or state agency. Payments by the secretary under this title may, in the secretary's discretion, be paid directly to community residential programs, or to counties having created developmental disability boards under chapter 71A.14 RCW. [1988 c 176 § 207.]

71A.12.080 Rules. (1) The secretary shall adopt rules concerning the eligibility of residents of residential habilitation centers for placement in community residential programs under this title; determination of ability of such persons or their estates to pay all or a portion of the cost of care, support, and training; the manner and method of licensing or certification and inspection and approval of such community residential programs for placement under this title; and procedures for the payment of costs of care, maintenance, and training in community residential programs. The rules shall include standards for care, maintenance, and training to be met by such community residential programs.

(2) The secretary shall coordinate state activities and resources relating to placement in community residential programs to help efficiently expend state and local resources and, to the extent designated funds are available, create an effective community residential program. [1988 c 176 § 208.]

71A.12.090 Eligibility of parent for services. If a person with developmental disabilities is the parent of a child who is about to be placed for adoption or foster care by the secretary, the parent shall be eligible to receive services in order to promote the integrity of the family unit. [1988 c 176 § 209.]

71A.12.100 Other services. Consistent with the general powers of the secretary and whether or not a particular person with a developmental disability is involved, the secretary may:

(1) Provide information to the public on developmental disabilities and available services;

(2) Engage in research concerning developmental disabilities and the habilitation of persons with developmental disabilities, and cooperate with others who do such research;

(3) Provide consultant services to public and private agencies to promote and coordinate services to persons with developmental disabilities;

(4) Provide training for persons in state or local governmental agencies or with private entities who come in contact with persons with developmental disabilities or who have a role in the care or habilitation of persons with developmental disabilities. [1988 c 176 § 210.]

71A.12.110 Authority to contract for services. (1) The secretary may enter into agreements with any person, corporation, or governmental entity to pay the contracting party to perform services that the secretary is authorized to provide under this title, except for operation of residential habilitation centers under chapter 71A.20 RCW.

(2) The secretary by contract or by rule may impose standards for services contracted for by the secretary. [1988 c 176 § 211.]

71A.12.120 Authority to participate in federal programs. (1) The governor may take whatever action is necessary to enable the state to participate in the manner set forth in this title in any programs provided by any federal law and to designate state agencies authorized to administer within this state the several federal acts providing federal moneys to assist in providing services and training at the state or local level for persons with developmental disabilities and for persons who work with persons with developmental disabilities.

(2) Designated state agencies may apply for and accept and disburse federal grants, matching funds, or other funds or gifts or donations from any source available for use by the state or by local government to provide more adequate services for and habilitation of persons with developmental disabilities. [1988 c 176 § 212.]

71A.12.130 Gifts—Acceptance, use, record. The secretary may receive and accept from any person, organization, or estate gifts of money or personal property on behalf of a residential habilitation center, or the residents therein, or on behalf of the entire program for persons with developmental disabilities, or any part of the program, and to use the gifts for the purposes specified by the donor where such use is consistent with law. In the absence of a specified purpose, the secretary shall use such money or personal property for the general benefit of persons with developmental disabilities. The secretary shall keep an accurate record of the amount or kind of gift, the date received, manner expended, and the name and address of the donor. Any increase resulting from such gift may be used for the same purpose as the original gift. [1988 c 176 § 213.]

71A.12.140 Duties of state agencies generally. Each state agency that administers federal or state funds for services to persons with developmental disabilities, or for research or staff training in the field of developmental disabilities, shall:

(1) Investigate and determine the nature and extent of services within its legal authority that are presently available to persons with developmental disabilities in this state;

(2) Develop and prepare any state plan or application which may be necessary to establish the eligibility of the state or any community to participate in any program established by the federal government relating to persons with developmental disabilities;

(3) Cooperate with other state agencies providing services to persons with developmental disabilities to determine the availability of services and facilities within the state, and to coordinate state and local services in order to maximize services to persons with developmental disabilities and their families;

(4) Review and approve any proposed plans that local governments are required to submit for the expenditure of funds by local governments for services to persons with developmental disabilities; and

(5) Provide consultant and staff training for state and local personnel working in the field of developmental disability. [1988 c 176 § 214.]

71A.12.150 Contracts with United States and other states for developmental disability services. The secretary shall have the authority, in the name of the state, to enter into contracts with any duly authorized representative of the United States of America, or its territories, or other states for the provision of services under this title at the expense of the United States, its territories, or other states. The contracts may provide for the separate or joint maintenance, care, treatment, training, or education of persons. The contracts shall provide that all payments due to the state of Washington from the United States, its territories, or other states for services rendered under the contracts shall be paid to the department and transmitted to the state treasurer for deposit in the general fund. [1988 c 176 § 215.]

Chapter 71A.14 LOCAL SERVICES

Sections

71A.14.010	Coordinated and comprehensive state and local program.
71A.14.020	County developmental disability boards—Composition—Expenses.
71A.14.030	County authorities—State fund eligibility—Rules—Application.
71A.14.040	Applications for state funds—Review—Approval—Rules.
71A.14.050	Services to community may be required.
71A.14.060	Local authority to provide services.
71A.14.070	Confidentiality of information—Oath.
71A.14.080	Local authority to receive and spend funds.
71A.14.090	Local authority to participate in federal programs.
71A.14.100	Funds from tax levy under RCW 71.20.110.
71A.14.110	Contracts by boundary counties or cities in boundary counties.

71A.14.010 Coordinated and comprehensive state and local program. The legislative policy to provide a coordinated and comprehensive state and local program of services for persons with developmental disability is expressed in RCW 71A.12.010. [1988 c 176 § 301.]

71A.14.020 County developmental disability boards—Composition—Expenses. (1) The county governing authority of any county may appoint a developmental disability board to plan services for persons with developmental disabilities, to provide directly or indirectly a continuum of care and services to persons with

developmental disabilities within the county or counties served by the community board. The governing authorities of more than one county by joint action may appoint a single developmental disability board. Nothing in this section shall prohibit a county or counties from combining the developmental disability board with another county board, such as a mental health board.

(2) Members appointed to the board shall include but not be limited to representatives of public, private, or voluntary agencies, representatives of local governmental units, and citizens knowledgeable about developmental disabilities or interested in services to persons with developmental disabilities in the community.

(3) The board shall consist of not less than nine nor more than fifteen members.

(4) Members shall be appointed for terms of three years and until their successors are appointed and qualified.

(5) The members of the developmental disability board shall not be compensated for the performance of their duties as members of the board, but may be paid subsistence rates and mileage in the amounts prescribed by RCW 42.24.090. [1988 c 176 § 302.]

71A.14.030 County authorities—State fund eligibility—Rules—Application. Pursuant to RCW 71A.14.040 the secretary shall work with the county governing authorities and developmental disability boards who apply for state funds to coordinate and provide local services for persons with developmental disabilities and their families. The secretary is authorized to promulgate rules establishing the eligibility of each county and the developmental disability board for state funds to be used for the work of the board in coordinating and providing services to persons with developmental disabilities and their families. An application for state funds shall be made by the board with the approval of the county governing authority, or by the county governing authority on behalf of the board. [1988 c 176 § 303.]

71A.14.040 Applications for state funds—Review—Approval—Rules. The secretary shall review the applications from the county governing authority made under RCW 71A.14.030. The secretary may approve an application if it meets the requirements of this chapter and the rules promulgated by the secretary. The secretary shall promulgate rules to assist in determining the amount of the grant. In promulgating the rules, the secretary shall consider the population of the area served, the needs of the area, and the ability of the community to provide funds for the developmental disability program provided in this title. [1988 c 176 § 304.]

71A.14.050 Services to community may be required. The department may require by rule that in order to be eligible for state funds, the county and the developmental disability board shall provide the following indirect services to the community:

(1) Serve as an informational and referral agency within the community for persons with developmental disabilities and their families;

(2) Coordinate all local services for persons with developmental disabilities and their families to insure the maximum utilization of all available services;

(3) Prepare comprehensive plans for present and future development of services and for reasonable progress toward the coordination of all local services to persons with developmental disabilities. [1988 c 176 § 305.]

71A.14.060 Local authority to provide services. The secretary by rule may authorize the county and the developmental disability board to provide any service for persons with developmental disabilities that the department is authorized to provide, except for operating residential habilitation centers under chapter 71A.20 RCW. [1988 c 176 § 306.]

71A.14.070 Confidentiality of information—Oath. In order for the developmental disability board to plan, coordinate, and provide required services for persons with developmental disabilities, the county governing authority and the board shall be eligible to obtain such confidential information from public or private schools and the department as is necessary to accomplish the purposes of this chapter. Such information shall be kept in accordance with state law and rules promulgated by the secretary under chapter 34.05 RCW to permit the use of the information to coordinate and plan services. All persons permitted to have access to or to use such information shall sign an oath of confidentiality, substantially as follows:

"As a condition of obtaining information from (fill in facility, agency, or person) I, -----, agree not to divulge, publish, or otherwise make known to unauthorized persons or the public any information obtained in the course of using such confidential information, where release of such information may possibly make the person who received such services identifiable. I recognize that unauthorized release of confidential information may subject me to civil liability under state law." [1988 c 176 § 307.]

71A.14.080 Local authority to receive and spend funds. The county governing authority and the developmental disability board created under RCW 71A.14.020 are authorized to receive and spend funds received from the state under this chapter, or any federal funds received through any state agency, or any gifts or donations received by it for the benefit of persons with developmental disabilities. [1988 c 176 § 308.]

71A.14.090 Local authority to participate in federal programs. RCW 71A.12.120 authorizes local governments to participate in federal programs for persons with developmental disabilities. [1988 c 176 § 309.]

71A.14.100 Funds from tax levy under RCW 71.20.110. Counties are authorized by RCW 71.20.110 to fund county activities under this chapter. Expenditures

of county funds under this chapter shall be subject to the provisions of chapter 36.40 RCW and other statutes relating to expenditures by counties. [1988 c 176 § 310.]

71A.14.110 Contracts by boundary counties or cities in boundary counties. Any county or city within a county either of which is situated on the state boundaries is authorized to contract for developmental disability services with a county situated in either the states of Oregon or Idaho, which county is located on boundaries with the state of Washington. [1988 c 176 § 311.]

Chapter 71A.16 ELIGIBILITY FOR SERVICES

Sections

71A.16.010	Referral for services.
71A.16.020	Eligibility for services—Rules.
71A.16.030	Determination of eligibility—Application.
71A.16.040	Determination of eligibility—Notice—Rules for redetermination.
71A.16.050	Determination of eligibility—Effect—Determination of appropriate services.

71A.16.010 Referral for services. It is the intention of the legislature in this chapter to establish a single point of referral for persons with developmental disabilities and their families so that they may have a place of entry and continuing contact for services authorized under this title to persons with developmental disabilities. [1988 c 176 § 401.]

71A.16.020 Eligibility for services—Rules. (1) A person is eligible for services under this title if the secretary finds that the person has a developmental disability as defined in RCW 71A.10.020(2).

(2) The secretary may adopt rules further defining and implementing the criteria in the definition of "developmental disability" under RCW 71A.10.020(2). [1988 c 176 § 402.]

71A.16.030 Determination of eligibility—Application. (1) The secretary shall establish a single procedure for persons to apply for a determination of eligibility for services provided to persons with developmental disabilities.

(2) An application may be submitted by a person with a developmental disability, by the legal representative of a person with a developmental disability, or by any other person who is authorized by rule of the secretary to submit an application. [1988 c 176 § 403.]

71A.16.040 Determination of eligibility—Notice—Rules for redetermination. (1) On receipt of an application for services submitted under RCW 71A.16.030, the secretary in a timely manner shall make a written determination as to whether the applicant is eligible for services provided under this title for persons with developmental disabilities.

(2) The secretary shall give notice of the secretary's determination on eligibility to the person who submitted the application and to the applicant, if the applicant is a

person other than the person who submitted the application for services. The notice shall also include a statement advising the recipient of the right to an adjudicative proceeding under RCW 71A.10.050 and the right to judicial review of the secretary's final decision.

(3) The secretary may establish rules for redetermination of eligibility for services under this title. [1989 c 175 § 141; 1988 c 176 § 404.]

Effective date—1989 c 175: See note following RCW 34.05.010.

71A.16.050 Determination of eligibility—Effect—Determination of appropriate services. The determination made under this chapter is only as to whether a person is eligible for services. After the secretary has determined under this chapter that a person is eligible for services, the secretary shall make a determination as to what services are appropriate for the person. [1988 c 176 § 405.]

Chapter 71A.18 SERVICE DELIVERY

Sections

71A.18.010	Individual service plans.
71A.18.020	When services delivered.
71A.18.030	Rejection of service.
71A.18.040	Alternative service—Application—Determination—Reauthorization—Notice.
71A.18.050	Discontinuance of a service.

71A.18.010 Individual service plans. The secretary may produce and maintain an individual service plan for each eligible person. An individual service plan is a plan that identifies the needs of a person for services and determines what services will be in the best interests of the person and will meet the person's needs. [1988 c 176 § 501.]

71A.18.020 When services delivered. The secretary may provide a service to a person eligible under this title if funds are available. If there is an individual service plan, the secretary shall consider the need for services as provided in that plan. [1988 c 176 § 601.]

71A.18.030 Rejection of service. An eligible person or the person's legal representative may reject an authorized service. Rejection of an authorized service shall not affect the person's eligibility for services and shall not eliminate the person from consideration for other services or for the same service at a different time or under different circumstances. [1988 c 176 § 602.]

71A.18.040 Alternative service—Application—Determination—Reauthorization—Notice. (1) A person who is receiving a service under this title or the person's legal representative may request the secretary to authorize a service that is available under this title in place of a service that the person is presently receiving.

(2) The secretary upon receiving a request for change of service shall consult in the manner provided in RCW

71A.10.070 and within ninety days shall determine whether the following criteria are met:

(a) The alternative plan proposes a less dependent program than the person is participating in under current service;

(b) The alternative service is appropriate under the goals and objectives of the person's individual service plan;

(c) The alternative service is not in violation of applicable state and federal law; and

(d) The service can reasonably be made available.

(3) If the requested alternative service meets all of the criteria of subsection (2) of this section, the service shall be authorized as soon as reasonable, but not later than one hundred twenty days after completion of the determination process, unless the secretary determines that:

(a) The alternative plan is more costly than the current plan;

(b) Current appropriations are not sufficient to implement the alternative service without reducing services to existing clients; or

(c) Providing alternative service would take precedence over other priorities for delivery of service.

(4) The secretary shall give notice as provided in RCW 71A.10.060 of the grant of a request for a change of service. The secretary shall give notice as provided in RCW 71A.10.060 of denial of a request for change of service and of the right to an adjudicative proceeding.

(5) When the secretary has changed service from a residential habilitation center to a setting other than a residential habilitation center, the secretary shall reauthorize service at the residential habilitation center if the secretary in reevaluating the needs of the person finds that the person needs service in a residential habilitation center.

(6) If the secretary determines that current appropriations are sufficient to deliver additional services without reducing services to persons who are presently receiving services, the secretary is authorized to give persons notice under RCW 71A.10.060 that they may request the services as new services or as changes of services under this section. [1989 c 175 § 142; 1988 c 176 § 603.]

Effective date—1989 c 175: See note following RCW 34.05.010.

71A.18.050 Discontinuance of a service. (1) When considering the discontinuance of a service that is being provided to a person, the secretary shall consult as required in RCW 71A.10.070.

(2) The discontinuance of a service under this section does not affect the person's eligibility for services. Other services may be provided or the same service may be restored when it is again available or when it is again needed.

(3) Except when the service is discontinued at the request of the person receiving the service or that person's legal representative, the secretary shall give notice as required in RCW 71A.10.060. [1988 c 176 § 604.]

Chapter 71A.20

RESIDENTIAL HABILITATION CENTERS

Sections

71A.20.010	Scope of chapter.
71A.20.020	Residential habilitation centers.
71A.20.030	Facilities for Interlake School.
71A.20.040	Use of Harrison Memorial Hospital property.
71A.20.050	Superintendents—Secretary's custody of residents.
71A.20.060	Work programs for residents.
71A.20.070	Educational programs.
71A.20.080	Return of resident to community—Notice—Adjudicative proceeding—Judicial review—Effect of appeal.
71A.20.090	Secretary to determine capacity of residential quarters.
71A.20.100	Personal property of resident—Secretary as custodian—Limitations—Judicial proceedings to recover.
71A.20.110	Clothing for residents—Cost.
71A.20.120	Financial responsibility.
71A.20.130	Death of resident, payment of funeral expenses—Limitation.
71A.20.140	Resident desiring to leave center—Authority to hold resident limited.
71A.20.150	Admission to residential habilitation center for observation.
71A.20.800	Chapter to be liberally construed.

71A.20.010 Scope of chapter. This chapter covers the operation of residential habilitation centers. The selection of persons to be served at the centers is governed by chapters 71A.16 and 71A.18 RCW. The purposes of this chapter are: To provide for those children and adults who are exceptional in their needs for care, treatment, and education by reason of developmental disabilities, residential care designed to develop their individual capacities to their optimum; to provide for admittance, withdrawal and discharge from state residential habilitation centers upon application; and to insure a comprehensive program for the education, guidance, care, treatment, and rehabilitation of all persons admitted to residential habilitation centers. [1988 c 176 § 701.]

71A.20.020 Residential habilitation centers. The following residential habilitation centers are permanently established to provide services to persons with developmental disabilities: Interlake School, located at Medical Lake, Spokane county; Lakeland Village, located at Medical Lake, Spokane county; Rainier School, located at Buckley, Pierce county; Yakima Valley School, located at Selah, Yakima county; Fircrest School, located at Seattle, King county; and Frances Haddon Morgan Children's Center, located at Bremerton, Kitsap county. [1988 c 176 § 702.]

71A.20.030 Facilities for Interlake School. (1) The secretary may use surplus physical facilities at Eastern State Hospital as a residential habilitation center, which shall be known as the "Interlake School."

(2) The secretary may designate and select such buildings and facilities and tracts of land at Eastern State Hospital that are surplus to the needs of the department for mentally ill persons and that are reasonably necessary and adequate for services for persons with developmental disabilities. The secretary shall also designate those buildings, equipment, and facilities which

are to be used jointly and mutually by both Eastern State Hospital and Interlake School. [1988 c 176 § 703.]

71A.20.040 Use of Harrison Memorial Hospital property. The secretary may under RCW 72.29.010 use the Harrison Memorial Hospital property at Bremerton, Kitsap county, for services to persons with developmental disabilities. [1988 c 176 § 704.]

71A.20.050 Superintendents—Secretary's custody of residents. (1) The secretary shall appoint a superintendent for each residential habilitation center. The superintendent of a residential habilitation center shall have a demonstrated history of knowledge, understanding, and compassion for the needs, treatment, and training of persons with developmental disabilities.

(2) The secretary shall have custody of all residents of the residential habilitation centers and control of the medical, educational, therapeutic, and dietetic treatment of all residents, except that the school district that conducts the program of education provided pursuant to RCW 28A.58.772 through 28A.58.776 shall have control of and joint custody of residents while they are participating in the program. The secretary shall cause surgery to be performed on any resident only upon gaining the consent of a parent, guardian, or limited guardian as authorized, except, if after reasonable effort to locate the parents, guardian, or limited guardian as authorized, and the health of the resident is certified by the attending physician to be jeopardized unless such surgery is performed, the required consent shall not be necessary. [1988 c 176 § 705.]

71A.20.060 Work programs for residents. The secretary shall have authority to engage the residents of a residential habilitation center in beneficial work programs, but the secretary shall not engage residents in excessive hours of work or work for disciplinary purposes. [1988 c 176 § 706.]

71A.20.070 Educational programs. (1) An educational program shall be created and maintained for each residential habilitation center pursuant to RCW 28A.58.772 through 28A.58.776. The educational program shall provide a comprehensive program of academic, vocational, recreational, and other educational services best adapted to meet the needs and capabilities of each resident.

(2) The superintendent of public instruction shall assist the secretary in all feasible ways, including financial aid, so that the educational programs maintained within the residential habilitation centers are comparable to the programs advocated by the superintendent of public instruction for children with similar aptitudes in local school districts.

(3) Within available resources, the secretary shall, upon request from a local school district, provide such clinical, counseling, and evaluating services as may assist the local district lacking such professional resources in determining the needs of its exceptional children. [1988 c 176 § 707.]

71A.20.080 Return of resident to community—Notice—Adjudicative proceeding—Judicial review—Effect of appeal. Whenever in the judgment of the secretary, the treatment and training of any resident of a residential habilitation center has progressed to the point that it is deemed advisable to return such resident to the community, the secretary may grant placement on such terms and conditions as the secretary may deem advisable after consultation in the manner provided in RCW 71A.10.070. The secretary shall give written notice of the decision to return a resident to the community as provided in RCW 71A.10.060. The notice must include a statement advising the recipient of the right to an adjudicative proceeding under RCW 71A.10.050 and the time limits for filing an application for an adjudicative proceeding. The notice must also include a statement advising the recipient of the right to judicial review of an adverse adjudicative order as provided in chapter 34.05 RCW.

A placement decision shall not be implemented at any level during any period during which an appeal can be taken or while an appeal is pending and undecided, unless authorized by court order so long as the appeal is being diligently pursued.

The department of social and health services shall periodically evaluate at reasonable intervals the adjustment of the resident to the specific placement to determine whether the resident should be continued in the placement or returned to the institution or given a different placement. [1989 c 175 § 143; 1988 c 176 § 708.]

Effective date—1989 c 175: See note following RCW 34.05.010.

71A.20.090 Secretary to determine capacity of residential quarters. The secretary shall determine by the application of proper criteria the maximum number of persons to reside in the residential quarters of each residential habilitation center. The secretary in authorizing service at a residential habilitation center shall not exceed the maximum population for the residential habilitation center unless the secretary makes a written finding of reasons for exceeding the rated capacity. [1988 c 176 § 709.]

71A.20.100 Personal property of resident—Secretary as custodian—Limitations—Judicial proceedings to recover. The secretary shall serve as custodian without compensation of personal property of a resident of a residential habilitation center that is located at the residential habilitation center, including moneys deposited with the secretary for the benefit of the resident. As custodian, the secretary shall have authority to disburse moneys from the resident's fund for the following purposes and subject to the following limitations:

(1) Subject to specific instructions by a donor of money to the secretary for the benefit of a resident, the secretary may disburse any of the funds belonging to a resident for such personal needs of the resident as the secretary may deem proper and necessary.

(2) The secretary may pay to the department as reimbursement for the costs of care, support, maintenance, treatment, hospitalization, medical care, and habilitation

of a resident from the resident's fund when such fund exceeds a sum as established by rule of the department, to the extent of any notice and finding of financial responsibility served upon the secretary after such findings shall have become final. If the resident does not have a guardian, parent, spouse, or other person acting in a representative capacity, upon whom notice and findings of financial responsibility have been served, then the secretary shall not make payments to the department as provided in this subsection, until a guardian has been appointed by the court, and the time for the appeal of findings of financial responsibility as provided in RCW 43.20B.430 shall not commence to run until the appointment of such guardian and the service upon the guardian of notice and findings of financial responsibility.

(3) When services to a person are changed from a residential center to another setting, the secretary shall deliver to the person, or to the parent, guardian, or agency legally responsible for the person, all or such portion of the funds of which the secretary is custodian as defined in this section, or other property belonging to the person, as the secretary may deem necessary to the person's welfare, and the secretary may deliver to the person such additional property or funds belonging to the person as the secretary may from time to time deem proper, so long as the person continues to receive service under this title. When the resident no longer receives any services under this title, the secretary shall deliver to the person, or to the parent, person, or agency legally responsible for the person, all funds or other property belonging to the person remaining in the secretary's possession as custodian.

(4) All funds held by the secretary as custodian may be deposited in a single fund, the receipts and expenditures from the fund to be accurately accounted for by the secretary. All interest accruing from, or as a result of the deposit of such moneys in a single fund shall be credited to the personal accounts of the residents. All expenditures under this section shall be subject to the duty of accounting provided for in this section.

(5) The appointment of a guardian for the estate of a resident shall terminate the secretary's authority as custodian of any funds of the resident which may be subject to the control of the guardianship, upon receipt by the secretary of a certified copy of letters of guardianship. Upon the guardian's request, the secretary shall immediately forward to the guardian any funds subject to the control of the guardianship or other property of the resident remaining in the secretary's possession, together with a full and final accounting of all receipts and expenditures made.

(6) Upon receipt of a written request from the secretary stating that a designated individual is a resident of the residential habilitation center and that such resident has no legally appointed guardian of his or her estate, any person, bank, corporation, or agency having possession of any money, bank accounts, or choses in action owned by such resident, shall, if the amount does not

exceed two hundred dollars, deliver the same to the secretary as custodian and mail written notice of the delivery to such resident at the residential habilitation center. The receipt by the secretary shall constitute full and complete acquittance for such payment and the person, bank, corporation, or agency making such payment shall not be liable to the resident or his or her legal representative. All funds so received by the secretary shall be duly deposited by the secretary as custodian in the resident's fund to the personal account of the resident. If any proceeding is brought in any court to recover property so delivered, the attorney general shall defend the lawsuit without cost to the person, bank, corporation, or agency that delivered the property to the secretary, and the state shall indemnify such person, bank, corporation, or agency against any judgment rendered as a result of such proceeding. [1988 c 176 § 710.]

71A.20.110 Clothing for residents—Cost. When clothing for a resident of a residential habilitation center is not otherwise provided, the secretary shall provide a resident with suitable clothing, the actual cost of which shall be a charge against the parents, guardian, or estate of the resident. If such parent or guardian is unable to provide or pay for the clothing, or the estate of the resident is insufficient to provide or pay for the clothing, the clothing shall be provided by the state. [1988 c 176 § 711.]

71A.20.120 Financial responsibility. The subject of financial responsibility for the provision of services to persons in residential habilitation centers is covered by RCW 43.20B.410 through 43.20B.455. [1988 c 176 § 712.]

71A.20.130 Death of resident, payment of funeral expenses—Limitation. Upon the death of a resident of a residential habilitation center, the secretary may supplement such funds as were in the resident's account at the time of the person's death to provide funeral and burial expense for the deceased resident. These expenses shall not exceed funeral and burial expenses allowed under RCW 74.08.120. [1988 c 176 § 713.]

71A.20.140 Resident desiring to leave center—Authority to hold resident limited. (1) If a resident of a residential habilitation center desires to leave the center and the secretary believes that departures may be harmful to the resident, the secretary may hold the resident at the residential habilitation center for a period not to exceed forty-eight hours in order to consult with the person's legal representative as provided in RCW 71A.10.070 as to the best interests of the resident.

(2) The secretary shall adopt rules to provide for the application of subsection (1) of this section in a manner that protects the constitutional rights of the resident.

(3) Neither the secretary nor any person taking action under this section shall be civilly or criminally liable for performing duties under this section if such duties were performed in good faith and without gross negligence. [1988 c 176 § 714.]

71A.20.150 Admission to residential habilitation center for observation. Without committing the department to continued provision of service, the secretary may admit a person eligible for services under this chapter to a residential habilitation center for a period not to exceed thirty days for observation prior to determination of needed services, where such observation is necessary to determine the extent and necessity of services to be provided. [1988 c 176 § 715.]

71A.20.800 Chapter to be liberally construed. The provisions of this chapter shall be liberally construed to accomplish its purposes. [1988 c 176 § 716.]

Chapter 71A.22

TRAINING CENTERS AND HOMES

Sections

- 71A.22.010 Contracts for services authorized.
- 71A.22.020 Definitions.
- 71A.22.030 Payments by secretary under this chapter supplemental—Limitation.
- 71A.22.040 Certification of facility as day training center or group training home.
- 71A.22.050 Services in day training center or group training home—Application for payment.
- 71A.22.060 Facilities to be nonsectarian.

71A.22.010 Contracts for services authorized. The secretary may enter into agreements with any person or with any person, corporation, or association operating a day training center or group training home or a combination day training center and group training home approved by the department, for the payment of all, or a portion, of the cost of the care, treatment, maintenance, support, and training of persons with developmental disabilities. [1988 c 176 § 801.]

71A.22.020 Definitions. As used in this chapter:

(1) "Day training center" means a facility equipped, supervised, managed, and operated at least three days per week by any person, association, or corporation on a nonprofit basis for the day-care, treatment, training, and maintenance of persons with developmental disabilities, and approved under this chapter and the standards under rules adopted by the secretary.

(2) "Group training home" means a facility equipped, supervised, managed, and operated on a full-time basis by any person, association, or corporation on a nonprofit basis for the full-time care, treatment, training, and maintenance of persons with developmental disabilities, and approved under this chapter and the standards under the rules adopted by the secretary. [1988 c 176 § 802.]

71A.22.030 Payments by secretary under this chapter supplemental—Limitation. All payments made by the secretary under this chapter, shall be, insofar as possible, supplementary to payments to be made to a day training center or group training home, or a combination of both, by the persons with developmental disabilities

resident in the home or center. Payments made by the secretary under this chapter shall not exceed actual costs for the care, treatment, support, maintenance, and training of any person with a developmental disability whether at a day training center or group training home or combination of both. [1988 c 176 § 803.]

71A.22.040 Certification of facility as day training center or group training home. Any person, corporation, or association may apply to the secretary for approval and certification of the applicant's facility as a day training center or a group training home for persons with developmental disabilities, or a combination of both. The secretary may either grant or deny certification or revoke certification previously granted after investigation of the applicant's facilities, to ascertain whether or not such facilities are adequate for the care, treatment, maintenance, training, and support of persons with developmental disabilities, under standards in rules adopted by the secretary. Day training centers and group training homes must meet local health and safety standards as may be required by local health and fire-safety authorities. [1989 c 329 § 2; 1988 c 176 § 804.]

71A.22.050 Services in day training center or group training home—Application for payment. (1) Except as otherwise provided in this section, the provisions of this title govern applications for payment by the state for services in a day training center or group training home approved by the secretary under this chapter.

(2) In determining eligibility and the amount of payment, the secretary shall make special provision for group training homes where parents are actively involved as a member of the administrative board of the group training home and who may provide for some of the services required by a resident therein. The special provisions shall include establishing eligibility requirements for a person placed in such a group training home to have a parent able and willing to attend administrative board meetings and participate insofar as possible in carrying out special activities deemed by the board to contribute to the well being of the residents.

(3) If the secretary determines that a person is eligible for services in a day training center or group training home, the secretary shall determine the extent and type of services to be provided and the amount that the department will pay, based upon the needs of the person and the ability of the parent or the guardian to pay or contribute to the payment of the monthly cost of the services.

(4) The secretary may, upon application of the person who is receiving services or the person's legal representative, after investigation of the ability or inability of such persons to pay, or without application being made, modify the amount of the monthly payments to be paid by the secretary for services at a day training center or group training home or combination of both. [1988 c 176 § 805.]

71A.22.060 Facilities to be nonsectarian. A day training center and a group training home under this

chapter shall be a nonsectarian training center and a nonsectarian group training home. [1988 c 176 § 806.]

Title 72

STATE INSTITUTIONS

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- 72.02 Adult corrections.**
- 72.04A Probation and parole.**
- 72.05 Children and youth services.**
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Alcoholism, intoxication, and drug addiction treatment: Chapter 70-.96A RCW.

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Jurisdiction over Indians concerning mental illness: Chapter 37.12 RCW.

Mental illness—Financial responsibility: Chapter 71.02 RCW.

Public bodies may retain collection agencies to collect public debts: RCW 19.16.500.

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Veterans affairs, powers and duties concerning transferred to department of veterans affairs: RCW 43.60A.020.

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Chapter 72.01 ADMINISTRATION

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- 72.01.010 Joint exercise of powers and duties—Department of social and health services, department of corrections.
- 72.01.042 Hours of labor for full time employees—Compensatory time—Premium pay.
- 72.01.043 Hours of labor for full time employees—Certain personnel excepted.
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- 72.01.050 Secretary's powers and duties—Management of public institutions.
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- 72.01.458 Use of files and records for courses of education, instruction and training at institutions.
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- 72.01.490 Authority of superintendents, business managers and officers of correctional institutions to take acknowledgments and administer oaths—Procedure.

Children's center for research and training in mental retardation, director as member of advisory committee: RCW 28B.20.412.

Counties may engage in probation and parole services: RCW 36.01.070.

Disposition of property of deceased inmate of state institution: RCW 11.08.101, 11.08.111 and 11.08.120.

Employment of dental hygienist without supervision of dentist authorized: RCW 18.29.056.

Out-of-state physicians, conditional license to practice in conjunction with institutions: RCW 18.71.095.

Public purchase preferences: Chapter 39.24 RCW.

Social security benefits, payment to survivors or department of social and health services: RCW 11.66.010.

State administrative departments and agencies: Chapter 43.17 RCW.

72.01.010 Joint exercise of powers and duties—Department of social and health services, department of corrections. As used in this chapter:

"Department" means the departments of social and health services and corrections; and

"Secretary" means the secretaries of social and health services and corrections.

The powers and duties granted and imposed in this chapter, when applicable, apply to both the departments of social and health services and corrections and the secretaries of social and health services and corrections for institutions under their control. A power or duty may be exercised or fulfilled jointly if joint action is more efficient, as determined by the secretaries. [1981 c 136 § 66; 1979 c 141 § 142; 1970 ex.s. c 18 § 56; 1959 c 28 § 72.01.010. Prior: 1907 c 166 § 10; RRS § 10919. Formerly RCW 72.04.010.]

Effective date—1981 c 136: See RCW 72.09.900.

Effective date—Severability—1970 ex.s. c 18: See notes following RCW 43.20A.010.

72.01.042 Hours of labor for full time employees—Compensatory time—Premium pay. The hours of labor for each full time employee shall be a maximum of eight hours in any work day and forty hours in any work week.

Employees required to work in excess of the eight-hour maximum per day or the forty-hour maximum per week shall be compensated by not less than equal hours of compensatory time off or, in lieu thereof, a premium rate of pay per hour equal to not less than one hundred and seventy-sixth of the employee's gross monthly salary: *Provided*, That in the event that an employee is granted compensatory time off, such time off should be given within the calendar year and in the event that such an arrangement is not possible the employee shall be given a premium rate of pay: *Provided further*, That compensatory time and/or payment thereof shall be allowed only for overtime as is duly authorized and accounted for under rules and regulations established by

the secretary. [1981 c 136 § 67; 1979 c 141 § 143; 1970 ex.s. c 18 § 60; 1953 c 169 § 1. Formerly RCW 43.19.255.]

Effective date—1981 c 136: See RCW 72.09.900.

Effective date—Severability—1970 ex.s. c 18: See notes following RCW 43.20A.010.

72.01.043 Hours of labor for full time employees—Certain personnel excepted. RCW 72.01.042 shall not be applicable to the following designated personnel: Administrative officers of the department; institutional superintendents, medical staff other than nurses, and business managers; and such professional, administrative and supervisory personnel as designated prior to July 1, 1970 by the department of social and health services with the concurrence of the merit system board having jurisdiction. [1979 c 141 § 144; 1970 ex.s. c 18 § 61; 1953 c 169 § 2. Formerly RCW 43.19.256.]

Effective date—Severability—1970 ex.s. c 18: See notes following RCW 43.20A.010.

72.01.045 Institutional care employees—Reimbursement for costs resulting from assaults by residents, patients, or juvenile offenders. (1) For purposes of this section only, "assault" means an unauthorized touching of an employee by a resident, patient, or juvenile offender resulting in physical injury to the employee.

(2) In recognition of the hazardous nature of employment in state institutions, the legislature hereby provides a supplementary program to reimburse institutional care employees of the department of social and health services and the department of veterans affairs for some of their costs attributable to their being the victims of assault by residents, patients, or juvenile offenders. This program shall be limited to the reimbursement provided in this section.

(3) An employee is only entitled to receive the reimbursement provided in this section if the secretary of social and health services or the director of the department of veterans affairs, or the secretary's or director's designee, finds that each of the following has occurred:

(a) A resident or patient has assaulted the employee and as a result thereof the employee has sustained demonstrated physical injuries which have required the employee to miss days of work;

(b) The assault cannot be attributable to any extent to the employee's negligence, misconduct, or failure to comply with any rules or conditions of employment; and

(c) The department of labor and industries has approved the employee's workers' compensation application pursuant to chapter 51.32 RCW.

(4) The reimbursement authorized under this section shall be as follows:

(a) The employee's accumulated sick leave days shall not be reduced for the workdays missed;

(b) For each workday missed for which the employee is not eligible to receive compensation under chapter 51.32 RCW, the employee shall receive full pay; and

(c) In respect to workdays missed for which the employee will receive or has received compensation under chapter 51.32 RCW, the employee shall be reimbursed

in an amount which, when added to that compensation, will result in the employee receiving full pay for the workdays missed.

(5) Reimbursement under this section may not last longer than three hundred sixty-five consecutive days after the date of the injury.

(6) The employee shall not be entitled to the reimbursement provided in subsection (4) of this section for any workday for which the secretary, director, or applicable designee, finds that the employee has not diligently pursued his or her compensation remedies under chapter 51.32 RCW.

(7) The reimbursement shall only be made for absences which the secretary, director, or applicable designee believes are justified.

(8) While the employee is receiving reimbursement under this section, he or she shall continue to be classified as a state employee and the reimbursement amount shall be considered as salary or wages.

(9) All reimbursement payments required to be made to employees under this section shall be made by the employing department. The payments shall be considered as a salary or wage expense and shall be paid by the department in the same manner and from the same appropriations as other salary and wage expenses of the department.

(10) Should the legislature revoke the reimbursement authorized under this section or repeal this section, no affected employee is entitled thereafter to receive the reimbursement as a matter of contractual right. [1987 c 102 § 1; 1986 c 269 § 4.]

72.01.050 Secretary's powers and duties—Management of public institutions. (1) The secretary of social and health services shall have full power to manage and govern the following public institutions: The western state hospital, the eastern state hospital, the northern state hospital, the state training school, the state school for girls, Lakeland Village, the Rainier school, and such other institutions as authorized by law, subject only to the limitations contained in laws relating to the management of such institutions.

(2) The secretary of corrections shall have full power to manage and govern the following public institutions: The Washington state penitentiary, the Washington state reformatory, the Washington corrections center, the McNeil Island corrections center, the Washington corrections center for women, the Cedar Creek corrections center, the Clearwater corrections center, the Indian Ridge corrections center, the Larch corrections center, the Olympic corrections center, Pine Lodge corrections center, the special offender center, the Twin Rivers corrections center, and the Clallam Bay corrections center subject only to the limitations contained in laws relating to the management of such institutions.

(3) If any of the facilities specified in subsection (2) of this section is fully or partially destroyed by natural causes or otherwise, the secretary of corrections may, with the approval of the governor, provide for the establishment and operation of additional residential correctional facilities to place those inmates displaced by such

destruction. However, such additional facilities may not be established if there are existing residential correctional facilities to which all of the displaced inmates can be appropriately placed. The establishment and operation of any additional facility shall be on a temporary basis, and the facility may not be operated beyond July 1 of the year following the year in which it was partially or fully destroyed. [1988 c 143 § 1. Prior: 1985 c 378 § 8; 1985 c 350 § 1; 1981 c 136 § 68; 1979 c 141 § 145; 1977 c 31 § 1; 1959 c 28 § 72.01.050; prior: 1955 c 195 § 4(1); 1915 c 107 § 1, part; 1907 c 166 § 2, part; 1901 c 119 § 3, part; RRS § 10899, part. Formerly RCW 43-.28.020, part.]

Severability—1985 c 378: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1985 c 378 § 36.]

Effective date—1985 c 378: "This act shall take effect July 1, 1986. The secretary of social and health services and the governor may immediately take such steps as are necessary to ensure that this act is implemented on its effective date." [1985 c 378 § 37.]

Effective date—1981 c 136: See RCW 72.09.900.

72.01.060 Chief executive officers—Appointment—Salaries—Assistants. The secretary shall appoint the chief executive officers necessary to manage one or more of the public facilities operated by the department. This section, however, shall not apply to RCW 72.40.020.

Except as otherwise provided in this title, the chief executive officer of each institution may appoint all assistants and employees required for the management of the institution placed in his charge, the number of such assistants and employees to be determined and fixed by the secretary. The chief executive officer of any institution may, at his pleasure, discharge any person therein employed. The secretary shall investigate all complaints made against the chief executive officer of any institution and also any complaint against any other officer or employee thereof, if it has not been investigated and reported upon by the chief executive officer.

The secretary may, after investigation, for good and sufficient reasons, order the discharge of any subordinate officer or employee of an institution.

Each chief executive officer shall receive such salary as is fixed by the secretary, who shall also fix the compensation of other officers and the employees of each institution. Such latter compensation shall be fixed on or before the first day of April of each year and no change shall be made in the compensation, so fixed, during the twelve month period commencing April 1st. [1983 1st ex.s. c 41 § 26; 1979 c 141 § 146; 1959 c 28 § 72.01.060. Prior: 1907 c 166 § 5; 1901 c 119 § 6; RRS § 10902. Formerly RCW 72.04.020.]

Severability—1983 1st ex.s. c 41: See note following RCW 26.09.060.

Authority to appoint a single executive officer for multiple institutions—Exception: RCW 43.20A.607.

Juvenile correctional institution in King county, appointment of superintendent: RCW 72.19.030.

Maple Lane School, appointment of superintendent and subordinate officers and employees: RCW 72.20.020.

State hospitals for mentally ill—Superintendents: RCW 72.23.030.

72.01.090 Rules and regulations. The department is authorized to make its own rules for the proper execution of its powers. It shall also have the power to adopt rules and regulations for the government of the public institutions placed under its control, and shall therein prescribe, in a manner consistent with the provisions of this title, the duties of the persons connected with the management of such public institutions. [1959 c 28 § 72.01.090. Prior: 1907 c 166 § 7; 1901 c 119 § 9; RRS § 10905. Formerly RCW 72.04.060.]

72.01.110 Construction or repair of buildings. The department may employ the services of competent architects for the preparation of plans and specifications for new buildings, or for repairs, changes, or additions to buildings already constructed, employ competent persons to superintend the construction of new buildings or repairs, changes, or additions to buildings already constructed and call for bids and award contracts for the erection of new buildings, or for repairs, changes, or additions to buildings already constructed: *Provided*, That the department may proceed with the erecting of any new building, or repairs, changes, or additions to any buildings already constructed, employing thereon the labor of the inmates of the institution, when in its judgment the improvements can be made in as satisfactory a manner and at a less cost to the state by so doing. [1959 c 28 § 72.01.110. Prior: 1901 c 119 § 12; RRS § 10909. Formerly RCW 72.04.100.]

Public works: Chapter 39.04 RCW.

72.01.120 Construction or repair of buildings—Award of contracts. When improvements are to be made under contract, notice of the call for the same shall be published in at least two newspapers of general circulation in the state for two weeks prior to the award being made. The contract shall be awarded to the lowest responsible bidder. The secretary is authorized to require such security as he may deem proper to accompany the bids submitted, and shall also fix the amount of the bond or other security that shall be furnished by the person or firm to whom the contract is awarded. The secretary shall have the power to reject any or all bids submitted, if for any reason it is deemed for the best interest of the state to do so, and to readvertise in accordance with the provisions hereof. The secretary shall also have the power to reject the bid of any person or firm who has had a prior contract, and who did not, in the opinion of the secretary, faithfully comply with the same. [1979 c 141 § 148; 1959 c 28 § 72.01.120. Prior: 1901 c 119 § 10, part; RRS § 10906.]

72.01.130 Destruction of buildings—Reconstruction. If any of the shops or buildings in which convicts are employed are destroyed in any way, or injured by fire or otherwise, they may be rebuilt or repaired immediately under the direction of the department, by and with the advice and consent of the governor, and the expenses thereof shall be paid out of any unexpended funds appropriated to the department for any purpose, not to exceed one hundred thousand dollars: *Provided*, That if

a specific appropriation for a particular project has been made by the legislature, only such funds exceeding the cost of such project may be expended for the purposes of this section. [1959 c 28 § 72.01.130. Prior: 1957 c 25 § 1; 1891 c 147 § 29; RRS § 10908. Formerly RCW 72.04.090.]

72.01.140 Agricultural and farm economy. The secretary shall:

(1) Make a survey, investigation, and classification of the lands connected with the state institutions under his control, and determine which thereof are of such character as to be most profitably used for agricultural, horticultural, dairying, and stock raising purposes, taking into consideration the costs of making them ready for cultivation, the character of the soil, its depth and fertility, the number of kinds of crops to which it is adapted, the local climatic conditions, the local annual rainfall, the water supply upon the land or available, the needs of all state institutions for the food products that can be grown or produced, and the amount and character of the available labor of inmates at the several institutions;

(2) Establish and carry on suitable farming operations at the several institutions under his control;

(3) Supply the several institutions with the necessary food products produced thereat;

(4) Exchange with, or furnish to, other institutions, food products at the cost of production;

(5) Sell and dispose of surplus food products produced.

This section shall not apply to the Rainier school for which cognizance of farming operations has been transferred to Washington State University by RCW 72.01.142. [1981 c 238 § 1; 1979 c 141 § 149; 1959 c 28 § 72.01.140. Prior: 1955 c 195 § 4(7), (8), (9), (10) and (11); 1921 c 7 § 39; RRS § 10797. Formerly RCW 43.28.020, part.]

Effective date—1981 c 238: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect on July 1, 1981." [1981 c 238 § 7.]

Savings—Liabilities—1981 c 238: "The enactment of this act shall not have the effect of terminating, or in any way modifying, any liability, civil or criminal, which is already in existence on the effective date of this act." [1981 c 238 § 5.]

Savings—Rights, actions, contracts—1981 c 238: "Nothing in this act shall be construed as affecting any existing rights except as to the agencies referred to, nor as affecting any pending actions, activities, proceedings, or contracts, nor affect the validity of any act performed by such agency or any employee thereof prior to the effective date of this act." [1981 c 238 § 6.]

72.01.142 Transfer of dairy operation from Rainier school. The secretary of social and health services shall transfer on July 1, 1981, cognizance and control of all real property and improvements thereon owned by the state at the Rainier school, used for agricultural purposes, other than the school buildings and school grounds, to Washington State University for use as a dairy/forage research facility established pursuant to RCW 28B.30.810.

All livestock and the supplies, equipment, implements, documents, records, papers, vehicles, appropriations,

tangible property, and other items used in the dairy operation or production of forage shall also be transferred to the university. [1981 c 238 § 2.]

Effective date—Savings—Liabilities, rights, actions, contracts—1981 c 238: See notes following RCW 72.01.140.

72.01.150 Industrial economy. The secretary shall:

(1) Establish, install and operate, at the several state institutions under his control, such industries and industrial plants as may be most suitable and beneficial to the inmates thereof, and as can be operated at the least relative cost and the greatest relative benefit to the state, taking into consideration the needs of the state institutions for industrial products, and the amount and character of labor of inmates available at the several institutions;

(2) Supply the several institutions with the necessary industrial products produced thereat;

(3) Exchange with, or furnish to, other state institutions industrial products at prices to be fixed by the department, not to exceed in any case the price of such products in the open market;

(4) Sell and dispose of surplus industrial products produced, to such persons and under such rules, regulations, terms, and prices as may be in his judgment for the best interest of the state;

(5) Sell products of the plate mill to any department, to any state, county, or other public institution and to any governmental agency, of this or any other state under such rules, regulations, terms, and prices as may be in his judgment for the best interests of the state. [1979 c 141 § 150; 1959 c 28 § 72.01.150. Prior: 1955 c 195 § 4(12), (13), (14), (15) and (16); 1923 c 101 § 1; 1921 c 7 § 40; RRS § 10798. Formerly RCW 43.28.020, part.]

Correctional industries: Chapter 72.60 RCW.

72.01.180 Dietitian—Duties—Travel expenses.

The secretary shall have the power to select a member of the faculty of the University of Washington, or the Washington State University, skilled in scientific food analysis and dietetics, to be known as the state dietitian, who shall make and furnish to the department food analyses showing the relative food value, in respect to cost, of food products, and advise the department as to the quantity, comparative cost, and food values, of proper diets for the inmates of the state institutions under the control of the department. The state dietitian shall receive travel expenses while engaged in the performance of his duties in accordance with RCW 43.03.050 and 43.03.060 as now existing or hereafter amended. [1979 c 141 § 152; 1975-'76 2nd ex.s. c 34 § 166; 1959 c 28 § 72.01.180. Prior: 1921 c 7 § 32; RRS § 10790. Formerly RCW 43.19.150.]

Effective date—Severability—1975-'76 2nd ex.s. c 34: See notes following RCW 2.08.115.

72.01.190 Fire protection. The secretary may enter into an agreement with a city or town adjacent to any state institution for fire protection for such institution. [1979 c 141 § 153; 1959 c 28 § 72.01.190. Prior: 1947 c

188 § 1; Rem. Supp. 1947 § 10898a. Formerly RCW 72.04.140.]

72.01.200 Employment of teachers—Exceptions.

The several penal and reformatory institutions of the state may employ certificated teachers to carry on their educational work, except for the educational programs provided pursuant to RCW 28A.58.772 through 28A.58.776, as now or hereafter amended, and all such teachers so employed shall be eligible to membership in the state teachers' retirement fund. [1979 ex.s. c 217 § 6; 1959 c 28 § 72.01.200. Prior: 1947 c 211 § 1; Rem. Supp. 1947 § 10319-1. Formerly RCW 72.04.130.]

Effective date—Severability—1979 ex.s. c 217: See notes following RCW 28A.58.770.

Teachers' qualifications at state schools for the deaf and blind: RCW 72.40.028.

Teachers' retirement: Chapter 41.32 RCW.

72.01.210 Institutional chaplains—Appointment.

The secretary of corrections shall appoint chaplains for the state correctional institutions for convicted felons; and the secretary of social and health services shall appoint chaplains for the correctional institutions for juveniles found delinquent by the juvenile courts; and the secretary of corrections and the secretary of social and health services shall appoint one or more chaplains for other custodial, correctional and mental institutions under their control. The chaplains so appointed shall have the qualifications and shall be compensated in an amount, as shall hereafter be recommended by the department and approved by the state personnel board. [1981 c 136 § 69; 1979 c 141 § 154; 1967 c 58 § 1; 1959 c 33 § 1; 1959 c 28 § 72.01.210. Prior: 1955 c 248 § 1. Formerly RCW 72.04.160.]

Effective date—1981 c 136: See RCW 72.09.900.

Housing allowance for state-employed chaplains: RCW 41.04.360.

State personnel board: RCW 41.06.110.

72.01.220 Institutional chaplains—Duties.

It shall be the duty of the chaplains at the respective institutions mentioned in RCW 72.01.210, under the direction of the department, to conduct religious services and to give religious and moral instruction to the inmates of the institutions, and to attend to their spiritual wants. They shall counsel with and interview the inmates concerning their social and family problems, and shall give assistance to the inmates and their families in regard to such problems. [1959 c 28 § 72.01.220. Prior: 1955 c 248 § 2. Formerly RCW 72.04.170.]

72.01.230 Institutional chaplains—Offices, chapels, supplies.

The chaplains at the respective institutions mentioned in RCW 72.01.210 shall be provided with the offices and chapels at their institutions, and such supplies as may be necessary for the carrying out of their duties. [1959 c 28 § 72.01.230. Prior: 1955 c 248 § 3. Formerly RCW 72.04.180.]

72.01.240 Supervisor of chaplains. Each secretary is hereby empowered to appoint one of the chaplains,

authorized by RCW 72.01.210, to act as supervisor of chaplains for his department, in addition to his duties at one of the institutions designated in RCW 72.01.210. [1981 c 136 § 70; 1979 c 141 § 155; 1959 c 28 § 72.01-.240. Prior: 1955 c 248 § 4. Formerly RCW 72.04.190.]

Effective date—1981 c 136: See RCW 72.09.900.

72.01.260 Outside ministers not excluded. Nothing contained in RCW 72.01.210 through 72.01.240 shall be so construed as to exclude ministers of any denomination from giving gratuitous religious or moral instruction to prisoners under such reasonable rules and regulations as the secretary may prescribe. [1983 c 3 § 184; 1979 c 141 § 156; 1959 c 28 § 72.01.260. Prior: 1929 c 59 § 2; Code 1881 § 3297; RRS § 10236-1. Formerly RCW 72.08.210.]

72.01.270 Gifts, acceptance of. The secretary shall have the power to receive, hold and manage all real and personal property made over to the department by gift, devise or bequest, and the proceeds and increase thereof shall be used for the benefit of the institution for which it is received. [1979 c 141 § 157; 1959 c 28 § 72.01.270. Prior: 1901 c 119 § 8; RRS § 10904. Formerly RCW 72.04.050.]

72.01.280 Quarters for personnel—Charges. The superintendent of each public institution and the assistant physicians, steward, accountant and chief engineer of each hospital for the mentally ill may be furnished with quarters, household furniture, board, fuel, and lights for themselves and their families, and the secretary may, when in his opinion any public institution would be benefited by so doing, extend this privilege to any officer at any of the public institutions under his control. The words "family" or "families" used in this section shall be construed to mean only the spouse and dependent children of an officer. Employees may be furnished with quarters and board for themselves. The secretary shall charge and collect from such officers and employees the full cost of the items so furnished, including an appropriate charge for depreciation of capital items. [1979 c 141 § 158; 1959 c 39 § 3; 1959 c 28 § 72.01.280. Prior: 1957 c 188 § 1; 1907 c 166 § 6; 1901 c 119 § 6; RRS § 10903. Formerly RCW 72.04.040.]

72.01.282 Quarters for personnel—Deposit of receipts. All moneys received by the secretary from charges made pursuant to RCW 72.01.280 shall be deposited by him in the state general fund. [1981 c 136 § 71; 1979 c 141 § 159; 1959 c 210 § 1.]

Effective date—1981 c 136: See RCW 72.09.900.

72.01.290 Record of patients and inmates. The department shall keep at its office, accessible only to the secretary and to proper officers and employees, and to other persons authorized by the secretary, a record showing the residence, sex, age, nativity, occupation, civil condition and date of entrance, or commitment of every person, patient, inmate or convict, in the several public institutions governed by the department, the date

of discharge of every person from the institution, and whether such discharge is final: *Provided*, That in addition to this information the superintendents for the hospitals for the mentally ill shall also state the condition of the person at the time of leaving the institution. The record shall also state if the person is transferred from one institution to another and to what institution; and if dead the date and cause of death. This information shall be furnished to the department by the several institutions, and also such other obtainable facts as the department may from time to time require, not later than the fifth day of each month for the month preceding, by the chief executive officer of each public institution, upon blank forms which the department may prescribe. [1979 c 141 § 160; 1959 c 28 § 72.01.290. Prior: 1907 c 166 § 9; 1901 c 119 § 13; RRS § 10910. Formerly RCW 72.04.110.]

Record as to patients or inmates for purposes of vital statistics: RCW 70.58.270.

72.01.300 Accounting systems. The secretary shall have the power, and it shall be his duty, to install and maintain in the department a proper cost accounting system of accounts for each of the institutions under the control of the department, for the purpose of detecting and avoiding unprofitable expenditures and operations. [1979 c 141 § 161; 1959 c 28 § 72.01.300. Prior: 1921 c 7 § 43; RRS § 10801. Formerly RCW 43.19.160.]

72.01.310 Political influence forbidden. Any officer, including the secretary, or employee of the department or of the institutions under the control of the department, who, by solicitation or otherwise, exercises his influence, directly or indirectly, to influence other officers or employees of the state to adopt his political views or to favor any particular person or candidate for office, shall be removed from his office or position by the proper authority. [1979 c 141 § 162; 1959 c 28 § 72.01-.310. Prior: 1901 c 119 § 15; RRS § 10917. Formerly RCW 72.04.150.]

72.01.320 Examination of conditions and needs—Report. The secretary shall examine into the conditions and needs of the several state institutions under the secretary's control and report in writing to the governor the condition of each institution. [1987 c 505 § 66; 1979 c 141 § 163; 1977 c 75 § 84; 1959 c 28 § 72.01.320. Prior: 1955 c 195 § 5. (i) 1901 c 119 § 14; RRS § 10915. (ii) 1915 c 107 § 1, part; 1907 c 166 § 2, part; 1901 c 119 § 3, part; RRS § 10899, part. Formerly RCW 43.28.030.]

72.01.365 Escorted leaves of absence for inmates—Definitions. As used in RCW 72.01.370 and 72.01.375:

"Escorted leave" means a leave of absence from a correctional facility under the continuous supervision of an escort.

"Escort" means a correctional officer or other person approved by the superintendent or the superintendent's designee to accompany an inmate on a leave of absence

and be in visual or auditory contact with the inmate at all times.

"Nonviolent offender" means an inmate under confinement for an offense other than a violent offense defined by RCW 9.94A.030. [1983 c 255 § 2.]

Severability—1983 c 255: See RCW 72.74.900.
Prisoner furloughs: Chapter 72.66 RCW.

72.01.370 Escorted leaves of absence for inmates—Grounds. The superintendents of the state penitentiary, the state reformatory, the state honor camps and such other penal institutions as may hereafter be established, may, subject to the approval of the secretary and under RCW 72.01.375, grant escorted leaves of absence to inmates confined in such institutions to:

(1) Go to the bedside of the inmate's wife, husband, child, mother or father, or other member of the inmate's immediate family who is seriously ill;

(2) Attend the funeral of a member of the inmate's immediate family listed in subsection (1) of this section;

(3) Participate in athletic contests;

(4) Perform work in connection with the industrial, educational, or agricultural programs of the department;

(5) Receive necessary medical or dental care which is not available in the institution; and

(6) Participate as a volunteer in community service work projects which are approved by the superintendent, but only inmates who are nonviolent offenders may participate in these projects. Such community service work projects shall only be instigated at the request of a local community. [1983 c 255 § 3; 1981 c 136 § 72; 1979 c 141 § 164; 1959 c 40 § 1.]

Severability—1983 c 255: See RCW 72.74.900.
Effective date—1981 c 136: See RCW 72.09.900.

72.01.375 Escorted leaves of absence for inmates—Notification of local law enforcement agencies. An inmate shall not be allowed to start a leave of absence under RCW 72.01.370 until the secretary, or the secretary's designee, has notified any county and city law enforcement agency having jurisdiction in the area of the inmate's destination. [1983 c 255 § 4.]

Severability—1983 c 255: See RCW 72.74.900.

72.01.380 Leaves of absence for inmates—Rules—Restrictions—Costs. The secretary is authorized to make rules and regulations providing for the conditions under which inmates will be granted leaves of absence, and providing for safeguards to prevent escapes while on leave of absence: *Provided*, That leaves of absence granted to inmates under RCW 72.01.370 shall not allow or permit any inmate to go beyond the boundaries of this state. The secretary shall also make rules and regulations requiring the reimbursement of the state from the inmate granted leave of absence, or his family, for the actual costs incurred arising from any leave of absence granted under the authority of RCW 72.01.370, subsections (1) and (2): *Provided further*, That no state funds shall be expended in connection with leaves of absence granted under RCW 72.01.370, subsections (1)

and (2), unless such inmate and his immediate family are indigent and without resources sufficient to reimburse the state for the expenses of such leaves of absence. [1981 c 136 § 73; 1979 c 141 § 165; 1959 c 40 § 2.]

Effective date—1981 c 136: See RCW 72.09.900.

72.01.410 Transfer of child under sixteen convicted of crime amounting to felony. Whenever any child under the age of sixteen is convicted in the courts of this state of a crime amounting to a felony, and is committed for a term of confinement in a correctional institution wherein adults are confined, the secretary of corrections, with the consent of the secretary of social and health services, may transfer such child to a juvenile correctional institution, or to such other institution as is now, or may hereafter be authorized by law to receive such child, until such time as the child arrives at the age of eighteen years, whereupon the child shall be returned to the institution of original commitment. Notice of such transfers shall be given to the clerk of the committing court and the parents, guardian, or next of kin of such child, if known. [1981 c 136 § 74; 1979 c 141 § 166; 1959 c 140 § 1.]

Effective date—1981 c 136: See RCW 72.09.900.
Juvenile not to be confined with adult inmates: RCW 13.04.116.

72.01.430 Transfer of equipment, supplies, livestock between institutions—Notice—Conditions. The secretary, notwithstanding any provision of law to the contrary, is hereby authorized to transfer equipment, livestock and supplies between the several institutions within the department without reimbursement to the transferring institution excepting, however, any such equipment donated by organizations for the sole use of such transferring institutions. Whenever transfers of capital items are made between institutions of the department, notice thereof shall be given to the director of the department of general administration accompanied by a full description of such items with inventory numbers, if any. [1981 c 136 § 75; 1979 c 141 § 167; 1967 c 23 § 1; 1961 c 193 § 1.]

Effective date—1981 c 136: See RCW 72.09.900.

72.01.450 Use of facilities, equipment and personnel by school districts and institutions of higher learning authorized. The secretary is authorized to enter into agreements with any school district or any institution of higher learning for the use of the facilities, equipment and personnel of any state institution of the department, for the purpose of conducting courses of education, instruction or training in the professions and skills utilized by one or more of the institutions, at such times and under such circumstances and with such terms and conditions as may be deemed appropriate. [1981 c 136 § 76; 1979 c 141 § 168; 1970 ex.s. c 50 § 2; 1967 c 46 § 1.]

Effective date—1981 c 136: See RCW 72.09.900.

72.01.452 Use of facilities, equipment and personnel by state agencies, counties, cities or political subdivisions.

The secretary is authorized to enter into an agreement with any agency of the state, a county, city or political subdivision of the state for the use of the facilities, equipment and personnel of any institution of the department for the purpose of conducting courses of education, instruction or training in any professional skill having a relationship to one or more of the functions or programs of the department. [1979 c 141 § 169; 1970 ex.s. c 50 § 3.]

72.01.454 Use of facilities by counties, community service organizations, nonprofit associations, etc. (1) The secretary may permit the use of the facilities of any state institution by any community service organization, nonprofit corporation, group or association for the purpose of conducting a program of education, training, entertainment or other purpose, for the residents of such institutions, if determined by the secretary to be beneficial to such residents or a portion thereof.

(2) The secretary may permit the nonresidential use of the facilities of any state institution by any county, community service organization, nonprofit corporation, group or association for the purpose of conducting programs under RCW 72.06.070. [1982 c 204 § 15; 1979 c 141 § 170; 1970 ex.s. c 50 § 5.]

72.01.458 Use of files and records for courses of education, instruction and training at institutions. In any course of education, instruction or training conducted in any state institution of the department use may be made of selected files and records of such institution, notwithstanding the provisions of any statute to the contrary. [1970 ex.s. c 50 § 4.]

72.01.460 Lease of lands with outdoor recreation potential—Restrictions—Unlawful to use posted lands. (1) Any lease of public lands with outdoor recreation potential authorized by the department shall be open and available to the public for compatible recreational use unless the department determines that the leased land should be closed in order to prevent damage to crops or other land cover, to improvements on the land, to the lessee, or to the general public or is necessary to avoid undue interference with carrying forward a departmental program. Any lessee may file an application with the department to close the leased land to any public use. The department shall cause written notice of the impending closure to be posted in a conspicuous place in the department's Olympia office, at the principal office of the institution administering the land, and in the office of the county auditor in which the land is located thirty days prior to the public hearing. This notice shall state the parcel or parcels involved and shall indicate the time and place of the public hearing. Upon a determination by the department that posting is not necessary, the lessee shall desist from posting. Upon a determination by the department that posting is necessary, the lessee shall post his leased premises so as to prohibit recreational uses thereon. In the event any such lands are so posted, it shall be unlawful for any person to hunt or fish, or for

any person other than the lessee or his immediate family to use any such posted land for recreational purposes.

(2) The department may insert the provisions of subsection (1) of this section in all leases hereafter issued. [1981 c 136 § 77; 1979 c 141 § 171; 1969 ex.s. c 46 § 2.]

Effective date—1981 c 136: See RCW 72.09.900.

72.01.480 Agreements with nonprofit organizations to provide services for persons admitted or committed to institutions. The secretary is authorized to enter into agreements with any nonprofit corporation or association for the purpose of providing and coordinating voluntary and community based services for the treatment or rehabilitation of persons admitted or committed to any institution under the supervision of the department. [1981 c 136 § 78; 1979 c 141 § 172; 1970 ex.s. c 50 § 1.]

Effective date—1981 c 136: See RCW 72.09.900.

Severability—1970 ex.s. c 50: "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1970 ex.s. c 50 § 8.] For codification of 1970 ex.s. c 50, see Codification Tables, Volume 0.

72.01.490 Authority of superintendents, business managers and officers of correctional institutions to take acknowledgments and administer oaths—Procedure. See RCW 64.08.090.

Chapter 72.02

ADULT CORRECTIONS

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72.02.015 Powers of court or judge not impaired. Nothing in this chapter shall be construed to restrict or impair the power of any court or judge having jurisdiction to pronounce sentence upon a person to whom this chapter applies, to fix the term of imprisonment and to order commitment, according to law, nor to deny the

right of any such court or judge to sentence to imprisonment; nor to deny the right of any such court or judge to suspend sentence or the execution of judgment thereon or to make any other disposition of the case pursuant to law. [1988 c 143 § 9; 1959 c 214 § 13. Formerly RCW 72.13.130.]

72.02.040 Secretary acting for department exercises powers and duties. The secretary of corrections acting for the department of corrections shall exercise all powers and perform all duties prescribed by law with respect to the administration of any adult correctional program by the department of corrections. [1981 c 136 § 79; 1970 ex.s. c 18 § 57; 1959 c 28 § 72.02.040. Prior: 1957 c 272 § 16. Formerly RCW 43.28.110.]

Effective date—1981 c 136: See RCW 72.09.900.

Effective date—Severability—1970 ex.s. c 18: See notes following RCW 43.20A.010.

72.02.045 Superintendent's authority. The superintendent of each institution has the powers, duties, and responsibilities specified in this section.

(1) Subject to the rules of the department, the superintendent is responsible for the supervision and management of the institution, the grounds and buildings, the subordinate officers and employees, and the prisoners committed, admitted, or transferred to the institution.

(2) Subject to the rules of the department and the director of the division of prisons or his or her designee and the state personnel board, the superintendent shall appoint all subordinate officers and employees.

(3) The superintendent shall be the custodian of all funds and valuable personal property of convicted persons as may be in their possession upon admission to the institution, or which may be sent or brought in to such persons, or earned by them while in custody, or which shall be forwarded to the superintendent on behalf of convicted persons. All such funds shall be deposited in the personal account of the convicted person and the superintendent shall have authority to disburse moneys from such person's personal account for the personal and incidental needs of the convicted person as may be deemed reasonably necessary. When convicted persons are released from the confines of the institution either on parole, transfer, or discharge, all funds and valuable personal property in the possession of the superintendent belonging to such convicted persons shall be delivered to them. In no case shall the state of Washington, or any state officer, including state elected officials, employees, or volunteers, be liable for the loss of such personal property, except upon a showing that the loss was occasioned by the intentional act, gross negligence, or negligence of the officer, official, employee, or volunteer, and that the actions or omissions occurred while the person was performing, or in good faith purporting to perform, his or her official duties. Recovery of damages for loss of personal property while in the custody of the superintendent under this subsection shall be limited to the lesser of the market value of the item lost at the time of the loss, or the original purchase price of the item or, in

the case of hand-made goods, the materials used in fabricating the item.

(4) The superintendent, subject to the approval of the director of the division of prisons and the secretary, shall make, amend, and repeal rules for the administration, supervision, discipline, and security of the institution.

(5) When in the superintendent's opinion an emergency exists, the superintendent may promulgate temporary rules for the governance of the institution, which shall remain in effect until terminated by the director of the division of prisons or the secretary.

(6) The superintendent shall perform such other duties as may be prescribed. [1988 c 143 § 2.]

72.02.055 Appointment of associate superintendents. The superintendent, subject to the approval of the director of the division of prisons and the secretary, shall appoint such associate superintendents as shall be deemed necessary, who shall have such qualifications as shall be determined by the secretary. In the event the superintendent is absent from the institution, or during periods of illness or other situations incapacitating the superintendent from properly performing his or her duties, one of the associate superintendents of such institution as may be designated by the director of the division of prisons and the secretary shall act as superintendent. [1988 c 143 § 3.]

72.02.100 Earnings, clothing, transportation and subsistence payments upon release of certain prisoners. Any person serving a sentence for a term of confinement in a state correctional facility for convicted felons, pursuant to court commitment, who is thereafter released upon an order of parole of the *indeterminate sentencing review board, or who is discharged from custody upon expiration of sentence, or who is ordered discharged from custody by a court of appropriate jurisdiction, shall be entitled to retain his earnings from labor or employment while in confinement and shall be supplied by the superintendent of the state correctional facility with suitable and presentable clothing, the sum of forty dollars for subsistence, and transportation by the least expensive method of public transportation not to exceed the cost of one hundred dollars to his place of residence or the place designated in his parole plan, or to the place from which committed if such person is being discharged on expiration of sentence, or discharged from custody by a court of appropriate jurisdiction: *Provided*, That up to sixty additional dollars may be made available to the parolee for necessary personal and living expenses upon application to and approval by such person's community corrections officer. If in the opinion of the superintendent suitable arrangements have been made to provide the person to be released with suitable clothing and/or the expenses of transportation, the superintendent may consent to such arrangement. If the superintendent has reasonable cause to believe that the person to be released has ample funds, with the exception of earnings from labor or employment while in confinement, to assume the expenses of clothing, transportation, or the expenses for which payments made pursuant to RCW 72.02.100 or

72.02.110 or any one or more of such expenses, the person released shall be required to assume such expenses. [1988 c 143 § 5; 1971 ex.s. c 171 § 1.]

*Reviser's note: The "indeterminate sentencing review board" should be referred to as the "indeterminate sentence review board." See RCW 9.95.001.

72.02.110 Weekly payments to certain released prisoners. As state, federal or other funds are available, the secretary of corrections or his designee is authorized, in his discretion, not to provide the forty dollars subsistence money or the optional sixty dollars to a person or persons released as described in RCW 72.02.100, and instead to utilize the authorization and procedure contained in this section relative to such person or persons.

Any person designated by the secretary serving a sentence for a term of confinement in a state correctional facility for convicted felons, pursuant to court commitment, who is thereafter released upon an order of parole of the *indeterminate sentencing review board, or is discharged from custody upon expiration of sentence, or is ordered discharged from custody by a court of appropriate jurisdiction, shall receive the sum of fifty-five dollars per week for a period of up to six weeks. The initial weekly payment shall be made to such person upon his release or parole by the superintendent of the institution. Subsequent weekly payments shall be made to such person by the community corrections officer at the office of such officer. In addition to the initial six weekly payments provided for in this section, a community corrections officer and his supervisor may, at their discretion, continue such payments up to a maximum of twenty additional weeks when they are satisfied that such person is actively seeking employment and that such payments are necessary to continue the efforts of such person to gain employment: *Provided*, That if, at the time of release or parole, in the opinion of the superintendent funds are otherwise available to such person, with the exception of earnings from labor or employment while in confinement, such weekly sums of money or part thereof shall not be provided to such person.

When a person receiving such payments provided for in this section becomes employed, he may continue to receive payments for two weeks after the date he becomes employed but payments made after he becomes employed shall be discontinued as of the date he is first paid for such employment: *Provided*, That no person shall receive payments for a period exceeding the twenty-six week maximum as established in this section.

The secretary of corrections may annually adjust the amount of weekly payment provided for in this section to reflect changes in the cost of living and the purchasing power of the sum set for the previous year. [1988 c 143 § 6; 1981 c 136 § 80; 1971 ex.s. c 171 § 2.]

*Reviser's note: The "indeterminate sentencing review board" should be referred to as the "indeterminate sentence review board." See RCW 9.95.001.

Effective date—1981 c 136: See RCW 72.09.900.

72.02.150 Disturbances at state penal facilities—Development of contingency plans—Scope—Local participation. The secretary or the secretary's designee shall be responsible for the preparation of contingency plans for dealing with disturbances at state penal facilities. The plans shall be developed or revised in cooperation with representatives of state and local agencies at least annually. Contingency plans developed shall encompass contingencies of varying levels of severity, specific contributions of personnel and material from participating agencies, and a unified chain of command. Agencies providing personnel under the plan shall provide commanders for the personnel who will be included in the unified chain of command. [1982 c 49 § 1.]

72.02.160 Disturbances at state penal facilities—Utilization of outside law enforcement personnel—Scope. Whenever the secretary or the secretary's designee determines that due to a disturbance at a state penal facility within the jurisdiction of the department that the assistance of law enforcement officers in addition to department of corrections' personnel is required, the secretary may notify the Washington state patrol, the chief law enforcement officer of any nearby county and the county in which the facility is located, and the chief law enforcement officer of any municipality near the facility or in which the facility is located. These law enforcement agencies may provide such assistance as expressed in the contingency plan or plans, or as is deemed necessary by the secretary, or the secretary's designee, to restore order at the facility, consistent with the resources available to the law enforcement agencies and the law enforcement agencies' other statutory obligations. While on the grounds of a penal facility and acting under this section, all law enforcement officials shall be under the immediate control of their respective supervisors who shall be responsive to the secretary, or the secretary's designee, which designee need not be an employee of the department of corrections. [1982 c 49 § 2.]

Reimbursement for local support at prison disturbances: RCW 72.72.050, 72.72.060.

72.02.170 Disturbances at state penal facilities—Contingency plans—Report of failure to support. The secretary shall report to the governor and the legislature annually if, in the secretary's opinion, state and local agencies have declined to participate or cooperate in the development or implementation of contingency plans under RCW 72.02.150. [1982 c 49 § 5.]

72.02.180 Inmate population limits for institutions at Monroe. It is the intent of the legislature that limitations be placed on the state correctional institutions at Monroe.

The following facilities at Monroe shall be subject to the inmate population limitations specified in this section.

(1) The special offender center shall house no more than one hundred forty-four inmates.

(2) The Twin Rivers corrections center shall house no more than five hundred inmates.

(3) The Washington state reformatory population shall be as determined pursuant to federal court order: *Provided*, That the governor may declare an emergency and increase by ten percent for a twelve-month period of time the population limitation of any of the facilities specified in this section. [1988 c 143 § 4; 1985 c 350 § 2; 1981 c 136 § 109. Formerly RCW 72.12.160.]

Effective date—1981 c 136: See RCW 72.09.900.

72.02.190 Inmate population limit for correction center at Shelton. The training center general population housing units at the Washington correction center at Shelton shall be subject to an inmate population limit of no more than one hundred fifteen percent of the rated capacity. However, the governor may declare an emergency and increase by fifteen percent for a twelve-month period of time the population limitation of the training center general population housing units. [1988 c 143 § 14.]

72.02.200 Reception and classification units. There shall be units known as reception and classification centers which, subject to the rules and regulations of the department, shall be charged with the function of receiving and classifying all persons committed or transferred to the institution, taking into consideration age, type of crime for which committed, physical condition, behavior, attitude and prospects for reformation for the purposes of confinement and treatment of offenders convicted of offenses punishable by imprisonment, except offenders convicted of crime and sentenced to death. [1988 c 143 § 7; 1959 c 214 § 11. Formerly RCW 72.13.110.]

72.02.210 Sentence—Commitment to reception units. Any offender convicted of an offense punishable by imprisonment, except an offender sentenced to death, shall, notwithstanding any inconsistent provision of law, be sentenced to imprisonment in a penal institution under the jurisdiction of the department without designating the name of such institution, and be committed to the reception units for classification, confinement and placement in such correctional facility under the supervision of the department as the secretary shall deem appropriate. [1988 c 143 § 8; 1981 c 136 § 95; 1979 c 141 § 206; 1959 c 214 § 12. Formerly RCW 72.13.120.]

Effective date—1981 c 136: See RCW 72.09.900.

72.02.220 Cooperation with reception units by state agencies. The indeterminate sentence review board and other state agencies shall cooperate with the department in obtaining necessary investigative materials concerning offenders committed to the reception unit and supply the reception unit with necessary information regarding social histories and community background. [1988 c 143 § 10; 1979 c 141 § 207; 1959 c 214 § 14. Formerly RCW 72.13.140.]

Indeterminate sentences: Chapter 9.95 RCW.

(1989 Ed.)

72.02.230 Persons to be received for classification and placement. The division of prisons shall receive all persons convicted of a felony by the superior court and committed by the superior court to the reception units for classification and placement in such facility as the secretary shall designate. The superintendent of these institutions shall only receive prisoners for classification and study in the institution upon presentation of certified copies of a judgment, sentence, and order of commitment of the superior court and the statement of the prosecuting attorney, along with other reports as may have been made in reference to each individual prisoner. [1988 c 143 § 11; 1984 c 114 § 4; 1979 c 141 § 208; 1959 c 214 § 15. Formerly RCW 72.13.150.]

72.02.240 Secretary to determine placement—What laws govern confinement, parole and discharge. The secretary shall determine the state correctional institution in which the offender shall be confined during the term of imprisonment. The confinement of any offender shall be governed by the laws applicable to the institution to which the offender is certified for confinement, but parole and discharge shall be governed by the laws applicable to the sentence imposed by the court. [1988 c 143 § 12; 1979 c 141 § 209; 1959 c 214 § 16. Formerly RCW 72.13.160.]

72.02.250 Commitment of convicted female persons—Procedure as to death sentences. All female persons convicted in the superior courts of a felony and sentenced to a term of confinement, shall be committed to the Washington correctional institution for women. Female persons sentenced to death shall be committed to the Washington correctional institution for women, notwithstanding the provisions of RCW 10.95.170, except that the death warrant shall provide for the execution of such death sentence at the Washington state penitentiary as provided by RCW 10.95.160, and the secretary of corrections shall transfer to the Washington state penitentiary any female offender sentenced to death not later than seventy-two hours prior to the date fixed in the death warrant for the execution of the death sentence. The provisions of this section shall not become effective until the secretary of corrections certifies to the chief justice of the supreme court, the chief judge of each division of the court of appeals, the superior courts and the prosecuting attorney of each county that the facilities and personnel for the implementation of commitments are ready to receive persons committed to the Washington correctional institution for women under the provisions of this section. [1983 c 3 § 185; 1981 c 136 § 97; 1971 c 81 § 134; 1967 ex.s. c 122 § 8. Formerly RCW 72.15.060.]

Effective date—1981 c 136: See RCW 72.09.900.

72.02.260 Letters of inmates may be withheld. Whenever the superintendent of an institution withholds from mailing letters written by inmates of such institution, the superintendent shall forward such letters to the secretary of corrections or the secretary's designee for study and the inmate shall be forthwith notified that

such letter has been withheld from mailing and the reason for so doing. Letters forwarded to the secretary for study shall either be mailed within seven days to the addressee or, if deemed objectionable by the secretary, retained in a separate file for two years and then destroyed. [1988 c 143 § 13; 1981 c 136 § 87; 1979 c 141 § 192; 1959 c 28 § 72.08.380. Prior: 1957 c 61 § 1. Formerly RCW 72.08.380.]

Effective date—1981 c 136: See RCW 72.09.900.

Chapter 72.04A PROBATION AND PAROLE

Sections

- 72.04A.050 Transfer of certain powers and duties of board of prison terms and paroles to secretary of corrections.
- 72.04A.070 Plans and recommendations for conditions of supervision of parolees.
- 72.04A.080 Parolees subject to supervision of department—Progress reports.
- 72.04A.090 Violations of parole or probation—Revision of parole conditions—Detention.
- 72.04A.120 Parolee assessments.
- 72.04A.900 RCW 72.04A.050 through 72.04A.090 inapplicable to felonies committed after July 1, 1984.

Counties may provide probation and parole services: RCW 36.01.070.

Indeterminate sentence review board: Chapter 9.95 RCW.

Victims of crimes, reimbursement by convicted person as condition of work release or parole: RCW 7.68.120.

72.04A.050 Transfer of certain powers and duties of board of prison terms and paroles to secretary of corrections. The powers and duties of the state *board of prison terms and paroles, relating to (1) the supervision of parolees of any of the state penal institutions, (2) the supervision of persons placed on probation by the courts, and (3) duties with respect to persons conditionally pardoned by the governor, are transferred to the secretary of corrections.

This section shall not be construed as affecting any of the remaining powers and duties of the *board of prison terms and paroles including, but not limited to, the following:

- (1) The fixing of minimum terms of confinement of convicted persons, or the reconsideration of its determination of minimum terms of confinement;
- (2) Determining when and under what conditions a convicted person may be released from custody on parole, and the revocation or suspension of parole or the modification or revision of the conditions of the parole, of any convicted person. [1981 c 136 § 81; 1979 c 141 § 173; 1967 c 134 § 7.]

***Reviser's note:** The "board of prison terms and paroles" was redesignated the "indeterminate sentence review board" by 1986 c 224, effective July 1, 1986.

Effective date—1981 c 136: See RCW 72.09.900.

72.04A.070 Plans and recommendations for conditions of supervision of parolees. The secretary of corrections shall cause to be prepared plans and recommendations for the conditions of supervision under which each inmate of any state penal institutions who is

eligible for parole may be released from custody. Such plans and recommendations shall be submitted to the *board of prison terms and paroles which may, at its discretion, approve, reject, or revise or amend such plans and recommendations for the conditions of supervision of release of inmates on parole, and, in addition, the board may stipulate any special conditions of supervision to be carried out by a probation and parole officer. [1981 c 136 § 82; 1979 c 141 § 174; 1967 c 134 § 9.]

***Reviser's note:** The "board of prison terms and paroles" was redesignated the "indeterminate sentence review board" by 1986 c 224, effective July 1, 1986.

Effective date—1981 c 136: See RCW 72.09.900.

72.04A.080 Parolees subject to supervision of department—Progress reports. Each inmate hereafter released on parole shall be subject to the supervision of the department of corrections, and the probation and parole officers of the department shall be charged with the preparation of progress reports of parolees and to give guidance and supervision to such parolees within the conditions of a parolee's release from custody. Copies of all progress reports prepared by the probation and parole officers shall be supplied to the *board of prison terms and paroles for their files and records. [1981 c 136 § 83; 1979 c 141 § 175; 1967 c 134 § 10.]

***Reviser's note:** The "board of prison terms and paroles" was redesignated the "indeterminate sentence review board" by 1986 c 224, effective July 1, 1986.

Effective date—1981 c 136: See RCW 72.09.900.

72.04A.090 Violations of parole or probation—Revision of parole conditions—Detention. Whenever a parolee breaches a condition or conditions under which he was granted parole, or violates any law of the state or rules and regulations of the *board of prison terms and paroles, any probation and parole officer may arrest, or cause the arrest and suspension of parole of, such parolee without a warrant, pending a determination by the board. The facts and circumstances of such conduct of the parolee shall be reported by the probation and parole officer, with recommendations, to the *board of prison terms and paroles, who may order the revocation or suspension of parole, revise or modify the conditions of parole or take such other action as may be deemed appropriate in accordance with RCW 9.95.120. The *board of prison terms and paroles, after consultation with the secretary of corrections, shall make all rules and regulations concerning procedural matters, which shall include the time when state probation and parole officers shall file with the board reports required by this section, procedures pertaining thereto and the filing of such information as may be necessary to enable the *board of prison terms and paroles to perform its functions under this section.

The probation and parole officers shall have like authority and power regarding the arrest and detention of a probationer who has breached a condition or conditions under which he was granted probation by the superior court, or violates any law of the state, pending a determination by the superior court.

In the event a probation and parole officer shall arrest or cause the arrest and suspension of parole of a parolee or probationer in accordance with the provisions of this section, such parolee or probationer shall be confined and detained in the county jail of the county in which the parolee or probationer was taken into custody, and the sheriff of such county shall receive and keep in the county jail, where room is available, all prisoners delivered thereto by the probation and parole officer, and such parolees shall not be released from custody on bail or personal recognizance, except upon approval of the *board of prison terms and paroles and the issuance by the board of an order of reinstatement on parole on the same or modified conditions of parole. [1981 c 136 § 84; 1979 c 141 § 176; 1969 c 98 § 1; 1967 c 134 § 11.]

*Reviser's note: The "board of prison terms and paroles" was redesignated the "indeterminate sentence review board" by 1986 c 224, effective July 1, 1986.

Effective date—1981 c 136: See RCW 72.09.900.

Severability—Effective date—1969 c 98: See notes following RCW 9.95.120.

Suspension, revision of parole, retaking of violator, powers and duties of parole and probation officers, etc.: RCW 9.95.120.

72.04A.120 Parolee assessments. (Effective until July 1, 1990.) (1) Any person placed on parole shall be required to pay the monthly assessment, prescribed under subsection (2) of this section, which shall be for the duration of the parole and which shall be considered as payment or part payment of the cost of providing parole supervision to the parolee. The board may exempt a person from the payment of all or any part of the assessment based upon any of the following factors:

(a) The offender has diligently attempted but has been unable to obtain employment which provides the offender sufficient income to make such payments.

(b) The offender is a student in a school, college, university, or a course of vocational or technical training designed to fit the student for gainful employment.

(c) The offender has an employment handicap, as determined by an examination acceptable to or ordered by the board.

(d) The offender's age prevents him from obtaining employment.

(e) The offender is responsible for the support of dependents and the payment of the assessment constitutes an undue hardship on the offender.

(f) Other extenuating circumstances as determined by the board.

(2) The department of corrections shall adopt a rule prescribing the amount of the assessment. The department may, if it finds it appropriate, prescribe a schedule of assessments which shall vary in accordance with the intensity or cost of the supervision. The department may not prescribe any assessment which is less than ten dollars nor more than fifty dollars.

(3) Payment of the assessed amount shall constitute a condition of parole for purposes of the application of RCW 72.04A.090.

(4) All amounts required to be paid under this section shall be collected by the department of corrections and deposited by the department in the state general fund.

(5) This section shall not apply to parole services provided under an interstate compact pursuant to chapter 9.95 RCW or to parole services provided for offenders paroled before June 10, 1982. [1982 c 207 § 1.]

72.04A.120 Parolee assessments. (Effective July 1, 1990.) (1) Any person placed on parole shall be required to pay the monthly assessment, prescribed under subsection (2) of this section, which shall be for the duration of the parole and which shall be considered as payment or part payment of the cost of providing parole supervision to the parolee. The board may exempt a person from the payment of all or any part of the assessment based upon any of the following factors:

(a) The offender has diligently attempted but has been unable to obtain employment which provides the offender sufficient income to make such payments.

(b) The offender is a student in a school, college, university, or a course of vocational or technical training designed to fit the student for gainful employment.

(c) The offender has an employment handicap, as determined by an examination acceptable to or ordered by the board.

(d) The offender's age prevents him from obtaining employment.

(e) The offender is responsible for the support of dependents and the payment of the assessment constitutes an undue hardship on the offender.

(f) Other extenuating circumstances as determined by the board.

(2) The department of corrections shall adopt a rule prescribing the amount of the assessment. The department may, if it finds it appropriate, prescribe a schedule of assessments which shall vary in accordance with the intensity or cost of the supervision. The department may not prescribe any assessment which is less than ten dollars nor more than fifty dollars.

(3) Payment of the assessed amount shall constitute a condition of parole for purposes of the application of RCW 72.04A.090.

(4) All amounts required to be paid under this section shall be collected by the department of corrections and deposited by the department in the dedicated fund established pursuant to RCW 72.11.040.

(5) This section shall not apply to parole services provided under an interstate compact pursuant to chapter 9.95 RCW or to parole services provided for offenders paroled before June 10, 1982. [1989 c 252 § 20; 1982 c 207 § 1.]

Purpose—Prospective application—Effective dates—Severability—1989 c 252: See notes following RCW 9.94A.030.

72.04A.900 RCW 72.04A.050 through 72.04A.090 inapplicable to felonies committed after July 1, 1984. The following sections of law do not apply to any felony offense committed on or after July 1, 1984: RCW 72.04A.050, 72.04A.070, 72.04A.080, and 72.04A.090. [1981 c 137 § 34.]

Severability—1981 c 137: See RCW 9.94A.910.

Chapter 72.05

CHILDREN AND YOUTH SERVICES

Sections

72.05.010	Declaration of purpose.
72.05.020	Definitions.
72.05.130	Powers and duties of department—"Close security" institutions designated.
72.05.150	"Minimum security" institutions.
72.05.152	Juvenile forest camps—Industrial insurance benefits prohibited—Exceptions.
72.05.154	Juvenile forest camps—Industrial insurance—Eligibility for benefits—Exceptions.
72.05.160	Contracts with other divisions, agencies authorized.
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72.05.200	Parental right to provide treatment preserved.
72.05.210	Juvenile court law—Applicability—Synonymous terms.
72.05.300	Parental schools—Leases, purchases—Powers of school district.
72.05.310	Parental schools—Personnel.

Council for the prevention of child abuse and neglect: Chapter 43.121 RCW.

Educational programs for residential school residents: RCW 28A.58.770 through 28A.58.778.

Employment of dental hygienist without supervision of dentist authorized: RCW 18.29.056.

Financial responsibility for cost of detention of minor: RCW 13.16.085.

Handicapped children, parental responsibility, order of commitment: Chapter 26.40 RCW.

Minors—Mental health services, commitment: Chapter 71.34 RCW.

Transfer of child under sixteen convicted of crime amounting to felony: RCW 72.01.410.

Uniform interstate compact on juveniles: Chapter 13.24 RCW.

72.05.010 Declaration of purpose. The purposes of RCW 72.05.010 through 72.05.210 are: To provide for every child with behavior problems, mentally and physically handicapped persons, and hearing and visually impaired children, within the purview of RCW 72.05.010 through 72.05.210, as now or hereafter amended, such care, guidance and instruction, control and treatment as will best serve the welfare of the child or person and society; to insure nonpolitical and qualified operation, supervision, management, and control of the Green Hill school, the Maple Lane school, the Naselle Youth Camp, the Mission Creek Youth Camp, Echo Glen, the Cascadia Diagnostic Center, Lakeland Village, Rainier school, the Yakima Valley school, Interlake school, Fircrest school, the Francis Haddon Morgan Center, the Child Study and Treatment Center and Secondary School of Western State Hospital, and like residential state schools, camps and centers hereafter established, and to place them under the department of social and health services except where specified otherwise; and to provide for the persons committed or admitted to those schools that type of care, instruction, and treatment most likely to accomplish their rehabilitation and restoration to normal citizenship. [1985 c 378 § 9; 1980 c 167 § 7; 1979 ex.s. c 217 § 7; 1979 c 141 § 177; 1959 c 28 § 72.05.010. Prior: 1951 c 234 § 1.]

Severability—Effective date—1985 c 378: See notes following RCW 72.01.050.

Effective date—Severability—1979 ex.s. c 217: See notes following RCW 28A.58.770.

72.05.020 Definitions. As used in this chapter, unless the context requires otherwise:

"Department" means the department of social and health services. [1979 c 141 § 178; 1970 ex.s. c 18 § 58; 1959 c 28 § 72.05.020. Prior: 1951 c 234 § 2. Formerly RCW 43.19.260.]

Effective date—Severability—1970 ex.s. c 18: See notes following RCW 43.20A.010.

72.05.130 Powers and duties of department—"Close security" institutions designated. The department shall establish, maintain, operate and administer a comprehensive program for the custody, care, education, treatment, instruction, guidance, control and rehabilitation of all persons who may be committed or admitted to institutions, schools, or other facilities controlled and operated by the department, except for the programs of education provided pursuant to RCW 28A.58.772 through 28A.58.776, as now or hereafter amended, which shall be established, operated and administered by the school district conducting the program, and in order to accomplish these purposes, the powers and duties of the secretary shall include the following:

(1) The assembling, analyzing, tabulating, and reproduction in report form, of statistics and other data with respect to children with behavior problems in the state of Washington, including, but not limited to, the extent, kind, and causes of such behavior problems in the different areas and population centers of the state. Such reports shall not be open to public inspection, but shall be open to the inspection of the governor and to the superior court judges of the state of Washington.

(2) The establishment and supervision of diagnostic facilities and services in connection with the custody, care, and treatment of mentally and physically handicapped, and behavior problem children who may be committed or admitted to any of the institutions, schools, or facilities controlled and operated by the department, or who may be referred for such diagnosis and treatment by any superior court of this state. Such diagnostic services may be established in connection with, or apart from, any other state institution under the supervision and direction of the secretary. Such diagnostic services shall be available to the superior courts of the state for persons referred for such services by them prior to commitment, or admission to, any school, institution, or other facility. Such diagnostic services shall also be available to other departments of the state. When the secretary determines it necessary, the secretary may create waiting lists and set priorities for use of diagnostic services for juvenile offenders on the basis of those most severely in need.

(3) The supervision of all persons committed or admitted to any institution, school, or other facility operated by the department, and the transfer of such persons from any such institution, school, or facility to any other such school, institution, or facility: *Provided*, That where a person has been committed to a minimum security institution, school, or facility by any of the superior courts of this state, a transfer to a close security institution

shall be made only with the consent and approval of such court.

(4) The supervision of parole, discharge, or other release, and the post-institutional placement of all persons committed to Green Hill school and Maple Lane school, or such as may be assigned, paroled, or transferred therefrom to other facilities operated by the department. Green Hill school and Maple Lane school are hereby designated as "close security" institutions to which shall be given the custody of children with the most serious behavior problems. [1985 c 378 § 10; 1983 c 191 § 12; 1979 ex.s. c 217 § 8; 1979 c 141 § 179; 1959 c 28 § 72.05.130. Prior: 1951 c 234 § 13. Formerly RCW 43.19.370.]

Severability—Effective date—1985 c 378: See notes following RCW 72.01.050.

Effective date—Severability—1979 ex.s. c 217: See notes following RCW 28A.58.770.

72.05.150 "Minimum security" institutions. The department shall have power to acquire, establish, maintain, and operate "minimum security" facilities for the care, custody, education, and treatment of children with less serious behavior problems. Such facilities may include parental schools or homes, farm units, and forest camps. Admission to such minimum security facilities shall be by juvenile court commitment or by transfer as herein otherwise provided. In carrying out the purposes of this section, the department may establish or acquire the use of such facilities by gift, purchase, lease, contract, or other arrangement with existing public entities, and to that end the secretary may execute necessary leases, contracts, or other agreements. In establishing forest camps, the department may contract with other divisions of the state and the federal government; including, but not limited to, the department of natural resources, the state parks and recreation commission, the U.S. forest service, and the national park service, on a basis whereby such camps may be made as nearly as possible self-sustaining. Under any such arrangement the contracting agency shall reimburse the department for the value of services which may be rendered by the inmates of a camp. [1979 ex.s. c 67 § 6; 1979 c 141 § 181; 1959 c 28 § 72.05.150. Prior: 1951 c 234 § 15. Formerly RCW 43.19.390.]

Severability—1979 ex.s. c 67: See note following RCW 19.28.330.

72.05.152 Juvenile forest camps—Industrial insurance benefits prohibited—Exceptions. No inmate of a juvenile forest camp who is affected by this chapter or receives benefits pursuant to RCW 72.05.152 and 72.05.154 shall be considered as an employee or to be employed by the state or the department of social and health services or the department of natural resources, nor shall any such inmate, except those provided for in RCW 72.05.154, come within any of the provisions of the workers' compensation act, or be entitled to any benefits thereunder, whether on behalf of himself or any other person. All moneys paid to inmates shall be considered a gratuity. [1987 c 185 § 37; 1973 c 68 § 1.]

Intent—Severability—1987 c 185: See notes following RCW 51.12.130.

Effective date—1973 c 68: "This 1973 act shall take effect on July 1, 1973." [1973 c 68 § 3.]

72.05.154 Juvenile forest camps—Industrial insurance—Eligibility for benefits—Exceptions. From and after July 1, 1973, any inmate working in a juvenile forest camp established and operated pursuant to RCW 72.05.150, pursuant to an agreement between the department of social and health services and the department of natural resources shall be eligible for the benefits provided by Title 51 RCW, as now or hereafter amended, relating to industrial insurance, with the exceptions provided by this section.

No inmate as described in RCW 72.05.152, until released upon an order of parole by the department of social and health services, or discharged from custody upon expiration of sentence, or discharged from custody by order of a court of appropriate jurisdiction, or his dependents or beneficiaries, shall be entitled to any payment for temporary disability or permanent total disability as provided for in RCW 51.32.090 or 51.32.060 respectively, as now or hereafter amended, or to the benefits of chapter 51.36 RCW relating to medical aid: *Provided*, That RCW 72.05.152 and 72.05.154 shall not affect the eligibility, payment or distribution of benefits for any industrial injury to the inmate which occurred prior to his existing commitment to the department of social and health services.

Any and all premiums or assessments as may arise under this section pursuant to the provisions of Title 51 RCW shall be the obligation of and be paid by the state department of natural resources. [1973 c 68 § 2.]

Effective date—1973 c 68: See note following RCW 72.05.152.

72.05.160 Contracts with other divisions, agencies authorized. In carrying out the provisions of RCW 72.05.010 through 72.05.210, the department shall have power to contract with other divisions or departments of the state or its political subdivisions, with any agency of the federal government, or with any private social agency. [1979 c 141 § 182; 1959 c 28 § 72.05.160. Prior: 1951 c 234 § 16. Formerly RCW 43.19.400.]

72.05.170 Counseling and consultative services. The department may provide professional counseling services to delinquent children and their parents, consultative services to communities dealing with problems of children and youth, and may give assistance to law enforcement agencies by means of juvenile control officers who may be selected from the field of police work. [1977 ex.s. c 80 § 45; 1959 c 28 § 72.05.170. Prior: 1955 c 240 § 1. Formerly RCW 43.19.405.]

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.

72.05.200 Parental right to provide treatment preserved. Nothing in RCW 72.05.010 through 72.05.210 shall be construed as limiting the right of a parent, guardian or person standing in loco parentis in providing any medical or other remedial treatment recognized or

permitted under the laws of this state. [1959 c 28 § 72.05.200. Prior: 1951 c 234 § 19. Formerly RCW 43.19.410.]

72.05.210 Juvenile court law—Applicability—Synonymous terms. RCW 72.05.010 through 72.05.210 shall be construed in connection with and supplemental to the juvenile court law as embraced in chapter 13.04 RCW. Process, procedure, probation by the court prior to commitment, and commitment shall be as provided therein. The terms "delinquency", "delinquent" and "delinquent children" as used and applied in the juvenile court law and the terms "behavior problems" and "children with behavior problems" as used in RCW 72.05.010 through 72.05.210 are synonymous and interchangeable. [1959 c 28 § 72.05.210. Prior: 1951 c 234 § 20. Formerly RCW 43.19.420.]

72.05.300 Parental schools—Leases, purchases—Powers of school district. The department may execute leases, with options to purchase, of parental school facilities now or hereafter owned and operated by school districts, and such leases with options to purchase shall include such terms and conditions as the secretary of social and health services deems reasonable and necessary to acquire such facilities. Notwithstanding any provisions of the law to the contrary, the board of directors of each school district now or hereafter owning and operating parental school facilities may, without submission for approval to the voters of the school district, execute leases, with options to purchase, of such parental school facilities, and such leases with options to purchase shall include such terms and conditions as the board of directors deems reasonable and necessary to dispose of such facilities in a manner beneficial to the school district. The department if it enters into a lease, with an option to purchase, of parental school facilities, may exercise its option and purchase such parental school facilities; and a school district may, if it enters into a lease, with an option to purchase, of parental school facilities, upon exercise of the option to purchase by the department, sell such parental school facilities and such sale may be accomplished without first obtaining a vote of approval from the electorate of the school district. [1979 c 141 § 183; 1959 c 28 § 72.05.300. Prior: 1957 c 297 § 2. Formerly RCW 43.28.160.]

State parks and recreation commission may acquire parental school facilities from school districts: RCW 43.51.230.

72.05.310 Parental schools—Personnel. The department may employ personnel, including but not limited to, superintendents and all other officers, agents, and teachers necessary to the operation of parental schools. [1979 c 141 § 184; 1959 c 28 § 72.05.310. Prior: 1957 c 297 § 3. Formerly RCW 43.28.170.]

Chapter 72.06 MENTAL HEALTH

Sections

72.06.010	"Department" defined.
72.06.050	Mental health—Dissemination of information and advice by department.
72.06.060	Mental health—Psychiatric outpatient clinics.
72.06.070	Mental health—Cooperation of department and state hospitals with local programs.

Reviser's note: 1979 ex.s. c 108, which was to be added to this chapter, has been codified as chapter 72.72 RCW.

Alcoholism, intoxication, and drug addiction treatment: Chapter 70.96A RCW.

Minors—Mental health services, commitment: Chapter 71.34 RCW.
State hospitals for the mentally ill: Chapter 72.23 RCW.

72.06.010 "Department" defined. "Department" for the purposes of this chapter shall mean the department of social and health services. [1970 ex.s. c 18 § 59; 1959 c 28 § 72.06.010. Prior: 1957 c 272 § 9. Formerly RCW 43.28.040.]

Effective date—Severability—1970 ex.s. c 18: See notes following RCW 43.20A.010.

72.06.050 Mental health—Dissemination of information and advice by department. The department shall cooperate with other departments of state government and its political subdivisions in the following manner:

(1) By disseminating educational information relating to the prevention, diagnosis and treatment of mental illness .

(2) Upon request therefor, by advising public officers, organizations and agencies interested in the mental health of the people of the state. [1977 ex.s. c 80 § 46; 1959 c 28 § 72.06.050. Prior: 1955 c 136 § 2. Formerly RCW 43.28.600.]

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.

72.06.060 Mental health—Psychiatric outpatient clinics. The department is hereby authorized to establish and maintain psychiatric outpatient clinics at such of the several state mental institutions as the secretary shall designate for the prevention, diagnosis and treatment of mental illnesses, and the services of such clinics shall be available to any citizen of the state in need thereof, when determined by a physician that such services are not otherwise available, subject to the rules of the department. [1979 c 141 § 185; 1977 ex.s. c 80 § 47; 1959 c 28 § 72.06.060. Prior: 1955 c 136 § 3. Formerly RCW 43.28.610.]

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.

72.06.070 Mental health—Cooperation of department and state hospitals with local programs. The department and the several state hospitals for the mentally ill shall cooperate with local mental health programs by providing necessary information, recommendations relating to proper after care for patients paroled or discharged from such institutions and shall also supply the

services of psychiatrists, psychologists and other persons specialized in mental illness as they are available. [1959 c 28 § 72.06.070. Prior: 1955 c 136 § 4. Formerly RCW 43.28.620.]

Chapter 72.09

DEPARTMENT OF CORRECTIONS (CORRECTIONS REFORM ACT OF 1981)

Sections

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Disturbances at state penal facilities

contingency plans—Report of failure to support: RCW 72.02.170.

development of contingency plans—Scope—Local participation: RCW 72.02.150.

reimbursement to cities and counties for certain expenses incurred: RCW 72.72.050, 72.72.060.

utilization of outside law enforcement personnel—Scope: RCW 72.02.160.

72.09.010 Legislative intent. It is the intent of the legislature to establish a comprehensive system of corrections for convicted law violators within the state of Washington to accomplish the following objectives.

(1) The system should ensure the public safety. The system should be designed and managed to provide the maximum feasible safety for the persons and property of the general public, the staff, and the inmates.

(2) The system should punish the offender for violating the laws of the state of Washington. This punishment should generally be limited to the denial of liberty of the offender.

(3) The system should treat all offenders fairly and equitably without regard to race, religion, sex, national origin, residence, or social condition.

(4) The system, as much as possible, should reflect the values of the community including:

(a) Avoiding idleness. Idleness is not only wasteful but destructive to the individual and to the community.

(b) Adoption of the work ethic. It is the community expectation that all citizens should work and through their efforts benefit both themselves and the community.

(c) Providing opportunities for self improvement. All individuals should have opportunities to grow and expand their skills and abilities so as to fulfill their role in the community.

(d) Providing tangible rewards for accomplishment. The individual who works to improve himself or herself and the community should be rewarded for these efforts. As a corollary, there should be no rewards for no effort.

(e) Sharing in the obligations of the community. All citizens, the public and inmates alike, have a personal and fiscal obligation in the corrections system. All communities must share in the responsibility of the corrections system.

(5) The system should provide for prudent management of resources. The human and fiscal resources of the community are limited. The management and use of these resources can be enhanced by wise investment, productive programs, the reduction of duplication and waste, and the joining together of all involved parties in a common endeavor. Since virtually all offenders return to the community, it is wise for the state and the communities to make an investment in effective rehabilitation programs for offenders and the wise use of resources.

(6) The system should provide for restitution. Those who have damaged others, persons or property, have a responsibility to make restitution for these damages.

(7) The system should be accountable to the citizens of the state. In return, the individual citizens and local units of government must meet their responsibilities to make the corrections system effective.

(8) The system should meet those national standards which the state determines to be appropriate. [1981 c 136 § 2.]

72.09.015 Definitions. The definitions in this section apply throughout this chapter.

(1) "Department" means the department of corrections.

(2) "Secretary" means the secretary of corrections.

(3) "County" refers to a county or combination of counties.

(4) "Base level of correctional services" means the minimum level of field services the department of corrections is required by statute to provide for the supervision and monitoring of offenders. [1987 c 312 § 2.]

72.09.020 Definition—"Inmate." For purposes of this chapter, "inmate" means any person committed to the custody of the department, including but not limited to persons residing in a correctional institution or facility and persons released on furlough, work release, or community custody. [1988 c 153 § 7; 1981 c 136 § 7.]

Effective date—Implementation—Application of increased sanctions—1988 c 153: See notes following RCW 9.94A.030.

72.09.030 Department created—Secretary. There is created a department of state government to be known as the department of corrections. The executive head of the department shall be the secretary of corrections who shall be appointed by the governor with the consent of the senate. The secretary shall serve at the pleasure of the governor and shall receive a salary to be fixed under RCW 43.03.040. [1981 c 136 § 3.]

72.09.040 Transfer of functions from department of social and health services. All powers, duties, and functions assigned to the secretary of social and health services and to the department of social and health services relating to adult correctional programs and institutions are hereby transferred to the secretary of corrections and to the department of corrections. Except as may be specifically provided, all functions of the department of social and health services relating to juvenile rehabilitation and the juvenile justice system shall remain in the department of social and health services. Where functions of the department of social and health services and the department of corrections overlap in the juvenile rehabilitation and/or juvenile justice area, the governor may allocate such functions between these departments.

The secretaries of the department of social and health services and the department of corrections shall submit to the 1983 session of the Washington state legislature a joint report which addresses the question of in which agency juvenile rehabilitation and state level juvenile justice programs should be located. [1981 c 136 § 4.]

72.09.050 Powers and duties of secretary. The secretary shall manage the department of corrections and shall be responsible for the administration of adult correctional programs, including but not limited to the operation of all state correctional institutions or facilities used for the confinement of convicted felons. In addition, the secretary shall have broad powers to enter into agreements with any federal agency, or any other state, or any Washington state agency or local government providing for the operation of any correctional facility or program for persons convicted of felonies or misdemeanors or for juvenile offenders. Such agreements for counties with community corrections boards shall be required in the community corrections plan pursuant to RCW 72.09.300. The agreements may provide for joint operation or operation by the department of corrections,

alone, or by any of the other governmental entities, alone. The secretary may employ persons to aid in performing the functions and duties of the department. The secretary may delegate any of his functions or duties to department employees. The secretary is authorized to promulgate standards for the department of corrections within appropriation levels authorized by the legislature.

Pursuant to the authority granted in chapter 34.05 RCW, the secretary shall adopt rules providing for inmate restitution when restitution is determined appropriate as a result of a disciplinary action. [1987 c 312 § 4; 1986 c 19 § 1; 1981 c 136 § 5.]

72.09.060 Organization of department—Program for volunteers. The department of corrections may be organized into such divisions or offices as the secretary may determine, but shall include divisions for (1) correctional industries, (2) prisons and other custodial institutions and (3) probation, parole, community service, restitution, and other nonincarcerative sanctions. The secretary shall have at least one person on his staff who shall have the responsibility for developing a program which encourages the use of volunteers, for citizen advisory groups, and for similar public involvement programs in the corrections area. Minimum qualification for staff assigned to public involvement responsibilities shall include previous experience in working with volunteers or volunteer agencies. [1989 c 185 § 3; 1981 c 136 § 6.]

72.09.070 Correctional industries board of directors—Duties. (1) There is created a correctional industries board of directors which shall have the composition provided in RCW 72.09.080.

(2) Consistent with general department of corrections policies and procedures pertaining to the general administration of correctional facilities, the board shall establish and implement policy for correctional industries programs designed to:

(a) Offer inmates employment, work experience, and training in vocations which may provide opportunities for legitimate means of livelihood upon their release from custody;

(b) Provide industries which will reduce the tax burden of corrections through production of goods and services for sale and use;

(c) Operate correctional work programs in an effective and efficient manner which are as similar as possible to those provided by the private sector;

(d) Provide for selection of, contracting for, and supervision of work programs with participating private enterprise firms;

(e) Develop and design correctional industries work programs;

(f) Invest available funds in correctional industries enterprises and work programs.

(3) The board of directors shall at least annually review the work performance of the director of correctional industries division with the secretary.

(4) The director of correctional industries division shall review and evaluate the productivity, funding, and

appropriateness of all correctional work programs and report on their effectiveness to the board and to the secretary.

(5) The board of directors shall have the authority to identify and establish trade advisory or apprenticeship committees to advise them on correctional industries work programs. The secretary shall appoint the members of the committees.

Where a labor management trade advisory and apprenticeship committee has already been established by the department pursuant to RCW 72.62.050 the existing committee shall also advise the board of directors. [1989 c 185 § 4; 1981 c 136 § 8.]

72.09.080 Correctional industries board of directors—Appointment of members, chair—Compensation—Support. (1) The correctional industries board of directors shall consist of nine voting members, appointed by the governor upon recommendation by the secretary. Each member shall serve a three-year staggered term. Initially, the governor shall appoint three members to one-year terms, three members to two-year terms, and three members to three-year terms. The speaker of the house of representatives and the president of the senate shall each appoint one member from each of the two largest caucuses in their respective houses. The legislators so appointed shall be nonvoting members and shall serve two-year terms, or until they cease to be members of the house from which they were appointed, whichever occurs first. The nine members appointed by the governor shall include representatives from both labor and industry.

(2) The board of directors shall elect a chair and such other officers as it deems appropriate from among the voting members.

(3) The voting members of the board of directors shall serve with compensation pursuant to RCW 43.03.240 and shall be reimbursed by the department for travel expenses and per diem under RCW 43.03.050 and 43.03.060, as now or hereafter amended. Legislative members shall be reimbursed under RCW 44.04.120, as now or hereafter amended.

(4) The secretary shall provide such staff services, facilities, and equipment as the board shall require to carry out its duties. [1989 c 185 § 5; 1981 c 136 § 9.]

72.09.090 Correctional industries account—Expenditure—Profits—Appropriations. The correctional industries account is established in the state treasury. The department of corrections shall deposit in the account all moneys collected and all profits that accrue from the industrial and agricultural operations of the department and any moneys appropriated to the account. Moneys in the account may be spent only for expenses arising in the correctional industries operations.

The division's net profits from correctional industries' sales and contracts shall be reinvested, without appropriation, in the expansion and improvement of correctional industries. However, the board of directors shall annually recommend that some portion of the profits

from correctional industries be returned to the state general fund.

The board and secretary shall request appropriations or increased appropriations whenever it appears that additional money is needed to provide for the establishment and operation of a comprehensive correctional industries program. [1989 c 185 § 6; 1987 c 7 § 203; 1981 c 136 § 10.]

Severability—1987 c 7: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1987 c 7 § 901.]

72.09.100 Inmate work program—Types of industries, programs. It is the intent of the legislature to vest in the department the power to provide for a comprehensive inmate work program and to remove statutory and other restrictions which have limited work programs in the past. For purposes of establishing such a comprehensive program, the legislature recommends that the department consider adopting any or all, or any variation of, the following classes of work programs:

(1) **CLASS I: FREE VENTURE INDUSTRIES.** The industries in this class shall be operated and managed in total or in part by any profit or nonprofit organization pursuant to an agreement between the organization and the department. The organization shall produce goods or services for sale to both the public and private sector.

The department of corrections shall supply appropriate security and custody services without charge to the participating firms.

Inmates who work in free venture industries shall do so at their own choice. They shall be paid a wage not less than sixty percent of the approximate prevailing wage within the state for the occupation, as determined by the director of the correctional industries division. If the director finds that he cannot reasonably determine the wage, then the pay shall not be less than the federal minimum wage.

(2) **CLASS II: TAX REDUCTION INDUSTRIES.** Industries in this class shall be state-owned and operated enterprises designed to reduce the costs for goods and services for tax-supported agencies and for nonprofit organizations. The industries selected for development within this class shall, as much as possible, match the available pool of inmate work skills and aptitudes with the work opportunities in the free community. The industries shall be closely patterned after private sector industries but with the objective of reducing public support costs rather than making a profit. The products and services of this industry, including purchased products and services necessary for a complete product line, may be sold to public agencies and to nonprofit organizations: *Provided*, That to avoid waste or spoilage and consequent loss to the state, when there is no public sector market for such goods, byproducts and surpluses of timber, agricultural, and animal husbandry enterprises may be sold to private persons, at private sale. Surplus byproducts and surpluses of timber, agricultural and animal husbandry enterprises that cannot be sold to public

agencies or to private persons may be donated to nonprofit organizations. All sales of surplus products shall be carried out in accordance with rules prescribed by the secretary.

Security and custody services shall be provided without charge by the department of corrections.

Inmates working in this class of industries shall do so at their own choice and shall be paid for their work on a gratuity scale which shall not exceed the federal minimum wage and which is approved by the director of correctional industries.

(3) **CLASS III: INSTITUTIONAL SUPPORT INDUSTRIES.** Industries in this class shall be operated by the department of corrections. They shall be designed and managed to accomplish the following objectives:

(a) Whenever possible, to provide basic work training and experience so that the inmate will be able to qualify for better work both within correctional industries and the free community. It is not intended that an inmate's work within this class of industries should be his or her final and total work experience as an inmate.

(b) Whenever possible, to provide forty hours of work or work training per week.

(c) Whenever possible, to offset tax and other public support costs.

Supervising, management, and custody staff shall be employees of the department.

All able and eligible inmates who are assigned work and who are not working in other classes of industries shall work in this class.

Except for inmates who work in work training programs, inmates in this class shall be paid for their work in accordance with an inmate gratuity scale. The scale shall be adopted by the secretary of corrections.

(4) **CLASS IV: COMMUNITY WORK INDUSTRIES.** Industries in this class shall be operated by the department of corrections. They shall be designed and managed to provide services in the inmate's resident community at a reduced cost. The services shall be provided to public agencies, to persons who are poor or infirm, or to nonprofit organizations.

Inmates in this program shall reside in facilities owned by, contracted for, or licensed by the department of corrections. A unit of local government shall provide work supervision services without charge to the state and shall pay the inmate's wage.

The department of corrections shall reimburse participating units of local government for liability and workers compensation insurance costs.

Inmates who work in this class of industries shall do so at their own choice and shall receive a gratuity which shall not exceed the minimum wage for their work.

(5) **CLASS V: COMMUNITY SERVICE PROGRAMS.** Programs in this class shall be subject to supervision by the department of corrections. The purpose of this class of industries is to enable an offender, placed on community supervision, to work off all or part of a community service order as ordered by the sentencing court.

Employment shall be in a community service program operated by the state, local units of government, or a nonprofit agency.

To the extent that funds are specifically made available for such purposes, the department of corrections shall reimburse nonprofit agencies for workers compensation insurance costs. [1989 c 185 § 7; 1986 c 193 § 2; 1985 c 151 § 1; 1983 c 255 § 5; 1981 c 136 § 11.]

Severability—1983 c 255: See RCW 72.74.900.
Fish and game projects in prison work programs subject to RCW 72-09.100: RCW 72.63.020.

72.09.102 Use and purchase of commodities produced by correctional systems—Plans—Legislative review. The department of corrections and department of general administration shall develop the following for legislative review: (1) A plan for production within the department of corrections of one or more commodities not currently being produced within the department for use within all state institutions and which may be sold to state correctional systems in other states; (2) a plan for purchasing commodities produced by correctional systems located in other states to the degree the plan would be cost-effective and would involve reciprocal marketing agreements between the several states represented; and (3) a plan to purchase, where cost-effective, materials used in the production of prison-made goods jointly with prison industry programs in other states. The plans shall be submitted to the legislature by March, 1987. [1986 c 94 § 1.]

72.09.104 Prison work programs to operate automated data input and retrieval systems. The department of general administration and the department of corrections shall implement prison work programs to operate automated data input and retrieval systems for appropriate departments of state government. [1983 c 296 § 3.]

Findings—1983 c 296: "The legislature finds and declares that the costs of state government automated data input and retrieval are escalating. The legislature further finds and declares that new record conversion technologies offer a promising means for coping with current records management problems." [1983 c 296 § 1.]

Policy—1983 c 296: "It is the policy of the state of Washington that state prisons shall provide prisoners with a work environment in order that, upon their release, inmates may have the skills necessary for the successful reentry into society. It is also the policy of the state to promote the establishment and growth of prison industries whose work shall benefit the state." [1983 c 296 § 2.]

72.09.106 Subcontracting of data input and microfilm capacities. Class II correctional industries may subcontract its data input and microfilm capacities to firms from the private sector. Inmates employed under these subcontracts will be paid in accordance with the Class I free venture industries procedures and wage scale. [1989 c 185 § 8; 1983 c 296 § 4.]

Findings—Policy—1983 c 296: See notes following RCW 72.09.104.

72.09.110 Inmates' wages—Supporting cost of corrections—Crime victims' compensation, restitution, family support. All inmates working in prison industries

shall participate in the cost of corrections, including costs to develop and implement correctional industries programs. The secretary shall develop a formula which can be used to determine the extent to which the wages of these inmates will be deducted for this purpose. The amount so deducted shall be placed in the general fund and shall be a reasonable amount which will not unduly discourage the incentive to work. The secretary may direct the state treasurer to deposit a portion of these moneys in the crime victims compensation account.

When the secretary finds it appropriate and not unduly destructive of the work incentive, the secretary shall also provide deductions for restitution, savings, and family support. [1989 c 185 § 9; 1986 c 162 § 1; 1981 c 136 § 12.]

72.09.120 Distribution of list of inmate job opportunities. In order to assist inmates in finding work within prison industries, the department shall periodically prepare and distribute a list of prison industries' job opportunities, which shall include job descriptions and the educational and skill requirements for each job. [1981 c 136 § 16.]

72.09.130 Incentive system for good conduct—Dissemination. The department shall adopt a system providing incentives for good conduct and disincentives for poor conduct. The system may include increases or decreases in the degree of liberty granted the inmate within the programs operated by the department and recommended increases or decreases in the number of earned early release days that an inmate can earn for good conduct and good performance. Earned early release days shall be recommended by the department as a form of tangible reward for accomplishment. The system shall be fair, measurable, and understandable to offenders, staff, and the public. At least once in each twelve-month period, the department shall inform the offender in writing as to his or her conduct and performance. This written evaluation shall include reasons for awarding or not awarding recommended earned early release days for good conduct and good performance. The term "good performance" as used in this section means successfully performing a work, work training, or educational task to levels of expectation as specified in writing by the department. The term "good conduct" as used in this section refers to compliance with department rules.

Within one year after July 1, 1981, the department shall adopt, and provide a written description of, the system. The department shall provide a copy of this description to each offender in its custody. [1981 c 136 § 17.]

72.09.135 Adoption of standards for correctional facilities. The department of corrections shall, no later than July 1, 1987, adopt standards for the operation of state adult correctional facilities. These standards shall be the minimums necessary to meet federal and state constitutional requirements relating to health, safety, and welfare of inmates and staff, and specific state and federal statutory requirements, and to provide for the

public's health, safety, and welfare. The need for each standard shall be documented. [1987 c 462 § 15.]

Effective dates—1987 c 462: See note following RCW 13.04.116.

72.09.160 Corrections standards board—Responsibilities, powers, support.

Reviser's note: RCW 72.09.160 was both amended and repealed during the 1987 legislative session, each without reference to the other. It has been decodified for publication purposes pursuant to RCW 1.12.025.

72.09.180 Corrections standards board—Expiration of board—January 1, 1988. The corrections standards board shall cease to exist on January 1, 1988. [1987 c 462 § 21; 1981 c 136 § 22.]

Effective dates—1987 c 462: See note following RCW 13.04.116.

72.09.190 Legal services for inmates. (1) It is the intent of the legislature that reasonable legal services be provided to persons committed to the custody of the department of corrections. The department shall contract with persons or organizations to provide legal services. The secretary shall adopt procedures designed to minimize any conflict of interest, or appearance thereof, in respect to the provision of legal services and the department's administration of such contracts.

(2) Persons who contract to provide legal services are expressly forbidden to solicit plaintiffs or promote litigation which has not been pursued initially by a person entitled to such services under this section.

(3) Persons who contract to provide legal services shall exhaust all informal means of resolving a legal complaint or dispute prior to the filing of any court proceeding.

(4) Nothing in this section forbids the secretary to supplement contracted legal services with any of the following: (a) Law libraries, (b) law student interns, and (c) volunteer attorneys.

(5) The total due a contractor as compensation, fees, or reimbursement under the terms of the contract shall be reduced by the total of any other compensation, fees, or reimbursement received by or due the contractor for the performance of any legal service to inmates during the contract period. Any amount received by a contractor under contract which is not due under this section shall be immediately returned by the contractor. [1981 c 136 § 23.]

72.09.200 Transfer of files, property, and appropriations. All reports, documents, surveys, books, records, files, papers, and other writings in the possession of the department of social and health services pertaining to the functions transferred by RCW 72.09.040 shall be delivered to the custody of the department of corrections. All cabinets, furniture, office equipment, motor vehicles, and other tangible property employed exclusively in carrying out the powers and duties transferred by RCW 72.09.040 shall be made available to the department of corrections. All funds, credits, or other assets held in connection with the functions transferred by

RCW 72.09.040 shall be assigned to the department of corrections.

Any appropriations made to the department of social and health services for the purpose of carrying out the powers, duties, and functions transferred by RCW 72.09.040 shall on July 1, 1981, be transferred and credited to the department of corrections for the purpose of carrying out the transferred powers, duties, and functions.

Whenever any question arises as to the transfer of any funds including unexpended balances within any accounts, books, documents, records, papers, files, equipment, or other tangible property used or held in the exercise of the powers and the performance of the duties and functions transferred under RCW 72.09.040, the director of financial management shall make a determination as to the proper allocation and certify the same to the state agencies concerned.

If apportionments of budgeted funds are required because of the transfers authorized in this section, the director of financial management shall certify the apportionments to the agencies affected, the state auditor, and the state treasurer. Each of these shall make the appropriate transfer and adjustments in funds and appropriation accounts and equipment records in accordance with the certification. [1981 c 136 § 31.]

72.09.210 Transfer of employees. All employees of the department of social and health services who are directly employed in connection with the exercise of the powers and performance of the duties and functions transferred to the department of corrections by RCW 72.09.040 shall be transferred on July 1, 1981, to the jurisdiction of the department of corrections.

All such employees classified under chapter 41.06 RCW, the state civil service law, shall be assigned to the department of corrections. Except as otherwise provided, such employees shall be assigned without any loss of rights, subject to any action that may be appropriate thereafter in accordance with the laws and rules governing the state civil service law. [1981 c 136 § 32.]

72.09.220 Employee rights under collective bargaining. Nothing contained in *sections 1 through 13 and 16 through 23 of this act may be construed to downgrade any rights of any employee under any existing collective bargaining unit or the provisions of any existing collective bargaining agreement until the agreement has expired or until the bargaining unit has been modified by action of the personnel board as provided by law. [1981 c 136 § 33.]

*Reviser's note: Sections 1 through 12 and 16 through 23 are RCW 72.09.010 through 72.09.190 and 72.09.901. Section 13 [1981 c 136 § 13] is a temporary, uncodified section.

72.09.230 Duties continued during transition. All state officials required to maintain contact with or provide services to the department or secretary of social and health services relating to adult corrections shall continue to perform the services for the department of corrections.

In order to ease the transition of adult corrections to the department of corrections, the governor may require an interagency agreement between the department and the department of social and health services under which the department of social and health services would, on a temporary basis, continue to perform all or part of any specified function of the department of corrections. [1981 c 136 § 34.]

72.09.240 Reimbursement of employees for offender assaults. (1) In recognition of prison overcrowding and the hazardous nature of employment in state correctional institutions and offices, the legislature hereby provides a supplementary program to reimburse employees of the department of corrections for some of their costs attributable to their being the victims of offender assaults. This program shall be limited to the reimbursement provided in this section.

(2) An employee is only entitled to receive the reimbursement provided in this section if the secretary of corrections, or the secretary's designee, finds that each of the following has occurred:

(a) An offender has assaulted the employee while the employee is performing the employee's official duties and as a result thereof the employee has sustained injuries which have required the employee to miss days of work; and

(b) The assault cannot be attributable to any extent to the employee's negligence, misconduct, or failure to comply with any rules or conditions of employment.

(3) The reimbursement authorized under this section shall be as follows:

(a) The employee's accumulated sick leave days shall not be reduced for the workdays missed;

(b) For each workday missed for which the employee is not eligible to receive compensation under chapter 51.32 RCW, the employee shall receive full pay; and

(c) In respect to workdays missed for which the employee will receive or has received compensation under chapter 51.32 RCW, the employee shall be reimbursed in an amount which, when added to that compensation, will result in the employee receiving full pay for the workdays missed.

(4) Reimbursement under this section may not last longer than three hundred sixty-five consecutive days after the date of the injury.

(5) The employee shall not be entitled to the reimbursement provided in subsection (3) of this section for any workday for which the secretary, or the secretary's designee, finds that the employee has not diligently pursued his or her compensation remedies under chapter 51.32 RCW.

(6) The reimbursement shall only be made for absences which the secretary, or the secretary's designee, believes are justified.

(7) While the employee is receiving reimbursement under this section, he or she shall continue to be classified as a state employee and the reimbursement amount shall be considered as salary or wages.

(8) All reimbursement payments required to be made to employees under this section shall be made by the department of corrections. The payments shall be considered as a salary or wage expense and shall be paid by the department in the same manner and from the same appropriations as other salary and wage expenses of the department.

(9) Should the legislature revoke the reimbursement authorized under this section or repeal this section, no affected employee is entitled thereafter to receive the reimbursement as a matter of contractual right.

(10) For the purposes of this section, "offender" means: (a) inmate as defined in RCW 72.09.020, (b) offender as defined in RCW 9.94A.030, and (c) any other person in the custody of or subject to the jurisdiction of the department of corrections. [1988 c 149 § 1; 1984 c 246 § 9.]

Severability—1984 c 246: See note following RCW 9.94A.160.

72.09.300 Community corrections board—Establishment—Members—Joint establishment—Community corrections plan—Rules—Base level of services. (1) A county may establish a community corrections board which shall consist of nine members. The county legislative authority shall appoint four members to the board, two of whom shall be from the private sector. The secretary shall appoint one member to the board. In addition, the county prosecutor and county sheriff, or their designees, a judge of the county superior court selected by the county superior court judges, and a county district court judge, selected by the county district court judges, shall be members of the board.

(2) If a combination of counties establishes a community corrections board, an intergovernmental agreement shall establish the composition and powers of the board, not to exceed the authority granted in this section.

(3) The community corrections board shall develop a community corrections plan for the county. Upon request, the department may provide technical assistance in developing the plan. The plan shall describe the existing correctional resources, goals, objectives, needs, and problems for local and state correctional services in the county. The plan shall review ways to maximize resources and reduce duplication of services. Areas to be addressed in the plan include, but are not limited to: Voluntary services for offenders, which include employment, substance and alcohol abuse services, housing and mental health services; ways to share administrative costs between local and state government; and the development of alternatives to partial and total confinement.

(4) The secretary shall adopt rules for the submittal and review of all plans. Representatives from other state and local agencies and organizations shall participate in the review process. Initiatives that reduce the duplication of services or maximize the use of existing resources shall be given priority.

(5) The department shall establish a base level of correctional services, which shall be determined and distributed in a consistent manner state-wide. The department's contributions to any partnerships, approved

pursuant to this section, shall not operate to reduce this base level of services. [1987 c 312 § 3.]

Purpose—1987 c 312 § 3: "It is the purpose of RCW 72.09.300 to encourage local and state government to join in partnerships for the sharing of resources regarding the management of offenders in the correctional system. The formation of partnerships between local and state government is intended to reduce duplication while assuring better accountability and offender management through the most efficient use of resources at both the local and state level." [1987 c 312 § 1.]

72.09.310 Community custody violator. An inmate in community custody who wilfully fails to comply with any one or more of the controls placed on the inmate's movements by the department of corrections shall be deemed an escapee and fugitive from justice, and upon conviction shall be guilty of a class C felony under chapter 9A.20 RCW. [1988 c 153 § 6.]

Effective date—Implementation—Application of increased sanctions—1988 c 153: See notes following RCW 9.94A.030.

72.09.320 Community placement—Liability. The state of Washington, the department and its employees, community corrections officers, their staff, and volunteers who assist community corrections officers in the community placement program are not liable for civil damages resulting from any act or omission in the rendering of community placement activities unless the act or omission constitutes gross negligence. For purposes of this section, "volunteers" is defined according to RCW 51.12.035. [1988 c 153 § 10.]

Effective date—Implementation—Application of increased sanctions—1988 c 153: See notes following RCW 9.94A.030.

72.09.900 Effective date—1981 c 136. This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1981. [1981 c 136 § 124.]

72.09.901 Short title. This chapter may be known and cited as the corrections reform act of 1981. [1981 c 136 § 1.]

72.09.902 Construction—1981 c 136. All references to the department or secretary of social and health services in other chapters of the Revised Code of Washington shall be construed as meaning the department or secretary of corrections when referring to the functions established by this chapter. [1981 c 136 § 29.]

72.09.903 Savings—1981 c 136. All rules and all pending business before the secretary of social and health services and the department of social and health services pertaining to matters transferred by RCW 72.09.040 shall be continued and acted upon by the department of corrections.

All existing contracts and obligations pertaining to the powers, duties, and functions transferred shall remain in full force and effect and shall be performed by the department of corrections.

The transfer of powers, duties, and functions under RCW 72.09.040 shall not affect the validity of any act

performed prior to July 1, 1981, by the department of social and health services or its secretary and, except as otherwise specifically provided, shall not affect the validity of any rights existing on July 1, 1981.

If questions arise regarding whether any sort of obligation is properly that of the department of social and health services or the department of corrections, such questions shall be resolved by the director of financial management. [1981 c 136 § 30.]

Chapter 72.10

HEALTH CARE SERVICES—DEPARTMENT OF CORRECTIONS

Sections

72.10.005	Intent—Application.
72.10.010	Definitions.
72.10.020	Health services plan.
72.10.030	Contracts for services.
72.10.040	Rules.

72.10.005 Intent—Application. It is the intent of the legislature that inmates in the custody of the department of corrections receive such basic medical services as may be mandated by the federal Constitution and the Constitution of the state of Washington. Notwithstanding any other laws, it is the further intent of the legislature that the department of corrections may contract directly with any persons, firms, agencies, or corporations qualified to provide such services. Nothing in this chapter is to be construed to authorize a reduction in state employment in service component areas presently rendering such services or to preclude work typically and historically performed by department employees. [1989 c 157 § 1.]

72.10.010 Definitions. As used in this chapter:

(1) "Department" means the department of corrections.

(2) "Health care practitioner" means an individual or firm licensed or certified to actively engage in a regulated health profession.

(3) "Health profession" means and includes those licensed or regulated professions set forth in RCW 18.120.020(4).

(4) "Health care facility" means any hospital, hospice care center, licensed or certified health care facility, health maintenance organization regulated under chapter 48.46 RCW, federally qualified health maintenance organization, renal dialysis center or facility federally approved under 42 CFR 405.2100, or blood bank federally licensed under 21 CFR 607.

(5) "Health care services" means and includes medical, dental, and mental health care services.

(6) "Secretary" means the secretary of the department of corrections. [1989 c 157 § 2.]

72.10.020 Health services plan. The department may develop and implement a health services plan for the delivery of health care services to inmates in the department's custody, at the discretion of the secretary. [1989 c 157 § 3.]

72.10.030 Contracts for services. (1) Notwithstanding any other provisions of law, the secretary may enter into contracts with health care practitioners, health care facilities, and other entities or agents as may be necessary to provide basic medical care to inmates. The contracts shall not cause the termination of classified employees of the department rendering the services at the time the contract is executed.

(2) In contracting for services, the secretary is authorized to provide for indemnification of health care practitioners who cannot obtain professional liability insurance through reasonable effort, from liability on any action, claim, or proceeding instituted against them arising out of the good faith performance or failure of performance of services on behalf of the department. The contracts may provide that for the purposes of chapter 4.92 RCW only, those health care practitioners with whom the department has contracted shall be considered state employees. [1989 c 157 § 4.]

72.10.040 Rules. The secretary shall have the power to make rules necessary to carry out the intent of this chapter. [1989 c 157 § 5.]

Chapter 72.11

OFFENDERS' RESPONSIBILITY FOR LEGAL FINANCIAL OBLIGATIONS

Sections

72.11.010	Definitions.
72.11.020	Inmate funds—Legal financial obligations—Disbursal by secretary.
72.11.030	Inmate accounts—Legal financial obligations—Priority—Deductions.
72.11.040	Cost of supervision fund.

72.11.010 Definitions. Unless a different meaning is plainly required by the context, the following words and phrases as hereafter used in this chapter shall have the following meanings:

(1) "Court-ordered legal financial obligation" means a sum of money that is ordered by a superior court of the state of Washington for payment of restitution to a victim, statutorily imposed crime victims compensation fee, court costs, a county or interlocal drug fund, court-appointed attorneys' fees and costs of defense, fines, and any other legal financial obligation that is assessed as a result of a felony conviction.

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

(3) "Offender" means an individual who is currently under the jurisdiction of the Washington state department of corrections, and who also has a court-ordered legal financial obligation as a result of a felony conviction.

(4) "Secretary" means the secretary of the department of corrections or the secretary's designee.

(5) "Superintendent" means the superintendent of a correctional facility under the jurisdiction of the Washington state department of corrections. [1989 c 252 § 22.]

Purpose—Prospective application—Effective dates—Severability—1989 c 252: See notes following RCW 9.94A.030.

72.11.020 Inmate funds—Legal financial obligations—Disbursal by secretary. The secretary shall be custodian of all funds of a convicted person that are in his or her possession upon admission to a state institution, or that are sent or brought to the person, or earned by the person while in custody, or that are forwarded to the superintendent on behalf of a convicted person. All such funds shall be deposited in the personal account of the convicted person within the institutional resident deposit account as established by the office of financial management pursuant to RCW 43.88.195, and the secretary shall have authority to disburse money from such person's personal account for the purposes of satisfying a court-ordered legal financial obligation to the court. Unless specifically granted authority herein, at no time shall the withdrawal of funds for the payment of a legal financial obligation result in reducing the inmate's account to an amount less than the defined level of indigency to be determined by the department.

Further, unless specifically altered herein, court-ordered legal financial obligations shall be paid. [1989 c 252 § 23.]

Purpose—Prospective application—Effective dates—Severability—1989 c 252: See notes following RCW 9.94A.030.

72.11.030 Inmate accounts—Legal financial obligations—Priority—Deductions. (1) Except as otherwise provided herein, all court-ordered legal financial obligations shall take priority over any other statutorily imposed mandatory withdrawals from inmate's accounts.

(2) For those inmates who are on work release pursuant to chapter 72.65 RCW, before any legal financial obligations are withdrawn from the inmate's account, the inmate is entitled to payroll deductions that are required by law, or such payroll deductions as may reasonably be required by the nature of the employment unless any such amount which his or her work release plan specifies should be retained to help meet the inmate's needs, including costs necessary for his or her participation in the work release plan such as travel, meals, clothing, tools, and other incidentals.

(3) Before the payment of any court-ordered legal financial obligation is required, the department is entitled to reimbursement for any expenses advanced for vocational training pursuant to RCW 72.65.020(2), for expenses incident to a work release plan pursuant to RCW 72.65.090, payments for board and room charges for the work release participant, and payments that are necessary for the support of the work release participant's dependents, if any. [1989 c 252 § 24.]

Purpose—Prospective application—Effective dates—Severability—1989 c 252: See notes following RCW 9.94A.030.

72.11.040 Cost of supervision fund. (Effective July 1, 1990.) The cost of supervision fund is created in the custody of the state treasurer. All receipts from assessments made under RCW 9.94A.270 and 72.04A.120 shall be deposited into the fund. Expenditures from the fund may be used only to support the collection of legal financial obligations. Only the secretary of the department of corrections or the secretary's designee may authorize expenditures from the fund. The fund is subject to allotment procedures under chapter 43.88 RCW, but no appropriation is required for expenditures. [1989 c 252 § 26.]

Purpose—Prospective application—Effective dates—Severability—1989 c 252: See notes following RCW 9.94A.030.

Chapter 72.16 GREEN HILL SCHOOL

Sections

72.16.010 School established.
72.16.020 Purpose of school.

Basic juvenile court act: Chapter 13.04 RCW.

Commitment: Chapter 13.04 RCW.

Disposition of property of deceased inmate of state institution: RCW 11.08.101, 11.08.111, 11.08.120.

Disturbances at state penal facilities

contingency plans—Report of failure to support: RCW 72.02.170.

development of contingency plans—Scope—Local participation: RCW 72.02.150.

reimbursement to cities and counties for certain expenses incurred: RCW 72.72.050, 72.72.060.

utilization of outside law enforcement personnel—Scope: RCW 72.02.160.

Educational programs for residential school residents: RCW 28A.58-.770 through 28A.58.778.

Financial responsibility for cost of detention of minor: RCW 13.16.085.

Fugitives of this state: Chapter 10.34 RCW.

Record as to patients or inmates for purposes of vital statistics: RCW 70.58.270.

Transfer of child under sixteen convicted of crime amounting to felony: RCW 72.01.410.

72.16.010 School established. There is established at Chehalis, Lewis county, an institution which shall be known as the Green Hill school. [1959 c 28 § 72.16.010. Prior: 1955 c 230 § 1. (i) 1909 c 97 p 256 § 1; RRS § 4624. (ii) 1907 c 90 § 1; 1890 p 271 § 1; RRS § 10299.]

72.16.020 Purpose of school. The said school shall be for the keeping and training of all boys between the ages of eight and eighteen years who are residents of the state of Washington and who are lawfully committed to said institution. [1959 c 28 § 72.16.020. Prior: (i) 1909 c 97 p 256 § 2; RRS § 4625. (ii) 1890 p 272 § 2; RRS § 10300.]

Chapter 72.19
JUVENILE CORRECTIONAL INSTITUTION IN
KING COUNTY

Sections

- 72.19.010 Institution established—Location.
 72.19.020 Rules and regulations.
 72.19.030 Superintendent—Appointment.
 72.19.040 Associate superintendents—Appointment—Acting superintendent.
 72.19.050 Powers and duties of superintendent.
 72.19.060 Male, female, juveniles—Residential housing, separation—Correctional programs, separation, combination.
 72.19.070 General obligation bond issue to provide buildings—Authorized—Form, terms, etc.
 72.19.100 General obligation bond issue to provide buildings—Bond redemption fund—Payment from sales tax.
 72.19.110 General obligation bond issue to provide buildings—Legislature may provide additional means of revenue.
 72.19.120 General obligation bond issue to provide buildings—Bonds legal investment for state and municipal corporation funds.
 72.19.130 Referral to electorate.

Disturbances at state penal facilities

- contingency plans—Report of failure to support: RCW 72.02.170.*
development of contingency plans—Scope—Local participation: RCW 72.02.150.
reimbursement to cities and counties for certain expenses incurred: RCW 72.72.050, 72.72.060.
utilization of outside law enforcement personnel—Scope: RCW 72.02.160.

Educational programs for residential school residents: RCW 28A.58-.770 through 28A.58.778.

72.19.010 Institution established—Location. There is hereby established under the supervision and control of the secretary of social and health services a correctional institution for the confinement and rehabilitation of juveniles committed by the juvenile courts to the department of social and health services. Such institution shall be situated upon publicly owned lands within King county, under the supervision of the department of natural resources, which land is located in the vicinity of Echo Lake and more particularly situated in Section 34, Township 24 North, Range 7 East W.M. and that portion of Section 3, Township 23 North, Range 7 East W.M. lying north of U.S. Highway 10, together with necessary access routes thereto, all of which tract is leased by the department of natural resources to the department of social and health services for the establishment and construction of the correctional institution authorized and provided for in this chapter. [1979 c 141 § 222; 1963 c 165 § 1; 1961 c 183 § 1.]

72.19.020 Rules and regulations. The secretary may make, amend and repeal rules and regulations for the administration of the juvenile correctional institution established by this chapter in furtherance of the provisions of this chapter and not inconsistent with law. [1979 c 141 § 223; 1961 c 183 § 4.]

72.19.030 Superintendent—Appointment. The superintendent of the correctional institution established by this chapter shall be appointed by the secretary.

[1983 1st ex.s. c 41 § 27; 1979 c 141 § 224; 1963 c 165 § 3.]

Severability—1983 1st ex.s. c 41: See note following RCW 26.09.060.

72.19.040 Associate superintendents—Appointment—Acting superintendent. The superintendent, subject to the approval of the secretary, shall appoint such associate superintendents as shall be deemed necessary. In the event the superintendent shall be absent from the institution, or during periods of illness or other situations incapacitating the superintendent from properly performing his duties, one of the associate superintendents of such institution shall act as superintendent during such period of absence, illness or incapacity as may be designated by the secretary. [1979 c 141 § 225; 1963 c 165 § 4.]

72.19.050 Powers and duties of superintendent. The superintendent shall have the following powers, duties and responsibilities:

(1) Subject to the rules and regulations of the department, the superintendent shall have the supervision and management of the institution, of the grounds and buildings, the subordinate officers and employees, and of the juveniles received at such institution and the custody of such persons until released or transferred as provided by law.

(2) Subject to the rules and regulations of the department and the state personnel board, appoint all subordinate officers and employees.

(3) The superintendent shall be the custodian of the personal property of all juveniles in the institution and shall make rules and regulations governing the accounting and disposition of all moneys received by such juveniles, not inconsistent with the law, and subject to the approval of the secretary. [1979 c 141 § 226; 1963 c 165 § 5.]

72.19.060 Male, female, juveniles—Residential housing, separation—Correctional programs, separation, combination. The plans and construction of the juvenile correctional institution established by this chapter shall provide for adequate separation of the residential housing of the male juvenile from the female juvenile. In all other respects, the juvenile correctional programs for both boys and girls may be combined or separated as the secretary deems most reasonable and effective to accomplish the reformation, training and rehabilitation of the juvenile offender, realizing all possible economies from the lack of necessity for duplication of facilities. [1979 c 141 § 227; 1963 c 165 § 7.]

72.19.070 General obligation bond issue to provide buildings—Authorized—Form, terms, etc. For the purpose of providing needful buildings at the correctional institution for the confinement and rehabilitation of juveniles situated in King county in the vicinity of Echo Lake which institution was established by the provisions of this chapter, the state finance committee is hereby authorized to issue, at any time prior to January

1, 1970, general obligation bonds of the state of Washington in the sum of four million six hundred thousand dollars, or so much thereof as shall be required to finance the program above set forth, to be paid and discharged within twenty years of the date of issuance.

The state finance committee is authorized to prescribe the form of such bonds, and the time of sale of all or any portion or portions of such bonds, and the conditions of sale and issuance thereof: *Provided*, That none of the bonds herein authorized shall be sold for less than the par value thereof, nor shall they bear interest at a rate in excess of four percent per annum.

The bonds shall pledge the full faith and credit of the state of Washington and contain an unconditional promise to pay the principal and interest when due. The committee may provide that the bonds, or any of them, may be called prior to the due date thereof under such terms and conditions as it may determine. The state finance committee may authorize the use of facsimile signatures in the issuance of the bonds. [1963 ex.s. c 27 § 1.]

72.19.100 General obligation bond issue to provide buildings—Bond redemption fund—Payment from sales tax. The juvenile correctional institution building bond redemption fund is hereby created in the state treasury, which fund shall be exclusively devoted to the payment of interest on and retirement of the bonds authorized by RCW 72.19.070 through 72.19.130. The state finance committee shall, on or before June 30th of each year, certify to the state treasurer the amount needed in the ensuing twelve months to meet bond retirement and interest requirements and the state treasurer shall thereupon deposit such amount in said juvenile correctional institution building bond redemption fund from moneys transmitted to the state treasurer by the department of revenue and certified by the department of revenue to be sales tax collections and such amount certified by the state finance committee to the state treasurer shall be a prior charge against all retail sales tax revenues of the state of Washington, except that portion thereof heretofore pledged for the payment of bond principal and interest.

The owner and holder of each of said bonds or the trustee for any of the bonds may by mandamus or other appropriate proceeding require and compel the transfer and payment of funds as directed herein. [1975 1st ex.s. c 278 § 35; 1963 ex.s. c 27 § 4.]

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

72.19.110 General obligation bond issue to provide buildings—Legislature may provide additional means of revenue. The legislature may provide additional means for raising moneys for the payment of the interest and principal of the bonds authorized herein and RCW 72.19.070 through 72.19.130 shall not be deemed to provide an exclusive method for such payment. [1963 ex.s. c 27 § 5.]

72.19.120 General obligation bond issue to provide buildings—Bonds legal investment for state and municipal corporation funds. The bonds herein authorized shall be a legal investment for all state funds or for funds under state control and all funds of municipal corporations. [1963 ex.s. c 27 § 6.]

72.19.130 Referral to electorate. *This act shall be submitted to the people for their adoption and ratification, or rejection, at the general election to be held in this state on the Tuesday next succeeding the first Monday in November, 1964, in accordance with the provisions of section 3, Article VIII of the state Constitution; and in accordance with the provisions of section 1, Article II of the state Constitution, as amended, and the laws adopted to facilitate the operation thereof. [1963 ex.s. c 27 § 7.]

*Reviser's note: "This act" consists of RCW 72.19.070 through 72.19.130. 1963 ex.s. c 27 became Referendum Bill No. 13, which was approved by the electorate November 3, 1964.

Chapter 72.20 MAPLE LANE SCHOOL

Sections

72.20.001	Definitions.
72.20.010	School established.
72.20.020	Management—Superintendent.
72.20.040	Duties of superintendent.
72.20.050	Parole or discharge—Behavior credits.
72.20.060	Conditional parole—Apprehension on escape or violation of parole.
72.20.065	Intrusion—Enticement away of girls—Interference—Penalty.
72.20.070	Eligibility restricted.
72.20.090	Hiring out—Apprenticeships—Compensation.

Basic juvenile court act: Chapter 13.04 RCW.

Commitment: Chapter 13.04 RCW.

Disposition of property of deceased inmate of state institution: RCW 11.08.101, 11.08.111, 11.08.120.

Disturbances at state penal facilities

contingency plans—Report of failure to support: RCW 72.02.170.

development of contingency plans—Scope—Local participation: RCW 72.02.150.

reimbursement to cities and counties for certain expenses incurred: RCW 72.72.050, 72.72.060.

utilization of outside law enforcement personnel—Scope: RCW 72.02.160.

Educational programs for residential school residents: RCW 28A.58.770 through 28A.58.778.

Financial responsibility for cost of detention of minor: RCW 13.16.085.

Fugitives of this state: Chapter 10.34 RCW.

Record as to patients or inmates for purposes of vital statistics: RCW 70.58.270.

Transfer of child under sixteen convicted of crime amounting to felony: RCW 72.01.410.

72.20.001 Definitions. As used in this chapter: "Department" means the department of social and health services; and "Secretary" means the secretary of social and health services. [1981 c 136 § 98.]

Effective date—1981 c 136: See RCW 72.09.900.

72.20.010 School established. There is established at Grand Mound, Thurston county, an institution which shall be known as the Maple Lane school. [1959 c 28 § 72.20.010. Prior: 1955 c 230 § 2; 1913 c 157 § 1; RRS § 4631.]

72.20.020 Management—Superintendent. The government, control and business management of such school shall be vested in the secretary. The secretary shall, with the approval of the governor, appoint a suitable superintendent of said school, and shall designate the number of subordinate officers and employees to be employed, and fix their respective salaries, and have power, with the like approval, to make and enforce all such rules and regulations for the administration, government and discipline of the school as the secretary may deem just and proper, not inconsistent with this chapter. [1979 c 141 § 228; 1959 c 39 § 1; 1959 c 28 § 72.20.020. Prior: 1913 c 157 § 3; RRS § 4633.]

Appointment of chief executive officers and subordinate employees, general provisions: RCW 72.01.060.

72.20.040 Duties of superintendent. The superintendent, subject to the direction and approval of the secretary shall:

(1) Have general supervision and control of the grounds and buildings of the institution, the subordinate officers and employees, and the inmates thereof, and all matters relating to their government and discipline.

(2) Make such rules, regulations and orders, not inconsistent with law or with the rules, regulations or directions of the secretary, as may seem to him proper or necessary for the government of such institution and for the employment, discipline and education of the inmates, except for the program of education provided pursuant to RCW 28A.58.772 through 28A.58.776, as now or hereafter amended, which shall be governed by the school district conducting the program.

(3) Exercise such other powers, and perform such other duties as the secretary may prescribe. [1979 ex.s. c 217 § 10; 1979 c 141 § 229; 1959 c 39 § 2; 1959 c 28 § 72.20.040. Prior: 1913 c 157 § 5; RRS § 4635.]

Effective date—Severability—1979 ex.s. c 217: See notes following RCW 28A.58.770.

72.20.050 Parole or discharge—Behavior credits. The department, acting with the superintendent, shall, under a system of marks, or otherwise, fix upon a uniform plan by which girls may be paroled or discharged from the school, which system shall be subject to revision from time to time. Each girl shall be credited for personal demeanor, diligence in labor or study and for the results accomplished, and charged for derelictions, negligence or offense. The standing of each girl shall be made known to her as often as once a month. [1959 c 28 § 72.20.050. Prior: 1913 c 157 § 8; RRS § 4638.]

72.20.060 Conditional parole—Apprehension on escape or violation of parole. Every girl shall be entitled to a trial on parole before reaching the age of twenty

years, such parole to continue for at least one year unless violated. The superintendent and resident physician, with the approval of the secretary, shall determine whether such parole has been violated. Any girl committed to the school who shall escape therefrom, or who shall violate a parole, may be apprehended and returned to the school by any officer or citizen on written order or request of the superintendent. [1979 c 141 § 230; 1959 c 28 § 72.20.060. Prior: 1913 c 157 § 9, part; RRS § 4639, part.]

72.20.065 Intrusion—Enticement away of girls—Interference—Penalty. Any person who shall go upon the school grounds except on lawful business, or by consent of the superintendent, or who shall entice any girl away from the school, or who shall in any way interfere with its management or discipline, shall be guilty of a misdemeanor. [1959 c 28 § 72.20.065. Prior: 1913 c 157 § 9, part; RRS § 4639, part.]

72.20.070 Eligibility restricted. No girl shall be received in the Maple Lane school who is not of sound mind, or who is subject to epileptic or other fits, or is not possessed of that degree of bodily health which should render her a fit subject for the discipline of the school. It shall be the duty of the court committing her to cause such girl to be examined by a reputable physician to be appointed by the court, who will certify to the above facts, which certificate shall be forwarded to the school with the commitment. Any girl who may have been committed to the school, not complying with the above requirements, may be returned by the superintendent to the court making the commitment, or to the officer or institution last having her in charge. The department shall arrange for the transportation of all girls to and from the school. [1959 c 28 § 72.20.070. Prior: 1913 c 157 § 10; RRS § 4640.]

72.20.090 Hiring out—Apprenticeships—Compensation. The superintendent shall have power to place any girl under the age of eighteen years at any employment for account of the institution or the girl employed, and receive and hold the whole or any part of her wages for the benefit of the girl less the amount necessary for her board and keep, and may also, with the consent of any girl over fourteen years of age, and the approval of the secretary endorsed thereon, execute indentures of apprenticeship, which shall be binding on all parties thereto. In case any girl so apprenticed shall prove untrustworthy or unsatisfactory, the superintendent may permit her to be returned to the school, and the indenture may thereupon be canceled. If such girl shall have an unsuitable employer, the superintendent may, with the approval of the secretary, take her back to the school, and cancel the indenture of apprenticeship. All indentures so made shall be filed and kept in the school. A system may also be established, providing for compensation to girls for services rendered, and payments may be made from time to time, not to exceed in the aggregate to any one girl the sum of twenty-five dollars

for each year of service. [1979 c 141 § 232; 1959 c 28 § 72.20.090. Prior: 1913 c 157 § 12; RRS § 4642.]

Chapter 72.23

PUBLIC AND PRIVATE FACILITIES FOR MENTALLY ILL

Sections

72.23.010	Definitions.
72.23.020	State hospitals designated.
72.23.025	Eastern and Western state hospital boards established—Duties—Institutes for the study and treatment of mental disorders established—Relocation of inappropriately placed persons, plan to legislature.
72.23.030	Superintendent—Powers—Direction of clinical care, exception.
72.23.035	Background checks of prospective employees.
72.23.040	Seal of hospital.
72.23.050	Superintendent as witness—Exemptions from military duty.
72.23.060	Gifts—Record—Use.
72.23.080	Voluntary patients—Legal competency—Record.
72.23.100	Voluntary patients—Policy—Duration.
72.23.110	Voluntary patients—Limitation as to number.
72.23.120	Voluntary patients—Charges for hospitalization.
72.23.125	Temporary residential observation and evaluation of persons requesting treatment.
72.23.130	History of patient.
72.23.160	Escape—Apprehension and return.
72.23.170	Escape of patient—Penalty for assisting.
72.23.180	Discharge, parole, death, escape—Notice—Certificate of discharge.
72.23.190	Death—Report to coroner.
72.23.200	Persons under eighteen—Confinement in adult wards.
72.23.210	Persons under eighteen—Special wards and attendants.
72.23.230	Patient's property—Superintendent as custodian—Management and accounting.
72.23.240	Patient's property—Delivery to superintendent as acquittance—Defense, indemnity.
72.23.250	Funds donated to patients.
72.23.260	Federal patients—Agreements authorized.
72.23.280	Nonresidents—Hospitalization.
72.23.290	Transfer of patients—Authority of transferee.
72.23.300	Bringing narcotics, intoxicating liquors, weapons, etc., into institution or its grounds prohibited—Penalty.
72.23.900	Construction—Purpose—1959 c 28.
72.23.910	Construction—Effect on laws relating to the criminally insane—"Insane" as used in other statutes.

Commitment to veterans' administration or other federal agency: RCW 73.36.165.

County hospitals: Chapter 36.62 RCW.

Division of mental health: Chapter 43.20A RCW.

Mental illness, commitment procedures, rights, etc.: Chapter 71.05 RCW.

Minors—Mental health services, commitment: Chapter 71.34 RCW.

Out-of-state physicians, conditional license to practice in conjunction with institutions: RCW 18.71.095.

Private mental establishments: Chapter 71.12 RCW.

Record as to patients or inmates for purposes of vital statistics: RCW 70.58.270.

Sexual psychopaths: Chapter 71.06 RCW.

72.23.010 Definitions. As used in this chapter, the following terms shall have the following meanings:

"Department" means the department of social and health services.

"Mentally ill person" shall mean any person who, pursuant to the definitions contained in RCW 71.05.020,

as a result of a mental disorder presents a likelihood of serious harm to others or himself or is gravely disabled.

"Patient" shall mean a person under observation, care or treatment in a state hospital, or a person found mentally ill by the court, and not discharged from a state hospital, or other facility, to which such person had been ordered hospitalized.

"Licensed physician" shall mean an individual permitted to practice as a physician under the laws of the state, or a medical officer, similarly qualified, of the government of the United States while in this state in performance of his official duties.

"Secretary" means the secretary of social and health services.

"State hospital" shall mean any hospital operated and maintained by the state of Washington for the care of the mentally ill.

"Superintendent" shall mean the superintendent of a state hospital.

"Court" shall mean the superior court of the state of Washington.

"Resident" shall mean a resident of the state of Washington.

Wherever used in this chapter, the masculine shall include the feminine and the singular shall include the plural. [1981 c 136 § 99; 1974 ex.s. c 145 § 2; 1973 1st ex.s. c 142 § 3; 1959 c 28 § 72.23.010. Prior: 1951 c 139 § 2. Formerly RCW 71.02.010.]

Effective date—1981 c 136: See RCW 72.09.900.

Severability—Construction—Effective date—1973 1st ex.s. c 142: See RCW 71.05.900 through 71.05.930.

72.23.020 State hospitals designated. There are hereby permanently located and established the following state hospitals: Western state hospital at Fort Steilacoom, Pierce county; eastern state hospital at Medical Lake, Spokane county; and northern state hospital near Sedro Woolley, Skagit county. [1959 c 28 § 72.23.020. Prior: 1951 c 139 § 6. Formerly RCW 71.02.440.]

72.23.025 Eastern and Western state hospital boards established—Duties—Institutes for the study and treatment of mental disorders established—Relocation of inappropriately placed persons, plan to legislature. (1) It is the intent of the legislature to improve the quality of service at state hospitals, eliminate overcrowding, and more specifically define the role of the state hospitals. The legislature intends that eastern and western state hospitals shall become clinical centers for handling the most complicated long-term care needs. Over the next six years, their involvement in providing short-term and acute care shall be diminished in accordance with the revised responsibilities for mental health care under chapter 71.24 RCW. The legislature finds that establishment of the eastern state hospital board, the western state hospital board, and institutes for the study and treatment of mental disorders at both eastern state hospital and western state hospital will be instrumental in implementing the legislative intent.

(2)(a) The eastern state hospital board and the western state hospital board are each established. Members of the boards shall be appointed by the governor with the consent of the senate. Each board shall include:

- (i) The director of the institute for the study and treatment of mental disorders established at the hospital;
- (ii) One family member of a current or recent hospital resident;
- (iii) One consumer of services;
- (iv) One community mental health service provider;
- (v) Two citizens with no financial or professional interest in mental health services;
- (vi) One representative of the regional support network in which the hospital is located;
- (vii) One representative from the staff who is a physician;
- (viii) One representative from the nursing staff;
- (ix) One representative from the other professional staff;
- (x) One representative from the nonprofessional staff; and
- (xi) One representative of a minority community.

(b) At least one representative listed in (a) (viii), (ix), or (x) of this subsection shall be a union member.

(c) Members shall serve four-year terms. Members of the board shall be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060 and shall receive compensation as provided in RCW 43.03.240.

(3) The boards established under this section shall:

- (a) Monitor the operation and activities of the hospital;
- (b) Review and advise on the hospital budget;
- (c) Make recommendations to the governor and the legislature for improving the quality of service provided by the hospital;
- (d) Monitor and review the activities of the hospital in implementing the intent of the legislature set forth in this section;
- (e) Report periodically to the governor and the legislature on the implementation of the legislative intent set forth in this section; and
- (f) Consult with the secretary regarding persons the secretary may select as the superintendent of the hospital whenever a vacancy occurs.

(4)(a) There is established at eastern state hospital and western state hospital, institutes for the study and treatment of mental disorders. The institutes shall be operated by joint operating agreements between state colleges and universities and the department of social and health services. The institutes are intended to:

- (i) Promote recruitment and retention of highly qualified professionals at the state hospitals;
- (ii) Improve clinical care by exploring new, innovative, and scientifically based treatment models for persons presenting particularly difficult and complicated clinical syndromes;
- (iii) Provide expanded training opportunities for existing staff at the state hospitals;

(iv) Promote bilateral understanding of treatment orientation, possibilities, and challenges between state hospital professionals and community mental health professionals.

(b) To accomplish these purposes the institutes may, within funds appropriated for this purpose:

(i) Enter joint operating agreements with state universities or other institutions of higher education to accomplish the placement and training of students and faculty in psychiatry, psychology, social work, occupational therapy, nursing, and other relevant professions at the state hospitals;

(ii) Design and implement clinical research projects to improve the quality and effectiveness of state hospital services and operations;

(iii) Enter into agreements with community mental health service providers to accomplish the exchange of professional staff between the state hospitals and community mental health service providers;

(iv) Establish a student loan forgiveness program to retain qualified professionals at the state hospitals when the superintendent has determined a shortage of such professionals exists.

(c) Notwithstanding any other provisions of law to the contrary, the institutes may enter into agreements with the department or the state hospitals which may involve changes in staffing necessary to implement improved patient care programs contemplated by this section.

(d) The institutes are authorized to seek and accept public or private gifts, grants, contracts, or donations to accomplish their purposes under this section.

(5) The department shall review the diagnoses and treatment history of hospital patients and create a plan to locate inappropriately placed persons into medicaid reimbursable nursing homes or other nonhospital settings. The plan shall be submitted to the legislature by June 30, 1990. [1989 c 205 § 21.]

Evaluation of transition to regional systems—1989 c 205: See note following RCW 71.24.015.

72.23.030 Superintendent—Powers—Direction of clinical care, exception. The superintendent of a state hospital subject to rules of the department, shall have control of the internal government and economy of a state hospital and shall appoint and direct all subordinate officers and employees. If the superintendent is not a psychiatrist, clinical care shall be under the direction of a qualified psychiatrist. [1983 1st ex.s. c 41 § 28; 1969 c 56 § 2; 1959 c 28 § 72.23.030. Prior: 1951 c 139 § 7. Formerly RCW 71.02.510.]

Severability—1983 1st ex.s. c 41: See note following RCW 26.09.060.

Appointment of chief executive officers: RCW 72.01.060.

72.23.035 Background checks of prospective employees. In consultation with law enforcement personnel, the secretary shall have the power and duty to investigate the conviction record and the protection proceeding record information under chapter 43.43 RCW of each prospective employee of a state hospital. [1989 c 334 § 12.]

72.23.040 Seal of hospital. The superintendent shall provide an official seal upon which shall be inscribed the statutory name of the hospital under his charge and the name of the state. He shall affix the seal of the hospital to any notice, order of discharge, or other paper required to be given by him or issued. [1959 c 28 § 72.23.040. Prior: 1951 c 139 § 8. Formerly RCW 71.02.540.]

72.23.050 Superintendent as witness—Exemptions from military duty. The superintendent shall not be required to attend any court as a witness in a civil or juvenile court proceedings, but parties desiring his testimony can take and use his deposition; nor shall he be required to attend as a witness in any criminal case, unless the court before which his testimony shall be desired shall, upon being satisfied of the materiality of his testimony require his attendance; and, in time of peace, he and all other persons employed at the hospital shall be exempt from performing military duty; and the certificate of the superintendent shall be evidence of such employment. [1979 ex.s. c 135 § 5; 1959 c 28 § 72.23.050. Prior: 1951 c 139 § 9. Formerly RCW 71.02.520.]

Severability—1979 ex.s. c 135: See note following RCW 2.36.080.

72.23.060 Gifts—Record—Use. The superintendent is authorized to accept and receive from any person or organization gifts of money or personal property on behalf of the state hospital under his charge, or on behalf of the patients therein. The superintendent is authorized to use such money or personal property for the purposes specified by the donor where such purpose is consistent with law. In the absence of a specified use the superintendent may use such money or personal property for the benefit of the state hospital under his charge or for the general benefit of the patients therein. The superintendent shall keep an accurate record of the amount or kind of gift, the date received, and the name and address of the donor. The superintendent may deposit any money received as he sees fit upon the giving of adequate security. Any increase resulting from such gift may be used for the same purpose as the original gift. Gratuities received for services rendered by a state hospital staff in their official capacity shall be used for the purposes specified in this section. [1959 c 28 § 72.23.060. Prior: 1951 c 139 § 10. Formerly RCW 71.02.600.]

72.23.080 Voluntary patients—Legal competency—Record. Any person received and detained in a state hospital pursuant to *RCW 72.23.070 shall be deemed a voluntary patient and shall not suffer a loss of legal competency by reason of his application and admission. Upon the admission of a voluntary patient to a state hospital the superintendent shall immediately forward to the department the record of such patient showing the name, address, sex, age, place of birth, occupation, date of admission, name of nearest relative, and such other information as the department may from time to time require. [1959 c 28 § 72.23.080. Prior: 1951 c 139 § 12; 1949 c 198 § 19, part; Rem. Supp. 1949 § 6953-19, part. Formerly RCW 71.02.040.]

***Reviser's note:** RCW 72.23.070 was repealed by 1985 c 354 § 34, effective January 1, 1986. Later enactment, see chapter 71.34 RCW.

72.23.100 Voluntary patients—Policy—Duration. It shall be the policy of the department to permit liberal use of the foregoing sections for the admission of those cases that can be benefited by treatment and returned to normal life and mental condition, in the opinion of the superintendent, within a period of six months. No person shall be carried as a voluntary patient for a period of more than one year. [1973 1st ex.s. c 142 § 5; 1959 c 28 § 72.23.100. Prior: 1951 c 139 § 14; 1949 c 198 § 19, part; Rem. Supp. 1949 § 6953-19, part. Formerly RCW 71.02.060.]

Severability—Construction—Effective date—1973 1st ex.s. c 142: See RCW 71.05.900 through 71.05.930.

72.23.110 Voluntary patients—Limitation as to number. If it becomes necessary because of inadequate facilities or staff, the department may limit applicants for voluntary admission in accordance with such rules and regulations as it may establish. The department may refuse all applicants for voluntary admission where lack of adequate facilities or staff make such action necessary. [1959 c 28 § 72.23.110. Prior: 1951 c 139 § 15. Formerly RCW 71.02.070.]

72.23.120 Voluntary patients—Charges for hospitalization. Payment of hospitalization charges shall not be a necessary requirement for voluntary admission: *Provided, however,* The department may request payment of hospitalization charges, or any portion thereof, from the patient or relatives of the patient within the following classifications: Spouse, parents, or children. Where the patient or relatives within the above classifications refuse to make the payments requested, the department shall have the right to discharge such patient or initiate proceedings for involuntary hospitalization. The maximum charge shall be the same for voluntary and involuntary hospitalization. [1959 c 28 § 72.23.120. Prior: 1951 c 139 § 16. Formerly RCW 71.02.080.]

72.23.125 Temporary residential observation and evaluation of persons requesting treatment. The department is directed to establish at each state hospital a procedure, including the necessary resources, to provide temporary residential observation and evaluation of persons who request treatment, unless admitted under *RCW 72.23.070. Temporary residential observation and evaluation under this section shall be for a period of not less than twenty-four hours nor more than forty-eight hours and may be provided informally without complying with the admission procedure set forth in *RCW 72.23.070 or the rules and regulations established thereunder.

It is the intent of the legislature that temporary observation and evaluation as described in this section be provided in all cases except where an alternative such as: (1) Delivery to treatment outside the hospital, or (2) no need for treatment is clearly indicated. [1979 ex.s. c 215 § 18.]

*Reviser's note: RCW 72.23.070 was repealed by 1985 c 354 § 34, effective January 1, 1986. Later enactment, see chapter 71.34 RCW.

72.23.130 History of patient. It shall be the duty of the superintendent to ascertain by diligent inquiry and correspondence, the history of each and every patient admitted to his hospital. [1959 c 28 § 72.23.130. Prior: 1951 c 139 § 40. Formerly RCW 71.02.530.]

72.23.160 Escape—Apprehension and return. If a patient shall escape from a state hospital the superintendent shall cause immediate search to be made for him and return him to said hospital wherever found. Notice of such escape shall be given to the committing court who may issue an order of apprehension and return directed to any peace officer within the state. Notice may be given to any sheriff or peace officer, who, when requested by the superintendent, may apprehend and detain such escapee or return him to the state hospital without warrant. [1959 c 28 § 72.23.160. Prior: 1951 c 139 § 43. Formerly RCW 71.02.630.]

72.23.170 Escape of patient—Penalty for assisting. Any person who procures the escape of any patient of any state hospital for the mentally ill, or institutions for psychopaths to which such patient has been lawfully committed, or who advises, connives at, aids, or assists in such escape or conceals any such escape, is guilty of a felony and shall be punished by imprisonment in a state penal institution for a term of not more than five years or by a fine of not more than five hundred dollars or by both imprisonment and fine. [1959 c 28 § 72.23.170. Prior: 1957 c 225 § 1, part; 1949 c 198 § 20, part; Rem. Supp. 1949 § 6953-20, part. Formerly RCW 71.12.620, part.]

72.23.180 Discharge, parole, death, escape—Notice—Certificate of discharge. Whenever a patient dies, escapes, or is paroled or discharged from a state hospital, the superintendent shall immediately notify the clerk of the court which ordered such patient's hospitalization. A copy of such notice shall be given to the next of kin or next friend of such patient if their names or addresses are known or can, with reasonable diligence, be ascertained. Whenever a patient is discharged the superintendent shall issue such patient a certificate of discharge. Such notice or certificate shall give the date of parole, discharge, or death of said patient, and shall state the reasons for parole or discharge, or the cause of death, and shall be signed by the superintendent. [1959 c 28 § 72.23.180. Prior: 1951 c 139 § 44. Formerly RCW 71.02.640.]

Disposition of property of deceased inmate of state institution: RCW 11.08.101, 11.08.111, 11.08.120.

72.23.190 Death—Report to coroner. In the event of the sudden or mysterious death of any patient at a state hospital, not on parole or escape therefrom, such fact shall be reported by the superintendent thereof to the coroner of the county in which the death occurs. [1959 c 28 § 72.23.190. Prior: 1951 c 139 § 45. Formerly RCW 71.02.660.]

72.23.200 Persons under eighteen—Confinement in adult wards. No mentally ill person under the age of sixteen years shall be regularly confined in any ward in any state hospital which ward is designed and operated for the care of the mentally ill eighteen years of age or over. No person of the ages of sixteen and seventeen shall be placed in any such ward, when in the opinion of the superintendent such placement would be detrimental to the mental condition of such a person or would impede his recovery or treatment. [1971 ex.s. c 292 § 52; 1959 c 28 § 72.23.200. Prior: 1951 c 139 § 46; 1949 c 198 § 17; Rem. Supp. 1949 § 6953-17. Formerly RCW 71.02.550.]

Severability—1971 ex.s. c 292: See note following RCW 26.28.010.

72.23.210 Persons under eighteen—Special wards and attendants. The department may designate one or more wards at one or more state hospitals as may be deemed necessary for the sole care and treatment of persons under eighteen years of age admitted thereto. Nurses and attendants for such ward or wards shall be selected for their special aptitude and sympathy with such young people, and occupational therapy and recreation shall be provided as may be deemed necessary for their particular age requirements and mental improvement. [1971 ex.s. c 292 § 53; 1959 c 28 § 72.23.210. Prior: 1951 c 139 § 47; 1949 c 198 § 18; Rem. Supp. 1949 § 6953-18. Formerly RCW 71.02.560.]

Severability—1971 ex.s. c 292: See note following RCW 26.28.010.

72.23.230 Patient's property—Superintendent as custodian—Management and accounting. The superintendent of a state hospital shall be the custodian without compensation of such personal property of a patient involuntarily hospitalized therein as may come into the superintendent's possession while the patient is under the jurisdiction of the hospital. As such custodian, the superintendent shall have authority to disburse moneys from the patients' funds for the following purposes only and subject to the following limitations:

(1) The superintendent may disburse any of the funds in his possession belonging to a patient for such personal needs of that patient as may be deemed necessary by the superintendent; and

(2) Whenever the funds belonging to any one patient exceed the sum of one thousand dollars or a greater sum as established by rules and regulations of the department, the superintendent may apply the excess to reimbursement for state hospitalization and/or outpatient charges of such patient to the extent of a notice and finding of responsibility issued under RCW 43.20B.340; and

(3) When a patient is paroled, the superintendent shall deliver unto the said patient all or such portion of the funds or other property belonging to the patient as the superintendent may deem necessary and proper in the interests of the patient's welfare, and the superintendent may during the parole period deliver to the patient such additional property or funds belonging to the

patient as the superintendent may from time to time determine necessary and proper. When a patient is discharged from the jurisdiction of the hospital, the superintendent shall deliver to such patient all funds or other property belonging to the patient, subject to the conditions of subsection (2) of this section.

All funds held by the superintendent as custodian may be deposited in a single fund. Annual reports of receipts and expenditures shall be forwarded to the department, and shall be open to inspection by interested parties: *Provided*, That all interest accruing from, or as a result of the deposit of such moneys in a single fund shall be used by the superintendent for the general welfare of all the patients of such institution: *Provided, further*, That when the personal accounts of patients exceed three hundred dollars, the interest accruing from such excess shall be credited to the personal accounts of such patients. All such expenditures shall be accounted for by the superintendent.

The appointment of a guardian for the estate of such patient shall terminate the superintendent's authority to pay state hospitalization charges from funds subject to the control of the guardianship upon the superintendent's receipt of a certified copy of letters of guardianship. Upon the guardian's request, the superintendent shall forward to such guardian any funds subject to the control of the guardianship or other property of the patient remaining in the superintendent's possession, together with a final accounting of receipts and expenditures. [1987 c 75 § 21; 1985 c 245 § 4; 1971 c 82 § 1; 1959 c 60 § 1; 1959 c 28 § 72.23.230. Prior: 1953 c 217 § 2; 1951 c 139 § 49. Formerly RCW 71.02.570.]

Savings—Severability—1987 c 75: See RCW 43.20B.900 and 43.20B.901.

Guardianship of estate: Chapters 11.88 and 11.92 RCW.

72.23.240 Patient's property—Delivery to superintendent as acquittance—Defense, indemnity. Upon receipt of a written request signed by the superintendent stating that a designated patient of such hospital is involuntarily hospitalized therein, and that no guardian of his estate has been appointed, any person, bank, firm or corporation having possession of any money, bank accounts, or choses in action owned by such patient, may, if the balance due does not exceed one thousand dollars, deliver the same to the superintendent and mail written notice thereof to such patient at such hospital. The receipt of the superintendent shall be full and complete acquittance for such payment and the person, bank, firm or corporation making such payment shall not be liable to the patient or his legal representatives. All funds so received by the superintendent shall be deposited in such patient's personal account at such hospital and be administered in accordance with this chapter.

If any proceeding is brought in any court to recover property so delivered, the attorney general shall defend the same without cost to the person, bank, firm or corporation effecting such delivery, and the state shall indemnify such person, bank, firm or corporation against any judgment rendered as a result of such proceeding.

(1989 Ed.)

[1959 c 28 § 72.23.240. Prior: 1953 c 217 § 1. Formerly RCW 71.02.575.]

72.23.250 Funds donated to patients. The superintendent shall also have authority to receive funds for the benefit of individual patients and may disburse such funds according to the instructions of the donor of such funds. [1959 c 28 § 72.23.250. Prior: 1951 c 139 § 50. Formerly RCW 71.02.580.]

72.23.260 Federal patients—Agreements authorized. The department shall have the power, in the name of the state, to enter into contracts with any duly authorized representative of the United States government, providing for the admission to, and the separate or joint observation, maintenance, care, treatment and custody in, state hospitals of persons entitled to or requiring the same, at the expense of the United States, and contracts providing for the separate or joint maintenance, care, treatment or custody of such persons hospitalized in the manner provided by law, and to perform such contracts, which contracts shall provide that all payments due the state of Washington from the United States for services rendered under said contracts shall be paid to the department. [1959 c 28 § 72.23.260. Prior: 1951 c 139 § 65. Formerly RCW 71.02.460.]

72.23.280 Nonresidents—Hospitalization. Nonresidents of this state conveyed or coming herein while mentally ill shall not be hospitalized in a state hospital, but this prohibition shall not prevent the hospitalization and temporary care in said hospitals of such persons stricken with mental illness while traveling or temporarily sojourning in this state, or sailors attacked with mental illness upon the high seas and first arriving thereafter in some port within this state. [1959 c 28 § 72.23.280. Prior: 1951 c 139 § 67. Formerly RCW 71.02.470.]

72.23.290 Transfer of patients—Authority of transferee. Whenever it appears to be to the best interests of the patients concerned, the department shall have the authority to transfer such patients among the various state hospitals pursuant to rules and regulations established by said department. The superintendent of a state hospital shall also have authority to transfer patients eligible for treatment to the veterans administration or other United States government agency where such transfer is satisfactory to such agency. Such agency shall possess the same authority over such patients as the superintendent would have possessed had the patient remained in a state hospital. [1959 c 28 § 72.23.290. Prior: 1951 c 139 § 68. Formerly RCW 71.02.480.]

Commitment to veterans' administration or other federal agency: RCW 73.36.165.

72.23.300 Bringing narcotics, intoxicating liquors, weapons, etc., into institution or its grounds prohibited—Penalty. Any person not authorized by law so to do, who brings into any state institution for the care and treatment of mental illness or within the grounds thereof, any opium, morphine, cocaine or other narcotic,

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or any intoxicating liquor of any kind whatever, except for medicinal or mechanical purposes, or any firearms, weapons, or explosives of any kind is guilty of a felony. [1959 c 28 § 72.23.300. Prior: 1949 c 198 § 52; Rem. Supp. 1949 § 6932-52. Formerly RCW 71.12.630.]

Uniform controlled substances act: Chapter 69.50 RCW.

72.23.900 Construction—Purpose—1959 c 28.

The provisions of this chapter shall be liberally construed so that persons who are in need of care and treatment for mental illness shall receive humane care and treatment and be restored to normal mental condition as rapidly as possible with an avoidance of loss of civil rights where not necessary, and with as little formality as possible, still preserving all rights and all privileges of the person as guaranteed by the Constitution. [1959 c 28 § 72.23.900. Prior: 1951 c 139 § 1.]

72.23.910 Construction—Effect on laws relating to the criminally insane—"Insane" as used in other statutes. Nothing in this chapter shall be construed as affecting the laws of this state relating to the criminally insane or insane inmates of penal institutions. Where the term "insane" is used in other statutes of this state its meaning shall be synonymous with mental illness as defined in this chapter. [1959 c 28 § 72.23.910. Prior: 1951 c 139 § 4; 1949 c 198 § 15; Rem. Supp. 1949 § 6953-15. Formerly RCW 71.02.020.]

Chapter 72.25

NONRESIDENT MENTALLY ILL, SEXUAL PSYCHOPATHS, AND PSYCHOPATHIC DELINQUENTS—DEPORTATION, TRANSPORTATION

Sections

72.25.010	Deportation of aliens—Return of residents.
72.25.020	Return of nonresidents—Reciprocity—Expense—Resident of this state defined.
72.25.030	Assistance—Payment of expenses.

Council for the prevention of child abuse and neglect: Chapter 43.121 RCW.

72.25.010 Deportation of aliens—Return of residents. It shall be the duty of the secretary of the department of social and health services, in cooperation with the United States bureau of immigration and/or the United States department of the interior, to arrange for the deportation of all alien sexual psychopaths, psychopathic delinquents, or mentally ill persons who are now confined in, or who may hereafter be committed to, any state hospital for the sexual psychopath, psychopathic delinquent, or the mentally ill in this state; to transport such alien sexual psychopaths, psychopathic delinquents, or mentally ill persons to such point or points as may be designated by the United States bureau of immigration or by the United States department of the interior; and to give written permission for the return of any resident of Washington now or hereafter confined in a hospital for the sexual psychopath, psychopathic delinquent, or

the mentally ill in a territory of the United States or in a foreign country. Mentally ill person for the purposes of this section shall be any person defined as mentally ill under RCW 72.23.010, as now or hereafter amended. [1977 ex.s. c 80 § 49; 1965 c 78 § 1; 1959 c 28 § 72.25.010. Prior: 1957 c 29 § 1; 1953 c 232 § 1. Formerly RCW 71.04.270.]

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.

Minors—Mental health services, commitment: Chapter 71.34 RCW. Sexual psychopaths: Chapter 71.06 RCW.

72.25.020 Return of nonresidents—Reciprocity—Expense—Resident of this state defined. The secretary shall also return all nonresident sexual psychopaths, psychopathic delinquents, or mentally ill persons who are now confined in or who may hereafter be committed to a state hospital for the sexual psychopath, psychopathic delinquent, or the mentally ill in this state to the states or state in which they may have a legal residence. For the purpose of facilitating the return of such persons the secretary may enter into a reciprocal agreement with any other state for the mutual exchange of sexual psychopaths, psychopathic delinquents, or mentally ill persons now confined in or hereafter committed to any hospital for the sexual psychopath, psychopathic delinquent, or the mentally ill in one state whose legal residence is in the other, and he may give written permission for the return of any resident of Washington now or hereafter confined in a hospital for the sexual psychopath, psychopathic delinquent, or the mentally ill in another state. Such residents may be returned directly to the proper Washington state institution without further court proceedings: *Provided*, That if the superintendent of such institution is of the opinion that the returned person is not a sexual psychopath, a psychopathic delinquent, or mentally ill person he may discharge said patient: *Provided further*, That if such superintendent deems such person a sexual psychopath, a psychopathic delinquent, or mentally ill person, he shall file an application for commitment within ninety days of arrival at the Washington institution.

A person shall be deemed to be a resident of this state within the meaning of this chapter who has maintained his domiciliary residence in this state for a period of one year preceding commitment to a state institution without receiving assistance from any tax supported organization and who has not subsequently acquired a domicile in another state: *Provided*, That any period of time spent by such person while an inmate of a state hospital or state institution or while on parole, escape, or leave of absence therefrom shall not be counted in determining the time of residence in this or another state.

All expenses incurred in returning sexual psychopaths, psychopathic delinquents, or mentally ill persons from this to another state may be paid by this state, but the expense of returning residents of this state shall be borne by the state making the return. Mentally ill person for the purposes of this section shall be any person defined as mentally ill under RCW 72.23.010, as now or hereafter amended. [1977 ex.s. c 80 § 50; 1965 c 78 § 2; 1959

c 28 § 72.25.020. Prior: 1957 c 29 § 2; 1953 c 232 § 2. Formerly RCW 71.04.280.]

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.

72.25.030 Assistance—Payment of expenses. For the purpose of carrying out the provisions of this chapter the secretary may employ all help necessary in arranging for and transporting such alien and nonresident sexual psychopaths, psychopathic delinquents, or mentally ill persons, and the cost and expense of providing such assistance, and all expenses incurred in effecting the transportation of such alien and nonresident sexual psychopaths, psychopathic delinquents, or mentally ill persons, shall be paid from the funds appropriated for that purpose upon vouchers approved by the department. Mentally ill person for the purposes of this section shall be any person defined as mentally ill under RCW 72.23.010, as now or hereafter amended. [1977 ex.s. c 80 § 51; 1965 c 78 § 3; 1959 c 28 § 72.25.030. Prior: 1957 c 29 § 3; 1953 c 232 § 3. Formerly RCW 71.04.290.]

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.

Chapter 72.27

INTERSTATE COMPACT ON MENTAL HEALTH

Sections

72.27.010	Compact enacted.
72.27.020	Secretary is compact administrator—Rules and regulations—Cooperation with other agencies.
72.27.030	Supplementary agreements.
72.27.040	Financial arrangements.
72.27.050	Prerequisites for transfer of person to another party state—Release or return of residents, jurisdiction, laws applicable.
72.27.060	Transmittal of copies of chapter.
72.27.070	Right to deport aliens and return residents of nonparty states preserved.

72.27.010 Compact enacted. The Interstate Compact on Mental Health is hereby enacted into law and entered into by this state with all other states legally joining therein in the form substantially as follows:

The contracting states solemnly agree that:

ARTICLE I

The party states find that the proper and expeditious treatment of the mentally ill and mentally deficient can be facilitated by cooperative action, to the benefit of the patients, their families, and society as a whole. Further, the party states find that the necessity of and desirability for furnishing such care and treatment bears no primary relation to the residence or citizenship of the patient but that, on the contrary, the controlling factors of community safety and humanitarianism require that facilities and services be made available for all who are in need of them. Consequently, it is the purpose of this compact and of the party states to provide the necessary legal basis for the institutionalization or other appropriate care and treatment of the mentally ill and mentally deficient under a system that recognizes the paramount

importance of patient welfare and to establish the responsibilities of the party states in terms of such welfare.

ARTICLE II

As used in this compact:

(a) "Sending state" shall mean a party state from which a patient is transported pursuant to the provisions of the compact or from which it is contemplated that a patient may be so sent.

(b) "Receiving state" shall mean a party state to which a patient is transported pursuant to the provisions of the compact or to which it is contemplated that a patient may be so sent.

(c) "Institution" shall mean any hospital or other facility maintained by a party state or political subdivision thereof for the care and treatment of mental illness or mental deficiency.

(d) "Patient" shall mean any person subject to or eligible as determined by the laws of the sending state, for institutionalization or other care, treatment, or supervision pursuant to the provisions of this compact.

(e) "After-care" shall mean care, treatment and services provided a patient, as defined herein, on convalescent status or conditional release.

(f) "Mental illness" shall mean mental disease to such extent that a person so afflicted requires care and treatment for his own welfare, or the welfare of others, or of the community.

(g) "Mental deficiency" shall mean mental deficiency as defined by appropriate clinical authorities to such extent that a person so afflicted is incapable of managing himself and his affairs, but shall not include mental illness as defined herein.

(h) "State" shall mean any state, territory or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

ARTICLE III

(a) Whenever a person physically present in any party state shall be in need of institutionalization by reason of mental illness or mental deficiency, he shall be eligible for care and treatment in an institution in that state irrespective of his residence, settlement or citizenship qualifications.

(b) The provisions of paragraph (a) of this article to the contrary notwithstanding, any patient may be transferred to an institution in another state whenever there are factors based upon clinical determinations indicating that the care and treatment of said patient would be facilitated or improved thereby. Any such institutionalization may be for the entire period of care and treatment or for any portion or portions thereof. The factors referred to in this paragraph shall include the patient's full record with due regard for the location of the patient's family, character of the illness and probable duration thereof, and such other factors as shall be considered appropriate.

(c) No state shall be obliged to receive any patient pursuant to the provisions of paragraph (b) of this article unless the sending state has given advance notice of its intention to send the patient; furnished all available

medical and other pertinent records concerning the patient; given the qualified medical or other appropriate clinical authorities of the receiving state an opportunity to examine the patient if said authorities so wish; and unless the receiving state shall agree to accept the patient.

(d) In the event that the laws of the receiving state establish a system of priorities for the admission of patients, an interstate patient under this compact shall receive the same priority as a local patient and shall be taken in the same order and at the same time that he would be taken if he were a local patient.

(e) Pursuant to this compact, the determination as to the suitable place of institutionalization for a patient may be reviewed at any time and such further transfer of the patient may be made as seems likely to be in the best interest of the patient.

ARTICLE IV

(a) Whenever, pursuant to the laws of the state in which a patient is physically present, it shall be determined that the patient should receive after-care or supervision, such care or supervision may be provided in a receiving state. If the medical or other appropriate clinical authorities having responsibility for the care and treatment of the patient in the sending state shall have reason to believe that after-care in another state would be in the best interest of the patient and would not jeopardize the public safety, they shall request the appropriate authorities in the receiving state to investigate the desirability of affording the patient such after-care in said receiving state, and such investigation shall be made with all reasonable speed. The request for investigation shall be accompanied by complete information concerning the patient's intended place of residence and the identity of the person in whose charge it is proposed to place the patient, the complete medical history of the patient, and such other documents as may be pertinent.

(b) If the medical or other appropriate clinical authorities having responsibility for the care and treatment of the patient in the sending state and the appropriate authorities in the receiving state find that the best interest of the patient would be served thereby, and if the public safety would not be jeopardized thereby, the patient may receive after-care or supervision in the receiving state.

(c) In supervising, treating, or caring for a patient on after-care pursuant to the terms of this article, a receiving state shall employ the same standards of visitation, examination, care, and treatment that it employs for similar local patients.

ARTICLE V

Whenever a dangerous or potentially dangerous patient escapes from an institution in any party state, that state shall promptly notify all appropriate authorities within and without the jurisdiction of the escape in a manner reasonably calculated to facilitate the speedy apprehension of the escapee. Immediately upon the apprehension and identification of any such dangerous or potentially dangerous patient, he shall be detained in the

state where found pending disposition in accordance with law.

ARTICLE VI

The duly accredited officers of any state party to this compact, upon the establishment of their authority and the identity of the patient, shall be permitted to transport any patient being moved pursuant to this compact through any and all states party to this compact, without interference.

ARTICLE VII

(a) No person shall be deemed a patient of more than one institution at any given time. Completion of transfer of any patient to an institution in a receiving state shall have the effect of making the person a patient of the institution in the receiving state.

(b) The sending state shall pay all costs of and incidental to the transportation of any patient pursuant to this compact, but any two or more party states may, by making a specific agreement for that purpose, arrange for a different allocation of costs as among themselves.

(c) No provision of this compact shall be construed to alter or affect any internal relationships among the departments, agencies and officers of and in the government of a party state, or between a party state and its subdivisions, as to the payment of costs, or responsibilities therefor.

(d) Nothing in this compact shall be construed to prevent any party state or subdivision thereof from asserting any right against any person, agency or other entity in regard to costs for which such party state or subdivision thereof may be responsible pursuant to any provision of this compact.

(e) Nothing in this compact shall be construed to invalidate any reciprocal agreement between a party state and a nonparty state relating to institutionalization, care or treatment of the mentally ill or mentally deficient, or any statutory authority pursuant to which such agreements may be made.

ARTICLE VIII

(a) Nothing in this compact shall be construed to abridge, diminish, or in any way impair the rights, duties, and responsibilities of any patient's guardian on his own behalf or in respect of any patient for whom he may serve, except that where the transfer of any patient to another jurisdiction makes advisable the appointment of a supplemental or substitute guardian, any court of competent jurisdiction in the receiving state may make such supplemental or substitute appointment and the court which appointed the previous guardian shall upon being duly advised of the new appointment, and upon the satisfactory completion of such accounting and other acts as such court may by law require, relieve the previous guardian of power and responsibility to whatever extent shall be appropriate in the circumstances: *Provided, however,* That in the case of any patient having settlement in the sending state, the court of competent jurisdiction in the sending state shall have the sole discretion to relieve a guardian appointed by it or continue

his power and responsibility, whichever it shall deem advisable. The court in the receiving state may, in its discretion, confirm or reappoint the person or persons previously serving as guardian in the sending state in lieu of making a supplemental or substitute appointment.

(b) The term "guardian" as used in paragraph (a) of this article shall include any guardian, trustee, legal committee, conservator, or other person or agency however denominated who is charged by law with power to act for or responsibility for the person or property of a patient.

ARTICLE IX

(a) No provision of this compact except Article V shall apply to any person institutionalized while under sentence in a penal or correctional institution or while subject to trial on a criminal charge, or whose institutionalization is due to the commission of an offense for which, in the absence of mental illness or mental deficiency, said person would be subject to incarceration in a penal or correctional institution.

(b) To every extent possible, it shall be the policy of states party to this compact that no patient shall be placed or detained in any prison, jail or lockup, but such patient shall, with all expedition, be taken to a suitable institutional facility for mental illness or mental deficiency.

ARTICLE X

(a) Each party state shall appoint a "compact administrator" who, on behalf of his state, shall act as general coordinator of activities under the compact in his state and who shall receive copies of all reports, correspondence, and other documents relating to any patient processed under the compact by his state either in the capacity of sending or receiving state. The compact administrator or his duly designated representative shall be the official with whom other party states shall deal in any matter relating to the compact or any patient processed thereunder.

(b) The compact administrators of the respective party states shall have power to promulgate reasonable rules and regulations to carry out more effectively the terms and provisions of this compact.

ARTICLE XI

The duly constituted administrative authorities of any two or more party states may enter into supplementary agreements for the provision of any service or facility or for the maintenance of any institution on a joint or cooperative basis whenever the states concerned shall find that such agreements will improve services, facilities, or institutional care and treatment in the fields of mental illness or mental deficiency. No such supplementary agreement shall be construed so as to relieve any party state of any obligation which it otherwise would have under other provisions of this compact.

ARTICLE XII

This compact shall enter into full force and effect as to any state when enacted by it into law and such state shall thereafter be a party thereto with any and all states legally joining therein.

ARTICLE XIII

(a) A state party to this compact may withdraw therefrom by enacting a statute repealing the same. Such withdrawal shall take effect one year after notice thereof has been communicated officially and in writing to the governors and compact administrators of all other party states. However, the withdrawal of any state shall not change the status of any patient who has been sent to said state or sent out of said state pursuant to the provisions of the compact.

(b) Withdrawal from any agreement permitted by Article VII(b) as to costs or from any supplementary agreement made pursuant to Article XI shall be in accordance with the terms of such agreement.

ARTICLE XIV

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state party thereto, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters. [1965 ex.s. c 26 § 1.]

Chapter added: "The foregoing provisions of this act are added to chapter 28, Laws of 1959 and to Title 72 RCW, and shall constitute a new chapter therein." [1965 ex.s. c 26 § 8.]

Effective date—1965 ex.s. c 26: "This act shall take effect upon July 1, 1965." [1965 ex.s. c 26 § 9.]

72.27.020 Secretary is compact administrator—Rules and regulations—Cooperation with other agencies. Pursuant to said compact provided in RCW 72.27.010, the secretary of social and health services shall be the compact administrator and who, acting jointly with like officers of other party states, shall have power to promulgate rules and regulations to carry out more effectively the terms of the compact. The compact administrator is hereby authorized, empowered and directed to cooperate with all departments, agencies and officers of and in the government of this state and its subdivisions in facilitating the proper administration of the compact or any supplementary agreement or agreements entered into by this state thereunder. [1979 c 141 § 233; 1965 ex.s. c 26 § 2.]

72.27.030 Supplementary agreements. The compact administrator is hereby authorized and empowered to

enter into supplementary agreements with appropriate officials of other states pursuant to Articles VII and XI of the compact. In the event that such supplementary agreements shall require or contemplate the use of any institution or facility of this state or require or contemplate the provision of any service by this state, no such agreement shall have force or effect until approved by the head of the department or agency under whose jurisdiction said institution or facility is operated or whose department or agency will be charged with the rendering of such service. [1965 ex.s. c 26 § 3.]

72.27.040 Financial arrangements. The compact administrator, subject to the moneys available therefor, may make or arrange for any payments necessary to discharge any financial obligations imposed upon this state by the compact or by any supplementary agreement entered into thereunder. [1965 ex.s. c 26 § 4.]

72.27.050 Prerequisites for transfer of person to another party state—Release or return of residents, jurisdiction, laws applicable. No person shall be transferred to another party state pursuant to this chapter unless the compact administrator first shall have obtained either:

(a) The written consent to such transfer by the proposed transferee or by others on his behalf, which consent shall be executed in accordance with the requirements of *RCW 72.23.070, and if such person was originally committed involuntarily, such consent also shall be approved by the committing court; or

(b) An order of the superior court approving such transfer, which order shall be obtained from the committing court, if such person was committed involuntarily, otherwise from the superior court of the county where such person resided at the time of such commitment; and such order shall be issued only after notice and hearing in the manner provided for the involuntary commitment of mentally ill or mentally deficient persons as the case may be.

The courts of this state shall have concurrent jurisdiction with the appropriate courts of other party states to hear and determine petitions seeking the release or return of residents of this state who have been transferred from this state under this chapter to the same extent as if such persons were hospitalized in this state; and the laws of this state relating to the release of such persons shall govern the disposition of any such proceeding. [1965 ex.s. c 26 § 5.]

*Reviser's note: RCW 72.23.070 was repealed by 1985 c 354 § 34, effective January 1, 1986. Later enactment, see chapter 71.34 RCW.

72.27.060 Transmittal of copies of chapter. Duly authorized copies of this chapter shall, upon its approval be transmitted by the secretary of state to the governor of each state, the attorney general and the administrator of general services of the United States, and the council of state governments. [1965 ex.s. c 26 § 6.]

72.27.070 Right to deport aliens and return residents of nonparty states preserved. Nothing in this chapter

shall affect the right of the secretary of social and health services to deport aliens and return residents of nonparty states as provided in chapter 72.25 RCW. [1979 c 141 § 234; 1965 ex.s. c 26 § 7.]

Chapter 72.29

MULTI-USE FACILITIES FOR THE MENTALLY OR PHYSICALLY HANDICAPPED OR THE MENTALLY ILL

Sections

72.29.010 Harrison Memorial Hospital property and facilities (Olympic Center for Mental Health and Mental Retardation).

72.29.010 Harrison Memorial Hospital property and facilities (Olympic Center for Mental Health and Mental Retardation). After the acquisition of Harrison Memorial Hospital, the department of social and health services is authorized to enter into contracts for the repair or remodeling of the hospital to the extent they are necessary and reasonable, in order to establish a multi-use facility for the mentally or physically handicapped or the mentally ill. The secretary of the department of social and health services is authorized to determine the most feasible and desirable use of the facility and to operate the facility in the manner he deems most beneficial to the mentally and physically handicapped, or the mentally ill, and is authorized, but not limited to programs for out-patient, diagnostic and referral, day care, vocational and educational services to the community which he determines are in the best interest of the state. [1977 ex.s. c 80 § 52; 1965 c 11 § 3.]

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.

Declaration of purpose—1965 c 11: "The state facilities to provide community services to the mentally and physically deficient and the mentally ill are inadequate to meet the present demand. Great savings to the taxpayers can be achieved while helping to meet these worthwhile needs. It is therefore the purpose of this act to provide for acquisition or lease of Harrison Memorial Hospital property and facilities and the operation thereof as a multi-use facility for the mentally and physically deficient and the mentally ill." [1965 c 11 § 1.]

Department created—Powers and duties transferred to: RCW 43.20A.030.

Use of Harrison Memorial Hospital property for services for persons with developmental disabilities: RCW 71A.20.040.

Chapter 72.36

SOLDIERS' AND VETERANS' HOMES

Sections

72.36.010 Establishment of soldiers' home.
72.36.020 Superintendents—Appointment.
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72.36.040 Colony established—Who may be admitted.
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 72.36.120 Soldiers' home revolving fund—Income and disbursements—Expenditure and revenue control.
 72.36.130 Veterans' home revolving fund—Income and disbursements—Expenditure and revenue control.

Commitment to veterans administration or other federal agency: RCW 73.36.165.

Disposition of property of deceased inmate of state institution: RCW 11.08.101, 11.08.111, 11.08.120.

Employment of dental hygienist without supervision of dentist authorized in state institutions: RCW 18.29.056.

Record as to patients or inmates for purposes of vital statistics: RCW 70.58.270.

72.36.010 Establishment of soldiers' home. There is established at Orting, Pierce county, an institution which shall be known as the Washington soldiers' home. [1959 c 28 § 72.36.010. Prior: 1901 c 167 § 1; 1890 p 269 § 1; RRS § 10727.]

72.36.020 Superintendents—Appointment. The director of the department of veterans affairs shall appoint a superintendent for the state soldiers' home and colony, and a superintendent for the Washington veterans' home, who, with the consent of the director, may be styled, respectively, "commandant of the home". The superintendent shall exercise management and control of the institution in accordance with policies and/or procedures promulgated by the director of the department of veterans affairs and rules and regulations of the department. [1977 c 31 § 2; 1959 c 28 § 72.36.020. Prior: 1890 p 271 § 7; RRS § 10728.]

Chief executive officers, general provisions: RCW 72.01.060.

72.36.030 Who may be admitted. All honorably discharged veterans who have served the United States government in any of its wars, and members of the state militia disabled while in the line of duty, may be admitted to the state soldiers' home at Orting under such rules and regulations as may be adopted by the department: *Provided*, That such applicants have been actual bona fide residents of this state at the time of their application, and are indigent and unable to support themselves: *Provided further*, That the surviving spouses of all veterans and members of the state militia disabled while in the line of duty, who were members of a soldiers' home or colony or veterans' home in this state or entitled to admission thereto at the time of death, and surviving spouses of all such veterans and members of the state militia, who would have been entitled to admission to a soldiers' home or colony or veterans' home in this state at the time of death, but for the fact that they were not indigent and unable to earn a support for themselves and families, which spouses have since the death of their husbands or wives, become indigent and unable to earn a support for themselves shall be admitted to such home: *Provided further*, That such spouses are not less than fifty years of age and were married and living with their husbands or wives on or before three years prior to the date of their application, and have not been married

since the decease of their husbands or wives to any person not a member of a soldiers' home or colony or veterans' home in this state or entitled to admission thereto: *And provided, further*, That sufficient facilities and resources are available to accommodate such applicant. [1977 ex.s. c 186 § 1; 1975 c 13 § 1; 1959 c 28 § 72.36.030. Prior: 1915 c 106 § 1; 1911 c 124 § 1; 1905 c 152 § 1; 1901 c 167 § 2; 1890 p 270 § 2; RRS § 10729.]

Severability—1977 ex.s. c 186: "If any provision of this 1977 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1977 ex.s. c 186 § 12.] For codification of 1977 ex.s. c 186, see Codification Tables, Volume 0.

72.36.035 Definitions. For purposes of this chapter, unless the context clearly indicates otherwise, "actual bona fide residents of this state" shall mean persons who have a domicile in the state of Washington immediately prior to application for membership in the soldiers' home or colony or veterans' home. The term "domicile" shall mean a person's true, fixed, and permanent home and place of habitation, and shall be the place where the person intends to remain, and to which the person expects to return when the person leaves without intending to establish a new domicile elsewhere. [1977 ex.s. c 186 § 11.]

Severability—1977 ex.s. c 186: See note following RCW 72.36.030.

72.36.040 Colony established—Who may be admitted. There is hereby established what shall be known as the "Colony of the State Soldiers' Home." All of the following persons who reside within the limits of Orting school district and have been actual bona fide residents of this state at the time of their application and who have personal property of less than one thousand five hundred dollars and/or a monthly income insufficient to meet their needs outside of residence in such colony and soldiers' home as determined by standards of the department of veterans' affairs, may be admitted to membership in said colony under such rules and regulations as may be adopted by the department.

(1) All honorably discharged veterans who have served in the armed forces of the United States during wartime, members of the state militia disabled while in the line of duty, and their respective spouses with whom they have lived for three years prior to application for membership in said colony. Also, the spouse of any such veteran or disabled member of the state militia is eligible for membership in said colony, if such spouse is the widow or widower of a veteran who was a member of a soldiers' home or colony in this state or entitled to admission thereto at the time of death: *Provided*, That such veterans and members of the state militia shall, while they are members of said colony, be living with their said spouses.

(2) The spouses of all veterans who were members of a soldiers' home or colony in this state or entitled to admission thereto at the time of death, and the spouses of all veterans who would have been entitled to admission to a soldiers' home or colony in this state at the time of

death but for the fact that they were not indigent and unable to support themselves and families, which spouses have since the death of their said husbands or wives become indigent and unable to earn a support for themselves: *Provided*, That such spouses are not less than fifty years of age and have not been married since the decease of their said husbands or wives to any person not a member of a soldiers' home or colony in this state or entitled to admission thereto. Any resident of said colony may be admitted to the state soldiers' home for temporary care when requiring treatment. [1977 ex.s. c 186 § 2. Prior: 1973 1st ex.s. c 154 § 102; 1973 c 101 § 1; 1959 c 235 § 1; 1959 c 28 § 72.36.040; prior: 1947 c 190 § 1; 1925 ex.s. c 74 § 1; 1915 c 106 § 2; Rem. Supp. 1947 § 10730.]

Severability—1977 ex.s. c 186: See note following RCW 72.36.030.

72.36.045 Soldiers' home and colony—Veterans' home—Maintenance defined. In the maintenance of the Washington soldiers' home and colony and the Washington veterans' home by the state through the department of veterans' affairs, such maintenance shall include, but not be limited to, the provision of members' room and board, medical and dental care, physical and occupational therapy, and recreational activities, with the necessary implementing transportation, equipment, and personnel therefor. [1977 ex.s. c 186 § 10.]

Severability—1977 ex.s. c 186: See note following RCW 72.36.030.

72.36.050 Regulations of home applicable—Rations, medical attendance, clothing. The members of the colony established in RCW 72.36.040 as now or hereafter amended shall, to all intents and purposes, be members of the state soldiers' home and subject to all the rules and regulations thereof, except the requirements of fatigue duty, and each member shall, in accordance with rules and regulations adopted by the director, be supplied with medical attendance and supplies from the home dispensary, rations, and clothing for a member and spouse, or for a spouse admitted under RCW 72.36.040 as now or hereafter amended. The value of the supplies, rations, and clothing furnished such persons shall be determined by the director of veterans affairs and be included in the biennial budget. [1979 c 65 § 1; 1973 1st ex.s. c 154 § 103; 1967 c 112 § 1; 1959 c 28 § 72.36.050. Prior: 1947 c 190 § 2; 1939 c 161 § 1; 1927 c 276 § 1; 1925 ex.s. c 74 § 1; 1915 c 106 § 3; Rem. Supp. 1947 § 10731.]

Severability—1973 1st ex.s. c 154: See note following RCW 2.12.030.

72.36.055 Domiciliary and nursing care to be provided. The soldiers' home and colony at Orting and the Washington veterans' home at Retsil shall provide both domiciliary and nursing care. The level of domiciliary members shall remain consistent with the facilities available to accommodate those members: *Provided*,

That nothing in this section shall preclude the department from moving residents between nursing and domiciliary care in order to better utilize facilities and maintain the appropriate care for the members. [1977 ex.s. c 186 § 6.]

Severability—1977 ex.s. c 186: See note following RCW 72.36.030.

72.36.060 Federal funds. The state treasurer is authorized to receive any and all moneys appropriated or paid by the United States under the act of congress entitled "An Act to provide aid to state or territorial homes for disabled soldiers and sailors of the United States," approved August 27, 1888, or under any other act or acts of congress for the benefit of such homes. Such moneys shall be deposited in the general fund and shall be expended for the maintenance of the soldiers' home and veterans' home. [1977 ex.s. c 186 § 3; 1959 c 28 § 72.36.060. Prior: 1897 c 67 § 1; RRS § 10735.]

Severability—1977 ex.s. c 186: See note following RCW 72.36.030.

72.36.070 Washington veterans' home. There shall be established and maintained in this state a branch of the state soldiers' home, under the name of the "Washington veterans' home," which branch shall be a home for honorably discharged veterans who have served the United States government in any of its wars, members of the state militia disabled while in the line of duty, and who are bona fide citizens of the state, and also the spouses of such veterans. [1977 ex.s. c 186 § 4; 1959 c 28 § 72.36.070. Prior: 1907 c 156 § 1; RRS § 10733.]

Severability—1977 ex.s. c 186: See note following RCW 72.36.030.

72.36.080 Who may be admitted to veterans' home. All of the following persons who have been actual bona fide residents of this state at the time of their application, and who are indigent and unable to earn a support for themselves and families may be admitted to the Washington veterans' home under such rules and regulations as may be adopted by the director: *Provided*, That sufficient facilities and resources are available to accommodate such person:

(1) All honorably discharged veterans of the armed forces of the United States who have served the United States in any of its wars, and members of the state militia disabled while in the line of duty, and the spouses of such veterans, and members of the state militia: *Provided*, That such spouse was married to and living with such veteran on or before three years prior to the date of application for admittance, or, if married to him or her since that date, was also a member of a soldiers' home or colony or veterans' home in this state or entitled to admission thereto.

(2) The spouses of all soldiers, sailors, and marines and members of the state militia disabled while in the line of duty, who were members of a soldiers' home or colony or veterans' home in this state or entitled to admission thereto at the time of death, and spouses of all such soldiers, sailors, and marines and members of the

state militia, who would have been entitled to admission to a soldiers' home or colony or veterans' home in this state at the time of death but for the fact that they were not indigent and unable to earn a support for themselves and families, which spouses have since the death of their husbands or wives, become indigent and unable to earn a support for themselves: *Provided*, That such spouses are not less than fifty years of age and were married and living with their husbands or wives on or before three years prior to the date of their application, and have not been married since the decease of their husbands or wives to any person not a member of a soldiers' home or colony or veterans' home in this state or entitled to admission thereto. [1977 ex.s. c 186 § 5; 1975 c 13 § 2; 1973 1st ex.s. c 154 § 104; 1959 c 28 § 72.36.080. Prior: 1955 c 104 § 1; 1927 c 276 § 2; 1915 c 106 § 4; RRS § 10732.]

Severability—1977 ex.s. c 186: See note following RCW 72.36.030.

Severability—1973 1st ex.s. c 154: See note following RCW 2.12.030.

Commitment to veterans administration or other federal agency: RCW 73.36.165.

72.36.090 Hobby promotion. The superintendents of the state soldiers' home and colony and the state veterans' home are hereby authorized to:

(1) Institute programs of hobby promotion designed to improve the general welfare and mental condition of the persons under their supervision;

(2) Provide for the financing of these programs by grants from funds in the superintendent's custody through operation of canteens and exchanges at such institutions;

(3) Limit the hobbies sponsored to projects which will, in their judgment, be self-liquidating or self-sustaining. [1977 ex.s. c 186 § 9; 1959 c 28 § 72.36.090. Prior: 1949 c 114 § 1; Rem. Supp. 1949 § 10736-1.]

Severability—1977 ex.s. c 186: See note following RCW 72.36.030.

72.36.100 Purchase of equipment, materials for therapy, hobbies. The superintendent of each institution referred to in RCW 72.36.090 may purchase, from the appropriation to the institution, for operations, equipment or materials designed to initiate the programs authorized by RCW 72.36.090. [1959 c 28 § 72.36.100. Prior: 1949 c 114 § 2; Rem. Supp. 1949 § 10736-2.]

Division of purchasing: RCW 43.19.190.

72.36.110 Burial of deceased member or deceased spouse. The superintendent of the Washington veterans' home and the superintendent of the Washington soldiers' home and colony are hereby authorized to provide for the burial of deceased members in the cemeteries provided at the Washington veterans' home and Washington soldiers' home: *Provided*, That this section shall not be construed to prevent any relative from assuming jurisdiction of such deceased persons: *Provided further*, That the superintendent of the Washington soldiers' home and colony is hereby authorized to provide

for the burial of husbands and wives of members of the colony of the Washington soldiers' home. [1959 c 120 § 1; 1959 c 28 § 72.36.110. Prior: 1955 c 247 § 7.]

Disposition of property of deceased inmate of state institution: RCW 11.08.101, 11.08.111, 11.08.120.

72.36.120 Soldiers' home revolving fund—Income and disbursements—Expenditure and revenue control. All income of members of the soldiers' home in excess of allowable income shall be deposited in the soldiers' home revolving fund as established in section 55, chapter 269, Laws of 1975 1st ex. sess. (uncodified, and herein continued and reenacted).

(1) Allowable income shall be defined by the rules and regulations adopted by the department: *Provided*, That the allowable income of members accepted for membership shall not be decreased below one hundred sixty dollars per month during periods that such members are resident thereat.

(2) Disbursements from the soldiers' home revolving fund shall be for the benefit and welfare of all members of the soldiers' home and such disbursements shall be on the authorization of the superintendent or his authorized representative after approval has been received from a duly constituted body representative of the members.

(3) In order to maintain an effective expenditure and revenue control, the soldiers' home revolving fund shall be subject in all respects to chapter 43.88 RCW, but no appropriation shall be required to permit expenditures from such funds. [1977 ex.s. c 186 § 7.]

Severability—1977 ex.s. c 186: See note following RCW 72.36.030.

72.36.130 Veterans' home revolving fund—Income and disbursements—Expenditure and revenue control. All income of members of the veterans' home in excess of allowable income shall be deposited in the veterans' home revolving fund as established in section 55, chapter 269, Laws of 1975 1st ex. sess. (uncodified, and herein continued and reenacted).

(1) Allowable income shall be defined by the rules and regulations adopted by the department. However, the allowable income of members accepted for membership shall not be decreased below one hundred sixty dollars per month during periods that such members are resident thereat.

(2) Disbursements from the veterans' home revolving fund shall be for the benefit and welfare of all members of the Washington veterans' home and such disbursements shall be on the authorization of the superintendent of the home or his duly authorized representative after approval has been received from a duly constituted body representative of the members.

(3) In order to maintain an effective expenditure and revenue control, the veterans' home revolving fund shall be subject in all respects to chapter 43.88 RCW, but no appropriation shall be required to permit expenditures from such funds. [1977 ex.s. c 186 § 8.]

Severability—1977 ex.s. c 186: See note following RCW 72.36.030.

Chapter 72.40

STATE SCHOOLS FOR BLIND, DEAF, SENSORY
HANDICAPPED

Sections

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72.40.010 Schools established—Purpose. There are established at Vancouver, Clark county, a school which shall be known as the state school for the blind, and a separate school which shall be known as the state school for the deaf. The primary purpose of the state school for the blind and the state school for the deaf is to educate and train hearing and visually impaired children.

The schools shall be under the direction of their respective superintendents with the advice of the board of trustees. [1985 c 378 § 11; 1959 c 28 § 72.40.010. Prior: 1913 c 10 § 1; 1886 p 136 § 1; RRS § 4645.]

Severability—Effective date—1985 c 378: See notes following RCW 72.01.050.

72.40.019 State school for the deaf—Appointment of superintendent—Qualifications. The governor shall appoint a superintendent for the state school for the deaf. The superintendent shall have a masters degree from an accredited college or university in school administration or deaf education, five years of experience teaching deaf students in the classroom, and three years administrative or supervisory experience in programs for deaf students. [1985 c 378 § 14.]

Severability—Effective date—1985 c 378: See notes following RCW 72.01.050.

72.40.020 State school for the blind—Appointment of superintendent—Qualifications. The governor shall

appoint a superintendent for the state school for the blind. The superintendent shall have a masters degree from an accredited college or university in school administration or blind education, five years of experience teaching blind students in the classroom, and three years administrative or supervisory experience in programs for blind students. [1985 c 378 § 13; 1979 c 141 § 247; 1959 c 28 § 72.40.020. Prior: 1909 c 97 p 258 § 5; RRS § 4649.]

Severability—Effective date—1985 c 378: See notes following RCW 72.01.050.

72.40.022 Superintendents—Powers and duties. In addition to any other powers and duties prescribed by law, the superintendent of the state school for the blind and the superintendent of the state school for the deaf:

(1) Shall have full control of their respective schools and the property of various kinds.

(2) May establish criteria, in addition to state certification, for teachers at their respective schools.

(3) Shall employ members of the faculty, administrative officers, and other employees, who shall all be subject to chapter 41.06 RCW, the state civil service law, unless specifically exempted by other provisions of law.

(4) Shall establish the course of study including vocational training, with the assistance of the faculty and the advice of the respective boards of trustees.

(5) May establish new facilities as needs demand.

(6) May adopt rules, under chapter 34.05 RCW, as deemed necessary for the government, management, and operation of the housing facilities.

(7) Shall control the use of the facilities and authorize the use of the facilities for night school, summer school, public meetings, or other purposes consistent with the purposes of their respective schools.

(8) May adopt rules for pedestrian and vehicular traffic on property owned, operated, and maintained by the respective schools.

(9) Purchase all supplies and lease or purchase equipment and other personal property needed for the operation or maintenance of their respective schools.

(10) Except as otherwise provided by law, may enter into contracts as each superintendent deems essential to the respective purposes of their schools.

(11) May receive gifts, grants, conveyances, devises, and bequests of real or personal property from whatever source, as may be made from time to time, in trust or otherwise, whenever the terms and conditions will aid in carrying out the programs of the respective schools; sell, lease or exchange, invest, or expend the same or the proceeds, rents, profits, and income thereof except as limited by the terms and conditions thereof; and adopt rules to govern the receipt and expenditure of the proceeds, rents, profits, and income thereof.

(12) May contract with the department of social and health services for management consultant or other services which the department, if requested, shall provide.

(13) May, except as otherwise provided by law, enter into contracts as the superintendents deem essential for the operation of their respective schools.

(14) Shall adopt rules providing for the transferability of employees between the school for the deaf and the school for the blind consistent with collective bargaining agreements in effect.

(15) Shall prepare and administer their respective budgets consistent with RCW 43.88.160 and the budget and accounting act, chapter 43.88 RCW generally, as applicable.

(16) May adopt rules under chapter 34.05 RCW and perform all other acts not forbidden by law as the superintendents deem necessary or appropriate to the administration of their respective schools. [1985 c 378 § 15.]

Severability—Effective date—1985 c 378: See notes following RCW 72.01.050.

72.40.024 Superintendents—Additional powers and duties. In addition to the powers and duties under RCW 72.40.022, the superintendent of each school shall:

(1) Monitor the location and educational placement of each student reported to the superintendents by the educational service district superintendents;

(2) Provide information about educational programs, instructional techniques, materials, equipment, and resources available to students with visual or auditory impairments to the parent or guardian, educational service district superintendent, and the superintendent of the school district where the student resides; and

(3) Serve as a consultant to the office of the superintendent of public instruction and assist school districts in improving their instructional programs for students with visual or hearing impairments. [1985 c 378 § 17.]

Severability—Effective date—1985 c 378: See notes following RCW 72.01.050.

72.40.028 Teachers' qualifications—Salaries—Provisional certification. All teachers at the state school for the deaf and the state school for the blind shall meet all certification requirements and the programs shall meet all accreditation requirements and conform to the standards defined by law or by rule of the state board of education or the office of the state superintendent of public instruction. The superintendents, by rule, may adopt additional educational standards for their respective schools. Salaries of all certificated employees shall be set so as to conform to and be contemporary with salaries paid to other certificated employees of similar background and experience in the school district in which the program or facility is located. The superintendents may provide for provisional certification for teachers in their respective schools including certification for emergency, temporary, substitute, or provisional duty. [1985 c 378 § 18.]

Severability—Effective date—1985 c 378: See notes following RCW 72.01.050.

72.40.031 School year—School term—Legal holidays—Use of schools. The school year for the state school for the blind and the state school for the deaf shall commence on the first day of July of each year and shall terminate on the 30th day of June of the

succeeding year. The regular school term shall be for a period of nine months and shall commence as near as reasonably practical at the time of the commencement of regular terms in the public schools, with the equivalent number of days as are now required by law, and the regulations of the superintendent of public instruction as now or hereafter amended, during the school year in the public schools. The school shall observe all legal holidays, in the same manner as other agencies of state government, and the schools will not be in session on such days and such other days as may be approved by the respective superintendents. During the period when the schools are not in session during the regular school term, schools may be operated, subject to the approval of the respective superintendents, for the instruction of students or for such other reasons which are in furtherance of the objects and purposes of such schools. [1985 c 378 § 16; 1979 c 141 § 248; 1970 ex.s. c 50 § 6.]

Severability—Effective date—1985 c 378: See notes following RCW 72.01.050.

72.40.040 Who may be admitted. The schools shall be free to residents of the state between the ages of five and twenty-one years until the 1984–85 school year, between the ages of four and twenty-one years commencing with the 1984–85 school year, and between the ages of three and twenty-one years commencing with the 1985–86 school year and who are visually or hearing impaired or otherwise sensory handicapped with problems of learning originating mainly due to a visual or auditory deficiency. Each school shall admit and retain students on a space available basis according to criteria developed and published by each school superintendent in consultation with each board of trustees and school faculty: *Provided*, That students over the age of twenty-one years, who are otherwise qualified may be retained at the school, if in the discretion of the superintendent in consultation with the faculty they are proper persons to receive further training given at the school and the facilities are adequate for proper care, education, and training. [1985 c 378 § 19; 1984 c 160 § 4; 1977 ex.s. c 80 § 68; 1969 c 39 § 1; 1959 c 28 § 72.40.040. Prior: 1955 c 260 § 1; 1909 c 97 p 258 § 3; 1903 c 140 § 1; 1897 c 118 § 229; 1886 p 136 § 2; RRS § 4647.]

Severability—Effective date—1985 c 378: See notes following RCW 72.01.050.

Severability—1984 c 160: See note following RCW 28A.13.010.

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.

72.40.050 Admission of nonresidents. The superintendents may admit to their respective schools visually or hearing impaired children from other states as appropriate, but the parents or guardians of such children or other state will be required to pay annually or quarterly in advance a sufficient amount to cover the cost of maintaining and educating such children as set by the applicable superintendent. [1985 c 378 § 20; 1979 c 141 § 249; 1959 c 28 § 72.40.050. Prior: 1909 c 97 p 258 § 4; 1897 c 118 § 251; 1886 p 141 § 32; RRS § 4648.]

Severability—Effective date—1985 c 378: See notes following RCW 72.01.050.

72.40.060 Duty of school districts. It shall be the duty of all school districts in the state, to report to their respective educational service districts the names of all visually or hearing impaired youth residing within their respective school districts who are between the ages of three and twenty-one years. [1985 c 378 § 21; 1975 1st ex.s. c 275 § 151; 1969 ex.s. c 176 § 97; 1959 c 28 § 72.40.060. Prior: 1909 c 97 p 258 § 6; 1897 c 118 § 252; 1890 p 497 § 1; RRS § 4650.]

Severability—Effective date—1985 c 378: See notes following RCW 72.01.050.

Effective date—1969 ex.s. c 176: The effective date of this section, RCW 72.40.070, 72.40.080, and 72.40.100 was April 25, 1969.

Rights preserved—Severability—1969 ex.s. c 176: See notes following RCW 28A.21.010.

Superintendent's duties: RCW 28A.58.150.

72.40.070 Duty of educational service districts. It shall be the duty of each educational service district to make a full and specific report of visually or hearing impaired youth to the superintendent of the school for the blind or the school for the deaf, as the case may be and the superintendent of public instruction, annually. The superintendent of public instruction shall report about the hearing or visually impaired youth to the school for the blind and the school for the deaf, as the case may be, annually. [1985 c 378 § 22; 1979 c 141 § 250; 1975 1st ex.s. c 275 § 152; 1969 ex.s. c 176 § 98; 1959 c 28 § 72.40.070. Prior: 1909 c 97 p 259 § 7; 1897 c 118 § 253; 1890 p 497 § 2; RRS § 4651.]

Severability—Effective date—1985 c 378: See notes following RCW 72.01.050.

Effective date—1969 ex.s. c 176: See note following RCW 72.40.060.

Rights preserved—Severability—1969 ex.s. c 176: See notes following RCW 28A.21.010.

Educational service districts—Superintendents—Boards: Chapter 28A.21 RCW.

72.40.080 Duty of parents. It shall be the duty of the parents or the guardians of all such visually or hearing impaired youth to send them each year to the proper school or institution. Full and due consideration shall be given to the parent's or guardian's preference as to which program the child should attend. The educational service district superintendent shall take all action necessary to enforce this section. [1985 c 378 § 23; 1975 1st ex.s. c 275 § 153; 1969 ex.s. c 176 § 99; 1959 c 28 § 72.40.080. Prior: 1909 c 97 p 259 § 8; 1897 c 118 § 254; 1890 p 498 § 3; RRS § 4652.]

Severability—Effective date—1985 c 378: See notes following RCW 72.01.050.

Effective date—1969 ex.s. c 176: See note following RCW 72.40.060.

Rights preserved—Severability—1969 ex.s. c 176: See notes following RCW 28A.21.010.

Handicapped children, parental responsibility, commitment: Chapter 26.40 RCW.

72.40.090 Expense of transportation. If it appears to the satisfaction of the board of county commissioners that the parents of any such visually or hearing impaired youth within their county are unable to bear the expense of transportation to and from the state schools, it shall send them to and return them from the schools or maintain them there during vacation at the expense of the county. Nothing in this section shall be construed as prohibiting the superintendents from authorizing or incurring such travel expenses for the purpose of transporting such visually or hearing impaired youth to and from points within this state during weekends and/or vacation periods. For the purposes of this section, the superintendents shall impose no conditions upon parents or guardians specifying the number of weekends such persons shall take custody of hearing or visually impaired students. [1985 c 378 § 24; 1975 c 51 § 1; 1959 c 28 § 72.40.090. Prior: 1909 c 97 p 259 § 9; 1899 c 142 § 28; 1899 c 81 § 2; 1897 c 118 § 255; RRS § 4653.]

Severability—Effective date—1985 c 378: See notes following RCW 72.01.050.

72.40.100 Penalty. Any parent, guardian, or educational service district superintendent who, without proper cause, fails to carry into effect the provisions of this chapter shall be guilty of a misdemeanor, and upon conviction thereof, upon the complaint of any officer or citizen of the county or state, before any district or superior court, shall be fined in any sum not less than fifty nor more than two hundred dollars. [1987 c 202 § 229; 1985 c 378 § 25; 1975 1st ex.s. c 275 § 154; 1969 ex.s. c 176 § 100; 1959 c 28 § 72.40.100. Prior: 1909 c 97 p 259 § 10; 1897 c 118 § 256; 1890 p 498 § 5; RRS § 4654.]

Intent—1987 c 202: See note following RCW 2.04.190.

Severability—Effective date—1985 c 378: See notes following RCW 72.01.050.

Effective date—1969 ex.s. c 176: See note following RCW 72.40.060.

Rights preserved—Severability—1969 ex.s. c 176: See notes following RCW 28A.21.010.

72.40.110 Employees' hours of labor. The hours of labor for each full time employee shall be a maximum of eight hours in any work day and forty hours in any work week.

Employees required to work in excess of the eight-hour maximum per day or the forty-hour maximum per week shall be compensated by not less than equal hours of compensatory time off or, in lieu thereof, a premium rate of pay per hour equal to not less than one-one hundred and seventy-sixth of the employee's gross monthly salary. If an employee is granted compensatory time off, such time off should be given within the calendar year and if such an arrangement is not possible the employee shall be given a premium rate of pay. However, compensatory time or payment in lieu thereof shall be allowed only for overtime as is duly authorized and accounted for under rules by each superintendent. [1985 c 378 § 12.]

Severability—Effective date—1985 c 378: See notes following RCW 72.01.050.

72.40.115 School for the deaf—School for the blind—Appropriations. Appropriations for the school for the deaf and the school for the blind shall be made to the superintendent of public instruction. The amounts for each institution shall be specified and shall not be used for any other purpose. The superintendent of public instruction shall transmit all the moneys to the state school for the blind or the state school for the deaf at the request of the superintendents of the respective schools. [1985 c 378 § 26.]

Severability—Effective date—1985 c 378: See notes following RCW 72.01.050.

Chapter 72.41

BOARD OF TRUSTEES—SCHOOL FOR THE BLIND

Sections

72.41.010	Intention—Purpose.
72.41.015	"Superintendent" defined.
72.41.020	Board of trustees—Membership—Terms—Vacancies—Officers—Rules and regulations.
72.41.025	Membership, effect of creation of new congressional districts or boundaries.
72.41.030	Bylaws—Rules and regulations—Officers.
72.41.040	Powers and duties.
72.41.060	Travel expenses.
72.41.070	Meetings.
72.41.080	Local advisory committees.

72.41.010 Intention—Purpose. It is the intention of the legislature in creating a board of trustees for the state school for the blind to perform the duties set forth in this chapter, that the board of trustees perform needed advisory services to the legislature and to the superintendent of the Washington state school for the blind, in the development of programs for the visually impaired, and in the operation of the Washington state school for the blind. [1985 c 378 § 28; 1973 c 118 § 1.]

Severability—Effective date—1985 c 378: See notes following RCW 72.01.050.

72.41.015 "Superintendent" defined. Unless the context clearly requires otherwise, as used in this chapter "superintendent" means superintendent of the state school for the blind. [1985 c 378 § 27.]

Severability—Effective date—1985 c 378: See notes following RCW 72.01.050.

72.41.020 Board of trustees—Membership—Terms—Vacancies—Officers—Rules and regulations. There is hereby created a board of trustees for the state school for the blind to be composed of a resident from each of the state's congressional districts now or hereafter existing. Trustees with voting privileges shall be appointed by the governor with the consent of the senate. A representative of the parent-teachers association of the Washington state school for the blind, a representative of the Washington council of the blind, a

representative of the national federation of the blind of Washington, a representative of the united blind of Washington state, one representative designated by the teacher association of the Washington state school for the blind, and a houseparent designated by the houseparents' exclusive bargaining representative shall each be ex officio and nonvoting members of the board of trustees and shall serve during their respective tenures in such positions.

Trustees shall be appointed by the governor to serve for a term of five years except that any person appointed to fill a vacancy occurring prior to the expiration of any term shall be appointed within sixty days of the vacancy and appointed only for the remainder of the term.

One trustee shall be a resident and qualified elector from each of the state's congressional districts. The board shall not be deemed to be unlawfully constituted and a trustee shall not be deemed ineligible to serve the remainder of the trustee's unexpired term on the board solely by reason of the establishment of new or revised boundaries for congressional districts. No voting trustee may be an employee of the state school for the blind, a member of the board of directors of any school district, a member of the governing board of any public or private educational institution, a school district or educational service district administrator, appointed after July 1, 1986, or an elected officer or member of the legislative authority or any municipal corporation.

The board of trustees shall organize itself by electing a chairman from its members. The board shall adopt a seal and may adopt such bylaws, rules, and regulations as it deems necessary for its own government. A majority of the voting members of the board in office shall constitute a quorum, but a lesser number may convene from time to time and may compel the attendance of absent members in such manner as prescribed in its bylaws, rules, or regulations. The superintendent of the state school for the blind shall serve as, or may designate another person to serve as, the secretary of the board, who shall not be deemed to be a member of the board. [1985 c 378 § 29; 1982 1st ex.s. c 30 § 13; 1973 c 118 § 2.]

Severability—Effective date—1985 c 378: See notes following RCW 72.01.050.

72.41.025 Membership, effect of creation of new congressional districts or boundaries. The terms of office of trustees on the board for the state school for the blind who are appointed from the various congressional districts shall not be affected by the creation of either new boundaries for congressional districts or additional districts. In such an event, each trustee may continue to serve in office for the balance of the term for which he or she was appointed: *Provided*, That the trustee continues to reside within the boundaries of the congressional district as they existed at the time of his or her appointment. Vacancies which occur in a trustee position during the balance of any such term shall be filled pursuant to RCW 72.41.020, as now or hereafter amended, by a successor who resides within the boundaries of the congressional district from which the member whose office

was vacated was appointed as they existed at the time of his or her election. At the completion of such term, and thereafter, a successor shall be appointed from the congressional district which corresponds in number with the congressional district from which the incumbent was appointed. [1982 1st ex.s. c 30 § 14.]

72.41.030 Bylaws—Rules and regulations—Officers. Within thirty days of their appointment or July 1, 1973, whichever is sooner, the board of trustees shall organize, adopt bylaws for its own government, and make such rules and regulations not inconsistent with this chapter as they deem necessary. At such organizational meeting it shall elect from among its members a chairman and a vice chairman, each to serve for one year, and annually thereafter shall elect such officers to serve until their successors are appointed or qualified. [1973 c 118 § 3.]

72.41.040 Powers and duties. The board of trustees of the state school for the blind:

(1) Shall monitor and inspect all existing facilities of the state school for the blind, and report its findings to the superintendent;

(2) Shall study and recommend comprehensive programs of education and training and review the admission policy as set forth in RCW 72.40.040 and 72.40.050, and make appropriate recommendations to the superintendent;

(3) Shall submit a list of three qualified candidates for superintendent to the governor and shall advise the superintendent about the criteria and policy to be used in the selection of members of the faculty and such other administrative officers and other employees, who shall with the exception of the superintendent all be subject to chapter 41.06 RCW, the state civil service law, unless specifically exempted by other provisions of law. All employees and personnel classified under chapter 41.06 RCW shall continue, after July 1, 1986, to perform their usual duties upon the same terms as formerly, without any loss of rights, subject to any action that may be appropriate thereafter in accordance with the laws and rules governing the state civil service law;

(4) Shall submit an evaluation of the superintendent to the governor by July 1 of each odd-numbered year and may recommend to the governor that the superintendent be removed for misfeasance, malfeasance, or wilful neglect of duty;

(5) May recommend to the superintendent the establishment of new facilities as needs demand;

(6) May recommend to the superintendent rules and regulations for the government, management, and operation of such housing facilities deemed necessary or advisable;

(7) May make recommendations to the superintendent concerning classrooms and other facilities to be used for summer or night schools, or for public meetings and for any other uses consistent with the use of such classrooms or facilities for the school for the blind;

(8) May make recommendations to the superintendent for adoption of rules and regulations for pedestrian and

vehicular traffic on property owned, operated, or maintained by the school for the blind;

(9) Shall recommend to the superintendent, with the assistance of the faculty, the course of study including vocational training in the school for the blind, in accordance with other applicable provisions of law and rules and regulations;

(10) May grant to every student, upon graduation or completion of a program or course of study, a suitable diploma, nonbaccalaureate degree, or certificate;

(11) Shall participate in the development of, and monitor the enforcement of the rules and regulations pertaining to the school for the blind;

(12) Shall perform any other duties and responsibilities prescribed by the superintendent. [1985 c 378 § 30; 1973 c 118 § 4.]

Severability—Effective date—1985 c 378: See notes following RCW 72.01.050.

72.41.060 Travel expenses. Each member of the board of trustees shall receive travel expenses as provided in RCW 43.03.050 and 43.03.060 as now existing or hereafter amended, and such payments shall be a proper charge to any funds appropriated or allocated for the support of the state school for the blind. [1975-'76 2nd ex.s. c 34 § 167; 1973 c 118 § 6.]

Effective date—Severability—1975-'76 2nd ex.s. c 34: See notes following RCW 2.08.115.

72.41.070 Meetings. The board of trustees shall meet at least six times each year. [1973 c 118 § 7.]

72.41.080 Local advisory committees. The board of trustees shall appoint a local advisory committee consisting of five or more persons from the local community and surrounding areas to advise the board on any matter relating to the development of vocational programs for the blind or relating to the operation of the state school for the blind. [1973 c 118 § 8.]

Chapter 72.42

BOARD OF TRUSTEES—SCHOOL FOR THE DEAF

Sections

72.42.010	Intention—Purpose.
72.42.015	"Superintendent" defined.
72.42.020	Board of trustees—Membership—Terms—Vacancies—Officers—Rules and regulations.
72.42.025	Membership, effect of creation of new congressional districts or boundaries.
72.42.030	Bylaws—Rules and regulations—Officers.
72.42.040	Powers and duties.
72.42.060	Travel expenses.
72.42.070	Meetings.
72.42.080	Local advisory committees.

72.42.010 Intention—Purpose. It is the intention of the legislature, in creating a board of trustees for the state school for the deaf to perform the duties set forth in this chapter, that the board of trustees perform

needed advisory services to the legislature and to the superintendent of the Washington state school for the deaf in the development of programs for the hearing impaired, and in the operation of the Washington state school for the deaf. [1985 c 378 § 31; 1972 ex.s. c 96 § 1.]

Severability—Effective date—1985 c 378: See notes following RCW 72.01.050.

72.42.015 "Superintendent" defined. Unless the context clearly requires otherwise as used in this chapter "superintendent" means superintendent of the Washington state school for the deaf. [1985 c 378 § 32.]

Severability—Effective date—1985 c 378: See notes following RCW 72.01.050.

72.42.020 Board of trustees—Membership—Terms—Vacancies—Officers—Rules and regulations. There is hereby created a board of trustees for the state school for the deaf to be composed of a resident from each of the state's congressional districts. Trustees with voting privileges shall be appointed by the governor with the consent of the senate. The president of the parent-teachers house organization of the school for the deaf, a houseparent selected by the houseparents' exclusive bargaining representative, one representative designated by the teacher association of the school for the deaf, and the president of the Washington state association for the deaf shall each be ex officio and nonvoting members of the board of trustees and shall serve during their respective tenures in such positions.

Trustees shall be appointed by the governor to serve for a term of five years except that any person appointed to fill a vacancy occurring prior to the expiration of any term shall be appointed within sixty days of the vacancy and appointed only for the remainder of the term.

One trustee shall be a resident and qualified elector from each of the state's congressional districts, as now or hereafter existing. The board shall not be deemed to be unlawfully constituted and a trustee shall not be deemed ineligible to serve the remainder of the trustee's unexpired term on the board solely by reason of the establishment of new or revised boundaries for congressional districts. No voting trustee may be an employee of the state school for the deaf, a member of the board of directors of any school district, a member of the governing board of any public or private educational institution, a school district or educational service district administrator appointed after July 1, 1986, or an elected officer or member of the legislative authority of any municipal corporation.

The board of trustees shall organize itself by electing a chairperson, vice-chairperson, and secretary from its members. The board shall adopt a seal and may adopt such bylaws, rules, and regulations as it deems necessary for its own government. A majority of the voting members of the board in office shall constitute a quorum, but a lesser number may adjourn from time to time and may compel the attendance of absent members in such manner as prescribed in its bylaws, rules, or regulations.

[1985 c 378 § 33; 1982 1st ex.s. c 30 § 15; 1972 ex.s. c 96 § 2.]

Severability—Effective date—1985 c 378: See notes following RCW 72.01.050.

72.42.025 Membership, effect of creation of new congressional districts or boundaries. The terms of office of trustees on the board for the state school for the deaf who are appointed from the various congressional districts shall not be affected by the creation of either new boundaries for congressional districts or additional districts. In such an event, each trustee may continue to serve in office for the balance of the term for which he or she was appointed: *Provided*, That the trustee continues to reside within the boundaries of the congressional district as they existed at the time of his or her appointment. Vacancies which occur in a trustee position during the balance of any such term shall be filled pursuant to RCW 72.42.020, as now or hereafter amended, by a successor who resides within the boundaries of the congressional district from which the member whose office was vacated was appointed as they existed at the time of his or her appointment. At the completion of such term, and thereafter, a successor shall be appointed from the congressional district which corresponds in number with the congressional district from which the incumbent was appointed. [1982 1st ex.s. c 30 § 16.]

72.42.030 Bylaws—Rules and regulations—Officers. Within thirty days of their appointment or July 1, 1972, whichever is sooner, the board of trustees shall organize, adopt bylaws for its own government, and make such rules and regulations not inconsistent with this chapter as they deem necessary. At such organizational meeting it shall elect from among its members a chairman and a vice chairman, each to serve for one year, and annually thereafter shall elect such officers to serve until their successors are appointed or qualified. [1972 ex.s. c 96 § 3.]

72.42.040 Powers and duties. The board of trustees of the state school for the deaf:

(1) Shall monitor and inspect all existing facilities of the state school for the deaf, and report its findings to the superintendent;

(2) Shall study and recommend comprehensive programs of education and training and review the admission policy as set forth in RCW 72.40.040 and 72.40.050, and make appropriate recommendations to the superintendent;

(3) Shall develop a process for recommending candidates for the position of superintendent and upon a vacancy shall submit a list of three qualified candidates for superintendent to the governor and shall advise the superintendent about the criteria and policy to be used in the selection of members of the faculty and such other administrative officers and other employees, who shall all with the exception of the superintendent be subject to chapter 41.06 RCW, the state civil service law, unless specifically exempted by other provisions of law. All employees and personnel classified under chapter 41.06

RCW shall continue, after July 1, 1986, to perform their usual duties upon the same terms as formerly, without any loss of rights, subject to any action that may be appropriate thereafter in accordance with the laws and rules governing the state civil service law;

(4) Shall submit an evaluation of the superintendent to the governor by July 1 of each odd-numbered year and may recommend to the governor at any time that the superintendent be removed for misfeasance, malfeasance, or wilful neglect of duty;

(5) May recommend to the superintendent the establishment of new facilities as needs demand;

(6) May recommend to the superintendent rules and regulations for the government, management, and operation of such housing facilities deemed necessary or advisable;

(7) May make recommendations to the superintendent concerning classrooms and other facilities to be used for summer or night schools, or for public meetings and for any other uses consistent with the use of such classrooms or facilities for the school for the deaf;

(8) May make recommendations to the superintendent for adoption of rules and regulations for pedestrian and vehicular traffic on property owned, operated, or maintained by the school for the deaf;

(9) Shall recommend to the superintendent, with the assistance of the faculty, the course of study including vocational training in the school for the deaf, in accordance with other applicable provisions of law and rules and regulations;

(10) May grant to every student, upon graduation or completion of a program or course of study, a suitable diploma, nonbaccalaureate degree, or certificate.

(11) Shall participate in the development of, and monitor the enforcement of the rules and regulations pertaining to the school for the deaf;

(12) Shall perform any other duties and responsibilities prescribed by the superintendent. [1985 c 378 § 34; 1981 c 42 § 1; 1972 ex.s. c 96 § 4.]

Severability—Effective date—1985 c 378: See notes following RCW 72.01.050.

72.42.060 Travel expenses. Each member of the board of trustees shall receive travel expenses as provided in RCW 43.03.050 and 43.03.060 as now existing or hereafter amended, and such payments shall be a proper charge to any funds appropriated or allocated for the support of the state school for the deaf. [1975-'76 2nd ex.s. c 34 § 168; 1972 ex.s. c 96 § 6.]

Effective date—Severability—1975-'76 2nd ex.s. c 34: See notes following RCW 2.08.115.

72.42.070 Meetings. The board of trustees shall meet at least six times each year. [1972 ex.s. c 96 § 7.]

72.42.080 Local advisory committees. The board of trustees shall appoint a local advisory committee consisting of five or more persons from the local community and surrounding areas to advise the board on any matter relating to the development of programs for the deaf or

relating to the operation of the state school for the deaf. [1972 ex.s. c 96 § 8.]

Chapter 72.49

NARCOTIC OR DANGEROUS DRUGS— TREATMENT AND REHABILITATION

Sections

72.49.010	Purpose.
72.49.020	Treatment and rehabilitation programs authorized— Rules and regulations.

72.49.010 Purpose. The purpose of this chapter is to provide additional programs for the treatment and rehabilitation of persons suffering from narcotic and dangerous drug abuse. [1969 ex.s. c 123 § 1.]

Effective date—1969 ex. s. c 123: "The effective date of this act shall be July 1, 1969." [1969 ex.s. c 123 § 3.]

72.49.020 Treatment and rehabilitation programs authorized—Rules and regulations. There may be established at an institution, or portion thereof, to be designated by the secretary of the department of social and health services, programs for treatment and rehabilitation of persons in need of medical care and treatment due to narcotic abuse or dangerous drug abuse. Such programs may include facilities for both residential and outpatient treatment. The secretary of the department of social and health services shall promulgate rules and regulations governing the voluntary admission, treatment, and release of such patients, and all other matters incident to the proper administration of this section. [1975-'76 2nd ex.s. c 103 § 2; 1969 ex.s. c 123 § 2.]

Effective date—1969 ex. s. c 123: See note following RCW 72.49.010.

Chapter 72.60

CORRECTIONAL INDUSTRIES (Formerly: Institutional industries)

Sections

72.60.100	Civil rights of inmates not restored—Other laws inapplicable.
72.60.102	Industrial insurance—Application to certain inmates.
72.60.110	Employment of inmates according to needs of state.
72.60.160	State agencies and subdivisions may purchase goods—Purchasing preference required of certain institutions.
72.60.190	Supervisor of purchasing may contract for and shall give preference to goods produced by correctional industries.
72.60.220	List of goods to be supplied to all departments, institutions, agencies.

Correctional industries administered by department of corrections: RCW 72.09.070 through 72.09.120.

72.60.100 Civil rights of inmates not restored—Other laws inapplicable. Nothing in this chapter is intended to restore, in whole or in part, the civil rights of any inmate. No inmate compensated for work in correctional industries shall be considered as an employee or to be employed by the state or the department, nor shall

any such inmate, except those provided for in RCW 72.60.102 and 72.64.065, come within any of the provisions of the workers' compensation act, or be entitled to any benefits thereunder whether on behalf of himself or of any other person. [1989 c 185 § 10; 1987 c 185 § 38; 1981 c 136 § 101; 1972 ex.s. c 40 § 1; 1959 c 28 § 72.60.100. Prior: 1955 c 314 § 10. Formerly RCW 43.95.090.]

Intent—Severability—1987 c 185: See notes following RCW 51.12.130.

Effective date—1981 c 136: See RCW 72.09.900.

Effective date—1972 ex.s. c 40: "This act shall be effective July 1, 1973." [1972 ex.s. c 40 § 4.]

Restoration of civil rights: Chapter 9.96 RCW.

72.60.102 Industrial insurance—Application to certain inmates. From and after July 1, 1973, any inmate employed in classes I, II, and IV of correctional industries as defined in RCW 72.09.100 is eligible for industrial insurance benefits as provided by Title 51 RCW. However, eligibility for benefits for either the inmate or the inmate's dependents or beneficiaries for temporary disability or permanent total disability as provided in RCW 51.32.090 or 51.32.060, respectively, shall not take effect until the inmate is released pursuant to an order of parole by the indeterminate sentence review board, or discharged from custody upon expiration of the sentence, or discharged from custody by order of a court of appropriate jurisdiction. Nothing in this section shall be construed to confer eligibility for any industrial insurance benefits to any inmate who is employed in class III or V of correctional industries as defined in RCW 72.09.100. [1989 c 185 § 11; 1983 1st ex.s. c 52 § 7; 1981 c 136 § 102; 1979 ex.s. c 160 § 3; 1972 ex.s. c 40 § 2.]

Severability—1983 1st ex.s. c 52: See RCW 63.42.900.

Effective date—1981 c 136: See RCW 72.09.900.

Effective date—1972 ex.s. c 40: See note following RCW 72.60.100.

72.60.110 Employment of inmates according to needs of state. The department is hereby authorized and empowered to cause the inmates in the state institutions of this state to be employed in the rendering of such services and in the production and manufacture of such articles, materials, and supplies as are now, or may hereafter be, needed by the state, or any political subdivision thereof, or that may be needed by any public institution of the state or of any political subdivision thereof. [1959 c 28 § 72.60.110. Prior: 1955 c 314 § 11. Formerly RCW 43.95.100.]

72.60.160 State agencies and subdivisions may purchase goods—Purchasing preference required of certain institutions. All articles, materials, and supplies herein authorized to be produced or manufactured in correctional institutions may be purchased from the institution producing or manufacturing the same by any state agency or political subdivision of the state, and the secretary shall require those institutions under his direction to give preference to the purchasing of their needs

of such articles as are so produced. [1981 c 136 § 103; 1979 c 141 § 260; 1959 c 28 § 72.60.160. Prior: 1955 c 314 § 16. Formerly RCW 43.95.150.]

Effective date—1981 c 136: See RCW 72.09.900.

72.60.190 Supervisor of purchasing may contract for and shall give preference to goods produced by correctional industries. The supervisor of purchasing for the state of Washington is authorized to enter into contracts for production of goods and supply of services and shall give preference in the purchase of materials and supplies for the institutions, departments and agencies of the state, to those produced by industries in state correctional institutions. [1981 c 136 § 104; 1979 ex.s. c 160 § 4; 1959 c 28 § 72.60.190. Prior: 1957 c 30 § 2. Formerly RCW 43.95.180.]

Effective date—1981 c 136: See RCW 72.09.900.

72.60.220 List of goods to be supplied to all departments, institutions, agencies. The department may cause to be prepared annually, at such times as it may determine, lists containing the descriptions of all articles and supplies manufactured and produced in state correctional institutions; copies of such list shall be sent to the supervisor of purchasing and to all departments, institutions and agencies of the state of Washington. [1981 c 136 § 105; 1959 c 28 § 72.60.220. Prior: 1957 c 30 § 6. Formerly RCW 43.95.210.]

Effective date—1981 c 136: See RCW 72.09.900.

Chapter 72.62

VOCATIONAL EDUCATION PROGRAMS

Sections

72.62.010	Purpose.
72.62.020	"Vocational education" defined.
72.62.030	Sale of products—Recovery of costs.
72.62.040	Crediting of proceeds of sales.
72.62.050	Trade advisory and apprenticeship committees.

72.62.010 Purpose. The legislature declares that programs of vocational education are essential to the habilitation and rehabilitation of residents of state correctional institutions and facilities. It is the purpose of this chapter to provide for greater reality and relevance in the vocational education programs within the correctional institutions of the state. [1972 ex.s. c 7 § 1.]

72.62.020 "Vocational education" defined. When used in this chapter, unless the context otherwise requires:

The term "vocational education" means a planned series of learning experiences, the specific objective of which is to prepare individuals for gainful employment as semiskilled or skilled workers or technicians or sub-professionals in recognized occupations and in new and emerging occupations, but shall not mean programs the primary characteristic of which is repetitive work for the purpose of production, including the correctional industries program. Nothing in this section shall be construed

to prohibit the correctional industries board of directors from identifying and establishing trade advisory or apprenticeship committees to advise them on correctional industries work programs. [1989 c 185 § 12; 1972 ex.s. c 7 § 2.]

72.62.030 Sale of products—Recovery of costs. Products goods, wares, articles, or merchandise manufactured or produced by residents of state correctional institutions or facilities within or in conjunction with vocational education programs for the training, habilitation, and rehabilitation of inmates may be sold on the open market. When services are performed by residents within or in conjunction with such vocational education programs, the cost of materials used and the value of depreciation of equipment used may be recovered. [1983 c 255 § 6; 1972 ex.s. c 7 § 3.]

Severability—1983 c 255: See RCW 72.74.900.

72.62.040 Crediting of proceeds of sales. The secretary of the department of social and health services or the secretary of corrections, as the case may be, shall credit the proceeds derived from the sale of such products, goods, wares, articles, or merchandise manufactured or produced by inmates of state correctional institutions within or in conjunction with vocational education programs to the institution where manufactured or produced to be deposited in a revolving fund to be expended for the purchase of supplies, materials and equipment for use in vocational education. [1981 c 136 § 107; 1972 ex.s. c 7 § 4.]

Effective date—1981 c 136: See RCW 72.09.900.

72.62.050 Trade advisory and apprenticeship committees. Labor-management trade advisory and apprenticeship committees shall be constituted by the department for each vocation taught within the vocational education programs in the state correctional system. [1972 ex.s. c 7 § 5.]

Chapter 72.63

PRISON WORK PROGRAMS—FISH AND GAME

Sections

72.63.010	Legislative finding.
72.63.020	Prison work programs for fish and game projects.
72.63.030	Departments of fisheries and wildlife to provide professional assistance—Identification of projects— Loan of facilities and property—Resources to be provided.
72.63.040	Available funds to support costs of implementation.

72.63.010 Legislative finding. The legislature finds and declares that the establishment of prison work programs that allow prisoners to undertake food fish, shellfish, and game fish rearing projects and game bird and game animal improvement, restoration, and protection projects is needed to reduce idleness, promote the growth of prison industries, and provide prisoners with skills necessary for their successful reentry into society. [1985 c 286 § 1.]

72.63.020 Prison work programs for fish and game projects. The departments of corrections, fisheries, and wildlife shall establish at or near appropriate state institutions, as defined in RCW 72.65.010, prison work programs that use prisoners to undertake state food fish, shellfish, and game fish rearing projects and state game bird and game animal improvement, restoration, and protection projects and that meet the requirements of RCW 72.09.100.

The department of corrections shall seek to identify a group of prisoners at each appropriate state institution, as defined by RCW 72.65.010, that are interested in participating in prison work programs established by this chapter.

If the department of corrections is unable to identify a group of prisoners to participate in work programs authorized by this chapter, it may enter into an agreement with the departments of fisheries or wildlife for the purpose of designing projects for any institution. Costs under this section shall be borne by the department of corrections.

The departments of corrections, fisheries, and wildlife shall use prisoners, where appropriate, to perform work in state projects that may include the following types:

(1) Food fish, shellfish, and game fish rearing projects, including but not limited to egg planting, egg boxes, juvenile planting, pen rearing, pond rearing, raceway rearing, and egg taking;

(2) Game bird and game animal projects, including but not limited to habitat improvement and restoration, replanting and transplanting, nest box installation, pen rearing, game protection, and supplemental feeding: *Provided*, That no project shall be established at the department of wildlife's south Tacoma game farm;

(3) Manufacturing of equipment for use in fish and game volunteer cooperative projects permitted by the department of fisheries or the department of wildlife, or for use in prison work programs with fish and game; and

(4) Maintenance, repair, restoration, and redevelopment of facilities operated by the departments of wildlife and fisheries. [1988 c 36 § 29; 1985 c 286 § 2.]

72.63.030 Departments of fisheries and wildlife to provide professional assistance—Identification of projects—Loan of facilities and property—Resources to be provided. (1) The departments of fisheries and wildlife, as appropriate, shall provide professional assistance from biologists, fish culturists, pathologists, engineers, habitat managers, and other departmental staff to assist the development and productivity of prison work programs under RCW 72.63.020, upon agreement with the department of corrections.

(2) The departments of fisheries and wildlife shall identify and describe potential and pilot projects that are compatible with the goals of the various departments involved and that are particularly suitable for prison work programs.

(3) The departments of fisheries or wildlife, or both, as appropriate, may make available surplus hatchery rearing space, net pens, egg boxes, portable rearing containers, incubators, and any other departmental facilities

or property that are available for loan to the department of corrections to carry out prison work programs under RCW 72.63.020.

(4) The departments of fisheries or wildlife, or both, as appropriate, shall provide live fish eggs, bird eggs, juvenile fish, game animals, or other appropriate seed stock, juveniles, or brood stock of acceptable disease history and genetic composition for the prison work projects at no cost to the department of corrections, to the extent that such resources are available. Fish food, bird food, or animal food may be provided by the departments of fisheries and wildlife to the extent that funding is available.

(5) The department of natural resources shall assist in the implementation of the program where project sites are located on public beaches or state owned aquatic lands. [1988 c 36 § 30; 1985 c 286 § 3.]

72.63.040 Available funds to support costs of implementation. The costs of implementation of the projects prescribed by this chapter shall be supported to the extent that funds are available under the provisions of chapter 75.52 RCW, and from correctional industries funds. [1989 c 185 § 13; 1985 c 286 § 4.]

Chapter 72.64

LABOR AND EMPLOYMENT OF PRISONERS

Sections

72.64.001	Definitions.
72.64.010	Useful employment of prisoners—Contract system barred.
72.64.020	Rules and regulations.
72.64.030	Prisoners required to work—Private benefit of enforcement officer prohibited.
72.64.040	Crediting of earnings—Payment.
72.64.050	Branch institutions—Honor camps for certain purposes.
72.64.060	Labor camps authorized—Type of work permitted—Contracts.
72.64.065	Industrial insurance—Application to certain inmates—Payment of premiums and assessments.
72.64.070	Industrial insurance—Eligibility for employment—Procedure—Return.
72.64.080	Industrial insurance—Duties of employing agency—Costs—Supervision.
72.64.090	Industrial insurance—Department's jurisdiction.
72.64.100	Regional jail camps—Authorized—Purposes—Rules.
72.64.110	Contracts to furnish county prisoners confinement, care, and employment—Reimbursement by county—Sheriff's order—Return of prisoner.

Contract system barred: State Constitution Art. 2 § 29.

Correctional industries: Chapter 72.60 RCW.

Labor prescribed by the indeterminate sentence review board: RCW 9.95.090.

72.64.001 Definitions. As used in this chapter: "Department" means the department of corrections; and "Secretary" means the secretary of corrections. [1981 c 136 § 108.]

Effective date—1981 c 136: See RCW 72.09.900.

72.64.010 Useful employment of prisoners—Contract system barred. The secretary shall have the power and it shall be his duty to provide for the useful employment of prisoners in the adult correctional institutions: *Provided*, That no prisoners shall be employed in what is known as the contract system of labor. [1979 c 141 § 265; 1959 c 28 § 72.64.010. Prior: 1943 c 175 § 1; Rem. Supp. 1943 § 10279-1. Formerly RCW 72.08.220.]

72.64.020 Rules and regulations. The secretary shall make the necessary rules and regulations governing the employment of prisoners, the conduct of all such operations, and the disposal of the products thereof, under such restrictions as provided by law. [1979 c 141 § 266; 1959 c 28 § 72.64.020. Prior: 1943 c 175 § 2; Rem. Supp. 1943 § 10279-2. Formerly RCW 72.08.230.]

72.64.030 Prisoners required to work—Private benefit of enforcement officer prohibited. Every prisoner in the Washington state penitentiary or reformatory or other state penal or correctional institution shall be required to work in such manner as may be prescribed by the secretary, other than for the private financial benefit of any enforcement officer. [1979 c 141 § 267; 1961 c 171 § 1; 1959 c 28 § 72.64.030. Prior: 1927 c 305 § 1; RRS § 10223-1.]

72.64.040 Crediting of earnings—Payment. Where a prisoner is employed at any occupation for which pay is allowed or permitted, or at any gainful occupation from which the state derives an income, the department shall credit the prisoner with the total amount of his earnings.

The amount of earnings credited but unpaid to a prisoner may be paid to the prisoner's spouse, children, mother, father, brother, or sister as the inmate may direct upon approval of the superintendent. Upon release, parole, or discharge, all unpaid earnings of the prisoner shall be paid to him. [1973 1st ex.s. c 154 § 105; 1959 c 28 § 72.64.040. Prior: 1957 c 19 § 1; 1927 c 305 § 3; RRS § 10223-3. Formerly RCW 72.08.250.]

Severability—1973 1st ex.s. c 154: See note following RCW 2.12.030.

72.64.050 Branch institutions—Honor camps for certain purposes. The secretary shall also have the power to establish temporary branch institutions for the state penitentiary, state reformatory and other penal and correctional institutions of the state in the form of honor camps for the employment of prisoners therein in farming, reforestation, wood-cutting, land clearing, processing of foods in state canneries, forest fire fighting, forest fire suppression and prevention, stream clearance, watershed improvement, development of parks and recreational areas and other work to conserve the natural resources and protect and improve the public domain and construction of water supply facilities to state institutions. [1979 c 141 § 268; 1961 c 171 § 2; 1959 c 28 § 72.64.050. Prior: 1943 c 175 § 3; Rem. Supp. 1943 § 10279-3. Formerly RCW 72.08.240.]

Leaves of absence for inmates: RCW 72.01.365 through 72.01.380.

72.64.060 Labor camps authorized—Type of work permitted—Contracts. Any department, division, bureau, commission, or other agency of the state of Washington or any agency of any political subdivision thereof or the federal government may use, or cause to be used, prisoners confined in state penal or correctional institutions to perform work necessary and proper, to be done by them at camps to be established pursuant to the authority granted by RCW 72.64.060 through 72.64.090: *Provided*, That such prisoners shall not be authorized to perform work on any public road, other than access roads to forestry lands. The secretary may enter into contracts for the purposes of RCW 72.64.060 through 72.64.090. [1979 c 141 § 269; 1961 c 171 § 3; 1959 c 28 § 72.64.060. Prior: 1955 c 128 § 1. Formerly RCW 43.28.500.]

72.64.065 Industrial insurance—Application to certain inmates—Payment of premiums and assessments. From and after July 1, 1973, any inmate working in a department of natural resources adult honor camp established and operated pursuant to RCW 72.64.050, 72.64.060, and 72.64.100 shall be eligible for the benefits provided by Title 51 RCW, as now or hereafter amended, relating to industrial insurance, with the exceptions herein provided.

No inmate as herein described, until released upon an order of parole by the state *board of prison terms and paroles, or discharged from custody upon expiration of sentence, or discharged from custody by order of a court of appropriate jurisdiction, or his dependents or beneficiaries, shall be entitled to any payment for temporary disability or permanent total disability as provided for in RCW 51.32.090 or 51.32.060 respectively, as now or hereafter enacted, or to the benefits of chapter 51.36 RCW relating to medical aid.

Any and all premiums or assessments as may arise under this section pursuant to the provisions of Title 51 RCW shall be the obligation of and be paid by the state department of natural resources. [1972 ex.s. c 40 § 3.]

***Reviser's note:** The "board of prison terms and paroles" was redesignated the "indeterminate sentence review board" by 1986 c 224, effective July 1, 1986.

Effective date—1972 ex.s. c 40: See note following RCW 72.60.100.

72.64.070 Industrial insurance—Eligibility for employment—Procedure—Return. The department shall determine which prisoners shall be eligible for employment under RCW 72.64.060, and shall establish and modify lists of prisoners eligible for such employment, upon the requisition of an agency mentioned in RCW 72.64.060. The secretary may send to the place, and at the time designated, the number of prisoners requisitioned, or such number thereof as have been determined to be eligible for such employment and are available. No prisoner shall be eligible or shall be released for such employment until his eligibility therefor has been determined by the department.

The secretary may return to prison any prisoner transferred to camp pursuant to this section, when the

need for such prisoner's labor has ceased or when the prisoner is guilty of any violation of the rules and regulations of the prison or camp. [1979 c 141 § 270; 1959 c 28 § 72.64.070. Prior: 1955 c 128 § 2. Formerly RCW 43.28.510.]

72.64.080 Industrial insurance—Duties of employing agency—Costs—Supervision. The agency providing for prisoners under RCW 72.64.060 through 72.64.090 shall designate and supervise all work done under the provisions thereof. The agency shall provide, erect and maintain any necessary camps, except that where no funds are available to the agency, the department may provide, erect and maintain the necessary camps. The secretary shall supervise and manage the necessary camps and commissaries. [1979 c 141 § 271; 1959 c 28 § 72.64.080. Prior: 1955 c 128 § 3. Formerly RCW 43.28.520.]

72.64.090 Industrial insurance—Department's jurisdiction. The department shall have full jurisdiction at all times over the discipline and control of the prisoners performing work under RCW 72.64.060 through 72.64.090. [1959 c 28 § 72.64.090. Prior: 1955 c 128 § 4. Formerly RCW 43.28.530.]

72.64.100 Regional jail camps—Authorized—Purposes—Rules. The secretary is authorized to establish and operate regional jail camps for the confinement, treatment, and care of persons sentenced to jail terms in excess of thirty days, including persons so imprisoned as a condition of probation. The secretary shall make rules and regulations governing the eligibility for commitment or transfer to such camps and rules and regulations for the government of such camps. Subject to the rules and regulations of the secretary, and if there is in effect a contract entered into pursuant to RCW 72.64.110, a county prisoner may be committed to a regional jail camp in lieu of commitment to a county jail or other county detention facility. [1979 c 141 § 272; 1961 c 171 § 4.]

72.64.110 Contracts to furnish county prisoners confinement, care, and employment—Reimbursement by county—Sheriff's order—Return of prisoner. (1) The secretary may enter into a contract with any county of the state, upon the request of the sheriff thereof, wherein the secretary agrees to furnish confinement, care, treatment, and employment of county prisoners. The county shall reimburse the state for the cost of such services. Each county shall pay to the state treasurer the amounts found to be due.

(2) The secretary shall accept such county prisoner if he believes that the prisoner can be materially benefited by such confinement, care, treatment and employment, and if adequate facilities to provide such care are available. No such person shall be transported to any facility under the jurisdiction of the secretary until the secretary has notified the referring court of the place to which said person is to be transmitted and the time at which he can be received.

(3) The sheriff of the county in which such an order is made placing a misdemeanor in a jail camp pursuant to this chapter, or any other peace officer designated by the court, shall execute an order placing such county prisoner in the jail camp or returning him therefrom to the court.

(4) The secretary may return to the committing authority, or to confinement according to his sentence, any person committed or transferred to a regional jail camp pursuant to this chapter when there is no suitable employment or when such person is guilty of any violation of rules and regulations of the regional jail camp. [1980 c 17 § 1. Prior: 1979 c 147 § 1; 1979 c 141 § 273; 1961 c 171 § 5.]

Chapter 72.65 WORK RELEASE PROGRAM

Sections	
72.65.010	Definitions.
72.65.020	Places of confinement—Extension of limits authorized, conditions—Application of section.
72.65.030	Application of prisoner to participate in program, contents—Application of section.
72.65.040	Approval or denial of application—Adoption of work release plan—Terms and conditions—Revocation—Reapplication—Application of section.
72.65.050	Disposition of earnings.
72.65.060	Earnings not subject to legal process.
72.65.070	Willfully failing to return—Deemed escapee and fugitive—Penalty.
72.65.080	Contracts with authorities for payment of expenses for housing participants—Procurement of housing facilities.
72.65.090	Transportation, clothing, supplies for participants.
72.65.100	Powers and duties of secretary—Rules and regulations—Cooperation of other state agencies directed.
72.65.110	Earnings to be deposited in personal funds—Disbursements.
72.65.120	Participants not considered agents or employees of the state—Contracting with persons, companies, etc., for labor of participants prohibited—Employee benefits and privileges extended to.
72.65.130	Authority of board of prison terms and paroles not impaired.
72.65.200	Participation in work release plan or program must be authorized by sentence or RCW 9.94A.150.
72.65.210	Inmate participation eligibility standards—Department to conduct overall review of work release program.
72.65.900	Effective date—1967 c 17.

Victims of crimes, reimbursement by convicted person as condition of work release or parole: RCW 7.68.120.

72.65.010 Definitions. As used in this chapter, the following terms shall have the following meanings:

(1) "Department" shall mean the department of corrections.

(2) "Secretary" shall mean the secretary of corrections.

(3) "State correctional institutions" shall mean and include the Washington state penitentiary; the Washington corrections center; the Washington state reformatory; the McNeil Island corrections center; the Purdy corrections center for women; the Cedar Creek corrections center; the Clearwater corrections center; the Firland corrections center; the Indian Ridge corrections

center; the Larch corrections center; the Olympic corrections center; Pine Lodge corrections center; the special offender center; the Twin Rivers corrections center; the proposed five hundred bed facility at Clallam Bay; and such other state correctional institutions, camps or facilities as may hereafter be established pursuant to law under the jurisdiction of the department for the treatment of convicted felons sentenced to a term of confinement.

(4) "Prisoner" shall mean a person either male or female, convicted of a felony and sentenced by the superior court to a term of confinement and treatment in a state correctional institution under the jurisdiction of the department.

(5) "Superintendent" shall mean the superintendent of a state correctional institution, camp or other facility now or hereafter established under the jurisdiction of the department pursuant to law. [1985 c 350 § 4; 1981 c 136 § 110; 1979 c 141 § 274; 1967 c 17 § 1.]

Effective date—1981 c 136: See RCW 72.09.900.

Administrative departments and agencies—General provisions: RCW 43.17.010, 43.17.020.

72.65.020 Places of confinement—Extension of limits authorized, conditions—Application of section.

(1) The secretary is authorized to extend the limits of the place of confinement and treatment within the state of any prisoner convicted of a felony, sentenced to a term of confinement and treatment by the superior court, and serving such sentence in a state correctional institution under the jurisdiction of the department, by authorizing a work release plan for such prisoner, permitting him, under prescribed conditions, to do any of the following:

(a) Work at paid employment.

(b) Participate in a vocational training program: *Provided*, That the tuition and other expenses of such a vocational training program shall be paid by the prisoner, by someone in his behalf, or by the department: *Provided further*, That any expenses paid by the department shall be recovered by the department pursuant to the terms of RCW 72.65.050.

(c) Interview or make application to a prospective employer or employers, or enroll in a suitable vocational training program.

Such work release plan of any prison shall require that he be confined during the hours not reasonably necessary to implement the plan, in (1) a state correctional institution, (2) a county or city jail, which jail has been approved after inspection pursuant to *RCW 70.48.050, or (3) any other appropriate, supervised facility, after an agreement has been entered into between the department and the appropriate authorities of the facility for the housing of work release prisoners.

(2) This section applies only to persons sentenced for crimes that were committed before July 1, 1984. [1984 c 209 § 28; 1979 ex.s. c 160 § 1; 1979 c 141 § 275; 1967 c 17 § 2.]

*Reviser's note: RCW 70.48.050 was repealed by 1987 c 462 § 23, effective January 1, 1988.

Effective dates—1984 c 209: See note following RCW 9.94A.030.

72.65.030 Application of prisoner to participate in program, contents—Application of section. (1) Any prisoner serving a sentence in a state correctional institution may make application to participate in the work release program to the superintendent of the institution in which he is confined. Such application shall set forth the name and address of his proposed employer or employers or shall specify the vocational training program, if any, in which he is enrolled. It shall include a statement to be executed by such prisoner that if his application be approved he agrees to abide faithfully by all terms and conditions of the particular work release plan adopted for him. It shall further set forth such additional information as the department or the secretary shall require.

(2) This section applies only to persons sentenced for crimes that were committed before July 1, 1984. [1984 c 209 § 29; 1979 c 141 § 276; 1967 c 17 § 3.]

Effective dates—1984 c 209: See note following RCW 9.94A.030.

72.65.040 Approval or denial of application—Adoption of work release plan—Terms and conditions—Revocation—Reapplication—Application of section. (1) The superintendent of the state correctional institution in which a prisoner who has made application to participate in the work release program is confined, after careful study of the prisoner's conduct, attitude and behavior within the institutions under the jurisdiction of the department, his criminal history and all other pertinent case history material, shall determine whether or not there is reasonable cause to believe that the prisoner will honor his trust as a work release participant. After having made such determination, the superintendent, in his discretion, may deny the prisoner's application, or recommend to the secretary, or such officer of the department as the secretary may designate, that the prisoner be permitted to participate in the work release program. The secretary or his designee, may approve, reject, modify, or defer action on such recommendation. In the event of approval, the secretary or his designee, shall adopt a work release plan for the prisoner, which shall constitute an extension of the limits of confinement and treatment of the prisoner when released pursuant thereto, and which shall include such terms and conditions as may be deemed necessary and proper under the particular circumstances. The plan shall be signed by the prisoner under oath that he will faithfully abide by all terms and conditions thereof. Further, as a condition, the plan shall specify where such prisoner shall be confined when not released for the purpose of the work release plan. At any time after approval has been granted to any prisoner to participate in the work release program, such approval may be revoked, and if the prisoner has been released on a work release plan, he may be returned to a state correctional institution, or the plan may be modified, in the sole discretion of the secretary or his designee. Any prisoner who has been initially rejected either by the superintendent or the secretary or his designee, may reapply for permission to participate in a work release program after a period of time has elapsed from the date of such rejection. This

period of time shall be determined by the secretary or his designee, according to the individual circumstances in each case.

(2) This section applies only to persons sentenced for crimes that were committed before July 1, 1984. [1984 c 209 § 30; 1979 c 141 § 277; 1967 c 17 § 4.]

Effective dates—1984 c 209: See note following RCW 9.94A.030.

72.65.050 Disposition of earnings. A prisoner employed under a work release plan shall surrender to the secretary, or to the superintendent of such state correctional institution as shall be designated by the secretary in the plan, his total earnings, less payroll deductions required by law, or such payroll deductions as may reasonably be required by the nature of the employment and less such amount which his work release plan specifies he should retain to help meet his personal needs, including costs necessary for his participation in the work release plan such as expenses for travel, meals, clothing, tools and other incidentals. The secretary, or the superintendent of the state correctional institution designated in the work release plan shall deduct from such earnings, and make payments from such work release participant's earnings in the following order of priority:

(1) Reimbursement to the department for any expenses advanced for vocational training pursuant to RCW 72.65.020(2), or for expenses incident to a work release plan pursuant to RCW 72.65.090.

(2) Payment of board and room charges for the work release participant: *Provided*, That if the participant is housed at a state correctional institution, the average daily per capita cost for the operation of such correctional institution, excluding capital outlay expenditures, shall be paid from the work release participant's earnings to the general fund of the state treasury: *Provided further*, That if such work release participant is housed in another facility pursuant to agreement, then the charges agreed to between the department and the appropriate authorities of such facility shall be paid from the participant's earnings to such appropriate authorities.

(3) Payments for the necessary support of the work release participant's dependents, if any.

(4) Payments to creditors of the work release participant, which may be made at his discretion and request, upon proper proof of personal indebtedness.

(5) Payments to the work release participant himself upon parole or discharge, or for deposit in his personal account if returned to a state correctional institution for confinement and treatment. [1979 c 141 § 278; 1967 c 17 § 5.]

72.65.060 Earnings not subject to legal process. (Effective until July 1, 1990.) The earnings of a work release participant shall not be subject to garnishment, attachment or execution while such earnings are either in the possession of the employer or any state officer authorized to hold such funds. [1967 c 17 § 6.]

72.65.060 Earnings not subject to legal process. (Effective July 1, 1990.) The earnings of a work release

participant shall not be subject to garnishment, attachment, or execution while such earnings are either in the possession of the employer or any state officer authorized to hold such funds, except for payment of a court-ordered legal financial obligation as that term is defined in RCW 72.11.010. [1989 c 252 § 21; 1967 c 17 § 6.]

Purpose—Prospective application—Effective dates—Severability—1989 c 252: See notes following RCW 9.94A.030.

72.65.070 Wilfully failing to return—Deemed escapee and fugitive—Penalty. Any prisoner approved for placement under a work release plan who wilfully fails to return to the designated place of confinement at the time specified shall be deemed an escapee and fugitive from justice, and upon conviction shall be guilty of a felony and sentenced in accordance with the terms of *chapter 9.31 RCW. The provisions of this section shall be incorporated in every work release plan adopted by the department. [1967 c 17 § 7.]

*Reviser's note: "chapter 9.31 RCW" was repealed by 1975 1st ex.s. c 260 § 9A.92.010. For later enactment, see chapter 9A.76 RCW.

72.65.080 Contracts with authorities for payment of expenses for housing participants—Procurement of housing facilities. The secretary may enter into contracts with the appropriate authorities for the payment of the cost of feeding and lodging and other expenses of housing work release participants. Such contracts may include any other terms and conditions as may be appropriate for the implementation of the work release program. In addition the secretary is authorized to acquire, by lease or contract, appropriate facilities for the housing of work release participants and providing for their subsistence and supervision. Such work release participants placed in leased or contracted facilities shall be required to reimburse the department the per capita cost of subsistence and lodging in accordance with the provisions and in the priority established by RCW 72.65.050(2). The location of such facilities shall be subject to the zoning laws of the city or county in which they may be situated. [1982 1st ex.s. c 48 § 18; 1981 c 136 § 111; 1979 c 141 § 279; 1969 c 109 § 1; 1967 c 17 § 8.]

Severability—1982 1st ex.s. c 48: See note following RCW 28B.14G.900.

Effective date—1981 c 136: See RCW 72.09.900.

Effective date—1969 c 109: "This act shall become effective on July 1, 1969." [1969 c 109 § 2.]

72.65.090 Transportation, clothing, supplies for participants. The department may provide transportation for work release participants to the designated places of housing under the work release plan, and may supply suitable clothing and such other equipment, supplies and other necessities as may be reasonably needed for the implementation of the plans adopted for such participation from the community services revolving fund as established in RCW 9.95.360: *Provided*, That costs and expenditures incurred for this purpose may be deducted by the department from the earnings of the participants

and deposited in the community services revolving fund. [1986 c 125 § 6; 1967 c 17 § 9.]

72.65.100 Powers and duties of secretary—Rules and regulations—Cooperation of other state agencies directed. The secretary is authorized to make rules and regulations for the administration of the provisions of this chapter to administer the work release program. In addition, the department shall:

(1) Supervise and consult with work release participants;

(2) Locate available employment or vocational training opportunities for qualified work release participants;

(3) Effect placement of work release participants under the program;

(4) Collect, account for and make disbursement from earnings of work release participants under the provisions of this chapter, including accounting for all inmate debt in the community services revolving fund. RCW 9.95.370 applies to inmates assigned to work/training release facilities who receive assistance as provided in RCW 9.95.310, 9.95.320, 72.65.050, and 72.65.090;

(5) Promote public understanding and acceptance of the work release program.

All state agencies shall cooperate with the department in the administration of the work release program as provided by this chapter. [1986 c 125 § 7; 1981 c 136 § 112; 1979 c 141 § 280; 1967 c 17 § 10.]

Effective date—1981 c 136: See RCW 72.09.900.

72.65.110 Earnings to be deposited in personal funds—Disbursements. All earnings of work release participants shall be deposited by the secretary, or the superintendent of a state correctional institution designated by the secretary in the work release plan, in personal funds. All disbursements from such funds shall be made only in accordance with the work release plans of such participants and in accordance with the provisions of this chapter. [1979 c 141 § 281; 1967 c 17 § 11.]

72.65.120 Participants not considered agents or employees of the state—Contracting with persons, companies, etc., for labor of participants prohibited—Employee benefits and privileges extended to. All participants who become engaged in employment or training under the work release program shall not be considered as agents, employees or involuntary servants of state and the department is prohibited from entering into a contract with any person, co-partnership, company or corporation for the labor of any participant under its jurisdiction: *Provided*, That such work release participants shall be entitled to all benefits and privileges in their employment under the provisions of this chapter to the same extent as other employees of their employer, except that such work release participants shall not be eligible for unemployment compensation benefits pursuant to any of the provisions of Title 50 RCW until released on parole or discharged on expiration of their maximum sentences. [1967 c 17 § 12.]

72.65.130 Authority of board of prison terms and paroles not impaired. This chapter shall not be construed as affecting the authority of the *board of prison terms and paroles pursuant to the provisions of chapter 9.95 RCW over any person who has been approved for participation in the work release program. [1971 ex.s. c 58 § 1; 1967 c 17 § 13.]

*Reviser's note: The "board of prison terms and paroles" was redesignated the "indeterminate sentence review board" by 1986 c 224, effective July 1, 1986.

Effective date—1971 ex.s. c 58: See note following RCW 72.66.010.

72.65.200 Participation in work release plan or program must be authorized by sentence or RCW 9.94A.150. The secretary may permit a prisoner to participate in any work release plan or program but only if the participation is authorized pursuant to the prisoner's sentence or pursuant to RCW 9.94A.150. This section shall become effective July 1, 1984. [1981 c 137 § 35.]

Severability—1981 c 137: See RCW 9.94A.910.

72.65.210 Inmate participation eligibility standards—Department to conduct overall review of work release program. (1) The department shall establish, by rule, inmate eligibility standards for participation in the work release program.

(2) The department shall:

(a) Conduct an annual examination of each work release facility and its security procedures;

(b) Investigate and set standards for the inmate supervision policies of each work release facility;

(c) Establish physical standards for future work release structures to ensure the safety of inmates, employees, and the surrounding communities;

(d) Evaluate its recordkeeping of serious infractions to determine if infractions are properly and consistently assessed against inmates eligible for work release;

(e) Report to the legislature on a case management procedure to evaluate and determine those inmates on work release who are in need of treatment. The department shall establish in the report a written treatment plan best suited to the inmate's needs, cost, and the relationship of community placement and community corrections officers to a system of case management;

(f) Adopt a policy to encourage businesses employing work release inmates to contact the appropriate work release facility whenever an inmate is absent from his or her work schedule. The department of corrections shall provide each employer with written information and instructions on who should be called if a work release employee is absent from work or leaves the job site without authorization; and

(g) Develop a siting policy, in conjunction with cities, counties, community groups, and the department of community development for the establishment of additional work release facilities. Such policy shall include at least the following elements: (i) Guidelines for appropriate site selection of work-release facilities; (ii) notification requirements to local government and community

groups of intent to site a work release facility; and (iii) guidelines for effective community relations by the work release program operator.

The department shall comply with the requirements of this section by July 1, 1990. [1989 c 89 § 1.]

72.65.900 Effective date—1967 c 17. This act shall become effective on July 1, 1967. [1967 c 17 § 14.]

Chapter 72.66

FURLOUGHS FOR PRISONERS

Sections

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72.66.042	Emergency furlough—Waiver of certain requirements.
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72.66.050	Revocation or modification of furlough plan—Reapplication.
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72.66.080	Powers and duties of secretary—Certain agreements—Rules and regulations.
72.66.090	Violation or revocation of furlough—Authority of secretary to issue arrest warrants—Enforcement of warrants by law enforcement officers—Authority of probation and parole officer to suspend furlough.

Reviser's note: Throughout this chapter "this act" has been changed to "this chapter." "This act" [1971 ex.s. c 58] consists of this chapter and the 1971 amendment to RCW 72.65.130.

Leaves of absence for inmates: RCW 72.01.365 through 72.01.380.

72.66.010 Definitions. As used in this chapter the following words shall have the following meanings:

(1) "Department" means the department of corrections.

(2) "Furlough" means an authorized leave of absence for an eligible resident, without any requirement that the resident be accompanied by, or be in the custody of, any law enforcement or corrections official while on such leave.

(3) "Emergency furlough" means a specially expedited furlough granted to a resident to enable him to meet an emergency situation, such as the death or critical illness of a member of his family.

(4) "Resident" means a person convicted of a felony and serving a sentence for a term of confinement in a state correctional institution or facility, or a state approved work or training release facility.

(5) "Secretary" means the secretary of corrections, or his designee or designees. [1981 c 136 § 113; 1973 c 20 § 2; 1971 ex.s. c 58 § 2.]

Effective date—1981 c 136: See RCW 72.09.900.

Construction—Prior rules and regulations—1973 c 20: "The provisions of this 1973 amendatory act shall not affect the validity of any rule or regulation adopted prior to the effective date of this 1973 amendatory act [June 7, 1973], if such rule or regulation is not in conflict with any provision of this 1973 amendatory act." [1973 c 20 § 17.] For codification of 1973 c 20, see Codification Tables, Volume 0.

Effective date—1971 ex.s. c 58: "This act shall become effective on July 1, 1971." [1971 ex.s. c 58 § 11.] For codification of 1971 ex.s. c 58, see Codification Tables, Volume 0.

72.66.012 Granting of furloughs authorized. The secretary may grant a furlough but only if not precluded from doing so under RCW 72.66.014, 72.66.016, 72.66.018, 72.66.024, 72.66.034, or 72.66.036. [1973 c 20 § 3.]

72.66.014 Ineligibility. A resident may apply for a furlough if he is not precluded from doing so under this section. A resident shall be ineligible to apply for a furlough if:

(1) He is not classified by the secretary as eligible for or on minimum security status; or

(2) His minimum term of imprisonment has not been set; or

(3) He has a valid detainer pending and the agency holding the detainer has not provided written approval for him to be placed on a furlough-eligible status. Such written approval may include either specific approval for a particular resident or general approval for a class or group of residents. [1973 c 20 § 4.]

72.66.016 Minimum time served requirement. (1) A furlough shall not be granted to a resident if the furlough would commence prior to the time the resident has served the minimum amounts of time provided under this section:

(a) If his minimum term of imprisonment is longer than twelve months, he shall have served at least six months of the term;

(b) If his minimum term of imprisonment is less than twelve months, he shall have served at least ninety days and shall have no longer than six months left to serve on his minimum term;

(c) If he is serving a mandatory minimum term of confinement, he shall have served all but the last six months of such term.

(2) A person convicted and sentenced for a violent offense as defined in RCW 9.94A.030 is not eligible for furlough until the person has served at least one-half of the minimum term as established by the *board of prison terms and paroles or the sentencing guidelines commission. [1983 c 255 § 8; 1973 c 20 § 5.]

*Reviser's note: The "board of prison terms and paroles" was redesignated the "indeterminate sentence review board" by 1986 c 224, effective July 1, 1986.

Severability—1983 c 255: See RCW 72.74.900.

72.66.018 Grounds for granting furlough. A furlough may only be granted to enable the resident:

(1) To meet an emergency situation, such as death or critical illness of a member of his family;

(2) To obtain medical care not available in a facility maintained by the department;

(3) To seek employment or training opportunities, but only when:

(a) There are scheduled specific work interviews to take place during the furlough;

(b) The resident has been approved for work or training release but his work or training placement has not occurred or been concluded; or

(c) When necessary for the resident to prepare a parole plan for a parole meeting scheduled to take place within one hundred and twenty days of the commencement of the furlough;

(4) To make residential plans for parole which require his personal appearance in the community;

(5) To care for business affairs in person when the inability to do so could deplete the assets or resources of the resident so seriously as to affect his family or his future economic security;

(6) To visit his family for the purpose of strengthening or preserving relationships, exercising parental responsibilities, or preventing family division or disintegration; or

(7) For any other purpose deemed to be consistent with plans for rehabilitation of the resident. [1973 c 20 § 6.]

72.66.022 Application—Contents. Each resident applying for a furlough shall include in his application for the furlough:

(1) A furlough plan which shall specify in detail the purpose of the furlough and how it is to be achieved, the address at which the applicant would reside, the names of all persons residing at such address and their relationships to the applicant;

(2) A statement from the applicant's proposed sponsor that he agrees to undertake the responsibilities provided in RCW 72.66.024; and

(3) Such other information as the secretary shall require in order to protect the public or further the rehabilitation of the applicant. [1973 c 20 § 7.]

72.66.024 Sponsor. No furlough shall be granted unless the applicant for the furlough has procured a person to act as his sponsor. No person shall qualify as a sponsor unless he satisfies the secretary that he knows the applicant's furlough plan, is familiar with the furlough conditions prescribed pursuant to RCW 72.66.026, and submits a statement that he agrees to:

(1) See to it that the furloughed person is provided with appropriate living quarters for the duration of the furlough;

(2) Notify the secretary immediately if the furloughed person does not appear as scheduled, departs from the furlough plan at any time, becomes involved in serious difficulty during the furlough, or experiences problems that affect his ability to function appropriately;

(3) Assist the furloughed person in other appropriate ways, such as discussing problems and providing transportation to job interviews; and

(4) Take reasonable measures to assist the resident to return from furlough. [1973 c 20 § 8.]

72.66.026 Furlough terms and conditions. The terms and conditions prescribed under this section shall apply to each furlough, and each resident granted a furlough shall agree to abide by them.

(1) The furloughed person shall abide by the terms of his furlough plan.

(2) Upon arrival at the destination indicated in his furlough plan, the furloughed person shall, when so required, report to a state probation and parole officer in accordance with instructions given by the secretary prior to release on furlough. He shall report as frequently as may be required by the state probation and parole officer.

(3) The furloughed person shall abide by all local, state and federal laws.

(4) With approval of the state probation and parole officer designated by the secretary, the furloughed person may accept temporary employment during a period of furlough.

(5) The furloughed person shall not leave the state at any time while on furlough.

(6) Other limitations on movement within the state may be imposed as a condition of furlough.

(7) The furloughed person shall not, in any public place, drink intoxicating beverages or be in an intoxicated condition. A furloughed person shall not enter any tavern, bar, or cocktail lounge.

(8) A furloughed person who drives a motor vehicle shall:

(a) have a valid Washington driver's license in his possession,

(b) have the owner's written permission to drive any vehicle not his own or his spouse's,

(c) have at least minimum personal injury and property damage liability coverage on the vehicle he is driving, and

(d) observe all traffic laws.

(9) Each furloughed person shall carry with him at all times while on furlough a copy of his furlough order prescribed pursuant to RCW 72.66.028 and a copy of the identification card issued to him pursuant to RCW 72.66.032.

(10) The furloughed person shall comply with any other terms or conditions which the secretary may prescribe. [1973 c 20 § 9.]

72.66.028 Furlough order—Contents. Whenever the secretary grants a furlough, he shall do so by a special order which order shall contain each condition and term of furlough prescribed pursuant to RCW 72.66.026 and each additional condition and term which the secretary may prescribe as being appropriate for the particular person to be furloughed. [1973 c 20 § 10.]

72.66.032 Furlough identification card. The secretary shall issue a furlough identification card to each resident granted a furlough. The card shall contain the name of the resident and shall disclose the fact that he has been granted a furlough and the time period covered by the furlough. [1973 c 20 § 11.]

72.66.034 Applicant's personality and conduct—Examination. Prior to the granting of any furlough, the secretary shall examine the applicant's personality and past conduct and determine whether or not he represents a satisfactory risk for furlough. The secretary shall not grant a furlough to any person whom he believes represents an unsatisfactory risk. [1973 c 20 § 12.]

72.66.036 Furlough duration—Extension. (1) The furlough or furloughs granted to any one resident, excluding furloughs for medical care, may not exceed thirty consecutive days or a total of sixty days during a calendar year.

(2) Absent unusual circumstances, each first furlough and each second furlough granted to a resident shall not exceed a period of five days and each emergency furlough shall not exceed forty-eight hours plus travel time.

(3) A furlough may be extended within the maximum time periods prescribed under this section. [1983 c 255 § 7; 1973 c 20 § 13.]

Severability—1983 c 255: See RCW 72.74.900.

72.66.038 Furlough infractions—Reporting—Regaining custody. Any employee of the department having knowledge of a furlough infraction shall report the facts to the secretary. Upon verification, the secretary shall cause the custody of the furloughed person to be regained, and for this purpose may cause a warrant to be issued. [1973 c 20 § 14.]

72.66.042 Emergency furlough—Waiver of certain requirements. In the event of an emergency furlough, the secretary may waive all or any portion of RCW 72.66.014(2), 72.66.016, 72.66.022, 72.66.024, and 72.66.026. [1973 c 20 § 15.]

72.66.044 Application proceeding not deemed adjudicative proceeding. Any proceeding involving an application for a furlough shall not be deemed an adjudicative proceeding under the provisions of chapter 34.05 RCW, the Administrative Procedure Act. [1989 c 175 § 144; 1973 c 20 § 16.]

Effective date—1989 c 175: See note following RCW 34.05.010.

72.66.050 Revocation or modification of furlough plan—Reapplication. At any time after approval has been granted for a furlough to any prisoner, such approval or order of furlough may be revoked, and if the prisoner has been released on an order of furlough, he may be returned to a state correctional institution, or the plan may be modified, in the discretion of the secretary. Any prisoner whose furlough application is rejected may reapply for a furlough after such period of time has elapsed as shall be determined at the time of rejection by

the superintendent or secretary, whichever person initially rejected the application for furlough, such time period being subject to modification. [1971 ex.s. c 58 § 6.]

72.66.060 Wilfully failing to return—Deemed escapee and fugitive—Penalty. Any furloughed prisoner who wilfully fails to return to the designated place of confinement at the time specified in the order of furlough shall be deemed an escapee and fugitive from justice, and upon conviction shall be guilty of a felony and sentenced to a term of confinement of not more than ten years. The provisions of this section shall be incorporated in every order of furlough granted by the department. [1971 ex.s. c 58 § 7.]

72.66.070 Transportation, clothing and funds for furloughed prisoners. The department may provide or arrange for transportation for furloughed prisoners to the designated place of residence within the state and may, in addition, supply funds not to exceed forty dollars and suitable clothing, such clothing to be returned to the institution on the expiration of furlough. [1971 ex.s. c 58 § 8.]

72.66.080 Powers and duties of secretary—Certain agreements—Rules and regulations. The secretary may enter into agreements with any agency of the state, a county, a municipal corporation or any person, corporation or association for the purpose of implementing furlough plans, and, in addition, may make such rules and regulations in furtherance of this chapter as he may deem necessary. [1971 ex.s. c 58 § 9.]

72.66.090 Violation or revocation of furlough—Authority of secretary to issue arrest warrants—Enforcement of warrants by law enforcement officers—Authority of probation and parole officer to suspend furlough. The secretary may issue warrants for the arrest of any prisoner granted a furlough, at the time of the revocation of such furlough, or upon the failure of the prisoner to report as designated in the order of furlough. Such arrest warrants shall authorize any law enforcement, probation and parole or peace officer of this state, or any other state where such prisoner may be located, to arrest such prisoner and to place him in physical custody pending his return to confinement in a state correctional institution. Any state probation and parole officer, if he has reasonable cause to believe that a person granted a furlough has violated a condition of his furlough, may suspend such person's furlough and arrest or cause the arrest and detention in physical custody of the furloughed prisoner, pending the determination of the secretary whether the furlough should be revoked. The probation and parole officer shall report to the secretary all facts and circumstances and the reasons for the action of suspending such furlough. Upon the basis of the report and such other information as the secretary may obtain, he may revoke, reinstate or modify the conditions of furlough, which shall be by written order of

the secretary. If the furlough is revoked, the secretary shall issue a warrant for the arrest of the furloughed prisoner and his return to a state correctional institution. [1971 ex.s. c 58 § 10.]

Chapter 72.68

TRANSFER, REMOVAL, TRANSPORTATION— DETENTION CONTRACTS

Sections	Definitions.
72.68.001	Transfer of prisoners.
72.68.010	Transportation of prisoners.
72.68.020	Transfer or removal of person in correctional institution to institution for mentally ill.
72.68.031	Transfer or removal of person in institution for mentally ill to other institution.
72.68.032	Transfer or removal of committed or confined persons—State institution or facility for the care of the mentally ill, defined.
72.68.035	Transfer or removal of committed or confined persons—Record—Notice.
72.68.037	Contracts with other governmental units for detention of felons convicted in this state.
72.68.040	Contracts with other governmental units for detention of felons convicted in this state—Notice of transfer of prisoner.
72.68.050	Contracts with other governmental units for detention of felons convicted in this state—Procedure when transferred prisoner's presence required in judicial proceedings.
72.68.060	Contracts with other governmental units for detention of felons convicted in this state—Procedure regarding prisoner when contract expires.
72.68.070	Contracts with other states or territories for care, confinement or rehabilitation of female prisoners.
72.68.075	Federal prisoners, or from other state—Authority to receive.
72.68.080	Federal prisoners, or from other state—Per diem rate for keep.
72.68.090	Federal prisoners, or from other state—Space must be available.
72.68.100	

Officers and guards as peace officers: RCW 9.94.050.

Transfer of child under sixteen convicted of crime amounting to felony: RCW 72.01.410.

Western interstate corrections compact: Chapter 72.70 RCW.

72.68.001 Definitions. As used in this chapter: "Department" means the department of corrections; and "Secretary" means the secretary of corrections. [1981 c 136 § 114.]

Effective date—1981 c 136: See RCW 72.09.900.

72.68.010 Transfer of prisoners. (1) Whenever in its judgment the best interests of the state or the welfare of any prisoner confined in any penal institution will be better served by his or her transfer to another institution or to a foreign country of which the prisoner is a citizen or national, the secretary may effect such transfer consistent with applicable federal laws and treaties.

(2) If directed by the governor, the secretary shall, in carrying out this section and RCW 43.06.350, adopt rules under chapter 34.05 RCW to effect the transfer of prisoners requesting transfer to foreign countries. [1983 c 255 § 10; 1979 c 141 § 282; 1959 c 28 § 72.68.010.]

Prior: 1955 c 245 § 2; 1935 c 114 § 5; RRS § 10249-5. Formerly RCW 9.95.180.]

Severability—1983 c 255: See RCW 72.74.900.

72.68.020 Transportation of prisoners. (1) The secretary shall transport prisoners under guard:

(a) to and between the state penitentiary, the state reformatory and all other institutions under his supervision;

(b) from a county, city, or municipal jail to an institution mentioned in subparagraph (a) of this subsection and to a county, city or municipal jail from an institution mentioned in subparagraph (a) of this subsection.

(2) The secretary may employ necessary persons for such purpose. [1979 c 141 § 283; 1959 c 28 § 72.68.020. Prior: 1955 c 245 § 1. Formerly RCW 9.95.181.]

Officers and guards as peace officers: RCW 9.94.050.

72.68.031 Transfer or removal of person in correctional institution to institution for mentally ill. When, in the judgment of the secretary, the welfare of any person committed to or confined in any state correctional institution or facility necessitates that such person be transferred or moved for observation, diagnosis or treatment to any state institution or facility for the care of the mentally ill, the secretary, with the consent of the secretary of social and health services, is authorized to order and effect such move or transfer: *Provided*, That the sentence of such person shall continue to run as if he remained confined in a correctional institution or facility, and that such person shall not continue so detained or confined beyond the maximum term to which he was sentenced: *Provided, further*, That the secretary and the *board of prison terms and paroles shall adopt and implement procedures to assure that persons so transferred shall, while detained or confined at such institution or facility for the care of the mentally ill, be provided with substantially similar opportunities for parole or early release evaluation and determination as persons detained or confined in the state correctional institutions or facilities. [1981 c 136 § 115; 1972 ex.s. c 59 § 1.]

*Reviser's note: The "board of prison terms and paroles" was redesignated the "indefinite sentence review board" by 1986 c 224, effective July 1, 1986.

Effective date—1981 c 136: See RCW 72.09.900.

72.68.032 Transfer or removal of person in institution for mentally ill to other institution. When, in the judgment of the secretary of the department of social and health services, the welfare of any person committed to or confined in any state institution or facility for the care of the mentally ill necessitates that such person be transferred or moved for observation, diagnosis, or treatment, or for different security status while being observed, diagnosed or treated to any other state institution or facility for the care of the mentally ill, the secretary of social and health services is authorized to order and effect such move or transfer. [1981 c 136 § 116; 1972 ex.s. c 59 § 2.]

Effective date—1981 c 136: See RCW 72.09.900.

72.68.035 Transfer or removal of committed or confined persons—State institution or facility for the care of the mentally ill, defined. As used in RCW 72.68.031 and 72.68.032, the phrase "state institution or facility for the care of the mentally ill" shall mean any hospital, institution or facility operated and maintained by the state of Washington which has as its principal purpose the care of the mentally ill, whether such hospital, institution or facility is physically located within or outside the geographical or structural confines of a state correctional institution or facility: *Provided*, That whether a state institution or facility for the care of the mentally ill be physically located within or outside the geographical or structural confines of a state correctional institution or facility, it shall be administered separately from the state correctional institution or facility, and in conformity with its principal purpose. [1972 ex.s. c 59 § 3.]

72.68.037 Transfer or removal of committed or confined persons—Record—Notice. Whenever a move or transfer is made pursuant to RCW 72.68.031 or 72.68.032, a record shall be made and the relatives, attorney, if any, and guardian, if any, of the person moved shall be notified of the move or transfer. [1972 ex.s. c 59 § 4.]

72.68.040 Contracts with other governmental units for detention of felons convicted in this state. The secretary may contract with the authorities of the federal government, or the authorities of any state of the United States or of any county or city in this state providing for the detention in an institution or jail operated by such governmental unit, of prisoners convicted of a felony in the courts of this state and sentenced to a term of imprisonment therefor in a state correctional institution for convicted felons under the jurisdiction of the department. After the making of a contract under this section, prisoners sentenced to a term of imprisonment in a state correctional institution for convicted felons may be conveyed by the superintendent or his assistants to the institution or jail named in the contract. The prisoners shall be delivered to the authorities of the institution or jail, there to be confined until their sentences have expired or they are otherwise discharged by law, paroled or until they are returned to a state correctional institution for convicted felons for further confinement. [1981 c 136 § 117; 1979 c 141 § 284; 1967 c 60 § 1; 1959 c 47 § 1; 1959 c 28 § 72.68.040. Prior: 1957 c 27 § 1. Formerly RCW 9.95.184.]

Effective date—1981 c 136: See RCW 72.09.900.

72.68.050 Contracts with other governmental units for detention of felons convicted in this state—Notice of transfer of prisoner. Whenever a prisoner who is serving a sentence imposed by a court of this state is transferred from a state correctional institution for convicted felons under RCW 72.68.040 through 72.68.070, the superintendent shall send to the clerk of the court pursuant to whose order or judgment the prisoner was committed to a state correctional institution for convicted felons a notice of transfer, disclosing the name of the prisoner

transferred and giving the name and location of the institution to which the prisoner was transferred. The superintendent shall keep a copy of all notices of transfer on file as a public record open to inspection; and the clerk of the court shall file with the judgment roll in the appropriate case a copy of each notice of transfer which he receives from the superintendent. [1967 c 60 § 2; 1959 c 47 § 2; 1959 c 28 § 72.68.050. Prior: 1957 c 27 § 2. Formerly RCW 9.95.185.]

72.68.060 Contracts with other governmental units for detention of felons convicted in this state—Procedure when transferred prisoner's presence required in judicial proceedings. Should the presence of any prisoner confined, under authority of RCW 72.68.040 through 72.68.070, in an institution of another state or the federal government or in a county or city jail, be required in any judicial proceeding of this state, the superintendent of a state correctional institution for convicted felons or his assistants shall, upon being so directed by the secretary, or upon the written order of any court of competent jurisdiction, or of a judge thereof, procure such prisoner, bring him to the place directed in such order and hold him in custody subject to the further order and direction of the secretary, or of the court or of a judge thereof, until he is lawfully discharged from such custody. The superintendent or his assistants may, by direction of the secretary or of the court, or a judge thereof, deliver such prisoner into the custody of the sheriff of the county in which he was convicted, or may, by like order, return such prisoner to a state correctional institution for convicted felons or the institution from which he was taken. [1979 c 141 § 285; 1967 c 60 § 3; 1959 c 47 § 3; 1959 c 28 § 72.68.060. Prior: 1957 c 27 § 3. Formerly RCW 9.95.186.]

72.68.070 Contracts with other governmental units for detention of felons convicted in this state—Procedure regarding prisoner when contract expires. Upon the expiration of any contract entered into under RCW 72.68.040 through 72.68.070, all prisoners of this state confined in such institution or jail shall be returned by the superintendent or his assistants to a state correctional institution for convicted felons of this state, or delivered to such other institution as the secretary has contracted with under RCW 72.68.040 through 72.68.070. [1979 c 141 § 286; 1967 c 60 § 4; 1959 c 47 § 4; 1959 c 28 § 72.68.070. Prior: 1957 c 27 § 4. Formerly RCW 9.95.187.]

72.68.075 Contracts with other states or territories for care, confinement or rehabilitation of female prisoners. The secretary is hereby authorized to contract for the care, confinement and rehabilitation of female prisoners of other states or territories of the United States, as more specifically provided in the Western Interstate Corrections Compact, as contained in chapter 72.70 RCW as now or hereafter amended. [1979 c 141 § 287; 1967 ex.s. c 122 § 12.]

72.68.080 Federal prisoners, or from other state—Authority to receive. All persons sentenced to prison by the authority of the United States or of any state or territory of the United States may be received by the department and imprisoned in a state correctional institution as defined in RCW 72.65.010 in accordance with the sentence of the court by which they were tried. The prisoners so confined shall be subject in all respects to discipline and treatment as though committed under the laws of this state. [1983 c 255 § 11; 1967 ex.s. c 122 § 10; 1959 c 28 § 72.68.080. Prior: 1951 c 135 § 1. Formerly RCW 72.08.350.]

Severability—1983 c 255: See RCW 72.74.900.

72.68.090 Federal prisoners, or from other state—Per diem rate for keep. The secretary is authorized to enter into contracts with the proper officers or agencies of the United States and of other states and territories of the United States relative to the per diem rate to be paid the state of Washington for the conditions of the keep of each prisoner. [1979 c 141 § 288; 1959 c 28 § 72.68.090. Prior: 1951 c 135 § 2. Formerly RCW 72.08.360.]

72.68.100 Federal prisoners, or from other state—Space must be available. The secretary shall not enter into any contract for the care or commitment of any prisoner of the federal government or any other state unless there is vacant space and unused facilities in the Washington state penitentiary or reformatory or the Washington correctional institution for women. [1979 c 141 § 289; 1967 ex.s. c 122 § 11; 1959 c 28 § 72.68.100. Prior: 1951 c 135 § 3. Formerly RCW 72.08.370.]

Chapter 72.70

WESTERN INTERSTATE CORRECTIONS COMPACT

Sections	
72.70.010	Compact enacted—Provisions.
72.70.020	Secretary authorized to receive or transfer inmates pursuant to contract.
72.70.030	Responsibilities of courts, departments, agencies and officers.
72.70.040	Hearings.
72.70.050	Secretary may enter into contracts.
72.70.060	Secretary may provide clothing, etc., to inmate released in another state.
72.70.900	Severability—Liberal construction—1959 c 287.

Compacts for out-of-state supervision of parolees or probationers: RCW 9.95.270.

Interstate compact on juveniles: Chapter 13.24 RCW.

72.70.010 Compact enacted—Provisions. The Western Interstate Corrections Compact as contained herein is hereby enacted into law and entered into on behalf of this state with any and all other states legally joining therein in a form substantially as follows:

WESTERN INTERSTATE CORRECTIONS
COMPACT

ARTICLE I—Purpose and Policy

The party states, desiring by common action to improve their institutional facilities and provide programs of sufficiently high quality for the confinement, treatment and rehabilitation of various types of offenders, declare that it is the policy of each of the party states to provide such facilities and programs on a basis of cooperation with one another, thereby serving the best interests of such offenders and of society. The purpose of this compact is to provide for the development and execution of such programs of cooperation for the confinement, treatment and rehabilitation of offenders.

ARTICLE II—Definitions

As used in this compact, unless the context clearly requires otherwise:

(a) "State" means a state of the United States, or, subject to the limitation contained in Article VII, Guam.

(b) "Sending state" means a state party to this compact in which conviction was had.

(c) "Receiving state" means a state party to this compact to which an inmate is sent for confinement other than a state in which conviction was had.

(d) "Inmate" means a male or female offender who is under sentence to or confined in a prison or other correctional institution.

(e) "Institution" means any prison, reformatory or other correctional facility except facilities for the mentally ill or mentally handicapped in which inmates may lawfully be confined.

ARTICLE III—Contracts

(a) Each party state may make one or more contracts with any one or more of the other party states for the confinement of inmates on behalf of a sending state in institutions situated within receiving states. Any such contract shall provide for:

1. Its duration.

2. Payments to be made to the receiving state by the sending state for inmate maintenance, extraordinary medical and dental expenses, and any participation in or receipt by inmates of rehabilitative or correctional services, facilities, programs or treatment not reasonably included as part of normal maintenance.

3. Participation in programs of inmate employment, if any; the disposition or crediting of any payments received by inmates on account thereof; and the crediting of proceeds from or disposal of any products resulting therefrom.

4. Delivery and retaking of inmates.

5. Such other matters as may be necessary and appropriate to fix the obligations, responsibilities and rights of the sending and receiving states.

(b) Prior to the construction or completion of construction of any institution or addition thereto by a party state, any other party state or states may contract therewith for the enlargement of the planned capacity of the institution or addition thereto, or for the inclusion

therein of particular equipment or structures, and for the reservation of a specific percentum of the capacity of the institution to be kept available for use by inmates of the sending state or states so contracting. Any sending state so contracting may, to the extent that monies are legally available therefor, pay to the receiving state, a reasonable sum as consideration for such enlargement of capacity, or provision of equipment or structures, and reservation of capacity. Such payment may be in a lump sum or in installments as provided in the contract.

(c) The terms and provisions of this compact shall be a part of any contract entered into by the authority of or pursuant thereto, and nothing in any such contract shall be inconsistent therewith.

ARTICLE IV—Procedures and Rights

(a) Whenever the duly constituted judicial or administrative authorities in a state party to this compact, and which has entered into a contract pursuant to Article III, shall decide that confinement in, or transfer of an inmate to, an institution within the territory of another party state is necessary in order to provide adequate quarters and care or desirable in order to provide an appropriate program of rehabilitation or treatment, said officials may direct that the confinement be within an institution within the territory of said other party state, the receiving state to act in that regard solely as agent for the sending state.

(b) The appropriate officials of any state party to this compact shall have access, at all reasonable times, to any institution in which it has a contractual right to confine inmates for the purpose of inspecting the facilities thereof and visiting such of its inmates as may be confined in the institution.

(c) Inmates confined in an institution pursuant to the terms of this compact shall at all times be subject to the jurisdiction of the sending state and may at any time be removed therefrom for transfer to a prison or other institution within the sending state, for transfer to another institution in which the sending state may have a contractual or other right to confine inmates, for release on probation or parole, for discharge, or for any other purpose permitted by the laws of the sending state; provided that the sending state shall continue to be obligated to such payments as may be required pursuant to the terms of any contract entered into under the terms of Article III.

(d) Each receiving state shall provide regular reports to each sending state on the inmates of that sending state in institutions pursuant to this compact including a conduct record of each inmate and certify said record to the official designated by the sending state, in order that each inmate may have the benefit of his or her record in determining and altering the disposition of said inmate in accordance with the law which may obtain in the sending state and in order that the same may be a source of information for the sending state.

(e) All inmates who may be confined in an institution pursuant to the provisions of this compact shall be treated in a reasonable and humane manner and shall be cared for and treated equally with such similar inmates

of the receiving state as may be confined in the same institution. The fact of confinement in a receiving state shall not deprive any inmate so confined of any legal rights which said inmate would have had if confined in an appropriate institution of the sending state.

(f) Any hearing or hearings to which an inmate confined pursuant to this compact may be entitled by the laws of the sending state may be had before the appropriate authorities of the sending state, or of the receiving state if authorized by the sending state. The receiving state shall provide adequate facilities for such hearings as may be conducted by the appropriate officials of a sending state. In the event such hearing or hearings are had before officials of the receiving state, the governing law shall be that of the sending state and a record of the hearing or hearings as prescribed by the sending state shall be made. Said record together with any recommendations of the hearing officials shall be transmitted forthwith to the official or officials before whom the hearing would have been had if it had taken place in the sending state. In any and all proceedings had pursuant to the provisions of this subdivision, the officials of the receiving state shall act solely as agents of the sending state and no final determination shall be made in any matter except by the appropriate officials of the sending state. Costs of records made pursuant to this subdivision shall be borne by the sending state.

(g) Any inmate confined pursuant to this compact shall be released within the territory of the sending state unless the inmate, and the sending and receiving states, shall agree upon release in some other place. The sending state shall bear the cost of such return to its territory.

(h) Any inmate confined pursuant to the terms of this compact shall have any and all rights to participate in and derive any benefits or incur or be relieved of any obligations or have such obligations modified or his status changed on account of any action or proceeding in which he could have participated if confined in any appropriate institution of the sending state located within such state.

(i) The parent, guardian, trustee, or other person or persons entitled under the laws of the sending state to act for, advise, or otherwise function with respect to any inmate shall not be deprived of or restricted in his exercise of any power in respect of any inmate confined pursuant to the terms of this compact.

ARTICLE V—Acts Not Reviewable In Receiving State; Extradition

(a) Any decision of the sending state in respect of any matter over which it retains jurisdiction pursuant to this compact shall be conclusive upon and not reviewable within the receiving state, but if at the time the sending state seeks to remove an inmate from an institution in the receiving state there is pending against the inmate within such state any criminal charge or if the inmate is suspected of having committed within such state a criminal offense, the inmate shall not be returned without the consent of the receiving state until discharged from prosecution or other form of proceeding, imprisonment

or detention for such offense. The duly accredited officers of the sending state shall be permitted to transport inmates pursuant to this compact through any and all states party to this compact without interference.

(b) An inmate who escapes from an institution in which he is confined pursuant to this compact shall be deemed a fugitive from the sending state and from the state in which the institution is situated. In the case of an escape to a jurisdiction other than the sending or receiving state, the responsibility for institution of extradition proceedings shall be that of the sending state, but nothing contained herein shall be construed to prevent or affect the activities of officers and agencies of any jurisdiction directed toward the apprehension and return of an escapee.

ARTICLE VI—Federal Aid

Any state party to this compact may accept federal aid for use in connection with an institution or program, the use of which is or may be affected by this compact or any contract pursuant thereto and any inmate in a receiving state pursuant to this compact may participate in any such federally aided program or activity for which the sending and receiving states have made contractual provision; provided that if such program or activity is not part of the customary correctional regimen the express consent of the appropriate official of the sending state shall be required therefor.

ARTICLE VII—Entry Into Force

This compact shall enter into force and become effective and binding upon the states so acting when it has been enacted into law by any two contiguous states from among the states of Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nebraska, Nevada, New Mexico, Oregon, Utah, Washington and Wyoming. For the purposes of this article, Alaska and Hawaii shall be deemed contiguous to each other; to any and all of the states of California, Oregon and Washington; and to Guam. Thereafter, this compact shall enter into force and become effective and binding as to any other of said states, or any other state contiguous to at least one party state upon similar action by such state. Guam may become party to this compact by taking action similar to that provided for joinder by any other eligible party state and upon the consent of Congress to such joinder. For the purposes of this article, Guam shall be deemed contiguous to Alaska, Hawaii, California, Oregon and Washington.

ARTICLE VIII—Withdrawal and Termination

This compact shall continue in force and remain binding upon a party state until it shall have enacted a statute repealing the same and providing for the sending of formal written notice of withdrawal from the compact to the appropriate officials of all other party states. An actual withdrawal shall not take effect until two years after the notices provided in said statute have been sent. Such withdrawal shall not relieve the withdrawing state from its obligations assumed hereunder prior to the effective date of withdrawal. Before the effective date of

withdrawal, a withdrawing state shall remove to its territory, at its own expense, such inmates as it may have confined pursuant to the provisions of this compact.

ARTICLE IX—Other Arrangements Unaffected

Nothing contained in this compact shall be construed to abrogate or impair any agreement or other arrangement which a party state may have with a non-party state for the confinement, rehabilitation or treatment of inmates nor to repeal any other laws of a party state authorizing the making of cooperative institutional arrangements.

ARTICLE X—Construction and Severability

The provisions of this compact shall be liberally construed and shall be severable. If any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any participating state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating therein, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters. [1977 ex.s. c 80 § 69; 1959 c 287 § 1.]

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.

72.70.020 Secretary authorized to receive or transfer inmates pursuant to contract. The secretary of corrections is authorized to receive or transfer an inmate as defined in Article II(d) of the Western Interstate Corrections Compact to any institution as defined in Article II(e) of the Western Interstate Corrections Compact within this state or without this state, if this state has entered into a contract or contracts for the confinement of inmates in such institutions pursuant to Article III of the Western Interstate Corrections Compact. [1981 c 136 § 118; 1979 c 141 § 290; 1959 c 287 § 2.]

Effective date—1981 c 136: See RCW 72.09.900.

72.70.030 Responsibilities of courts, departments, agencies and officers. The courts, departments, agencies and officers of this state and its subdivisions shall enforce this compact and shall do all things appropriate to the effectuation of its purposes and intent which may be within their respective jurisdictions including but not limited to the making and submission of such reports as are required by the compact. [1959 c 287 § 3.]

72.70.040 Hearings. The secretary and members of the *board of prison terms and paroles are hereby authorized and directed to hold such hearings as may be requested by any other party state pursuant to Article IV(f) of the Western Interstate Corrections Compact. Additionally, the secretary and members of the *board

of prison terms and paroles may hold out-of-state hearings in connection with the case of any inmate of this state confined in an institution of another state party to the Western Interstate Corrections Compact. [1979 c 141 § 291; 1959 c 287 § 4.]

***Reviser's note:** The "board of prison terms and paroles" was redesignated the "indeterminate sentence review board" by 1986 c 224, effective July 1, 1986.

72.70.050 Secretary may enter into contracts. The secretary of corrections is hereby empowered to enter into such contracts on behalf of this state as may be appropriate to implement the participation of this state in the Western Interstate Corrections Compact pursuant to Article III thereof. No such contract shall be of any force or effect until approved by the attorney general. [1981 c 136 § 119; 1979 c 141 § 292; 1959 c 287 § 5.]

Effective date—1981 c 136: See RCW 72.09.900.

72.70.060 Secretary may provide clothing, etc., to inmate released in another state. If any agreement between this state and any other state party to the Western Interstate Corrections Compact enables the release of an inmate of this state confined in an institution of another state to be released in such other state in accordance with Article IV(g) of this compact, then the secretary is authorized to provide clothing, transportation and funds to such inmate in accordance with the provisions of chapter 72.02 RCW. [1983 c 3 § 186; 1979 c 141 § 293; 1959 c 287 § 6.]

72.70.900 Severability—Liberal construction—1959 c 287. The provisions of this act shall be severable and if any phrase, clause, sentence, or provision of this act is declared to be unconstitutional or the applicability thereof to any state, agency, person or circumstance is held invalid, the constitutionality of this act and the applicability thereof to any other state, agency, person or circumstance shall, with respect to all severable matters, not be affected thereby. It is the legislative intent that the provisions of this act be reasonably and liberally construed. [1959 c 287 § 7.]

Chapter 72.72

CRIMINAL BEHAVIOR OF RESIDENTS OF INSTITUTIONS

Sections	
72.72.010	Legislative intent.
72.72.020	Definitions.
72.72.030	Institutional impact account—Reimbursement to political subdivisions—Limitations—Earnings.
72.72.040	Reimbursement—Rules.
72.72.050	Disturbances at state penal facilities—Reimbursement to cities and counties for certain expenses incurred—Funding.
72.72.060	Disturbances at state penal facilities—Reimbursement to cities and counties for physical injury benefit costs—Limitations.

Reviser's note: 1979 ex.s. c 108 was to be added to chapter 72.06 RCW but has been codified as chapter 72.72 RCW.

72.72.010 Legislative intent. The legislature finds that political subdivisions in which state institutions are located incur a disproportionate share of the criminal justice costs due to criminal behavior of the residents of such institutions. To redress this inequity, it shall be the policy of the state of Washington to reimburse political subdivisions which have incurred such costs. [1979 ex.s. c 108 § 1.]

72.72.020 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Political subdivisions" means counties, cities, and towns.

(2) "Institution" means any state institution for the confinement of adult offenders committed pursuant to chapters 10.64, 10.77, and 71.06 RCW or juvenile offenders committed pursuant to chapter 13.40 RCW. [1983 c 279 § 1; 1981 c 136 § 120; 1979 ex.s. c 108 § 2.]

Effective date—1981 c 136: See RCW 72.09.900.

72.72.030 Institutional impact account—Reimbursement to political subdivisions—Limitations—Earnings. (1) There is hereby created, in the state treasury, an institutional impact account. The secretary of social and health services may reimburse political subdivisions for criminal justice costs incurred directly as a result of crimes committed by offenders residing in an institution as defined herein under the jurisdiction of the secretary of social and health services. Such reimbursement shall be made to the extent funds are available from the institutional impact account. Reimbursements shall be limited to law enforcement, prosecutorial, judicial, and jail facilities costs which are documented to be strictly related to the criminal activities of the offender.

(2) The secretary of corrections may reimburse political subdivisions for criminal justice costs incurred directly as a result of crimes committed by offenders residing in an institution as defined herein under the jurisdiction of the secretary of corrections. Such reimbursement shall be made to the extent funds are available from the institutional impact account. Reimbursements shall be limited to law enforcement, prosecutorial, judicial, and jail facilities costs which are documented to be strictly related to the criminal activities of the offender.

(3) All earnings of investments of balances in the institutional impact account shall be credited to the general fund. [1985 c 57 § 71; 1983 c 279 § 2; 1979 ex.s. c 108 § 3.]

Effective date—1985 c 57: See note following RCW 15.52.320.

72.72.040 Reimbursement—Rules. (1) The secretary of social and health services and the secretary of corrections shall each promulgate rules pursuant to chapter 34.05 RCW regarding the reimbursement process for their respective agencies.

(2) Reimbursement shall not be made if otherwise provided pursuant to other provisions of state law. [1983 c 279 § 3; 1979 ex.s. c 108 § 4.]

72.72.050 Disturbances at state penal facilities—Reimbursement to cities and counties for certain expenses incurred—Funding. The state shall reimburse cities and counties for their expenses incurred directly as a result of their providing personnel and material pursuant to a contingency plan adopted under RCW 72.02.150. Reimbursement to cities and counties shall be expended solely from the institutional impact account within funds available in that account. If the costs of reimbursements to cities and counties exceed available funds, the secretary of corrections shall request the legislature to appropriate sufficient funds to enable the secretary of corrections to make full reimbursement. [1983 c 279 § 4; 1982 c 49 § 3.]

72.72.060 Disturbances at state penal facilities—Reimbursement to cities and counties for physical injury benefit costs—Limitations. The state shall reimburse cities and counties for their costs incurred under chapter 41.26 RCW if the costs are the direct result of physical injuries sustained in the implementation of a contingency plan adopted under RCW 72.02.150 and if reimbursement is not precluded by the following provisions: If the secretary of corrections identifies in the contingency plan the prison walls or other perimeter of the secured area, then reimbursement will not be made unless the injuries occur within the walls or other perimeter of the secured area. If the secretary of corrections does not identify prison walls or other perimeter of the secured area, then reimbursement shall not be made unless the injuries result from providing assistance, requested by the secretary of corrections or the secretary's designee, which is beyond the description of the assistance contained in the contingency plan. In no case shall reimbursement be made when the injuries result from conduct which either is not requested by the secretary of corrections or the secretary's designee, or is in violation of orders by superiors of the local law enforcement agency. [1983 c 279 § 5; 1982 c 49 § 4.]

Chapter 72.74

INTERSTATE CORRECTIONS COMPACT

Sections

72.74.010	Short title.
72.74.020	Authority to execute, terms of compact.
72.74.030	Authority to receive or transfer inmates.
72.74.040	Enforcement.
72.74.050	Hearings.
72.74.060	Contracts for implementation.
72.74.070	Clothing, transportation, and funds for state inmates released in other states.
72.74.900	Severability—1983 c 255.

72.74.010 Short title. This chapter shall be known and may be cited as the Interstate Corrections Compact. [1983 c 255 § 12.]

72.74.020 Authority to execute, terms of compact. The secretary of the department of corrections is hereby authorized and requested to execute, on behalf of the

state of Washington, with any other state or states legally joining therein a compact which shall be in form substantially as follows:

The contracting states solemnly agree that:

(1) The party states, desiring by common action to fully utilize and improve their institutional facilities and provide adequate programs for the confinement, treatment, and rehabilitation of various types of offenders, declare that it is the policy of each of the party states to provide such facilities and programs on a basis of cooperation with one another, and with the federal government, thereby serving the best interest of such offenders and of society and effecting economies in capital expenditures and operational costs. The purpose of this compact is to provide for the mutual development and execution of such programs of cooperation for the confinement, treatment, and rehabilitation of offenders with the most economical use of human and material resources.

(2) As used in this compact, unless the context clearly requires otherwise:

(a) "State" means a state of the United States; the United States of America; a territory or possession of the United States; the District of Columbia; and the Commonwealth of Puerto Rico.

(b) "Sending state" means a state party to this compact in which conviction or court commitment was had.

(c) "Receiving state" means a state party to this compact to which an inmate is sent for confinement other than a state in which conviction or court commitment was had.

(d) "Inmate" means a male or female offender who is committed, under sentence to, or confined in a penal or correctional institution.

(e) "Institution" means any penal or correctional facility, including but not limited to a facility for the mentally ill or mentally defective, in which inmates as defined in subsection (2)(d) of this section may lawfully be confined.

(3) (a) Each party state may make one or more contracts with any one or more of the other party states, or with the federal government, for the confinement of inmates on behalf of a sending state in institutions situated within receiving states. Any such contract shall provide for:

(i) Its duration;

(ii) Payments to be made to the receiving state or to the federal government, by the sending state for inmate maintenance, extraordinary medical and dental expenses, and any participation in or receipt by inmates of rehabilitative or correctional services, facilities, programs or treatment not reasonably included as part of normal maintenance;

(iii) Participation in programs of inmate employment, if any; the disposition or crediting of any payments received by inmates on account thereof; and the crediting of proceeds from or disposal of any products resulting therefrom;

(iv) Delivery and retaking of inmates;

(v) Such other matters as may be necessary and appropriate to fix the obligations, responsibilities and rights of the sending and receiving states.

(b) The terms and provisions of this compact shall be a part of any contract entered into by the authority of or pursuant thereto and nothing in any such contract shall be inconsistent therewith.

(4) (a) Whenever the duly constituted authorities in a state party to this compact, and which has entered into a contract pursuant to subsection (3)(a) of this section, shall decide that confinement in, or transfer of an inmate to, an institution within the territory of another party state is necessary or desirable in order to provide adequate quarters and care or an appropriate program of rehabilitation or treatment, said officials may direct that the confinement be within an institution within the territory of said other party state, the receiving state to act in that regard solely as agent for the sending state.

(b) The appropriate officials of any state party to this compact shall have access, at all reasonable times, to any institution in which it has a contractual right to confine inmates for the purpose of inspecting the facilities thereof and visiting such of its inmates as may be confined in the institution.

(c) Inmates confined in an institution pursuant to the terms of this compact shall at all times be subject to the jurisdiction of the sending state and may at any time be removed therefrom for transfer to a prison or other institution within the sending state, for transfer to another institution in which the sending state may have a contractual or other right to confine inmates, for release on probation or parole, for discharge, or for any other purpose permitted by the laws of the sending state, provided that the sending state shall continue to be obligated to such payments as may be required pursuant to the terms of any contract entered into under the terms of subsection (3)(a) of this section.

(d) Each receiving state shall provide regular reports to each sending state on the inmates of that sending state in institutions pursuant to this compact, including a conduct record of each inmate, and certify said record to the official designated by the sending state, in order that each inmate may have official review of his or her record in determining and altering the disposition of said inmate in accordance with the law which may obtain in the sending state and in order that the same may be a source of information for the sending state.

(e) All inmates who may be confined in an institution pursuant to the provisions of this compact shall be treated in a reasonable and humane manner and shall be treated equally with such similar inmates of the receiving state as may be confined in the same institution. The fact of confinement in a receiving state shall not deprive any inmate so confined of any legal rights which said inmate would have had if confined in an appropriate institution of the sending state.

(f) Any hearing or hearings to which an inmate confined pursuant to this compact may be entitled by the laws of the sending state may be had before the appropriate authorities of the sending state, or of the receiving state if authorized by the sending state. The receiving

state shall provide adequate facilities for such hearings as may be conducted by the appropriate officials of a sending state. In the event such hearing or hearings are had before officials of the receiving state, the governing law shall be that of the sending state and a record of the hearing or hearings as prescribed by the sending state shall be made. Said record, together with any recommendations of the hearing officials, shall be transmitted forthwith to the official or officials before whom the hearing would have been had if it had taken place in the sending state. In any and all proceedings had pursuant to the provisions of this subdivision, the officials of the receiving state shall act solely as agents of the sending state and no final determination shall be made in any matter except by the appropriate officials of the sending state.

(g) Any inmate confined pursuant to this compact shall be released within the territory of the sending state unless the inmate, and the sending and receiving states, shall agree upon release in some other place. The sending state shall bear the cost of such return to its territory.

(h) Any inmate confined pursuant to the terms of this compact shall have any and all rights to participate in and derive any benefits or incur or be relieved of any obligations or have such obligations modified or his status changed on account of any action or proceeding in which he could have participated if confined in any appropriate institution of the sending state located within such state.

(i) The parents, guardian, trustee, or other person or persons entitled under the laws of the sending state to act for, advise or otherwise function with respect to any inmate shall not be deprived of or restricted in his exercise of any power in respect of any inmate confined pursuant to the terms of this compact.

(5) (a) Any decision of the sending state in respect to any matter over which it retains jurisdiction pursuant to this compact shall be conclusive upon and not reviewable within the receiving state, but if at the time the sending state seeks to remove an inmate from an institution in the receiving state there is pending against the inmate within such state any criminal charge or if the inmate is formally accused of having committed within such state a criminal offense, the inmate shall not be returned without the consent of the receiving state until discharge from prosecution or other form of proceeding, imprisonment or detention for such offense. The duly accredited officers of the sending state shall be permitted to transport inmates pursuant to this compact through any and all states party to this compact without interference.

(b) An inmate who escapes from an institution in which he is confined pursuant to this compact shall be deemed a fugitive from the sending state and from the state in which the institution is situated. In the case of an escape to a jurisdiction other than the sending or receiving state, the responsibility for institution of extradition or rendition proceedings shall be that of the sending state, but nothing contained herein shall be construed to prevent or affect the activities of officers and agencies of

any jurisdiction directed toward the apprehension and return of an escapee.

(6) Any state party to this compact may accept federal aid for use in connection with any institution or program, the use of which is or may be affected by this compact or any contract pursuant hereto; and any inmate in a receiving state pursuant to this compact may participate in any such federally-aided program or activity for which the sending and receiving states have made contractual provision, provided that if such program or activity is not part of the customary correctional regimen, the express consent of the appropriate official of the sending state shall be required therefor.

(7) This compact shall enter into force and become effective and binding upon the states so acting when it has been enacted into law by any two states. Thereafter, this compact shall enter into force and become effective and binding as to any other of said states upon similar action by such state.

(8) This compact shall continue in force and remain binding upon a party state until it shall have enacted a statute repealing the same and providing for the sending of formal written notice of withdrawal from the compact to the appropriate official of all other party states. An actual withdrawal shall not take effect until one year after the notice provided in said statute has been sent. Such withdrawal shall not relieve the withdrawing state from its obligations assumed hereunder prior to the effective date of withdrawal. Before effective date of withdrawal, a withdrawing state shall remove to its territory, at its own expense, such inmates as it may have confined pursuant to the provisions of this compact.

(9) Nothing contained in this compact shall be construed to abrogate or impair any agreement or other arrangement which a party state may have with a nonparty state for the confinement, rehabilitation or treatment of inmates nor to repeal any other laws of a party state authorizing the making of cooperative institutional arrangements.

(10) The provisions of this compact shall be liberally construed and shall be severable. If any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any participating state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating therein, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters. [1983 c 255 § 13.]

72.74.030 Authority to receive or transfer inmates. The secretary of corrections is authorized to receive or transfer an inmate as defined in the Interstate Corrections Compact to any institution as defined in the Interstate Corrections Compact within this state or without this state, if this state has entered into a contract or

contracts for the confinement of inmates in such institutions pursuant to subsection (3) of the Interstate Corrections Compact. [1983 c 255 § 14.]

72.74.040 Enforcement. The courts, departments, agencies, and officers of this state and its subdivisions shall enforce this compact and shall do all things appropriate to the effectuation of its purposes and intent which may be within their respective jurisdictions including but not limited to the making and submission of such reports as are required by the compact. [1983 c 255 § 15.]

72.74.050 Hearings. The secretary is authorized and directed to hold such hearings as may be requested by any other party state pursuant to subsection (4)(f) of the Interstate Corrections Compact. Additionally, the secretary may hold out-of-state hearings in connection with the case of any inmate of this state confined in an institution of another state party to the Interstate Corrections Compact. [1983 c 255 § 16.]

72.74.060 Contracts for implementation. The secretary of corrections is empowered to enter into such contracts on behalf of this state as may be appropriate to implement the participation of this state in the Interstate Corrections Compact pursuant to subsection (3) of the compact. No such contract shall be of any force or effect until approved by the attorney general. [1983 c 255 § 17.]

72.74.070 Clothing, transportation, and funds for state inmates released in other states. If any agreement between this state and any other state party to the Interstate Corrections Compact enables an inmate of this state confined in an institution of another state to be released in such other state in accordance with subsection (4)(g) of this compact, then the secretary is authorized to provide clothing, transportation, and funds to such inmate in accordance with RCW 72.02.100. [1983 c 255 § 18.]

72.74.900 Severability—1983 c 255. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1983 c 255 § 20.]

Chapter 72.76

INTRASTATE CORRECTIONS COMPACT

Sections	
72.76.005	Intent.
72.76.010	Compact enacted—Provisions.
72.76.020	Costs and accounting of offender days.
72.76.030	Contracts authorized for implementation of participation—Application of chapter.
72.76.040	Fiscal management.
72.76.900	Short title.

72.76.005 Intent. It is the intent of the legislature to enable and encourage a cooperative relationship between

the department of corrections and the counties of the state of Washington, and to provide adequate facilities and programs for the confinement, care, treatment, and employment of offenders through the exchange or transfer of offenders. [1989 c 177 § 2.]

72.76.010 Compact enacted—Provisions. The Washington intrastate corrections compact is enacted and entered into on behalf of this state by the department with any and all counties of this state legally joining in a form substantially as follows:

WASHINGTON INTRASTATE CORRECTIONS COMPACT

A compact is entered into by and among the contracting counties and the department of corrections, signatories hereto, for the purpose of maximizing the use of existing resources and to provide adequate facilities and programs for the confinement, care, treatment, and employment of offenders.

The contracting counties and the department do solemnly agree that:

(1) As used in this compact, unless the context clearly requires otherwise:

(a) "Department" means the Washington state department of corrections.

(b) "Secretary" means the secretary of the department of corrections or designee.

(c) "Compact jurisdiction" means the department of corrections or any county of the state of Washington which has executed this compact.

(d) "Sending jurisdiction" means a county party to this agreement or the department of corrections to whom the courts have committed custody of the offender.

(e) "Receiving jurisdiction" means the department of corrections or a county party to this agreement to which an offender is sent for confinement.

(f) "Offender" means a person who has been charged with and/or convicted of an offense established by applicable statute or ordinance.

(g) "Convicted felony offender" means a person who has been convicted of a felony established by state law and is eighteen years of age or older, or who is less than eighteen years of age, but whose case has been transferred by the appropriate juvenile court to a criminal court pursuant to RCW 13.40.110.

(h) An "offender day" includes the first day an offender is delivered to the receiving jurisdiction, but ends at midnight of the day immediately preceding the day of the offender's release or return to the custody of the sending jurisdiction.

(i) "Facility" means any state correctional institution, camp, or other unit established or authorized by law under the jurisdiction of the department of corrections; any jail, holding, detention, special detention, or correctional facility operated by the county for the housing of adult offenders; or any contract facility, operated on behalf of either the county or the state for the housing of adult offenders.

(j) "Extraordinary medical expense" means any medical expense beyond that which is normally provided by

contract or other health care providers at the facility of the receiving jurisdiction.

(k) "Compact" means the Washington intrastate corrections compact.

(2)(a) Any county may make one or more contracts with one or more counties, the department, or both for the exchange or transfer of offenders pursuant to this compact. Appropriate action by ordinance, resolution, or otherwise in accordance with the law of the governing bodies of the participating counties shall be necessary before the contract may take effect. The secretary is authorized and requested to execute the contracts on behalf of the department. Any such contract shall provide for:

(i) Its duration;

(ii) Payments to be made to the receiving jurisdiction by the sending jurisdiction for offender maintenance, extraordinary medical and dental expenses, and any participation in or receipt by offenders of rehabilitative or correctional services, facilities, programs, or treatment not reasonably included as part of normal maintenance;

(iii) Participation in programs of offender employment, if any; the disposition or crediting of any payments received by offenders on their accounts; and the crediting of proceeds from or the disposal of any products resulting from the employment;

(iv) Delivery and retaking of offenders;

(v) Such other matters as may be necessary and appropriate to fix the obligations, responsibilities and rights of the sending and receiving jurisdictions.

(b) The terms and provisions of this compact shall be a part of any contract entered into by the authority of or pursuant to the contract. Nothing in any contract may be inconsistent with the compact.

(3)(a) Whenever the duly constituted authorities of any compact jurisdiction decide that confinement in, or transfer of an offender to a facility of another compact jurisdiction is necessary or desirable in order to provide adequate housing and care or an appropriate program of rehabilitation or treatment, the officials may direct that the confinement be within a facility of the other compact jurisdiction, the receiving jurisdiction to act in that regard solely as agent for the sending jurisdiction.

(b) The receiving jurisdiction shall be responsible for the supervision of all offenders which it accepts into its custody.

(c) The receiving jurisdiction shall be responsible to establish screening criteria for offenders it will accept for transfer. The sending jurisdiction shall be responsible for ensuring that all transferred offenders meet the screening criteria of the receiving jurisdiction.

(d) The sending jurisdiction shall notify the sentencing courts of the name, charges, cause numbers, date, and place of transfer of any offender, prior to the transfer, on a form to be provided by the department. A copy of this form shall accompany the offender at the time of transfer.

(e) The receiving jurisdiction shall be responsible for providing an orientation to each offender who is transferred. The orientation shall be provided to offenders

upon arrival and shall address the following conditions at the facility of the receiving jurisdiction:

(i) Requirements to work;

(ii) Facility rules and disciplinary procedures;

(iii) Medical care availability; and

(iv) Visiting.

(f) Delivery and retaking of inmates shall be the responsibility of the sending jurisdiction. The sending jurisdiction shall deliver offenders to the facility of the receiving jurisdiction where the offender will be housed, at the dates and times specified by the receiving jurisdiction. The receiving jurisdiction retains the right to refuse or return any offender. The sending jurisdiction shall be responsible to retake any transferred offender who does not meet the screening criteria of the receiving jurisdiction, or who is refused by the receiving jurisdiction. If the receiving jurisdiction has notified the sending jurisdiction to retake an offender, but the sending jurisdiction does not do so within a seven-day period, the receiving jurisdiction may return the offender to the sending jurisdiction at the expense of the sending jurisdiction.

(g) Offenders confined in a facility under the terms of this compact shall at all times be subject to the jurisdiction of the sending jurisdiction and may at any time be removed from the facility for transfer to another facility within the sending jurisdiction, for transfer to another facility in which the sending jurisdiction may have a contractual or other right to confine offenders, for release or discharge, or for any other purpose permitted by the laws of the state of Washington.

(h) Unless otherwise agreed, the sending jurisdiction shall provide at least one set of the offender's personal clothing at the time of transfer. The sending jurisdiction shall be responsible for searching the clothing to ensure that it is free of contraband. The receiving jurisdiction shall be responsible for providing work clothing and equipment appropriate to the offender's assignment.

(i) The sending jurisdiction shall remain responsible for the storage of the offender's personal property, unless prior arrangements are made with the receiving jurisdiction. The receiving jurisdiction shall provide a list of allowable items which may be transferred with the offender.

(j) Copies or summaries of records relating to medical needs, behavior, and classification of the offender shall be transferred by the sending jurisdiction to the receiving jurisdiction at the time of transfer. At a minimum, such records shall include:

(i) A copy of the commitment order or orders legally authorizing the confinement of the offender;

(ii) A copy of the form for the notification of the sentencing courts required by subsection (3)(d) of this section;

(iii) A brief summary of any known criminal history, medical needs, behavioral problems, and other information which may be relevant to the classification of the offender; and

(iv) A standard identification card which includes the fingerprints and at least one photograph of the offender.

Disclosure of public records shall be the responsibility of the sending jurisdiction, except for those documents generated by the receiving jurisdiction.

(k) The receiving jurisdiction shall be responsible for providing regular medical care, including prescription medication, but extraordinary medical expenses shall be the responsibility of the sending jurisdiction. The costs of extraordinary medical care incurred by the receiving jurisdiction for transferred offenders shall be reimbursed by the sending jurisdiction. The receiving jurisdiction shall notify the sending jurisdiction as far in advance as practicable prior to incurring such costs. In the event emergency medical care is needed, the sending jurisdiction shall be advised as soon as practicable after the offender is treated. Offenders who are required by the medical authority of the sending jurisdiction to take prescription medication at the time of the transfer shall have at least a three-day supply of the medication transferred to the receiving jurisdiction with the offender, and at the expense of the sending jurisdiction. Costs of prescription medication incurred after the use of the supply shall be borne by the receiving jurisdiction.

(l) Convicted offenders transferred under this agreement may be required by the receiving jurisdiction to work. Transferred offenders participating in programs of offender employment shall receive the same reimbursement, if any, as other offenders performing similar work. The receiving jurisdiction shall be responsible for the disposition or crediting of any payments received by offenders, and for crediting the proceeds from or disposal of any products resulting from the employment. Other programs normally provided to offenders by the receiving jurisdiction such as education, mental health, or substance abuse treatment shall also be available to transferred offenders, provided that usual program screening criteria are met. No special or additional programs will be provided except by mutual agreement of the sending and receiving jurisdiction, with additional expenses, if any, to be borne by the sending jurisdiction.

(m) The receiving jurisdiction shall notify offenders upon arrival of the rules of the jurisdiction and the specific rules of the facility. Offenders will be required to follow all rules of the receiving jurisdiction. Disciplinary detention, if necessary, shall be provided at the discretion of the receiving jurisdiction. The receiving jurisdiction may require the sending jurisdiction to retake any offender found guilty of a serious infraction; similarly, the receiving jurisdiction may require the sending jurisdiction to retake any offender whose behavior requires segregated or protective housing.

(n) Good-time calculations and notification of each offender's release date shall be the responsibility of the sending jurisdiction. The sending jurisdiction shall provide the receiving jurisdiction with a formal notice of the date upon which each offender is to be released from custody. If the receiving jurisdiction finds an offender guilty of a violation of its disciplinary rules, it shall notify the sending jurisdiction of the date and nature of the violation. If the sending jurisdiction resets the release date according to its good-time policies, it shall provide

the receiving jurisdiction with notice of the new release date.

(o) The sending jurisdiction shall retake the offender at the receiving jurisdiction's facility on or before his or her release date, unless the sending and receiving jurisdictions shall agree upon release in some other place. The sending jurisdiction shall bear the transportation costs of the return.

(p) Each receiving jurisdiction shall provide monthly reports to each sending jurisdiction on the number of offenders of that sending jurisdiction in its facilities pursuant to this compact.

(q) Each party jurisdiction shall notify the others of its coordinator who is responsible for administering the jurisdiction's responsibilities under the compact. The coordinators shall arrange for alternate contact persons in the event of an extended absence of the coordinator.

(r) Upon reasonable notice, representatives of any party to this compact shall be allowed to visit any facility in which another party has agreed to house its offenders, for the purpose of inspecting the facilities and visiting its offenders that may be confined in the institution.

(4) This compact shall enter into force and become effective and binding upon the participating parties when it has been executed by two or more parties. Upon request, each party county shall provide any other compact jurisdiction with a copy of a duly enacted resolution or ordinance authorizing entry into this compact.

(5) A party participating may withdraw from the compact by formal resolution and by written notice to all other parties then participating. The withdrawal shall become effective, as it pertains to the party wishing to withdraw, thirty days after written notice to the other parties. However, such withdrawal shall not relieve the withdrawing party from its obligations assumed prior to the effective date of withdrawal. Before the effective date of withdrawal, a withdrawing participant shall notify the other parties to retake the offenders it has housed in its facilities and shall remove to its facilities, at its own expense, offenders it has confined under the provisions of this compact.

(6) Legal costs relating to defending actions brought by an offender challenging his or her transfer to another jurisdiction under this compact shall be borne by the sending jurisdiction. Legal costs relating to defending actions arising from events which occur while the offender is in the custody of a receiving jurisdiction shall be borne by the receiving jurisdiction.

(7) The receiving jurisdiction shall not be responsible to provide legal services to offenders placed under this agreement. Requests for legal services shall be referred to the sending jurisdiction.

(8) The provisions of this compact shall be liberally construed and shall be severable. If any phrase, clause, sentence, or provision of this compact is declared to be contrary to the Constitution or laws of the state of Washington or is held invalid, the validity of the remainder of this compact and its applicability to any county or the department shall not be affected.

(9) Nothing contained in this compact shall be construed to abrogate or impair any agreement or other arrangement which a county or the department may have with each other or with a nonparty county for the confinement, rehabilitation, or treatment of offenders. [1989 c 177 § 3.]

72.76.020 Costs and accounting of offender days. (1) The costs per offender day to the sending jurisdiction for the custody of offenders transferred according to the terms of this agreement shall be at the rate set by the state of Washington, office of financial management under RCW 70.48.440, unless the parties agree to another rate in a particular transfer. The costs may not include extraordinary medical costs, which shall be billed separately. Except in the case of prisoner exchanges, as described in subsection (2) of this section, the sending jurisdiction shall be billed on a monthly basis by the receiving jurisdiction. Payment shall be made within thirty days of receipt of the invoice.

(2) When two parties to this agreement transfer offenders to each other, there shall be an accounting of the number of "offender days." If the number is exactly equal, no payment is necessary for the affected period. The payment by the jurisdiction with the higher net number of offender days may be reduced by the amount otherwise due for the number of offender days its offenders were held by the receiving jurisdiction. Billing and reimbursement shall remain on the monthly schedule, and shall be supported by the forms and procedures provided by applicable regulations. The accounting of offender days exchanged may be reconciled on a monthly basis, but shall be at least quarterly. [1989 c 177 § 4.]

72.76.030 Contracts authorized for implementation of participation—Application of chapter. The secretary is empowered to enter into contracts on behalf of this state on the terms and conditions as may be appropriate to implement the participation of the department in the Washington intrastate corrections compact under RCW 72.76.010(2). Nothing in this chapter is intended to create any right or entitlement in any offender transferred or housed under the authority granted in this chapter. The failure of the department or the county to comply with any provision of this chapter as to any particular offender or transfer shall not invalidate the transfer nor give rise to any right for such offender. [1989 c 177 § 5.]

72.76.040 Fiscal management. Notwithstanding any other provisions of law, payments received by the department pursuant to contracts entered into under the authority of this chapter shall be treated as nonappropriated funds and shall be exempt from the allotment controls established under chapter 43.88 RCW. The secretary may use such funds, in addition to appropriated funds, to provide institutional and community corrections programs. The secretary may, in his or her

discretion and in lieu of direct fiscal payment, offset the obligation of any sending jurisdiction against any obligation the department may have to the sending jurisdiction. Outstanding obligations of the sending jurisdiction may be carried forward across state fiscal periods by the department as a credit against future obligations of the department to the sending jurisdiction. [1989 c 177 § 6.]

72.76.900 Short title. This chapter shall be known and may be cited as the Washington Intrastate Corrections Compact. [1989 c 177 § 1.]

Chapter 72.98 CONSTRUCTION

Sections

72.98.010	Continuation of existing law.
72.98.020	Title, chapter, section headings not part of law.
72.98.030	Invalidity of part of title not to affect remainder.
72.98.040	Repeals and saving.
72.98.050	Bonding acts exempted.
72.98.060	Emergency—1959 c 28.

72.98.010 Continuation of existing law. The provisions of this title insofar as they are substantially the same as statutory provisions repealed by this chapter, and relating to the same subject matter, shall be construed as restatements and continuations, and not as new enactments. [1959 c 28 § 72.98.010.]

72.98.020 Title, chapter, section headings not part of law. Title headings, chapter headings, and section or subsection headings, as used in this title do not constitute any part of the law. [1959 c 28 § 72.98.020.]

72.98.030 Invalidity of part of title not to affect remainder. If any provision of this title, or its application to any person or circumstance is held invalid, the remainder of the title, or the application of the provision to other persons or circumstances is not affected. [1959 c 28 § 72.98.030.]

72.98.040 Repeals and saving. See 1959 c 28 § 72.98.040.

72.98.050 Bonding acts exempted. This act shall not repeal nor otherwise affect the provisions of the institutional bonding acts (chapter 230, Laws of 1949 and chapters 298 and 299, Laws of 1957). [1959 c 28 § 72.98.050.]

72.98.060 Emergency—1959 c 28. This act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect immediately, with the exception of RCW 72.01.280 the effective date of which section is July 1, 1959. [1959 c 28 § 72.98.060.]

Chapter 72.99

STATE BUILDING CONSTRUCTION ACT

Sections

- 72.99.100 Limited obligation bonds—Form, term, sale, payment, legal investment, etc.
- 72.99.120 State building construction bond redemption fund—Purpose, deposits—Priority as to sales tax revenue.

72.99.100 Limited obligation bonds—Form, term, sale, payment, legal investment, etc.

Reviser's note: RCW 72.99.100 was both amended and repealed during the 1983 legislative sessions, each without reference to the other. It has been decodified for publication purposes pursuant to RCW 1.12.025.

72.99.120 State building construction bond redemption fund—Purpose, deposits—Priority as to sales tax revenue.

Reviser's note: RCW 72.99.120 was both amended and repealed during the 1983 legislative sessions, each without reference to the other. It has been decodified for publication purposes pursuant to RCW 1.12.025.

Title 73

VETERANS AND VETERANS' AFFAIRS

Chapters

- 73.04** General provisions.
- 73.08** Veterans' relief.
- 73.16** Employment and reemployment.
- 73.20** Acknowledgments and powers of attorney.
- 73.24** Burial.
- 73.36** Uniform veterans' guardianship act.

Colony of the state soldiers' home: RCW 72.36.040.

Estates of absentees: Chapter 11.80 RCW.

Firemen's retirement, credit for military service: RCW 41.16.220, 41.18.150.

Hunting and fishing license, free to certain veterans: RCW 77.32.230.

Liquor control board employment, veteran preference: RCW 66.08.016.

Mental illness, commitment: Chapter 71.05 RCW.

Militia and military affairs: Title 38 RCW.

Nuncupative wills: RCW 11.12.025.

Oaths, military personnel, who may administer: RCW 38.38.844.

Police retirement, credit for military service: RCW 41.20.050.

Professional, occupational licenses, moratorium: RCW 43.24.130.

Property taxation exemptions: RCW 84.36.030.

Public employment, veterans' preference in examinations: RCW 41.04.010.

Public institutions of higher education, children of certain citizens missing in action or prisoners of war exempt from tuition—Limitations—Procedure: RCW 28B.10.265.

Soldiers' and veterans' homes: Chapter 72.36 RCW.

State employees' retirement credit for military service: RCW 41.40.170. exception from membership: RCW 41.40.120(6).

State hospitals for insane, war veterans: RCW 73.36.165.

State-wide city employees' retirement, prior service credit: RCW 41.44.120(4).

Teachers' retirement, credit for military service: RCW 41.32.260.

Veterans' rehabilitation council: Chapter 43.61 RCW.

Wills

proof when witness in war service: RCW 11.20.040. who may make: RCW 11.12.010.

Chapter 73.04

GENERAL PROVISIONS

Sections

- 73.04.010 Pension papers—Fees not to be charged.
- 73.04.020 Pension papers—Fees not to be charged—Penalty.
- 73.04.030 Recording discharges without charge.
- 73.04.040 Recording discharges without charge—Certified copy as proof.
- 73.04.042 Recording honorable discharge—Veterans of Spanish-American War and World War I.
- 73.04.050 Right to peddle, vend, sell goods without license—License fee on business established under act of congress prohibited.
- 73.04.060 Right to peddle, vend, sell goods without license—Issuance of license.
- 73.04.070 Meeting hall may be furnished veterans' organizations.
- 73.04.080 Meeting place rental may be paid out of county fund.

- 73.04.090 Benefits, preferences, exemptions, etc., limited to veterans subject to full, continuous military control.
- 73.04.110 Free license plates for disabled veterans, prisoners of war—Penalty.
- 73.04.115 Free license plates for surviving spouses of deceased prisoners of war.
- 73.04.120 Certificate stating marital status available free.
- 73.04.130 Director of department of veterans affairs authorized to act as executor, administrator, guardian or federal fiduciary of veteran's estate—Appointment.

Department of veterans affairs: Chapter 43.60A RCW.

Veterans classified as resident students: RCW 28B.15.014.

Vietnam veterans' exemption from tuition and fee increases at institutions of higher education: RCW 28B.15.620.

73.04.010 Pension papers—Fees not to be charged. No judge, or clerk of court, county clerk, county auditor, or any other county officer, shall be allowed to charge any honorably discharged soldier or seaman, or the spouse, orphan, or legal representative thereof, any fee for administering any oath, or giving any official certificate for the procuring of any pension, bounty, or back pay, nor for administering any oath or oaths and giving the certificate required upon any voucher for collection of periodical dues from the pension agent, nor any fee for services rendered in perfecting any voucher. [1973 1st ex.s. c 154 § 106; 1891 c 14 § 1; RRS § 4232.]

Severability—1973 1st ex.s. c 154: See note following RCW 2.12.030.

73.04.020 Pension papers—Fees not to be charged—Penalty. Any such officer who may require and accept fees for such services shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined in any sum not less than ten dollars nor more than fifty dollars. [1891 c 14 § 2; RRS § 4233.]

73.04.030 Recording discharges without charge. Each county auditor of the several counties of the state of Washington shall record upon presentation without expense, in a suitable permanent record the discharge of any veteran of the armed forces of the United States who is residing in the state of Washington. [1989 c 50 § 1; 1943 c 38 § 1; Rem. Supp. 1943 § 10758–10. FORMER PART OF SECTION: 1923 c 17 § 1 now codified as RCW 73.04.042.]

73.04.040 Recording discharges without charge—Certified copy as proof. A certified copy of such record shall be prima facie proof for all purposes of the services rendered, citizenship, place and date of birth of such veteran. [1943 c 38 § 2; Rem. Supp. 1943 § 10758–11.]

73.04.042 Recording honorable discharge—Veterans of Spanish-American War and World War I. It shall

be the duty of county auditors to record without charge, in a book kept for that purpose, the certificate of discharge of any honorably discharged soldier, sailor or marine who served with the United States forces in the war with Germany and her allies and veterans of the Spanish-American War. [1923 c 17 § 1; 1919 c 86 § 1; RRS § 4094-1. Formerly RCW 73.04.030, part.]

73.04.050 Right to peddle, vend, sell goods without license—License fee on business established under act of congress prohibited. Every honorably discharged soldier, sailor or marine of the military or naval service of the United States, who is a resident of this state, shall have the right to peddle, hawk, vend and sell goods, other than his own manufacture and production, without paying for the license as now provided by law, by those who engage in such business; but any such soldier, sailor or marine may engage in such business by procuring a license for that purpose as provided in RCW 73.04.060.

No county, city or political subdivision in this state shall charge or collect any license fee on any business established by any veteran under the provisions of Public Law 346 of the 78th congress. [1945 c 144 § 9; 1903 c 69 § 1; Rem. Supp. 1945 § 10755. Formerly RCW 73.04.050, part and 73.04.060. FORMER PART OF SECTION: 1945 c 144 § 10 now codified as RCW 73.04.060.]

Reviser's note: 1945 c 144 §§ 9 and 10 amending 1903 c 69 §§ 1 and 2 were declared unconstitutional in *Larsen v. City of Shelton*, 37 Wn. (2d) 481.

Peddlers' and hawkers' licenses: Chapter 36.71 RCW.

73.04.060 Right to peddle, vend, sell goods without license—Issuance of license. On presentation to the county auditor or city clerk of the county in which any such soldier, sailor or marine may reside, of a certificate of honorable discharge from the army or naval service of the United States, such county auditor or city clerk, as the case may be, shall issue without cost to such soldier, sailor or marine, a license authorizing him to carry on the business of peddler, as provided in RCW 73.04.050. [1945 c 144 § 10; 1903 c 69 § 2; Rem. Supp. 1945 § 10756. Formerly RCW 73.04.050, part. FORMER PART OF SECTION: 1945 c 144 § 9, part now codified in RCW 73.04.050.]

Reviser's note: 1945 c 144 § 10 amending 1903 c 69 § 2 declared unconstitutional, see note following RCW 73.04.050.

73.04.070 Meeting hall may be furnished veterans' organizations. Counties, cities and other political subdivisions of the state of Washington are authorized to furnish free of charge a building, office and/or meeting hall for the exclusive use of the several nationally recognized veterans' organizations and their auxiliaries, subject to the direction of the committee or person in charge of such building, office and/or meeting hall. The several nationally recognized veterans' organizations shall have access at all times to said building, office and/or meeting hall. Counties, cities and other political subdivisions

shall further have the right to furnish heat, light, utilities, furniture and janitor service at no cost to the veterans' organizations and their auxiliaries. [1945 c 108 § 1; Rem. Supp. 1945 § 10758-60.]

73.04.080 Meeting place rental may be paid out of county fund. Any post, camp or chapter of any national organization of veterans now, or which may hereafter be, chartered by an act of congress which has qualified to accept relief from the veteran's assistance fund of any county may draw upon said county fund for the payment of the rent of its regular meeting place: *Provided*, That no post, camp or chapter shall be allowed to draw on such fund for this purpose to exceed a reasonable amount approved by the county legislative authority in any one year, or in any amount for hall rental where said post, camp or chapter is furnished quarters by the state or by any municipality.

Before such claims are ordered paid by the county legislative authority, the commander or authorized disbursing officer of such posts, camps or chapters shall file a proper claim each month with the county auditor for such rental. [1985 c 181 § 1; 1947 c 180 § 7; 1945 c 144 § 8; 1921 c 41 § 8; 1915 c 69 § 1; 1909 c 64 § 1; Rem. Supp. 1947 § 10743.]

73.04.090 Benefits, preferences, exemptions, etc., limited to veterans subject to full, continuous military control. All benefits, advantages or emoluments, not available upon equal terms to all citizens, including but not being limited to preferred rights to public employment, civil service preference, exemption from license fees or other impositions, preference in purchasing state property and special pension or retirement rights, which by any law of this state have been made specially available to war veterans or to persons who have served in the armed forces or defense forces of the United States, shall be available only to persons who have been subject to full and continuous military control and discipline as actual members of the federal armed forces. Service with such forces in a civilian capacity, or in any capacity wherein a person retained the right to terminate his service or to refuse full obedience to military superiors, shall not be the basis for eligibility for such benefits. Service in any of the following shall not for purposes of this section be considered as military service: The office of emergency services or any component thereof; the American Red Cross; the United States Coast Guard Auxiliary; United States Coast Guard Reserve Temporary; United States Coast and Geodetic Survey; American Field Service; Civil Air Patrol; Cadet Nurse Corps, and any other similar organization. [1974 ex.s. c 171 § 45; 1947 c 142 § 1; Rem. Supp. 1947 § 10758-115.]

Emergency management: Chapter 38.52 RCW.

73.04.110 Free license plates for disabled veterans, prisoners of war—Penalty. Any person who is a veteran as defined in RCW 41.04.005 who submits to the department of licensing satisfactory proof of a service-

connected disability rating from the veterans administration or the military service from which the veteran was discharged and:

- (1) Has lost the use of both hands or one foot;
- (2) Was captured and incarcerated for more than twenty-nine days by an enemy of the United States during a period of war with the United States;
- (3) Has become blind in both eyes as the result of military service; or
- (4) Is rated by the veterans administration or the military service from which the veteran was discharged and is receiving service-connected compensation at the one hundred percent rate that is expected to exist for more than one year;

is entitled to regular or special license plates issued by the department of licensing. The special license plates shall bear distinguishing marks, letters, or numerals indicating that the motor vehicle is owned by a disabled veteran or former prisoner of war. This license shall be issued annually for one personal use vehicle without payment of any license fees or excise tax thereon. Whenever any person who has been issued license plates under the provisions of this section applies to the department for transfer of the plates to a subsequently acquired motor vehicle, a transfer fee of five dollars shall be charged in addition to all other appropriate fees. The department may periodically verify the one hundred percent rate as provided in subsection (4) of this section.

Any person who has been issued free motor vehicle license plates under this section prior to July 1, 1983, shall continue to be eligible for the annual free license plates.

For the purposes of this section, "blind" means the definition of "blind" used by the state of Washington in determining eligibility for financial assistance to the blind under Title 74 RCW.

Any unauthorized use of a special plate is a gross misdemeanor. [1987 c 98 § 2; 1983 c 230 § 2; 1982 c 115 § 1; 1980 c 88 § 2; 1979 c 158 § 221; 1972 ex.s. c 60 § 1; 1971 ex.s. c 193 § 1; 1951 c 206 § 1; 1949 c 178 § 1; Rem. Supp. 1949 § 6360-50-1.]

Effective date—1983 c 230: See note following RCW 41.04.005.

73.04.115 Free license plates for surviving spouses of deceased prisoners of war. The department shall issue to the surviving spouse of any deceased former prisoner of war described in RCW 73.04.110(2), one set of regular or special license plates for use on a personal passenger vehicle registered to that person.

In order to qualify under this section the surviving spouse must have been married to the deceased former prisoner of war during the period of his or her incarceration. The plates shall be issued without the payment of any license fees or excise tax on the vehicle. Whenever any person who has been issued license plates under this section applies to the department for transfer of the plates to a subsequently acquired motor vehicle, a transfer fee of five dollars shall be charged in addition to all other appropriate fees. [1987 c 98 § 1.]

73.04.120 Certificate stating marital status available free. County clerks and county auditors, respectively, are authorized and directed to furnish free of charge to the legal representative, surviving spouse, child or parent of any deceased veteran certified copies of marriage certificates, decrees of divorce or annulment, or other documents contained in their files and to record and issue, free of charge, certified copies of such documents from other states, territories, or foreign countries affecting the marital status of such veteran whenever any such document shall be required in connection with any claim pending before the United States veterans' bureau or other governmental agency administering benefits to war veterans. Where these same documents are required of service personnel of the armed forces of the United States for determining entitlement to family allowances and other benefits, they shall be provided without charge by county clerks and county auditors upon request of the person in the service or his dependents. [1985 c 44 § 19; 1984 c 84 § 1; 1967 c 89 § 1; 1949 c 16 § 1; Rem. Supp. 1949 § 10758-13b.]

73.04.130 Director of department of veterans affairs authorized to act as executor, administrator, guardian or federal fiduciary of veteran's estate—Appointment. The director of the department of veterans affairs or his designee is authorized to act as executor under the last will, or as administrator of the estate of any deceased veteran, or as the guardian or duly appointed federal fiduciary of the estate of any insane or incompetent veteran, or as guardian or duly appointed federal fiduciary of the estate of any person who is a bona fide resident of the state of Washington and who is certified by the veterans' administration as having money due from the veterans' administration, the payment of which is dependent upon the appointment of a guardian or other type fiduciary. No fee shall be allowed or paid to the director or his designee for acting as executor, administrator, guardian or fiduciary, or to any attorney for the director or his designee.

The director or his designee, or any other interested person may petition the appropriate court for the appointment of the director or his designee. Any such petition by the director or his designee shall be without cost and without fee. If appointed, the director or his designee may serve without bond. This section shall not affect the prior right to act as administrator of a veterans' estate of such persons as are denominated in RCW 11.28.120 (1) and (2), nor shall this section affect the appointment of executor made in the last will of any veteran, nor shall this section apply to estates larger than fifteen thousand dollars. [1979 c 64 § 1; 1977 c 31 § 3; 1974 ex.s. c 63 § 1; 1972 ex.s. c 4 § 1.]

Chapter 73.08 VETERANS' RELIEF

Sections	
73.08.010	County aid to indigent veterans and families— Procedure.
73.08.030	Procedure where no veterans' organization in precinct.

- 73.08.040 Notice of intention to furnish relief—Annual statement.
 73.08.050 Performance bond may be required.
 73.08.060 Restrictions on sending veterans or families to almshouses, etc.
 73.08.070 County burial of indigent deceased veterans.
 73.08.080 Tax levy authorized.

Soldiers' and veterans' homes: Chapter 72.36 RCW.

Soldiers' home: State Constitution Art. 10 § 3.

73.08.010 County aid to indigent veterans and families—Procedure. For the relief of indigent and suffering veterans as defined in RCW 41.04.005 and their families or the families of those deceased, who need assistance in any city, town or precinct in this state, the legislative authority of the county in which the city, town or precinct is situated shall provide such sum or sums of money as may be necessary, to be drawn upon by the commander and quartermaster, or commander and adjutant or commander and service officer of any post, camp or chapter of any national organization of veterans now, or which may hereafter be, chartered by an act of congress in the city or town upon recommendation of the relief committee of said post, camp or chapter: *Provided*, Said veteran or the families of those deceased are and have been residents of the state for at least twelve months, and the orders of said commander and quartermaster, or commander and adjutant or commander and service officer shall be the proper voucher for the expenditure of said sum or sums of money. [1983 c 295 § 1; 1947 c 180 § 1; 1945 c 144 § 1; 1921 c 41 § 1; 1919 c 83 § 1; 1907 c 64 § 1; 1893 c 37 § 1; 1888 p 208 § 1; Rem. Supp. 1947 § 10737. Cf. 1935 c 38 § 1.]

Soldiers' home and colony: Chapter 72.36 RCW.

Veterans' rehabilitation council: Chapter 43.61 RCW.

73.08.030 Procedure where no veterans' organization in precinct. If there be no post, camp or chapter of any national organization of veterans now, or which may hereafter be, chartered by an act of congress, in any precinct in which it should be granted, the legislative authority of the county in which said precinct is, may accept and pay the orders drawn, as hereinbefore provided by the commander and quartermaster, or commander and adjutant or commander and service officer, of any post, camp or chapter of any national organization of veterans now, or which may hereafter be, chartered by an act of congress, located in the nearest city or town, upon the recommendation of a relief committee who shall be residents of the said precinct in which the relief may be furnished. [1983 c 295 § 2; 1947 c 180 § 2; 1945 c 144 § 2; 1921 c 41 § 2; 1907 c 64 § 2; 1888 p 208 § 2; Rem. Supp. 1947 § 10738.]

73.08.040 Notice of intention to furnish relief—Annual statement. *Upon the passage of this act the commander of any post, camp or chapter of any national organization of veterans now, or which may hereafter be, chartered by an act of congress which shall undertake the relief of indigent veterans and their families, as hereinbefore provided, before the acts of said commander and quartermaster, or commander and adjutant

may become operative in any city or precinct, shall file with the county auditor of such county, notice that said post, camp or chapter intends to undertake such relief as is provided by this chapter. Such notice shall contain the names of the relief committee of said post, camp or chapter in such city or precinct, and the commander of said post, camp or chapter shall annually thereafter during the month of October file a similar notice with said auditor, and also a detailed statement of the amount of relief furnished during the preceding year, with the names of all persons to whom such relief shall have been furnished, together with a brief statement in each case from the relief committee upon whose recommendations the orders were drawn. [1947 c 180 § 3; 1945 c 144 § 3; 1921 c 41 § 3; 1907 c 64 § 3; 1888 p 209 § 3; Rem. Supp. 1947 § 10739.]

*Reviser's note: The language "Upon the passage of this act" first appears in 1888 p 209 § 3.

73.08.050 Performance bond may be required. The county legislative authority may require of the commander and quartermaster, or commander and adjutant or commander and service officer, of any post, camp or chapter of any national organization of veterans now, or which may hereafter be, chartered by an act of congress undertaking to distribute relief under this chapter a bond with sufficient and satisfactory sureties for the faithful and honest discharge of their duties under this chapter. [1983 c 295 § 3; 1947 c 180 § 4; 1945 c 144 § 4; 1921 c 41 § 4; 1907 c 64 § 4; 1888 p 209 § 4; Rem. Supp. 1947 § 10740.]

73.08.060 Restrictions on sending veterans or families to almshouses, etc. County legislative authorities are hereby prohibited from sending indigent or disabled veterans as defined in RCW 41.04.005 or their families or the families of the deceased to any almshouse (or orphan asylum) without the concurrence and consent of the commander and relief committee of the post, camp or chapter of any national organization of veterans now, or which may hereafter be, chartered by an act of congress as provided in RCW 73.08.010 and 73.08.030. Indigent veterans shall, whenever practicable, be provided for and relieved at their homes in such city, town or precinct in which they shall have a residence, in the manner provided in RCW 73.08.010 and 73.08.030. Indigent or disabled veterans as defined in RCW 41.04.005, who are not insane and have no families or friends with whom they may be domiciled, may be sent to any soldiers' home. [1983 c 295 § 4; 1947 c 180 § 5; 1945 c 144 § 5; 1919 c 83 § 5; 1907 c 64 § 5; 1888 p 209 § 5; Rem. Supp. 1947 § 10741.]

73.08.070 County burial of indigent deceased veterans. It shall be the duty of the legislative authority in each of the counties in this state to designate some proper authority other than the one designated by law for the care of paupers and the custody of criminals who shall cause to be interred at the expense of the county the body of any honorably discharged veterans as defined in RCW 41.04.005 and the wives, husbands, minor

children, widows or widowers of such veterans, who shall hereafter die without leaving means sufficient to defray funeral expenses; and when requested so to do by the commanding officer of any post, camp or chapter of any national organization of veterans now, or which may hereafter be, chartered by an act of congress or the relief committee of any such posts, camps or chapters: *Provided, however,* That such interment shall not cost more than three hundred dollars. If the deceased has relatives or friends who desire to conduct the burial of such deceased person, then upon request of said commander or relief committee a sum not to exceed three hundred dollars shall be paid to said relatives or friends by the county treasurer, upon due proof of the death and burial of any person provided for by this section and proof of expenses incurred. [1983 c 295 § 5; 1949 c 15 § 1; 1947 c 180 § 6; 1945 c 144 § 6; 1921 c 41 § 6; 1919 c 83 § 6; 1917 c 42 § 1; 1907 c 64 § 6; 1899 c 99 § 1; 1888 p 209 § 6; Rem. Supp. 1949 § 10757. Formerly RCW 73.24.010.]

Counties, disposal of remains of indigent persons: RCW 36.39.030.

73.08.080 Tax levy authorized. The legislative authorities of the several counties in this state shall levy, in addition to the taxes now levied by law, a tax in a sum equal to the amount which would be raised by not less than one and one-eighth cents per thousand dollars of assessed value, and not greater than twenty-seven cents per thousand dollars of assessed value against the taxable property of their respective counties, to be levied and collected as now prescribed by law for the assessment and collection of taxes, for the purpose of creating the veteran's assistance fund for the relief of honorably discharged veterans as defined in RCW 41.04.005 and the indigent wives, husbands, widows, widowers and minor children of such indigent or deceased veterans, to be disbursed for such relief by such county legislative authority: *Provided,* That if the funds on deposit, less outstanding warrants, residing in the veteran's assistance fund on the first Tuesday in September exceed the expected yield of one and one-eighth cents per thousand dollars of assessed value against the taxable property of the county, the county legislative authority may levy a lesser amount: *Provided further,* That the costs incurred in the administration of said veteran's assistance fund shall be computed by the county treasurer not less than annually and such amount may then be transferred from the veteran's assistance fund as herein provided for to the county current expense fund.

The amount of a levy allocated to the purposes specified in this section may be reduced in the same proportion as the regular property tax levy of the county is reduced by chapter 84.55 RCW. [1985 c 181 § 2; 1983 c 295 § 6; 1980 c 155 § 6; 1973 2nd ex.s. c 4 § 5; 1973 1st ex.s. c 195 § 86; 1970 ex.s. c 47 § 9; 1969 c 57 § 1; 1945 c 144 § 7; 1921 c 41 § 7; 1919 c 83 § 7; 1907 c 64 § 7; 1893 c 37 § 2; 1888 p 210 § 7; Rem. Supp. 1945 § 10742. Formerly RCW 73.08.020.]

Effective date—Applicability—1980 c 155: See note following RCW 84.40.030.

Emergency—Effective dates—1973 2nd ex.s. c 4: See notes following RCW 84.52.043.

Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195: See notes following RCW 84.52.043.

Chapter 73.16

EMPLOYMENT AND REEMPLOYMENT

Sections

- 73.16.010 Preference in public employment.
- 73.16.015 Enforcement of preference—Civil action.
- 73.16.020 Failure to comply—Infraction.
- 73.16.031 Reemployment—Definitions.
- 73.16.033 Reemployment of returned veterans and others.
- 73.16.035 Eligibility requirements.
- 73.16.041 Leaves of absence of elective and judicial officers.
- 73.16.051 Restoration without loss of seniority or benefits.
- 73.16.061 Enforcement of provisions.
- 73.16.070 Federal act to apply in state courts.

73.16.010 Preference in public employment. In every public department, and upon all public works of the state, and of any county thereof, honorably discharged soldiers, sailors, and marines who are veterans of any war of the United States, or of any military campaign for which a campaign ribbon shall have been awarded, and their widows or widowers, shall be preferred for appointment and employment. Age, loss of limb, or other physical impairment, which does not in fact incapacitate, shall not be deemed to disqualify them, provided they possess the capacity necessary to discharge the duties of the position involved: *Provided,* That spouses of honorably discharged veterans who have a service connected permanent and total disability shall also be preferred for appointment and employment. [1975 1st ex.s. c 198 § 1; 1973 1st ex.s. c 154 § 107; 1951 c 29 § 1; 1943 c 141 § 1; 1919 c 26 § 1; 1915 c 129 § 1; 1895 c 84 § 1; Rem. Supp. 1943 § 10753.]

Severability—1973 1st ex.s. c 154: See note following RCW 2.12.030.

Veterans to receive preference status in competitive examinations for public employment: RCW 41.04.010.

73.16.015 Enforcement of preference—Civil action. Any veteran entitled to the benefits of RCW 73.16.010 may enforce his rights hereunder by civil action in the courts. [1951 c 29 § 2.]

73.16.020 Failure to comply—Infraction. All officials or other persons having power to appoint to or employment in the public service set forth in RCW 73.16.010, are charged with a faithful compliance with its terms, both in letter and in spirit, and a failure therein shall be a class 1 civil infraction. [1987 c 456 § 30; 1895 c 84 § 2; RRS § 10754.]

Legislative finding—1987 c 456: See RCW 7.80.005.

Effective date—1987 c 456 §§ 9 through 31: See RCW 7.80.901.

73.16.031 Reemployment—Definitions. As used in RCW 73.16.031 through 73.16.061, the term:

"Resident" means any person residing in the state.

"Position of employment" means any position (other than temporary) wherein a person is engaged for a private employer, company, corporation, state, municipality, or political subdivision thereof.

"Temporary position" means a position of short duration which, after being vacated, ceases to exist and wherein the employee has been advised as to its temporary nature prior to his engagement.

"Employer" means the person, firm, corporation, state and any political subdivision thereof, or public official currently having control over the position which has been vacated.

"Rejectee" means a person rejected because he is not, physically or otherwise, qualified to enter the service. [1953 c 212 § 1.]

Employment and reemployment rights of members of organized militia upon return from militia duty: RCW 38.24.060.

73.16.033 Reemployment of returned veterans and others. Any person who is a resident of this state and who voluntarily or upon demand, vacates a position of employment to determine his physical fitness to enter, or, who actually does enter upon active duty or training in the Washington National Guard, the armed forces of the United States, or the United States public health service, shall, provided he meets the requirements of RCW 73.16.035, be reemployed forthwith: *Provided*, That the employer need not reemploy such person if circumstances have so changed as to make it impossible, unreasonable, or against the public interest for him to do so: *Provided further*, That this section shall not apply to a temporary position.

If such person is still qualified to perform the duties of his former position, he shall be restored to that position or to a position of like seniority, status and pay. If he is not so qualified as a result of disability sustained during his service, or during the determination of his fitness for service, but is nevertheless qualified to perform the duties of another position, under the control of the same employer, he shall be reemployed in such other position: *Provided*, That such position shall provide him with like seniority, status, and pay, or the nearest approximation thereto consistent with the circumstances of the case. [1953 c 212 § 2.]

73.16.035 Eligibility requirements. In order to be eligible for the benefits of RCW 73.16.031 through 73.16.061, an applicant must comply with the following requirements:

(1) He must furnish a receipt of an honorable discharge, report of separation, certificate of satisfactory service, or other proof of having satisfactorily completed his service. Rejectees must furnish proof of orders for examination and rejection.

(2) He must make written application to the employer or his representative within ninety days of the date of his separation or release from training and service. Rejectees must apply within thirty days from date of rejection.

(3) If, due to the necessity of hospitalization, while on active duty, he is released or placed on inactive duty and

remains hospitalized, he is eligible for the benefits of RCW 73.16.031 through 73.16.061: *Provided*, That such hospitalization does not continue for more than one year from date of such release or inactive status: *Provided further*, That he applies for his former position within ninety days after discharge from such hospitalization.

(4) He must return and reenter the office or position within three months after serving four years or less: *Provided*, That any period of additional service imposed by law, from which one is unable to obtain orders relieving him from active duty, will not affect his reemployment rights. [1969 c 16 § 1; 1953 c 212 § 3.]

73.16.041 Leaves of absence of elective and judicial officers. When any elective officer of this state or any political subdivision thereof, including any judicial officer, shall enter upon active service or training as provided in RCW 73.16.031, 73.16.033 and 73.16.035, the proper officer, board or other agency, which would ordinarily be authorized to grant leave of absence or fill a vacancy created by the death or resignation of the elective official so ordered to such service, shall grant an extended leave of absence to cover the period of such active service or training and may appoint a temporary successor to the position so vacated. No leave of absence provided for herein shall operate to extend the term for which the occupant of any elective position shall have been elected. [1953 c 212 § 4.]

73.16.051 Restoration without loss of seniority or benefits. Any person who is entitled to be restored to a position in accordance with the provisions of RCW 73.16.031, 73.16.033, 73.16.035, and 73.16.041 shall be considered as having been on furlough or leave of absence, from his position of employment, during his period of active military duty or service, and he shall be so restored without loss of seniority. He shall further be entitled to participate in insurance, vacations, retirement pay and other benefits offered by the employer pursuant to established rules and practices relating to employees on furlough or leave of absence in effect with the employer at the time such person was ordered into the service; and he shall not be discharged from such position without cause within one year after restoration: *Provided*, That no employer shall be required to make any payment to keep insurance or retirement rights current during such period of military service. [1953 c 212 § 5.]

73.16.061 Enforcement of provisions. In case any employer, his successor or successors fails or refuses to comply with the provisions of RCW 73.16.031 through 73.16.061, the prosecuting attorney of the county in which the employer is located shall bring action in the superior court to obtain an order to specifically require such employer to comply with the provisions hereof, and, as an incident thereto, to compensate such person for any loss of wages or benefits suffered by reason of such employer's unlawful act. Any such person who does not desire the services of the prosecuting attorney may, by private counsel, bring such action. [1953 c 212 § 6.]

73.16.070 Federal act to apply in state courts. The soldiers' and sailors' civil relief act of 1940, Public Act No. 861, 76th congress, is hereby specifically declared to apply in proper cases in all the courts of this state. [1941 c 201 § 5; Rem. Supp. 1941 § 10758-7.]

**Chapter 73.20
ACKNOWLEDGMENTS AND POWERS OF
ATTORNEY**

Sections	
73.20.010	Acknowledgments.
73.20.050	Agency created by power of attorney not revoked by unverified report of death.
73.20.060	Affidavit of agent as to knowledge of revocation.
73.20.070	"Missing in action" report not construed as actual knowledge.
73.20.080	Provision in power for revocation not affected.

73.20.010 Acknowledgments. In addition to the acknowledgment of instruments and the performance of other notarial acts in the manner and form and as otherwise authorized by law, instruments may be acknowledged, documents attested, oaths and affirmations administered, depositions and affidavits executed, and other notarial acts performed, before or by any commissioned officer in active service of the armed forces of the United States with the rank of second lieutenant or higher in the army or marine corps, or with the rank of ensign or higher in the navy or coast guard, or with equivalent rank in any other component part of the armed forces of the United States, by any person who either

- (1) is a member of the armed forces of the United States, or
- (2) is serving as a merchant seaman outside the limits of the United States included within the forty-eight states and the District of Columbia; or
- (3) is outside said limits by permission, assignment or direction of any department or official of the United States government, in connection with any activity pertaining to the prosecution of any war in which the United States is then engaged.

Such acknowledgment of instruments, attestation of documents, administration of oaths and affirmations, execution of depositions and affidavits, and performance of other notarial acts, heretofore or hereafter made or taken, are hereby declared legal, valid and binding, and instruments and documents so acknowledged, authenticated, or sworn to shall be admissible in evidence and eligible to record in this state under the same circumstances, and with the same force and effect as if such acknowledgment, attestation, oath, affirmation, deposition, affidavit, or other notarial act, had been made or taken within this state before or by a duly qualified officer or official as otherwise provided by law.

In the taking of acknowledgments and the performing of other notarial acts requiring certification, a certificate endorsed upon or attached to the instrument or documents, which shows the date of the notarial act and

which states, in substance, that the person appearing before the officer acknowledged the instrument as his act or made or signed the instrument or document under oath, shall be sufficient for all intents and purposes. The instrument or document shall not be rendered invalid by the failure to state the place of execution or acknowledgment.

If the signature, rank, and branch of service or subdivision thereof, of any such commissioned officer appear upon such instrument or document or certificate, no further proof of the authority of such officer so to act shall be required and such action by such commissioned officer shall be prima facie evidence that the person making such oath or acknowledgment is within the purview of this section. [1945 c 271 § 1; Rem. Supp. 1945 § 10758-13a. See also, 1943 c 47. Formerly RCW 73.20.010 through 73.20.040.]

Acknowledgments, generally: Chapter 64.08 RCW.

73.20.050 Agency created by power of attorney not revoked by unverified report of death. No agency created by a power of attorney in writing given by a principal who is at the time of execution, or who, after executing such power of attorney, becomes either (1) a member of the armed forces of the United States, or (2) a person serving as a merchant seaman outside the limits of the United States, included within the forty-eight states and the District of Columbia; or (3) a person outside said limits by permission, assignment or direction of any department or official of the United States government, in connection with any activity pertaining to or connected with the prosecution of any war in which the United States is then engaged, shall be revoked or terminated by the death of the principal, as to the agent or other person who, without actual knowledge or actual notice of the death of the principal, shall have acted or shall act, in good faith, under or in reliance upon such power of attorney or agency, and any action so taken, unless otherwise invalid or unenforceable, shall be binding on the heirs, devisees, legatees, or personal representatives of the principal. [1945 c 139 § 1; Rem. Supp. 1945 § 10758-70.]

Severability—1945 c 139: "If any provision of this act or the application thereof to any person or circumstance be held invalid, such invalidity shall not affect any other provision or application of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable." [1945 c 139 § 5.] This applies to RCW 73.20.050 through 73.20.080.

73.20.060 Affidavit of agent as to knowledge of revocation. An affidavit, executed by the attorney in fact or agent, setting forth that the maker of the power of attorney is a member of the armed forces of the United States or within the class of persons described in RCW 73.20.050, and that he has not or had not, at the time of doing any act pursuant to the power of attorney, received actual knowledge or actual notice of the revocation or termination of the power of attorney, by death or otherwise, or notice of any facts indicating the same, shall, in the absence of fraud, be conclusive proof of the nonrevocation or nontermination of the power at such

time. If the exercise of the power requires execution and delivery of any instrument which is recordable under the laws of this state, such affidavit shall likewise be recordable. [1945 c 139 § 2; Rem. Supp. 1945 § 10758-71.]

73.20.070 "Missing in action" report not construed as actual knowledge. No report or listing, either official or otherwise, of "missing" or "missing in action", as such words are used in military parlance, shall constitute or be interpreted as constituting actual knowledge or actual notice of the death of such principal or notice of any facts indicating the same, or shall operate to revoke the agency. [1945 c 139 § 3; Rem. Supp. 1945 § 10758-72.]

73.20.080 Provision in power for revocation not affected. RCW 73.20.050 through 73.20.070 shall not be construed so as to alter or affect any provision for revocation or termination contained in such power of attorney. [1945 c 139 § 4; Rem. Supp. 1945 § 10758-73.]

Chapter 73.24

BURIAL

Sections

- 73.24.020 Contract for care of veterans' plot at Olympia.
73.24.030 Authorized burials in plot.

73.24.020 Contract for care of veterans' plot at Olympia. The director of the *department of finance, budget and business is hereby authorized and directed to contract with Olympia Lodge No. 1, F.&A.M., a corporation for the improvement and perpetual care of the state veterans' plot in the Masonic cemetery at Olympia; such care to include the providing of proper curbs and walks, cultivating, reseeding and fertilizing grounds, repairing and resetting the bases and monuments in place on the ground, leveling grounds, and transporting and setting headstones for graves of persons hereafter buried on the plot. [1937 c 36 § 1; RRS § 10758-1.]

***Reviser's note:** Powers and duties of the "department of finance, budget and business" have devolved upon the department of general administration through a chain of statutes as follows: 1935 c 176 § 11; 1947 c 114 § 5; and 1955 c 285 §§ 4, 14, 16, and 18 (RCW 43.19.010 and 43.19.015).

Cemeteries, endowment and nonendowment care: Chapters 68.40, 68.44 RCW.

73.24.030 Authorized burials in plot. The said plot shall be available, to the extent such space is available, without charge or cost for the burial of persons who have served in the army, navy, or marine corps in the United States, in the Spanish-American war, Philippine insurrection, or the Chinese Relief Expedition, or who served in any said branches of said service at any time between April 21, 1898 and July 4, 1902 and any veteran as defined in RCW 41.04.005. [1977 c 31 § 4; 1937 c 36 § 2; RRS § 10758-2.]

Chapter 73.36

UNIFORM VETERANS' GUARDIANSHIP ACT

Sections

- 73.36.010 Terms defined.
73.36.020 Administrator party in interest in guardianship proceedings—Notice.
73.36.030 Appointment of guardian—Necessary when.
73.36.040 Guardian—Number of wards permitted.
73.36.050 Guardian—Appointment—Contents of petition.
73.36.060 Guardian for minor—Appointment—Prima facie evidence.
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73.36.170 Application of chapter to other guardianships of veterans.
73.36.180 Construction of chapter—Uniformity.
73.36.190 Short title.

Guardianship, generally: Chapters 11.88, 11.92 RCW.

73.36.010 Terms defined. As used in this chapter:

"Person" means an individual, a partnership, a corporation or an association.

"Veterans administration" means the veterans administration, its predecessors or successors.

"Income" means moneys received from the veterans administration and revenue or profit from any property wholly or partially acquired therewith.

"Estate" means income on hand and assets acquired partially or wholly with "income".

"Benefits" means all moneys paid or payable by the United States through the veterans administration.

"Administrator" means the administrator of veterans affairs of the United States or his successor.

"Ward" means a beneficiary of the veterans administration.

"Guardian" means any fiduciary for the person or estate of a ward. [1951 c 53 § 1.]

73.36.020 Administrator party in interest in guardianship proceedings—Notice. The administrator shall be a party in interest in any proceeding for the appointment or removal of a guardian or for the removal of the disability of minority or mental incapacity of a ward, and in any suit or other proceeding affecting in any manner the administration by the guardian of the estate of any present or former ward whose estate includes assets derived in whole or in part from benefits heretofore or hereafter paid by the veterans administration. Not less than fifteen days prior to hearing in such matter notice in writing of the time and place thereof shall be given by mail (unless waived in writing) to the office of the veterans administration having jurisdiction over the

area in which any such suit or any such proceeding is pending. [1951 c 53 § 2.]

73.36.030 Appointment of guardian—Necessary when. Whenever, pursuant to any law of the United States or regulation of the veterans administration, it is necessary, prior to payment of benefits, that a guardian be appointed, the appointment may be made in the manner hereinafter provided. [1951 c 53 § 3.]

73.36.040 Guardian—Number of wards permitted. No person other than a bank or trust company shall be guardian of more than five wards at one time, unless all the wards are members of one family. Upon presentation of a petition by an attorney of the veterans administration or other interested person, alleging that a guardian is acting in a fiduciary capacity for more than five wards as herein provided and requesting his discharge for that reason, the court, upon proof substantiating the petition, shall require a final accounting forthwith from such guardian and shall discharge him from guardianships in excess of five and forthwith appoint a successor. [1951 c 53 § 4.]

73.36.050 Guardian—Appointment—Contents of petition. (1) A petition for the appointment of a guardian may be filed by any relative or friend of the ward or by any person who is authorized by law to file such a petition. If there is no person so authorized or if the person so authorized refuses or fails to file such a petition within thirty days after mailing of notice by the veterans administration to the last known address of the person, if any, indicating the necessity for the same, a petition for appointment may be filed by any resident of this state.

(2) The petition for appointment shall set forth the name, age, place of residence of the ward, the name and place of residence of the nearest relative, if known, and the fact that the ward is entitled to receive benefits payable by or through the veterans administration and shall set forth the amount of moneys then due and the amount of probable future payments.

(3) The petition shall also set forth the name and address of the person or institution, if any, having actual custody of the ward and the name, age, relationship, if any, occupation and address of the proposed guardian and if the nominee is a natural person, the number of wards for whom the nominee is presently acting as guardian. Notwithstanding any law as to priority of persons entitled to appointment, or the nomination in the petition, the court may appoint some other individual or a bank or trust company as guardian, if the court determines it is for the best interest of the ward.

(4) In the case of a mentally incompetent ward the petition shall show that such ward has been rated incompetent by the veterans administration on examination in accordance with the laws and regulations governing the veterans administration. [1951 c 53 § 5.]

73.36.060 Guardian for minor—Appointment—Prima facie evidence. Where a petition is filed for the

appointment of a guardian for a minor, a certificate of the administrator or his authorized representative, setting forth the age of such minor as shown by the records of the veterans administration and the fact that the appointment of a guardian is a condition precedent to the payment of any moneys due the minor by the veterans administration shall be prima facie evidence of the necessity for such appointment. [1951 c 53 § 6.]

73.36.070 Guardian for incompetent—Appointment—Prima facie evidence. Where a petition is filed for the appointment of a guardian for a mentally incompetent ward, a certificate of the administrator or his duly authorized representative, that such person has been rated incompetent by the veterans administration on examination in accordance with the laws and regulations governing such veterans administration and that the appointment of a guardian is a condition precedent to the payment of any moneys due such ward by the veterans administration, shall be prima facie evidence of the necessity for such appointment. [1951 c 53 § 7.]

73.36.080 Notice of petition. Upon the filing of a petition for the appointment of a guardian under this chapter, notice shall be given to the ward, to such other persons, and in such manner as is provided by the general law of this state, and also to the veterans administration as provided by this chapter. [1951 c 53 § 8.]

73.36.090 Guardian's bond. (1) Upon the appointment of a guardian, he shall execute and file a bond to be approved by the court in an amount not less than the estimated value of the personal estate and anticipated income of the ward during the ensuing two years, except in cases where banks or trust companies are appointed as guardian and no bond is required by the general state law. The bond shall be in the form and be conditioned as required of guardians appointed under the general guardianship laws of this state. The court may from time to time require the guardian to file an additional bond.

(2) Where a bond is tendered by a guardian with personal sureties, there shall be at least two such sureties and they shall file with the court a certificate under oath which shall describe the property owned, both real and personal, and shall state that each is worth the sum named in the bond as the penalty thereof over and above all his debts and liabilities and the aggregate of other bonds in which he is principal or surety and exclusive of property exempt from execution. The court may require additional security or may require a corporate surety bond, the premium thereon to be paid from the ward's estate. [1951 c 53 § 9.]

Guardianship, generally: Chapters 11.88 and 11.92 RCW.

73.36.100 Accounting by guardian—Copies of all proceedings to be furnished administration—Hearings. (1) Every guardian, who has received or shall receive on account of his ward any money or other thing of value from the veterans administration, at the expiration of two years from date of his appointment, and every two

years thereafter on the anniversary date of his appointment, or as much oftener as the court may require, shall file with the court a full, true and accurate account under oath of all moneys or other things of value received by him, all earnings, interest or profits derived therefrom, and all property acquired therewith and of all disbursements therefrom, and showing the balance thereof in his hands at the date of the account and how invested. Each year when not required to file an account with the court, the guardian shall file an account with the proper office of the veterans administration. If the interim account be not filed with the veterans administration, or, if filed, shall be unsatisfactory, the court shall upon receipt of notice thereof from the veterans administration require the guardian forthwith to file an account which shall be subject in all respects to the next succeeding paragraphs. Any account filed with the veterans administration and approved by the chief attorney thereof may be filed with the court and be approved by the court without hearing, unless a hearing thereon be requested by some party in interest.

(2) The guardian, at the time of filing any account with the court or veterans administration shall exhibit all securities or investments held by him to an officer of the bank or other depository wherein said securities or investments are held for safekeeping or to an authorized representative of the corporation which is surety on his bond, or to the judge or clerk of a court of record in this state, or upon request of the guardian or other interested party, to any other reputable person designated by the court, who shall certify in writing that he has examined the securities or investments and identified them with those described in the account and shall note any omissions or discrepancies. If the depository is the guardian, the certifying officer shall not be the officer verifying the account. The guardian may exhibit the securities or investments to the judge of the court, who shall endorse on the account and copy thereof, a certificate that the securities or investments shown therein as held by the guardian were each in fact exhibited to him and that those exhibited to him were the same as those in the account and noting any omission or discrepancy. The certificate, and the certificate of an official of the bank in which are deposited any funds for which the guardian is accountable, showing the amount on deposit, shall be prepared and signed in duplicate and one of each shall be filed by the guardian with his account.

(3) At the time of filing in the court any account, a certified copy thereof and a signed duplicate of each certificate filed with the court shall be sent by the guardian to the office of the veterans administration having jurisdiction over the area in which such court is located. A duplicate signed copy or a certified copy of any petition, motion or other pleading pertaining to an account, or to any matter other than an account, and which is filed in the guardianship proceedings or in any proceedings for the purpose of removing the disability of minority or mental incapacity, shall be furnished by the persons filing the same to the proper office of the veterans administration. Unless hearing be waived in writing by the attorney of the veterans administration and by all

other persons, if any, entitled to notice, the court shall fix a time and place for the hearing on the account, petition, motion or other pleading, not less than fifteen days nor more than sixty days from the date same is filed, unless a different available date be stipulated in writing. Unless waived in writing, written notice of the time and place of hearing shall be given the veterans administration office concerned and to the guardian and any others entitled to notice, not less than fifteen days prior to the date fixed for the hearing. The notice may be given by mail, in which event it shall be deposited in the mails not less than fifteen days prior to said date. The court or clerk thereof, shall mail to said veterans administration office a copy of each order entered in any guardianship proceeding wherein the administrator is an interested party.

(4) If the guardian is accountable for property derived from sources other than the veterans administration, he shall be accountable as is or may be required under the applicable law of this state pertaining to the property of minors or persons of unsound mind who are not beneficiaries of the veterans administration, and as to such other property shall be entitled to the compensation provided by such law. The account for other property may be combined with the account filed in accordance with this section. [1951 c 53 § 10.]

73.36.110 Failure to account—Penalties. If any guardian shall fail to file with the court any account as required by this chapter, or by an order of the court, when any account is due or within thirty days after citation issues and provided by law, or shall fail to furnish the veterans administration a true copy of any account, petition or pleading as required by this chapter, such failure may in the discretion of the court be ground for his removal, in addition to other penalties provided by law. [1951 c 53 § 11.]

73.36.120 Compensation of guardian. Compensation payable to guardians shall be based upon services rendered and shall not exceed five percent of the amount of moneys received during the period covered by the account, except that the court may allow a fee of not exceeding twenty-five dollars per year, as a minimum fee, upon the approval of the chief attorney for the veterans administration. In the event of extraordinary services by any guardian, the court, upon petition and hearing thereon may authorize reasonable additional compensation therefor. A copy of the petition and notice of hearing thereon shall be given the proper office of the veterans administration in the manner provided in the case of hearing on a guardian's account or other pleading. No commission or compensation shall be allowed on the moneys or other assets received from a prior guardian nor upon the amount received from liquidation of loans or other investments. [1951 c 53 § 12.]

73.36.130 Investment of funds—Procedure. Every guardian shall invest the surplus funds of his ward's estate in such securities or property as authorized under the laws of this state but only upon prior order of the

court; except that the funds may be invested, without prior court authorization, in direct unconditional interest-bearing obligations of this state or of the United States and in obligations the interest and principal of which are unconditionally guaranteed by the United States. A signed duplicate or certified copy of the petition for authority to invest shall be furnished the proper office of the veterans administration, and notice of hearing thereon shall be given said office as provided in the case of hearing on a guardian's account. [1951 c 53 § 13.]

73.36.140 Use of funds—Procedure. A guardian shall not apply any portion of the income or the estate for the support or maintenance of any person including the ward, the spouse and the minor children of the ward, except upon petition to and prior order of the court after a hearing. A signed duplicate or certified copy of said petition shall be furnished the proper office of the veterans administration and notice of hearing thereon shall be given said office as provided in the case of hearing on a guardian's account or other pleading. [1951 c 53 § 14.]

73.36.150 Purchase of real estate—Procedure. (1) The court may authorize the purchase of the entire fee simple title to real estate in this state in which the guardian has no interest, but only as a home for the ward, or to protect his interest, or (if he is not a minor) as a home for his dependent family. Such purchase of real estate shall not be made except upon the entry of an order of the court after hearing upon verified petition. A copy of the petition shall be furnished the proper office of the veterans administration and notice of hearing thereon shall be given said office as provided in the case of hearing on a guardian's account.

(2) Before authorizing such investment the court shall require written evidence of value and of title and of the advisability of acquiring such real estate. Title shall be taken in the ward's name. This section does not limit the right of the guardian on behalf of his ward to bid and to become the purchaser of real estate at a sale thereof pursuant to decree of foreclosure of lien held by or for the ward, or at a trustee's sale, to protect the ward's right in the property so foreclosed or sold; nor does it limit the right of the guardian, if such be necessary to protect the ward's interest and upon prior order of the court in which the guardianship is pending, to agree with cotenants of the ward for a partition in kind, or to purchase from cotenants the entire undivided interests held by them, or to bid and purchase the same at a sale under a partition decree, or to compromise adverse claims of title to the ward's realty. [1951 c 53 § 15.]

73.36.155 Public records—Free copies. When a copy of any public record is required by the veterans administration to be used in determining the eligibility of any person to participate in benefits made available by the veterans administration, the official custodian of such public record shall without charge provide the applicant for such benefits or any person acting on his behalf or the authorized representative of the veterans

administration with a certified copy of such record. [1951 c 53 § 16. Formerly RCW 73.04.025.]

73.36.160 Discharge of guardian—Final account. In addition to any other provisions of law relating to judicial restoration and discharge of guardian, a certificate by the veterans administration showing that a minor ward has attained majority, or that an incompetent ward has been rated competent by the veterans administration upon examination in accordance with law shall be prima facie evidence that the ward has attained majority, or has recovered his competency. Upon hearing after notice as provided by this chapter and the determination by the court that the ward has attained majority or has recovered his competency, an order shall be entered to that effect, and the guardian shall file a final account. Upon hearing after notice to the former ward and to the veterans administration as in case of other accounts, upon approval of the final account, and upon delivery to the ward of the assets due him from the guardian, the guardian shall be discharged and his sureties released. [1951 c 53 § 17.]

73.36.165 Commitment to veterans administration or other federal agency. (1) Whenever, in any proceeding under the laws of this state for the commitment of a person alleged to be of unsound mind or otherwise in need of confinement in a hospital or other institution for his proper care, it is determined after such adjudication of the status of such person as may be required by law that commitment to a hospital for mental disease or other institution is necessary for safekeeping or treatment and it appears that such person is eligible for care or treatment by the veterans administration or other agency of the United States government, the court, upon receipt of a certificate from the veterans administration or such other agency showing that facilities are available and that such person is eligible for care or treatment therein, may commit such person to said veterans administration or other agency. The person whose commitment is sought shall be personally served with notice of the pending commitment proceeding in the manner as provided by the law of this state; and nothing in this chapter shall affect his right to appear and be heard in the proceedings. Upon commitment, such person, when admitted to any hospital operated by any such agency within or without this state shall be subject to the rules and regulations of the veterans administration or other agency. The chief officer of any hospital of the veterans administration or institution operated by any other agency of the United States to which the person is so committed shall with respect to such person be vested with the same powers as superintendents of state hospitals for mental diseases within this state with respect to retention of custody, transfer, parole or discharge. Jurisdiction is retained in the committing or other appropriate court of this state at any time to inquire into the mental condition of the person so committed, and to determine the necessity for continuance of his restraint, and all commitments pursuant to this chapter are so conditioned.

(2) The judgment or order of commitment by a court of competent jurisdiction of another state or of the District of Columbia, committing a person to the veterans administration, or other agency of the United States government for care or treatment shall have the same force and effect as to the committed person while in this state as in the jurisdiction in which is situated the court entering the judgment or making the order; and the courts of the committing state, or of the District of Columbia, shall be deemed to have retained jurisdiction of the person so committed for the purpose of inquiring into the mental condition of such person, and of determining the necessity for continuance of his restraint; as is provided in subsection (1) of this section with respect to persons committed by the courts of this state. Consent is hereby given to the application of the law of the committing state or district in respect to the authority of the chief officer of any hospital of the veterans administration, or of any institution operated in this state by any other agency of the United States to retain custody, or transfer, parole or discharge the committed person.

(3) Upon receipt of a certificate of the veterans administration or such other agency of the United States that facilities are available for the care or treatment of any person heretofore committed to any hospital for the insane or other institution for the care or treatment of persons similarly afflicted and that such person is eligible for care or treatment, the superintendent of the institution may cause the transfer of such person to the veterans administration or other agency of the United States for care or treatment. Upon effecting any such transfer, the committing court or proper officer thereof shall be notified thereof by the transferring agency. No person shall be transferred to the veterans administration or other agency of the United States if he be confined pursuant to conviction of any felony or misdemeanor or if he has been acquitted of the charge solely on the ground of insanity, unless prior to transfer the court or other authority originally committing such person shall enter an order for such transfer after appropriate motion and hearing.

Any person transferred as provided in this section shall be deemed to be committed to the veterans administration or other agency of the United States pursuant to the original commitment. [1951 c 53 § 18. Formerly RCW 71.02.700 through 71.02.720.]

73.36.170 Application of chapter to other guardianships of veterans. The provisions of this chapter relating to surety bonds and the administration of estates of wards shall apply to all "income" and "estate" as defined in RCW 73.36.010 whether the guardian shall have been appointed under this chapter or under any other law of this state, special or general, prior or subsequent to the enactment hereof. [1951 c 53 § 21.]

73.36.180 Construction of chapter—Uniformity. This chapter shall be so construed to make uniform the law of those states which enact it. [1951 c 53 § 19.]

73.36.190 Short title. This chapter may be cited as the "uniform veterans' guardianship act". [1951 c 53 § 20.]

Title 74

PUBLIC ASSISTANCE

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Chapter 74.04

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74.04.005 Definitions—Eligibility for assistance.

For the purposes of this title, unless the context indicates otherwise, the following definitions shall apply:

(1) "Public assistance" or "assistance"—Public aid to persons in need thereof for any cause, including services, medical care, assistance grants, disbursing orders, work relief, general assistance and federal-aid assistance.

(2) "Department"—The department of social and health services.

(3) "County or local office"—The administrative office for one or more counties or designated service areas.

(4) "Director" or "secretary" means the secretary of social and health services.

(5) "Federal-aid assistance"—The specific categories of assistance for which provision is made in any federal law existing or hereafter passed by which payments are made from the federal government to the state in aid or in respect to payment by the state for public assistance rendered to any category of needy persons for which provision for federal funds or aid may from time to time be made, or a federally administered needs-based program.

(6) (a) "General assistance"—Aid to persons in need who:

(i) Are not eligible to receive federal-aid assistance, other than food stamps and medical assistance; however, an individual who refuses or fails to cooperate in obtaining federal-aid assistance, without good cause, is not eligible for general assistance;

(ii) Are either:

(A) Pregnant: *Provided*, That need is based on the current income and resource requirements of the federal aid to families with dependent children program: *Provided further*, That during any period in which an aid for dependent children employable program is not in operation, only those pregnant women who are categorically eligible for medicaid are eligible for general assistance; or

(B) Incapacitated from gainful employment by reason of bodily or mental infirmity that will likely continue for a minimum of sixty days as determined by the department. Persons who are unemployable due to alcohol or drug addiction are not eligible for general assistance. Persons receiving general assistance on July 26, 1987, or becoming eligible for such assistance thereafter, due to an alcohol or drug-related incapacity, shall be referred to appropriate assessment, treatment, shelter, or supplemental security income referral services as authorized under chapter 74.50 RCW. Referrals shall be made at the time of application or at the time of eligibility review. Alcoholic and drug addicted clients who are receiving general assistance on July 26, 1987, may remain on general assistance if they otherwise retain their eligibility until they are assessed for services under chapter 74.50 RCW. This subsection (6)(a)(ii)(B) shall not be construed to prohibit the department from granting general assistance benefits to alcoholics and drug addicts who are incapacitated due to other physical or mental conditions that meet the eligibility criteria for the general assistance program;

(iii) Are citizens or aliens lawfully admitted for permanent residence or otherwise residing in the United States under color of law; and

(iv) Have furnished the department their social security account number. If the social security account number cannot be furnished because it has not been issued or is not known, an application for a number shall be made prior to authorization of assistance, and the social security number shall be provided to the department upon receipt.

(b) Notwithstanding the provisions of subsection (6)(a)(i), (ii), and (c) of this section, general assistance shall be provided to the following recipients of federal-aid assistance:

(i) Recipients of supplemental security income whose need, as defined in this section, is not met by such supplemental security income grant because of separation from a spouse; or

(ii) To the extent authorized by the legislature in the biennial appropriations act, to recipients of aid to families with dependent children whose needs are not being met because of a temporary reduction in monthly income below the entitled benefit payment level caused by

loss or reduction of wages or unemployment compensation benefits or some other unforeseen circumstances. The amount of general assistance authorized shall not exceed the difference between the entitled benefit payment level and the amount of income actually received.

(c) General assistance shall be provided only to persons who are not members of assistance units receiving federal aid assistance, except as provided in subsection (6) (a)(ii)(A) and (b) of this section, and will accept available services which can reasonably be expected to enable the person to work or reduce the need for assistance unless there is good cause to refuse. Failure to accept such services shall result in termination until the person agrees to cooperate in accepting such services and subject to the following maximum periods of ineligibility after reapplication:

- (i) First failure: One week;
- (ii) Second failure within six months: One month;
- (iii) Third and subsequent failure within one year:

Two months.

(d) The department shall adopt by rule medical criteria for general assistance eligibility to ensure that eligibility decisions are consistent with statutory requirements and are based on clear, objective medical information.

(e) The process implementing the medical criteria shall involve consideration of opinions of the treating or consulting physicians or health care professionals regarding incapacity, and any eligibility decision which rejects uncontroverted medical opinion must set forth clear and convincing reasons for doing so.

(f) Recipients of general assistance who remain otherwise eligible shall not have their benefits terminated absent a clear showing of material improvement in their medical or mental condition or specific error in the prior determination that found the recipient eligible by reason of incapacitation.

(7) "Applicant"—Any person who has made a request, or on behalf of whom a request has been made, to any county or local office for assistance.

(8) "Recipient"—Any person receiving assistance and in addition those dependents whose needs are included in the recipient's assistance.

(9) "Standards of assistance"—The level of income required by an applicant or recipient to maintain a level of living specified by the department.

(10) "Resource"—Any asset, tangible or intangible, owned by or available to the applicant at the time of application, which can be applied toward meeting the applicant's need, either directly or by conversion into money or its equivalent: *Provided*, That an applicant may retain the following described resources and not be ineligible for public assistance because of such resources.

(a) A home, which is defined as real property owned and used by an applicant or recipient as a place of residence, together with a reasonable amount of property surrounding and contiguous thereto, which is used by and useful to the applicant. Whenever a recipient shall cease to use such property for residential purposes, either for himself or his dependents, the property shall be considered as a resource which can be made available to

meet need, and if the recipient or his dependents absent themselves from the home for a period of ninety consecutive days such absence, unless due to hospitalization or health reasons or a natural disaster, shall raise a rebuttable presumption of abandonment: *Provided*, That if in the opinion of three physicians the recipient will be unable to return to the home during his lifetime, and the home is not occupied by a spouse or dependent children or disabled sons or daughters, such property shall be considered as a resource which can be made available to meet need.

(b) Household furnishings and personal effects and other personal property having great sentimental value to the applicant or recipient, as limited by the department consistent with limitations on resources and exemptions for federal aid assistance.

(c) A motor vehicle, other than a motor home, used and useful having an equity value not to exceed one thousand five hundred dollars.

(d) All other resources, including any excess of values exempted, not to exceed one thousand dollars or other limit as set by the department, to be consistent with limitations on resources and exemptions necessary for federal aid assistance.

(e) Applicants for or recipients of general assistance may retain the following described resources in addition to exemption for a motor vehicle or home and not be ineligible for public assistance because of such resources:

(i) Household furnishings, personal effects, and other personal property having great sentimental value to the applicant or recipient;

(ii) Term and burial insurance for use of the applicant or recipient;

(iii) Life insurance having a cash surrender value not exceeding one thousand five hundred dollars; and

(iv) Cash, marketable securities, and any excess of values above one thousand five hundred dollars equity in a vehicle and above one thousand five hundred dollars in cash surrender value of life insurance, not exceeding one thousand five hundred dollars for a single person or two thousand two hundred fifty dollars for a family unit of two or more. The one thousand dollar limit in subsection (10)(d) of this section does not apply to recipients of or applicants for general assistance.

(f) If an applicant for or recipient of public assistance possesses property and belongings in excess of the ceiling value, such value shall be used in determining the need of the applicant or recipient, except that: (i) The department may exempt resources or income when the income and resources are determined necessary to the applicant's or recipient's restoration to independence, to decrease the need for public assistance, or to aid in rehabilitating the applicant or recipient or a dependent of the applicant or recipient; and (ii) the department may provide grant assistance to persons who are otherwise ineligible because of excess real property owned by such persons when they are making a good faith effort to dispose of that property, but the recipient must sign an agreement to dispose of the property and repay assistance payments made to the date of disposition of the

property which would not have been made had the disposal occurred at the beginning of the period for which the payments of such assistance were made. In no event shall such amount due the state exceed the net proceeds otherwise available to the recipient from the disposition, unless after nine months from the date of the agreement the property has not been sold, or if the recipient's eligibility for financial assistance ceases for any other reason. In these two instances the entire amount of assistance paid during this period will be treated as an overpayment and a debt due the state, and may be recovered pursuant to RCW 43.20B.630.

(11) "Income"—(a) All appreciable gains in real or personal property (cash or kind) or other assets, which are received by or become available for use and enjoyment by an applicant or recipient during the month of application or after applying for or receiving public assistance. The department may by rule and regulation exempt income received by an applicant for or recipient of public assistance which can be used by him to decrease his need for public assistance or to aid in rehabilitating him or his dependents, but such exemption shall not, unless otherwise provided in this title, exceed the exemptions of resources granted under this chapter to an applicant for public assistance. In determining the amount of assistance to which an applicant or recipient of aid to families with dependent children is entitled, the department is hereby authorized to disregard as a resource or income the earned income exemptions consistent with federal requirements. The department may permit the above exemption of earnings of a child to be retained by such child to cover the cost of special future identifiable needs even though the total exceeds the exemptions or resources granted to applicants and recipients of public assistance, but consistent with federal requirements. In formulating rules and regulations pursuant to this chapter, the department shall define income and resources and the availability thereof, consistent with federal requirements. All resources and income not specifically exempted, and any income or other economic benefit derived from the use of, or appreciation in value of, exempt resources, shall be considered in determining the need of an applicant or recipient of public assistance.

(b) If, under applicable federal requirements, the state has the option of considering property in the form of lump sum compensatory awards or related settlements received by an applicant or recipient as income or as a resource, the department shall consider such property to be a resource.

(12) "Need"—The difference between the applicant's or recipient's standards of assistance for himself and the dependent members of his family, as measured by the standards of the department, and value of all nonexempt resources and nonexempt income received by or available to the applicant or recipient and the dependent members of his family.

(13) For purposes of determining eligibility for public assistance and participation levels in the cost of medical care, the department shall exempt restitution payments made to people of Japanese and Aleut ancestry pursuant

to the Civil Liberties Act of 1988 and the Aleutian and Pribilof Island Restitution Act passed by congress, P.L. 100-383, including all income and resources derived therefrom.

(14) In the construction of words and phrases used in this title, the singular number shall include the plural, the masculine gender shall include both the feminine and neuter genders and the present tense shall include the past and future tenses, unless the context thereof shall clearly indicate to the contrary. [1989 1st ex.s. c 9 § 816. Prior: 1987 c 406 § 9; 1987 c 75 § 31; 1985 c 335 § 2; 1983 1st ex.s. c 41 § 36; 1981 2nd ex.s. c 10 § 5; 1981 1st ex.s. c 6 § 1; prior: 1981 c 8 § 1; prior: 1980 c 174 § 1; 1980 c 84 § 1; 1979 c 141 § 294; 1969 ex.s. c 173 § 1; 1965 ex.s. c 2 § 1; 1963 c 228 § 1; 1961 c 235 § 1; 1959 c 26 § 74.04.005; prior: (i) 1947 c 289 § 1; 1939 c 216 § 1; Rem. Supp. 1947 § 10007-101a. (ii) 1957 c 63 § 1; 1953 c 174 § 17; 1951 c 122 § 1; 1951 c 1 § 3 (Initiative Measure No. 178, approved November 7, 1950); 1949 c 6 § 3; Rem. Supp. 1949 § 9998-33c.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

Savings—Severability—1987 c 75: See RCW 43.20B.900 and 43.20B.901.

Severability—1983 1st ex.s. c 41: See note following RCW 26.09.060.

Effective date—1981 1st ex.s. c 6: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1981." [1981 1st ex.s. c 6 § 31.]

Severability—1981 1st ex.s. c 6: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1981 1st ex.s. c 6 § 30.]

Consolidated standards of need: RCW 74.04.770.

74.04.006 Contract of sale of property—Availability as a resource or income—Establishment. The department may establish, by rule and regulation, the availability of a contract of sale of real or personal property as a resource or income as defined in RCW 74.04.005. [1973 1st ex.s. c 49 § 2.]

74.04.011 Secretary's authority—Personnel. The secretary of social and health services shall be the administrative head and appointing authority of the department of social and health services and he shall have the power to and shall employ such assistants and personnel as may be necessary for the general administration of the department: *Provided*, That such employment is in accordance with the rules and regulations of the state merit system. The secretary shall through and by means of his assistants and personnel exercise such powers and perform such duties as may be prescribed by the public assistance laws of this state.

The authority vested in the secretary as appointing authority may be delegated by the secretary or his designee to any suitable employee of the department. [1979 c 141 § 295; 1969 ex.s. c 173 § 4; 1959 c 26 § 74.04.011. Prior: 1953 c 174 § 3. (i) 1937 c 111 § 3; RRS § 10785-2. (ii) 1937 c 111 § 5; RRS § 10785-4.]

State civil service law: Chapter 41.06 RCW.

74.04.015 Secretary responsible officer to administer federal funds, etc. The secretary of social and health services shall be the responsible state officer for the administration of, and the disbursement of all funds, goods, commodities and services, which may be received by the state in connection with programs of public assistance or services related directly or indirectly to assistance programs, and all other matters included in the federal social security act approved August 14, 1935, or any other federal act or as the same may be amended excepting those specifically required to be administered by other entities.

He shall make such reports and render such accounting as may be required by the federal agency having authority in the premises. [1981 1st ex.s. c 6 § 2; 1981 c 8 § 2; 1979 c 141 § 296; 1963 c 228 § 2; 1959 c 26 § 74.04.015. Prior: 1953 c 174 § 49; 1937 c 111 § 12; RRS § 10785-11.]

Effective date—Severability—1981 1st ex.s. c 6: See notes following RCW 74.04.005.

Children's center for research and training in mental retardation, assistant secretaries as advisory committee members: RCW 28B.20.412.

74.04.025 Bilingual services for non-English speaking applicants and recipients—Bilingual personnel, when—Primary language pamphlets and written materials—Report to legislature. (1) The department and the office of administrative hearings shall insure that bilingual services are provided to non-English speaking applicants and recipients. The services shall be provided to the extent necessary to assure that non-English speaking persons are not denied, or unable to obtain or maintain, services or benefits because of their inability to speak English.

(2) If the number of non-English speaking applicants or recipients sharing the same language served by any community service office client contact job classification equals or exceeds fifty percent of the average caseload of a full-time position in such classification, the department shall, through attrition, employ bilingual personnel to serve such applicants or recipients.

(3) Regardless of the applicant or recipient caseload of any community service office, each community service office shall ensure that bilingual services required to supplement the community service office staff are provided through contracts with interpreters, local agencies, or other community resources.

(4) Initial client contact materials shall inform clients in all primary languages of the availability of interpretation services for non-English speaking persons. Basic informational pamphlets shall be translated into all primary languages.

(5) To the extent all written communications directed to applicants or recipients are not in the primary language of the applicant or recipient, the department and the office of administrative hearings shall include with the written communication a notice in all primary languages of applicants or recipients describing the significance of the communication and specifically how the

applicants or recipients may receive assistance in understanding, and responding to if necessary, the written communication. The department shall assure that sufficient resources are available to assist applicants and recipients in a timely fashion with understanding, responding to, and complying with the requirements of all such written communications.

(6) As used in this section, "primary languages" includes but is not limited to Spanish, Vietnamese, Cambodian, Laotian, and Chinese.

(7) The department shall report to the legislature by July 1, 1984, on the cost-effectiveness of translating all written forms, notices, and other documents provided to non-English speaking applicants or recipients into primary languages. [1983 1st ex.s. c 41 § 33.]

Severability—1983 1st ex.s. c 41: See note following RCW 26.09.060.

74.04.033 Notification of availability of basic health plan. The department shall notify any applicant for public assistance who resides in a local area served by the Washington basic health plan and is under sixty-five years of age of the availability of basic health care coverage to qualified enrollees in the Washington basic health plan under chapter 70.47 RCW, unless the Washington basic health plan administrator has notified the department of a closure of enrollment in the area. The department shall maintain a supply of Washington basic health plan enrollment application forms, which shall be provided in reasonably necessary quantities by the administrator, in each appropriate community service office for the use of persons wishing to apply for enrollment in the Washington basic health plan. [1987 1st ex.s. c 5 § 18.]

Sunset Act application: See note following chapter 70.47 RCW digest.

Severability—1987 1st ex.s. c 5: See note following RCW 70.47.901.

74.04.040 Public assistance a joint federal, state, and county function—Notice required. The care, support, and relief of needy persons is hereby declared to be a joint federal, state, and county function. County offices are charged with the responsibility for the administration of public assistance within the respective county or counties or parts thereof as local offices of the department as prescribed by the rules and regulations of the department.

Whenever a city or town establishes a program or policy for the care, support, and relief of needy persons it shall provide notice of the program or policy to the county or counties within which the city or town is located. [1981 c 191 § 1; 1959 c 26 § 74.04.040. Prior: 1953 c 174 § 12; 1939 c 216 § 5; RRS § 10007-105a.]

74.04.050 Department to administer public assistance programs. The department shall serve as the single state agency to administer public assistance. The department is hereby empowered and authorized to cooperate in the administration of such federal laws, consistent with the

public assistance laws of this state, as may be necessary to qualify for federal funds for:

- (1) Medical assistance;
- (2) Aid to dependent children;
- (3) Child welfare services; and
- (4) Any other programs of public assistance for which provision for federal grants or funds may from time to time be made.

The state hereby accepts and assents to all the present provisions of the federal law under which federal grants or funds, goods, commodities and services are extended to the state for the support of programs administered by the department, and to such additional legislation as may subsequently be enacted as is not inconsistent with the purposes of this title, authorizing public welfare and assistance activities. The provisions of this title shall be so administered as to conform with federal requirements with respect to eligibility for the receipt of federal grants or funds.

The department shall periodically make application for federal grants or funds and submit such plans, reports and data, as are required by any act of congress as a condition precedent to the receipt of federal funds for such assistance. The department shall make and enforce such rules and regulations as shall be necessary to insure compliance with the terms and conditions of such federal grants or funds. [1981 1st ex.s. c 6 § 3; 1981 c 8 § 3; 1963 c 228 § 3; 1959 c 26 § 74.04.050. Prior: 1955 c 273 § 21; 1953 c 174 § 6; 1939 c 216 § 6; RRS § 10007-106a.]

Effective date—Severability—1981 1st ex.s. c 6: See notes following RCW 74.04.005.

74.04.055 Cooperation with federal government—

Construction. In furtherance of the policy of this state to cooperate with the federal government in the programs included in this title the secretary shall issue such rules and regulations as may become necessary to entitle this state to participate in federal grants-in-aid, goods, commodities and services unless the same be expressly prohibited by this title. Any section or provision of this title which may be susceptible to more than one construction shall be interpreted in favor of the construction most likely to satisfy federal laws entitling this state to receive federal matching or other funds for the various programs of public assistance. [1979 c 141 § 298; 1963 c 228 § 4; 1959 c 26 § 74.04.055. Prior: 1953 c 174 § 50.]

74.04.057 Promulgation of rules and regulations to qualify for federal funds. The department is authorized to promulgate such rules and regulations as are necessary to qualify for any federal funds available under Title XVI of the federal social security act, and any other combination of existing programs of assistance consistent with federal law and regulations. [1969 ex.s. c 173 § 3.]

74.04.060 Records, etc., confidential—Exceptions—Penalty. For the protection of applicants and recipients, the department and the county offices and their respective officers and employees are prohibited,

except as hereinafter provided, from disclosing the contents of any records, files, papers and communications, except for purposes directly connected with the administration of the programs of this title. In any judicial proceeding, except such proceeding as is directly concerned with the administration of these programs, such records, files, papers and communications, and their contents, shall be deemed privileged communications and except for the right of any individual to inquire of the office whether a named individual is a recipient of welfare assistance and such person shall be entitled to an affirmative or negative answer. However, upon written request of a parent who has been awarded visitation rights in an action for divorce or separation or any parent with legal custody of the child, the department shall disclose to him or her the last known address and location of his or her natural or adopted children. The secretary shall adopt rules which establish procedures for disclosing the address of the children and providing, when appropriate, for prior notice to the custodian of the children. The notice shall state that a request for disclosure has been received and will be complied with by the department unless the department receives a copy of a court order which enjoins the disclosure of the information or restricts or limits the requesting party's right to contact or visit the other party or the child. Information supplied to a parent by the department shall be used only for purposes directly related to the enforcement of the visitation and custody provisions of the court order of separation or decree of divorce. No parent shall disclose such information to any other person except for the purpose of enforcing visitation provisions of the said order or decree.

The county offices shall maintain monthly at their offices a report showing the names and addresses of all recipients in the county receiving public assistance under this title, together with the amount paid to each during the preceding month.

The provisions of this section shall not apply to duly designated representatives of approved private welfare agencies, public officials, members of legislative interim committees and advisory committees when performing duties directly connected with the administration of this title, such as regulation and investigation directly connected therewith: *Provided, however,* That any information so obtained by such persons or groups shall be treated with such degree of confidentiality as is required by the federal social security law.

It shall be unlawful, except as provided in this section, for any person, body, association, firm, corporation or other agency to solicit, publish, disclose, receive, make use of, or to authorize, knowingly permit, participate in or acquiesce in the use of any lists or names for commercial or political purposes of any nature. The violation of this section shall be a gross misdemeanor. [1987 c 435 § 29; 1983 1st ex.s. c 41 § 32; 1973 c 152 § 1; 1959 c 26 § 74.04.060. Prior: 1953 c 174 § 7; 1950 ex.s. c 10 § 1; 1941 c 128 § 5; Rem. Supp. 1941 § 10007-106b.]

Effective date—1987 c 435: See RCW 26.23.900.

Severability—1983 1st ex.s. c 41: See note following RCW 26.09.060.

Severability—1973 c 152: "If any provision of this 1973 act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1973 c 152 § 3.]

Child support, department may disclose information to internal revenue department: RCW 74.20.160.

74.04.062 Disclosure of information to police officer or immigration official. Upon written request of a person who has been properly identified as an officer of the law with a felony arrest warrant or a properly identified United States immigration official with a warrant for an illegal alien the department shall disclose to such officer the current address and location of the person properly described in the warrant. [1973 c 152 § 2.]

Severability—1973 c 152: See note following RCW 74.04.060.

74.04.070 County office—Administrator. There may be established in each county of the state a county office which shall be administered by an executive officer designated as the county administrator. The county administrator shall be appointed by the secretary in accordance with the rules and regulations of the state merit system. [1979 c 141 § 299; 1959 c 26 § 74.04.070. Prior: 1953 c 174 § 13; 1941 c 128 § 2, part; 1939 c 216 § 4, part; Code 1881 §§ 2680, 2696; 1854 p 422 § 19; 1854 p 395 § 1; Rem. Supp. 1941 § 10007–104a, part.]

74.04.080 Personnel—Administrator's bond. The county administrator shall have the power to, and shall, employ such personnel as may be necessary to carry out the provisions of this title, which employment shall be in accordance with the rules and regulations of the state merit system, and in accordance with personnel and administrative standards established by the department. The county administrator before qualifying shall furnish a surety bond in such amount as may be fixed by the secretary, but not less than five thousand dollars, conditioned that the administrator will faithfully account for all money and property that may come into his possession or control. The cost of such bond shall be an administrative expense and shall be paid by the department. [1979 c 141 § 300; 1959 c 26 § 74.04.080. Prior: 1953 c 174 § 14; 1941 c 128 § 2, part; 1939 c 216 § 4, part; Code 1881 §§ 2680, 2696; 1854 p 422 § 19; 1854 p 395 § 1; Rem. Supp. 1941 § 10007–104a, part.]

74.04.120 Basis of state's allocation of federal aid funds. Allocations of state and federal funds shall be made upon the basis of need within the respective counties as disclosed by the quarterly budgets, considered in conjunction with revenues available for the satisfaction of that need: *Provided*, That in preparing his quarterly budget for federal aid assistance, the administrator shall include the aggregate of the individual case load approved by the department to date on the basis of need and the secretary shall approve and allocate an amount sufficient to service the aggregate case load as included in said budget, and in the event any portion of the budgeted case load cannot be serviced with moneys available for the particular category for which an application is made the committee may on the administrator's

request authorize the transfer of sufficient general assistance funds to the appropriation for such category to service such case load and secure the benefit of federal matching funds. [1979 c 141 § 301; 1959 c 26 § 74.04.120. Prior: 1939 c 216 § 8, part; RRS § 10007–108a, part.]

74.04.180 Joint county administration. Public assistance may be administered through a single administrator and a single administrative office for one or more counties. There may be a local office for the transaction of official business maintained in each county. [1959 c 26 § 74.04.180. Prior: 1953 c 174 § 15; 1939 c 216 § 12; RRS § 10007–112a.]

74.04.200 Standards—Established, enforced. It shall be the duty of the department of social and health services to establish state-wide standards which may vary by geographical areas to govern the granting of assistance in the several categories of this title and it shall have power to compel compliance with such standards as a condition to the receipt of state and federal funds by counties for social security purposes. [1981 1st ex.s. c 6 § 4; 1981 c 8 § 4; 1979 c 141 § 302; 1959 c 26 § 74.04.200. Prior: 1939 c 216 § 14; RRS § 10007–114a.]

Effective date—Severability—1981 1st ex.s. c 6: See notes following RCW 74.04.005.

74.04.210 Basis of allocation of moneys. The moneys appropriated for public assistance purposes and subject to allocation as in this title provided shall be allocated to counties on the basis of past experience and established case load history. [1959 c 26 § 74.04.210. Prior: 1939 c 216 § 15; RRS § 10007–115a.]

74.04.230 General assistance—Mental health services. Persons eligible for general assistance under RCW 74.04.005 are eligible for mental health services to the extent that they meet the client definitions and priorities established by chapter 71.24 RCW. [1982 c 204 § 16.]

Clients to be charged for mental health services: RCW 71.24.215.

74.04.265 Earnings—Deductions from grants. The secretary may issue rules consistent with federal laws and with memorials of the legislature, as will recognize the income of any persons without the deduction in full thereof from the amount of their grants. [1979 c 141 § 303; 1965 ex.s. c 35 § 1; 1959 c 26 § 74.04.265. Prior: 1953 c 174 § 16.]

74.04.266 General assistance—Earned income exemption to be established for unemployable persons. In determining need for general assistance for unemployable persons as defined in RCW 74.04.005(6)(a), the department may by rule and regulation establish a monthly earned income exemption in an amount not to exceed the exemption allowable under disability programs authorized in Title XVI of the federal social security act. [1977 ex.s. c 215 § 1.]

74.04.270 Audit of accounts—Uniform accounting system. It shall be the duty of the state auditor to audit the accounts, books and records of the department of social and health services. The public assistance committee shall establish and install a uniform accounting system for all categories of public assistance, applicable to all officers, boards, commissions, departments or other agencies having to do with the allowance and disbursement of public funds for assistance purposes, which said uniform accounting system shall conform to the accounting methods required by the federal government in respect to the administration of federal funds for assistance purposes. [1979 c 141 § 304; 1959 c 26 § 74.04.270. Prior: 1939 c 216 § 21; RRS § 10007-121a.]

74.04.280 Assistance nontransferable and exempt from process. Assistance given under this title shall not be transferable or assignable at law or in equity and none of the moneys received by recipients under this title shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law. [1959 c 26 § 74.04.280. Prior: 1939 c 216 § 25; RRS § 10007-125a.]

74.04.290 Subpoena of witnesses, books, records, etc. In carrying out any of the provisions of this title, the secretary, county administrators, hearing examiners, or other duly authorized officers of the department shall have power to subpoena witnesses, administer oaths, take testimony and compel the production of such papers, books, records and documents as they may deem relevant to the performance of their duties. Subpoenas issued under this power shall be under RCW 43.20A-.605. [1983 1st ex.s. c 41 § 22; 1979 ex.s. c 171 § 2; 1979 c 141 § 305; 1969 ex.s. c 173 § 2; 1959 c 26 § 74.04.290. Prior: 1939 c 216 § 26; RRS § 10007-126a.]

Severability—1983 1st ex.s. c 41: See note following RCW 26.09.060.

Severability—1979 ex.s. c 171: See note following RCW 74.20.300.

74.04.300 Recovery of payments improperly received—Lien. If a recipient receives public assistance and/or food stamps for which he is not eligible, or receives public assistance and/or food stamps in an amount greater than that for which he is eligible, the portion of the payment to which he is not entitled shall be a debt due the state recoverable under RCW 43.20B.610 through 43.20B.645. It shall be the duty of recipients of public assistance and/or food stamps to notify the department within twenty days of the receipt or possession of all income or resources not previously declared to the department. The department shall advise applicants for assistance that failure to report as required, failure to reveal resources or income, and false statements will result in recovery by the state of any overpayment and may result in criminal prosecution. [1987 c 75 § 32; 1982 c 201 § 16; 1980 c 84 § 2; 1979 c 141 § 306; 1973 1st ex.s. c 49 § 1; 1969 ex.s. c 173 § 18; 1959 c 26 § 74.04.300. Prior: 1957 c 63 § 3; 1953 c 174 § 35; 1939 c 216 § 27; RRS § 10007-127a.]

Savings—Severability—1987 c 75: See RCW 43.20B.900 and 43.20B.901.

74.04.310 Authority to accept contributions. In furthering the purposes of this title, the secretary or any county administrator may accept contributions or gifts in cash or otherwise from persons, associations or corporations, such contributions to be disbursed in the same manner as moneys appropriated for the purposes of this title: *Provided*, That the donor of such gifts may stipulate the manner in which such gifts shall be expended. [1979 c 141 § 309; 1959 c 26 § 74.04.310. Prior: 1939 c 216 § 28; RRS § 10007-128a.]

74.04.330 Annual reports by assistance organizations—Penalty. Every person, firm, corporation, association or organization receiving twenty-five percent or more of its income from contributions, gifts, dues, or other payments from persons receiving assistance, community work and training, federal-aid assistance, or any other form of public assistance from the state of Washington or any agency or subdivision thereof, and engaged in political or other activities in behalf of such persons receiving such public assistance, shall, within ninety days after the close of each calendar year, make a report to the secretary of social and health services for the preceding year, which report shall contain:

(1) A statement of the total amount of contributions, gifts, dues, or other payments received;

(2) The names of any and all persons, firms, corporations, associations or organizations contributing the sum of twenty-five dollars or more during such year, and the amounts contributed by such persons, firms, corporations, associations, or organizations;

(3) A full and complete statement of all disbursements made during such year, including the names of all persons, firms, corporations, associations, or organizations to whom any moneys were paid, and the amounts and purposes of such payments; and

(4) Every such report so filed shall constitute a public record.

(5) Any person, firm, or corporation, and any officer or agent of any firm, corporation, association or organization, violating this section by failing to file such report, or in any other manner, shall be guilty of a gross misdemeanor. [1979 c 141 § 310; 1963 c 228 § 5; 1959 c 26 § 74.04.330. Prior: 1941 c 170 § 7; Rem. Supp. 1941 § 10007-138.]

74.04.340 Federal surplus commodities—Certification of persons eligible to receive commodities. The state department of social and health services is authorized to assist needy families and individuals to obtain federal surplus commodities for their use, by certifying, when such is the case, that they are eligible to receive such commodities. However, only those who are receiving or are eligible for public assistance or care and such others as may qualify in accordance with federal requirements and standards shall be certified as eligible to receive such commodities. [1979 c 141 § 311; 1959 c 26 § 74.04.340. Prior: 1957 c 187 § 2.]

Purchase of federal property: Chapter 39.32 RCW.

74.04.350 Federal surplus commodities—Not to be construed as public assistance, eligibility not affected. Federal surplus commodities shall not be deemed or construed to be public assistance and care or a substitute, in whole or in part, therefor; and the receipt of such commodities by eligible families and individuals shall not subject them, their legally responsible relatives, their property or their estates to any demand, claim or liability on account thereof. A person's need or eligibility for public assistance or care shall not be affected by his receipt of federal surplus commodities. [1959 c 26 § 74.04.350. Prior: 1957 c 187 § 3.]

74.04.360 Federal surplus commodities—Certification deemed administrative expense of department. Expenditures made by the state department of social and health services for the purpose of certifying eligibility of needy families and individuals for federal surplus commodities shall be deemed to be expenditures for the administration of public assistance and care. [1979 c 141 § 312; 1959 c 26 § 74.04.360. Prior: 1957 c 187 § 4.]

74.04.370 Federal surplus commodities—County program, expenses, handling of commodities. See RCW 36.39.040.

74.04.380 Federal and other surplus food commodities—Agreements—Personnel—Facilities—Cooperation with other agencies—Discontinuance of program. The secretary of social and health services, from funds appropriated to his department for such purpose, shall, upon receipt of authorization from the governor, provide for the receiving, warehousing and distributing of federal and other surplus food commodities for the use and assistance of recipients of public assistance or other needy families and individuals certified as eligible to obtain such commodities. The secretary is authorized to enter into such agreements as may be necessary with the federal government or any state agency in order to participate in any program of distribution of surplus food commodities including but not limited to a food stamp program. The secretary shall hire personnel, establish distribution centers and acquire such facilities as may be required to carry out the intent of this section; and he may carry out any such program as a sole operation of the department or in conjunction or cooperation with any similar program of distribution by private individuals or organizations, any department of the state or any political subdivision of the state.

The secretary shall discontinue such program, or any part thereof, whenever in the determination of the governor such program, or any part thereof, is no longer in the best interest of the state. [1979 c 141 § 313; 1963 c 219 § 1; 1961 c 112 § 1.]

74.04.385 Unlawful practices relating to surplus commodities—Penalty. It shall be unlawful for any recipient of federal or other surplus commodities received under RCW 74.04.380 to sell, transfer, barter or

otherwise dispose of such commodities to any other person. It shall be unlawful for any person to receive, possess or use any surplus commodities received under RCW 74.04.380 unless he has been certified as eligible to receive, possess and use such commodities by the state department of social and health services.

Violation of the provisions of RCW 74.04.380 or this section shall constitute a misdemeanor and upon conviction thereof shall be punished by imprisonment in the county jail for not more than six months or by a fine of not more than five hundred dollars or both. [1979 c 141 § 314; 1963 c 219 § 2.]

74.04.390 Community work and training program—Defined. The term community work and training program shall be defined as follows: A plan jointly entered into between the state department of social and health services and an agency, department, board or commission of the state or federal government, county, city or municipal corporation which is subject to approval of the state department of social and health services, under which the state or federal government, county, city or municipal corporation undertakes to provide work in and about public works or improvements, utilizing labor and services required to be performed by applicants or recipients of public assistance. [1979 c 141 § 315; 1963 c 228 § 6; 1961 c 269 § 2.]

Severability—1961 c 269: "The several provisions of this act are hereby declared to be separate and severable and if any clause, sentence, paragraph, subdivision, section or part thereof shall for any reason be adjudged invalid or unconstitutional, such invalidity or unconstitutionality shall not affect any other clause, sentence, paragraph, subdivision or section." [1961 c 269 § 8.] For codification of 1961 c 269, see Codification Tables, Volume 0.

74.04.400 Community work and training program—Rules and regulations. The state department of social and health services is empowered and directed to adopt such rules and regulations as will make a community work and training program fair, efficient and workable. [1979 c 141 § 316; 1963 c 228 § 7; 1961 c 269 § 3.]

74.04.410 Community work and training program—Agreements with governmental entities for employment of eligible persons—Amount of earnings. When the state or federal government or any agencies thereof, a county, city or municipal corporation has undertaken or is about to undertake, a program which is for the benefit of the general public or any segment thereof, said state agency, county, city or municipal corporation may enter into an agreement with the state department of social and health services wherein and whereby the department of social and health services may assign unemployed employable persons who have attained the age of eighteen and who are eligible for assistance to do and perform work and labor on behalf of said state, or federal government, county, city or municipal corporation and such person shall perform, if available, work and labor for such state, or federal government, county, city or municipal corporation for

the length of time necessary to earn at the legal minimum wage or the going hourly rate prevailing in the area for labor of like kind, whichever is higher, an amount of money equal to the amount of assistance granted to such person and the assistance unit of which he or his dependents is a part. [1979 c 141 § 317; 1963 c 228 § 8; 1961 c 269 § 4.]

74.04.420 Community work and training program—Denial or suspension of assistance—Grounds. Any person assigned to a community work and training program may be denied assistance or may be suspended for such time as may be fixed by the rules and regulations of the department of social and health services if such person without good cause:

- (1) Fails or refuses to satisfactorily perform the labor or services as may be assigned to him;
- (2) Fails or refuses to report to work under such a program when and as directed by the state, or federal government, county, city or municipal corporation or by his foreman, overseer or other supervisor therein;
- (3) Abandons or repeatedly absents himself from work;
- (4) Is insubordinate to his foreman, overseer or other supervisor therein;
- (5) Fails or refuses to take due precaution for the safety of himself or others or to use safety clothing or equipment made available to him; or
- (6) Is guilty of misconduct connected with such work. [1979 c 141 § 318; 1963 c 228 § 9; 1961 c 269 § 5.]

74.04.430 Community work and training program—Approval of program by department—Workers' compensation. All community work and training programs, before an applicant or recipient of public assistance shall be assigned shall have met the approval of the state department of social and health services: *Provided*, That the state, or federal government, county, city or municipal corporation utilizing assistance applicants or recipients for work and labor shall insure that such employment is covered by workers' compensation administered by the department of labor and industries, or a similar plan approved by the department of social and health services, and all fees and charges for such coverage shall be paid by such state, or federal government, county, city or municipal corporation except that portion which is paid for medical aid and is properly chargeable to such applicant or recipient of assistance. [1987 c 185 § 39; 1979 c 141 § 319; 1963 c 228 § 10; 1961 c 269 § 6.]

Intent—Severability—1987 c 185: See notes following RCW 51.12.130.

74.04.440 Community work and training program—Governmental entity to furnish transportation, tools, supervision. The state, or federal government, county, city or municipal corporation utilizing assistance applicants or recipients for work and labor shall furnish, where necessary, transportation, protective clothing and necessary tools and equipment for individuals performing such work or labor and shall take such measures as

are necessary to insure that adequate supervision is provided on all such programs. [1963 c 228 § 11; 1961 c 269 § 7.]

74.04.450 Community work and training program—Work to serve useful public purpose and not displace regular workers. The work performed on a community work and training program by a recipient of public assistance must serve a useful public purpose, must not displace regular workers or result in the performance by such persons of work that would otherwise be performed by employees of public or private agencies, institutions or organizations except in case of projects which are emergent or nonrecurring. [1963 c 228 § 12.]

74.04.460 Community work and training program—Effect as to employment security program. Work and labor performed by an applicant or recipient of public assistance on a community work and training program shall not be deemed employment under the provisions of Title 50 RCW, and shall not deprive such person of any rights or benefits available thereunder. [1963 c 228 § 13.]

74.04.470 Community work and training program—Department may terminate agreements. The state department of social and health services shall have the right to terminate unilaterally any agreement entered into pursuant to RCW 74.04.410 with the state or federal government or any agency thereof, a county, city or municipal corporation whenever the community work and training program contemplated by such agreement fails, for any reason, to meet any provision of chapter 74.04 RCW relating to community work and training or the purposes thereof, or any rule or regulation promulgated by the department thereunder. [1979 c 141 § 320; 1963 c 228 § 14.]

74.04.473 Community work and training program for recipients of aid to families with dependent children. (1) The department shall provide a community work and training program for recipients of aid for dependent children in accordance with RCW 74.04.390 through 74.04.470 beginning no later than January 1, 1984. The program shall be designed to:

- (a) Provide community work and training services to a minimum of two hundred recipients in each biennium;
- (b) Provide community work and training experience which will enhance the recipient's ability to obtain employment;
- (c) Provide useful assistance to public and private nonprofit agencies which would otherwise not be provided by paid employees;
- (d) Coordinate with other public or private employment programs to assure maximum employment opportunities for program participants;
- (e) Utilize the effective components of the community work experience pilot program. [1983 1st ex.s. c 41 § 41.]

Severability—1983 1st ex.s. c 41: See note following RCW 26.09.060.

Severability—1983 1st ex.s. c 41: See note following RCW 26.09.060.

74.04.477 Community work and training program for food stamp recipients. (1) The department of social and health services shall apply for a waiver from the federal government to implement a community work and training program for recipients of food stamps in accordance with RCW 74.04.390 through 74.04.470. The program shall be established in two counties, one east and one west of the Cascade Mountains, and shall serve a minimum of one hundred recipients in each fiscal year.

(2) Any member of a household participating in the food stamp program who is not exempt under subsection (3) of this section may be required to participate in the community work and training program required in subsection (1) of this section in order to continue to be eligible for food stamps.

(3) No household member shall be required to participate in the community work and training program who is:

(a) Determined to have good cause to refuse employment under chapter 74.23 RCW;

(b) Under eighteen or over sixty years of age;

(c) A parent or other member of the household responsible for the care of a child under six or of an incapacitated person;

(d) Employed at least twenty hours a week or participating in another work and training program under this title; or

(e) A regular participant in a drug addiction or alcohol training program.

(4) The department shall adopt any rules necessary to administer the community work and training program for food stamp recipients consistent with this title and with federal statutes and regulations. [1983 1st ex.s. c 41 § 42.]

Severability—1983 1st ex.s. c 41: See note following RCW 26.09.060.

74.04.480 Educational leaves of absence for personnel. The state department of social and health services is hereby authorized to promulgate rules and regulations governing the granting to any employee of the department, other than a provisional employee, a leave of absence for educational purposes to attend an institution of learning for the purpose of improving his skill, knowledge and technique in the administration of social welfare programs which will benefit the department.

Pursuant to the rules and regulations of the department, employees of the department who are engaged in the administration of public welfare programs may (1) attend courses of training provided by institutions of higher learning; (2) attend special courses of study or seminars of short duration conducted by experts on a temporary basis for the purpose; (3) accept fellowships or traineeships at institutions of higher learning with such stipends as are permitted by regulations of the federal government.

The department of social and health services is hereby authorized to accept any funds from the federal government or any other public or private agency made available for training purposes for public assistance personnel and to conform with such requirements as are necessary

in order to receive such funds. [1979 c 141 § 321; 1963 c 228 § 15.]

74.04.500 Food stamp program—Authorized. The department of social and health services is authorized to establish a food stamp program under the federal food stamp act of 1964. [1979 c 141 § 322; 1969 ex.s. c 172 § 4.]

Unlawful use of food coupons: RCW 9.91.140.

74.04.505 Food stamp program—Eligibility. Eligibility for the food stamp program shall be determined on a household basis. A "household" means all related or nonrelated persons living together as one economic unit to share common household facilities and customarily purchase and prepare food in common. It shall also mean a single individual living alone who has cooking facilities and who purchases and prepares food for home consumption. Persons in nursing homes, infirmaries, hospitals, boarding homes or eating in restaurants and those without cooking facilities are excluded from this program. [1969 ex.s. c 172 § 5.]

Consideration of food stamp allotments in determining eligibility: RCW 74.04.750.

74.04.510 Food stamp program—Rules and regulations. The department shall promulgate rules and regulations conforming to federal laws, rules and regulations required to be observed in maintaining the eligibility of the state to receive from the federal government and to issue or distribute to recipients, food stamps or coupons under a food stamp plan. Such rules and regulations shall relate to and include, but shall not be limited to: (1) The classifications of and requirements of eligibility of households to receive food stamps or coupons. (2) The periods during which households shall be certified or recertified to be eligible to receive food stamps or coupons under this plan. [1981 1st ex.s. c 6 § 5; 1981 c 8 § 5; 1969 ex.s. c 172 § 6.]

Effective date—Severability—1981 1st ex.s. c 6: See notes following RCW 74.04.005.

74.04.515 Food stamp program—Discrimination prohibited. In determining eligibility for purchase of food stamps, there shall be no discrimination against any household by reason of race, color, or national origin. [1969 ex.s. c 172 § 7.]

74.04.520 Food stamp program—Confidentiality. The provisions of RCW 74.04.060 relating to disclosure of information regarding public assistance recipients shall apply to recipients of food stamps. [1969 ex.s. c 172 § 8.]

74.04.600 Supplemental security income program—Purpose. The purpose of RCW 74.04.600 through 74.04.650 is to recognize and accept that certain act of congress known as Public Law 92-603 and Public Law 93-66, and to enable the department of social and health services to take advantage of and implement the provisions of that act. The state shall provide

assistance to those individuals who were eligible or would have been eligible for benefits under this state's old age assistance, disability assistance, and aid to the blind programs as they were in effect in December, 1973 but who will no longer be eligible for such program due to Title XVI of the Social Security Act. [1973 2nd ex.s. c 10 § 1.]

74.04.610 Supplemental security income program—Termination of federal financial assistance payments—Supersession by supplemental security income program. Effective January 1, 1974, the financial assistance payments under the federal aid categories of old age assistance, disability assistance, and blind assistance provided in chapters 74.08, *74.10, and 74.16 RCW, respectively, and the corresponding provisions of RCW 74.04.005, shall be terminated and superseded by the national program to provide supplemental security income to individuals who have attained age sixty-five or are blind or disabled as established by Public Law 92-603 and Public Law 93-66: *Provided*, That the agreements between the department of social and health services and the United States department of health, education and welfare receive such legislative authorization and/or ratification as required by **RCW 74.04.630. [1973 2nd ex.s. c 10 § 2.]

Reviser's note: *(1) Chapter 74.10 RCW was repealed by 1981 1st ex.s. c 6 § 28, effective July 1, 1982; chapter 74.16 RCW was repealed by 1983 c 194 § 30, effective June 30, 1983.

***(2) The legislative authorization and/or ratification requirements in RCW 74.04.630 were eliminated by 1986 c 158 § 22.

74.04.620 State supplement to national program of supplemental security income—Authorized—Reimbursement of interim assistance, attorneys' fees. (1) The department is authorized to establish a program of state supplementation to the national program of supplemental security income consistent with Public Law 92-603 and Public Law 93-66 to those persons who are in need thereof in accordance with eligibility requirements established by the department.

(2) The department is authorized to establish reasonable standards of assistance and resource and income exemptions specifically for such program of state supplementation which shall be consistent with the provisions of the Social Security Act.

(3) The department is authorized to make payments to applicants for supplemental security income, pursuant to agreements as provided in Public Law 93-368, who are otherwise eligible for general assistance.

(4) Any agreement between the department and a supplemental security income applicant providing for the reimbursement of interim assistance to the department shall provide, if the applicant has been represented by an attorney, that twenty-five percent of the reimbursement received shall be withheld by the department and all or such portion thereof as has been approved as a fee by the United States department of health and human services shall be released directly to the applicant's attorney. The secretary may maintain such records as are

deemed appropriate to measure the cost and effectiveness of such agreements and may make recommendations concerning the continued use of such agreements to the legislature. [1983 1st ex.s. c 41 § 37; 1981 1st ex.s. c 6 § 7; 1981 c 8 § 6; 1973 2nd ex.s. c 10 § 3.]

Retroactive application—1983 1st ex.s. c 41 § 37: "Section 37, chapter 41, Laws of 1983 1st ex. sess. shall be applied retroactively by the department of social and health services to all reimbursement of interim assistance received on or after August 23, 1983, so long as the attorney of the applicant for whom reimbursement is received began representing the applicant on or after August 23, 1983." [1985 c 100 § 1.]

Severability—1983 1st ex.s. c 41: See note following RCW 26.09.060.

Effective date—Severability—1981 1st ex.s. c 6: See notes following RCW 74.04.005.

74.04.630 State supplementation to national program of supplemental security income—Contractual agreements with federal government. The department shall enter into contractual agreements with the United States department of health, education and welfare, consistent with the provisions of Public Laws 92-603 and 93-66, and to be effective January 1, 1974, for the purpose of enabling the secretary of the department of health, education and welfare to perform administrative functions of state supplementation to the national supplemental security income program and the determination of medicaid eligibility on behalf of the state. The department is authorized to transfer and make payments of state funds to the secretary of the department of health, education and welfare as required by Public Laws 92-603 and 93-66: *Provided, however*, That such agreements shall be submitted for review and comment to the social and health services committees of the senate and house of representatives. The department of social and health services shall administer the state supplemental program as established in RCW 74.04.620. [1986 c 158 § 22; 1973 2nd ex.s. c 10 § 4.]

74.04.640 Acceptance of referrals for vocational rehabilitation—Reimbursement. Referrals to the state department of social and health services for vocational rehabilitation made in accordance with section 1615 of Title XVI of the Social Security Act, as amended, shall be accepted by the state.

The department shall be reimbursed by the secretary of the department of health, education and welfare for the costs it incurs in providing such vocational rehabilitation services. [1973 2nd ex.s. c 10 § 5.]

74.04.650 Individuals failing to comply with federal requirements. Notwithstanding any other provisions of RCW 74.04.600 through 74.04.650, those individuals who have been receiving supplemental security income assistance and failed to comply with any federal requirements, including those relating to drug abuse and alcoholism treatment and rehabilitation, shall be ineligible for state assistance. [1981 1st ex.s. c 6 § 8; 1981 c 8 § 7; 1973 2nd ex.s. c 10 § 6.]

Effective date—Severability—1981 1st ex.s. c 6: See notes following RCW 74.04.005.

74.04.660 Family emergency assistance program. The department shall establish a consolidated emergency assistance program for families with children. Assistance may be provided in accordance with this section.

(1) Benefits provided under this program shall not be provided for more than two months of assistance in any consecutive twelve-month period.

(2) Benefits under this program shall be provided to alleviate emergent conditions resulting from insufficient income and resources to provide for: Food, shelter, clothing, medical care, or other necessary items, as defined by the department. Benefits shall be provided only in an amount sufficient to cover the cost of the specific need, subject to the limitations established in this section.

(3) In determining eligibility for this program, the department shall consider all cash resources as being available to meet need.

(4) The department shall, by rule, establish assistance standards and eligibility criteria for this program in accordance with this section. Eligibility for this program does not automatically entitle a recipient to medical assistance. Eligibility standards and resource levels for this program shall be stricter than the standards for eligibility and resource levels for the aid to families with dependent children program.

(5) The department shall seek federal emergency assistance funds to supplement the state funds appropriated for the operation of this program. If the receipt of federal funds would require a reduction of funds available to households not receiving aid to families with dependent children below the amount of state funds appropriated for this program, the department may operate a program utilizing only state funds unless the aid to families with dependent children additional requirement program is substantially reduced in scope.

(6) If state funds appropriated for the consolidated emergency assistance program are exhausted, the department may discontinue the program. [1989 c 11 § 26; 1985 c 335 § 3; 1981 1st ex.s. c 6 § 6.]

Severability—1989 c 11: See note following RCW 9A.56.220.

Effective date—Severability—1981 1st ex.s. c 6: See notes following RCW 74.04.005.

74.04.750 Reporting requirements—Food stamp allotments and rent or housing subsidies, consideration as income. (1) Applicants and recipients under this title must satisfy all reporting requirements imposed by the department.

(2) The secretary shall have the discretion to consider: (a) Food stamp allotments and/or (b) rent or housing subsidies as income in determining eligibility for and assistance to be provided by public assistance programs. If the department considers food stamp allotments as income in determining eligibility for assistance, applicants or recipients for any grant assistance program must apply for and take all reasonable actions necessary to establish and maintain eligibility for food stamps. [1981 2nd ex.s. c 10 § 1.]

74.04.760 Minimum amount of monthly assistance payments. Payment of assistance shall not be made for any month if the payment prior to any adjustments would be less than ten dollars. However, if payment is denied solely by reason of this section, the individual with respect to whom such payment is denied is determined to be a recipient of assistance for purposes of eligibility for other programs of assistance except for a community work experience program. [1981 2nd ex.s. c 10 § 2.]

74.04.770 Consolidated standards of need—Rateable reductions—Grant maximums. The department shall establish consolidated standards of need each fiscal year which may vary by geographical areas, program, and family size, for aid to families with dependent children, refugee assistance, supplemental security income, and general assistance. Standards for aid to families with dependent children, refugee assistance, and general assistance shall be based on studies of actual living costs and generally recognized inflation indices and shall include reasonable allowances for shelter, fuel, food, transportation, clothing, household maintenance and operations, personal maintenance, and necessary incidentals. The standard of need may take into account the economies of joint living arrangements, but unless explicitly required by federal statute, there shall not be proration of any portion of assistance grants unless the amount of the grant standard is equal to the standard of need.

The department is authorized to establish rateable reductions and grant maximums consistent with federal law.

Payment level will be equal to need or a lesser amount if rateable reductions or grant maximums are imposed. In no case shall a recipient of supplemental security income receive a state supplement less than the minimum required by federal law.

The department may establish a separate standard for shelter provided at no cost. [1983 1st ex.s. c 41 § 38; 1981 2nd ex.s. c 10 § 4.]

Severability—1983 1st ex.s. c 41: See note following RCW 26.09.060.

Chapter 74.08

ELIGIBILITY GENERALLY—STANDARDS OF ASSISTANCE—OLD AGE ASSISTANCE

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74.08.025 Eligibility for public assistance, generally. Public assistance shall be awarded to any applicant:

(1) Who is in need and otherwise meets the eligibility requirements of department assistance programs; and

(2) Who has not made a voluntary assignment of property or cash for the purpose of qualifying for an assistance grant; and

(3) Who is not an inmate of a public institution except as a patient in a medical institution or except as an inmate in a public institution who could qualify for federal aid assistance: *Provided*, That the assistance paid by the department to recipients in nursing homes, or receiving nursing home care, may cover the cost of clothing and incidentals and general maintenance exclusive of medical care and health services. The department may pay a grant to cover the cost of clothing and personal incidentals in public or private medical institutions and institutions for tuberculosis. The department shall allow recipients in nursing homes to retain, in addition to the grant to cover the cost of clothing and incidentals, wages received for work as a part of a training or rehabilitative program designed to prepare the recipient for less restrictive placement to the extent permitted under Title XIX of the federal social security act. [1981 1st ex.s. c 6 § 9; 1981 c 8 § 8; 1980 c 79 § 1; 1971 ex.s. c 169 § 1; 1967 ex.s. c 31 § 1; 1959 c 26 § 74.08.025. Prior: 1953 c 174 § 19.]

Effective date—Severability—1981 1st ex.s. c 6: See notes following RCW 74.04.005.

Aid to dependent children: RCW 74.12.030.

74.08.030 Old age assistance eligibility requirements. In addition to meeting the eligibility requirements of RCW 74.08.025, an applicant for old age assistance must be an applicant who:

(1) Has attained the age of sixty-five: *Provided*, That if an applicant for old age assistance is already on the assistance rolls in some other program or category of assistance, such applicant shall be considered eligible the first of the month immediately preceding the date on which such applicant will attain the age of sixty-five; and

(2) Is a resident of the state of Washington. [1971 ex.s. c 169 § 2; 1961 c 248 § 1; 1959 c 26 § 74.08.030. Prior: 1953 c 174 § 20; 1951 c 165 § 1; 1951 c 1 § 5 (Initiative Measure No. 178, approved November 7, 1950); 1949 c 6 § 4; Rem. Supp. 1949 § 9998–33d.]

74.08.043 Need for personal and special care—Authority to consider in determining living requirements.

In determining the living requirements of otherwise eligible applicants and recipients of supplemental security income and general assistance, the department is authorized to consider the need for personal and special care and supervision due to physical and mental conditions. [1981 1st ex.s. c 6 § 12; 1981 c 8 § 11; 1969 ex.s. c 172 § 10.]

Effective date—Severability—1981 1st ex.s. c 6: See notes following RCW 74.04.005.

74.08.044 Need for personal and special care—Licensing—Rules and regulations.

The department is authorized to promulgate rules and regulations establishing eligibility for alternate living arrangements, and license the same, including minimum standards of care, based upon need for personal care and supervision beyond the level of board and room only, but less than the level of care required in a hospital or a skilled nursing home as defined in the federal social security act. [1975-'76 2nd ex.s. c 52 § 1; 1969 ex.s. c 172 § 11.]

74.08.045 Need for personal and special care—Purchase of personal and special care by department.

The department may purchase such personal and special care at reasonable rates established by the department from substitute homes and intermediate care facilities providing this service is in compliance with standards of care established by the regulations of the department. [1969 ex.s. c 172 § 12.]

74.08.046 Energy assistance allowance. There is designated to be included in the public assistance payment level a monthly energy assistance allowance. The allowance shall be excluded from consideration as income for the purpose of determining eligibility and benefit levels of food stamp program recipients to the maximum extent exclusion is authorized by federal law. The allowance shall be calculated on a seasonal basis for the period of November 1st through April 30th. [1982 c 127 § 1.]

Legislative intent—1982 c 127: "It is the continuing intention of the legislature that first priority in the use of increased appropriations, expenditures, and payment levels for the 1981–83 biennium to income assistance recipients be for an energy allowance to offset the high and escalating costs of energy. Of the total amount appropriated or transferred for public assistance, an amount not to exceed \$50,000,000 is

designated as energy assistance allowance to meet the high cost of energy. This designation is consistent with the legislative intent of section 11, chapter 6, Laws of 1981 1st ex. sess. to assist public assistance recipients in meeting the high costs of energy." [1982 c 127 § 2.]

Effective date—1982 c 127: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect April 1, 1982." [1982 c 127 § 4.]

74.08.050 Applications for grants. Application for a grant in any category of public assistance shall be made to the county office by the applicant or by another on his behalf, and shall be reduced to writing upon standard forms prescribed by the department, and a written acknowledgment of receipt of the application by the department shall be given to each applicant at the time of making application. [1971 ex.s. c 169 § 3; 1959 c 26 § 74.08.050. Prior: 1953 c 174 § 26; 1949 c 6 § 6; Rem. Supp. 1949 § 9998–33f.]

74.08.055 Verification of applications—Penalty. Each applicant for or recipient of public assistance shall make an application for assistance which shall contain or be verified by a written declaration that it is made under the penalties of perjury. The secretary, by rule and regulation, may require that any other forms filled out by applicants or recipients of public assistance shall contain or be verified by a written declaration that it is made under the penalties of perjury and such declaration shall be in lieu of any oath otherwise required, and each applicant shall be so informed at the time of the signing.

Any applicant for or recipient of public assistance who wilfully makes and subscribes any application, statement or other paper which contains or is verified by a written declaration that it is made under the penalties of perjury and which he does not believe to be true and correct as to every material matter shall be guilty of a felony. [1979 c 141 § 323; 1959 c 26 § 74.08.055. Prior: 1953 c 174 § 27.]

74.08.060 Action on applications—Early applications—Employment and training services. The department shall be required to approve or deny the application within forty-five days after the filing thereof and shall immediately notify the applicant in writing of its decision: *Provided*, That if the department is not able within forty-five days, despite due diligence, to secure all information necessary to establish his eligibility, the department is charged to continue to secure such information and if such information, when established, makes applicant eligible, the department shall pay his grant from date of authorization or forty-five days after date of application whichever is sooner.

Any person currently ineligible, who will become eligible after the occurrence of a specific event, may apply for assistance within forty-five days of that event.

The department is authorized, in respect to work requirements, to provide employment and training services, including job search, job placement, work orientation, and necessary support services to verify eligibility. [1985 c 335 § 4; 1981 1st ex.s. c 6 § 13; 1969 ex.s. c 173 § 6; 1959 c 26 § 74.08.060. Prior: 1953 c 174 § 28; 1949 c 6 § 7; Rem. Supp. 1949 § 9998–33g.]

Effective date—Severability—1981 1st ex.s. c 6: See notes following RCW 74.04.005.

74.08.080 Departmental and judicial review. (1) (a) A public assistance applicant or recipient who is aggrieved by a decision of the department or an authorized agency of the department has the right to an adjudicative proceeding. A current or former recipient who is aggrieved by a department claim that he or she owes a debt for an overpayment of assistance or food stamps, or both, has the right to an adjudicative proceeding.

(b) An applicant or recipient has no right to an adjudicative proceeding when the sole basis for the department's decision is a state or federal law that requires an assistance adjustment for a class of recipients.

(2) The adjudicative proceeding is governed by the Administrative Procedure Act, chapter 34.05 RCW, and this subsection.

(a) The applicant or recipient must file the application for an adjudicative proceeding with the secretary within ninety days after receiving notice of the aggrieving decision.

(b) The hearing shall be conducted at the local community services office or other location in Washington convenient to the appellant.

(c) The appellant or his or her representative has the right to inspect his or her department file and, upon request, to receive copies of department documents relevant to the proceedings free of charge.

(d) The appellant has the right to a copy of the tape recording of the hearing free of charge.

(e) The department is limited to recovering an overpayment arising from assistance being continued pending the adjudicative proceeding to the amount recoverable up to the sixtieth day after the secretary's receipt of the application for an adjudicative proceeding.

(f) If the final adjudicative order is made in favor of the appellant, assistance shall be paid from the date of denial of the application for assistance or thirty days following the date of application for aid to families with dependent children or forty-five days after date of application for all other programs, whichever is sooner; or in the case of a recipient, from the effective date of the local community services office decision.

(g) This subsection applies only to an adjudicative proceeding in which the appellant is an applicant for or recipient of medical assistance or the limited casualty program for the medically needy and the issue is his or her eligibility or ineligibility due to the assignment or transfer of a resource. The burden is on the department to prove by a preponderance of the evidence that the person knowingly and willingly assigned or transferred the resource at less than market value for the purpose of qualifying or continuing to qualify for medical assistance or the limited casualty program for the medically needy. If the prevailing party in the adjudicative proceeding is the applicant or recipient, he or she is entitled to reasonable attorney's fees.

(3) (a) When a person files a petition for judicial review as provided in RCW 34.05.514 of an adjudicative

order entered in a public assistance program, no filing fee shall be collected from the person and no bond shall be required on any appeal. In the event that the superior court, the court of appeals, or the supreme court renders a decision in favor of the appellant, said appellant shall be entitled to reasonable attorney's fees and costs. If a decision of the court is made in favor of the appellant, assistance shall be paid from date of the denial of the application for assistance or thirty days after the application for aid to families with dependent children or forty-five days following the date of application, whichever is sooner; or in the case of a recipient, from the effective date of the local community services office decision. [1989 c 175 § 145; 1988 c 202 § 58; 1971 c 81 § 136; 1969 ex.s. c 172 § 2; 1959 c 26 § 74.08.080. Prior: 1953 c 174 § 31; 1949 c 6 § 9; Rem. Supp. 1949 § 9998-33i.]

Effective date—1989 c 175: See note following RCW 34.05.010.
Severability—1988 c 202: See note following RCW 2.24.050.

74.08.090 Rules and regulations. The department is hereby authorized to make rules and regulations not inconsistent with the provisions of this title to the end that this title shall be administered uniformly throughout the state, and that the spirit and purpose of this title may be complied with. The department shall have the power to compel compliance with the rules and regulations established by it. Such rules and regulations shall be filed in accordance with the Administrative Procedure Act, as it is now or hereafter amended, and copies shall be available for public inspection in the office of the department and in each county office. [1969 ex.s. c 173 § 5; 1959 c 26 § 74.08.090. Prior: 1953 c 174 § 5; 1949 c 6 § 10; Rem. Supp. 1949 § 9998-33j.]

74.08.100 Age and length of residence verification. Proof of age and length of residence in the state of any applicant may be established as provided by the rules and regulations of the department: *Provided*, That if an applicant is unable to establish proof of age or length of residence in the state by any other method he may make a statement under oath of his age on the date of application or the length of his residence in the state, before any judge of the superior court, any judge of the court of appeals, or any justice of the supreme court of the state of Washington, and such statement shall constitute sufficient proof of age of applicant or of length of residence in the state: *Provided however*, That any applicant who wilfully makes a false statement as to his age or length of residence in the state under oath before a judge of the superior court, a judge of the court of appeals, or a justice of the supreme court, as provided above, shall be guilty of a felony. [1971 c 81 § 137; 1959 c 26 § 74.08.100. Prior: 1949 c 6 § 11; Rem. Supp. 1949 § 9998-33k.]

74.08.105 Out-of-state recipients. No assistance payments shall be made to recipients living outside the state of Washington unless in the discretion of the secretary there is sound social reason for such out-of-state payments: *Provided*, That the period for making such

payments when authorized shall not exceed the length of time required to satisfy the residence requirements in the other state in order to be eligible for a grant in the same category of assistance as the recipient was eligible to receive in Washington. [1979 c 141 § 325; 1959 c 26 § 74.08.105. Prior: 1953 c 174 § 39.]

74.08.120 Funeral and burial expenses. The term "funeral" shall mean the proper preparation, transportation within the local service area defined by the department, and care of the remains of a deceased person with needed facilities and appropriate memorial services. "Burial" includes necessary costs of a lot or cremation and all services related to interment and the customary memorial marking of a grave.

The department is hereby authorized to assume responsibility for payment for the funeral and burial of deceased persons dying without assets sufficient to pay for the minimum standard funeral herein provided: *Provided, however*, That the secretary may furnish funeral assistance for deceased recipients if they leave assets to a surviving spouse and/or to minor children and if the assets are resources permitted to be owned by or available to an eligible applicant or recipient under RCW 74.04.005, and the department shall thereby have a lien against said assets as provided in RCW 43.20B.120. If the deceased person is survived by a spouse or is a minor child survived by his parent or parents, the department may take into consideration the assets of such surviving spouse, parent, or parents in determining whether or not the department will assume responsibility for the funeral.

The department shall not pay more than cost for a minimum standard service rendered by each vendor. Payments to the funeral director and to the cemetery or crematorium will be made by separate vouchers. The standard of such services and the uniform amounts to be paid shall be determined by the department after giving due consideration to such advice and counsel as it shall obtain from the trade associations of the various vendors and related state departments, agencies, and commissions. Payment made for any funeral or burial service by relatives, friends, or any other third party shall be subtracted from the payment made by the department. [1987 c 75 § 39; 1981 1st ex.s. c 6 § 15; 1981 c 8 § 12; 1979 c 141 § 326; 1969 ex.s. c 259 § 1; 1969 ex.s. c 159 § 1; 1965 ex.s. c 102 § 1; 1959 c 26 § 74.08.120. Prior: 1953 c 174 § 32; 1949 c 6 § 13; Rem. Supp. 1949 § 9998-33m.]

Savings—**Severability**—1987 c 75: See RCW 43.20B.900 and 43.20B.901.

Effective date—**Severability**—1981 1st ex.s. c 6: See notes following RCW 74.04.005.

Indigent person, county to dispose of remains: RCW 36.39.030.

74.08.210 Grants not assignable nor subject to execution. Grants awarded under this title shall not be transferable or assignable, at law or in equity, and none of the money paid or payable under this title shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of bankruptcy or

insolvency law. [1959 c 26 § 74.08.210. Prior: 1941 c 1 § 16; 1935 c 182 § 17; 1933 c 29 § 13; Rem. Supp. 1941 § 9998-49.]

74.08.260 Federal act to control in event of conflict. If any plan of administration of this title submitted to the federal security agency shall be found to be not in conformity with the federal social security act by reason of any conflict of any section, portion, clause or part of this title and the federal social security act, such conflicting section, portion, clause or part of this title is hereby declared to be inoperative to the extent that it is so in conflict, and such finding or determination shall not affect the remainder of this title. [1959 c 26 § 74.08.260. Prior: 1949 c 6 § 17; Rem. Supp. 1949 § 9998-33q.]

74.08.278 Central operating fund established. In order to comply with federal statutes and regulations pertaining to federal matching funds and to provide for the prompt payment of initial grants and adjusting payments of grants the secretary is authorized to make provisions for the cash payment of assistance by the secretary or county administrators by the establishment of a central operating fund. The secretary may establish such a fund with the approval of the state auditor from moneys appropriated to the department for the payment of general assistance in a sum not to exceed one million dollars. Such funds shall be deposited as agreed upon by the secretary and the state auditor in accordance with the laws regulating the deposits of public funds. Such security shall be required of the depository in connection with the fund as the state treasurer may prescribe. Moneys remaining in the fund shall be returned to the general fund at the end of the biennium, or an accounting of proper expenditures from the fund shall be made to the state auditor. All expenditures from such central operating fund shall be reimbursed out of and charged to the proper program appropriated by the use of such forms and vouchers as are approved by the secretary of the department and the state auditor. Expenditures from such fund shall be audited by the director of financial management and the state auditor from time to time and a report shall be made by the state auditor and the secretary as are required by law. [1979 c 141 § 327; 1959 c 26 § 74.08.278. Prior: 1953 c 174 § 42; 1951 c 261 § 1.]

74.08.280 Payments to persons incapable of self-care—Protective payee services. If any person receiving public assistance has demonstrated an inability to care for oneself or for money, the department may direct the payment of the installments of public assistance to any responsible person, social service agency, or corporation or to a legally appointed guardian for his benefit. The state may contract with persons, social service agencies, or corporations approved by the department to provide protective payee services for a fixed amount per recipient receiving protective payee services to cover administrative costs. The department may by rule specify a

fee to cover administrative costs. Such fee shall not be withheld from a recipient's grant.

If the state requires the appointment of a guardian for this purpose, the department shall pay all costs and reasonable fees as fixed by the court. [1987 c 406 § 10; 1979 c 141 § 328; 1959 c 26 § 74.08.280. Prior: 1953 c 174 § 40; 1937 c 156 § 7; 1935 c 182 § 10; RRS § 9998-10.]

74.08.283 Services provided to attain self-care. The department is authorized to provide such social and related services as are reasonably necessary to the end that applicants for or recipients of public assistance are helped to attain self-care. [1963 c 228 § 16; 1959 c 26 § 74.08.283. Prior: 1957 c 63 § 6.]

74.08.290 Suspension of payments. The department is hereby authorized to suspend temporarily the public assistance granted to any person for any period during which such person is not in need thereof.

If a recipient is convicted of any crime or offense, and punished by imprisonment, no payment shall be made during the period of imprisonment. [1959 c 26 § 74.08.290. Prior: 1953 c 174 § 38; 1935 c 182 § 12; RRS § 9998-12.]

74.08.331 Unlawful practices—Obtaining assistance—Disposal of realty—Penalties. Any person who by means of a wilfully false statement, or representation, or impersonation, or a wilful failure to reveal any material fact, condition or circumstance affecting eligibility of need for assistance, including medical care, surplus commodities and food stamps, as required by law, or a wilful failure to promptly notify the county office in writing as required by law or any change in status in respect to resources, or income, or need, or family composition, money contribution and other support, from whatever source derived, or any other change in circumstances affecting his eligibility or need for assistance, or other fraudulent device, obtains, or attempts to obtain, or aids or abets any person to obtain any public assistance to which he is not entitled or greater public assistance than that to which he is justly entitled shall be guilty of grand larceny and upon conviction thereof shall be punished by imprisonment in the state penitentiary for not more than fifteen years.

Any person who by means of a wilfully false statement or representation or by impersonation or other fraudulent device aids or abets in buying, selling, or in any other way disposing of the real property of a recipient of public assistance without the consent of the secretary shall be guilty of a gross misdemeanor and upon conviction thereof shall be punished by imprisonment for not more than one year in the county jail or a fine of not to exceed one thousand dollars or by both. [1979 c 141 § 329; 1965 ex.s. c 34 § 1.]

74.08.335 Transfers of property to qualify for assistance. Aid to families with dependent children and general assistance shall not be granted to any person who has made an assignment or transfer of property for the

purpose of rendering himself eligible for the assistance. There is a rebuttable presumption that a person who has transferred or transfers any real or personal property or any interest in property within two years of the date of application for the assistance without receiving adequate monetary consideration therefor, did so for the purpose of rendering himself eligible for the assistance. Any person who transfers property for the purpose of rendering himself eligible for assistance, or any person who after becoming a recipient transfers any property or any interest in property without the consent of the secretary, shall be ineligible for assistance for a period of time during which the reasonable value of the property so transferred would have been adequate to meet the person's needs under normal conditions of living: *Provided*, That the secretary is hereby authorized to allow exceptions in cases where undue hardship would result from a denial of assistance. [1980 c 79 § 2; 1979 c 141 § 330; 1959 c 26 § 74.08.335. Prior: 1953 c 174 § 33.]

74.08.338 Real property transfers for inadequate consideration. When the consideration for a deed executed and delivered by a recipient is not paid, or when the consideration does not approximate the fair cash market value of the property, such deed shall be prima facie fraudulent as to the state and the department may proceed under RCW 43.20B.660. [1987 c 75 § 40; 1979 c 141 § 331; 1959 c 26 § 74.08.338. Prior: 1953 c 174 § 37.]

Savings—Severability—1987 c 75: See RCW 43.20B.900 and 43.20B.901.

74.08.340 No vested rights conferred. All assistance granted under this title shall be deemed to be granted and to be held subject to the provisions of any amending or repealing act that may hereafter be enacted, and no recipient shall have any claim for compensation, or otherwise, by reason of his assistance being affected in any way by such amending or repealing act. [1959 c 26 § 74.08.340. Prior: 1935 c 182 § 21; RRS § 9998-21.]

74.08.370 Old age assistance grants charged against general fund. All old age assistance grants under this title shall be a charge against and payable out of the general fund of the state. Payment thereof shall be by warrant drawn upon vouchers duly prepared and verified by the secretary of the department of social and health services or his official representative. [1973 c 106 § 33; 1959 c 26 § 74.08.370. Prior: 1935 c 182 § 24; RRS § 9998-24. FORMER PART OF SECTION: 1935 c 182 § 25; RRS § 9998-25, now codified as RCW 74.08.375.]

74.08.380 Acceptance of federal act. The state hereby accepts the provisions of that certain act of the congress of the United States entitled, An Act to provide for the general welfare by establishing a system of federal old age benefits, and by enabling the several states to make more adequate provisions for aged persons, blind persons, dependent and crippled children, maternal and child welfare, public health, and the administration

of their unemployment compensation laws; to establish a social security board; to raise revenue; and for other purposes, and such other act with like or similar objects as may be enacted. [1959 c 26 § 74.08.380. Prior: 1937 c 156 § 12; 1935 c 182 § 26; RRS § 9998-26.]

74.08.390 Research, projects, to effect savings by restoring self-support—Waiver of public assistance requirements. The department of social and health services may conduct research studies, pilot projects, demonstration projects, surveys and investigations for the purpose of determining methods to achieve savings in public assistance programs by means of restoring individuals to maximum self-support and personal independence and preventing social and physical disablement, and for the accomplishment of any of such purposes may employ consultants or enter into contracts with any agency of the federal, state or local governments, nonprofit corporations, universities or foundations.

Pursuant to this authority the department may waive the enforcement of specific statutory requirements, regulations, and standards in one or more counties or on a state-wide basis by formal order of the secretary. The order establishing the waiver shall provide alternative methods and procedures of administration, shall not be in conflict with the basic purposes, coverage, or benefits provided by law, shall not be general in scope but shall apply only for the duration of such a project and shall not take effect unless the secretary of health, education and welfare of the United States has agreed, for the same project, to waive the public assistance plan requirements relative to state-wide uniformity. [1979 c 141 § 332; 1969 ex.s. c 173 § 7; 1963 c 228 § 17.]

74.08.530 Homemaker-home health, chore, and personal and household services—Legislative finding, intent. The legislature finds that it is desirable to provide a coordinated and comprehensive program of in-home services for certain citizens in order that such persons may remain in their own homes, obtain employment if possible, and maintain a closer contact with the community. Such a program will seek to prevent mental and psychological deterioration which our citizens might otherwise experience. The legislature intends that the services will be provided in a fashion which promotes independent living. [1980 c 137 § 1; 1973 1st ex.s. c 51 § 1.]

74.08.541 Definitions—Chore services—Generally. (1) "Department" as used in this chapter, means the department of social and health services.

(2) "Long-term care facility" as used in this chapter, means a nursing home licensed under chapter 18.51 RCW or a residential habilitation center licensed under chapter 71A.20 RCW.

(3) "Chore services," as used in this chapter, means services in performing personal care and related tasks as provided in the department's medical assistance state plan provision addressing personal care.

(4) Persons eligible for chore services are adult persons having resources less than a level determined by the

department, whose need for chore services and risk of being placed in a long-term care facility have been determined by the department, and who are not eligible to receive medical assistance personal care benefits under RCW 74.09.520.

(a) Persons are eligible for the level of services determined by the department under RCW 74.08.545 if the persons have an income at or below thirty percent of the state median income.

(b) For other persons, the department shall develop a scale which progressively reduces the level of chore services provided by the department based on the ability of applicants and clients to purchase the chore services. The department shall not consider income below thirty percent of the state median income.

(c) Effort shall be made to obtain chore services from volunteer chore service providers under the senior citizens services act, chapter 74.38 RCW, for those individuals at risk of being placed in a residential care facility and who are age sixty or over but eligible for five hours of chore services per month or less, rather than have those services provided by paid providers. Any individual at risk of being placed in a residential care facility and who is age sixty or over but not eligible for chore services or eligible for a reduced amount of service shall be referred to a volunteer chore service program under the senior citizens services act, chapter 74.38 RCW, where available for needed services not authorized by the department.

(d) Persons determined by the department to be eligible for adult protective services are eligible to receive emergency chore services without regard to income if the services are essential to, and a subordinate part of, the adult protective services plan. Emergency chore services under adult protective services shall be provided only until the situation necessitating the services has stabilized, not to exceed ninety days.

(5) The department shall establish a monthly dollar lid on chore services expenditures as necessary to maintain such expenditures within the legislative appropriation. To maintain expenditures for chore services within the limits of funds appropriated for this purpose, the department may reduce the level of services authorized below the level of need assessed pursuant to RCW 74.08.545 for some or all clients. The reductions shall be done in a manner which maintains state-wide uniformity of eligibility and service authorization standards and which considers the level of need for services and the degree of risk of being placed in a long-term care facility of all applicants for, and recipients of, chore services: *Provided*, That the department may implement a ratable reduction of hours or payment for some or all clients receiving chore services.

(6) The department may continue providing chore services for those clients who were receiving assistance only with household tasks prior to December 14, 1987, provided that those clients are receiving this same service as of June 1989.

(7) The department may continue providing chore services to clients who were receiving attendant care

services prior to April 1, 1988, provided that those clients are receiving the same services as of June 1989. [1989 c 427 § 4; 1986 c 222 § 1; 1983 1st ex.s. c 41 § 39; 1981 1st ex.s. c 6 § 17.]

Severability—1989 c 427: See RCW 74.39.900.

Severability—1983 1st ex.s. c 41: See note following RCW 26.09.060.

Effective date—**Severability**—1981 1st ex.s. c 6: See notes following RCW 74.04.005.

74.08.545 Chore services—Legislative policy and intent regarding available funds—Levels of service. It is the intent of the legislature that chore services be provided to eligible persons within the limits of funds appropriated for that purpose. Therefore, the department shall provide services only to those persons identified as at risk of being placed in a long-term care facility in the absence of such services. Chore services shall be provided to the extent necessary to maintain a safe and healthful living environment. It is the policy of the state to encourage the development of volunteer chore services in local communities as a means of meeting chore care service needs and directing financial resources. In determining eligibility for chore services, the department shall consider the following:

(1) The kind of services needed;

(2) The degree of service need, and the extent to which an individual is dependent upon such services to remain in his or her home or return to his or her home;

(3) The availability of personal or community resources which may be utilized to meet the individual's need; and

(4) Such other factors as the department considers necessary to insure service is provided only to those persons whose chore service needs cannot be met by relatives, friends, nonprofit organizations, or other persons.

In determining the level of services to be provided under this chapter, [the] client shall be assessed using an instrument designed by the department to determine the level of functional disability, the need for service and the person's risk of long-term care facility placement. [1989 c 427 § 5; 1981 1st ex.s. c 6 § 16.]

Severability—1989 c 427: See RCW 74.39.900.

Effective date—**Severability**—1981 1st ex.s. c 6: See notes following RCW 74.04.005.

74.08.550 Chore services—Department to develop program. (1) The department is authorized to develop a program to provide for those services enumerated in RCW 74.08.541.

(2) The department may provide assistance in the recruiting of providers of the services enumerated in RCW 74.08.541 and seek to assure the timely provision of services in emergency situations.

(3) The department shall assure that all providers of the services enumerated in RCW 74.08.541 are compensated for the delivery of the services on a prompt and regular basis. [1989 c 427 § 6; 1983 c 3 § 189; 1980 c 137 § 2; 1973 1st ex.s. c 51 § 3.]

Severability—1989 c 427: See RCW 74.39.900.

74.08.560 Chore services—Employment of public assistance recipients. In developing the program set forth in RCW 74.08.550, the department shall, to the extent possible, and consistent with federal law, enlist the services of persons receiving grants under the provisions of chapter 74.08 RCW and chapter 74.12 RCW to carry out the services enumerated under RCW 74.08.541. To this end, the department shall establish appropriate rules and regulations designed to determine eligibility for employment under this section, as well as regulations designed to notify persons receiving such grants of eligibility for such employment. The department shall further establish a system of compensation to persons employed under the provisions of this section which provides that any grants they receive under chapter 74.08 RCW or chapter 74.12 RCW shall be diminished by such percentage of the compensation received under this section as the department shall establish by rules and regulations. [1983 c 3 § 190; 1973 1st ex.s. c 51 § 4.]

74.08.570 Chore services for disabled persons—Eligibility. (1) An otherwise eligible disabled person shall not be deemed ineligible for chore services under this chapter if the person's gross income from employment, adjusted downward by the cost of the chore services to be provided and the disabled person's work expenses, does not exceed the maximum eligibility standard established by the department for such chore services. The department shall establish a sliding scale fee schedule for such disabled persons, taking into consideration the person's ability to pay and work expenses.

(2) If a disabled person arranges for chore services through an individual provider arrangement, the client's contribution shall be counted as first dollar toward the total amount owed to the provider for chore services rendered.

(3) As used in this section:

(a) "Gross income" means total earned wages, commissions, salary, and any bonus;

(b) "Work expenses" includes:

(i) Payroll deductions required by law or as a condition of employment, in amounts actually withheld;

(ii) The necessary cost of transportation to and from the place of employment by the most economical means, except rental cars; and

(iii) Expenses of employment necessary for continued employment, such as tools, materials, union dues, transportation to service customers if not furnished by the employer, and uniforms and clothing needed on the job and not suitable for wear away from the job;

(c) "Employment" means any work activity for which a recipient receives monetary compensation;

(d) "Disabled" means:

(i) Permanently and totally disabled as defined by the department and as such definition is approved by the federal social security administration for federal matching funds;

(ii) Eighteen years of age or older;

(iii) A resident of the state of Washington; and

(iv) Willing to submit to such examinations as are deemed necessary by the department to establish the extent and nature of the disability. [1989 c 427 § 7; 1980 c 137 § 3.]

Severability—1989 c 427: See RCW 74.39.900.

74.08.900 Limited application. Nothing in this chapter except RCW 74.08.070 and 74.08.080 applies to chapter 74.50 RCW. [1989 c 3 § 3.]

Chapter 74.09 MEDICAL CARE

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MATERNITY CARE ACCESS PROGRAM

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- 74.09.910 Severability—1979 ex.s. c 152.

74.09.010 Definitions. As used in this chapter:

- (1) "Department" means the department of social and health services.
- (2) "Secretary" means the secretary of social and health services.
- (3) "Internal management" means the administration of medical assistance, medical care services, and the limited casualty program.
- (4) "Medical assistance" means the federal aid medical care program provided to categorically needy persons as defined under Title XIX of the federal social security act.
- (5) "Medical care services" means the limited scope of care financed by state funds and provided to general assistance recipients, and recipients of alcohol and drug addiction services provided under chapter 74.50 RCW.
- (6) "Limited casualty program" means the medical care program provided to medically needy persons as defined under Title XIX of the federal social security act, and to medically indigent persons who are without income or resources sufficient to secure necessary medical services.
- (7) "Nursing home" means nursing home as defined in RCW 18.51.010. [1987 c 406 § 11; 1981 1st ex.s. c 6 § 18; 1981 c 8 § 17; 1979 c 141 § 333; 1959 c 26 § 74.09.010. Prior: 1955 c 273 § 2.]

Effective date—Severability—1981 1st ex.s. c 6: See notes following RCW 74.04.005.

74.09.035 Medical care services—Eligibility, standards—Limits. (1) To the extent of available funds, medical care services may be provided to recipients of general assistance, and recipients of alcohol and drug

addiction services provided under chapter 74.50 RCW, in accordance with medical eligibility requirements established by the department.

(2) Determination of the amount, scope, and duration of medical care services shall be limited to coverage as defined by the department, except that adult dental, and routine foot care shall not be included unless there is a specific appropriation for these services.

(3) The department shall establish standards of assistance and resource and income exemptions, which may include deductibles and co-insurance provisions. In addition, the department may include a prohibition against the voluntary assignment of property or cash for the purpose of qualifying for assistance.

(4) Residents of skilled nursing homes, intermediate care facilities, and intermediate care facilities for the mentally retarded who are eligible for medical care services shall be provided medical services to the same extent as provided to those persons eligible under the medical assistance program.

(5) Payments made by the department under this program shall be the limit of expenditures for medical care services solely from state funds.

(6) Eligibility for medical care services shall commence with the date of certification for general assistance or the date of eligibility for alcohol and drug addiction services provided under chapter 74.50 RCW. [1987 c 406 § 12; 1985 c 5 § 1; 1983 1st ex.s. c 43 § 2; 1982 1st ex.s. c 19 § 3; 1981 1st ex.s. c 6 § 19.]

Effective date—1983 1st ex.s. c 43: See note following RCW 74.09.700.

Effective date—1982 1st ex.s. c 19: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect April 1, 1982 [April 3, 1982]." [1982 1st ex.s. c 19 § 6.]

Effective date—Severability—1981 1st ex.s. c 6: See notes following RCW 74.04.005.

74.09.050 Secretary's responsibilities and duties—Personnel—Medical screeners. The secretary shall appoint such professional personnel and other assistants and employees, including professional medical screeners, as may be reasonably necessary to carry out the provisions of this chapter. The medical screeners shall be supervised by one or more physicians who shall be appointed by the secretary or his designee. [1979 c 141 § 335; 1959 c 26 § 74.09.050. Prior: 1955 c 273 § 6.]

74.09.055 Copayment, deductible, coinsurance requirements authorized. The department is authorized to establish copayment, deductible, or coinsurance requirements for recipients of any medical programs defined in RCW 74.09.010 but shall not establish copayment, deductible or coinsurance requirements for legend drugs as defined in RCW 69.41.210, unless required by federal law. [1982 c 201 § 19.]

74.09.075 Evaluation of employability when medical condition represented—Medical reports—Medical consultations and assistance. The department shall provide (a) for evaluation of employability when a person is

applying for public assistance representing a medical condition as a basis for need, and (b) for medical reports to be used in the evaluation of total and permanent disability. It shall further provide for medical consultation and assistance in determining the need for special diets, housekeeper and attendant services, and other requirements as found necessary because of the medical condition under the rules promulgated by the secretary. [1979 c 141 § 337; 1967 ex.s. c 30 § 2.]

74.09.080 Methods of performing administrative responsibilities. In carrying out the administrative responsibility of this chapter, the department may contract with an individual or a group, may utilize existing local state public assistance offices, or establish separate welfare medical care offices on a county or multicounty unit basis as found necessary. [1979 c 141 § 338; 1959 c 26 § 74.09.080. Prior: 1955 c 273 § 9.]

74.09.110 Administrative personnel—Professional consultants and screeners. The department shall employ administrative personnel in both state and local offices and employ the services of professional screeners and consultants as found necessary to carry out the proper administration of the program. [1979 c 141 § 339; 1959 c 26 § 74.09.110. Prior: 1955 c 273 § 12.]

74.09.120 Purchases of services, care, supplies—Purchase of care in institutions for mentally retarded—Purchase of care in institutions for mental diseases—Regulations. The department shall purchase necessary physician and dentist services by contract or "fee for service." The department shall purchase hospital care by contract or by all inclusive day rate, or at a reasonable cost based on a ratio of charges to cost. Any hospital when requested by the department shall supply such information as necessary to justify its rate, charges or costs. All additional services provided by the hospital shall be purchased at rates established by the department after consultation with the hospital. The department shall purchase nursing home care by contract. The department shall establish regulations for reasonable nursing home accounting and reimbursement systems which shall provide that no payment shall be made to a nursing home which does not permit inspection by the department of social and health services of every part of its premises and an examination of all records, including financial records, methods of administration, general and special dietary programs, the disbursement of drugs and methods of supply, and any other records the department deems relevant to the establishment of such a system.

All other services and supplies provided under the program shall be secured by contract.

The department may purchase care in institutions for the mentally retarded, also known as intermediate care facilities for the mentally retarded. The department shall establish rules for reasonable accounting and reimbursement systems for such care. Institutions for the mentally retarded include licensed nursing homes, public institutions, licensed boarding homes with fifteen beds or less,

and hospital facilities certified as intermediate care facilities for the mentally retarded under the federal medicaid program to provide health, habilitative, or rehabilitative services and twenty-four hour supervision for mentally retarded individuals or persons with related conditions and includes in the program "active treatment" as federally defined.

The department may purchase care in institutions for mental diseases by contract. The department shall establish rules for reasonable accounting and reimbursement systems for such care. Institutions for mental diseases are certified under the federal medicaid program and primarily engaged in providing diagnosis, treatment, or care to persons with mental diseases, including medical attention, nursing care, and related services. [1989 c 372 § 15; 1983 1st ex.s. c 67 § 44; 1981 2nd ex.s. c 11 § 6; 1981 1st ex.s. c 2 § 11; 1980 c 177 § 84 (repealed by 1983 1st ex.s. c 67 § 48); 1975 1st ex.s. c 213 § 1; 1967 ex.s. c 30 § 1; 1959 c 26 § 74.09.120. Prior: 1955 c 273 § 13.]

Severability—Effective dates—1983 1st ex.s. c 67: See RCW 74.46.905 and 74.46.901.

Severability—Effective dates—1981 1st ex.s. c 2: See notes following RCW 18.51.010.

Effective dates—1980 c 177: See RCW 74.46.901.

Conflict with federal requirements and this section: RCW 74.46.840.

74.09.150 Personnel to be under existing merit system. All personnel employed in the administration of the medical care program shall be covered by the existing merit system under the state personnel board or its successor. [1959 c 26 § 74.09.150. Prior: 1955 c 273 § 16.]

State civil service law: Chapter 41.06 RCW.

74.09.160 Presentment of charges by contractors. Each vendor or group who has a contract and is rendering service to eligible persons as defined in this chapter shall submit such charges as agreed upon between the department and the individual or group on a monthly basis and shall present their final charges not more than one hundred twenty days after the termination of service. If the final charges are not presented within the one hundred twenty-day period they shall not be a charge against the state unless previous extension in writing has been given by the department. Said one hundred twenty-day period may also be extended by regulation, but only if required by applicable federal law or regulation, and to no more than the extension of time so required. [1980 c 32 § 11; 1979 ex.s. c 81 § 1; 1973 1st ex.s. c 48 § 1; 1959 c 26 § 74.09.160. Prior: 1955 c 273 § 17.]

74.09.180 Chapter does not apply where another party liable—Exception—Subrogation—Lien—Recovery—Settlement. The provisions of this chapter shall not apply to recipients whose personal injuries are occasioned by negligence or wrong of another: *Provided, however,* That the secretary of the department of social and health services may, in his discretion, furnish assistance, under the provisions of this chapter, for the results of injuries to or illness of a recipient, and the department

of social and health services shall thereby be subrogated to the recipient's rights against the recovery had from any tort feisor and/or his or her insurer and shall have a lien thereupon to the extent of the value of the assistance furnished by the department of social and health services: *Provided further*, That to the end of securing reimbursement of any assistance furnished to such a recipient, the department of social and health services may, as a nonexclusive legal remedy, assert and enforce a lien upon any claim, right of action, settlement proceeds, and/or money, including any claim for benefits arising from an insurance program, to which such recipient is entitled (a) against any tort feisor and/or insurer of such tort feisor, or (b) any contract of insurance, purchased by the recipient or any other person, providing coverage to such recipient for said injuries, any illness, dental costs, costs incident to birth, or any other coverage for purposes of or costs for which the department provides assistance or meets all or part of the cost of care to a vendor, to the extent of the assistance furnished by said department to the recipient. If a recovery shall be made and the subrogation or lien is satisfied either in full or in part as a result of an independent action initiated by or on behalf of a recipient to recover the personal injuries against any tort feisor or insurer, then and in that event the amount repaid to the state of Washington as a result of said action, whether concluded by entry of a judgment or compromise and settlement, shall bear its proportionate share of attorney's fees and costs incurred by the injured recipient or his widow, children, or dependents, as the case may be, to the extent that such attorney's fees and costs are approved by the court in which the action is initiated, and upon notice to the department which shall have the right to be heard on the matter. [1987 c 283 § 14; 1979 ex.s. c 171 § 14; 1971 ex.s. c 306 § 1; 1969 ex.s. c 173 § 8; 1959 c 26 § 74.09.180. Prior: 1955 c 273 § 19.]

Severability—Savings—1987 c 283: See notes following RCW 43.20A.020.

Severability—1979 ex.s. c 171: See note following RCW 74.20.300.

74.09.182 Chapter does not apply where another party liable—Statement of lien—Form. The form of the lien in RCW 74.09.180 shall be substantially as follows:

STATEMENT OF LIEN

Notice is hereby given that the State of Washington, Department of Social and Health Services, has rendered assistance to _____, a person who was injured on or about the _____ day of _____ in the county of _____ state of _____, and the said department hereby asserts a lien, to the extent provided in RCW 74.09.180, for the amount of such assistance, upon any sum due and owing _____ (name of injured person) from _____, alleged to have caused the injury, and/or his insurer and from any other person

or insurer liable for the injury or obligated to compensate the injured person on account of such injuries by contract or otherwise.

STATE OF WASHINGTON, DEPARTMENT OF SOCIAL AND HEALTH SERVICES

By: _____ (Title)

STATE OF WASHINGTON

COUNTY OF

} ss.

I, _____, being first duly sworn, on oath state: That I am _____ (title); that I have read the foregoing Statement of Lien, know the contents thereof, and believe the same to be true.

Subscribed and sworn to before me this _____ day of _____, 19---

Notary Public in and for the State of Washington, residing at _____

[1979 c 141 § 341; 1969 ex.s. c 173 § 9.]

74.09.184 Chapter does not apply where another party liable—Lien effective upon being filed. The lien created in RCW 74.09.180 shall become effective upon being filed with the county auditor of the county in which the assistance was authorized by the department. [1969 ex.s. c 173 § 10.]

74.09.186 Chapter does not apply where another party liable—Settlement between recipient and tort feisor and/or insurer—Lien not discharged—Exceptions. No settlement made by and between the recipient and tort feisor and/or insurer shall discharge the lien created in RCW 74.09.180, against any money due or owing by such tort feisor or insurer to the recipient or relieve the tort feisor and/or insurer from liability by reason of such lien unless such settlement also provides for the payment and discharge of such lien or unless a written release or waiver of such claim or lien, signed by the department, be filed in the court where any action has been commenced on such claim, or in case no action has been commenced against the tort feisor and/or insurer, then such written release or waiver shall be delivered to the tort feisor or insurer. [1969 ex.s. c 173 § 12.]

74.09.190 Construction of chapter—Religious beliefs. Nothing in this chapter shall be construed as empowering the secretary to compel any recipient of public assistance and a medical indigent person to undergo any physical examination, surgical operation, or accept any form of medical treatment contrary to the wishes of said person who relies on or is treated by prayer or spiritual means in accordance with the creed and tenets of any well recognized church or religious denomination. [1979 c 141 § 342; 1959 c 26 § 74.09.190. Prior: 1955 c 273 § 23.]

74.09.200 Legislative intent—Policy. The legislature finds and declares it to be in the public interest and for the protection of the health and welfare of the residents of the state of Washington that a proper regulatory and inspection program be instituted in connection with the providing of medical, dental, and other health services to recipients of public assistance and medically indigent persons. In order to effectively accomplish such purpose and to assure that the recipient of such services receives such services as are paid for by the state of Washington, the acceptance by the recipient of such services, and by practitioners of reimbursement for performing such services, shall authorize the secretary of the department of social and health services or his designee, to inspect and audit all records in connection with the providing of such services. [1979 ex.s. c 152 § 1.]

74.09.210 Fraudulent practices—Penalties. (1) No person, firm, corporation, partnership, association, agency, institution, or other legal entity, but not including an individual public assistance recipient of health care, shall, on behalf of himself or others, obtain or attempt to obtain benefits or payments under this chapter in a greater amount than that to which entitled by means of:

- (a) A willful false statement;
- (b) By willful misrepresentation, or by concealment of any material facts; or
- (c) By other fraudulent scheme or device, including, but not limited to:
 - (i) Billing for services, drugs, supplies, or equipment that were unfurnished, of lower quality, or a substitution or misrepresentation of items billed; or
 - (ii) Repeated billing for purportedly covered items, which were not in fact so covered.

(2) Any person or entity knowingly violating any of the provisions of subsection (1) of this section shall be liable for repayment of any excess benefits or payments received, plus interest at the rate and in the manner provided in RCW 43.20B.695. Such person or other entity shall further, in addition to any other penalties provided by law, be subject to civil penalties. The secretary may assess civil penalties in an amount not to exceed three times the amount of such excess benefits or payments: *Provided*, That these civil penalties shall not apply to any acts or omissions occurring prior to September 1, 1979. RCW 43.20A.215 governs notice of a civil fine and provides the right to an adjudicative proceeding.

(3) A criminal action need not be brought against a person for that person to be civilly liable under this section.

(4) In all proceedings under this section, service, adjudicative proceedings, and judicial review of such determinations shall be in accordance with chapter 34.05 RCW, the Administrative Procedure Act.

(5) Civil penalties shall be deposited in the general fund upon their receipt. [1989 c 175 § 146; 1987 c 283 § 7; 1979 ex.s. c 152 § 2.]

Effective date—1989 c 175: See note following RCW 34.05.010.

Severability—Savings—1987 c 283: See notes following RCW 43.20A.020.

74.09.220 Liability for receipt of excess payments. Any person, firm, corporation, partnership, association, agency, institution or other legal entity, but not including an individual public assistance recipient of health care, that, without intent to violate this chapter, obtains benefits or payments under this code to which such person or entity is not entitled, or in a greater amount than that to which entitled, shall be liable for (1) any excess benefits or payments received, and (2) interest calculated at the rate and in the manner provided in RCW 43.20B.695. Whenever a penalty is due under RCW 74.09.210 or interest is due under RCW 43.20B.695, such penalty or interest shall not be reimbursable by the state as an allowable cost under any of the provisions of this chapter. [1987 c 283 § 8; 1979 ex.s. c 152 § 3.]

Severability—Savings—1987 c 283: See notes following RCW 43.20A.020.

74.09.230 False statements, fraud—Penalties. Any person, including any corporation, that

(1) knowingly makes or causes to be made any false statement or representation of a material fact in any application for any payment under any medical care program authorized under this chapter, or

(2) at any time knowingly makes or causes to be made any false statement or representation of a material fact for use in determining rights to such payment, or knowingly falsifies, conceals, or covers up by any trick, scheme, or device a material fact in connection with such application or payment, or

(3) having knowledge of the occurrence of any event affecting (a) the initial or continued right to any payment, or (b) the initial or continued right to any such payment of any other individual in whose behalf he has applied for or is receiving such payment, conceals or fails to disclose such event with an intent fraudulently to secure such payment either in a greater amount or quantity than is due or when no such payment is authorized,

shall be guilty of a class C felony: *Provided*, That the fine, if imposed, shall not be in an amount more than twenty-five thousand dollars, except as authorized by RCW 9A.20.030. [1979 ex.s. c 152 § 4.]

74.09.240 Bribes, kickbacks, rebates—Penalties.

(1) Any person, including any corporation, that solicits or receives any remuneration (including any kickback, bribe, or rebate) directly or indirectly, overtly or covertly, in cash or in kind

(a) in return for referring an individual to a person for the furnishing or arranging for the furnishing of any item or service for which payment may be made in whole or in part under this chapter, or

(b) in return for purchasing, leasing, ordering, or arranging for or recommending purchasing, leasing, or ordering any goods, facility, service, or item for which payment may be made in whole or in part under this chapter,

shall be guilty of a class C felony: *Provided*, That the fine, if imposed, shall not be in an amount more than twenty-five thousand dollars, except as authorized by RCW 9A.20.030.

(2) Any person, including any corporation, that offers or pays any remuneration (including any kickback, bribe, or rebate) directly or indirectly, overtly or covertly, in cash or in kind to any person to induce such person

(a) to refer an individual to a person for the furnishing or arranging for the furnishing of any item or service for which payment may be made, in whole or in part, under this chapter, or

(b) to purchase, lease, order, or arrange for or recommend purchasing, leasing, or ordering any goods, facility, service, or item for which payment may be made in whole or in part under this chapter,

shall be guilty of a class C felony: *Provided*, That the fine, if imposed, shall not be in an amount more than twenty-five thousand dollars, except as authorized by RCW 9A.20.030.

(3) Subsections (1) and (2) of this section shall not apply to

(a) a discount or other reduction in price obtained by a provider of services or other entity under this chapter if the reduction in price is properly disclosed and appropriately reflected in the costs claimed or charges made by the provider or entity under this chapter, and

(b) any amount paid by an employer to an employee (who has a bona fide employment relationship with such employer) for employment in the provision of covered items or services.

(4) Subsections (1) and (2) of this section, if applicable to the conduct involved, shall supersede the criminal provisions of chapter 19.68 RCW, but shall not preclude administrative proceedings authorized by chapter 19.68 RCW. [1979 ex.s. c 152 § 5.]

74.09.250 False statements regarding institutions, facilities—Penalties. Any person, including any corporation, that knowingly makes or causes to be made, or induces or seeks to induce the making of, any false statement or representation of a material fact with respect to the conditions or operations of any institution or facility in order that such institution or facility may qualify (either upon initial certification or upon recertification) as a hospital, skilled nursing facility, intermediate care facility, or home health agency, shall be guilty of a class C felony: *Provided*, That the fine, if imposed, shall not be in an amount more than five thousand dollars. [1979 ex.s. c 152 § 6.]

74.09.260 Excessive charges, payments—Penalties. Any person, including any corporation, that knowingly

(1) charges, for any service provided to a patient under any medical care plan authorized under this chapter, money or other consideration at a rate in excess of the rates established by the department of social and health services, or

(2) charges, solicits, accepts, or receives, in addition to any amount otherwise required to be paid under such plan any gift, money, donation, or other consideration (other than a charitable, religious, or philanthropic contribution from an organization or from a person unrelated to the patient)

(a) as a precondition of admitting a patient to a hospital, skilled nursing facility, or intermediate care facility, or

(b) as a requirement for the patient's continued stay in such facility,

when the cost of the services provided therein to the patient is paid for, in whole or in part, under such plan, shall be guilty of a class C felony: *Provided*, That the fine, if imposed, shall not be in an amount more than twenty-five thousand dollars, except as authorized by RCW 9A.20.030. [1979 ex.s. c 152 § 7.]

74.09.270 Failure to maintain trust funds in separate account—Penalties. (1) Any person having any patient trust funds in his possession, custody, or control, who, knowing that he is violating any statute, regulation, or agreement, deliberately fails to deposit, transfer, or maintain said funds in a separate, designated, trust bank account as required by such statute, regulation, or agreement shall be guilty of a gross misdemeanor and shall be punished by imprisonment for not more than one year in the county jail, or by a fine of not more than ten thousand dollars or as authorized by RCW 9A.20.030, or by both such fine and imprisonment.

(2) "Patient trust funds" are funds received by any health care facility which belong to patients and are required by any state or federal statute, regulation, or by agreement to be kept in a separate trust bank account for the benefit of such patients.

(3) This section shall not be construed to prevent a prosecution for theft. [1979 ex.s. c 152 § 8.]

74.09.280 False verification of written statements—Penalties. The secretary of social and health services may by rule require that any application, statement, or form filled out by suppliers of medical care under this chapter shall contain or be verified by a written statement that it is made under the penalties of perjury and such declaration shall be in lieu of any oath otherwise required, and each such paper shall in such event so state. The making or subscribing of any such papers or forms containing any false or misleading information may be prosecuted and punished under chapter 9A.72 RCW. [1979 ex.s. c 152 § 9.]

74.09.290 Department audits and investigations—Other powers. The secretary of the department of social and health services or his authorized representative shall have the authority to:

(1) Conduct audits and investigations of providers of medical and other services furnished pursuant to this chapter, except that the Washington state medical disciplinary board shall generally serve in an advisory capacity to the secretary in the conduct of audits or

investigations of physicians. In the conduct of such audits or investigations, the secretary may examine only those records or portions thereof, including patient records, for which services were rendered by a health care provider and reimbursed by the department, notwithstanding the provisions of RCW 5.60.060, 18.53.200, 18.83.110, or any other statute which may make or purport to make such records privileged or confidential: *Provided*, That no original patient records shall be removed from the premises of the health care provider, and that the disclosure of any records or information by the department of social and health services is prohibited and constitutes a violation of RCW 42.22.040, unless such disclosure is directly connected to the official purpose for which the records or information were obtained: *Provided further*, That the disclosure of patient information as required under this section shall not subject any physician or other health services provider to any liability for breach of any confidential relationship between the provider and the patient, but no evidence resulting from such disclosure may be used in any civil, administrative, or criminal proceeding against the patient unless a waiver of the applicable evidentiary privilege is obtained: *Provided further*, That the secretary shall destroy all copies of patient medical records in their possession upon completion of the audit, investigation or proceedings;

(2) Approve or deny applications to participate as a provider of services furnished pursuant to this chapter;

(3) Terminate or suspend eligibility to participate as a provider of services furnished pursuant to this chapter; and

(4) Adopt, promulgate, amend, and rescind administrative rules and regulations, in accordance with the administrative procedure act, chapter 34.05 RCW, to carry out the policies and purposes of RCW 74.09.200 through 74.09.290. [1983 1st ex.s. c 41 § 23; 1979 ex.s. c 152 § 10.]

Severability—1983 1st ex.s. c 41: See note following RCW 26.09.060.

74.09.300 Department to report penalties to appropriate licensing agency or disciplinary board. Whenever the secretary of the department of social and health services imposes a civil penalty under RCW 74.09.210, or terminates or suspends a provider's eligibility under RCW 74.09.290, he shall, if the provider is licensed pursuant to Titles 18, 70, or 71 RCW, give written notice of such imposition, termination, or suspension to the appropriate licensing agency or disciplinary board. [1979 ex.s. c 152 § 11.]

74.09.500 Medical assistance—Established. There is hereby established a new program of federal-aid assistance to be known as medical assistance to be administered by the state department of social and health services. The department of social and health services is authorized to comply with the federal requirements for the medical assistance program provided in the Social Security Act and particularly Title XIX of Public Law

(89-97) in order to secure federal matching funds for such program. [1979 c 141 § 343; 1967 ex.s. c 30 § 3.]

74.09.510 Medical assistance—Accordance with eligibility requirements—Ineligibility. Medical assistance may be provided in accordance with eligibility requirements established by the department of social and health services, as defined in the social security Title XIX state plan for mandatory categorically needy persons and: (1) Individuals who would be eligible for cash assistance except for their institutional status; (2) individuals who are under twenty-one years of age, who would be eligible for aid to families with dependent children, but do not qualify as dependent children and who are in (a) foster care, (b) subsidized adoption, (c) an intermediate care facility or an intermediate care facility for the mentally retarded, or (d) inpatient psychiatric facilities; (3) the aged, blind, and disabled who: (a) Receive only a state supplement, or (b) would not be eligible for cash assistance if they were not institutionalized; (4) individuals who would be eligible for but choose not to receive cash assistance; (5) individuals who are enrolled in managed health care systems, who have otherwise lost eligibility for medical assistance, but who have not completed a current six-month enrollment in a managed health care system, and who are eligible for federal financial participation under Title XIX of the social security act; (6) children and pregnant women allowed by federal statute for whom funding is appropriated; and (7) other individuals eligible for medical services under RCW 74.09.035 and 74.09.700 for whom federal financial participation is available under Title XIX of the social security act. [1989 1st ex.s. c 10 § 8; 1989 c 87 § 2; 1985 c 5 § 2; 1981 2nd ex.s. c 3 § 5; 1981 1st ex.s. c 6 § 20; 1981 c 8 § 19; 1971 ex.s. c 169 § 4; 1970 ex.s. c 60 § 1; 1967 ex.s. c 30 § 4.]

Effective dates—1989 c 87: See notes following RCW 11.94.050.

Severability—1981 2nd ex.s. c 3: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1981 2nd ex.s. c 3 § 8.]

Effective date—Severability—1981 1st ex.s. c 6: See notes following RCW 74.04.005.

74.09.520 Medical assistance—Care and services included—Funding limitations. (1) The term "medical assistance" may include the following care and services: (a) Inpatient hospital services; (b) outpatient hospital services; (c) other laboratory and x-ray services; (d) skilled nursing home services; (e) physicians' services, which shall include prescribed medication and instruction on birth control devices; (f) medical care, or any other type of remedial care as may be established by the secretary; (g) home health care services; (h) private duty nursing services; (i) dental services; (j) physical therapy and related services; (k) prescribed drugs, dentures, and prosthetic devices; and eyeglasses prescribed by a physician skilled in diseases of the eye or by an optometrist, whichever the individual may select; (l) personal care services, as provided in this section; (m) hospice services; (n) other diagnostic, screening, preventive, and rehabilitative services; and (o) like services when furnished to a

handicapped child by a school district as part of an individualized education program established pursuant to chapter 28A.13 RCW. For the purposes of this section, the department may not cut off any prescription medications, oxygen supplies, respiratory services, or other life-sustaining medical services or supplies.

"Medical assistance," notwithstanding any other provision of law, shall not include routine foot care, or dental services delivered by any health care provider, that are not mandated by Title XIX of the social security act unless there is a specific appropriation for these services. Services included in an individualized education program for a handicapped child under chapter 28A.13 RCW shall not qualify as medical assistance prior to the implementation of the funding process developed under RCW 74.09.524.

(2) The department shall amend the state plan for medical assistance under Title XIX of the federal social security act to include personal care services, as defined in 42 C.F.R. 440.170(f), in the categorically needy program.

(3) The department shall adopt, amend, or rescind such administrative rules as are necessary to ensure that Title XIX personal care services are provided to eligible persons in conformance with federal regulations.

(a) These administrative rules shall include financial eligibility indexed according to the requirements of the social security act providing for medicaid eligibility.

(b) The rules shall require clients be assessed as having a medical condition requiring assistance with personal care tasks. Plans of care must be approved by a physician and reviewed by a nurse every ninety days.

(4) The department shall design and implement a means to assess the level of functional disability of persons eligible for personal care services under this section. The personal care services benefit shall be provided to the extent funding is available according to the assessed level of functional disability. Any reductions in services made necessary for funding reasons should be accomplished in a manner that assures that priority for maintaining services is given to persons with the greatest need as determined by the assessment of functional disability.

(5) The department shall report to the appropriate fiscal committees of the legislature on the utilization and associated costs of the personal care option under Title XIX of the federal social security act, as defined in 42 C.F.R. 440.170(f), in the categorically needy program. This report shall be submitted by January 1, 1990, and submitted on a yearly basis thereafter.

(6) Effective July 1, 1989, the department shall offer hospice services in accordance with available funds. The department shall provide a complete accounting of the costs of providing hospice services under this section by December 20, 1989. The report shall include an assessment of cost savings which may result by providing hospice to persons who otherwise would use hospitals, nursing homes, or more expensive care. The hospice benefit under this section shall terminate on April 1, 1990, unless extended by the legislature. [1989 c 427 § 10; 1989 c 400 § 3; 1985 c 5 § 3; 1982 1st ex.s. c 19 § 4;

1981 1st ex.s. c 6 § 21; 1981 c 8 § 20; 1979 c 141 § 344; 1969 ex.s. c 173 § 11; 1967 ex.s. c 30 § 5.]

Reviser's note: This section was amended by 1989 c 400 § 3 and by 1989 c 427 § 10, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Severability—1989 c 427: See RCW 74.39.900.

Intent—1989 c 400: See note following RCW 28A.41.053.

Effective date—1982 1st ex.s. c 19: See note following RCW 74.09.035.

Effective date—Severability—1981 1st ex.s. c 6: See notes following RCW 74.04.005.

74.09.522 Medical assistance—Agreements with managed health care systems required for services to recipients of aid to families with dependent children. (1) For the purposes of this section, "managed health care system" means any health care organization, including health care providers, insurers, health care service contractors, health maintenance organizations, health insuring organizations, or any combination thereof, that provides directly or by contract health care services covered under RCW 74.09.520 and rendered by licensed providers, on a prepaid capitated case management basis and that meets the requirements of section 1903(m)(1)(A) of Title XIX of the federal social security act.

(2) No later than July 1, 1991, the department of social and health services shall enter into agreements with managed health care systems to provide health care services to recipients of aid to families with dependent children under the following conditions:

(a) Agreements shall be made for at least thirty thousand recipients state-wide;

(b) Agreements in at least one county shall include enrollment of all recipients of aid to families with dependent children;

(c) To the extent that this provision is consistent with section 1903(m) of Title XIX of the federal social security act, recipients shall have a choice of systems in which to enroll and shall have the right to terminate their enrollment in a system: *Provided*, That the department may limit recipient termination of enrollment without cause to the first month of a period of enrollment, which period shall not exceed six months: *And provided further*, That the department shall not restrict a recipient's right to terminate enrollment in a system for cause;

(d) To the extent that this provision is consistent with section 1903(m) of Title XIX of the federal social security act, participating managed health care systems shall not enroll a disproportionate number of medical assistance recipients within the total numbers of persons served by the managed health care systems, except that this subsection (d) shall not apply to entities described in subparagraph (B) of section 1903(m) of Title XIX of the federal social security act;

(e) Prior to negotiating with any managed health care system, the department shall estimate, on an actuarially sound basis, the expected cost of providing the health care services expressed in terms of upper and lower limits, and recognizing variations in the cost of providing

the services through the various systems and in different project areas. In negotiating with managed health care systems the department shall adopt a uniform procedure to negotiate and enter into contractual arrangements, including standards regarding the quality of services to be provided; and financial integrity of the responding system;

(f) The department shall seek waivers from federal requirements as necessary to implement this chapter;

(g) The department shall, wherever possible, enter into prepaid capitation contracts that include inpatient care. However, if this is not possible or feasible, the department may enter into prepaid capitation contracts that do not include inpatient care;

(h) The department shall define those circumstances under which a managed health care system is responsible for out-of-system services and assure that recipients shall not be charged for such services; and

(i) Nothing in this section prevents the department from entering into similar agreements for other groups of people eligible to receive services under chapter 74.09 RCW.

(3) The department shall seek to obtain a large number of contracts with providers of health services to medicaid recipients. The department shall ensure that publicly supported community health centers and providers in rural areas, who show serious intent and apparent capability to participate in the project as managed health care systems are seriously considered as providers in the project. The department shall coordinate these projects with the plans developed under chapter 70.47 RCW.

(4) The department shall work jointly with the state of Oregon and other states in this geographical region in order to develop recommendations to be presented to the appropriate federal agencies and the United States congress for improving health care of the poor, while controlling related costs. [1989 c 260 § 2; 1987 1st ex.s. c 5 § 21; 1986 c 303 § 2.]

Severability—1987 1st ex.s. c 5: See note following RCW 70.47.901.

Legislative findings—Intent—1986 c 303: "(1) The legislature finds that:

(a) Good health care for indigent persons is of importance to the state;

(b) To ensure the availability of a good level of health care, efforts must be made to encourage cost consciousness on the part of providers and consumers, while maintaining medical assistance recipients within the mainstream of health care delivery;

(c) Managed health care systems have been found to be effective in controlling costs while providing good health care services;

(d) By enrolling medical assistance recipients within managed health care systems, the state's goal is to ensure that medical assistance recipients receive at least the same quality of care they currently receive.

(2) It is the intent of the legislature to develop and implement new strategies that promote the use of managed health care systems for medical assistance recipients by establishing prepaid capitated programs for both in-patient and out-patient services." [1986 c 303 § 1.]

74.09.524 Medical assistance—Reimbursement to schools for services for handicapped children. The department of social and health services and the superintendent of public instruction shall jointly develop a process and plan to enable school districts to bill medical

assistance for eligible services included in handicapped education programs, subject to the restrictions and limitations of *this act. The process shall be implemented during the 1990–91 school year, with the intent that the billing system be in operation in selected regions of the state during the first half of that school year. The billing system shall be extended state-wide prior to the beginning of the 1991–92 school year. The planning shall include:

(1) Consideration of the types of services provided by school districts that would be eligible for medical assistance, and whether the state's medical assistance plan should be expanded to cover additional services for children;

(2) Establishment of categories of eligible services and the rates of reimbursement;

(3) Development of a state-wide billing system for use by school districts and educational service districts, which may include phased expansion of the system, providing billing services to the various regions of the state in stages;

(4) Measures for accountability and auditing of billings;

(5) Information bulletins and workshops for school districts and educational service districts;

(6) Contracting with educational service districts or other organizations for billing services or for other assistance in implementing the process established under this section;

(7) Formal agreements between the department and the superintendent of public instruction for notification of payments and for interagency reimbursement under RCW 28A.41.053; and

(8) Review and approval of the plan by the office of financial management prior to submission to the legislature of the report under **section 5 of this act. [1989 c 400 § 4.]

Reviser's note: *(1) "This act" consists of the enactment of RCW 74.09.524, the 1989 c 400 amendments to RCW 28A.41.053 and 74.09.520, and an uncodified section.

***(2) "Section 5 of this act" is an uncodified section.

Intent—1989 c 400: See note following RCW 28A.41.053.

74.09.530 Medical assistance—Powers and duties of department. The amount and nature of medical assistance and the determination of eligibility of recipients for medical assistance shall be the responsibility of the department of social and health services. The department shall establish reasonable standards of assistance and resource and income exemptions which shall be consistent with the provisions of the Social Security Act and with the regulations of the secretary of health, education and welfare for determining eligibility of individuals for medical assistance and the extent of such assistance to the extent that funds are available from the state and federal government. [1979 c 141 § 345; 1967 ex.s. c 30 § 6.]

74.09.545 Medical assistance or limited casualty program—Eligibility—Agreements between spouses to transfer future income—Community income. (1) An

agreement between spouses transferring or assigning rights to future income from one spouse to the other shall be invalid for purposes of determining eligibility for medical assistance or the limited casualty program for the medically needy, but this subsection does not affect agreements between spouses transferring or assigning resources, and income produced by transferred or assigned resources shall continue to be recognized as the separate income of the transferee; and

(2) In determining eligibility for medical assistance or the limited casualty program for the medically needy for a married person in need of institutional care, or care under home and community based waivers as defined in Title XIX of the Social Security Act, if the community income received in the name of the nonapplicant spouse exceeds the community income received in the name of the applicant spouse, the applicant's interest in that excess shall be considered unavailable to the applicant. [1986 c 220 § 1.]

74.09.565 Medical assistance for institutionalized persons—Treatment of income between spouses. (1) An agreement between spouses transferring or assigning rights to future income from one spouse to the other shall be invalid for purposes of determining eligibility for medical assistance or the limited casualty program for the medically needy, but this subsection does not affect agreements between spouses transferring or assigning resources, and income produced by transferred or assigned resources shall continue to be recognized as the separate income of the transferee.

(2) In determining eligibility for medical assistance or the limited casualty program for the medically needy for a married person in need of institutional care, or care under home and community-based waivers as defined in Title XIX of the social security act, if the community income received in the name of the nonapplicant spouse exceeds the community income received in the name of the applicant spouse, the applicant's interest in that excess shall be considered unavailable to the applicant.

(3) The department shall adopt rules consistent with the provisions of section 1924 of the social security act entitled "Treatment of Income and Resources for Certain Institutionalized Spouses," in determining the allocation of income between an institutionalized and community spouse.

(4) The department shall establish the monthly maintenance needs allowance for the community spouse up to the maximum amount allowed by state appropriation or within available funds and permitted in section 1924 of the social security act. The total monthly needs allowance shall not exceed one thousand five hundred dollars, subject to adjustment provided in section 1924 of the social security act. [1989 c 87 § 4.]

Captions not law—1989 c 87: "Section captions, as found in sections 4 through 8 of this act, constitute no part of the law." [1989 c 87 § 10.]

Effective dates—1989 c 87: See note following RCW 11.94.050.

74.09.575 Medical assistance for institutionalized persons—Treatment of resources. (1) The department

shall promulgate rules consistent with the treatment of resources provisions of section 1924 of the social security act entitled "Treatment of Income and Resources for Certain Institutionalized Spouses," in determining the allocation of resources between the institutionalized and community spouse.

(2) In the interest of supporting the community spouse the department shall allow the maximum resource allowance amount permissible under the social security act for the community spouse. [1989 c 87 § 5.]

Effective dates—1989 c 87: See note following RCW 11.94.050.

Captions not law—1989 c 87: See note following RCW 74.09.565.

74.09.585 Medical assistance for institutionalized persons—Period of ineligibility for transfer of resources. (1) The department shall establish standards consistent with section 1917 of the social security act in determining the period of ineligibility for medical assistance due to the transfer of resources.

(2) The department may waive a period of ineligibility if the department determines that denial of eligibility would work an undue hardship. [1989 c 87 § 7.]

Effective dates—1989 c 87: See note following RCW 11.94.050.

Captions not law—1989 c 87: See note following RCW 74.09.565.

74.09.595 Medical assistance for institutionalized persons—Due process procedures. The department shall in compliance with section 1924 of the social security act adopt procedures which provide due process for institutionalized or community spouses who request a fair hearing as to the valuation of resources, the amount of the community spouse resource allowance, or the monthly maintenance needs allowance. [1989 c 87 § 8.]

Effective dates—1989 c 87: See note following RCW 11.94.050.

Captions not law—1989 c 87: See note following RCW 74.09.565.

74.09.600 Post audit examinations by state auditor. Nothing in this chapter shall preclude the state auditor from conducting post audit examinations of public funds pursuant to RCW 43.09.330 or other applicable law. [1977 ex.s. c 260 § 6.]

Severability—1977 ex.s. c 260: "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1977 ex.s. c 260 § 8.]

74.09.700 Medical care—Limited casualty program. (1) To the extent of available funds, medical care may be provided under the limited casualty program to persons not otherwise eligible for medical assistance or medical care services who are medically needy as defined in the social security Title XIX state plan and medical indigents in accordance with medical eligibility requirements established by the department. This includes residents of skilled nursing homes, intermediate care facilities, and intermediate care facilities for the mentally retarded who are aged, blind, or disabled as defined in Title XVI of the federal social security act and whose income exceeds three hundred percent of the federal supplement security income benefit level.

(2) Determination of the amount, scope, and duration of medical coverage under the limited casualty program shall be the responsibility of the department, subject to the following:

(a) Only inpatient hospital services; outpatient hospital and rural health clinic services; physicians' and clinic services; prescribed drugs, dentures, prosthetic devices, and eyeglasses; skilled nursing home services, intermediate care facility services, and intermediate care facility services for the mentally retarded; home health services; other laboratory and x-ray services; rehabilitative services; medically necessary transportation; and other services for which funds are specifically provided in the omnibus appropriations act shall be covered;

(b) Persons who are medically indigent and are not eligible for a federal aid program shall satisfy a deductible of not less than one hundred dollars nor more than five hundred dollars in any twelve-month period;

(c) Medical care services provided to the medically indigent and received no more than seven days prior to the date of application shall be retroactively certified and approved for payment on behalf of a person who was otherwise eligible at the time the medical services were furnished: *Provided*, That eligible persons who fail to apply within the seven-day time period for medical reasons or other good cause may be retroactively certified and approved for payment.

(3) The department shall establish standards of assistance and resource and income exemptions. All non-exempt income and resources of limited casualty program recipients shall be applied against the cost of their medical care services. [1989 c 87 § 3; 1985 c 5 § 4; 1983 1st ex.s. c 43 § 1; 1982 1st ex.s. c 19 § 1; 1981 2nd ex.s. c 10 § 6; 1981 2nd ex.s. c 3 § 6; 1981 1st ex.s. c 6 § 22.]

Effective dates—1989 c 87: See note following RCW 11.94.050.

Effective date—1983 1st ex.s. c 43: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect on July 1, 1983." [1983 1st ex.s. c 43 § 3.]

Effective date—1982 1st ex.s. c 19: See note following RCW 74.09.035.

Severability—1981 2nd ex.s. c 3: See note following RCW 74.09.510.

Effective date—**Severability**—1981 1st ex.s. c 6: See notes following RCW 74.04.005.

74.09.720 Prevention of blindness program. (1) A prevention of blindness program is hereby established in the department of social and health services to provide prompt, specialized medical eye care, including assistance with costs when necessary, for conditions in which sight is endangered or sight can be restored or significantly improved. The department of social and health services shall adopt rules concerning program eligibility, levels of assistance, and the scope of services.

(2) The department of social and health services shall employ on a part-time basis an ophthalmological and/or an optometrical consultant to provide liaison with participating eye physicians and to review medical recommendations made by an applicant's eye physician to

determine whether the proposed services meet program standards.

(3) The department of social and health services and the department of services for the blind shall formulate a cooperative agreement concerning referral of clients between the two agencies and the coordination of policies and services. [1983 c 194 § 26.]

Severability—**Effective dates**—1983 c 194: See RCW 74.18.902 and 74.18.903.

Department of services for the blind—*Specialized medical eye care*: RCW 74.18.250.

74.09.730 Grants to certain hospitals providing disproportionate low-income care. In establishing Title XIX payment rates for inpatient hospital services:

(1) The department of social and health services shall take into account the situation of hospitals which serve a disproportionate number of low-income patients with special needs;

(2) The department shall define eligible disproportionate share hospitals by regulation, and shall consider a hospital's Medicaid utilization rate, its low-income utilization rate, and its provision of obstetric services;

(3) The payment methodology for disproportionate share hospitals shall be specified by the department in regulation. [1989 c 260 § 1; 1987 1st ex.s. c 5 § 20.]

Severability—1987 1st ex.s. c 5: See note following RCW 70.47.901.

74.09.750 Recovery of costs of medical care provided to recipients sixty-five or older authorized—Exceptions—Lien. (1) The department is authorized to recover the cost of medical care provided to a recipient who was sixty-five years or older, upon the recipient's death except:

(a) Where there is a surviving spouse; or

(b) Where there is a surviving child under 21 years of age or blind or disabled as defined in the state plan under Title XIX of the social security act; or

(c) To the extent of the first fifty thousand dollars of the estate value at the time of death, where there are surviving children other than as defined above, and not to exceed thirty-five percent of the remainder.

(2) The department may assert and enforce a claim against the estate of the deceased recipient for the debt in subsection (1) of this section, in accordance with chapter 11.40 RCW.

(3) The remedies in subsection (2) of this section are nonexclusive and upon the death of the recipient, the department shall have a lien for the debt in subsection (1) of this section. The lien attaches to the real property of which the deceased recipient was seized immediately before death. Upon subsequent filing of the notice thereof with the county auditor of the county in which the real property is located, the lien shall be deemed to relate back and be effective against such property as of the date of the recipient's death. Recovery under the lien shall be upon the sale or transfer of the subject property. [1987 c 283 § 13.]

Severability—**Savings**—1987 c 283: See notes following RCW 43.20A.020.

Revenue recovery by department of social and health services: Chapter 43.20B RCW.

74.09.755 AIDS—Community-based care—Federal social security act waiver. The department shall prepare and request a waiver under section 1915(c) of the federal social security act to provide community based long-term care services to persons with AIDS or AIDS-related conditions who qualify for the medical assistance program under RCW 74.09.510 or the limited casualty program for the medically needy under RCW 74.09.700. Respite services shall be included as a service available under the waiver. [1989 c 427 § 12.]

Severability—1989 c 427: See RCW 74.39.900.

MATERNITY CARE ACCESS PROGRAM

74.09.760 Short title—1989 1st ex.s. c 10. *This act may be known and cited as the "maternity care access act of 1989." [1989 1st ex.s. c 10 § 1.]

***Reviser's note:** "This act" consists of the enactment of RCW 74.09.760 through 74.09.820, the 1989 1st ex.s. c 10 amendment to RCW 74.09.510, and several uncodified sections.

74.09.770 Maternity care access system established. (1) The legislature finds that Washington state and the nation as a whole have a high rate of infant illness and death compared with other industrialized nations. This is especially true for minority and low-income populations. Premature and low weight births have been directly linked to infant illness and death. The availability of adequate maternity care throughout the course of pregnancy has been identified as a major factor in reducing infant illness and death. Further, the investment in preventive health care programs, such as maternity care, contributes to the growth of a healthy and productive society and is a sound approach to health care cost containment. The legislature further finds that access to maternity care for low-income women in the state of Washington has declined significantly in recent years and has reached a crisis level.

(2) It is the purpose of this chapter [subchapter] to provide, consistent with appropriated funds, maternity care necessary to ensure healthy birth outcomes for low-income families. To this end, a maternity care access system is established based on the following principles:

(a) The family is the fundamental unit in our society and should be supported through public policy.

(b) Access to maternity care for eligible persons to ensure healthy birth outcomes should be made readily available in an expeditious manner through a single service entry point.

(c) Unnecessary barriers to maternity care for eligible persons should be removed.

(d) Access to preventive and other health care services should be available for low-income children.

(e) Each woman should be encouraged to and assisted in making her own informed decisions about her maternity care.

(f) Unnecessary barriers to the provision of maternity care by qualified health professionals should be removed.

(g) The system should be sensitive to cultural differences among eligible persons.

(h) To the extent possible, decisions about the scope, content, and delivery of services should be made at the local level involving a broad representation of community interests.

(i) The maternity care access system should be evaluated at appropriate intervals to determine effectiveness and need for modification.

(j) Maternity care services should be delivered in a cost-effective manner. [1989 1st ex.s. c 10 § 2.]

74.09.780 Reservation of legislative power. The legislature reserves the right to amend or repeal all or any part of this chapter [subchapter] at any time and there shall be no vested private right of any kind against such amendment or repeal. All rights, privileges, or immunities conferred by this chapter [subchapter] or any acts done pursuant thereto shall exist subject to the power of the legislature to amend or repeal this chapter [subchapter] at any time. [1989 1st ex.s. c 10 § 3.]

74.09.790 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout RCW 74.09.510 and 74.09.760 through 74.09.820:

(1) "At-risk eligible person" means an eligible person determined by the department to need special assistance in applying for and obtaining maternity care, including pregnant women who are substance abusers, pregnant and parenting adolescents, pregnant minority women, and other eligible persons who need special assistance in gaining access to the maternity care system.

(2) "County authority" means the board of county commissioners, county council, or county executive having the authority to participate in the maternity care access program or its designee. Two or more county authorities may enter into joint agreements to fulfill the requirements of this chapter [subchapter].

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

(4) "Eligible person" means a woman in need of maternity care or a child, who is eligible for medical assistance pursuant to chapter 74.09 RCW or the prenatal care program administered by the department.

(5) "Maternity care services" means inpatient and outpatient medical care, case management, and support services necessary during prenatal, delivery, and postpartum periods.

(6) "Support services" means, at least, public health nursing assessment and follow-up, health and childbirth education, psychological assessment and counseling, outreach services, nutritional assessment and counseling, needed vitamin and nonprescriptive drugs, transportation, and child care. Support services may include alcohol and substance abuse treatment for pregnant women who are addicted or at risk of being addicted to alcohol or drugs to the extent funds are made available for that purpose by chapter 271, Laws of 1989. [1989 1st ex.s. c 10 § 4.]

74.09.800 Maternity care access program established. The department shall, consistent with the state budget act, develop a maternity care access program designed to ensure healthy birth outcomes as follows:

(1) Provide maternity care services to low-income pregnant women and health care services to children in poverty to the maximum extent allowable under the medical assistance program, Title XIX of the federal social security act;

(2) Provide maternity care services to low-income women who are not eligible to receive such services under the medical assistance program, Title XIX of the federal social security act;

(3) By January 1, 1990, have the following procedures in place to improve access to maternity care services and eligibility determinations for pregnant women applying for maternity care services under the medical assistance program, Title XIX of the federal social security act:

(a) Use of a shortened and simplified application form;

(b) Outstationing department staff to make eligibility determinations;

(c) Establishing local plans at the county and regional level, coordinated by the department; and

(d) Conducting an interview for the purpose of determining medical assistance eligibility within five working days of the date of an application by a pregnant woman and making an eligibility determination within fifteen working days of the date of application by a pregnant woman;

(4) Establish a maternity care case management system that shall assist at-risk eligible persons with obtaining medical assistance benefits and receiving maternity care services, including transportation and child care services;

(5) Within available resources, establish appropriate reimbursement levels for maternity care providers;

(6) Implement a broad-based public education program that stresses the importance of obtaining maternity care early during pregnancy;

(7) Study the desirability and feasibility of implementing the presumptive eligibility provisions set forth in section 9407 of the federal omnibus budget reconciliation act of 1986 and report to the appropriate committees of the legislature by December 1, 1989; and

(8) Refer persons eligible for maternity care services under the program established by this section to persons, agencies, or organizations with maternity care service practices that primarily emphasize healthy birth outcomes. [1989 1st ex.s. c 10 § 5.]

74.09.810 Alternative maternity care service delivery system established—Development and use of report.

(1) The department shall establish an alternative maternity care service delivery system, if it determines that a county or a group of counties is a maternity care distressed area. A maternity care distressed area shall be defined by the department, in rule, as a county or a group of counties where eligible women are unable to

obtain adequate maternity care. The department shall include the following factors in its determination:

(a) Higher than average percentage of eligible persons in the distressed area who receive late or no prenatal care;

(b) Higher than average percentage of eligible persons in the distressed area who go out of the area to receive maternity care;

(c) Lower than average percentage of obstetrical care providers in the distressed area who provide care to eligible persons;

(d) Higher than average percentage of infants born to eligible persons per obstetrical care provider in the distressed area; and

(e) Higher than average percentage of infants that are of low birth weight, five and one-half pounds or two thousand five hundred grams, born to eligible persons in the distressed area.

(2) If the department determines that a maternity care distressed area exists, it shall notify the relevant county authority. The county authority shall, within one hundred twenty days, submit a brief report to the department recommending remedial action. The report shall be prepared in consultation with the department and its local community service offices, the local public health officer, community health clinics, health care providers, hospitals, the business community, labor representatives, and low-income advocates in the distressed area. A county authority may contract with a local non-profit entity to develop the report. If the county authority is unwilling or unable to develop the report, it shall notify the department within thirty days, and the department shall develop the report for the distressed area.

(3) The department shall review the report and use it, to the extent possible, in developing strategies to improve maternity care access in the distressed area. The department may contract with or directly employ qualified maternity care health providers to provide maternity care services, if access to such providers in the distressed area is not possible by other means. In such cases, the department is authorized to pay that portion of the health care providers' malpractice liability insurance that represents the percentage of maternity care provided to eligible persons by that provider through increased medical assistance payments. [1989 1st ex.s. c 10 § 6.]

74.09.820 Loan repayment program. To the extent that federal matching funds are available, the department or the *department of health if one is created shall establish, in consultation with the health science programs of the state's colleges and universities, and community health clinics, a loan repayment program that will encourage maternity care providers to practice in medically underserved areas in exchange for repayment of part or all of their health education loans. [1989 1st ex.s. c 10 § 7.]

*Reviser's note: The department of health was created by 1989 1st ex.s. c 9.

74.09.850 Conflict with federal requirements. If any part of this chapter is found to conflict with federal requirements which are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this chapter is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this chapter. [1981 2nd ex.s. c 3 § 7.]

Severability—1981 2nd ex.s. c 3: See note following RCW 74.09.510.

74.09.900 Other laws applicable. All the provisions of Title 74 RCW, not otherwise inconsistent herewith, shall apply to the provisions of this chapter. [1959 c 26 § 74.09.900. Prior: 1955 c 273 § 22.]

74.09.910 Severability—1979 ex.s. c 152. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1979 ex.s. c 152 § 12.]

Chapter 74.12

AID TO FAMILIES WITH DEPENDENT CHILDREN

Sections

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Children and youth services: Chapter 72.05 RCW.

Community work and training program for recipients of aid to families with dependent children: RCW 74.04.473.

Enforcement of support of dependent children: Chapters 74.20 and 74.20A RCW.

Sale or gift of tobacco or intoxicating liquor to minor is gross misdemeanor: RCW 26.28.080.

State schools for blind and deaf: Chapter 72.40 RCW.

74.12.010 Definitions. For the purposes of the administration of aid to families with dependent children assistance, the term "dependent child" means any child in need under the age of eighteen years who has been deprived of parental support or care by reason of the

death, continued absence from the home, or physical or mental incapacity of the parent, and who is with his father, mother, grandmother, grandfather, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle, aunt, first cousin, nephew, or niece, in a place of residence maintained by one or more of such relatives as his or their homes. The term a "dependent child" shall, notwithstanding the foregoing, also include a child who would meet such requirements except for his removal from the home of a relative specified above as a result of a judicial determination that continuation therein would be contrary to the welfare of such child, for whose placement and care the state department of social and health services or the county office is responsible, and who has been placed in a licensed or approved child care institution or foster home as a result of such determination and who: (1) Was receiving an aid to families with dependent children grant for the month in which court proceedings leading to such determination were initiated; or (2) would have received aid to families with dependent children for such month if application had been made therefor; or (3) in the case of a child who had been living with a specified relative within six months prior to the month in which such proceedings were initiated, would have received aid to families with dependent children for such month if in such month he had been living with such a relative and application had been made therefor, as authorized by the Social Security Act: *Provided*, That to the extent authorized by the legislature in the biennial appropriations act and to the extent that matching funds are available from the federal government, aid to families with dependent children assistance shall be available to any child in need who has been deprived of parental support or care by reason of the unemployment of a parent or stepparent liable under this chapter for support of the child.

"Aid to families with dependent children" means money payments, services, and remedial care with respect to a dependent child or dependent children and the needy parent or relative with whom the child lives and may include the spouse of such relative if living with him and if such relative is the child's parent and the child is a dependent child by reason of the physical or mental incapacity or unemployment of a parent or stepparent liable under this chapter for the support of such child. [1983 1st ex.s. c 41 § 40; 1981 1st ex.s. c 6 § 23; 1981 c 8 § 21; 1979 c 141 § 350; 1973 2nd ex.s. c 31 § 1; 1969 ex.s. c 173 § 13; 1965 ex.s. c 37 § 1; 1963 c 228 § 18; 1961 c 265 § 1; 1959 c 26 § 74.12.010. Prior: 1957 c 63 § 10; 1953 c 174 § 24; 1941 c 242 § 1; 1937 c 114 § 1; Rem. Supp. 1941 § 9992-101.]

Severability—1983 1st ex.s. c 41: See note following RCW 26.09.060.

Effective date—Severability—1981 1st ex.s. c 6: See notes following RCW 74.04.005.

74.12.030 Eligibility. In addition to meeting the eligibility requirements of RCW 74.08.025, as now or hereafter amended, an applicant for aid to families with dependent children must be a needy child who is a resident of the state of Washington. [1971 ex.s. c 169 § 6;

1963 c 228 § 19; 1959 c 26 § 74.12.030. Prior: 1953 c 174 § 23; 1941 c 242 § 2; 1937 c 114 § 4; Rem. Supp. 1941 § 9992-104.]

74.12.035 Additional eligibility requirements—Maximum monthly income—Participating in strike—Students. (1) A family or assistance unit is not eligible for aid for any month if for that month the total income of the family or assistance unit, without application of income disregards, exceeds one hundred eighty-five percent of the state standard of need for a family of the same composition: *Provided*, That for the purposes of determining the total income of the family or assistance unit, the earned income of a dependent child who is a full-time student for whom aid to families with dependent children is being provided shall be disregarded for six months per calendar year.

(2) Participation in a strike does not constitute good cause to leave or to refuse to seek or accept employment. Assistance is not payable to a family for any month in which any caretaker relative with whom the child is living is, on the last day of the month, participating in a strike. An individual's need shall not be included in determining the amount of aid payable for any month to a family or assistance unit if, on the last day of the month, the individual is participating in a strike.

(3) Children over eighteen years of age and under nineteen years of age who are full-time students reasonably expected to complete a program of secondary school, or the equivalent level of vocational or technical training, before reaching nineteen years of age are eligible to receive aid to families with dependent children: *Provided however*, That if such students do not successfully complete such program before reaching nineteen years of age, the assistance rendered under this subsection during such period shall not be a debt due the state. [1985 c 335 § 1; 1981 2nd ex.s. c 10 § 3.]

State consolidated standards of need: RCW 74.04.770.

74.12.240 Services provided to help attain maximum self-support and independence of parents and relatives. The department is authorized to provide such social and related services as are reasonably necessary to encourage the care of dependent children in their own homes or in the homes of relatives, to help maintain and strengthen family life and to help such parents or relatives to attain maximum self-support and personal independence consistent with the maintenance of continuing parental care and protection. In the provision of such services, maximum utilization of other agencies providing similar or related services shall be effected. [1959 c 26 § 74.12.240. Prior: 1957 c 63 § 8.]

74.12.245 Self-employment of recipient—Assistance authorized during start-up period. The secretary of social and health services shall seek an exception to federal law under the waiver authorities set forth in the federal social security act, 42 U.S.C. Sec. 301 et seq., for the purposes of allowing recipients of aid to families with dependent children to become self-employed in a manner that will lead to economic independence. The

application for waivers shall be sought by October 1, 1988.

If the waivers are obtained, the department shall adopt rules that allow a recipient to separate business assets from personal assets during a start-up period not exceeding two years. The rules shall provide for evaluation of business progress during the start-up period and, if it appears to the department that sufficient income exists to provide an adequate income to replace the aid to families with dependent children, the recipient has the burden of showing why the recipient is not ready to terminate the aid prior to the expiration of the start-up period.

The rules shall also provide for deductions from income for business expenses including but not limited to capital expenditures, payments on the principal of loans to the business and reasonable amounts for cash reserves.

Any program operated under this section shall be operated in cooperation with any demonstration project on self-entrepreneurship operated by the employment security department. [1988 c 170 § 2.]

Purpose—1988 c 170: "The health of our state's economy requires the promotion of entrepreneurship and new enterprise development as well as the retention of existing jobs. Encouraging families who are recipients of aid to families with dependent children to become self-sufficient through self-employment will improve the lives of citizens in this state." [1988 c 170 § 1.]

74.12.250 Payment of grant to another—Limited guardianship. If the department, after investigation, finds that any recipient of funds under an aid to families with dependent children grant is not utilizing the grant adequately for the needs of the child or children or is otherwise dissipating such grant, or is unable to manage adequately the funds paid on behalf of said child and that to continue said payments to him would be contrary to the welfare of the child, the department may make such payments to another individual who is interested in or concerned with the welfare of such child and relative: *Provided*, That the department shall provide such counseling and other services as are available and necessary to develop greater ability on the part of the relative to manage funds in such manner as to protect the welfare of the family. Periodic review of each case shall be made by the department to determine if said relative is able to resume management of the assistance grant. If after a reasonable period of time the payments to the relative cannot be resumed, the department may request the attorney general to file a petition in the superior court for the appointment of a guardian for the child or children. Such petition shall set forth the facts warranting such appointment. Notice of the hearing on such petition shall be served upon the recipient and the department not less than ten days before the date set for such hearing. Such petition may be filed with the clerk of superior court and all process issued and served without payment of costs. If upon the hearing of such petition the court is satisfied that it is for the best interest of the child or children, and all parties concerned, that a guardian be appointed, he shall order the appointment, and may require the guardian to render to the court a detailed

itemized account of expenditures of such assistance payments at such time as the court may deem advisable.

It is the intention of this section that the guardianship herein provided for shall be a special and limited guardianship solely for the purpose of safeguarding the assistance grants made to dependent children. Such guardianship shall terminate upon the termination of such assistance grant, or sooner on order of the court, upon good cause shown. [1963 c 228 § 21; 1961 c 206 § 1.]

74.12.260 Persons to whom grants shall be made—Proof of use for benefit of children. Aid to families with dependent children grants shall be made to persons specified in RCW 74.12.010 as amended or such others as the federal department of health, education and welfare shall recognize for the sole purposes of giving benefits to the children whose needs are included in the grant paid to such persons. The recipient of each aid to families with dependent children's grant shall be and hereby is required to present reasonable proof to the department of social and health services as often as may be required by the department that all funds received in the form of an aid to families with dependent children grant for the children represented in the grant are being spent for the benefit of the children. [1979 c 141 § 351; 1963 c 228 § 22.]

74.12.280 Rules and regulations for coordination of services. The department is hereby authorized to promulgate rules and regulations which will provide for coordination between the services provided pursuant to chapter 74.13 RCW and the services provided under the aid to families with dependent children program in order to provide welfare and related services which will best promote the welfare of such children and their families and conform with the provisions of Public Law 87-543 (HR 10606). [1983 c 3 § 191; 1963 c 228 § 24.]

74.12.290 Evaluation of suitability of home. The department of social and health services shall, during the initial and any subsequent determination of eligibility, evaluate the suitability of the home in which the dependent child lives, consideration to be given to physical care and supervision provided in the home; social, educational, and the moral atmosphere of the home as compared with the standards of the community; the child's physical and mental health and emotional security, special needs occasioned by the child's physical handicaps or illnesses, if any; the extent to which desirable factors outweigh the undesirable in the home; and the apparent possibility for improving undesirable conditions in the home. [1979 c 141 § 352; 1963 c 228 § 25.]

74.12.300 Grant during period required to eliminate undesirable conditions. If the home in which the child lives is found to be unsuitable, but there is reason to believe that elimination of the undesirable conditions can be effected, and the child is otherwise eligible for aid, a grant shall be initiated or continued for such time as the state department of social and health services and the

family require to remedy the conditions. [1979 c 141 § 353; 1963 c 228 § 26.]

74.12.310 Placement of child with other relatives. When intensive efforts over a reasonable period have failed to improve the home conditions, the department shall determine if any other relatives specified by the social security act are maintaining a suitable home and are willing to take the care and custody of the child in their home. Upon an affirmative finding the department shall, if the parents or relatives with whom the child is living consent, take the necessary steps for placement of the child with such other relatives, but if the parents or relatives with whom the child lives refuse their consent to the placement then the department shall file a petition in the juvenile court for a decree adjudging the home unsuitable and placing the dependent child with such other relatives. [1963 c 228 § 27.]

74.12.320 Placement of child pursuant to chapter 13.04 RCW. If a diligent search reveals no other relatives as specified in the social security act maintaining a suitable home and willing to take custody of the child, then the department may file a petition in the appropriate juvenile court for placement of the child pursuant to the provisions of chapter 13.04 RCW. [1963 c 228 § 28.]

74.12.330 Assistance not to be denied for want of relative or court order. Notwithstanding the provisions of this chapter a child otherwise eligible for aid shall not be denied such assistance where a relative as specified in the social security act is unavailable or refuses to accept custody and the juvenile court fails to enter an order removing the child from the custody of the parent, relative or guardian then having custody. [1963 c 228 § 29.]

74.12.340 Day care. The department is authorized to promulgate rules and regulations governing the provision of day care as a part of child welfare services when the secretary determines that a need exists for such day care and that it is in the best interests of the child, the parents, or the custodial parent and in determining the need for such day care priority shall be given to geographical areas having the greatest need for such care and to members of low income groups in the population: *Provided*, That where the family is financially able to pay part or all of the costs of such care, fees shall be imposed and paid according to the financial ability of the family. [1973 1st ex.s. c 154 § 111; 1963 c 228 § 30.]

Severability—1973 1st ex.s. c 154: See note following RCW 2.12.030.

Child welfare services: Chapter 74.13 RCW.

74.12.350 Department may promulgate rules to allow child's income to be set aside for future needs. The department of social and health services is hereby authorized to promulgate rules and regulations in conformity with the provisions of Public Law 87-543 to allow all or any portion of a dependent child's earned or other income to be set aside for the identifiable future needs of

the dependent child which will make possible the realization of the child's maximum potential as an independent and useful citizen. [1979 c 141 § 354; 1963 c 226 § 1.]

Chapter 74.13

CHILD WELFARE SERVICES

Sections

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74.13.010 Declaration of purpose. The purpose of this chapter is to safeguard, protect and contribute to the welfare of the children of the state, through a comprehensive and coordinated program of public child welfare services providing for: Social services and facilities for children who require guidance, care, control, protection, treatment or rehabilitation; setting of standards for social services and facilities for children; cooperation with public and voluntary agencies, organizations, and citizen groups in the development and coordination of programs and activities in behalf of children; and promotion of community conditions and resources that help parents to discharge their responsibilities for the care, development and well-being of their children. [1965 c 30 § 2.]

74.13.020 Definitions—"Child", "child welfare services". As used in Title 74 RCW, child welfare services shall be defined as public social services including adoption services which strengthen, supplement, or substitute for, parental care and supervision for the purpose of:

- (1) Preventing or remedying, or assisting in the solution of problems which may result in families in conflict, or the neglect, abuse, exploitation, or criminal behavior of children;
- (2) Protecting and caring for homeless, dependent, or neglected children;
- (3) Assisting children who are in conflict with their parents, and assisting parents who are in conflict with their children with services designed to resolve such conflicts;
- (4) Protecting and promoting the welfare of children, including the strengthening of their own homes where possible, or, where needed;
- (5) Providing adequate care of children away from their homes in foster family homes or day care or other child care agencies or facilities.

As used in this chapter, child means a person less than eighteen years of age. [1979 c 155 § 76; 1977 ex.s. c 291 § 21; 1975-'76 2nd ex.s. c 71 § 3; 1971 ex.s. c 292 § 66; 1965 c 30 § 3.]

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

Effective dates—Severability—1977 ex.s. c 291: See notes following RCW 13.04.005.

Severability—1971 ex.s. c 292: See note following RCW 26.28.010.

74.13.031 Duties of department—Provision of child welfare services—Establishment of children's services advisory committee. The department shall have the duty to provide child welfare services as defined in RCW 74.13.020, and shall:

- (1) Develop, administer, supervise, and monitor a coordinated and comprehensive plan that establishes, aids,

and strengthens services for the protection and care of homeless, runaway, dependent, or neglected children.

(2) Develop a recruiting plan for recruiting an adequate number of prospective adoptive and foster homes, both regular and specialized, i.e. homes for children of ethnic minority, including Indian homes for Indian children, sibling groups, handicapped and emotionally disturbed, and annually submit the plan for review to the house and senate committees on social and health services. The plan shall include a section entitled "Foster Home Turn-Over, Causes and Recommendations."

(3) Investigate complaints of neglect, abuse, or abandonment of children, and on the basis of the findings of such investigation, offer child welfare services in relation to the problem to such parents, legal custodians, or persons serving in loco parentis, and/or bring the situation to the attention of an appropriate court, or another community agency: *Provided*, That an investigation is not required of nonaccidental injuries which are clearly not the result of a lack of care or supervision by the child's parents, legal custodians, or persons serving in loco parentis. If the investigation reveals that a crime may have been committed, the department shall notify the appropriate law enforcement agency.

(4) Offer, on a voluntary basis, family reconciliation services to families who are in conflict.

(5) Monitor out-of-home placements, on a timely and routine basis, to assure the safety, well-being, and quality of care being provided is within the scope of the intent of the legislature as defined in RCW 74.13.010 and 74.15.010, and annually submit a report delineating the results to the house and senate committees on social and health services.

(6) Have authority to accept custody of children from parents and to accept custody of children from juvenile courts, where authorized to do so under law, to provide child welfare services including placement for adoption, and to provide for the physical care of such children and make payment of maintenance costs if needed. Except where required by Public Law 95-608 (25 U.S.C. Sec. 1915), no private adoption agency which receives children for adoption from the department shall discriminate on the basis of race, creed, or color when considering applications in their placement for adoption.

(7) Have authority to provide temporary shelter to children who have run away from home and who are admitted to crisis residential centers.

(8) Have authority to purchase care for children; and shall follow in general the policy of using properly approved private agency services for the actual care and supervision of such children insofar as they are available, paying for care of such children as are accepted by the department as eligible for support at reasonable rates established by the department.

(9) Establish a children's services advisory committee which shall assist the secretary in the development of a partnership plan for utilizing resources of the public and private sectors, and advise on all matters pertaining to child welfare, day care, licensing of child care agencies, and services related thereto. At least one-third of the membership shall be composed of child care providers.

(10) Have authority to provide continued foster care or group care for individuals from eighteen through twenty years of age to enable them to complete their high school or vocational school program.

(11) Have authority within funds appropriated for foster care services to purchase care for Indian children who are in the custody of a federally recognized Indian tribe or tribally licensed child-placing agency pursuant to parental consent, tribal court order, or state juvenile court order; and the purchase of such care shall be subject to the same eligibility standards and rates of support applicable to other children for whom the department purchases care.

Notwithstanding any other provision of RCW 13.32A.170 through 13.32A.200 and RCW 74.13.032 through 74.13.036, or of this section all services to be provided by the department of social and health services under subsections (4), (6), and (7) of this section, subject to the limitations of these subsections, may be provided by any program offering such services funded pursuant to Titles II and III of the federal juvenile justice and delinquency prevention act of 1974 (P.L. No. 93-415; 42 U.S.C. 5634 et seq.; and 42 U.S.C. 5701 note as amended by P.L. 94-273, 94-503, and 95-115). [1987 c 505 § 69; 1987 c 170 § 10; 1983 c 246 § 4; 1982 c 118 § 3; 1981 c 298 § 16; 1979 ex.s. c 165 § 22; 1979 c 155 § 77; 1977 ex.s. c 291 § 22; 1975-'76 2nd ex.s. c 71 § 4; 1973 1st ex.s. c 101 § 2; 1967 c 172 § 17.]

Reviser's note: This section was amended by 1987 c 170 § 10 and by 1987 c 505 § 69, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—1987 c 170 §§ 10 and 11: "Sections 10 and 11 of this act shall take effect July 1, 1988." [1987 c 170 § 16.]

Severability—1987 c 170: See note following RCW 13.04.030.

Severability—1981 c 298: See note following RCW 13.32A.040.

Effective dates—Severability—1977 ex.s. c 291: See notes following RCW 13.04.005.

Severability—1967 c 172: See note following RCW 74.15.010.

Abuse of child or adult dependent person: Chapter 26.44 RCW.

Licensing of agencies caring for or placing children, expectant mothers, and developmentally disabled persons: Chapter 74.15 RCW.

74.13.032 Crisis residential centers, regional and others, number—Establishment—Staff—Duties—Facilities semi-secure. (1) The department shall establish, by contracts with private vendors, not less than eight regional crisis residential centers, which shall be structured group care facilities licensed under rules adopted by the department. Each regional center shall have an average of at least four adult staff members and in no event less than three adult staff members to every eight children. The staff shall be trained so that they may effectively counsel juveniles admitted to the centers, provide treatment, supervision, and structure to the juveniles, and carry out the responsibilities outlined in RCW 13.32A.090.

(2) The department shall, in addition to the regional facilities established under subsection (1) of this section, establish not less than thirty additional crisis residential centers pursuant to contract with licensed private group care or specialized foster home facilities. The staff at the

facilities shall be trained so that they may effectively counsel juveniles admitted to the centers, provide treatment, supervision, and structure to the juveniles, and carry out the responsibilities stated in RCW 13.32A.090. The responsibilities stated in RCW 13.32A.090 may, in any of the centers, be carried out by the department.

Crisis residential facilities shall be operated as semi-secure facilities. [1979 c 155 § 78.]

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

74.13.033 Crisis residential centers—Removal from, when—Services available—Unauthorized leave. (1) If a resident of a center becomes by his or her behavior disruptive to the facility's program, such resident may be immediately removed to a separate area within the facility and counseled on an individual basis until such time as the child regains his or her composure. The department may set rules and regulations establishing additional procedures for dealing with severely disruptive children on the premises, which procedures are consistent with the federal juvenile justice and delinquency prevention act of 1974 and regulations and clarifying instructions promulgated thereunder. Nothing in this section shall prohibit a center from referring any child who, as the result of a mental or emotional disorder, or intoxication by alcohol or other drugs, is suicidal, seriously assaultive or seriously destructive toward others, or otherwise similarly evidences an immediate need for emergency medical evaluation and possible care, to a community mental health center pursuant to *RCW 72.23.070 or to a mental health professional pursuant to chapter 71.05 RCW whenever such action is deemed appropriate and consistent with law.

(2) When the juvenile resides in this facility, all services deemed necessary to the juvenile's reentry to normal family life shall be made available to the juvenile as required by chapter 13.32A RCW. In providing these services, the facility shall:

- (a) Interview the juvenile as soon as possible;
- (b) Contact the juvenile's parents and arrange for a counseling interview with the juvenile and his or her parents as soon as possible;
- (c) Conduct counseling interviews with the juvenile and his or her parents, to the end that resolution of the child/parent conflict is attained and the child is returned home as soon as possible; and
- (d) Provide additional crisis counseling as needed, to the end that placement of the child in the crisis residential center will be required for the shortest time possible, but not to exceed seventy-two hours.

(3) A juvenile taking unauthorized leave from this residence may be apprehended and returned to it by law enforcement officers or other persons designated as having this authority as provided in RCW 13.32A.050. If returned to the facility after having taken unauthorized leave for a period of more than twenty-four hours a juvenile may be supervised by such a facility for a period, pursuant to this chapter, which, unless where otherwise provided, may not exceed seventy-two hours on the premises. Costs of housing juveniles admitted to crisis

residential centers shall be assumed by the department for a period not to exceed seventy-two hours. [1979 c 155 § 79.]

***Reviser's note:** RCW 72.23.070 was repealed by 1985 c 354 § 34, effective January 1, 1986. Later enactment, see chapter 71.34 RCW.

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

74.13.034 Crisis residential centers—Removal to another center—Placement in secure juvenile detention facility—Legislative intent. (1) A child taken into custody and taken to a crisis residential center established pursuant to RCW 74.13.032(2) may, if the center is unable to provide appropriate treatment, supervision, and structure to the child, be taken at department expense to another crisis residential center or the nearest regional crisis residential center. Placement in both centers shall not exceed seventy-two hours from the point of intake as provided in RCW 13.32A.130.

(2) A child taken into custody and taken to a crisis residential center established by this chapter may be placed physically by the department or the department's designee and, at departmental expense and approval, in a secure juvenile detention facility operated by the county in which the center is located for a maximum of forty-eight hours, including Saturdays, Sundays, and holidays, if the person in charge of the crisis residential center finds that the child is seriously assaultive or seriously destructive towards others and the center is unable to provide appropriate supervision and structure. Any child who takes unauthorized leave from the center, if the person in charge of the center cannot provide supervision and structure adequate to ensure that the child will not again take unauthorized leave, may be taken to a secure juvenile detention facility subject to the provisions of this section: *Provided*, That juveniles placed in such a facility pursuant to this section may not, to the extent possible, come in contact with alleged or convicted juvenile or adult offenders.

(3) Any child placed in secure detention pursuant to this section shall, during the period of confinement, be provided with appropriate treatment by the department or the department's designee, which shall include the services defined in RCW 74.13.033(2). If the child placed in secure detention is not returned home or if an alternative living arrangement agreeable to the parent and the child is not made within twenty-four hours after the child's admission, the child shall be taken at the department's expense to a crisis residential center. Placement in the crisis residential center or centers plus placement in juvenile detention shall not exceed seventy-two hours from the point of intake as provided in RCW 13.32A.130.

(4) Juvenile detention facilities used pursuant to this section shall first be certified by the department to ensure that juveniles placed in the facility pursuant to this section are provided with living conditions suitable to the well-being of the child. Where space is available, juvenile courts, when certified by the department to do so, shall provide secure placement for juveniles pursuant to this section, at department expense.

(5) It is the intent of the legislature that by July 1, 1982, crisis residential centers, supplemented by community mental health programs and mental health professionals, will be able to respond appropriately to children admitted to centers under this chapter and will be able to respond to the needs of such children with appropriate treatment, supervision, and structure. [1981 c 298 § 17; 1979 ex.s. c 165 § 21; 1979 c 155 § 80.]

Severability—1981 c 298: See note following RCW 13.32A.040.

Effective date—**Severability**—1979 c 155: See notes following RCW 13.04.011.

Child admitted to crisis residential center—Maximum hours of detention—Reconciliation effort—Information to parents upon retaining custody—Written statement of services and rights: RCW 13.32A.130.

74.13.035 Crisis residential centers—Annual records, contents—Multiple licensing. Crisis residential centers shall compile yearly records which shall be transmitted to the department and which shall contain information regarding population profiles of the children admitted to the centers during each past calendar year. Such information shall include but shall not be limited to the following:

- (1) The number, age, and sex of children admitted to custody;
- (2) Who brought the children to the center;
- (3) Services provided to children admitted to the center;
- (4) The circumstances which necessitated the children being brought to the center;
- (5) The ultimate disposition of cases;
- (6) The number of children admitted to custody who ran away from the center and their ultimate disposition, if any;
- (7) Length of stay.

The department may require the provision of additional information and may require each center to provide all such necessary information in a uniform manner.

A center may, in addition to being licensed as such, also be licensed as a family foster home or group care facility and may house on the premises juveniles assigned for foster or group care. [1979 c 155 § 81.]

Effective date—**Severability**—1979 c 155: See notes following RCW 13.04.011.

74.13.036 Implementation of chapters 13.32A and 13.34 RCW—Report to local governments. (1) The department of social and health services shall oversee implementation of chapter 13.34 RCW and chapter 13.32A RCW. The oversight shall be comprised of working with affected parts of the criminal justice and child care systems as well as with local government, legislative, and executive authorities to effectively carry out these chapters. The department shall work with all such entities to ensure that chapters 13.32A and 13.34 RCW are implemented in a uniform manner throughout the state.

(2) The department shall, by January 1, 1986, develop a plan and procedures, in cooperation with the state-wide advisory committee, to insure the full implementation of the provisions of chapter 13.32A RCW. Such plan and procedures shall include but are not limited to:

(a) Procedures defining and delineating the role of the department and juvenile court with regard to the execution of the alternative residential placement process;

(b) Procedures for designating department staff responsible for family reconciliation services;

(c) Procedures assuring enforcement of contempt proceedings in accordance with RCW 13.32A.170 and 13.32A.250; and

(d) Procedures for the continued education of all individuals in the criminal juvenile justice and child care systems who are affected by chapter 13.32A RCW, as well as members of the legislative and executive branches of government.

The plan and procedures required under this subsection shall be submitted to the appropriate standing committees of the legislature by January 1, 1986.

There shall be uniform application of the procedures developed by the department and juvenile court personnel, to the extent practicable. Local and regional differences shall be taken into consideration in the development of procedures required under this subsection.

(3) In addition to its other oversight duties, the department shall:

(a) Identify and evaluate resource needs in each region of the state;

(b) Disseminate information collected as part of the oversight process to affected groups and the general public;

(c) Educate affected entities within the juvenile justice and child care systems, local government, and the legislative branch regarding the implementation of chapters 13.32A and 13.34 RCW;

(d) Review complaints concerning the services, policies, and procedures of those entities charged with implementing chapters 13.32A and 13.34 RCW; and

(e) Report any violations and misunderstandings regarding the implementation of chapters 13.32A and 13.34 RCW.

(4) The secretary shall submit a quarterly report to the appropriate local government entities.

(5) Where appropriate, the department shall request opinions from the attorney general regarding correct construction of these laws. [1989 c 175 § 147; 1987 c 505 § 70; 1985 c 257 § 11; 1981 c 298 § 18; 1979 c 155 § 82.]

Effective date—1989 c 175: See note following RCW 34.05.010.

Severability—1985 c 257: See note following RCW 13.34.165.

Severability—1981 c 298: See note following RCW 13.32A.040.

Effective date—**Severability**—1979 c 155: See notes following RCW 13.04.011.

74.13.040 Rules and regulations for coordination of services. See RCW 74.12.280.

74.13.050 Day care—Rules and regulations governing the provision of day care as a part of child welfare services. See RCW 74.12.340.

74.13.055 Rules limiting foster care—Cooperation with private sector—Report. The department shall

adopt rules pursuant to chapter 34.05 RCW which establish goals as to the maximum number of children who will remain in foster care for a period of longer than twenty-four months. The department shall also work cooperatively with the major private child care providers to assure that a partnership plan for utilizing the resources of the public and private sector in all matters pertaining to child welfare is developed and implemented. The department shall report to the legislature, no later than January 15, 1983, on the implementation of the partnership plan. [1982 c 118 § 1.]

74.13.060 Secretary as custodian of funds of person placed with department—Authority—Limitations—Termination. The secretary or his designees or delegates shall be the custodian without compensation of such moneys and other funds of any person which may come into the possession of the secretary during the period such person is placed with the department of social and health services pursuant to chapter 74.13 RCW. As such custodian, the secretary shall have authority to disburse moneys from the person's funds for the following purposes only and subject to the following limitations:

(1) The secretary may disburse any of the funds belonging to such person for such personal needs of such person as the secretary may deem proper and necessary.

(2) The secretary may apply such funds against the amount of public assistance otherwise payable to such person. This includes applying, as reimbursement, any benefits, payments, funds, or accrual paid to or on behalf of said person from any source against the amount of public assistance expended on behalf of said person during the period for which the benefits, payments, funds or accruals were paid.

(3) All funds held by the secretary as custodian may be deposited in a single fund, the receipts and expenditures therefrom to be accurately accounted for by him on an individual basis. Whenever, the funds belonging to any one person exceed the sum of five hundred dollars, the secretary may deposit said funds in a savings and loan association account on behalf of that particular person.

(4) When the conditions of placement no longer exist and public assistance is no longer being provided for such person, upon a showing of legal competency and proper authority, the secretary shall deliver to such person, or the parent, person, or agency legally responsible for such person, all funds belonging to the person remaining in his possession as custodian, together with a full and final accounting of all receipts and expenditures made therefrom.

(5) The appointment of a guardian for the estate of such person shall terminate the secretary's authority as custodian of said funds upon receipt by the secretary of a certified copy of letters of guardianship. Upon the guardian's request, the secretary shall immediately forward to such guardian any funds of such person remaining in the secretary's possession together with full and final accounting of all receipts and expenditures made therefrom. [1971 ex.s. c 169 § 7.]

74.13.070 Moneys in possession of secretary not subject to certain proceedings. None of the moneys or other funds which come into the possession of the secretary under *this 1971 amendatory act shall be subject to execution, levy, attachment, garnishment or other legal process or other operation of any bankruptcy or insolvency law. [1971 ex.s. c 169 § 8.]

*Reviser's note: "this 1971 amendatory act" consists of RCW 74.08.025, 74.08.030, 74.08.050, 74.09.510, 74.10.020, 74.12.030, 74.13.060, 74.13.070, 74.16.030, 74.36.110, 74.36.120, and 74.36.130.

74.13.080 Requirements prior to payment for child in group care. The department shall not make payment for any child in group care placement unless the group home is licensed and the department has the custody of the child and the authority to remove the child in a cooperative manner after at least seventy-two hours notice to the child care provider; such notice may be waived in emergency situations. However, this requirement shall not be construed to prohibit the department from making or mandate the department to make payment for Indian children placed in facilities licensed by federally recognized Indian tribes pursuant to chapter 74.15 RCW. [1987 c 170 § 11; 1982 c 118 § 2.]

Effective date—1987 c 170 §§ 10 and 11: See note following RCW 74.13.031.

Severability—1987 c 170: See note following RCW 13.04.030.

74.13.085 Child care services—Declaration of policy. It shall be the policy of the state of Washington to:

(1) Recognize the family as the most important social and economic unit of society and support the central role parents play in child rearing. All parents are encouraged to care for and nurture their children through the traditional methods of parental care at home. However, there has been a dramatic increase in participation of women in the workforce which has made the availability of quality, affordable child care a critical concern for the state and its citizens. There are not enough child care services and facilities to meet the needs of working parents, the costs of care are often beyond the resources of working parents, and child care facilities are not located conveniently to work places and neighborhoods. Parents are encouraged to participate fully in the effort to improve the quality of child care services.

(2) Promote a variety of culturally and developmentally appropriate child care settings and services of the highest possible quality in accordance with the basic principle of continuity of care. These settings shall include, but not be limited to, family day care homes, mini-centers, centers and schools.

(3) Promote the growth, development and safety of children by working with community groups including providers and parents to establish standards for quality service, training of child care providers, fair and equitable monitoring, and salary levels commensurate with provider responsibilities and support services.

(4) Promote equal access to quality, affordable, socio-economically integrated child care for all children and families.

(5) Facilitate broad community and private sector involvement in the provision of quality child care services to foster economic development and assist industry. [1989 c 381 § 2; 1988 c 213 § 1.]

Findings—1989 c 381: "The legislature finds that the increasing difficulty of balancing work life and family needs for parents in the workforce has made the availability of quality, affordable child care a critical concern for the state and its citizens. The prospect for labor shortages resulting from the aging of the population and the importance of the quality of the workforce to the competitiveness of Washington businesses make the availability of quality child care an important concern for the state and its businesses.

The legislature further finds that making information on child care options available to businesses can help the market for child care adjust to the needs of businesses and working families. The legislature further finds that investments are necessary to promote partnerships between the public and private sectors, educational institutions, and local governments to increase the supply, affordability, and quality of child care in the state." [1989 c 381 § 1.]

Severability—1989 c 381: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1989 c 381 § 7.]

Severability—1988 c 213: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1988 c 213 § 5.]

74.13.090 Child care coordinating committee. (1) There is established a child care coordinating committee to provide coordination and communication between state agencies responsible for child care and early childhood education services. The child care coordinating committee shall be composed of not less than seventeen nor more than thirty members who shall include:

(a) One representative each from the department of social and health services, the department of community development, the office of the superintendent of public instruction, and any other agency having responsibility for regulation, provision, or funding of child care services in the state;

(b) One representative from the department of labor and industries;

(c) One representative from the department of trade and economic development;

(d) One representative from the department of revenue;

(e) One representative from the employment security department;

(f) At least one representative of family home child care providers and one representative of center care providers;

(g) At least one representative of early childhood development experts;

(h) At least one representative of school districts and teachers involved in the provision of child care and pre-school programs;

(i) At least one parent education specialist;

(j) At least one representative of resource and referral programs;

(k) One pediatric or other health professional;

(l) At least one representative of college or university child care providers;

(m) At least one representative of a citizen group concerned with child care;

(n) At least one representative of a labor organization;

(o) At least one representative of a head start – early childhood education assistance program agency;

(p) At least one employer who provides child care assistance to employees;

(q) Parents of children receiving, or in need of, child care, half of whom shall be parents needing or receiving subsidized child care and half of whom shall be parents who are able to pay for child care.

The named state agencies shall select their representative to the child care coordinating committee. The department of social and health services shall select the remaining members, considering recommendations from lists submitted by professional associations and other interest groups until such time as the committee adopts a member selection process. The department shall use any federal funds which may become available to accomplish the purposes of RCW 74.13.085 through 74.13.095.

The committee shall elect officers from among its membership and shall adopt policies and procedures specifying the lengths of terms, methods for filling vacancies, and other matters necessary to the ongoing functioning of the committee. The secretary of social and health services shall appoint a temporary chair until the committee has adopted policies and elected a chair accordingly. Child care coordinating committee members shall be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060.

(2) To the extent possible within available funds, the child care coordinating committee shall:

(a) Serve as an advisory coordinator for all state agencies responsible for early childhood or child care programs for the purpose of improving communication and interagency coordination;

(b) Annually review state programs and make recommendations to the agencies and the legislature which will maximize funding and promote furtherance of the policies set forth in RCW 74.13.085. Reports shall be provided to all appropriate committees of the legislature by December 1 of each year. At a minimum the committee shall:

(i) Review and propose changes to the child care subsidy system in its December 1989 report;

(ii) Review alternative models for child care service systems, in the context of the policies set forth in RCW 74.13.085, and recommend to the legislature a new child care service structure; and

(iii) Review options and make recommendations on the feasibility of establishing an allocation for day care facilities when constructing state buildings;

(c) Review department of social and health services administration of the child care expansion grant program described in RCW 74.13.095;

(d) Review rules regarding child care facilities and services for the purpose of identifying those which unnecessarily obstruct the availability and affordability of child care in the state;

(e) Advise and assist the child care resource coordinator in implementing his or her duties under RCW 74.13.0903; and

(f) Perform other functions to improve the quantity and quality of child care in the state, including compliance with existing and future prerequisites for federal funding. [1989 c 381 § 3; 1988 c 213 § 2.]

Findings—Severability—1989 c 381: See notes following RCW 74.13.085.

Severability—1988 c 213: See note following RCW 74.13.085.

74.13.0901 Child care partnership. The child care partnership is established as a subcommittee of the child care coordinating committee to increase employer assistance and involvement in child care, and to foster cooperation between business and government to improve the availability, quality, and affordability of child care services in the state.

(1) The partnership shall have nine members who may be drawn from the membership of the child care coordinating committee. The secretary of the department of social and health services shall appoint the partnership members, who shall include:

(a) At least two members representing labor organizations;

(b) At least one member representing each of the following: Businesses with one through fifty employees, businesses with fifty-one through two hundred employees, and businesses with more than two hundred employees; and

(c) At least one representative of local child care resource and referral organizations.

(2) The partnership shall follow the same policies and procedures adopted by the child care coordinating committee, and members shall be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060.

(3) To the extent possible within available funds, the partnership shall:

(a) Review and propose statutory and administrative changes to encourage employer involvement in child care and partnerships between employers and the public sector to increase the quantity, quality, and affordability of child care services and facilities in this state;

(b) Review public and private child care programs with the purpose of enhancing communications and coordination among business, labor, public agencies, and child care providers in order to encourage employers to develop and implement child care services for their employees;

(c) Evaluate alternative employer-assisted child care service systems, in the context of the policies set forth in RCW 74.13.085, and recommend to the legislature and local governments ways to encourage and enhance employer-assisted child care services in the state, including statutory and administrative changes;

(d) Evaluate the impact of workplace personnel practices and policies, including flexible work schedules, on the ability of parents to access or provide care for their children, and make recommendations to employers and the legislature in this regard;

(e) Study the liability insurance issues related to the provision of employer-assisted child care and report the findings and recommendations to the legislature; and

(f) Advise and assist the employer liaison in the implementation of its duties under RCW 74.13.0902.

All findings and recommendations of the partnership to the legislature shall be incorporated into the annual report of the child care coordinating committee required under RCW 74.13.090. [1989 c 381 § 4.]

Findings—Severability—1989 c 381: See notes following RCW 74.13.085.

74.13.0902 Child care partnership employer liaison. An employer liaison position is established in the department of social and health services to be colocated at the business assistance center established under RCW 43.31.083. The employer liaison shall, within appropriated funds:

(1) Staff and assist the child care partnership in the implementation of its duties under RCW 74.13.0901;

(2) Provide technical assistance to employers regarding child care services, working with and through local resource and referral organizations whenever possible. Such technical assistance shall include at a minimum:

(a) Assessing the child care needs of employees and prospective employees;

(b) Reviewing options available to employers interested in increasing access to child care for their employees;

(c) Developing techniques to permit small businesses to increase access to child care for their employees;

(d) Reviewing methods of evaluating the impact of child care activities on employers; and

(e) Preparing, collecting, and distributing current information for employers on options for increasing involvement in child care; and

(3) Provide assistance to local child care resource and referral organizations to increase their capacity to provide quality technical assistance to employers in their community. [1989 c 381 § 6.]

Findings—Severability—1989 c 381: See notes following RCW 74.13.085.

74.13.0903 Child care resources coordinator. The office of the child care resources coordinator is established to operate under the authority of the department of social and health services. The office shall, within appropriated funds:

(1) Staff and assist the child care coordinating committee in the implementation of its duties under RCW 74.13.090;

(2) Work with local governments, nonprofit organizations, businesses, and community child care advocates to create local child care resource and referral organizations. These organizations may carry out needs assessments, resource development, provider training, technical assistance, and parent information and training;

(3) Actively seek public and private money for distribution as grants to potential or existing local child care resource and referral organizations. No grant shall be distributed that is greater than twenty-five thousand dollars;

(4) Adopt rules regarding the application for and distribution of grants to local child care resource and referral organizations. The rules shall, at a minimum, require an applicant to submit a plan for achieving the following objectives:

(a) Provide parents with information about child care resources, including location of services and subsidies;

(b) Carry out child care provider recruitment and training programs;

(c) Offer support services, such as parent and provider seminars, toy-lending libraries, and substitute banks;

(d) Provide information for businesses regarding child care supply and demand;

(e) Advocate for increased public and private sector resources devoted to child care; and

(f) Provide technical assistance to employers regarding employee child care services;

(5) Provide staff support and technical assistance to local child care resource and referral organizations;

(6) Organize the local child care resource and referral organizations into a state-wide system;

(7) Maintain a state-wide child care referral data bank and work with department of social and health services licensors to provide information to local child care resource and referral organizations about licensed child care providers in the state;

(8) Through local resource and referral organizations, compile data about local child care needs and availability for future planning and development;

(9) Coordinate the provision of training and technical assistance to child care providers; and

(10) Collect and assemble information regarding the availability of insurance and of federal and other child care funding to assist state and local agencies, businesses, and other child care providers in offering child care services. [1989 c 381 § 5.]

Findings—Severability—1989 c 381: See notes following RCW 74.13.085.

74.13.095 Child care expansion grant fund. (1) The legislature recognizes that a severe shortage of child care exists to the detriment of all families and employers throughout the state. Many workers are unable to enter or remain in the work force due to a shortage of child care resources. The high costs of starting a child care business create a barrier to the creation of new slots, especially for children with special needs.

(2) A child care expansion grant fund is created in the custody of the secretary of the department of social and health services. Grants shall be awarded on a one-time only basis to persons, organizations, or schools needing assistance to start a child care center or mini-center as defined by the department by rule, or to existing licensed child care providers, including family home providers, for the purpose of making capital improvements in order to accommodate handicapped children as defined under chapter 72.40 RCW, sick children, or infant care, or children needing night time care. No grant may exceed ten thousand dollars. Start-up costs shall not include operational costs after the first three months of business.

(3) Child care expansion grants shall be awarded on the basis of need for the proposed services in the community, within appropriated funds.

(4) The department shall adopt rules under chapter 34.05 RCW setting forth criteria, application procedures, and methods to assure compliance with the purposes described in this section. [1988 c 213 § 3.]

Severability—1988 c 213: See note following RCW 74.13.085.

ADOPTION SUPPORT DEMONSTRATION ACT OF 1971

74.13.100 State policy enunciated. It is the policy of this state to enable the secretary to charge fees for certain services to adoptive parents who are able to pay for such services.

It is, however, also the policy of this state that the secretary of the department of social and health services shall be liberal in waiving, reducing, or deferring payment of any such fee to the end that adoptions shall be encouraged in cases where prospective adoptive parents lack means.

It is the policy of this state to encourage, within the limits of available funds, the adoption of certain hard to place children in order to make it possible for children living in, or likely to be placed in, foster homes or institutions to benefit from the stability and security of permanent homes in which such children can receive continuous parental care, guidance, protection, and love and to reduce the number of such children who must be placed or remain in foster homes or institutions until they become adults.

It is also the policy of this state to try, by means of the program of adoption support authorized in RCW 26.33.320 and 74.13.100 through 74.13.145, to reduce the total cost to the state of foster home and institutional care. [1985 c 7 § 133; 1971 ex.s. c 63 § 1.]

74.13.103 Prospective adoptive parent's fee for cost of adoption services. When a child proposed for adoption is placed with a prospective adoptive parent the department may charge such parent a fee in payment or part payment of such adoptive parent's part of the cost of the adoption services rendered and to be rendered by the department.

In charging such fees the department shall treat a husband and wife as a single prospective adoptive parent.

Each such fee shall be fixed according to a sliding scale based on the ability to pay of the prospective adoptive parent or parents.

Such fee scale shall be annually fixed by the secretary after considering the recommendations of the committee designated by the secretary to advise him on child welfare and pursuant to the regulations to be issued by the secretary in accordance with the provisions of Title 34 RCW.

The secretary may waive, defer, or provide for payment in installments without interest of, any such fee

whenever in his judgment payment or immediate payment would cause economic hardship to such adoptive parent or parents.

Nothing in this section shall require the payment of a fee to the state of Washington in a case in which an adoption results from independent placement or placement by a licensed child-placing agency. [1971 ex.s. c 63 § 2.]

74.13.106 Disposition of Fees—Use—Federal funds—Gifts and grants. All fees paid for adoption services pursuant to RCW 26.33.320 and 74.13.100 through 74.13.145 shall be credited to the general fund. Expenses incurred in connection with supporting the adoption of hard to place children shall be paid by warrants drawn against such appropriations as may be available. The secretary may for such purposes, contract with any public agency or licensed child placing agency and/or adoptive parent and is authorized to accept funds from other sources including federal, private, and other public funding sources to carry out such purposes.

The secretary shall actively seek, where consistent with the policies and programs of the department, and shall make maximum use of, such federal funds as are or may be made available to the department for the purpose of supporting the adoption of hard to place children. The secretary may, if permitted by federal law, deposit federal funds for adoption support, aid to adoptions, or subsidized adoption in the general fund and may use such funds, subject to such limitations as may be imposed by federal or state law, to carry out the program of adoption support authorized by RCW 26.33.320 and 74.13.100 through 74.13.145. [1985 c 7 § 134; 1979 ex.s. c 67 § 7; 1975 c 53 § 1; 1973 c 61 § 1; 1971 ex.s. c 63 § 3.]

Severability—1979 ex.s. c 67: See note following RCW 19.28.330.

74.13.109 Rules and regulations—Agreements for disbursements from appropriations available from the general fund, criteria. The secretary shall issue rules and regulations to assist in the administration of the program of adoption support authorized by RCW 26.33.320 and 74.13.100 through 74.13.145.

Disbursements from the appropriations available from the general fund shall be made pursuant to such rules and regulations and pursuant to agreements conforming thereto to be made by the secretary with parents for the purpose of supporting the adoption of children in, or likely to be placed in, foster homes or child caring institutions who are found by the secretary to be difficult to place in adoption because of physical or other reasons; including, but not limited to, physical or mental handicap, emotional disturbance, ethnic background, language, race, color, age, or sibling grouping.

Such agreements shall meet the following criteria:

(1) The child whose adoption is to be supported pursuant to such agreement shall be or have been a child hard to place in adoption.

(2) Such agreement must relate to a child who was or is residing in a foster home or child-caring institution or

a child who, in the judgment of the secretary, is both eligible for, and likely to be placed in, either a foster home or a child-caring institution.

(3) Such agreement shall provide that adoption support shall not continue beyond the time that the adopted child reaches eighteen years of age, becomes emancipated, dies, or otherwise ceases to need support, provided that if the secretary shall find that continuing dependency of such child after such child reaches eighteen years of age warrants the continuation of support pursuant to RCW 26.33.320 and 74.13.100 through 74.13.145 the secretary may do so, subject to all the provisions of RCW 26.33.320 and 74.13.100 through 74.13.145, including annual review of the amount of such support.

(4) Any prospective parent who is to be a party to such agreement shall be a person who, while having the character, judgment, sense of responsibility, and disposition which make him or her suitable as an adoptive parent of such child, lacks the financial means fully to care for such hard to place child. [1985 c 7 § 135; 1982 c 118 § 4; 1979 ex.s. c 67 § 8; 1971 ex.s. c 63 § 4.]

Severability—1979 ex.s. c 67: See note following RCW 19.28.330.

74.13.112 Factors determining payments or adjustment in standards. The factors to be considered by the secretary in setting the amount of any payment or payments to be made pursuant to RCW 26.33.320 and 74.13.100 through 74.13.145 and in adjusting standards hereunder shall include: The size of the family including the adoptive child, the usual living expenses of the family, the special needs of any family member including education needs, the family income, the family resources and plan for savings, the medical and hospitalization needs of the family, the family's means of purchasing or otherwise receiving such care, and any other expenses likely to be needed by the child to be adopted.

The amounts paid for the support of a child pursuant to RCW 26.33.320 and 74.13.100 through 74.13.145 may vary from family to family and from year to year. Due to changes in economic circumstances or the needs of the child such payments may be discontinued and later resumed.

Payments under RCW 26.33.320 and 74.13.100 through 74.13.145 may be continued by the secretary subject to review as provided for herein, if such parent or parents having such child in their custody establish their residence in another state or a foreign jurisdiction.

In fixing the standards to govern the amount and character of payments to be made for the support of adopted children pursuant to RCW 26.33.320 and 74.13.100 through 74.13.145 and before issuing rules and regulations to carry out the provisions of RCW 26.33.320 and 74.13.100 through 74.13.145, the secretary shall consider the comments and recommendations of the committee designated by the secretary to advise him with respect to child welfare. [1985 c 7 § 136; 1971 ex.s. c 63 § 5.]

74.13.115 Both continuing payments and lump sum payments authorized. To carry out the program authorized by RCW 26.33.320 and 74.13.100 through 74.13.145, the secretary may make continuing payments or lump sum payments of adoption support. In lieu of continuing payments, or in addition to them, the secretary may make one or more specific lump sum payments for or on behalf of a hard to place child either to the adoptive parents or directly to other persons to assist in correcting any condition causing such child to be hard to place for adoption.

After determination by the secretary of the amount of a payment or the initial amount of continuing payments, the prospective parent or parents who desire such support shall sign an agreement with the secretary providing for the payment, in the manner and at the time or times prescribed in regulations to be issued by him subject to the provisions of RCW 26.33.320 and 74.13.100 through 74.13.145, of the amount or amounts of support so determined.

Payments shall be subject to review as provided in RCW 26.33.320 and 74.13.100 through 74.13.145. [1985 c 7 § 137; 1971 ex.s. c 63 § 6.]

74.13.118 Review of support payments. At least annually the secretary shall review the need of any adoptive parent or parents receiving continuing support pursuant to RCW 26.33.320 and 74.13.100 through 74.13.145, or the need of any parent who is to receive more than one lump sum payment where such payments are to be spaced more than one year apart. Such review shall be made not later than the anniversary date of the adoption support agreement.

At the time of such annual review and at other times during the year when changed conditions, including variations in medical opinions, prognosis and costs, are deemed by the secretary to warrant such action, appropriate adjustments in payments shall be made based upon changes in the needs of the child, in the adoptive parents' income, resources, and expenses for the care of such child or other members of the family, including medical and/or hospitalization expense not otherwise covered by or subject to reimbursement from insurance or other sources of financial assistance.

Any parent who is a party to such an agreement may at any time in writing request, for reasons set forth in such request, a review of the amount of any payment or the level of continuing payments. Such review shall be begun not later than thirty days from the receipt of such request. Any adjustment may be made retroactive to the date such request was received by the secretary. If such request is not acted on within thirty days after it has been received by the secretary, such parent may invoke his rights under the hearing provisions set forth in RCW 74.13.127. [1985 c 7 § 138; 1971 ex.s. c 63 § 7.]

74.13.121 Copy of adoptive parent's federal income tax return to be filed—Additional financial information. So long as any adoptive parent is receiving support pursuant to RCW 26.33.320 and 74.13.100 through 74.13.145 he shall, not later than two weeks after it is filed

with the United States government, file with the secretary a copy of his federal income tax return. Such return and any information thereon shall be marked by the secretary "confidential", shall be used by the secretary solely for the purposes of RCW 26.33.320 and 74.13.100 through 74.13.145, and shall not be revealed to any other person, institution or agency, public or private, including agencies of the United States government, other than a superior court, judge or commissioner before whom a petition for adoption of a child being supported or to be supported pursuant to RCW 26.33.320 and 74.13.100 through 74.13.145 is then pending.

In carrying on the review process authorized by RCW 26.33.320 and 74.13.100 through 74.13.145 the secretary may require the adoptive parent or parents to disclose such additional financial information, not privileged, as may enable him to make determinations and adjustments in support to the end that the purposes and policies of this state expressed in RCW 74.13.100 may be carried out, provided that no adoptive parent or parents shall be obliged, by virtue of this section, to sign any agreement or other writing waiving any constitutional right or privilege nor to admit to his or her home any agent, employee, or official of any department of this state, or of the United States government.

Such information shall be marked "confidential" by the secretary, shall be used by him solely for the purposes of RCW 26.33.320 and 74.13.100 through 74.13.145, and shall not be revealed to any other person, institution, or agency, public or private, including agencies of the United States government other than a superior court judge or commission before whom a petition for adoption of a child being supported or to be supported pursuant to RCW 26.33.320 and 74.13.100 through 74.13.145 is then pending. [1985 c 7 § 139; 1971 ex.s. c 63 § 8.]

74.13.124 Agreements as contracts within state and federal Constitutions—State's continuing obligation. An agreement for adoption support made pursuant to *RCW 26.32.115 before January 1, 1985, or RCW 26.33.320 and 74.13.100 through 74.13.145, although subject to review and adjustment as provided for herein, shall, as to the standard used by the secretary in making such review or reviews and any such adjustment, constitute a contract within the meaning of section 10, Article I of the United States Constitution and section 23, Article I of the state Constitution. For that reason once such an agreement has been made any review of and adjustment under such agreement shall as to the standards used by the secretary, be made only subject to the provisions of RCW 26.33.320 and 74.13.100 through 74.13.145 and such rules and regulations relating thereto as they exist on the date of the initial determination in connection with such agreement or such more generous standard or parts of such standard as may hereafter be provided for by law or regulation. Once made such an agreement shall constitute a solemn undertaking by the state of Washington with such adoptive parent or parents. The termination of the effective period of RCW 26.33.320 and 74.13.100 through 74.13.145 or a decision

by the state or federal government to discontinue or reduce general appropriations made available for the purposes to be served by RCW 26.33.320 and 74.13.100 through 74.13.145, shall not affect the state's specific continuing obligations to support such adoptions, subject to such annual review and adjustment for all such agreements as have theretofore been entered into by the state.

The purpose of this section is to assure any such parent that, upon his consenting to assume the burdens of adopting a hard to place child, the state will not in future so act by way of general reduction of appropriations for the program authorized by RCW 26.33.320 and 74.13.100 through 74.13.145 or ratable reductions, to impair the trust and confidence necessarily reposed by such parent in the state as a condition of such parent taking upon himself the obligations of parenthood of a difficult to place child.

Should the secretary and any such adoptive parent differ as to whether any standard or part of a standard adopted by the secretary after the date of an initial agreement, which standard or part is used by the secretary in making any review and adjustment, is more generous than the standard in effect as of the date of the initial determination with respect to such agreement such adoptive parent may invoke his rights, including all rights of appeal under the fair hearing provisions, available to him under RCW 74.13.127. [1985 c 7 § 140; 1971 ex.s. c 63 § 9.]

*Reviser's note: RCW 26.32.115 was repealed by 1984 c 155 § 38, effective January 1, 1985.

74.13.127 Voluntary amendments to agreements—
Procedure when adoptive parties disagree. Voluntary amendments of any support agreement entered into pursuant to RCW 26.33.320 and 74.13.100 through 74.13.145 may be made at any time. In proposing any such amending action which relates to the amount or level of a payment or payments, the secretary shall, as provided in RCW 74.13.124, use either the standard which existed as of the date of the initial determination with respect to such agreement or any subsequent standard or parts of such standard which both parties to such agreement agree is more generous than those in effect as of the date of such initial agreement. If the parties do not agree to the level of support, the secretary shall set the level. The secretary shall give the adoptive parent or parents written notice of the determination. The adoptive parent or parents aggrieved by the secretary's determination have the right to an adjudicative proceeding. The proceeding is governed by RCW 74.08.080 and chapter 34.05 RCW, the Administrative Procedure Act. [1989 c 175 § 148; 1985 c 7 § 141; 1971 ex.s. c 63 § 10.]

Effective date—1989 c 175: See note following RCW 34.05.010.

74.13.130 Attorney's fee in adoption proceeding. If the secretary determines that a prospective adoptive parent or parents cannot, because of limited financial means, pay the cost or the full cost of an adoption proceeding for the adoption of a hard to place child who

would be eligible for support under RCW 26.33.320 and 74.13.100 through 74.13.145, the secretary may authorize the payment from the appropriations available from the general fund of all or part a reasonable attorney's fee to be determined by the superior court hearing the adoption and court costs. The clerk of the court shall furnish the secretary with a certified copy of the decree of adoption containing the finding as to such attorney's fee.

In evaluating any such prospective parent's ability to pay the secretary may use the same criteria for evaluating ability to pay which are to be used by him in waiving, reducing, or deferring fees pursuant to RCW 74.13.103 plus the burdens likely to be assumed by such parent even after adoption support is provided pursuant to RCW 26.33.320 and 74.13.100 through 74.13.145. [1985 c 7 § 142; 1979 ex.s. c 67 § 9; 1971 ex.s. c 63 § 11.]

Severability—1979 ex.s. c 67: See note following RCW 19.28.330.

74.13.133 Records—Confidentiality. The secretary shall keep such general records as are needed to evaluate the effectiveness of the program of adoption support authorized by RCW 26.33.320 and 74.13.100 through 74.13.145 in encouraging and effectuating the adoption of hard to place children. In so doing the secretary shall, however, maintain the confidentiality required by law with respect to particular adoptions. [1985 c 7 § 143; 1971 ex.s. c 63 § 13.]

74.13.136 Recommendations for support of the adoption of certain children. Any child-caring agency or person having a child in foster care or institutional care and wishing to recommend to the secretary support of the adoption of such child as provided for in RCW 26.33.320 and 74.13.100 through 74.13.145 may do so, and may include in its or his recommendation advice as to the appropriate level of support and any other information likely to assist the secretary in carrying out the functions vested in the secretary by RCW 26.33.320 and 74.13.100 through 74.13.145. Such agency may, but is not required to, be retained by the secretary to make the required preplacement study of the prospective adoptive parent or parents. [1985 c 7 § 144; 1971 ex.s. c 63 § 14.]

74.13.139 "Secretary" and "department" defined. As used in RCW 26.33.320 and 74.13.100 through 74.13.145 the following definitions shall apply:

- (1) "Secretary" means the secretary of the department of social and health services or his designee.
- (2) "Department" means the department of social and health services. [1985 c 7 § 145; 1971 ex.s. c 63 § 15.]

74.13.145 Short title—1971 act. RCW 26.33.320 and 74.13.100 through 74.13.145 may be known and cited as the "Adoption Support Demonstration Act of 1971". [1985 c 7 § 146; 1971 ex.s. c 63 § 17.]

74.13.200 Demonstration project for protection, care, and treatment of children who risk abuse or neglect. The department of social and health services shall conduct a

two-year demonstration project for the purpose of contracting with an existing day care center to provide for the protection, care, and treatment of children who are at risk of being abused or neglected. The children who shall be served by this project shall range in age from birth to twenty-four months. The client population served shall not exceed thirty children at any one time. [1979 ex.s. c 248 § 1.]

74.13.210 Project day care center—Definition. For the purposes of RCW 74.13.200 through 74.13.230 "day care center" means an agency, other than a residence, which regularly provides care for children for any part of the twenty-four hour day. No day care center shall be located in a private family residence unless that portion of the residence to which the children have access is used exclusively for the children during the hours the center is in operation or is separate from the usual living quarters of the family. [1979 ex.s. c 248 § 2.]

74.13.220 Project services. The services provided through this project shall include:

- (1) Transportation to and from the child's home;
- (2) Daily monitoring of the child's physical and emotional condition;
- (3) Developmentally oriented programs designed to meet the unique needs of each child in order to overcome the effects of parental abuse or neglect;
- (4) Family counseling and treatment; and
- (5) Evaluation by the department of social and health services assessing the efficiency and effectiveness of day care centers operated under the project. [1979 ex.s. c 248 § 3.]

74.13.230 Project shall utilize community services. The department of social and health services shall utilize existing community services and promote cooperation between the services in implementing the intent of RCW 74.13.200 through 74.13.230. [1979 ex.s. c 248 § 4.]

74.13.240 Implementation and enforcement of juvenile justice laws—Reports. See RCW 13.04.460.

74.13.900 Severability—1965 c 30. If any provision of this chapter, or its application to any person or circumstance is held invalid, the remainder of the chapter, or the application of the provision to other persons or circumstances is not affected. [1965 c 30 § 6.]

Chapter 74.14A

CHILDREN AND FAMILY SERVICES

Sections

- 74.14A.010 Legislative declaration.
 74.14A.020 Services for emotionally disturbed and mentally ill children, potentially dependent children, and families-in-conflict.
 74.14A.030 Treatment of juvenile offenders—Nonresidential community-based programs.
 74.14A.040 Treatment of juvenile offenders—Involvement of family unit.
 74.14A.900 Short title—1983 c 192.

74.14A.901 Severability—1983 c 192.

74.14A.010 Legislative declaration. The legislature reaffirms its declarations under RCW 13.34.020 that the family unit is the fundamental resource of American life which should be nurtured and that the family unit should remain intact in the absence of compelling evidence to the contrary. The legislature declares that the goal of serving emotionally disturbed and mentally ill children, potentially dependent children, and families-in-conflict in their own homes to avoid out-of-home placement of the child, when that form of care is premature, unnecessary, or inappropriate, is a high priority of this state. [1983 c 192 § 1.]

74.14A.020 Services for emotionally disturbed and mentally ill children, potentially dependent children, and families-in-conflict. The department of social and health services shall address the needs of emotionally disturbed and mentally ill children, potentially dependent children, and families-in-conflict by:

(1) Serving children and families as a unit in the least restrictive setting available and in close proximity to the family home, consistent with the best interests and special needs of the child;

(2) Ensuring that appropriate social and health services are provided to the family unit both prior to the removal of a child from the home and after family reunification;

(3) Developing and implementing comprehensive, preventive, and early intervention social and health services which have demonstrated the ability to delay or reduce the need for out-of-home placements and ameliorate problems before they become chronic or severe;

(4) Developing coordinated social and health services which:

(a) Identify problems experienced by children and their families early and provide services which are adequate in availability, appropriate to the situation, and effective;

(b) Seek to bring about meaningful change before family situations become irreversibly destructive and before disturbed psychological behavioral patterns and health problems become severe or permanent;

(c) Serve children and families in their own homes thus preventing unnecessary out-of-home placement or institutionalization;

(d) Focus resources on social and health problems as they begin to manifest themselves rather than waiting for chronic and severe patterns of illness, criminality, and dependency to develop which require long-term treatment, maintenance, or custody;

(e) Reduce duplication of and gaps in service delivery;

(f) Improve planning, budgeting, and communication among all units of the department serving children and families; and

(g) Develop outcome standards for measuring the effectiveness of social and health services for children and families. [1983 c 192 § 2.]

Effective date—1983 c 192: "Sections 2 through 4 of this act shall take effect January 1, 1984." [1983 c 192 § 8.]

74.14A.030 Treatment of juvenile offenders—Nonresidential community-based programs. The department shall address the needs of juvenile offenders whose standard range sentences do not include commitment by developing nonresidential community-based programs designed to reduce the incidence of manifest injustice commitments when consistent with public safety. [1983 c 192 § 3.]

Effective date—1983 c 192: See note following RCW 74.14A.020.

74.14A.040 Treatment of juvenile offenders—Involvement of family unit. The department shall involve a juvenile offender's family as a unit in the treatment process. The department need not involve the family as a unit in cases when family ties have by necessity been irrevocably broken. When the natural parents have been or will be replaced by a foster family or guardian, the new family will be involved in the treatment process. [1983 c 192 § 4.]

Effective date—1983 c 192: See note following RCW 74.14A.020.

74.14A.900 Short title—1983 c 192. This act may be known and cited as the "children and family services act." [1983 c 192 § 6.]

74.14A.901 Severability—1983 c 192. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1983 c 192 § 7.]

Chapter 74.14B

CHILDREN'S SERVICES

Sections

74.14B.010	Children's services workers—Hiring and training.
74.14B.020	Foster parent training.
74.14B.030	Child abuse and neglect—Multidisciplinary teams.
74.14B.040	Child abuse and neglect—Therapeutic day care and treatment.
74.14B.050	Child abuse and neglect—Counseling referrals.
74.14B.900	Captions.
74.14B.901	Severability—1987 c 503.
74.14B.902	Effective date—1987 c 503.

74.14B.010 Children's services workers—Hiring and training. Caseworkers employed in children services shall meet minimum standards established by the department of social and health services. Comprehensive training for caseworkers shall be completed before such caseworkers are assigned to case-carrying responsibilities without direct supervision. Intermittent, part-time, and standby workers shall be subject to the same minimum standards and training. [1987 c 503 § 8.]

74.14B.020 Foster parent training. The department shall, within funds appropriated for this purpose, provide foster parent training as an ongoing part of the foster care program. The department shall contract for a variety of support services to foster parents to reduce isolation and stress, and to increase skills and confidence. [1987 c 503 § 11.]

[Title 74 RCW—p 48]

74.14B.030 Child abuse and neglect—Multidisciplinary teams. The department shall establish and maintain one or more multidisciplinary teams in each state region of the division of children and family services. The team shall consist of at least four persons, selected by the department, from professions which provide services to abused and neglected children and/or the parents of such children. The teams shall be available for consultation on all cases where a risk exists of serious harm to the child and where there is dispute over whether out-of-home placement is appropriate. [1987 c 503 § 12.]

74.14B.040 Child abuse and neglect—Therapeutic day care and treatment. The department shall, within funds appropriated for this purpose, provide therapeutic day care and day treatment to children who have been abused or neglected and meet program eligibility criteria. [1987 c 503 § 13.]

74.14B.050 Child abuse and neglect—Counseling referrals. The department of social and health services shall inform victims of child abuse and neglect and their families of the availability of state-supported counseling through the crime victims' compensation program, community mental health centers, domestic violence and sexual assault programs, and other related programs. The department shall assist victims with referrals to these services. [1987 c 503 § 14.]

74.14B.900 Captions. Section headings as used in this chapter do not constitute any part of the law. [1987 c 503 § 19.]

74.14B.901 Severability—1987 c 503. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1987 c 503 § 21.]

74.14B.902 Effective date—1987 c 503. This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1987. [1987 c 503 § 22.]

Chapter 74.15

AGENCIES FOR CARE OF CHILDREN, EXPECTANT MOTHERS, DEVELOPMENTALLY DISABLED

Sections

74.15.010	Declaration of purpose.
74.15.020	Definitions.
74.15.030	Powers and duties of secretary.
74.15.040	Licenses for foster-family homes required— Inspections.
74.15.050	Fire protection—Powers and duties of director of community development.
74.15.060	Health protection—Powers and duties of secretary of health.
74.15.070	Articles of incorporation and amendments—Copies to be furnished to department.

74.15.080	Access to agencies, records.
74.15.090	Licenses required for agencies.
74.15.100	License application, issuance, duration— Reclassification.
74.15.110	Renewal of licenses.
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74.15.130	Licenses—Denial, suspension, revocation, modifica- tion—Procedures.
74.15.140	Action against licensed or unlicensed agencies authorized.
74.15.150	Penalty for operating without license.
74.15.160	Continuation of existing licensing rules.
74.15.170	Agencies, homes conducted by religious organiza- tions—Application of chapter.
74.15.180	Designating home or facility as semi-secure facility.
74.15.190	Authority of Indian tribes to license agencies within res- ervations—Placement of children.
74.15.200	Child abuse and neglect prevention training to parents and day care providers.

Adoption: Chapter 26.33 RCW.

Adult dependent or developmentally disabled persons, abuse: Chapter 26.44 RCW.

*Alternative residential placement—Court act upon filing of peti-
tion—Child placement: RCW 13.32A.160.*

Child abuse: Chapter 26.44 RCW.

*Immunization program, applicability to day-care centers: RCW 28A-
.31.100 through 28A.31.120.*

Infants: Chapter 26.28 RCW.

Maternity homes: Chapter 18.46 RCW.

Uniform Parentage Act: Chapter 26.26 RCW.

74.15.010 Declaration of purpose. The purpose of chapter 74.15 RCW and RCW 74.13.031 is:

(1) To safeguard the well-being of children, expectant mothers and developmentally disabled persons receiving care away from their own homes;

(2) To strengthen and encourage family unity and to sustain parental rights and responsibilities to the end that foster care is provided only when a child's family, through the use of all available resources, is unable to provide necessary care;

(3) To promote the development of a sufficient number and variety of adequate child-care and maternity-care facilities, both public and private, through the cooperative efforts of public and voluntary agencies and related groups.

(4) To provide consultation to agencies caring for children, expectant mothers or developmentally disabled persons in order to help them to improve their methods of and facilities for care;

(5) To license agencies as defined in RCW 74.15.020 and to assure the users of such agencies, their parents, the community at large and the agencies themselves that adequate minimum standards are maintained by all agencies caring for children, expectant mothers and developmentally disabled persons. [1983 c 3 § 192; 1977 ex.s. c 80 § 70; 1967 c 172 § 1.]

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.

Severability—1967 c 172: "If any provision of this 1967 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1967 c 172 § 24.] For codification of 1967 c 172, see Codification Tables, Volume 0.

74.15.020 Definitions. For the purpose of chapter 74.15 RCW and RCW 74.13.031, and unless otherwise

clearly indicated by the context thereof, the following terms shall mean:

(1) "Department" means the state department of social and health services;

(2) "Secretary" means the secretary of social and health services;

(3) "Agency" means any person, firm, partnership, association, corporation, or facility which receives children, expectant mothers, or persons with developmental disabilities for control, care, or maintenance outside their own homes, or which places, arranges the placement of, or assists in the placement of children, expectant mothers, or persons with developmental disabilities for foster care or placement of children for adoption, and shall include the following irrespective of whether there is compensation to the agency or to the children, expectant mothers or persons with developmental disabilities for services rendered:

(a) "Group-care facility" means an agency, other than a foster-family home, which is maintained and operated for the care of a group of children on a twenty-four hour basis;

(b) "Child-placing agency" means an agency which places a child or children for temporary care, continued care, or for adoption;

(c) "Maternity service" means an agency which provides or arranges for care or services to expectant mothers, before or during confinement, or which provides care as needed to mothers and their infants after confinement;

(d) "Day-care center" means an agency which regularly provides care for a group of children for periods of less than twenty-four hours;

(e) "Foster-family home" means an agency which regularly provides care on a twenty-four hour basis to one or more children, expectant mothers, or persons with developmental disabilities in the family abode of the person or persons under whose direct care and supervision the child, expectant mother, or person with a developmental disability is placed;

(f) "Crisis residential center" means an agency which is a temporary protective residential facility operated to perform the duties specified in chapter 13.32A RCW, in the manner provided in RCW 74.13.032 through 74.13.036.

(4) "Agency" shall not include the following:

(a) Persons related by blood or marriage to the child, expectant mother, or persons with developmental disabilities in the following degrees: Parent, grandparent, brother, sister, stepparent, stepbrother, stepsister, uncle, aunt, and/or first cousin;

(b) Persons who are legal guardians of the child, expectant mother, or persons with developmental disabilities;

(c) Persons who care for a neighbor's or friend's child or children, with or without compensation, where the person does not engage in such activity on a regular basis, or where parents on a mutually cooperative basis exchange care of one another's children, or persons who have the care of an exchange student in their own home;

(d) Nursery schools or kindergartens which are engaged primarily in educational work with preschool children and in which no child is enrolled on a regular basis for more than four hours per day;

(e) Schools, including boarding schools, which are engaged primarily in education, operate on a definite school year schedule, follow a stated academic curriculum, accept only school-age children and do not accept custody of children;

(f) Seasonal camps of three months' or less duration engaged primarily in recreational or educational activities;

(g) Hospitals licensed pursuant to chapter 70.41 RCW when performing functions defined in chapter 70.41 RCW, nursing homes licensed under chapter 18.51 RCW and boarding homes licensed under chapter 18.20 RCW;

(h) Licensed physicians or lawyers;

(i) Facilities providing care to children for periods of less than twenty-four hours whose parents remain on the premises to participate in activities other than employment;

(j) Facilities approved and certified under chapter 71A.22 RCW;

(k) Any agency having been in operation in this state ten years prior to June 8, 1967, and not seeking or accepting moneys or assistance from any state or federal agency, and is supported in part by an endowment or trust fund;

(l) Persons who have a child in their home for purposes of adoption, if the child was placed in such home by a licensed child-placing agency, an authorized public or tribal agency or court or if a preplacement report has been filed under chapter 26.33 RCW and the placement has been approved by the court;

(m) An agency operated by any unit of local, state, or federal government or an agency, located within the boundaries of a federally recognized Indian reservation, licensed by the Indian tribe;

(n) An agency located on a federal military reservation, except where the military authorities request that such agency be subject to the licensing requirements of this chapter.

(5) "Requirement" means any rule, regulation or standard of care to be maintained by an agency. [1988 c 176 § 912; 1987 c 170 § 12; 1982 c 118 § 5; 1979 c 155 § 83; 1977 ex.s. c 80 § 71; 1967 c 172 § 2.]

Severability—1988 c 176: See RCW 71A.10.900.

Severability—1987 c 170: See note following RCW 13.04.030.

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.

74.15.030 Powers and duties of secretary. The secretary shall have the power and it shall be the secretary's duty:

(1) In consultation with the children's services advisory committee, and with the advice and assistance of persons representative of the various type agencies to be licensed, to designate categories of facilities for which

separate or different requirements shall be developed as may be appropriate whether because of variations in the ages, sex and other characteristics of persons served, variations in the purposes and services offered or size or structure of the agencies to be licensed hereunder, or because of any other factor relevant thereto;

(2) In consultation with the children's services advisory committee, and with the advice and assistance of persons representative of the various type agencies to be licensed, to adopt and publish minimum requirements for licensing applicable to each of the various categories of agencies to be licensed.

The minimum requirements shall be limited to:

(a) The size and suitability of a facility and the plan of operation for carrying out the purpose for which an applicant seeks a license;

(b) The character, suitability and competence of an agency and other persons associated with an agency directly responsible for the care and treatment of children, expectant mothers or developmentally disabled persons. In consultation with law enforcement personnel, the secretary shall investigate the conviction record or pending charges and dependency record information under chapter 43.43 RCW of each agency and its staff seeking licensure or relicensure. The secretary shall use the information solely for the purpose of determining eligibility for a license and for determining the character, suitability, and competence of those persons or agencies, excluding parents, not required to be licensed who are authorized to care for children, expectant mothers, and developmentally disabled persons. Criminal justice agencies shall provide the secretary such information as they may have and that the secretary may require for such purpose;

(c) The number of qualified persons required to render the type of care and treatment for which an agency seeks a license;

(d) The safety, cleanliness, and general adequacy of the premises to provide for the comfort, care and well-being of children, expectant mothers or developmentally disabled persons;

(e) The provision of necessary care, including food, clothing, supervision and discipline; physical, mental and social well-being; and educational, recreational and spiritual opportunities for those served;

(f) The financial ability of an agency to comply with minimum requirements established pursuant to chapter 74.15 RCW and RCW 74.13.031; and

(g) The maintenance of records pertaining to the admission, progress, health and discharge of persons served;

(3) To investigate any person, including relatives by blood or marriage except for parents, for character, suitability, and competence in the care and treatment of children, expectant mothers, and developmentally disabled persons prior to authorizing that person to care for children, expectant mothers, and developmentally disabled persons. However, if a child is placed with a relative under RCW 13.34.060 or 13.34.130, and if such relative appears otherwise suitable and competent to

provide care and treatment the criminal history background check required by this section need not be completed before placement, but shall be completed as soon as possible after placement;

(4) On reports of child abuse and neglect, to investigate agencies in accordance with chapter 26.44 RCW, including day care centers and family day care homes, to determine whether the abuse or neglect has occurred, and whether child protective services or referral to a law enforcement agency is appropriate;

(5) To issue, revoke, or deny licenses to agencies pursuant to chapter 74.15 RCW and RCW 74.13.031. Licenses shall specify the category of care which an agency is authorized to render and the ages, sex and number of persons to be served;

(6) To prescribe the procedures and the form and contents of reports necessary for the administration of chapter 74.15 RCW and RCW 74.13.031 and to require regular reports from each licensee;

(7) To inspect agencies periodically to determine whether or not there is compliance with chapter 74.15 RCW and RCW 74.13.031 and the requirements adopted hereunder;

(8) To review requirements adopted hereunder at least every two years and to adopt appropriate changes after consultation with the children's services advisory committee; and

(9) To consult with public and private agencies in order to help them improve their methods and facilities for the care of children, expectant mothers and developmentally disabled persons. [1988 c 189 § 3. Prior: 1987 c 524 § 13; 1987 c 486 § 14; 1984 c 188 § 5; 1982 c 118 § 6; 1980 c 125 § 1; 1979 c 141 § 355; 1977 ex.s. c 80 § 72; 1967 c 172 § 3.]

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.

74.15.040 Licenses for foster-family homes required—Inspections. An agency seeking to accept and serve children, developmentally disabled persons, or expectant mothers as a foster-family home shall make application for license in such form and substance as required by the department. The department shall maintain a list of applicants through which placement may be undertaken. However, agencies and the department shall not place a child, developmentally disabled person, or expectant mother in a home until the home is licensed. Foster-family homes shall be inspected prior to licensure, except that inspection by the department is not required if the foster-family home is under the supervision of a licensed agency upon certification to the department by the licensed agency that such homes meet the requirements for foster homes as adopted pursuant to chapter 74.15 RCW and RCW 74.13.031. [1982 c 118 § 7; 1979 c 141 § 356; 1967 c 172 § 4.]

74.15.050 Fire protection—Powers and duties of director of community development. The director of community development, through the director of fire protection, shall have the power and it shall be his or her duty:

(1) In consultation with the children's services advisory committee and with the advice and assistance of persons representative of the various type agencies to be licensed, to adopt recognized minimum standard requirements pertaining to each category of agency established pursuant to chapter 74.15 RCW and RCW 74.13.031, except foster-family homes and child-placing agencies, necessary to protect all persons residing therein from fire hazards;

(2) To make or cause to be made such inspections and investigations of agencies, other than foster-family homes or child-placing agencies, as he or she deems necessary;

(3) To make a periodic review of requirements under *RCW 74.15.030(6) and to adopt necessary changes after consultation as required in subsection (1) of this section;

(4) To issue to applicants for licenses hereunder, other than foster-family homes or child-placing agencies, who comply with the requirements, a certificate of compliance, a copy of which shall be presented to the department of social and health services before a license shall be issued, except that a provisional license may be issued as provided in RCW 74.15.120. [1986 c 266 § 123; 1982 c 118 § 8; 1979 c 141 § 357; 1967 c 172 § 5.]

***Reviser's note:** RCW 74.15.030(6) was renumbered as RCW 74.15.030(7) by 1987 c 524 § 13.

Severability—1986 c 266: See note following RCW 38.52.005.

74.15.060 Health protection—Powers and duties of secretary of health. The secretary of health shall have the power and it shall be his duty:

In consultation with the children's services advisory committee and with the advice and assistance of persons representative of the various type agencies to be licensed, to develop minimum requirements pertaining to each category of agency established pursuant to chapter 74.15 RCW and RCW 74.13.031, necessary to promote the health of all persons residing therein.

The secretary of health or the city, county, or district health department designated by him shall have the power and the duty:

(1) To make or cause to be made such inspections and investigations of agencies as may be deemed necessary; and

(2) To issue to applicants for licenses hereunder who comply with the requirements adopted hereunder, a certificate of compliance, a copy of which shall be presented to the department of health before a license shall be issued, except that a provisional license may be issued as provided in RCW 74.15.120. [1989 1st ex.s. c 9 § 265; 1987 c 524 § 14; 1982 c 118 § 9; 1970 ex.s. c 18 § 14; 1967 c 172 § 6.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

Effective date—Severability—1970 ex.s. c 18: See notes following RCW 43.20A.010.

74.15.070 Articles of incorporation and amendments—Copies to be furnished to department. A copy

of the articles of incorporation of any agency or amendments to the articles of existing corporation agencies shall be sent by the secretary of state to the department of social and health services at the time such articles or amendments are filed. [1979 c 141 § 358; 1967 c 172 § 7.]

74.15.080 Access to agencies, records. All agencies subject to chapter 74.15 RCW and RCW 74.13.031 shall accord the department of social and health services, the secretary of health, the director of community development, and the director of fire protection, or their designees, the right of entrance and the privilege of access to and inspection of records for the purpose of determining whether or not there is compliance with the provisions of chapter 74.15 RCW and RCW 74.13.031 and the requirements adopted thereunder. [1989 1st ex.s. c 9 § 266; 1986 c 266 § 124; 1979 c 141 § 359; 1967 c 172 § 8.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

Severability—1986 c 266: See note following RCW 38.52.005.

74.15.090 Licenses required for agencies. Except as provided in RCW 74.15.190, it shall hereafter be unlawful for any agency to receive children, expectant mothers or developmentally disabled persons for supervision or care, or arrange for the placement of such persons, unless such agency is licensed as provided in chapter 74.15 RCW. [1987 c 170 § 14; 1982 c 118 § 10; 1977 ex.s. c 80 § 73; 1967 c 172 § 9.]

Severability—1987 c 170: See note following RCW 13.04.030.

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.

74.15.100 License application, issuance, duration—Reclassification. Each agency shall make application for a license or renewal of license to the department of social and health services on forms prescribed by the department. A licensed agency having foster-family homes under its supervision may make application for a license on behalf of any such foster-family home. Upon receipt of such application, the department shall either grant or deny a license within ninety days unless the application is for licensure as a foster-family home, in which case RCW 74.15.040 shall govern. A license shall be granted if the agency meets the minimum requirements set forth in chapter 74.15 RCW and RCW 74.13.031 and the departmental requirements consistent herewith, except that a provisional license may be issued as provided in RCW 74.15.120. Licenses provided for in chapter 74.15 RCW and RCW 74.13.031 shall be issued for a period of three years. The licensee, however, shall advise the secretary of any material change in circumstances which might constitute grounds for reclassification of license as to category. [1982 c 118 § 11; 1979 c 141 § 360; 1967 c 172 § 10.]

74.15.110 Renewal of licenses. If a licensee desires to apply for a renewal of its license, a request for a renewal shall be filed ninety days prior to the expiration date of

the license. If the department has failed to act at the time of the expiration date of the license, the license shall continue in effect until such time as the department shall act. [1967 c 172 § 11.]

74.15.120 Provisional licenses. The secretary of social and health services may, at his discretion, issue a provisional license to an agency or facility for a period not to exceed six months, renewable for a period not to exceed two years, to allow such agency or facility reasonable time to become eligible for full license, except that a provisional license shall not be granted to any foster-family home. [1979 c 141 § 361; 1967 c 172 § 12.]

74.15.130 Licenses—Denial, suspension, revocation, modification—Procedures. An agency may be denied a license, or any license issued pursuant to chapter 74.15 RCW and RCW 74.13.031 may be suspended, revoked, modified, or not renewed by the secretary upon proof (a) that the agency has failed or refused to comply with the provisions of chapter 74.15 RCW and RCW 74.13.031 or the requirements promulgated pursuant to the provisions of chapter 74.15 RCW and RCW 74.13.031; or (b) that the conditions required for the issuance of a license under chapter 74.15 RCW and RCW 74.13.031 have ceased to exist with respect to such licenses. RCW 43.20A.205 governs notice of a license denial, revocation, suspension, or modification and provides the right to an adjudicative proceeding. [1989 c 175 § 149; 1982 c 118 § 12; 1979 c 141 § 362; 1967 c 172 § 13.]

Effective date—1989 c 175: See note following RCW 34.05.010.

74.15.140 Action against licensed or unlicensed agencies authorized. Notwithstanding the existence or pursuit of any other remedy, the secretary may, in the manner provided by law, upon the advice of the attorney general, who shall represent the department in the proceeding, maintain an action in the name of the state for injunction or such other relief as he may deem advisable against any agency subject to licensing under the provisions of chapter 74.15 RCW and RCW 74.13.031 or against any such agency not having a license as heretofore provided in chapter 74.15 RCW and RCW 74.13.031. [1979 c 141 § 363; 1967 c 172 § 14.]

74.15.150 Penalty for operating without license. Any agency operating without a license shall be guilty of a misdemeanor. This section shall not be enforceable against an agency until sixty days after the effective date of new rules, applicable to such agency, have been adopted under chapter 74.15 RCW and RCW 74.13.031. [1982 c 118 § 13; 1967 c 172 § 15.]

74.15.160 Continuation of existing licensing rules. Existing rules for licensing adopted pursuant to *chapter 74.14 RCW, sections 74.14.010 through 74.14.150, chapter 26, Laws of 1959, shall remain in force and effect until new rules are adopted under chapter 74.15

RCW and RCW 74.13.031, but not thereafter. [1982 c 118 § 14; 1967 c 172 § 16.]

*Reviser's note: Chapter 74.14 RCW was repealed by 1967 c 172 § 23.

74.15.170 Agencies, homes conducted by religious organizations—Application of chapter. Nothing in this chapter or the rules and regulations adopted pursuant thereto shall be construed as authorizing the supervision, regulation, or control of the remedial care or treatment of residents of any agency, children's institution, child placing agency, maternity home, day or hourly nursery, foster home or other related institution conducted for or by members of a recognized religious sect, denomination or organization which in accordance with its creed, tenets, or principles depends for healing upon prayer in the practice of religion, nor shall the existence of any of the above conditions militate against the licensing of such a home or institution. [1967 c 172 § 21.]

74.15.180 Designating home or facility as semi-secure facility. The department, pursuant to rules, may enable any licensed foster family home or group care facility to be designated as a semi-secure facility, as defined by RCW 13.32A.030. [1979 c 155 § 84.]

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

74.15.190 Authority of Indian tribes to license agencies within reservations—Placement of children. The state of Washington recognizes the authority of Indian tribes within the state to license agencies, located within the boundaries of a federally recognized Indian reservation, to receive children for control, care, and maintenance outside their own homes, or to place, receive, arrange the placement of, or assist in the placement of children for foster care or adoption. The department and state licensed child-placing agencies may place children in tribally licensed facilities if the requirements of RCW 74.15.030(2)(b) and (3) and supporting rules are satisfied before placing the children in such facilities by the department or any state licensed child-placing agency. [1987 c 170 § 13.]

Severability—1987 c 170: See note following RCW 13.04.030.

74.15.200 Child abuse and neglect prevention training to parents and day care providers. The department of social and health services shall have primary responsibility for providing child abuse and neglect prevention training to parents and licensed child day care providers of preschool age children participating in day care programs meeting the requirements of chapter 74.15 RCW. The department may limit training under this section to trainers' workshops and curriculum development using existing resources. [1987 c 489 § 5.]

Intent—1987 c 489: See note following RCW 28A.03.512.

(1989 Ed.)

Chapter 74.18

DEPARTMENT OF SERVICES FOR THE BLIND

Sections

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74.18.901	Conflict with federal requirements.
74.18.902	Severability—1983 c 194.
74.18.903	Effective dates—1983 c 194.

74.18.010 Intent. The purposes of this chapter are to promote the economic and social welfare of blind persons in the state of Washington, to relieve blind or visually handicapped persons from the distress of poverty through their complete integration into society on the basis of equality, to encourage public acceptance of the abilities of blind persons, and to promote public awareness of the causes of blindness. [1983 c 194 § 1.]

74.18.020 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Department" means an agency of state government called the department of services for the blind.

(2) "Director" means the director of the state agency appointed by the governor with the consent of the senate.

(3) "Advisory council" means the body of members appointed by the governor to advise the state agency.

(4) "Blind" means a person who has no vision or whose vision with corrective lenses is so defective as to prevent the performance of ordinary activities for which eyesight is essential, or who has an eye condition of a progressive nature which may lead to blindness. [1983 c 194 § 2.]

74.18.030 Department created. There is hereby created an agency of state government to be known as the department of services for the blind. The department shall deliver services to blind persons to the extent that

appropriations are made available, provided that applicants meet the eligibility criteria for services authorized by this chapter. [1983 c 194 § 3.]

74.18.040 Director—Appointment—Salary. The executive head of the department shall be the director of the department of services for the blind. The director shall be appointed by the governor, with the consent of the senate, and hold office at the pleasure of the governor. The director's salary shall be fixed by the governor in accordance with the provisions of RCW 43.03.040. [1983 c 194 § 4.]

74.18.050 Appointment of personnel. The director may appoint such personnel as necessary, none of whom shall be members of the advisory council for the blind. The director and other personnel who are assigned substantial responsibility for formulating agency policy or directing and controlling a major administrative division, together with their confidential secretaries, up to a maximum of six persons, shall be exempt from the provisions of chapter 41.06 RCW. [1983 c 194 § 5.]

74.18.060 Department—Powers and duties. The department shall:

(1) Serve as the sole agency of the state for contracting for and disbursing all federal and state funds appropriated for programs established by and within the jurisdiction of this chapter, and make reports and render accounting as may be required;

(2) Adopt rules, in accordance with chapter 34.05 RCW, necessary to carry out the purposes of this chapter;

(3) Negotiate agreements with other state agencies to provide services for individuals who are both blind and otherwise disabled so that multiply handicapped persons and the elderly blind receive the most beneficial services. [1983 c 194 § 6.]

74.18.070 Advisory council for the blind—Membership. (1) There is hereby created the advisory council for the blind. The advisory council shall consist of at least six and no more than ten members. A majority of the members shall be blind. Advisory council members shall be residents of the state of Washington, and no member shall be an employee of the department.

(2) The governor shall appoint members of the advisory council for terms of three years, except that the initial appointments shall be as follows: (a) Three members for terms of three years; (b) two members for terms of two years; and (c) other members for terms of one year. Vacancies in the membership of the advisory council shall be filled by the governor for the remainder of the unexpired term.

(3) The governor may remove members of the advisory council for cause. [1983 c 194 § 7.]

74.18.080 Advisory council for the blind—Meetings—Travel expenses. (1) The advisory council for the blind shall meet officially with the director of the department quarterly to perform the duties enumerated

in RCW 74.18.090. Additional meetings of the advisory council may be convened at the call of the chairperson or of a majority of the members. The advisory council shall elect a chairperson from among its members for a term of one year or until a successor has been elected.

(2) Advisory council members shall receive reimbursement for travel expenses incurred in the performance of their official duties in accordance with RCW 43.03.050 and 43.03.060. [1983 c 194 § 8.]

74.18.090 Advisory council for the blind—Powers. The advisory council for the blind may:

(1) Provide counsel to the director in developing, reviewing, and making recommendations on the department's state plan for vocational rehabilitation, budget requests, permanent rules concerning services to blind citizens, and other major policies which impact the quality or quantity of services for the blind;

(2) Undertake annual reviews with the director of the needs of blind citizens, the effectiveness of the services and priorities of the department to meet those needs, and the measures that could be taken to improve the department's services;

(3) Annually make recommendations to the governor and the legislature on issues related to the department of services for the blind, other state agencies, or state laws which have a significant effect on the opportunities, services, or rights of blind citizens; and

(4) Advise and make recommendations to the governor on the criteria and qualifications pertinent to the selection of the director. [1983 c 194 § 9.]

74.18.100 Advisory council for the blind—Director to consult. It shall be the duty of the director to consult in a timely manner with the advisory council for the blind on the matters enumerated in RCW 74.18.090. The director shall provide appropriate departmental resources for the use of the advisory council in conducting its official business. [1983 c 194 § 10.]

74.18.110 Receipt of gifts, grants, and bequests. The department of services for the blind may receive, accept, and disburse gifts, grants, conveyances, devises, and bequests from public or private sources, in trust or otherwise, if the terms and conditions thereof will provide services for the blind in a manner consistent with the purposes of this chapter and with other provisions of law. Any money so received shall be deposited in the state treasury for investment or expenditure in accordance with the conditions of its receipt. [1983 c 194 § 11.]

74.18.120 Administrative review and hearing—Appeal. (1) Any person aggrieved by a decision, action, or inaction of the department or its agents may request, and shall receive from the department, an administrative review and redetermination of that decision, action, or inaction.

(2) After completion of an administrative review, an applicant or client aggrieved by a decision, action, or inaction of the department or its agents may request, and

shall be granted, an administrative hearing. Such administrative hearings shall be conducted pursuant to chapter 34.05 RCW by an administrative law judge.

(3) Final decisions of administrative hearings shall be the subject of appeal under RCW 34.05.510 through 34.05.598.

(4) In the event of an appeal from the final decision of an administrative hearing in which the department has overruled the proposed decision by an administrative law judge, the following terms shall apply for an appeal under RCW 34.05.510 through 34.05.598: (a) Upon request a copy of the transcript and evidence from the administrative hearing shall be made available without charge to the appellant; (b) the appellant shall not be required to post bond or pay any filing fee; and (c) an appellant receiving a favorable decision upon appeal shall be entitled to reasonable attorney's fees and costs. [1989 c 175 § 150; 1983 c 194 § 12.]

Effective date—1989 c 175: See note following RCW 34.05.010.

74.18.130 Vocational rehabilitation—Eligibility. The department shall provide a program of vocational rehabilitation to assist blind persons to overcome vocational handicaps and to develop skills necessary for self-support and self-care. Applicants eligible for vocational rehabilitation services shall be persons who are blind as defined in RCW 74.18.020 and who also (1) have no vision or limited vision which constitutes or results in a substantial handicap to employment and (2) can reasonably be expected to benefit from vocational rehabilitation services in terms of employability. [1983 c 194 § 13.]

74.18.140 Vocational rehabilitation—Services. The department may provide to eligible individuals vocational rehabilitation services, including medical and vocational diagnosis; vocational counseling, guidance, referral, and placement; rehabilitation training; physical and mental restoration; maintenance and transportation; reader services; interpreter services for the deaf; rehabilitation teaching services; orientation and mobility services; occupational licenses, tools, equipment, and initial stocks and supplies; telecommunications, sensory, and other technological aids and devices; and other goods and services which can be reasonably expected to benefit a client in terms of employability. [1983 c 194 § 14.]

74.18.150 Vocational rehabilitation—Grants of equipment and material. The department may grant to vocational rehabilitation clients equipment and materials with an individual value of not more than one thousand dollars, provided that the equipment or materials are required by the client's individual written rehabilitation program and are used by the client or former client in a manner consistent therewith. The department shall adopt rules to implement this section. [1983 c 194 § 15.]

74.18.160 Vocational rehabilitation—Orientation and training center. As part of its vocational rehabilitation program or in conjunction with other agency programs, the department may operate a rehabilitation

facility known as the orientation and training center. The orientation and training center may provide instruction in the alternative skills necessary to adjust to blindness or substantial loss of vision, develop increased confidence and independence, and encourage personal, social, and economic integration. The department shall adopt rules concerning selection criteria for clients, curriculum, and other matters necessary for the economical, efficient, and effective operation of the orientation and training center. [1983 c 194 § 17.]

74.18.170 Rehabilitation or habilitation facilities authorized. The department may establish, construct, and/or operate rehabilitation or habilitation facilities consistent with the purposes of this chapter. [1983 c 194 § 16.]

74.18.180 Services for independent living. The department, to the extent appropriations are made available, may provide a program of services for independent living designed to meet the current and future needs of blind individuals who presently cannot function independently in their living environment, but who may benefit from services that will enable them to maintain contact with society and perform some tasks of daily living independently. [1983 c 194 § 18.]

74.18.190 Services to blind children and their families. (1) The department may offer services to assist blind children and their families to learn skills and locate resources which increase the child's ability for personal development and participation in society.

(2) Services provided under this section may include:

(a) Direct consultation with blind children and their families to provide needs assessment, counseling, developmental training, adaptive skills, and information regarding other available resources;

(b) Consultation and technical assistance in all sectors of society, at the request of a blind child, his or her family, or a service provider working with the child or family, to assure the blind child's rights to participate fully in educational, vocational, and social opportunities. The department is encouraged to establish working agreements and arrangements with community organizations and other state agencies which provide services to blind children.

(3) To facilitate the coordination of services to blind children and their families, the office of superintendent of public instruction and the department of services for the blind shall negotiate an interagency agreement providing for coordinated service delivery and the sharing of information between the two agencies, including an annual register of blind students in the state of Washington. [1983 c 194 § 19.]

74.18.200 Business enterprises program—Definitions. Unless the context clearly requires otherwise, the definitions in this section apply in RCW 74.18.200 through 74.18.230.

(1) "Business enterprises program" means a program operated by the department under the federal

Randolph-Sheppard Act, 20 U.S.C. Sec. 107 et seq., and under this chapter in support of blind persons operating vending businesses in public buildings.

(2) "Vending facility" means any stand, snack bar, cafeteria, or business at which food, tobacco, sundries, or other retail merchandise or service is sold or provided.

(3) "Vending machine" means any coin-operated machine that sells or provides food, tobacco, sundries, or other retail merchandise or service.

(4) "Licensee" means a blind person licensed by the state of Washington under the Randolph-Sheppard Act, this chapter, and the rules issued hereunder.

(5) "Public building" means any building which is: (a) Owned by the state of Washington or any political subdivision thereof or any space leased by the state of Washington or any political subdivision thereof in any privately-owned building; and (b) dedicated to the administrative functions of the state or any political subdivision: *Provided*, That any vending facility or vending machine under the jurisdiction and control of a local board of education shall not be included without the consent and approval of that local board. [1985 c 97 § 1; 1983 c 194 § 20.]

74.18.210 Business enterprises program—Purposes. The department shall maintain or cause to be maintained a business enterprises program for blind persons to operate vending facilities in public buildings. The purposes of the business enterprises program are to implement the Randolph-Sheppard Act and thereby give priority to qualified blind persons in operating vending facilities on federal property, to make similar provisions for vending facilities in public buildings in the state of Washington and thereby increase employment opportunities for blind persons, and to encourage the blind to become successful, independent business persons. [1983 c 194 § 21.]

74.18.220 Business enterprises program—Vending facilities in public buildings. (1) The department is authorized to license blind persons to operate vending facilities and vending machines on federal property and in public buildings.

(2) The state, political subdivisions thereof, and agencies of the state, or political subdivisions thereof shall give priority to licensees in the operation of vending facilities and vending machines in public buildings. [1983 c 194 § 22.]

74.18.230 Business enterprises program—Revolving account. (1) There is established in the state treasury an account known as the business enterprises revolving account.

(2) The net proceeds from any vending machine operation in a public building, other than an operation managed by a licensee, shall be made payable to the business enterprises revolving fund. Net proceeds, for purposes of this section, means the gross amount received less the costs of the operation, including a fair minimum return to the vending machine owner, which return shall not

exceed a reasonable amount to be determined by the department.

(3) All moneys in the business enterprises revolving fund shall be expended only for development and expansion of locations, equipment, management services, and payments to licensees in the business enterprises program.

(4) The business enterprises program shall be supported by the business enterprises revolving fund and by income which may accrue to the department pursuant to the federal Randolph-Sheppard Act.

(5) Vocational rehabilitation funds may be spent in connection with the business enterprises program for training persons to become licensees and for other services that are required to complete an individual written rehabilitation program.

(6) All earnings of investments of balances in the business enterprises revolving account shall be credited to the business enterprises revolving account. [1985 c 97 § 2; 1985 c 57 § 72; 1983 c 194 § 23.]

Reviser's note: This section was amended by 1985 c 57 § 72 and by 1985 c 97 § 2, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—1985 c 57: See note following RCW 15.52.320.

74.18.250 Specialized medical eye care—Prevention of blindness. The department, to the extent that appropriations are made available, may provide specialized medical eye care to prevent blindness or restore or improve sight to persons who could medically benefit from such services but who are not eligible for services under RCW 74.09.720. The department may offer information and referral services to foster public awareness of the causes of blindness, encourage use of preventive or ameliorative measures, and explain the abilities and rights of blind citizens. [1983 c 194 § 24.]

74.18.901 Conflict with federal requirements. If any part of this chapter is found to be in conflict with federal requirements which are a condition precedent to the allocation of federal funds to the state, the conflicting part of this chapter is hereby declared to be inoperative solely to the extent of the conflict, and the findings or determination shall not affect the operation of the remainder of this chapter. [1983 c 194 § 25.]

74.18.902 Severability—1983 c 194. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1983 c 194 § 31.]

74.18.903 Effective dates—1983 c 194. This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions. Section 27 of this act which transfers functions from the commission for the blind to the department of social and health services and section 26 of this act shall take effect immediately. All other sections of this act shall take effect June 30, 1983. [1983 c 194 § 33.]

Reviser's note: Section 27, chapter 194, Laws of 1983, which is uncodified, and section 26, chapter 194, Laws of 1983, which is codified as RCW 74.09.720, took effect May 16, 1983. The remainder of chapter 194, Laws of 1983 consists of this chapter and the 1983 amendment of RCW 43.20A.300.

Chapter 74.20

SUPPORT OF DEPENDENT CHILDREN

Sections

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Aid to dependent children: Chapter 74.12 RCW.

Child support registry: Chapter 26.23 RCW.

74.20.010 Purpose—Legislative intent—Chapter to be liberally construed. It is the responsibility of the state of Washington through the state department of social and health services to conserve the expenditure of public assistance funds, whenever possible, in order that such funds shall not be expended if there are private funds available or which can be made available by judicial process or otherwise to partially or completely meet the financial needs of the children of this state. The failure of parents to provide adequate financial support and care for their children is a major cause of financial

dependency and a contributing cause of social delinquency.

The purpose of this chapter is to provide the state of Washington, through the department of social and health services, a more effective and efficient way to effect the support of dependent children by the person or persons who, under the law, are primarily responsible for such support and to lighten the heavy burden of the taxpayer, who in many instances is paying toward the support of dependent children while those persons primarily responsible are avoiding their obligations. It is the intention of the legislature that the powers delegated to the said department in this chapter be liberally construed to the end that persons legally responsible for the care and support of children within the state be required to assume their legal obligations in order to reduce the financial cost to the state of Washington in providing public assistance funds for the care of children. It is the intention of the legislature that the department provide sufficient staff to carry out the purposes of this chapter, chapter 74.20A RCW, the abandonment and nonsupport statutes, and any applicable federal support enforcement statute administered by the department. It is also the intent of the legislature that the staff responsible for support enforcement be encouraged to conduct their support enforcement duties with fairness, courtesy, and the highest professional standards. [1979 ex.s. c 171 § 24; 1979 c 141 § 364; 1963 c 206 § 1; 1959 c 322 § 2.]

Severability—1979 ex.s. c 171: See note following RCW 74.20.300.

74.20.021 Definitions. See RCW 74.20A.020.

74.20.040 Duty of department to enforce child support—Requests for support enforcement services—Schedule of fees—Waiver. (1) Whenever the department of social and health services receives an application for public assistance on behalf of a child, the department shall take appropriate action under the provisions of this chapter, chapter 74.20A RCW, or other appropriate statutes of this state to establish or enforce support obligations against the parent or other persons owing a duty to pay support moneys.

(2) The secretary may accept a request for support enforcement services on behalf of persons who are not recipients of public assistance and may take appropriate action to establish or enforce support obligations against the parent or other persons owing a duty to pay moneys. Requests accepted under this subsection may be conditioned upon the payment of a fee as required through regulation issued by the secretary. Action may be taken under the provisions of chapter 74.20 RCW, the abandonment or nonsupport statutes, or other appropriate statutes of this state, including but not limited to remedies established in chapter 74.20A RCW, to establish and enforce said support obligations. The secretary may establish by regulation, reasonable standards and qualifications for support enforcement services under this subsection.

(3) The secretary may accept requests for support enforcement services from child support enforcement

agencies in other states operating child support programs under Title IV–D of the social security act or from foreign countries, and may take appropriate action to establish and enforce support obligations against the parent or other person owing a duty to pay support moneys. The request shall contain and be accompanied by such information and documentation as the secretary may by rule require, and be signed by an authorized representative of the agency.

(4) The department may take action to establish, enforce, and collect a support obligation, including performing related services, under this chapter and chapter 74.20A RCW, or through the attorney general or prosecuting attorney for action under chapter 26.09, 26.18, 26.20, 26.21, or 26.26 RCW or other appropriate statutes or the common law of this state.

(5) Whenever a support order is filed with the Washington state support registry under chapter 26.23 RCW, the department may take appropriate action under the provisions of this chapter, chapter 26.23 or 74.20A RCW, or other appropriate law of this state to establish or enforce the support obligations contained in that order against the responsible parent or other persons owing a duty to pay support moneys.

(6) The secretary may charge and collect a fee from the person obligated to pay support to compensate the department for services rendered in establishment of or enforcement of support obligations. This fee shall be limited to not more than ten percent of any support money collected as a result of action taken by the secretary. The fee charged shall be in addition to the support obligation. In no event may any moneys collected by the department of social and health services from the person obligated to pay support be retained as satisfaction of fees charged until all current support obligations have been satisfied. The secretary shall by regulation establish reasonable fees for support enforcement services and said schedule of fees shall be made available to any person obligated to pay support. The secretary may, on showing of necessity, waive or defer any such fee.

(7) Fees, due and owing, may be collected as delinquent support moneys utilizing any of the remedies in chapter 74.20 RCW, chapter 74.20A RCW, chapter 26.21 RCW, or any other remedy at law or equity available to the department or any agencies with whom it has a cooperative or contractual arrangement to establish, enforce, or collect support moneys or support obligations.

(8) The secretary may waive the fee, or any portion thereof, as a part of a compromise of disputed claims or may grant partial or total charge off of said fee if the secretary finds there are no available, practical, or lawful means by which said fee may be collected or to facilitate payment of the amount of delinquent support moneys owed. [1989 c 360 § 12; 1985 c 276 § 1; 1984 c 260 § 29; 1982 c 201 § 20; 1973 1st ex.s. c 183 § 1; 1971 ex.s. c 213 § 1; 1963 c 206 § 3; 1959 c 322 § 5.]

Severability—1984 c 260: See RCW 26.18.900.

74.20.055 Designated agency under federal law—Role of prosecuting attorneys. The department of social

and health services office of support enforcement is the designated agency in Washington state to administer the child support program under Title IV–D of the federal social security act and is responsible for providing necessary and mandated support enforcement services and ensuring that such services are available state–wide. It is the intent of the legislature to enhance the total child support program in this state by granting the office of support enforcement administrative powers and flexibility. If the exercise of this authority is used to supplant or replace the role of the prosecuting attorneys for reasons other than economy or federal compliance, the Washington association of prosecuting attorneys shall report to the committees on judiciary of the senate and house of representatives. [1985 c 276 § 17.]

74.20.060 Cooperation by person having custody of child—Penalty. Any person having the care, custody or control of any dependent child or children who shall fail or refuse to cooperate with the department of social and health services, any prosecuting attorney or the attorney general in the course of administration of provisions of this chapter shall be guilty of a misdemeanor. [1979 c 141 § 365; 1959 c 322 § 7.]

74.20.065 Wrongful deprivation of custody—Legal custodian excused from support payments. If the legal custodian has been wrongfully deprived of physical custody, the department is authorized to excuse the custodian from support payments for a child or children receiving or on whose behalf public assistance was provided under chapter 74.12 RCW. [1983 1st ex.s. c 41 § 31.]

Severability—1983 1st ex.s. c 41: See note following RCW 26.09.060.

74.20.101 Payment of support moneys to state support registry—Notice—Effects of noncompliance. (1) A responsible parent shall make all support payments through the office of support enforcement or the Washington state support registry if:

(a) The parent's support order contains a provision directing the parent to make support payments through the office of support enforcement or the Washington state support registry; or

(b) If the parent has received written notice from the office of support enforcement under RCW 26.23.110, 74.20A.040, or 74.20A.055 that all future support payments must be made through the office of support enforcement or the Washington state support registry.

(2) A responsible parent who has been ordered or notified to make support payments to the office of support enforcement or the Washington state support registry shall not receive credit for payments which are not paid to the office of support enforcement or the Washington state support registry unless:

(a) The department determines that the granting of credit would not prejudice the rights of the residential parent or other person or agency entitled to receive the support payments and circumstances of an equitable nature exist; or

(b) A court, after a hearing at which all interested parties were given an opportunity to be heard, on equitable principles, orders that credit be given.

(3) The rights of the payee under an order for support shall not be prejudiced if the department grants credit under subsection (2)(a) of this section. If the department determines that credit should be granted pursuant to subsection (2) of this section, the department shall mail notice of its decision to the last known address of the payee, together with information about the procedure to contest the determination. [1989 c 360 § 7; 1987 c 435 § 30; 1979 ex.s. c 171 § 13; 1973 1st ex.s. c 183 § 2; 1969 ex.s. c 173 § 16.]

Effective date—1987 c 435: See RCW 26.23.900.

Severability—1979 ex.s. c 171: See note following RCW 74.20.300.

74.20.160 Department may disclose information to internal revenue department. Notwithstanding the provisions of RCW 74.04.060, upon approval of the department of health, education and welfare of the federal government, the department of social and health services may disclose to and keep the internal revenue department of the treasury of the United States advised of the names of all persons who are under legal obligation to support any dependent child or children and who are not doing so, to the end that the internal revenue department may have available to it the names of such persons for review in connection with income tax returns and claims of dependencies made by persons filing income tax returns. [1979 c 141 § 366; 1963 c 206 § 5; 1959 c 322 § 17.]

74.20.210 Attorney general may act under Uniform Reciprocal Enforcement of Support Act pursuant to agreement with prosecuting attorney. The prosecuting attorney of any county except class AA counties may enter into an agreement with the attorney general whereby the duty to initiate petitions for support authorized under the provisions of chapter 26.21 RCW as it is now or hereafter amended (Uniform Reciprocal Enforcement of Support Act) in cases where the petitioner has applied for or is receiving public assistance on behalf of a dependent child or children shall become the duty of the attorney general. Any such agreement may also provide that the attorney general has the duty to represent the petitioner in intercounty proceedings within the state initiated by the attorney general which involve a petition received from another county. Upon the execution of such agreement, the attorney general shall be empowered to exercise any and all powers of the prosecuting attorney in connection with said petitions. [1969 ex.s. c 173 § 14; 1963 c 206 § 6.]

74.20.220 Powers of department through the attorney general. In order to carry out its responsibilities imposed under this chapter, the state department of social and health services, through the attorney general, is hereby authorized to:

(1) Represent a dependent child or dependent children on whose behalf public assistance is being provided in

obtaining any support order necessary to provide for his or their needs or to enforce any such order previously entered.

(2) Appear as a friend of the court in divorce and separate maintenance suits, or proceedings supplemental thereto, when either or both of the parties thereto are receiving public assistance, for the purpose of advising the court as to the financial interest of the state of Washington therein.

(3) Appear on behalf of the custodial parent of a dependent child or children on whose behalf public assistance is being provided, when so requested by such parent, for the purpose of assisting such parent in securing a modification of a divorce or separate maintenance decree wherein no support, or inadequate support, was given for such child or children: *Provided*, That the attorney general shall be authorized to so appear only where it appears to the satisfaction of the court that the parent is without funds to employ private counsel. If the parent does not request such assistance, or refuses it when offered, the attorney general may nevertheless appear as a friend of the court at any supplemental proceeding, and may advise the court of such facts as will show the financial interest of the state of Washington therein; but the attorney general shall not otherwise participate in the proceeding.

(4) If public assistance has been applied for or granted on behalf of a child of parents who are divorced or legally separated, the attorney general may apply to the superior court in such action for an order directing either parent or both to show cause:

(a) Why an order of support for the child should not be entered, or

(b) Why the amount of support previously ordered should not be increased, or

(c) Why the parent should not be held in contempt for his failure to comply with any order of support previously entered.

(5) Initiate any civil proceedings deemed necessary by the department to secure reimbursement from the parent or parents of minor dependent children for all moneys expended by the state in providing assistance or services to said children. [1979 c 141 § 367; 1973 1st ex.s. c 154 § 112; 1969 ex.s. c 173 § 15; 1963 c 206 § 7.]

Severability—1973 1st ex.s. c 154: See note following RCW 2.12.030.

74.20.230 Petition for support order by married parent with minor or legally adopted children who are receiving public assistance. Any married parent with minor children, natural or legally adopted children who is receiving public assistance may apply to the superior court of the county in which such parent resides or in which the spouse may be found for an order upon such spouse, if such spouse is the natural or adoptive mother or father of such children, to provide for such spouse's support and the support of such spouse's minor children by filing in such county a petition setting forth the facts and circumstances upon which such spouse relies for such order. If it appears to the satisfaction of the court that such parent is without funds to employ counsel, the state

department of social and health services through the attorney general may file such petition on behalf of such parent. If satisfied that a just cause exists, the court shall direct that a citation issue to the other spouse requiring such spouse to appear at a time set by the court to show cause why an order of support should not be entered in the matter. [1973 1st ex.s. c 154 § 113; 1963 c 206 § 8.]

Severability—1973 1st ex.s. c 154: See note following RCW 2.12.030.

74.20.240 Petition for support order by married parent with minor or legally adopted children who are receiving public assistance—Order—Powers of court. (1) After the hearing of the petition for an order of support the court shall make an order granting or denying it and fixing, if allowed, the terms and amount of the support. (2) The court has the same power to compel the attendance of witnesses and the production of testimony as in actions and suits, to make such decree or orders as are equitable in view of the circumstances of both parties and to punish violations thereof as other contempts are punished. [1963 c 206 § 9.]

74.20.250 Petition for support order by married parent with minor or legally adopted children who are receiving public assistance—Waiver of filing fees. The court may, upon satisfactory showing that the petitioner is without funds to pay the filing fee, order that the petition and other papers be filed without payment of the fee. [1963 c 206 § 10.]

74.20.260 Financial statements by parent whose absence is basis of application for public assistance. Any parent in the state whose absence is the basis upon which an application is filed for public assistance on behalf of a child shall be required to complete a statement, under oath, of his current monthly income, his total income over the past twelve months, the number of dependents for whom he is providing support, the amount he is contributing regularly toward the support of all children for whom application for such assistance is made, his current monthly living expenses and such other information as is pertinent to determining his ability to support his children. Such statement shall be provided upon demand made by the state department of social and health services or attorney general, and if assistance based upon such application is granted on behalf of such child, additional statements shall be filed annually thereafter with the state department of social and health services until such time as the child is no longer receiving such assistance. Failure to comply with this section shall constitute a misdemeanor. [1979 c 141 § 368; 1963 c 206 § 11.]

74.20.280 Central unit for information and administration—Cooperation enjoined—Availability of records. The department is authorized and directed to establish a central unit to serve as a registry for the receipt of information, for answering interstate inquiries

concerning the parents of dependent children, to coordinate and supervise departmental activities in relation to such parents, to assure effective cooperation with law enforcement agencies, and to perform other functions authorized by state and federal support enforcement and child custody statutes and regulations.

To effectuate the purposes of this section, the secretary may request from state, county and local agencies all information and assistance as authorized by this chapter. Upon the request of the department of social and health services, all state, county and city agencies, officers and employees shall cooperate in the location of the parents of a dependent child and shall supply the department with all information relative to the location, income and property of such parents, notwithstanding any provision of law making such information confidential.

Any records established pursuant to the provisions of this section shall be available only to the attorney general, prosecuting attorneys, courts having jurisdiction in support and/or abandonment proceedings or actions, or other authorized agencies or persons for use consistent with the intent of state and federal support enforcement and child custody statutes and regulations. [1983 1st ex.s. c 41 § 15; 1979 c 141 § 370; 1963 c 206 § 13.]

Severability—1983 1st ex.s. c 41: See note following RCW 26.09.060.

74.20.300 Department exempt from fees relating to paternity or support. No filing or recording fees, court fees, or fees for making copies of documents shall be required from the state department of social and health services by any county clerk, county auditor, or other county officer for the filing of any actions or documents necessary to establish paternity or enforce or collect support moneys.

Filing fees shall also not be required of any prosecuting attorney or the attorney general for action to establish paternity or enforce or collect support moneys. [1979 ex.s. c 171 § 1; 1973 1st ex.s. c 183 § 3; 1963 c 206 § 15.]

Severability—1979 ex.s. c 171: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1979 ex.s. c 171 § 28.]

74.20.310 Guardian not required in actions brought on behalf of state, child, or mother. The provisions of RCW 26.26.090 requiring appointment of a general guardian or guardian ad litem to represent the child in an action brought to determine the parent and child relationship do not apply to actions brought under chapter 26.26 RCW if:

(1) The action is brought by the attorney general on behalf of the department of social and health services, the child, or the natural mother; or

(2) The action is brought by any prosecuting attorney on behalf of the state, the child, or the natural mother when referral has been made to the prosecuting attorney by the department of social and health services requesting such action.

The court, on its own motion or on motion of a party, may appoint a guardian ad litem when necessary. [1979 ex.s. c 171 § 15.]

Severability—1979 ex.s. c 171: See note following RCW 74.20.300.

74.20.320 Custodian to remit support moneys when department has support obligation—Noncompliance, effect of, action authorized. Whenever a custodian of children, or other person, receives support moneys paid to them which moneys are paid in whole or in part in satisfaction of a support obligation which has been assigned to the department pursuant to 42 U.S.C. Sec. 602(A)(26)(a) or RCW 74.20.330 or to which the department is owed a debt pursuant to RCW 74.20A.030, the moneys shall be remitted to the department within eight days of receipt by the custodian or other person. If not so remitted the custodian or other person shall be indebted to the department as a support debt in an amount equal to the amount of the support money received and not remitted.

By not paying over the moneys to the department, a custodial parent or other person is deemed, without the necessity of signing any document, to have made an irrevocable assignment to the department of any support delinquency owed which is not already assigned to the department or to any support delinquency which may accrue in the future in an amount equal to the amount of support money retained. The department may utilize the collection procedures in chapter 74.20A RCW to collect the assigned delinquency to effect recoupment and satisfaction of the debt incurred by reason of the failure of the custodial parent or other person to remit. The department is also authorized to make a set-off to effect satisfaction of the debt by deduction from support moneys in its possession or in the possession of any clerk of the court or other forwarding agent which are paid to the custodial parent or other person for the satisfaction of any support delinquency. Nothing in this section authorizes the department to make set-off as to current support paid during the month for which the payment is due and owing. [1979 ex.s. c 171 § 17.]

Severability—1979 ex.s. c 171: See note following RCW 74.20.300.

74.20.330 Payment of public assistance as assignment of rights to support—Department authorized to provide services. (1) Whenever public assistance is paid under this title, each applicant or recipient is deemed to have made assignment to the department of any rights to a support obligation from any other person the applicant or recipient may have in his or her own behalf or in behalf of any other family member for whom the applicant or recipient is applying for or receiving public assistance, including any unpaid support obligation or support debt which has accrued at the time the assignment is made.

(2) Payment of public assistance under this title shall:
 (a) Operate as an assignment by operation of law; and
 (b) Constitute an authorization to the department to provide the assistance recipient with support enforcement services. [1989 c 360 § 13; 1988 c 275 § 19; 1985 c 276 § 3; 1979 ex.s. c 171 § 22.]

Effective dates—**Severability**—1988 c 275: See notes following RCW 26.19.001.

Severability—1979 ex.s. c 171: See note following RCW 74.20.300.

74.20.340 Employees' case workload standards—Reports to legislative committees. The department shall develop workload standards for each employee classification involved in support enforcement activities for each category of support enforcement cases. The department shall submit the workload standards and a preliminary forecast of the level of staffing required to meet the workload standards to the senate ways and means committee and the house of representatives revenue and appropriations committees six months before the regular legislative sessions and whenever this information is requested by the senate ways and means committee and the house of representatives revenue and appropriations committees. [1979 ex.s. c 171 § 25.]

Severability—1979 ex.s. c 171: See note following RCW 74.20.300.

74.20.350 Costs and attorneys' fees. In order to facilitate and ensure compliance with Title IV-D of the federal social security act, now existing or hereafter amended, wherein the state is required to undertake to establish paternity of such children as are born out of wedlock, the secretary of social and health services may pay the reasonable and proper fees of attorneys admitted to practice before the courts of this state, who are engaged in private practice for the purpose of maintaining actions under chapter 26.26 RCW on behalf of such children, to the end that parent and child relationships be determined and financial support obligations be established by superior court order. The secretary or the secretary's designee shall make the determination in each case as to which cases shall be referred for representation by such private attorneys. The secretary may advance, pay, or reimburse for payment of, such reasonable costs as may be attendant to an action under chapter 26.26 RCW. The representation by a private attorney shall be only on behalf of the subject child, the custodial natural parent, and the child's personal representative or guardian ad litem, and shall not in any manner be, or be construed to be, in representation of the department of social and health services or the state of Washington, such representation being restricted to that provided pursuant to chapters 43.10 and 36.27 RCW. [1979 ex.s. c 171 § 19.]

Severability—1979 ex.s. c 171: See note following RCW 74.20.300.

Chapter 74.20A

SUPPORT OF DEPENDENT CHILDREN—

ALTERNATIVE METHOD—1971 ACT

Sections

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74.20A.010 Purpose—Remedies additional. Common law and statutory procedures governing the remedies for enforcement of support for financially dependent minor children by responsible parents have not proven sufficiently effective or efficient to cope with the increasing incidence of financial dependency. The increasing workload of courts, prosecuting attorneys, and the attorney general has made such remedies uncertain, slow and inadequate, thereby resulting in a growing burden on the financial resources of the state, which is constrained to provide public assistance grants for basic maintenance requirements when parents fail to meet their primary obligations. The state of Washington, therefore, exercising its police and sovereign power, declares that the common law and statutory remedies pertaining to family desertion and nonsupport of minor dependent children shall be augmented by additional remedies directed to the real and personal property resources of the responsible parents. In order to render resources more immediately available to meet the needs of minor children, it is the legislative intent that the remedies herein provided are in addition to, and not in lieu of, existing law. It is declared to be the public policy of this state that this chapter be construed and administered to the end that children shall be maintained from the resources of responsible parents, thereby relieving, at least in part, the burden presently borne by the general citizenry through welfare programs. [1971 ex.s. c 164 § 1.]

74.20A.020 Definitions. Unless a different meaning is plainly required by the context, the following words and phrases as hereinafter used in this chapter and chapter 74.20 RCW shall have the following meanings:

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

(2) "Secretary" means the secretary of the department of social and health services, his designee or authorized representative.

(3) "Dependent child" means any person:

(a) Under the age of eighteen who is not self-supporting, married, or a member of the armed forces of the United States; or

(b) Over the age of eighteen for whom a court order for support exists.

(4) "Support obligation" means the obligation to provide for the necessary care, support, and maintenance, including medical expenses, of a dependent child or other person as required by statutes and the common law of this or another state.

(5) "Superior court order" means any judgment, decree, or order of the superior court of the state of Washington, or a court of comparable jurisdiction of another state, establishing the existence of a support obligation and ordering payment of a set or determinable amount of support moneys to satisfy the support obligation. For purposes of RCW 74.20A.055, orders for support which were entered under the uniform reciprocal enforcement of support act by a state where the responsible parent no longer resides shall not preclude the department from establishing an amount to be paid as current and future support.

(6) "Administrative order" means any determination, finding, decree, or order for support pursuant to RCW 74.20A.055, or by an agency of another state pursuant to a substantially similar administrative process, establishing the existence of a support obligation and ordering the payment of a set or determinable amount of support moneys to satisfy the support obligation.

(7) "Responsible parent" means a natural parent, adoptive parent, or stepparent of a dependent child or a person who has signed an affidavit acknowledging paternity which has been filed with the state office of vital statistics.

(8) "Stepparent" means the present spouse of the person who is either the mother, father, or adoptive parent of a dependent child, and such status shall exist and continue as provided for in RCW 26.16.205 until the relationship is terminated by death or dissolution of marriage.

(9) "Support moneys" means any moneys or in-kind providings paid to satisfy a support obligation whether denominated as child support, spouse support, alimony, maintenance, or any other such moneys intended to satisfy an obligation for support of any person or satisfaction in whole or in part of arrears or delinquency on such an obligation.

(10) "Support debt" means any delinquent amount of support moneys which is due, owing, and unpaid under a superior court order or an administrative order, a debt for the payment of expenses for the reasonable or necessary care, support, and maintenance, including medical expenses, of a dependent child or other person for whom a support obligation is owed; or a debt under RCW 74.20A.100 or 74.20A.270. Support debt also includes any accrued interest, fees, or penalties charged on a support debt, and attorneys fees and other costs of litigation awarded in an action to establish and enforce a support obligation or debt.

(11) "State" means any state or political subdivision, territory, or possession of the United States, the District of Columbia, and the commonwealth of Puerto Rico. [1989 c 175 § 151; 1989 c 55 § 1; 1985 c 276 § 4; 1979 ex.s. c 171 § 3; 1971 ex.s. c 164 § 2.]

Reviser's note: This section was amended by 1989 c 55 § 1 and by 1989 c 175 § 151, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—1989 c 175: See note following RCW 34.05.010.

Severability—1979 ex.s. c 171: See note following RCW 74.20.300.

Birth certificate—Establishing paternity: RCW 70.58.080.

74.20A.030 Department subrogated to rights for support—Enforcement actions—Certain parents exempt. (1) The department shall be subrogated to the right of any dependent child or children or person having the care, custody, and control of said child or children, if public assistance money is paid to or for the benefit of the child, to prosecute or maintain any support action or execute any administrative remedy existing under the laws of the state of Washington to obtain reimbursement

of moneys expended, based on the support obligation of the responsible parent established by a superior court order or RCW 74.20A.055. Distribution of any support moneys shall be made in accordance with 42 U.S.C. Sec. 657.

(2) The department may initiate, continue, maintain, or execute an action to establish, enforce, and collect a support obligation, including establishing paternity and performing related services, under this chapter and chapter 74.20 RCW, or through the attorney general or prosecuting attorney under chapter 26.09, 26.18, 26.20, 26.21, 26.23, or 26.26 RCW or other appropriate statutes or the common law of this state, for so long as and under such conditions as the department may establish by regulation.

(3) Public assistance moneys shall be exempt from collection action under this chapter except as provided in RCW 74.20A.270.

(4) No collection action shall be taken against parents of children eligible for admission to, or children who have been discharged from a residential habilitation center as defined by RCW 71A.10.020(7). [1989 c 360 § 14. Prior: 1988 c 275 § 20; 1988 c 176 § 913; 1987 c 435 § 31; 1985 c 276 § 5; 1984 c 260 § 40; 1979 ex.s. c 171 § 4; 1979 c 141 § 371; 1973 1st ex.s. c 183 § 4; 1971 ex.s. c 164 § 3.]

Effective dates—Severability—1988 c 275: See notes following RCW 26.19.001.

Severability—1988 c 176: See RCW 71A.10.900.

Effective date—1987 c 435: See RCW 26.23.900.

Severability—1984 c 260: See RCW 26.18.900.

Severability—1979 ex.s. c 171: See note following RCW 74.20.300.

74.20A.035 Augmentation of paternity establishment services. The department of social and health services shall augment its present paternity establishment services through the hiring of additional assistant attorneys general, or contracting with prosecutors or private attorneys licensed in the state of Washington in those judicial districts experiencing delay or an accumulation of unserved paternity cases. The employment of private attorneys shall be limited in scope to renewable six-month periods in judicial districts where the prosecutor or the attorney general cannot provide adequate, cost-effective service. The department of social and health services shall provide a written report of the circumstances requiring employment of private attorneys to the judiciary committees of the senate and house of representatives and provide copies of such reports to the office of the attorney general and to the Washington association of prosecuting attorneys. [1987 c 441 § 3.]

Legislative findings—1987 c 441: "The state of Washington through the department of social and health services is required by state and federal statutes to provide paternity establishment services. These statutes require that reasonable efforts to establish paternity be made, if paternity of the child is in question, in all public assistance cases and whenever such services are requested in nonassistance cases.

The increasing number of children being born out of wedlock together with improved awareness of the benefits to the child and society of having paternity established have resulted in a greater demand on the existing judicial paternity establishment system." [1987 c 441 § 1.]

74.20A.040 Notice of support debt—Service or mailing—Contents—Action on, when. (1) The secretary may issue a notice of a support debt accrued and/or accruing based upon RCW 74.20A.030, assignment of a support debt or a request for support enforcement services under RCW 74.20.040 (2) or (3), to enforce and collect a support debt created by a superior court order or administrative order. The payee under the order shall be informed when a notice of support debt is issued under this section.

(2) The notice may be served upon the debtor in the manner prescribed for the service of a summons in a civil action or be mailed to the debtor at his last known address by certified mail, return receipt requested, demanding payment within twenty days of the date of receipt.

(3) The notice of debt shall include:

(a) A statement of the support debt accrued and/or accruing, computable on the amount required to be paid under any superior court order to which the department is subrogated or is authorized to enforce and collect under RCW 74.20A.030, has an assigned interest, or has been authorized to enforce pursuant to RCW 74.20.040 (2) or (3);

(b) A statement that the property of the debtor is subject to collection action;

(c) A statement that the property is subject to lien and foreclosure, distraint, seizure and sale, or order to withhold and deliver; and

(d) A statement that the net proceeds will be applied to the satisfaction of the support debt.

(4) Action to collect a support debt by lien and foreclosure, or distraint, seizure and sale, or order to withhold and deliver shall be lawful after twenty days from the date of service upon the debtor or twenty days from the receipt or refusal by the debtor of said notice of debt.

(5) The secretary shall not be required to issue or serve such notice of support debt prior to taking collection action under this chapter when a responsible parent's support order:

(a) Contains language directing the parent to make support payments to the Washington state support registry; and

(b) Includes a statement that income-withholding action under this chapter may be taken without further notice to the responsible parent, as provided in RCW 26.23.050(1). [1989 c 360 § 8; 1985 c 276 § 2; 1973 1st ex.s. c 183 § 5; 1971 ex.s. c 164 § 4.]

74.20A.055 Notice and finding of financial responsibility of responsible parent—Service—Hearing—Decisions—"Need" defined. (1) The secretary may, in the absence of a superior court order, serve on the responsible parent or parents a notice and finding of financial responsibility requiring a responsible parent or parents to appear and show cause in an adjudicative proceeding why the finding of responsibility and/or the amount thereof is incorrect, should not be finally ordered, but should be rescinded or modified. This notice and finding shall relate to the support debt accrued

and/or accruing under this chapter and/or RCW 26.16-.205, including periodic payments to be made in the future for such period of time as the child or children of said responsible parent or parents are in need. The hearing shall be held pursuant to RCW 74.20A.055, chapter 34.05 RCW, the Administrative Procedure Act, and the rules of the department.

(2) The notice and finding of financial responsibility shall be served in the same manner prescribed for the service of a summons in a civil action or may be served on the responsible parent by certified mail, return receipt requested. The receipt shall be prima facie evidence of service. The notice shall be served upon the debtor within sixty days from the date the state assumes responsibility for the support of the dependent child or children on whose behalf support is sought. If the notice is not served within sixty days from such date, the department shall lose the right to reimbursement of payments made after the sixty-day period and before the date of notification: *Provided*, That if the department exercises reasonable efforts to locate the debtor and is unable to do so the entire sixty-day period is tolled until such time as the debtor can be located. Any responsible parent who objects to all or any part of the notice and finding shall have the right for not more than twenty days from the date of service to file an application for an adjudicative proceeding. The application shall be served upon the department by registered or certified mail or personally. If no such application is made, the notice and finding of responsibility shall become final, and the debt created therein shall be subject to collection action as authorized under this chapter. If a timely application is made, the execution of notice and finding of responsibility shall be stayed pending the entry of the final administrative order. If no timely written application has previously been made, the responsible parent may petition the secretary or the secretary's designee at any time for an adjudicative proceeding as provided for in this section upon a showing of good cause for the failure to make a timely application. The filing of the petition for an adjudicative proceeding after the twenty-day period shall not affect any collection action previously taken under this chapter. The granting of an application after the twenty-day period operates as a stay on any future collection action, pending entry of the final administrative order. Moneys withheld as a result of collection action in effect at the time of the granting of the application after the twenty-day period shall be delivered to the department and shall be held in trust by the department pending entry of the final administrative order. The department may petition the presiding or reviewing officer to set temporary current and future support to be paid beginning with the month in which the application after the twenty-day period is granted. The presiding or reviewing officer shall order payment of temporary current and future support if appropriate in an amount determined pursuant to the child support schedule adopted under RCW 26.19.040. In the event the responsible parent does not make payment of the temporary current and future support as ordered by the presiding or reviewing officer, the department may take

collection action pursuant to chapter 74.20A RCW during the pendency of the adjudicative proceeding or thereafter to collect any amounts owing under the order. Temporary current and future support paid, or collected, during the pendency of the adjudicative proceeding shall be disbursed to the custodial parent or as otherwise appropriate when received by the department. If the final administrative order is that the department has collected from the responsible parent other than temporary current or future support, an amount greater than such parent's past support debt, the department shall promptly refund any such excess amount to such parent.

(3) Hearings may be held in the county of residence or other place convenient to the responsible parent. The notice and finding of financial responsibility shall set forth the amount the department has determined the responsible parent owes, the support debt accrued and/or accruing, and periodic payments to be made in the future for such period of time as the child or children of the responsible parent are in need, all computable on the basis of the need alleged. The notice and finding shall also include a statement of the name of the recipient or custodian and the name of the child or children for whom need is alleged; and/or a statement of the amount of periodic future support payments as to which financial responsibility is alleged.

(4) The notice and finding shall include a statement that the responsible parent may object to all or any part of the notice and finding, and file an application for an adjudicative proceeding to show cause why said responsible parent should not be determined to be liable for any or all of the debt, past and future.

The notice and finding shall include a statement that, if the responsible parent fails in timely fashion to file an application for an adjudicative proceeding, the support debt and payments stated in the notice and finding, including periodic support payments in the future, shall be assessed and determined and ordered by the department and that this debt shall be subject to collection action; a statement that the property of the debtor, without further advance notice or hearing, will be subject to lien and foreclosure, distraint, seizure and sale, or order to withhold and deliver to satisfy the debt.

(5) If an application for an adjudicative proceeding is filed, the presiding or reviewing officer shall determine the past liability and responsibility, if any, of the alleged responsible parent and shall also determine the amount of periodic payments to be made in the future, which amount is not limited by the amount of any public assistance payment made to or for the benefit of the child. If deviating from the child support schedule adopted under RCW 26.19.040 in making these determinations, the presiding or reviewing officer shall comply with RCW 26.19.020 (4), (5), and (6).

If the responsible parent fails to attend or participate in the hearing or other stage of an adjudicative proceeding, upon a showing of valid service, the presiding officer shall enter an initial decision and order declaring the support debt and payment provisions stated in the notice and finding of financial responsibility to be assessed and determined and subject to collection action.

(6) The final order establishing liability and/or future periodic support payments shall be superseded upon entry of a superior court order for support to the extent the superior court order is inconsistent with the administrative order: *Provided*, That in the absence of a superior court order, either the responsible parent or the department may petition the secretary or his designee for issuance of an order to appear and show cause based on a showing of good cause and material change of circumstances, to require the other party to appear and show cause why the order previously entered should not be prospectively modified. Said order to appear and show cause together with a copy of the petition and affidavit upon which the order is based shall be served in the manner of a summons in a civil action or by certified mail, return receipt requested, on the other party by the petitioning party. Prospective modification may be ordered, but only upon a showing of good cause and material change of circumstances.

(7) The presiding or reviewing officer shall order support payments under the child support schedule adopted under RCW 26.19.040.

(8) Debts determined pursuant to this section, accrued and not paid, are subject to collection action under this chapter without further necessity of action by a presiding or reviewing officer.

(9) "Need" as used in this section shall mean the necessary costs of food, clothing, shelter, and medical attendance for the support of a dependent child or children. The amount determined by reference to the child support schedule adopted under RCW 26.19.040, shall be a rebuttable presumption of the alleged responsible parent's ability to pay and the need of the family: *Provided*, That such responsible parent shall be presumed to have no ability to pay child support under this chapter from any income received from aid to families with dependent children, supplemental security income, or continuing general assistance. [1989 c 175 § 152; 1988 c 275 § 10; 1982 c 189 § 8; 1979 ex.s. c 171 § 12; 1973 1st ex.s. c 183 § 25.]

Effective date—1989 c 175: See note following RCW 34.05.010.

Effective dates—**Severability**—1988 c 275: See notes following RCW 26.19.001.

Effective date—1982 c 189: See note following RCW 34.12.020.

Severability—1979 ex.s. c 171: See note following RCW 74.20.300.

74.20A.056 Notice and finding of financial responsibility pursuant to an affidavit of paternity—Procedure for contesting. (1) If an alleged father has signed an affidavit acknowledging paternity which has been filed with the state office of vital statistics, the office of support enforcement may serve a notice and finding of parental responsibility on him. Service of the notice shall be in the same manner as a summons in a civil action or by certified mail, return receipt requested. The notice shall have attached to it a copy of the affidavit and shall state that:

(a) The alleged father may file an application for an adjudicative proceeding at which he will be required to appear and show cause why the amount stated in the

finding of financial responsibility as to support is incorrect and should not be ordered;

(b) An alleged father may request that a blood test be administered to determine whether such test would exclude him from being a natural parent and, if not excluded, may subsequently request that the office of support enforcement initiate an action in superior court to determine the existence of the parent-child relationship; and

(c) If the alleged father does not request that a blood test be administered or file an application for an adjudicative proceeding, the amount of support stated in the notice and finding of parental responsibility shall become final, subject only to a subsequent determination under RCW 26.26.060 that the parent-child relationship does not exist.

(2) An alleged father who objects to the amount of support requested in the notice may file an application for an adjudicative proceeding up to twenty days after the date the notice was served. An application for an adjudicative proceeding may be filed within one year of service of the notice and finding of parental responsibility without the necessity for a showing of good cause or upon a showing of good cause thereafter. An adjudicative proceeding under this section shall be pursuant to RCW 74.20A.055. The only issues shall be the amount of the accrued debt, the amount of the current and future support obligation, and the reimbursement of the costs of blood tests if advanced by the department.

(3) If the application for an adjudicative proceeding is filed within twenty days of service of the notice, collection action shall be stayed pending a final decision by the department. If no application is filed within twenty days:

(a) The amounts in the notice shall become final and the debt created therein shall be subject to collection action; and

(b) Any amounts so collected shall neither be refunded nor returned if the parent is later found not to be the father.

(4) An alleged father who denies being a responsible parent may request that a blood test be administered at any time. The request for testing shall be in writing and served on the office of support enforcement personally or by registered or certified mail. If a request for testing is made, the department shall arrange for the test and, pursuant to rules adopted by the department, may advance the cost of such testing. The department shall mail a copy of the test results by certified mail, return receipt requested, to the alleged father's last known address.

(5) If the test excludes the alleged father from being a natural parent, the office of support enforcement shall file a copy of the results with the state office of vital statistics and shall dismiss any pending administrative collection proceedings based upon the affidavit in issue. The state office of vital statistics shall remove the alleged father's name from the birth certificate.

(6) The alleged father may, within twenty days after the date of receipt of the test results, request the office of support enforcement to initiate an action under RCW 26.26.060 to determine the existence of the parent-child

relationship. If the office of support enforcement initiates a superior court action at the request of the alleged father and the decision of the court is that the alleged father is a natural parent, the alleged father shall be liable for court costs incurred.

(7) If the alleged father does not request the office of support enforcement to initiate a superior court action, or if the alleged father fails to appear and cooperate with blood testing, the notice of parental responsibility shall become final for all intents and purposes and may be overturned only by a subsequent superior court order entered under RCW 26.26.060. [1989 c 55 § 3.]

Birth certificate—Establishing paternity: RCW 70.58.080.

74.20A.057 Jurisdiction over responsible parent. A support obligation arising under the statutes or common law of this state binds the responsible parent, present in this state, regardless of the presence or residence of the custodian or children. The obligor is presumed to have been present in the state of Washington during the period for which support is sought until otherwise shown. The department may establish an administrative order pursuant to RCW 74.20A.055 that is based upon any support obligation imposed or impossible under the statutes or common law of any state in which the obligor was present during the period for which support is sought. [1985 c 276 § 15.]

74.20A.058 Adjudicative proceeding contesting parental responsibility—Notice to mother. If an adjudicative proceeding is requested by an alleged father under RCW 74.20A.056, the department shall mail a copy of the notice of hearing to the mother at her last known address. If the mother appears for the proceeding, she shall be allowed to participate in it. Participation includes giving testimony, and being present for or listening to other testimony offered in the proceeding. Nothing in this section shall preclude the administrative law judge from limiting participation to preserve the confidentiality of information protected by law. [1989 c 55 § 5.]

74.20A.060 Assertion of lien—Effect. (1) The secretary may assert a lien upon the real or personal property of a responsible parent:

(a) When a support payment is past due, if the parent's support order was entered in accordance with RCW 26.23.050(1);

(b) Twenty-one days after service of a notice of support debt under RCW 74.20A.040;

(c) Twenty-one days after service of a notice and finding of financial responsibility under RCW 74.20A.055;

(d) Twenty-one days after service of a notice and finding of parental responsibility;

(e) Twenty-one days after service of a notice of support owed under RCW 26.23.110; or

(f) When appropriate under RCW 74.20A.270.

(2) The claim of the department for a support debt, not paid when due, shall be a lien against all property of the debtor with priority of a secured creditor. This lien

shall be separate and apart from, and in addition to, any other lien created by, or provided for, in this title. The lien shall attach to all real and personal property of the debtor on the date of filing of such statement with the county auditor of the county in which such property is located.

(3) Whenever a support lien has been filed and there is in the possession of any person, firm, corporation, association, political subdivision or department of the state having notice of said lien any property which may be subject to the support lien, such property shall not be paid over, released, sold, transferred, encumbered or conveyed, except as provided for by the exemptions contained in RCW 74.20A.090 and 74.20A.130, unless:

(a) A written release or waiver signed by the secretary has been delivered to said person, firm, corporation, association, political subdivision or department of the state; or

(b) A determination has been made in an adjudicative proceeding pursuant to RCW 74.20A.055 or by a superior court ordering release of said support lien on the basis that no debt exists or that the debt has been satisfied. [1989 c 360 § 9; 1989 c 175 § 153; 1979 ex.s. c 171 § 5; 1973 1st ex.s. c 183 § 7; 1971 ex.s. c 164 § 6.]

Reviser's note: This section was amended by 1989 c 175 § 153 and by 1989 c 360 § 9, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective dates—1989 c 360 §§ 9, 10, 16, and 39: "(1) Sections 9, 10, and 16 of this act are necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately [May 12, 1989].

(2) Section 39 of this act shall take effect July 1, 1990." [1989 c 360 § 43.]

Effective date—1989 c 175: See note following RCW 34.05.010.

Severability—1979 ex.s. c 171: See note following RCW 74.20.300.

74.20A.070 Service of lien. The secretary may at any time after filing of a support lien serve a copy of said lien upon any person, firm, corporation, association, political subdivision or department of the state in possession of earnings, or deposits or balances held in any bank account of any nature which are due, owing, or belonging to said debtor. Said support lien shall be served upon the person, firm, corporation, association, political subdivision or department of the state either in the manner prescribed for the service of summons in a civil action or by certified mail, return receipt requested. No lien filed under RCW 74.20A.060 shall have any effect against earnings or bank deposits or balances unless it states the amount of the support debt accrued and unless service upon said person, firm, corporation, association, political subdivision or department of the state in possession of earnings or bank accounts, deposits or balances is accomplished pursuant to this section. [1973 1st ex.s. c 183 § 8; 1971 ex.s. c 164 § 7.]

Civil procedure—Commencement of actions: Chapter 4.28 RCW.

74.20A.080 Order to withhold and deliver—Issue and service—Contents—Effect—Duties of person served—Processing fee. (1) The secretary may issue to

any person, firm, corporation, association, political subdivision, or department of the state, an order to withhold and deliver property of any kind, including but not restricted to earnings which are due, owing, or belonging to the debtor, when the secretary has reason to believe that there is in the possession of such person, firm, corporation, association, political subdivision, or department of the state property which is due, owing, or belonging to said debtor. Such order to withhold and deliver may be issued:

(a) When a support payment is past due, if a responsible parent's support order:

(i) Contains language directing the parent to make support payments to the Washington state support registry; and

(ii) Includes a statement that other income-withholding action under this chapter may be taken without further notice to the responsible parent, as provided for in RCW 26.23.050(1);

(b) Twenty-one days after service of a notice of support debt under RCW 74.20A.040;

(c) Twenty-one days after service of a notice and finding of parental responsibility;

(d) Twenty-one days after service of a notice of support owed under RCW 26.23.110;

(e) Twenty-one days after service of a notice and finding of financial responsibility under RCW 74.20A.055; or

(f) When appropriate under RCW 74.20A.270.

(2) The order to withhold and deliver shall:

(a) State the amount of the support debt accrued;

(b) State in summary the terms of RCW 74.20A.090 and 74.20A.100;

(c) Be served in the manner prescribed for the service of a summons in a civil action or by certified mail, return receipt requested.

(3) Any person, firm, corporation, association, political subdivision, or department of the state upon whom service has been made is hereby required to:

(a) Answer said order to withhold and deliver within twenty days, exclusive of the day of service, under oath and in writing, and shall make true answers to the matters inquired of therein; and

(b) Provide further and additional answers when requested by the secretary.

(4) Any such person, firm, corporation, association, political subdivision, or department of the state in possession of any property which may be subject to the claim of the department of social and health services shall:

(a)(i) Immediately withhold such property upon receipt of the order to withhold and deliver; and

(ii) Deliver the property to the secretary as soon as the twenty-day answer period expires;

(iii) Continue to withhold earnings payable to the debtor at each succeeding disbursement interval as provided for in RCW 74.20A.090, and deliver amounts withheld from earnings to the obligee within ten days of the date earnings are payable to the debtor;

(iv) Inform the secretary of the date the amounts were withheld as requested under this section; or

(b) Furnish to the secretary a good and sufficient bond, satisfactory to the secretary, conditioned upon final determination of liability.

(5) Where money is due and owing under any contract of employment, express or implied, or is held by any person, firm, corporation, or association, political subdivision, or department of the state subject to withdrawal by the debtor, such money shall be delivered by remittance payable to the order of the secretary.

(6) Delivery to the secretary of the money or other property held or claimed shall satisfy the requirement and serve as full acquittance of the order to withhold and deliver.

(7) The state warrants and represents that:

(a) It shall defend and hold harmless for such actions persons delivering money or property to the secretary pursuant to this chapter; and

(b) It shall defend and hold harmless for such actions persons withholding money or property pursuant to this chapter.

(8) The secretary may hold the money or property delivered under this section in trust for application on the indebtedness involved or for return, without interest, in accordance with final determination of liability or nonliability.

(9) Exemptions contained in RCW 74.20A.090 apply to orders to withhold and deliver issued under this section.

(10) The secretary shall also, on or before the date of service of the order to withhold and deliver, mail or cause to be mailed by certified mail a copy of the order to withhold and deliver to the debtor at the debtor's last known post office address, or, in the alternative, a copy of the order to withhold and deliver shall be served on the debtor in the same manner as a summons in a civil action on or before the date of service of the order or within two days thereafter. The copy of the order shall be mailed or served together with a concise explanation of the right to petition for judicial review. This requirement is not jurisdictional, but, if the copy is not mailed or served as in this section provided, or if any irregularity appears with respect to the mailing or service, the superior court, in its discretion on motion of the debtor promptly made and supported by affidavit showing that the debtor has suffered substantial injury due to the failure to mail the copy, may set aside the order to withhold and deliver and award to the debtor an amount equal to the damages resulting from the secretary's failure to serve on or mail to the debtor the copy.

(11) An order to withhold and deliver issued in accordance with this section has priority over any other wage assignment or garnishment.

(12) The office of support enforcement shall notify any person, firm, corporation, association, or political subdivision, or department of the state required to withhold and deliver the earnings of a debtor under this action that they may deduct a processing fee from the remainder of the debtor's earnings, even if the remainder would otherwise be exempt under RCW 74.20A.090. The processing fee shall not exceed ten dollars for the first disbursement to the department and one dollar for

each subsequent disbursement under the order to withhold and deliver. [1989 c 360 § 10; 1989 c 175 § 154; 1985 c 276 § 6; 1979 ex.s. c 171 § 6; 1973 1st ex.s. c 183 § 9; 1971 ex.s. c 164 § 8.]

Reviser's note: This section was amended by 1989 c 175 § 154 and by 1989 c 360 § 10, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective dates—1989 c 360 §§ 9, 10, 16, and 39: See note following RCW 74.20A.060.

Effective date—1989 c 175: See note following RCW 34.05.010.

Severability—1979 ex.s. c 171: See note following RCW 74.20.300.

74.20A.090 Certain amount of earnings exempt from lien or order—"Earnings" and "disposable earnings" defined. Whenever a support lien or order to withhold and deliver is served upon any person, firm, corporation, association, political subdivision, or department of the state asserting a support debt against earnings and there is in the possession of such person, firm, corporation, association, political subdivision, or department of the state, any such earnings, RCW 6.27.150 shall not apply, but fifty percent of the disposable earnings shall be exempt and may be disbursed to the debtor whether such earnings are paid, or to be paid weekly, monthly, or at other intervals and whether there be due the debtor earnings for one week or for a longer period. The lien or order to withhold and deliver shall continue to operate and require said person, firm, corporation, association, political subdivision, or department of the state to withhold the nonexempt portion of earnings at each succeeding earnings disbursement interval until the entire amount of the support debt stated in the lien or order to withhold and deliver has been withheld. As used in this chapter, the term "earnings" means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, or otherwise, and, notwithstanding any other provision of law making such payments exempt from garnishment, attachment, or other process to satisfy support obligation, specifically includes periodic payments pursuant to pension or retirement programs, or insurance policies of any type, but does not include payments made under Title 50 RCW, except as provided in RCW 50.40.020 and 50.40.050 or Title 74 RCW. Earnings shall specifically include all gain derived from capital, from labor, or from both combined, not including profit gained through sale or conversion of capital assets. The term "disposable earnings" means that part of the earnings of any individual remaining after the deduction from those earnings of any amount required by law to be withheld. [1982 1st ex.s. c 18 § 12. Prior: 1982 c 201 § 21; 1979 ex.s. c 171 § 10; 1973 1st ex.s. c 183 § 10; 1971 ex.s. c 164 § 9.]

Severability—Conflict with federal requirements—1982 1st ex.s. c 18: See notes following RCW 50.12.200.

Severability—1979 ex.s. c 171: See note following RCW 74.20.300.

74.20A.100 Civil liability upon failure to comply with order or lien—Collection. (1) Any person, firm, corporation, association, political subdivision or department

of the state shall be liable to the department in an amount equal to one hundred percent of the value of the debt which is the basis of the lien, order to withhold and deliver, distraint, or assignment of earnings, or the amount that should have been withheld, whichever amount is less, together with costs, interest, and reasonable attorney fees if that person or entity:

- (a) Fails to answer an order to withhold and deliver within the time prescribed herein;
- (b) Fails or refuses to deliver property pursuant to said order;
- (c) After actual notice of filing of a support lien, pays over, releases, sells, transfers, or conveys real or personal property subject to a support lien to or for the benefit of the debtor or any other person;
- (d) Fails or refuses to surrender property distrained under RCW 74.20A.130 upon demand; or
- (e) Fails or refuses to honor an assignment of earnings presented by the secretary.

(2) The secretary is authorized to issue a notice of debt pursuant to RCW 74.20A.040 and to take appropriate action to collect the debt under this chapter if:

- (a) A judgment has been entered as the result of an action in superior court against a person, firm, corporation, association, political subdivision, or department of the state based on a violation of this section; or
- (b) Liability has been established under RCW 74.20A.270. [1989 c 360 § 5; 1985 c 276 § 7; 1973 1st ex.s. c 183 § 11; 1971 ex.s. c 164 § 10.]

74.20A.110 Release of excess to debtor. Whenever any person, firm, corporation, association, political subdivision or department of the state has in its possession earnings, deposits, accounts, or balances in excess of the amount of the debt claimed by the department, such person, firm, corporation, association, political subdivision or department of the state may, without liability under this chapter, release said excess to the debtor. [1979 ex.s. c 171 § 7; 1971 ex.s. c 164 § 11.]

Severability—1979 ex.s. c 171: See note following RCW 74.20.300.

74.20A.120 Banks, savings and loan associations, credit unions—Service on main office or branch, effect—Collection actions against community bank account, right to adjudicative proceeding. A lien, order to withhold and deliver, or any other notice or document authorized by this chapter or chapter 26.23 RCW may be served on the main office of a bank, savings and loan association, or credit union or on a branch office of such financial institution. Service on the main office shall be effective to attach the deposits of a responsible parent in the financial institution and compensation payable for personal services due the responsible parent from the financial institution. Service on a branch office shall be effective to attach the deposits, accounts, credits, or other personal property of the responsible parent, excluding compensation payable for personal services, in the possession or control of the particular branch served.

If the department initiates collection action under this chapter against a community bank account, the debtor

or the debtor's spouse, upon service on the department of a timely application, has a right to an adjudicative proceeding governed by chapter 34.05 RCW, the Administrative Procedure Act, to establish that the funds in the account, or a portion of those funds, were the earnings of the nonobligated spouse, and are exempt from the satisfaction of the child support obligation of the debtor pursuant to RCW 26.16.200. [1989 c 360 § 30; 1989 c 175 § 155; 1983 1st ex.s. c 41 § 3; 1971 ex.s. c 164 § 12.]

Reviser's note: This section was amended by 1989 c 175 § 155 and by 1989 c 360 § 30, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—1989 c 175: See note following RCW 34.05.010.

Severability—1983 1st ex.s. c 41: See note following RCW 26.09.060.

74.20A.130 Distraint, seizure and sale of property subject to liens under RCW 74.20A.060—Procedure.

Whenever a support lien has been filed pursuant to RCW 74.20A.060, the secretary may collect the support debt stated in said lien by the distraint, seizure, and sale of the property subject to said lien. Not less than ten days prior to the date of sale, the secretary shall cause a copy of the notice of sale to be transmitted by regular mail and by any form of mailing requiring a return receipt to the debtor and any person known to have or claim an interest in the property. Said notice shall contain a general description of the property to be sold and the time, date, and place of the sale. The notice of sale shall be posted in at least two public places in the county wherein the distraint has been made. The time of sale shall not be less than ten nor more than twenty days from the date of posting of such notices. Said sale shall be conducted by the secretary, who shall proceed to sell such property by parcel or by lot at a public auction, and who may set a minimum reasonable price to include the expenses of making a levy and of advertising the sale, and if the amount bid for such property at the sale is not equal to the price so fixed, the secretary may declare such property to be purchased by the department for such price, or may conduct another sale of such property pursuant to the provisions of this section. In the event of sale, the debtor's account shall be credited with the amount for which the property has been sold. Property acquired by the department as herein prescribed may be sold by the secretary at public or private sale, and the amount realized shall be placed in the state general fund to the credit of the department of social and health services. In all cases of sale, as aforesaid, the secretary shall issue a bill of sale or a deed to the purchaser and said bill of sale or deed shall be prima facie evidence of the right of the secretary to make such sale and conclusive evidence of the regularity of his proceeding in making the sale, and shall transfer to the purchaser all right, title, and interest of the debtor in said property. The proceeds of any such sale, except in those cases wherein the property has been acquired by the department, shall be first applied by the secretary to reimbursement of the costs of distraint and sale, and thereafter in satisfaction of the delinquent account. Any

excess which shall thereafter remain in the hands of the secretary shall be refunded to the debtor. Sums so refundable to a debtor may be subject to seizure or distraint by any taxing authority of the state or its political subdivisions or by the secretary for new sums due and owing subsequent to the subject proceeding. Except as specifically provided in this chapter, there shall be exempt from distraint, seizure, and sale under this chapter such property as is exempt therefrom under the laws of this state. [1987 c 435 § 32; 1973 1st ex.s. c 183 § 12; 1971 ex.s. c 164 § 13.]

Effective date—1987 c 435: See RCW 26.23.900.

74.20A.140 Action for foreclosure of support lien—Satisfaction. Whenever a support lien has been filed, an action in foreclosure of lien upon real or personal property may be brought in the superior court of the county where real or personal property is or was located and the lien was filed and judgment shall be rendered in favor of the department for the amount due, with costs, and the court shall allow, as part of the costs, the moneys paid for making and filing the claim of lien, and a reasonable attorney's fee, and the court shall order any property upon which any lien provided for by this chapter is established, to be sold by the sheriff of the proper county to satisfy the lien and costs. The payment of the lien debt, costs and reasonable attorney fees, at any time before sale, shall satisfy the judgment of foreclosure. Where the net proceeds of sale upon application to the debt claimed do not satisfy the debt in full, the department shall have judgment over for any deficiency remaining unsatisfied and further levy and sales upon other property of the judgment debtor may be made under the same execution. In all sales contemplated under this section, advertising of notice shall only be necessary for two weeks in a newspaper published in the county where said property is located, and if there be no newspaper therein, then in the most convenient newspaper having a circulation in such county. Remedies provided for herein are alternatives to remedies provided for in other sections of this chapter. [1973 1st ex.s. c 183 § 13; 1971 ex.s. c 164 § 14.]

74.20A.150 Satisfaction of lien after foreclosure proceedings instituted—Redemption. Any person owning real property, or any interest in real property, against which a support lien has been filed and foreclosure instituted, shall have the right to pay the amount due, together with expenses of the proceedings and reasonable attorney fees to the secretary and upon such payment the secretary shall restore said property to him and all further proceedings in the said foreclosure action shall cease. Said person shall also have the right within two hundred forty days after sale of property foreclosed under RCW 74.20A.140 to redeem said property by making payment to the purchaser in the amount paid by the purchaser plus interest thereon at the rate of six percent per annum. [1973 1st ex.s. c 183 § 14; 1971 ex.s. c 164 § 15.]

74.20A.160 Secretary may set debt payment schedule, release funds in certain hardship cases. With respect to any arrearages on a support debt assessed under this chapter, the secretary may at any time consistent with the income, earning capacity and resources of the debtor, set or reset a level and schedule of payments to be paid upon a support debt. The secretary may, upon petition of the debtor providing sufficient evidence of hardship, after consideration of the child support schedule adopted under RCW 26.19.040, release or refund moneys taken pursuant to RCW 74.20A.080 to provide for the reasonable necessities of the responsible parent or parents and minor children in the home of the responsible parent. Nothing in this section shall be construed to require the secretary to take any action which would require collection of less than the obligation for current support required under a superior court order or an administrative order or to take any action which would result in a bar of collection of arrearages from the debtor by reason of the statute of limitations. [1988 c 275 § 11; 1985 c 276 § 8; 1979 ex.s. c 171 § 8; 1971 ex.s. c 164 § 16.]

Effective dates—Severability—1988 c 275: See notes following RCW 26.19.001.

Severability—1979 ex.s. c 171: See note following RCW 74.20.300.

74.20A.170 Secretary may release lien or order or return seized property—Effect. The secretary may at any time release a support lien, or order to withhold and deliver, on all or part of the property of the debtor, or return seized property without liability, if assurance of payment is deemed adequate by the secretary, or if said action will facilitate the collection of the debt, but said release or return shall not operate to prevent future action to collect from the same or other property. [1973 1st ex.s. c 183 § 15; 1971 ex.s. c 164 § 17.]

74.20A.180 Secretary may make demand, file and serve liens, when payments appear in jeopardy. If the secretary finds that the collection of any support debt, accrued under a superior court order, based upon subrogation or an authorization to enforce and collect under RCW 74.20A.030, or assignment of, or a request for support enforcement services to enforce and collect the amount of support ordered by any superior court order is in jeopardy, the secretary may make a written demand under RCW 74.20A.040 for immediate payment of the support debt and, upon failure or refusal immediately to pay said support debt, may file and serve liens pursuant to RCW 74.20A.060 and 74.20A.070, without regard to the twenty day period provided for in RCW 74.20A.040: *Provided*, That no further action under RCW 74.20A.080, 74.20A.130 and 74.20A.140 may be taken until the notice requirements of RCW 74.20A.040 are met. [1985 c 276 § 9; 1973 1st ex.s. c 183 § 16; 1971 ex.s. c 164 § 18.]

74.20A.200 Judicial relief after administrative remedies exhausted. Any person against whose property a support lien has been filed or an order to withhold and

deliver has been served pursuant to this chapter may apply for relief to the superior court of the county wherein the property is located. It is the intent of this chapter that jurisdictional and constitutional issues, if any, shall be subject to review, but that administrative remedies be exhausted prior to judicial review. [1985 c 276 § 10; 1979 ex.s. c 171 § 9; 1973 1st ex.s. c 183 § 18; 1971 ex.s. c 164 § 20.]

Severability—1979 ex.s. c 171: See note following RCW 74.20.300.

74.20A.220 Charging off child support debts as uncollectible—Compromise—Waiver of any bar to collection. Any support debt due the department from a responsible parent may be written off and cease to be accounted as an asset if the secretary finds there are no cost-effective means of collecting the debt.

The department may accept offers of compromise of disputed claims or may grant partial or total charge-off of support arrears owed to the department up to the total amount of public assistance paid to or for the benefit of the persons for whom the support obligation was incurred. The department shall adopt rules as to the considerations to be made in the granting or denial of partial or total charge-off and offers of compromise of disputed claims of debt for support arrears. The rights of the payee under an order for support shall not be prejudiced if the department accepts an offer of compromise, or grants a partial or total charge-off under this section.

The responsible parent owing a support debt may execute a written extension or waiver of any statute which may bar or impair the collection of the debt and the extension or waiver shall be effective according to its terms. [1989 c 360 § 4; 1989 c 78 § 2; 1979 ex.s. c 171 § 16; 1973 1st ex.s. c 183 § 20; 1971 ex.s. c 164 § 22.]

Reviser's note: This section was amended by 1989 c 78 § 2 and by 1989 c 360 § 4, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Severability—1979 ex.s. c 171: See note following RCW 74.20.300.

74.20A.230 Employee debtor rights protected—Remedies. No employer shall discharge or discipline an employee or refuse to hire a person for reason that an assignment of earnings has been presented in settlement of a support debt or that a support lien or order to withhold and deliver has been served against said employee's earnings. If an employer discharges or disciplines an employee or refuses to hire a person in violation of this section, the employee or person shall have a cause of action against the employer. The employer shall be liable for double the amount of lost wages and any other damages suffered as a result of the violation and for costs and reasonable attorney fees, and shall be subject to a civil penalty of not more than two thousand five hundred dollars for each violation. The employer may also be ordered to hire, rehire, or reinstate the aggrieved individual. [1985 c 276 § 11; 1973 1st ex.s. c 183 § 21; 1971 ex.s. c 164 § 23.]

(1989 Ed.)

74.20A.240 Assignment of earnings to be honored—Effect—Processing fee. Any person, firm, corporation, association, political subdivision or department of the state employing a person owing a support debt or obligation, shall honor, according to its terms, a duly executed assignment of earnings presented by the secretary as a plan to satisfy or retire a support debt or obligation. This requirement to honor the assignment of earnings and the assignment of earnings itself shall be applicable whether said earnings are to be paid presently or in the future and shall continue in force and effect until released in writing by the secretary. Payment of moneys pursuant to an assignment of earnings presented by the secretary shall serve as full acquittance under any contract of employment, and the state warrants and represents it shall defend and hold harmless such action taken pursuant to said assignment of earnings. The secretary shall be released from liability for improper receipt of moneys under an assignment of earnings upon return of any moneys so received.

An assignment of earnings presented by the secretary in accordance with this section has priority over any other wage assignment or garnishment, except for another wage assignment or garnishment for support moneys.

The employer may deduct a processing fee from the remainder of the debtor's earnings, even if the remainder would be exempt under RCW 74.20A.090. The processing fee shall not exceed ten dollars from the first disbursement to the department and one dollar for each subsequent disbursement under the assignment of earnings. [1985 c 276 § 12; 1973 1st ex.s. c 183 § 22; 1971 ex.s. c 164 § 24.]

74.20A.250 Secretary empowered to act as attorney, endorse drafts. Whenever the secretary has been authorized under RCW 74.20.040 to take action to establish, enforce, and collect support moneys, the custodial parent and the child or children are deemed, without the necessity of signing any document, to have appointed the secretary as his or her true and lawful attorney in fact to act in his or her name, place, and stead to perform the specific act of endorsing any and all drafts, checks, money orders or other negotiable instruments representing support payments which are received on behalf of said child or children to effect proper and lawful distribution of the support moneys in accordance with 42 U.S.C. Sec. 657. [1985 c 276 § 13; 1979 ex.s. c 171 § 20; 1973 1st ex.s. c 183 § 23; 1971 ex.s. c 164 § 25.]

Severability—1979 ex.s. c 171: See note following RCW 74.20.300.

74.20A.260 Industrial insurance disability payments subject to collection by office of support enforcement. Disability payments made pursuant to Title 51 RCW shall be classified as earnings and shall be subject to collection action by the office for support enforcement under this chapter and all other applicable state statutes. [1987 c 435 § 34; 1973 1st ex.s. c 183 § 24.]

Effective date—1987 c 435: See RCW 26.23.900.

74.20A.270 Department claim for support moneys—Service—Answer—Adjudicative proceeding—Judicial review—Moneys not subject to claim. The secretary may issue a notice of noncompliance to any person, firm, corporation, association, or political subdivision of the state of Washington or any officer or agent thereof who has violated chapter 26.18 RCW, RCW 74.20A.100, or 26.23.040, who is in possession of support moneys, or who has had support moneys in his or her possession at some time in the past, which support moneys were or are claimed by the department as the property of the department by assignment, subrogation, or by operation of law or legal process under chapter 74.20A RCW, if the support moneys have not been remitted to the department as required by law.

The notice shall describe the claim of the department, stating the legal basis for the claim and shall provide sufficient detail to enable the person, firm, corporation, association, or political subdivision or officer or agent thereof upon whom service is made to identify the support moneys in issue or the specific violation of RCW 74.20A.100 that has occurred. The notice may also make inquiry as to relevant facts necessary to the resolution of the issue.

The notice may be served by certified mail, return receipt requested, or in the manner of a summons in a civil action. Upon service of the notice all moneys not yet disbursed or spent or like moneys to be received in the future are deemed to be impounded and shall be held in trust pending answer to the notice and any adjudicative proceeding.

The notice shall be answered under oath and in writing within twenty days of the date of service, which answer shall include true answers to the matters inquired of in the notice. The answer shall also either acknowledge the department's right to the moneys or application for an adjudicative proceeding to contest the allegation that chapter 26.18 RCW, RCW 74.20A.100, or 26.23.040, has been violated, or determine the rights to ownership of the support moneys in issue. The hearing shall be held pursuant to this section, chapter 34.05 RCW, the Administrative Procedure Act, and the rules of the department. The burden of proof to establish ownership of the support moneys claimed, including but not limited to moneys not yet disbursed or spent, is on the department.

If no answer is made within the twenty days, the department's claim shall be assessed and determined and subject to collection action as a support debt pursuant to chapter 26.18 or 74.20A RCW, or RCW 26.23.040. Any such debtor may, at any time within one year from the date of service of the notice of support debt, petition the secretary or the secretary's designee for an adjudicative proceeding upon a showing of any of the grounds enumerated in RCW 4.72.010 or superior court civil rule 60. A copy of the petition shall also be served on the department. The filing of the petition shall not stay any collection action being taken, but the debtor may petition the secretary or the secretary's designee for an order

staying collection action pending the final administrative order. Any moneys held and/or taken by collection action prior to the date of any such stay and any support moneys claimed by the department, including moneys to be received in the future to which the department may have a claim, shall be held in trust pending the final order, to be disbursed in accordance with the final order. The secretary or the secretary's designee shall condition the stay to provide for the trust.

If the petition is granted the issue in the proceeding is limited to the determination of the ownership of the moneys claimed in the notice of debt. The right to an adjudicative proceeding is conditioned upon holding of any funds not yet disbursed or expended or to be received in the future in trust pending the final order in these proceedings. The presiding or reviewing officer shall enter an appropriate order providing for the terms of the trust.

If the debtor fails to attend or participate in the hearing or other stage of an adjudicative proceeding, the presiding officer shall, upon showing of valid service, enter an order declaring the amount of support moneys, as claimed in the notice, to be assessed and determined and subject to collection action.

If, at any time, the superior court enters judgment for an amount of debt at variance with the amount determined by the final order in an adjudicative proceeding, the judgment shall supersede the final administrative order. Any debt determined by the superior court in excess of the amount determined by the final administrative order shall be the property of the department as assigned under 42 U.S.C. 602(A)(26)(a), RCW 74.20.040, 74.20A.250, 74.20.320, or 74.20.330. The department may, despite any final administrative order, take action pursuant to chapter 74.20 or 74.20A RCW to obtain such a judgment or to collect moneys determined by such a judgment to be due and owing.

If public assistance moneys have been paid to a parent for the benefit of that parent's minor dependent children, debt under this chapter shall not be incurred by nor at any time be collected from that parent because of that payment of assistance. Nothing in this section prohibits or limits the department from acting pursuant to RCW 74.20.320 and this section to assess a debt against a recipient or ex-recipient for receipt of support moneys paid in satisfaction of the debt assigned under RCW 74.20.330 which have been assigned to the department but were received by a recipient or ex-recipient from another responsible parent and not remitted to the department. To collect these wrongfully retained funds from the recipient, the department may not take collection action in excess of ten percent of the grant payment standard during any month the public assistance recipient remains in that status unless required by federal law. Payments not credited against the department's debt pursuant to RCW 74.20.101 may not be assessed or collected under this section. [1989 c 360 § 35; 1989 c 175 § 156; 1985 c 276 § 14; 1984 c 260 § 41; 1979 ex.s. c 171 § 18.]

Reviser's note: This section was amended by 1989 c 175 § 156 and by 1989 c 360 § 35, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—1989 c 175: See note following RCW 34.05.010.

Severability—1984 c 260: See RCW 26.18.900.

Severability—1979 ex.s. c 171: See note following RCW 74.20.300.

74.20A.280 Department to respect privacy of recipients. While discharging its responsibilities to enforce the support obligations of responsible parents, the department shall respect the right of privacy of recipients of public assistance and of other persons. Any inquiry about sexual activity shall be limited to that necessary to identify and locate possible fathers and to gather facts needed in the adjudication of parentage. [1987 c 441 § 2; 1979 ex.s. c 171 § 23.]

Severability—1979 ex.s. c 171: See note following RCW 74.20.300.

74.20A.290 Applicant for adjudicative proceeding must advise department of current address. Whenever any person files an application for an adjudicative proceeding under RCW 74.20A.055 or 74.20A.270, after the department has notified the person of the requirements of this section, it shall be the responsibility of the person to notify the department of the person's mailing address at the time the application for an adjudicative proceeding is made and also to notify the department of any subsequent change of mailing address during the pendency of the administrative proceeding and any judicial review. Whenever the person has a duty under this section to advise the department of the person's mailing address, mailing by the department by certified mail to the person's last known address constitutes service as required by chapters 74.20A and 34.05 RCW. [1989 c 175 § 157; 1979 ex.s. c 171 § 21.]

Effective date—1989 c 175: See note following RCW 34.05.010.

Severability—1979 ex.s. c 171: See note following RCW 74.20.300.

74.20A.300 Health insurance coverage required. (1) Whenever a support order is entered or modified under this chapter, the department shall require the responsible parent to maintain or provide health insurance coverage for any dependent child as provided under RCW 26.09.105.

(2) "Health insurance coverage" as used in this section does not include medical assistance provided under chapter 74.09 RCW.

(3) A parent ordered to provide health insurance coverage shall provide proof of such coverage to the department within twenty days of the entry of the order, or within fifteen days of the date such coverage becomes available.

(4) Every order requiring a parent to provide health insurance coverage shall be entered in compliance with *RCW 26.23.050 and be subject to direct enforcement as provided under chapter 26.18 RCW. [1989 c 416 § 6.]

***Reviser's note:** The reference to RCW 26.23.050 appears to refer to the amendments made by 1989 c 416 § 8 that were subsequently vetoed by the governor.

74.20A.310 Federal and state cooperation—Rules—Construction. In furtherance of the policy of the state to cooperate with the federal government in the administration of the child support enforcement program, the department may adopt such rules and regulations as may become necessary to entitle the state to participate in federal funds, unless such rules would be expressly prohibited by law. Any section or provision of law dealing with the child support program which may be susceptible to more than one construction shall be interpreted in favor of the construction most likely to comply with federal laws entitling the state to receive federal funds. If any law dealing with the child support enforcement program is ruled to be in conflict with federal requirements which are a prescribed condition of the allocation of federal funds, such conflicting law is declared to be inoperative solely to the extent of the conflict. [1989 c 416 § 7.]

74.20A.900 Severability—Alternative when method of notification held invalid. If any provision of this chapter or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

If any method of notification provided for in this chapter is held invalid, service as provided for by the laws of the state of Washington for service of process in a civil action shall be substituted for the method held invalid. [1971 ex.s. c 164 § 27.]

Civil procedure—Commencement of actions: Chapter 4.28 RCW.

74.20A.910 Savings clause. The repeal of RCW 74.20A.050 and the amendment of RCW 74.20A.030 and 74.20A.250 by this 1979 act is not intended to affect any existing or accrued right, any action or proceeding already taken or instituted, any administrative action already taken, or any rule, regulation, or order already promulgated. The repeal and amendments are not intended to revive any law heretofore repealed. [1979 ex.s. c 171 § 27.]

Severability—1979 ex.s. c 171: See note following RCW 74.20.300.

Chapter 74.21

FAMILY INDEPENDENCE PROGRAM

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74.21.010 Short title. This chapter may be cited as the family independence program. [1987 c 434 § 1.]

74.21.020 Intent. The legislature hereby establishes as state policy the goal of economic independence for employable adults receiving public assistance, through employment, training, and education. The legislature finds that children living in families with incomes below the needs standard have reduced opportunities for physical and intellectual development. A family's economic future is frequently not improved by the current program.

Therefore, in order to break the cycle of poverty and dependence, a family independence program is established. Participating families are to receive benefits under this program at no less than they would otherwise have been entitled to receive.

The legislature finds that the state has a vital interest in ensuring that citizens who are in economic need are provided appropriate financial assistance. It is the intent of the legislature to maintain the existing partnership between state and federal government and that this program remain part of the federal welfare entitlement program. The legislature seeks federal authority for a five-year demonstration project and recognizes that waivers and congressional action may be required to achieve our purpose. The legislature does not seek a block grant approach to welfare.

The legislature recognizes that any program intended to assist new and current public assistance recipients will be more likely to succeed when the state, private sector, and recipients work together.

The legislature also recognizes the value of building on successful programs that utilize the development of networking and mentoring strategies to assist public assistance recipients to gain self-sufficiency. The legislature further encourages public-private cooperation in the areas of job readiness training, education, job training, and work opportunities, including community-based organizations as service providers in these areas through contractual relationships.

The legislature finds that the goal of economic independence requires increased efforts to assist parents in

exercising their children's right to economic support from absent parents.

The legislature recognizes the substantial participation in the workforce of women with preschool children, and the difficulty in reentering employment after long absences.

The legislature further recognizes that public assistance recipients can play a major role in setting their own goals.

The objectives of this chapter are to assure that: The maximum number of recipients of public assistance become independent and self-sufficient through employment, training, and education; caseloads be correspondingly reduced on a long-term basis; financial incentives be available to recipients participating in job readiness, education, training, and work programs; the number of children growing up in poverty be substantially reduced; and unemployable recipients be afforded a basic level of financial and medical assistance consistent with the state's financial capabilities. [1988 c 43 § 2; 1987 c 434 § 2.]

74.21.030 Definitions. Unless the context requires to the contrary, the definitions in this section apply throughout this chapter.

(1) "Benchmark standard" is the basic monthly level of cash benefits, established according to family size, which equals the state's payment standard under the aid to families with dependent children program, plus an amount not less than the full cash equivalent of food stamps for which any family of such size would otherwise be eligible.

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

(3) "Enrollee" means the head(s) of household of a family eligible to receive financial assistance or other services under the family independence program.

(4) "Executive committee" or "committee" means the family independence program executive committee, authorized by and subject to the provisions of this chapter, to make policy recommendations to the legislature and develop procedure, program standards, data collection and information systems for family independence programs, including making budget allocations, setting incentive rates within appropriated funds, setting cost-sharing requirements for child care and medical services, and making related financial reports under chapter 43-.88 RCW.

(5) "Family independence program services" include but are not limited to job readiness programs, job creation, employment, work programs, training, education, family planning services, development of a mentor program, income and medical support, parent education, child care, and training in family responsibility and family management skills, including appropriate financial counseling and training on management of finances and use of credit.

(6) "Food stamps" means the food purchase benefit available through the United States department of agriculture.

(7) "Gross income" means the total income of an enrollee from earnings, cash assistance, and incentive benefit payments.

(8) "Incentive benefit payments" means those additional benefits payable to enrollees due to their participation in education, training, or work programs.

(9) "Job-ready" is the status of an enrollee who is assessed as ready to enter job search activities on the basis of the enrollee's skills, experience, or participation in job and education activities in accordance with RCW 74.21.080.

(10) "Job readiness training" means that training necessary to enable enrollees to participate in job search or job training classes. It may include any or all of the following: Budgeting and financial counseling, time management, self-esteem building, expectations of the workplace (including appropriate dress and behavior on the job), goal setting, transportation logistics, and other preemployment skills.

(11) "Maximum income levels" are those levels of income and cash benefits, both benchmark and incentive, which the state establishes as the maximum level of total gross cash income for persons to continue to receive cash benefits.

(12) "Medical benefits" or "medicaid" are categorically or medically needy medical benefits provided in accordance with Title XIX of the federal social security act. Eligibility and scope of medical benefits under this chapter shall incorporate any hereinafter enacted changes in the medicaid program under Title XIX of the federal social security act.

(13) "Noncash benefits" includes benefits such as child care and medicaid where the family receives a service in lieu of a cash payment related to the purposes of the family independence program.

(14) "Payment standard" is equal to the standard of need or a lesser amount if rateable reductions or grant maximums are established by the legislature. Standard of need shall be based on periodic studies of actual living costs and generally recognized inflation indices and shall include reasonable allowances for shelter, fuel, food, transportation, clothing, household maintenance, and necessary incidentals. The standard of need may take into account the economies of joint living arrangements, but there shall not be proration of any portion of assistance grants unless the amount of the payment standard is equal to the standard of need.

(15) "Subsidized employment" means employment for which the family independence program has provided the employer the financial resources, in whole or in part, to compensate an enrollee for the performance of work.

(16) "Unsubsidized employment" means employment for which the family independence program has not provided the employer the financial resources to compensate an enrollee for the performance of work. [1989 c 11 § 27; 1987 c 434 § 3.]

Severability—1989 c 11: See note following RCW 9A.56.220.

74.21.040 Eligibility for benefits. (1) Upon implementation of the family independence program, all applicants for public assistance, except persons eligible for

assistance under the general assistance—unemployable program, shall be enrolled in the family independence program and shall be eligible to receive financial and medical benefits under the following criteria:

(a) A person who is a "dependent child" as defined in 42 U.S.C. Sec. 606(a) or 42 U.S.C. Sec. 607(a), the caretaker relative(s) with whom the dependent child resides, or a pregnant woman as defined in 42 U.S.C. Sec. 606(b); and

(b) A person whose resources do not exceed those established by the United States department of health and human services at 45 C.F.R. Sec. 233.20(a)(3)(i)(B); and

(c) A person whose income does not exceed the benchmark standard plus appropriate incentive benefit payments established in accordance with this chapter. However, subject to subsection (2) of this section and RCW 74.21.180, the department may limit family independence program eligibility to exclude those new applicants whose monthly income would render them ineligible for aid to families with dependent children benefits under the payment level in effect at the time of the application. For the purposes of this subsection, a new applicant is a person who has not been a recipient of aid to families with dependent children or an enrollee for ninety days prior to application.

(2) Subject to the availability of funds for family independence program benefits, the department may expand eligibility to authorize family independence program benefits for additional categories of persons, but the department shall ensure that no person who would be eligible for benefits under the program requirements in place in this state as of January 1, 1988, pursuant to Titles IV-A and XIX of the federal social security act shall be denied financial or medical benefits under this chapter. [1987 c 434 § 4.]

74.21.050 Family independence program—Executive committee—Advisory committee—Records—Quorum. (1) The family independence program executive committee is hereby established.

(2) The executive committee shall consist of seven members as follows: The secretary of social and health services, the commissioner of the employment security department, the senior official from each of those agencies who is responsible for the family independence program, an official of the office of financial management, and two nonvoting individuals who have received public assistance in the past but have subsequently achieved economic independence. The former recipient members of the executive committee shall be selected by the advisory committee. The former recipient representatives on the committee shall hold a term of two years. Terms may be renewed for one additional two-year term. The former recipient representatives shall be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060.

(3) The executive committee shall appoint and consult with an advisory committee of not less than ten or more than twenty members broadly representative of business, labor, education, community, enrollee, civic groups, and

the public at large. The membership shall be geographically balanced with one-third of the membership composed of enrollees or community members in accordance with RCW 74.21.060. The advisory committee members shall serve terms of two years. In addition, the speaker of the house of representatives and the president of the senate shall appoint a member of each caucus of the legislature to the advisory committee.

The initial terms of the advisory committee members shall be staggered in a manner determined by the executive committee. In the event of a vacancy on the advisory committee due to death, resignation, or removal of one of the advisory committee members, and upon the expiration of the term of any member, the executive committee shall appoint a successor from a list supplied by the family opportunity councils for a term expiring on the second anniversary of the successor's date of the appointment, except that vacancies in a position appointed by a legislative officer shall be filled by that officer. Advisory committee members may be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060.

(4) If any one of the state offices on the executive committee is abolished, the resulting vacancy on the executive committee shall be filled by the state officer who shall succeed substantially to the power and duties of the abolished office.

(5) The secretary of social and health services shall serve as chairperson of the executive committee. The commissioner of the employment security department shall serve as vice-chairperson. The executive committee shall appoint a secretary who need not be a member of the executive committee.

(6) The secretary of the executive committee shall keep a record of the proceedings of the committee meetings.

(7) Three members of the executive committee constitute a quorum. The executive committee may act on the basis of motions. Motions shall be adopted upon the affirmative vote of a majority of a quorum of members present at any meeting of the executive committee. A vacancy in the membership of the committee does not impair the power of the committee to act under this chapter. However, in the case of a vacancy in one of the offices which constitutes the membership of the committee, the individual acting in the capacity of that officer shall also act as a member of the committee.

(8) The executive committee shall consult with the advisory committee on significant matters before taking action on such matters. Matters of significance include but are not limited to the nature and extent of contracts with private or nonprofit entities, decisions to modify incentive payments, and a right to review and comment upon the employment and child care plans and all reports submitted to the legislature, prior to their submission. The meetings of the executive committee are subject to chapter 42.30 RCW, the open public meetings act. The advisory committee shall study approaches to allow children in poverty to grow up healthy with self-

confidence and the ability to break the cycle of dependence that can result from inadequate nutrition, housing, and other basic needs. [1987 c 434 § 5.]

74.21.060 Family opportunity advisory councils. (1) The executive committee shall establish a family opportunity advisory council in each of the department's regions to make recommendations on the social services, procedures, and income maintenance operations used in the family independence program. The councils shall also assist in providing mentors, mutual self-help, and information on alternatives to welfare dependency. The councils shall include: (a) Individuals currently receiving assistance; (b) individuals who have received public assistance in the past but have subsequently achieved economic independence; and (c) persons who are board members or employees of nonprofit organizations providing services of the types offered to family independence program recipients, including those with experience in developing self-esteem and individual motivation. A regional advisory council may establish panels representing specific geographic areas within the region.

(2) Each advisory council shall nominate three persons from which the executive committee shall elect one person from each region to be a member of the advisory committee authorized by RCW 74.21.050. Appointments shall be for a term of two years. Terms may be renewed for one additional two-year term. Three regional appointments shall initially be for a term of one year. The regional representatives shall constitute the consumer and enrollee representatives required by 74.21.050.

(3) Recipients and former recipients may be paid a per diem rate established by the executive committee. Members may be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060. Recipients and former recipients may also be reimbursed for dependent care expenses required to permit their participation in the family opportunity advisory councils, the executive committee, and the family independence program advisory committee.

(4) The department may, within available funds, provide grants to each family opportunity council to assist and support their activities and to assist in the recruitment and training of volunteer mentors. [1988 c 43 § 3; 1987 c 434 § 6.]

74.21.070 Executive committee—Powers and duties. (1) The executive committee shall direct the employment security department and the department of social and health services, or the appropriate successor agencies, subject to the provisions of this chapter and consistent with available funds, to do the following in order to accomplish the purposes of this chapter:

(a) To carry out and ensure the development of job readiness training, job development activities, subsidize employment in or through public, private, volunteer, and nonprofit agencies, and provide training funds for enrollees prior to and during employment;

(b) To carry out training and education activities as set forth in RCW 74.21.080;

(c) To allow enrollees, consistent with available appropriations, to receive the incentive benefit payments while attending higher education and vocational institutions;

(d) To fund other related family services, including, but not limited to, child care services for enrollees who participate in the education, training, and work programs authorized by the executive committee;

(e) To receive federal and state funds for the family independence program and to otherwise manage the program so as to operate within legislatively determined funding limitations. However, the executive committee has no authority to alter the benchmark standard established by the legislature;

(f) To determine the level and types of program benefits and incentive benefit payments in accordance with this chapter, together with specific administrative requirements to be met by program enrollees;

(g) To authorize other individuals served under aid to families with dependent children—regular and employable to voluntarily seek enrollee status;

(h) To establish rules for the treatment of earnings and unearned income by enrollees as set forth in RCW 74.21.180;

(i) To establish administrative sanctions consistent with the criteria set forth in RCW 74.21.150(3) which may be applied to enrollees and the conditions under which program benefits may be reduced or terminated;

(j) To establish due process procedures as set forth in RCW 74.21.110;

(k) To establish the conditions under which child care and other related social services, including parent education and counseling, will be provided, subject to the following: Any child care provided under this chapter shall be in accordance with statutory child day care licensure requirements;

(l) To provide child care without cost to enrollees whose income is below the maximum authorized income level;

(m) To establish copayment requirements for noncash benefits as set forth in RCW 74.21.100;

(n) To establish the conditions and terms under which the department may enter into contracts with the public, private, and not-for-profit sectors to provide:

(i) Parenting education for parents;

(ii) Job readiness training;

(iii) Training of state agency employees to work with enrollees in developing plans for self-sufficiency, which include but are not limited to the employability, training, and education plans;

(iv) The development of mentoring programs to provide assistance to current recipients through the use of former recipients; and

(v) Facilitation of family opportunity councils in the geographical areas sited for implementation of the program;

(o) To establish the conditions and terms, and to enter into contracts, under which public, private, and not-for-

profit sector jobs will be created and financed by the executive committee and the circumstances under which training for employees or potential employees of public, private, and for-profit employers will be subsidized through the family independence program;

(p) To establish the terms and provisions under which training and job development services may be extended to the absent parent(s) of the children of enrollees;

(q) To establish the frequency and method for re-determining eligibility;

(r) To undertake the acquisition of all such services authorized in this chapter on an exempt basis, as provided in RCW 43.19.1901, from the public bid requirements of RCW 43.19.190 through 43.19.200;

(s) To establish a proposed schedule by geographic area for implementation of the family independence program, which shall be submitted to the legislature by January 1, 1988. Until the family independence program is implemented in a particular geographic area, applicants in that area shall continue to be eligible for benefits under the aid to families with dependent children program and shall have a right to convert to the family independence program when it is available in that area;

(t) To determine methods of administration and do all other things necessary to carry out the purposes of this chapter.

(2) The executive committee with assistance from the appropriate agencies shall promulgate rules in accordance with chapter 34.05 RCW in order to accomplish the purposes of this chapter. Policy decisions of the executive committee that require rule-making shall not be final until the adoption of the necessary rules. [1987 c 434 § 7.]

74.21.080 Mandatory enrollee participation. (1) The executive committee may mandate the participation of enrollees in registration and assessment activities unless persons meet the exemption criteria set forth in subsection (2)(d) (ii) through (vi) of this section;

(2) The executive committee may mandate the participation of enrollees in education, training, or work activities, subject to the following:

(a) There shall be no mandatory participation of enrollees in education, training, or work activities during the first two years after implementation of this chapter;

(b) The executive committee shall collect and maintain records regarding the number of enrollees awaiting placement in job preparation activities; the number of enrollees who are participating in an education, job training, or other job preparation program; the number of enrollees who are job-ready as defined in this chapter; and the number of enrollees who have obtained placement as defined in this chapter. After the first two years, participation in training, education, or work activities may become mandatory in regions in which the family independence program has been implemented in accordance with this chapter, in which more than fifty percent of the job-ready enrollees obtained placements within three months of the time they became assessed as job-ready, and in which incentive benefit payment levels are set as initially required under RCW 74.21.150;

(c) If mandatory participation is suspended, it may be suspended by rule on a county or regional basis, but may be retained for a discrete group of enrollees;

(d) When participation in work and training requirements becomes mandatory, the following persons are exempt from the mandatory participation requirement:

(i) One parent with a child under three years of age in the home unless the family has been receiving public assistance for more than three years, in which case the caretaking parent must participate after the child is six months of age;

(ii) New enrollees who are on public assistance for the first time shall not be required to participate in employment, training, or work activities until they have been on public assistance for six months;

(iii) Persons under sixteen years of age or over sixty-four years of age;

(iv) Persons over sixteen years of age who are in high school;

(v) Persons who are incapacitated, temporarily ill, or are needed at home to care for an impaired person;

(vi) A person who is in the third trimester of pregnancy; and

(vii) A person who has not yet been individually notified in writing of the requirement to participate in registration, assessment, work, or training requirements or the expiration of his or her exempt status.

(3) The executive committee may suspend and reinstate, based upon periodic review, the mandatory requirement as affected by the availability of training and job resources. [1987 c 434 § 8.]

74.21.090 Training and education activities. (1) The department of social and health services and the employment security department shall provide education and training opportunities to enrollees when appropriate, pursuant to the employability plan required in RCW 74.21.190, and shall emphasize efforts which prepare enrollees for long-term unsubsidized employment and economic independence. This shall include opportunities for: (a) Enrollees who seek to pursue basic remedial education, such as completion of general equivalency diploma, adult basic education, and English proficiency training; (b) enrollees who seek vocational or skills training through on-the-job training or enrollment in a skills training or vocational training program, including those programs at a vocational training institute or community college; and (c) enrollees seeking higher education, including community college and four-year college degrees.

(2) The state agencies shall assure that those enrollees who seek to pursue work, training, and education activities, and those enrollees who are required in accordance with this chapter to so participate, receive a realistic assessment of work, training, and education opportunities and the opportunity to mutually participate in developing an individual self-sufficiency plan. The self-sufficiency plan shall take into account the local labor market and wage levels, as well as the individual's skills, work history, abilities, limitations, financial needs, desires, and interests, and shall specify the activities and

services required for completion. The self-sufficiency plan is subject to approval by the state agencies. An enrollee may seek a modification of the self-sufficiency plan, or an administrative review if mutual agreement cannot be achieved.

(3) Within available funds, the department shall provide for payment of support services including child care and family independence program benefits at the benefit incentive level for education and training as set forth in RCW 74.21.150 to support appropriate training and education programs of enrollees. When the department has approved the funding of such payments for individual's appropriate training or education plan, such funding shall continue, subject to an annual review, for the duration of the individual's participation in the approved training or education program. The executive committee shall establish by rule criteria for funding of appropriate training and education programs.

(4) When support services are unavailable through existing day-care resources, the department shall make efforts to gain services through private and public agencies. [1987 c 434 § 9.]

74.21.100 Due process procedures. The executive committee shall direct the department of social and health services and the employment security department to adopt rules providing due process of law protections to applicants for and recipients of family independence program benefits. The requirements shall confer protections no less than those which the federal statutes and regulations confer on participants in the food stamp, aid to families with dependent children, and work incentive programs. The protections shall include, but are not limited to, the following:

(1) The departments shall provide adequate advance written notice to applicants or enrollees of any agency action to deny, award, reduce, terminate, increase, or suspend benefits or to change the manner or form of payment or of any agency action requiring the enrollee to take any action. Adequate notice includes a statement of what action the agency intends to take, the reasons for the intended agency action, the specific rules supporting the action, an explanation of the individual's right to file an application for an adjudicative proceeding, how to file an application, and the circumstances under which assistance is continued pending the adjudicative proceeding if an application for one is filed.

(2) Advance notice must be mailed to enrollees at least ten days prior to the date on which the proposed action would become effective.

(3) An applicant or enrollee aggrieved by an action or decision of the departments, including requiring or denying participation in a work, training, or education activity, has the right to file an application for an adjudicative proceeding under RCW 74.08.080 and chapters 34.05 and 34.12 RCW. The aggrieved person is entitled to all fair hearing rights and to the right of judicial review therefrom as provided in RCW 74.08.080.

(4) When an enrollee files an application for an adjudicative proceeding during the advance notice period, the departments shall not implement the challenged action

until a written adjudicative order is rendered after a hearing. The advance notice period is the period prior to the effective date of the proposed action or ten days from the date of adequate written notice, whichever is later. Any assistance received pending a hearing or adjudicative order may be considered to be an overpayment if the adjudicative order is against the enrollee.

(5) Financial, food stamp, and medical assistance shall be furnished to eligible individuals in a timely manner and shall be continued regularly to all eligible individuals until they are found to be ineligible. Applications should be disposed of as soon as possible in accordance with 7 C.F.R. Sec. 273.2 (g) and (i) and 45 C.F.R. Sec. 206.10 and no later than thirty days from the date of application unless good cause applies. Prior to denial or termination of family independence program cash or noncash benefits, each family's eligibility for financial assistance, medical assistance, and food stamp benefits shall be determined. [1989 c 175 § 158; 1987 c 434 § 10.]

Effective date—1989 c 175: See note following RCW 34.05.010.

74.21.110 Noncash benefits and required financial participation. (1) When an enrollee ceases to receive family independence program cash benefits as a result of increased earnings, the enrollee shall be eligible to receive family independence program noncash child care and medical benefits for a period of one year following the cessation of family independence program cash eligibility.

(2) The executive committee may authorize the department to require financial participation based on income of the enrollee in the cost of the family independence program noncash benefits, but such financial participation requirement shall not exceed twenty-five percent of the cost of the noncash benefit or twenty-five percent of the amount by which the family's income exceeds the maximum income level, whichever is less.

(3) No person may be required to participate in the cost of medical benefits if the person would have been eligible for medicaid benefits at no additional cost under the medically needy income levels or the program requirements in effect as of January 1, 1988. [1987 c 434 § 11.]

74.21.120 Limitations on subsidized and unsubsidized employment positions. (1) Enrollees referred to subsidized and unsubsidized employment positions established pursuant to this chapter shall not be considered employees of the executive committee or the state solely because of their status as enrollees in the family independence program. Enrollees in subsidized and unsubsidized employment positions established pursuant to this chapter shall be considered employees of the agency or employer sponsoring their employment. Enrollees in such subsidized and unsubsidized positions shall receive and enjoy the following protections and benefits of the sponsoring employer including, but not limited to, worker's compensation, old age and survivors health insurance, protections of a collective bargaining agreement,

sick leave, retirement, medical benefits, vacation leave, and hours of work, provided that these protections and benefits shall not be created by this subsection if such protections and benefits do not already exist. Enrollees in such subsidized and unsubsidized positions shall also be covered for purpose of unemployment compensation, notwithstanding RCW 50.44.040(5) to the contrary.

(2) Subsidized and unsubsidized positions under this chapter to which enrollees are referred shall not be created as a result of, nor result in, any of the following:

(a) Displacement of currently employed workers or authorized positions, for the purpose of employing enrollees, including partial displacement such as reduction in hours of nonovertime work, wages, or other employment benefits;

(b) The filling of subsidized and unsubsidized positions that would otherwise be a promotional opportunity;

(c) The filling of a subsidized or unsubsidized position before compliance with applicable personnel procedures and collective bargaining agreements, including in the instance of subsidized jobs the written concurrence from any affected union representative organization;

(d) The filling of a subsidized or unsubsidized position created by a reduction in work force or change of employers;

(e) A strike, lockout, or other bona fide labor dispute, or a violation of any existing collective bargaining agreement between employees and employers;

(f) Decertification of any bargaining unit;

(g) Creation of a new classification that has the intent or effect of subverting the intent of this section.

(3) Enrollees in subsidized and unsubsidized employment shall not continue participation at a place of employment that is involved in a strike, lockout, or other bona fide labor dispute.

(4) The employment security department shall establish a dispute-resolution process for resolving disagreements arising from this section or other employment-related sections of this chapter. [1987 c 434 § 12.]

74.21.130 Compensation for enrollees. The executive committee shall direct that no enrollee shall be referred to subsidized or unsubsidized employment in which the enrollee would be paid at a rate less than the highest of the following:

(1) The minimum wage set out in section 6 (a)(1) of the fair labor standards act of 1938, as amended, or as established by state law;

(2) The prevailing rate of pay for persons employed in similar occupations by the same employer;

(3) The minimum entrance rate for inexperienced workers in the same occupation with the employer or, if the occupation is new to the employer, the prevailing entrance rate for the occupation among other employers in the area or community, or the applicable minimum rate required by an applicable bargaining agreement; or

(4) The prevailing rate established in accordance with the Davis-Bacon act, as amended, or the service contract act, as amended, for enrollees working in occupations covered by the applicable acts. [1987 c 434 § 13.]

74.21.140 Reports and evaluation. (1) By January 1, 1988, the executive committee shall submit to the legislature:

(a) A child-care plan, which may include creative solutions to assist enrollees in making child-care arrangements;

(b) In consultation with the superintendent of public instruction, a plan for assisting high school students who are parents or pregnant to remain in school or complete their high school education;

(c) A plan for motivating those who are discouraged to seek self-sufficiency through work, education, or training;

(d) An employment plan for enrollees; and

(e) A plan for phased-in implementation of the family independence program.

(2) By January 1, 1988, the legislative budget committee, after consultation with the executive committee, shall submit to the legislature:

(a) An evaluation plan satisfactory to the federal government, including a plan for analysis, within available funds, of:

(i) The costs and effectiveness of the family independence program;

(ii) The extent to which education and training opportunities have led to employment and economic independence;

(iii) The extent to which support services have been provided for such education and training opportunities;

(iv) The impact of support services, training opportunities, and employment on the well-being of the children and families of enrollees;

(v) The impact of the family independence program on the early childhood education assistance program;

(vi) A comparison of the family independence program enrollees with a sample of aid to families with dependent children recipients entering assistance between July 1, 1987, through June 30, 1988, to determine the characteristics of the caseloads of the family independence program and the aid to families with dependent children program, including demographic characteristics, employment, training, and educational histories, spells on assistance, and reasons for entry onto and exit from assistance;

(vii) Such administrative and operational factors as may be requested by the executive committee;

(viii) A longitudinal study over time of a sample of public assistance recipients or persons at risk of becoming eligible for assistance, to determine the causes of public dependency and the impact of changes in the economy or of public programs on dependency, work, or other relevant behaviors of the sample population.

(3) The legislative budget committee shall cause the evaluation plan to be implemented as approved by the legislative budget committee in a manner that will insure the independence of the evaluation through appropriate arrangements, which may include contracts, with objective evaluators. The evaluation plan and all evaluation products shall receive the review and comment of evaluation advisory groups to be convened by the Washington

institute of public policy and which include representatives of the executive committee, appropriate legislative committee staffs, persons from the state's higher education institutions, staff members of the department and the employment security department, recipients, and former recipients. The reviews shall consider relevance to state policy and budget concerns, methodological procedure, implementation, and results.

(4) The first report of this evaluation shall be submitted to the legislature no later than December 1, 1989, and annually thereafter, with a final report due no later than November 15, 1993. [1988 c 43 § 4; 1987 c 434 § 14.]

74.21.150 Benchmark standard and incentive benefit payments. (1) The legislature shall determine the benchmark standard for enrollees. The legislature may adjust the benchmark standard periodically. However, the department shall promptly pass on to enrollees any increases in federal food stamp program benefits. The executive committee shall designate what portion of the benchmark standard constitutes a cash payment for food stamp benefits and shall ensure that this designation information is regularly provided to recipients. The portion of the benchmark standard and incentive benefit levels that is designated as the cash payment for food stamp benefits shall be excluded as income to the full extent that food stamps are so excluded by current and subsequently enacted state and federal law.

(2) Enrollees shall receive cash assistance which, when added to other income, provides total income not less than the benchmark standard set by the legislature. Enrollees participating in work, education, or training programs shall receive incentive benefit payments which, when added to other income, provides gross income not less than the levels which shall be initially set as follows:

(a) One hundred five percent of the benchmark standard for enrollees participating in training or education programs;

(b) One hundred five percent of the benchmark standard for teenage parents if they stay in school and progress toward graduation and successfully participate in parenting education approved by the office of the superintendent of public instruction or the department;

(c) One hundred fifteen percent of the benchmark standard for enrollees working half time, but the department may authorize a higher incentive benefit payment level for enrollees working part time; and

(d) One hundred thirty-five percent of the benchmark standard for enrollees working full time.

(3) Family independence program cash benefits shall not be available to meet the needs of enrollees for whom participation in the work and training components of the family independence program is mandatory and who refuse without good cause to participate in such programs. However, medical benefits for such sanctioned individuals and payments on behalf of the other members of the family shall be provided. In such cases, payments to the remaining family members may be in the form of protective payee payments unless, after reasonable efforts, the state is unable to locate an appropriate

protective payee, in which case the sanctioned individual can be the payee for the remaining family members. A participant under such sanction is eligible for the full benchmark plus appropriate incentive benefit level once he or she participates.

(4) The department, at the direction of the executive committee, may increase or decrease the incentive benefit payment levels based on the availability of funds. [1987 c 434 § 15.]

74.21.160 Current program benefits assured. No applicant for or recipient of family independence program benefits shall receive less financial assistance in family independence program benefits than the sum of the aid for families with dependent children cash benefits and the cash equivalent of food stamp benefits the applicant would have received under the program requirements of the federal law and under the benefit levels in place as of January 1, 1988, as adjusted to reflect all increases in the federal food stamp allotments and deductions and in the Washington state payment standard for aid to families with dependent children. Funds provided to the state under Title IV–A of the federal social security act and under the federal food stamp program shall be used first to make payments at one hundred percent of the benchmark level to all enrollees of the family independence program in accordance with the state plan, as well as to all recipients of aid to families with dependent children. Any remaining funds provided by the federal government may be used at the state's discretion for incentive payments and services to either enrollees or recipients of aid to families with dependent children in accordance with the purposes of this chapter. [1987 c 434 § 16.]

74.21.170 Nonassistance food stamps. The department shall continue to operate a federal food stamp program for persons who are not receiving family independence program benefits, including applicants awaiting determinations of eligibility for the family independence program.

No group of persons constituting a food stamp household under current food stamp law may receive less in any combination of food stamps and the portion of family independence program benefits designated as the food stamp cash equivalent pursuant to RCW 74.21.130 than the amount for which they would have been eligible in food stamps if the family independence program did not include a cash-out of food stamp benefits. [1987 c 434 § 17.]

74.21.180 Determining financial need and treatment of income. The department shall establish rules for the determination of financial need and the treatment of income of enrollees consistent with this section.

(1) Income and resources shall be reasonably evaluated and cannot be considered available to an applicant or recipient unless actually available.

(2) The following shall be excluded as income in family independence program eligibility and need determinations: The value of medical benefits, child care, higher education benefits, earned income tax credit, income tax

refunds, any housing subsidy, energy assistance, the earnings of a child, retroactive family independence program benefits, the child support exempted by 42 U.S.C. Sec. 657(b) or 42 U.S.C. Sec. 602(a)(8)(vi), and any benefit or moneys that any provision of federal law in effect on January 1, 1988, excludes from being considered income for eligibility for aid to families with dependent children or food stamps or other exclusions which Congress may hereafter enact.

(3) The executive committee may direct the department to establish methods for evaluating what portion of income is considered gross income for persons whose income is earned over a longer period of time than the period in which it is received and for measuring the gross income of self-employed persons. [1987 c 434 § 18.]

74.21.190 Enrollee participation in work, training, and education activities—Criteria. (1) All enrollees shall register for assessment to evaluate the appropriateness of work, education, or training options for that individual.

(2) For those enrollees who seek to pursue work, training, and education activities, and for those enrollees who are required in accordance with this chapter to so participate, the state agencies and the enrollee shall jointly develop an employability plan which sets forth the participation activity or sequence of activities and the available supportive services. In some instances, the plan may require additional assessment. The plan is subject to the approval of the state agencies. An enrollee may seek a modification of the employability plan, or an administrative review if mutual agreement cannot be achieved.

(3) Appropriate child care and other social services shall be available to enable an enrollee to participate in work, training, or education activities.

(4) Prior to the determination that a mandatory enrollee has refused to cooperate, efforts must be made at conciliation of the dispute consistent with 45 C.F.R. Sec. 224.63.

(5) The agencies shall adopt rules setting forth criteria that provide good cause for an enrollee's refusal to participate in or accept a specific assignment of proposed work, education, or training activities. The criteria shall include, but need not be limited to, the following:

(a) No suitable child care is available without cost to the enrollee;

(b) The assignment is not within the scope of the enrollee's employability plan;

(c) The assignment would have an adverse effect on the physical or mental health of the enrollee;

(d) The distance of the assignment from the enrollee's home makes participation impracticable;

(e) The assignment would result in a loss of income to the enrollee's family;

(f) Exigent personal or family circumstances would interfere with successful participation in the assignment;

(g) The assignment involves conditions which are in violation of applicable health and safety regulations;

(h) The assignment would interrupt a program in process at the undergraduate or vocational level which is

reasonably expected to result in economic self-sufficiency; or

(i) The best interests of a child or children in the family would be served by the parent providing full or part-time care in the home due to the particular personal or family circumstances of the enrollee's family. [1987 c 434 § 19.]

74.21.200 Implementation of program. (1) The family independence program shall not be implemented before February 28, 1988, and shall not be implemented until specifically authorized by the legislature. However, upon July 26, 1987, the executive committee shall be appointed and shall carry out those functions necessary to plan for the implementation of the family independence program, including securing federal approval.

(2) The governor shall report to the legislature at least once each quarter of 1987 on the progress of the executive committee's efforts to secure federal approval of the family independence program.

(3)(a) The governor shall seek congressional action on any federal legislation necessary to implement this chapter. The governor shall seek legislation that provides that any program under this chapter shall be a demonstration project which remains within the federal aid to families with dependent children system under Title IV of the federal social security act.

(b) Any agreements with the federal government necessary to implement the family independence program shall provide that any program under this chapter shall be a demonstration project which remains within the federal aid to families with dependent children system under Title IV of the federal social security act. Such agreements shall provide for waivers from the federal aid to families with dependent children system only to the extent necessary to implement this chapter.

(4) If all proposed agreements between the state and federal governments which are necessary to implement the family independence program have been completed before February 1, 1988, a plan outlining such proposed agreements shall be submitted to the legislature no later than February 7, 1988. If all agreements between the state and federal governments necessary to implement the family independence program have not been completed by February 1, 1988, an implementation plan with the proposed agreements shall be submitted to the senate committee on human services and corrections, the house of representatives committee on human services, and the senate and house of representatives committees on ways and means for consideration. Copies of all such proposed agreements and any proposed changes to state statute shall be submitted to the legislature with the plan. The family independence program shall be implemented only after the legislature has approved the implementation plan and authorized the signing and completion of all federal-state agreements.

(5) Any agreements with the federal government pursuant to this chapter shall provide that such agreements may be canceled by the state or federal government upon six months' notice or immediately upon mutual

agreement. If the agreements are canceled, those enrollees in the family independence program who are eligible for the aid to families with dependent children, medic-aid, and the food stamp programs shall be converted to those programs.

(6) Subject to the approval of the executive committee, the department of social and health services and the employment security department shall enter into an interagency agreement for carrying out appropriate administrative functions and purposes as required with respect to the family independence program to be undertaken in this state. [1987 c 434 § 20.]

74.21.201 Approval of implementation plan. The family independence program implementation plan submitted to the legislature pursuant to RCW 74.21.140 and 74.21.200 is approved. The governor or the governor's designee is authorized to sign and complete all necessary agreements with the federal government, provided that nothing in the agreements is inconsistent with chapter 74.21 RCW. [1988 c 43 § 1.]

74.21.900 Reference to other laws. Unless the language specifically states to the contrary, any reference in this chapter to a provision or requirement of federal law or regulations refers to that provision as of January 1, 1988. [1987 c 434 § 21.]

74.21.902 Captions. Section captions as used in this chapter do not constitute any part of the law. [1987 c 434 § 22.]

74.21.904 Expiration of chapter. This chapter shall expire on June 30, 1993, unless extended by law. [1988 c 43 § 5; 1987 c 434 § 25.]

74.21.906 Severability—1987 c 434. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1987 c 434 § 26.]

Chapter 74.22

WORK INCENTIVE PROGRAM FOR RECIPIENTS OF PUBLIC ASSISTANCE

Sections

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- 74.22.110 Transfer of funds between departments authorized—
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- 74.22.120 Acceptance of funds authorized.

Employment partnership program for public assistance recipients: Chapter 50.63 RCW.

74.22.010 Purpose—Program consistent with federal law, when. The purpose of this chapter is to provide every recipient of public assistance the opportunity to find and prepare for employment: *Provided*, That recipients of aid to families with dependent children may be subject to other similar work incentive programs. As to recipients of federal-aid assistance, the employment program shall be consistent with federal law and requirements entitling the state to matching funds. [1969 c 14 § 1.]

Work incentive program for recipients of aid to families with dependent children: Chapter 74.23 RCW.

74.22.020 Employables, others, referred to department of employment security. The department of social and health services shall seek to promptly refer to the department of employment security all employable recipients and such others as are selected as being appropriate for referral in accordance with the criteria and standards established by the department of social and health services under the employment program set forth in this chapter. [1979 c 141 § 372; 1969 c 14 § 2.]

74.22.030 Employability plan—Service categories. The employment security department shall seek to develop an employability plan for such persons referred to it under RCW 74.22.020 and determine whether such individuals can be placed in one of the following three service categories: (1) Employment in the regular economy, (2) institutional and work experience training likely to lead to regular employment, or (3) a program of special work projects for individuals for whom a job in the regular economy cannot be found, in accordance with the criteria and standards established by the employment security department pursuant to the employment program. [1969 c 14 § 3.]

74.22.040 Special work projects—Agreements, requisites of. In order to develop special work projects under the employment program set forth in this chapter, the employment security department is authorized to enter into agreements with public agencies and private nonprofit organizations, and with respect to developing special work projects for Indians on a reservation, with the respective Indian tribes represented on such reservation. The work provided thereunder must serve a useful public purpose and be such that would not otherwise be performed by regular employees. [1969 c 14 § 4.]

74.22.050 Special work projects—Participants in project, wages—Interdepartmental payments—Supplemental earnings payments. With respect to those individuals who are participating in a special work project established under the employment program, set forth in this chapter, the department of social and health services

is authorized to pay the employment security department the amount of assistance the participant would otherwise be eligible to receive under his particular category of assistance or eighty percent of the participant's earnings under the project, whichever is lesser. These payments will be used by the employment security department under the special works contracts as wages to the individual participant. The department of social and health services will supplement any earnings so received by payments to the extent that such payments, when added to the earnings, will equal the amount of assistance he would otherwise qualify for under his particular category of assistance had he not participated in the project, plus twenty percent of his earnings from the project. [1979 c 141 § 373; 1969 c 14 § 5.]

74.22.060 Training, incentive payments for—Federal law controls. When permitted by federal law, the employment security department is authorized to pay to any participant under service category (2), of RCW 74.22.030, training, an incentive payment of not more than thirty dollars per month. Such incentive payments may be disregarded in determining the needs of such person under his particular category of assistance. [1969 c 14 § 6.]

74.22.070 Payment of costs incidental to participation in program authorized. The department of social and health services is authorized to pay or consider expenses for costs incidental to participation in any program under this chapter including necessary child care. [1979 c 141 § 374; 1969 c 14 § 7.]

74.22.080 Good cause for refusal of employment under program. Good cause for refusal of employment shall be deemed to exist under this chapter when: (1) The wage rate of the offered employment is substantially less favorable than that which prevails for similar work in the locality, or (2) the job is available because of a labor dispute, or (3) the job is not within the physical or mental capacity of the person, as established, when necessary, by competent professional authority, or (4) acceptance would be unreasonable because it would interrupt a program in process for permanent rehabilitation or self-support or conflict with an imminent likelihood of reemployment at the person's regular work, or (5) such employment would be inconsistent with the declared intent and purpose of this chapter. [1969 c 14 § 8.]

74.22.090 Good cause for refusal to participate in training or a special work project under program. Good cause for refusal to participate in training or a special work project shall be deemed to exist under this chapter, when: (1) Participation would be unreasonable because it would interrupt a program in process for permanent rehabilitation or self-support or conflict with an imminent likelihood of reemployment at the person's regular work, or (2) participation will be unreasonable because the assignment would not be within the physical or

mental capacity of the person as established, when necessary, by competent professional authority, or (3) such participation would be inconsistent with the declared intent and purpose of this chapter. [1969 c 14 § 9.]

74.22.100 Refusal to participate as basis for denying public assistance—Procedure. The employment security department shall notify the department of social and health services whenever any person referred under the employment program provided for in this chapter refuses to accept employment or participate in training or a special work project. If the department of social and health services determines that any such person has refused employment or participation in the program without good cause, assistance shall be denied to such person. [1979 c 141 § 375; 1969 c 14 § 10.]

74.22.110 Transfer of funds between departments authorized—Rules and regulations. The employment security department and the department of social and health services are authorized to transfer funds between the two departments and to adopt rules and regulations necessary to carry out the purpose and provisions of this chapter. [1979 c 141 § 376; 1969 c 14 § 11.]

74.22.120 Acceptance of funds authorized. The state of Washington is hereby authorized to accept federal, private, or public funds from any source, including but not limited to funds available pursuant to the Manpower Development and Training Act of 1962, as amended, to carry out the purposes of this chapter. [1969 c 14 § 12.]

Chapter 74.23

WORK INCENTIVE PROGRAM FOR RECIPIENTS OF AID TO FAMILIES WITH DEPENDENT CHILDREN

Sections

- 74.23.005 Compliance with federal act.
- 74.23.010 Purpose.
- 74.23.020 Departments authorized to participate in and administer program consistent with federal law.
- 74.23.030 Institutional and training programs and special work projects—Requisites of.
- 74.23.040 Individuals referred to appropriate public agencies.
- 74.23.050 Department's scope in placement of referrals.
- 74.23.060 Training incentives paid disregarded for public assistance purposes.
- 74.23.070 Special work projects—Participants' wages—Interdepartmental payments—Supplemental earnings payments.
- 74.23.080 Good cause for refusal of employment under program.
- 74.23.090 Good cause for refusal to participate in training or a special work project under program.
- 74.23.100 Refusal to participate as basis for denying public assistance—Procedure—Notice—Appeal—Hearings.
- 74.23.110 Refusal to participate as basis for denying public assistance—Payments discontinued, when—Protective payments.
- 74.23.120 Departmental authorization—Transfer of funds between departments—Rules and regulations.
- 74.23.900 Severability—Conflict with federal requirements.

74.23.005 Compliance with federal act. The legislature hereby expresses its intention to comply with the requirements under the federal social security act, as amended, creating a work incentive program for recipients of aid to families with dependent children. [1969 c 15 § 1.]

74.23.010 Purpose. The purpose of this chapter is to establish a program utilizing all available manpower services, including those authorized under other provisions of law, under which individuals receiving aid to families with dependent children will be furnished incentives, opportunities, and necessary services in order to secure for such individuals (1) employment in the regular economy, (2) institutional and work experience training likely to lead to regular employment, and (3) participation in special work projects for those individuals for whom a job in the regular economy cannot be found, thus restoring the families of such individuals to independence and useful roles in their communities. It is expected that the individuals participating in the program established under this chapter will acquire a sense of dignity, self-worth, and confidence which will flow from being recognized as a wage-earning member of society and that the example of a working adult in these families will have beneficial effects on the children in such families. [1969 c 15 § 2.]

74.23.020 Departments authorized to participate in and administer program consistent with federal law. The employment security department and the department of social and health services are hereby authorized to participate in and administer the work incentive program for recipients of public assistance consistent with the provisions of the federal social security act, as amended. [1979 c 141 § 377; 1969 c 15 § 3.]

74.23.030 Institutional and training programs and special work projects—Requisites of. The institutional and work experience training programs and special work projects developed under this chapter shall be confined to programs which serve a useful public purpose, do not result either in displacement of regular workers or in the performance of work that would otherwise be performed by employees of public or private agencies, institutions, or organizations, except in cases of projects which involve emergencies or which are generally of a nonrecurring nature. [1969 c 15 § 4.]

74.23.040 Individuals referred to appropriate public agencies. The department of social and health services shall promptly seek to refer individuals who are selected as being appropriate for referral to the employment security department or other appropriate agencies for participation under the work incentive program in accordance with criteria and standards established by the department of social and health services. [1979 c 141 § 378; 1969 c 15 § 5.]

74.23.050 Department's scope in placement of referrals. The employment security department shall seek to

place such persons referred to it in employment in the regular economy, in institutional and work experience training likely to lead to regular employment, and in participation in special work projects in accordance with criteria and standards established by the employment security department pursuant to the work incentive program. [1969 c 15 § 6.]

74.23.060 Training incentives paid disregarded for public assistance purposes. Training incentives paid under the program shall be disregarded in determining the needs of the individual for public assistance, consistent with the federal social security act. [1969 c 15 § 7.]

74.23.070 Special work projects—Participants' wages—Interdepartmental payments—Supplemental earnings payments. With respect to those individuals who are participating in a special work project established under the work incentive program, the department of social and health services is authorized to pay the employment security department the amount of assistance the participant would otherwise be eligible to receive under aid to families with dependent children or eighty percent of a participant's earnings under the project, whichever is lesser. These payments will be used by the employment security department under the special work contracts as wages to the individual participant. The department of social and health services will supplement any earnings so received by payments to the extent that such payments, when added to the earnings, will equal the amount of assistance he would otherwise qualify for under aid to families with dependent children had he not participated in the project, plus twenty percent of his earnings from the project. [1979 c 141 § 379; 1969 c 15 § 8.]

74.23.080 Good cause for refusal of employment under program. Good cause for refusal of employment shall be deemed to exist under this chapter when: (1) The wage rate of the offered employment is substantially less favorable than that which prevails for similar work in the locality, or (2) the job is available because of a labor dispute, or (3) the job is not within the physical or mental capacity of the person, as established, when necessary, by competent professional authority, or (4) acceptance would be unreasonable because it would interrupt a program in process for permanent rehabilitation or self-support or conflict with an imminent likelihood of reemployment at the person's regular work, or (5) such employment would be inconsistent with the declared intent and purpose of this chapter. [1969 c 15 § 9.]

74.23.090 Good cause for refusal to participate in training or a special work project under program. Good cause for refusal to participate in training or a special work project under this chapter shall be deemed to exist, when: (1) Participation would be unreasonable because it would interrupt a program in process for permanent rehabilitation or self-support or conflict with an imminent likelihood of reemployment at the person's regular

work, or (2) participation would be unreasonable because the assignment is not suited to the person's abilities or potential, or will not lead to realistic employment opportunities suited to the person's ability or potential, or (3) such participation would be inconsistent with the declared intent and purpose of this chapter. [1969 c 15 § 10.]

74.23.100 Refusal to participate as basis for denying public assistance—Procedure—Notice—Appeal—Hearings. (1) Whenever any person referred to the employment security department under this work incentive program refuses to accept employment or participate in training or participate in a special work project without good cause as determined by the employment security department, he shall be notified in writing by said department of its determination which shall be served upon him personally or by mail. Unless appealed in writing within ten days from the date of receipt of such written determination, it shall become final.

(2) To the extent permitted by the federal social security act, as amended, the manner and conduct of hearings and administrative appeals concerning written determinations issued pursuant to this chapter shall be in accordance with hearings and administrative appeals held pursuant to the employment security act, Title 50 of the Revised Code of Washington. [1969 c 15 § 11.]

74.23.110 Refusal to participate as basis for denying public assistance—Payments discontinued, when—Protective payments. Upon notification by the employment security department to the department of social and health services that there has been a final determination that a person referred under this work incentive program has refused without good cause to accept employment or to participate in training or participate in a special work project, the department of social and health services, in accordance with the federal social security act, as amended, shall discontinue the assistance payment to such person or, if counseling is accepted, may continue such assistance payments for a period of not more than sixty days: *Provided, however,* That protective payments contemplated by and authorized under the provisions of the federal social security act, as amended, shall be made in accordance therewith. [1979 c 141 § 380; 1969 c 15 § 12.]

74.23.120 Departmental authorization—Transfer of funds between departments—Rules and regulations. The employment security department and the department of social and health services are authorized to do all things necessary to effectuate the work incentive program on the state level in accordance with federal requirements contained in the federal social security act, as amended, and to that extent are authorized to transfer funds between the two departments and to adopt rules and regulations necessary to carry out the purpose and provisions of this chapter. [1979 c 141 § 381; 1969 c 15 § 13.]

74.23.900 Severability—Conflict with federal requirements. If any part of this chapter shall be found to be in conflict with federal requirements which are a prescribed condition to the allocation of federal funds to the state, such conflicting part of this chapter is hereby declared to be inoperative solely to the extent of such conflict and with respect to the agency directly affected, and such finding or determination shall not affect the operation of the remainder of this chapter and its application to the agencies concerned. [1969 c 15 § 14.]

Chapter 74.26

SERVICES FOR CHILDREN WITH MULTIPLE HANDICAPS

Sections

74.26.010	Legislative intent.
74.26.020	Eligibility criteria.
74.26.030	Program plan for services—Local agency support.
74.26.040	Administrative responsibility—Regulations.
74.26.050	Contracts for services—Supervision.
74.26.060	Program costs—Liability of insurers.

74.26.010 Legislative intent. In recognition of the fact that there is a small population of children with multiple disabilities and specific and continuing medical needs now being served in high-daily-cost hospitals that could be more appropriately and cost-efficiently served in alternative residential alternatives, it is the intent of the legislature to establish a controlled program to develop and review an alternative service delivery system for certain multiply handicapped children who have continuing intensive medical needs but who are not required to continue in residence in a hospital setting. [1980 c 106 § 1.]

74.26.020 Eligibility criteria. (1) To be eligible for services under this alternative program, a person must meet all the following criteria:

(a) The individual must be under twenty-two years of age;

(b) The individual must be under the care of a physician and such physician must diagnose the child's condition as sufficiently serious to warrant eligibility;

(c) The individual must be presently residing in, or in immediate jeopardy of residing in, a hospital or other residential medical facility for the purpose of receiving intensive support medical services; and

(d) The individual must fall within one of the four functional/medical definitional categories listed in subsection (2) of this section.

(2) Functional/medical definitional categories:

(a) Respiratory impaired; with an acquired or congenital defect of the oropharynx, trachea, bronchial tree, or lung requiring continuing dependency on a respiratory assistive device in order to allow the disease process to heal or the individual to grow to a sufficient size to live as a normal person;

(b) Respiratory with multiple physical impairments; with acquired or congenital defects of the central nervous system or multiple organ systems requiring continued dependency on a respiratory assistive device and/or other medical, surgical, and physical therapy treatments in order to allow the disease process to heal or the individual to gain sufficient size to permit surgical correction of the defect or the individual to grow large and strong enough and acquire sufficient skills in self-care to allow survival in a nonmedical/therapy intensive environment;

(c) Multiply physically impaired; with congenital or acquired defects of multiple systems and at least some central nervous system impairment that causes loss of urine and stool sphincter control as well as paralysis or loss or reduction of two or more extremities, forcing the individual to be dependent on a wheelchair or other total body mobility device, also requiring medical, surgical, and physical therapy intervention in order to allow the individual to grow to a size that permits surgical correction of the defects or allows the individual to grow large and strong enough and acquire sufficient skills in self-care to allow survival in a nonmedical/therapy intensive environment;

(d) Static encephalopathies; with severe brain insults of acquired or congenital origin causing the individual to be medically diagnosed as totally dependent for all bodily and social functions except cardiorespiratory so that the individual requires continuous long-term daily medical/nursing care. [1980 c 106 § 2.]

74.26.030 Program plan for services—Local agency support. (1) A written individual program plan shall be developed for each child served under this controlled program by the division of developmental disabilities in cooperation with the child's parents or if available, legal guardians, and under the supervision of the child's primary health care provider.

(2) The plan shall provide for the systematic provision of all required services. The services to be available as required by the child's individual needs shall include: (a) Nursing care, including registered and licensed practical nurses, and properly trained nurse's aides; (b) physicians, including surgeons, general and family practitioners, and specialists in the child's particular diagnosis on either a referral, consultive, or on-going treatment basis; (c) respiratory therapists and devices; (d) dental care of both routine and emergent nature; (e) on-going nutritional consultation from a trained professional; (f) communication disorder therapy; (g) physical and occupational habilitation and rehabilitation therapy and devices; (h) special and regular education; (i) recreation therapy; (j) psychological counseling; and (k) transportation.

(3) A portion of these required services can be provided from state and local agencies having primary responsibility for such services, but the ultimate responsibility for ensuring and coordinating the delivery of all necessary services shall rest with the division of developmental disabilities. [1980 c 106 § 3.]

74.26.040 Administrative responsibility—Regulations. The department of social and health services, division of developmental disabilities, shall bear all administrative responsibility for the effective and rapid implementation of this controlled program. The division shall promulgate regulations within sixty days after June 12, 1980, to provide minimum standards and qualifications for the following program elements:

- (1) Residential services;
- (2) Medical services;
- (3) Day program;
- (4) Facility requirements and accessibility for all buildings in which the program is to be conducted;
- (5) Staff qualifications;
- (6) Staff training;
- (7) Program evaluation; and
- (8) Protection of client's rights, confidentiality, and informed consent. [1980 c 106 § 4.]

74.26.050 Contracts for services—Supervision. The division of developmental disabilities shall implement this controlled program through a "request-for-proposal" method and subsequent contracts for services with any local, county, or state agency demonstrating a probable ability to meet the program's goals. The proposals must demonstrate an ability to provide or insure the provision of all services set forth in RCW 74.26.030 if necessary for the children covered by the proposals.

The division of developmental disabilities shall thoroughly supervise, review, and audit fiscal and program performance for the individuals served under this control program. A comparison of all costs incurred by all public agencies for each individual prior to the implementation of this program and all costs incurred after one year under this program shall be made and reported back to the legislature in the 1982 session. [1980 c 106 § 5.]

74.26.060 Program costs—Liability of insurers. This program or any components necessary to the child shall be available to eligible children at no cost to their parents provided that any medical insurance benefits available to the child for his/her medical condition shall remain liable for payment for his/her cost of care. [1980 c 106 § 6.]

Chapter 74.29

VOCATIONAL REHABILITATION AND SERVICES FOR HANDICAPPED PERSONS

Sections	
74.29.005	Purpose.
74.29.010	Definitions—"State agency".
74.29.020	Powers and duties of state agency.
74.29.025	Additional duties of state agency—State-wide program—Rules and regulations—Report.
74.29.037	Vocational rehabilitation services to be made available to state and public agencies.
74.29.050	Acceptance of federal aid—Generally.
74.29.055	Acceptance of federal aid—Construction of chapter when part thereof in conflict with federal requirements which are condition precedent to allocation of federal funds.

74.29.080	Purchase of vocational rehabilitation services for handicapped persons—Procedure—Register of eligible nonprofit organizations—Rules.
74.29.100	Sheltered employment and supervised work programs—Purpose.
74.29.105	Sheltered employment and supervised work programs—"A disadvantaged person" defined for chapter purposes.
74.29.110	Sheltered employment and supervised work programs—Federal funds.

Department of social and health services (including division of vocational rehabilitation): Chapter 43.20A RCW.

Investment of industrial insurance funds in student loans for vocational training and education: RCW 51.44.100.

74.29.005 Purpose. The purposes of this chapter are (1) to rehabilitate vocationally handicapped persons so that they may prepare for and engage in a gainful occupation; (2) to provide persons with physical or mental disabilities with a program of services which will result in greater opportunities for them to enter more fully into the life of the community; (3) to promote activities which will assist the vocationally handicapped to reach their fullest potential; and (4) to encourage and develop facilities and other resources needed by the handicapped. [1969 ex.s. c 223 § 28A.10.005. Prior: 1967 c 118 § 1. Formerly RCW 28A.10.005, 28.10.005.]

74.29.010 Definitions—"State agency". (1) "Handicapped person" means any individual:

(a) Who has a physical or mental disability, which constitutes a substantial handicap to employment, of such a nature that vocational rehabilitation services may reasonably be expected to render him fit to engage in a gainful occupation consistent with his capacities and abilities; or

(b) Who, because of lack of social competence or mobility, experience, skills, training, or other factors, is in need of vocational rehabilitation services in order to become fit to engage in a gainful occupation or to attain or maintain a maximum degree of self-support or self-care; or

(c) For whom vocational rehabilitation services are necessary to determine rehabilitation potential.

(2) "Physical or mental disability" means a physical or mental condition which materially limits, contributes to limiting or, if not corrected, will probably result in limiting an individual's activities or functioning. The term includes behavioral disorders characterized by deviant social behavior or impaired ability to carry out normal relationships with family and community which may result from vocational, educational, cultural, social, environmental or other factors.

(3) "Vocational rehabilitation services" means goods or services provided handicapped persons to enable such persons to be fit for gainful occupation or to attain or maintain a maximum degree of self-support or self-care and includes every type of goods and services for which federal funds are available for vocational rehabilitation purposes, including, but not limited to, the establishment, construction, development, operation and maintenance of workshops and rehabilitation facilities.

(4) "Self-care" means a reasonable degree of restoration from dependency upon others for personal needs and care and includes but is not limited to ability to live in own home, rather than requiring nursing home care and care for self rather than requiring attendant care.

(5) "State agency" means the department of social and health services. [1970 ex.s. c 18 § 52; 1969 ex.s. c 223 § 28A.10.010. Prior: 1967 ex.s. c 8 § 41; 1967 c 118 § 2; 1957 c 223 § 1; 1933 c 176 § 2; RRS § 4925-2. Formerly RCW 28A.10.010, 28.10.010.]

Effective date—Severability—1970 ex.s. c 18: See notes following RCW 43.20A.010.

74.29.020 Powers and duties of state agency. The state agency shall:

(1) Provide vocational rehabilitation services to handicapped persons, including the placing of such persons in gainful occupations;

(2) Disburse all funds provided by law and may receive, accept and disburse such gifts, grants, conveyances, devises and bequests of real and personal property from public or private sources, as may be made from time to time, in trust or otherwise, whenever the terms and conditions thereof will aid in carrying out vocational rehabilitation services as specified by law and the regulations of the state agency; and may sell, lease or exchange real or personal property according to the terms and conditions thereof. Any money so received shall be deposited in the state treasury for investment, reinvestment or expenditure in accordance with the conditions of its receipt and RCW 43.88.180;

(3) Appoint and fix the compensation and prescribe the duties, of the personnel necessary for the administration of this chapter, unless otherwise provided by law;

(4) Make exploratory studies, make reviews, and do research relative to vocational rehabilitation. [1969 ex.s. c 223 § 28A.10.020. Prior: 1967 ex.s. c 8 § 42; 1967 c 118 § 6; 1963 c 135 § 1; 1957 c 223 § 3; 1933 c 176 § 3; RRS § 4925-3. Formerly RCW 28A.10.020, 28.10.030.]

74.29.025 Additional duties of state agency—State-wide program—Rules and regulations—Report. The state agency shall:

(1) Develop a state-wide vocational rehabilitation program;

(2) Adopt rules, in accord with chapter 34.05 RCW, necessary to carry out the purposes of this chapter; and

(3) Report to the governor and to the legislature on the administration of this chapter, as requested. [1977 c 75 § 18; 1969 ex.s. c 223 § 28A.10.025. Prior: 1967 c 118 § 5. Formerly RCW 28A.10.025, 28.10.035.]

74.29.037 Vocational rehabilitation services to be made available to state and public agencies. The state agency shall make available vocational rehabilitation services to the departments of institutions, labor and industries, public assistance, and employment security, and other state or other public agencies, in accordance with cooperative agreements between the state agency and the respective agencies. [1969 ex.s. c 223 § 28A.10.037.]

Prior: 1967 ex.s. c 8 § 45; 1967 c 118 § 7. Formerly RCW 28A.10.037, 28.10.037.]

74.29.050 Acceptance of federal aid—Generally. The state of Washington does hereby:

(1) Accept the provisions and maximum possible benefits resulting from any acts of congress which provide benefits for the purposes of this chapter;

(2) Designate the state treasurer as custodian of all moneys received by the state from appropriations made by the congress of the United States for purposes of this chapter, and authorize the state treasurer to make disbursements therefrom upon the order of the state agency; and

(3) Empower and direct the state agency to cooperate with the federal government in carrying out the provisions of this chapter or of any federal law or regulation pertaining to vocational rehabilitation, and to comply with such conditions as may be necessary to assure the maximum possible benefits resulting from any such federal law or regulation. [1969 ex.s. c 223 § 28A.10.050. Prior: 1967 ex.s. c 8 § 43; 1967 c 118 § 9; 1957 c 223 § 5; 1955 c 371 § 1; 1933 c 176 § 5; RRS § 4925-5. Formerly RCW 28A.10.050, 28.10.050.]

74.29.055 Acceptance of federal aid—Construction of chapter when part thereof in conflict with federal requirements which are condition precedent to allocation of federal funds. If any part of this chapter shall be found to be in conflict with federal requirements which are a condition precedent to the allocation of federal funds to the state, such conflicting part of this chapter is hereby declared to be inoperative solely to the extent of such conflict, and such findings or determination shall not affect the operation of the remainder of this chapter. [1969 ex.s. c 223 § 28A.10.055. Prior: 1967 c 118 § 10. Formerly RCW 28A.10.055, 28.10.055.]

74.29.080 Purchase of vocational rehabilitation services for handicapped persons—Procedure—Register of eligible nonprofit organizations—Rules. (1) The state agency may purchase, from any source, by contract, vocational rehabilitation services for handicapped persons, payments for such services to be made subject to procedures and fiscal controls approved by the director of financial management. The performance of and payment for such services shall be subject to post audit review by the state auditor.

(2) Notwithstanding any other provision of RCW 74.29.080, 74.29.100, 74.29.105 and 74.29.110, when the state agency determines that a mentally retarded, severely handicapped, or disadvantaged person can reasonably be expected to benefit from, or in his best interests reasonably requires extended sheltered employment or supervised work furnished by an approved nonprofit organization, the state agency is authorized to contract with such organization for the furnishing of such sheltered employment or supervised work to such mentally retarded, severely handicapped, or disadvantaged person.

(3) The determination of eligibility for such service shall be made for each individual by the state agency. The mentally retarded, severely handicapped and disadvantaged individuals served under this law shall be construed to be poor or infirm within the meaning of the term as used in the state Constitution.

(4) The state agency shall maintain a register of non-profit organizations which it has inspected and certified as meeting required standards and as qualifying to serve the needs of such mentally retarded, severely handicapped, or disadvantaged persons. Eligibility of such organizations to receive the funds hereinbefore specified shall be based upon standards and criteria promulgated by the state agency.

(5) The state agency is authorized to promulgate such rules and regulations as it may deem necessary or proper to carry out the provisions of this section. [1983 1st ex.s. c 41 § 16; 1979 c 151 § 11; 1972 ex.s. c 15 § 1; 1970 ex.s. c 18 § 53; 1970 ex.s. c 15 § 23; 1969 ex.s. c 223 § 28A.10.080. Prior: 1969 c 105 § 2; 1967 ex.s. c 8 § 46; 1967 c 118 § 8. Formerly RCW 28A.10.080, 28.10.080.]

Severability—1983 1st ex.s. c 41: See note following RCW 26.09.060.

Effective date—**Severability**—1970 ex.s. c 18: See notes following RCW 43.20A.010.

Severability—1970 ex.s. c 15: See note following RCW 28A.02.070.

74.29.100 Sheltered employment and supervised work programs—Purpose. The purpose of RCW 74.29.080, 74.29.100, 74.29.105 and 74.29.110 is to encourage the development, improvement, and expansion of sheltered employment and supervised work programs for mentally retarded, severely handicapped and disadvantaged individuals to enable them to become contributing and self-supporting members of society as an alternative to dependency.

The condition of the mentally retarded, severely handicapped and disadvantaged is such that after laborious training in the schools and otherwise, they reach the point in their lives where they can and should, under proper and continued guidance, engage in sheltered employment and/or supervised work to help them become contributing members of society instead of being dependent. For such persons, retention in sheltered employment or supervised work may constitute satisfactory placement. Such training and placement is often a suitable alternative to institutionalization or idleness and its consequences. By keeping these individuals within their communities and in touch with their families, a worthwhile dimension is added to their lives and they are thus spared the anxieties naturally attached to separation. All of these factors have also been shown to reflect tangible benefits upon the mentally retarded, severely handicapped or disadvantaged person by improving his overall well-being. [1970 ex.s. c 15 § 24; 1969 c 105 § 1. Formerly RCW 28A.10.100, 28.10.100.]

Severability—1970 ex.s. c 15: See note following RCW 28A.02.070.

74.29.105 Sheltered employment and supervised work programs—"A disadvantaged person" defined for chapter purposes. "A disadvantaged person" as used in chapter 74.29 RCW shall mean a person who is disadvantaged in his ability to secure or maintain appropriate employment by reason of physical or mental disability, youth, advanced age, low educational attainment, ethnic or cultural factors, prison or delinquency records or any other condition, especially in association with poverty and deprivation which constitutes a barrier to such employment. [1969 c 105 § 3. Formerly RCW 28A.10.105, 28.10.105.]

74.29.110 Sheltered employment and supervised work programs—Federal funds. It is further provided that any federal funds available may be used to supplement RCW 74.29.080, 74.29.100, 74.29.105 and 74.29.110. [1970 ex.s. c 15 § 25; 1969 c 105 § 4. Formerly RCW 28A.10.110, 28.10.110.]

Severability—1970 ex.s. c 15: See note following RCW 28A.02.070.

Chapter 74.32

ADVISORY COMMITTEES ON VENDOR RATES

Sections

74.32.100	Advisory committee on vendor rates—Created—Members—Chairman.
74.32.110	Advisory committee on vendor rates—"Vendor rates" defined.
74.32.120	Advisory committee on vendor rates—Meetings—Travel expenses.
74.32.130	Advisory committee on vendor rates—Powers and duties.
74.32.140	Investigation to determine if additional requirements or standards affecting vendor group.
74.32.150	Investigation to determine if additional requirements or standards affecting vendor group—Scope of investigation.
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74.32.170	Investigation to determine if additional requirements or standards affecting vendor group—Prevailing wage scales and fringe benefit programs to be considered.
74.32.180	Investigation to determine if additional requirements or standards affecting vendor group—Additional factors to be accounted for.

74.32.100 Advisory committee on vendor rates—Created—Members—Chairman. There is hereby created a governor's advisory committee on vendor rates. The committee shall be composed of nine members appointed by the governor. In addition, the secretary of the department of social and health services or his designee shall be an ex officio member of the committee. Members shall be selected on the basis of their interest in problems related to the department of social and health services, and no less than two members shall be licensed certified public accountants. The members shall serve at the pleasure of the governor. The governor shall select one member to serve as chairman of the committee and he shall serve as such at the pleasure of the governor. [1971 ex.s. c 87 § 1; 1969 ex.s. c 203 § 1.]

74.32.110 Advisory committee on vendor rates—
"Vendor rates" defined. The term "vendor rates" as used throughout RCW 74.32.100 through 74.32.130 shall include, but not be limited to, the cost reimbursement basis upon which all participating hospital organizations receive compensation. [1969 ex.s. c 203 § 2.]

74.32.120 Advisory committee on vendor rates—
Meetings—Travel expenses. The committee shall meet at least a total of three and no more than twelve times per year at such specific times and places as may be determined by the chairman. Members shall be entitled to reimbursement for travel expenses as provided for in RCW 43.03.050 and 43.03.060, as now existing or hereafter amended. [1975-'76 2nd ex.s. c 34 § 170; 1969 ex.s. c 203 § 3.]

Effective date—Severability—1975-'76 2nd ex.s. c 34: See notes following RCW 2.08.115.

74.32.130 Advisory committee on vendor rates—
Powers and duties. The committee shall have the following powers and duties:

(1) Study and review the methods and procedures for establishing the rates and/or fees of all vendors of goods, services and care purchased by the department of social and health services including all medical and welfare care and services.

(2) Provide each professional and trade association or other representative groups of each of the service areas, the opportunity to present to the committee their evidence for justifying the methods of computing and the justification for the rates and/or fees they propose.

(3) The committee shall have the authority to request vendors to appoint a fiscal intermediary to provide the committee with an evaluation and justification of the method of establishing rates and/or fees.

(4) Prepare and submit a written report to the governor, at least sixty days prior to each session of the legislature, which contains its findings and recommendations concerning the methods and procedures for establishing rates and/or fees and the specific rates and/or fees that should be paid by the department of social and health services to the various designated vendors. This report shall include the suggested effective dates of the recommended rates and/or fees when appropriate.

The vendors shall furnish adequate documented evidence related to the cost of providing their particular services, care or supplies, in the form, to the extent and at such times as the committee may determine.

The chairman of this committee, shall have the same authority as provided in RCW 74.04.290 as it is now or hereafter amended. [1971 ex.s. c 87 § 2; 1969 ex.s. c 203 § 4.]

74.32.140 Investigation to determine if additional requirements or standards affecting vendor group. Before completing its recommendations regarding rates, the governor's committee on vendor rates shall conduct an extensive investigation to determine the nature and extent of any additional requirements or standards established which affect any vendor group if the same have

not been fully considered and provided for in the committee's last recommendations, and shall similarly determine the nature and effect of any additional requirements or standards which are expected to be imposed during the period covered by the committee's recommendations. [1971 ex.s. c 298 § 1.]

74.32.150 Investigation to determine if additional requirements or standards affecting vendor group—
Scope of investigation. The additional requirements and standards referred to in RCW 74.32.140 shall include but shall not be limited to changes in minimum wage or overtime provisions, changes in building code or facility requirements for occupancy or licensing, and changes in requirements for staffing, available equipment, or methods and procedures. [1971 ex.s. c 298 § 2.]

74.32.160 Investigation to determine if additional requirements or standards affecting vendor group—
Changes investigated regardless of source. The committee shall investigate such changes whether their source is or may be federal, state, or local governmental agencies, departments and officers, and shall give full consideration to the cost of such changes and expected changes in the vendor rates recommended. [1971 ex.s. c 298 § 3.]

74.32.170 Investigation to determine if additional requirements or standards affecting vendor group—
Prevailing wage scales and fringe benefit programs to be considered. The committee shall also consider prevailing wage scales and fringe benefit programs affecting the vendor's industry or affecting related or associated industries or vendor classes, and shall consider in its rate recommendations a scale of competitive wages, to assure the availability of necessary personnel in each vendor program. [1971 ex.s. c 298 § 4.]

74.32.180 Investigation to determine if additional requirements or standards affecting vendor group—
Additional factors to be accounted for. The committee shall further fully account in its recommended rate structure for the effect of changes in payroll and property taxes[,] accurate costs of insurance, and increased or lowered costs of borrowing money. [1971 ex.s. c 298 § 5.]

Chapter 74.34

ABUSE OF VULNERABLE ADULTS

Sections

74.34.010	Legislative findings—Intent.
74.34.020	Definitions.
74.34.030	Reports—Duty to make.
74.34.040	Reports—Contents—Identity confidential.
74.34.050	Immunity from liability.
74.34.060	Response to reports—Services—Consent.
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74.34.080	Injunctions.
74.34.090	Data collection system—Confidentiality.
74.34.100	Protection of vulnerable adults—Legislative findings.
74.34.110	Protection of vulnerable adults—Petition for protective order.
74.34.120	Protection of vulnerable adults—Hearing.

- 74.34.130 Protection of vulnerable adults—Judicial relief.
 74.34.140 Protection of vulnerable adults—Execution of protective order.
 74.34.150 Protection of vulnerable adults—Department may seek relief.
 74.34.160 Protection of vulnerable adults—Proceedings are supplemental.
 74.34.170 Services of department discretionary—Funding.
 74.34.900 Severability—1984 c 97.
 74.34.901 Severability—1986 c 187.

Adult dependent or developmentally disabled persons, abuse: Chapter 26.44 RCW.

Patients in nursing homes and hospitals, abuse: Chapter 70.124 RCW.

74.34.010 Legislative findings—Intent. The legislature finds that there are a number of adults sixty years of age or older who lack the ability to perform or obtain those services necessary to maintain or establish their well-being. It is the intent of the legislature to prevent or remedy the abuse, neglect, exploitation, or abandonment of persons sixty years of age or older who have a functional, mental, or physical inability to care for or protect themselves by providing these persons with the least-restrictive services such as home care and preventing or reducing inappropriate institutional care. The legislature finds that it is in the interests of the public health, safety, and welfare of the people of the state to provide a procedure for identifying these persons and providing the services necessary for their well-being. [1984 c 97 § 7.]

74.34.020 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Abandonment" means leaving a vulnerable adult without the means or ability to obtain food, clothing, shelter, or health care.

(2) "Abuse" means an act of physical or mental mistreatment or injury which harms or threatens a person through action or inaction by another individual.

(3) "Consent" means express written consent granted after the person has been fully informed of the nature of the services to be offered and that the receipt of services is voluntary.

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

(5) "Exploitation" means the illegal or improper use of a vulnerable adult or that adult's resources for another person's profit or advantage.

(6) "Neglect" means a pattern of conduct resulting in deprivation of care necessary to maintain minimum physical and mental health.

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

(8) "Vulnerable adult" means a person sixty years of age or older who has the functional, mental, or physical inability to care for himself or herself. [1984 c 97 § 8.]

74.34.030 Reports—Duty to make. Any person, including but not limited to, financial institutions or attorneys, having reasonable cause to believe that a vulnerable adult has suffered abuse, exploitation, neglect, or abandonment, or is otherwise in need of protective

services may report such information to the department. Any police officer, social worker, employee of the department, a social service, welfare, mental health, or health agency, congregate long-term care facility, or health care provider licensed under Title 18 RCW, including but not limited to doctors, nurses, psychologists, and pharmacists, having reasonable cause to believe that a vulnerable adult has suffered abuse, exploitation, neglect, or abandonment, shall make an immediate oral report of such information to the department and shall report such information in writing to the department within ten calendar days of receiving the information. [1986 c 187 § 1; 1984 c 97 § 9.]

Effective date—1984 c 97 § 9: "Section 9 of this act shall take effect on July 1, 1985." [1984 c 97 § 16.] Section 9 is codified as RCW 74.34.030.

74.34.040 Reports—Contents—Identity confidential. The reports made under RCW 74.34.030 shall contain the following information if known:

- (1) Identification of the vulnerable adult;
- (2) The nature and extent of the suspected abuse, neglect, exploitation, or abandonment;
- (3) Evidence of previous abuse, neglect, exploitation, or abandonment;
- (4) The name and address of the person making the report; and
- (5) Any other helpful information.

Unless there is a judicial proceeding or the person consents, the identity of the person making the report is confidential. [1986 c 187 § 2; 1984 c 97 § 10.]

74.34.050 Immunity from liability. (1) A person participating in good faith in making a report under this chapter or testifying about the abuse, neglect, abandonment, or exploitation of a vulnerable adult in a judicial proceeding under this chapter is immune from liability resulting from the report or testimony. The making of permissive reports as allowed in RCW 74.34.030 does not create any duty to report and no civil liability shall attach for any failure to make a permissive report under RCW 74.34.030.

(2) Conduct conforming with the reporting and testifying provisions of this chapter shall not be deemed a violation of any confidential communication privilege. Nothing in this chapter shall be construed as superseding or abridging remedies provided in chapter 4.92 RCW. [1986 c 187 § 3; 1984 c 97 § 11.]

74.34.060 Response to reports—Services—Consent. The department shall insure that all reports made under this chapter are responded to. If the department finds that an incident of abuse, neglect, exploitation, or abandonment has occurred, the department shall insure that appropriate protective services are provided to the vulnerable adult with the consent of the vulnerable adult. The services shall not be provided if the vulnerable adult withdraws or refuses consent. If the department determines that the vulnerable adult lacks the ability or capacity to consent, the department may

bring an action under chapter 11.88 RCW as an interested person. [1984 c 97 § 12.]

74.34.070 Response to reports—Information required—Cooperative agreements for services. In responding to reports of abuse, exploitation, neglect, or abandonment under this chapter, the department shall provide information to the elderly person on protective services available to the person and inform the person of the right to refuse such services. The department shall develop cooperative agreements with community-based agencies servicing the abused elderly. The agreements shall cover such subjects as the appropriate roles and responsibilities of the department and community-based agencies in identifying and responding to reports of elderly abuse, the provision of case-management services, standardized data collection procedures, and related coordination activities. [1984 c 97 § 13.]

74.34.080 Injunctions. If access is denied to an employee of the department seeking to investigate an allegation of abuse, neglect, exploitation, or abandonment of a vulnerable adult by an individual, the department may seek an injunction to prevent interference with the investigation. The court shall issue the injunction if the department shows that:

(1) There is reasonable cause to believe that the person is a vulnerable adult and is or has been abused, neglected, exploited, or abandoned; and

(2) The employee of the department seeking to investigate the report has been denied access. [1984 c 97 § 14.]

74.34.090 Data collection system—Confidentiality. The department shall maintain a system for statistical data collection, accessible for bona fide research only as the department by rule prescribes. The identity of any person is strictly confidential. [1984 c 97 § 15.]

74.34.100 Protection of vulnerable adults—Legislative findings. The legislature finds that vulnerable adults, who are physically or emotionally abused or financially exploited may need the protection of the courts. The legislature further finds that many of these elderly persons may be homebound or otherwise may be unable to represent themselves in court or to retain legal counsel in order to obtain the relief available to them under this chapter. [1986 c 187 § 4.]

74.34.110 Protection of vulnerable adults—Petition for protective order. An action known as a petition for an order for protection of a vulnerable adult in cases of abuse or exploitation is created.

(1) A vulnerable adult may seek relief from abuse or exploitation, or the threat thereof, by filing a petition for an order for protection in superior court.

(2) A petition shall allege that the petitioner is a vulnerable adult and that the petitioner has been abused or exploited or is threatened with abuse or exploitation by respondent.

(3) A petition shall be accompanied by affidavit made under oath stating the specific facts and circumstances which demonstrate the need for the relief sought.

(4) A petition for an order may be made whether or not there is a pending lawsuit, complaint, petition, or other action between the parties.

(5) A petitioner is not required to post bond to obtain relief in any proceeding under this section.

(6) An action under this section shall be filed in the county where the petitioner resides; except that if the petitioner has left the residence as a result of abuse or exploitation, or in order to avoid abuse or exploitation, the petitioner may bring an action in the county of either the previous or new residence. [1986 c 187 § 5.]

74.34.120 Protection of vulnerable adults—Hearing. The court shall order a hearing on a petition under RCW 74.34.110 not later than fourteen days from the date of filing the petition. Personal service shall be made upon the respondent not less than five court days before the hearing. If timely service cannot be made, the court may set a new hearing date. A petitioner may move for temporary relief under chapter 7.40 RCW. [1986 c 187 § 6.]

74.34.130 Protection of vulnerable adults—Judicial relief. The court may order relief as it deems necessary for the protection of the petitioner, including, but not limited to the following:

(1) Restraining respondent from committing acts of abuse or exploitation;

(2) Excluding the respondent from petitioner's residence for a specified period or until further order of the court;

(3) Prohibiting contact by respondent for a specified period or until further order of the court;

(4) Requiring an accounting by respondent of the disposition of petitioner's income or other resources;

(5) Restraining the transfer of property for a specified period not exceeding ninety days;

(6) Requiring the respondent to pay the filing fee and court costs, including service fees, and to reimburse the petitioner for costs incurred in bringing the action, including a reasonable attorney's fee.

Any relief granted by an order for protection, other than a judgment for costs, shall be for a fixed period not to exceed one year. [1986 c 187 § 7.]

74.34.140 Protection of vulnerable adults—Execution of protective order. When an order for protection under RCW 74.34.130 is issued upon request of the petitioner, the court may order a peace officer to assist in the execution of the order of protection. [1986 c 187 § 8.]

74.34.150 Protection of vulnerable adults—Department may seek relief. The department of social and health services, in its discretion, may seek relief under RCW 74.34.110 through 74.34.140 on behalf of and with the consent of any vulnerable adult. Neither the department of social and health services nor the state of

Washington shall be liable for failure to seek relief on behalf of any persons under this section. [1986 c 187 § 9.]

74.34.160 Protection of vulnerable adults—Proceedings are supplemental. Any proceeding under RCW 74.34.110 through 74.34.150 is in addition to any other civil or criminal remedies. [1986 c 187 § 11.]

74.34.170 Services of department discretionary—Funding. The provision of services under RCW 74.34.030, 74.34.040, 74.34.050, and 74.34.100 through 74.34.160 are discretionary and the department shall not be required to expend additional funds beyond those appropriated. [1986 c 187 § 10.]

74.34.900 Severability—1984 c 97. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1984 c 97 § 18.]

74.34.901 Severability—1986 c 187. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1986 c 187 § 12.]

Chapter 74.36

FUNDING FOR COMMUNITY PROGRAMS FOR THE AGING

Sections

- 74.36.100 Department to participate in and administer Federal Older Americans Act of 1965.
- 74.36.110 Community programs and projects for the aging—Allotments for—Purpose.
- 74.36.120 Community programs and projects for the aging—Standards for eligibility and approval—Informal hearing on denial of approval.
- 74.36.130 Community programs and projects for the aging—State funding, limitations—Payments, type.

State council on aging: RCW 43.20A.680.

74.36.100 Department to participate in and administer Federal Older Americans Act of 1965. The department of social and health services is authorized to take advantage of and participate in the Federal Older Americans Act of 1965 (Public Law 89-73, 89th Congress, 79 Stat. 220) and to accept, administer and disburse any federal funds that may be available under said act. [1970 ex.s. c 18 § 27; 1967 ex.s. c 33 § 1.]

Effective date—Severability—1970 ex.s. c 18: See notes following RCW 43.20A.010.

74.36.110 Community programs and projects for the aging—Allotments for—Purpose. The secretary of the department of social and health services or his designee is authorized to allot for such purposes all or a portion of whatever state funds the legislature appropriates or are otherwise made available for the purpose of matching local funds dedicated to community programs

and projects for the aging. The purpose of RCW 74.36.110 through 74.36.130 is to stimulate and assist local communities to obtain federal funds made available under the Federal Older Americans Act of 1965 as amended. [1971 ex.s. c 169 § 10.]

Moneys in possession of secretary not subject to certain proceedings: RCW 74.13.070.

74.36.120 Community programs and projects for the aging—Standards for eligibility and approval—Informal hearing on denial of approval. (1) The secretary or his designee shall adopt and set forth standards for determining the eligibility and approval of community projects and priorities therefor, and shall have final authority to approve or deny such projects and funding requested under RCW 74.36.110 through 74.36.130.

(2) Only community project proposals submitted by local public agencies, by private nonprofit agencies or organizations, or by public or other nonprofit institutions of higher education, shall be eligible for approval.

(3) Any community project applicant whose application for approval is denied will be afforded an opportunity for an informal hearing before the secretary or his designee, but the administrative procedure act, chapter 34.05 RCW, shall not apply. [1971 ex.s. c 169 § 11.]

74.36.130 Community programs and projects for the aging—State funding, limitations—Payments, type.

(1) State funds made available under RCW 74.36.110 through 74.36.130 for any project shall not exceed fifty per centum of the nonfederal share of the costs. To the extent that federal law permits, and the secretary or his designee deems appropriate, the local community share and/or the state share may be in the form of cash or in-kind resources.

(2) Payments made under RCW 74.36.110 through 74.36.130 may be made in advance or by way of reimbursement, and in such installments and on such conditions as the secretary or his designee may determine, including provisions for adequate accounting systems, reasonable record retention periods and financial audits. [1971 ex.s. c 169 § 12.]

Moneys in possession of secretary not subject to certain proceedings: RCW 74.13.070.

Chapter 74.38

SENIOR CITIZENS SERVICES ACT

Sections

- 74.38.010 Legislative recognition—Public policy.
- 74.38.020 Definitions.
- 74.38.030 Administration of community based services program—Area plans—Annual state plan—Determination of low income eligible persons.
- 74.38.040 Scope and extent of community based services program.
- 74.38.050 Availability of services for persons other than those of low income—Utilization of volunteers and public assistance recipients—Private agencies—Well-adult clinics—Fee schedule, exceptions.
- 74.38.060 Expansion of federal programs authorized.
- 74.38.061 Expansion of federal programs authorized.
- 74.38.070 Reduced utility rates for low income senior citizens and low income disabled citizens.

74.38.900 Short title.
74.38.905 Severability—1975-'76 2nd ex.s. c 131.

74.38.010 Legislative recognition—Public policy. The legislature recognizes the need for the development and expansion of alternative services and forms of care for senior citizens. Such services should be designed to restore individuals to, or maintain them at, the level of independent living they are capable of attaining. These alternative services and forms of care should be designed to both complement the present forms of institutional care and create a system whereby appropriate services can be rendered according to the care needs of an individual. The provision of service should continue until the client is able to function independently, moves to an institution, moves from the state, dies, or withdraws from the program.

Therefore, it shall be the policy of this state to develop, expand, or maintain those programs which provide an alternative to institutional care when that form of care is premature, unnecessary, or inappropriate. [1977 ex.s. c 321 § 1; 1975-'76 2nd ex.s. c 131 § 1.]

74.38.020 Definitions. As used in this chapter, the following words and phrases shall have the following meaning unless the content clearly requires otherwise:

(1) "Area agency" means an agency, other than a state agency, designated by the department to carry out programs or services approved by the department in a designated geographical area of the state.

(2) "Area plan" means the document submitted annually by an area agency to the department for approval which sets forth (a) goals and measurable objectives, (b) review of past expenditures and accounting of revenue for the previous year, (c) estimated revenue and expenditures for the ensuing year, and (d) the planning, coordination, administration, social services, and evaluation activities to be undertaken to carry out the purposes of the Older Americans Act of 1965 (42 U.S.C. Sec. 3024 et. seq.), as now or hereafter amended.

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

(4) "Office" shall mean the office on aging which is the organizational unit within the department responsible for coordinating and administering aging problems.

(5) "Eligible persons" means senior citizens who are:

(a) Sixty-five years of age or more; or

(b) Sixty years of age or more and are either (i) non-employed, or (ii) employed for twenty hours per week or less; and

(c) In need of services to enable them to remain in their customary homes because of physical, mental, or other debilitating impairments.

(6) "Low income" means initial resources or subsequent income at or below forty percent of the state median income as promulgated by the secretary of the United States department of health, education and welfare for Title XX of the Social Security Act, or, in the alternative, a level determined by the department and approved by the legislature.

(7) "Income" shall have the same meaning as in chapter 74.04 RCW, as now or hereafter amended; except, that money received from RCW 74.38.060 shall be excluded from this definition.

(8) "Resource" shall have the same meaning as in chapter 74.04 RCW, as now or hereafter amended.

(9) "Need" shall have the same meaning as in chapter 74.04 RCW, as now or hereafter amended. [1989 1st ex.s. c 9 § 817; 1977 ex.s. c 321 § 2; 1975-'76 2nd ex.s. c 131 § 2.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

74.38.030 Administration of community based services program—Area plans—Annual state plan—Determination of low income eligible persons. (1) The program of community based services authorized under this chapter shall be administered by the department. Such services may be provided by the department or through purchase of service contracts, vendor payments or direct client grants.

The department shall, under stipend or grant programs provided under RCW 74.38.060, utilize, to the maximum staffing level possible, eligible persons in its administration, supervision, and operation.

(2) The department shall be responsible for planning, coordination, monitoring and evaluation of services provided under this chapter but shall avoid duplication of services.

(3) The department may designate area agencies in cities of not less than twenty thousand population or in regional areas within the state. These agencies shall submit area plans, as required by the department. They shall also submit, in the manner prescribed by the department, such other program or fiscal data as may be required.

(4) The department shall develop an annual state plan pursuant to the Older Americans Act of 1965, as now or hereafter amended. This plan shall include, but not be limited to:

(a) Area agencies' programs and services approved by the department;

(b) Other programs and services authorized by the department; and

(c) Coordination of all programs and services.

(5) The department shall establish rules and regulations for the determination of low income eligible persons. Such determination shall be related to need based on the initial resources and subsequent income of the person entering into a program or service. This determination shall not prevent the eligible person from utilizing a program or service provided by the department or area agency. However, if the determination is that such eligible person is nonlow income, the provision of RCW 74.38.050 shall be applied as of the date of such determination. [1975-'76 2nd ex.s. c 131 § 3.]

74.38.040 Scope and extent of community based services program. The community based services for low-income eligible persons provided by the department or the respective area agencies may include:

(1) Access services designed to provide identification of eligible persons, assessment of individual needs, reference to the appropriate service, and follow-up service where required. These services shall include information and referral, outreach, transportation and counseling;

(2) Day care offered on a regular, recurrent basis. General nursing, rehabilitation, personal care, nutritional services, social casework, mental health as provided pursuant to chapter 71.24 RCW and/or limited transportation services may be made available within this program;

(3) In-home care for persons, including basic health care; performance of various household tasks and other necessary chores, or, a combination of these services;

(4) Counseling on death for the terminally ill and care and attendance at the time of death; except, that this is not to include reimbursement for the use of life-sustaining mechanisms;

(5) Health services which will identify health needs and which are designed to avoid institutionalization; assist in securing admission to medical institutions or other health related facilities when required; and, assist in obtaining health services from public or private agencies or providers of health services. These services shall include health screening and evaluation, in-home services, health education, and such health appliances which will further the independence and well-being of the person;

(6) The provision of low cost, nutritionally sound meals in central locations or in the person's home in the instance of incapacity. Also, supportive services may be provided in nutritional education, shopping assistance, diet counseling and other services to sustain the nutritional well-being of these persons;

(7) The provisions of services to maintain a person's home in a state of adequate repair, insofar as is possible, for their safety and comfort. These services shall be limited, but may include housing counseling, minor repair and maintenance, and moving assistance when such repair will not attain standards of health and safety, as determined by the department;

(8) Civil legal services, as limited by RCW 2.50.100, for counseling and representation in the areas of housing, consumer protection, public entitlements, property, and related fields of law;

(9) Long-term care ombudsman programs for residents of all long-term care facilities. [1983 c 290 § 14; 1977 ex.s. c 321 § 3; 1975-'76 2nd ex.s. c 131 § 4.]

Severability—1983 c 290: See RCW 43.190.900.

74.38.050 Availability of services for persons other than those of low income—**Utilization of volunteers and public assistance recipients**—**Private agencies**—**Well-adult clinics**—**Fee schedule, exceptions.** The services provided in RCW 74.38.040 may be provided to nonlow income eligible persons: *Provided*, That the department and the area agencies on aging shall utilize volunteer workers and public assistant recipients to the maximum extent possible to provide the services provided in RCW 74.38.040: *Provided, further*, That the department and the area agencies shall utilize the bid procedure pursuant to chapter 43.19 RCW for providing

such services to low income and nonlow income persons whenever the services to be provided are available through private agencies at a cost savings to the department. The department shall establish a fee schedule based on the ability to pay and graduated to full recovery of the cost of the service provided; except, that nutritional services, health screening, services under the long-term care ombudsman program under chapter 43.190 RCW and access services provided in RCW 74.38-.040 shall not be based on need and no fee shall be charged; except further, notwithstanding any other provision of this chapter, that well adult clinic services may be provided in lieu of health screening services if such clinics use the fee schedule established by this section. [1983 c 290 § 15; 1979 ex.s. c 147 § 1; 1977 ex.s. c 321 § 4; 1975-'76 2nd ex.s. c 131 § 5.]

Severability—1983 c 290: See RCW 43.190.900.

Effective date—1979 ex.s. c 147: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1979." [1979 ex.s. c 147 § 4.]

74.38.060 Expansion of federal programs authorized.

The department may expand the foster grandparent, senior companion and retired senior volunteer programs funded under the Federal Volunteer Agency (ACTION) (P.L. 93-113 Title II), or its successor agency, which provide senior citizens with volunteer stipends, out-of-pocket expenses, or wages to perform services in the community. [1975-'76 2nd ex.s. c 131 § 6.]

74.38.061 Expansion of federal programs authorized.

The department may expand the foster grandparent, senior companion, and retired senior volunteer programs funded under the Federal Volunteer Agency (ACTION) (P.L. 93-113 Title II), or its successor agency, which provide senior citizens with volunteer stipends, out-of-pocket expenses, or wages to perform services in the community. [1977 ex.s. c 321 § 5.]

74.38.070 Reduced utility rates for low income senior citizens and low income disabled citizens. (1) Notwithstanding any other provision of law, any county, city, town, municipal corporation, or quasi municipal corporation providing utility services may provide such services at reduced rates for low income senior citizens or low income disabled citizens: *Provided*, That, for the purposes of this section, "low income senior citizen" or "low income disabled citizen" shall be defined by appropriate ordinance or resolution adopted by the governing body of the county, city, town, municipal corporation, or quasi municipal corporation providing the utility services except as provided in subsection (2) of this section. Any reduction in rates granted in whatever manner to low income senior citizens or low income disabled citizens in one part of a service area shall be uniformly extended to low income senior citizens or low income disabled citizens in all other parts of the service area.

(2) For purposes of implementing this section by any public utility district, (a) "low income senior citizen" means a person who is sixty-two years of age or older and whose total income, including that of his or her

spouse or cotenant, does not exceed the amount specified in RCW 84.36.381(5)(b), as now or hereafter amended and (b) "low income disabled citizen" means a person qualifying for special parking privileges under RCW 46.16.381(1) (a) through (f) or a blind person as defined in RCW 74.18.020 and whose income, including that of his or her spouse or cotenant, does not exceed the amount specified in RCW 70.164.020(4). [1988 c 44 § 1; 1980 c 160 § 1; 1979 c 116 § 1.]

74.38.900 Short title. Sections 1 through 6 of this act shall be known and may be cited as the "Senior Citizens Services Act". [1975-'76 2nd ex.s. c 131 § 7.]

74.38.905 Severability—1975-'76 2nd ex.s. c 131. If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1975-'76 2nd ex.s. c 131 § 10.]

Chapter 74.39

LONG-TERM CARE SERVICE OPTIONS

Sections

74.39.001	Finding.
74.39.005	Purpose.
74.39.010	Option—Flexibility—Title XIX of the federal social security act.
74.39.020	Opportunities—Increase of federal funds—Title XIX of the federal social security act.
74.39.030	Community options program entry system—Waiver—Respite services.
74.39.040	Long-term care commission—Generally.
74.39.900	Severability—1989 c 427.

74.39.001 Finding. The legislature finds that:

Washington's chronically functionally disabled population is growing at a rapid pace. This growth, along with economic and social changes and the coming age wave, presents opportunities for the development of long-term care community services networks and enhanced volunteer participation in those networks, and creates a need for different approaches to currently fragmented long-term care programs. The legislature further recognizes that persons with functional disabilities should receive long-term care services that encourage individual dignity, autonomy, and development of their fullest human potential. [1989 c 427 § 1.]

74.39.005 Purpose. The purpose of this chapter is to:

(1) Establish a balanced range of community-based health, social, and supportive services that deliver long-term care services to chronically, functionally disabled persons of all ages;

(2) Ensure that functional disability shall be the determining factor in defining long-term care service needs and that these needs will be determined by a uniform system for comprehensively assessing functional disability;

(3) Ensure that services are provided in the most independent living situation consistent with individual needs;

(4) Ensure that long-term care service options shall be developed and made available that enable functionally disabled persons to continue to live in their homes or other community residential facilities while in the care of their families or other volunteer support persons;

(5) Ensure that long-term care services are coordinated in a way that minimizes administrative cost, eliminates unnecessarily complex organization, minimizes program and service duplication, and maximizes the use of financial resources in directly meeting the needs of persons with functional limitations;

(6) Develop a systematic plan for the coordination, planning, budgeting, and administration of long-term care services now fragmented between the division of developmental disabilities, division of mental health, aging and adult services administration, division of children and family services, division of vocational rehabilitation, office on AIDS, division of health, and bureau of alcohol and substance abuse;

(7) Encourage the development of a state-wide long-term care case management system that effectively coordinates the plan of care and services provided to eligible clients;

(8) Ensure that individuals and organizations affected by or interested in long-term care programs have an opportunity to participate in identification of needs and priorities, policy development, planning, and development, implementation, and monitoring of state supported long-term care programs;

(9) Support educational institutions in Washington state to assist in the procurement of federal support for expanded research and training in long-term care; and

(10) Facilitate the development of a coordinated system of long-term care education that is clearly articulated between all levels of higher education and reflective of both in-home care needs and institutional care needs of functionally disabled persons. [1989 c 427 § 2.]

74.39.010 Option—Flexibility—Title XIX of the federal social security act. A valuable option available to Washington state to achieve the goals of RCW 74.39.001 and 74.39.005 is the flexibility in personal care and other long-term care services encouraged by the federal government under Title XIX of the federal social security act. These services include options to expand community-based long-term care services, such as adult family homes, congregate care facilities, respite, chore services, hospice, and case management. [1989 c 427 § 3.]

74.39.020 Opportunities—Increase of federal funds—Title XIX of the federal social security act. Title XIX of the federal social security act offers valuable opportunities to increase federal funds available to provide community-based long-term care services to functionally disabled persons in their homes, and in

noninstitutional residential facilities, such as adult family homes and congregate care facilities. [1989 c 427 § 9.]

74.39.030 Community options program entry system—Waiver—Respite services. The department shall request an amendment to its community options program entry system waiver under section 1905(c) of the federal social security act to include respite services as a service available under the waiver. [1989 c 427 § 11.]

74.39.040 Long-term care commission—Generally. (1) A long-term care commission is created. It shall consist of:

(a) Four legislators who shall serve on the executive committee, one from each of the two largest caucuses in the house of representatives and the senate who shall be selected by the president of the senate and the speaker of the house of representatives;

(b) Six members, to be selected by the executive committee, who shall be authorities in gerontology, developmental disabilities, neurological impairments, physical disabilities, mental illness, nursing, long-term care service delivery, long-term care service financing, systems development, or systems analysis;

(c) Three members, to be selected by the executive committee, who represent long-term care consumers, services providers, or advocates;

(d) Two members, to be selected by the executive committee, who represent county government;

(e) One member, to be selected by the secretary of social and health services, to represent the department of social and health services long-term care programs, including at least developmental disabilities, mental health, aging and adult services, AIDS, children's services, alcohol and substance abuse, and vocational rehabilitation; and

(f) Two members, to represent the governor, who shall serve on the executive committee.

The legislative members shall select a chair from the membership of the commission.

The commission shall be staffed, to the extent possible, by staff from the appropriate senate and house of representatives committees.

The commission may form technical advisory committees to assist it with any particular matters deemed necessary by the commission.

The commission and technical advisory committee members shall receive no compensation, but except for publicly funded agency staff, shall, to the extent funds are available, be reimbursed for their expenses while attending any meetings in the same manner as legislators engaged in interim committee business as specified in RCW 44.04.120.

The commission may receive appropriations, grants, gifts, and other payments from any governmental or other public or private entity or person which it may use to defray the cost of its operations or to contract for technical assistance, with the approval of the senate

committee on facilities and operations and the house of representatives executive rules committee.

(2) The long-term care commission shall develop legislation and recommend administrative actions necessary to achieve the following long-term care reforms:

(a) The systematic coordination, planning, budgeting, and administration of long-term care services currently administered by the department of social and health services, division of developmental disabilities, aging and adult services administration, division of vocational rehabilitation, office on AIDS, division of health, and the bureau of alcohol and substance abuse;

(b) Provision of long-term care services to persons based on their functional disabilities noncategorically and in the most independent living situation consistent with the person's needs;

(c) A consistent definition of appropriate roles and responsibilities for state and local government, regional organizations, and private organizations in the planning, administration, financing, and delivery of long-term care services;

(d) Technical assistance to enable local communities to have greater participation and control in the planning, administration, and provision of long-term care services;

(e) A case management system that coordinates an appropriate and cost-effective plan of care and services for eligible functionally disabled persons based on their individual needs and preferences;

(f) A sufficient supply of quality noninstitutional residential alternatives for functionally disabled persons, and supports for the providers of such services;

(g) Public and private alternative funding for long-term care services, such as federal Title XIX funding of personal care services through the limited casualty program for the medically needy and other optional services, a uniform fee scale for client participation in state-funded, long-term care programs, and private, long-term care insurance;

(h) A systematic and balanced long-term care services payment and reimbursement system, including nursing home reimbursement, that will provide access to needed services while controlling the rate of cost increases for such services;

(i) Active involvement of volunteers and advocacy groups;

(j) An integrated data base that provides long-term care client tracking;

(k) A coordinated education system for long-term care; and

(l) Other issues deemed appropriate by the implementation team.

The commission shall report to the legislature with its findings, recommendations, and proposed legislation by December 1, 1990. [1989 c 427 § 13.]

74.39.900 Severability—1989 c 427. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1989 c 427 § 43.]

Chapter 74.41
RESPITE CARE SERVICES

Sections

74.41.010	Legislative findings.
74.41.020	Intent.
74.41.030	Definitions.
74.41.040	Administration—Rules—Program standards.
74.41.050	Respite care projects—Respite services, evaluation of need, caregiver abilities.
74.41.060	Respite care program—Criteria.
74.41.070	Respite care program—Data—Report to legislature.
74.41.080	Health care practitioners and facilities not impaired.
74.41.090	Entitlement not created.

74.41.010 Legislative findings. The legislature recognizes that:

(1) Most care provided for functionally disabled adults is delivered by family members or friends who are not compensated for their services. Family involvement is a crucial element for avoiding or postponing institutionalization of the disabled adult.

(2) Family or other caregivers who provide continuous care in the home are frequently under substantial stress, physical, psychological, and financial. The stress, if unrelieved by family or community support to the caregiver, may lead to premature or unnecessary nursing home placement.

(3) Respite care and other community-based supportive services for the caregiver and for the disabled adult could relieve some of the stresses, maintain and strengthen the family structure, and postpone or prevent institutionalization.

(4) With family and friends providing the primary care for the disabled adult, supplemented by community health and social services, long-term care may be less costly than if the individual were institutionalized. [1984 c 158 § 1.]

74.41.020 Intent. It is the intent of the legislature to provide for both in-home and out-of-home respite care services which are provided by a range of service providers. The respite care services shall:

(1) Provide relief and support to family or other unpaid caregivers of disabled adults;

(2) Encourage individuals to provide care for disabled adults at home, and thus offer a viable alternative to institutionalization;

(3) Ensure that respite care is made generally available on a sliding-fee basis to eligible participants in the program according to priorities established by the department;

(4) Be provided in the least restrictive setting available consistent with the individually assessed needs of the functionally disabled adult; and

(5) Include services appropriate to the needs of persons caring for individuals with dementing illnesses. [1987 c 409 § 1; 1984 c 158 § 2.]

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

(1) "Respite care services" means relief care for families or other caregivers of disabled adults, eligibility for which shall be determined by the department by rule. The services provide temporary care or supervision of disabled adults in substitution for the caregiver. The term includes social day care.

(2) "Eligible participant" means an adult (a) who needs substantially continuous care or supervision by reason of his or her functional disability, and (b) who is assessed as requiring institutionalization in the absence of a caregiver assisted by home and community support services, including respite care.

(3) "Caregiver" means a spouse, relative, or friend who has primary responsibility for the care of a functionally disabled adult, who does not receive financial compensation for the care, and who is assessed as being at risk of placing the eligible participant in a long-term care facility if respite care is not available.

(4) "Institutionalization" means placement in a long-term care facility.

(5) "Social day care" means nonmedical services to persons who live with their families, cannot be left unsupervised, and are at risk of being placed in a twenty-four-hour care facility if their families do not receive some relief from constant care.

(6) "Department" means the department of social and health services. [1987 c 409 § 2; 1984 c 158 § 3.]

74.41.040 Administration—Rules—Program standards. The department shall administer this chapter and shall establish such rules and standards as the department deems necessary in carrying out this chapter. The department shall not require the development of plans of care or discharge plans by nursing homes providing respite care service under this chapter.

The department shall develop standards for the respite program in conjunction with the selected area agencies on aging. The program standards shall serve as the basis for soliciting bids, entering into subcontracts, and developing sliding fee scales to be used in determining the ability of eligible participants to participate in paying for respite care. [1987 c 409 § 3; 1984 c 158 § 4.]

74.41.050 Respite care projects—Respite services, evaluation of need, caregiver abilities. The department shall contract with area agencies on aging or other appropriate agencies to conduct respite care projects to the extent of available funding. The responsibilities of the agencies shall include but not be limited to: Negotiating rates of payment, administering sliding-fee scales to enable eligible participants to participate in paying for respite care, and arranging for respite care services. Rates of payment to respite care service providers shall not exceed, and may be less than, rates paid by the department to providers for the same level of service. In evaluating the need for respite services, consideration shall be given to the mental and physical ability of the caregiver to perform necessary caregiver functions. [1989 c 427 § 8; 1987 c 409 § 4; 1984 c 158 § 5.]

Severability—1989 c 427: See RCW 74.39.900.

74.41.060 Respite care program—Criteria. The department shall insure that the respite care program is designed to meet the following criteria:

- (1) Make maximum use of services which provide care to the greatest number of eligible participants with the fewest number of staff consistent with adequate care;
- (2) Provide for use of one-on-one care when necessary;
- (3) Provide for both day care and overnight care;
- (4) Provide personal care to continue at the same level which the caregiver ordinarily provides to the eligible participant; and
- (5) Provide for the utilization of family home settings. [1984 c 158 § 6.]

74.41.070 Respite care program—Data—Report to legislature. (1) The area agencies administering respite care programs shall maintain data which indicates demand for respite care, and which includes information on in-home and out-of-home day care and in-home and out-of-home overnight care demand.

(2) The department shall provide a progress report to the legislature on the respite care programs authorized in this chapter. The report shall at least include a comparison of the relative cost-effectiveness of the services provided under this chapter with all other programs and services which are intended to forestall institutionalization. In addition, the report shall include a similar comparison between in-home and out-of-home respite care services. The department shall make recommendations on the inclusion of respite care services under the senior citizens act for delivery and funding of respite care services described in this chapter. The report shall be provided to the legislature not later than thirty days prior to the 1989 legislative session. [1987 c 409 § 5; 1984 c 158 § 7.]

74.41.080 Health care practitioners and facilities not impaired. Nothing in this chapter shall impair the practice of any licensed health care practitioner or licensed health care facility. [1984 c 158 § 8.]

74.41.090 Entitlement not created. Nothing in this chapter creates or provides any individual with an entitlement to services or benefits. It is the intent of the legislature that services under this chapter shall be made available only to the extent of the availability and level of appropriation made by the legislature. [1987 c 409 § 6.]

Chapter 74.42

**NURSING HOMES—RESIDENT CARE,
OPERATING STANDARDS**

Sections

- 74.42.010 Definitions.
- 74.42.020 Minimum standards.
- 74.42.030 Resident to receive statement of rights, rules, services, and charges.
- 74.42.040 Resident's rights regarding medical condition, care, and treatment.

- 74.42.050 Residents to be treated with consideration, respect—Complaints.
- 74.42.055 Discrimination against medicaid recipients prohibited.
- 74.42.060 Management of residents' financial affairs.
- 74.42.070 Privacy.
- 74.42.080 Confidentiality of records.
- 74.42.090 Work tasks by residents.
- 74.42.100 Personal mail.
- 74.42.110 Freedom of association—Limits.
- 74.42.120 Personal possessions.
- 74.42.130 Individual financial records.
- 74.42.140 Prescribed plan of care—Treatment, medication, diet services.
- 74.42.150 Plan of care—Goals—Program—Responsibilities—Review.
- 74.42.160 Nursing care.
- 74.42.170 Rehabilitative services.
- 74.42.180 Social services.
- 74.42.190 Activities program—Recreation areas, equipment.
- 74.42.200 Supervision of health care by physician—When required.
- 74.42.210 Pharmacist services.
- 74.42.220 Contracts for professional services from outside the agency.
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- 74.42.240 Administering medication.
- 74.42.250 Medication stop orders—Procedure for developmentally disabled.
- 74.42.260 Drug storage, security, inventory.
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- 74.42.300 Nutritionist—Menus, special diets.
- 74.42.310 Staff duties at meals.
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- 74.42.330 Food storage.
- 74.42.340 Administrative support—Purchasing—Inventory control.
- 74.42.350 Organization chart.
- 74.42.360 Adequate staff.
- 74.42.370 Licensed administrator.
- 74.42.380 Director of nursing services.
- 74.42.390 Communication system.
- 74.42.400 Engineering and maintenance personnel.
- 74.42.410 Laundry services.
- 74.42.420 Resident record system.
- 74.42.430 Written policy guidelines.
- 74.42.440 Facility rated capacity not to be exceeded.
- 74.42.450 Residents limited to those the facility qualified to care for—Transfer or discharge of residents.
- 74.42.460 Organization plan and procedures.
- 74.42.470 Infected employees.
- 74.42.480 Living areas.
- 74.42.490 Room requirements—Waiver.
- 74.42.500 Toilet and bathing facilities.
- 74.42.510 Room for dining, recreation, social activities—Waiver.
- 74.42.520 Therapy area.
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- 74.42.560 Emergency lighting for facilities housing developmentally disabled persons.
- 74.42.570 Health and safety requirements.
- 74.42.580 Penalties for violation of standards.
- 74.42.600 Department inspections—Notice of noncompliance—Penalties.
- 74.42.610 Department to assess resident's needs.
- 74.42.620 Departmental rules.
- 74.42.630 Conflict with federal requirements.
- 74.42.900 Severability—1979 ex.s. c 211.
- 74.42.910 Construction—Conflict with federal requirements.

74.42.920 Chapter 74.42 RCW suspended—Effective date delayed until January 1, 1981.

Effective date—Chapter 74.42 RCW: See RCW 74.42.920.

74.42.010 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Department" means the department of social and health services and the department's employees.

(2) "Facility" refers to a nursing home as defined in RCW 18.51.010.

(3) "Licensed practical nurse" means a person licensed to practice practical nursing under chapter 18.78 RCW.

(4) "Medicaid" means Title XIX of the Social Security Act enacted by the social security amendments of 1965 (42 U.S.C. Sec. 1396; 79 Stat. 343), as amended.

(5) "Nursing care" means that care provided by a registered nurse, a licensed practical nurse, or a nursing assistant in the regular performance of their duties.

(6) "Qualified therapist" means:

(a) An activities specialist who has specialized education, training, or experience specified by the department.

(b) An audiologist who is eligible for a certificate of clinical competence in audiology or who has the equivalent education and clinical experience.

(c) A mental health professional as defined in chapter 71.05 RCW.

(d) A mental retardation professional who is a qualified therapist or a therapist approved by the department and has specialized training or one year experience in treating or working with the mentally retarded or developmentally disabled.

(e) An occupational therapist who is a graduate of a program in occupational therapy or who has equivalent education or training.

(f) A physical therapist as defined in chapter 18.74 RCW.

(g) A social worker who is a graduate of a school of social work.

(h) A speech pathologist who is eligible for a certificate of clinical competence in speech pathology or who has equivalent education and clinical experience.

(7) "Registered nurse" means a person practicing nursing under chapter 18.88 RCW.

(8) "Resident" means an individual recipient of medical benefits pursuant to chapter 74.09 RCW, except as to RCW 74.42.030 through 74.42.130 which shall apply to all patients.

(9) "Physician's assistant" means a person practicing pursuant to chapters 18.57A and 18.71A RCW.

(10) "Nurse practitioner" means a person practicing such expanded acts of nursing as are authorized by the board of nursing pursuant to RCW 18.88.030. [1979 ex.s. c 211 § 1.]

74.42.020 Minimum standards. The standards in RCW 74.42.030 through 74.42.570 are the minimum standards for facilities licensed under chapter 18.51

RCW: *Provided, however,* That RCW 74.42.040, 74.42-.140 through 74.42.280, 74.42.300, 74.42.360, 74.42-.370, 74.42.380, 74.42.420(2), (4), (5), (6) and (7), 74.42.430(3), 74.42.450(2) and (3), 74.42.520, 74.42-.530, 74.42.540, 74.42.570, and 74.42.580 shall not apply to Christian Science sanatoria facilities operated and listed or certified by The First Church of Christ, Scientist, in Boston, Massachusetts. [1982 c 120 § 1; 1980 c 184 § 6; 1979 ex.s. c 211 § 2.]

74.42.030 Resident to receive statement of rights, rules, services, and charges. Each resident or guardian, if any, shall be fully informed and receive in writing the following:

(1) The resident's rights and responsibilities in the facility;

(2) Rules governing resident conduct;

(3) Services available in the facility; and

(4) Charges for services not included in the facility's basic daily rate or not paid by medicaid.

The facility shall provide this information before or at the time of admission and as changes occur during the resident's stay. The resident or legal guardian shall acknowledge in writing receipt of this information and any changes in the information. [1979 ex.s. c 211 § 3.]

74.42.040 Resident's rights regarding medical condition, care, and treatment. The facility shall insure that each resident and guardian, if any:

(1) Is fully informed by a physician about his or her health and medical condition unless the physician decides that informing the resident is medically contraindicated and the physician documents this decision in the resident's record;

(2) Has the opportunity to participate in his or her total care and treatment;

(3) Has the opportunity to refuse treatment; and

(4) Gives informed, written consent before participating in experimental research. [1979 ex.s. c 211 § 4.]

74.42.050 Residents to be treated with consideration, respect—Complaints. (1) Residents shall be treated with consideration, respect, and full recognition of their dignity and individuality. Residents shall be encouraged and assisted in the exercise of their rights as residents of the facility and as citizens.

(2) A resident or guardian, if any, may submit complaints or recommendations concerning the policies of the facility to the staff and to outside representatives of the resident's choice. No facility may restrain, interfere, coerce, discriminate, or retaliate in any manner against a resident who submits a complaint or recommendation. [1979 ex.s. c 211 § 5.]

74.42.055 Discrimination against medicaid recipients prohibited. (1) The purpose of this section is to prohibit discrimination against medicaid recipients by nursing homes which have contracted with the department to provide skilled or intermediate nursing care services to medicaid recipients.

(2) It shall be unlawful for any nursing home which has a medicaid contract with the department:

(a) To require, as a condition of admission, assurance from the patient or any other person that the patient is not eligible for or will not apply for medicaid;

(b) To deny or delay admission or readmission of a person to a nursing home because of his or her status as a medicaid recipient;

(c) To transfer a patient, except from a private room to another room within the nursing home, because of his or her status as a medicaid recipient;

(d) To transfer a patient to another nursing home because of his or her status as a medicaid recipient;

(e) To discharge a patient from a nursing home because of his or her status as a medicaid recipient; or

(f) To charge any amounts in excess of the medicaid rate from the date of eligibility, except for any supplementation permitted by the department pursuant to RCW 18.51.070.

(3) Any nursing home which has a medicaid contract with the department shall maintain one list of names of persons seeking admission to the facility, which is ordered by the date of request for admission. This information shall be retained for one year from the month admission was requested.

(4) The department may assess monetary penalties of a civil nature, not to exceed three thousand dollars for each violation of this section.

(5) Because it is a matter of great public importance to protect senior citizens who need medicaid services from discriminatory treatment in obtaining long-term health care, any violation of this section shall be construed for purposes of the application of the consumer protection act, chapter 19.86 RCW, to constitute an unfair or deceptive act or practice or unfair method of competition in the conduct of trade or commerce.

(6) It is not an act of discrimination under this chapter to refuse to admit a patient if admitting that patient would prevent the needs of the other patients residing in that facility from being met at that facility. [1987 c 476 § 30; 1985 c 284 § 3.]

74.42.060 Management of residents' financial affairs. The facility shall allow a resident or the resident's guardian to manage the resident's financial affairs. The facility may assist a resident in the management of his or her financial affairs if the resident requests assistance in writing and the facility complies with the record-keeping requirements of RCW 74.42.130 and the provisions of *chapter ... (Senate Bill No. 2335), Laws of 1979. [1979 ex.s. c 211 § 6.]

**Reviser's note:* Senate Bill No. 2335 was not enacted during the 1979 legislative sessions. A similar bill was enacted in 1980 and became 1980 c 177, which is codified primarily in chapter 74.46 RCW.

74.42.070 Privacy. Residents shall be given privacy during treatment and care of personal needs. Married residents shall be given privacy during visits with their spouses. If both husband and wife are residents of the facility, the facility shall permit the husband and wife to

share a room, unless medically contraindicated. [1979 ex.s. c 211 § 7.]

74.42.080 Confidentiality of records. Residents' records, including information in an automatic data bank, shall be treated confidentially. The facility shall not release information from a resident's record to a person not otherwise authorized by law to receive the information without the resident's or the resident's guardian's written consent. [1979 ex.s. c 211 § 8.]

74.42.090 Work tasks by residents. No resident may be required to perform services for the facility; except that a resident may be required to perform work tasks specified or included in the comprehensive plan of care. [1979 ex.s. c 211 § 9.]

74.42.100 Personal mail. The facility shall not open the personal mail that residents send or receive. [1979 ex.s. c 211 § 10.]

74.42.110 Freedom of association—Limits. Residents shall be allowed to communicate, associate, meet privately with individuals of their choice, and participate in social, religious, and community group activities unless this infringes on the rights of other residents. [1979 ex.s. c 211 § 11.]

74.42.120 Personal possessions. The facility shall allow residents to have personal possessions as space or security permits. [1979 ex.s. c 211 § 12.]

74.42.130 Individual financial records. The facility shall keep a current, written financial record for each resident. The record shall include written receipts for all personal possessions and funds received by or deposited with the facility and for all disbursements made to or for the resident. The resident or guardian and the resident's family shall have access to the financial record. [1979 ex.s. c 211 § 13.]

74.42.140 Prescribed plan of care—Treatment, medication, diet services. The facility shall care for residents by providing residents with authorized medical services which shall include treatment, medication, and diet services, and any other services contained in the comprehensive plan of care or otherwise prescribed by the attending physician. [1979 ex.s. c 211 § 14.]

74.42.150 Plan of care—Goals—Program—Responsibilities—Review. (1) Under the attending physician's instructions, qualified facility staff will establish and maintain a comprehensive plan of care for each resident which shall be kept on file by the facility and be evaluated through review and assessment by the department. The comprehensive plan contains:

(a) Goals for each resident to accomplish;

(b) An integrated program of treatment, therapies and activities to help each resident achieve those goals; and

(c) The persons responsible for carrying out the programs in the plan.

(2) Qualified facility staff shall review the comprehensive plan of care at least quarterly. [1980 c 184 § 7; 1979 ex.s. c 211 § 15.]

74.42.160 Nursing care. The facility shall provide the nursing care required for the classification given each resident. The nursing care shall help each resident to achieve and maintain the highest possible degree of function, self-care, and independence to the extent medically possible. [1979 ex.s. c 211 § 16.]

74.42.170 Rehabilitative services. (1) The facility shall provide rehabilitative services itself or arrange for the provision of rehabilitative services with qualified outside resources for each resident whose comprehensive plan of care requires the provision of rehabilitative services.

(2) The rehabilitative service personnel shall be qualified therapists, qualified therapists' assistants, or mental health professionals. Other support personnel under appropriate supervision may perform the duties of rehabilitative service personnel.

(3) The rehabilitative services shall be designed to maintain and improve the resident's ability to function independently; prevent, as much as possible, advancement of progressive disabilities; and restore maximum function. [1979 ex.s. c 211 § 17.]

74.42.180 Social services. (1) The facility shall provide social services, or arrange for the provision of social services with qualified outside resources, for each resident whose comprehensive plan of care requires the provision of social services.

(2) The facility shall designate one staff member qualified by training or experience to be responsible for arranging for social services in the facility or with qualified outside resources and integrating social services with other elements of the plan of care. [1979 ex.s. c 211 § 18.]

74.42.190 Activities program—Recreation areas, equipment. The facility shall have an activities program designed to encourage each resident to maintain normal activity and help each resident return to self care. A staff member qualified by experience or training in directing group activities shall be responsible for the activities program. The facility shall provide adequate recreation areas with sufficient equipment and materials to support the program. [1979 ex.s. c 211 § 19.]

74.42.200 Supervision of health care by physician—When required. The health care of each resident shall be under the continuing supervision of a physician: *Provided*, That a resident of a facility licensed pursuant to chapter 18.51 RCW but not certified by the federal government under Title XVIII or Title XIX of the Social Security Act as now or hereafter amended shall not be required to receive the continuing supervision of a health care practitioner licensed pursuant to chapter 18.22, 18.25, 18.32, 18.57, 18.71, and 18.83 RCW, nor shall the state of Washington require such continuing

supervision as a condition of licensing. The physician shall see the resident whenever necessary, and as required and/or consistent with state and federal regulations. [1980 c 184 § 8; 1979 ex.s. c 211 § 20.]

74.42.210 Pharmacist services. The facility shall either employ a licensed pharmacist responsible for operating the facility's pharmacy or have a written agreement with a licensed pharmacist who will advise the facility on ordering, storage, administration, disposal, and recordkeeping of drugs and biologicals. [1979 ex.s. c 211 § 21.]

74.42.220 Contracts for professional services from outside the agency. (1) If the facility does not employ a qualified professional to furnish required services, the facility shall have a written contract with a qualified professional or agency outside the facility to furnish the required services. The terms of the contract, including terms about responsibilities, functions, and objectives, shall be specified. The contract shall be signed by the administrator, or the administrator's representative, and the qualified professional.

(2) All contracts for these services shall require the standards in RCW 74.42.010 through 74.42.570 to be met. [1980 c 184 § 9; 1979 ex.s. c 211 § 22.]

74.42.225 Self-medication programs for residents—Educational program—Implementation. The department shall develop an educational program for attending and staff physicians and patients on self-medication. The department shall actively encourage the implementation of such self-medication programs for residents. [1980 c 184 § 18.]

74.42.230 Physician or authorized practitioner to prescribe medication. (1) The resident's attending or staff physician or authorized practitioner approved by the attending physician shall order all medications for the resident. The order may be oral or written and shall be limited by time. An "authorized practitioner," as used in this section, is a registered nurse under chapter 18.88 RCW when authorized by the board of nursing, an osteopathic physician's assistant under chapter 18.57A RCW when authorized by the committee of osteopathic examiners, or a physician's assistant under chapter 18.71A RCW when authorized by the board of medical examiners.

(2) An oral order shall be given only to a licensed nurse, pharmacist, or another physician. The oral order shall be recorded and signed immediately by the person receiving the order. The attending physician shall sign the record of the oral order in a manner consistent with good medical practice. [1982 c 120 § 2; 1979 ex.s. c 211 § 23.]

74.42.240 Administering medication. (1) No staff member may administer any medication to a resident unless the staff member is licensed to administer medication: *Provided*, That nothing herein shall be construed as prohibiting graduate nurses or student nurses from

administering medications when permitted to do so under chapter 18.88 or 18.78 RCW and rules adopted thereunder.

(2) The facility may only allow a resident to give himself or herself medication with the attending physician's permission.

(3) Medication shall only be administered to or used by the resident for whom it is ordered. [1989 c 372 § 5; 1979 ex.s. c 211 § 24.]

74.42.250 Medication stop orders—Procedure for developmentally disabled. (1) When the physician's order for medication does not include a specific time limit or a specific number of dosages, the facility shall notify the physician that the medication will be stopped at a date certain unless the medication is ordered continued by the physician. The facility shall so notify the physician every thirty days.

(2) A facility for the developmentally disabled shall have an automatic stop order on all drugs, unless such stoppage will place the patient in jeopardy. [1979 ex.s. c 211 § 25.]

74.42.260 Drug storage, security, inventory. (1) The facility shall store drugs under proper conditions of sanitation, temperature, light, moisture, ventilation, segregation, and security. Poisons, drugs used externally, and drugs taken internally shall be stored on separate shelves or in separate cabinets at all locations. When medication is stored in a refrigerator containing other items, the medication shall be kept in a separate compartment with proper security. All drugs shall be kept under lock and key unless an authorized individual is in attendance.

(2) The facility shall meet the drug security requirements of federal and state laws that apply to storerooms, pharmacies, and living units.

(3) If there is a drug storeroom separate from the pharmacy, the facility shall keep a perpetual inventory of receipts and issues of all drugs from that storeroom. [1979 ex.s. c 211 § 26.]

74.42.270 Drug disposal. Any drug that is discontinued or outdated and any container with a worn, illegible, or missing label shall be properly disposed. [1979 ex.s. c 211 § 27.]

74.42.280 Adverse drug reaction. Medication errors and adverse drug reactions shall be recorded and reported immediately to the practitioner who ordered the drug. The facility shall report adverse drug reactions consistent with good medical practice. [1979 ex.s. c 211 § 28.]

74.42.290 Meal intervals—Food handling—Utensils—Disposal. (1) The facility shall serve at least three meals, or their equivalent, daily at regular times with not more than fourteen hours between a substantial evening meal and breakfast on the following day and not less than ten hours between breakfast and a substantial evening meal on the same day.

(2) Food shall be procured, stored, transported, and prepared under sanitary conditions in compliance with state and local regulations.

(3) Food of an appropriate quantity at an appropriate temperature shall be served in a form consistent with the needs of the resident;

(4) Special eating equipment and utensils shall be provided for residents who need them; and

(5) Food served and uneaten shall be discarded. [1979 ex.s. c 211 § 29.]

74.42.300 Nutritionist—Menus, special diets. (1) The facility shall have a staff member trained or experienced in food management and nutrition responsible for planning menus that meet the requirements of subsection (2) of this section and supervising meal preparation and service to insure that the menu plan is followed.

(2) The menu plans shall follow the orders of the resident's physician.

(3) The facility shall:

(a) Meet the nutritional needs of each resident;

(b) Have menus written in advance;

(c) Provide a variety of foods at each meal;

(d) Provide daily and weekly variations in the menus; and

(e) Adjust the menus for seasonal changes.

(4) If the facility has residents who require medically prescribed special diets, the menus for those residents shall be planned by a professionally qualified dietitian or reviewed and approved by the attending physician. The preparation and serving of meals shall be supervised to insure that the resident accepts the special diet. [1979 ex.s. c 211 § 30.]

74.42.310 Staff duties at meals. (1) A facility shall have sufficient personnel to supervise the residents, direct self-help dining skills, and to insure that each resident receives enough food.

(2) A facility shall provide table service for all residents, including residents in wheelchairs, who are capable and willing to eat at tables. [1980 c 184 § 10; 1979 ex.s. c 211 § 31.]

74.42.320 Sanitary procedures for food preparation. Facilities shall have effective sanitary procedures for the food preparation staff including procedures for cleaning food preparation equipment and food preparation areas. [1979 ex.s. c 211 § 32.]

74.42.330 Food storage. The facility shall store dry or staple food items at an appropriate height above the floor in a ventilated room not subject to sewage or waste water backflow or contamination by condensation, leakage, rodents or vermin. Perishable foods shall be stored at proper temperatures to conserve nutritive values. [1979 ex.s. c 211 § 33.]

74.42.340 Administrative support—Purchasing—Inventory control. (1) The facility shall provide adequate administrative support to efficiently meet the

needs of residents and facilitate attainment of the facility's goals and objectives.

(2) The facility shall:

- (a) Document the purchasing process;
- (b) Adequately operate the inventory control system and stockroom;
- (c) Have appropriate storage facilities for all supplies and surplus equipment; and
- (d) Train and assist personnel to do purchase, supply, and property control functions. [1980 c 184 § 11; 1979 ex.s. c 211 § 34.]

74.42.350 Organization chart. The facility shall have and keep current an organization chart showing:

- (1) The major operating programs of the facility;
- (2) The staff divisions of the facility;
- (3) The administrative personnel in charge of the programs and divisions; and
- (4) The lines of authority, responsibility, and communication of administrative personnel. [1979 ex.s. c 211 § 35.]

74.42.360 Adequate staff. The facility shall have staff on duty twenty-four hours daily sufficient in number and qualifications to carry out the provisions of RCW 74.42.010 through 74.42.570 and the policies, responsibilities, and programs of the facility. [1979 ex.s. c 211 § 36.]

74.42.370 Licensed administrator. The facility shall have an administrator who is a licensed nursing home administrator under chapter 18.52 RCW. The administrator is responsible for managing the facility and implementing established policies and procedures. [1979 ex.s. c 211 § 37.]

74.42.380 Director of nursing services. (1) The facility shall have a director of nursing services. The director of nursing services shall be a registered nurse.

(2) The director of nursing services is responsible for:

- (a) Coordinating the plan of care for each resident;
- (b) Permitting only licensed personnel to administer medications: *Provided*, That nothing herein shall be construed as prohibiting graduate nurses or student nurses from administering medications when permitted to do so under chapter 18.88 or 18.78 RCW and rules promulgated pursuant thereto: *Provided further*, That nothing herein shall be construed as prohibiting persons certified under chapter 18.135 RCW from practicing pursuant to the delegation and supervision requirements of chapter 18.135 RCW and rules promulgated pursuant thereto; and
- (c) Insuring that the licensed practical nurses comply with chapter 18.78 RCW, the registered nurses comply with chapter 18.88 RCW, and persons certified under chapter 18.135 RCW comply with the provisions of that chapter and rules promulgated pursuant thereto. [1989 c 372 § 6; 1985 c 284 § 2; 1979 ex.s. c 211 § 38.]

74.42.390 Communication system. The facility shall have a communication system, including telephone service, that insures prompt contact of on-duty personnel and prompt notification of responsible personnel in an emergency. [1979 ex.s. c 211 § 39.]

74.42.400 Engineering and maintenance personnel. The facility shall have sufficient trained and experienced personnel for necessary engineering and maintenance functions. [1979 ex.s. c 211 § 40.]

74.42.410 Laundry services. The facility shall manage laundry services to meet the residents' daily clothing and linen needs. The facility shall have available at all times enough linen for the proper care and comfort of the residents. [1979 ex.s. c 211 § 41.]

74.42.420 Resident record system. The facility shall maintain an organized record system containing a record for each resident. The record shall contain:

- (1) Identification information;
- (2) Admission information, including the resident's medical and social history;
- (3) A comprehensive plan of care and subsequent changes to the comprehensive plan of care;
- (4) Copies of initial and subsequent periodic examinations, assessments, evaluations, and progress notes made by the facility and the department;
- (5) Descriptions of all treatments, services, and medications provided for the resident since the resident's admission;
- (6) Information about all illnesses and injuries including information about the date, time, and action taken; and
- (7) A discharge summary.

Resident records shall be available to the staff members directly involved with the resident and to appropriate representatives of the department. The facility shall protect resident records against destruction, loss, and unauthorized use. The facility shall keep a resident's record after the resident is discharged as provided in RCW 18.51.300. [1979 ex.s. c 211 § 42.]

74.42.430 Written policy guidelines. The facility shall develop written guidelines governing:

- (1) All services provided by the facility;
- (2) Admission, transfer or discharge;
- (3) The use of chemical and physical restraints, the personnel authorized to administer restraints in an emergency, and procedures for monitoring and controlling the use of the restraints;
- (4) Procedures for receiving and responding to residents' complaints and recommendations;
- (5) Access to, duplication of, and dissemination of information from the resident's record;
- (6) Residents' rights, privileges, and duties;
- (7) Procedures if the resident is adjudicated incompetent or incapable of understanding his or her rights and responsibilities;
- (8) When to recommend initiation of guardianship proceedings under chapter 11.88 RCW; and

- (9) Emergencies;
- (10) Procedures for isolation of residents with infectious diseases;
- (11) Procedures for residents to refuse treatment and for the facility to document informed refusal.

The written guidelines shall be made available to the staff, residents, members of residents' families, and the public. [1980 c 184 § 12; 1979 ex.s. c 211 § 43.]

74.42.440 Facility rated capacity not to be exceeded. The facility may only admit individuals when the facility's rated capacity will not be exceeded and when the facility has the capability to provide adequate treatment, therapy, and activities. [1979 ex.s. c 211 § 44.]

74.42.450 Residents limited to those the facility qualified to care for—Transfer or discharge of residents. (1) The facility shall admit as residents only those individuals whose needs can be met by:

- (a) The facility;
- (b) The facility cooperating with community resources; or
- (c) The facility cooperating with other providers of care affiliated or under contract with the facility.

(2) The facility shall transfer a resident to a hospital or other appropriate facility when a change occurs in the resident's physical or mental condition that requires care or service that the facility cannot provide. The resident, the resident's guardian, if any, the resident's next of kin, the attending physician, and the department shall be consulted at least fifteen days before a transfer or discharge unless the resident is transferred under emergency circumstances. The department shall use casework services or other means to insure that adequate arrangements are made to meet the resident's needs.

(3) A resident shall be transferred or discharged only for medical reasons, the resident's welfare or request, the welfare of other residents, or nonpayment. A resident may not be discharged for nonpayment if the discharge would be prohibited by the medicaid program. [1979 ex.s. c 211 § 45.]

74.42.460 Organization plan and procedures. The facility shall have a written staff organization plan and detailed written procedures to meet potential emergencies and disasters. The facility shall clearly communicate and periodically review the plan and procedures with the staff and residents. The plan and procedures shall be posted at suitable locations throughout the facility. [1979 ex.s. c 211 § 46.]

74.42.470 Infected employees. No employee with symptoms of a communicable disease may work in a facility. The facility shall have written guidelines that will help enforce this section. [1979 ex.s. c 211 § 47.]

74.42.480 Living areas. The facility shall design and equip the resident living areas for the comfort and privacy of each resident. [1979 ex.s. c 211 § 48.]

74.42.490 Room requirements—Waiver. Each resident's room shall:

- (1) Be equipped with or conveniently located near toilet and bathing facilities;
- (2) Be at or above grade level;
- (3) Contain a suitable bed for each resident and other appropriate furniture;
- (4) Have closet space that provides security and privacy for clothing and personal belongings;
- (5) Contain no more than four beds;
- (6) Have adequate space for each resident; and
- (7) Be equipped with a device for calling the staff member on duty.

The department may waive the space, occupancy, and certain equipment requirements of this section for an existing building constructed prior to January 1, 1980, or space and certain equipment for new intermediate care facilities for the mentally retarded for as long as the department considers appropriate if the department finds that the requirements would result in unreasonable hardship on the facility, the waiver serves the particular needs of the residents, and the waiver does not adversely affect the health and safety of the residents. [1980 c 184 § 13; 1979 ex.s. c 211 § 49.]

74.42.500 Toilet and bathing facilities. Toilet and bathing facilities shall be located in or near residents' rooms and shall be appropriate in number, size, and design to meet the needs of the residents. The facility shall provide an adequate supply of hot water at all times for resident use. Plumbing shall be equipped with control valves that automatically regulate the temperature of the hot water used by residents. [1979 ex.s. c 211 § 50.]

74.42.510 Room for dining, recreation, social activities—Waiver. The facility shall provide one or more areas not used for corridor traffic for dining, recreation, and social activities. A multipurpose room may be used if it is large enough to accommodate all of the activities without the activities interfering with each other: *Provided*, That the department may waive the provisions of this section for facilities constructed prior to January 1, 1980. [1979 ex.s. c 211 § 51.]

74.42.520 Therapy area. The facility's therapy area shall be large enough and designed to accommodate the necessary equipment, conduct an examination, and provide treatment: *Provided*, That developmentally disabled facilities shall not be subject to the provisions of this section if therapeutic services are obtained by contract with other facilities. [1979 ex.s. c 211 § 52.]

74.42.530 Isolation areas. The facility shall have isolation areas for residents with infectious diseases or make other provisions for isolating these residents. [1979 ex.s. c 211 § 53.]

74.42.540 Building requirements. (1) The facility shall be accessible to and usable by all residents, personnel, and the public, including individuals with disabilities: *Provided*, That no substantial structural changes shall be required in any facilities constructed prior to January 1, 1980.

(2) The facility shall meet the requirements of American National Standards Institute (ANSI) standard No. A117.1 (1961), or, if applicable, the requirements of chapter 70.92 RCW if the requirements are stricter than ANSI standard No. A117.1 (1961), unless the department waives the requirements of ANSI standard No. A117.1 (1961) under subsection (3) of this section.

(3) The department may waive, for as long as the department considers appropriate, provisions of ANSI standard No. A117.1 (1961) if:

(a) The construction plans for the facility or a part of the facility were approved by the department before March 18, 1974;

(b) The provisions would result in unreasonable hardship on the facility if strictly enforced; and

(c) The waiver does not adversely affect the health and safety of the residents. [1979 ex.s. c 211 § 54.]

74.42.550 Handrails. The facility shall have handrails that are firmly attached to the walls in all corridors used by residents: *Provided*, That the department may waive the provisions of this section in developmentally disabled facilities. [1979 ex.s. c 211 § 55.]

74.42.560 Emergency lighting for facilities housing developmentally disabled persons. If a living unit of a facility for the developmentally disabled houses more than fifteen residents, the living unit shall have emergency lighting with automatic switches for stairs and exits. [1979 ex.s. c 211 § 56.]

74.42.570 Health and safety requirements. The facility shall meet state and local laws, rules, regulations, and codes pertaining to health and safety. [1980 c 184 § 14; 1979 ex.s. c 211 § 57.]

74.42.580 Penalties for violation of standards. The department may deny, suspend, revoke, or refuse to renew a license or provisional license, assess monetary penalties of a civil nature, deny payment, seek receivership, order stop placement, appoint temporary management, order emergency closure, or order emergency transfer as provided in RCW 18.51.054 and 18.51.060 for violations of requirements of this chapter or, in the case of medicaid contractors, the requirements of Title XIX of the social security act, as amended, or rules adopted thereunder. Chapter 34.05 RCW shall apply to any such actions, except for receivership, and except that stop placement, appointment of temporary management, emergency closure, emergency transfer, and summary license suspension shall be effective pending any hearing, and except that denial of payment shall be effective pending any hearing when the department determines deficiencies jeopardize the health and safety of the residents or seriously limit the nursing home's capacity to provide adequate care. [1989 c 372 § 13; 1987 c 476 § 27; 1980 c 184 § 15; 1979 ex.s. c 211 § 58.]

74.42.600 Department inspections—Notice of noncompliance—Penalties. (1) In addition to the inspection required by chapter 18.51 RCW, the department shall inspect the facility for compliance with resident rights and direct care standards of this chapter. The department may inspect any and all other provisions randomly, by exception profiles, or during complaint investigations.

(2) If the facility has not complied with all the requirements of this chapter, the department shall notify the facility in writing that the facility is in noncompliance and describe the reasons for the facility's noncompliance and the department may impose penalties in accordance with RCW 18.51.060. [1987 c 476 § 28; 1982 c 120 § 3; 1980 c 184 § 17; 1979 ex.s. c 211 § 60.]

74.42.610 Department to assess resident's needs. The department shall assess the needs of each resident within thirty days after the resident's admission. The department shall use the patient assessment system developed pursuant to RCW 18.51.310, as now or hereafter amended. Based upon the assessment of the resident's needs, the department shall assign each resident to a classification, developed by the patient care classification and standards task force pursuant to *section 86, chapter 177, Laws of 1980, reflecting the level of care required by that resident.

This section shall apply to developmentally disabled residents as a separate system. [1980 c 177 § 85; 1979 ex.s. c 211 § 61.]

***Reviser's note:** Section 86, chapter 177, Laws of 1980 is a temporary, uncodified section which established the patient care classification and standards task force and provided for its termination on December 31, 1980.

Effective dates—1980 c 177: See RCW 74.46.901.

74.42.620 Departmental rules. The department shall adopt rules pursuant to chapter 34.05 RCW necessary to carry out the policies and provisions of RCW 74.42.010 through 74.42.570. The department shall amend or repeal any rules that are in conflict with RCW 74.42.010 through 74.42.570. [1979 ex.s. c 211 § 62.]

74.42.630 Conflict with federal requirements. If any part of *this act shall be found to be in conflict with federal requirements which are a prescribed condition to the allocation of federal funds to the state, such conflicting part of this act is hereby declared to be inoperative solely to the extent of such conflict, and such finding or determination shall not affect the operation of the remainder of this act; the rules and regulations under this act shall meet federal requirements which are a necessary condition to the receipt of federal funds by the state. [1980 c 184 § 21.]

***Reviser's note:** The sections of "this act" consist of the amendments to RCW 18.51.290, 18.51.310, 74.42.020, 74.42.150, 74.42.200, 74.42.220, 74.42.310, 74.42.340, 74.42.430, 74.42.490, 74.42.570, 74.42.580, 74.42.590, and 74.42.600 and the enactment of RCW 74.42.225 and 74.42.630.

74.42.900 Severability—1979 ex.s. c 211. If any provision of this act or its application to any person or

circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1979 ex.s. c 211 § 69.]

74.42.910 Construction—Conflict with federal requirements. If any part of this act is found to be in conflict with federal requirements which are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and such finding or determination shall not affect the operation of the remainder of this act in its application to the agencies concerned. The rules under this act shall meet federal requirements which are a necessary condition to the receipt of federal funds by the state. [1979 ex.s. c 211 § 70.]

74.42.920 Chapter 74.42 RCW suspended—Effective date delayed until January 1, 1981. Chapter 74.42 RCW shall be suspended immediately, and its effective date delayed so that it shall take effect on January 1, 1981. [1980 c 184 § 19; 1979 ex.s. c 211 § 72.]

Effective date—1980 c 184 § 19: "Section 19 of this 1980 act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately [April 4, 1980]." [1980 c 184 § 22.] Section 19 consists of the 1980 amendment to RCW 74.42.920.

Chapter 74.46

NURSING HOME AUDITING AND COST REIMBURSEMENT ACT OF 1980

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74.46.010 Short title. This chapter may be known and cited as the "Nursing Homes Auditing and Cost Reimbursement Act of 1980." [1980 c 177 § 1.]

74.46.020 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Accrual method of accounting" means a method of accounting in which revenues are reported in the period when they are earned, regardless of when they are collected, and expenses are reported in the period in which they are incurred, regardless of when they are paid.

(2) "Ancillary care" means those services required by the individual, comprehensive plan of care provided by qualified therapists.

(3) "Appraisal" means the process of estimating the fair market value or reconstructing the historical cost of an asset acquired in a past period as performed by a professionally designated real estate appraiser with no pecuniary interest in the property to be appraised. It includes a systematic, analytic determination and the recording and analyzing of property facts, rights, investments, and values based on a personal inspection and inventory of the property.

(4) "Arm's-length transaction" means a transaction resulting from good-faith bargaining between a buyer and seller who are not related organizations and have adverse positions in the market place. Sales or exchanges of nursing home facilities among two or more parties in which all parties subsequently continue to own one or more of the facilities involved in the transactions shall not be considered as arm's-length transactions for purposes of this chapter. Sale of a nursing home facility which is subsequently leased back to the seller within five years of the date of sale shall not be considered as an arm's-length transaction for purposes of this chapter.

(5) "Assets" means economic resources of the contractor, recognized and measured in conformity with generally accepted accounting principles.

(6) "Bad debts" means amounts considered to be uncollectable from accounts and notes receivable.

(7) "Beds" means the number of set-up beds in the facility, not to exceed the number of licensed beds.

(8) "Beneficial owner" means:

(a) Any person who, directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise has or shares:

(i) Voting power which includes the power to vote, or to direct the voting of such ownership interest; and/or

(ii) Investment power which includes the power to dispose, or to direct the disposition of such ownership interest;

(b) Any person who, directly or indirectly, creates or uses a trust, proxy, power of attorney, pooling arrangement, or any other contract, arrangement, or device with the purpose or effect of divesting himself of beneficial ownership of an ownership interest or preventing the vesting of such beneficial ownership as part of a plan or scheme to evade the reporting requirements of this chapter;

(c) Any person who, subject to subparagraph (b) of this subsection, has the right to acquire beneficial ownership of such ownership interest within sixty days, including but not limited to any right to acquire:

(i) Through the exercise of any option, warrant, or right;

(ii) Through the conversion of an ownership interest;

(iii) Pursuant to the power to revoke a trust, discretionary account, or similar arrangement; or

(iv) Pursuant to the automatic termination of a trust, discretionary account, or similar arrangement;

except that, any person who acquires an ownership interest or power specified in subparagraphs (i), (ii), or (iii) of this subparagraph (c) with the purpose or effect of changing or influencing the control of the contractor, or in connection with or as a participant in any transaction having such purpose or effect, immediately upon such acquisition shall be deemed to be the beneficial owner of the ownership interest which may be acquired through the exercise or conversion of such ownership interest or power;

(d) Any person who in the ordinary course of business is a pledgee of ownership interest under a written pledge agreement shall not be deemed to be the beneficial owner of such pledged ownership interest until the pledgee has taken all formal steps necessary which are required to declare a default and determines that the power to vote or to direct the vote or to dispose or to direct the disposition of such pledged ownership interest will be exercised; except that:

(i) The pledgee agreement is bona fide and was not entered into with the purpose nor with the effect of changing or influencing the control of the contractor, nor in connection with any transaction having such purpose or effect, including persons meeting the conditions set forth in subparagraph (b) of this subsection; and

(ii) The pledgee agreement, prior to default, does not grant to the pledgee:

(A) The power to vote or to direct the vote of the pledged ownership interest; or

(B) The power to dispose or direct the disposition of the pledged ownership interest, other than the grant of such power(s) pursuant to a pledge agreement under which credit is extended and in which the pledgee is a broker or dealer.

(9) "Capitalization" means the recording of an expenditure as an asset.

(10) "Contractor" means an entity which contracts with the department to provide services to medical care recipients in a facility and which entity is responsible for operational decisions.

(11) "Department" means the department of social and health services (DSHS) and its employees.

(12) "Depreciation" means the systematic distribution of the cost or other basis of tangible assets, less salvage, over the estimated useful life of the assets.

(13) "Direct care supplies" means medical, pharmaceutical, and other supplies required for the direct nursing and ancillary care of medical care recipients.

(14) "Entity" means an individual, partnership, corporation, or any other association of individuals capable of entering enforceable contracts.

(15) "Equity" means the net book value of all tangible and intangible assets less the recorded value of all liabilities, as recognized and measured in conformity with generally accepted accounting principles.

(16) "Facility" means a nursing home licensed in accordance with chapter 18.51 RCW, excepting nursing homes certified as institutions for mental diseases, or that portion of a hospital licensed in accordance with chapter 70.41 RCW which operates as a nursing home.

(17) "Fair market value" means the replacement cost of an asset less observed physical depreciation on the date for which the market value is being determined.

(18) "Financial statements" means statements prepared and presented in conformity with generally accepted accounting principles including, but not limited to, balance sheet, statement of operations, statement of changes in financial position, and related notes.

(19) "Generally accepted accounting principles" means accounting principles approved by the financial accounting standards board (FASB).

(20) "Generally accepted auditing standards" means auditing standards approved by the American institute of certified public accountants (AICPA).

(21) "Goodwill" means the excess of the price paid for a business over the fair market value of all other identifiable, tangible, and intangible assets acquired.

(22) "Historical cost" means the actual cost incurred in acquiring and preparing an asset for use, including feasibility studies, architect's fees, and engineering studies.

(23) "Imprest fund" means a fund which is regularly replenished in exactly the amount expended from it.

(24) "Joint facility costs" means any costs which represent resources which benefit more than one facility, or one facility and any other entity.

(25) "Lease agreement" means a contract between two parties for the possession and use of real or personal property or assets for a specified period of time in exchange for specified periodic payments. Elimination (due to any cause other than death or divorce) or addition of any party to the contract, expiration, or modification of any lease term in effect on January 1, 1980, or termination of the lease by either party by any means shall constitute a termination of the lease agreement. An extension or renewal of a lease agreement, whether or

not pursuant to a renewal provision in the lease agreement, shall be considered a new lease agreement. A strictly formal change in the lease agreement which modifies the method, frequency, or manner in which the lease payments are made, but does not increase the total lease payment obligation of the lessee, shall not be considered modification of a lease term.

(26) "Medical care program" means medical assistance provided under RCW 74.09.500 or authorized state medical care services.

(27) "Medical care recipient" or "recipient" means an individual determined eligible by the department for the services provided in chapter 74.09 RCW.

(28) "Net book value" means the historical cost of an asset less accumulated depreciation.

(29) "Net invested funds" means the net book value of tangible fixed assets employed by a contractor to provide services under the medical care program, including land, buildings, and equipment as recognized and measured in conformity with generally accepted accounting principles, plus an allowance for working capital which shall be five percent of the allowable costs of each contractor for the previous calendar year.

(30) "Operating lease" means a lease under which rental or lease expenses are included in current expenses in accordance with generally accepted accounting principles.

(31) "Owner" means a sole proprietor, general or limited partners, and beneficial interest holders of five percent or more of a corporation's outstanding stock.

(32) "Ownership interest" means all interests beneficially owned by a person, calculated in the aggregate, regardless of the form which such beneficial ownership takes.

(33) "Patient day" or "client day" means a calendar day of care which will include the day of admission and exclude the day of discharge; except that, when admission and discharge occur on the same day, one day of care shall be deemed to exist.

(34) "Professionally designated real estate appraiser" means an individual who is regularly engaged in the business of providing real estate valuation services for a fee, and who is deemed qualified by a nationally recognized real estate appraisal educational organization on the basis of extensive practical appraisal experience, including the writing of real estate valuation reports as well as the passing of written examinations on valuation practice and theory, and who by virtue of membership in such organization is required to subscribe and adhere to certain standards of professional practice as such organization prescribes.

(35) "Qualified therapist" means:

(a) An activities specialist who has specialized education, training, or experience as specified by the department;

(b) An audiologist who is eligible for a certificate of clinical competence in audiology or who has the equivalent education and clinical experience;

(c) A mental health professional as defined by chapter 71.05 RCW;

PART A
REPORTING

(d) A mental retardation professional who is either a qualified therapist or a therapist approved by the department who has had specialized training or one year's experience in treating or working with the mentally retarded or developmentally disabled;

(e) A social worker who is a graduate of a school of social work;

(f) A speech pathologist who is eligible for a certificate of clinical competence in speech pathology or who has the equivalent education and clinical experience;

(g) A physical therapist as defined by chapter 18.74 RCW; and

(h) An occupational therapist who is a graduate of a program in occupational therapy, or who has the equivalent of such education or training.

(36) "Questioned costs" means those costs which have been determined in accordance with generally accepted accounting principles but which may constitute disallowed costs or departures from the provisions of this chapter or rules and regulations adopted by the department.

(37) "Records" means those data supporting all financial statements and cost reports including, but not limited to, all general and subsidiary ledgers, books of original entry, and transaction documentation, however such data are maintained.

(38) "Related organization" means an entity which is under common ownership and/or control with, or has control of, or is controlled by, the contractor.

(a) "Common ownership" exists when an entity is the beneficial owner of five percent or more ownership interest in the contractor and any other entity.

(b) "Control" exists where an entity has the power, directly or indirectly, significantly to influence or direct the actions or policies of an organization or institution, whether or not it is legally enforceable and however it is exercisable or exercised.

(39) "Restricted fund" means those funds the principal and/or income of which is limited by agreement with or direction of the donor to a specific purpose.

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

(41) "Title XIX" or "Medicaid" means the 1965 amendments to the social security act, P.L. 89-07, as amended.

(42) "Physical plant capital improvement" means a capitalized improvement that is limited to an improvement to the building or the related physical plant. [1989 c 372 § 17; 1987 c 476 § 6; 1985 c 361 § 16; 1982 c 117 § 1; 1980 c 177 § 2.]

Savings—1985 c 361: "This act shall not be construed as affecting any existing right acquired or any obligation or liability incurred under the statutes amended or repealed by this act or any rule, regulation, or order adopted under those sections, nor as affecting any proceeding instituted under those sections." [1985 c 361 § 20.]

74.46.030 Principles of reporting requirements. The principle inherent within RCW 74.46.040 through 74.46.090 is that the department shall receive complete, annual reporting of costs and financial condition of the contractor prepared and presented in a standardized manner. [1980 c 177 § 3.]

74.46.040 Due dates for cost reports. (1) Not later than March 31 of each year, each contractor shall submit to the department an annual cost report for the period from January 1st through December 31st of the preceding year.

(2) Not later than one hundred twenty days following the termination of a contract, the contractor shall submit to the department a cost report for the period from January 1st through the date the contract terminated.

(3) Two extensions of not more than thirty days each may be granted by the department upon receipt of a written request setting forth the circumstances which prohibit the contractor from compliance with a report due date; except, that the secretary shall establish the grounds for extension in rule and regulation. Such request must be received by the department at least ten days prior to the due date. [1985 c 361 § 4; 1983 1st ex.s. c 67 § 1; 1980 c 177 § 4.]

Savings—1985 c 361: See note following RCW 74.46.020.

74.46.050 Improperly completed or late cost report. If the cost report is not properly completed or if it is not received by the due date, all or part of any payments due under the contract may be withheld by the department until such time as the required cost report is properly completed and received. [1985 c 361 § 5; 1980 c 177 § 5.]

Savings—1985 c 361: See note following RCW 74.46.020.

74.46.060 Completing cost reports and maintaining records. (1) Cost reports shall be prepared in a standard manner and form, as determined by the department, which shall provide for an itemized list of allowable costs and a preliminary settlement report. Costs reported shall be determined in accordance with generally accepted accounting principles, the provisions of this chapter, and such additional rules and regulations as are established by the secretary.

(2) The records shall be maintained on the accrual method of accounting and agree with or be reconcilable to the cost report. [1985 c 361 § 6; 1983 1st ex.s. c 67 § 2; 1980 c 177 § 6.]

Savings—1985 c 361: See note following RCW 74.46.020.

74.46.080 Requirements for retention of records by the contractor. (1) All records supporting the required cost reports, as well as trust funds established by RCW 74.46.700, shall be retained by the contractor for a period of four years following the filing of such reports at a location in the state of Washington specified by the

contractor. All records supporting the cost reports and financial statements filed with the department before May 20, 1985, shall be retained by the contractor for four years following their filing.

The department may direct supporting records to be retained for a longer period if there remain unresolved questions on the cost reports. All such records shall be made available upon demand to authorized representatives of the department, the office of the state auditor, and the United States department of health and human services.

(2) When a contract is terminated, all payments due will be withheld until accessibility and preservation of the records within the state of Washington are assured. [1985 c 361 § 7; 1983 1st ex.s. c 67 § 3; 1980 c 177 § 8.]

Savings—1985 c 361: See note following RCW 74.46.020.

74.46.090 Retention of cost reports by the department. The department will retain the required cost reports for a period of one year after final settlement, or the period required under chapter 40.14 RCW, whichever is longer. [1985 c 361 § 8; 1980 c 177 § 9.]

Savings—1985 c 361: See note following RCW 74.46.020.

PART B AUDIT

74.46.100 Principles of audit requirements. The principles inherent within RCW 74.46.105 and 74.46.130 are:

(1) To ascertain, through department audit, that the costs for each year are accurately reported, thereby providing a valid basis for future rate determination;

(2) To ascertain, through department audits of the cost reports, that cost reports properly reflect the financial records of the contractor, particularly as they pertain to related organizations and beneficial ownership, thereby providing a valid basis for the determination of return as specified by this chapter;

(3) To ascertain, through department audit that compliance with the accounting and auditing provisions of this chapter and the rules and regulations of the department as they pertain to these accounting and auditing provisions is proper and consistent; and

(4) To ascertain, through department audits, that the responsibility of the contractor has been met in the maintenance of patient trust funds. [1985 c 361 § 9; 1983 1st ex.s. c 67 § 4; 1980 c 177 § 10.]

Savings—1985 c 361: See note following RCW 74.46.020.

74.46.105 Departmental audits—Procedure. Cost reports and patient trust accounts of contractors shall be field audited by the department, either by department staff or by auditors under contract to the department, in accordance with the provisions of this chapter. The department when it deems necessary to assure the accuracy of cost reports may review any underlying financial statements or other records upon which the cost reports

are based. The department shall have the authority to accept or reject audits which fail to satisfy the requirements of this section or which are performed by auditors who violate any of the rules of this section. Department audits of the cost reports and patient trust accounts shall be conducted as follows:

(1) Each year the department will provide for field audit of the cost report, statistical reports, and patient trust funds, as established by RCW 74.46.700, of all or a sample of reporting facilities selected by profiles of costs, exceptions, contract terminations, upon special requests or other factors determined by the department.

(2) Beginning with audits for calendar year 1983, up to one hundred percent of contractors cost reports and patient care trust fund accounts shall be audited: *Provided*, That each contractor shall be audited at least once in every three-year period.

(3) Facilities shall be selected for sample audits within one hundred twenty days of submission of a correct and complete cost report, and shall be so informed of the department's intent to audit. Audits so scheduled shall be completed within one year of selection.

(4) Where an audit for a recent reporting or trust fund period discloses material discrepancies, undocumented costs or mishandling of patient trust funds, auditors may examine prior unaudited periods, for indication of similar material discrepancies, undocumented costs or mishandling of patient trust funds for not more than two reporting periods preceding the facility reporting period selected in the sample.

(5) The audit will result in a schedule summarizing appropriate adjustments to the contractor's cost report. These adjustments will include an explanation for the adjustment, the general ledger account or account group, and the dollar amount. Patient trust fund audits shall be reported separately and in accordance with RCW 74.46.700.

(6) Audits shall meet generally accepted auditing standards as promulgated by the American institute of certified public accountants and the standards for audit of governmental organizations, programs, activities and functions as published by the comptroller general of the United States. Audits shall be supervised or reviewed by a certified public accountant.

(7) No auditor under contract with or employed by the department to perform audits in accordance with the provisions of this chapter shall:

(a) Have had direct or indirect financial interest in the ownership, financing or operation of a nursing home in this state during the period covered by the audits;

(b) Acquire or commit to acquire any direct or indirect financial interest in the ownership, financing or operation of a nursing home in this state during said auditor's employment or contract with the department;

(c) Accept as a client any nursing home in this state during or within two years of termination of said auditor's contract or employment with the department.

(8) Audits shall be conducted by auditors who are otherwise independent as determined by the standards of independence established by the American institute of certified public accountants.

(9) All audit rules adopted after March 31, 1984, shall be published before the beginning of the cost report year to which they apply. [1985 c 361 § 10; 1983 1st ex.s. c 67 § 5.]

Savings—1985 c 361: See note following RCW 74.46.020.

74.46.115 Departmental audits—Review by state auditor. The office of the state auditor shall annually review the performance of the department to ensure that departmental audits are conducted in accordance with generally accepted accounting principles and auditing standards. [1983 1st ex.s. c 67 § 6.]

74.46.130 Preparation for audit by the contractor. (1) For the requirements of RCW 74.46.105, the contractor shall be notified by the department at least ten working days in advance of the engagement. Upon such notification, the contractor shall:

(a) Provide access to the facility, all records, and all working papers which are in support of the cost report and patient trust funds; and

(b) Prepare reconciliation of the cost report with (i) applicable federal income and federal and state payroll tax returns and (ii) the records for the period covered by the cost report.

(2) To facilitate department audit, the owner or administrator of a facility shall designate and make available an individual or individuals to respond to questions and requests for information from auditors. The designated individual or individuals shall have sufficient knowledge of the issue or function to provide accurate information. [1985 c 361 § 11; 1983 1st ex.s. c 67 § 7; 1980 c 177 § 13.]

Savings—1985 c 361: See note following RCW 74.46.020.

PART C SETTLEMENT

74.46.150 Settlement process. (1) For each cost center, payments to contractors shall not exceed the lower of prospective reimbursement rates or audited allowable costs, except as otherwise provided in this chapter.

(2) The settlement process shall consist of:

(a) The evaluation of the proposed preliminary settlement by cost center contained within the cost report and preparation of the preliminary settlement report;

(b) The evaluation of the audit results, if an audit is conducted, including disallowed costs and preparation of the final settlement report; and

(c) The process of scheduling payment of underpayments or overpayments determined by preliminary or final settlement. [1983 1st ex.s. c 67 § 8; 1980 c 177 § 15.]

74.46.160 Preliminary and final settlement reports. (1) Within one hundred twenty days after receipt of the proposed preliminary settlement, the department shall verify the accuracy of the proposal and shall issue a

preliminary settlement report by cost center to the contractor which fully substantiates disallowed costs, refunds, underpayments, or adjustments to the proposed preliminary settlement.

(2) After completion of the audit process, including exhaustion or mutual termination of reviews and appeals of audit findings or determinations, the department will submit a final settlement report by cost center to the contractor which fully substantiates disallowed costs, refunds, underpayments, or adjustments to the contractor's cost report. Where the contractor is pursuing judicial or administrative review or appeal in good faith regarding audit findings or determinations, the department may issue a partial final settlement to recover overpayments based on audit adjustments not in dispute. [1985 c 361 § 12; 1983 1st ex.s. c 67 § 9; 1980 c 177 § 16.]

Savings—1985 c 361: See note following RCW 74.46.020.

74.46.170 Settlement—Contractor may contest—Date settlement becomes final. (1) A contractor shall have thirty days after the date the preliminary or final settlement report is submitted to the contractor to contest a settlement determination under RCW 74.46-.780. After the thirty-day period has expired, a preliminary or final settlement will not be subject to review.

(2) A preliminary settlement report as issued by the department will become the final settlement report if no audit has been scheduled within twelve calendar months following the department's issuance of a preliminary settlement report to the contractor.

(3) A settlement will be reopened if necessary to make adjustments for findings resulting from an audit performed pursuant to RCW 74.46.105(4). [1983 1st ex.s. c 67 § 10; 1980 c 177 § 17.]

74.46.180 Payment of underpayments—Refund of overpayments, erroneous payments—Allocation of savings. (1) The state shall make payment of any underpayments within thirty days after the date the preliminary or final settlement report is submitted to the contractor.

(2) A contractor found to have received either overpayments or erroneous payments under a preliminary or final settlement shall refund such payments to the state within thirty days after the date the preliminary or final settlement report is submitted to the contractor, subject to the provisions of subsections (3), (4), and (7) of this section.

(3) Within the cost centers of nursing services and food, all savings resulting from the respective allowable costs being lower than the respective reimbursement rate paid to the contractor during the report period shall be refunded. In computing a preliminary or final settlement, savings in a cost center may be shifted to cover a deficit in another cost center up to the amount of any savings: *Provided*, That not more than twenty percent of the rate in a cost center may be shifted into that cost center and no shifting may be made into the property cost center: *Provided further*, That there shall be no shifting out of nursing services, and savings in food shall

be shifted only to cover deficits in the nursing services cost center.

(4) Within the cost centers of administration and operations and property, the contractor shall retain at least fifty percent, but not more than seventy-five percent, of any savings resulting from the respective audited allowable costs being lower than the respective reimbursement rates paid to the contractor during the report period multiplied by the number of authorized medical care client days in which said rates were in effect, except that no savings may be retained if reported costs in the property cost center and the administration and operations cost center exceed audited allowable costs by ten cents or more per patient day. The secretary, by rule and regulation, shall establish the basis for the specific percentages of savings to the contractors. Such rules and regulations may provide for differences in the percentages allowed for each cost center to individual facilities based on performance measures related to administrative efficiency.

(5) All allowances provided by RCW 74.46.530 shall be retained by the contractor. Any industrial insurance dividend or premium discount under RCW 51.16.035 shall be retained by the contractor to the extent that such dividend or premium discount is attributable to the contractor's private patients.

(6) In the event the contractor fails to make repayment in the time provided in subsection (2) of this section, the department shall either:

(a) Deduct the amount of refund due, plus any interest accrued under RCW 43.20B.695, from payment amounts due the contractor; or

(b) In the instance the contract has been terminated, (i) deduct the amount of refund due, plus interest assessed at the rate and in the manner provided in RCW 43.20B.695, from any payments due; or (ii) recover the amount due, plus any interest assessed under RCW 43.20B.695, from security posted with the department or by any other lawful means.

(7) Where the facility is pursuing timely-filed judicial or administrative remedies in good faith regarding settlement issues, the contractor need not refund nor shall the department withhold from the facility current payment amounts the department claims to be due from the facility but which are specifically disputed by the contractor. If the judicial or administrative remedy sought by the facility is not granted after all appeals are exhausted or mutually terminated, the facility shall make payment of such amounts due plus interest accrued from the date of filing of the appeal, as payable on judgments, within sixty days of the date such decision is made. [1987 c 476 § 1; 1987 c 283 § 9; 1985 c 361 § 1; 1985 c 7 § 147; 1983 1st ex.s. c 67 § 11; 1980 c 177 § 18.]

Reviser's note: This section was amended by 1987 c 283 § 9 and by 1987 c 476 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Severability—Savings—1987 c 283: See notes following RCW 43.20A.020.

Savings—1985 c 361: See note following RCW 74.46.020.

PART D ALLOWABLE COSTS

74.46.190 Principles of allowable costs. (1) The substance of a transaction will prevail over its form.

(2) All documented costs which are ordinary, necessary, related to care of medical care recipients, and not expressly unallowable, are to be allowable.

(3) Costs applicable to services, facilities, and supplies furnished to the provider by related organizations are allowable but at the cost to the related organization, provided they do not exceed the price of comparable services, facilities, or supplies that could be purchased elsewhere.

(4) Beginning January 1, 1985, the payment for property usage is to be independent of ownership structure and financing arrangements. [1983 1st ex.s. c 67 § 12; 1980 c 177 § 19.]

74.46.200 Offset of miscellaneous revenues. (1) Allowable costs shall be reduced by the contractor whenever the item, service, or activity covered by such costs generates revenue or financial benefits other than through the contractor's normal billing for care services; except that, unrestricted grants, gifts, and endowments, and interest therefrom, will not be deducted from the allowable costs of a nonprofit facility.

(2) Where goods or services are sold, the amount of the reduction shall be the actual cost relating to the item, service, or activity. In the absence of adequate documentation of cost, it shall be the full amount of the revenue received. Where financial benefits such as purchase discounts or rebates are received, the amount of the reduction shall be the amount of the discount or rebate. [1980 c 177 § 20.]

74.46.210 Costs of meeting standards. All necessary and ordinary expenses a contractor incurs in providing care services will be allowable costs. These expenses include:

(1) Meeting licensing and certification standards;

(2) Meeting standards of providing regular room, nursing, ancillary, and dietary services, as established by department rule and regulation pursuant to *chapter 211, Laws of 1979 ex. sess.; and

(3) Fulfilling accounting and reporting requirements imposed by this chapter. [1980 c 177 § 21.]

***Reviser's note:** Chapter 211, Laws of 1979 ex. sess. consists of the enactment of chapter 74.42 RCW and RCW 18.51.091 and amendments to RCW 18.51.070, 18.51.100, 18.51.110, and 18.51.310.

74.46.220 Payments to related organizations—Limits—Documentation. (1) Costs applicable to services, facilities, and supplies furnished by a related organization to the contractor shall be allowable only to the extent they do not exceed the lower of the cost to the related organization or the price of comparable services, facilities, or supplies purchased elsewhere.

(2) Documentation of costs to the related organization shall be made available to the auditor at the time and

place the records relating to the entity are audited. Payments to or for the benefit of the related organization will be disallowed where the cost to the related organization cannot be documented. [1980 c 177 § 22.]

74.46.230 Initial cost of operation. (1) The necessary and ordinary one-time expenses directly incident to the preparation of a newly constructed or purchased building by a contractor for operation as a licensed facility shall be allowable costs. These expenses shall be limited to start-up and organizational costs incurred prior to the admission of the first patient.

(2) Start-up costs shall include, but not be limited to, administrative and nursing salaries, utility costs, taxes, insurance, repairs and maintenance, and training; except, that they shall exclude expenditures for capital assets. These costs will be allowable in the administration and operations cost center if they are amortized over a period of not less than sixty months beginning with the month in which the first patient is admitted for care.

(3) Organizational costs are those necessary, ordinary, and directly incident to the creation of a corporation or other form of business of the contractor including, but not limited to, legal fees incurred in establishing the corporation or other organization and fees paid to states for incorporation; except, that they do not include costs relating to the issuance and sale of shares of capital stock or other securities. Such organizational costs will be allowable in the administration and operations cost center if they are amortized over a period of not less than sixty months beginning with the month in which the first patient is admitted for care. [1980 c 177 § 23.]

74.46.240 Education and training. (1) Necessary and ordinary expenses of on-the-job training and in-service training required for employee orientation and certification training directly related to the performance of duties assigned will be allowable costs.

(2) Necessary and ordinary expenses of recreational and social activity training conducted by the contractor for volunteers will be allowable costs. [1980 c 177 § 24.]

74.46.250 Owner or relative—Compensation. (1) Total compensation of an owner or relative of an owner shall be limited to ordinary compensation for necessary services actually performed.

(a) Compensation is ordinary if it is the amount usually paid for comparable services in a comparable facility to an unrelated employee, and does not exceed limits set out in this chapter.

(b) A service is necessary if it is related to patient care and would have had to be performed by another person if the owner or relative had not done it.

(2) The contractor, in maintaining customary time records adequate for audit, shall include such records for owners and relatives who receive compensation. [1980 c 177 § 25.]

74.46.260 Compensation for administrative personnel. (1) Compensation for full-time administrative personnel, as defined in the contract between the contractor

and such personnel, shall be an allowable cost, limited as follows:

(a) For calendar year 1981, the compensation of a licensed administrator of a facility having one hundred sixty or more beds shall not exceed thirty-two thousand dollars. The compensation of licensed administrators having beds not exceeding:

(i) Seventy-nine; and

(ii) One hundred fifty-nine;

shall be established by the department on a calendar year basis. The maximum compensation of these three categories of facilities may be adjusted in subsequent calendar years by the department through rule and regulation.

(b) The compensation of a licensed assistant administrator for a facility having eighty or more beds shall not exceed seventy-five percent of the compensation received by the licensed administrator of the facility.

(c) The compensation of a registered administrator-in-training shall not exceed sixty percent of the compensation received by the licensed administrator of the facility.

(2) If the licensed administrator, licensed assistant administrator, or registered administrator-in-training regularly work fewer than forty hours per week, the allowable compensation will be the product of the full-time compensation multiplied by the percentage derived from the division of the actual hours worked by forty hours.

(3) The contractor shall maintain customary time records for the licensed administrator, assistant administrator, and/or administrator-in-training. [1980 c 177 § 26.]

74.46.270 Disclosure and approval of cost allocation.

(1) The contractor shall disclose to the department:

(a) The nature and purpose of all costs which represent allocations of joint facility costs; and

(b) The methodology of the allocation utilized.

(2) Such disclosure shall demonstrate that:

(a) The services involved are necessary and nonduplicative; and

(b) Costs are allocated in accordance with benefits received from the resources represented by those costs.

(3) Such disclosure shall be made not later than September 30, 1980, for the following year and not later than September 30th for each year thereafter; except that a new contractor shall submit the first year's disclosure together with the submissions required by RCW 74.46.670. Where a contractor will make neither a change in the joint costs to be incurred nor in the allocation methodology, the contractor may certify that no change will be made in lieu of the disclosure required in subsection (1) of this section.

(4) The department shall approve such methodology not later than December 31, 1980, and not later than December 31st for each year thereafter.

(5) An approved methodology may be revised or amended subject to approval as provided in rules and regulations adopted by the department. [1983 1st ex.s. c 67 § 13; 1980 c 177 § 27.]

74.46.280 Management fees, agreements. (1) Management fees will be allowed only if:

(a) A written management agreement both creates a principal/agent relationship between the contractor and the manager, and sets forth the items, services, and activities to be provided by the manager; and

(b) Documentation demonstrates that the services contracted for were actually delivered.

(2) To be allowable, fees must be for necessary, non-duplicative services. Allowable fees for general management services, including the portion of a management fee which is not allocated to specific services such as accounting, are limited to

(a) the maximum allowable compensation under RCW 74.46.260 of the licensed administrator and, if the facility has at least eighty beds, of an assistant administrator, less

(b) actual compensation received by the licensed administrator and by the assistant administrator and administrator-in-training, if any.

In computing maximum allowable compensation under RCW 74.46.260 for a facility with at least eighty beds, include the maximum compensation of an assistant administrator even if an assistant administrator is not employed.

(3) A management fee paid to or for the benefit of a related organization will be allowable to the extent it does not exceed the lower of:

(a) The limits set out in subsection (2) of this section; or

(b) The lower of the actual cost to the related organization of providing necessary services related to patient care under the agreement, or the cost of comparable services purchased elsewhere. Where costs to the related organization represent joint facility costs, the measurement of such costs shall comply with RCW 74.46.270.

(4) A copy of the agreement must be received by the department at least sixty days before it is to become effective. A copy of any amendment to a management agreement must also be received by the department at least thirty days in advance of the date it is to become effective.

(5) Central office costs for general management services, including the portion of a management expense which is not allocated to specific services, such as accounting, shall be subject to the management fee limits determined in subsections (2) and (3) of this section. [1980 c 177 § 28.]

74.46.290 Expense for construction interest. (1) Interest expense and loan origination fees relating to construction of a facility incurred during the period of construction shall be capitalized and amortized over the life of the facility pursuant to RCW 74.46.360. The period of construction shall extend from the date of the construction loan to the date the facility is put into service for patient care.

(2) For the purposes of this chapter, the period provided for in subsection (1) of this section shall not exceed the project certificate of need time period pursuant to RCW 70.38.125. [1980 c 177 § 29.]

74.46.300 Operating leases of office equipment. Rental or lease costs under arm's-length operating leases of office equipment shall be allowable to the extent the cost is necessary and ordinary. [1980 c 177 § 30.]

Effective dates—1980 c 177: See RCW 74.46.901.

74.46.310 Capitalization. The following costs shall be capitalized:

(1) Expenses for facilities or equipment with historical cost in excess of seven hundred fifty dollars per unit and a useful life of more than one year from the date of purchase; and

(2) Expenses for equipment with historical cost of seven hundred fifty dollars or less per unit if either:

(a) The item was acquired in a group purchase where the total cost exceeded seven hundred fifty dollars; or

(b) The item was part of the initial stock of the facility.

(3) Dollar limits in this section may be adjusted for economic trends and conditions by the department as established by rule and regulation. [1983 1st ex.s. c 67 § 16; 1980 c 177 § 31.]

74.46.320 Depreciation expense. Depreciation expense on depreciable assets which are required in the regular course of providing patient care will be an allowable cost. It shall be computed using the depreciation base, lives, and methods specified in this chapter. [1980 c 177 § 32.]

74.46.330 Depreciable assets. Tangible assets of the following types in which a contractor has an interest through ownership or leasing are subject to depreciation:

(1) Building – the basic structure or shell and additions thereto;

(2) Building fixed equipment – attachments to buildings, including, but not limited to, wiring, electrical fixtures, plumbing, elevators, heating system, and air conditioning system. The general characteristics of this equipment are:

(a) Affixed to the building and not subject to transfer; and

(b) A fairly long life, but shorter than the life of the building to which affixed;

(3) Major movable equipment including, but not limited to, beds, wheelchairs, desks, and x-ray machines. The general characteristics of this equipment are:

(a) A relatively fixed location in the building;

(b) Capable of being moved as distinguished from building equipment;

(c) A unit cost sufficient to justify ledger control;

(d) Sufficient size and identity to make control feasible by means of identification tags; and

(e) A minimum life greater than one year;

(4) Minor equipment including, but not limited to, waste baskets, bed pans, syringes, catheters, silverware, mops, and buckets which are properly capitalized. No depreciation shall be taken on items which are not properly capitalized as directed in RCW 74.46.310. The general characteristics of minor equipment are:

- (a) In general, no fixed location and subject to use by various departments;
 - (b) Small in size and unit cost;
 - (c) Subject to inventory control;
 - (d) Large number in use; and
 - (e) Generally, a useful life of one to three years;
- (5) Land improvements including, but not limited to, paving, tunnels, underpasses, on-site sewer and water lines, parking lots, shrubbery, fences, and walls where replacement is the responsibility of the contractor; and
- (6) Leasehold improvements – betterments and additions made by the lessee to the leased property, which become the property of the lessor after the expiration of the lease. [1980 c 177 § 33.]

74.46.340 Land, improvements—Depreciation. Land is not depreciable. The cost of land includes but is not limited to, off-site sewer and water lines, public utility charges necessary to service the land, governmental assessments for street paving and sewers, the cost of permanent roadways and grading of a nondepreciable nature, and the cost of curbs and sidewalks, replacement of which is not the responsibility of the contractor. [1980 c 177 § 34.]

74.46.350 Methods of depreciation. (1) Buildings, land improvements, and fixed equipment shall be depreciated using the straight-line method of depreciation. Major-minor equipment shall be depreciated using either the straight-line method, the sum-of-the-years' digits method, or declining balance method not to exceed one hundred fifty percent of the straight line rate. Contractors who have elected to take either the sum-of-the-years' digits method or the declining balance method of depreciation on major-minor equipment may change to the straight-line method without permission of the department.

(2) The annual provision for depreciation shall be reduced by the portion allocable to use of the asset for purposes which are neither necessary nor related to patient care.

(3) No further depreciation shall be claimed after an asset has been fully depreciated unless a new depreciation base is established pursuant to RCW 74.46.360. [1980 c 177 § 35.]

74.46.360 Depreciation base. (1) The depreciation base shall be the historical cost of the contractor or lessor, when the assets are leased by the contractor, in acquiring the asset in an arm's-length transaction and preparing it for use, less goodwill, and less accumulated depreciation which has been incurred during periods that the assets have been used in or as a facility by any contractor, such accumulated depreciation to be measured in accordance with subsections (2), (3), and (4) of this section and RCW 74.46.350 and 74.46.370. If the department challenges the historical cost of an asset, or if the contractor cannot or will not provide the historical costs, the department will have the department of general administration, through an appraisal procedure, determine the fair market value of the assets at the time of

purchase. The depreciation base of the assets will not exceed such fair market value.

(2) The historical cost of donated assets, or of assets received through testate or intestate distribution, shall be the lesser of:

(a) Fair market value at the date of donation or death; or

(b) The historical cost base of the owner last contracting with the department, if any.

(3) Estimated salvage value of acquired, donated, or inherited assets shall be deducted from historical cost where the straight-line or sum-of-the-years' digits method of depreciation is used.

(4) (a) Where depreciable assets are acquired that were used in the medical care program subsequent to January 1, 1980, the depreciation base of the assets will not exceed the net book value which did exist or would have existed had the assets continued in use under the previous contract with the department; except that depreciation shall not be assumed to accumulate during periods when the assets were not in use in or as a facility.

(b) The provisions of (a) of this subsection shall not apply to the most recent arm's-length acquisition if it occurs at least ten years after the ownership of the assets has been previously transferred in an arm's-length transaction nor to the first arm's-length acquisition that occurs after January 1, 1980, for facilities participating in the medical care program prior to January 1, 1980. The new depreciation base for such acquisitions shall not exceed the fair market value of the assets as determined by the department of general administration through an appraisal procedure. A determination by the department of general administration of fair market value shall be final unless the procedure used to make such determination is shown to be arbitrary and capricious. This subsection is inoperative for any transfer of ownership of any asset occurring on or after July 18, 1984, leaving (a) of this subsection to apply alone to such transfers: *Provided, however,* That this subsection shall apply to transfers of ownership of assets occurring prior to January 1, 1985, if the costs of such assets have never been reimbursed under medicaid cost reimbursement on an owner-operated basis or as a related-party lease: *Provided further,* That for any contractor that can document in writing an enforceable agreement for the purchase of a nursing home dated prior to July 18, 1984, and submitted to the department prior to January 1, 1988, the depreciation base of the nursing home, for rates established after July 18, 1984, shall not exceed the fair market value of the assets at the date of purchase as determined by the department of general administration through an appraisal procedure. For medicaid cost reimbursement purposes, an agreement to purchase a nursing home dated prior to July 18, 1984, is enforceable, even though such agreement contains no legal description of the real property involved, notwithstanding the statute of frauds or any other provision of law.

(c) In the case of assets leased by the same contractor since January 1, 1980, in an arm's-length lease, and

purchased by the lessee/contractor, the lessee/contractor shall have the option:

(i) To have the provisions of subsection (b) of this section apply to the purchase; or

(ii) To have the reimbursement for property and return on investment continue to be calculated pursuant to the provisions contained in RCW 74.46.530(1) (e) and (f) based upon the provisions of the lease in existence on the date of the purchase, but only if the purchase date meets one of the following criteria:

(A) The purchase date is after the lessor has declared bankruptcy or has defaulted in any loan or mortgage held against the leased property;

(B) The purchase date is within one year of the lease expiration or renewal date contained in the lease;

(C) The purchase date is after a rate setting for the facility in which the reimbursement rate set pursuant to this chapter no longer is equal to or greater than the actual cost of the lease; or

(D) The purchase date is within one year of any purchase option in existence on January 1, 1988.

(d) Where depreciable assets are acquired from a related organization, the contractor's depreciation base shall not exceed the base the related organization had or would have had under a contract with the department.

(e) Where the depreciable asset is a donation or distribution between related organizations, the base shall be the lesser of (i) fair market value, less salvage value, or (ii) the depreciation base the related organization had or would have had for the asset under a contract with the department. [1989 c 372 § 14. Prior: 1988 c 221 § 1; 1988 c 208 § 1; 1986 c 175 § 1; 1980 c 177 § 36.]

Effective dates—1980 c 177: See RCW 74.46.901.

74.46.370 Lives of assets. (1) Except for new buildings, the contractor shall use lives which reflect the estimated actual useful life of the asset and which shall be no shorter than guideline lives as established by the department. The shortest life which may be used for new buildings is thirty years. Lives shall be measured from the date on which the assets were first used in the medical care program or from the date of the most recent arm's-length acquisition of the asset, whichever is more recent. In cases where RCW 74.46.360(4)(a) does apply, the shortest life that may be used for buildings is the remaining useful life under the prior contract. In all cases, lives shall be extended to reflect periods, if any, when assets were not used in or as a facility.

(2) Building improvements shall be depreciated over the remaining useful life of the building, as modified by the improvement.

(3) Improvements to leased property which are the responsibility of the contractor under the terms of the lease shall be depreciated over the useful life of the improvement.

(4) A contractor may change the estimate of an asset's useful life to a longer life for purposes of depreciation. [1980 c 177 § 37.]

74.46.380 Disposal of depreciable assets—Inactive status. (1) Where depreciable assets are disposed of

through sale, trade-in, scrapping, exchange, theft, wrecking, or fire or other casualty, depreciation shall no longer be taken on the assets. No further depreciation shall be taken on permanently abandoned assets.

(2) Where an asset has been retired from active use but is being held for stand-by or emergency service, and the department has determined that it is needed and can be effectively used in the future, depreciation may be taken. [1980 c 177 § 38.]

74.46.390 Gains and losses upon replacement of depreciable assets. If the retired asset is replaced, the gain or loss shall be applied against or added to the cost of the replacement asset, provided that a loss will only be so applied if the contractor has made a reasonable effort to recover at least the outstanding book value of the asset. [1980 c 177 § 39.]

74.46.410 Unallowable costs. (1) Costs will be unallowable if they are not documented, necessary, ordinary, and related to the provision of care services to authorized patients.

(2) Unallowable costs include, but are not limited to, the following:

(a) Costs of items or services not covered by the medical care program. Costs of such items or services will be unallowable even if they are indirectly reimbursed by the department as the result of an authorized reduction in patient contribution;

(b) Costs of services and items provided to recipients which are covered by the department's medical care program but not included in care services established by the department under this chapter;

(c) Costs associated with a capital expenditure subject to section 1122 approval (part 100, Title 42 C.F.R.) if the department found it was not consistent with applicable standards, criteria, or plans. If the department was not given timely notice of a proposed capital expenditure, all associated costs will be unallowable up to the date they are determined to be reimbursable under applicable federal regulations;

(d) Costs associated with a construction or acquisition project requiring certificate of need approval pursuant to chapter 70.38 RCW if such approval was not obtained;

(e) Interest costs other than those provided by RCW 74.46.290 on and after the effective date of RCW 74.46.530;

(f) Salaries or other compensation of owners, officers, directors, stockholders, and others associated with the contractor or home office, except compensation paid for service related to patient care;

(g) Costs in excess of limits or in violation of principles set forth in this chapter;

(h) Costs resulting from transactions or the application of accounting methods which circumvent the principles of the cost-related reimbursement system set forth in this chapter;

(i) Costs applicable to services, facilities, and supplies furnished by a related organization in excess of the lower of the cost to the related organization or the price

of comparable services, facilities, or supplies purchased elsewhere;

(j) Bad debts of non–Title XIX recipients. Bad debts of Title XIX recipients are allowable if the debt is related to covered services, it arises from the recipient's required contribution toward the cost of care, the provider can establish that reasonable collection efforts were made, the debt was actually uncollectible when claimed as worthless, and sound business judgment established that there was no likelihood of recovery at any time in the future;

(k) Charity and courtesy allowances;

(l) Cash, assessments, or other contributions, excluding dues, to charitable organizations, professional organizations, trade associations, or political parties, and costs incurred to improve community or public relations;

(m) Vending machine expenses;

(n) Expenses for barber or beautician services not included in routine care;

(o) Funeral and burial expenses;

(p) Costs of gift shop operations and inventory;

(q) Personal items such as cosmetics, smoking materials, newspapers and magazines, and clothing, except those used in patient activity programs;

(r) Fund–raising expenses, except those directly related to the patient activity program;

(s) Penalties and fines;

(t) Expenses related to telephones, televisions, radios, and similar appliances in patients' private accommodations;

(u) Federal, state, and other income taxes;

(v) Costs of special care services except where authorized by the department;

(w) Expenses of key–man insurance and other insurance or retirement plans not made available to all employees;

(x) Expenses of profit–sharing plans;

(y) Expenses related to the purchase and/or use of private or commercial airplanes which are in excess of what a prudent contractor would expend for the ordinary and economic provision of such a transportation need related to patient care;

(z) Personal expenses and allowances of owners or relatives;

(aa) All expenses of maintaining professional licenses or membership in professional organizations;

(bb) Costs related to agreements not to compete;

(cc) Amortization of goodwill;

(dd) Expenses related to vehicles which are in excess of what a prudent contractor would expend for the ordinary and economic provision of transportation needs related to patient care;

(ee) Legal and consultant fees in connection with a fair hearing against the department where a decision is rendered in favor of the department or where otherwise the determination of the department stands;

(ff) Legal and consultant fees of a contractor or contractors in connection with a lawsuit against the department;

(gg) Lease acquisition costs and other intangibles not related to patient care;

(hh) All rental or lease costs other than those provided in RCW 74.46.300 on and after the effective date of RCW 74.46.510 and 74.46.530;

(ii) Postsurvey charges incurred by the facility as a result of subsequent inspections under RCW 18.51.050 which occur beyond the first postsurvey visit during the certification survey calendar year;

(jj) Costs and fees otherwise allowable for legal services, whether purchased, allocated by a home office, regional office or management company, or performed by the contractor or employees of the contractor, in excess of the eighty–fifth percentile of such costs reported by all contractors for the most recent cost report period: *Provided*, That this limit shall not apply if a contractor has not exceeded this percentile in any of the preceding three annual cost report periods;

(kk) Costs and fees otherwise allowable for accounting and bookkeeping services, whether purchased, allocated by a home office, regional office or management company, or performed by the contractor or employees of the contractor, in excess of the eighty–fifth percentile of such costs reported by all contractors for the most recent cost report period: *Provided*, That this limit shall not apply if a contractor has not exceeded this percentile in any of the preceding three annual cost report periods. [1989 c 372 § 2; 1986 c 175 § 3; 1983 1st ex.s. c 67 § 17; 1980 c 177 § 41.]

Effective date—1989 c 372 § 2: "Section 2 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1989." [1989 c 372 § 19.] This note refers to the 1989 c 372 amendment to RCW 74.46.410.

PART E RATE SETTING

74.46.420 Principles of rate setting. The following principles are inherent in RCW 74.46.430 through 74.46.590:

(1) Reimbursement rates will be set prospectively on a per patient day basis; and

(2) The rates so established will be adjusted for economic conditions and trends in accordance with appropriations made by the legislature as consistent with federal requirements for the period to be covered by such rates. [1985 c 361 § 18; 1983 1st ex.s. c 67 § 18; 1980 c 177 § 42.]

Savings—1985 c 361: See note following RCW 74.46.020.

74.46.430 Prospective reimbursement rates—Minimum hourly wages. (1) The department, as provided by this chapter, will determine prospective cost–related reimbursement rates for services provided to medical care recipients. Each rate so determined shall represent the contractor's maximum compensation within each cost center for each patient day for such medical care recipient.

(2) As required, the department may modify such maximum per patient day rates pursuant to the administrative review provisions of RCW 74.46.780.

(3) Until the effective date of RCW 74.46.510 and 74.46.530, the maximum prospective reimbursement rates for the administration and operations and the property cost centers shall be established based upon a minimum facility occupancy level of eighty-five percent.

(4) On and after the effective date of RCW 74.46.510 and 74.46.530, the maximum prospective reimbursement rates for the administration and operations and the property cost centers and the return on investment allowance shall be established based upon a minimum facility occupancy level of eighty-five percent.

(5) All contractors shall be required to adjust and maintain wages for all employees to a minimum hourly wage established by the legislature in the biennial appropriations act, if the legislature appropriates moneys to fund prospectively the portion of the minimum wage attributable to services to medicaid patients. Prospective rate revisions to fund any minimum wage increases shall be made only on the dates authorized in the appropriation act. The department shall by regulation limit reimbursement to the amount appropriated for legislatively authorized enhancement for nonadministrative wages and benefits above the moneys necessary to fund minimum wages specified in this section. The department in considering reimbursement for legislatively authorized wage enhancements will take into consideration facility wage history over the past three cost report periods. [1987 2nd ex.s. c 1 § 2; 1987 c 476 § 2; 1983 1st ex.s. c 67 § 19; 1980 c 177 § 43.]

74.46.440 Limitation of services subject to cost reimbursement—Exception. Only those services which are authorized for a facility pursuant to the medical care program shall be reimbursed under this chapter. Services provided by institutions for mental diseases shall not be reimbursed under this chapter. [1989 c 372 § 16; 1980 c 177 § 44.]

74.46.450 Reimbursement rate for new contractor. (1) Prospective reimbursement rates for a new contractor will be established within sixty days following receipt by the department of the properly completed projected budget required by RCW 74.46.670. Such reimbursement rates will become effective as of the effective date of the contract and shall remain in effect until rates can be established under RCW 74.46.460 based on a contractor's cost report including at least six months of cost data.

(2) Such reimbursement rates will be based on the contractor's projected cost of operations and on costs and payment rates of the prior contractor, if any, or of other contractors in comparable circumstances.

(3) If a properly completed budget is not received at least sixty days prior to the effective date of the contract, the department will establish preliminary rates based on the other factors specified in subsection (2) of this section. These preliminary rates will remain in effect until a determination is made pursuant to RCW 74.46.460. [1983 1st ex.s. c 67 § 20; 1980 c 177 § 45.]

74.46.460 Rate determination or adjustment—When—Basis. (1) Each contractor's reimbursement rates will be determined prospectively at least once each calendar year, to be effective July 1st.

(2) Rates may be adjusted as determined by the department to take into account variations in the distribution of patient classifications or changes in patient characteristics from the prior reporting year, program changes required by the department, or changes in staffing levels at a facility required by the department. Rates shall be adjusted by the amount of legislatively authorized enhancements in accordance with RCW 74.46.430(5) and 74.46.470(2). Rates may also be adjusted to cover costs associated with placing a nursing home in receivership which costs are not covered by the rate of the former contractor, including: Compensation of the receiver, reasonable expenses of receivership and transition of control, and costs incurred by the receiver in carrying out court instructions or rectifying deficiencies found. Rates shall be adjusted for any capitalized additions or replacements made as a condition for licensure or certification. Rates shall be adjusted for capitalized improvements done under RCW 74.46.465.

(3) Where the contractor participated in the provisions of prospective cost-related reimbursement in effect prior to July 1, 1983, such contractor's prospective rate effective July 1, 1983, will be determined utilizing the contractor's desk-reviewed allowable costs for calendar year 1982.

(4) All prospective reimbursement rates for 1984 and thereafter shall be determined utilizing the prior year's desk-reviewed cost reports. [1987 c 476 § 3; 1985 c 361 § 15; 1983 1st ex.s. c 67 § 21; 1981 1st ex.s. c 2 § 5; 1980 c 177 § 46.]

Savings—1985 c 361: See note following RCW 74.46.020.

Severability—Effective dates—1981 1st ex.s. c 2: See notes following RCW 18.51.010.

74.46.465 Rate adjustment for physical plant capital improvements. (1) The department, in consultation with interested parties, shall adopt rules to establish criteria the department will use in reviewing any request by a contractor for a prospective rate adjustment for a physical plant capital improvement. The rules shall also specify the time periods for submission and review of proposed physical plant capital improvements. In establishing the criteria, the department may consider, but is not limited to, the following:

(a) The remaining functional life of the facility and the length of time since the facility's last significant improvement;

(b) The amount and scope of renovation or remodel to the facility and whether the facility will be able to serve better the needs of its residents;

(c) Whether the proposed improvement improves the quality of the living conditions of the residents;

(d) Whether the proposed improvement might eliminate life safety, building code, or construction standard waivers;

(e) The percentage of public-pay residents in the facility.

(2) Rate adjustments under this section may be provided only if funds are appropriated for this purpose. [1987 c 476 § 8.]

74.46.470 Cost centers. (1) A contractor's reimbursement rates for medical care recipients will be determined utilizing desk-reviewed cost report data within the following cost centers:

- (a) Nursing services;
- (b) Food;
- (c) Administration and operations; and
- (d) Property.

(2) There shall be an enhancement cost center established to reimburse contractors for specific legislatively authorized enhancements for nonadministrative wages and benefits to ensure that such enhancements are used exclusively for the legislatively authorized purposes. For purposes of settlement, funds appropriated to this cost center shall only be used for expenditures for which the legislative authorization is granted. Such funds may be used only in the following circumstances:

(a) The contractor has increased expenditures for which legislative authorization is granted to at least the highest level paid in any of the last three cost years, plus, beginning July 1, 1987, any percentage inflation adjustment granted each year under RCW 74.46.495; and

(b) All funds shifted from the enhancement cost center are shown to have been expended for legislatively authorized enhancements.

(3) If the contractor does not spend the amount appropriated to this cost center in the legislatively authorized manner, then the amounts not appropriately spent shall be recouped at preliminary or final settlement pursuant to RCW 74.46.160.

(4) For purposes of this section, "nonadministrative wages and benefits" means wages and payroll taxes paid with respect to, and the employer share of the cost of benefits provided to, employees in job classes specified in an appropriation, which may not include administrators, assistant administrators, or administrators in training.

(5) Amounts expended in the enhancement cost center in excess of the minimum wage established under RCW 74.46.430 are subject to all provisions contained in this chapter. [1987 c 476 § 4; 1983 1st ex.s. c 67 § 22; 1980 c 177 § 47.]

74.46.475 Submitted cost report—Analysis and adjustment by department. (1) The department shall analyze the submitted cost report of each contractor to determine if the information is correct, complete, and reported in conformance with generally accepted accounting principles, the requirements of this chapter and such rules and regulations as the secretary may adopt. If the analysis finds that the cost report is incorrect or incomplete, the department may make adjustments to the reported information for purposes of establishing reimbursement rates. A schedule of such adjustments shall be provided to contractors and shall include an explanation for the adjustment and the dollar amount of the

adjustment. Adjustments shall be subject to review and appeal as provided in this chapter.

(2) The department shall accumulate data from properly completed cost reports for use in:

- (a) Exception profiling; and
- (b) Establishing rates.

(3) The department may further utilize such accumulated data for analytical, statistical, or informational purposes as necessary. [1985 c 361 § 13; 1983 1st ex.s. c 67 § 23.]

Savings—1985 c 361: See note following RCW 74.46.020.

74.46.481 Nursing services cost center reimbursement rate. (1) The nursing services cost center shall include all costs related to the direct provision of nursing and related care, including fringe benefits and payroll taxes for the nursing and related care personnel. For rates effective for state fiscal year 1984, the department shall adopt by administrative rule a definition of "related care" which shall incorporate, but not exceed services reimbursable as of June 30, 1983. For rates effective for state fiscal year 1985, the definition of related care shall include ancillary care.

(2) The department shall adopt by administrative rules a method for establishing a nursing services cost center rate consistent with the principles stated in this section.

(3) Utilizing regression or other statistical technique, the department shall determine a reasonable limit on facility nursing staff taking into account facility patient characteristics. For purposes of this section, facility nursing staff refers to registered nurses, licensed practical nurses and nursing assistants employed by the facility or obtained through temporary labor contract arrangements. Effective January 1, 1988, the hours associated with the training of nursing assistants and the supervision of that training for nursing assistants shall not be included in the calculation of facility nursing staff. In selecting a measure of patient characteristics, the department shall take into account:

(a) The correlation between alternative measures and facility nursing staff; and

(b) The cost of collecting information for and computation of a measure.

If regression is used, the limit shall be set at predicted nursing staff plus 1.75 regression standard errors. If another statistical method is utilized, the limit shall be set at a level corresponding to 1.75 standard errors above predicted staffing computed according to a regression procedure.

(4) No facility shall receive reimbursement for nursing staff levels in excess of the limit, except that, if a facility was reimbursed for a nursing staff level in excess of the limit as of June 30, 1983, the facility may choose to continue to receive its June, 1983 nursing services rate plus any adjustments in rates, such as adjustments for economic trends, made available to all facilities. The reasonableness limit established pursuant to this subsection shall remain in effect for the period July 1, 1983 through June 30, 1985. At that time the department

may revise the measure of patient characteristics or method used to establish the limit.

(5) The department shall select an index of cost increase relevant to the nursing and related services cost area. In the absence of a more representative index, the department shall use the medical care component index as maintained by the United States bureau of labor statistics.

(6) If a facility's nursing staff level is below the limit specified in subsection (3) of this section, the department shall determine the percentage increase for all items included in the nursing services cost center between the facility's most recent cost reporting period and the next prior cost reporting period.

(a) If the percentage cost increase for a facility is below the increase in the selected index for the same time period, the facility's reimbursement rate in the nursing services cost center shall equal the facility's cost from the most recent cost reporting period plus any allowance for inflation provided by legislative appropriation.

(b) If the percentage cost increase for a facility exceeds the increase in the selected index, the department shall limit the cost used for setting the facility's rate in the nursing services cost area to a level reflecting the increase in the selected index.

(7) If the facility's nursing staff level exceeds the reasonableness limit established in subsection (3) of this section, the department shall determine the increase for all items included in the nursing services cost center between the facility's most recent cost reporting period and the next prior cost reporting period.

(a) If the percentage cost increase for a facility is below the increase in the index selected pursuant to subsection (5) of this section, the facility's reimbursement rate in the nursing cost center shall equal the facility's cost from the most recent cost reporting period adjusted downward to reflect the limit on nursing staff, plus any allowance for inflation provided by legislative appropriation subject to the provisions of subsection (4) of this section.

(b) If the percentage cost increase for a facility exceeds the increase in the selected index, the department shall limit the cost used for setting the facility's rate in the nursing services cost center to a level reflecting the nursing staff limit and the cost increase limit, subject to the provisions of subsection (4) of this section, plus any allowance for inflation provided by legislative appropriation.

(8) The department is authorized to determine on a systematic basis facilities with unmet patient care service needs. The department may increase the nursing services cost center prospective rate for a facility beyond the level determined in accordance with subsection (6) of this section if the facility's actual and reported nursing staffing is one standard error or more below predicted staffing as determined according to the method selected pursuant to subsection (3) of this section and the facility has unmet patient care service needs: *Provided*, That prospective rate increases authorized by this subsection shall be funded only from legislative appropriations made for this purpose and the increases shall

be conditioned on specified improvements in patient care at such facilities.

(9) The department shall establish a method for identifying patients with exceptional care requirements and a method for establishing or negotiating on a consistent basis rates for such patients.

(10) The department, in consultation with interested parties, shall adopt rules to establish the criteria the department will use in reviewing any requests by a contractor for a prospective rate adjustment to be used to increase the number of nursing staff. These rules shall also specify the time period for submission and review of staffing requests: *Provided*, That a decision on a staffing request shall not take longer than sixty days from the date the department receives such a complete request. In establishing the criteria, the department may consider, but is not limited to, the following:

- (a) Increases in acuity levels of contractors' residents;
- (b) Staffing patterns for similar facilities;
- (c) Physical plant of contractor; and
- (d) Survey, inspection of care, and department consultation results. [1987 c 476 § 5; 1983 1st ex.s. c 67 § 24.]

74.46.490 Food cost center reimbursement rate. (1) The food cost center shall include all costs for bulk and raw food and beverages purchased for the dietary needs of medical care recipients.

(2) Reimbursement for the food cost center shall be at the January 1, 1983, reimbursement rate, adjusted annually for inflation. [1983 1st ex.s. c 67 § 25; 1981 1st ex.s. c 2 § 6; 1980 c 177 § 49.]

Severability—Effective dates—1981 1st ex.s. c 2: See notes following RCW 18.51.010.

74.46.495 Inflation adjustments. (1) References in RCW 74.46.490 and 74.46.481 to adjustments for inflation mean percentages determined by the legislature in the biennial budget act.

(2) Inflation adjustments shall be applied as follows:

(a) Where a prior period rate forms the basis for the next period rate, the adjustment in subsection (1) of this section shall be applied to that prior period rate.

(b) In the nursing services cost center rates beginning July 1, 1984, and the administration and operations cost center rate, the adjustments in subsection (1) of this section shall be applied to prior period annual costs in establishing July rates. Where a July rate is based upon a cost report covering less than twelve months, the department shall reduce the inflation adjustment factor in subsection (1) of this section proportionately. [1983 1st ex.s. c 67 § 26.]

74.46.500 Administration and operations cost center reimbursement rate. (1) The administration and operations cost center shall include all items not included in the cost centers of nursing services, food, and property.

(2) The administration and operations cost center reimbursement rate for each facility shall be based on the computation in this subsection and shall not exceed the eighty-fifth percentile of (a) the rates of all reporting

facilities derived from the computation below, or (b) reporting facilities grouped in accordance with subsection (3) of this section:

AR = TAC/TPD, where

AR = the administration and operations cost center reimbursement rate for a facility;

TAC = the total costs of the administration and operations cost center plus the retained savings from such cost center as provided in RCW 74.46.180 of a facility; and

TPD = the total patient days for a facility for the prior year.

(3) The secretary may group facilities based on factors which could reasonably influence cost requirements of this cost center, other than ownership or legal organization characteristics. [1980 c 177 § 50.]

74.46.510 Property cost center. The property cost center rate for each facility shall be determined by dividing the sum of the reported allowable prior period actual depreciation costs, subject to RCW 74.46.310 through 74.46.380, adjusted for any capitalized additions or replacements approved by the department, and the retained savings from such cost center, as provided in RCW 74.46.180, by the total patient days for the facility in the prior period. If a capitalized addition or retirement of an asset will result in a different licensed bed capacity during the ensuing period, the prior period total patient days used in computing the property cost center rate shall be adjusted to anticipated patient day level.

When a certificate of need for a new facility is requested, the department, in reaching its decision, shall take into consideration per-bed land and building construction costs for the facility which shall not exceed a maximum to be established by the secretary. [1980 c 177 § 51.]

Effective dates—1980 c 177: See RCW 74.46.901.

74.46.530 Return on investment allowance—Review. (1) The department shall establish for individual facilities return on investment allowances composed of two parts: A financing allowance and a variable return allowance.

(a) The financing allowance shall be determined by multiplying the net invested funds of each facility by .11, and dividing by the contractor's total patient days. If a capitalized addition or retirement of an asset will result in a different licensed bed capacity during the ensuing period, the prior period total patient days used in computing the financing and variable return allowances shall be adjusted to the anticipated patient day level.

(b) In computing the portion of net invested funds representing the net book value of tangible fixed assets, the same assets, depreciation bases, lives, and methods referred to in RCW 74.46.330, 74.46.350, 74.46.360, and 74.46.370, including owned and leased assets, shall be utilized, except that the capitalized cost of land upon which the facility is located and such other contiguous land which is reasonable and necessary for use in the

regular course of providing patient care shall also be included. In the case of leased facilities where the net invested funds are unknown or the contractor is unable to provide necessary information to determine net invested funds, the secretary shall have the authority to determine an amount for net invested funds based on an appraisal conducted according to RCW 74.46.360(1).

(c) In determining the variable return allowance:

(i) The department will first rank all facilities in numerical order from highest to lowest according to their average per diem allowable costs for the sum of the administration and operations and property cost centers for the previous cost report period.

(ii) The department shall then compute the variable return allowance by multiplying the appropriate percentage amounts, which shall not be less than one percent and not greater than four percent, by the total prospective rate for each facility, as determined in RCW 74.46.450 through 74.46.510. The percentage amounts will be based on groupings of facilities according to the rankings as established in subparagraph (1)(b)(i) of this section. Those groups of facilities with lower per diem costs shall receive higher percentage amounts than those with higher per diem costs.

(d) The sum of the financing allowance and the variable return allowance shall be the return on investment for each facility, and shall be added to the prospective rates of each contractor as determined in RCW 74.46.450 through 74.46.510.

(e) In the case of a facility which was leased by the contractor as of January 1, 1980, in an arm's-length agreement, which continues to be leased under the same lease agreement, and for which the annualized lease payment, plus any interest and depreciation expenses associated with contractor-owned assets, for the period covered by the prospective rates, divided by the contractor's total patient days, minus the property cost center determined according to RCW 74.46.510, is more than the return on investment allowance determined according to subsection (1)(d) of this section, the following shall apply:

(i) The financing allowance shall be recomputed substituting the fair market value of the assets as of January 1, 1982, as determined by the department of general administration through an appraisal procedure, less accumulated depreciation on the lessor's assets since January 1, 1982, for the net book value of the assets in determining net invested funds for the facility. A determination by the department of general administration of fair market value shall be final unless the procedure used to make such determination is shown to be arbitrary and capricious.

(ii) The sum of the financing allowance computed under subsection (1)(e)(i) of this section and the variable allowance shall be compared to the annualized lease payment, plus any interest and depreciation expenses associated with contractor-owned assets, for the period covered by the prospective rates, divided by the contractor's total patient days, minus the property cost center rate determined according to RCW 74.46.510. The

lesser of the two amounts shall be called the alternate return on investment allowance.

(iii) The return on investment allowance determined according to subsection (1)(d) of this section or the alternate return on investment allowance, whichever is greater, shall be the return on investment allowance for the facility and shall be added to the prospective rates of the contractor as determined in RCW 74.46.450 through 74.46.510.

(f) In the case of a facility which was leased by the contractor as of January 1, 1980, in an arm's-length agreement, if the lease is renewed or extended pursuant to a provision of the lease, the treatment provided in subsection (1)(e) of this section shall be applied except that in the case of renewals or extensions made subsequent to April 1, 1985, reimbursement for the annualized lease payment shall be no greater than the reimbursement for the annualized lease payment for the last year prior to the renewal or extension of the lease.

(2) In the event that the department of health and human services disallows the application of the return on investment allowances to nonprofit facilities, the department shall modify the measurements of net invested funds used for computing individual facility return on investment allowances as follows: Net invested funds for each nonprofit facility shall be multiplied by one minus the ratio of equity funds to the net invested funds of all nonprofit facilities.

(3) Each biennium, beginning in 1985, the secretary shall review the adequacy of return on investment allowances in relation to anticipated requirements for maintaining, reducing, or expanding nursing care capacity. The secretary shall report the results of such review to the legislature and make recommendations for adjustments in the return on investment rates utilized in this section, if appropriate. [1985 c 361 § 17; 1983 1st ex.s. c 67 § 28; 1981 1st ex.s. c 2 § 7; 1980 c 177 § 53.]

Savings—1985 c 361: See note following RCW 74.46.020.

Effective dates—1983 1st ex.s. c 67; 1980 c 177: See RCW 74.46.901.

Severability—**Effective dates**—1981 1st ex.s. c 2: See notes following RCW 18.51.010.

74.46.540 Effect of legislative revision. If the legislature changes the methodology of property reimbursement established in *this 1980 act, no affected contractor shall be entitled thereafter to receive such benefits as a matter of contractual right. [1980 c 177 § 54.]

***Reviser's note:** For codification of sections of "this 1980 act" [1980 c 177], see Codification Tables, Volume 0.

74.46.550 Reimbursement rates not to exceed customary charges. The reimbursement rates shall not exceed the contractor's customary charges to the general public for comparable services. [1983 1st ex.s. c 67 § 29; 1980 c 177 § 55.]

74.46.560 Notification of rates. The department will notify each contractor in writing of its prospective reimbursement rates by the effective date of the rates. Unless

otherwise specified at the time it is issued, the rate will be effective from the first day of the month in which it is issued until a new rate becomes effective. If a rate is changed as the result of an appeal in accordance with RCW 74.46.780, it will be effective as of the date the appealed rate became effective. [1983 1st ex.s. c 67 § 30; 1980 c 177 § 56.]

74.46.570 Adjustments required due to errors or omissions. (1) Prospective rates are subject to adjustment by the department as a result of errors or omissions by the department or by the contractor. The department will notify the contractor in writing of each adjustment and of the effective date of the adjustment, and of any amount due to the department or to the contractor as a result of the rate adjustment.

(2) If a contractor claims an error or omission based upon incorrect cost reporting, amended cost report pages shall be prepared and submitted by the contractor. Amended pages shall be accompanied by a certification signed by the licensed administrator of the nursing facility and a written justification explaining why the amendment is necessary. The certification and justification shall meet such criteria as are adopted by the department. Such amendments may be used to revise a prospective rate but shall not be used to revise a settlement if submitted after commencement of the field audit. All changes determined to be material by the department shall be subject to field audit. If changes are found to be incorrect or otherwise unacceptable, any rate adjustment based thereon shall be null and void and resulting payments or payment increases shall be subject to refund.

(3) The contractor shall pay an amount owed the department resulting from an error or omission, or commence repayment in accordance with a schedule determined by the department, within sixty days after receipt of notification of the rate adjustment, unless the contractor contests the department's determination in accordance with the procedures set forth in RCW 74.46.780. If the determination is contested, the contractor shall pay or commence repayment within sixty days after completion of these proceedings. If a refund is not paid when due, the amount thereof may be deducted from current payments by the department.

(4) The department shall pay any amount owed the contractor as a result of a rate adjustment within thirty days after the contractor is notified of the rate adjustment.

(5) No adjustments will be made to a rate more than one hundred twenty days after the final audit narrative and summary for the period the rate was effective is sent to the contractor or, if no audit is held, more than one hundred twenty days after the preliminary settlement becomes the final settlement, except when a settlement is reopened as provided in RCW 74.46.170(3). [1983 1st ex.s. c 67 § 31; 1980 c 177 § 57.]

74.46.580 Public review of rate setting. The department shall provide all interested members of the public

with an opportunity to review and comment on the proposed rate-setting factors, indices, measures, and guidelines, consistent with federal requirements. [1983 1st ex.s. c 67 § 32; 1980 c 177 § 58.]

74.46.590 Public disclosure of rate-setting methodology. In accordance with the provisions of RCW 74.46-.820, the department will make available to the public full information regarding its factors, indices, measures, and guidelines. [1980 c 177 § 59.]

PART F BILLING/PAYMENT

74.46.600 Billing period. A contractor shall bill the department for care provided to medical care recipients from the first through the last day of each calendar month. [1980 c 177 § 60.]

74.46.610 Billing procedure. (1) A contractor shall bill the department each month by completing and returning a facility billing statement as provided by the department which shall include, but not be limited to:

- (a) Billing by cost center;
- (b) Total patient days; and
- (c) Patient days for medical care recipients.

The statement shall be completed and filed in accordance with rules and regulations established by the secretary.

(2) A facility shall not bill the department for service provided to a recipient until an award letter of eligibility of such recipient under rules established under chapter 74.09 RCW has been received by the facility. However a facility may bill and shall be reimbursed for all medical care recipients referred to the facility by the department prior to the receipt of the award letter of eligibility or the denial of such eligibility.

(3) Billing shall cover the patient days of care. [1983 1st ex.s. c 67 § 33; 1980 c 177 § 61.]

74.46.620 Payment. (1) The department will reimburse a contractor for service rendered under the facility contract and billed in accordance with RCW 74.46.610.

(2) The amount paid will be computed using the appropriate rates assigned to the contractor.

(3) For each recipient, the department will pay an amount equal to the appropriate rates, multiplied by the number of patient days each rate was in effect, less the amount the recipient is required to pay for his or her care as set forth by RCW 74.46.630. [1980 c 177 § 62.]

74.46.630 Charges to patients. (1) The department will notify a contractor of the amount each medical care recipient is required to pay for care provided under the contract and the effective date of such required contribution. It is the contractor's responsibility to collect that portion of the cost of care from the patient, and to account for any authorized reduction from his or her contribution in accordance with rules and regulations established by the secretary.

(2) If a contractor receives documentation showing a change in the income or resources of a recipient which will mean a change in his or her contribution toward the cost of care, this shall be reported in writing to the department within seventy-two hours and in a manner specified by rules and regulations established by the secretary. If necessary, appropriate corrections will be made in the next facility statement, and a copy of documentation supporting the change will be attached. If increased funds for a recipient are received by a contractor, an amount determined by the department shall be allowed for clothing and personal and incidental expense, and the balance applied to the cost of care.

(3) The contractor shall accept the reimbursement rates established by the department as full compensation for all services provided under the contract, certification as specified by Title XIX, and licensure under chapter 18.51 RCW. The contractor shall not seek or accept additional compensation from or on behalf of a recipient for any or all such services. [1980 c 177 § 63.]

74.46.640 Suspension of payments. (1) Payments to a contractor may be withheld by the department in each of the following circumstances:

(a) A required report is not properly completed and filed by the contractor within the appropriate time period, including any approved extension. Payments will be released as soon as a properly completed report is received;

(b) State auditors, department auditors, or authorized personnel in the course of their duties are refused access to a nursing home or are not provided with existing appropriate records. Payments will be released as soon as such access or records are provided;

(c) A refund in connection with a settlement or rate adjustment is not paid by the contractor when due. The amount withheld will be limited to the unpaid amount of the refund; and

(d) Payment for the final thirty days of service under a contract will be held pending final settlement when the contract is terminated.

(2) No payment will be withheld until written notification of the suspension is provided to the contractor, stating the reason therefor. [1983 1st ex.s. c 67 § 34; 1980 c 177 § 64.]

74.46.650 Termination of payments. All payments to a contractor will end no later than sixty days after any of the following occurs:

(1) A contract expires, is terminated or is not renewed;

(2) A facility license is revoked; or

(3) A facility is decertified as a Title XIX facility; except that, in situations where the secretary determines that residents must remain in such facility for a longer period because of the resident's health or safety, payments for such residents shall continue. [1980 c 177 § 65.]

PART G
ADMINISTRATION

74.46.660 Conditions of participation. In order to participate in the prospective cost-related reimbursement system established by this chapter, the person or legal organization responsible for operation of a facility shall:

(1) Obtain a state certificate of need and/or federal capital expenditure review (section 1122) approval pursuant to chapter 70.38 RCW and Part 100, Title 42 CFR where required;

(2) Hold the appropriate current license;

(3) Hold current Title XIX certification;

(4) Hold a current contract to provide services under this chapter; and

(5) Comply with all provisions of the contract and all application regulations, including but not limited to the provisions of this chapter. [1980 c 177 § 66.]

74.46.670 Projected budget for new contractors. (1) Each new contractor shall submit a projected budget to the department at least sixty days before its contract will become effective.

(2) The projected budget shall cover the contractor's first twelve months of operation from the date the contractor will enter the program. It shall be prepared on forms and in accordance with rules and regulations established by the secretary. [1983 1st ex.s. c 67 § 35; 1980 c 177 § 67.]

74.46.680 Change of ownership. (1) On the effective date of a change of ownership the department's contract with the old owner shall be terminated. The old owner shall give the department sixty days' written notice of such termination. When certificate of need and/or section 1122 approval is required pursuant to chapter 70.38 RCW and Part 100, Title 42 CFR, for the new owner to acquire the facility, and the new owner wishes to continue to provide service to recipients without interruption, certificate of need and/or section 1122 approval shall be obtained before the old owner submits a notice of termination.

(2) If the new owner desires to participate in the cost-related reimbursement system, it shall meet the conditions specified in RCW 74.46.660 and shall submit a projected budget in accordance with RCW 74.46.670 no later than sixty days before the date of the change of ownership. The facility contract with the new owner shall be effective as of the date of the change of ownership. [1985 c 361 § 2; 1980 c 177 § 68.]

Savings—1985 c 361: See note following RCW 74.46.020.

74.46.690 Termination of contract—Settlement.

(1) When a facility contract is terminated for any reason, the old contractor shall submit final reports as required by RCW 74.46.040.

(2) Upon notification of a contract termination, the department shall determine by preliminary or final settlement calculations the amount of any overpayments

made to the contractor, including overpayments disputed by the contractor. If preliminary or final settlements are unavailable for any period up to the date of contract termination, the department shall make a reasonable estimate of any overpayment or underpayments for such periods. The reasonable estimate shall be based upon prior period settlements, available audit findings, the projected impact of prospective rates, and other information available to the department.

(3) The old contractor shall provide security, in a form deemed adequate by the department, in the amount of determined and estimated overpayments, whether or not the overpayments are the subject of good faith dispute. Security shall consist of:

(a) Withheld payments due the contractor; or

(b) A surety bond issued by a bonding company acceptable to the department; or

(c) An assignment of funds to the department; or

(d) Collateral acceptable to the department; or

(e) A purchaser's assumption of liability for the prior contractor's overpayment; or

(f) Any combination of (a), (b), (c), (d), or (e) of this subsection.

(4) A surety bond or assignment of funds shall:

(a) Be at least equal in amount to determined or estimated overpayments, whether or not the subject of good faith dispute, minus withheld payments;

(b) Be issued or accepted by a bonding company or financial institution licensed to transact business in Washington state;

(c) Be for a term sufficient to ensure effectiveness after final settlement and the exhaustion of administrative and judicial remedies: *Provided*, That the bond or assignment shall initially be for a term of five years, and shall be forfeited if not renewed thereafter in an amount equal to any remaining overpayment in dispute;

(d) Provide that the full amount of the bond or assignment, or both, shall be paid to the department if a properly completed final cost report is not filed in accordance with this chapter, or if financial records supporting this report are not preserved and made available to the auditor; and

(e) Provide that an amount equal to any recovery the department determines is due from the contractor at settlement, but not exceeding the amount of the bond and assignment, shall be paid to the department if the contractor does not pay the refund within sixty days following receipt of written demand or the conclusion of administrative or judicial proceedings to contest settlement issues.

(5) The department shall release any payment withheld as security if alternate security is provided under subsection (3) of this section in an amount equivalent to determined and estimated overpayments.

(6) If the total of withheld payments, bonds, and assignments is less than the total of determined and estimated overpayments, the unsecured amount of such overpayments shall be a debt due the state and shall become a lien against the real and personal property of the contractor from the time of filing by the department

with the county auditor of the county where the contractor resides or owns property, and the lien claim has preference over the claims of all unsecured creditors.

(7) The contractor shall file a properly completed final cost report in accordance with the requirements of this chapter, which shall be audited by the department. A final settlement shall be determined within ninety days following completion of the audit process, including any administrative review of the audit requested by the contractor.

(8) Following determination of settlement for all periods, security held pursuant to this section shall be released to the contractor after overpayments determined in connection with final settlement have been paid by the contractor. If the contractor contests the settlement determination in accordance with RCW 74.46.170, the department shall hold the security, not to exceed the amount of estimated unrecovered overpayments being contested, pending completion of the administrative appeal process.

(9) If, after calculation of settlements for any periods, it is determined that overpayments exist in excess of the value of security held by the state, the department may seek recovery of these additional overpayments as provided by law.

(10) If a contract is terminated solely in order for the same owner to contract with the department to deliver services to another classification of medical care recipients at the same facility, the contractor is not required to submit final cost reports, and security shall not be required. [1985 c 361 § 3; 1983 1st ex.s. c 67 § 36; 1980 c 177 § 69.]

Savings—1985 c 361: See note following RCW 74.46.020.

PART H PATIENT TRUST FUNDS

74.46.700 Trust fund establishment, reports. (1) Each contractor shall establish and maintain, as a service to the medical care recipient, a bookkeeping system incorporated into the business records for all recipient moneys entrusted to the contractor and received by the facility for the recipient.

(2) Such system will apply to a recipient who is:

(a) Incapable of handling his or her own money and the department or the recipient's guardian, relative, or physician makes written request of the facility to accept this responsibility; or

(b) Capable of handling his or her own money, but requests the facility in writing to accept this responsibility.

(3) The written requests provided in subsection (2) of this section shall be maintained by the contractor in the recipient's file.

(4) The recipient must be given at least a quarterly reporting of all financial transactions in his or her trust account. The representative payee, the guardian, and/or other designated agents of the recipient must be sent a copy of said reporting on the same basis as the recipient. [1980 c 177 § 70.]

74.46.710 Trust fund accounts—Charges for medical services. (1) The contractor shall maintain a subsidiary ledger with an account for each recipient for whom the contractor has money in trust.

(2) Each account and related supporting records shall:

(a) Be kept current;

(b) Be balanced each month; and

(c) Show in detail, with supporting verification, all moneys received on behalf of the recipient and the disposition of all moneys so received.

(3) Records of each account shall be available for audit pursuant to RCW 74.46.105 and shall be retained for a minimum of four years. When an account has attained the maximum limit established by rules and regulations promulgated by the secretary, the contractor will notify the department within five days.

(4) Any charge for medical services otherwise properly made to a recipient's trust account must be supported by a written denial of such services from the department. [1983 1st ex.s. c 67 § 37; 1980 c 177 § 71.]

74.46.720 Petty cash fund. (1) The contractor may maintain a petty cash fund originating from trust moneys of an amount determined by the department which shall be reasonable and necessary for the size of a facility and the needs of the recipients.

(2) Such petty cash fund shall be maintained as an imprest fund. All moneys over and above the trust fund petty cash amount shall be deposited intact, within twenty-four hours, in a trust fund checking account, separate and apart from any other bank account or accounts of the facility or other facilities.

(3) Cash deposits of recipient allowances from any source must be made intact to the trust account within one week from the time that payment of such allowances are received.

(4) Any related bankbooks, bank statements, checkbook, check register, and all voided and canceled checks, shall be made available for audit pursuant to RCW 74.46.105 and shall be retained by the facility for not less than four years.

(5) No service charges for such checking account shall be paid from recipient trust moneys.

(6) The trust account per bank shall be reconciled monthly to the trust account per patient ledgers. [1983 1st ex.s. c 67 § 38; 1980 c 177 § 72.]

74.46.730 Trust moneys control, disbursement. (1) Trust moneys shall be held in trust and are not to be turned over to anyone other than the recipient or the recipient's guardian without the written consent of the recipient, his designated agent as appointed by power of attorney, or an appropriate employee of the department designated by the secretary. Such trust moneys shall not be subject to attachment, execution, or other creditor remedies.

(2) When moneys are received, a receipt shall be filled out in duplicate; one copy shall be given to the person making payment of deposit, and the second copy shall be retained by the facility.

(3) Checks received by recipients shall be endorsed by the recipient. If the recipient is incapable of signing his or her name, the contractor shall secure the recipient's mark "X" followed by the printed name of the recipient and the signature of two witnesses.

(4) The recipient's trust account ledger sheet must be credited with any allowance received; referenced with the receipt number and supported by a copy of the deposit slip. [1980 c 177 § 73.]

74.46.740 Trust moneys availability. Moneys held in trust for any recipient shall be available for his or her personal and incidental needs when requested by the recipient or one of the persons designated in RCW 74.46.730(1). [1980 c 177 § 74.]

74.46.750 Procedure for refunding trust money. When a recipient is discharged and/or transferred, the balance of the recipient's trust account shall be returned either directly to the person within five days, or by mail. In either instance a receipt shall be obtained. [1980 c 177 § 75.]

74.46.760 Liquidation of trust fund. (1) When a recipient has died, the contractor shall obtain a receipt from the next of kin, guardian, or duly qualified agent when releasing the balance of money held in trust. If there is no identified next of kin, guardian, or duly qualified agent, the department shall be contacted in writing within seven days for assistance in the release of the money held in trust.

(2) A check or other document showing payment to such next of kin, guardian, or duly qualified agent will serve as a receipt.

(3) Where the recipient leaves the facility without authorization and his or her whereabouts are not known:

(a) The facility will make a reasonable attempt to locate the missing recipient using the agencies of state or local government;

(b) If the recipient cannot be located after ninety days, the facility shall notify the department of revenue of the existence of abandoned property, pursuant to chapter 63.29 RCW. The facility will be required to deliver to the department of revenue the balance of the recipient's trust fund account within twenty days following such notification. [1985 c 7 § 149; 1980 c 177 § 76.]

PART I MISCELLANEOUS

74.46.770 Contractor challenges—Laws, department decisions, etc. (1) If a contractor wishes to contest the way in which a rule or contract provision relating to the prospective cost-related reimbursement system was applied to the contractor by the department, it shall first pursue the administrative review process set forth in RCW 74.46.780.

(2) The administrative review and fair hearing process in RCW 74.46.780 need not be exhausted if a contractor wishes to challenge the legal validity of a statute, rule,

or contract provision. [1983 1st ex.s. c 67 § 39; 1980 c 177 § 77.]

74.46.780 Administrative review process. (1) Within twenty-eight days after a contractor is notified of an action or determination it wishes to challenge, the contractor shall request in writing that the secretary review such determination. The request shall be signed by the contractor or the licensed administrator of the facility, shall identify the challenged determination and the date thereof, and shall state as specifically as practicable the grounds for its contention that the determination was erroneous. Copies of any documentation on which the contractor intends to rely to support its position shall be included with the request.

(2) After receiving a request meeting the above criteria, the secretary or his designee will contact the contractor to schedule a conference for the earliest mutually convenient time. The conference shall be scheduled for no later than ninety days after a properly completed request is received unless both parties agree in writing to a specified later date.

(3) The contractor and appropriate representatives of the department shall attend the conference. In addition, representatives selected by the contractor may attend and participate. The contractor shall provide to the department in advance of the conference any documentation on which it intends to rely to support its contentions. The parties shall clarify and attempt to resolve the issues at the conference. If additional documentation is needed to resolve the issues, a second session of the conference shall be scheduled for not later than twenty-eight days after the initial session unless both parties agree in writing to a specific later date.

(4) A written decision by the secretary will be furnished to the contractor within sixty days after the conclusion of the conference.

(5) If the contractor desires review of an adverse decision of the secretary, it shall within twenty-eight days following receipt of such decision file a written application for an adjudicative proceeding. The proceeding is governed by chapter 34.05 RCW, the Administrative Procedure Act. [1989 c 175 § 159; 1983 1st ex.s. c 67 § 40; 1980 c 177 § 78.]

Effective date—1989 c 175: See note following RCW 34.05.010.

74.46.790 Denial, suspension, or revocation of license or provisional license—Penalties. The department is authorized to deny, suspend, or revoke a license or provisional license or, in lieu thereof or in addition thereto, assess monetary penalties of a civil nature not to exceed one thousand dollars per violation in any case in which it finds that the licensee, or any partner, officer, director, owner of five percent or more of the assets of the nursing home, or managing employee:

(1) Failed or refused to comply with the requirements of this chapter or the rules and regulations established hereunder; or

(2) Has knowingly or with reason to know made a false statement of a material fact in any record required by this chapter; or

(3) Refused to allow representatives or agents of the department to inspect all books, records, and files required by this chapter to be maintained or any portion of the premises of the nursing home; or

(4) Wilfully prevented, interfered with, or attempted to impede in any way the work of any duly authorized representative of the department and the lawful enforcement of any provision of this chapter; or

(5) Wilfully prevented or interfered with any representative of the department in the preservation of evidence of any violation of any of the provisions of this chapter or the rules and regulations promulgated hereunder. [1980 c 177 § 79.]

74.46.800 Rule-making authority—Review of standards. The department shall adopt, promulgate, amend, and rescind such administrative rules as are necessary to carry out the policies and purposes of this chapter. In addition, at least annually the department shall review changes to generally accepted accounting principles and generally accepted auditing standards as approved by the financial accounting standards board, and the American institute of certified public accountants, respectively. The department shall adopt by administrative rule those approved changes which it finds to be consistent with the policies and purposes of this chapter. [1980 c 177 § 80.]

74.46.820 Public disclosure. (1) Cost reports and their final audit reports shall be subject to public disclosure pursuant to the requirements of chapter 42.17 RCW. Notwithstanding any other provision of law, cost report schedules showing information on rental or lease of assets, the facility or corporate balance sheet, schedule of changes in financial position, statement of changes in equity-fund balances, notes to financial statements, and any accompanying schedules summarizing the adjustments to a contractor's financial records, reports on review of internal control and accounting procedures, and letters of comments or recommendations relating to suggested improvements in internal control or accounting procedures which are prepared pursuant to the requirements of this chapter shall be exempt from public disclosure.

This subsection does not prevent a contractor from having access to its own records or from authorizing an agent or designee to have access to the contractor's records.

(2) Regardless of whether any document or report submitted to the secretary pursuant to this chapter is subject to public disclosure, copies of such documents or reports shall be provided by the secretary, upon written request, to the legislature and to state agencies or state or local law enforcement officials who have an official interest in the contents thereof. [1985 c 361 § 14; 1983 1st ex.s. c 67 § 41; 1980 c 177 § 82.]

Savings—1985 c 361: See note following RCW 74.46.020.

74.46.840 Conflict with federal requirements. If any part of this chapter and RCW 18.51.145 and 74.09.120

is found by an agency of the federal government to be in conflict with federal requirements which are a prescribed condition to the receipts of federal funds to the state, the conflicting part of this chapter and RCW 18.51.145 and 74.09.120 is hereby declared inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and such finding or determination shall not affect the operation of the remainder of this chapter and RCW 18.51.145 and 74.09.120 in its application to the agencies concerned. In the event that any portion of this chapter and RCW 18.51.145 and 74.09.120 is found to be in conflict with federal requirements which are a prescribed condition to the receipt of federal funds, the secretary, to the extent that the secretary finds it to be consistent with the general policies and intent of chapters 18.51, 74.09, and 74.46 RCW, may adopt such rules as to resolve a specific conflict and which do meet minimum federal requirements. In addition, the secretary shall submit to the next regular session of the legislature a summary of the specific rule changes made and recommendations for statutory resolution of the conflict. [1983 1st ex.s. c 67 § 42; 1980 c 177 § 92.]

74.46.900 Severability—1980 c 177. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1980 c 177 § 93.]

74.46.901 Effective dates—1983 1st ex.s. c 67; 1980 c 177. (1) *Sections 2, 7, 83, 85, 86, and 91 of chapter 177, Laws of 1980 are necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect on April 4, 1980.

(2) **Section 27 of chapter 177, Laws of 1980 shall take effect on July 1, 1980.

(3) RCW 74.46.300, 74.46.360, 74.46.510, and 74.46.530 shall take effect on January 1, 1985.

(4) All other sections of chapter 74.46 RCW, except those which took effect before July 1, 1983, shall take effect on July 1, 1983, which shall be "the effective date of this act" where that term is used in ***chapter 177, Laws of 1980. [1983 1st ex.s. c 67 § 49; 1981 1st ex.s. c 2 § 10; 1980 c 177 § 94.]

Reviser's note: *(1) Sections 2, 7, and 83 are RCW 74.46.020, 74.46.070 and 74.46.830, respectively. Section 85 consists of amendments to RCW 74.42.610. Sections 86 and 91 are temporary, uncodified sections.

** (2) Section 27 is codified as RCW 74.46.270.

*** (3) For codification of sections of chapter 177, Laws of 1980, see Codification Tables, Volume 0.

Effective dates—1983 1st ex.s. c 67: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions and shall take effect on July 1, 1983, with the exception of section 28 of this act, which shall take effect on January 1, 1985." [1983 1st ex.s. c 67 § 51.] Section 28 consists of the 1983 amendment to RCW 74.46.530.

Severability—Effective dates—1981 1st ex.s. c 2: See notes following RCW 18.51.010.

74.46.902 Section captions—1980 c 177. Section captions as used in this act do not constitute any part of the law. [1980 c 177 § 89.]

74.46.905 Severability—1983 1st ex.s. c 67. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1983 1st ex.s. c 67 § 43.]

Chapter 74.50

**ALCOHOLISM AND DRUG ADDICTION
TREATMENT AND SUPPORT**

Sections

- 74.50.010 Legislative findings.
- 74.50.011 Additional legislative findings.
- 74.50.035 Shelter services—Eligibility.
- 74.50.040 Client assessment, treatment, and support services.
- 74.50.050 Treatment services.
- 74.50.055 Treatment services—Eligibility.
- 74.50.060 Shelter assistance program.
- 74.50.070 County multipurpose diagnostic center or detention center.
- 74.50.080 Rules—Discontinuance of service.
- 74.50.900 Short title.

Alcoholism, intoxication, and drug addiction treatment: Chapters 70-.96 and 70.96A RCW.

Applicability of chapter 74.08 RCW: RCW 74.08.900.

- 74.50.010 Legislative findings.** The legislature finds:
- (1) There is a need for reevaluation of state policies and programs regarding indigent alcoholics and drug addicts;
 - (2) The practice of providing a cash grant may be causing rapid caseload growth and attracting transients to the state;
 - (3) Many chronic public inebriates have been recycled through county detoxification centers repeatedly without apparent improvement;
 - (4) The assumption that all individuals will recover through treatment has not been substantiated;
 - (5) The state must modify its policies and programs for alcoholics and drug addicts and redirect its resources in the interests of these individuals, the community, and the taxpayers; and
 - (6) Treatment resources should be focused on persons willing to commit to rehabilitation; and
 - (7) It is the intent of the legislature that, to the extent possible, shelter services be developed under this chapter that do not result in the displacement of existing emergency shelter beds. To the extent that shelter operators do not object, it is the intent of the legislature that any vacant shelter beds contracted for under this chapter be made available to provide emergency temporary shelter to homeless individuals. [1988 c 163 § 1; 1987 c 406 § 2.]

74.50.011 Additional legislative findings. The legislature recognizes that alcoholism and drug addiction are treatable diseases and that most persons with this illness can recover. For this reason, this chapter provides a range of substance abuse treatment services. In addition,

the legislature recognizes that when these diseases have progressed to the stage where a person's alcoholism or drug addiction has resulted in physiological or organic damage or cognitive impairment, shelter services may be appropriate. The legislature further recognizes that distinguishing alcoholics and drug addicts from persons incapacitated due to physical disability or mental illness is necessary in order to provide an incentive for alcoholics and drug addicts to seek appropriate treatment and in order to avoid use of programs that are not oriented toward their conditions. [1989 1st ex.s. c 18 § 1.]

Study and report—1989 1st ex.s. c 18: "The department of social and health services shall:

- (1) Collect and maintain relevant demographic data regarding persons receiving or awaiting treatment services under this chapter;
- (2) Collect and maintain utilization data on inpatient treatment, outpatient treatment, shelter services, and medical services;
- (3) Monitor contracted service providers to ensure conformance with the omnibus appropriations act and the treatment priorities established in this chapter;
- (4) Report the results of the data collection and monitoring provided for in this section to appropriate committees of the legislature on or before December 1, 1989, and December 1, 1990." [1989 1st ex.s. c 18 § 7.]

Severability—1989 1st ex.s. c 18: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1989 1st ex.s. c 18 § 9.]

Effective date—1989 1st ex.s. c 18: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1989." [1989 1st ex.s. c 18 § 10.]

74.50.035 Shelter services—Eligibility. A person is eligible for shelter services under this chapter only if he or she:

- (1) Meets the financial eligibility requirements contained in RCW 74.04.005;
- (2) Is incapacitated from gainful employment due to a condition contained in subsection (3) of this section, which incapacity will likely continue for a minimum of sixty days; and
- (3) (a) Suffers from active addiction to alcohol or drugs manifested by physiological or organic damage resulting in functional limitation, based on documented evidence from a physician, psychologist, or alcohol or drug treatment professional who is determined by the department to be qualified to make this finding; or
(b) Suffers from active addiction to alcohol or drugs to the extent that impairment of the applicant's cognitive ability will not dissipate with sobriety or detoxification, based on documented evidence from a physician, psychologist, or alcohol or drug treatment professional who is determined by the department to be qualified to make this finding. [1989 1st ex.s. c 18 § 2.]

Study and report—Severability—Effective date—1989 1st ex.s. c 18: See notes following RCW 74.50.011.

74.50.040 Client assessment, treatment, and support services. (1) The department shall provide client assessment, treatment, and support services. The assessment services shall include diagnostic evaluation and arranging for admission into treatment or supported living programs.

(2) The department shall assist clients in making application for supplemental security benefits and in obtaining the necessary documentation required by the federal social security administration for such benefits. [1987 c 406 § 5.]

74.50.050 Treatment services. (1) The department shall establish a treatment program to provide, within available funds, alcohol and drug treatment services for indigent persons eligible under this chapter. The treatment services may include but are not limited to:

- (a) Intensive inpatient treatment services;
- (b) Recovery house treatment;
- (c) Outpatient treatment and counseling, including assistance in obtaining employment, and including a living allowance while undergoing outpatient treatment. The living allowance may not be used to provide shelter to clients in a dormitory setting that does not require sobriety as a condition of residence. The living allowance shall be administered on the clients' behalf by the outpatient treatment facility or other social service agency designated by the department. The department is authorized to pay the facility a fee for administering this allowance.

(2) No individual may receive treatment services under this section for more than six months in any two-year period: *Provided*, That the department may approve additional treatment and/or living allowance as an exception.

(3) The department may require an applicant or recipient selecting treatment to complete inpatient and recovery house treatment when, in the judgment of a designated assessment center, such treatment is necessary prior to providing the outpatient program. [1989 1st ex.s. c 18 § 5; 1988 c 163 § 3; 1987 c 406 § 6.]

Study and report—Severability—Effective date—1989 1st ex.s. c 18: See notes following RCW 74.50.011.

74.50.055 Treatment services—Eligibility. (1) A person shall not be eligible for treatment services under this chapter unless he or she:

- (a) Meets the financial eligibility requirements contained in RCW 74.04.005; and
- (b) Is incapacitated from gainful employment, which incapacity will likely continue for a minimum of sixty days.

(2) First priority for receipt of treatment services shall be given to pregnant women and parents of young children.

(3) In order to rationally allocate treatment services, the department may establish by rule caseload ceilings and additional eligibility criteria, including the setting of priorities among classes of persons for the receipt of treatment services. Any such rules shall be consistent with any conditions or limitations contained in any appropriations for treatment services. [1989 1st ex.s. c 18 § 4.]

Study and report—Severability—Effective date—1989 1st ex.s. c 18: See notes following RCW 74.50.011.

74.50.060 Shelter assistance program. (1) The department shall establish a shelter assistance program to provide, within available funds, shelter for persons eligible under this chapter. "Shelter," "shelter support," or "shelter assistance" means a facility under contract to the department providing room and board in a supervised living arrangement, normally in a group or dormitory setting, to eligible recipients under this chapter. This may include supervised domiciliary facilities operated under the auspices of public or private agencies. No facility under contract to the department shall allow the consumption of alcoholic beverages on the premises. The department may contract with counties and cities for such shelter services. To the extent possible, the department shall not displace existing emergency shelter beds for use as shelter under this chapter. In areas of the state in which it is not feasible to develop shelters, due to low numbers of people needing shelter services, or in which sufficient numbers of shelter beds are not available, the department may provide shelter through an intensive protective payee program, unless the department grants an exception on an individual basis for less intensive supervision.

(2) Persons continuously eligible for the general assistance—unemployable program since July 25, 1987, who transfer to the program established by this chapter, have the option to continue their present living situation, but only through a protective payee. [1989 1st ex.s. c 18 § 3; 1988 c 163 § 4; 1987 c 406 § 7.]

Study and report—Severability—Effective date—1989 1st ex.s. c 18: See notes following RCW 74.50.011.

74.50.070 County multipurpose diagnostic center or detention center. (1) If a county elects to establish a multipurpose diagnostic center or detention center, the alcoholism and drug addiction assessment service under RCW 74.50.040 may be integrated into the services provided by such a center.

(2) The center may be financed from funds made available by the department for alcoholism and drug addiction assessments under this chapter and funds contained in the department's budget for detoxification, involuntary detention, and involuntary treatment under chapters 70.96A and 71.05 RCW. The center may be operated by the county or pursuant to contract between the county and a qualified organization. [1987 c 406 § 8.]

74.50.080 Rules—Discontinuance of service. The department by rule may establish procedures for the administration of the services provided by this chapter. Any rules shall be consistent with any conditions or limitations on appropriations provided for these services. If funds provided for any service under this chapter have been fully expended, the department shall immediately discontinue that service. [1989 1st ex.s. c 18 § 6; 1989 c 3 § 2.]

Study and report—Severability—Effective date—1989 1st ex.s. c 18: See notes following RCW 74.50.011.

74.50.900 Short title. This chapter may be cited as the alcoholism and drug addiction treatment and support act. [1987 c 406 § 1.]

**Chapter 74.98
CONSTRUCTION**

Sections

74.98.010	Continuation of existing law.
74.98.020	Title, chapter, section headings not part of law.
74.98.030	Invalidity of part of title not to affect remainder.
74.98.040	Purpose—1959 c 26.
74.98.050	Repeals and saving.
74.98.060	Emergency—1959 c 26.

74.98.010 Continuation of existing law. The provisions of this title insofar as they are substantially the same as statutory provisions repealed by this chapter, and relating to the same subject matter, shall be construed as restatements and continuations, and not as new enactments. [1959 c 26 § 74.98.010.]

74.98.020 Title, chapter, section headings not part of law. Title headings, chapter headings, and section or subsection headings, as used in this title do not constitute any part of the law. [1959 c 26 § 74.98.020.]

74.98.030 Invalidity of part of title not to affect remainder. If any provision of this title, or its application to any person or circumstance is held invalid, the remainder of the title, the application of the provision to other persons or circumstances is not affected. [1959 c 26 § 74.98.030.]

74.98.040 Purpose—1959 c 26. It is the purpose and intent of this title to provide for the public welfare by making available, in conjunction with federal matching funds, such public assistance as is necessary to insure to recipients thereof a reasonable subsistence compatible with decency and health. [1959 c 26 § 74.98.040.]

74.98.050 Repeals and saving. See 1959 c 26 § 74.98.050.

74.98.060 Emergency—1959 c 26. This act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect immediately. [1959 c 26 § 74.98.060.]



Title 75

FOOD FISH AND SHELLFISH

Chapters

- 75.08 Administration.**
- 75.10 Enforcement—Penalties.**
- 75.12 Unlawful acts.**
- 75.20 Construction projects in state waters.**
- 75.24 Shellfish.**
- 75.25 Recreational licenses.**
- 75.28 Commercial licenses.**
- 75.30 License limitation programs.**
- 75.40 Compacts.**
- 75.44 Program to purchase fishing vessels and licenses.**
- 75.48 Salmon enhancement facilities—Bond issue.**
- 75.50 Salmon enhancement program.**
- 75.52 Volunteer cooperative fish and wildlife enhancement program.**
- 75.56 Salmon and steelhead trout—Management of resources.**
- 75.58 Aquaculture disease control.**
- 75.98 Construction.**

Development of intensive management plan for geoducks: RCW 79.96.906.

Halibut—Misbranding by failure to show proper name: RCW 69.04.315.

Hood Canal bridge, public sport fishing from: RCW 47.56.366.

Infractions: Chapter 7.84 RCW.

Material removed for channel or harbor improvement, or flood control—Use for public purpose: RCW 79.90.150.

Measurement of fish and fish products, fraud, penalty: RCW 9.45.122 through 9.45.126.

Shellfish protection districts: Chapter 90.72 RCW.

Chapter 75.08 ADMINISTRATION

Sections

- 75.08.010 Fisheries Code.
- 75.08.011 Definitions.
- 75.08.012 Duties of the department.
- 75.08.014 Authority of director to administer department—Qualifications of director.
- 75.08.020 Director—Research—Reports.
- 75.08.025 Agreements with department of defense.
- 75.08.040 Acquisition, use, and management of lands, water rights, rights of way, and personal property.
- 75.08.045 Acceptance of funds or property for damage claims or conservation of fish resources.
- 75.08.055 Agreements with United States to protect Columbia River fish—Fish cultural stations and protective devices.
- 75.08.065 Contracts and agreements for propagation of food fish or shellfish.
- 75.08.070 Territorial authority of director—Adoption of federal regulations and rules of fisheries commissions and compacts.
- 75.08.080 Scope of director's authority to adopt rules.
- 75.08.090 Adoption and certification of rules.

- 75.08.110 Unofficial printings of laws or rules—Approval required.
- 75.08.120 Director may designate fishing areas.
- 75.08.160 Right of entry—Aircraft operated by department.
- 75.08.206 Fisheries patrol officer compensation insurance—Medical aid.
- 75.08.208 Fisheries patrol officers—Relieved from active duty when injured—Compensation.
- 75.08.230 Disposition of moneys collected—Proceeds from sale of food fish or shellfish—Unanticipated receipts.
- 75.08.245 Sale of surplus salmon eggs.
- 75.08.255 Director may take or sell fish or shellfish—Restrictions on sale of salmon.
- 75.08.265 Salmon fishing by Wanapum (Sokulk) Indians.
- 75.08.274 Taking food fish for propagation or scientific purposes—Permit required.
- 75.08.285 Prevention and suppression of diseases and pests.
- 75.08.295 Planting food fish or shellfish—Permit required.
- 75.08.300 Release and recapture of salmon or steelhead unlawful—Exception—Penalty.
- 75.08.400 Legislative finding—1989 c 336.
- 75.08.410 Director's determination of salmon production costs.
- 75.08.420 State purchase of private salmon smolts.
- 75.08.430 State purchase of private salmon smolts—Bids.
- 75.08.440 State purchase of private salmon smolts—Private ocean ranching not authorized.
- 75.08.450 State purchase of private salmon smolts—Availability of excess salmon eggs.

Agricultural pesticide advisory board, departmental representation: RCW 17.21.230.

Ecological commission, departmental representation at meetings of: RCW 43.21A.170.

Energy facility site evaluation council, director a member: RCW 80.50.030.

Fisheries laboratory, appropriation: RCW 79.24.320.

Interagency committee for outdoor recreation, director member of: RCW 43.99.110.

Minimum flows and levels—Departmental authority exclusive—Other recommendations considered: RCW 90.03.247.

75.08.010 Fisheries Code. This title is known and may be cited as the "Fisheries Code of the State of Washington." [1983 1st ex.s. c 46 § 2; 1955 c 12 § 75.08.010. Prior: 1949 c 112 § 2; Rem. Supp. 1949 § 5780–200.]

75.08.011 Definitions. As used in this title or rules of the director, unless the context clearly requires otherwise:

- (1) "Director" means the director of fisheries.
- (2) "Department" means the department of fisheries.
- (3) "Person" means an individual or a public or private entity or organization. The term "person" includes local, state, and federal government agencies, and all business organizations.
- (4) "Fisheries patrol officer" means a person appointed and commissioned by the director, with authority to enforce this title, rules of the director, and other statutes as prescribed by the legislature. Fisheries patrol officers are peace officers.

(5) "Ex officio fisheries patrol officer" means a commissioned officer of a municipal, county, state, or federal agency having as its primary function the enforcement of criminal laws in general, while the officer is in the appropriate jurisdiction. The term "ex officio fisheries patrol officer" also includes wildlife agents, special agents of the national marine fisheries service, United States fish and wildlife special agents, state parks commissioned officers, department of natural resources enforcement officers, and United States forest service officers, while the agents and officers are within their respective jurisdictions.

(6) "To fish" and "to take" and their derivatives mean an effort to kill, injure, harass, or catch food fish or shellfish.

(7) "State waters" means all marine waters and fresh waters within ordinary high water lines and within the territorial boundaries of the state.

(8) "Offshore waters" means marine waters of the Pacific Ocean outside the territorial boundaries of the state, including the marine waters of other states and countries.

(9) "Concurrent waters of the Columbia river" means those waters of the Columbia river that coincide with the Washington–Oregon state boundary.

(10) "Resident" means a person who has for the preceding ninety days maintained a permanent abode within the state, has established by formal evidence an intent to continue residing within the state, and is not licensed to fish as a resident in another state.

(11) "Nonresident" means a person who has not fulfilled the qualifications of a resident.

(12) "Food fish" means those species of the classes Osteichthyes, Agnatha, and Chondrichthyes that shall not be fished for except as authorized by rule of the director. The term "food fish" includes all stages of development and the bodily parts of food fish species.

(13) "Shellfish" means those species of marine and freshwater invertebrates that shall not be taken except as authorized by rule of the director. The term "shellfish" includes all stages of development and the bodily parts of shellfish species.

(14) "Salmon" means all species of the genus *Oncorhynchus*, except those classified as game fish in Title 77 RCW, and includes:

Scientific Name	Common Name
<i>Oncorhynchus tshawytscha</i>	Chinook salmon
<i>Oncorhynchus kisutch</i>	Coho salmon
<i>Oncorhynchus keta</i>	Chum salmon
<i>Oncorhynchus gorbuscha</i>	Pink salmon
<i>Oncorhynchus nerka</i>	Sockeye salmon

(15) "Commercial" means related to or connected with buying, selling, or bartering. Fishing for food fish or shellfish with gear unlawful for fishing for personal use, or possessing food fish or shellfish in excess of the limits permitted for personal use are commercial activities.

(16) "To process" and its derivatives mean preparing or preserving food fish or shellfish.

(17) "Personal use" means for the private use of the individual taking the food fish or shellfish and not for sale or barter.

(18) "Angling gear" means a line attached to a rod and reel capable of being held in hand while landing the fish or a hand-held line operated without rod or reel to which are attached no more than two single hooks or one artificial bait with no more than four multiple hooks. [1989 c 218 § 1; 1983 1st ex.s. c 46 § 4; 1975 1st ex.s. c 152 § 2; 1955 c 12 § 75.04.010. Prior: 1949 c 112 § 1, part; Rem. Supp. 1949 § 5780–100, part. Formerly RCW 75.04.010.]

75.08.012 Duties of the department. The department shall preserve, protect, perpetuate and manage the food fish and shellfish in state waters and offshore waters.

The department shall conserve the food fish and shellfish resources in a manner that does not impair the resource. In a manner consistent with this goal, the department shall seek to maintain the economic well-being and stability of the fishing industry in the state. The department shall promote orderly fisheries and shall enhance and improve recreational and commercial fishing in this state. [1983 1st ex.s. c 46 § 5; 1975 1st ex.s. c 183 § 1; 1949 c 112 § 3, part; Rem. Supp. 1949 § 5780–201, part. Formerly RCW 43.25.020.]

State policy regarding improvement of recreational salmon fishing: See note following RCW 75.25.100.

75.08.014 Authority of director to administer department—Qualifications of director. The director of fisheries shall supervise the administration and operation of the department of fisheries and perform the duties prescribed by law. The director may appoint and employ necessary personnel. The director may delegate, in writing, to department personnel the duties and powers necessary for efficient operation and administration of the department.

Only persons having general knowledge of the fisheries resources and commercial and recreational fishing industry in this state are eligible for appointment as director. The director shall not have a financial interest in the fishing industry or a directly related industry. [1983 1st ex.s. c 46 § 6; 1953 c 207 § 10. Prior: (i) 1933 c 3 § 5; 1921 c 7 § 116; RRS § 10874. (ii) 1949 c 112 § 3, part; Rem. Supp. 1949 § 5780–201, part. (iii) 1949 c 112 § 5; Rem. Supp. 1949 § 5780–204. Formerly RCW 43.25.010.]

75.08.020 Director—Research—Reports. (1) The director shall investigate the habits, supply, and economic use of food fish and shellfish in state and offshore waters.

(2) The director shall make an annual report to the governor on the operation of the department and the statistics of the fishing industry.

(3) Subject to RCW 40.07.040, the director shall provide a comprehensive biennial report of all departmental operations to the chairs of the committees on natural resources and ways and means of the senate and house of representatives, including one copy to the staff

of each of the committees, to reflect the previous fiscal period. The format of the report shall be similar to reports issued by the department from 1964–1970 and the report shall include, but not be limited to, descriptions of all department activities including: Revenues generated, program costs, capital expenditures, personnel, special projects, new and ongoing research, environmental controls, cooperative projects, intergovernmental agreements, and outlines of ongoing litigation, recent court decisions and orders on major issues with the potential for state liability. The report shall describe the status of the resource and its recreational, commercial, and tribal utilization. The report shall be given to the house and senate committees on ways and means and the house and senate committees on natural resources and shall be made available to the public. [1988 c 36 § 31; 1987 c 505 § 71; 1985 c 208 § 1; 1985 c 93 § 1; 1983 1st ex.s. c 46 § 7; 1977 c 75 § 87; 1955 c 12 § 75.08.020. Prior: 1949 c 112 § 7(3), (6), (7); Rem. Supp. 1949 § 5780–206 (3), (6), (7).]

Director of wildlife to develop proposals to reinstate salmon and steelhead in Tilton and Cowlitz rivers: RCW 77.04.100.

75.08.025 Agreements with department of defense.

The director may negotiate agreements with the United States department of defense to coordinate fishing in state waters over which the department of defense has assumed control. [1983 1st ex.s. c 46 § 8; 1955 c 12 § 75.08.025. Prior: 1953 c 207 § 11.]

75.08.040 Acquisition, use, and management of lands, water rights, rights of way, and personal property. The director may acquire by gift, easement, purchase, lease, or condemnation lands, water rights, and rights of way, and construct and maintain necessary facilities for purposes consistent with this title.

The director may sell, lease, convey, or grant concessions upon real or personal property under the control of the department. [1983 1st ex.s. c 46 § 9; 1955 c 212 § 1; 1955 c 12 § 75.08.040. Prior: 1949 c 112 § 7(2); Rem. Supp. 1949 § 5780–206(2).]

Department of fisheries authorized to establish small works roster of public works contractors: RCW 39.04.150.

Tidelands reserved for recreational use and taking of fish and shellfish: RCW 79.94.390, 79.94.400.

75.08.045 Acceptance of funds or property for damage claims or conservation of fish resources. The director may accept money or real property from persons under conditions requiring the use of the property or money for the protection, rehabilitation, preservation, or conservation of the state food fish and shellfish resources, or in settlement of claims for damages to food fish and shellfish resources. The director shall only accept real property useful for the protection, rehabilitation, preservation, or conservation of these fisheries resources. [1983 1st ex.s. c 46 § 11; 1955 c 12 § 75.16.050. Prior: 1949 c 112 § 51; Rem. Supp. 1949 § 5780–325. Formerly RCW 75.16.050.]

75.08.055 Agreements with United States to protect Columbia River fish—Fish cultural stations and protective devices. (1) The director, and the director of wildlife with the concurrence of the wildlife commission, may enter into agreements with and receive funds from the United States for the construction, maintenance, and operation of fish cultural stations, laboratories, and devices in the Columbia River basin for improvement of feeding and spawning conditions for fish, for the protection of migratory fish from irrigation projects and for facilitating free migration of fish over obstructions.

(2) The director and the wildlife commission may acquire by gift, purchase, lease, easement, or condemnation the use of lands where the construction or improvement is to be carried on by the United States. [1987 c 506 § 94; 1983 1st ex.s. c 46 § 12; 1955 c 12 § 75.16.060. Prior: 1949 c 112 § 52; Rem. Supp. 1949 § 5780–326. Formerly RCW 75.16.060.]

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

75.08.065 Contracts and agreements for propagation of food fish or shellfish. (1) The director may enter into contracts and agreements with a person to secure food fish or shellfish or for the construction, operation, and maintenance of facilities for the propagation of food fish or shellfish.

(2) The director may enter into contracts and agreements to procure from private aquaculturists food fish or shellfish with which to stock state waters. [1985 c 458 § 7; 1983 1st ex.s. c 46 § 13; 1955 c 12 § 75.16.070. Prior: 1949 c 112 § 53; Rem. Supp. 1949 § 5780–327. Formerly RCW 75.16.070.]

Severability—1985 c 458: See RCW 75.50.900.

75.08.070 Territorial authority of director—Adoption of federal regulations and rules of fisheries commissions and compacts. Consistent with federal law, the director's authority extends to all areas and waters within the territorial boundaries of the state, to the offshore waters, and to the concurrent waters of the Columbia river.

Consistent with federal law, the director's authority extends to fishing in offshore waters by residents of this state.

The director may adopt rules consistent with the regulations adopted by the United States department of commerce for the offshore waters. The director may adopt rules consistent with the recommendations or regulations of the Pacific marine fisheries commission, Columbia river compact, the Pacific salmon commission as provided in chapter 75.40 RCW, or the international Pacific halibut commission. [1989 c 130 § 1; 1983 1st ex.s. c 46 § 14; 1955 c 12 § 75.08.070. Prior: 1949 c 112 § 6, part; Rem. Supp. 1949 § 5780–205, part.]

75.08.080 Scope of director's authority to adopt rules. (1) The director may adopt, amend, or repeal rules as follows:

(a) Specifying the times when the taking of food fish or shellfish is lawful or unlawful.

(b) Specifying the areas and waters in which the taking and possession of food fish or shellfish is lawful or unlawful.

(c) Specifying and defining the gear, appliances, or other equipment and methods that may be used to take food fish or shellfish, and specifying the times, places, and manner in which the equipment may be used or possessed.

(d) Regulating the possession, disposal, landing, and sale of food fish or shellfish within the state, whether acquired within or without the state.

(e) Regulating the prevention and suppression of diseases and pests affecting food fish or shellfish.

(f) Regulating the size, sex, species, and quantities of food fish or shellfish that may be taken, possessed, sold, or disposed of.

(g) Specifying the statistical and biological reports required from fishermen, dealers, boathouses, or processors of food fish or shellfish.

(h) Classifying species of marine and freshwater life as food fish or shellfish.

(i) Classifying the species of food fish and shellfish that may be used for purposes other than human consumption.

(j) Other rules necessary to carry out this title and the purposes and duties of the department.

(2) Subsections (1)(a), (b), (c), (d), and (f) of this section do not apply to private tideland owners and lessees of state tidelands, when they take or possess oysters, clams, cockles, borers, or mussels, excluding razor clams, produced on their own private tidelands or their leased state tidelands for personal use.

(3) Except for subsection (1)(g) of this section, this section does not apply to private sector cultured aquatic products as defined in RCW 15.85.020. Subsection (1)(g) of this section does apply to such products. [1985 c 457 § 17; 1983 1st ex.s. c 46 § 15; 1980 c 55 § 1; 1955 c 12 § 75.08.080. Prior: 1949 c 112, § 6, part; Rem. Supp. 1949 § 5780-205, part.]

75.08.090 Adoption and certification of rules. (1) Rules of the director shall be adopted by the director or a designee in accordance with chapter 34.05 RCW.

(2) Rules of the director shall be admitted as evidence in the courts of the state when accompanied by an affidavit from the director or a designee certifying that the rule has been lawfully adopted and the affidavit is prima facie evidence of the adoption of the rule.

(3) The director may designate department employees to act on the director's behalf in the adoption and certification of rules. [1983 1st ex.s. c 46 § 16; 1973 c 93 § 1; 1955 c 12 § 75.08.090. Prior: 1949 c 112 § 6, part; Rem. Supp. 1949 § 5780-205, part.]

75.08.110 Unofficial printings of laws or rules—Approval required. Provisions of this title or rules of the director shall not be printed in a pamphlet unless the pamphlet is clearly marked as an unofficial version. This section does not apply to printings approved by the director. [1983 1st ex.s. c 46 § 17; 1955 c 12 § 75.08.110. Prior: 1949 c 112 § 16; Rem. Supp. 1949 § 5780-215.]

75.08.120 Director may designate fishing areas. The director may designate the boundaries of fishing areas by driving piling or by establishing monuments or by description of landmarks or section lines and directional headings. [1983 1st ex.s. c 46 § 18; 1955 c 12 § 75.08-120. Prior: 1949 c 112 § 10; Rem. Supp. 1949 § 5780-209.]

75.08.160 Right of entry—Aircraft operated by department. The director, fisheries patrol officers, ex officio fisheries patrol officers, and department employees may enter upon any land or waters and remain there while performing their duties without liability for trespass.

It is lawful for aircraft operated by the department to land and take off from the beaches or waters of the state. It is unlawful for a person to interfere with the operation of these aircraft. [1983 1st ex.s. c 46 § 19; 1955 c 12 § 75.08.160. Prior: 1949 c 112 § 13; Rem. Supp. 1949 § 5780-212.]

75.08.206 Fisheries patrol officer compensation insurance—Medical aid. The director shall provide compensation insurance for fisheries patrol officers, insuring these employees against injury or death in the performance of enforcement duties not covered under the workers' compensation act of the state. The beneficiaries and the compensation and benefits under the compensation insurance shall be the same as provided in chapter 51.32 RCW, and the compensation insurance also shall provide for medical aid and hospitalization to the extent and amount as provided in RCW 51.36.010 and 51.36.020. [1983 1st ex.s. c 46 § 20; 1971 ex.s. c 289 § 73; 1953 c 207 § 14. Formerly RCW 43.25.047.]

Effective date—Severability—1971 ex.s. c 289: See RCW 51-98.060 and 51.98.070.

75.08.208 Fisheries patrol officers—Relieved from active duty when injured—Compensation. The director shall relieve from active duty fisheries patrol officers who are injured in the performance of their official duties to such an extent as to be incapable of active service. While relieved from active duty, the employees shall receive one-half of their salary less any compensation received through the provisions of RCW 41.40.200, 41.40.220, and 75.08.206. [1983 1st ex.s. c 46 § 22; 1957 c 216 § 1. Formerly RCW 75.08.024.]

75.08.230 Disposition of moneys collected—Proceeds from sale of food fish or shellfish—Unanticipated receipts. (1) Except as provided in this section, state and county officers receiving the following moneys shall deposit them in the state general fund:

- (a) The sale of licenses required under this title;
- (b) The sale of property seized or confiscated under this title;
- (c) Fines and forfeitures collected under this title;
- (d) The sale of real or personal property held for department purposes;
- (e) Rentals or concessions of the department;

(f) Moneys received for damages to food fish, shellfish or department property; and

(g) Gifts.

(2) The director shall make weekly remittances to the state treasurer of moneys collected by the department.

(3) All fines and forfeitures collected or assessed by a district court for a violation of this title or rule of the director shall be remitted as provided in chapter 3.62 RCW.

(4) Proceeds from the sale of food fish or shellfish taken in test fishing conducted by the department, to the extent that these proceeds exceed the estimates in the budget approved by the legislature, may be allocated as unanticipated receipts under RCW 43.79.270 to reimburse the department for unanticipated costs for test fishing operations in excess of the allowance in the budget approved by the legislature.

(5) Proceeds from the sale of salmon and salmon eggs by the department, to the extent these proceeds exceed estimates in the budget approved by the legislature, may be allocated as unanticipated receipts under RCW 43.79.270. Allocations under this subsection shall be made only for hatchery operations partially or wholly financed by sources other than state general revenues or for purposes of processing human consumable salmon for disposal.

(6) Moneys received by the director under RCW 75.08.045, to the extent these moneys exceed estimates in the budget approved by the legislature, may be allocated as unanticipated receipts under RCW 43.79.270. Allocations under this subsection shall be made only for the specific purpose for which the moneys were received, unless the moneys were received in settlement of a claim for damages to food fish or shellfish, in which case the moneys may be expended for the conservation of these resources.

(7) Proceeds from the sale of herring spawn on kelp permits by the department, to the extent those proceeds exceed estimates in the budget approved by the legislature, may be allocated as unanticipated receipts under RCW 43.79.270. Allocations under this subsection shall be made only for herring management, enhancement, and enforcement. [1989 c 176 § 4; 1987 c 202 § 230; 1984 c 258 § 332; 1983 1st ex.s. c 46 § 23; 1979 c 151 § 175; 1977 ex.s. c 327 § 33; 1975 1st ex.s. c 223 § 1; 1969 ex.s. c 199 § 31; 1969 ex.s. c 16 § 1; 1965 ex.s. c 72 § 2; 1955 c 12 § 75.08.230. Prior: 1951 c 271 § 2; 1949 c 112 § 25; Rem. Supp. 1949 § 5780-223.]

Intent—1987 c 202: See note following RCW 2.04.190.

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

Intent—1984 c 258: See note following RCW 3.46.120.

Severability—Effective date—1977 ex.s. c 327: See notes following RCW 75.25.100.

75.08.245 Sale of surplus salmon eggs. The department may supply, at a reasonable charge, surplus salmon eggs to a person for use in the cultivation of salmon. The department shall not intentionally create a surplus of salmon to provide eggs for sale. The department shall only sell salmon eggs from stocks that are not suitable

for salmon population rehabilitation or enhancement in state waters in Washington. All sales or transfers shall be consistent with the department's egg transfer and aquaculture disease control regulations as now existing or hereafter amended. Prior to department determination that eggs of a salmon stock are surplus and available for sale, the department shall assess the productivity of each watershed that is suitable for receiving eggs.

The salmon enhancement advisory council, created in *RCW 75.48.120, shall consider egg sales at each meeting. [1988 c 115 § 1; 1983 1st ex.s. c 46 § 25; 1974 ex.s. c 23 § 1; 1971 c 35 § 4. Formerly RCW 75.16.120.]

*Reviser's note: RCW 75.48.120 expired December 31, 1989.

Sale of surplus salmon eggs and carcasses by volunteer cooperative fish projects: RCW 75.52.035.

75.08.255 Director may take or sell fish or shellfish—Restrictions on sale of salmon. (1) The director may take or remove any species of fish or shellfish from the waters or beaches of the state.

(2) The director may sell food fish or shellfish caught or taken during department test fishing operations. Salmon taken in test fishing operations shall only be sold during a season open to commercial fishing in the district in which the test fishing is conducted.

(3) The director shall not sell inedible salmon for human consumption. Salmon and carcasses may be given to state institutions or schools or to economically depressed people, unless the salmon are unfit for human consumption. Salmon not fit for human consumption may be sold by the director for animal food, fish food, or for industrial purposes.

(4) In the sale of surplus salmon from state hatcheries, the division of purchasing shall require that a portion of the surplus salmon be processed and returned to the state by the purchaser. The processed salmon shall be fit for human consumption and in a form suitable for distribution to individuals. The division of purchasing shall establish the required percentage at a level that does not discourage competitive bidding for the surplus salmon. The measure of the percentage is the combined value of all of the surplus salmon sold. The department of social and health services shall distribute the processed salmon to economically depressed individuals and state institutions pursuant to rules adopted by the department of social and health services. [1985 c 28 § 1; 1983 1st ex.s. c 46 § 26; 1979 c 141 § 382; 1969 ex.s. c 16 § 2; 1965 ex.s. c 72 § 1; 1955 c 12 § 75.12.130. Prior: 1949 c 112 § 41; Rem. Supp. 1949 § 5780-315. Formerly RCW 75.12.130.]

75.08.265 Salmon fishing by Wanapum (Sokulk) Indians. The director may issue permits to members of the Wanapum band of Indians to take salmon for ceremonial and subsistence purposes. The department shall establish the areas in which the permits are valid and shall regulate the times for and manner of taking the salmon. This section does not create a right to fish commercially. [1983 1st ex.s. c 46 § 27; 1981 c 251 § 2. Formerly RCW 75.12.310.]

Legislative findings—1981 c 251: "The legislature finds that the Sokulk Indians, otherwise known as the Wanapum band of Indians, have made a significant effort to maintain their traditional tribal culture, including the activity of taking salmon for ceremonial and subsistence purposes. The legislature further finds that previously the state has encouraged ceremonial and subsistence fishing by the Wanapums by chapter 210, Laws of 1939 and other permission. Therefore, the intent of the legislature in enacting RCW 75.08.265 is to recognize the cultural importance of salmon fishing to only the Wanapum Indians by authorizing these people a ceremonial and subsistence fishery, while also preserving the state's ability to conserve and manage the salmon resource." [1983 1st ex.s. c 46 § 62; 1981 c 251 § 1. Formerly RCW 75.12.300.]

75.08.274 Taking food fish for propagation or scientific purposes—Permit required. Except by permit of the director, it is unlawful to take food fish or shellfish for propagation or scientific purposes within state waters. [1983 1st ex.s. c 46 § 28; 1971 c 35 § 1; 1955 c 12 § 75.16.010. Prior: 1949 c 112 § 42; Rem. Supp. 1949 § 5780-316. Formerly RCW 75.16.010.]

75.08.285 Prevention and suppression of diseases and pests. The director may prohibit the introduction, transportation or transplanting of food fish, shellfish, organisms, material, or other equipment which in the director's judgment may transmit any disease or pests affecting food fish or shellfish. [1983 1st ex.s. c 46 § 29; 1955 c 12 § 75.16.030. Prior: 1949 c 112 § 43; Rem. Supp. 1949 § 5780-317. Formerly RCW 75.16.030.]

75.08.295 Planting food fish or shellfish—Permit required. Except by permit of the director, it is unlawful to release, plant, or place food fish or shellfish in state waters. [1983 1st ex.s. c 46 § 30; 1955 c 12 § 75.16.020. Prior: 1949 c 112 § 40; Rem. Supp. 1949 § 5780-314. Formerly RCW 75.16.020.]

75.08.300 Release and recapture of salmon or steelhead unlawful—Exception—Penalty. (1) It is unlawful for any person other than the United States, an Indian tribe recognized as such by the federal government, the state, a subdivision of the state, or a municipal corporation or an agency of such a unit of government to release salmon or steelhead trout into the public waters of the state and subsequently to recapture and commercially harvest such salmon or trout. This section shall not prevent any person from rearing salmon or steelhead trout in pens or in a confined area under circumstances where the salmon or steelhead trout are confined and never permitted to swim freely in open water.

(2) A violation of this section constitutes a gross misdemeanor. [1985 c 457 § 12.]

75.08.400 Legislative finding—1989 c 336. The legislature finds that:

(1) The fishery resources of Washington are critical to the social and economic needs of the citizens of the state;

(2) Salmon production is dependent on both wild and artificial production;

(3) The department of fisheries is directed to enhance Washington's salmon runs; and

(4) Full utilization of the state's salmon rearing facilities is necessary to enhance commercial and recreational fisheries. [1989 c 336 § 1.]

Severability—1989 c 336: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1989 c 336 § 7.]

75.08.410 Director's determination of salmon production costs. The director shall determine the cost of operating all state-funded salmon production facilities at full capacity and shall provide this information with the department's biennial budget request. [1989 c 336 § 2.]

Severability—1989 c 336: See note following RCW 75.08.400.

75.08.420 State purchase of private salmon smolts. The director may contract with cooperatives or private aquaculturists for the purchase of quality salmon smolts for release into public waters if all department fish rearing facilities are operating at full capacity. The intent of cooperative and private sector contracting is to explore the opportunities of cooperatively producing more salmon for the public fisheries without incurring additional capital expense for the department. [1989 c 336 § 3.]

Severability—1989 c 336: See note following RCW 75.08.400.

75.08.430 State purchase of private salmon smolts—Bids. If the director elects to contract with cooperatives or private aquaculturists for the purpose of purchasing quality salmon smolts, contracting shall be done by a competitive bid process. In awarding contracts to private contractors, the director shall give preference to nonprofit corporations. The director shall establish the criteria for the contract, which shall include but not be limited to species, size of smolt, stock composition, quantity, quality, rearing location, release location, and other pertinent factors. [1989 c 336 § 4.]

Severability—1989 c 336: See note following RCW 75.08.400.

75.08.440 State purchase of private salmon smolts—Private ocean ranching not authorized. Nothing in *this act shall authorize the practice of private ocean ranching. Privately contracted smolts become the property of the state at the time of release. [1989 c 336 § 5.]

***Reviser's note:** "This act" [1989 c 336] consists of the enactment of RCW 75.08.400 through 75.08.450.

Severability—1989 c 336: See note following RCW 75.08.400.

75.08.450 State purchase of private salmon smolts—Availability of excess salmon eggs. The department may make available to private contractors salmon eggs in excess of department hatchery needs for the purpose of contract rearing to release the smolts into public waters. The priority of providing eggs to contract rearing shall be higher than providing eggs to aquaculture purposes which are not destined for release into Washington public waters. [1989 c 336 § 6.]

Severability—1989 c 336: See note following RCW 75.08.400.

Chapter 75.10

ENFORCEMENT—PENALTIES

Sections

75.10.010	Enforcement of laws and rules by fisheries patrol officers.
75.10.020	Inspection, searches, and arrest without warrant.
75.10.030	Seizure of property without warrant—Deposit of cash bond in lieu.
75.10.040	Service of warrants and processes—Assistance or obstruction of fisheries patrol officers.
75.10.050	Venue for violations occurring in offshore waters.
75.10.060	Concurrent jurisdiction of courts of limited jurisdiction and superior courts.
75.10.070	Service of summons and forfeiture if unable to prosecute violator.
75.10.080	Sale or destruction of property forfeited—Notice of sale.
75.10.090	Authority to issue search warrants.
75.10.100	Authority of attorney general if prosecuting attorney defaults.
75.10.110	General penalties for violations—Penalties for violation of salmon laws and rules.
75.10.120	Forfeiture of license for violations.
75.10.130	Suspension of salmon licenses for repeated violations.
75.10.140	Revocation of geoduck licenses.
75.10.150	Wholesale fish dealers—Accounting of commercial harvest—Penalties.
75.10.160	Enforcement of watercraft registration and boating safety education.

75.10.010 Enforcement of laws and rules by fisheries patrol officers. (1) Fisheries patrol officers and ex officio fisheries patrol officers within their respective jurisdictions, shall enforce this title, rules of the director, and other statutes as prescribed by the legislature.

(2) When acting within the scope of subsection (1) of this section and when an offense occurs in the presence of the fisheries patrol officer who is not an ex officio fisheries patrol officer, the fisheries patrol officer may enforce all criminal laws of the state. The fisheries patrol officer must have successfully completed the basic law enforcement academy course sponsored by the criminal justice training commission, or a supplemental course in criminal law enforcement as approved by the department and the criminal justice training commission and provided by the department or the criminal justice training commission, prior to enforcing the criminal laws of the state.

(3) Any liability or claim of liability which arises out of the exercise or alleged exercise of authority by a fisheries patrol officer rests with the department of fisheries unless the fisheries patrol officer acts under the direction and control of another agency or unless the liability is otherwise assumed under a written agreement between the department of fisheries and another agency.

(4) Fisheries patrol officers may serve and execute warrants and processes issued by the courts. [1985 c 155 § 1; 1983 1st ex.s. c 46 § 32; 1980 c 78 § 133; 1955 c 12 § 75.08.150. Prior: 1949 c 112 § 22; Rem. Supp. 1949 § 5780–220. Formerly RCW 75.08.150.]

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

Fisheries patrol officers, duties related to sanitary control of shellfish: Chapter 69.30 RCW.

75.10.020 Inspection, searches, and arrest without warrant. (1) Fisheries patrol officers may inspect and search without warrant a person, boat, fishing equipment, vehicle, conveyance, container, or property used in catching, processing, storing, or marketing food fish or shellfish which they have reason to believe contain evidence of violations of this title or rules of the director. This authority does not extend to quarters in a boat, building, or other property used exclusively as a private domicile.

(2) Fisheries patrol officers and ex officio fisheries patrol officers may arrest without warrant a person they have reason to believe is in violation of this title or rules of the director. [1983 1st ex.s. c 46 § 33; 1955 c 12 § 75.08.170. Prior: 1949 c 112 § 19; Rem. Supp. 1949 § 5780–218. Formerly RCW 75.08.170.]

75.10.030 Seizure of property without warrant—Deposit of cash bond in lieu. Fisheries patrol officers and ex officio fisheries patrol officers may seize without warrant food fish or shellfish they have reason to believe have been taken, killed, transported, or possessed in violation of this title or rule of the director and may seize without warrant a boat, vehicle, gear, appliance, or other article they have reason to believe is held with intent to violate or has been used in violation of this title or rule of the director. The articles seized shall be subject to forfeiture to the state, regardless of ownership. Articles seized may be recovered by their owner by depositing into court a cash bond equal to the value of the seized articles but not more than five thousand dollars. The cash bond is subject to forfeiture to the state in lieu of the seized article. [1983 1st ex.s. c 46 § 34; 1955 c 12 § 75.36.010. Prior: 1949 c 112 § 76(1); Rem. Supp. 1949 § 5780–602(1). Formerly RCW 75.36.010.]

75.10.040 Service of warrants and processes—Assistance or obstruction of fisheries patrol officers. (1) Fisheries patrol officers and ex officio fisheries patrol officers may serve and execute warrants and processes issued by the courts to enforce this title and rules of the director.

(2) To enforce this title or rules of the director, fisheries patrol officers may call to their aid any equipment, boat, vehicle, or airplane, or ex officio fisheries patrol officer.

(3) It is unlawful to knowingly or wilfully resist or obstruct a fisheries patrol officer in the discharge of the officer's duties. [1983 1st ex.s. c 46 § 35; 1980 c 78 § 134; 1955 c 12 § 75.08.200. Prior: 1949 c 112 § 21; Rem. Supp. 1949 § 5780–219. Formerly RCW 75.08.200.]

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

75.10.050 Venue for violations occurring in offshore waters. Violations of this title or rules of the director occurring in the offshore waters may be prosecuted in a county bordering on the Pacific Ocean, or a county in which the food fish or shellfish are landed. [1983 1st ex.s. c 46 § 36; 1955 c 12 § 75.08.280. Prior: 1949 c 112

§ 79; Rem. Supp. 1949 § 5780–605. Formerly RCW 75.08.280.]

75.10.060 Concurrent jurisdiction of courts of limited jurisdiction and superior courts. Courts of limited jurisdiction, as defined in RCW 3.02.010, and superior courts have concurrent jurisdiction to impose penalties and order forfeitures provided for in this title. [1983 1st ex.s. c 46 § 37; 1955 c 12 § 75.36.040. Prior: 1949 c 112 § 76(4); Rem. Supp. 1949 § 5780–602(4). Formerly RCW 75.36.040.]

75.10.070 Service of summons and forfeiture if unable to prosecute violator. If the state is unable to prosecute the person responsible for the violation for which the seizure was made, the court may forfeit the articles upon a hearing held after service of summons as provided in RCW 4.28.100 describing the articles seized. [1983 1st ex.s. c 46 § 38; 1955 c 12 § 75.36.030. Prior: 1949 c 112 § 76(3); Rem. Supp. 1949 § 5780–602(3). Formerly RCW 75.36.030.]

75.10.080 Sale or destruction of property forfeited—Notice of sale. The director may sell at public auction or destroy articles forfeited under this chapter. The time, place, and manner of sale shall be determined by the director. Notice of the time and place of sale shall be published once a week for at least two consecutive weeks prior to the sale in at least one newspaper of general circulation in the county in which the sale is to be held. [1983 1st ex.s. c 46 § 39; 1955 c 12 § 75.36.050. Prior: 1951 c 271 § 38; 1949 c 112 § 76(5); Rem. Supp. 1949 § 5780–602(5). Formerly RCW 75.36.050.]

75.10.090 Authority to issue search warrants. Upon complaint showing probable cause to believe that food fish or shellfish unlawfully caught, taken, killed, controlled, possessed, or transported is concealed or kept in a place or container, the court shall issue a search warrant and have the place or container searched for food fish or shellfish and records pertaining to the food fish or shellfish. [1983 1st ex.s. c 46 § 40; 1955 c 12 § 75.08.180. Prior: 1949 c 112 § 23; Rem. Supp. 1949 § 5780–221. Formerly RCW 75.08.180.]

75.10.100 Authority of attorney general if prosecuting attorney defaults. If the prosecuting attorney of the county in which a violation of this title or rule of the director occurs fails to file an information against the alleged violator, the attorney general upon request of the director may file an information in the superior court of the county and prosecute the case in place of the prosecuting attorney. The director may request prosecution by the attorney general if thirty days have passed since the director informed the county prosecuting attorney of the alleged violation. [1983 1st ex.s. c 46 § 41; 1949 c 112 § 24; Rem. Supp. 1949 § 5780–222. Formerly RCW 75.08.275, 43.25.070.]

75.10.110 General penalties for violations—Penalties for violation of salmon laws and rules. (1) Unless otherwise provided for in this title, a person who violates

this title or rules of the director or who aids or abets in the violation is guilty of a gross misdemeanor, and upon a conviction thereof shall be punished by imprisonment in the county jail of the county in which the offense is committed for not less than thirty days or more than one year, or by a fine of not less than twenty-five dollars or more than one thousand dollars, or by both such fine and imprisonment. Food fish or shellfish involved in the violation shall be forfeited to the state. The court may forfeit seized articles involved in the violation.

(2) The director may specify by rule, when not inconsistent with applicable statutes, that violation of a specific rule is an infraction under chapter 7.84 RCW. A person taking or possessing salmon in violation of this title or rules of the director shall be punished by a fine in an amount not more than five thousand dollars if the salmon involved in the violation have a market value greater than two hundred fifty dollars. This fine is in addition to the punishment resulting under subsection (1) of this section. [1987 c 380 § 16; 1983 1st ex.s. c 46 § 42; 1979 ex.s. c 99 § 1; 1955 c 12 § 75.08.260. Prior: 1949 c 112 § 75; Rem. Supp. 1949 § 5780–601. Formerly RCW 75.08.260.]

Effective date—Severability—1987 c 380: See RCW 7.84.900 and 7.84.901.

75.10.120 Forfeiture of license for violations. (1) Upon conviction of a person for a violation of this title or rule of the director, in addition to the penalty imposed by law, the court may forfeit the person's license.

(2) The court shall forfeit the license: (a) Upon conviction for a violation of this title or rule of the director prescribing the length, depth, or construction of fishing gear, or (b) upon two or more convictions in a five-year period of any violation of this title or rule of the director. The license shall remain forfeited pending appeal. The director may prohibit the issuance of a license to a person convicted of two or more violations of this title or rule of the director in a five-year period or prescribe the conditions under which the license may be issued. [1983 1st ex.s. c 46 § 43; 1979 ex.s. c 99 § 2; 1957 c 171 § 5; 1955 c 12 § 75.28.380. Prior: 1949 c 112 § 77; Rem. Supp. 1949 § 5780–603. Formerly RCW 75.28.380.]

75.10.130 Suspension of salmon licenses for repeated violations. Upon two or more convictions of a person in a five-year period for violating salmon fishing rules of the director which restrict fishing times or areas, the director shall deny all salmon fishing privileges and suspend all salmon fishing licenses of that person for one year. A person may not avoid this penalty by transferring a commercial salmon fishing license.

For the purposes of this section, the term "conviction" means a final conviction in a state or municipal court. An unvacated forfeiture of bail or collateral deposited to secure the defendant's appearance in court, the payment of a fine, a plea of guilty, or a finding of guilt on a violation of this title is equivalent to a conviction regardless of whether the imposition of sentence is deferred or the penalty is suspended. [1983 1st ex.s. c 46 § 44; 1979 ex.s. c 99 § 3. Formerly RCW 75.28.384.]

75.10.140 Revocation of geoduck licenses. (1) In addition to the penalties prescribed in RCW 75.10.110 and 75.10.120, the director may revoke geoduck diver licenses or geoduck tract licenses held by a person if:

(a) Within a five-year period that person is convicted or has an unvacated bail forfeiture for two or more violations of this title or rules of the director relating to geoduck licensing or harvesting; or

(b) The department of natural resources suspended or canceled the lease or harvesting agreement under RCW 79.96.080.

(2) When a geoduck tract licensee permits a person to harvest geoducks on that tract, each violation by that person of this title or rules of the director relating to geoduck licensing or harvesting resulting in: (a) Conviction or unvacated forfeiture of bail; or (b) suspension or cancellation of the lease or harvesting agreement by the department of natural resources under RCW 79.96.080; shall be imputed to the tract licensee for the purpose of computing the number of violations by the tract licensee under subsection (1) of this section.

(3) Except as provided in subsection (4) of this section, the director shall not issue a geoduck diver license or geoduck tract license to a person who has had a license revoked. This prohibition is effective for one year after the revocation.

(4) Appeals of revocations under this section may be taken under the judicial review provisions of chapter 34.05 RCW. If the license revocation is determined to be invalid, the director shall reissue the license to that person. [1984 c 80 § 4; 1983 1st ex.s. c 46 § 45; 1979 ex.s. c 141 § 7. Formerly RCW 75.28.288.]

75.10.150 Wholesale fish dealers—Accounting of commercial harvest—Penalties. Since violation of the rules of the director relating to the accounting of the commercial harvest of food fish and shellfish result in damage to the resources of the state, liability for damage to food fish and shellfish resources is imposed on a wholesale fish dealer for violation of a provision in chapter 75.28 RCW or a rule of the director related to the accounting of the commercial harvest of food fish and shellfish and shall be for the actual damages or for damages imposed as follows:

(1) For violation of rules requiring the timely presentation to the department of documents relating to the accounting of commercial harvest, fifty dollars for each of the first fifteen documents in a series and ten dollars for each subsequent document in the same series. If documents relating to the accounting of commercial harvest of food fish and shellfish are lost or destroyed and the wholesale dealer notifies the department in writing within seven days of the loss or destruction, the director shall waive the requirement for timely presentation of the documents.

(2) For violation of rules requiring accurate and legible information relating to species, value, harvest area, or amount of harvest, twenty-five dollars for each of the first five violations of this subsection following July 28, 1985, and fifty dollars for each violation after the first five violations.

(3) For violations of rules requiring certain signatures, fifty dollars for each of the first two violations and one hundred dollars for each subsequent violation. For the purposes of this subsection, each signature is a separate requirement.

(4) For other violations of rules relating to the accounting of the commercial harvest, fifty dollars for each separate violation. [1985 c 248 § 5.]

Wholesale fish dealers—Documentation of commercial harvest: RCW 75.28.315.

75.10.160 Enforcement of watercraft registration and boating safety education. Fisheries patrol officers are authorized to enforce all provisions of chapter 88.02 RCW and any rules adopted thereunder, and the provisions of RCW 43.51.400 and any rules adopted thereunder. [1989 c 393 § 16.]

Commission to adopt rules: RCW 88.36.110.

**Chapter 75.12
UNLAWFUL ACTS**

Sections	
75.12.010	Limitations on commercial fishing for salmon in Puget Sound waters unlawful.
75.12.015	Limitations on commercial fishing for chinook or coho salmon in Pacific Ocean and Straits of Juan de Fuca.
75.12.020	Fishing near dams or obstructions.
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75.12.430	False or misleading information.
75.12.650	Commercial salmon fishing—Authorized gear.

75.12.010 Limitations on commercial fishing for salmon in Puget Sound waters unlawful. (1) Except as provided in this section, it is unlawful to fish commercially for salmon within the waters described in subsection (2) of this section.

(2) All waters east and south of a line commencing at a concrete monument on Angeles Point in Clallam

county near the mouth of the Elwha River on which is inscribed "Angeles Point Monument" (latitude 48° 9'3" north, longitude 123° 33'01" west of Greenwich Meridian); thence running east on a line 81° 30' true across the flashlight and bell buoy off Partridge Point and thence continued to longitude 122° 40' west; thence north to the southerly shore of Sinclair Island; thence along the southerly shore of the island to the most easterly point of the island; thence 46° true to Carter Point, the most southerly point of Lummi Island; thence northwesterly along the westerly shore line of Lummi Island to where the shore line intersects line of longitude 122° 40' west; thence north to the mainland, including: The southerly portion of Hale Passage, Bellingham Bay, Padilla Bay, Fidalgo Bay, Guemes Channel, Skagit Bay, Similk Bay, Saratoga Passage, Holmes Harbor, Possession Sound, Admiralty Inlet, Hood Canal, Puget Sound, and their inlets, passages, waters, waterways, and tributaries.

(3) The director may authorize commercial fishing for sockeye salmon within the waters described in subsection (2) of this section during the period June 10 to July 25 and for other salmon from the second Monday of September through November 30, except during the hours between 4:00 p.m. of Friday and 4:00 p.m. of the following Sunday.

(4) The director may authorize commercial fishing for salmon with gill net gear prior to the second Monday in September within the waters of Hale Passage, Bellingham Bay, Samish Bay, Padilla Bay, Fidalgo Bay, Guemes Channel, Skagit Bay, and Similk Bay, to wit: Those waters northerly and easterly of a line commencing at Stanwood, thence along the south shore of Skagit Bay to Rocky Point on Camano Island; thence northerly to Polnell Point on Whidbey Island.

(5) Whenever the director determines that a stock or run of salmon cannot be harvested in the usual manner, and that the stock or run of salmon may be in danger of being wasted and surplus to natural or artificial spawning requirements, the director may authorize units of gill net and purse seine gear in any number or equivalents, by time and area, to fully utilize the harvestable portions of these salmon runs for the economic well being of the citizens of this state. Gill net and purse seine gear other than emergency and test gear authorized by the director shall not be used in Lake Washington.

(6) The director may authorize commercial fishing for pink salmon in each odd-numbered year from August 1 through September 1 in the waters lying inside of a line commencing at the most easterly point of Dungeness Spit and thence projected to Point Partridge on Whidbey Island and a line commencing at Olele Point and thence projected easterly to Bush Point on Whidbey Island. [1983 1st ex.s. c 46 § 46; 1973 1st ex.s. c 220 § 2; 1971 ex.s. c 283 § 13; 1955 c 12 § 75.12.010. Prior: 1949 c 112 § 28; Rem. Supp. 1949 § 5780-301.]

Legislative declaration: "The preservation of the fishing industry and food fish and shellfish resources of the state of Washington is vital to the state's economy, and effective measures and remedies are necessary to prevent the depletion of these resources." [1973 1st ex.s. c 220 § 1.]

Effective dates—1971 ex.s. c 283: See note following RCW 75.28.113.

75.12.015 Limitations on commercial fishing for chinook or coho salmon in Pacific Ocean and Straits of Juan de Fuca. Except as provided in this section, it is unlawful to fish commercially for chinook or coho salmon in the Pacific Ocean and the Straits of Juan de Fuca.

(1) The director may authorize commercial fishing for coho salmon from June 16 through October 31.

(2) The director may authorize commercial fishing for chinook salmon from March 15 through October 31. [1983 1st ex.s. c 46 § 48; 1955 c 12 § 75.18.020. Prior: 1953 c 147 § 3. Formerly RCW 75.18.020.]

75.12.020 Fishing near dams or obstructions. It is unlawful to fish for or take food fish at a rack, dam, or other obstruction or in the waters and on the beaches within one mile below a rack, dam, or other obstruction except as provided by rule of the director. [1983 1st ex.s. c 46 § 49; 1955 c 12 § 75.12.020. Prior: 1949 c 112 § 37; Rem. Supp. 1949 § 5780-311.]

75.12.031 Unlawful to fish in or interfere with fishways or protective devices. It is unlawful to fish for food fish in a fishway, fish guard, or other protective device, or to break open, damage, or interfere with the proper operation of a fishway, fish guard, other protective device or fish collection device. [1983 1st ex.s. c 46 § 51; 1955 c 12 § 75.20.070. Prior: 1949 c 112 § 39; Rem. Supp. 1949 § 5780-313. Formerly RCW 75.20.070.]

75.12.040 Unlawful salmon fishing gear. (1) It is unlawful to use, operate, or maintain a gill net which exceeds 250 fathoms in length or a drag seine in the waters of the Columbia river for catching salmon.

(2) It is unlawful to construct, install, use, operate, or maintain within state waters a pound net, round haul net, lampara net, fish trap, fish wheel, scow fish wheel, set net, weir, or fixed appliance for catching salmon. The director may authorize the use of this gear for scientific investigations.

(3) The department of fisheries, in coordination with the Oregon department of fish and wildlife, shall adopt rules to regulate the use of monofilament in gill net webbing on the Columbia river. [1985 c 147 § 1; 1983 1st ex.s. c 46 § 52; 1955 c 12 § 75.12.040. Prior: 1949 c 112 § 29; Rem. Supp. 1949 § 5780-303.]

75.12.070 Molesting food fish or shellfish unlawful—Permit required for use of explosives. (1) Except as provided by rule of the director, it is unlawful to shoot, gaff, snag, snare, spear, stone, or otherwise molest food fish or shellfish in state waters.

(2) It is unlawful to use or discharge an explosive substance in state waters, except by permit of the director. [1983 1st ex.s. c 46 § 53; 1955 c 12 § 75.12.070. Prior: 1949 c 112 § 38; Rem. Supp. 1949 § 5780-312.]

75.12.090 Theft of food fish, shellfish, or fishing gear. (1) It is unlawful to take food fish or shellfish from a building, vehicle, vessel, container, or fishing gear

thereby depriving the rightful owner of the food fish or shellfish.

(2) It is unlawful to steal or molest gear used to take food fish or shellfish for either commercial purposes or personal use. [1983 1st ex.s. c 46 § 54; 1982 c 14 § 1; 1955 c 12 § 75.12.090. Prior: 1949 c 112 § 33; Rem. Supp. 1949 § 5780-307.]

75.12.100 Purchase or possession of food fish or shellfish taken unlawfully. It is unlawful to purchase, handle, deal in, sell, or possess food fish or shellfish contrary to this title or the rules of the director. [1983 1st ex.s. c 46 § 55; 1955 c 12 § 75.12.100. Prior: 1949 c 112 § 34; Rem. Supp. 1949 § 5780-308.]

75.12.115 Commercial fishing for crayfish unlawful—Exceptions. It is unlawful to fish commercially for crayfish in state waters except where crayfish have been commercially cultured or as permitted by rules of the director. [1983 1st ex.s. c 46 § 56; 1971 ex.s. c 106 § 1.]

75.12.120 Waste of food fish or shellfish unlawful—Exception—Timely processing required. It is unlawful to waste or destroy food fish or shellfish wantonly, except for disposals authorized by RCW 69.30.110.

A processor shall not purchase or engage a quantity of food fish or shellfish that cannot be processed within sixty hours after the food fish or shellfish are taken from the water, unless the food fish or shellfish are preserved in good marketable condition. [1985 c 51 § 7; 1983 1st ex.s. c 46 § 57; 1955 c 12 § 75.12.120. Prior: 1949 c 112 § 36; Rem. Supp. 1949 § 5780-310.]

75.12.125 Commingling of commercial and personal use food fish or shellfish unlawful. It is unlawful to commingle food fish or shellfish taken for personal use with food fish or shellfish taken for commercial purposes prior to or during canning or processing. The words "personal use only, not for sale" shall be embossed in a legible manner on the lid or cover of each container used in canning or preserving food fish or shellfish taken for personal use. [1983 1st ex.s. c 46 § 58.]

75.12.132 Commercial net fishing for salmon in tributaries of Columbia river. (1) It is unlawful to fish for or take salmon commercially with a net within the waters of the tributaries and sloughs described in subsection (2) of this section which flow into or are connected with the Columbia river.

(2) The director shall adopt rules defining geographical boundaries of the following Columbia river tributaries and sloughs:

- (a) Washougal river;
- (b) Camas slough;
- (c) Lewis river;
- (d) Kalama river;
- (e) Cowlitz river;
- (f) Elokomin river;
- (g) Elokomin sloughs;

(h) Skamokawa sloughs;

(i) Grays river;

(j) Deep river;

(k) Grays bay.

(3) The director may authorize commercial net fishing for salmon in the tributaries and sloughs from September 1 to November 30 if the time, areas and level of effort are regulated in order to maximize the recreational fishing opportunity while minimizing excess returns of fish to hatcheries. The director shall not authorize commercial net fishing if a significant catch of steelhead would occur. [1984 c 80 § 5; 1983 c 245 § 1.]

75.12.140 Reef net salmon fishing gear—Reef net areas specified. It is unlawful to fish for salmon with reef net fishing gear in state waters, except in the reef net areas described in this section.

(1) Point Roberts reef net fishing area includes those waters within 250 feet on each side of a line projected 129° true from a point at longitude 123° 01' 15" W. latitude 48° 58' 38" N. to a point one mile distant, as such description is shown upon the United States Coast and Geodetic Survey map numbered 6300, published September, 1941, in Washington, D.C., eleventh edition.

(2) Cherry Point reef net fishing area includes those waters inland and inside the 10-fathom line between lines projected 205° true from points on the mainland at longitude 122° 44' 54" latitude 48° 51' 48" and longitude 122° 44' 18" latitude 48° 51' 33", as such descriptions are shown upon the United States Coast and Geodetic Survey map numbered 6380, published March, 1947, in Washington, D.C., eighth edition.

(3) Lummi Island reef net fishing area includes those waters inland and inside a line projected from Village Point 208° true to a point 900 yards distant, thence 129° true to the point of intersection with a line projected 259° true from the shore of Lummi Island 122° 40' 42" latitude 48° 41' 32", as such descriptions are shown upon the United States Coast and Geodetic Survey map numbered 6380, published March, 1947, in Washington, D.C., eighth edition, revised 11-25-57, save and except that there shall be excluded therefrom all waters lying inside of a line projected 259° true from a point at 122° 40' 42" latitude 48° 41' 32" to a point 300 yards distant from high tide, thence in a northerly direction to the United States Coast and Geodetic Survey reference mark number 2, 1941-1950, located on that point on Lummi Island known as Lovers Point, as such descriptions are shown upon the United States Coast and Geodetic Survey map number 6380 as aforesaid. The term "Village Point" as used herein shall be construed to mean a point of location on Village Point, Lummi Island, at the mean high tide line on a true bearing of 43° 53' a distance of 457 feet to the center of the chimney of a wood frame house on the east side of the county road. Said chimney and house being described as Village Point Chimney on page 612 of the United States Coast and Geodetic Survey list of geographic positions No. G-5455, Rosario Strait.

(4) Sinclair Island reef net fishing area includes those waters inland and inside a line projected from the

northern point of Sinclair Island to Boulder reef, thence 200° true to the northwesterly point of Sinclair Island, as such descriptions are shown upon the United States Coast and Geodetic Survey map numbered 6380, published March, 1947, in Washington, D.C., eighth edition.

(5) Flat Point reef net fishing area includes those waters within a radius of 175 feet of a point off Lopez Island located at longitude 122° 55' 24" latitude 48° 32' 33", as such description is shown upon the United States Coast and Geodetic Survey map numbered 6380, published March, 1947, in Washington, D.C., eighth edition.

(6) Lopez Island reef net fishing area includes those waters within 400 yards of shore between lines projected true west from points on the shore of Lopez Island at longitude 122° 55' 04" latitude 48° 31' 59" and longitude 122° 55' 54" latitude 48° 30' 55", as such descriptions are shown upon the United States Coast and Geodetic Survey map numbered 6380, published March, 1947, in Washington, D.C., eighth edition.

(7) Iceberg Point reef net fishing area includes those waters inland and inside a line projected from Davis Point on Lopez Island to the west point of Long Island, thence to the southern point of Hall Island, thence to the eastern point at the entrance to Jones Bay, and thence to the southern point at the entrance to Mackaye Harbor on Lopez Island; and those waters inland and inside a line projected 320° from Iceberg Point light on Lopez Island, a distance of 400 feet, thence easterly to the point on Lopez Island at longitude 122° 53' 00" latitude 48° 25' 39", as such descriptions are shown upon the United States Coast and Geodetic Survey map numbered 6380, published March, 1947, in Washington, D.C., eighth edition.

(8) Aleck Bay reef net fishing area includes those waters inland and inside a line projected from the southwestern point at the entrance to Aleck Bay on Lopez Island at longitude 122° 51' 11" latitude 48° 25' 14" southeasterly 800 yards to the submerged rock shown on U.S.G.S. map number 6380, thence northerly to the cove on Lopez Island at longitude 122° 50' 49" latitude 48° 25' 42", as such descriptions are shown upon the United States Coast and Geodetic Survey map numbered 6380, published March, 1947, in Washington, D.C., eighth edition.

(9) Shaw Island reef net fishing area number 1 includes those waters within 300 yards of shore between lines projected true south from points on Shaw Island at longitude 122° 56' 14" latitude 48° 33' 28" and longitude 122° 57' 29" latitude 48° 32' 58", as such descriptions are shown upon the United States Coast and Geodetic Survey map numbered 6380, published March, 1947, in Washington, D.C., eighth edition.

(10) Shaw Island reef net fishing area number 2 includes those waters inland and inside a line projected from Point George on Shaw Island to the westerly point of Neck Point on Shaw Island, as such description is shown upon the United States Coast and Geodetic Survey map numbered 6380, published March, 1947, in Washington, D.C., eighth edition.

(11) Stuart Island reef net fishing area number 1 includes those waters within 600 feet of the shore of

Stuart Island between lines projected true east from points at longitude 123° 10' 47" latitude 48° 39' 47" and longitude 123° 10' 47" latitude 48° 39' 33", as such descriptions are shown upon the United States Coast and Geodetic Survey map numbered 6380, published March, 1947, in Washington, D.C., eighth edition.

(12) Stuart Island reef net fishing area number 2 includes those waters within 250 feet of Gossip Island, also known as Happy Island, as such description is shown upon the United States Coast and Geodetic Survey map numbered 6380, published March, 1947, in Washington, D.C., eighth edition.

(13) Johns Island reef net fishing area includes those waters inland and inside a line projected from the eastern point of Johns Island to the northwestern point of Little Cactus Island, thence northwesterly to a point on Johns Island at longitude 123° 09' 24" latitude 48° 39' 59", as such descriptions are shown upon the United States Coast and Geodetic Survey map numbered 6380, published March, 1947, in Washington, D.C., eighth edition.

(14) Battleship Island reef net fishing area includes those waters lying within 350 feet of Battleship Island, as such description is shown upon the United States Coast and Geodetic Survey map numbered 6380, published March, 1947, in Washington, D.C., eighth edition.

(15) Open Bay reef net fishing area includes those waters lying within 150 feet of shore between lines projected true east from a point on Henry Island at longitude 123° 11' 34 1/2" latitude 48° 35' 27 1/2" at a point 250 feet south, as such descriptions are shown upon the United States Coast and Geodetic Survey map numbered 6380, published March, 1947, in Washington, D.C., eighth edition.

(16) Mitchell Reef net fishing area includes those waters within a line beginning at the rock shown on U.S.G.S. map number 6380 at longitude 123° 10' 56" latitude 48° 34' 49 1/2", and projected 50 feet northwesterly, thence southwesterly 250 feet, thence southeasterly 300 feet, thence northeasterly 250 feet, thence to the point of beginning, as such descriptions are shown upon the United States Coast and Geodetic Survey map numbered 6380, published March, 1947, in Washington, D.C., eighth edition.

(17) Smugglers Cove reef fishing area includes those waters within 200 feet of shore between lines projected true west from points on the shore of San Juan Island at longitude 123° 10' 29" latitude 48° 33' 50" and longitude 123° 10' 31" latitude 48° 33' 45", as such descriptions are shown upon the United States Coast and Geodetic Survey map numbered 6380, published March, 1947, in Washington, D.C., eighth edition.

(18) Andrews Bay reef net fishing area includes those waters lying within 300 feet of the shore of San Juan Island between a line projected true south from a point at the northern entrance of Andrews Bay at longitude 123° 09' 53 1/2" latitude 48° 33' 00" and the cable crossing sign in Andrews Bay, at longitude 123° 09' 45" latitude 48° 33' 04", as such descriptions are shown upon the United States Coast and Geodetic Survey map

numbered 6380, published March, 1947, in Washington, D.C., eighth edition.

(19) Orcas Island reef net fishing area includes those waters inland and inside a line projected true west a distance of 1,000 yards from the shore of Orcas Island at longitude 122° 57' 40" latitude 48° 41' 06" thence northeasterly to a point 500 feet true west of Point Doughty, then true east to Point Doughty, as such descriptions are shown upon the United States Coast and Geodetic Survey map numbered 6380, published March, 1947, in Washington, D.C., eighth edition. [1983 1st ex.s. c 46 § 59; 1965 c 64 § 1; 1961 c 236 § 1; 1959 c 309 § 1; 1955 c 276 § 2.]

75.12.155 Unauthorized fishing vessels entering state waters. In order to protect the welfare of the citizens of the state of Washington by protecting the natural resources of the state from illegal fishing in state waters, commercial fishing vessels which are not authorized by law to fish for salmon in Washington state waters cannot enter Washington state waters unless all salmon fishing gear is stowed below deck or placed in a position so that it is not readily available for fishing. [1987 c 262 § 1.]

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

(2) The director may authorize the use of nets for taking salmon in the waters described in subsection (1) of this section for scientific investigations. [1983 1st ex.s. c 46 § 60; 1957 c 108 § 3.]

Preamble—1957 c 108: "The state has a vital interest in the salmon resources of the Pacific Ocean both within and beyond the territorial limits of the state, in that a large number of such salmon spawn in its fresh water streams, migrate to the waters of the Pacific Ocean and, in response to their anadromous cycle, return to the fresh water streams to spawn.

Expansion of fishing for salmon by the use of nets in waters of the eastern Pacific Ocean, which has occurred in the past year, will result in a substantial depletion of salmon originating within the state because the salmon runs are intercepted before they separate to move in

toward the rivers of their origin. Oregon, California and Canada, through their respective fisheries agencies, have likewise expressed a deep concern over this problem since portions of such salmon originate within their respective jurisdictions. Short of absolute prohibition, it appears to be presently impracticable to regulate salmon net fishing in such waters of the Pacific Ocean by any known scientific fisheries management techniques in order to insure adequate salmon escapement to the three Pacific Coast states and Canada, the reason being that salmon stocks and races are so commingled in such Pacific Ocean waters that they are indistinguishable as to origin until they enter the harbors, bays, straits and estuaries of the respective jurisdictions.

Canada, through its authorized officials, has proposed to prohibit its nationals from net fishing for salmon in Pacific Ocean waters provided the United States or the three Pacific Coast states apply such appropriate conservation measures to their respective citizens. Inasmuch as there is presently no congressional legislation prohibiting such fishing, and inasmuch as authorized officials of the state department of the United States have expressed a desire to have the states act in this area, the Pacific Marine Fisheries Commission has proposed and recommended appropriate legislation to the three Pacific Coast states to insure the survival of their valuable salmon resources." [1957 c 108 § 2. Formerly RCW 75.12.200.]

75.12.230 Possession or transportation in Pacific Ocean of salmon taken by other than troll lines or angling gear. Within the waters described in RCW 75.12-.210, it is unlawful to transport or possess salmon on board a vessel carrying fishing gear of a type other than troll lines or angling gear, unless accompanied by a certificate issued by a state or country showing that the salmon have been lawfully taken within the territorial waters of the state or country. [1983 1st ex.s. c 46 § 61; 1963 c 234 § 2; 1957 c 108 § 5.]

Preamble—1957 c 108: See note following RCW 75.12.210.

75.12.320 Participation of non-Indians in Indian fishery forbidden—Exceptions, definitions, penalty. (1) Except as provided in subsection (2) of this section, it is unlawful for a person who is not a treaty Indian fisherman to participate in the taking of food fish or shellfish in a treaty Indian fishery, or to be on board a vessel, or associated equipment, operating in a treaty Indian fishery.

(2) (a) The spouse, forebears, siblings, children, and grandchildren of a treaty Indian fisherman may assist the fisherman in exercising treaty Indian fishing rights when the treaty Indian fisherman is present at the fishing site.

(b) Other treaty Indian fishermen with off-reservation treaty fishing rights in the same usual and accustomed places, whether or not the fishermen are members of the same tribe or another treaty tribe, may assist a treaty Indian fisherman in exercising treaty Indian fishing rights when the treaty Indian fisherman is present at the fishing site.

(c) Biologists approved by the department may be on board a vessel operating in a treaty Indian fishery.

(3) For the purposes of this section:

(a) "Treaty Indian fisherman" means a person who may exercise treaty Indian fishing rights as determined under *United States v. Washington*, 384 F. Supp. 312 (W.D. Wash. 1974), or *Sohappy v. Smith*, 302 F. Supp. 899 (D. Oregon 1969), and post-trial orders of those courts;

(b) "Treaty Indian fishery" means a fishery open to only treaty Indian fishermen by tribal or federal regulation;

(c) "To participate" and its derivatives mean an effort to operate a vessel or fishing equipment, provide immediate supervision in the operation of a vessel or fishing equipment, or otherwise assist in the fishing operation, or to claim possession of a share of the catch.

(4) A violation of this section involving salmon constitutes illegal fishing and is subject to the sanctions provided under RCW 75.10.130. [1983 1st ex.s. c 46 § 63; 1982 c 197 § 1.]

75.12.390 Bottom trawling unlawful—Areas specified. Commercial bottom trawling for food fish and shellfish is unlawful in all areas of Hood Canal south of a line projected from Tala Point to Foulweather Bluff and in Puget Sound south of a line projected from Foulweather Bluff to Double Bluff and including all marine waters east of Whidbey Island and Camano Island. [1989 c 172 § 1.]

75.12.400 Unlawful to lift or set shellfish pots in Hood Canal at night. It is unlawful to lift or set shellfish pots from the waters of Hood Canal south of a line between the abutments of the Hood Canal bridge from one hour after sunset until one hour before sunrise. [1983 1st ex.s. c 46 § 64; 1982 c 14 § 2.]

75.12.410 Damaging department signs. It is unlawful to remove, possess, alter, or damage signs posted by authority of the director. [1983 1st ex.s. c 46 § 66; 1955 c 12 § 75.08.130. Prior: 1949 c 112 § 15; Rem. Supp. 1949 § 5780-214. Formerly RCW 75.08.130.]

75.12.420 Failure to make required reports and returns. It is unlawful for a fisherman, dealer, or processor of food fish or shellfish to fail to make a report or return as required by this title or rule of the director. [1983 1st ex.s. c 46 § 67; 1955 c 12 § 75.08.210. Prior: 1949 c 112 § 18; Rem. Supp. 1949 § 5780-217. Formerly RCW 75.08.210.]

75.12.430 False or misleading information. It is unlawful to give intentionally false or misleading information to the department as to the time, area, or waters in which food fish or shellfish were taken. [1983 1st ex.s. c 46 § 68; 1955 c 12 § 75.08.220. Prior: 1949 c 112 § 14; Rem. Supp. 1949 § 5780-213. Formerly RCW 75.08.220.]

75.12.650 Commercial salmon fishing—Authorized gear. It is unlawful to fish commercially for salmon using fishing gear not authorized for commercial salmon fishing by rule of the director. The director shall not authorize angling gear or other personal use gear for commercial salmon fishing. [1983 1st ex.s. c 46 § 69; 1969 ex.s. c 23 § 1.]

Effective date—1969 ex.s. c 23: "The provisions of this act shall become effective January 1, 1970." [1969 ex.s. c 23 § 2.] This applies to RCW 75.12.650.

Chapter 75.20

CONSTRUCTION PROJECTS IN STATE WATERS

Sections	
75.20.040	Fish guards required on diversion devices—Penalties, remedies for failure.
75.20.050	Review of permit applications to divert or store water—Water flow policy.
75.20.060	Fishways required in dams, obstructions—Penalties, remedies for failure.
75.20.061	Director may modify inadequate fishways and fish guards.
75.20.090	If fishway is impractical, fish hatchery or cultural facility may be provided in lieu.
75.20.100	Hydraulic projects or other work—Plans and specifications—Approval—Criminal penalty—Emergencies.
75.20.103	Hydraulic projects for irrigation, stock watering, or streambank stabilization—Plans and specifications—Approval—Criminal penalty—Emergencies.
75.20.106	Hydraulic projects—Civil penalty.
75.20.110	Columbia River anadromous fish sanctuary—Restrictions.
75.20.130	Hydraulic appeals board—Members—Jurisdiction—Procedures.
75.20.140	Hydraulic appeals board—Procedures.
75.20.150	Processing of permits or authorizations for emergency water withdrawal and facilities to be expedited.
75.20.300	Mt. St. Helens eruption—Flood-control, sediment retention site acquisition, and dredging operations in rivers—Fish resource protection—Expiration of section.
75.20.310	Operation and maintenance of fish collection facility on Toutle river.

75.20.040 Fish guards required on diversion devices—Penalties, remedies for failure. A diversion device used for conducting water from a lake, river, or stream for any purpose shall be equipped with a fish guard approved by the director to prevent the passage of fish into the diversion device. The fish guard shall be maintained at all times when water is taken into the diversion device. The fish guards shall be installed at places and times prescribed by the director upon thirty days' notice to the owner of the diversion device. It is unlawful for the owner of a diversion device to fail to comply with this section.

Each day the diversion device is not equipped with an approved fish guard is a separate offense. If within thirty days after notice to equip a diversion device the owner fails to do so, the director may take possession of the diversion device and close the device until it is properly equipped. Expenses incurred by the department constitute the value of a lien upon the diversion device and upon the real and personal property of the owner. Notice of the lien shall be filed and recorded in the office of the county auditor of the county in which the action is taken. [1983 1st ex.s. c 46 § 70; 1955 c 12 § 75.20.040. Prior: 1949 c 112 § 45; Rem. Supp. 1949 § 5780-319.]

75.20.050 Review of permit applications to divert or store water—Water flow policy. It is the policy of this state that a flow of water sufficient to support game fish and food fish populations be maintained at all times in the streams of this state.

The director of ecology shall give the director of fisheries and the director of wildlife notice of each application for a permit to divert or store water. The director of fisheries and director of wildlife have thirty days after receiving the notice to state their objections to the application. The permit shall not be issued until the thirty-day period has elapsed.

The director of ecology may refuse to issue a permit if, in the opinion of the director of fisheries or director of wildlife, issuing the permit might result in lowering the flow of water in a stream below the flow necessary to adequately support food fish and game fish populations in the stream.

The provisions of this section shall in no way affect existing water rights. [1988 c 36 § 32; 1986 c 173 § 7; 1983 1st ex.s. c 46 § 71; 1955 c 12 § 75.20.050. Prior: 1949 c 112 § 46; Rem. Supp. 1949 § 5780–320.]

75.20.060 Fishways required in dams, obstructions—Penalties, remedies for failure. A dam or other obstruction across or in a stream shall be provided with a durable and efficient fishway approved by the director. Plans and specifications shall be provided to the department prior to the director's approval. The fishway shall be maintained in an effective condition and continuously supplied with sufficient water to freely pass fish. It is unlawful for the owner, manager, agent, or person in charge of the dam or obstruction to fail to comply with this section.

If a person fails to construct and maintain a fishway or to remove the dam or obstruction in a manner satisfactory to the director, then within thirty days after written notice to comply has been served upon the owner, his agent, or the person in charge, the director may construct a fishway or remove the dam or obstruction. Expenses incurred by the department constitute the value of a lien upon the dam and upon the personal property of the person owning the dam. Notice of the lien shall be filed and recorded in the office of the county auditor of the county in which the dam or obstruction is situated. The lien may be foreclosed in an action brought in the name of the state.

If, within thirty days after notice to construct a fishway or remove a dam or obstruction, the owner, his agent, or the person in charge fails to do so, the dam or obstruction is a public nuisance and the director may take possession of the dam or obstruction and destroy it. No liability shall attach for the destruction. [1983 1st ex.s. c 46 § 72; 1955 c 12 § 75.20.060. Prior: 1949 c 112 § 47; Rem. Supp. 1949 § 5780–321.]

75.20.061 Director may modify inadequate fishways and fish guards. If the director determines that a fishway or fish guard described in RCW 75.20.040 and 75.20.060 and in existence on September 1, 1963, is inadequate, in addition to other authority granted in this chapter, the director may remove, relocate, reconstruct, or modify the device, without cost to the owner. The director shall not materially modify the amount of flow of water through the device. After the department has completed the improvements, the fishways and fish

guards shall be operated and maintained at the expense of the owner in accordance with RCW 75.20.040 and 75.20.060. [1983 1st ex.s. c 46 § 73; 1963 c 153 § 1.]

Director of wildlife may modify, etc., inadequate fishways and protective devices: RCW 77.12.425.

75.20.090 If fishway is impractical, fish hatchery or cultural facility may be provided in lieu. Before a person commences construction on a dam or other hydraulic project for which the director determines that a fishway is impractical, the person shall at the option of the director:

(1) Convey to the state a fish cultural facility on a site satisfactory to the director and constructed according to plans and specifications approved by the director, and enter into an agreement with the director secured by sufficient bond, to furnish water and electricity, without expense, and funds necessary to operate and maintain the facilities; or

(2) Enter into an agreement with the director secured by sufficient bond to make payments to the state as the director determines are necessary to expand, maintain, and operate additional facilities at existing hatcheries within a reasonable distance of the dam or other hydraulic work to compensate for the damages caused by the dam or other hydraulic work.

(3) A decision of the director under this section is subject to review in the superior court of the state for Thurston county. Each day that a person carries on construction work or operates a dam or hydraulic project without complying with this section is a separate offense. [1983 1st ex.s. c 46 § 74; 1955 c 12 § 75.20.090. Prior: 1949 c 112 § 48; Rem. Supp. 1949 § 5780–322.]

75.20.100 Hydraulic projects or other work—Plans and specifications—Approval—Criminal penalty—Emergencies. In the event that any person or government agency desires to construct any form of hydraulic project or perform other work that will use, divert, obstruct, or change the natural flow or bed of any of the salt or fresh waters of the state, such person or government agency shall, before commencing construction or work thereon and to ensure the proper protection of fish life, secure the written approval of the department of fisheries or the department of wildlife as to the adequacy of the means proposed for the protection of fish life. This approval shall not be unreasonably withheld. The department of fisheries or the department of wildlife shall grant or deny approval within forty-five calendar days of the receipt of a complete application and notice of compliance with any applicable requirements of the state environmental policy act, made in the manner prescribed in this section. The applicant may document receipt of application by filing in person or by registered mail. A complete application for approval shall contain general plans for the overall project, complete plans and specifications of the proposed construction or work within the mean higher high water line in salt water or within the ordinary high water line in fresh water, and complete plans and specifications for the

proper protection of fish life. The forty-five day requirement shall be suspended if (1) after ten working days of receipt of the application, the applicant remains unavailable or unable to arrange for a timely field evaluation of the proposed project; (2) the site is physically inaccessible for inspection; or (3) the applicant requests delay. Immediately upon determination that the forty-five day period is suspended, the department of fisheries or the department of wildlife shall notify the applicant in writing of the reasons for the delay. Approval is valid for a period of up to five years from date of issuance. The permittee must demonstrate substantial progress on construction of that portion of the project relating to the approval within two years of the date of issuance. If either the department of fisheries or the department of wildlife denies approval, that department shall provide the applicant, in writing, a statement of the specific reasons why and how the proposed project would adversely affect fish life. Protection of fish life shall be the only ground upon which approval may be denied or conditioned. Chapter 34.05 RCW applies to any denial of project approval, conditional approval, or requirements for project modification upon which approval may be contingent. If any person or government agency commences construction on any hydraulic works or projects subject to this section without first having obtained written approval of the department of fisheries or the department of wildlife as to the adequacy of the means proposed for the protection of fish life, or if any person or government agency fails to follow or carry out any of the requirements or conditions as are made a part of such approval, the person or director of the agency is guilty of a gross misdemeanor. If any such person or government agency is convicted of violating any of the provisions of this section and continues construction on any such works or projects without fully complying with the provisions hereof, such works or projects are hereby declared a public nuisance and shall be subject to abatement as such.

For the purposes of this section and RCW 75.20.103, "bed" shall mean the land below the ordinary high water lines of state waters. This definition shall not include irrigation ditches, canals, storm water run-off devices, or other artificial watercourses except where they exist in a natural watercourse that has been altered by man.

The phrase "to construct any form of hydraulic project or perform other work" shall not include the act of driving across an established ford. Driving across streams or on wetted stream beds at areas other than established fords requires approval. Work within the ordinary high water line of state waters to construct or repair a ford or crossing requires approval.

For each application, the department of fisheries and the department of wildlife shall mutually agree on whether the department of fisheries or the department of wildlife shall administer the provisions of this section, in order to avoid duplication of effort. The department designated to act shall cooperate with the other department in order to protect all species of fish life found at the project site. If the department of fisheries or the department of wildlife receives an application concerning a

site not in its jurisdiction, it shall transmit the application to the other department within three days and notify the applicant.

In case of an emergency arising from weather or stream flow conditions or other natural conditions, the department of fisheries or department of wildlife, through their authorized representatives, shall issue immediately upon request oral approval for removing any obstructions, repairing existing structures, restoring stream banks, or to protect property threatened by the stream or a change in the stream flow without the necessity of obtaining a written approval prior to commencing work. Conditions of an oral approval shall be reduced to writing within thirty days and complied with as provided for in this section. Oral approval shall be granted immediately upon request, for a stream crossing during an emergency situation.

This section shall not apply to the construction of any form of hydraulic project or other work which diverts water for agricultural irrigation or stock watering purposes authorized under or recognized as being valid by the state's water codes, or when such hydraulic project or other work is associated with streambank stabilization to protect farm and agricultural land as defined in RCW 84.34.020. These irrigation or stock watering diversion and streambank stabilization projects shall be governed by RCW 75.20.103. [1988 c 272 § 1; 1988 c 36 § 33; 1986 c 173 § 1; 1983 1st ex.s. c 46 § 75; 1975 1st ex.s. c 29 § 1; 1967 c 48 § 1; 1955 c 12 § 75.20.100. Prior: 1949 c 112 § 49; Rem. Supp. 1949 § 5780-323.]

Severability—1988 c 279: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1988 c 272 § 6.]

75.20.103 Hydraulic projects for irrigation, stock watering, or streambank stabilization—Plans and specifications—Approval—Criminal penalty—Emergencies. In the event that any person or government agency desires to construct any form of hydraulic project or other work that diverts water for agricultural irrigation or stock watering purposes, or when such hydraulic project or other work is associated with streambank stabilization to protect farm and agricultural land as defined in RCW 84.34.020, and when such diversion or streambank stabilization will use, divert, obstruct, or change the natural flow or bed of any river or stream or will utilize any waters of the state or materials from the stream beds, the person or government agency shall, before commencing construction or work thereon and to ensure the proper protection of fish life, secure a written approval from the department of fisheries or the department of wildlife as to the adequacy of the means proposed for the protection of fish life. This approval shall not be unreasonably withheld. The department of fisheries or the department of wildlife shall grant or deny the approval within forty-five calendar days of the receipt of a complete application and notice of compliance with any applicable requirements of the state environmental policy act, made in the manner prescribed in this section. The applicant may document receipt of application by

filing in person or by registered mail. A complete application for an approval shall contain general plans for the overall project, complete plans and specifications of the proposed construction or work within ordinary high water line, and complete plans and specifications for the proper protection of fish life. The forty-five day requirement shall be suspended if (1) after ten working days of receipt of the application, the applicant remains unavailable or unable to arrange for a timely field evaluation of the proposed project; (2) the site is physically inaccessible for inspection; or (3) the applicant requests delay.

Immediately upon determination that the forty-five day period is suspended, the department of fisheries or the department of wildlife shall notify the applicant in writing of the reasons for the delay.

An approval shall remain in effect without need for periodic renewal for projects that divert water for agricultural irrigation or stock watering purposes and that involve seasonal construction or other work. Approval for streambank stabilization projects shall remain in effect without need for periodic renewal if the problem causing the need for the streambank stabilization occurs on an annual or more frequent basis. The permittee must notify the appropriate agency before commencing the construction or other work within the area covered by the approval.

The permittee must demonstrate substantial progress on construction of that portion of the project relating to the approval within two years of the date of issuance. If either the department of fisheries or the department of wildlife denies approval, that department shall provide the applicant, in writing, a statement of the specific reasons why and how the proposed project would adversely affect fish life. Protection of fish life shall be the only ground upon which approval may be denied or conditioned. Issuance, denial, conditioning, or modification shall be appealable to the hydraulic appeals board established in RCW 43.21B.005 within thirty days of the notice of decision. The burden shall be upon the department of fisheries or the department of wildlife to show that the denial or conditioning of an approval is solely aimed at the protection of fish life.

The department granting approval may, after consultation with the permittee, modify an approval due to changed conditions. The modifications shall become effective unless appealed to the hydraulic appeals board within thirty days from the notice of the proposed modification. The burden is on the department issuing the approval to show that changed conditions warrant the modification in order to protect fish life.

A permittee may request modification of an approval due to changed conditions. The request shall be processed within forty-five calendar days of receipt of the written request. A decision by the department that issued the approval may be appealed to the hydraulic appeals board within thirty days of the notice of the decision. The burden is on the permittee to show that changed conditions warrant the requested modification and that such modification will not impair fish life.

If any person or government agency commences construction on any hydraulic works or projects subject to this section without first having obtained written approval of the department of fisheries or the department of wildlife as to the adequacy of the means proposed for the protection of fish life, or if any person or government agency fails to follow or carry out any of the requirements or conditions as are made a part of such approval, the person or director of the agency is guilty of a gross misdemeanor. If any such person or government agency is convicted of violating any of the provisions of this section and continues construction on any such works or projects without fully complying with the provisions hereof, such works or projects are hereby declared a public nuisance and shall be subject to abatement as such.

For each application, the department of fisheries and the department of wildlife shall mutually agree on whether the department of fisheries or the department of wildlife shall administer the provisions of this section, in order to avoid duplication of effort. The department designated to act shall cooperate with the other department in order to protect all species of fish found at the project site. If the department of fisheries or the department of wildlife receives an application concerning a site not in its jurisdiction, it shall transmit the application to the other department within three days and notify the applicant.

In case of an emergency arising from weather or stream flow conditions or other natural conditions, the department of fisheries or department of wildlife, through their authorized representatives, shall issue immediately upon request oral approval for removing any obstructions, repairing existing structures, restoring stream banks, or to protect property threatened by the stream or a change in the stream flow without the necessity of obtaining a written approval prior to commencing work. Conditions of an oral approval shall be reduced to writing within thirty days and complied with as provided for in this section.

For purposes of this chapter, "streambank stabilization" shall include but not be limited to log and debris removal, bank protection (including riprap, jetties, and groins), gravel removal and erosion control. [1988 c 272 § 2; 1988 c 36 § 34; 1986 c 173 § 2.]

Severability—1988 c 272: See note following RCW 75.20.100.

75.20.106 Hydraulic projects—Civil penalty. The department of fisheries and the department of wildlife may each levy civil penalties of up to one hundred dollars per day for violation of any provisions of RCW 75.20.100 or 75.20.103. The penalty provided shall be imposed by notice in writing, either by certified mail or personal service to the person incurring the penalty, from the director of the appropriate department or that director's designee describing the violation. Any person incurring any penalty under this chapter may appeal the same under chapter 34.05 RCW to the director of the department levying the penalty. Appeals shall be filed within thirty days of receipt of notice imposing any penalty. The penalty imposed shall become due and payable

thirty days after receipt of a notice imposing the penalty unless an appeal is filed. Whenever an appeal of any penalty incurred under this chapter is filed, the penalty shall become due and payable only upon completion of all review proceedings and the issuance of a final order confirming the penalty in whole or in part.

If the amount of any penalty is not paid within thirty days after it becomes due and payable the attorney general, upon the request of the director of the department of fisheries or the department of wildlife shall bring an action in the name of the state of Washington in the superior court of Thurston county or of any county in which such violator may do business, to recover such penalty. In all such actions the procedure and rules of evidence shall be the same as an ordinary civil action. All penalties recovered under this section shall be paid into the state's general fund. [1988 c 36 § 35; 1986 c 173 § 6.]

75.20.110 Columbia River anadromous fish sanctuary—Restrictions. (1) Except for the north fork of the Lewis river and the White Salmon river, all streams and rivers tributary to the Columbia river downstream from McNary dam are established as an anadromous fish sanctuary. This sanctuary is created to preserve and develop the food fish and game fish resources in these streams and rivers and to protect them against undue industrial encroachment.

(2) Within the sanctuary area:

(a) It is unlawful to construct a dam greater than twenty-five feet high within the migration range of anadromous fish as jointly determined by the director of fisheries and the director of wildlife.

(b) Except by concurrent order of the director of fisheries and director of wildlife, it is unlawful to divert water from rivers and streams in quantities that will reduce the respective stream flow below the annual average low flow, based upon data published in United States geological survey reports.

(3) The director of fisheries and the director of wildlife may acquire and abate a dam or other obstruction, or acquire any water right vested on a sanctuary stream or river, which is in conflict with the provisions of subsection (2) of this section.

(4) Subsection (2)(a) of this section does not apply to the sediment retention structure to be built on the North Fork Toutle river by the United States army corps of engineers. [1988 c 36 § 36; 1985 c 307 § 5; 1983 1st ex.s. c 46 § 76; 1961 c 4 § 1; Initiative Measure No. 25, approved November 8, 1960.]

Severability—1961 c 4: "If any section or provision or part thereof of this act shall be held unconstitutional or for any other reason invalid, the invalidity of such section, provision or part thereof shall not affect the validity of the remaining sections, provisions or parts thereof which are not judged to be invalid or unconstitutional." [1961 c 4 § 3 (Initiative Measure No. 25, approved November 8, 1960).]

75.20.130 Hydraulic appeals board—Members—Jurisdiction—Procedures. (1) There is hereby created within the environmental hearings office under RCW 43.21B.005 the hydraulic appeals board of the state of Washington.

(2) The hydraulic appeals board shall consist of three members: The director of the department of ecology or the director's designee, the director of the department of agriculture or the director's designee, and the director or the director's designee of the department whose action is appealed under subsection (6) of this section. A decision must be agreed to by at least two members of the board to be final.

(3) The board may adopt rules necessary for the conduct of its powers and duties or for transacting other official business.

(4) The board shall make findings of fact and prepare a written decision in each case decided by it, and that finding and decision shall be effective upon being signed by two or more board members and upon being filed at the hydraulic appeals board's principal office, and shall be open to public inspection at all reasonable times.

(5) The board has exclusive jurisdiction to hear appeals arising from the approval, denial, conditioning, or modification of a hydraulic approval issued by either the department of fisheries or the department of wildlife under the authority granted in RCW 75.20.103 for the diversion of water for agricultural irrigation or stock watering purposes or when associated with streambank stabilization to protect farm and agricultural land as defined in RCW 84.34.020.

(6) (a) Any person aggrieved by the approval, denial, conditioning, or modification of a hydraulic approval pursuant to RCW 75.20.103 may seek review from the board by filing a request for the same within thirty days of notice of the approval, denial, conditioning, or modification of such approval.

(b) The review proceedings authorized in (a) of this subsection are subject to the provisions of chapter 34.05 RCW pertaining to procedures in adjudicative proceedings. [1989 c 175 § 160; 1988 c 272 § 3; 1988 c 36 § 37; 1986 c 173 § 4.]

Effective date—1989 c 175: See note following RCW 34.05.010.

Severability—1988 c 272: See note following RCW 75.20.100.

75.20.140 Hydraulic appeals board—Procedures.

(1) In all appeals over which the hydraulic appeals board has jurisdiction, a party taking an appeal may elect either a formal or informal hearing. Such election shall be made according to the rules of practice and procedure to be adopted by the hydraulic appeals board. In the event that appeals are taken from the same decision, order, or determination, by different parties and only one of such parties elects a formal hearing, a formal hearing shall be granted.

(2) In all appeals, the hydraulic appeals board shall have all powers relating to administration of oaths, issuance of subpoenas, and taking of depositions, but such powers shall be exercised in conformity with chapter 34.05 RCW.

(3) In all appeals involving a formal hearing, the hydraulic appeals board, and each member thereof, shall be subject to all duties imposed upon and shall have all powers granted to, an agency by those provisions of chapter 34.05 RCW relating to adjudicative proceedings.

(4) All proceedings, including both formal and informal hearings, before the hydraulic appeals board or any of its members shall be conducted in accordance with such rules of practice and procedure as the board may prescribe. Such rules shall be published and distributed.

(5) Judicial review of a decision of the hydraulic appeals board shall be de novo except when the decision has been rendered pursuant to the formal hearing, in which event judicial review may be obtained only pursuant to RCW 34.05.510 through 34.05.598. [1989 c 175 § 161; 1986 c 173 § 5.]

Effective date—1989 c 175: See note following RCW 34.05.010.

75.20.150 Processing of permits or authorizations for emergency water withdrawal and facilities to be expedited. All state and local agencies with authority under this chapter to issue permits or other authorizations in connection with emergency water withdrawals and facilities authorized under RCW 43.83B.410 shall expedite the processing of such permits or authorizations in keeping with the emergency nature of such requests and shall provide a decision to the applicant within fifteen calendar days of the date of application. [1989 c 171 § 8; 1987 c 343 § 6.]

Severability—1989 c 171: See note following RCW 43.83B.400.

Severability—1987 c 343: See note following RCW 43.83B.300.

75.20.300 Mt. St. Helens eruption—Flood-control, sediment retention site acquisition, and dredging operations in rivers—Fish resource protection—Expiration of section. (1) The legislature intends to expedite flood-control, acquisition of sites for sediment retention, and dredging operations in those rivers affected by the May 1980 eruption of Mt. St. Helens, while continuing to protect the fish resources of these rivers.

(2) The director of fisheries and director of wildlife shall process hydraulic project applications submitted under RCW 75.20.100 within fifteen working days of receipt of the application. This requirement is only applicable to flood control and dredging projects located in the Cowlitz river from mile 22 to the confluence with the Columbia, and in the Toutle river from the mouth to the North Fork Toutle sediment dam site at North Fork mile 12, and to river mile 3 on the South Fork Toutle river, and volcano-affected areas of the Columbia river.

(3) For the purposes of this section, the emergency provisions of RCW 75.20.100 may be initiated by the county legislative authority if the project is necessary to protect human life or property from flood hazards, including:

(a) Flood fight measures necessary to provide protection during a flood event; or

(b) Measures necessary to reduce or eliminate a potential flood threat when other alternative measures are not available or cannot be completed prior to the expected flood threat season; or

(c) Measures which must be initiated and completed within an immediate period of time and for which processing of the request through normal methods would

cause a delay to the project and such delay would significantly increase the potential for damages from a flood event.

(4) This section does not apply to the sediment retention structure to be built on the North Fork Toutle river by the United States army corps of engineers.

(5) This section expires on June 30, 1995. [1989 c 213 § 3; 1988 c 36 § 38; 1985 c 307 § 6; 1984 c 80 § 3; 1983 1st ex.s. c 46 § 77; 1983 1st ex.s. c 1 § 7; 1982 c 7 § 8.]

Severability—1983 1st ex.s. c 1: See note following RCW 43.01.200.

Severability—1982 c 7: See note following RCW 36.01.150.

75.20.310 Operation and maintenance of fish collection facility on Toutle river. The legislature recognizes the need to mitigate the effects of sedimentary build-up and resultant damage to fish population in the Toutle river resulting from the Mt. St. Helens eruption. The state has entered into a contractual agreement with the United States army corps of engineers designed to minimize fish habitat disruption created by the sediment retention structure on the Toutle river, under which the corps has agreed to construct a fish collection facility at the sediment retention structure site conditional upon the state assuming the maintenance and operation costs of the facility. The department of wildlife and the department of fisheries shall cooperatively operate and maintain a fish collection facility on the Toutle river. Each agency shall share in the cost of operating and maintaining the facility. [1988 c 36 § 39; 1987 c 506 § 101.]

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Chapter 75.24 SHELLFISH

Sections	
75.24.010	State oyster reserves established.
75.24.030	Sale or lease of state oyster reserves.
75.24.050	Taking shellfish from state oyster reserves or state tidelands.
75.24.060	State oyster reserves management policy—Personal use harvesting—Inventory—Management categories—Cultch permits.
75.24.065	Olympia oysters—Cultivation on reserves in Puget Sound.
75.24.070	Sale of shellfish from state oyster reserves.
75.24.080	Restricted shellfish areas—Infestations—Permit.
75.24.090	Culled shellfish must be returned to beds.
75.24.100	Geoduck clams, commercial harvesting—License—Gear—Director may impose license limitations—Compliance with federal safety rules (OSHA).
75.24.110	Imported oyster seed—Permit and inspection required.
75.24.120	Imported oyster seed—Inspection—Costs.
75.24.130	Establishment of reserves on state shellfish lands.

Sanitary control of shellfish: Chapter 69.30 RCW.

75.24.010 State oyster reserves established. The following areas are the state oyster reserves and are more completely described in maps and plats on file in the office of the commissioner of public lands and in the office

of the auditor of the county in which the reserve is located:

1. PUGET SOUND OYSTER RESERVES:

- (a) Totten Inlet reserves (sometimes known as Oyster Bay reserves), located in Totten Inlet, Thurston county;
- (b) Eld Inlet reserves (sometimes known as Mud Bay reserves), located in Mud Bay, Thurston county;
- (c) Oakland Bay reserves, located in Oakland Bay, Mason county;
- (d) North Bay reserves (sometimes known as Case Inlet reserves), located in Case Inlet, Mason county.

2. WILLAPA HARBOR OYSTER RESERVES:

- (a) Nemah reserve, south and west sides of reserve located along Nemah River channel, Pacific county;
- (b) Long Island reserve, located at south end and along west side of Long Island, Willapa Harbor, Pacific county;
- (c) Long Island Slough reserve, located at south end and along east side of Long Island, Willapa Harbor, Pacific county;
- (d) Bay Center reserve, located in the Palix River channel, extending from Palix River bridge to beyond Bay Center to north of Goose Point, Willapa Harbor, Pacific county;
- (e) Willapa River reserve, located in the Willapa River channel extending west and up-river from a point approximately one-quarter mile from the blinker light marking the division of Willapa River channel and the North River channel, Willapa Harbor, Pacific county. [1983 1st ex.s. c 46 § 78; 1955 c 12 § 75.24.010. Prior: 1949 c 112 § 54; Rem. Supp. 1949 § 5780-401.]

75.24.030 Sale or lease of state oyster reserves. Only upon recommendation of the director may the state oyster reserves be sold, leased, or otherwise disposed of by the department of natural resources. [1983 1st ex.s. c 46 § 79; 1955 c 12 § 75.24.030. Prior: 1949 c 112 § 55; Rem. Supp. 1949 § 5780-402.]

75.24.050 Taking shellfish from state oyster reserves or state tidelands. It is unlawful to take shellfish from state oyster reserves or tidelands under the jurisdiction of the state contrary to this title or rules of the director. [1983 1st ex.s. c 46 § 80; 1955 c 12 § 75.24.050. Prior: 1949 c 112 § 62; Rem. Supp. 1949 § 5780-409.]

75.24.060 State oyster reserves management policy—Personal use harvesting—Inventory—Management categories—Cultch permits. It is the policy of the state to improve state oyster reserves so that they are productive and yield a revenue sufficient for their maintenance. In fixing the price of oysters and other shellfish sold from the reserves, the director shall take into consideration this policy. It is also the policy of the state to maintain the oyster reserves to furnish shellfish to growers and processors and to stock public beaches.

Shellfish may be harvested from state oyster reserves for personal use as prescribed by rule of the director.

The department shall periodically inventory the state oyster reserves and assign the reserve lands into management categories:

- (1) Native Olympia oyster broodstock reserves;
- (2) Commercial shellfish harvesting zones;
- (3) Commercial shellfish propagation zones designated for long-term leasing to private aquaculturists;
- (4) Public recreational shellfish harvesting zones;
- (5) Unproductive land.

The department shall manage each category of oyster reserve land to maximize the sustained yield production of shellfish consistent with the purpose for establishment of each management category.

The department shall develop an oyster reserve management plan, to include recommendations for leasing reserve lands, in coordination with the shellfish industry, by January 1, 1986. The report shall be presented to the house and senate committees on natural resources.

The director shall protect, reseed, improve the habitat of, and replant state oyster reserves and issue cultch permits. [1985 c 256 § 1; 1983 1st ex.s. c 46 § 81; 1969 ex.s. c 91 § 1; 1955 c 12 § 75.24.060. Prior: 1949 c 112 § 56; Rem. Supp. 1949 § 5780-403.]

75.24.065 Olympia oysters—Cultivation on reserves in Puget Sound. The legislature finds that current environmental and economic conditions warrant a renewal of the state's historical practice of actively cultivating and managing its oyster reserves in Puget Sound to produce the state's native oyster, the Olympia oyster. The department of fisheries shall reestablish dike cultivated production of Olympia oysters on such reserves on a trial basis as a tool for planning more comprehensive cultivation by the state. [1985 c 256 § 2.]

75.24.070 Sale of shellfish from state oyster reserves. The director shall determine the time, place, and method of sale of oysters and other shellfish from state oyster reserves.

To maintain local communities and industries and to restrain the formation of monopolies in the industry, the director shall determine the number of bushels which shall be sold to a person. When the shellfish are sold at public auction, the director may reject any and all bids. [1983 1st ex.s. c 46 § 82; 1955 c 12 § 75.24.070. Prior: 1949 c 112 § 57; Rem. Supp. 1949 § 5780-404.]

75.24.080 Restricted shellfish areas—Infestations—Permit. The director may designate as "restricted shellfish areas" those areas in which infection or infestation of shellfish is present. Except by permit of the director, it is unlawful to transplant or transport into or out of a restricted area shellfish or equipment used in culturing, taking, handling, or processing shellfish. [1983 1st ex.s. c 46 § 83; 1955 c 12 § 75.24.080. Prior: 1949 c 112 § 59; Rem. Supp. 1949 § 5780-406.]

75.24.090 Culled shellfish must be returned to beds. It is unlawful to destroy oysters or clams by culling them on land or shore and leaving the culled oysters or clams

there to die. The culled oysters or clams must be returned to the harvest area, except as provided by rule of the director. [1983 1st ex.s. c 46 § 84; 1955 c 212 § 7; 1955 c 12 § 75.24.090. Prior: 1949 c 112 § 61; Rem. Supp. 1949 § 5780-408.]

75.24.100 Geoduck clams, commercial harvesting—License—Gear—Director may impose license limitations—Compliance with federal safety rules (OSHA). (1) The director may issue licenses, with the approval of the commissioner of public lands, for the commercial harvesting of geoduck clams from specific tracts of beds of navigable waters for which harvest rights have been granted by the department of natural resources. The director shall not authorize commercial harvesting on bottoms which are shallower than eighteen feet below mean lower low water (0.0. ft.), or which lie in an area bounded by the line of ordinary high tide (mean high tide) and a line two hundred yards seaward from and parallel to the line of ordinary high tide. If the director determines that the number of units of gear is sufficient to harvest the known available crop and that additional units of gear might prove damaging to the resource or its habitat, the director may suspend the issuance of additional licenses until the director determines there is need for additional units of gear to achieve a sustained harvest.

(2) Commercial geoduck harvesting shall be done with a hand-held, manually operated water jet or suction device guided and controlled from under water by a diver. Periodically, the director shall determine the effect of each type or unit of gear upon the geoduck population or the substrate they inhabit. The director may require modification of the gear or stop its use if it is being operated in a wasteful or destructive manner or if its operation may cause permanent damage to the bottom or adjacent shellfish populations.

(3) A person, including the person's agents or representatives, who holds a license under subsection (1) of this section shall comply with all applicable commercial diving safety regulations adopted by the federal occupational safety and health administration established under the federal occupational safety and health act of 1970 as such law exists on May 8, 1979 (84 Stat. 1590 et seq.; 29 U.S.C. Sec. 651 et seq.). A violation of these regulations is a violation of this subsection. For the purposes of this section, persons who dive for geoducks are "employees" as defined by the federal occupational safety and health act. A violation of this subsection is grounds for suspension or revocation of the license following a hearing as provided for in chapter 34.05 RCW. A license shall not be suspended or revoked if the violation has been corrected within ten days of receipt of written notice of the violation. If there is a substantial probability that a violation of the commercial diving standards could result in death or serious physical harm to a person engaged in harvesting geoduck clams, the department shall suspend the license immediately until the violation has been corrected. If the licensee is the holder of a tract license and contracts with another person for the harvesting of geoducks, the license shall not be suspended or

canceled if the licensee terminates its business relationship with such entity until compliance with this subsection is secured. [1984 c 80 § 2. Prior: 1983 1st ex.s. c 46 § 85; 1983 c 3 § 193; 1979 ex.s. c 141 § 1; 1969 ex.s. c 253 § 1.]

Liberal construction—1969 ex.s. c 253: "The provisions of this act shall be liberally construed." [1969 ex.s. c 253 § 5.]

Severability—1969 ex.s. c 253: "If any provisions of this 1969 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1969 ex.s. c 253 § 6.]

Designation of aquatic lands for geoduck harvesting: RCW 79.96.085.
Tract license for harvesting geoducks: RCW 75.28.287.

75.24.110 Imported oyster seed—Permit and inspection required. It is unlawful for a person to import oysters or oyster seed into this state for the purpose of planting them in state waters without a permit from the director. The director shall issue a permit only after an adequate inspection has been made and the oysters or oyster seed are found to be free of disease, pests, and other substances which might endanger oysters in state waters. [1983 1st ex.s. c 46 § 87; 1955 c 12 § 75.08.054. Prior: 1951 c 271 § 42. Formerly RCW 75.08.054.]

75.24.120 Imported oyster seed—Inspection—Costs. The director may require imported oyster seed to be inspected for diseases and pests. The director may specify the place of inspection. Persons importing oyster seed shall pay for the inspection costs excluding the inspector's salary. The cost shall be determined by the director and prorated among the importers according to the number of cases of oyster seeds each imports. The director shall specify the time and manner of payment. [1983 1st ex.s. c 46 § 88; 1967 ex.s. c 38 § 1; 1955 c 12 § 75.08.056. Prior: 1951 c 271 § 43. Formerly RCW 75.08.056.]

75.24.130 Establishment of reserves on state shellfish lands. The director may examine the clam, mussel, and oyster beds located on aquatic lands belonging to the state and request the commissioner of public lands to withdraw these lands from sale and lease for the purpose of establishing reserves or public beaches. The director shall conserve, protect, and develop these reserves and the oyster, shrimp, clam, and mussel beds on state lands. [1983 1st ex.s. c 46 § 89; 1955 c 12 § 75.08.060. Prior: 1949 c 112 § 7(5); Rem. Supp. 1949 § 5780-206(5). Formerly RCW 75.08.060.]

Chapter 75.25

RECREATIONAL LICENSES

Sections

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75.25.901	Effective date—1987 c 87.
75.25.902	Effective date—1989 c 305.

75.25.005 Licenses issued by department. The following recreational fishing licenses are administered and issued by the department of fisheries under authority of the director of fisheries:

- (1) Hood Canal shrimp license;
- (2) Razor clam license;
- (3) Personal use fishing license;
- (4) Salmon license; and
- (5) Sturgeon license. [1989 c 305 § 1.]

75.25.015 Hood Canal shrimp licenses—Required—Fees. (1) A Hood Canal shrimp license is required for all persons other than residents under fifteen years of age to take or possess shrimp taken for personal use from that portion of Hood Canal lying south of the Hood Canal floating bridge.

(2) The annual fees for Hood Canal shrimp licenses are:

- (a) For a resident, fifteen years of age or older and under seventy years of age, five dollars;
- (b) For a nonresident, fifteen dollars. [1989 c 305 § 2; 1984 c 80 § 6; 1983 1st ex.s. c 31 § 1.]

Effective date—1983 1st ex.s. c 31: "This act shall take effect January 1, 1984." [1983 1st ex.s. c 31 § 4.]

Commercial Hood Canal shrimp endorsement: RCW 75.28.134.

75.25.040 Razor clam licenses—Fees. (1) A razor clam license is required for all persons other than residents under fifteen years of age to take, dig for, or possess razor clams taken for personal use from the clam beds of this state including razor clams taken from national park beaches.

(2) The annual fees for razor clam licenses are:

- (a) For a resident fifteen years of age or older and under seventy years of age, three dollars; and
- (b) For a nonresident, ten dollars. [1989 c 305 § 3; 1983 1st ex.s. c 46 § 91; 1980 c 81 § 1; 1979 ex.s. c 243 § 4.]

Effective date—1980 c 81: "This act shall take effect on July 1, 1980." [1980 c 81 § 3.]

Intent—1979 ex.s. c 243: "The legislature, recognizing that the digging of razor clams, *Siliqua patula*, is a major recreational asset to the state, declares that it is the policy of the state to improve recreational razor clam digging for residents of the state. The legislature finds that clam wastage and violation of daily bag limits by some clam diggers has made effective clam resource conservation extremely difficult. It is the intent of the legislature to provide a razor clam license program that will be an aid to effective management and conservation of the razor clam resource. It is also the intent of the legislature to

provide a source of funds that can be used to defray the expenses of added enforcement, enhancement, research, and educational programs related to razor clams." [1979 ex.s. c 243 § 1. Formerly RCW 75.25.010.]

75.25.080 Razor clam licenses—Physical disability permit. (1) It is lawful to dig the personal-use daily bag limit of razor clams for another person if that person has in possession a physical disability permit issued by the director.

(2) An application for a physical disability permit must be submitted on a department of fisheries official form and must be accompanied by a licensed medical doctor's certification of disability. [1989 c 305 § 4; 1983 1st ex.s. c 46 § 92; 1980 c 81 § 2.]

Effective date—1980 c 81: See note following RCW 75.25.040.

75.25.090 Personal use fishing licenses—Fees. (1) A personal use license is required for all persons other than persons under fifteen years of age to fish for, take, or possess food fish for personal use from state waters or offshore waters. A personal use license is not required under this section to fish for, take, or possess carp and sturgeon in the Columbia river above Chief Joseph Dam, smelt, or albacore.

(2) The fees for annual personal use licenses are:

(a) For a resident fifteen years of age or older and under seventy years of age, three dollars; and

(b) For a nonresident fifteen years of age or older, ten dollars.

(3) The fees for two-consecutive-day personal use licenses are:

(a) For food fish other than sturgeon, three dollars; and

(b) For sturgeon only, three dollars. [1989 c 305 § 5; 1987 c 87 § 1.]

75.25.100 Salmon licenses—Fees. (1) In addition to a personal use license, a salmon license is required to take, fish for, or possess anadromous salmon taken for personal use from state waters or offshore waters. A salmon license is not required for persons under fifteen years of age, nor is it required of a person who has a valid two-consecutive-day personal use license for food fish other than sturgeon.

(2) The fees for annual salmon licenses are:

(a) For a resident fifteen years of age or older and under seventy years of age, three dollars; and

(b) For nonresidents, fifteen years of age or older, three dollars. [1989 c 305 § 6; 1987 c 87 § 2; 1983 1st ex.s. c 46 § 94; 1977 ex.s. c 327 § 11. Formerly RCW 75.28.610.]

Legislative intent—Funding of salmon enhancement facilities—Use of license fees—1977 ex.s. c 327: "The long range economic development goals for the state of Washington shall include the restoration of salmon runs to provide an increased supply of this valuable renewable resource for the benefit of commercial and recreational users and the economic well-being of the state. For the purpose of providing funds for the planning, acquisition, construction, improvement, and operation of salmon enhancement facilities within the state it is the intent of the legislature that the revenues received from fees from the issuance of vessel delivery permits, charter boat licenses, trolling gear licenses, gill net gear licenses, purse seine gear licenses, reef net

gear licenses, anadromous salmon angling licenses and all moneys received from all privilege fees and fish sales taxes collected on fresh or frozen salmon or parts thereof be utilized to fund such costs.

The salmon enhancement program funded by commercial and recreational fishing fees and taxes shall be for the express benefit of all persons whose fishing activities fall under the management authority of the Washington department of fisheries and who actively participate in the funding of the enhancement costs through the fees and taxes set forth in chapters 75.28 and 82.27 RCW or through other adequate funding methods." [1980 c 98 § 8; 1977 ex.s. c 327 § 1. Formerly RCW 75.18.100.]

Declaration of state policy—1977 ex.s. c 327: "The legislature, recognizing that anadromous salmon within the waters of the state and offshore waters are fished for both recreational and commercial purposes and that the recreational anadromous salmon fishery is a major recreational and economic asset to the state and improves the quality of life for all residents of the state, declares that it is the policy of the state to enhance and improve recreational anadromous salmon fishing in the state." [1977 ex.s. c 327 § 10. Formerly RCW 75.28.600.]

Severability—1977 ex.s. c 327: "If any provision of this 1977 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1977 ex.s. c 327 § 34.]

Effective date—1977 ex.s. c 327: "This 1977 amendatory act shall take effect on January 1, 1978." [1977 ex.s. c 327 § 35.]

75.25.110 Persons entitled to free recreational fishing licenses—License substitute. (1) Any of the recreational fishing licenses required by this chapter shall, upon request, be issued without charge to the following individuals upon request:

(a) Residents under fifteen years of age and residents seventy years of age or older;

(b) Residents who submit applications attesting that they are a person sixty-five years of age or older who is an honorably discharged veteran of the United States armed forces with a service-connected disability and who has been a resident of this state for the preceding ninety days;

(c) A blind person;

(d) A person with a developmental disability as defined in RCW 71A.10.020 with documentation of the disability from the department of social and health services; and

(e) A person who is physically handicapped and confined to a wheelchair.

(2) Personal use licenses, salmon licenses, and sturgeon licenses shall, upon request, be issued to nonresidents under fifteen years of age.

(3) A blind person or a physically handicapped person confined to a wheelchair who has been issued a card for a permanent disability under RCW 46.16.381 may use that card in place of a fishing license unless a punchcard is required by the director. [1989 c 305 § 8; 1987 c 87 § 3; 1983 1st ex.s. c 46 § 95; 1977 ex.s. c 327 § 13. Formerly RCW 75.28.630.]

Legislative intent—Funding of salmon enhancement facilities—Use of license fees—Declaration of state policy—Severability—Effective date—1977 ex.s. c 327: See notes following RCW 75.25.100.

75.25.120 Recreational licenses—Reciprocity with Oregon in concurrent waters of Columbia river and coastal waters. In concurrent waters of the Columbia river and in Washington coastal territorial waters from

the Oregon–Washington boundary to a point five nautical miles north, an Oregon angling license comparable to the Washington personal use license, two-consecutive-day personal use license, salmon license, or sturgeon license is valid if Oregon recognizes as valid the Washington personal use license, two-consecutive-day personal use license, salmon license, or sturgeon license in comparable Oregon waters.

If Oregon recognizes as valid the Washington personal use license, two-consecutive-day personal use license, salmon license, or sturgeon license southward to Cape Falcon in the coastal territorial waters from the Washington–Oregon boundary and in concurrent waters of the Columbia river then Washington shall recognize a valid Oregon license comparable to the Washington personal use license, two-consecutive-day personal use license, salmon license, or sturgeon license northward to Leadbetter Point.

Oregon licenses are not valid for the taking of food fish when angling in concurrent waters of the Columbia river from the Washington shore. [1989 c 305 § 9; 1987 c 87 § 4; 1985 c 174 § 1; 1983 1st ex.s. c 46 § 96; 1977 ex.s. c 327 § 17. Formerly RCW 75.28.670.]

Declaration of state policy—Severability—Effective date—1977 ex.s. c 327: See notes following RCW 75.25.100.

75.25.126 Sturgeon license—Fees. (1) A sturgeon license is required to take, fish for, or possess sturgeon taken for personal use from the following state waters:

(a) Columbia river and all tributaries;

(b) Willapa Bay and all tributaries; and

(c) Grays Harbor and all tributaries.

A sturgeon license is not required of a person under fifteen years of age, nor is it required of a person who has a valid sturgeon-only two-consecutive-day personal use license.

(2) In addition to a sturgeon license, a personal use license is required when fishing for sturgeon in all waters listed in subsection (1) of this section, except the Columbia river above Chief Joseph Dam.

(3) The fees for annual sturgeon licenses are:

(a) For a resident fifteen years of age or older, and under seventy years of age, three dollars; and

(b) For all nonresidents fifteen years of age or older, three dollars. [1989 c 305 § 7.]

75.25.130 Recreational licenses—Issuance—

Dealer's fee—Rules. All recreational licenses required by this chapter shall be issued only under authority of the director. The director may authorize license dealers to issue the recreational licenses and collect the recreational license fees. In addition to the recreational license fees, dealers may charge a dealer's fee for each recreational license. The director shall establish the amount to be retained by dealers, which shall be at least fifty cents for each license issued. Fees retained by dealers shall be uniform throughout the state. The dealer's fee may be retained by the license dealer.

The director shall adopt rules for the issuance of recreational licenses and for the collection, payment, and handling of license fees and dealers' fees. [1989 c 305 §

11; 1987 c 87 § 6; 1984 c 80 § 7; 1983 1st ex.s. c 46 § 97; 1977 ex.s. c 327 § 12. Formerly RCW 75.28.620.]

Declaration of state policy—Severability—Effective date—1977 ex.s. c 327: See notes following RCW 75.25.100.

75.25.140 Recreational licenses—Nontransferable—Enforcement provisions. (1) Recreational licenses are not transferable. Upon request of a fisheries patrol officer, ex officio fisheries patrol officer, or authorized fisheries employee, a person digging for or possessing razor clams or fishing for or possessing Hood Canal shrimp or food fish for personal use shall exhibit the required recreational license and write his or her signature for comparison with the signature on the license. Failure to comply with the request is prima facie evidence that the person does not have a license or is not the person named on the license.

(2) The razor clam license shall be visible on the licensee while digging for razor clams. [1989 c 305 § 12; 1987 c 87 § 7; 1984 c 80 § 8; 1983 1st ex.s. c 46 § 98; 1980 c 78 § 135; 1977 ex.s. c 327 § 15. Formerly RCW 75.28.650.]

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

Declaration of state policy—Severability—Effective date—1977 ex.s. c 327: See notes following RCW 75.25.100.

75.25.150 Unlawful possession of razor clams, food fish, or shrimp. It is unlawful to dig for or possess razor clams, fish for or possess food fish, or take or possess Hood Canal shrimp without the licenses required by this chapter. [1989 c 305 § 13; 1984 c 80 § 9; 1983 1st ex.s. c 46 § 99.]

75.25.160 Recreational licenses—Penalties. A person who violates a provision of this chapter or who knowingly falsifies information required for the issuance of a recreational license is guilty of a misdemeanor and is subject to the penalties provided in chapter 9A.20 RCW. [1989 c 305 § 15; 1987 c 87 § 8; 1984 c 80 § 10; 1983 1st ex.s. c 46 § 100; 1977 ex.s. c 327 § 16. Formerly RCW 75.28.660.]

Declaration of state policy—Severability—Effective date—1977 ex.s. c 327: See notes following RCW 75.25.100.

75.25.170 Recreational licenses—Use of fees. Fees received for recreational licenses required under this chapter shall be deposited in the general fund and shall be appropriated for management, enhancement, research, and enforcement purposes of the shellfish, salmon, and marine fish programs of the department of fisheries. [1989 c 305 § 16; 1987 c 87 § 9.]

75.25.180 Recreational licenses—Terms. Recreational licenses issued by the department of fisheries under this chapter are valid for the following periods:

(1) Recreational licenses issued without charge to persons designated by this chapter are valid:

- (a) For life for blind persons;
- (b) For the period of continued state residency for qualified disabled veterans;

(c) For the period of continued state residency for persons sixty-five years of age or more;

(d) For the period of the disability for persons with a developmental disability;

(e) For life for handicapped persons confined to a wheelchair who have been issued a permanent disability card; and

(f) Until a child reaches fifteen years of age.

(2) Two-consecutive-day personal use licenses expire at midnight on the day following the validation date written on the license by the license dealer, except two-consecutive-day personal use licenses validated for December 31 expire at midnight on that date.

(3) An annual salmon license is valid for a maximum catch of fifteen salmon, after which another salmon license may be purchased. A salmon license is valid only for the calendar year for which it is issued.

(4) An annual sturgeon license is valid for a maximum catch of fifteen sturgeon. A sturgeon license is valid only for the calendar year for which it is issued.

(5) All other recreational licenses are valid for the calendar year for which they are issued. [1989 c 305 § 14.]

75.25.190 Catch record cards. Catch record cards necessary for proper management of the state's food fish and shellfish resources shall be administered under rules adopted by the director and issued at no charge. [1989 c 305 § 10.]

75.25.901 Effective date—1987 c 87. This act shall take effect on January 1, 1988. [1987 c 87 § 10.]

75.25.902 Effective date—1989 c 305. This act shall take effect on January 1, 1990. [1989 c 305 § 21.]

Chapter 75.28

COMMERCIAL LICENSES

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75.28.900	Effective date—1989 c 316.

Commercial Puget Sound whiting license endorsement: RCW 75.30.160.

75.28.010 Commercial licenses and permits required—Exemption. (1) Except as otherwise provided by this title, a license or permit issued by the director is required to:

- (a) Commercially fish for or take food fish or shellfish;
- (b) Deliver food fish or shellfish taken in offshore waters;
- (c) Operate a charter boat; or
- (d) Engage in processing or wholesaling food fish or shellfish.

(2) It is unlawful to engage in the activities described in subsection (1) of this section without having in possession the licenses or permits required by this title.

(3) No license or permit is required for the production or harvesting of private sector cultured aquatic products as defined in RCW 15.85.020 or for the delivery, processing, or wholesaling of such aquatic products. However, if a means of identifying such products is required by rules adopted under RCW 15.85.060, the exemption from licensing or permit requirements established by this subsection applies only if the aquatic products are identified in conformance with those rules. [1985 c 457 § 18; 1983 1st ex.s. c 46 § 101; 1959 c 309 § 2; 1955 c 12 § 75.28.010. Prior: 1949 c 112 § 73; Rem. Supp. 1949 § 5780–511.]

75.28.012 Licensing districts—Created. The following licensing districts are created:

(1) The Puget Sound licensing district includes waters of the Strait of Juan de Fuca, Georgia Strait, Puget Sound and all bays, inlets, canals, coves, sounds and estuaries lying easterly and southerly of the international

boundary line and a line at the entrance to the Strait of Juan de Fuca projected northerly from Cape Flattery to the lighthouse on Tatoosh Island and then to Bonilla Point on Vancouver Island.

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

(3) The Willapa Bay–Columbia river licensing district includes waters of Willapa Bay and tributary estuaries and easterly of a line projected northerly from Leadbetter Point to Cape Shoalwater Light and those waters of the Columbia river and tributary sloughs described in subsection (2) of this section. [1983 1st ex.s. c 46 § 102; 1971 ex.s. c 283 § 2; 1957 c 171 § 1.]

Effective dates—1971 ex.s. c 283: See note following RCW 75.28.113.

75.28.014 Application deadlines for types of gear and licensing districts. (1) The department may establish by rule license application deadlines for types of gear and licensing districts. An applicant for a commercial salmon fishing license shall submit a license application in accordance with this subsection.

(a) If an application is postmarked or personally delivered to the department in Olympia by the application deadline, it shall be accompanied by the prescribed license fee.

(b) If an application is postmarked or personally delivered to the department in Olympia after the application deadline, it shall be accompanied by the prescribed license fee and a late application fee of two hundred dollars.

(2) Columbia River smelt license applications accompanied by the license fee shall be made in person or postmarked by January 10 of the license year. [1986 c 198 § 8; 1983 1st ex.s. c 46 § 103; 1981 c 201 § 1; 1965 ex.s. c 57 § 1; 1959 c 309 § 4; 1957 c 171 § 3.]

75.28.020 Qualifications for commercial licenses—Reciprocity with Oregon in concurrent waters of Columbia River. (1) The department may only issue a commercial license to a person who is sixteen years of age or older and a bona fide resident of the United States. The deckhand license required by RCW 75.28.690 may be issued to persons under sixteen years of age. The department may only issue a commercial license to a corporation if it is authorized to do business in this state. A valid Oregon license which is comparable to a license under this title is valid in the concurrent waters of the Columbia River if the state of Oregon recognizes as valid the comparable Washington license. [1989 c 47 § 1; 1983 1st ex.s. c 46 § 104; 1963 c 171 § 1; 1955 c 12 § 75.28.020. Prior: 1953 c 207 § 9; 1949 c 112 § 63; Rem. Supp. 1949 § 5780–501.]

75.28.030 Application for commercial licenses. Except as otherwise provided in this title, the director shall issue commercial licenses and permits to a qualified person, upon the receipt of an application accompanied by the required fee. Applications shall be submitted on forms provided by the department. Applicants for commercial licenses and permits shall indicate at the time of application the species of food fish or shellfish they intend to take and the type of gear they intend to use. [1983 1st ex.s. c 46 § 105; 1959 c 309 § 7; 1955 c 12 § 75.28.030. Prior: 1953 c 207 § 2; 1949 c 112 § 65; Rem. Supp. 1949 § 5780-503.]

75.28.035 Application for commercial licenses—Vessel registration, license decals—Additional operator—Transfer or replacement. An application for issuance or renewal of a commercial fishing license shall contain the name and address of the vessel owner, the name and address of the vessel operator, the name and number of the vessel, a description of the vessel and fishing gear to be carried on the vessel, and other information required by the department.

At the time of issuance of a commercial fishing license the director shall furnish the licensee with a vessel registration and two license decals.

Vessel registrations and license decals issued by the director shall be displayed as provided by rule of the director.

A commercial fishing license is not valid if the vessel is operated by a person other than the operator listed on the license. The director may authorize additional operators for the license. Unless adjusted by the director pursuant to the director's authority granted in RCW 75.28.065, the fee for an additional operator is twenty dollars.

The vessel owner shall notify the director on forms provided by the department of changes of ownership or operator and a new license shall be issued upon payment of a fee of twenty dollars.

A defaced, mutilated, or lost license or license decal shall be replaced immediately. Unless adjusted by the director pursuant to the director's authority granted in RCW 75.28.065, the replacement fee is ten dollars. [1989 c 316 § 1; 1983 1st ex.s. c 46 § 107; 1959 c 309 § 9; 1955 c 12 § 75.28.100. Prior: 1951 c 271 § 8; 1949 c 112 § 68; Rem. Supp. 1949 § 5780-506. Formerly RCW 75.28.100.]

75.28.040 Expiration and renewal of commercial licenses. Commercial licenses and permits expire at midnight on December 31st following their issuance and in accordance with this title may be renewed annually upon application and payment of the prescribed license fees. [1983 1st ex.s. c 46 § 108; 1955 c 212 § 2; 1955 c 12 § 75.28.040. Prior: 1949 c 112 § 64; Rem. Supp. 1949 § 5780-502.]

75.28.060 Licenses transferable—Determination of fee for gear operated by nonresident. Except as otherwise provided in this title, commercial fishing licenses are transferable. It is unlawful for a license to be operated

by a person other than the person listed as operator on the license. Fishing gear operated by a nonresident shall be licensed as nonresident gear. If a commercial license is transferred from a resident to a nonresident, the transferee shall pay the difference between the resident and nonresident license fees at the time of transfer. [1983 1st ex.s. c 46 § 109; 1971 ex.s. c 283 § 4; 1965 ex.s. c 30 § 1; 1959 c 309 § 8; 1955 c 212 § 3; 1955 c 12 § 75.28.060. Prior: 1951 c 271 § 5; 1949 c 112 § 74, part; Rem. Supp. 1949 § 5780-512, part.]

Effective dates—1971 ex.s. c 283: See note following RCW 75.28.113.

75.28.065 Fees—Adjustment by director—Expiration of section. On January 1, 1993, the director shall adjust all fees under this chapter in accordance with the implicit price deflator published by the United States department of commerce. This section shall cease to exist on January 1, 1994, unless extended by law for an additional fixed period of time. [1989 c 316 § 19.]

75.28.070 Display of license—Clam or oyster farm, oyster reserve, wholesale fish dealer. Clam or oyster farm, oyster reserve, and wholesale fish dealer licenses shall be displayed at the business premises of the licensee. [1983 1st ex.s. c 46 § 110; 1955 c 12 § 75.28-.070. Prior: 1949 c 112 § 74, part; Rem. Supp. 1949 § 5780-512, part.]

75.28.095 Charter boat license—Fee—"Charter boat" defined—Oregon charter boats, when allowed—Restrictions on commercial fishing. (1) A charter boat license is required for a vessel to be operated as a charter boat from which food fish are taken for personal use. Unless adjusted by the director pursuant to the director's authority granted in RCW 75.28.065, the annual license fees are:

Species	Resident Fee	Nonresident Fee
(a) Food fish other than salmon	\$135	\$270
(b) Salmon and other food fish	\$275	\$550

(2) "Charter boat" means a vessel from which persons may, for a fee, fish for food fish, and which delivers food fish into state ports or delivers food fish taken from state waters into United States ports. "Charter boat" does not mean:

(a) Vessels not generally engaged in charter boat fishing which are under private lease or charter and operated by the lessee for the lessee's personal recreational enjoyment; or

(b) Vessels used by guides for clients fishing for food fish for personal use in freshwater rivers, streams, and lakes, other than Lake Washington or that part of the Columbia River below the bridge at Longview.

(3) A charter boat licensed in Oregon shall be permitted to fish without a charter boat license in ocean waters within the jurisdiction of Washington state from

the southern border of the state of Washington to Leadbetter Point under the same regulations as Washington charter boat operators, as long as the Oregon vessel does not land at any Washington port with the purpose of taking on or discharging passengers. The provisions of this subsection shall be in effect as long as the state of Oregon has reciprocal laws and regulations.

(4) A vessel shall not engage in both charter or sports fishing and commercial fishing on the same day. [1989 c 316 § 2; 1989 c 147 § 1; 1989 c 47 § 2; 1988 c 9 § 1; 1983 1st ex.s. c 46 § 112; 1979 c 60 § 1; 1977 ex.s. c 327 § 5; 1971 ex.s. c 283 § 15; 1969 c 90 § 1.]

Reviser's note: This section was amended by 1989 c 47 § 2, 1989 c 147 § 1, and by 1989 c 316 § 2, each without reference to the other. All amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Severability—1979 c 60: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1979 c 60 § 4.]

Legislative intent—Funding of salmon enhancement facilities—Use of license fees—Severability—Effective date—1977 ex.s. c 327: See notes following RCW 75.25.100.

Effective dates—1971 ex.s. c 283: See note following RCW 75.28.113.

Limitation on issuance of salmon charter boat licenses: RCW 75.30.065.

Salmon charter boats—Angler permit, when required: RCW 75.30.070.

75.28.110 Commercial salmon fishing licenses—Gear—Fees. (1) The following commercial salmon fishing licenses are required for the licensee to use the specified gear to fish for salmon and other food fish in state waters. Unless adjusted by the director pursuant to the director's authority granted in RCW 75.28.065, the annual license fees are:

Gear	Resident Fee	Nonresident Fee
(a) Purse seine	\$410	\$820
(b) Gill net	\$275	\$550
(c) Troll	\$275	\$550
(d) Reef net	\$275	\$550

(2) Holders of commercial salmon fishing licenses may retain incidentally caught food fish other than salmon, subject to rules of the director.

(3) A salmon troll license allows fishing in all licensing districts and includes a salmon delivery license.

(4) A separate gill net license is required to fish for salmon in each of the licensing districts established in RCW 75.28.012. [1989 c 316 § 3; 1985 c 107 § 1; 1983 1st ex.s. c 46 § 113; 1965 ex.s. c 73 § 2; 1959 c 309 § 10; 1955 c 12 § 75.28.110. Prior: 1951 c 271 § 9; 1949 c 112 § 69(1); Rem. Supp. 1949 § 5780–507(1).]

Limitations on issuance of commercial salmon fishing licenses: RCW 75.30.120.

75.28.113 Salmon delivery license—Fee—Revocation. (1) A person operating a commercial fishing vessel used in taking salmon in offshore waters and delivering the salmon to a place or port in the state shall

obtain a salmon delivery license from the director. Unless adjusted by the director pursuant to the director's authority granted in RCW 75.28.065, the annual fee for a salmon delivery license is two hundred seventy-five dollars for residents and five hundred fifty dollars for nonresidents. Persons operating fishing vessels licensed under RCW 75.28.125 may apply the delivery license fee of fifty dollars against the salmon delivery license fee.

(2) If the director determines that the operation of a vessel under a salmon delivery license results in the depletion or destruction of the state's salmon resource or the delivery into this state of salmon products prohibited by law, the director may revoke the license. [1989 c 316 § 4; 1983 1st ex.s. c 46 § 115; 1977 ex.s. c 327 § 3; 1971 ex.s. c 283 § 1; 1955 c 12 § 75.18.080. Prior: 1953 c 147 § 9. Formerly RCW 75.18.080.]

Legislative intent—Funding of salmon enhancement facilities—Use of license fees—Severability—Effective date—1977 ex.s. c 327: See notes following RCW 75.25.100.

Effective dates—1971 ex.s. c 283: "The provisions of this 1971 amendatory act are necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect immediately. The provisions of sections 1 to 10 inclusive of this 1971 amendatory act shall take effect on January 1, 1972." [1971 ex.s. c 283 § 16.]

Limitations on issuance of salmon delivery permits: RCW 75.30.120.

75.28.116 Salmon single delivery license—Fee. The owner of a commercial salmon fishing vessel which is not qualified for a license under RCW 75.30.120 is required to obtain a salmon single delivery license in order to make one landing of salmon taken in offshore waters. The director shall not issue a salmon single delivery license unless, as determined by the director, a bona fide emergency exists. Unless adjusted by the director pursuant to the director's authority granted in RCW 75.28.065, the license fee is one hundred thirty-five dollars for residents and two hundred seventy dollars for nonresidents. [1989 c 316 § 5; 1984 c 80 § 1. Prior: 1983 1st ex.s. c 46 § 116; 1983 c 297 § 1; 1977 ex.s. c 327 § 4; 1974 ex.s. c 184 § 3. Formerly RCW 75.28.460.]

Legislative intent—Funding of salmon enhancement facilities—Use of license fees—Severability—Effective date—1977 ex.s. c 327: See notes following RCW 75.25.100.

Legislative intent—Severability—1974 ex.s. c 184: See notes following RCW 75.30.120.

75.28.120 Commercial fishing licenses for food fish other than salmon—Gear—Fees. The following commercial fishing licenses are required for the licensee to use the specified gear to fish for food fish other than salmon in state waters. Unless adjusted by the director pursuant to the director's authority granted in RCW 75.28.065, the annual license fees are:

Gear	Resident Fee	Nonresident Fee
(1) Jig	\$50	\$100
(2) Set line	\$50	\$100
(3) Set net	\$50	\$100
(4) Drag seine	\$50	\$100

(5) Gill net	\$275	\$550
(6) Purse seine	\$410	\$820
(7) Troll	\$50	\$100
(8) Bottom fish pots	\$50	\$100
(9) Lampara	\$100	\$200
(10) Dip bag net	\$50	\$100
(11) Brush weir	\$100	\$200
(12) Other gear	\$100	\$200

[1989 c 316 § 6; 1983 1st ex.s. c 46 § 117; 1965 ex.s. c 73 § 3; 1959 c 309 § 11; 1955 c 12 § 75.28.120. Prior: 1951 c 271 § 10; 1949 c 112 § 69(2); Rem. Supp. 1949 § 5780-507(2).]

Limitation on commercial herring fishing: RCW 75.30.140.

75.28.125 Delivery license for shellfish and food fish other than salmon—Fee. A delivery license is required to deliver shellfish or food fish other than salmon taken in offshore waters to a port in the state. Unless adjusted by the director pursuant to the director's authority granted in RCW 75.28.065, the annual license fee is fifty dollars for residents and one hundred dollars for nonresidents. Licenses issued under RCW 75.28.113 (salmon delivery license), RCW 75.28.130(4) (crab pot, other than Puget Sound), or RCW 75.28.140(2) (trawl, other than Puget Sound) shall include a delivery license. [1989 c 316 § 7; 1983 1st ex.s. c 46 § 119; 1971 ex.s. c 283 § 5; 1965 ex.s. c 73 § 1; 1959 c 309 § 5. Formerly RCW 75.28.085.]

Effective dates—1971 ex.s. c 283: See note following RCW 75.28.113.

75.28.130 Commercial shellfish licenses—Gear—Fee. The following commercial fishing licenses are required for the licensee to use the specified gear to fish for shellfish in state waters. Unless adjusted by the director pursuant to the director's authority granted in RCW 75.28.065, the annual license fees are:

Gear	Resident Fee	Nonresident Fee
(1) Ring net	\$50	\$100
(2) Shellfish pots (excluding crab)	\$50	\$100
(3) Crab pots (Puget Sound)	\$50	\$100
(4) Crab pots (other than Puget Sound)	\$200	\$400
(5) Shellfish diver (excluding clams)	\$50	\$100
(6) Squid gear, all types	\$100	\$200
(7) Ghost shrimp gear	\$100	\$200
(8) Commercial razor clam license	\$50	\$100
(9) Geoduck diver license	\$100	\$200
(10) Other shellfish gear	\$100	\$200

[1989 c 316 § 8; 1983 1st ex.s. c 46 § 120; 1977 ex.s. c 327 § 6; 1971 ex.s. c 283 § 7; 1965 ex.s. c 73 § 4; 1959 c 309 § 12; 1955 c 12 § 75.28.130. Prior: 1951 c 271 § 11; 1949 c 112 § 69(3); Rem. Supp. 1949 § 5780-507(3).]

Severability—Effective date—1977 ex.s. c 327: See notes following RCW 75.25.100.

Effective dates—1971 ex.s. c 283: See note following RCW 75.28.113.

Puget Sound crab license endorsement: RCW 75.30.130.

75.28.134 Hood Canal shrimp endorsement—Fee—Limitation on shrimp pots. (1) In addition to a shellfish pot license, a Hood Canal shrimp endorsement is required to take shrimp commercially in that portion of Hood Canal lying south of the Hood Canal floating bridge. Unless adjusted by the director pursuant to the director's authority granted in RCW 75.28.065, the annual endorsement fee is two hundred twenty-five dollars for a resident and four hundred fifty dollars for a nonresident.

(2) Not more than fifty shrimp pots may be used while commercially fishing for shrimp in that portion of Hood Canal lying south of the Hood Canal floating bridge. [1989 c 316 § 9; 1983 1st ex.s. c 31 § 2.]

Effective date—1983 1st ex.s. c 31: See note following RCW 75.25.015.

Recreational Hood Canal shrimp license: RCW 75.25.015.

75.28.140 Commercial fishing licenses for shellfish and food fish other than salmon—Fees. The following commercial fishing licenses are required for the licensee to use the specified gear to fish for shellfish and food fish other than salmon in state waters. Unless adjusted by the director pursuant to the director's authority granted in RCW 75.28.065, the annual license fees are:

Gear	Resident Fee	Nonresident Fee
(1) Trawl (Puget Sound)	\$100	\$200
(2) Trawl (other than Puget Sound)	\$150	\$300

[1989 c 316 § 10; 1983 1st ex.s. c 46 § 121; 1977 ex.s. c 327 § 7; 1971 ex.s. c 283 § 8; 1965 ex.s. c 73 § 5; 1959 c 309 § 13; 1955 c 12 § 75.28.140. Prior: 1951 c 271 § 12; 1949 c 112 § 69(4); Rem. Supp. 1949 § 5780-507(4).]

Severability—Effective date—1977 ex.s. c 327: See notes following RCW 75.25.100.

Effective dates—1971 ex.s. c 283: See note following RCW 75.28.113.

75.28.235 Herring spawn on kelp permits—Number limited. The legislature finds that the wise management of Washington state's herring resource is of paramount importance to the people of the state. The legislature finds that herring are an important part of the food chain for a number of the state's living marine resources. The legislature finds that both open and closed pond "spawn on kelp" harvesting techniques allow for an economic return to the state while at the same time providing for the proper management of the herring resource. The legislature finds that limitations on the number of herring harvesters tends to improve the management and economic health of the herring industry. The maximum number of herring spawn on kelp permits shall not exceed five annually. The state therefore must use its authority to regulate the number of herring

spawn on kelp permits so that the management and economic health of the herring fishery may be improved. [1989 c 176 § 1.]

75.28.245 Herring spawn on kelp permits—Auction. In addition to a commercial fishing license, a herring validation, and other applicable permits required under state law, a herring spawn on kelp permit is required to commercially take herring eggs which have been deposited on vegetation of any type. All herring spawn on kelp permits shall be sold at auction to the highest bidder. Bidders are required to identify their sources of kelp. Kelp harvested from state-owned aquatic lands as defined in RCW 79.90.465 requires the written consent of the department of natural resources. The department shall give all herring validation holders thirty days' notice of the auction. [1989 c 176 § 2.]

75.28.255 Commercial fishing licenses for specified species—Columbia river smelt—Carp—Fees. The following commercial fishing licenses are required for the licensee to fish for the specified species in state waters with gear authorized by rule of the director. Unless adjusted by the director pursuant to the director's authority granted in RCW 75.28.065, the annual license fees are:

Species	Resident Fee	Nonresident Fee
(1) Columbia River smelt	\$275	\$550
(2) Carp	\$50	\$100

[1989 c 316 § 11; 1983 1st ex.s. c 46 § 122; 1955 c 212 § 5.]

75.28.280 Mechanical harvester license—Fee. A mechanical harvester license is required to operate a mechanical or hydraulic device for commercially harvesting clams, other than geoduck clams, on a clam farm unless the requirements of RCW 75.20.100 are fulfilled for the proposed activity. Unless adjusted by the director pursuant to the director's authority granted in RCW 75.28.065, the annual license fee is four hundred ten dollars for residents and eight hundred twenty dollars for nonresidents. [1989 c 316 § 12; 1985 c 457 § 19; 1983 1st ex.s. c 46 § 125; 1979 ex.s. c 141 § 3; 1969 ex.s. c 253 § 3; 1955 c 212 § 8; 1955 c 12 § 75.28.280. Prior: 1951 c 271 § 26; 1949 c 112 § 70; Rem. Supp. 1949 § 5780–508.]

Construction—Severability—1969 ex.s. c 253: See notes following RCW 75.24.100.

75.28.287 Geoduck tract license—Geoduck diver license—Fees. (1) A geoduck tract license is required for the commercial harvest of geoducks from each subtidal tract for which harvest rights have been granted by the department of natural resources. Unless adjusted by the director pursuant to the director's authority granted in RCW 75.28.065, the annual license fee is one hundred thirty-five dollars for residents and two hundred seventy dollars for nonresidents.

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(2) Every diver engaged in the commercial harvest of geoduck or other clams shall obtain a nontransferable geoduck diver license. [1989 c 316 § 13; 1983 1st ex.s. c 46 § 130; 1979 ex.s. c 141 § 4; 1969 ex.s. c 253 § 4.]

Construction—Severability—1969 ex.s. c 253: See notes following RCW 75.24.100.

Designation of aquatic lands for geoduck harvesting: RCW 79.96.085.
Geoducks, harvesting for commercial purposes—License: RCW 75.24.100.

75.28.290 Oyster reserve license—Fee. An oyster reserve license is required for the commercial taking of shellfish from state oyster reserves. Unless adjusted by the director pursuant to the director's authority granted in RCW 75.28.065, the annual license fee is fifty dollars for residents and one hundred dollars for nonresidents. [1989 c 316 § 14; 1983 1st ex.s. c 46 § 131; 1969 ex.s. c 91 § 2; 1955 c 12 § 75.28.290. Prior: 1951 c 271 § 27; 1949 c 112 § 71; Rem. Supp. 1949 § 5780–509.]

75.28.295 Oyster cultch permit. An oyster cultch permit is required for commercial cultching of oysters on state oyster reserves. The director shall require that ten percent of the cultch bags or other collecting materials be provided to the state after the oysters have set, for the purposes of increasing the supply of oysters on state oyster reserves and enhancing oyster supplies on public beaches. [1989 c 316 § 15.]

75.28.300 Wholesale fish dealer's license—Fee—Exemption. A wholesale fish dealer's license is required for:

(1) A business in the state to engage in the commercial processing of food fish or shellfish, including custom canning or processing of personal use food fish or shellfish.

(2) A business in the state to engage in the wholesale selling, buying, or brokering of food fish or shellfish. A wholesale fish dealer's license is not required of those businesses which buy exclusively from Washington licensed wholesale dealers and sell solely at retail.

(3) Fishermen who land and sell their catch or harvest in the state to anyone other than a licensed wholesale dealer within or outside the state.

(4) A business to engage in the commercial manufacture or preparation of fertilizer, oil, meal, caviar, fish bait, or other byproducts from food fish or shellfish.

(5) A business employing a fish buyer as defined under RCW 75.28.340.

Unless adjusted by the director pursuant to the director's authority granted in RCW 75.28.065, the annual license fee is one hundred dollars. A wholesale fish dealer's license is not required for persons engaged in the processing, wholesale selling, buying, or brokering of private sector cultured aquatic products as defined in RCW 15.85.020. However, if a means of identifying such products is required by rules adopted under RCW 15.85.060, the exemption from licensing requirements established by this subsection applies only if the aquatic products are identified in conformance with those rules. [1989 c 316 § 16. Prior: 1985 c 457 § 20; 1985 c 248 §

1; 1983 1st ex.s. c 46 § 132; 1979 c 66 § 1; 1965 ex.s. c 28 § 1; 1955 c 212 § 11; 1955 c 12 § 75.28.300; prior: 1951 c 271 § 28; 1949 c 112 § 72(1); Rem. Supp. 1949 § 5780-510(1).]

75.28.305 Wholesale fish dealer may be a fish buyer. A wholesale dealer who is an individual may be a fish buyer. [1985 c 248 § 3.]

75.28.315 Wholesale fish dealers—Documentation of commercial harvest. Wholesale fish dealers are responsible for documenting the commercial harvest of food fish and shellfish according to the rules of the director. The director may allow only wholesale fish dealers or their designees to receive the forms necessary for the accounting of the commercial harvest of food fish and shellfish. [1985 c 248 § 4.]

75.28.323 Wholesale fish dealers—Performance bond. (1) A wholesale fish dealer shall not take possession of food fish or shellfish until the dealer has deposited with the department an acceptable performance bond on forms prescribed and furnished by the department. This performance bond shall be a corporate surety bond executed in favor of the department by a corporation authorized to do business in the state of Washington under chapter 48.28 RCW and approved by the department. The bond shall be filed and maintained in an amount equal to one thousand dollars for each buyer engaged by the wholesale dealer. In no case shall the bond be less than two thousand dollars nor more than fifty thousand dollars.

(2) A wholesale dealer shall, within seven days of engaging additional fish buyers, notify the department and increase the amount of the bonding required in subsection (1) of this section.

(3) The director may suspend and refuse to reissue a wholesale fish dealer's license of a dealer who has taken possession of food fish or shellfish without an acceptable performance bond on deposit with the department.

(4) The bond shall be conditioned upon the compliance with the requirements of this chapter and rules of the director relating to the payment of fines for violations of rules for the accounting of the commercial harvest of food fish or shellfish. In lieu of the surety bond required by this section the wholesale fish dealer may file with the department a cash deposit, negotiable securities acceptable to the department, or an assignment of a savings account or of a savings certificate in a Washington bank on an assignment form prescribed by the department.

(5) Liability under the bond shall be maintained as long as the wholesale fish dealer engages in activities under RCW 75.28.300 unless released. Liability under the bond may be released only upon written notification from the department. Notification shall be given upon acceptance by the department of a substitute bond or forty-five days after the expiration of the wholesale fish dealer's annual license. In no event shall the liability of the surety exceed the amount of the surety bond required under this chapter. [1985 c 248 § 6.]

75.28.328 Wholesale fish dealers—Performance bond—Payment of liability. The director shall promptly notify by order a wholesale dealer and the appropriate surety when a violation of rules relating to the accounting of commercial harvest has occurred. The notification shall specify the type of violation, the liability to be imposed for damages caused by the violation, and a notice that the amount of liability is due and payable to the department by the wholesale fish dealer and the surety.

If the amount specified in the order is not paid within thirty days after receipt of the notice, the prosecuting attorney for any county in which the persons to whom the order is directed do business, or the attorney general upon request of the department, may bring an action on behalf of the state in the superior court for Thurston county or any county in which the persons to whom the order is directed do business to recover the amount specified in the final order of the department. The surety shall be liable to the state to the extent of the bond. [1985 c 248 § 7.]

75.28.335 Wholesale fish dealers—Additional penalties. The liabilities imposed upon a wholesale fish dealer by this chapter shall be in addition to the penalties authorized in chapter 75.10 RCW. [1985 c 248 § 8.]

Wholesale fish dealers—Penalties: RCW 75.10.150.

75.28.340 Fish buyer's license. (1) A fish buyer's license is required of and shall be carried by each individual engaged by a wholesale fish dealer to purchase food fish or shellfish from a licensed commercial fisherman. A fish buyer may represent only one wholesale fish dealer.

(2) Unless adjusted by the director pursuant to the director's authority granted in RCW 75.28.065, the annual fee for a fish buyer's license is twenty dollars. [1989 c 316 § 17; 1985 c 248 § 2.]

75.28.690 Deckhand license—Fee—Sale of salmon roe by charter boat deckhands—Conditions. (1) A deckhand license is required for a crew member on a licensed salmon charter boat to sell salmon roe as provided in subsection (2) of this section. Unless adjusted by the director pursuant to the director's authority granted in RCW 75.28.065, the annual license fee is twenty dollars.

(2) A deckhand on a licensed salmon charter boat may sell salmon roe taken from fish caught for personal use, subject to rules of the director and the following conditions:

(a) The salmon is taken while fishing on the charter boat;

(b) The roe is the property of the angler until the roe is given to the deckhand. The charter boat's passengers are notified of this fact by the deckhand;

(c) The roe is sold to a licensed wholesale dealer; and

(d) The deckhand is licensed as provided in subsection (1) of this section and has the license in possession whenever salmon roe is sold. [1989 c 316 § 18; 1983 1st ex.s. c 46 § 137; 1981 c 227 § 2.]

75.28.700 License fee increases—Disposition. All revenues generated from the license fee increases in *sections 1 through 14 and 16 through 19 of this act shall be deposited in the general fund and shall be appropriated for the food fish and shellfish enhancement programs. [1989 c 316 § 20.]

***Reviser's note:** "Sections 1 through 14 and 16 through 19 of this act" consist of the enactment of RCW 75.28.065 and the 1989 c 316 amendments to RCW 75.28.035, 75.28.095, 75.28.110, 75.28.113, 75.28.116, 75.28.120, 75.28.125, 75.28.130, 75.28.134, 75.28.140, 75.28.255, 75.28.280, 75.28.287, 75.28.290, 75.28.300, 75.28.340, and 75.28.690.

75.28.900 Effective date—1989 c 316. This act shall take effect on January 1, 1990. The director of fisheries may immediately take such steps as are necessary to ensure that this act is implemented on its effective date. [1989 c 316 § 22.]

Chapter 75.30

LICENSE LIMITATION PROGRAMS

Sections

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75.30.050 Advisory review boards. (1) The director shall appoint three-member advisory review boards to hear cases as provided in RCW 75.30.060. Members shall be from:

- The salmon charter boat fishing industry in cases involving salmon charter boat licenses or angler permits;
- The commercial salmon fishing industry in cases involving commercial salmon licenses;
- The commercial crab fishing industry in cases involving Puget Sound crab license endorsements;
- The commercial herring fishery in cases involving herring validations;

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(e) The commercial Puget Sound whiting fishery in cases involving Puget Sound whiting license endorsements; and

(f) The commercial sea urchin fishery in cases involving sea urchin endorsements to shellfish diver licenses.

(2) Members shall serve at the discretion of the director and shall be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060. [1989 c 37 § 3; 1986 c 198 § 7; 1983 1st ex.s. c 46 § 138; 1977 ex.s. c 106 § 5.]

Legislative finding—1989 c 37: See note following RCW 75.30.210.

Legislative findings—Severability—1977 ex.s. c 106: See notes following RCW 75.30.065.

75.30.060 Administrative review of department's decision—Hearing—Procedures. A person aggrieved by a decision of the department under this chapter may request administrative review under the informal procedure established by this section.

In an informal hearing before a review board, the rules of evidence do not apply. A record of the proceeding shall be kept as provided by chapter 34.05 RCW. After hearing the case the review board shall notify in writing the director and the initiating party whether the review board agrees or disagrees with the department's decision and the reasons for the board's findings. Upon receipt of the board's findings the director may order such relief as the director deems appropriate under the circumstances.

Nothing in this section: (1) Impairs an aggrieved person's right to proceed under chapter 34.05 RCW; or (2) imposes a liability on members of a review board for their actions under this section. [1983 1st ex.s. c 46 § 139; 1977 ex.s. c 106 § 6.]

Legislative findings—Severability—1977 ex.s. c 106: See notes following RCW 75.30.065.

75.30.065 Salmon charter boats—Limitation on issuance of licenses—Renewal—Transfer. Salmon charter boat licenses issued under RCW 75.28.095(1)(b) may be issued only to boats which held a salmon charter boat license during the previous year or had transferred to the boat such a license, and has not subsequently transferred the license to another boat. A boat is entitled to only one salmon charter boat license.

Salmon charter boat licenses may be renewed each year. A salmon charter boat license which is not renewed each year shall not be renewed further.

Salmon charter boat licenses are transferable. [1983 1st ex.s. c 46 § 141; 1981 c 202 § 1; 1979 c 101 § 7; 1977 ex.s. c 106 § 2. Formerly RCW 75.30.020.]

Effective date—Intent—1979 c 101: See notes following RCW 75.30.070.

Legislative findings—1977 ex.s. c 106: "The legislature finds that the wise management and economic health of the state's salmon fishery are of continued importance to the people of the state and to the economy of the state as a whole. The legislature finds that charter boats licensed by the state for use by the state's charter boat fishing industry have increased in quantity. The legislature finds that limitations on the number of licensed charter boats will tend to improve the management of the charter boat fishery and the economic health of the charter boat industry. The state therefore must use its authority to

regulate the number of licensed boats in use by the state's charter boat industry in a manner provided in this chapter so that management and economic health of the salmon fishery may be improved." [1977 ex.s. c 106 § 1. Formerly RCW 75.30.010.]

Severability—1977 ex.s. c 106: "If any provision of this 1977 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1977 ex.s. c 106 § 10.]

75.30.070 Salmon charter boats—Angler permit, when required. (1) In addition to a salmon charter boat license, an angler permit is required to operate a salmon charter boat in salt water. The angler permit shall specify the maximum number of persons that may fish from the charter boat per trip and shall be issued annually without charge. The angler permit expires if the salmon charter boat license is not renewed.

(2) An angler permit shall not be required for charter boats licensed in Oregon and fishing in ocean waters within the jurisdiction of Washington state from the southern border of the state of Washington to Leadbetter Point under the same regulations as Washington charter boat operators, as long as the Oregon vessel does not land at any Washington port with the purpose of taking on or discharging passengers. The provisions of this subsection shall be in effect as long as the state of Oregon has reciprocal laws and regulations. [1989 c 147 § 2; 1983 1st ex.s. c 46 § 142; 1979 c 101 § 2.]

Effective date—1979 c 101: "This act shall take effect on January 1, 1980." [1979 c 101 § 10.]

Intent—1979 c 101: "The legislature finds that wise management of the state's salmon fishery is essential to the well-being of the state. The legislature recognizes that further restrictions on salmon fishing in the charter salmon industry are necessary and that a limitation on the number of persons fishing is preferable to reductions in the fishing season or daily bag limits, or increases in size limits." [1979 c 101 § 1.]

75.30.090 Salmon charter boats—Angler permit—Number of anglers. A salmon charter boat may not carry more anglers than the number specified in the angler permit issued to the boat under RCW 75.30.070. Members of the crew may fish from the boat only to the extent that the number of anglers specified in the angler permit exceeds the number of noncrew passengers on the boat at that time. [1983 1st ex.s. c 46 § 143; 1979 c 101 § 4.]

Effective date—Intent—1979 c 101: See notes following RCW 75.30.070.

75.30.100 Salmon charter boats—Angler permit—Total number of anglers limited—Permit transfer. (1) The total number of anglers authorized by the department shall not exceed the total number authorized for 1980.

(2) Angler permits issued under RCW 75.30.070 are transferable. All or a portion of the permit may be transferred to another charter boat.

(3) The department shall be notified when an angler permit is transferred, and the department shall issue a new angler permit certificate. If the original permit holder retains a portion of the permit, the department shall issue a new angler permit certificate reflecting the

decrease in angler capacity. The department shall collect a fee of ten dollars for each certificate issued under this subsection. [1983 1st ex.s. c 46 § 144; 1979 c 101 § 5.]

Effective date—Intent—1979 c 101: See notes following RCW 75.30.070.

75.30.120 Commercial salmon fishing licenses and delivery permits—Limitations on issuance—Waiver of landing requirement—Transfer. (1) A commercial salmon fishing license issued under RCW 75.28.110 or salmon delivery permit issued under RCW 75.28.113 may be issued only to a vessel:

(a) Which held a state commercial salmon fishing license or salmon delivery permit during the previous year or had transferred to the vessel such a license, and has not subsequently transferred the license or permit to another vessel; and

(b) From which food fish were caught and landed in this state or in another state during the previous year as documented by a valid fish receiving document.

Where the failure to obtain the license or permit during the previous year was the result of a license or permit suspension, the vessel may qualify for a license or permit by establishing that the vessel held such a license or permit during the last year in which the license or permit was not suspended.

(2) The director may waive the landing requirement of subsection (1)(b) of this section if:

(a) The vessel to which an otherwise valid license is transferred has not had the opportunity to have caught and landed salmon; and

(b) The intent of the commercial salmon vessel limitation program established under this section is not violated.

(3) Commercial salmon fishing licenses and salmon delivery permits are transferable. [1983 1st ex.s. c 46 § 146; 1979 c 135 § 1; 1977 ex.s. c 230 § 1; 1977 ex.s. c 106 § 7; 1974 ex.s. c 184 § 2. Formerly RCW 75.28.455.]

Legislative findings—Severability—1977 ex.s. c 106: See notes following RCW 75.30.065.

Legislative intent—1974 ex.s. c 184: "The legislature finds that the protection, welfare, and economic good of the commercial salmon fishing industry is of paramount importance to the people of this state. Scientific advancement has increased the efficiency of salmon fishing gear. There presently exists an overabundance of commercial salmon fishing gear in our state waters which causes great pressure on the salmon fishery resource. This situation results in great economic waste to the state and prohibits conservation programs from achieving their goals. The public welfare requires that the number of commercial salmon fishing licenses and salmon delivery permits issued by the state be limited to insure that sound conservation programs can be scientifically carried out. It is the intention of the legislature to preserve this valuable natural resource so that our food supplies from such resource can continue to meet the ever increasing demands placed on it by the people of this state." [1983 1st ex.s. c 46 § 136; 1974 ex.s. c 184 § 1. Formerly RCW 75.28.450.]

Severability—1974 ex.s. c 184: "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1974 ex.s. c 184 § 11.]

75.30.125 Commercial salmon fishing licenses and delivery permits—Reversion to department following government confiscation of vessel. Any commercial

salmon fishing license issued under RCW 75.28.110 or salmon delivery permit issued under RCW 75.28.113 shall revert to the department when any government confiscates and sells the vessel to which the license or permit was issued. Upon application of the person named on the license or permit and the approval of the director, the department shall transfer the license or permit to the original owner. Application for transfer of the license or permit must be made within the calendar year in which the vessel was licensed. [1986 c 198 § 2.]

75.30.130 Puget Sound commercial crab fishing—Limitations on license endorsements—Qualifications.

(1) It is unlawful to take dungeness crab (*Cancer magister*) in the Puget Sound licensing district without first obtaining a Puget Sound crab license endorsement. A license endorsement is not required to take other species of crab, including red rock crab (*Cancer productus*).

(2) Commercial crab licenses issued under RCW 75.28.130(3) endorsed for the Puget Sound licensing district may be issued only to vessels:

(a) Which held a commercial crab license endorsed for the Puget Sound licensing district during the previous year or had transferred to the vessel such a license, and has not subsequently transferred the endorsed license to another vessel; and

(b) From which one thousand pounds of dungeness crab were caught and landed in this state during the previous two-year period ending on December 31st of an odd-numbered year, as documented by a valid shellfish receiving ticket. This requirement shall apply to licenses for which application is made after January 1, 1984.

Where the failure to obtain the license during the previous year was the result of a license suspension, the vessel may qualify for a license by establishing that the vessel held such a license during the last year in which the license was not suspended.

(3) The director may reduce or waive the landing requirement established under subsection (2)(b) of this section upon the recommendation of a review board established under RCW 75.30.050. The review board may recommend a reduction or waiver of the landing requirement in individual cases if, in the board's judgment, extenuating circumstances prevent achievement of the landing requirement. The director shall adopt rules governing the operation of the review boards and defining "extenuating circumstances."

(4) The issuance of commercial crab licenses for areas other than the Puget Sound licensing district is not restricted by this section.

(5) License endorsements issued under this section are not transferable from one owner to another owner, except from parent to child or upon the death of the owner, before July 1, 1986. This restriction applies to all changes in the vessel owner named on the license, including (a) changes during the license year, and (b) changes during the license renewal process between years. This restriction does not prevent changes in vessel operator or transfers between vessels when the vessel owner remains unchanged. Upon request of a vessel

owner, the director may issue a temporary permit to allow the vessel owner to use the license endorsement on a leased or rented vessel.

(6) If less than two hundred vessels are eligible for Puget Sound license endorsements, the director may accept applications for new endorsements. The director shall determine by random selection the successful applicants for the additional endorsements. The number of additional endorsements issued shall be sufficient to maintain two hundred vessels in the Puget Sound crab fishery. The director shall adopt rules governing the application, selection, and issuance procedures for new Puget Sound crab license endorsements, based upon recommendations of a board of review established under RCW 75.30.050. [1983 1st ex.s. c 46 § 147; 1982 c 157 § 1; 1980 c 133 § 4. Formerly RCW 75.28.275.]

Severability—1980 c 133: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1980 c 133 § 8.]

Legislative findings—1980 c 133: "The legislature finds that a significant commercial crab fishery is developing within Puget Sound. The legislature further finds that the crab fishery in Puget Sound represents a separate and distinct fishery from that of the coastal waters and is limited in quantity and is in need of conservation. The potential for depletion of the crab stocks in these waters is increasing, particularly as crab fishing becomes an attractive alternative to fishermen facing increasing restrictions on commercial salmon fishing.

The legislature finds that the number of commercial fishermen engaged in crab fishing has steadily increased. This factor, combined with advances in fishing and marketing techniques, has resulted in strong pressures on the supply of crab, unnecessary waste of an important natural resource, and economic loss to the citizens of the state.

The legislature finds that increased regulation of commercial crab fishing is necessary to preserve and efficiently manage the commercial crab fishery in the waters of Puget Sound." [1980 c 133 § 1.]

75.30.140 Commercial herring fishing—Herring validation required—Limitations on issuance. (1) In addition to a commercial fishing license, a herring validation is required to fish commercially for herring in state waters. Herring validations shall be issued without charge.

(2) Except as provided in this section, permanent herring validations may be issued only to a person who:

(a) Established eligibility for a permanent herring validation as provided in subsection (3) of this section or had transferred to the person a permanent herring validation; and

(b) Has not subsequently transferred the validation to another person.

(3) A person may establish eligibility for a permanent herring validation by:

(a) Documenting to the department that the person landed herring during the period January 1, 1971, through April 15, 1973;

(b) Documenting to the department that the person landed herring during the period January 1, 1969, through December 31, 1970, if the person was in the armed forces of the United States during the period January 1, 1971, through April 15, 1973; or

(c) Applying to the department and qualifying for a permanent herring validation under hardship criteria established by rule of the director.

Landings may be documented only by a department fish receiving ticket.

(4) A permanent herring validation may be used only with the type of fishing gear originally used to establish eligibility for the validation.

(5) The director may establish rules governing the administration of this section based upon recommendations of a board of review established under RCW 75.30.050.

(6) Additional permanent and temporary validations may be granted by the department if the stocks of herring will not be jeopardized by granting additional validations. Herring validations are transferable. [1983 1st ex.s. c 46 § 148; 1974 ex.s. c 104 § 1; 1973 1st ex.s. c 173 § 4. Formerly RCW 75.28.420.]

Legislative findings—Purpose—1973 1st ex.s. c 173: "The legislature finds that a significant commercial herring fishing industry is presently developing in the state of Washington under the careful guidance of the department of fisheries. The legislature further finds that the stocks of herring within the waters of this state are limited in extent and are in need of strict preservation.

In addition, the legislature finds that the number of commercial fishermen engaged in fishing for herring has steadily increased. This factor, combined with advances made in fishing and marketing techniques, has resulted in strong pressures on the supply of herring, unnecessary waste in one of Washington's valuable resources, and economic loss to the citizens of this state. Therefore, it is the purpose of RCW 75.30.140 to establish reasonable procedures for controlling the extent of commercial herring fishing." [1983 1st ex.s. c 46 § 135; 1973 1st ex.s. c 173 § 2. Formerly RCW 75.28.390 and 75.28.400.]

75.30.150 Commercial Puget Sound whiting license endorsement—Legislative findings. The legislature finds that maintaining a commercial whiting fishery in Puget Sound affects the public welfare. Excessive fishing for Puget Sound whiting, especially at the time of spawning, severely affects the abundance of whiting. The legislature further finds that as a result of increases in the number of vessels fishing for whiting, the amount of gear used in fishing, and the limited whiting resource, it is proper and necessary to limit the number of vessels and amount of gear used in taking whiting in Puget Sound. [1986 c 198 § 3.]

75.30.160 Commercial Puget Sound whiting license endorsement—Required in designated areas—Fees. In addition to any other license, a Puget Sound commercial whiting endorsement is required to take whiting in the waters of marine fish-shell fish management and catch reporting areas 24B, Port Susan; 24C, Saratoga Passage; 26A, Possession Sound; or any other area designated by the department. An annual endorsement fee is two hundred dollars for residents and four hundred dollars for nonresidents. The license shall be affixed to the licensed vessel. [1986 c 198 § 6.]

75.30.170 Commercial Puget Sound whiting license endorsement—Limitation on issuance. To obtain a Puget Sound commercial whiting endorsement, the owner of the vessel must have delivered at least fifty thousand pounds of whiting during the period from January 1, 1981, through February 22, 1985 as verified by fish delivery tickets and must have possessed, on January

1, 1986, all equipment necessary to fish for whiting. [1986 c 198 § 5.]

75.30.180 Commercial Puget Sound whiting license endorsement—Transferable to family members. Commercial Puget Sound whiting license endorsements issued under RCW 75.30.160 shall be valid for the owner and the vessel for which the endorsement was issued. The endorsement may be transferred through gift, devise, bequest or descent to members of the immediate family which shall be limited to spouse, children or stepchildren. Only a natural person may possess an endorsement. The owner of the endorsement must be present on any vessel taking whiting under terms of the endorsement. In no instance may temporary permits be issued.

The director may adopt rules necessary to implement RCW 75.30.150 through 75.30.180. [1986 c 198 § 4.]

75.30.210 Sea urchin fishery endorsement—Required—Limitation on issuance—Transferable to family members—Issuance of new endorsements. (1) After October 1, 1989, it is unlawful to commercially take any species of sea urchin using shellfish diver gear without first obtaining a sea urchin endorsement to accompany a shellfish diver license. A sea urchin endorsement to a shellfish diver license issued under *RCW 75.28.130(4) shall be limited to those vessels which:

(a) Held a commercial shellfish diver license, excluding clams, between January 1, 1988, and December 31, 1988, or had transferred to the vessel such a license;

(b) Have not transferred the license to another vessel; and

(c) Can establish, by means of dated shellfish receiving documents issued by the department, that twenty thousand pounds of sea urchins were caught and landed under the license during the period of April 1, 1986, through March 31, 1988.

(2) In addition to the requirements of subsection (1) of this section, after December 31, 1991, sea urchin endorsements to shellfish diver licenses issued under *RCW 75.28.130(4) may be issued only to vessels:

(a) Which held a sea urchin endorsement to a shellfish diver license during the previous year or had transferred to the vessel such a license; and

(b) From which twenty thousand pounds of sea urchins were caught and landed in this state during the two-year period ending March 31 of an odd-numbered year, as documented by valid shellfish receiving documents issued by the department.

Where failure to obtain the license during the previous year was the result of a license suspension or revocation by the department, the vessel may qualify for a license by establishing that the vessel held such a license during the last year in which it was eligible.

(3) The director may reduce or waive the landing requirement established under subsection (2)(b) of this section upon the recommendation of a board of review established under RCW 75.30.050. The board of review may recommend a reduction or waiver of the landing

requirement in individual cases if in the board's judgment, extenuating circumstances prevent achievement of the landing requirement. The director shall adopt rules governing the operation of the board of review and defining "extenuating circumstances."

(4) Sea urchin endorsements issued under this section are not transferable from one owner to another owner, except from parent to child, or from spouse to spouse during marriage or as a result of marriage dissolution, or upon the death of the owner. This restriction applies to all changes in the vessel owner's name on the license, including (a) changes during the license year, and (b) changes during the license renewal process between years. This restriction does not prevent changes in vessel operator or transfers between vessels when the vessel owner remains unchanged. Upon request of a vessel owner, the director may issue a temporary permit to allow the vessel owner to use the license endorsement on a leased or rented vessel.

(5) If less than forty-five vessels are eligible for sea urchin endorsements, the director may accept applications for new endorsements. The director shall determine by random selection the successful applicants for the additional endorsements. The number of additional endorsements issued shall be sufficient to maintain up to forty-five vessels in the sea urchin fishery. The director shall adopt rules governing the application, selection, and issuance procedure for new sea urchin endorsements, based upon recommendations of a board of review established under RCW 75.30.050. [1989 c 37 § 2.]

***Reviser's note:** RCW 75.28.130 was amended by 1989 c 316 § 8, and shellfish diver licenses are now issued under subsection (5) of that section.

Legislative finding—1989 c 37: "The legislature finds that a significant commercial sea urchin fishery is developing within state waters. The potential for depletion of the sea urchin stocks in these waters is increasing, particularly as the sea urchin fishery becomes an attractive alternative to fishermen facing increasing restrictions on other types of commercial fishery activities.

The legislature finds that the number of commercial fishermen engaged in sea urchin fishing has steadily increased. This factor, combined with advances in marketing techniques, has resulted in strong pressures on the supply of sea urchins.

The legislature finds that increased regulation of commercial sea urchin fishing is necessary to preserve and efficiently manage the commercial sea urchin fishery in the waters of the state." [1989 c 37 § 1.]

**Chapter 75.40
COMPACTS**

Sections

- 75.40.010 Columbia River Compact—Provisions.
- 75.40.020 Columbia River Compact—Director to represent state.
- 75.40.030 Pacific Marine Fisheries Compact—Provisions.
- 75.40.040 Pacific Marine Fisheries Compact—Representatives of state on Pacific Marine Fisheries Commission.
- 75.40.060 Treaty between United States and Canada concerning Pacific salmon.

Authority of director to adopt rules of fisheries commissions and compacts: RCW 75.08.070.

75.40.010 Columbia River Compact—Provisions. There exists between the states of Washington and Oregon a definite compact and agreement as follows:

All laws and regulations now existing or which may be necessary for regulating, protecting or preserving fish in the waters of the Columbia river, or its tributaries, over which the states of Washington and Oregon have concurrent jurisdiction, or which would be affected by said concurrent jurisdiction, shall be made, changed, altered and amended in whole or in part, only with the mutual consent and approbation of both states. [1983 1st ex.s. c 46 § 149; 1955 c 12 § 75.40.010. Prior: 1949 c 112 § 80; Rem. Supp. 1949 § 5780-701.]

75.40.020 Columbia River Compact—Director to represent state. The director may give to the state of Oregon such consent and approbation of the state of Washington as is necessary under the compact set out in RCW 75.40.010. For the purposes of RCW 75.40.010, the states of Washington and Oregon have concurrent jurisdiction in the concurrent waters of the Columbia river as defined in RCW 75.08.011. [1983 1st ex.s. c 46 § 150; 1955 c 12 § 75.40.020. Prior: 1949 c 112 § 81; Rem. Supp. 1949 § 5780-702.]

75.40.030 Pacific Marine Fisheries Compact—Provisions. There exists between the states of Alaska, California, Idaho, Oregon and Washington a definite compact and agreement as follows:

THE PACIFIC MARINE FISHERIES COMPACT

The contracting states do hereby agree as follows:

ARTICLE I.

The purposes of this compact are and shall be to promote the better utilization of fisheries, marine, shell and anadromous, which are of mutual concern, and to develop a joint program of protection and prevention of physical waste of such fisheries in all of those areas of the Pacific Ocean and adjacent waters over which the compacting states jointly or separately now have or may hereafter acquire jurisdiction.

Nothing herein contained shall be construed so as to authorize the compacting states or any of them to limit the production of fish or fish products for the purpose of establishing or fixing the prices thereof or creating and perpetuating a monopoly.

ARTICLE II.

This agreement shall become operative immediately as to those states executing it whenever the compacting states have executed it in the form that is in accordance with the laws of the executing states and the congress has given its consent.

ARTICLE III.

Each state joining herein shall appoint, as determined by state statutes, one or more representatives to a commission hereby constituted and designated as The Pacific Marine Fisheries Commission, of whom one shall be the administrative or other officer of the agency of such

state charged with the conservation of the fisheries resources to which this compact pertains. This commission shall be a body with the powers and duties set forth herein.

The term of each commissioner of The Pacific Marine Fisheries Commission shall be four years. A commissioner shall hold office until his successor shall be appointed and qualified but such successor's term shall expire four years from legal date of expiration of the term of his predecessor. Vacancies occurring in the office of such commissioner from any reason or cause shall be filled for the unexpired term, or a commissioner may be removed from office, as provided by the statutes of the state concerned. Each commissioner may delegate in writing from time to time to a deputy the power to be present and participate, including voting as his representative or substitute, at any meeting of or hearing by or other proceeding of the commission.

Voting powers under this compact shall be limited to one vote for each state regardless of the number of representatives.

ARTICLE IV.

The duty of the said commission shall be to make inquiry and ascertain from time to time such methods, practices, circumstances and conditions as may be disclosed for bringing about the conservation and the prevention of the depletion and physical waste of the fisheries, marine, shell, and anadromous in all of those areas of the Pacific Ocean over which the states signatory to this compact jointly or separately now have or may hereafter acquire jurisdiction. The commission shall have power to recommend the coordination of the exercise of the police powers of the several states within their respective jurisdictions and said conservation zones to promote the preservation of those fisheries and their protection against overfishing, waste, depletion or any abuse whatsoever and to assure a continuing yield from the fisheries resources of the signatory parties hereto.

To that end the commission shall draft and, after consultation with the advisory committee hereinafter authorized, recommend to the governors and legislative branches of the various signatory states hereto legislation dealing with the conservation of the marine, shell and anadromous fisheries in all of those areas of the Pacific Ocean and adjacent waters over which the signatory states jointly or separately now have or may hereafter acquire jurisdiction. The commission shall, more than one month prior to any regular meeting of the legislative branch in any state signatory hereto, present to the governor of such state its recommendations relating to enactments by the legislative branch of that state in furthering the intents and purposes of this compact.

The commission shall consult with and advise the pertinent administrative agencies in the signatory states with regard to problems connected with the fisheries and recommend the adoption of such regulations as it deems advisable and which lie within the jurisdiction of such agencies.

The commission shall have power to recommend to the states signatory hereto the stocking of the waters of

such states with marine, shell, or anadromous fish and fish eggs or joint stocking by some or all of such states and when two or more of the said states shall jointly stock waters the commission shall act as the coordinating agency for such stocking.

ARTICLE V.

The commission shall elect from its number a chairman and a vice chairman and shall appoint and at its pleasure, remove or discharge such officers and employees as may be required to carry the provisions of this compact into effect and shall fix and determine their duties, qualifications and compensation. Said commission shall adopt rules and regulations for the conduct of its business. It may establish and maintain one or more offices for the transaction of its business and may meet at any time or place within the territorial limits of the signatory states but must meet at least once a year.

ARTICLE VI.

No action shall be taken by the commission except by the affirmative vote of a majority of the whole number of compacting states represented at any meeting. No recommendation shall be made by the commission in regard to any species of fish except by the vote of a majority of the compacting states which have an interest in such species.

ARTICLE VII.

The fisheries research agencies of the signatory states shall act in collaboration as the official research agency of The Pacific Marine Fisheries Commission.

An advisory committee to be representative of the commercial fishermen, commercial fishing industry and such other interests of each state as the commission deems advisable shall be established by the commission as soon as practicable for the purpose of advising the commission upon such recommendations as it may desire to make.

ARTICLE VIII.

Nothing in this compact shall be construed to limit the powers of any state or to repeal or prevent the enactment of any legislation or the enforcement of any requirement by any state imposing additional conditions and restrictions to conserve its fisheries.

ARTICLE IX.

Continued absence of representation or of any representative on the commission from any state party hereto, shall be brought to the attention of the governor thereof.

ARTICLE X.

The states agree to make available annual funds for the support of the commission on the following basis:

Eighty percent of the annual budget shall be shared equally by those member states having as a boundary the Pacific Ocean; not less than five percent of the annual budget shall be contributed by any other member state; the balance of the annual budget shall be shared by those member states, having as a boundary the Pacific Ocean, in proportion to the primary market value

of the products of their commercial fisheries on the basis of the latest five-year catch records.

The annual contribution of each member state shall be figured to the nearest one hundred dollars.

This amended article shall become effective upon its enactment by the states of Alaska, California, Idaho, Oregon, and Washington and upon ratification by congress by virtue of the authority vested in it under Article I, section 10 of the Constitution of the United States.

ARTICLE XI.

This compact shall continue in force and remain binding upon each state until renounced by it. Renunciation of this compact must be preceded by sending six months' notice in writing of intention to withdraw from the compact to the other parties hereto.

ARTICLE XII.

The states of Alaska or Hawaii, or any state having rivers or streams tributary to the Pacific Ocean may become a contracting state by enactment of The Pacific Marine Fisheries Compact. Upon admission of any new state to the compact, the purposes of the compact and the duties of the commission shall extend to the development of joint programs for the conservation, protection and prevention of physical waste of fisheries in which the contracting states are mutually concerned and to all waters of the newly admitted state necessary to develop such programs.

This article shall become effective upon its enactment by the states of Alaska, California, Idaho, Oregon and Washington and upon ratification by congress by virtue of the authority vested in it under Article I, section 10, of the Constitution of the United States. [1983 1st ex.s. c 46 § 151; 1969 ex.s. c 101 § 2; 1959 ex.s. c 7 § 1; 1955 c 12 § 75.40.030. Prior: 1949 c 112 § 82(1); Rem. Supp. 1949 § 5780-703(1).]

Reviser's note: The 24th annual report (1971 p 40) of the Pacific Marine Fisheries Compact commission indicates congressional approval effective July 10, 1970, by P.L. 91-315, 91st congress; 84 Stat. 415.

Effective date—1969 ex.s. c 101: "The provisions of this 1969 amendatory act shall not take effect until such time as the proposed amendment to The Pacific Marine Fisheries Compact contained herein is approved by the congress of the United States." [1969 ex.s. c 101 § 1.] This applies to RCW 75.40.030.

75.40.040 Pacific Marine Fisheries Compact—Representatives of state on Pacific Marine Fisheries Commission. The director, ex officio, and two appointees of the governor representing the fishing industry shall act as the representatives of this state on the Pacific Marine Fisheries Commission. The appointees of the governor are subject to confirmation by the state senate. [1983 1st ex.s. c 46 § 152; 1963 c 171 § 2; 1955 c 12 § 75.40.040. Prior: 1949 c 112 § 82(2); Rem. Supp. 1949 § 5780-703(2).]

75.40.060 Treaty between United States and Canada concerning Pacific salmon. The director may adopt and

enforce the provisions of the treaty between the government of the United States and the government of Canada concerning Pacific salmon, treaty document number 99-2, entered into force March 18, 1985, at Quebec City, Canada, and the regulations of the commission adopted under authority of the treaty. [1989 c 130 § 2; 1983 1st ex.s. c 46 § 153; 1955 c 12 § 75.40.060. Prior: 1949 c 112 § 83; Rem. Supp. 1949 § 5780-704.]

Chapter 75.44

PROGRAM TO PURCHASE FISHING VESSELS AND LICENSES

Sections

75.44.100	Definitions.
75.44.110	Program authorized—Conditions.
75.44.120	Determination of purchase price—Maximum price.
75.44.130	Disposition of vessels and gear—Prohibition against using purchased vessels for fishing purposes.
75.44.140	Rules—Administration of program—Advisory board—Travel expenses.
75.44.150	Vessel, gear, license, and permit reduction fund.

75.44.100 Definitions. As used in this chapter:

(1) "Case areas" means those areas of the Western district of Washington and in the adjacent offshore waters which are within the jurisdiction of the state of Washington, as defined in United States of America et al. v. State of Washington et al., Civil No. 9213, United States District Court for Western District of Washington, February 12, 1974, and in *Sohappy v. Smith*, 302 F. Supp. 899 (D. Oregon, 1969), as amended, affirmed, and remanded 529 F. 2d 570 (9th Cir., 1976), or an area in which fishing rights are affected by court decision in a manner consistent with the above-mentioned decisions;

(2) "Program" means the program established under RCW 75.44.100 through 75.44.150. [1985 c 7 § 150; 1983 1st ex.s. c 46 § 155; 1977 ex.s. c 230 § 3; 1975 1st ex.s. c 183 § 3. Formerly RCW 75.28.505.]

Legislative finding and intent—1975 1st ex.s. c 183: "The legislature finds that the protection, welfare, and economic well-being of the commercial fishing industry is important to the people of this state. There presently exists an overabundance of commercial fishing gear in our state waters which causes great pressure on the fishing resources. This results in great economic waste to the state and prohibits conservation and harvesting programs from achieving their goals. This adverse situation has been compounded by the federal court decisions, *United States of America et al. v. State of Washington et al.*, Civil No. 9213, United States District Court for the Western District of Washington, February 12, 1974, and *Sohappy v. Smith*, 302 F. Supp. 899 (D. Oregon, 1969), as amended, affirmed, and remanded 529 F. 2d 570 (9th Cir., 1976). As a result, large numbers of commercial fishermen face personal economic hardship, and the state commercial fishing industry is confronted with economic difficulty. The public welfare requires that the state have the authority to purchase commercial fishing vessels, licenses, gear, and permits offered for sale, as appropriate, in a manner which will provide relief to the individual vessel owner, and which will effect a reduction in the amount of commercial fishing gear in use in the state so as to insure increased economic opportunity for those persons in the industry and to insure that sound scientific conservation and harvesting programs can be carried out. It is the intention of the legislature to provide relief to commercial fishermen adversely affected by the current economic situation in the state fishery and to preserve this valuable state industry and these natural resources." [1977 ex.s. c 230 § 2; 1975 1st ex.s. c 183 § 2. Formerly RCW 75.28.500.]

75.44.110 Program authorized—Conditions. The department may purchase commercial fishing vessels and appurtenant gear, and the current state commercial fishing licenses, delivery permits, and charter boat licenses if the license or permit holder was substantially restricted in fishing as a result of compliance with United States of America et al. v. State of Washington et al., Civil No. 9213, United States District Court for Western District of Washington, February 12, 1974, and *Sohappy v. Smith*, 302 F. Supp. 899 (D. Oregon, 1969), as amended, affirmed, and remanded 529 F. 2d 570 (9th Cir., 1976).

The department shall not purchase a vessel without also purchasing all current Washington commercial fishing licenses and delivery permits and charter boat licenses issued to the vessel or its owner. The department may purchase current licenses and delivery permits without purchasing the vessel. [1984 c 67 § 1; 1983 1st ex.s. c 46 § 156; 1979 ex.s. c 43 § 1; 1977 ex.s. c 230 § 4; 1975 1st ex.s. c 183 § 4. Formerly RCW 75.28.510.]

Legislative finding and intent—1975 1st ex.s. c 183: See note following RCW 75.44.100.

75.44.120 Determination of purchase price—Maximum price. The purchase price of a vessel and appurtenant gear shall be based on a survey conducted by a qualified marine surveyor. A license or delivery permit shall be valued separately.

The director may specify a maximum price to be paid for a vessel, gear, license, or delivery permit purchased under RCW 75.44.110. A license or delivery permit purchased under RCW 75.44.110 shall be permanently retired by the department. [1983 1st ex.s. c 46 § 157; 1975 1st ex.s. c 183 § 5. Formerly RCW 75.28.515.]

Legislative finding and intent—1975 1st ex.s. c 183: See note following RCW 75.44.100.

75.44.130 Disposition of vessels and gear—Prohibition against using purchased vessels for fishing purposes. The department may arrange for the insurance, storage, and resale or other disposition of vessels and gear purchased under RCW 75.44.110. Vessels shall not be resold by the department to the seller or the seller's immediate family. The vessels shall not be used by any owner or operator: (1) As a commercial fishing or charter vessel in state waters; or (2) to deliver fish to a place or port in the state. The department shall require that the purchasers and other users of vessels sold by the department execute suitable instruments to insure compliance with the requirements of this section. The director may commence suit or be sued on such an instrument in a state court of record or United States district court having jurisdiction. [1983 1st ex.s. c 46 § 158; 1979 ex.s. c 43 § 2; 1975 1st ex.s. c 183 § 6. Formerly RCW 75.28.520.]

Legislative finding and intent—1975 1st ex.s. c 183: See note following RCW 75.44.100.

75.44.140 Rules—Administration of program—Advisory board—Travel expenses. The director shall adopt rules for the administration of the program. To

assist the department in the administration of the program, the director may contract with persons not employed by the state and may enlist the aid of other state agencies.

The director shall appoint an advisory board composed of five individuals who are knowledgeable of the commercial fishing industry to advise the director concerning the values of licenses and permits. Advisory board members shall be reimbursed for travel expenses under RCW 43.03.050 and 43.03.060. [1983 1st ex.s. c 46 § 159; 1979 ex.s. c 43 § 4; 1975-'76 2nd ex.s. c 34 § 172; 1975 1st ex.s. c 183 § 8. Formerly RCW 75.28.530.]

Effective date—Severability—1975-'76 2nd ex.s. c 34: See notes following RCW 2.08.115.

Legislative finding and intent—1975 1st ex.s. c 183: See note following RCW 75.44.100.

75.44.150 Vessel, gear, license, and permit reduction fund. The director is responsible for the administration and disbursement of all funds, goods, commodities, and services received by the state under the program.

There is created within the state treasury a fund to be known as the "vessel, gear, license, and permit reduction fund". This fund shall be used for purchases under RCW 75.44.110 and for the administration of the program. This fund shall be credited with federal or other funds received to carry out the purposes of the program and the proceeds from the sale or other disposition of property purchased under RCW 75.44.110. [1983 1st ex.s. c 46 § 160; 1977 ex.s. c 230 § 5; 1975 1st ex.s. c 183 § 9. Formerly RCW 75.28.535.]

Legislative finding and intent—1975 1st ex.s. c 183: See note following RCW 75.44.100.

Chapter 75.48

SALMON ENHANCEMENT FACILITIES—BOND ISSUE

Sections

75.48.020	General obligation bonds authorized—Purpose—Terms—Appropriation required (as amended by 1989 c 136).
75.48.020	General obligation bonds authorized—Purpose—Terms—Appropriation required (as amended by 1989 1st ex.s. c 14).
75.48.030	Disposition of proceeds—Salmon enhancement construction account—Earnings.
75.48.040	Administration of proceeds.
75.48.050	"Facilities" defined.
75.48.060	Form, terms, conditions, etc., of bonds.
75.48.070	Anticipation notes—Authorized—Payment of principal and interest on bonds and notes.
75.48.080	Salmon enhancement construction bond retirement fund—Created—Purpose.
75.48.100	Availability of sufficient revenue required before bonds issued.
75.48.110	Bonds legal investment for public funds.

75.48.020 General obligation bonds authorized—Purpose—Terms—Appropriation required (as amended by 1989 c 136). For the purpose of providing funds for the planning, acquisition, construction, and improvement of salmon hatcheries, other salmon propagation facilities including natural production sites, and necessary supporting facilities within the state, the state finance committee may issue general

obligation bonds of the state of Washington in the sum of thirty-four million (~~five~~) six hundred sixty thousand dollars or so much thereof as may be required to finance the improvements defined in this chapter and all costs incidental thereto. These bonds shall be paid and discharged within thirty years. No bonds authorized by this chapter may be offered for sale without prior legislative appropriation of the net proceeds of such bonds to be sold. [1989 c 136 § 8; 1985 ex.s. c 4 § 10; 1983 1st ex.s. c 46 § 162; 1981 c 261 § 1; 1980 c 15 § 1; 1977 ex.s. c 308 § 2.]

Intent—1989 c 136: See note following RCW 43.83A.020.

75.48.020 General obligation bonds authorized—Purpose—Terms—Appropriation required (as amended by 1989 1st ex.s. c 14). For the purpose of providing funds for the planning, acquisition, construction, and improvement of salmon hatcheries, other salmon propagation facilities including natural production sites, and necessary supporting facilities within the state, the state finance committee may issue general obligation bonds of the state of Washington in the sum of (~~thirty-four~~) twenty-nine million (~~five~~) two hundred thousand dollars or so much thereof as may be required to finance the improvements defined in this chapter and all costs incidental thereto. These bonds shall be paid and discharged within thirty years. No bonds authorized by this chapter may be offered for sale without prior legislative appropriation of the proceeds of such bonds to be sold. [1989 1st ex.s. c 14 § 15; 1985 ex.s. c 4 § 10; 1983 1st ex.s. c 46 § 162; 1981 c 261 § 1; 1980 c 15 § 1; 1977 ex.s. c 308 § 2.]

Reviser's note: RCW 75.48.020 was amended twice during the 1989 legislative session, each without reference to the other. For rule of construction concerning sections amended more than once during the same legislative session, see RCW 1.12.025.

Severability—Effective dates—1989 1st ex.s. c 14: See RCW 43.99H.900 and 43.99H.901.

Severability—1985 ex.s. c 4: See RCW 43.99G.900.

Legislative finding—1977 ex.s. c 308: "The long range economic development goals for the state of Washington must include the restoration of salmon runs to provide an increased supply of this renewable resource for the benefit of commercial and recreational users and the economic well-being of the state." [1977 ex.s. c 308 § 1. Formerly RCW 75.48.010.]

75.48.030 Disposition of proceeds—Salmon enhancement construction account—Earnings. The proceeds from the sale of bonds authorized by this chapter shall be deposited in the salmon enhancement construction account hereby created in the state treasury and shall be used exclusively for the purpose specified in RCW 75.48.020 and for payment of the expenses incurred in the issuance and sale of the bonds. All earnings of investments of balances in the salmon enhancement construction account shall be credited to the general fund. [1985 c 57 § 73; 1983 1st ex.s. c 46 § 163; 1977 ex.s. c 308 § 3.]

Effective date—1985 c 57: See note following RCW 15.52.320.

75.48.040 Administration of proceeds. The proceeds from the sale of the bonds deposited in the salmon enhancement construction account of the general fund under the terms of this chapter shall be administered by the department subject to legislative appropriation. [1983 1st ex.s. c 46 § 164; 1977 ex.s. c 308 § 4.]

75.48.050 "Facilities" defined. As used in this chapter, "facilities" means salmon propagation facilities including, but not limited to, all equipment, utilities, structures, real property, and interests in and improvements on real property, as well as stream bed clearing,

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for or incidental to the acquisition, construction, or development of salmon propagation facilities. Specifically, the term includes a spawning channel on the Skagit river. [1983 1st ex.s. c 46 § 165; 1981 c 261 § 2; 1977 ex.s. c 308 § 5.]

75.48.060 Form, terms, conditions, etc., of bonds. The state finance committee may prescribe the form, terms, conditions, and covenants of the bonds, the time or times of sale of all or any portion of them, and the conditions and manner of their sale and issuance. [1989 c 136 § 9; 1983 1st ex.s. c 46 § 166; 1977 ex.s. c 308 § 6.]

Intent—1989 c 136: See note following RCW 43.83A.020.

75.48.070 Anticipation notes—Authorized—Payment of principal and interest on bonds and notes. When the state finance committee has decided to issue the bonds or a portion thereof, it may, pending the issuing of the bonds, issue, in the name of the state, temporary notes in anticipation of the money to be derived from the sale of the bonds, which notes shall be designated as "anticipation notes". The portion of the proceeds of the sale of the bonds as may be required for the purpose shall be applied to the payment of the principal of and interest on the anticipation notes which have been issued. The bonds and notes shall pledge the full faith and credit of the state of Washington and shall contain an unconditional promise to pay the principal and interest when due. The state finance committee may authorize the use of a printed facsimile of the seal of the state of Washington in the issuance of the bonds and notes. [1983 1st ex.s. c 46 § 167; 1977 ex.s. c 308 § 7.]

75.48.080 Salmon enhancement construction bond retirement fund—Created—Purpose. The salmon enhancement construction bond retirement fund is created in the state treasury. This fund shall be exclusively devoted to the payment of interest on and retirement of the bonds authorized by this chapter. The state finance committee shall, on or before June 30th of each year, certify to the state treasurer the amount required in the next succeeding twelve months for the payment of the principal of and the interest coming due on the bonds. Not less than thirty days prior to the date on which the interest or principal and interest payment is due, the state treasurer shall withdraw from any general state revenues received in the state treasury and deposit in the salmon enhancement construction bond retirement fund an amount equal to the amount certified by the state finance committee to be due on such payment date. The owner and holder of each of the bonds or the trustee for any of the bonds may by mandamus or other appropriate proceeding require the transfer and payment of funds as directed herein. [1983 1st ex.s. c 46 § 168; 1977 ex.s. c 308 § 8.]

75.48.100 Availability of sufficient revenue required before bonds issued. The bonds authorized by this chapter shall be issued only after the director has certified, based upon reasonable estimates and data provided to

the department, that sufficient revenues will be available from sport and commercial salmon license sales and from salmon fees and taxes to meet the requirements of RCW 75.48.080 during the life of the bonds. [1983 1st ex.s. c 46 § 170; 1977 ex.s. c 308 § 10.]

75.48.110 Bonds legal investment for public funds. The bonds authorized in this chapter are a legal investment for all state funds or for funds under state control and for all funds of any other public body. [1983 1st ex.s. c 46 § 171; 1977 ex.s. c 308 § 11.]

Chapter 75.50

SALMON ENHANCEMENT PROGRAM

Sections

75.50.010	Legislative findings.
75.50.020	Long-term regional policy statements.
75.50.030	Salmon enhancement plan—Enhancement projects.
75.50.040	Director to monitor enhancement projects and enhancement plan.
75.50.050	Annual report to legislature.
75.50.060	"Enhancement project" defined.
75.50.070	Regional fisheries enhancement group authorized.
75.50.080	Regional fisheries enhancement group—Goals.
75.50.900	Severability—1985 c 458.

75.50.010 Legislative findings. Currently, many of the salmon stocks of Washington state are critically reduced from their sustainable level. The best interests of all fishing groups and the citizens as a whole are served by a stable and productive salmon resource. Immediate action is needed to reverse the severe decline of the resource and to insure its very survival. The legislature finds a state of emergency exists and that immediate action is required to restore its fishery.

Disagreement and strife have dominated the salmon fisheries for many years. Conflicts among the various fishing interests have only served to erode the resource. It is time for the state of Washington to make a major commitment to increasing productivity of the resource and to move forward with an effective rehabilitation and enhancement program. The department of fisheries is directed to dedicate its efforts to make increasing the productivity of the salmon resource a first priority and to seek resolution to the many conflicts that involve the resource.

Success of the enhancement program can only occur if projects efficiently produce salmon or restore habitat. The expectation of the program is to optimize the efficient use of funding on projects that will increase artificially and naturally produced salmon, restore and improve habitat, or identify ways to increase the survival of salmon. The full utilization of state resources and cooperative efforts with interested groups are essential to the success of the program. [1985 c 458 § 1.]

75.50.020 Long-term regional policy statements. (1) The director shall develop long-term regional policy statements regarding the salmon fishery resources before

December 1, 1985. The director shall consider the following in formulating and updating regional policy statements:

- (a) Existing resource needs;
 - (b) Potential for creation of new resources;
 - (c) Successful existing programs, both within and outside the state;
 - (d) Balanced utilization of natural and hatchery production;
 - (e) Desires of the fishing interest;
 - (f) Need for additional data or research;
 - (g) Federal court orders; and
 - (h) Salmon advisory council recommendations.
- (2) The director shall review and update each policy statement at least once each year. [1985 c 458 § 2.]

75.50.030 Salmon enhancement plan—Enhancement projects. (1) The director shall develop a detailed salmon enhancement plan with proposed enhancement projects. The plan and the regional policy statements shall be submitted to the secretary of the senate and chief clerk of the house of representatives for legislative distribution by June 30, 1986. The enhancement plan and regional policy statements shall be provided by June 30, 1986, to the natural resources committees of the house of representatives and the senate. The director shall provide a maximum opportunity for the public to participate in the development of the salmon enhancement plan. To insure full participation by all interested parties, the director shall solicit and consider enhancement project proposals from Indian tribes, sports fishermen, commercial fishermen, private aquaculturists, and other interested groups or individuals for potential inclusion in the salmon enhancement plan. Joint or cooperative enhancement projects shall be considered for funding.

(2) The following criteria shall be used by the director in formulating the project proposals:

- (a) Compatibility with the long-term policy statement;
- (b) Benefit/cost analysis;
- (c) Needs of all fishing interests;
- (d) Compatibility with regional plans, including harvest management plans;
- (e) Likely increase in resource productivity;
- (f) Direct applicability of any research;
- (g) Salmon advisory council recommendations;
- (h) Compatibility with federal court orders;
- (i) Coordination with the salmon and steelhead advisory commission program;
- (j) Economic impact to the state;
- (k) Technical feasibility; and
- (l) Preservation of native salmon runs.

(3) The director shall not approve projects that serve as replacement funding for projects that exist prior to May 21, 1985, unless no other sources of funds are available.

(4) The director shall prioritize various projects and establish a recommended implementation time schedule. [1985 c 458 § 3.]

75.50.040 Director to monitor enhancement projects and enhancement plan. Upon approval by the legislature of funds for its implementation, the director shall monitor the progress of projects detailed in the salmon enhancement plan.

The director shall be responsible for establishing criteria which shall be used to measure the success of each project in the salmon enhancement plan. [1985 c 458 § 4.]

75.50.050 Annual report to legislature. The director shall report to the legislature on or before October 30th of each year through 1991 on the progress and performance of each project. The report shall contain an analysis of the successes and failures of the program to enable optimum development of the program. The report shall include estimates of funding levels necessary to operate the projects in future years.

The director shall submit the reports and any additional recommendations to the chairs of the committees on ways and means and the committees on natural resources of the senate and house of representatives. [1987 c 505 § 72; 1985 c 458 § 5.]

75.50.060 "Enhancement project" defined. As used in this chapter, "enhancement project" means salmon propagation activities including, but not limited to, hatcheries, spawning channels, rearing ponds, egg boxes, fishways, fish screens, stream bed clearing, erosion control, habitat restoration, net pens, applied research projects, and any equipment, real property, or other interest necessary to the proper operation thereof. [1985 c 458 § 6.]

75.50.070 Regional fisheries enhancement group authorized. The legislature finds that it is in the best interest of the salmon resource of the state to encourage the development of regional fisheries enhancement groups. The accomplishments of one existing group, the Grays Harbor fisheries enhancement task force, have been widely recognized as being exemplary. The legislature recognizes the potential benefits to the state that would occur if each region of the state had a similar group of dedicated citizens working to enhance the salmon resource.

The legislature authorizes the formation of regional fisheries enhancement groups. These groups shall be eligible for state financial support and shall be actively supported by the department of fisheries. The regional groups shall be operated on a strictly nonprofit basis, and shall seek to maximize the efforts of volunteer and private donations to improve the salmon resource for all citizens of the state. [1989 c 426 § 1.]

Severability—1989 c 426: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1989 c 426 § 10.]

75.50.080 Regional fisheries enhancement group—Goals. Regional fisheries enhancement groups, consistent with the long-term regional policy statements developed under RCW 75.50.020, shall seek to:

- (1) Enhance the salmon resource of the state;
- (2) Maximize volunteer efforts and private donations to improve the salmon resource for all citizens;
- (3) Assist the department in achieving the goal to double the state-wide salmon catch by the year 2000 under chapter 214, Laws of 1988; and
- (4) Develop projects designed to supplement the fishery enhancement capability of the department of fisheries. [1989 c 426 § 4.]

Severability—1989 c 426: See note following RCW 75.50.070.

75.50.900 Severability—1985 c 458. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1985 c 458 § 12.]

Chapter 75.52

VOLUNTEER COOPERATIVE FISH AND WILDLIFE ENHANCEMENT PROGRAM

Sections

75.52.010	Legislative findings—Departments of fisheries and wildlife to administer cooperative enhancement program.
75.52.020	Definitions.
75.52.030	Cooperative projects—Types.
75.52.035	Cooperative projects—Sale of surplus salmon eggs and carcasses.
75.52.040	Duties of department.
75.52.050	Director to establish rules—Subjects.
75.52.060	Agreements for cooperative projects—Duration.
75.52.070	Duties of volunteer group.
75.52.080	Application of chapter.
75.52.100	Cedar river spawning channel.
75.52.110	Cedar river spawning channel—Technical committee—Policy committee.
75.52.120	Cedar river spawning channel—Specifications.
75.52.130	Cedar river spawning channel—Funding.
75.52.140	Cedar river spawning channel—Transfer of funds.
75.52.150	Cedar river spawning channel—Legislative declaration.
75.52.160	Cedar river spawning channel—Mitigation of water diversion projects.
75.52.900	Severability—1984 c 72.

75.52.010 Legislative findings—Departments of fisheries and wildlife to administer cooperative enhancement program. The fish and game resources of the state benefit by the contribution of volunteer recreational and commercial fishing organizations, schools, and other volunteer groups in cooperative projects under agreement with the department of fisheries or the department of wildlife. These projects provide educational opportunities, improve the communication between the natural resources agencies and the public, and increase the fish and game resources of the state. In an effort to increase these benefits and realize the full potential of cooperative projects, the department of fisheries and the department of wildlife each shall administer a cooperative fish and wildlife enhancement program and enter agreements with volunteer groups relating to the operation of cooperative projects. [1988 c 36 § 41; 1984 c 72 § 1.]

75.52.020 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Volunteer group" means any person or group of persons interested in or party to an agreement with the department of fisheries or the department of wildlife relating to a cooperative fish or game project.

(2) "Cooperative project" means a project conducted by a volunteer group that will benefit the fish, shellfish, game bird, nongame wildlife, or game animal resources of the state and for which the benefits of the project, including fish and game reared and released, are available to all citizens of the state. Indian tribes may elect to participate in cooperative fish and wildlife projects with the department.

(3) "Department" means either the department of fisheries or the department of wildlife, whichever is responsible for managing the species of fish or game most affected by the cooperative project. [1988 c 36 § 42; 1984 c 72 § 2.]

75.52.030 Cooperative projects—Types. The department shall encourage and support the development and operation of cooperative projects of the following types:

(1) Cooperative food fish and game fish rearing projects, including but not limited to egg planting, egg boxes, juvenile planting, pen rearing, pond rearing, raceway rearing, and egg taking;

(2) Cooperative fish habitat improvement projects, including but not limited to fish migration improvement, spawning bed rehabilitation, habitat restoration, reef construction, lake fertilization, pond construction, pollution abatement, and endangered stock protection;

(3) Cooperative fish or game research projects if the project is clearly of a research nature and if the results are readily available to the public;

(4) Cooperative game bird and game animal projects, including but not limited to habitat improvement and restoration, replanting and transplanting, nest box installation, pen rearing, game protection, and supplemental feeding;

(5) Cooperative nongame wildlife projects, including but not limited to habitat improvement and restoration, nest box installation, establishment of wildlife interpretive areas or facilities, pollution abatement, supplemental feeding, and endangered species preservation and enhancement; and

(6) Cooperative information and education projects, including but not limited to landowner relations, outdoor ethics, natural history of Washington's fish, shellfish, and wildlife, and outdoor survival. [1984 c 72 § 3.]

75.52.035 Cooperative projects—Sale of surplus salmon eggs and carcasses. The department of fisheries may authorize the sale of surplus salmon eggs and carcasses by permitted cooperative projects for the purposes of defraying the expenses of the cooperative project. In no instance shall the department allow a profit to be realized through such sales. The department shall adopt

rules to implement this section pursuant to chapter 34.05 RCW. [1987 c 48 § 1.]

Sale of surplus salmon eggs by department: RCW 75.08.245.

75.52.040 Duties of department. (1) The department shall:

(a) Encourage and support the establishment of cooperative agreements for the development and operation of cooperative food fish, shellfish, game fish, game bird, game animal, and nongame wildlife projects, and projects which provide an opportunity for volunteer groups to become involved in resource and habitat-oriented activities. All cooperative projects shall be fairly considered in the approval of cooperative agreements;

(b) Identify regions and species or activities that would be particularly suitable for cooperative projects providing benefits compatible with department goals;

(c) Determine the availability of rearing space at operating facilities or of net pens, egg boxes, portable rearing containers, incubators, and any other rearing facilities for use in cooperative projects, and allocate them to volunteer groups as fairly as possible;

(d) Exempt volunteer groups from payment of fees to the department for activities related to the project;

(e) Publicize the cooperative program;

(f) Not substitute a new cooperative project for any part of the department's program unless mutually agreeable to the department and volunteer group;

(g) Not approve agreements that are incompatible with legally existing land, water, or property rights.

(2) The department may, when requested, provide to volunteer groups its available professional expertise and assist the volunteer group to evaluate its project. [1987 c 505 § 73; 1984 c 72 § 4.]

75.52.050 Director to establish rules—Subjects. The director of each department shall establish by rule:

(1) The procedure for entering a cooperative agreement and the application forms for a permit to release fish or wildlife required by RCW 75.08.295 or 77.16-.150. The procedure shall indicate the information required from the volunteer group as well as the process of review by the department. The process of review shall include the means to coordinate with other agencies and Indian tribes when appropriate and to coordinate the review of any necessary hydraulic permit approval applications.

(2) The procedure for providing within forty-five days of receipt of a proposal a written response to the volunteer group indicating the date by which an acceptance or rejection of the proposal can be expected, the reason why the date was selected, and a written summary of the process of review. The response should also include any suggested modifications to the proposal which would increase its likelihood of approval and the date by which such modified proposal could be expected to be accepted. If the proposal is rejected, the department must provide in writing the reasons for rejection. The volunteer group may request the director or the director's designee to review information provided in the response.

(3) The priority of the uses to which eggs, seed, juveniles, or brood stock are put. Use by cooperative projects shall be second in priority only to the needs of programs of the department or of other public agencies within the territorial boundaries of the state. Sales of eggs, seed, juveniles, or brood stock have a lower priority than use for cooperative projects.

(4) The procedure for notice in writing to a volunteer group of cause to revoke the agreement for the project and the procedure for revocation. Revocation shall be documented in writing to the volunteer group. Cause for revocation may include: (a) The unavailability of adequate biological or financial resources; (b) the development of unacceptable biological or resource management conflicts; or (c) a violation of agreement provisions. Notice of cause to revoke for a violation of agreement provisions may specify a reasonable period of time within which the volunteer group must comply with any violated provisions of the agreement.

(5) An appropriate method of distributing among volunteer groups fish, bird, or animal food or other supplies available for the program. [1984 c 72 § 5.]

75.52.060 Agreements for cooperative projects—

Duration. Agreements under this chapter may be for up to five years, with the department attempting to maximize the duration of each cooperative agreement. The duration of the agreement should reflect the financial and volunteer commitment and the stability of the volunteer group as well as the department's expectation of resource availability and project contributions to the resource. [1984 c 72 § 6.]

75.52.070 Duties of volunteer group. (1) The volunteer group shall:

(a) Provide care and diligence in conducting the cooperative project; and

(b) Maintain accurately the required records of the project on forms provided by the department.

(2) The volunteer group shall acknowledge that fish and game reared in cooperative projects are public property and must be handled and released for the benefit of all citizens of the state. The fish and game are to remain public property until reduced to private ownership under rules of the department. [1984 c 72 § 7.]

75.52.080 Application of chapter. This chapter applies to cooperative projects which were in existence on June 7, 1984, or which require no further funding. Implementation of this chapter for new projects requiring funding shall be to the extent that funds are available from the aquatic land enhancement account. [1984 c 72 § 8.]

75.52.100 Cedar river spawning channel. A salmon spawning channel shall be constructed on the Cedar river with the assistance and cooperation of the state department of fisheries. The department shall use existing personnel and the volunteer fisheries enhancement program outlined under chapter 75.52 RCW to assist in the

planning, construction, and operation of the spawning channel. [1989 c 85 § 3.]

Project designation—1989 c 85: "The legislature hereby designates the Cedar river sockeye salmon enhancement project as a "Washington state centennial salmon venture." [1989 c 85 § 1.]

Legislative finding—1989 c 85: "The legislature recognizes that King county has a unique urban setting for a recreational fishery and that Lake Washington and the rivers flowing into it should be developed for greater salmon production. A Lake Washington fishery is accessible to fifty percent of the state's citizens by automobile in less than one hour. There has been extensive sockeye fishing success in Lake Washington, primarily from fish originating in the Cedar river. The legislature intends to enhance the Cedar river fishery by active state and local management and intends to maximize the Lake Washington sockeye salmon runs for recreational fishing for all of the citizens of the state. A sockeye enhancement program could produce two to three times the current numbers of returning adults. A sockeye enhancement project would increase the public's appreciation of our state's fisheries, would demonstrate the role of a clean environment, and would show that positive cooperation can exist between local and state government in planning and executing programs that directly serve the public. A spawning channel in the Cedar river has been identified as an excellent way to enhance the Lake Washington sockeye run. A public utility currently diverting water from the Cedar river for beneficial public use has expressed willingness to fund the planning, design, evaluation, construction, and operation of a spawning channel on the Cedar river." [1989 c 85 § 2.]

Severability—1989 c 85: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1989 c 85 § 11.]

75.52.110 Cedar river spawning channel—Technical committee—Policy committee. The department of fisheries shall chair a technical committee, which shall review the preparation of enhancement plans and construction designs for a Cedar river sockeye spawning channel. The technical committee shall consist of not more than eight members: One representative each from the department of fisheries, national marine fisheries service, United States fish and wildlife service, and Muckleshoot Indian tribe; and four representatives from the public utility described in RCW 75.52.130. The technical committee will be guided by a policy committee, also to be chaired by the department of fisheries, which shall consist of not more than six members: One representative from the department of fisheries, one from the Muckleshoot Indian tribe, and one from either the national marine fisheries service or the United States fish and wildlife service; and three representatives from the public utility described in RCW 75.52.130. The policy committee shall present a progress report to the senate and house of representatives natural resources and environment committees by January 1, 1990, and shall oversee the operation and evaluation of the spawning channel. The policy committee will continue its oversight until the policy committee concludes that the channel is meeting the production goals specified in RCW 75.52.120. [1989 c 85 § 4.]

Project designation—Legislative finding—Severability—1989 c 85: See notes following RCW 75.52.100.

75.52.120 Cedar river spawning channel—Specifications. The channel shall be designed to produce, at a minimum, fry comparable in quality to those produced in the Cedar river and equal in number to what could be

produced naturally by the estimated two hundred sixty-two thousand adults that could have spawned upstream of the Landsburg diversion. Construction of the spawning channel shall commence no later than September 1, 1990. Initial construction size shall be adequate to produce fifty percent or more of the production goal specified in this section. [1989 c 85 § 5.]

Project designation—Legislative finding—Severability—1989 c 85: See notes following RCW 75.52.100.

75.52.130 Cedar river spawning channel—Funding.

The legislature recognizes that, if funding for planning, design, evaluation, construction, and operating expenses is provided by a public utility that diverts water for beneficial public use, and if the performance of the spawning channel meets the production goals described in RCW 75.52.120, the spawning channel project will serve, at a minimum, as compensation for lost sockeye salmon spawning habitat upstream of the Landsburg diversion. The amount of funding to be supplied by said utility will fully fund the total cost of planning, design, evaluation, and construction of the spawning channel. [1989 c 85 § 6.]

Project designation—Legislative finding—Severability—1989 c 85: See notes following RCW 75.52.100.

75.52.140 Cedar river spawning channel—Transfer of funds. In order to provide operation and maintenance funds for the facility authorized by RCW 75.52.100 through 75.52.160, the utility shall place two million five hundred thousand dollars in the state general fund Cedar river channel construction and operation account herein created. The interest from the fund shall be used for operation and maintenance of the spawning channel and any unused interest shall be added to the fund to increase the principal to cover possible future operation cost increases. The state treasurer may invest funds from the account as provided by law. [1989 c 85 § 7.]

Project designation—Legislative finding—Severability—1989 c 85: See notes following RCW 75.52.100.

75.52.150 Cedar river spawning channel—Legislative declaration. The legislature hereby declares that the construction of the Cedar river sockeye spawning channel is in the best interests of the state of Washington. [1989 c 85 § 9.]

Project designation—Legislative finding—Severability—1989 c 85: See notes following RCW 75.52.100.

75.52.160 Cedar river spawning channel—Mitigation of water diversion projects. Should the requirements of RCW 75.52.100 through 75.52.160 not be met, the department of fisheries shall seek immediate legal clarification of the steps which must be taken to fully mitigate water diversion projects on the Cedar river. [1989 c 85 § 10.]

Project designation—Legislative finding—Severability—1989 c 85: See notes following RCW 75.52.100.

75.52.900 Severability—1984 c 72. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1984 c 72 § 9.]

Chapter 75.56

SALMON AND STEELHEAD TROUT— MANAGEMENT OF RESOURCES

Sections	
75.56.010	Declaration.
75.56.020	Petition to congress.
75.56.030	Management of natural resources—State policy.
75.56.040	Declaration—Denial of rights based on race, sex, origin, or cultural heritage.
75.56.900	Transmittal of act to president and congress—1985 c 1.
75.56.905	Severability—1985 c 1.

75.56.010 Declaration. The people of the state of Washington declare that an emergency exists in the management of salmon and steelhead trout resources such that both are in great peril. An immediate resolution of this crisis is essential to perpetuating and enhancing these resources. [1985 c 1 § 1 (Initiative Measure No. 456, approved November 6, 1984).]

75.56.020 Petition to congress. The people of the state of Washington petition the United States Congress to immediately make the steelhead trout a national game fish protected under the Black Bass Act. [1985 c 1 § 2 (Initiative Measure No. 456, approved November 6, 1984).]

75.56.030 Management of natural resources—State policy. The people of the state of Washington declare that conservation, enhancement, and proper utilization of the state's natural resources, including but not limited to lands, waters, timber, fish, and game are responsibilities of the state of Washington and shall remain within the express domain of the state of Washington.

While fully respecting private property rights, all resources in the state's domain shall be managed by the state alone such that conservation, enhancement, and proper utilization are the primary considerations. No citizen shall be denied equal access to and use of any resource on the basis of race, sex, origin, cultural heritage, or by and through any treaty based upon the same. [1985 c 1 § 3 (Initiative Measure No. 456, approved November 6, 1984).]

75.56.040 Declaration—Denial of rights based on race, sex, origin, or cultural heritage. The people of the state of Washington declare that under the Indians Citizens Act of 1924, all Indians became citizens of the United States and subject to the Constitution and laws of the United States and state in which they reside. The people further declare that any special off-reservation legal rights or privileges of Indians established through treaties that are denied to other citizens were terminated

by that 1924 enactment, and any denial of rights to any citizen based upon race, sex, origin, cultural heritage, or by and through any treaty based upon the same is unconstitutional.

No rights, privileges, or immunities shall be denied to any citizen upon the basis of race, sex, origin, cultural heritage, or by and through any treaty based upon the same. [1985 c 1 § 4 (Initiative Measure No. 456, approved November 6, 1984).]

75.56.900 Transmittal of act to president and congress—1985 c 1. The secretary of state shall transmit copies of this act to the president of the United States senate, the speaker of the United States house of representatives, and each member of congress. [1985 c 1 § 5 (Initiative Measure No. 456, approved November 6, 1984).]

75.56.905 Severability—1985 c 1. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1985 c 1 § 6 (Initiative Measure No. 456, approved November 6, 1984).]

Chapter 75.58

AQUACULTURE DISEASE CONTROL

Sections

75.58.010	Disease inspection and control for aquatic farmers— Development of program—Elements—Rules— Violations.
75.58.020	Disease inspection and control program—User fees—Aquaculture disease control account.
75.58.030	Consultation required—Agreements for diagnostic field services authorized—Roster of biologists.
75.58.040	Registration of aquatic farmers.

Aquaculture marketing: Chapter 15.85 RCW.

75.58.010 Disease inspection and control for aquatic farmers—Development of program—Elements—Rules—Violations. (1) The director of agriculture and the director of fisheries shall jointly develop a program of disease inspection and control for aquatic farmers as defined in RCW 15.85.020. The program shall be administered by the department of fisheries under rules established under this section. The purpose of the program is to protect the aquaculture industry and wildstock fisheries from a loss of productivity due to aquatic diseases or maladies. As used in this section "diseases" means, in addition to its ordinary meaning, infestations of parasites or pests. The disease program may include, but is not limited to, the following elements:

- (a) Disease diagnosis;
- (b) Import and transfer requirements;
- (c) Provision for certification of stocks;
- (d) Classification of diseases by severity;
- (e) Provision for treatment of selected high-risk diseases;
- (f) Provision for containment and eradication of high-risk diseases;

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(g) Provision for destruction of diseased cultured aquatic products;

(h) Provision for quarantine of diseased cultured aquatic products;

(i) Provision for coordination with state and federal agencies;

(j) Provision for development of preventative or control measures;

(k) Provision for cooperative consultation service to aquatic farmers; and

(l) Provision for disease history records.

(2) The director of fisheries shall adopt rules implementing this section. However, such rules shall have the prior approval of the director of agriculture and shall provide therein that the director of agriculture has provided such approval. The director of agriculture or the director's designee shall attend the rule-making hearings conducted under chapter 34.05 RCW and shall assist in conducting those hearings. The authorities granted the department of fisheries by these rules and by RCW 75.08.080(1)(g), 75.24.080, 75.24.110, 75.28.125, 75.58.020, 75.58.030, and 75.58.040 constitute the only authorities of the department of fisheries to regulate private sector cultured aquatic products and aquatic farmers as defined in RCW 15.85.020. Except as provided in subsection (3) of this section, no action may be taken against any person to enforce these rules unless the department has first provided the person an opportunity for a hearing. In such a case, if the hearing is requested, no enforcement action may be taken before the conclusion of that hearing.

(3) The rules adopted under this section shall specify the emergency enforcement actions that may be taken by the department of fisheries, and the circumstances under which they may be taken, without first providing the affected party with an opportunity for a hearing. Neither the provisions of this subsection nor the provisions of subsection (2) of this section shall preclude the department of fisheries from requesting the initiation of criminal proceedings for violations of the disease inspection and control rules.

(4) It is unlawful for any person to violate the rules adopted under subsection (2) or (3) of this section or to violate RCW 75.58.040.

(5) In administering the program established under this section, the department of fisheries shall use the services of a pathologist licensed to practice veterinary medicine.

(6) The director in administering the program shall not place constraints on or take enforcement actions in respect to the aquaculture industry that are more rigorous than those placed on the department of fisheries, the department of wildlife, or other fish-rearing entities. [1988 c 36 § 43; 1985 c 457 § 8.]

75.58.020 Disease inspection and control program—User fees—Aquaculture disease control account. The directors of agriculture and fisheries shall jointly adopt by rule, in the manner prescribed in RCW 75.58.010(2), a schedule of user fees for the disease inspection and control program established under RCW

75.58.010. The fees shall be established such that the program shall be entirely funded by revenues derived from the user fees by the beginning of the 1987-89 biennium.

There is established in the state treasury an account known as the aquaculture disease control account which is subject to appropriation. Proceeds of fees charged under this section shall be deposited in the account. Moneys from the account shall be used solely for administering the disease inspection and control program established under RCW 75.58.010. [1985 c 457 § 9.]

75.58.030 Consultation required—Agreements for diagnostic field services authorized—Roster of biologists. (1) The director of fisheries shall consult regarding the disease inspection and control program established under RCW 75.58.010 with the department of wildlife, federal agencies, and Indian tribes to assure protection of state, federal, and tribal aquatic resources and to protect private sector cultured aquatic products from disease that could originate from waters or facilities managed by those agencies.

(2) With regard to the program, the director of fisheries may enter into contracts or interagency agreements for diagnostic field services with government agencies and institutions of higher education and private industry.

(3) The director of fisheries shall provide for the creation and distribution of a roster of biologists having a speciality in the diagnosis or treatment of diseases of fish or shellfish. The director shall adopt rules specifying the qualifications which a person must have in order to be placed on the roster. [1988 c 36 § 44; 1985 c 457 § 10.]

75.58.040 Registration of aquatic farmers. All aquatic farmers as defined in RCW 15.85.020 shall register with the department of fisheries. The director shall develop and maintain a registration list of all aquaculture farms. Registered aquaculture farms shall provide the department production statistical data. The state veterinarian and the department of wildlife shall be provided with registration and statistical data by the department. [1988 c 36 § 45; 1985 c 457 § 11.]

Chapter 75.98 CONSTRUCTION

Sections

75.98.005	Intent—1983 1st ex.s. c 46.
75.98.006	Savings—1983 1st ex.s. c 46.
75.98.007	Effective date—1983 1st ex.s. c 46.
75.98.030	Severability—1983 1st ex.s. c 46.

75.98.005 Intent—1983 1st ex.s. c 46. In enacting this 1983 act, it is the intent of the legislature to revise and reorganize the fisheries code of this state to clarify and improve the administration of the state's fisheries laws. Unless the context clearly requires otherwise, the revisions made to the fisheries code by this act are not to be construed as substantive. [1983 1st ex.s. c 46 § 1.]

75.98.006 Savings—1983 1st ex.s. c 46. This act shall not have the effect of terminating or in any way modifying any proceeding or liability, civil or criminal, which exists on the effective date of this act. [1983 1st ex.s. c 46 § 183.]

75.98.007 Effective date—1983 1st ex.s. c 46. This act shall take effect on January 1, 1984. [1983 1st ex.s. c 46 § 191.]

75.98.030 Severability—1983 1st ex.s. c 46. If any provision of this title, or its application to any person or circumstance is held invalid, the remainder of the title or the application of the provision to other persons or circumstances is not affected. [1983 1st ex.s. c 46 § 174; 1955 c 12 § 75.98.030.]

Title 76

FORESTS AND FOREST PRODUCTS

Chapters

- 76.01** General provisions.
- 76.04** Forest protection.
- 76.06** Forest insect and disease control.
- 76.09** Forest practices.
- 76.10** Surface mining.
- 76.12** Reforestation.
- 76.14** Forest rehabilitation.
- 76.16** Access to state timber and other valuable material.
- 76.20** Firewood on state lands.
- 76.36** Marks and brands.
- 76.40** Log patrols.
- 76.42** Wood debris—Removal from navigable waters.
- 76.44** Institute of forest resources.
- 76.48** Specialized forest products.
- 76.52** Cooperative forest management services act.
- 76.56** Center for international trade in forest products.

Access roads to public and state forest lands: Chapter 79.38 RCW.

County timber: Chapter 36.34 RCW.

Easements over public lands: RCW 79.01.312 through 79.01.336, 79.36.230 through 79.36.290.

Exchange of state lands to facilitate marketing of forest products or to consolidate state lands: RCW 79.08.180 through 79.08.200.

Excise tax on conveyance of standing timber: Chapter 82.45 RCW.

Forest management, major line at state universities: RCW 28B.10.115, 28B.20.060.

Forest roads, county: RCW 36.82.140.

Infractions: Chapter 7.84 RCW.

Lien for labor and services on timber and lumber: Chapter 60.24 RCW.

Limitation on liability of forest landowner for injuries to recreation users: RCW 4.24.210.

Logging railroads: Title 81 RCW.

Logging trucks, special permits for use of roads and highways: RCW 46.44.047.

Logs on county highways and bridges: RCW 36.86.090.

Measurement of timber and wood products, fraud, penalty: RCW 9.45.122 through 9.45.126.

Motor vehicle size, weight and load: Chapter 46.44 RCW.

National forests, jurisdiction: Chapter 37.08 RCW.

Pest control compact: Chapter 17.34 RCW.

Reservation of timber on sale of county tax-title lands: RCW 84.64.270.

Safety supervisor: RCW 43.22.040.

Sustained yield plan and cooperative agreements: Chapter 79.60 RCW.

Taxation and/or assessment of lands lying both within fire protection district and forest protection assessment area: RCW 52.16.170.

Taxation of reforestation lands: Chapter 84.28 RCW.

Transportation of forest products, applicability of public utility tax: RCW 82.16.020.

University demonstration forest and experiment station: RCW 79.08.070.

Chapter 76.01

GENERAL PROVISIONS

Sections

- 76.01.010 Sale of other than state forest lands.
- 76.01.020 Sale of other than state forest lands—Procedure.
- 76.01.030 Sale of other than state forest lands—Disposition of revenue.
- 76.01.040 Federal funds for management and protection of forests, forest and range lands.
- 76.01.050 Federal funds for management and protection of forests, forest and range lands—Disbursement of funds.
- 76.01.060 Right of entry in course of duty by representatives of department of natural resources.
- 76.01.070 Joint select committee on domestic timber processing.

76.01.010 Sale of other than state forest lands. The department of natural resources is hereby authorized to sell any real property not designated or acquired as state forest lands, but acquired by the state, either in the name of the forest board, the forestry board, or the division of forestry, for administrative sites, lien foreclosures or other purposes whenever it shall determine that said lands are no longer or not necessary for public use. [1988 c 128 § 12; 1955 c 121 § 1.]

76.01.020 Sale of other than state forest lands—Procedure. The sale may be made after public notice to the highest bidder for such a price as shall be approved by the governor, but not less than the fair market value of the real property, plus the value of improvements thereon. Any instruments necessary to convey title shall be executed by the governor in form approved by the attorney general. [1955 c 121 § 2.]

76.01.030 Sale of other than state forest lands—Disposition of revenue. All amounts received from the sale shall be credited to the fund of the department of government responsible for the acquisition and maintenance of the property sold. [1955 c 121 § 3.]

76.01.040 Federal funds for management and protection of forests, forest and range lands. The department of natural resources is hereby authorized to receive funds from the federal government for cooperative work in management and protection of forests and forest and range lands as may be authorized by any act of Congress which is now, or may hereafter be, adopted for such purposes. [1988 c 128 § 13; 1957 c 78 § 1.]

76.01.050 Federal funds for management and protection of forests, forest and range lands—Disbursement of funds. The department of natural resources is hereby authorized to disburse such funds, together with any funds which may be appropriated or contributed from

any source for such purposes, on management and protection of forests and forest and range lands. [1988 c 128 § 14; 1957 c 78 § 2.]

76.01.060 Right of entry in course of duty by representatives of department of natural resources. Any authorized assistants, employees, agents, appointees or representatives of the department of natural resources may, in the course of their inspection and enforcement duties as provided for in chapters 76.04, 76.06, 76.09, 76.16, 76.36 and 76.40 RCW, enter upon any lands, real estate, waters or premises except the dwelling house or appurtenant buildings in this state whether public or private and remain thereon while performing such duties. Similar entry by the department of natural resources may be made for the purpose of making examinations, locations, surveys and/or appraisals of all lands under the management and jurisdiction of the department of natural resources; or for making examinations, appraisals and, after five days' written notice to the landowner, making surveys for the purpose of possible acquisition of property to provide public access to public lands. In no event other than an emergency such as fire fighting shall motor vehicles be used to cross a field customarily cultivated, without prior consent of the owner. None of the entries herein provided for shall constitute trespass, but nothing contained herein shall limit or diminish any liability which would otherwise exist as a result of the acts or omissions of said department or its representatives. [1983 c 3 § 194; 1971 ex.s. c 49 § 1; 1963 c 100 § 1.]

76.01.070 Joint select committee on domestic timber processing. (1) A joint select committee on domestic timber processing is established consisting of six members appointed in the following manner:

(a) Three members shall be from the senate, two from the majority caucus and one from the minority caucus, appointed by the president of the senate; and

(b) Three members shall be from the house of representatives, two from the majority caucus and one from the minority caucus, appointed by the speaker of the house of representatives. The chair shall be selected by the committee from among its members.

Committee members shall receive no compensation, but shall, to the extent funds are available, be reimbursed for their expenses while attending any meetings in the same manner as legislators engaged in interim committee business as specified in RCW 44.04.120. The committee shall be staffed by senate committee services and the office of program research.

(2) The joint select committee on domestic timber processing shall:

(a) Review other state's legislative actions on domestic processing and log exports;

(b) Develop recommendations on possible state responses to possible federal legislation on log exports;

(c) Review mill closures or reduction in production due to lack of timber supply;

(d) Work in concert with the Washington state congressional delegation in developing domestic processing laws and programs;

(e) Review the positive and negative aspects of state and private log export policy on the state's economy and on the state's citizens;

(f) Review present federal policy of permitting substitution of state logs for private logs;

(g) Analyze the impact of log exports on timber supply as well as on all aspects of finished timber products and the supply of wood chips;

(h) Request the department of natural resources to provide upon request, all available information relating to state timber harvest, timber bidding procedures, export sales, and market analyses;

(i) Study all aspects of domestic timber processing;

(j) Analyze the effect of domestic timber processing on timber supply;

(k) Analyze the effect of domestic timber processing on the state's economy;

(l) Recommend methods to encourage greater domestic timber processing; and

(m) Prepare legislation for introduction to the legislature for the 1990 legislative session.

The committee shall report its findings and any recommendations for legislation to the appropriate legislative committees of the senate and house of representatives by January 1, 1990.

(3) This section shall expire June 30, 1991. [1989 c 424 § 12.]

Findings—Effective date—1989 c 424: See notes following RCW 76.12.190.

Chapter 76.04 FOREST PROTECTION

Sections

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76.04.005	Definitions.
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76.04.035	Wardens—Appointment—Duties.
76.04.045	Rangers—Appointment—Ex officio rangers— Compensation.
76.04.055	Service of notices.
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- 76.04.650 Disposal of forest debris—Permission to allow trees to fall on another's land.
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- 76.04.700 Failure to extinguish campfire.
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Burning permits within fire protection districts: RCW 52.12.101.

Christmas trees—Cutting, breaking, removing: RCW 79.40.070 and 79.40.080.

Excessive steam in boilers, penalty: RCW 70.54.080.

Steam boilers and pressure vessels, construction, installation, inspection and certification: Chapter 70.79 RCW.

Treble damages for removal of trees: RCW 64.12.030 and 79.01.756.

ADMINISTRATION

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

(1) "Additional fire hazard" means a condition existing on any land in the state covered wholly or in part by forest debris which is likely to further the spread of fire and thereby endanger life or property.

(2) "Closed season" means the period between April 15 and October 15, unless the department designates different dates because of prevailing fire weather conditions.

(3) "Department" means the department of natural resources, or its authorized representatives, as defined in chapter 43.30 RCW.

(4) "Department protected lands" means all lands subject to the forest protection assessment under RCW 76.04.610 or covered under contract or agreement pursuant to RCW 76.04.135 by the department.

(5) "Emergency fire costs" means those costs incurred or approved by the department for emergency forest fire suppression, including the employment of personnel, rental of equipment, and purchase of supplies over and above costs regularly budgeted and provided for non-emergency fire expenses for the biennium in which the costs occur.

(6) "Forest debris" includes forest slash, chips, and any other vegetative residue resulting from activities on forest land.

(7) "Forest fire service" includes all wardens, rangers, and other persons employed especially for preventing or fighting forest fires.

(8) "Forest land" means any unimproved lands which have enough trees, standing or down, or flammable material, to constitute in the judgment of the department, a fire menace to life or property. Sagebrush and grass areas east of the summit of the Cascade mountains may be considered forest lands when such areas are adjacent to or intermingled with areas supporting tree growth. Forest land, for protection purposes, does not include structures.

(9) "Forest landowner," "owner of forest land," "landowner," or "owner" means the owner or the person in possession of any public or private forest land.

(10) "Forest material" means forest slash, chips, timber, standing or down, or other vegetation.

(11) "Landowner operation" means every activity, and supporting activities, of a forest landowner and the landowner's agents, employees, or independent contractors or permittees in the management and use of forest land subject to the forest protection assessment under RCW 76.04.610 for the primary benefit of the owner. The term includes, but is not limited to, the growing and harvesting of forest products, the development of transportation systems, the utilization of minerals or other natural resources, and the clearing of land. The term does not include recreational and/or residential activities not associated with these enumerated activities.

(12) "Participating landowner" means an owner of forest land whose land is subject to the forest protection assessment under RCW 76.04.610.

(13) "Slash" means organic forest debris such as tree tops, limbs, brush, and other dead flammable material remaining on forest land as a result of a landowner operation.

(14) "Slash burning" means the planned and controlled burning of forest debris on forest lands by broadcast burning, underburning, pile burning, or other means, for the purposes of silviculture, hazard abatement, or reduction and prevention or elimination of a fire hazard.

(15) "Suppression" means all activities involved in the containment and control of forest fires, including the patrolling thereof until such fires are extinguished or considered by the department to pose no further threat to life or property.

(16) "Unimproved lands" means those lands that will support grass, brush and tree growth, or other flammable material when such lands are not cleared or cultivated and, in the opinion of the department, are a fire menace to life and property. [1986 c 100 § 1.]

76.04.015 Fire protection powers and duties of department. (1) The department may, at its discretion, appoint trained personnel possessing the necessary qualifications to carry out the duties and supporting functions of the department and may determine their respective salaries.

(2) The department shall have direct charge of and supervision of all matters pertaining to the forest fire service of the state.

(3) The department shall:

(a) Enforce all laws within this chapter;

(b) Be empowered to take charge of and direct the work of suppressing forest fires;

(c) Investigate the origin and cause of all forest fires;

(d) Furnish notices or information to the public calling attention to forest fire dangers and the penalties for violation of this chapter;

(e) Be familiar with all timbered and cut-over areas of the state; and

(f) Regulate and control the official actions of its employees, the wardens, and the rangers.

(4) The department may:

(a) Authorize all needful and proper expenditures for forest protection;

(b) Adopt rules for the prevention, control, and suppression of forest fires as it considers necessary including but not limited to: Fire equipment and materials; use of personnel; and fire prevention standards and operating conditions including a provision for reducing these conditions where justified by local factors such as location and weather;

(c) Remove at will the commission of any ranger or suspend the authority of any warden;

(d) Inquire into:

(i) The extent, kind, value, and condition of all timber lands within the state;

(ii) The extent to which timber lands are being destroyed by fire and the damage thereon.

(5) When the department considers it to be in the best interest of the state, it may cooperate with any agency of another state, the United States or any agency thereof, the Dominion of Canada or any agency or province thereof, and any county, town, corporation, individual, or Indian tribe within the state of Washington in forest fire fighting and patrol. [1986 c 100 § 2.]

76.04.025 Federal funds. The department shall receive and disburse any and all moneys contributed, allotted, or paid by the United States under the authority of any act of Congress for use in cooperation with the state of Washington in protecting and developing forests. [1986 c 100 § 3.]

76.04.035 Wardens—Appointment—Duties. (1) The department may appoint any of its employees as

wardens, at the times and localities as it considers the public welfare demands, within any area of the state where there is forest land requiring protection.

(2) The duties of wardens shall be:

(a) To provide forest fire prevention and protection information to the public;

(b) To investigate discovered or reported fires on forest lands and take appropriate action;

(c) To patrol their areas as necessary;

(d) To visit all parts of their area, and frequented places and camps as far as possible, and warn campers or other users and visitors of fire hazards;

(e) To see that all locomotives and all steam, internal combustion, and other spark-emitting equipment are provided with spark arresters and adequate devices for preventing the escape of fire or sparks in accordance with the law;

(f) To see that operations or activities on forest land have all required fire prevention and suppression equipment or devices as required by law;

(g) To extinguish wildfires;

(h) To set back-fires to control fires;

(i) To summons, impress, and employ help in controlling wildfires;

(j) To see that all laws for the protection of forests are enforced;

(k) To investigate, arrest, and initiate prosecution of all offenders of this chapter or other chapters as allowed by law; and

(l) To perform all other duties as prescribed by law and as the department directs.

(3) All wardens and rangers shall render reports to the department on blanks or forms, or in the manner and at the times as may be ordered, giving a summary of how employed, the area visited, expenses incurred, and other information as required by the department.

(4) The department may suspend the authority of any warden who may be incompetent or unwilling to discharge properly the duties of the office.

(5) The department shall determine the placement of the wardens and, upon its request to the county commissioners of any county, the county commissioners shall designate and furnish the wardens with suitably equipped office quarters in the county courthouse.

(6) The authority of the wardens regarding the prevention, suppression, and control of forest fires, summoning, impressing, or employing help, or making arrests for violations of this chapter may extend to any part of the state. [1986 c 100 § 4.]

76.04.045 Rangers—Appointment—Ex officio rangers—Compensation. (1) All Washington state patrol officers, wildlife agents, fisheries patrol officers, deputy state fire marshals, and state park rangers, while in their respective jurisdictions, shall be ex officio rangers.

(2) Employees of the United States forest service, when recommended by their forest supervisor, and citizens of the state advantageously located may, at the discretion of the department, be commissioned as rangers and vested with the certain powers and duties of wardens

as specified in this chapter and as directed by the department.

(3) Rangers shall receive no compensation for their services except when employed in cooperation with the state and under the provisions of this chapter and shall not create any indebtedness or incur any liability on behalf of the state: *Provided*, That rangers actually engaged in extinguishing or preventing the spread of fire on forest land or elsewhere that may endanger forest land shall, when their accounts for such service have been approved by the department, be entitled to receive compensation for such services at a rate to be fixed by the department.

(4) The department may cancel the commission of any ranger or authority granted to any ex officio ranger who may be incompetent or unwilling to discharge properly the duties of the office. [1986 c 100 § 5.]

76.04.055 Service of notices. Any notice required by law to be served by the department, warden, or ranger shall be sufficient if a written or printed copy thereof is delivered, mailed, telegraphed, or electronically transmitted by the department, warden, or ranger to the person to receive the notice or to his or her responsible agent. If the name or address of the person or agent is unknown and cannot be obtained by reasonable diligence, the notice may be served by posting the copy in a conspicuous place upon the premises concerned by the notice. [1986 c 100 § 6.]

76.04.065 Arrests without warrants. Department employees appointed as wardens, persons commissioned as rangers, and all police officers may arrest persons violating this chapter, without warrant, as prescribed by law. [1986 c 100 § 7.]

76.04.075 Rules—Penalty. Any person who violates any of the orders or rules adopted under this chapter for the protection of forests from fires is guilty of a misdemeanor and subject to the penalties for a misdemeanor under RCW 9A.20.021, unless another penalty is provided. [1986 c 100 § 8.]

76.04.085 Penalty for violations. Unless specified otherwise, violations of the provisions of this chapter shall be a misdemeanor and subject to the penalties for a misdemeanor under RCW 9A.20.021. [1986 c 100 § 9.]

76.04.095 Cooperative protection. When any responsible protective agency or agencies composed of timber owners other than the state agrees to undertake systematic forest protection in cooperation with the state and such cooperation appears to the department to be more advantageous to the state than the state-provided forest fire services, the department may designate suitable areas to be official cooperative districts and substitute cooperative services for the state-provided services. The department may cooperate in the compensation for expenses of preventing and controlling fire in cooperative districts to the extent it considers equitable on behalf of the state. [1986 c 100 § 10.]

76.04.105 Contracts for protection and development. The department may enter into contracts and undertakings with private corporations for the protection and development of the forest lands within the state, subject to the provisions of this chapter. [1986 c 100 § 11.]

76.04.115 Articles of incorporation—Requirements. Before any private corporation may enter into any contract under RCW 76.04.105, there shall be incorporated into the articles of incorporation or charter of such corporation a provision requiring that the corporation, out of its earnings or earned surplus, and in a manner satisfactory to the department, annually set apart funds to discharge any contract entered into between such corporation and the department. [1986 c 100 § 12.]

76.04.125 Requisites of contract. Any undertaking for the protection and development of the forest lands of the state under RCW 76.04.105 shall be regulated and controlled by a contract to be entered into between the private corporation and the department. The contract shall outline the lands involved and the conditions and details of the undertaking, including an exact specification of the amount of funds to be made available by the corporation and the time and manner of disbursement. Before entering into any such contract, the department shall be satisfied that the private corporation is financially solvent and will be able to carry out the project outlined in the contract. The department shall have charge of the project for the protection and development of the forest lands described in the contract, and any expense incurred by the department under any such contract shall be payable solely by the corporation from the funds provided by it for these purposes. The state of Washington shall not in any event be responsible to any person, firm, company, or corporation for any indebtedness created by any corporation under a contract pursuant to RCW 76.04.105. [1986 c 100 § 13.]

76.04.135 Cooperative agreements—Public agencies. (1) For the purpose of promoting and facilitating cooperation between fire protection agencies and to more adequately protect life, property, and the natural resources of the state, the department may enter into a contract or agreement with a municipality, county, state, or federal agency to provide fire detection, prevention, presuppression, or suppression services on property which they are responsible to protect.

(2) Contracts or agreements under subsection (1) of this section may contain provisions for the exchange of services on a cooperative basis or services in return for cash payment or other compensation.

(3) No charges may be made when the department determines that under a cooperative contract or agreement the assistance received from a municipality, county, or federal agency on state protected lands equals that provided by the state on municipal, county, or federal lands. [1986 c 100 § 14.]

76.04.145 Forest fire advisory board. (1) There is hereby created a forest fire advisory board, consisting of seven members who shall represent private and public forest landowners and other interested segments of the public. The members shall be appointed by the commissioner of public lands and shall serve at the commissioner's pleasure, without compensation.

(2) The duties of the forest fire advisory board shall be strictly advisory and shall include, but not necessarily be limited to:

(a) Reviewing forest fire prevention and suppression policies of the department;

(b) Monitoring expenditures from and recoveries for the landowner contingency forest fire suppression account;

(c) Recommending appropriate assessments and allocations for establishment and replenishment of the account based upon the proportionate expenditures necessitated by participating landowner operations in western and eastern Washington;

(d) Recommending to the department appropriate rules or amendments to existing rules and reviewing nonemergency rules affecting the protection of forest lands from fire, including reasonable alternative means or procedures for the abatement, isolation, or reduction of forest fire hazards.

(3) Except where an emergency exists, all rules concerning matters listed in subsection (2)(d) of this section shall be adopted by the department after consultation with the forest fire advisory board. [1986 c 100 § 15.]

76.04.155 Fire fighting—Employment—Assistance. (1) The department may employ a sufficient number of persons to extinguish or prevent the spreading of any fire that may be in danger of damaging or destroying any timber or other property on department protected lands. The department may provide needed tools and supplies and may provide transportation when necessary for persons so employed.

(2) Every person so employed is entitled to compensation at a rate to be fixed by the department. The department shall, upon request, show the person the number of hours worked by that person and the rate established for payment. After approval of the department, that person is entitled to receive payment from the state.

(3) It is unlawful to fail to render assistance when called upon by the department to aid in guarding or extinguishing any fire. [1986 c 100 § 16.]

76.04.165 Legislative declaration—Forest protection zones. (1) The legislature finds and declares that forest lands within the state are increasingly being used for residential purposes; that the risk to life and property is increasing from forest fires which may destroy developed property; that the department's primary mission is to protect forest land and suppress forest fires; that a primary mission of the rural fire districts and municipal fire departments is to protect improved property and suppress structural fires; that adjustment of the geographic areas of responsibility for the respective fire

control agencies has not kept pace with the increasing use of forest lands for residential purposes; and that the department should work with the state's other fire control agencies to define geographic areas of responsibility that are more consistent with their respective primary missions.

(2) To accomplish the purposes of subsection (1) of this section, the department shall establish a procedure to clarify its geographic areas of responsibility. The areas of department protection shall be called forest protection zones. The forest protection zones shall include all forest land which the department is obligated to protect but shall not include forest land within rural fire districts or municipal fire districts which affected local fire control agencies agree, by mutual consent with the department, is not appropriate for department protection. Forest land not included within a forest protection zone established by mutual agreement of the department and a rural fire district or a municipal fire district shall not be assessed under RCW 76.04.610 or 76.04.630.

(3) After the department and any affected local fire protection agencies have agreed on the boundary of a forest protection zone, the department shall establish the boundary by rule under chapter 34.05 RCW.

(4) Except by agreement of the affected parties, the establishment of forest protection zones shall not alter any mutual aid agreement. [1988 c 273 § 2.]

PERMITS

76.04.205 Burning permits. (1) Except in certain areas designated by the department or as permitted under rules adopted by the department, a person shall have a valid written burning permit obtained from the department to burn:

(a) Any flammable material on any lands under the protection of the department; or

(b) Refuse or waste forest material on forest lands protected by the department.

(2) To be valid a permit must be signed by both the department and the permittee. Conditions may be imposed in the permit for the protection of life, property, or air quality and [the department] may suspend or revoke the permits when conditions warrant. A permit shall be effective only under the conditions and for the period stated therein. Signing of the permit shall indicate the permittee's agreement to and acceptance of the conditions of the permit.

(3) The department may inspect or cause to be inspected the area involved and may issue a burning permit if:

(a) All requirements relating to fire fighting equipment, the work to be done, and precautions to be taken before commencing the burning have been met;

(b) No unreasonable danger will result; and

(c) Burning will be done in compliance with air quality standards established by chapter 70.94 RCW.

(4) The department, authorized employees thereof, or any warden or ranger may refuse, revoke, or postpone the use of permits to burn when necessary for the safety

of adjacent property or when necessary in their judgment to prevent air pollution as provided in chapter 70.94 RCW. [1986 c 100 § 17.]

76.04.215 Burning mill wood waste—Arresters.

(1) It is unlawful for anyone manufacturing lumber or shingles, or other forest products, to destroy wood waste material by burning within one-fourth of one mile of any forest material without properly confining the place of the burning and without further safeguarding the surrounding property against danger from the burning by such additional devices as the department may require.

(2) It is unlawful for anyone to destroy any wood waste material by fire within any burner or destructor operated within one-fourth of one mile of any forest material, or to operate any power-producing plant using in connection therewith any smokestack, chimney, or other spark-emitting outlet, without installing and maintaining on such burner, or destructor, or on such smokestack, chimney, or other spark-emitting outlet, a safe and suitable device for arresting sparks. [1986 c 100 § 18.]

76.04.235 Dumping mill waste, forest debris—

Penalty. (1) No person may dump mill waste from forest products, or forest debris of any kind, in quantities that the department declares to constitute a forest fire hazard on or threatening forest lands located in this state without first obtaining a written permit issued by the department on such terms and conditions determined by the department pursuant to the rules enacted to protect forest lands from fire. The permit is in addition to any other permit required by law.

(2) Any person who dumps such mill waste, or forest debris, without a permit, or in violation of a permit is guilty of a gross misdemeanor and subject to the penalties for a gross misdemeanor under RCW 9A.20.021 and may further be required to remove all materials dumped. [1986 c 100 § 19.]

76.04.246 Use of blasting fuse. It is unlawful to use fuse for blasting on any area of logging slash or area of actual logging operation without a permit during the closed season. Upon the issuance of a written permit by the department or warden or ranger, fuse may be used during the closed season under the conditions specified in the permit. [1986 c 100 § 20.]

CLOSURES/SUSPENSIONS

76.04.305 Closed to entry—Designation. (1) When, in the opinion of the department, any forest land is particularly exposed to fire danger, the department may designate such land as a region of extra fire hazard subject to closure, and the department shall adopt rules for the protection thereof.

(2) All such rules shall be published in such newspapers of general circulation in the counties wherein such region is situated and for such length of time as the department may determine.

(1989 Ed.)

(3) When in the opinion of the department it becomes necessary to close the region to entry, posters carrying the wording "Region of extra fire hazard—CLOSED TO ENTRY—except as provided by RCW 76.04.305" and indicating the beginning and ending dates of the closures shall be posted on the public highways entering the regions.

(4) The rules shall be in force from the time specified therein, but when in the opinion of the department such forest region continues to be exposed to fire danger, or ceases to be so exposed, the department may extend, suspend, or terminate the closure by proclamation.

(5) This section does not authorize the department to prohibit the conduct of industrial operations, public work, or access of permanent residents to their own property within the closed area, but no one legally entering the region of extra fire hazard may use the area for recreational purposes which are prohibited to the general public under the terms of this section. [1986 c 100 § 21.]

76.04.315 Suspension of burning permits/privileges.

In times and localities of unusual fire danger, the department may issue an order suspending any or all burning permits or privileges authorized by RCW 76.04.205 and may prohibit absolutely the use of fire in such locations. [1986 c 100 § 22.]

76.04.325 Closure of forest operations or forest

lands. (1) When in the opinion of the department weather conditions arise which present an extreme fire hazard, whereby life and property may be endangered, the department may issue an order shutting down all logging, land clearing, or other industrial operations which may cause a fire to start. The shutdown shall be for the periods and regions designated in the order. During shutdowns, all persons are excluded from logging operating areas and areas of logging slash, except those present in the interest of fire protection.

(2) When in the opinion of the department extreme fire weather exists, whereby forest lands may be endangered, the department may issue an order restricting access to and activities on forest lands. The order shall describe the regions and extent of restrictions necessary to protect forest lands. During the period in which the order is in effect, all persons may be excluded from the regions described, except those persons present in the interest of fire protection.

(3) Each day's violation of an order under this section shall constitute a separate offense. [1986 c 100 § 23.]

FIRE PROTECTION REGULATION

76.04.405 Steam, internal combustion, or electrical engines and other spark-emitting equipment regulated. It is unlawful during the closed season for any person to operate any steam, internal combustion, or electric engine, or any other spark-emitting equipment or device, on any forest land or in any place where, in the opinion

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of the department, fire could spread to forest land, without first complying with the requirements as may be established by the department by rule pursuant to this chapter. [1986 c 100 § 24.]

76.04.415 Penalty for violations—Work stoppage notice. (1) Every person upon receipt of written notice issued by the department that such person has or is violating any of the provisions of RCW 76.04.215, 76.04.305, 76.04.405, or 76.04.650 or any rule adopted by the department concerning fire prevention and fire suppression preparedness shall cease operations until compliance with the provisions of the sections or rules specified in such notice.

(2) The department may specify in the notice of violation the special conditions and precautions under which the operation would be allowed to continue until the end of that working day. [1986 c 100 § 25.]

76.04.425 Unauthorized entry into sealed fire tool box. It is unlawful to enter into a sealed fire tool box without authorization. [1986 c 100 § 26.]

76.04.435 Deposit of fire or live coals. No person operating a railroad may permit to be deposited by any employee, and no one may deposit fire or live coals, upon the right of way within one-fourth of one mile of any forest material, during the closed season, unless the fire or live coals are immediately extinguished. [1986 c 100 § 27.]

76.04.445 Reports of fire. (1) Any person engaged in any activity on forest lands shall immediately report to the department, in person or by radio, telephone, or telegraph, any fires on forest lands.

(2) Railroad companies and other public carriers operating on or through forest lands shall immediately report to the department, in person or by radio, telephone, or telegraph, any fires on or adjacent to their right of way or route. [1986 c 100 § 28.]

76.04.455 Lighted material, etc.—Receptacles in conveyances. (1) It is unlawful during the closed season for any person to throw away any lighted tobacco, cigars, cigarettes, matches, fireworks, charcoal, or other lighted material or to discharge any tracer or incendiary ammunition in any forest, brush, range, or grain areas.

(2) It is unlawful during the closed season for any individual to smoke any flammable material when in forest or brush areas except on roads, cleared landings, gravel pits, or any similar area free of flammable material.

(3) Every conveyance operated through or above forest, range, brush, or grain areas shall be equipped in each compartment with a suitable receptacle for the disposition of lighted tobacco, cigars, cigarettes, matches, or other flammable material.

(4) Every person operating a public conveyance through or above forest, range, brush, or grain areas shall post a copy of this section in a conspicuous place within the smoking compartment of the conveyance; and

every person operating a saw mill or a logging camp in any such areas shall post a copy of this section in a conspicuous place upon the ground or buildings of the milling or logging operation. [1986 c 100 § 29.]

76.04.465 Certain snags to be felled currently with logging. Standing dead trees constitute a substantial deterrent to effective fire control action in forest areas, but are also an important and essential habitat for many species of wildlife. To insure continued existence of these wildlife species and continued forest growth while minimizing the risk of destruction by conflagration, only certain snags must be felled currently with the logging. The department shall adopt rules relating to effective fire control action to require that only certain snags be felled, taking into consideration the need to protect the wildlife habitat. [1986 c 100 § 30.]

76.04.475 Reimbursement for costs of suppression action. Any person, firm, or corporation, public or private, obligated to take suppression action on any forest fire is entitled to reimbursement for reasonable costs incurred, subject to the following:

(1) No reimbursement is allowed under this section to a person, firm, or corporation whose negligence is responsible for the starting or existence of any fire for which costs may be recoverable pursuant to law. Reimbursement for fires resulting from slash burns are subject to RCW 76.04.486.

(2) If the fire is started in the course of or as a result of land clearing operations, right of way clearing, or a landowner operation, the person, firm, or corporation conducting the operation shall supply:

(a) At no cost to the department, all equipment and able-bodied persons under contract, control, employment, or ownership that are requested by the department and are reasonably available until midnight of the day on which the fire started; and

(b) After midnight of the day on which the fire started, at no cost to the department, all equipment and able-bodied persons under contract, control, employment, or ownership that were within a one-half mile radius of the fire at the time of discovery, until the fire is declared out by the department. In no case may the person, firm, or corporation provide less than one suitable bulldozer and five able-bodied persons, or other equipment accepted by the department as equivalent, unless the department determines less is needed for the purpose of suppressing the fire; and

(c) If the person, firm, or corporation has no personnel or equipment within one-half mile of the fire, payment shall be made to the department for the minimum requirement of one suitable bulldozer and five able-bodied persons, for the duration of the fire; and

(d) If, after midnight of the day on which the fire started, additional personnel and equipment are requested by the department, the person, firm, or corporation shall supply the personnel and equipment under contract, control, employment, or ownership outside the one-half mile radius, if reasonably available, but shall

be reimbursed for such personnel and equipment as provided in subsection (4) of this section.

(3) When a fire which occurred in the course of or as a result of land clearing operations, right of way clearing, or a landowner operation, which had previously been suppressed, rekindles, the person, firm, or corporation shall supply the same personnel and equipment, under the same conditions, as were required at the time of the original fire.

(4) Claims for reimbursement shall be submitted within a reasonable time to the department which shall upon verifying the amounts therein and the necessity thereof authorize payment at such rates as established by the department for wages and equipment rental. [1986 c 100 § 31.]

76.04.486 Escaped slash burns—Obligations. (1) All personnel and equipment required by the burning permit issued for a slash burn may be required by the department, at the permittee's expense, for suppression of a fire resulting from the slash burn until the fire is declared out by the department. In no case may the permittee provide less than one suitable bulldozer and five persons capable of taking suppression action. In addition, if a slash burn becomes an uncontrolled fire the department may recover from the landowner the actual costs incurred in suppressing the fire. The amount collected from the landowner shall be limited to and calculated at the rate of one dollar per acre for the landowner's total forest lands protected by the department, up to a maximum charge of fifty thousand dollars per escaped slash burn.

(2) The landowner contingency forest fire suppression account shall be used to pay and the permittee shall not be responsible for fire suppression expenditures greater than fifty thousand dollars or the total amount calculated for forest lands owned as determined in subsection (1) of this section for each escaped slash burn.

(3) All expenses incurred in suppressing a fire resulting from a slash burn in which negligence was involved shall be the obligation of the landowner. [1986 c 100 § 32.]

76.04.495 Negligent starting of fires—Existence of extreme fire hazard or forest debris—Liability for costs—Recovery. (1) Any person, firm, or corporation: (a) Whose negligence is responsible for the starting or existence of a fire which spreads on forest land; or (b) who creates or allows an extreme fire hazard under RCW 76.04.660 to exist and which hazard contributes to the spread of a fire; or (c) who allows forest debris subject to RCW 76.04.650 to exist and which debris contributes to the spread of fire, shall be liable for any expenses made necessary by (a), (b), or (c) of this subsection incurred by the state, a municipality, or a forest protective association, in fighting the fire, together with costs of investigation and litigation including reasonable attorneys' fees and taxable court costs, if the expense was authorized or subsequently approved by the department.

(2) The department or agency incurring such expense shall have a lien for the same against any property of the person, firm, or corporation liable under subsection (1) of this section by filing a claim of lien naming the person, firm, or corporation, describing the property against which the lien is claimed, specifying the amount expended on the lands on which the fire fighting took place and the period during which the expenses were incurred, and signing the claim with post office address. No claim of lien is valid unless filed, with the county auditor of the county in which the property sought to be charged is located, within a period of ninety days after the expenses of the claimant are incurred. The lien may be foreclosed in the same manner as a mechanic's lien is foreclosed under the statutes of the state of Washington. [1986 c 100 § 33.]

ASSESSMENTS, OBLIGATIONS, FUNDS

76.04.600 Owners to protect forests. Every owner of forest land in the state of Washington shall furnish or provide, during the season of the year when there is danger of forest fires, adequate protection against the spread of fire thereon or therefrom which shall meet with the approval of the department. [1986 c 100 § 34.]

76.04.610 Forest fire protection assessment. (1) If any owner of forest land within a forest protection zone, or any owner of forest land located where fire protection responsibility has not been mutually agreed upon as provided in RCW 76.04.165(2), neglects or fails to provide adequate fire protection as required by RCW 76.04.600, the department shall provide such protection, notwithstanding the provisions of RCW 76.04.630, at a cost to the owner of not to exceed twenty-two cents an acre per year for assessments levied after December 31, 1989: *Provided*, That there shall be no assessment on any parcel of privately owned lands of less than two acres. Assessors may, at their option, collect the assessment on any tax exempt lands less than ten acres. If the assessor elects not to collect the assessment, the department may bill the landowner directly. The minimum assessment for any ownership parcel subject to the assessment shall be ten dollars for assessments levied in collection year 1990 and fourteen dollars for each year thereafter.

(2) An owner of two or more parcels per county, each containing less than fifty acres, may obtain a refund of the assessments paid on all such parcels over one by applying therefor within the year the assessment was due to the department, in such form as the department may require. Verification that all assessments and property taxes on the property have been paid shall be provided to the department by the owner. If the total acreage of the parcels exceeds fifty acres, the per-acre rate shall apply and the refund shall be computed accordingly. Application for the refund may be made by mail.

(3) Beginning January 1, 1991, under the administration and at the discretion of the department up to two hundred thousand dollars per year of this assessment

shall be used in support of those rural fire districts assisting the department in fire protection services on forest lands.

(4) For the purpose of this chapter, the department may divide the forest lands of the state, or any part thereof, into districts, for fire protection and assessment purposes, may classify lands according to the character of timber prevailing, and the fire hazard existing, and place unprotected lands under the administration of the proper district. Any amounts paid or contracted to be paid by the department for protection of forest lands from any funds at its disposal shall be a lien upon the property protected, unless reimbursed by the owner within ten days after October 1st of the year in which they were incurred. The department shall be prepared to make statement thereof, upon request, to any forest owner whose own protection has not been previously approved as to its adequacy, the department shall report the same to the assessor of the county in which the property is situated. The assessor shall extend the amounts upon the tax rolls covering the property, and upon authorization from the department shall levy the forest protection assessment against the amounts of unimproved land as shown in each ownership on the county assessor's records. The assessor may then segregate on the records to provide that the improved land and improvements thereon carry the millage levy designed to support the rural fire protection districts as provided for in RCW 52.16.170.

(5) The amounts assessed shall be collected at the time, in the same manner, by the same procedure, and with the same penalties attached that general state and county taxes on the same property are collected, except that errors in assessments may be corrected at any time by the department certifying them to the treasurer of the county in which the land involved is situated. Assessments shall be known and designated as assessments of the year in which the amounts became reimbursable. Upon the collection of such assessments the county treasurer shall transmit them to the department. Collections shall be applied against expenses incurred in carrying out the provisions of this section, including necessary and reasonable administrative costs incurred by the department in the enforcement of these provisions. The department may also expend any sums collected from owners of forest lands or received from any other source for necessary administrative costs in connection with the enforcement of RCW 76.04.660.

(6) When land against which forest protection assessments are outstanding is acquired for delinquent taxes and sold at public auction, the state shall have a prior lien on the proceeds of sale over and above the amount necessary to satisfy the county's delinquent tax judgment. The county treasurer, in case the proceeds of sale exceed the amount of the delinquent tax judgment, shall forthwith remit to the department the amount of the outstanding forest protection assessments.

(7) All nonfederal public bodies owning or administering forest land included in a forest protection zone shall pay the forest protection assessments provided in

this section and the special forest fire suppression account assessments under RCW 76.04.630. The forest protection assessments and special forest fire suppression account assessments shall be payable by nonfederal public bodies from any available funds within thirty days following receipt of the written notice from the department which is given after October 1st of the year in which the protection was provided. Unpaid assessments shall not be a lien against the nonfederal publicly owned land but shall constitute a debt by the nonfederal public body to the department and shall be subject to interest charges at the legal rate.

(8) A public body, having failed to previously pay the forest protection assessments required of it by this section, which fails to suppress a fire on or originating from forest lands owned or administered by it, shall be liable for the costs of suppression incurred by the department or its agent and shall not be entitled to reimbursement of any costs incurred by the public body in the suppression activities.

(9) The department may adopt rules to implement this section, including, but not limited to, rules on levying and collecting forest protection assessments. [1989 c 362 § 1; 1988 c 273 § 3; 1986 c 100 § 35.]

76.04.620 State funds—Loans—Recovery of funds from the landowner contingency forest fire suppression account. Biennial general fund appropriations to the department of natural resources normally provide funds for the purpose of paying the emergency fire costs and expenses incurred and/or approved by the department in forest fire suppression or in reacting to any potential forest fire situation. When a determination is made that the fire started in the course of or as a result of a landowner operation, moneys expended from such appropriations in the suppression of the fire shall be recovered from the landowner contingency forest fire suppression account. The department shall transmit to the state treasurer for deposit in the general fund any such moneys which are later recovered. Moneys recovered during the biennium in which they are expended may be spent for purposes set forth in this section during the same biennium, without reappropriation. Loans between the general fund and the landowner contingency forest fire suppression account are authorized for emergency fire suppression. The loans shall not exceed the amount appropriated for emergency forest fire suppression costs and shall bear interest at the then current rate of interest as determined by the state treasurer. [1986 c 100 § 36.]

76.04.630 Landowner contingency forest fire suppression account—Expenditures—Assessments. There is created a landowner contingency forest fire suppression account which shall be a separate account in the state treasury. Moneys in the account may be spent only as provided in this section. Disbursements from the account shall be on authorization of the commissioner of public lands or the commissioner's designee. The account is subject to the allotment procedure provided under

chapter 43.88 RCW, but no appropriation is required for disbursements.

The department may expend from this account such amounts as may be available and as it considers appropriate for the payment of emergency fire costs resulting from a participating landowner fire. The department may, when moneys are available from the landowner contingency forest fire suppression account, expend moneys for summarily abating, isolating, or reducing an extreme fire hazard under RCW 76.04.660. All moneys recovered as a result of the department's actions, from the owner or person responsible, under RCW 76.04.660 shall be deposited in the landowner contingency forest fire suppression account.

When a determination is made that the fire was started by other than a landowner operation, moneys expended from this account in the suppression of such fire shall be recovered from such general fund appropriations as may be available for emergency fire suppression costs. The department shall deposit in the landowner contingency forest fire suppression account any moneys paid out of the account which are later recovered, less reasonable costs of recovery.

This account shall be established and renewed by a special forest fire suppression account assessment paid by participating landowners at a rate to be established by the department, but not to exceed fifteen cents per acre per year for such period of years as may be necessary to establish and thereafter reestablish a balance in the account of three million dollars. The department may establish a minimum assessment for ownership parcels identified in RCW 76.04.610 as paying the minimum assessment. The maximum assessment for these parcels shall not exceed the fees levied on a thirty-acre parcel. There shall be no assessment on each parcel of privately owned lands of less than two acres. The assessments may differ to equitably distribute the assessment based on emergency fire suppression cost experience necessitated by landowner operations. Amounts assessed for this account shall be a lien upon the forest lands with respect to which the assessment is made and may be collected as directed by the department in the same manner as forest protection assessments. This account shall be held by the state treasurer, who is authorized to invest so much of the account as is not necessary to meet current needs. Any interest earned on moneys from the account shall be deposited in and remain a part of the account and shall be computed as part of same in determining the balance thereof. Interfund loans to and from this account are authorized at the current rate of interest as determined by the state treasurer, provided that the effect of the loan is considered for purposes of determining the assessments. Payment of emergency costs from this account shall in no way restrict the right of the department to recover costs pursuant to RCW 76.04.495 or other laws.

When the department determines that a forest fire was started in the course of or as a result of a landowner operation, it shall notify the forest fire advisory board of the determination. The determination shall be final, unless, within ninety days of the notification, the forest fire

advisory board or any interested party serves a request for a hearing before the department. The hearing shall constitute an adjudicative proceeding under chapter 34.05 RCW, the administrative procedure act, and any appeal shall be in accordance with RCW 34.05.510 through 34.05.598. [1989 c 362 § 2; 1989 c 175 § 162; 1986 c 100 § 37.]

Reviser's note: This section was amended by 1989 c 175 § 162 and by 1989 c 362 § 2, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—1989 c 175: See note following RCW 34.05.010.

HAZARD ABATEMENT

76.04.650 Disposal of forest debris—Permission to allow trees to fall on another's land. Everyone clearing land or clearing right of way for railroad, public highway, private road, ditch, dike, pipe or wire line, or for any other transmission, or transportation utility right of way, shall pile and burn or dispose of by other satisfactory means, all forest debris cut thereon, as rapidly as the clearing or cutting progresses, or at such other times as the department may specify, and if during the closed season, in compliance with the law requiring burning permits.

No person clearing any land or right of way, or in cutting or logging timber for any purpose, may fell, or permit to be felled, any trees so that they may fall onto land owned by another without first obtaining permission from the owner in addition to complying with the terms of this section for the disposal of refuse. All the terms of this section and other forest laws of the state shall be observed in all clearings of right of way or other land on behalf of the state itself or any county thereof, either directly or by contract, and, unless unavoidable emergency prevents, provision shall be made by all officials directing the work for withholding a sufficient portion of the payment therefor until the disposal is completed, to insure the completion of the disposal in compliance with this section. [1986 c 100 § 38.]

76.04.660 Additional fire hazards—Extreme fire hazard areas—Abatement, isolation or reduction—Summary action—Recovery of costs. (1) The owner of land which is an additional fire hazard and the person responsible for the existence of an additional fire hazard shall take reasonable measures to reduce the danger of fire spreading from the area and may abate the hazard by burning or other satisfactory means.

(2) The department shall adopt rules defining areas of extreme fire hazard that the owner and person responsible shall abate. The areas shall include but are not limited to high risk areas such as where life or buildings may be endangered, areas adjacent to public highways, and areas of frequent public use.

(3) The department may adopt rules, after consultation with the forest fire advisory board, defining other conditions of extreme fire hazard with a high potential for fire spreading to lands in other ownerships. The department may prescribe additional measures that shall

be taken by the owner and person responsible to isolate or reduce the extreme fire hazard.

(4) The owner or person responsible for the existence of the extreme fire hazard is required to abate, isolate, or reduce the hazard. The duty to abate, isolate, or reduce, and liability under this chapter, arise upon creation of the extreme fire hazard. Liability shall include but not be limited to all fire suppression expenses incurred by the department, regardless of fire cause.

(5) If the owner or person responsible for the existence of the extreme fire hazard or forest debris subject to RCW 76.04.650 refuses, neglects, or unsuccessfully attempts to abate, isolate, or reduce the same, the department may summarily abate, isolate, or reduce the hazard as required by this chapter and recover twice the actual cost thereof from the owner or person responsible. Landowner contingency forest fire suppression account moneys may be used by the department, when available, for this purpose. Moneys recovered by the department pursuant to this section shall be returned to the landowner contingency forest fire suppression account.

(6) Such costs shall include all salaries and expenses of people and equipment incurred therein, including those of the department. All such costs shall also be a lien upon the land enforceable in the same manner with the same effect as a mechanic's lien.

(7) The summary action may be taken only after ten days' notice in writing has been given to the owner or reputed owner of the land on which the extreme fire hazard or forest debris subject to RCW 76.04.650 exists. The notice shall include a suggested method of abatement and estimated cost thereof. The notice shall be by personal service or by registered or certified mail addressed to the owner or reputed owner at the owner's last known place of residence. [1986 c 100 § 39.]

FIRE REGULATION

76.04.700 Failure to extinguish campfire. It is unlawful for any person to start any fire upon any camping ground and upon leaving the camping ground fail to extinguish the fire. [1986 c 100 § 40.]

76.04.710 Wilful setting of fire. It is unlawful for any person to wilfully start a fire, whether on his or her land or the land of another, whereby forest lands or the property of another is endangered, under circumstances not amounting to arson in either the first or second degree or reckless burning in either the first or second degree. [1986 c 100 § 41.]

76.04.720 Removal of notices. It is unlawful for any person to wilfully and without authorization deface or remove any warning notice posted under the requirements of this chapter. [1986 c 100 § 42.]

76.04.730 Negligent fire—Spread. It is unlawful for any person to negligently allow fire originating on

the person's own property to spread to the property of another. [1986 c 100 § 43.]

76.04.740 Reckless burning. (1) It is unlawful to knowingly cause a fire or explosion and thereby place forest lands in danger of destruction or damage.

(2) This section does not apply to acts amounting to reckless burning in the first degree under RCW 9A.48.040.

(3) Terms used in this section shall have the meanings given to them in Title 9A RCW.

(4) A violation of this section shall be punished as a gross misdemeanor under RCW 9A.20.021. [1986 c 100 § 44.]

76.04.750 Uncontrolled fire a public nuisance—Suppression—Duties—Summary action—Recovery of costs. Any fire on or threatening any forest land burning uncontrolled and without proper action being taken to prevent its spread, notwithstanding the origin of the fire, is a public nuisance by reason of its menace to life and property. Any person engaged in any activity on such lands, having knowledge of the fire, notwithstanding the origin or subsequent spread thereof on his or her own or other forest lands, and the landowner, shall make every reasonable effort to suppress the fire. If the person has not suppressed the fire and the fire is on or threatening forest land within a forest protection zone, the department shall summarily suppress the fire. If the owner, lessee, other possessor of such land, or an agent or contractor of the owner, lessee, or possessor, having knowledge of the fire, has not made a reasonable effort to suppress the fire, the cost thereof may be recovered from the owner, lessee, or other possessor of the land and the cost of the work shall also constitute a lien upon the real property or chattels under the person's ownership. The lien may be filed by the department in the office of the county auditor and foreclosed in the same manner provided by law for the foreclosure of mechanics' liens. The prosecuting attorney shall bring the action to recover the cost or foreclose the lien, upon the request of the department. In the absence of negligence, no costs, other than those provided in RCW 76.04.475, shall be recovered from any landowner for lands subject to the forest protection assessment with respect to the land on which the fire burns.

When a fire occurs in a land clearing, right of way clearing, or landowner operation it shall be fought to the full limit of the available employees and equipment, and the fire fighting shall be continued with the necessary crews and equipment in such numbers as are, in the opinion of the department, sufficient to suppress the fire. The fire shall not be left without a fire fighting crew or fire patrol until authority has been granted in writing by the department. [1988 c 273 § 4; 1986 c 100 § 45.]

76.04.900 Captions—1986 c 100. As used in this act subchapter and section captions constitute no part of the law. [1986 c 100 § 60.]

Chapter 76.06
FOREST INSECT AND DISEASE CONTROL

Sections

76.06.010	Forest insects and tree diseases are public nuisance.
76.06.020	Definitions.
76.06.030	Administration.
76.06.040	Owner must control pests and diseases.
76.06.050	Infestation control district—Creation—Notice to owners.
76.06.060	Department to control pests and diseases if owner fails.
76.06.070	Lien for costs of control—Collection.
76.06.080	Owner complying with notice is exempt.
76.06.090	Dissolution of infestation control district.
76.06.110	Deposit of moneys in general fund—Allotment as unanticipated receipts.

76.06.010 Forest insects and tree diseases are public nuisance. Forest insects and forest tree diseases which threaten the permanent timber production of the forest areas of the state of Washington are hereby declared to be a public nuisance. [1951 c 233 § 1.]

76.06.020 Definitions. As used in this chapter: "Department" means the department of natural resources;

"Owner" means and includes individuals, partnerships, corporations and associations;

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

"Timber land" means any land on which there is a sufficient number of trees, standing or down, to constitute, in the judgment of the department, a forest insect or forest disease breeding ground of a nature to constitute a menace, injurious and dangerous to permanent forest growth in the district under consideration. [1988 c 128 § 15; 1951 c 233 § 2.]

76.06.030 Administration. This chapter shall be administered by the department. [1988 c 128 § 16; 1951 c 233 § 3.]

76.06.040 Owner must control pests and diseases. Every owner of timber lands, or his agent, shall make every reasonable effort to control, destroy and eradicate such forest insect pests and forest tree diseases which threaten the existence of any stand of timber or provide for the same to be done on timber lands owned by him or under his control. In the event he fails, neglects, or is unable to accomplish such control, the action may be performed as provided for in this chapter. [1951 c 233 § 4.]

76.06.050 Infestation control district—Creation—Notice to owners. Whenever the department finds timber lands threatened by infestations of forest insects or forest tree diseases, and if it finds that such infestation is of such character as to threaten destruction of timber stands, the department shall declare and certify an infestation control district and fix and declare the boundaries thereof, so as to definitely describe such district. Said district may include timber lands threatened by the infestation as well as those timber lands already infested.

Thereafter the department shall at once serve written notice to all owners of timber lands or their agents within the said district to proceed under the provisions of this chapter without delay to control, destroy and eradicate the said forest insect pests or forest tree diseases as provided herein. The said notice may be made by personal service, or by mail addressed to the last known place or address of such owner or agent. Said notice shall list and describe the method or methods of action that will be acceptable to the department if the owner or agent elects to control, destroy and eradicate said insects or diseases on his own property.

Said notice when published for five consecutive days in at least one daily newspaper or in two consecutive issues of a weekly newspaper, either paper having a general circulation in said district will serve as the written notice to owners of noncommercial timber lands. [1988 c 128 § 17; 1961 c 72 § 1; 1951 c 233 § 5.]

76.06.060 Department to control pests and diseases if owner fails. If the owner or agent so notified shall fail, refuse, neglect or is unable to comply with the requirements of said notice, within a period of thirty days after the date thereof, it shall be the duty of the department or its agents, using such funds as have been, or hereafter may be, made available to proceed with the control, eradication and destruction of such forest pests or forest tree diseases with or without the cooperation of the owner involved in a manner approved by the department. [1988 c 128 § 18; 1951 c 233 § 6.]

76.06.070 Lien for costs of control—Collection. Upon the completion of the work directed, authorized and performed under the provisions of this chapter, the department shall prepare a verified statement of the expenses necessarily incurred in performing the work of controlling, eradicating and destroying said forest insects or forest tree diseases. The balance of such expenses after deducting such amounts as may be contributed to the control costs by the state, by the federal government, or by any other agencies, companies, corporations or individuals, shall be a lien to be prorated per acre upon the property, or properties involved: *Provided*, That the amount of said lien shall not exceed twenty-five percent of the total costs incurred on such owner's lands including necessary buffer strips. Said lien shall be reported by the department to the county assessor of the county in which said lands are situated, and shall be levied and collected with the next taxes on such lands in the same manner and with the same interest, penalty and cost charges as apply to ad valorem property taxes in this state: *Provided further*, Such report and levy shall be made only on commercial timber lands. The assessor shall extend the amounts on the assessment roll in a separate column, and the procedure provided by law for the collection of taxes and delinquent taxes shall be applicable thereto, and, upon the collection thereof, the county treasurer shall repay the same to the department to be applied to the expenses incurred in carrying out the provisions of this chapter. [1988 c 128 § 19; 1951 c 233 § 7.]

76.06.080 Owner complying with notice is exempt. Every owner, and all owners or representatives, who upon receiving notice as provided in RCW 76.06.050, shall proceed and continue in good faith to control, eradicate and destroy said forest insects and forest tree diseases in accordance with standards established by the department shall be exempt from the provisions hereof as to the lands upon which he or they are so proceeding. [1988 c 128 § 20; 1951 c 233 § 11.]

76.06.090 Dissolution of infestation control district. Whenever the department shall determine that insect control work within the designated district of infestation is no longer necessary or feasible, the department may dissolve said district. [1988 c 128 § 21; 1951 c 233 § 12.]

76.06.110 Deposit of moneys in general fund—Allotment as unanticipated receipts. All moneys collected under the provisions of RCW 76.06.070, together with such moneys as may be contributed by the federal government or by any owner or agent, shall be deposited in the state general fund for the purposes of this chapter.

Any additional revenue earmarked for the purposes of this chapter which was not anticipated in the budget adopted by the legislature may be deposited in the general fund and allotted as unanticipated receipts pursuant to RCW 43.79.270 through 43.79.282 as now existing or hereafter amended. [1979 ex.s. c 67 § 12; 1951 c 233 § 9.]

Effective date—1979 ex.s. c 67: "Sections 12, 13, and 19 of this 1979 act shall take effect on July 1, 1981." [1979 ex.s. c 67 § 21.] This annotation applies to the amendments to RCW 76.06.110 and 76.40.030 and to the repeal of RCW 76.06.100, 76.06.120, 76.40.015, 76.40.016, 76.42.040, and 76.42.050 by 1979 ex.s. c 67.

Severability—1979 ex.s. c 67: See note following RCW 19.28.330.

Chapter 76.09 FOREST PRACTICES

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Chapter 76.09 RCW to be used to satisfy federal water pollution act requirements: RCW 90.48.425.

76.09.010 Legislative finding and declaration. (1) The legislature hereby finds and declares that the forest land resources are among the most valuable of all resources in the state; that a viable forest products industry is of prime importance to the state's economy; that it is in the public interest for public and private commercial forest lands to be managed consistent with sound policies of natural resource protection; that coincident with maintenance of a viable forest products industry, it

is important to afford protection to forest soils, fisheries, wildlife, water quantity and quality, air quality, recreation, and scenic beauty.

(2) The legislature further finds and declares it to be in the public interest of this state to create and maintain through the adoption of this chapter a comprehensive state-wide system of laws and forest practices regulations which will achieve the following purposes and policies:

(a) Afford protection to, promote, foster and encourage timber growth, and require such minimum reforestation of commercial tree species on forest lands as will reasonably utilize the timber growing capacity of the soil following current timber harvest;

(b) Afford protection to forest soils and public resources by utilizing all reasonable methods of technology in conducting forest practices;

(c) Recognize both the public and private interest in the profitable growing and harvesting of timber;

(d) Promote efficiency by permitting maximum operating freedom consistent with the other purposes and policies stated herein;

(e) Provide for regulation of forest practices so as to avoid unnecessary duplication in such regulation;

(f) Provide for interagency input and intergovernmental and tribal coordination and cooperation;

(g) Achieve compliance with all applicable requirements of federal and state law with respect to nonpoint sources of water pollution from forest practices;

(h) To consider reasonable land use planning goals and concepts contained in local comprehensive plans and zoning regulations; and

(i) Foster cooperation among managers of public resources, forest landowners, Indian tribes and the citizens of the state.

(3) The legislature further finds and declares that it is also in the public interest of the state to encourage forest landowners to undertake corrective and remedial action to reduce the impact of mass earth movements and fluvial processes. [1987 c 95 § 1; 1974 ex.s. c 137 § 1.]

76.09.020 Definitions. For purposes of this chapter:

(1) "Appeals board" shall mean the forest practices appeals board created by RCW 76.09.210.

(2) "Commissioner" shall mean the commissioner of public lands.

(3) "Contiguous" shall mean land adjoining or touching by common corner or otherwise. Land having common ownership divided by a road or other right of way shall be considered contiguous.

(4) "Conversion to a use other than commercial timber operation" shall mean a bona fide conversion to an active use which is incompatible with timber growing and as may be defined by forest practices regulations.

(5) "Department" shall mean the department of natural resources.

(6) "Forest land" shall mean all land which is capable of supporting a merchantable stand of timber and is not being actively used for a use which is incompatible with timber growing.

(7) "Forest land owner" shall mean any person in actual control of forest land, whether such control is based either on legal or equitable title, or on any other interest entitling the holder to sell or otherwise dispose of any or all of the timber on such land in any manner: *Provided*, That any lessee or other person in possession of forest land without legal or equitable title to such land shall be excluded from the definition of "forest land owner" unless such lessee or other person has the right to sell or otherwise dispose of any or all of the timber located on such forest land.

(8) "Forest practice" shall mean any activity conducted on or directly pertaining to forest land and relating to growing, harvesting, or processing timber, including but not limited to:

(a) Road and trail construction;

(b) Harvesting, final and intermediate;

(c) Precommercial thinning;

(d) Reforestation;

(e) Fertilization;

(f) Prevention and suppression of diseases and insects;

(g) Salvage of trees; and

(h) Brush control.

"Forest practice" shall not include preparatory work such as tree marking, surveying and road flagging, and removal or harvesting of incidental vegetation from forest lands such as berries, ferns, greenery, mistletoe, herbs, mushrooms, and other products which cannot normally be expected to result in damage to forest soils, timber, or public resources.

(9) "Forest practices regulations" shall mean any rules promulgated pursuant to RCW 76.09.040.

(10) "Application" shall mean the application required pursuant to RCW 76.09.050.

(11) "Operator" shall mean any person engaging in forest practices except an employee with wages as his sole compensation.

(12) "Person" shall mean any individual, partnership, private, public, or municipal corporation, county, the department or other state or local governmental entity, or association of individuals of whatever nature.

(13) "Public resources" shall mean water, fish and wildlife, and in addition shall mean capital improvements of the state or its political subdivisions.

(14) "Timber" shall mean forest trees, standing or down, of a commercial species, including Christmas trees.

(15) "Timber owner" shall mean any person having all or any part of the legal interest in timber. Where such timber is subject to a contract of sale, "timber owner" shall mean the contract purchaser.

(16) "Board" shall mean the forest practices board created in RCW 76.09.030. [1974 ex.s. c 137 § 2.]

76.09.030 Forest practices board—Created—Membership—Terms—Vacancies—Meetings—Compensation, travel expenses—Staff. (1) There is hereby created the forest practices board of the state of Washington as an agency of state government consisting of members as follows:

(a) The commissioner of public lands or his designee;

(b) The director of the department of trade and economic development or his designee;

(c) The director of the department of agriculture or his designee;

(d) The director of the department of ecology or his designee;

(e) An elected member of a county legislative authority appointed by the governor: *Provided*, That such member's service on the board shall be conditioned on his continued service as an elected county official; and

(f) Six members of the general public appointed by the governor, one of whom shall be an owner of not more than five hundred acres of forest land, and one of whom shall be an independent logging contractor.

(2) The members of the initial board appointed by the governor shall be appointed so that the term of one member shall expire December 31, 1975, the term of one member shall expire December 31, 1976, the term of one member shall expire December 31, 1977, the terms of two members shall expire December 31, 1978, and the terms of two members shall expire December 31, 1979. Thereafter, each member shall be appointed for a term of four years. Vacancies on the board shall be filled in the same manner as the original appointments. Each member of the board shall continue in office until his successor is appointed and qualified. The commissioner of public lands or his designee shall be the chairman of the board.

(3) The board shall meet at such times and places as shall be designated by the chairman or upon the written request of the majority of the board. The principal office of the board shall be at the state capital.

(4) Members of the board, except public employees and elected officials, shall be compensated in accordance with RCW 43.03.240. Each member shall be entitled to reimbursement for travel expenses incurred in the performance of their duties as provided in RCW 43.03.050 and 43.03.060.

(5) The board may employ such clerical help and staff pursuant to chapter 41.06 RCW as is necessary to carry out its duties. [1987 c 330 § 1301; 1985 c 466 § 70; 1984 c 287 § 108; 1975-'76 2nd ex.s. c 34 § 173; 1975 1st ex.s. c 200 § 1; 1974 ex.s. c 137 § 3.]

Construction—Application of rules—Severability—1987 c 330: See notes following RCW 28B.12.050.

Effective date—Severability—1985 c 466: See note following RCW 43.31.005.

Legislative findings—Severability—Effective date—1984 c 287: See notes following RCW 43.03.220.

Effective date—Severability—1975-'76 2nd ex.s. c 34: See notes following RCW 2.08.115.

76.09.040 Forest practices regulations—Promulgation—Review of proposed regulations—Hearings—Adoption. (1) Where necessary to accomplish the purposes and policies stated in RCW 76.09.010, and to implement the provisions of this chapter, the board shall promulgate forest practices regulations pursuant to chapter 34.05 RCW and in accordance with the procedures enumerated in this section that:

(a) Establish minimum standards for forest practices;

(b) Provide procedures for the voluntary development of resource management plans which may be adopted as an alternative to the minimum standards in (a) of this subsection if the plan is consistent with the purposes and policies stated in RCW 76.09.010 and the plan meets or exceeds the objectives of the minimum standards; and

(c) Set forth necessary administrative provisions.

Forest practices regulations pertaining to water quality protection shall be promulgated individually by the board and by the department of ecology after they have reached agreement with respect thereto. All other forest practices regulations shall be promulgated by the board.

Forest practices regulations shall be administered and enforced by the department except as otherwise provided in this chapter. Such regulations shall be promulgated and administered so as to give consideration to all purposes and policies set forth in RCW 76.09.010.

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

Prior to initiating the rule making process, the proposed regulations shall be submitted for review and comments to the department of fisheries, the department of wildlife, and to the counties of the state. After receipt of the proposed forest practices regulations, the departments of fisheries and wildlife and the counties of the state shall have thirty days in which to review and submit comments to the board, and to the department of ecology with respect to its proposed regulations relating to water quality protection. After the expiration of such thirty day period the board and the department of ecology shall jointly hold one or more hearings on the proposed regulations pursuant to chapter 34.05 RCW. At such hearing(s) any county may propose specific forest practices regulations relating to problems existing within such county. The board and the department of ecology may adopt such proposals if they find the proposals are consistent with the purposes and policies of this chapter. [1988 c 36 § 46; 1987 c 95 § 8; 1974 ex.s. c 137 § 4.]

76.09.050 Rules establishing classes of forest practices—Applications for classes of forest practices—Approval or disapproval—Notifications—Procedures—Appeals—Waiver. (1) The board shall establish by rule which forest practices shall be included within each of the following classes:

Class I: Minimal or specific forest practices that have no direct potential for damaging a public resource that may be conducted without submitting an application or a notification;

Class II: Forest practices which have a less than ordinary potential for damaging a public resource that may be conducted without submitting an application and may begin five calendar days, or such lesser time as the department may determine, after written notification by the operator, in the manner, content, and form as prescribed by the department, is received by the department. Class II shall not include forest practices:

(a) On lands platted after January 1, 1960, or being converted to another use;

(b) Which require approvals under the provisions of the hydraulics act, RCW 75.20.100;

(c) Within "shorelines of the state" as defined in RCW 90.58.030; or

(d) Excluded from Class II by the board;

Class III: Forest practices other than those contained in Class I, II, or IV. A Class III application must be approved or disapproved by the department within thirty calendar days from the date the department receives the application;

Class IV: Forest practices other than those contained in Class I or II: (a) On lands platted after January 1, 1960, (b) on lands being converted to another use, (c) on lands which, pursuant to RCW 76.09.070 as now or hereafter amended, are not to be reforested because of the likelihood of future conversion to urban development, and/or (d) which have a potential for a substantial impact on the environment and therefore require an evaluation by the department as to whether or not a detailed statement must be prepared pursuant to the state environmental policy act, chapter 43.21C RCW. Such evaluation shall be made within ten days from the date the department receives the application: *Provided*, That nothing herein shall be construed to prevent any local or regional governmental entity from determining that a detailed statement must be prepared for an action pursuant to a Class IV forest practice taken by that governmental entity concerning the land on which forest practices will be conducted. A Class IV application must be approved or disapproved by the department within thirty calendar days from the date the department receives the application, unless the department determines that a detailed statement must be made, in which case the application must be approved or disapproved by the department within sixty calendar days from the date the department receives the application, unless the commissioner of public lands, through the promulgation of a formal order, determines that the process cannot be completed within such period.

Forest practices under Classes I, II, and III are exempt from the requirements for preparation of a detailed statement under the state environmental policy act.

(2) No Class II, Class III, or Class IV forest practice shall be commenced or continued after January 1, 1975, unless the department has received a notification with regard to a Class II forest practice or approved an application with regard to a Class III or Class IV forest practice containing all information required by RCW 76.09.060 as now or hereafter amended: *Provided*, That any person commencing a forest practice during 1974 may continue such forest practice until April 1, 1975, if such person has submitted an application to the department prior to January 1, 1975: *Provided, further*, That in the event forest practices regulations necessary for the scheduled implementation of this chapter and RCW 90.48.420 have not been adopted in time to meet such schedules, the department shall have the authority to regulate forest practices and approve applications on such terms and conditions consistent with this chapter

and RCW 90.48.420 and the purposes and policies of RCW 76.09.010 until applicable forest practices regulations are in effect.

(3) If a notification or application is delivered in person to the department by the operator or his agent, the department shall immediately provide a dated receipt thereof. In all other cases, the department shall immediately mail a dated receipt to the operator.

(4) Forest practices shall be conducted in accordance with the forest practices regulations, orders and directives as authorized by this chapter or the forest practices regulations, and the terms and conditions of any approved applications.

(5) The department of natural resources shall notify the applicant in writing of either its approval of the application or its disapproval of the application and the specific manner in which the application fails to comply with the provisions of this section or with the forest practices regulations. Except as provided otherwise in this section, if the department fails to either approve or disapprove an application or any portion thereof within the applicable time limit, the application shall be deemed approved and the operation may be commenced: *Provided*, That this provision shall not apply to applications which are neither approved nor disapproved pursuant to the provisions of subsection (7) of this section: *Provided, further*, That if seasonal field conditions prevent the department from being able to properly evaluate the application, the department may issue an approval conditional upon further review within sixty days: *Provided, further*, That the department shall have until April 1, 1975, to approve or disapprove an application involving forest practices allowed to continue to April 1, 1975, under the provisions of subsection (2) of this section. Upon receipt of any notification or any satisfactorily completed application the department shall in any event no later than two business days after such receipt transmit a copy to the departments of ecology, wildlife, and fisheries, and to the county in which the forest practice is to be commenced. Any comments by such agencies shall be directed to the department of natural resources.

(6) If the county believes that an application is inconsistent with this chapter, the forest practices regulations, or any local authority consistent with RCW 76.09.240 as now or hereafter amended, it may so notify the department and the applicant, specifying its objections.

(7) The department shall not approve portions of applications to which a county objects if:

(a) The department receives written notice from the county of such objections within fourteen business days from the time of transmittal of the application to the county, or one day before the department acts on the application, whichever is later; and

(b) The objections relate to lands either:

(i) Platted after January 1, 1960; or

(ii) Being converted to another use.

The department shall either disapprove those portions of such application or appeal the county objections to the appeals board. If the objections related to subparagraphs (b) (i) and (ii) of this subsection are based on

local authority consistent with RCW 76.09.240 as now or hereafter amended, the department shall disapprove the application until such time as the county consents to its approval or such disapproval is reversed on appeal. The applicant shall be a party to all department appeals of county objections. Unless the county either consents or has waived its rights under this subsection, the department shall not approve portions of an application affecting such lands until the minimum time for county objections has expired.

(8) In addition to any rights under the above paragraph, the county may appeal any department approval of an application with respect to any lands within its jurisdiction. The appeals board may suspend the department's approval in whole or in part pending such appeal where there exists potential for immediate and material damage to a public resource.

(9) Appeals under this section shall be made to the appeals board in the manner and time provided in RCW 76.09.220(8). In such appeals there shall be no presumption of correctness of either the county or the department position.

(10) The department shall, within four business days notify the county of all notifications, approvals, and disapprovals of an application affecting lands within the county, except to the extent the county has waived its right to such notice.

(11) A county may waive in whole or in part its rights under this section, and may withdraw or modify any such waiver, at any time by written notice to the department. [1988 c 36 § 47; 1987 c 95 § 9; 1975 1st ex.s. c 200 § 2; 1974 ex.s. c 137 § 5.]

76.09.060 Applications for forest practices—Form—Contents—Conversion of forest land to other use—New applications—Approval—Emergencies.

(1) The department shall prescribe the form and contents of the notification and application. The forest practices regulations shall specify by whom and under what conditions the notification and application shall be signed. The application or notification shall be delivered in person or sent by certified mail to the department. The information required may include, but shall not be limited to:

(a) Name and address of the forest land owner, timber owner, and operator;

(b) Description of the proposed forest practice or practices to be conducted;

(c) Legal description of the land on which the forest practices are to be conducted;

(d) Planimetric and topographic maps showing location and size of all lakes and streams and other public waters in and immediately adjacent to the operating area and showing all existing and proposed roads and major tractor roads;

(e) Description of the silvicultural, harvesting, or other forest practice methods to be used, including the type of equipment to be used and materials to be applied;

(f) Proposed plan for reforestation and for any revegetation necessary to reduce erosion potential from roadsides and yarding roads, as required by the forest practices regulations;

(g) Soil, geological, and hydrological data with respect to forest practices;

(h) The expected dates of commencement and completion of all forest practices specified in the application;

(i) Provisions for continuing maintenance of roads and other construction or other measures necessary to afford protection to public resources; and

(j) An affirmation that the statements contained in the notification or application are true.

(2) At the option of the applicant, the application or notification may be submitted to cover a single forest practice or any number of forest practices within reasonable geographic or political boundaries as specified by the department. Long range plans may be submitted to the department for review and consultation.

(3) The application shall indicate whether any land covered by the application will be converted or is intended to be converted to a use other than commercial timber production within three years after completion of the forest practices described in it. (a) If the application states that any such land will be or is intended to be so converted:

(i) The reforestation requirements of this chapter and of the forest practices regulations shall not apply if the land is in fact so converted unless applicable alternatives or limitations are provided in forest practices regulations issued under RCW 76.09.070 as now or hereafter amended;

(ii) Completion of such forest practice operations shall be deemed conversion of the lands to another use for purposes of chapters 84.28, 84.33, and 84.34 RCW unless the conversion is to a use permitted under a current use tax agreement permitted under chapter 84.34 RCW;

(iii) The forest practices described in the application are subject to applicable county, city and regional governmental authority permitted under RCW 76.09.240 as now or hereafter amended as well as the forest practices regulations.

(b) If the application does not state that any land covered by the application will be or is intended to be so converted:

(i) For six years after the date of the application the county or city and regional governmental entities may deny any or all applications for permits or approvals, including building permits and subdivision approvals, relating to nonforestry uses of land subject to the application;

(ii) Failure to comply with the reforestation requirements contained in any final order or decision shall constitute a removal from classification under the provisions of RCW 84.28.065, a removal of designation under the provisions of RCW 84.33.140, and a change of use under the provisions of RCW 84.34.080, and, if applicable, shall subject such lands to the payments and/or penalties resulting from such removals or changes; and

(iii) Conversion to a use other than commercial timber operations within three years after completion of the

forest practices without the consent of the county or municipality shall constitute a violation of each of the county, municipal and regional authorities to which the forest practice operations would have been subject if the application had so stated.

(c) The application shall be either signed by the land owner or accompanied by a statement signed by the land owner indicating his intent with respect to conversion and acknowledging that he is familiar with the effects of this subsection.

(4) Whenever an approved application authorizes a forest practice which, because of soil condition, proximity to a water course or other unusual factor, has a potential for causing material damage to a public resource, as determined by the department, the applicant shall, when requested on the approved application, notify the department two days before the commencement of actual operations.

(5) Before the operator commences any forest practice in a manner or to an extent significantly different from that described in a previously approved application or notification, there shall be submitted to the department a new application or notification form in the manner set forth in this section.

(6) The notification to or the approval given by the department to an application to conduct a forest practice shall be effective for a term of one year from the date of approval or notification and shall not be renewed unless a new application is filed and approved or a new notification has been filed.

(7) Notwithstanding any other provision of this section, no prior application or notification shall be required for any emergency forest practice necessitated by fire, flood, windstorm, earthquake, or other emergency as defined by the board, but the operator shall submit an application or notification, whichever is applicable, to the department within forty-eight hours after commencement of such practice. [1975 1st ex.s. c 200 § 3; 1974 ex.s. c 137 § 6.]

76.09.070 Reforestation—Requirements—Procedures—Notification on sale or transfer. After the completion of a logging operation, satisfactory reforestation as defined by the rules and regulations promulgated by the board shall be completed within three years: *Provided*, That: (1) A longer period may be authorized if seed or seedlings are not available; (2) a period of up to five years may be allowed where a natural regeneration plan is approved by the department; and (3) the department may identify low-productivity lands on which it may allow for a period of up to ten years for natural regeneration. Upon the completion of a reforestation operation a report on such operation shall be filed with the department of natural resources. Within twelve months of receipt of such a report the department shall inspect the reforestation operation, and shall determine either that the reforestation operation has been properly completed or that further reforestation and inspection is necessary.

Satisfactory reforestation is the obligation of the owner of the land as defined by forest practices regulations, except the owner of perpetual rights to cut timber owned separately from the land is responsible for satisfactory reforestation. The reforestation obligation shall become the obligation of a new owner if the land or perpetual timber rights are sold or otherwise transferred.

Prior to the sale or transfer of land or perpetual timber rights subject to a reforestation obligation, the seller shall notify the buyer of the existence and nature of the obligation and the buyer shall sign a notice of reforestation obligation indicating the buyer's knowledge thereof. The notice shall be on a form prepared by the department and shall be sent to the department by the seller at the time of sale or transfer of the land or perpetual timber rights. If the seller fails to notify the buyer about the reforestation obligation, the seller shall pay the buyer's costs related to reforestation, including all legal costs which include reasonable attorneys' fees, incurred by the buyer in enforcing the reforestation obligation against the seller. Failure by the seller to send the required notice to the department at the time of sale shall be prima facie evidence, in an action by the buyer against the seller for costs related to reforestation, that the seller did not notify the buyer of the reforestation obligation prior to sale.

The forest practices regulations may provide alternatives to or limitations on the applicability of reforestation requirements with respect to forest lands being converted in whole or in part to another use which is compatible with timber growing. The forest practices regulations may identify classifications and/or areas of forest land that have the likelihood of future conversion to urban development within a ten year period. The reforestation requirements may be modified or eliminated on such lands: *Provided*, That such identification and/or such conversion to urban development must be consistent with any local or regional land use plans or ordinances. [1987 c 95 § 10; 1982 c 173 § 1; 1975 1st ex.s. c 200 § 4; 1974 ex.s. c 137 § 7.]

Effective date—1982 c 173: "This act shall take effect July 1, 1982." [1982 c 173 § 2.]

76.09.080 Stop work orders—Grounds—Contents—Procedure—Appeals. (1) The department shall have the authority to serve upon an operator a stop work order which shall be a final order of the department if:

(a) There is any violation of the provisions of this chapter or the forest practices regulations; or

(b) There is a deviation from the approved application; or

(c) Immediate action is necessary to prevent continuation of or to avoid material damage to a public resource.

(2) The stop work order shall set forth:

(a) The specific nature, extent, and time of the violation, deviation, damage, or potential damage;

(b) An order to stop all work connected with the violation, deviation, damage, or potential damage;

(c) The specific course of action needed to correct such violation or deviation or to prevent damage and to correct and/or compensate for damage to public resources which has resulted from any violation, unauthorized deviation, or willful or negligent disregard for potential damage to a public resource; and/or those courses of action necessary to prevent continuing damage to public resources where the damage is resulting from the forest practice activities but has not resulted from any violation, unauthorized deviation, or negligence; and

(d) The right of the operator to a hearing before the appeals board.

The department shall immediately file a copy of such order with the appeals board and mail a copy thereof to the timber owner and forest land owner at the addresses shown on the application. The operator, timber owner, or forest land owner may commence an appeal to the appeals board within fifteen days after service upon the operator. If such appeal is commenced, a hearing shall be held not more than twenty days after copies of the notice of appeal were filed with the appeals board. Such proceeding shall be an adjudicative proceeding within the meaning of chapter 34.05 RCW, the Administrative Procedure Act. The operator shall comply with the order of the department immediately upon being served, but the appeals board if requested shall have authority to continue or discontinue in whole or in part the order of the department under such conditions as it may impose pending the outcome of the proceeding. [1989 c 175 § 163; 1975 1st ex.s. c 200 § 5; 1974 ex.s. c 137 § 8.]

Effective date—1989 c 175: See note following RCW 34.05.010.

76.09.090 Notice of failure to comply—Contents—Procedures—Appeals—Hearing—Final order—Limitations on actions. If a violation, a deviation, material damage or potential for material damage to a public resource has occurred and the department determines that a stop work order is unnecessary, then the department shall issue and serve upon the operator or land owner a notice, which shall clearly set forth:

(1) (a) The specific nature, extent, and time of failure to comply with the approved application; or identifying the damage or potential damage; and/or

(b) The relevant provisions of this chapter or of the forest practice regulations relating thereto;

(2) The right of the operator or land owner to a hearing before the department; and

(3) The specific course of action ordered by the department to be followed by the operator to correct such failure to comply and to prevent, correct and/or compensate for material damage to public resources which resulted from any violation, unauthorized deviation, or willful or negligent disregard for potential damage to a public resource; and/or those courses of action necessary to prevent continuing damage to public resources where the damage is resulting from the forest practice activities but has not resulted from any violation, unauthorized deviation, or negligence.

The department shall mail a copy thereof to the forest land owner and the timber owner at the addresses shown

on the application, showing the date of service upon the operator. Such notice to comply shall become a final order of the department: *Provided*, That no direct appeal to the appeals board will be allowed from such final order. Such operator shall undertake the course of action so ordered by the department unless, within fifteen days after the date of service of such notice to comply, the operator, forest land owner, or timber owner, shall request the department in writing to schedule a hearing. If so requested, the department shall schedule a hearing on a date not more than twenty days after receiving such request. Within ten days after such hearing, the department shall issue a final order either withdrawing its notice to comply or clearly setting forth the specific course of action to be followed by such operator. Such operator shall undertake the course of action so ordered by the department unless within thirty days after the date of such final order, the operator, forest land owner, or timber owner appeals such final order to the appeals board.

No person shall be under any obligation under this section to prevent, correct, or compensate for any damage to public resources which occurs more than one year after the date of completion of the forest practices operations involved exclusive of reforestation, unless such forest practices were not conducted in accordance with forest practices rules and regulations: *Provided*, That this provision shall not relieve the forest land owner from any obligation to comply with forest practices rules and regulations pertaining to providing continuing road maintenance. No action to recover damages shall be taken under this section more than two years after the date the damage involved occurs. [1975 1st ex.s. c 200 § 6; 1974 ex.s. c 137 § 9.]

76.09.100 Failure to comply with water quality protection—Department of ecology authorized to petition appeals board—Action on petition. If the department of ecology determines that a person has failed to comply with the forest practices regulations relating to water quality protection, and that the department of natural resources has not issued a stop work order or notice to comply, the department of ecology shall inform the department thereof. If the department of natural resources fails to take authorized enforcement action within twenty-four hours under RCW 76.09.080, 76.09.090, 76.09.120, or 76.09.130, the department of ecology may petition to the chairman of the appeals board, who shall, within forty-eight hours, either deny the petition or direct the department of natural resources to immediately issue a stop work order or notice to comply, or to impose a penalty. No civil or criminal penalties shall be imposed for past actions or omissions if such actions or omissions were conducted pursuant to an approval or directive of the department of natural resources. [1975 1st ex.s. c 200 § 7; 1974 ex.s. c 137 § 10.]

76.09.110 Final orders or final decisions binding upon all parties. Unless declared invalid on appeal, a final order of the department or a final decision of the appeals board shall be binding upon all parties. [1974 ex.s. c 137 § 11.]

76.09.120 Failure of owner to take required course of action—Notice of cost—Department authorized to complete course of action—Liability of owner for costs—Lien. If an operator fails to undertake and complete any course of action with respect to a forest practice, as required by a final order of the department or a final decision of the appeals board or any court pursuant to RCW 76.09.080 and 76.09.090, the department may determine the cost thereof and give written notice of such cost to the operator, the timber owner and the owner of the forest land upon or in connection with which such forest practice was being conducted. If such operator, timber owner, or forest land owner fails within thirty days after such notice is given to undertake such course of action, or having undertaken such course of action fails to complete it within a reasonable time, the department may expend any funds available to undertake and complete such course of action and such operator, timber owner, and forest land owner shall be jointly and severally liable for the actual, direct cost thereof, but in no case more than the amount set forth in the notice from the department. If not paid within sixty days after the department completes such course of action and notifies such forest land owner in writing of the amount due, such amount shall become a lien on such forest land and the department may collect such amount in the same manner provided in chapter 60.04 RCW for mechanics' liens. [1974 ex.s. c 137 § 12.]

76.09.130 Failure to obey stop work order—Departmental action authorized—Liability of owner or operator for costs. When the operator has failed to obey a stop work order issued under the provisions of RCW 76.09.080 the department may take immediate action to prevent continuation of or avoid material damage to public resources. If a final order or decision fixes liability with the operator, timber owner, or forest land owner, they shall be jointly and severally liable for such emergency costs which may be collected in the manner provided for in RCW 76.09.120. [1974 ex.s. c 137 § 13.]

76.09.140 Enforcement. (1) The department of natural resources, through the attorney general, may take any necessary action to enforce any final order or final decision, or to enjoin any forest practices by any person for a one year period after such person has failed to comply with a final order or a final decision.

(2) A county may bring injunctive, declaratory, or other actions for enforcement for forest practice activities within its jurisdiction in the superior court as provided by law against the department, the forest land owner, timber owner or operator to enforce the forest practice regulations or any final order of the department, or the appeals board: *Provided*, That no civil or criminal penalties shall be imposed for past actions or omissions if such actions or omissions were conducted pursuant to an approval or directive of the department of natural resources: *And provided further*, That such actions shall not be commenced unless the department fails to take appropriate action after ten days written

notice to the department by the county of a violation of the forest practices regulations or final orders of the department or the appeals board. [1975 1st ex.s. c 200 § 8; 1974 ex.s. c 137 § 14.]

76.09.150 Inspection—Right of entry. The department shall make inspections of forest lands, before, during and after the conducting of forest practices as necessary for the purpose of insuring compliance with this chapter and the forest practice regulations and to insure that no material damage occurs to the natural resources of this state as a result of such practices.

Any duly authorized representative of the department shall have the right to enter upon forest land at any reasonable time to enforce the provisions of this chapter and the forest practices regulations. [1974 ex.s. c 137 § 15.]

76.09.160 Right of entry by department of ecology. Any duly authorized representative of the department of ecology shall have the right to enter upon forest land at any reasonable time to administer the provisions of this chapter and RCW 90.48.420. [1974 ex.s. c 137 § 16.]

76.09.170 Violations—Penalties—Remission or mitigation—Appeals. Every person who fails to comply with any provision of RCW 76.09.010 through 76.09.280 as now or hereafter amended or of the forest practices regulations shall be subject to a penalty in an amount of not more than five hundred dollars for every such violation. Each and every such violation shall be a separate and distinct offense. In case of a failure to comply with a notice pursuant to RCW 76.09.090 as now or hereafter amended or a stop work order, every day's continuance shall be a separate and distinct violation. Every person who through an act of commission or omission procures, aids or abets in the violation shall be considered to have violated the provisions of this section and shall be subject to the penalty herein provided for: *Provided*, That no penalty shall be imposed under this section upon any governmental official, an employee of any governmental department, agency, or entity, or a member of any board or advisory committee created by this chapter for any act or omission in his duties in the administration of this chapter or of any regulation promulgated thereunder.

The penalty herein provided for shall be imposed by a notice in writing, either by certified mail with return receipt requested or by personal service, to the person incurring the same from the department of natural resources describing the violation with reasonable particularity. Within fifteen days after the notice is received, the person incurring the penalty may apply in writing to the department for the remission or mitigation of such penalty. Upon receipt of the application, that department may remit or mitigate the penalty upon whatever terms that department in its discretion deems proper, provided the department deems such remission or mitigation to be in the best interests of carrying out the purposes of this chapter. The department of natural resources shall have authority to ascertain the facts

regarding all such applications in such reasonable manner and under such regulations as it may deem proper.

Any person incurring any penalty hereunder may appeal the same to the forest practices appeals board.

Such appeals shall be filed within thirty days of receipt of notice imposing any penalty unless an application for remission or mitigation is made to the department. When such an application for remission or mitigation is made, such appeals shall be filed within thirty days of receipt of notice from the department setting forth the disposition of the application.

Any penalty imposed hereunder shall become due and payable thirty days after receipt of a notice imposing the same unless application for remission or mitigation is made or an appeal is filed. When such an application for remission or mitigation is made, any penalty incurred hereunder shall become due and payable thirty days after receipt of notice setting forth the disposition of such application unless an appeal is filed from such disposition. Whenever an appeal of any penalty incurred hereunder is filed, the penalty shall become due and payable only upon completion of all review proceedings and the issuance of a final decision confirming the penalty in whole or in part.

If the amount of any penalty is not paid to the department within thirty days after it becomes due and payable, the attorney general, upon the request of the department, shall bring an action in the name of the state of Washington in the superior court of Thurston county or of any county in which such violator may do business, to recover such penalty. In all such actions the procedure and rules of evidence shall be the same as an ordinary civil action except as otherwise in this chapter provided. [1975 1st ex.s. c 200 § 9; 1974 ex.s. c 137 § 17.]

76.09.180 Disposition of moneys received as penalties, reimbursement for damages. All penalties received or recovered by state agency action for violations as prescribed in RCW 76.09.170 shall be deposited in the state general fund. All such penalties recovered as a result of local government action shall be deposited in the local government general fund. Any funds recovered as reimbursement for damages pursuant to RCW 76.09.080 and 76.09.090 shall be transferred to that agency with jurisdiction over the public resource damaged, including but not limited to political subdivisions, the department of wildlife, the department of fisheries, the department of ecology, the department of natural resources, or any other department that may be so designated: *Provided*, That nothing herein shall be construed to affect the provisions of RCW 90.48.142. [1988 c 36 § 48; 1974 ex.s. c 137 § 18.]

76.09.190 Additional penalty, gross misdemeanor. In addition to the penalties imposed pursuant to RCW 76.09.170, any person who conducts any forest practice or knowingly aids or abets another in conducting any forest practice in violation of any provisions of RCW 76.09.010 through 76.09.280 or 90.48.420, or of the regulations

implementing RCW 76.09.010 through 76.09.280 or 90.48.420, shall be guilty of a gross misdemeanor and upon conviction thereof shall be punished by a fine of not less than one hundred dollars nor more than one thousand dollars, or by imprisonment for a term of not more than one year or by both fine and imprisonment for each separate violation. Each day upon which such violation occurs shall constitute a separate violation. [1974 ex.s. c 137 § 19.]

76.09.210 Forest practices appeals board—Created—Membership—Terms—Vacancies—Removal. (1) There is hereby created within the environmental hearings office under RCW 43.21B.005 the forest practices appeals board of the state of Washington.

(2) The forest practices appeals board shall consist of three members qualified by experience and training in pertinent matters pertaining to the environment, and at least one member of the appeals board shall have been admitted to the practice of law in this state and shall be engaged in the legal profession at the time of his appointment. The appeals board shall be appointed by the governor with the advice and consent of the senate, and no more than two of the members at the time of appointment or during their term shall be members of the same political party.

(3) Members shall be appointed for a term of six years and shall serve until their successors are appointed and have qualified. In case of a vacancy, it shall be filled by appointment by the governor for the unexpired portion of the term in which such vacancy occurs. The terms of the first three members of the appeals board shall be staggered so that their terms shall expire after two, four, and six years.

(4) Any member may be removed for inefficiency, malfeasance or misfeasance in office, upon specific written charges filed by the governor, who shall transmit such written charges to the member accused and to the chief justice of the supreme court. The chief justice shall thereupon designate a tribunal composed of three judges of the superior court to hear and adjudicate the charges. Such tribunal shall fix the time of the hearing, which shall be public, and the procedure for the hearing, and the decision of such tribunal shall be final and not subject to review by the supreme court. Removal of any member by the tribunal shall disqualify such member for reappointment.

(5) Each member of the appeals board:

(a) Shall not be a candidate for nor hold any other public office or trust, and shall not engage in any occupation or business interfering with or inconsistent with his duty as a member, nor shall he serve on or under any committee of any political party; and

(b) Shall not for a period of one year after the termination of his membership, act in a representative capacity before the appeals board on any matter. [1979 ex.s. c 47 § 4; 1974 ex.s. c 137 § 21.]

Intent—1979 ex.s. c 47: See note following RCW 43.21B.005.

76.09.220 Forest practices appeals board—Compensation—Travel expenses—Chairman—Office—Quorum—Powers and duties—Jurisdiction—Review. (1) The appeals board shall operate on either a part-time or a full-time basis, as determined by the governor. If it is determined that the appeals board shall operate on a full-time basis, each member shall receive an annual salary to be determined by the governor. If it is determined that the appeals board shall operate on a part-time basis, each member shall be compensated in accordance with RCW 43.03-.240: *Provided*, That such compensation shall not exceed ten thousand dollars in a fiscal year. Each member shall receive reimbursement for travel expenses incurred in the discharge of his duties in accordance with the provisions of RCW 43.03.050 and 43.03.060.

(2) The appeals board shall as soon as practicable after the initial appointment of the members thereof, meet and elect from among its members a chairman, and shall at least biennially thereafter meet and elect or reelect a chairman.

(3) The principal office of the appeals board shall be at the state capital, but it may sit or hold hearings at any other place in the state. A majority of the appeals board shall constitute a quorum for making orders or decisions, promulgating rules and regulations necessary for the conduct of its powers and duties, or transacting other official business, and may act though one position on the board be vacant. One or more members may hold hearings and take testimony to be reported for action by the board when authorized by rule or order of the board. The appeals board shall perform all the powers and duties granted to it in this chapter or as otherwise provided by law.

(4) The appeals board shall make findings of fact and prepare a written decision in each case decided by it, and such findings and decision shall be effective upon being signed by two or more members and upon being filed at the appeals board's principal office, and shall be open to public inspection at all reasonable times.

(5) The appeals board shall either publish at its expense or make arrangements with a publishing firm for the publication of those of its findings and decisions which are of general public interest, in such form as to assure reasonable distribution thereof.

(6) The appeals board shall maintain at its principal office a journal which shall contain all official actions of the appeals board, with the exception of findings and decisions, together with the vote of each member on such actions. The journal shall be available for public inspection at the principal office of the appeals board at all reasonable times.

(7) The forest practices appeals board shall have exclusive jurisdiction to hear appeals arising from an action or determination by the department.

(8)(a) Any person aggrieved by the approval or disapproval of an application to conduct a forest practice may seek review from the appeals board by filing a request for the same within thirty days of the approval or disapproval. Concurrently with the filing of any request for review with the board as provided in this section, the

requestor shall file a copy of his request with the department and the attorney general. The attorney general may intervene to protect the public interest and insure that the provisions of this chapter are complied with.

(b) The review proceedings authorized in subparagraph (a) of this subsection are subject to the provisions of chapter 34.05 RCW pertaining to procedures in adjudicative proceedings. [1989 c 175 § 164; 1984 c 287 § 109; 1979 ex.s. c 47 § 5; 1975-'76 2nd ex.s. c 34 § 174; 1975 1st ex.s. c 200 § 10; 1974 ex.s. c 137 § 22.]

Effective date—1989 c 175: See note following RCW 34.05.010.

Legislative findings—Severability—Effective date—1984 c 287: See notes following RCW 43.03.220.

Intent—1979 ex.s. c 47: See note following RCW 43.21B.005.

Effective date—Severability—1975-'76 2nd ex.s. c 34: See notes following RCW 2.08.115.

76.09.230 Forest practices appeals board—Appeal procedure—Judicial review. (1) In all appeals over which the appeals board has jurisdiction, a party taking an appeal may elect either a formal or an informal hearing, unless such party has had an informal hearing with the department. Such election shall be made according to the rules of practice and procedure to be promulgated by the appeals board. In the event that appeals are taken from the same decision, order, or determination, as the case may be, by different parties and only one of such parties elects a formal hearing, a formal hearing shall be granted.

(2) In all appeals the appeals board shall have all powers relating to administration of oaths, issuance of subpoenas, and taking of depositions, but such powers shall be exercised in conformity with chapter 34.05 RCW.

(3) In all appeals involving formal hearing the appeals board, and each member thereof, shall be subject to all duties imposed upon and shall have all powers granted to, an agency by those provisions of chapter 34.05 RCW relating to adjudicative proceedings.

(4) All proceedings, including both formal and informal hearings, before the appeals board or any of its members shall be conducted in accordance with such rules of practice and procedure as the board may prescribe. The appeals board shall publish such rules and arrange for the reasonable distribution thereof.

(5) Judicial review of a decision of the appeals board shall be de novo except when the decision has been rendered pursuant to the formal hearing, in which event judicial review may be obtained only pursuant to RCW 34.05.510 through 34.05.598. [1989 c 175 § 165; 1974 ex.s. c 137 § 23.]

Effective date—1989 c 175: See note following RCW 34.05.010.

76.09.240 Restrictions upon local political subdivisions or regional entities—Exceptions and limitations. No county, city, municipality, or other local or regional governmental entity shall adopt or enforce any law, ordinance, or regulation pertaining to forest practices, except that to the extent otherwise permitted by law, such entities may exercise any:

(1) Land use planning or zoning authority: *Provided*, That exercise of such authority may regulate forest practices only: (a) Where the application submitted under RCW 76.09.060 as now or hereafter amended indicates that the lands will be converted to a use other than commercial timber production; or (b) on lands which have been platted after January 1, 1960: *Provided*, That no permit system solely for forest practices shall be allowed; that any additional or more stringent regulations shall not be inconsistent with the forest practices regulations enacted under this chapter; and such local regulations shall not unreasonably prevent timber harvesting;

(2) Taxing powers;

(3) Regulatory authority with respect to public health; and

(4) Authority granted by chapter 90.58 RCW, the "Shoreline Management Act of 1971", except that in relation to "shorelines" as defined in RCW 90.58.030, the following shall apply:

(a) The forest practice regulations adopted pursuant to this chapter shall be the sole rules applicable to the performance of forest practices, and enforcement thereof shall be solely as provided in chapter 76.09 RCW;

(b) As to that road construction which constitutes a substantial development, no permit shall be required under chapter 90.58 RCW for the construction of up to five hundred feet of one and only one road or segment of a road provided such road does not enter the shoreline more than once. Such exemption from said permit requirements shall be limited to a single road or road segment for each forest practice and such road construction shall be subject to the requirements of chapter 76.09 RCW and regulations adopted pursuant thereto and to the prohibitions or restrictions of any master program in effect under the provisions of chapter 90.58 RCW. Nothing in this subsection shall add to or diminish the authority of the shoreline management act regarding road construction except as specifically provided herein. The provisions of this subsection shall not relate to any road which crosses over or through a stream, lake, or other water body subject to chapter 90.58 RCW;

(c) Nothing in this section shall create, add to, or diminish the authority of local government to prohibit or restrict forest practices within the shorelines through master programs adopted and approved pursuant to chapter 90.58 RCW except as provided in (a) and (b) above.

Any powers granted by chapter 90.58 RCW pertaining to forest practices, as amended herein, are expressly limited to lands located within "shorelines of the state" as defined in RCW 90.58.030. [1975 1st ex.s. c 200 § 11; 1974 ex.s. c 137 § 24.]

76.09.250 Policy for continuing program of orientation and training. The board shall establish a policy for a continuing program of orientation and training to be conducted by the department with relation to forest practices and the regulation thereof pursuant to RCW 76.09.010 through 76.09.280. [1974 ex.s. c 137 § 25.]

76.09.260 Department to represent state's interest—Cooperation with other public agencies—Grants and gifts. The department shall represent the state's interest in matters pertaining to forestry and forest practices, including federal matters, and may consult with and cooperate with the federal government and other states, as well as other public agencies, in the study and enhancement of forestry and forest practices. The department is authorized to accept, receive, disburse, and administer grants or other funds or gifts from any source, including private individuals or agencies, the federal government, and other public agencies for the purposes of carrying out the provisions of this chapter.

Nothing in this chapter shall modify the designation of the department of ecology as the agency representing the state for all purposes of the Federal Water Pollution Control Act. [1974 ex.s. c 137 § 26.]

76.09.270 Annual determination of state's research needs—Recommendations. The department, along with other affected agencies and institutions, shall annually determine the state's needs for research in forest practices and the impact of such practices on public resources and shall recommend needed projects to the governor and the legislature. [1974 ex.s. c 137 § 27.]

76.09.280 Removal of log and debris jams from streams. Forest land owners shall permit reasonable access requested by appropriate agencies for removal from stream beds abutting their property of log and debris jams accumulated from upstream ownerships. Any owner of logs in such jams in claiming or removing them shall be required to remove all unmerchantable material from the stream bed in accordance with the forest practices regulations. Any material removed from stream beds must also be removed in compliance with all applicable laws administered by other agencies. [1974 ex.s. c 137 § 28.]

76.09.285 Water quality standards affected by forest practices. See RCW 90.48.420.

76.09.290 Inspection of lands—Reforestation. The department shall inspect, or cause to be inspected, deforested lands of the state and ascertain if the lands are valuable chiefly for agriculture, timber growing, or other purposes, with a view to reforestation. [1986 c 100 § 49.]

76.09.300 Mass earth movements and fluvial processes—Program to correct hazardous conditions on sites associated with roads and railroad grades—Hazard-reduction plans. (1) Mass earth movements and fluvial processes can endanger public resources and public safety. In some cases, action can be taken which has a probability of reducing the danger to public resources and public safety. In other cases it may be best to take no action. In order to determine where and what, if any, actions should be taken on forest lands, the department shall develop a program to correct hazardous conditions on identified sites associated with roads and railroad

grades constructed on private and public forest lands prior to January 1, 1987. The first priority treatment shall be accorded to those roads and railroad grades constructed before the effective date of the forest practices act of 1974.

(2) This program shall be designed to accomplish the purposes and policies set forth in RCW 76.09.010. For each geographic area studied, the department shall produce a hazard-reduction plan which shall consist of the following elements:

(a) Identification of sites where the department determines that earth movements or fluvial processes pose a significant danger to public resources or public safety: *Provided*, That no liability shall attach to the state of Washington or the department for failure to identify such sites;

(b) Recommendations for the implementation of any appropriate hazard-reduction measures on the identified sites, which minimize interference with natural processes and disturbance to the environment;

(c) Analysis of the costs and benefits of each of the hazard-reduction alternatives, including a no-action alternative.

(3) In developing these plans, it is intended that the department utilize appropriate scientific expertise including a geomorphologist, a forest hydrologist, and a forest engineer.

(4) In developing these plans, the department shall consult with affected tribes, landowners, governmental agencies, and interested parties.

(5) Unless requested by a forest landowner under RCW 76.09.320, the department shall study geographic areas for participation in the program only to the extent that funds have been appropriated for cost sharing of hazard-reduction measures under RCW 76.09.320. [1987 c 95 § 2.]

76.09.305 Advisory committee to review hazard-reduction plans authorized—Compensation, travel expenses. The forest practices board may, upon request of the department or at its own discretion, appoint an advisory committee consisting of not more than five members qualified by appropriate experience and training to review and comment upon such draft hazard reduction plans prepared by the department as the department submits for review.

If an advisory committee is established, and within ninety days following distribution of a draft plan, the advisory committee shall prepare a written report on each hazard reduction plan submitted to it. The report, which shall be kept on file by the department, shall address each of those elements described in RCW 76.09.300(2).

Final authority for each plan is vested in the department, and advisory committee comments and decisions shall be advisory only. The exercise by advisory committee members of their authority to review and comment shall not imply or create any liability on their part. Advisory committee members shall be compensated as provided for in RCW 43.03.250 and shall receive

reimbursement for travel expenses as provided by RCW 43.03.050 and 43.03.060. [1987 c 95 § 3.]

76.09.310 Hazard-reduction program—Notice to landowners within areas selected for review—Proposed plans—Objections to plan, procedure—Final plans—Appeal. (1) The department shall send a notice to all forest landowners, both public and private, within the geographic area selected for review, stating that the department intends to study the area as part of the hazard-reduction program.

(2) The department shall prepare a proposed plan for each geographic area studied. The department shall provide the proposed plan to affected landowners, Indian tribes, interested parties, and to the advisory committee, if established pursuant to RCW 76.09.305.

(3) Any aggrieved landowners, agencies, tribes, and other persons who object to any or all of the proposed hazard-reduction plan may, within thirty days of issuance of the plan, request the department in writing to schedule a conference. If so requested, the department shall schedule a conference on a date not more than thirty days after receiving such request.

(4) Within ten days after such a conference, the department shall either amend the proposed plan or respond in writing indicating why the objections were not incorporated into the plan.

(5) Within one hundred twenty days following the issuance of the proposed plan as provided in subsection (2) of this section, the department shall distribute a final hazard-reduction plan designating those sites for which hazard-reduction measures are recommended and those sites where no action is recommended. For each hazard-reduction measure recommended, a description of the work and cost estimate shall be provided.

(6) Any aggrieved landowners, agencies, tribes, and other persons are entitled to appeal the final hazard-reduction plan to the forest practices appeals board if, within thirty days of the issuance of the final plan, the party transmits a notice of appeal to the forest practices appeals board and to the department.

(7) A landowner's failure to object to the recommendations or to appeal the final hazard-reduction plan shall not be deemed an admission that the hazard-reduction recommendations are appropriate.

(8) The department shall provide a copy of the final hazard-reduction plan to the department of ecology and to each affected county. [1987 c 95 § 4.]

76.09.315 Implementation of hazard-reduction measures—Election—Notice and application for cost-sharing funds—Inspection—Letter of compliance—Limitations on liability. (1) When a forest landowner elects to implement the recommended hazard-reduction measures, the landowner shall notify the department and apply for cost-sharing funds. Upon completion, the department shall inspect the remedial measures undertaken by the forest landowner. If, in the department's opinion, the remedial measures have been properly implemented, the department shall promptly

transmit a letter to the landowner stating that the landowner has complied with the hazard-reduction measures.

(2) Forest landowners, public and private, of hazard-reduction sites reviewed by the department and who have complied with the department's recommendations for sites which require action shall not be liable for any personal injuries or property damage, occurring on or off the property reviewed, arising from mass earth movements or fluvial processes associated with the hazard-reduction site reviewed. The limitation on liability contained in this subsection shall also cover personal injuries or property damage arising from mass earth movements or fluvial processes which are associated with those areas disturbed by activities required to acquire site access and to execute the plan when such activities are approved as part of a hazard-reduction plan. Notwithstanding the foregoing provisions of this subsection, a landowner may be liable when the landowner had actual knowledge of a dangerous artificial latent condition on the property that was not disclosed to the department.

(3) The exercise by the department of its authority, duties, and responsibilities provided for developing and implementing the hazard-reduction program and plans shall not imply or create any liability in the state of Washington or the department except that the department may be liable if the department is negligent in making a final hazard-reduction plan or in approving the implementation of specific hazard-reduction measures. [1987 c 95 § 5.]

76.09.320 Implementation of hazard-reduction program—Cost sharing by department—Limitations.

(1) Subject to the availability of appropriated funds, the department shall pay fifty percent of the cost of implementing the hazard-reduction program, except as provided in subsection (2) of this section.

(2) In the event department funds described in subsection (1) of this section are not available for all or a portion of a forest landowner's property, the landowner may request application of the hazard-reduction program to the owner's lands, provided the landowner funds one hundred percent of the cost of implementation of the department's recommended actions on his property.

(3) No cost-sharing funds may be made available for sites where the department determines that the hazardous condition results from a violation of then-prevailing standards as established by statute or rule. [1987 c 95 § 6.]

76.09.330 Legislative findings—Limitation on liability from naturally falling trees that were required to be left standing. The legislature hereby finds and declares that riparian ecosystems on forest lands in addition to containing valuable timber resources, provide benefits for wildlife, fish, and water quality. Forest landowners may be required to leave trees standing in riparian areas to benefit public resources. It is recognized that these trees may blow down or fall into streams. This is beneficial to riparian dependent species. The landowner shall

not be held liable for damages resulting from the leave trees falling from natural causes in riparian areas. [1987 c 95 § 7.]

76.09.900 Short title. Sections 1 through 28 of this 1974 act shall be known and may be cited as the "Forest Practices Act of 1974". [1974 ex.s. c 137 § 29.]

76.09.905 Air pollution laws not modified. Nothing in RCW 76.09.010 through 76.09.280 or 90.48.420 shall modify chapter 70.94 RCW or any other provision of law relating to the control of air pollution. [1974 ex.s. c 137 § 31.]

76.09.910 Shoreline management act, hydraulics act, other statutes and ordinances not modified—Exceptions. Nothing in RCW 76.09.010 through 76.09.280 as now or hereafter amended shall modify any requirements to comply with the Shoreline Management Act of 1971 except as limited by RCW 76.09.240 as now or hereafter amended, or the hydraulics act (RCW 75.20-.100), other state statutes in effect on January 1, 1975, and any local ordinances not inconsistent with RCW 76.09.240 as now or hereafter amended. [1975 1st ex.s. c 200 § 12; 1974 ex.s. c 137 § 32.]

76.09.915 Repeal and savings. (1) The following acts or parts of acts are each repealed:

(a) Section 2, chapter 193, Laws of 1945, section 1, chapter 218, Laws of 1947, section 1, chapter 44, Laws of 1953, section 1, chapter 79, Laws of 1957, section 10, chapter 207, Laws of 1971 ex. sess. and RCW 76.08.010;

(b) Section 1, chapter 193, Laws of 1945 and RCW 76.08.020;

(c) Section 3, chapter 193, Laws of 1945, section 2, chapter 218, Laws of 1947, section 1, chapter 115, Laws of 1955 and RCW 76.08.030;

(d) Section 4, chapter 193, Laws of 1945, section 3, chapter 218, Laws of 1947, section 2, chapter 79, Laws of 1957 and RCW 76.08.040;

(e) Section 5, chapter 193, Laws of 1945, section 4, chapter 218, Laws of 1947, section 3, chapter 79, Laws of 1957, section 11, chapter 207, Laws of 1971 ex. sess. and RCW 76.08.050;

(f) Section 6, chapter 193, Laws of 1945, section 5, chapter 218, Laws of 1947, section 2, chapter 44, Laws of 1953, section 12, chapter 207, Laws of 1971 ex. sess. and RCW 76.08.060;

(g) Section 7, chapter 193, Laws of 1945 and RCW 76.08.070;

(h) Section 8, chapter 193, Laws of 1945, section 6, chapter 218, Laws of 1947, section 3, chapter 44, Laws of 1953, section 2, chapter 115, Laws of 1955, section 1, chapter 40, Laws of 1961 and RCW 76.08.080; and

(i) Section 9, chapter 193, Laws of 1945, section 4, chapter 44, Laws of 1953 and RCW 76.08.090.

(2) Notwithstanding the foregoing repealer, obligations under such sections or permits issued thereunder and in effect on the effective date of this section shall

continue in full force and effect, and no liability thereunder, civil or criminal, shall be in any way modified. [1974 ex.s. c 137 § 34.]

76.09.920 Application for extension of prior permits. Permits issued by the department under the provisions of RCW 76.08.030 during 1974 shall be effective until April 1, 1975 if an application has been submitted under the provisions of RCW 76.09.050 prior to January 1, 1975. [1974 ex.s. c 137 § 35.]

76.09.925 Effective dates—1974 ex.s. c 137. RCW 76.09.030, 76.09.040, 76.09.050, 76.09.060, 76.09.200, 90.48.420, and 76.09.935 are necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect immediately. RCW 76.09.010, 76.09.020, 76.09.070, 76.09.080, 76.09.090, 76.09.100, 76.09.110, 76.09.120, 76.09.130, 76.09.140, 76.09.150, 76.09.160, 76.09.170, 76.09.180, 76.09.190, 76.09.210, 76.09.220, 76.09.230, 76.09.240, 76.09.250, 76.09.260, 76.09.270, 76.09.280, 76.09.900, 76.09.905, 76.09.910, 76.09.930, 76.09.915, and 76.09.920 shall take effect January 1, 1975. [1974 ex.s. c 137 § 37.]

76.09.935 Severability—1974 ex.s. c 137. If any provision of this 1974 act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provisions to other persons or circumstances shall not be affected. [1974 ex.s. c 137 § 36.]

Chapter 76.10 SURFACE MINING

Reviser's note: Chapter 64, Laws of 1970 ex. sess. has been codified as chapter 78.44 RCW, "Mines, Minerals, and Petroleum" although section 1 of the act states "Sections 2 through 25 of this act shall constitute a new chapter in Title 76 RCW." As the act pertains solely to surface mining, the change in placement has been made to preserve the subject matter arrangement of the code.

Chapter 76.12 REFORESTATION

Sections	
76.12.015	"Department" defined.
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76.12.180	Department-county agreements for improvement of access roads.
76.12.190	Reserved timber—Sale—Expiration of section.
76.12.200	Reserved timber—Report to legislature.
76.12.210	Olympic institute for old growth forest and ocean research and education.

Reservation of state land for reforestation after timber removed: RCW 79.01.164.

76.12.015 "Department" defined. As used in this chapter, "department" means the department of natural resources. [1988 c 128 § 22.]

76.12.020 Powers of department—Acquisition of land for reforestation—Taxes, cancellation. The department shall have the power to accept gifts and bequests of money or other property, made in its own name, or made in the name of the state, to promote generally the interests of reforestation or for a specific named purpose in connection with reforestation, and to acquire in the name of the state, by purchase or gift, any lands which by reason of their location, topography or geological formation, are chiefly valuable for purpose of developing and growing timber, and to designate such lands and any lands of the same character belonging to the state as state forest lands; and may acquire by gift or purchase any lands of the same character. The department shall have power to seed, plant and develop forests on any lands, purchased, acquired or designated by it as state forest lands, and shall furnish such care and fire protection for such lands as it shall deem advisable. Upon approval of the board of county commissioners of the county in which said land is located such gift or donation of land may be accepted subject to delinquent general taxes thereon, and upon such acceptance of such gift or donation subject to such taxes, the department shall record the deed of conveyance thereof and file with the assessor and treasurer of the county wherein such land is situated, written notice of acquisition of such land, and that all delinquent general taxes thereon, except state taxes, shall be canceled, and the county treasurer shall thereupon proceed to make such cancellation in the records of his office. Thereafter, such lands shall

be held in trust, protected, managed, and administered upon, and the proceeds therefrom disposed of, under RCW 76.12.030. [1988 c 128 § 23; 1937 c 172 § 1; 1929 c 117 § 1; 1923 c 154 § 3; RRS § 5812-3. Prior: 1921 c 169 § 1, part.]

76.12.030 Deed of county land to department—Disposition of proceeds. If any land acquired by a county through foreclosure of tax liens, or otherwise, comes within the classification of land described in RCW 76.12.020 and can be used as state forest land and if the department deems such land necessary for the purposes of this chapter, the county shall, upon demand by the department, deed such land to the department and the land shall become a part of the state forest lands.

Such land shall be held in trust and administered and protected by the department as other state forest lands. Any moneys derived from the lease of such land or from the sale of forest products, oils, gases, coal, minerals, or fossils therefrom, shall be distributed as follows:

(1) The expense incurred by the state for administration, reforestation, and protection, not to exceed twenty-five percent, which rate of percentage shall be determined by the board of natural resources, shall be returned to the forest development account in the state general fund.

(2) Any balance remaining shall be paid to the county in which the land is located to be paid, distributed, and prorated, except as hereinafter provided, to the various funds in the same manner as general taxes are paid and distributed during the year of payment: *Provided*, That any such balance remaining paid to a county of the seventh, eighth, or ninth class shall first be applied to the reduction of any indebtedness existing in the current expense fund of such county during the year of payment. [1988 c 128 § 24; 1981 2nd ex.s. c 4 § 4; 1971 ex.s. c 224 § 1; 1969 c 110 § 1; 1957 c 167 § 1; 1951 c 91 § 1; 1935 c 126 § 1; 1927 c 288 § 3, part (adding a new section to 1923 c 154 § 3b); RRS § 5812-36.]

Severability—1981 2nd ex.s. c 4: See note following RCW 43.85.130.

76.12.035 Reacquisition from federal government of lands originally acquired through tax foreclosure—Agreements. Whenever any forest land which shall have been acquired by any county through the foreclosure of tax liens, or otherwise, and which shall have been acquired by the federal government either from said county or from the state holding said lands in trust, and shall be available for reacquisition, the state board of natural resources and the board of county commissioners of any such county are hereby authorized to enter into an agreement for the reacquisition of such lands as state forest lands in trust for such county. Such agreement shall provide for the price and manner of such reacquisition. The state board of natural resources is authorized to provide in such agreement for the advance of funds available to it for such purpose from the forest development account, all or any part of the price for such reacquisition so agreed upon, which advance shall be repaid at such time and in such manner as in said agreement

provided, solely from any distribution to be made to said county under the provisions of RCW 76.12.030; that the title to said lands shall be retained by the state free from any trust until the state shall have been fully reimbursed for all funds advanced in connection with such reacquisition; and that in the event of the failure of the county to repay such advance in the manner provided, the said forest lands shall be retained by the state to be administered and/or disposed of in the same manner as other state forest lands free and clear of any trust interest therein by said county. Such county shall make provisions for the reimbursement of the various funds from any moneys derived from such lands so acquired, or any other county trust forest board lands which are distributable in a like manner, for any sums withheld from funds for other areas which would have been distributed thereto from time to time but for such agreement. [1959 c 87 § 1.]

76.12.040 Gifts of county or city land for offices, warehouses, etc. Any county, city or town is authorized and empowered to convey to the state of Washington any lands owned by such county, city or town upon the selection of such lands by the department and the department is hereby authorized to select and accept conveyances of lands from such counties, cities or towns, suitable for use by the department as locations for offices, warehouses and machinery storage buildings in the administration of the forestry laws and lands of the state of Washington: *Provided, however*, No consideration shall be paid by the state nor by the department for the conveyance of such lands by such county, city or town. [1988 c 128 § 25; 1937 c 125 § 1; RRS § 5812-3c. FORMER PART OF SECTION: 1937 c 125 § 2 now codified as RCW 76.12.045.]

76.12.045 Gifts of county or city land for offices, warehouses, etc.—Use of lands authorized. The department is authorized to use such lands for the purposes hereinbefore expressed and to improve said lands and build thereon any necessary structures for the purposes hereinbefore expressed and expend in so doing such funds as may be authorized by law therefor. [1988 c 128 § 26; 1937 c 125 § 2; RRS § 5812-3d. Formerly RCW 76.12.040.]

76.12.050 Exchange of lands to consolidate and block up holdings or obtain lands having commercial recreational leasing potential. The board of county commissioners of any county and/or the mayor and city council or city commission of any city or town and/or the board of natural resources shall have authority to exchange, each with the other, or with the federal forest service, the federal government or any proper agency thereof and/or with any private landowner, county land of any character, land owned by municipalities of any character, and land owned by the state under the jurisdiction of the department of natural resources, for real property of equal value for the purpose of consolidating and blocking up the respective land holdings of any county, municipality, the federal government, or the state of

Washington or for the purpose of obtaining lands having commercial recreational leasing potential. [1973 1st ex.s. c 50 § 1; 1961 c 77 § 1; 1937 c 77 § 1; RRS § 5812-3e.]

76.12.060 Exchange of lands to consolidate and block up holdings—Agreements and deeds by commissioner. The commissioner of public lands shall, with the advice and approval of the attorney general, execute such agreements, writings, or relinquishments and certify to the governor such deeds as are necessary or proper to complete an exchange as authorized by the board of natural resources under RCW 76.12.050. [1961 c 77 § 2; 1937 c 77 § 2; RRS § 5812-3f.]

76.12.065 Exchange of lands to consolidate and block up holdings—Lands acquired are subject to same laws and administered for same fund as lands exchanged. Lands acquired by the state of Washington as the result of any exchange authorized under RCW 76.12.050 shall be held and administered for the benefit of the same fund and subject to the same laws as were the lands exchanged therefor. [1961 c 77 § 3.]

76.12.070 Reconveyance to county in certain cases. Whenever any county shall have acquired by tax foreclosure, or otherwise, lands within the classification of RCW 76.12.020 and shall have thereafter contracted to sell such lands to bona fide purchasers before the same may have been selected as forest lands by the department, and has heretofore deeded or shall hereafter deed because of inadvertence or oversight such lands to the state or to the department to be held under RCW 76.12.030 or any amendment thereof; the department upon being furnished with a certified copy of such contract of sale on file in such county and a certificate of the county treasurer showing said contract to be in good standing in every particular and that all due payments and taxes have been made thereon, and upon receipt of a certified copy of a resolution of the board of county commissioners of such county requesting the reconveyance to the county of such lands, is hereby authorized to reconvey such lands to such county by quitclaim deed executed by the department. Such reconveyance of lands hereafter so acquired shall be made within one year from the conveyance thereof to the state or department. [1988 c 128 § 27; 1941 c 84 § 1; Rem. Supp. 1941 § 5812-3g.]

76.12.072 Transfer of state forest lands back to county for public park use—Procedure—Reconveyance back when use ceases. Whenever the board of county commissioners of any county shall determine that forest lands, that were acquired from such county by the state pursuant to RCW 76.12.030 and that are under the administration of the department of natural resources, are needed by the county for public park use in accordance with the county and the state outdoor recreation plans, the board of county commissioners may file an application with the board of natural resources for the transfer of such forest lands.

Upon the filing of an application by the board of county commissioners, the department of natural resources shall cause notice of the impending transfer to be given in the manner provided by RCW 42.30.060. If the department of natural resources determines that the proposed use is in accordance with the state outdoor recreation plan, it shall reconvey said forest lands to the requesting county to have and to hold for so long as the forest lands are developed, maintained, and used for the proposed public park purpose. This reconveyance may contain conditions to allow the department of natural resources to coordinate the management of any adjacent state owned lands with the proposed park activity to encourage maximum multiple use management and may reserve rights of way needed to manage other state owned lands in the area. The application shall be denied if the department of natural resources finds that the proposed use is not in accord with the state outdoor recreation plan. If the land is not, or ceases to be, used for public park purposes the land shall be conveyed back to the department of natural resources upon request of the department. [1983 c 3 § 195; 1969 ex.s. c 47 § 1.]

76.12.073 Transfer of state forest lands back to county for public park use—Timber resource management. The timber resources on any such state forest land transferred to the counties under RCW 76.12.072 shall be managed by the department of natural resources to the extent that this is consistent with park purposes and meets with the approval of the board of county commissioners. Whenever the department of natural resources does manage the timber resources of such lands, it will do so in accordance with the general statutes relative to the management of all other state forest lands. [1969 ex.s. c 47 § 2.]

76.12.074 Transfer of state forest lands back to county for public park use—Lands transferred by deed. Under provisions mutually agreeable to the board of county commissioners and the board of natural resources, lands approved for transfer to a county for public park purposes under the provisions of RCW 76.12.072 shall be transferred to the county by deed. [1969 ex.s. c 47 § 3.]

76.12.075 Transfer of state forest lands back to county for public park use—Provisions cumulative and nonexclusive. The provisions of RCW 76.12.072 through 76.12.075 shall be cumulative and nonexclusive and shall not repeal any other related statutory procedure established by law. [1969 ex.s. c 47 § 4.]

76.12.080 Acquisition of forest land—Requisites. The department shall take such steps as it deems advisable for locating and acquiring lands suitable for state forests and reforestation. No sum in excess of two dollars per acre shall ever be paid or allowed either in cash, bonds or otherwise, for any lands suitable for forest growth, but devoid of such; nor shall any sum in excess of six dollars per acre be paid or allowed either in cash, bonds or otherwise, for any lands adequately restocked

with young growth or left in a satisfactory natural condition for natural reforestation and continuous forest production; nor shall any lands ever be acquired by the department except upon the approval of the title by the attorney general and on a conveyance being made to the state of Washington by good and sufficient deed. No forest lands shall be designated, purchased, or acquired by the department unless the area so designated or the area to be acquired shall, in the judgment of the department, be of sufficient acreage and so located that it can be economically administered for forest development purposes. Whenever the department acquires or designates an area as forest lands it shall designate such area by a distinctive name or number, e.g., "State forest No. -----", or, "Cascade State Forest". [1988 c 128 § 28; 1923 c 154 § 4; RRS § 5812-4. Prior: 1921 c 169 § 1, part.]

76.12.090 Utility bonds. For the purpose of acquiring and paying for lands for state forests and reforestation as herein provided the department may issue utility bonds of the state of Washington, in an amount not to exceed two hundred thousand dollars in principal, during the biennium expiring March 31, 1925, and such other amounts as may hereafter be authorized by the legislature. Said bonds shall bear interest at not to exceed the rate of two percent per annum which shall be payable annually. Said bonds shall never be sold or exchanged at less than par and accrued interest, if any, and shall mature in not less than a period equal to the time necessary to develop a merchantable forest on the lands exchanged for said bonds or purchased with money derived from the sale thereof. Said bonds shall be known as state forest utility bonds. The principal or interest of said bonds shall not be a general obligation of the state, but shall be payable only from the forest development account. The department may issue said bonds in exchange for lands selected by it in accordance with RCW 76.12.020, 76.12.030, 76.12.080, 76.12.090, 76.12.110, 76.12.120, 76.12.140, and *76.12.150, or may sell said bonds in such manner as it deems advisable, and with the proceeds purchase and acquire such lands. Any of said bonds issued in exchange and payment for any particular tract of lands may be made a first and prior lien against the particular land for which they are exchanged, and upon failure to pay said bonds and interest thereon according to their terms, the lien of said bonds may be foreclosed by appropriate court action. [1988 c 128 § 29; 1937 c 104 § 1; 1923 c 154 § 5; RRS § 5812-5.]

*Reviser's note: RCW 76.12.150 was repealed by 1977 c 75 § 96.

76.12.100 Bonds—Purchase price of land limited—Retirement of bonds. For the purpose of acquiring, seeding, reforestation and administering land for forests and of carrying out RCW 76.12.020, 76.12.030, 76.12.080, 76.12.090, 76.12.110, 76.12.120, 76.12.140, and *76.12.150, the department is authorized to issue and dispose of utility bonds of the state of Washington in an amount not to exceed one hundred thousand dollars in principal during the biennium expiring March 31, 1951: *Provided, however,* That no sum in excess of one

dollar per acre shall ever be paid or allowed either in cash, bonds, or otherwise, for any lands suitable for forest growth, but devoid of such, nor shall any sum in excess of three dollars per acre be paid or allowed either in cash, bonds, or otherwise, for any lands adequately restocked with young growth.

Any utility bonds issued under the provisions of this section may be retired from time to time, whenever there is sufficient money in the forest development account, said bonds to be retired at the discretion of the department either in the order of issuance, or by first retiring bonds with the highest rate of interest. [1988 c 128 § 30; 1949 c 80 § 1; 1947 c 66 § 1; 1945 c 13 § 1; 1943 c 123 § 1; 1941 c 43 § 1; 1939 c 106 § 1; 1937 c 104 § 2; 1935 c 126 § 2; 1933 c 117 § 1; Rem. Supp. 1949 § 5812-11.]

*Reviser's note: RCW 76.12.150 was repealed by 1977 c 75 § 96.

76.12.110 Forest development account. There is created a forest development account in the state treasury. The state treasurer shall keep an account of all sums deposited therein and expended or withdrawn therefrom. Any sums placed in the account shall be pledged for the purpose of paying interest and principal on the bonds issued by the department, and for the purchase of land for growing timber. Any bonds issued shall constitute a first and prior claim and lien against the account for the payment of principal and interest. No sums for the above purposes shall be withdrawn or paid out of the account except upon approval of the department.

Appropriations may be made by the legislature from the forest development account to the department for the purpose of carrying on the activities of the department on state forest lands, lands managed on a sustained yield basis as provided for in RCW 79.68.040, and for reimbursement of expenditures that have been made or may be made from the resource management cost account in the management of state forest lands. [1988 c 128 § 31; 1985 c 57 § 75; 1977 ex.s. c 159 § 1; 1959 c 314 § 1; 1951 c 149 § 1; 1933 c 118 § 2; 1923 c 154 § 6; RRS § 5812-6.]

Effective date—1985 c 57: See note following RCW 15.52.320.

76.12.120 Sales and leases of timber, timber land, or products thereon—Disposition of revenue. All land, acquired or designated by the department as state forest land, shall be forever reserved from sale, but the timber and other products thereon may be sold or the land may be leased in the same manner and for the same purposes as is authorized for state granted land if the department finds such sale or lease to be in the best interests of the state and approves the terms and conditions thereof.

Except as provided in RCW 79.12.035, all money derived from the sale of timber or other products, or from lease, or from any other source from the land, except where the Constitution of this state or RCW 76.12.030 requires other disposition, shall be disposed of as follows:

(1) Fifty percent shall be placed in the forest development account.

(2) Fifty percent shall be prorated and distributed to the state general fund, to be dedicated for the benefit of

the public schools, and the county in which the land is located according to the relative proportions of tax levies of all taxing districts in the county. The portion to be distributed to the state general fund shall be based on the regular school levy rate under RCW 84.52.065 as now or hereafter amended and the levy rate for any maintenance and operation special school levies. The money distributed to the county shall be paid, distributed, and prorated to the various other funds in the same manner as general taxes are paid and distributed during the year of payment. [1988 c 128 § 32; 1988 c 70 § 1; 1980 c 154 § 11; 1971 ex.s. c 123 § 4; 1955 c 116 § 1; 1953 c 21 § 1; 1923 c 154 § 7; RRS § 5812-7.]

Reviser's note: This section was amended by 1988 c 70 § 1 and by 1988 c 128 § 32, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Purpose—Effective dates—Savings—Disposition of certain funds—Severability—1980 c 154: See notes following chapter 82-.45 RCW digest.

Christmas trees—Cutting, breaking, removing: RCW 79.40.070 and 79.40.080.

76.12.140 Logging of land—Rules and regulations—Penalty. Any lands acquired by the state under RCW 76.12.020, 76.12.030, 76.12.080, 76.12.090, 76.12.110, 76.12.120, 76.12.140, and *76.12.150, or any amendments thereto, shall be logged, protected and cared for in such manner as to insure natural reforestation of such lands, and to that end the department shall have power, and it shall be its duty to make rules and regulations, and amendments thereto, governing logging operations on such areas, and to embody in any contract for the sale of timber on such areas, such conditions as it shall deem advisable, with respect to methods of logging, disposition of slashings, and debris, and protection and promotion of new forests. All such rules and regulations, or amendments thereto, shall be adopted by the department under chapter 34.05 RCW. Any violation of any such rules shall be a gross misdemeanor unless the department has specified by rule, when not inconsistent with applicable statutes, that violation of a specific rule is an infraction under chapter 7.84 RCW. [1988 c 128 § 33; 1987 c 380 § 17; 1927 c 288 § 3, part (adding a new section to 1923 c 154 § 3a); RRS § 5812-3a. Prior: 1921 c 169 § 2.]

***Reviser's note:** RCW 76.12.150 was repealed by 1977 c 75 § 96.

Effective date—Severability—1987 c 380: See RCW 7.84.900 and 7.84.901.

76.12.155 Record of proceedings, etc. The commissioner of public lands shall keep in his office in a permanent bound volume a record of all forest lands acquired by the state and any lands owned by the state and designated as such by the department. The record shall show the date and from whom said lands were acquired; amount and method of payment therefor; the forest within which said lands are embraced; the legal description of such lands; the amount of money expended, if any, and the date thereof, for seeding, planting, maintenance or care for such lands; the amount,

date and source of any income derived from such land; and such other information and data as may be required by the department. [1988 c 128 § 34; 1923 c 154 § 9; RRS § 5812-9. Formerly RCW 43.12.140.]

76.12.160 Sale or exchange of tree seedling stock and tree seed. The department is authorized to sell to or exchange with persons intending to restock forest areas, tree seedling stock and tree seed produced at the state nursery. [1988 c 128 § 35; 1947 c 67 § 1; Rem. Supp. 1947 § 5823-40.]

76.12.170 Use of proceeds specified. All receipts from the sale of stock or seed shall be deposited in a state forest nursery revolving fund to be maintained by the department, which is hereby authorized to use all money in said fund for the maintenance of the state tree nursery or the planting of denuded state owned lands. [1988 c 128 § 36; 1947 c 67 § 2; RRS § 5823-41.]

76.12.180 Department-county agreements for improvement of access roads. The department of natural resources may enter into agreements with the county to:

(1) Identify public roads used to provide access to state forest lands in need of improvement;

(2) Establish a time schedule for the improvements;

(3) Advance payments to the county to fund the road improvements: *Provided*, That no more than fifty percent of the access road revolving fund shall be eligible for use as advance payments to counties. The department shall assess the fund on January 1 and July 1 of each year to determine the amount that may be used as advance payments to counties for road improvements; and

(4) Determine the equitable distribution, if any, of costs of such improvements between the county and the state through negotiation of terms and conditions of any resulting repayment to the fund or funds financing the improvements. [1981 c 204 § 5.]

76.12.190 Reserved timber —Sale—Expiration of section. (1) Whenever the board of county commissioners or the county council of any county determines that it is in the best interests of the county as a trust beneficiary and that it would help to ensure the economic viability of that county, the county may petition the board of natural resources to reserve, for the purposes described in this section, a portion of the timber to be sold in any given year from forest lands which have been acquired from that county by the state under RCW 76.12.030. The county shall specify what portion of such timber is to be reserved, and the portion reserved may be up to one hundred percent of such timber.

(2)(a) Timber reserved under this section shall be made available for sale to enterprises which meet all of the following criteria: (i) At least fifty percent by volume of the timber purchased by the enterprise in the previous three years was state-owned or federally-owned; (ii) at least eighty-five percent by volume of the timber purchased by the enterprise in the previous year

was processed in Washington state; and (iii) the enterprise operates facilities in Washington which manufacture lumber, plywood, veneer, posts, poles, pilings, shakes, or shingles. For purposes of these criteria, "processed" means manufactured into lumber, plywood, veneer, posts, poles, pilings, shakes, or shingles.

(b) Once the board of natural resources has accepted the petition of a county to reserve a portion of timber pursuant to this section, the department shall compile a list of enterprises which meet the criteria listed in (a) of this subsection. An enterprise must petition the department for inclusion in the list of eligible enterprises, and must include with the petition certified records sufficient to establish that the enterprise meets the criteria listed in (a) of this subsection. If an enterprise purchases a processing facility, the enterprise may incorporate the records of that facility in its petition for inclusion in the list of eligible enterprises. The department shall establish by rule what types of records are acceptable for purposes of establishing eligibility. Timber reserved under this section shall be sold only to enterprises contained in the list of eligible firms prepared by the department.

(c) For each sale of timber under this section, the department shall require the purchaser to: (i) Submit annually, until all unprocessed timber is accounted for, a certified report on the disposition of any unprocessed timber harvested from the sale, including a description of unprocessed timber which is sold, exchanged, or otherwise disposed of to another enterprise and a description of the relationship with the other enterprise; (ii) submit annually, until all unprocessed timber from the sale is accounted for, a certified report on the sale of any unprocessed timber from private lands which is exported or sold for export; and (iii) maintain records of all such transactions involving unprocessed timber, and to make such records available for inspection and verification by the department for up to three years after the sale is terminated.

(d) For purposes of this section, "enterprise" means any business concern and its affiliates, as that term is defined in 13 C.F.R. 121.3, in effect as of January 1, 1988.

(3) If a county petitions the board of natural resources to reserve timber as provided in this section, the use of the forest board land trust assets for the purposes of *this act shall be deemed to be consistent with the trust mandate imposed on the management of lands acquired pursuant to RCW 76.12.030.

(4) A petition to reserve a portion of timber may be revoked by the board of county commissioners or county council. Notice of such revocation shall be delivered to the board of natural resources. The board of natural resources shall not unreasonably deny such a request. Such revocation shall not impair any sale of timber which is approved by the board of natural resources before the board receives the notice.

(5) This section shall expire June 30, 1994. [1989 c 424 § 2.]

*Reviser's note: For codification of "this act" [1989 c 424], see Codification Tables, Volume 0.

Findings—1989 c 424: "The forest resources of Washington are among the most valuable of the state's resources. They provide significant opportunities for employment, education, and enjoyment, and they support a variety of uses. These forest resources are increasingly affected by pressure from a variety of sources, which will result in changes in current management practices for the resources and in changes in the economies that are dependent on these resources.

The legislature desires to develop forest management policies that anticipate emerging issues and assure a response which will protect and enhance those economic and ecological systems that are dependent on the resources. The legislature also desires to obtain information which enables better decision-making and to identify courses of action which will assist counties in receiving a reliable flow of income from county forest lands. The legislature finds that it is in the best interests of the state and the counties to establish a process which encourages the counties, through their boards of county commissioners or county councils, to share in the decision-making relating to the sale of timber from forest board lands as they seek to assure the economic stability of their communities.

Further, the legislature finds that recent management decisions concerning federally-owned forested lands have significantly reduced the amount of timber available to small businesses with facilities in Washington. This reduction has caused and will increasingly cause economic hardship in counties where a significant portion of the population is employed in the timber industry. In these counties, the rate of unemployment among residents previously employed in the timber industry has risen drastically and will continue to rise. This will put an increasing burden on the counties to provide necessary financial and social support to these residents.

This section shall expire June 30, 1994." [1989 c 424 § 1.]

Effective date—1989 c 424: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1989." [1989 c 424 § 13.]

76.12.200 Reserved timber—Report to legislature. By December 1, 1990, and annually thereafter until December 1, 1994, the board of natural resources shall report to the appropriate legislative committees on the amount of reserved timber sold pursuant to RCW 76.12.190. The report shall identify the quantity of the reserved timber which was not exported out-of-state in the form of raw logs, and shall identify the quantity which was processed into final products within the state. The report shall also identify which counties have elected to reserve timber pursuant to this section, and shall identify any rules which have been adopted in the last year for the implementation of this section. [1989 c 424 § 3.]

Findings—Effective date—1989 c 424: See notes following RCW 76.12.190.

76.12.210 Olympic institute for old growth forest and ocean research and education. (1) The Olympic institute for old growth forest and ocean research and education is hereby created. The institute shall be located in the western portion of the Olympic Peninsula. Its purpose shall be to demonstrate innovative management methods which successfully integrate environmental and economic interests into pragmatic management of forest and ocean resources. The institute shall combine research and educational opportunities with experimental forestry, oceans management, and traditional management knowledge into an overall program which demonstrates that management based on sound economic principles is made superior when combined with new methods of management based on ecological principles. The institute shall be jointly supported by the college of

forest resources and the college of ocean and fishery science.

(2) There is hereby appropriated from the general fund to the University of Washington the sum of one hundred fifty thousand dollars, or as much thereof as may be necessary, for the biennium ending June 30, 1991, for the purpose of preparing a development plan for the institute. The development plan shall involve policy makers from state, federal, tribal, business, and environmental interests in the preparation of management plans and as it develops programs and shall be guided by the recommendation of the old growth commission appointed by the commissioner of public lands. [1989 c 424 § 4.]

Findings—Effective date—1989 c 424: See notes following RCW 76.12.190.

Chapter 76.14 FOREST REHABILITATION

Sections

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76.14.010 Definitions. As used in this chapter:

"Department" means the department of natural resources;

The term "owner" means and includes individuals, partnerships, corporations, associations, federal land managing agencies, state of Washington, counties, municipalities, and other forest land owners;

"Forest land" means any lands considered best adapted for the growing of trees. [1988 c 128 § 37; 1953 c 74 § 2.]

76.14.020 Yacolt burn designated high hazard area—Rehabilitation required. The Yacolt burn situated in Clark, Skamania, and Cowlitz counties in townships 2, 3, 4, 5, 6 and 7 north, ranges 3, 4, 5, 6, 7, 7 1/2 and 8 east is hereby designated a high hazard forest area requiring rehabilitation by the establishment of extensive protection facilities and by the restocking of denuded areas artificially to restore the productivity of the land. [1953 c 74 § 1.]

76.14.030 Administration. This chapter shall be administered by the department. [1988 c 128 § 38; 1953 c 74 § 3.]

76.14.040 Duties. The department shall use funds placed at its disposal to map, survey, fell snags, build firebreaks and access roads, increase forest protection activities and do all work deemed necessary to protect forest lands from fire in the rehabilitation zone, and to perform reforestation and do other improvement work on state lands in the rehabilitation zone. [1988 c 128 § 39; 1955 c 171 § 1; 1953 c 74 § 4.]

76.14.050 Firebreaks—Powers of department—Grazing lands. The department is authorized to cooperate with owners of land located in the area described in RCW 76.14.020 in establishing firebreaks in their most logical position regardless of land ownership. The department may by gift, purchase, condemnation or otherwise acquire easements for road rights of way and land or interests therein located in the high hazard forest area described in RCW 76.14.020 for any purpose deemed necessary for access for forest protection, reforestation, development and utilization, and for access to state owned lands within the area described in RCW 76.14.020 for all other purposes, and the department shall have authority to regulate the use thereof. When the landowner is using the land for agricultural grazing purposes the state shall maintain gates or adequate cattle guards at each place the road enters upon the private landowner's fenced lands. [1988 c 128 § 40; 1975 1st ex.s. c 101 § 1; 1955 c 171 § 2; 1953 c 74 § 5.]

76.14.051 Firebreaks—Preexisting agreements not altered. Nothing in the provisions of RCW 76.14.050 as now or hereafter amended shall be construed to otherwise alter the terms of any existing agreements heretofore entered into by the state and private parties under the authority of RCW 76.14.050 as now or hereafter amended. [1975 1st ex.s. c 101 § 2.]

76.14.060 Powers and duties—Private lands. The department shall have authority to acquire the right by purchase, condemnation or otherwise to cause snags on private land to be felled, slash to be disposed of, and to take such other measures on private land necessary to carry out the objectives of this chapter. [1988 c 128 § 41; 1955 c 171 § 3.]

76.14.070 Powers and duties—Expenditure of public funds. The department shall have authority to expend public money for the purposes and objectives provided in this chapter. [1988 c 128 § 42; 1955 c 171 § 4.]

76.14.080 Fire protection projects—Assessments—Payment. The department shall develop fire protection projects within the high hazard forest area and shall determine the boundaries thereof in accordance with the lands benefited thereby and shall assess one-sixth of the cost of such projects equally upon all forest lands within the project on an acreage basis. Such assessment shall not, however, exceed twenty-five cents per acre annually nor more than one dollar and fifty cents per acre in the aggregate and shall constitute a lien

upon any forest products harvested therefrom. The landowner may by written notice to the department elect to pay his assessment on a deferred basis at a rate of ten cents per thousand board feet and/or one cent per Christmas tree when these products are harvested from the lands for commercial use until the assessment plus two percent interest from the date of completion of each project has been paid for each acre. Payments under the deferred plan shall be credited by forty acre tracts and shall be first applied to payment of the assessment against the forty acre tract from which the funds were derived and secondly to other forty acre tracts held and designated by the payor. In the event total ownership is less than forty acres then payment shall be applied on an undivided basis to the entire areas as to which the assessment remains unpaid. The landowner who elects to pay on deferred basis may pay any unpaid assessment and interest at any time. [1988 c 128 § 43; 1955 c 171 § 5.]

76.14.090 Fire protection projects—Notice—Hearing. Notice of each project, the estimated assessment per acre and a description of the boundaries thereof shall be given by publication in a local newspaper of general circulation thirty days in advance of commencing work. Any person owning land within the project may within ten days after publication of notice demand a hearing before the department in Olympia and present any reasons why he feels the assessment should not be made upon his land. Thereafter, the department may change the boundaries of said project to eliminate land from the project which it determines in its discretion will not be benefited by the project. [1988 c 128 § 44; 1955 c 171 § 6.]

76.14.100 Fire protection projects—Collection of assessments. Except when the owner has notified the department in writing that he will make payment on the deferred plan, the assessment shall be collected by the department reporting the same to the county assessor of the county in which the property is situated upon completion of the work in that project and the assessor shall annually extend the amounts upon the tax rolls covering the property, and the amounts shall be collected in the same manner, by the same procedure, and with the same penalties attached as the next general state and county taxes on the same property are collected. Errors in assessments may be corrected at any time by the department by certifying them to the treasurer of the county in which the land involved is situated. Upon the collection of such assessments the county treasurer shall transmit them to the department. Payment on the deferred plan shall be made directly to the department. Such payment must be made by January 31st for any timber or Christmas trees harvested during the previous calendar year and must be accompanied by a statement of the amount of timber or number of Christmas trees harvested and the legal description of the property from which they were harvested. Whenever an owner paying on the deferred plan desires to pay any unpaid balance

or portion thereof, he may make direct payment to the department. [1988 c 128 § 45; 1955 c 171 § 7.]

Collection of taxes: Chapter 84.56 RCW.

76.14.110 Fire protection projects—Credit on assessment for private expenditure. Where the department finds that a portion of the work in any project, except road building, has been done by private expenditures for fire protection purposes only and that the work was not required by other forestry laws having general application, then the department shall appraise the work on the basis of what it would have cost the state and shall credit the amount of the appraisal toward payment of any sums assessed against lands contained in the project and owned by the person or his predecessors in title making the expenditure. Such appraisal shall be added to the cost of the project for purposes of determining the general assessment. [1988 c 128 § 46; 1955 c 171 § 8.]

76.14.120 Landowner's responsibility under other laws. This chapter shall not relieve the landowner of providing adequate fire protection for forest land pursuant to RCW 76.04.610 or, in lieu thereof, of paying the forest fire protection assessment specified, but shall be deemed as providing solely for extra fire protection needed in the extrahazardous fire area. [1986 c 100 § 56; 1955 c 171 § 9.]

76.14.130 Lands not to be included in project. Projects pursuant to RCW 76.14.080 shall not be developed to include lands outside the following described boundary within the high hazard forest areas: Beginning at a point on the east boundary of section 24, township 4 north, range 4 east 1/4 mile south of the northeast corner; thence west 1/4 mile; south 1/16 mile; west 1/4 mile; north 1/16 mile; west 1/2 mile; south 1/8 mile; west 1/4 mile; south 1/8 mile; west 1/2 mile; south 1/16 mile; west 1/8 mile; south 1/16 mile; west 1/8 mile; south 1/16 mile; west 1/2 mile; south 1/16 mile; west 3/4 mile; north 1/16 mile; west 1/4 mile; north 1/16 mile; west 1/2 mile; north 1/16 mile; west 1/4 mile; north 1/16 mile; west 1 3/4 miles to the west quarter corner of section 19, township 4 north, range 4 east. Thence north 1/4 mile; west 1/4 mile; north 1/8 mile; west 1/8 mile; north 1/8 mile; west 1/16 mile; north 1/4 mile; west 1/16 mile; north 1/8 mile; west 1/8 mile; north 1/8 mile; west 3/16 mile; south 1/8 mile; west 3/16 mile; south 1/8 mile; east 3/16 mile; south 1/4 mile; west 2 3/16 miles; south 1/8 mile; west 1/8 mile; south 1/4 mile; east 1/8 mile; south 1/16 mile; east 1/4 mile; south 3/16 mile; east 3/8 mile; south 1/8 mile; east 1/8 mile; south 1/16 mile; east 3/16 mile; south 7/16 mile; west 3/16 mile; south 1/4 mile; west 3/16 mile; south 1/4 mile; east 15/16 mile; south 1/4 mile; east 1/4 mile; south 1/4 mile; east 1/4 mile; south 3/4 mile; to the southwest corner of section 36, township 4 north, range 3 east. Thence west 3/8 mile; south 1/8 mile; east 1/8 mile; south 1/2 mile; west 1/8 mile; south 3/8 mile; west 1/8 mile; south 1/4 mile; west 1/4 mile; south 1/2 mile; west 1/8 mile; south 1/4 mile; east 3/8 mile; south 7/16 mile; west 1/4 mile;

Chapter 76.16

ACCESS TO STATE TIMBER AND OTHER VALUABLE MATERIAL

Sections	
76.16.010	Acquisition of property interests for access authorized—Maintenance.
76.16.020	Condemnation—Duty of attorney general.
76.16.030	Disposal of property interests acquired under this chapter.
76.16.040	Acquisition—Payment—Moneys available to department.

south 1/16 mile; west 1/4 mile; south 1/2 mile; west 1/8 mile; south 1/4 mile; east 1/8 mile; south 1/16 mile; west 1/4 mile; south 1/4 mile; east 1/2 mile; south 3/16 mile; east 1/4 mile; south 1/16 mile; east 7/16 mile; south 3/16 mile; east 9/16 mile; south 1/4 mile; east 1/16 mile; south 1/4 mile; east 1/16 mile; south 1/8 mile; east 1/8 mile; south 1/8 mile; west 1/16 mile; south 5/8 mile; west 3/16 mile; south 1/16 mile; east 1/4 mile; south 1/16 mile; east 1/8 mile; south 3/16 mile; west 1/8 mile; south 1/16 mile; west 11/16 mile; south 3/16 mile; east 15/16 mile, being 1/16 mile north of the southeast corner of section 36, township 3 north, range 3 east. Thence east 1 mile; south 1/16 mile; west 7/8 mile; south 1/8 mile; east 1/4 mile; south 1/4 mile; west 1/8 mile; south 1/8 mile; west 3/16 mile; south 1/4 mile; west 7/16 mile; north 1/8 mile; west 1/8 mile; south 1/8 mile; west 5/16 mile; south 1/4 mile; west 3/16 mile; south 1/16 mile; east 1/2 mile; north 1/16 mile; east 1/4 mile; south 1/8 mile; east 1/8 mile; north 1/8 mile; east 1/8 mile being the southeast corner of section 1, township 2 north, range 3 east. Thence south 1/4 mile; east 1/4 mile; south 1/16 mile; east 1/4 mile; south 1/16 mile; east 1/4 mile; south 1/8 mile; east 3/8 mile; south 1/8 mile; east 1/16 mile; north 1/4 mile; east 7/16 mile; north 1/8 mile; east 9/16 mile; south 1/4 mile; west 1/16 mile; south 1/8 mile; west 1/8 mile; south 1/8 mile; west 1/8 mile; south 1/8 mile; west 1/16 mile; south 1/4 mile; west 1/16 mile; south 1/8 mile; west 1/8 mile; south 1/16 mile; west 1/4 mile; south 5/16 mile; to the center of section 17, township 2 north, range 4 east. Thence east 1 mile; south 1/16 mile; east 2 miles; north 1/16 mile; east 1 1/2 miles; to the east quarter corner of section 13, township 2 north, range 4 east. Thence easterly 9 miles following Bonneville Power Administration's power transmission line through sections 18, 17, 16, 15, 14 and 13, township 2 north, range 5 east and sections 18, 17 and 16, township 2 north, range 6 east to the southeast corner of section 16, township 2 north, range 6 east. Thence easterly 3 3/4 miles; north 1 1/4 miles; east 1/4 mile; north 2 1/4 miles; west 3/4 mile; north 1 1/2 miles; east 3/4 mile; north 1/2 mile; east 1 mile; north 1/2 mile; east 1 mile; north 1 mile; east 2 miles; south 1 mile; east 1 mile; north 3 miles; to the northeast corner of section 1, township 3 north, range 7 east. Thence west 4 miles; south 1 mile; west 2 miles; north 1/2 mile; west 2 miles; south 1/2 mile; west 1 mile; south 1/2 mile; west 2 miles; north 1 1/2 miles; west 1 mile; south 1 mile; west 2 miles; south 1 1/2 miles; east 1 mile; south 1/2 mile; west 1 mile; south 1/2 mile; west 1/2 mile; south 1/2 mile; west 3 1/2 miles to the northwest corner of section 30, township 3 north, range 5 east. Thence north along Gifford Pinchot National Forest boundary to the point of beginning. [1955 c 171 § 10.]

76.16.010 Acquisition of property interests for access authorized—Maintenance. Whenever the department of natural resources, hereinafter referred to as the department, shall find it to be for the best interests of the state of Washington to acquire any property or use of a road in private ownership to afford access to state timber and other valuable material for the purpose of developing, caring for or selling the same, the acquisition of such property, or use thereof, is hereby declared to be necessary for the public use of the state of Washington, and said department is hereby authorized to acquire such property or the use of such roads by gift, purchase, exchange or condemnation, and subject to all of the terms and conditions of such gift, purchase, exchange or decree of condemnation to maintain such property or roads as part of the department's land management road system. [1963 c 140 § 1; 1945 c 239 § 1; Rem. Supp. 1945 § 5823-30.]

Eminent domain: State Constitution Art. 1 § 16; chapter 8.04 RCW. State lands subject to easements for removal of materials: RCW 79.01.312 and 79.36.230.

76.16.020 Condemnation—Duty of attorney general. The attorney general of the state of Washington is hereby required and authorized to condemn said property interests found to be necessary for the public purposes of the state of Washington, as provided in RCW 76.16.010, and upon being furnished with a certified copy of the resolution of the department, describing said property interests found to be necessary for the purposes set forth in RCW 76.16.010, the attorney general shall immediately take steps to acquire said property interests by exercising the state's right of eminent domain under the provisions of chapter 8.04 RCW, and in any condemnation action herein authorized, the resolution so describing the property interests found to be necessary for the purposes set forth above shall, in the absence of a showing of bad faith, arbitrary, capricious or fraudulent action, be conclusive as to the public use and real necessity for the acquisition of said property interests for a public purpose, and said property interests shall be awarded to the state without the necessity of either pleading or proving that the department was unable to agree with the owner or owners of said private property interest for its purchase. Any condemnation action herein authorized shall have precedence over all actions, except criminal actions, and shall be summarily tried and disposed of. [1963 c 140 § 2; 1945 c 239 § 2; Rem. Supp. 1945 § 5823-31.]

76.16.030 Disposal of property interests acquired under this chapter. In the event the department should determine that the property interests acquired under the authority of this chapter are no longer necessary for the purposes for which they were acquired, the department shall dispose of the same in the following manner, when in the discretion of the department it is to the best interests of the state of Washington to do so, except that property purchased with educational funds or held in trust for educational purposes shall be sold only in the same manner as are public lands of the state:

(1) Where the state property necessitating the acquisition of private property interests for access purposes under authority of this chapter is sold or exchanged, said acquired property interests may be sold or exchanged as an appurtenance of said state property when it is determined by the department that sale or exchange of said state property and acquired property interests as one parcel is in the best interests of the state.

(2) If said acquired property interests are not sold or exchanged as provided in the preceding subsection, the department shall notify the person or persons from whom the property interest was acquired, stating that said property interests are to be sold, and that said person or persons shall have the right to purchase the same at the appraised price. Said notice shall be given by registered letter or certified mail, return receipt requested, mailed to the last known address of said person or persons. If the address of said person or persons is unknown, said notice shall be published twice in an official newspaper of general circulation in the county where the lands or a portion thereof is located. The second notice shall be published not less than ten nor more than thirty days after the notice is first published. Said person or persons shall have thirty days after receipt of the registered letter or five days after the last date of publication, as the case may be, to notify the department, in writing, of their intent to purchase the offered property interest. The purchaser shall include with his notice of intention to purchase, cash payment, certified check or money order in an amount not less than one-third of the appraised price. No instrument conveying property interests shall issue from the department until the full price of the property is received by said department. All costs of publication required under this section shall be added to the appraised price and collected by the department upon sale of said property interests.

(3) If said property interests are not sold or exchanged as provided in the preceding subsections, the department shall notify the owners of land abutting said property interests in the same manner as provided in the preceding subsection and their notice of intent to purchase shall be given in the manner and in accordance with the same time limits as are set forth in the preceding subsection (2): *Provided*, That if more than one abutting owner gives notice of intent to purchase said property interests the department shall apportion them in relation to the lineal footage bordering each side of the property interests to be sold, and apportion the costs to the interested purchasers in relation thereto: *Provided further*, That no sale is authorized by this section unless

the department is satisfied that the amounts to be received from the several purchasers will equal or exceed the appraised price of the entire parcel plus any costs of publishing notices.

(4) If no sale or exchange is consummated as provided in subsections (1), (2) and (3) hereof, the department shall sell said properties in the same manner as public lands of the state of Washington are sold.

(5) Any disposal of property interests authorized by this chapter shall be subject to any existing rights previously granted by the department. [1963 c 140 § 3; 1945 c 239 § 3; Rem. Supp. 1945 § 5823-32.]

76.16.040 Acquisition—Payment—Moneys available to department. The department in acquiring any property interests under the provisions of this chapter, either by purchase or condemnation, is hereby authorized to pay for the same out of any moneys available to the department of natural resources for this purpose. [1963 c 140 § 4; 1945 c 239 § 4; Rem. Supp. 1945 § 5823-33.]

Chapter 76.20

FIREWOOD ON STATE LANDS

Sections

76.20.010	License to remove firewood authorized.
76.20.020	Removal only for personal use.
76.20.030	Issuance of license—Fee—Limit on amount removed.
76.20.035	Removal of firewood without charge—Authorization.
76.20.040	Penalty.

76.20.010 License to remove firewood authorized. The department of natural resources may issue licenses to residents of this state to enter upon lands under the administration or jurisdiction of the department of natural resources for the purpose of removing therefrom, standing or downed timber which is unfit for any purpose except to be used as firewood. [1975 c 10 § 1; 1945 c 97 § 1; Rem. Supp. 1945 § 7797-40a.]

76.20.020 Removal only for personal use. In addition to other matters which may be required to be contained in the application for a license under this chapter the applicant must certify that the wood so removed is to be only for his own personal use and in his own home and that he will not dispose of it to any other person. [1945 c 97 § 2; Rem. Supp. 1945 § 7797-40b.]

76.20.030 Issuance of license—Fee—Limit on amount removed. The application may be made to the department of natural resources, and if deemed proper, the license may be issued upon the payment of two dollars and fifty cents which shall be paid into the treasury of the state by the officer collecting the same and placed in the resource management cost account; the license shall be dated as of the date of issuance and authorize the holder thereof to remove between the dates so specified not more than six cords of wood not fit for any use but as firewood for the use of himself and family from

the premises described in the license under such regulations as the department of natural resources may prescribe. [1975 c 10 § 2; 1945 c 97 § 3; Rem. Supp. 1945 § 7797-40c.]

76.20.035 Removal of firewood without charge—
Authorization. Whenever the department of natural resources determines that it is in the best interest of the state and there will be a benefit to the lands involved or a state program affecting such lands it may designate specific areas and authorize the general public to enter upon lands under its jurisdiction for the purposes of cutting and removing standing or downed timber for use as firewood for the personal use of the person so cutting and removing without a charge under such terms and conditions as it may require. [1975 c 10 § 3.]

76.20.040 Penalty. Any false statement made in the application or any violation of the provisions of this chapter shall constitute a gross misdemeanor and be punishable as such. [1945 c 97 § 4; Rem. Supp. 1945 § 7797-40d.]

Chapter 76.36
MARKS AND BRANDS

Sections	
76.36.010	Definitions.
76.36.020	Forest products to be marked.
76.36.035	Registration of brands—Assignments—Fee— Rules—Penalty.
76.36.060	Impression of mark—Presumption.
76.36.070	Cancellation of registration.
76.36.090	Catch brands.
76.36.100	Right of entry to retake branded products.
76.36.110	Penalties for false branding, etc.
76.36.120	Forgery of mark, etc.—Penalty.
76.36.130	Sufficiency of mark.
76.36.140	Application of chapter to eastern Washington.
76.36.160	Deposit of fees—Use.
76.36.900	Severability—1925 ex.s. c 154.

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

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

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

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

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

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

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

(7) "Department" means the department of natural resources. [1984 c 60 § 1; 1925 ex.s. c 154 § 1; RRS § 8381-1.]

76.36.020 Forest products to be marked. Persons who wish to identify any of their forest products which will be stored or transported in or on the waters of the state shall place a registered mark or brand in a conspicuous place on each forest product item. Placement of the registered mark or brand is prima facie evidence of ownership over forest product items which have escaped from storage or transportation. Unbranded or unmarked stray logs or forest products become the property of the state when recovered. [1984 c 60 § 2; 1925 ex.s. c 154 § 2; RRS § 8381-2. Prior: 1890 p 110 § 1.]

76.36.035 Registration of brands—Assignments—Fee—Rules—Penalty. (1) All applications for brands, catch brands, renewals, and assignments thereof shall be submitted to and approved by the department prior to use. The department may refuse to approve any brand or catch brand which is identical to or closely resembles a registered brand or catch brand, or is in use by any other person or was not selected in good faith for the marking or branding of forest products. If approval is denied the applicant will select another brand.

The registration for all existing brands or catch brands shall expire on December 31, 1984, unless renewed prior to that date. Renewals or new approved applications shall be for five-year periods or portions thereof beginning on January 1, 1985. On or before September 30, 1984, and September 30th immediately preceding the end of each successive five-year period the department shall notify by mail all registered owners of brands or catch brands of the forthcoming expiration of their brands and the requirements for renewal.

A fee of fifteen dollars shall be charged by the department for registration of all brands, catch brands, renewals or assignments prior to January 1, 1985. Thereafter the fee shall be twenty-five dollars.

Abandoned or canceled brands shall not be reissued for a period of at least one year. The department shall determine the right to use brands or catch brands in dispute by applicants.

(2) The department may adopt and enforce rules implementing the provisions of this chapter. A violation of any such rule shall constitute a misdemeanor unless the department has specified by rule, when not inconsistent with applicable statutes, that violation of a specific rule is an infraction under chapter 7.84 RCW. [1987 c 380 § 18; 1984 c 60 § 8.]

Effective date—Severability—1987 c 380: See RCW 7.84.900 and 7.84.901.

76.36.060 Impression of mark—Presumption. All forest products and booming equipment having impressed thereupon a registered mark or brand are presumed to belong to the person appearing on the records of the department as the owner of such mark or brand. All forest products having impressed thereupon a registered catch brand are presumed to belong to the owner of the registered catch brand, unless there is impressed thereupon more than one registered catch brand, in which event they are presumed to belong to the owner whose registered catch brand was placed thereupon latest in point of time. [1984 c 60 § 3; 1957 c 36 § 4; 1925 ex.s. c 154 § 6; RRS § 8381-6. Prior: 1890 p 111 § 4.]

76.36.070 Cancellation of registration. The department, upon the petition of the owner of a registered mark or brand, may cancel the registration in which case the mark or brand shall be open to registration by any person subsequently applying therefor. [1984 c 60 § 4; 1957 c 36 § 5; 1925 ex.s. c 154 § 7; RRS § 8381-7.]

76.36.090 Catch brands. A person desiring to use a catch brand as an identifying mark upon forest products or booming equipment purchased or lawfully acquired from another, shall before using it, make application for the registration thereof to the department in the manner prescribed for the registration of other marks or brands as herein required. The provisions contained in this chapter in reference to registration, certifications, assignment, and cancellation, and the fees to be paid to the department shall apply equally to catch brands. The certificate of the department shall designate the mark or brand as a catch brand, and the mark or brand selected by the applicant as a catch brand shall be inclosed in the letter C, which shall identify the mark or brand as, and shall be used only in connection with, a catch brand. [1984 c 60 § 5; 1957 c 36 § 6; 1925 ex.s. c 154 § 9; RRS § 8381-9.]

76.36.100 Right of entry to retake branded products. The owner of any mark or brand registered as herein provided, by himself or his duly authorized agent or representative, shall have a lawful right, at any time and in any peaceable manner, to enter into or upon any tidelands, marshes and beaches of this state and any mill, mill yard, mill boom, rafting or storage grounds and any forest products or raft or boom thereof, for the purpose of searching for any forest products and booming equipment having impressed thereupon or cut therein a registered mark or brand belonging to him and to retake any forest products and booming equipment so found by him. [1925 ex.s. c 154 § 10; RRS § 8381-10. Prior: 1901 c 123 § 4.]

76.36.110 Penalty for false branding, etc. Every person:

(1) Except boom companies and log patrol companies organized as corporations for the purpose of catching or reclaiming and holding or disposing of forest products for the benefit of the owners, and authorized to do business under the laws of this state, who has or takes in tow

or into custody or possession or under control, without the authorization of the owner of a registered mark or brand thereupon, any forest products or booming equipment having thereupon a mark or brand registered as required by the terms of this chapter, or, with or without such authorization, any forest products or booming equipment which may be branded under the terms of this chapter with a registered mark or brand and having no registered mark or brand impressed thereupon or cut therein; or,

(2) Who impresses upon or cut in any forest products or booming equipment a mark or brand that is false, forged or counterfeit; or,

(3) Who interferes with, prevents, or obstructs the owner of any registered mark or brand, or his or her duly authorized agent or representative, entering into or upon any tidelands, marshes or beaches of this state or any mill, mill site, mill yard or mill boom or rafting or storage grounds or any forest products or any raft or boom thereof for the purpose of searching for forest products and booming equipment having impressed thereupon a registered mark or brand belonging to him or her or retaking any forest products or booming equipment so found by him or her; or,

(4) Who impresses or cuts a catch brand that is not registered under the terms of this chapter upon or into any forest products or booming equipment upon which there is a registered mark or brand as authorized by the terms of this chapter or a catch brand, whether registered or not, upon any forest products or booming equipment that was not purchased or lawfully acquired by him or her from the owner; is guilty of a gross misdemeanor. [1984 c 60 § 6; 1925 ex.s. c 154 § 11; RRS § 8381-11. Prior: 1890 p 112 § 8.]

76.36.120 Forgery of mark, etc.—Penalty. Every person who, with an intent to injure or defraud the owner:

(1) Shall falsely make, forge or counterfeit a mark or brand registered as herein provided and use it in marking or branding forest products or booming equipment; or,

(2) Shall cut out, destroy, alter, deface, or obliterate any registered mark or brand impressed upon or cut into any forest products or booming equipment; or,

(3) Shall sell, encumber or otherwise dispose of or deal in, or appropriate to his own use, any forest products or booming equipment having impressed thereupon a mark or brand registered as required by the terms of this chapter; or

(4) Shall buy or otherwise acquire or deal in any forest products or booming equipment having impressed thereupon a registered mark or brand;

Shall be guilty of a felony. [1925 ex.s. c 154 § 12; RRS § 8381-12. Prior: 1890 p 111 §§ 6, 7.]

76.36.130 Sufficiency of mark. A mark or brand cut in boom sticks with an ax or other sharp instrument shall be sufficient for the purposes of this chapter if it substantially conforms to the impression or drawing and written description on file with the department. [1988 c

128 § 47; 1957 c 36 § 7; 1925 ex.s. c 154 § 13; RRS § 8381-13.]

76.36.140 Application of chapter to eastern Washington. In view of the different conditions existing in the logging industry of this state between the parts of the state lying respectively east and west of the crest of the Cascade mountains, forest products may be put into the water of this state or shipped on common carrier railroads without having thereon a registered mark or brand, as herein required, within that portion of the state lying east of the crest of the Cascade mountains and composed of the following counties to wit: Adams, Asotin, Benton, Chelan, Columbia, Douglas, Ferry, Franklin, Garfield, Grant, Kittitas, Klickitat, Lincoln, Okanogan, Pend Oreille, Spokane, Stevens, Walla Walla, Whitman, and Yakima; and the penalties herein provided for failure to mark or brand such forest products shall not apply: *Provided*, That any person operating within such east portion of the state may select a mark or brand and cause it to be registered with the department pursuant to the terms of this chapter, and use it for the purpose of marking or branding forest products and booming equipment, and, in the event of the registration of such mark or brand and the use of it in marking or branding forest products or booming equipment, the provisions hereof shall apply as to the forest products and booming equipment so marked or branded. [1988 c 128 § 48; 1957 c 36 § 8; 1925 ex.s. c 154 § 14; RRS § 8381-14.]

76.36.160 Deposit of fees—Use. The department shall deposit all moneys received under this chapter in the general fund to be used exclusively for the administration of this chapter by the department. [1984 c 60 § 7; 1957 c 36 § 10.]

76.36.900 Severability—1925 ex.s. c 154. If any section or provision of this chapter shall be adjudged to be invalid or unconstitutional, such adjudication shall not affect the validity of the chapter as a whole or any section, provision, or part thereof not adjudged invalid or unconstitutional. [1925 ex.s. c 154 § 15; RRS § 8381-15.]

Chapter 76.40 LOG PATROLS

Sections	
76.40.010	Definitions.
76.40.012	Enforcement of chapter.
76.40.013	Rules and regulations—Penalty for violation.
76.40.020	Log patrol license required for certain acts— Exceptions.
76.40.030	Log patrol license—Bond—Equipment stickers or devices—Fees—Deposit of fees—Use.
76.40.040	Identifying equipment device to be displayed.
76.40.050	Disposition of recovered stray logs—Compensation.
76.40.060	Presumption as to branded logs.
76.40.070	Disposition of recovered boom sticks and chains— Compensation—Notice to owner—Sale.
76.40.080	Presumption arising from possession.
76.40.090	Notice to patrol not to take possession.

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76.40.100	Conversion of boom sticks or chains.
76.40.110	Unlawful to acquire or process certain logs.
76.40.120	Records to be kept—Examination of records—In- vestigation of business.
76.40.130	Penalties—Criminal—Civil actions.
76.40.135	License denial, revocation, or suspension— Grounds—Hearing.
76.40.140	Designation of closed areas—Designation of removal sites.
76.40.145	Agreements with Oregon.
76.40.900	Severability—1947 c 116.
76.40.910	Construction—1947 c 116.

76.40.010 Definitions. Words and phrases herein used, unless clearly contrary to or inconsistent with the context of this chapter or the section in which used, shall be construed as follows:

(1) "Log patrol" means any person licensed by the department for the purpose of engaging in the recapture, return, or other disposition of stray logs from the waters of this state except activities by the owner of such logs, the transportation agency that towed or transported the booms or cargo from which such stray logs were lost, or any other duly constituted agent of the owner who is attempting immediate recovery of the stray logs;

(2) "Stray logs" means and includes any and all logs, trees, piling, poles, and boom sticks having a merchantable value that are adrift or have been adrift and stranded on beaches, marshes, or tide and shore lands, or that are partially or wholly submerged in the waters of the state, which have escaped in any manner from the owner or from a transportation agency, from storage or while being transported;

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

(4) "Boom company" means a company organized and operating under the authority of *chapter 76.28 RCW;

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

(6) "Department" means the Washington state department of natural resources;

(7) "Other equipment" means any mechanized equipment used to recapture stray logs from the waters of this state, its beaches, marshes, beds, and tide and shore lands;

(8) "Merchantable value" means those stray logs that are capable of commanding value singly or in combination with other stray logs when disposed of by the log patrol or the state as provided in RCW 76.40.050. [1984 c 60 § 9; 1957 c 182 § 1. Prior: (i) 1947 c 116 § 2; Rem. Supp. 1947 § 8415-11. (ii) 1947 c 116 § 7; Rem. Supp. 1947 § 8415-16.]

*Reviser's note: Chapter 76.28 RCW was repealed by 1983 c 197 § 40, effective June 30, 1987.

76.40.012 Enforcement of chapter. The department shall administer and enforce the provisions of this chapter. [1984 c 60 § 10; 1955 c 108 § 1; 1953 c 140 § 2.]

76.40.013 Rules and regulations—Penalty for violation. The department may adopt and enforce such reasonable rules and regulations as may be consistent with and necessary to carry out the provisions of this chapter relating to log patrols. Any violation of a rule or regulation prescribed by the department under this chapter shall be punishable as a misdemeanor. [1984 c 60 § 11; 1957 c 182 § 9.]

76.40.020 Log patrol license required for certain acts—Exceptions. It is unlawful for any person who does not have a valid log patrol license to hold any stray log or to directly or indirectly engage in the activities of a log patrol on or adjacent to the waters of this state, except that area in the state of Washington on the Columbia River above Grand Coulee Dam drained by the Columbia River and its tributaries, and except as hereinafter provided. Nothing in this chapter shall be construed to deprive any person of any right to take nonmerchantable unbranded stray logs for his own domestic use. [1984 c 60 § 12; 1957 c 182 § 2; 1955 c 27 § 1; 1953 c 140 § 9; 1947 c 116 § 1; Rem. Supp. 1947 § 8415–10.]

76.40.030 Log patrol license—Bond—Equipment stickers or devices—Fees—Deposit of fees—Use. (1) Before any person may engage in log patrol activities that person must be licensed by the department. Before any license is issued, the applicant must apply to the department on a form to be prescribed by the department. The application must contain all information required by the department. Before any license may be issued, the applicant must execute and file with the department, to be approved by it, a surety bond running to the state in the sum of ten thousand dollars, conditioned that the applicant will comply with all the requirements of the laws of the state governing such activities, and will account for all stray logs taken into possession. Each application shall be accompanied by a remittance of five hundred dollars for each boat or other equipment to be used or operated in such activities by the licensee or agent. All licenses shall expire on June 30th of each even-numbered year following the date of issuance. The department shall issue each applicant a license and shall also issue distinctive stickers or other suitable devices for the piece of equipment listed in the application identifying it as engaged in log patrol activities.

(2) All moneys received by the department under this chapter shall be deposited in the general fund. License fees shall be used exclusively for administration of this chapter by the department. [1984 c 60 § 13; 1979 ex.s. c 67 § 13; 1963 c 12 § 1; 1957 c 182 § 3; 1955 c 108 § 3; 1953 c 140 § 10; 1947 c 116 § 3; Rem. Supp. 1947 § 8415–12.]

Effective date—1979 ex.s. c 67: See note following RCW 76.06.110.

Severability—1979 ex.s. c 67: See note following RCW 19.28.330.

76.40.040 Identifying equipment device to be displayed. It is unlawful for any licensee or the licensee's

agent to engage in the activities of a log patrol without having at all times displayed on each side of each piece of licensed equipment the distinctive device identifying it as a log patrol issued by the department. [1984 c 60 § 14; 1957 c 182 § 4; 1947 c 116 § 4; Rem. Supp. 1947 § 8415–13.]

76.40.050 Disposition of recovered stray logs—Compensation. (1) All stray logs may be:

(a) Returned to the owner, if marked or branded, when deemed practical; or

(b) Delivered to a boom company, other agency approved by the department, or the department if so directed; or

(c) Held by the log patrol in a raft or dry land storage at locations approved by the department.

The log patrol shall be entitled to a reasonable compensation, for the recovery and return of such logs, and shall have all the rights incident to a logger's lien therefor: *Provided*, That a log patrol shall not take into possession any stray logs including unbranded logs during the time that the owner, the owner's agent, or the transportation agency which lost said stray logs, are attempting immediate recovery of the stray logs.

(2) Sales procedure for recovered stray logs shall be as directed by the department. Log patrols shall receive compensation for the services performed of seventy-five percent of the selling price of the logs, unless written permission is first obtained from the stray log owner for a higher rate. [1984 c 60 § 15; 1957 c 182 § 5; 1953 c 140 § 11; 1947 c 116 § 5; Rem. Supp. 1947 § 8415–14.]

Lien for labor and service on timber and lumber: Chapter 60.24 RCW.

76.40.060 Presumption as to branded logs. Branded and marked logs, boom sticks and boom chains shall be presumed to be the property of the person in whose name the brand or catch brand thereon imprinted is registered with the department of natural resources. [1982 c 35 § 199; 1947 c 116 § 6; Rem. Supp. 1947 § 8415–15.]

Intent—Severability—Effective dates—Application—1982 c 35: See notes following RCW 43.07.160.

76.40.070 Disposition of recovered boom sticks and chains—Compensation—Notice to owner—Sale.

Branded or marked boom sticks and boom chains shall be held by the log patrol, boom company, or approved agency for the owner as identified by the registered brand or mark thereon, and when claimed by the owner the log patrol, boom company, or approved agency shall be entitled to receive reasonable compensation. If there is no agreement between the parties as to the level of compensation for the return of boom sticks or boom chains, the department shall set the level. Upon receipt of such boom sticks, the log patrol, the boom company, or other approved agency shall notify the owner who shall have thirty days to recover said boom sticks upon payment of such reasonable compensation for its recovery. If the owner fails, neglects, or refuses to claim his boom sticks within such period after notice, they may be

sold as stray logs. [1984 c 60 § 16; 1957 c 182 § 6; 1947 c 116 § 8; Rem. Supp. 1947 § 8415-17.]

Lien for labor and service on timber and lumber: Chapter 60.24 RCW.

76.40.080 Presumption arising from possession. Any log patrol having possession of stray logs, boom sticks, or boom chains, except as herein provided shall be presumed to have and hold possession of same with intent to deprive and defraud the owner thereof and such possession shall be prima facie evidence of intent to deprive or defraud. [1984 c 60 § 17; 1947 c 116 § 9; Rem. Supp. 1947 § 8415-18.]

76.40.090 Notice to patrol not to take possession. Whenever the owner of any logs, boom sticks or chains, shall notify a log patrol by registered mail, addressed to the place of business listed in the application for license, not to take into possession any logs, boom sticks or chains, belonging to such owner and designating the brands and marks, then it shall be unlawful for such log patrol to thereafter take possession of any logs, boom sticks or chains bearing such brands or marks, until thirty days after such property has been lost from the owner, the agent, storage grounds, or transportation agency, or until such time as such notice has been rescinded by notice thereof served in the same manner. [1947 c 116 § 10; Rem. Supp. 1947 § 8415-19.]

76.40.100 Conversion of boom sticks or chains. It is unlawful for any log patrol or any other person to take into possession with intent to sell, or for any person to buy boom sticks or chains, or to manufacture boom sticks into lumber or other wooden products without the written consent of the owner. [1984 c 60 § 18; 1947 c 116 § 11; Rem. Supp. 1947 § 8415-20.]

76.40.110 Unlawful to acquire or process certain logs. It shall be unlawful to purchase, or otherwise acquire stray logs other than from the owner, or from a boom company or other approved agency as provided in this chapter, or to process or manufacture products from logs acquired in contravention of the provisions of this section or to possess such logs for such purpose. [1957 c 182 § 7; 1953 c 140 § 12; 1947 c 116 § 12; Rem. Supp. 1947 § 8415-21.]

76.40.120 Records to be kept—Examination of records—Investigation of business. (1) Every log patrol boom company, or agency designated by the department shall keep, at the place of business listed in its application, open to public inspection, during office hours, such permanent records required by the department as will be a tabulation of its log patrol activities.

(2) The department may at any time examine all records that relate to log patrol activity of any log patrol licensee, boom company, agent, or any person applying for a license.

(3) The department shall have reasonable access to and the right to investigate the place of business of any person who handles, sells, or buys logs pursuant to this

chapter. [1984 c 60 § 19; 1947 c 116 § 14; RRS § 8412-23.]

76.40.130 Penalties—Criminal—Civil actions. Any violation of this chapter shall be a gross misdemeanor. In addition thereto, the owner who has been deprived of the use, benefit or possession of any stray logs, boom sticks or boom chains, in violation of this chapter, shall have a right of civil action to recover for himself in damages from any person causing such deprivation, including the purchaser of such stray logs, boom sticks and boom chains. [1947 c 116 § 13; Rem. Supp. 1947 § 8415-22.]

76.40.135 License denial, revocation, or suspension—Grounds—Hearing. (1) The department may deny an application for a license if the applicant:

(a) Has previously violated the terms of this chapter, its rules, or conditions of any previous permit or approval; or

(b) Has a conflict of interest the department reasonably believes will prevent or hinder the applicant from carrying out the provisions of this chapter; or

(c) In the opinion of the department, does not have the ability to carry out the provisions of this chapter.

(2) The department may revoke or suspend a log patrol license or authority by a boom company or agent to sell stray logs if the licensee, boom company, or agent has violated the provisions of this chapter, the terms of its license, the rules promulgated by the department, approvals for authority to sell to boom companies or designated agencies, or laws which may affect the performance of log patrol activities.

(3) All persons whose application is denied, or whose licenses or authorizations or approvals are revoked or suspended shall be notified by the department of such determination. All such persons have the right within thirty days of receipt of such notice to request a hearing by making a written request to the department.

(4) The department may, where it deems it in the best interest of the state, provide that the revocation or suspension take place immediately pending any hearing. In such a case, if a hearing is properly requested in accordance with this section, the hearing shall be held not more than fifteen days after receipt of the request.

(5) All hearings provided for in this section shall be *contested cases under the provisions of chapter 34.05 RCW. Such hearings are the exclusive method to appeal the denials, revocations, or suspensions of the department. Nothing prevents the department from holding informal hearings prior to such denial, revocation, or suspension. [1984 c 60 § 20.]

***Reviser's note:** The term "contested cases" is no longer used in chapter 34.05 RCW. Contested cases are now referred to as "adjudicative proceedings."

76.40.140 Designation of closed areas—Designation of removal sites. The department, when it determines it is necessary for the effective administration and enforcement of this chapter, may:

(1) Set aside areas in any of the waters of the state which shall be closed to log patrol activities. The department may administer such areas by a contract in order to carry out recovery of stray logs including wood debris as provided in chapter 76.42 RCW. All contracts shall be awarded by the department on a competitive bid basis pursuant to procedures specified by the department.

(2) Designate specific sites from which stray logs may be removed from the waters of this state by log patrol licensees, log buyers, boom companies, or agencies designated by the state. [1984 c 60 § 21.]

76.40.145 Agreements with Oregon. The department may enter into agreements with the state of Oregon and its applicable agencies to coordinate log patrol activities on or adjacent to the Columbia river and, to the extent possible, provide for uniform administration and enforcement.

These agreements may include, but are not limited to, record keeping requirements, tagging or marking requirements, auditing and inspection requirements, enforcement procedures including delegation of police powers, license requirements, suspensions or revocations, designations of closed areas, designations of removal sites, and log sale or disposal. [1984 c 60 § 22.]

76.40.900 Severability—1947 c 116. If any section, phrase, provision or clause hereof shall be held ineffectual for any reason or unconstitutional, that shall not affect the validity of the remaining portions of said act. [1947 c 116 § 15; no RRS.]

76.40.910 Construction—1947 c 116. In case of conflict with any existing provision of law, the provisions hereof shall prevail. [1947 c 116 § 16; Rem. Supp. 1947 § 8415-24.]

Chapter 76.42

WOOD DEBRIS—REMOVAL FROM NAVIGABLE WATERS

Sections

76.42.010	Removal of debris authorized—Enforcement of chapter—Department of natural resources.
76.42.020	Definitions.
76.42.030	Removal of wood debris—Authorized.
76.42.060	Navigable waters—Unlawful to deposit wood debris into—Exception.
76.42.070	Rules and regulations—Administration of chapter—Authority to adopt and enforce.

Navigation and harbor improvements: Title 88 RCW.

76.42.010 Removal of debris authorized—Enforcement of chapter—Department of natural resources. This chapter authorizes the removal of wood debris from navigable waters of the state of Washington. It shall be the duty of the department of natural resources to administer and enforce the provisions of this chapter. [1973 c 136 § 2.]

76.42.020 Definitions. "Wood debris" as used in this chapter is wood that is adrift on navigable waters or has been adrift thereon and stranded on beaches, marshes, or *navigable [tidal] and shorelands and which is not merchantable or economically salvageable under the Log Patrol Act, chapter 76.40 RCW.

"Removal" as used in this chapter shall include all activities necessary for the collection and disposal of such wood debris: *Provided*, That nothing herein provided shall permit removal of wood debris from private property without written consent of the owner. [1973 c 136 § 3.]

***Reviser's note:** Apparently an error in engrossing caused the term "or navigable and shorelands" to appear where "or tidal and shorelands" was intended.

76.42.030 Removal of wood debris—Authorized. The department of natural resources may by contract, license, or permit, or other arrangements, cause such wood debris to be removed by licensed log patrolmen, other private contractors, department of natural resources employees, or by other public bodies. Nothing contained in this chapter shall prohibit any individual from using any nonmerchantable wood debris for his own personal use. [1973 c 136 § 4.]

76.42.060 Navigable waters—Unlawful to deposit wood debris into—Exception. It shall be unlawful to dispose of wood debris by depositing such material into any of the navigable waters of this state, except as authorized by law including any discharge or deposit allowed to be made under and in compliance with chapter 90.48 RCW and any rules or regulations duly promulgated thereunder. Violation of this section shall be a misdemeanor. [1973 c 136 § 7.]

76.42.070 Rules and regulations—Administration of chapter—Authority to adopt and enforce. The department of natural resources shall adopt and enforce such rules and regulations as may be deemed necessary for administering this chapter. [1973 c 136 § 8.]

Chapter 76.44

INSTITUTE OF FOREST RESOURCES

Sections

76.44.010	Institute created.
76.44.020	Administration of institute.
76.44.030	Duties.
76.44.040	Dissemination of research results.
76.44.050	Contributions may be accepted.

76.44.010 Institute created. There is hereby created the institute of forest resources of the state of Washington which shall operate under the authority of the board of regents of the University of Washington. [1979 c 50 § 1; 1947 c 177 § 1; Rem. Supp. 1947 § 10831-1.]

Severability—1979 c 50: "If any provision of this amendatory act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1979 c 50 § 8.]

76.44.020 Administration of institute. The institute of forest resources shall be administered by the dean of the college of forest resources of the University of Washington who shall also be the director of the institute. [1988 c 81 § 21; 1979 c 50 § 2; 1959 c 306 § 1; 1947 c 177 § 2; Rem. Supp. 1947 § 10831-2.]

Severability—1979 c 50: See note following RCW 76.44.010.

76.44.030 Duties. The institute of forest resources shall pursue research and education related to the forest resource and its multiple use including its conservation, management and utilization; its evaluation of forest land use and the maintenance of its rural environment; the manufacture and marketing of forest products and the provision of recreation and aesthetic values.

In pursuit of these objectives, the institute of forest resources is authorized to cooperate with other universities, state and federal agencies, industrial institutions, domestic or foreign, where such cooperation advances these objectives. [1979 c 50 § 5; 1947 c 177 § 3; Rem. Supp. 1947 § 10831-3.]

Severability—1979 c 50: See note following RCW 76.44.010.

76.44.040 Dissemination of research results. The results of any research undertaken by the institute or in which the institute participates shall be available to all industries and citizens of the state of Washington and the institute is authorized to disseminate such information. [1979 c 50 § 6; 1947 c 177 § 4; Rem. Supp. 1947 § 10831-4.]

Severability—1979 c 50: See note following RCW 76.44.010.

76.44.050 Contributions may be accepted. The institute is authorized to solicit and/or accept funds through grants, contracts, or institutional consulting arrangements for the prosecution of any research or education activity which it may undertake in pursuit of its objectives. [1979 c 50 § 7; 1947 c 177 § 5; Rem. Supp. 1947 § 10831-5.]

Severability—1979 c 50: See note following RCW 76.44.010.

Chapter 76.48

SPECIALIZED FOREST PRODUCTS

Sections	
76.48.010	Declaration of public interest.
76.48.020	Definitions.
76.48.030	Unlawful acts.
76.48.040	Agencies responsible for enforcement of chapter.
76.48.050	Specialized forest products permits—Expiration—Specifications.
76.48.060	Specialized forest products permits—Required—Forms—Filing.
76.48.070	Transporting or possessing cedar or other specialized forest products—Requirements.
76.48.075	Specialized forest products from out-of-state.
76.48.080	Contents of authorization, sales invoice, or bill of lading.
76.48.092	Surrender of copy of specialized forest products permit to permittee following stipulated use—Penalty.
76.48.094	Cedar processors—Records of purchase, possession or retention of cedar products and salvage.

76.48.096	Cedar processors—Obtaining from suppliers not having specialized forest products permit unlawful.
76.48.098	Cedar processors—Display of valid registration certificate required.
76.48.100	Exemptions.
76.48.110	Violations—Seizure and disposition of products—Disposition of proceeds.
76.48.120	False, fraudulent, stolen or forged specialized forest products permit, sales invoice, bill of lading, etc.—Penalty.
76.48.130	Penalties.
76.48.140	Disposition of fines.
76.48.900	Severability—1967 ex.s. c 47.
76.48.901	Severability—1977 ex.s. c 147.
76.48.902	Severability—1979 ex.s. c 94.
76.48.910	Saving—1967 ex.s. c 47.

76.48.010 Declaration of public interest. It is in the public interest of this state to protect a great natural resource and to provide a high degree of protection to the landowners of the state of Washington from the theft of specialized forest products. [1967 ex.s. c 47 § 2.]

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

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

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

(3) "Cut or picked evergreen foliage," commonly known as brush, shall mean evergreen boughs, huckleberry, salal, fern, Oregon grape, rhododendron, and other cut or picked evergreen products.

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

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

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

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

(8) "Cascara bark" shall mean the bark of a Cascara tree.

(9) "Specialized forest products" shall mean Christmas trees, native ornamental trees and shrubs, cut or picked evergreen foliage, cedar products, cedar salvage, processed cedar products, and Cascara bark.

(10) "Person" shall include the plural and all corporations foreign or domestic, copartnerships, firms, and associations of persons.

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

(12) "Transportation" means the physical conveyance of specialized forest products outside or off of a harvest site, including but not limited to conveyance by a motorized vehicle designed for use on improved roadways, or by vessel, barge, raft, or other waterborne conveyance. "Transportation" also means any conveyance of specialized forest products by helicopter.

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

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

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

(16) "Specialized forest products permit" shall mean a printed document in a form specified by the department of natural resources, or true copy thereof, signed by a landowner or his duly authorized agent or representative (herein referred to as "permitters"), and validated by the county sheriff, authorizing a designated person (herein referred to as "permittee"), who shall also have signed the permit, to harvest and/or transport a designated specialized forest product from land owned or controlled and specified by the permittor, located in the county where such permit is issued.

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

(18) "True copy" means a replica of a validated specialized forest products permit as reproduced by a copy machine capable of effectively reproducing the information contained on the permittee's copy of the specialized forest products permit. A copy is made true by the permittee or the permittee and permittor signing in the space provided on the face of the copy. A true copy will be effective until the expiration date of the specialized forest products permit unless the permittee or the permittor and permittor specify an earlier date. A permittor

may require the actual signatures of both the permittee and permittor for execution of a true copy by so indicating in the space provided on the original copy of the specialized forest products permit. A permittee, or, if so indicated, the permittee and permittor, may condition the use of the true copy to harvesting only, transportation only, possession only, or any combination thereof. [1979 ex.s. c 94 § 1; 1977 ex.s. c 147 § 1; 1967 ex.s. c 47 § 3.]

76.48.030 Unlawful acts. It shall be unlawful for any person to:

(1) Harvest specialized forest products as described in RCW 76.48.020, in the quantities specified in RCW 76.48.060, without first obtaining a validated specialized forest products permit;

(2) Engage in activities or phases of harvesting specialized forest products not authorized by the permit; or

(3) Harvest specialized forest products in any lesser quantities than those specified in RCW 76.48.060, as now or hereafter amended, without first obtaining permission from the landowner or his duly authorized agent or representative. [1979 ex.s. c 94 § 2; 1977 ex.s. c 147 § 2; 1967 ex.s. c 47 § 4.]

76.48.040 Agencies responsible for enforcement of chapter. Agencies charged with the enforcement of this chapter shall include, but not be limited to, the Washington state patrol, county sheriffs and their deputies, county or municipal police forces, authorized personnel of the United States forest service, and authorized personnel of the departments of natural resources, fisheries, and wildlife. Primary enforcement responsibility lies in the county sheriffs and their deputies. [1988 c 36 § 49; 1979 ex.s. c 94 § 3; 1977 ex.s. c 147 § 3; 1967 ex.s. c 47 § 5.]

76.48.050 Specialized forest products permits—Expiration—Specifications. Specialized forest products permits shall consist of properly completed permit forms validated by the sheriff of the county in which the specialized forest products are to be harvested. All specialized forest products permits shall expire at the end of the calendar year in which issued, or sooner, at the discretion of the permittor. A properly completed specialized forest products permit form shall include:

(1) The date of its execution and expiration;

(2) The name, address, telephone number, if any, and signature of the permittor;

(3) The name, address, telephone number, if any, and signature of the permittee;

(4) The type of specialized forest products to be harvested or transported;

(5) The approximate amount or volume of specialized forest products to be harvested or transported;

(6) The legal description of the property from which the specialized forest products are to be harvested or transported, including the name of the county, or the state or province if outside the state of Washington;

(7) A description by local landmarks of where the harvesting is to occur, or from where the specialized forest products are to be transported;

(8) Any other condition or limitation which the permittor may specify. [1979 ex.s. c 94 § 4; 1977 ex.s. c 147 § 4; 1967 ex.s. c 47 § 6.]

76.48.060 Specialized forest products permits—Required—Forms—Filing. A specialized forest products permit validated by the county sheriff shall be obtained by any person prior to harvesting from any lands, including his own, more than five Christmas trees, more than five ornamental trees or shrubs, more than five pounds of cut or picked evergreen foliage, any cedar products, cedar salvage, processed cedar products, or more than five pounds of Cascara bark. Specialized forest products permit forms shall be provided by the department of natural resources, and shall be made available through the office of the county sheriff to permittees or permittors in reasonable quantities. A permit form shall be completed in triplicate for each permittor's property on which a permittee harvests specialized forest products. A properly completed permit form shall be mailed or presented for validation to the sheriff of the county in which the specialized forest products are to be harvested. Before a permit form is validated by the sheriff, sufficient personal identification may be required to reasonably identify the person mailing or presenting the permit form and the sheriff may conduct such other investigations as deemed necessary to determine the validity of the information alleged on the form. When the sheriff is reasonably satisfied as to the truth of such information, the form shall be validated with the sheriff's validation stamp provided by the department of natural resources. Upon validation, the form shall become the specialized forest products permit authorizing the harvesting, possession and/or transportation of specialized forest products, subject to any other conditions or limitations which the permittor may specify. Two copies of the permit shall be given or mailed to the permittor, or one copy shall be given or mailed to the permittor and the other copy given or mailed to the permittee. The original permit shall be retained in the office of the county sheriff validating the permit. In the event a single land ownership is situated in two or more counties, a specialized forest product permit shall be completed as to the land situated in each county. While engaged in harvesting of specialized forest products, permittees, or their agents or employees, must have readily available at each harvest site a valid permit or true copy of the permit. [1979 ex.s. c 94 § 5; 1977 ex.s. c 147 § 5; 1967 ex.s. c 47 § 7.]

76.48.070 Transporting or possessing cedar or other specialized forest products—Requirements. (1) Except as provided in RCW 76.48.100 and 76.48.075, it shall be unlawful for any person (a) to possess, and/or (b) to transport within the state of Washington, subject to any other conditions or limitations specified in the specialized forest products permit by the permittor, more than five Christmas trees, more than five native ornamental

trees or shrubs, more than five pounds of cut or picked evergreen foliage, any processed cedar products, or more than five pounds of Cascara bark without having in his possession a written authorization, sales invoice, bill of lading, or specialized forest products permit or a true copy thereof evidencing his title to or authority to have possession of specialized forest products being so possessed or transported.

(2) It shall be unlawful for any person (a) to possess and/or (b) to transport within the state of Washington any cedar products or cedar salvage without having in his possession a specialized forest products permit or a true copy thereof evidencing his title to or authority to have possession of the materials being so possessed or transported. [1979 ex.s. c 94 § 6; 1977 ex.s. c 147 § 6; 1967 ex.s. c 47 § 8.]

76.48.075 Specialized forest products from out-of-state. (1) It is unlawful for any person to transport or cause to be transported into this state from any other state or province specialized forest products, except those harvested from that person's own property, without: (a) First acquiring and having readily available for inspection a document indicating the true origin of the specialized forest products as being outside the state, or (b) without acquiring a specialized forest products permit as provided in subsection (4) of this section.

(2) Any person transporting or causing to be transported specialized forest products into this state from any other state or province shall, upon request of any person to whom the specialized forest products are sold or delivered or upon request of any law enforcement officer, prepare and sign a statement indicating the true origin of the specialized forest products, the date of delivery, and the license number of the vehicle making delivery, and shall leave the statement with the person making the request.

(3) It is unlawful for any person to possess specialized forest products, transported into this state, with knowledge that the products were introduced into this state in violation of this chapter.

(4) When any person transporting or causing to be transported into this state specialized forest products elects to acquire a specialized forest products permit, the specialized forest products transported into this state shall be deemed to be harvested in the county of entry, and the sheriff of that county may validate the permit as if the products were so harvested, except that the permit shall also indicate the actual harvest site outside the state.

(5) A cedar processor shall comply with RCW 76.48.096 by requiring a person transporting specialized forest products into this state from any other state or province to display a specialized forest products permit, or true copy thereof, or other document indicating the true origin of the specialized forest products as being outside the state. The cedar processor shall make and maintain a record of the purchase, taking possession, or retention of cedar products and cedar salvage in compliance with RCW 76.48.094.

(6) If, pursuant to official inquiry, investigation, or other authorized proceeding regarding specialized forest products not covered by a valid specialized forest products permit or other acceptable document, the inspecting law enforcement officer has probable cause to believe that the specialized forest products were harvested in this state or wrongfully obtained in another state or province, the officer may take into custody and detain, for a reasonable time, the specialized forest products, all supporting documents, invoices, and bills of lading, and the vehicle in which the products were transported until the true origin of the specialized forest products can be determined. [1979 ex.s. c 94 § 15.]

76.48.080 Contents of authorization, sales invoice, or bill of lading. The authorization, sales invoice, or bill of lading required by RCW 76.48.070 shall specify:

- (1) The date of its execution.
- (2) The number and type of products sold or being transported.
- (3) The name and address of the owner, vendor, or donor of the specialized forest products.
- (4) The name and address of the vendee, donee, or receiver of the specialized forest products.
- (5) The location of origin of the specialized forest products. [1979 ex.s. c 94 § 7; 1967 ex.s. c 47 § 9.]

76.48.092 Surrender of copy of specialized forest products permit to permittee following stipulated use—Penalty. Following the stipulated use of a true copy of a specialized forest products permit, an agent or employee of a permittee shall surrender said copy to the permittee. A wilful failure to surrender the same to the permittee is a gross misdemeanor and punishable as provided by law. [1979 ex.s. c 94 § 8; 1977 ex.s. c 147 § 14.]

76.48.094 Cedar processors—Records of purchase, possession or retention of cedar products and salvage. Cedar processors shall make and maintain a record of the purchase, taking possession, or retention of cedar products and cedar salvage for at least one year after the date of receipt. The record shall be legible and shall include the date of delivery, the license number of the vehicle delivering the products, the driver's name, and the specialized forest products permit number or the information provided for in RCW 76.48.075(5). The record must be made at the time each delivery is made. [1979 ex.s. c 94 § 9; 1977 ex.s. c 147 § 11.]

76.48.096 Cedar processors—Obtaining from suppliers not having specialized forest products permit unlawful. It shall be unlawful for any cedar processor to purchase, take possession, or retain cedar products or cedar salvage subsequent to the harvesting and prior to the retail sale of such products, unless the supplier thereof displays a specialized forest products permit, or true copy thereof, which appears to be valid, or obtains the information pursuant to RCW 76.48.075(5). [1979 ex.s. c 94 § 10; 1977 ex.s. c 147 § 12.]

76.48.098 Cedar processors—Display of valid registration certificate required. Every cedar processor shall prominently display a valid registration certificate, or copy thereof, obtained from the department of revenue pursuant to RCW 82.32.030 at each location where such processor receives cedar products or cedar salvage.

Permittees shall sell cedar products or cedar salvage only to cedar processors displaying registration certificates which appear to be valid. [1979 ex.s. c 94 § 11; 1977 ex.s. c 147 § 13.]

76.48.100 Exemptions. The provisions of this chapter shall not apply to:

- (1) Nursery grown products.
- (2) Logs (except as included in the definition of "cedar salvage" under RCW 76.48.020), poles, pilings, or other major forest products from which substantially all of the limbs and branches have been removed, and cedar salvage when harvested concurrently with timber stands (a) under an approved forest practices application or notification, or (b) under a contract or permit issued by an agency of the United States government.
- (3) The activities of a landowner, his agent, or representative, or of a lessee of land in carrying on noncommercial property management, maintenance, or improvements on or in connection with the land of such landowner or lessee. [1979 ex.s. c 94 § 12; 1977 ex.s. c 147 § 7; 1967 ex.s. c 47 § 11.]

76.48.110 Violations—Seizure and disposition of products—Disposition of proceeds. Whenever any law enforcement officer has probable cause to believe that a person is harvesting or is in possession of or transporting specialized forest products in violation of the provisions of this chapter, he may, at the time of making an arrest, seize and take possession of any such specialized forest products found. The law enforcement officer shall provide reasonable protection for the specialized forest products involved during the period of litigation or he shall dispose of such specialized forest products at the discretion or order of the court before which the arrested person is ordered to appear.

Upon any disposition of the case by the court, the court shall make a reasonable effort to return the specialized forest products to their rightful owner or pay the proceeds of any sale of specialized forest products less any reasonable expenses of such sale to the rightful owner. If for any reason, the proceeds of such sale cannot be disposed of to the rightful owner, such proceeds, less the reasonable expenses of the sale, shall be paid to the treasurer of the county in which the violation occurred. The county treasurer shall deposit the same in the county general fund. The return of the specialized forest products or the payment of the proceeds of any sale of products seized to the owner shall not preclude the court from imposing any fine or penalty upon the violator for the violation of the provisions of this chapter. [1979 ex.s. c 94 § 13; 1977 ex.s. c 147 § 8; 1967 ex.s. c 47 § 12.]

76.48.120 False, fraudulent, stolen or forged specialized forest products permit, sales invoice, bill of lading, etc.—Penalty. It shall be unlawful for any person, upon official inquiry, investigation, or other authorized proceedings, to offer as genuine any paper, document, or other instrument in writing purporting to be a specialized forest products permit, or true copy thereof, authorization, sales invoice, or bill of lading, or to make any representation of authority to possess or conduct harvesting or transporting of specialized forest products, knowing the same to be in any manner false, fraudulent, forged, or stolen.

Any person who knowingly or intentionally violates this section shall be guilty of forgery, and shall be punished as a class C felony providing for imprisonment in a state correctional institution for a maximum term fixed by the court of not more than five years or by a fine of not more than five thousand dollars, or by both such imprisonment and fine.

Whenever any law enforcement officer reasonably suspects that a specialized forest products permit or true copy thereof, authorization, sales invoice, or bill of lading is forged, fraudulent, or stolen, it may be retained by the officer until its authenticity can be verified. [1979 ex.s. c 94 § 14; 1977 ex.s. c 147 § 9; 1967 ex.s. c 47 § 13.]

76.48.130 Penalties. Any person who violates any provision of this chapter, other than the provisions contained in RCW 76.48.120, as now or hereafter amended, shall be guilty of a gross misdemeanor and upon conviction thereof shall be punished by a fine of not more than one thousand dollars or by imprisonment in the county jail for not to exceed one year or by both such fine and imprisonment. [1977 ex.s. c 147 § 10; 1967 ex.s. c 47 § 14.]

76.48.140 Disposition of fines. All fines collected for violations of any provision of this chapter shall be paid into the general fund of the county treasury of the county in which the violation occurred. [1977 ex.s. c 147 § 15.]

76.48.900 Severability—1967 ex.s. c 47. If any section, provision, or part thereof of this chapter shall be adjudged to be invalid or unconstitutional, such adjudication shall not affect the validity of the chapter as a whole, or any section, provision, or part thereof not adjudged invalid or unconstitutional. [1967 ex.s. c 47 § 15.]

76.48.901 Severability—1977 ex.s. c 147. If any provision of this 1977 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1977 ex.s. c 147 § 16.]

76.48.902 Severability—1979 ex.s. c 94. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1979 ex.s. c 94 § 17.]

76.48.910 Saving—1967 ex.s. c 47. This chapter is not intended to repeal or modify any provision of existing law. [1967 ex.s. c 47 § 16.]

Chapter 76.52

COOPERATIVE FOREST MANAGEMENT SERVICES ACT

Sections	Short title.
76.52.010	Contracts with landowners.
76.52.020	Extending department forest management services to landowners.
76.52.030	Disposition of funds from landowners.
76.52.040	

76.52.010 Short title. This chapter shall be known and cited as the "cooperative forest management services act." [1979 c 100 § 1.]

76.52.020 Contracts with landowners. The department of natural resources may, by agreement, make available to forest landowners, equipment, materials, and personnel for the purpose of more intensively managing or protecting the land when the department determines that such services are not otherwise available at a cost which would encourage the landowner to so avail himself, and that the use of department equipment, materials, or personnel will not jeopardize the management of state lands or other programs of the department. The department shall enter into a contractual agreement with the landowner for services rendered and shall recover the costs thereof. [1979 c 100 § 2.]

76.52.030 Extending department forest management services to landowners. The department may, by agreement, extend forest management services to private lands as a condition of carrying out such services on state lands when the private lands are adjacent to or in close proximity to the state lands being treated. The agreement shall include provisions requiring the parties to pay all costs attributable to the conducting of the services on their respective lands. [1979 c 100 § 3.]

76.52.040 Disposition of funds from landowners. Costs recovered by the department as a result of extending forest management practices to private lands shall be credited to the program or programs providing the services. The department will report by December 31 of each odd numbered year up to and including 1985 to the house and senate natural resources committees the private acres treated as a result of this chapter. [1979 c 100 § 4.]

Chapter 76.56

CENTER FOR INTERNATIONAL TRADE IN
FOREST PRODUCTS

Sections

76.56.010	Center for international trade in forest products created at the University of Washington.
76.56.020	Duties.
76.56.030	Director—Appointment.
76.56.040	Use of center's programs, research, and advisory services—Schedule of fees.
76.56.050	Solicitation of financial contributions and support—Biennial report—Use of other funds.
76.56.900	Severability—1985 c 122.

Reviser's note—Sunset Act application: The center for international trade in forest products is subject to review, termination, and possible extension under chapter 43.131 RCW, the Sunset Act. See RCW 43.131.333. RCW 76.56.010, 76.56.020, 76.56.030, 76.56.040, and 76.56.050 are scheduled for future repeal under RCW 43.131.334.

76.56.010 Center for international trade in forest products created at the University of Washington. There is created a center for international trade in forest products at the University of Washington in the college of forest resources, which shall be referred to in this chapter as "the center." The center shall operate under the authority of the board of regents of the University of Washington. [1985 c 122 § 1.]

Sunset Act application: See note following chapter digest.

76.56.020 Duties. The center shall:

(1) Coordinate the University of Washington's college of forest resources' faculty and staff expertise to assist in:

(a) The development of research and analysis for developing policies and strategies which will expand forest-based international trade, including trade in manufactured forest products;

(b) The development of technology for manufactured products that will meet the evolving needs of international customers; and

(c) The coordination, development, and dissemination of market and technical information relevant to international trade in forest products;

(2) Further develop and maintain a computer based world-wide forest products production and trade data base system and coordinate this system with state, federal, and private sector efforts to insure a cost-effective information resource that will avoid unnecessary duplication;

(3) Monitor international forest products markets and assess the status of the state's forest products industry, including the competitiveness of the forest products industry and including the increased exports of Washington-produced products;

(4) Provide high-quality research and graduate education and professional nondegree training in international trade in forest products in cooperation with the University of Washington's graduate school of business administration, the school of law, the Jackson school of international studies, and other supporting academic units;

(5) Develop cooperative linkages with the international marketing program for agricultural commodities and trade at Washington State University, the international trade project of the United States forest service, the department of natural resources, the department of trade and economic development, the small business export finance assistance center, and other state and federal agencies to avoid duplication of effort and programs;

(6) Provide for public dissemination of research, analysis, and results of the center's programs through technical workshops, short courses, international and national symposia, or other means, including appropriate publications; and

(7) Establish advisory or technical committees as necessary to develop policies, operating procedures, and program priorities consistent with the international trade opportunities achievable by the forest products sector of the state and region. Service on the committees shall be without compensation but actual travel expenses incurred in connection with service to the center may be reimbursed from appropriated funds in accordance with RCW 43.03.050 and 43.03.060. [1987 c 195 § 16; 1985 c 122 § 2.]

Sunset Act application: See note following chapter digest.

76.56.030 Director—Appointment. The center shall be administered by a director appointed by the dean of the college of forest resources of the University of Washington. The director shall be a member of the professional staff of that college. [1985 c 122 § 3.]

Sunset Act application: See note following chapter digest.

76.56.040 Use of center's programs, research, and advisory services—Schedule of fees. The governor, the legislature, state agencies, and the public may use the center's programs, research, and advisory services as may be needed. The center shall establish a schedule of fees for actual services rendered. [1985 c 122 § 4.]

Sunset Act application: See note following chapter digest.

76.56.050 Solicitation of financial contributions and support—Biennial report—Use of other funds. The center shall aggressively solicit financial contributions and support from the forest products industry, federal and state agencies, and other granting sources or through other arrangements to assist in conducting its activities. Subject to RCW 40.07.040, the center shall report biennially through 1991 to the governor and the legislature on its success in obtaining funding from non-state sources. It may also use separately appropriated funds of the University of Washington for the center's activities. [1987 c 505 § 74; 1985 c 122 § 5.]

Sunset Act application: See note following chapter digest.

76.56.900 Severability—1985 c 122. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1985 c 122 § 6.]

Title 77

GAME AND GAME FISH

Chapters

- 77.04 Department of wildlife.**
- 77.08 General terms defined.**
- 77.12 Powers and duties.**
- 77.16 Prohibited acts and penalties.**
- 77.21 Penalties—Proceedings.**
- 77.32 Licenses.**

Carrier or racing pigeons—Injury to: RCW 9.61.190 and 9.61.200.
Control of predatory birds injurious to agriculture: RCW 15.04.110 through 15.04.120.
Coyote getters—Use in control of coyotes: RCW 9.41.185.
Expediting flood-control, sediment retention site acquisition, and dredging operations in rivers affected by Mt. St. Helens eruption—Fish resource protection—Expiration of section: RCW 75.20.300.
Hood Canal bridge, public sport fishing from: RCW 47.56.366.
Infractions: Chapter 7.84 RCW.
Operation and maintenance of fish collection facility on Toutle river: RCW 75.20.310.
Volunteer cooperative fish and wildlife enhancement program: Chapter 75.52 RCW.

Chapter 77.04

DEPARTMENT OF WILDLIFE

Sections

- 77.04.010 Short title.
 - 77.04.020 Composition of department—Duties and powers.
 - 77.04.030 Wildlife commission—Appointment.
 - 77.04.040 Wildlife commission—Qualifications of members.
 - 77.04.055 Wildlife commission—Duties.
 - 77.04.060 Wildlife commission—Meetings—Officers—Compensation, travel expenses.
 - 77.04.080 Director—Qualifications—Salary—Powers.
 - 77.04.090 Rules—Adoption—Certified copy as evidence.
 - 77.04.100 Proposals to reinstate salmon and steelhead in Tilton and Cowlitz rivers.
 - 77.04.111 Reports.
- Public bodies may retain collection agencies to collect public debts:* RCW 19.16.500.

77.04.010 Short title. This title is known and may be cited as "Game Code of the State of Washington." [1980 c 78 § 2; 1955 c 36 § 77.04.010. Prior: 1947 c 275 § 1; Rem. Supp. 1947 § 5992-11.]

Effective date—1980 c 78: "This act shall take effect on July 1, 1981." [1980 c 78 § 137.]

Intent, construction—1980 c 78: "In enacting this 1980 act, it is the intent of the legislature to revise and reorganize the game code of this state to clarify and improve the administration of the state's game laws. Unless the context clearly requires otherwise, the revisions made to the game code by this act are not to be construed as substantive." [1980 c 78 § 1.]

Savings—1980 c 78: "This act shall not have the effect of terminating or in any way modifying any proceeding or liability, civil or criminal, which exists on the effective date of this act." [1980 c 78 § 138.]

Severability—1980 c 78: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1980 c 78 § 139.]

77.04.020 Composition of department—Duties and powers. The department of wildlife consists of the state wildlife commission and the director of wildlife. The director is responsible for the administration and operation of the department, subject to the provisions of this title. The commission may delegate to the director additional duties and powers necessary and appropriate to carry out this title. The director shall perform the duties prescribed by law and shall carry out the basic goals and objectives prescribed pursuant to RCW 77.04.055. [1987 c 506 § 4; 1980 c 78 § 3; 1955 c 36 § 77.04.020. Prior: 1947 c 275 § 2; Rem. Supp. 1947 § 5992-12.]

Legislative findings and intent—1987 c 506: "Washington's fish and wildlife resources are the responsibility of all residents of the state. We all benefit economically, recreationally, and aesthetically from these resources. Recognizing the state's changing environment, the legislature intends to continue to provide opportunities for the people to appreciate wildlife in its native habitat. However, the wildlife management in the state of Washington shall not cause a reduction of recreational opportunity for hunting and fishing activities. The paramount responsibility of the department remains to preserve, protect, and perpetuate all wildlife species. Adequate funding for proper management, now and for future generations, is the responsibility of everyone.

The intent of the legislature is: (1) To allow the governor to select the director of wildlife; (2) to retain the authority of the wildlife commission to establish the goals and objectives of the department; (3) to insure a high level of public involvement in the decision-making process; (4) to provide effective communications among the commission, the governor, the legislature, and the public; (5) to expand the scope of appropriate funding for the management, conservation, and enhancement of wildlife; (6) to not increase the cost of license, tag, stamp, permit, and punchcard fees prior to January 1, 1990; and (7) for the commission to carry out any other responsibilities prescribed by the legislature in this title." [1987 c 506 § 1.]

References—1987 c 506: "All references in the Revised Code of Washington to the department of game, the game commission, the director of game, and the game fund shall mean, respectively, the department of wildlife, the wildlife commission, the director of wildlife, and the wildlife fund." [1987 c 506 § 99.]

Continuation of rules, director, game commission—1987 c 506: "Rules of the department of game existing prior to July 26, 1987, shall remain in effect unless or until amended or repealed by the director of wildlife or the wildlife commission pursuant to Title 77 RCW. The director of game on July 26, 1987, shall continue as the director of wildlife until resignation or removal in accordance with the provisions of RCW 43.17.020. The game commission on July 26, 1987, shall continue as the wildlife commission." [1987 c 506 § 100.]

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.04.030 Wildlife commission—Appointment. The state wildlife commission consists of six registered voters of the state. In January of each odd-numbered year, the governor shall appoint with the advice and consent of the senate two registered voters to the commission to serve for terms of six years from that January

or until their successors are appointed and qualified. If a vacancy occurs on the commission prior to the expiration of a term, the governor shall appoint a registered voter within sixty days to complete the term. Three members shall be residents of that portion of the state lying east of the summit of the Cascade mountains, and three shall be residents of that portion of the state lying west of the summit of the Cascade mountains. No two members may be residents of the same county. The legal office of the commission is at the administrative office of the department in Olympia. [1987 c 506 § 5; 1981 c 338 § 11; 1980 c 78 § 4; 1955 c 36 § 77.04.030. Prior: 1947 c 275 § 3; Rem. Supp. 1947 § 5992-13.]

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.04.040 Wildlife commission—Qualifications of members. Persons eligible for appointment as members of the commission shall have general knowledge of the habits and distribution of wildlife and shall not hold another state, county, or municipal elective or appointive office. In making these appointments, the governor shall seek to maintain a balance reflecting all aspects of wildlife. [1987 c 506 § 6; 1980 c 78 § 5; 1955 c 36 § 77.04.040. Prior: 1947 c 275 § 4; Rem. Supp. 1947 § 5992-14.]

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.04.055 Wildlife commission—Duties. (1) In addition to any other duties and responsibilities, the commission shall establish, and periodically review with the governor and the legislature, the department's basic goals and objectives to preserve, protect, and perpetuate wildlife and wildlife habitat. The commission shall maximize hunting and fishing recreational opportunities.

(2) By November 1, 1987, the department shall prepare and submit to the office of financial management the comprehensive and detailed departmental analyses and management plans specified in subsection (3) of this section. The governor shall submit a spending plan to the appropriate legislative committees by December 31, 1987.

(3) The comprehensive and detailed analyses and management plans shall include, but not be limited to:

(a) An analysis of each unique functional element, prioritized within each of the subprograms of the department, as to the element's purpose and role in the subprogram or agency mission, together with expenditures and staffing as of February 28, 1987, and a separate analysis, prioritized within the subprogram, of any revision in expenditure and staffing above the element's level as of February 28, 1987. However, any revision in expenditure or staffing will require specific justification, particularly as to fund source for the expenditure;

(b) An analysis of all hunting and fishing licenses and tags, stamps, or permits issued and the effect of increases or reductions of these fees;

(c) An analysis of the agency's management, organization, and productivity and a detailed plan for any revisions or improvements, if required;

(d) An analysis of the land management practices on department-owned and managed lands and a detailed plan for any improvements; and

(e) An analysis of the department's relationship with landowners, including wildlife damage to agricultural crops and a detailed plan for any improvements.

(4) The governor may also direct the use of personnel from the office of financial management and other state agencies to assist and participate as the governor deems necessary in any or all parts of the analyses or plans required in this section.

(5) The director of financial management shall inform the house of representatives and the senate bimonthly of the progress of the analyses and plans required in subsection (2) of this section.

(6) The analyses and plans, together with any supporting data, shall be made available to the natural resources and ways and means committees of the senate and house of representatives upon receipt by the office of financial management.

(7) The commission shall establish hunting, trapping, and fishing seasons and prescribe the time, place, manner, and methods that may be used to harvest or enjoy wildlife.

(8) The commission shall prepare and submit to the governor and appropriate legislative committees by October 1, 1988, an analysis of the state's wildlife and wildlife recreation needs, looking at innovative management methods and alternatives to increased agency revenues, and make recommendations as to how those needs could be addressed.

(9) By June 30, 1989, the wildlife commission shall prepare a recommendation determining the fees that shall be charged for hunting and fishing licenses. Prior to preparing any recommendations, the commission shall hold state-wide hearings to learn concerns of all citizens. The commission shall consider the needs of low-income citizens, veterans of the armed services, the disabled, senior citizens, and juveniles. If the commission recommends a change in the license fees or residency requirements, the commission shall report to the legislature at its next regular session, the reasons for recommending the change. [1987 c 506 § 7.]

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

77.04.060 Wildlife commission—Meetings—Officers—Compensation, travel expenses. The commission shall hold at least one regular meeting during the first two months of each calendar quarter, and special meetings when called by the chairman or by four members. Four members constitute a quorum for the transaction of business.

The commission at a meeting in each odd-numbered year shall elect one of its members as chairman and another member as vice chairman, each of whom shall serve for a term of two years or until a successor is elected and qualified.

Members of the commission shall be compensated in accordance with RCW 43.03.250. In addition, members are allowed their travel expenses incurred while absent from their usual places of residence in accordance with RCW 43.03.050 and 43.03.060. [1987 c 506 § 8; 1987 c 114 § 1; 1984 c 287 § 110; 1980 c 78 § 6; 1977 c 75 § 89; 1975-'76 2nd ex.s. c 34 § 175; 1961 c 307 § 9; 1955 c 352 § 1; 1955 c 36 § 77.04.060. Prior: 1949 c 205 § 1; 1947 c 275 § 6; Rem. Supp. 1949 § 5992-16.]

Reviser's note: This section was amended by 1987 c 114 § 1 and by 1987 c 506 § 8, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Legislative findings—Severability—Effective date—1984 c 287: See notes following RCW 43.03.220.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

Effective date—Severability—1975-'76 2nd ex.s. c 34: See notes following RCW 2.08.115.

77.04.080 Director—Qualifications—Salary—Powers. Persons eligible for appointment by the governor as director shall have practical knowledge of the habits and distribution of wildlife. The governor shall seek recommendations from the commission on the qualifications, skills, and experience necessary to discharge the duties of the position. When considering and selecting the director, the governor shall consult with and be advised by the commission. The director shall receive the salary fixed by the governor under RCW 43.03.040.

The director is the ex officio secretary of the commission and shall attend its meetings and keep a record of its business.

The director may appoint and employ necessary departmental personnel. The director may delegate to department personnel the duties and powers necessary for efficient operation and administration of the department. The department shall provide staff for the commission. [1987 c 506 § 9; 1980 c 78 § 8; 1955 c 36 § 77.04.080. Prior: 1947 c 275 § 8; Rem. Supp. 1947 § 5992-18.]

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.04.090 Rules—Adoption—Certified copy as evidence. The commission shall adopt permanent rules and amendments to or repeals of existing rules by approval of four members by resolution, entered and recorded in the minutes of the commission. The commission shall adopt emergency rules by approval of four members. The commission or the director, when adopting emergency rules under RCW 77.12.150, shall adopt rules in conformance with chapter 34.05 RCW.

Judicial notice shall be taken of the rules filed and published as provided in RCW 34.05.380 and 34.05.210.

A copy of an emergency rule, certified as a true copy by a member of the commission, the director, or by a person authorized in writing by the director to make the certification, is admissible in court as prima facie evidence of the adoption and validity of the rule. [1984 c 240 § 1; 1980 c 78 § 16; 1955 c 36 § 77.12.050. Prior: 1947 c 275 § 15; Rem. Supp. 1947 § 5992-25. Formerly RCW 77.12.050.]

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.04.100 Proposals to reinstate salmon and steelhead in Tilton and Cowlitz rivers. The director, in cooperation with the director of fisheries shall develop proposals to reinstate the natural salmon and steelhead trout fish runs in the Tilton and upper Cowlitz rivers in accordance with RCW 75.08.020(3). [1985 c 208 § 2.]

77.04.111 Reports. The director shall provide a comprehensive annual report of all departmental operations to the governor, appropriate legislative committees, and the public, on or before October 1 of each year, to reflect the previous fiscal year. The report shall include, but not be limited to, descriptions of all departmental activities, including: Revenues generated, program costs, capital expenditures, personnel, department projects and research including cooperative projects, environmental controls, intergovernmental agreements, outlines of ongoing litigation, concluded litigation, and any major issues with the potential for state liability. The report shall describe the status of the resource and its recreational and tribal utilization.

In addition to the above elements, the commission shall prepare and submit to the governor, the appropriate legislative committees, and the public its own report and analysis on the condition of recreational hunting and fishing opportunities and wildlife and wildlife resources in the state and on the progress of the department in meeting goals and objectives set by the commission. The commission shall solicit public input in the preparation of this annual analysis. [1987 c 506 § 10.]

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Chapter 77.08 GENERAL TERMS DEFINED

Sections

77.08.010	Definitions.
77.08.020	"Game fish" defined.
77.08.030	"Big game" defined.
77.08.045	Terms defined.

77.08.010 Definitions. As used in this title or rules adopted pursuant to this title, unless the context clearly requires otherwise:

- (1) "Director" means the director of wildlife.
- (2) "Department" means the department of wildlife.

(3) "Commission" means the state wildlife commission.

(4) "Person" means and includes an individual, a corporation, or a group of two or more individuals acting with a common purpose whether acting in an individual, representative, or official capacity.

(5) "Wildlife agent" means a person appointed and commissioned by the director, with authority to enforce laws and rules adopted pursuant to this title, and other statutes as prescribed by the legislature.

(6) "Ex officio wildlife agent" means a commissioned officer of a municipal, county, state, or federal agency having as its primary function the enforcement of criminal laws in general, while the officer is in the appropriate jurisdiction. The term "ex officio wildlife agent" includes fisheries patrol officers, special agents of the national marine fisheries commission, state parks commissioned officers, United States fish and wildlife special agents, department of natural resources enforcement officers, and United States forest service officers, while the agents and officers are within their respective jurisdictions.

(7) "To hunt" and its derivatives means an effort to kill, injure, capture, or harass a wild animal or wild bird.

(8) "To trap" and its derivatives means a method of hunting using devices to capture wild animals or wild birds.

(9) "To fish" and its derivatives means an effort to kill, injure, harass, or catch a game fish.

(10) "Open season" means those times, manners of taking, and places or waters established by rule of the commission for the lawful hunting, fishing, or possession of game animals, game birds, or game fish. "Open season" includes the first and last days of the established time.

(11) "Closed season" means all times, manners of taking, and places or waters other than those established as an open season.

(12) "Closed area" means a place where the hunting of some species of wild animals or wild birds is prohibited.

(13) "Closed waters" means all or part of a lake, river, stream, or other body of water, where fishing for game fish is prohibited.

(14) "Game reserve" means a closed area where hunting for all wild animals and wild birds is prohibited.

(15) "Bag limit" means the maximum number of game animals, game birds, or game fish which may be taken, caught, killed, or possessed by a person, as specified by rule of the commission for a particular period of time, or as to size, sex, or species.

(16) "Wildlife" means all species of the animal kingdom whose members exist in Washington in a wild state. This includes but is not limited to mammals, birds, reptiles, amphibians, fish, and invertebrates. The term "wildlife" does not include feral domestic mammals, the family Muridae of the order Rodentia (old world rats and mice), or those fish, shellfish, and marine invertebrates classified by the director of fisheries. The term "wildlife" includes all stages of development and the bodily parts of wildlife members.

(17) "Wild animals" means those species of the class Mammalia whose members exist in Washington in a wild state and the species *Rana catesbeiana* (bullfrog). The term "wild animal" does not include feral domestic mammals or the family Muridae of the order Rodentia (old world rats and mice).

(18) "Wild birds" means those species of the class Aves whose members exist in Washington in a wild state.

(19) "Protected wildlife" means wildlife designated by the commission that shall not be hunted or fished.

(20) "Endangered species" means wildlife designated by the commission as seriously threatened with extinction.

(21) "Game animals" means wild animals that shall not be hunted except as authorized by the commission.

(22) "Fur-bearing animals" means game animals that shall not be trapped except as authorized by the commission.

(23) "Game birds" means wild birds that shall not be hunted except as authorized by the commission.

(24) "Predatory birds" means wild birds that may be hunted throughout the year as authorized by the commission.

(25) "Deleterious exotic wildlife" means species of the animal kingdom not native to Washington and designated as dangerous to the environment or wildlife of the state.

(26) "Game farm" means property on which wildlife is held or raised for commercial purposes, trade, or gift. The term "game farm" does not include publicly owned facilities.

(27) "Person of disability" means a permanently disabled person who is not ambulatory without the assistance of a wheelchair, crutches, or similar devices. [1989 c 297 § 7; 1987 c 506 § 11; 1980 c 78 § 9; 1955 c 36 § 77.08.010. Prior: 1947 c 275 § 9; Rem. Supp. 1947 § 5992-19.]

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.08.020 "Game fish" defined. (1) As used in this title or rules of the commission, "game fish" means those species of the class Osteichthyes that shall not be fished for except as authorized by rule of the commission and includes:

Scientific Name	Common Name
<i>Ambloplites rupestris</i>	rock bass
<i>Coregonus clupeaformis</i>	lake white fish
<i>Ictalurus furcatus</i>	blue catfish
<i>Ictalurus melas</i>	black bullhead
<i>Ictalurus natalis</i>	yellow bullhead
<i>Ictalurus nebulosus</i>	brown bullhead
<i>Ictalurus punctatus</i>	channel catfish
<i>Lepomis cyanellus</i>	green sunfish
<i>Lepomis gibbosus</i>	pumpkinseed
<i>Lepomis gulosus</i>	warmouth
<i>Lepomis macrochirus</i>	bluegill

Scientific Name	Common Name
Lota lota	burbot or fresh water ling
Micropterus dolomieu	smallmouth bass
Micropterus salmoides	largemouth bass
Oncorhynchus nerka (in its landlocked form)	kokanee or silver trout
Perca flavescens	yellow perch
Pomixis annularis	white crappie
Pomixis nigromaculatus	black crappie
Prosopium williamsoni	mountain white fish
Oncorhynchus aquabonita	golden trout
Oncorhynchus clarkii	cutthroat trout
Oncorhynchus mykiss	rainbow or steelhead trout
Salmo salar (in its landlocked form)	Atlantic salmon
Salmo trutta	brown trout
Salvelinus fontinalis	eastern brook trout
Salvelinus malma	Dolly Varden trout
Salvelinus namaycush	lake trout
Stizostedion vitreum	Walleye
Thymallus arcticus	arctic grayling

(2) Private sector cultured aquatic products as defined in RCW 15.85.020 are not game fish. [1989 c 218 § 2; 1985 c 457 § 21; 1980 c 78 § 10; 1969 ex.s. c 19 § 1; 1955 c 36 § 77.08.020. Prior: 1947 c 275 § 10; Rem. Supp. 1947 § 5992-20.]

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.08.030 "Big game" defined. As used in this title or rules of the commission, "big game" means the following species:

Scientific Name	Common Name
Cervus canadensis	elk or wapiti
Odocoileus hemionus	blacktail deer or mule deer
Odocoileus virginianus	whitetail deer
Alces americana	moose
Oreamnos americanus	mountain goat
Rangifer caribou	caribou
Ovis canadensis	mountain sheep
Antilocapra americana	pronghorn antelope
Felis concolor	cougar or mountain lion
Euarctos americana	black bear
Ursus horribilis	grizzly bear

[1980 c 78 § 11; 1971 ex.s. c 166 § 1.]

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.08.045 Terms defined. As used in this title or rules adopted pursuant to this title:

(1) "Migratory waterfowl" means members of the family Anatidae, including brants, ducks, geese, and swans;

(2) "Migratory waterfowl stamp" means the stamp that is required by RCW 77.32.350 to be in the possession of persons over sixteen years of age to hunt migratory waterfowl;

(3) "Prints and artwork" means replicas of the original stamp design that are sold to the general public. Prints and artwork are not to be construed to be the migratory waterfowl stamp that is required by RCW 77.32.350. Artwork may be any facsimile of the original stamp design, including color renditions, metal duplications, or any other kind of design; and

(4) "Migratory waterfowl art committee" means the committee created by RCW 77.12.680. The committee's primary function is to select the annual migratory waterfowl stamp design. [1987 c 506 § 12; 1985 c 243 § 2.]

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

**Chapter 77.12
POWERS AND DUTIES**

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Reviser's note—Sunset Act application: The migratory waterfowl art committee is subject to review, termination, and possible extension under chapter 43.131 RCW, the Sunset Act. See RCW 43.131.359, RCW 77.12.670, 77.12.680, and 77.12.690 are scheduled for future repeal under RCW 43.131.360.

77.12.010 Policy of protection of wildlife—Limitation on prohibiting fishing with bait or artificial lures. Wildlife is the property of the state. The department shall preserve, protect, and perpetuate wildlife. Game animals, game birds, and game fish may be taken only at times or places, or in manners or quantities as in the

judgment of the commission maximizes public recreational opportunities without impairing the supply of wildlife.

The commission shall not adopt rules that categorically prohibit fishing with bait or artificial lures in streams, rivers, beaver ponds, and lakes except that the commission may adopt rules and regulations restricting fishing methods upon a determination by the director that an individual body of water or part thereof clearly requires a fishing method prohibition to conserve or enhance the fisheries resource or to provide selected fishing alternatives. The commission shall attempt to maximize the public recreational fishing opportunities of all citizens, particularly juvenile, handicapped, and senior citizens.

Nothing contained herein shall be construed to infringe on the right of a private property owner to control the owner's private property. [1985 c 438 § 1; 1980 c 78 § 12; 1977 c 74 § 1; 1955 c 36 § 77.12.010. Prior: 1947 c 275 § 11; Rem. Supp. 1947 § 5992–21.]

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.12.020 Wildlife to be classified. (1) The director shall investigate the habits and distribution of the various species of wildlife native to or adaptable to the habitats of the state. The commission shall determine whether a species should be managed by the department and, if so, classify it under this section.

(2) The commission may classify by rule wild animals as game animals and game animals as fur-bearing animals.

(3) The commission may classify by rule wild birds as game birds or predatory birds. All wild birds not otherwise classified are protected wildlife.

(4) In addition to those species listed in RCW 77.08-.020, the commission may classify by rule as game fish other species of the class Osteichthyes that are commonly found in fresh water except those classified as food fish by the director of fisheries.

(5) The director may recommend to the commission that a species of wildlife should not be hunted or fished. The commission may designate species of wildlife as protected.

(6) If the director determines that a species of wildlife is seriously threatened with extinction in the state of Washington, the director may request its designation as an endangered species. The commission may designate an endangered species.

(7) If the director determines that a species of the animal kingdom, not native to Washington, is dangerous to the environment or wildlife of the state, the director may request its designation as deleterious exotic wildlife. The commission may designate deleterious exotic wildlife. [1987 c 506 § 13; 1980 c 78 § 13; 1969 ex.s. c 18 § 1; 1955 c 36 § 77.12.020. Prior: 1947 c 275 § 12; Rem. Supp. 1947 § 5992–22.]

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.12.030 Authority to regulate wildlife. The director may regulate the collection, importation, and transportation of wildlife. [1987 c 506 § 14; 1984 c 240 § 2; 1980 c 78 § 14; 1969 ex.s. c 18 § 2; 1955 c 36 § 77.12-.030. Prior: 1947 c 275 § 13; Rem. Supp. 1947 § 5992-23.]

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.12.040 Regulating the taking or possessing of game—Emergency rules—Game reserves, closed areas and waters. The commission shall adopt, amend, or repeal, and enforce reasonable rules prohibiting or governing the time, place, and manner of taking or possessing game animals, game birds, or game fish. The commission may specify the quantities, species, sex, and size of game animals, game birds, or game fish that may be taken or possessed. The commission shall regulate the taking, sale, possession, and distribution of wildlife and deleterious exotic wildlife. The director may adopt emergency rules under RCW 77.12.150.

The commission may establish by rule game reserves and closed areas where hunting for wild animals or wild birds may be prohibited and closed waters where fishing for game fish may be prohibited. [1987 c 506 § 15; 1984 c 240 § 3; 1980 c 78 § 15; 1969 ex.s. c 18 § 3; 1955 c 36 § 77.12.040. Prior: 1947 c 275 § 14; Rem. Supp. 1947 § 5992-24.]

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.12.055 Enforcement authority of director and wildlife agents. (1) Jurisdiction and authority granted under RCW 77.12.060, 77.12.070, and 77.12.080 to the director, wildlife agents, and ex officio wildlife agents is limited to the laws and rules adopted pursuant to this title pertaining to wildlife or to the management, operation, maintenance, or use of or conduct on real property used, owned, leased, or controlled by the department and other statutes as prescribed by the legislature. However, when acting within the scope of these duties and when an offense occurs in the presence of the wildlife agent who is not an ex officio wildlife agent, the wildlife agent may enforce all criminal laws of the state. The wildlife agent must have successfully completed the basic law enforcement academy course sponsored by the criminal justice training commission, or a supplemental course in criminal law enforcement as approved by the department and the criminal justice training commission and provided by the department or the criminal justice training commission, prior to enforcing the criminal laws of the state.

(2) Wildlife agents are peace officers.

(3) Any liability or claim of liability which arises out of the exercise or alleged exercise of authority by a wildlife agent rests with the department unless the wildlife agent acts under the direction and control of another

agency or unless the liability is otherwise assumed under a written agreement between the department of wildlife and another agency.

(4) Wildlife agents may serve and execute warrants and processes issued by the courts. [1988 c 36 § 50; 1987 c 506 § 16; 1985 c 155 § 2; 1980 c 78 § 17.]

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.12.060 Service of process by wildlife agents—Aid by citizens. The director, wildlife agents, and ex officio wildlife agents may serve and execute warrants and process issued by the courts to enforce the law and rules adopted pursuant to this title.

To enforce these laws or rules, they may call to their aid any ex officio wildlife agent or citizen and that person shall render aid. [1987 c 506 § 17; 1980 c 78 § 18; 1961 c 68 § 1; 1955 c 36 § 77.12.060. Prior: 1947 c 275 § 16; Rem. Supp. 1947 § 5992-26.]

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.12.070 Duties of wildlife agents. Wildlife agents and ex officio wildlife agents within their respective jurisdictions shall enforce the law and rules adopted pursuant to this title. [1987 c 506 § 18; 1980 c 78 § 19; 1971 ex.s. c 173 § 1; 1961 c 68 § 2; 1955 c 36 § 77.12-.070. Prior: 1947 c 275 § 17; Rem. Supp. 1947 § 5992-27.]

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.12.080 Arrest without warrant. Wildlife agents and ex officio wildlife agents may arrest without warrant persons found violating the law or rules adopted pursuant to this title. [1987 c 506 § 19; 1980 c 78 § 20; 1971 ex.s. c 173 § 2; 1961 c 68 § 3; 1955 c 36 § 77.12.080. Prior: 1947 c 275 § 18; Rem. Supp. 1947 § 5992-28.]

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.12.090 Search without warrant. Wildlife agents, and ex officio wildlife agents may make a reasonable search without warrant of conveyances, vehicles, packages, game baskets, game coats, or other receptacles for wildlife, or tents, camps, or similar places which they have reason to believe contain evidence of a violation of law or rules adopted pursuant to this title. [1987 c 506 § 20; 1980 c 78 § 21; 1955 c 36 § 77.12.090. Prior: 1947 c 275 § 19; Rem. Supp. 1947 § 5992-29.]

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.12.095 Inspections of commercial enterprises involved with wildlife. Wildlife agents may inspect without warrant at reasonable times and in a reasonable manner the premises, wildlife, and records of any commercial enterprise operating under the authority of a license or permit issued by the department or any commercial business that sells, stores, transports, or possesses wildlife. [1982 c 152 § 1; 1980 c 78 § 22.]

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.12.101 Seizure of contraband wildlife and devices—Forfeiture. (1) Wildlife agents and ex officio wildlife agents may seize without a warrant wildlife, as defined in RCW 77.08.010(16), they have probable cause to believe have been taken, killed, transported, or possessed in violation of this title or rule of the commission or director. Agents may also seize without warrant boat(s), vehicle(s), all conveyances, airplane(s), motorized implement(s), gear, appliance(s), or other articles they have probable cause to believe: (a) Are held with intent to violate; or (b) were used in the violation of Title 77 RCW, or any regulation pursuant thereto when the species involved is one which is listed in RCW 77.21.070, or any wildlife involved in trafficking under RCW 77.16.040 or illegal netting of game fish under RCW 77.16.060. However, agents may not seize any item or article, other than evidence, from a violator if under the circumstances it is reasonable to conclude that the violation was inadvertent. The articles seized shall be forfeited to the state, upon conviction, plea of guilty, or bail forfeiture. Articles seized may be recovered by their owner by depositing into court a cash bond equal to the value of the seized articles. The cash bond is subject to forfeiture in lieu of the seized articles.

(2)(a) In the event of a seizure of an article under subsection (1) of this section, proceedings for forfeiture shall be deemed commenced by bail forfeiture, plea of guilty, or upon conviction. The seizing authority shall serve notice within fifteen days following the seizure on the owner of the property seized and on any person having any known right or interest in the property seized. Notice may be served by any method authorized by law or court rule, including service by certified mail with return receipt requested, and service by such mail shall be deemed complete upon mailing within the fifteen-day period following the seizure.

(b) If no person notifies the department in writing of the person's claim of ownership or right to possession of articles seized pursuant to subsection (1) of this section within forty-five days of the seizure, the articles shall be deemed forfeited.

(c) If any person notifies the department in writing within forty-five days of the seizure, the person shall be afforded an opportunity to be heard as to the claim or right. The hearing shall be before the director or his designee, or before an administrative law judge appointed under chapter 34.12 RCW, except that any person asserting a claim or right may remove the matter to a court of competent jurisdiction. The department hearing and any appeal therefrom shall be under Title 34

RCW. The burden of producing evidence shall be upon the person claiming to be the lawful owner or person claiming lawful right of possession of the articles seized. The department shall promptly return the seized articles to the claimant upon a determination by the director or designee, an administrative law judge, or a court that the claimant is the present lawful owner or is lawfully entitled to possession of the articles seized, and that the seized articles were improperly seized.

(d)(i) No conveyance, including vessels, vehicles, or aircraft, is subject to forfeiture under this section by reason of any act or omission established by the owner of the conveyance to have been committed or omitted without his knowledge or consent.

(ii) A forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party if the secured party neither had knowledge nor consented to the act or omission.

(e) When seized property is forfeited under this section the department may retain it for official use unless the property is required to be destroyed, or upon application by any law enforcement agency of the state, release such property to such agency for the use of enforcing Title 77 RCW, or sell such property, and deposit the proceeds to the wildlife fund in the state treasury, as provided for in RCW 77.12.170. [1989 c 314 § 2.]

Legislative finding—1989 c 314: "In order to improve the enforcement of wildlife laws it is important to increase the penalties upon poachers by seizing the conveyances and gear that are used in poaching activities and to cause forfeiture of those items to the department." [1989 c 314 § 1.]

77.12.103 Seizure or forfeiture of personal property—Limitations. (1) The burden of proof of any exemption or exception to seizure or forfeiture of personal property involved with wildlife offenses is upon the person claiming it.

(2) An authorized state, county, or municipal officer may be subject to civil liability under RCW 77.12.101 for willful misconduct or gross negligence in the performance of his or her duties.

(3) The director of wildlife, the wildlife commission, or the department of wildlife may be subject to civil liability for their willful or reckless misconduct in matters involving the seizure and forfeiture of personal property involved with wildlife offenses. [1989 c 314 § 3.]

Finding—1989 c 314: See note following RCW 77.12.101.

77.12.105 Authority to retain or transfer wildlife. Except as otherwise provided in this title, a person who has lawfully acquired possession of wildlife and who desires to retain or transfer it may do so in accordance with the rules adopted pursuant to this title. [1987 c 506 § 22; 1980 c 78 § 71; 1977 c 44 § 2; 1955 c 36 § 77.16-.030. Prior: 1947 c 275 § 42; Rem. Supp. 1947 § 5992-51. Formerly RCW 77.16.030.]

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.12.120 Search for contraband game—Warrants. Upon complaint showing probable cause for believing that wildlife unlawfully caught, taken, killed, controlled, possessed, or transported, is concealed or kept in a game basket, game coat, package, or other receptacle for wildlife, or at a business place, vehicle, or other place, the court shall issue a search warrant and have the place searched for wildlife. The court may have a building, enclosure, vehicle, or receptacle opened or entered and the contents examined. [1980 c 78 § 26; 1955 c 36 § 77.12.120. Prior: 1947 c 275 § 22; Rem. Supp. 1947 § 5992–32.]

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.12.130 Certain devices declared public nuisances. Articles or devices unlawfully used, possessed, or maintained for catching, taking, killing, attracting, or decoying wildlife are public nuisances. If necessary, wildlife agents and ex officio wildlife agents may seize, abate, or destroy these public nuisances without warrant or process. [1980 c 78 § 27; 1955 c 36 § 77.12.130. Prior: 1947 c 275 § 23; Rem. Supp. 1947 § 5992–33.]

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.12.140 Acquisition or sale of wildlife. The director, acting in a manner not inconsistent with criteria established by the commission, may obtain by purchase, gift, or exchange and may sell or transfer wildlife and their eggs for stocking, research, or propagation. [1987 c 506 § 23; 1980 c 78 § 28; 1955 c 36 § 77.12.140. Prior: 1947 c 275 § 24; Rem. Supp. 1947 § 5992–34.]

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.12.150 Game seasons—Opening and closing—Bag limits. By emergency rule only, and in accordance with criteria established by the commission, the director may close or shorten a season for game animals, game birds, or game fish, and after a season has been closed or shortened, may reopen it and reestablish bag limits on game animals, game birds, or game fish during that season. The director shall advise the commission of the adoption of emergency rules. A copy of an emergency rule, certified as a true copy by the director or by a person authorized in writing by the director to make the certification, is admissible in court as prima facie evidence of the adoption and validity of the rule.

If the director finds that game animals have increased in numbers in an area of the state so that they are damaging public or private property or over-utilizing their habitat, the commission may establish a special hunting season and designate the time, area, and manner of taking and the number and sex of the animals that may be killed or possessed by a licensed hunter. The director shall determine by random selection the identity of hunters who may hunt within the area and shall determine the conditions and requirements of the selection

process. The director shall include notice of the special season in the rules establishing open seasons. [1987 c 506 § 24; 1984 c 240 § 4; 1980 c 78 § 29; 1977 ex.s. c 58 § 1; 1975 1st ex.s. c 102 § 1; 1955 c 36 § 77.12.150. Prior: 1949 c 205 § 2; 1947 c 275 § 25; Rem. Supp. 1949 § 5992–35.]

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

Special hunting season permits: RCW 77.32.370.

77.12.170 State wildlife fund—Deposits. (1) There is established in the state treasury the state wildlife fund which consists of moneys received from:

- (a) Rentals or concessions of the department;
 - (b) The sale of real or personal property held for department purposes;
 - (c) The sale of licenses, permits, tags, stamps, and punchcards required by this title;
 - (d) Fees for informational materials published by the department;
 - (e) Fees for personalized vehicle license plates as provided in chapter 46.16 RCW;
 - (f) Articles or wildlife sold by the director under this title;
 - (g) Compensation for wildlife losses or gifts or grants received under RCW 77.12.320;
 - (h) Excise tax on anadromous game fish collected under chapter 82.27 RCW; and
 - (i) The sale of personal property seized by the department for wildlife violations.
- (2) State and county officers receiving any moneys listed in subsection (1) of this section shall deposit them in the state treasury to be credited to the state wildlife fund. [1989 c 314 § 4; 1987 c 506 § 25; 1984 c 258 § 334. Prior: 1983 1st ex.s. c 8 § 2; 1983 c 284 § 1; 1981 c 310 § 2; 1980 c 78 § 30; 1979 c 56 § 1; 1973 1st ex.s. c 200 § 12 (Referendum Bill No. 33); 1969 ex.s. c 199 § 33; 1955 c 36 § 77.12.170; prior: 1947 c 275 § 27; Rem. Supp. 1947 § 5992–37.]

Finding—1989 c 314: See note following RCW 77.12.101.

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

Intent—1984 c 258: See note following RCW 3.46.120.

Findings—1983 1st ex.s. c 8: See note following RCW 77.21.070.

Findings—Intent—1983 c 284: See note following RCW 82.27.020.

Effective dates—1981 c 310: "(1) Sections 9 and 10 of this act are necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect on July 1, 1981.

(2) Section 13 of this act shall take effect on May 1, 1982.

(3) Sections 8, 11, 12, and 14 of this act shall take effect on July 1, 1982.

(4) All other sections of this act shall take effect on January 1, 1982." [1981 c 310 § 32.]

Reviser's note: (1) "Sections 9 and 10" refer to the 1981 c 310 amendments to RCW 77.32.020 and to the enactment of RCW 77.32.330.

(2) "Section 13" refers to the enactment of RCW 77.32.360.

(3) "Sections 8, 11, 12, and 14" refer to the enactment of RCW 77.32.320, 77.32.340, 77.32.350, and 77.32.370.

Legislative intent—1981 c 310: "The legislature finds that abundant deer and elk populations are in the best interest of the state, and for many reasons the state's deer and elk populations have apparently declined. The legislature further finds that antlerless deer and elk seasons have been an issue of great controversy throughout the state, and that antlerless deer and elk seasons may contribute to a further decline in the state's deer and elk populations." [1981 c 310 § 1.]

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.12.185 Publications—Authority to recover costs—Disposition of moneys. The director may collect moneys to recover the reasonable costs of publication of informational materials by the department and shall deposit them in the state treasury to be credited to the state wildlife fund. [1987 c 506 § 26; 1980 c 78 § 66; 1979 c 56 § 2. Formerly RCW 77.12.520.]

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.12.190 Diversion of wildlife fund moneys prohibited. Moneys in the state wildlife fund may be used only for the purposes of this title. [1987 c 506 § 27; 1980 c 78 § 34; 1955 c 36 § 77.12.190. Prior: 1947 c 275 § 28; Rem. Supp. 1947 § 5992–38.]

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.12.195 Firearm range account. The firearm range account is hereby created in the state wildlife fund. Moneys in the account shall be subject to legislative appropriation and shall be used for land, construction, development, and operation of firearm ranges and sporting training and practice facilities. [1988 c 263 § 9.]

Reviser's note: 1988 c 263 § 9 directed codification of this section in chapter 77.32 RCW, dealing with licenses. Notwithstanding that directive, it has been codified in chapter 77.12 RCW, dealing with powers and duties of the department of wildlife.

77.12.200 Acquisition of property. The commission may authorize the director to acquire by gift, purchase, lease, or condemnation lands, buildings, waters, or other necessary property for purposes consistent with this title, together with rights of way for access to the property so acquired. Except to clear title and acquire access rights of way, the power of condemnation may be exercised by the director only when an appropriation has been made by the legislature for the acquisition of a specific property. [1987 c 506 § 28; 1980 c 78 § 35; 1965 ex.s. c 97 § 1; 1955 c 36 § 77.12.200. Prior: 1953 c 65 § 1; 1947 c 275 § 29; Rem. Supp. 1947 § 5992–39.]

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.12.201 Counties may elect to receive an amount in lieu of taxes—County to record collections for violations of law or rules—Deposit. The legislative authority of a county may elect, by giving written notice to the

director and the treasurer prior to January 1st of any year, to obtain for the following year an amount in lieu of real property taxes on game lands as provided in RCW 77.12.203. Upon the election, the county shall keep a record of all fines, forfeitures, reimbursements, and costs assessed and collected, in whole or in part, under this title for violations of law or rules adopted pursuant to this title and shall monthly remit an amount equal to the amount collected to the state treasurer for deposit in the public safety and education account established under RCW 43.08.250. The election shall continue until the department is notified differently prior to January 1st of any year. [1987 c 506 § 29. Prior: 1984 c 258 § 335; 1984 c 214 § 1; 1980 c 78 § 36; 1977 ex.s. c 59 § 1; 1965 ex.s. c 97 § 2.]

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

Intent—1984 c 258: See note following RCW 3.46.120.

Effective date—1984 c 214: "This act takes effect on January 1, 1985." [1984 c 214 § 3.]

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.12.203 In lieu payments authorized—Procedure—Game lands defined. Notwithstanding RCW 84.36.010 or other statutes to the contrary, the director shall pay by April 30th of each year on game lands in each county, if requested by an election under RCW 77.12.201, an amount in lieu of real property taxes equal to that amount paid on similar parcels of open space land taxable under chapter 84.34 RCW or the greater of seventy cents per acre per year or the amount paid in 1984 plus an additional amount for control of noxious weeds equal to that which would be paid if such lands were privately owned. This amount shall not be assessed or paid on department buildings, structures, facilities, game farms, fish hatcheries, tidelands, or public fishing areas of less than one hundred acres.

"Game lands," as used in this section and RCW 77.12.201, means those tracts one hundred acres or larger owned in fee by the department and used for wildlife habitat and public recreational purposes. All lands purchased for wildlife habitat, public access or recreation purposes with federal funds in the Snake River drainage basin shall be considered game lands regardless of acreage. [1984 c 214 § 2; 1980 c 78 § 37; 1965 ex.s. c 97 § 3.]

Effective date—1984 c 214: See note following RCW 77.12.201.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.12.210 Department property—Management, sale. The director shall maintain and manage real or personal property owned, leased, or held by the department and shall control the construction of buildings, structures, and improvements in or on the property. The director may adopt rules for the operation and maintenance of the property.

The commission may authorize the director to sell timber, gravel, sand, and other materials or products

from real property held by the department and may authorize the director to sell or lease the department's real or personal property or grant concessions or rights of way for roads or utilities in the property. Oil and gas resources owned by the state which lie below lands owned, leased, or held by the department shall be offered for lease by the commissioner of public lands pursuant to chapter 79.14 RCW with the proceeds being deposited in the state wildlife fund: *Provided*, That the commissioner of public lands shall condition such leases at the request of the department to protect wildlife and its habitat.

If the commission determines that real or personal property held by the department cannot be used advantageously by the department, the director may dispose of that property if it is in the public interest.

If the state acquired real property with use limited to specific purposes, the director may negotiate terms for the return of the property to the donor or grantor. Other real property shall be sold to the highest bidder at public auction. After appraisal, notice of the auction shall be published at least once a week for two successive weeks in a newspaper of general circulation within the county where the property is located at least twenty days prior to sale.

Proceeds from the sales shall be deposited in the state wildlife fund. [1987 c 506 § 30; 1980 c 78 § 38; 1969 ex.s. c 73 § 1; 1955 c 36 § 77.12.210. Prior: 1947 c 275 § 30; Rem. Supp. 1947 § 5992-40.]

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective date—**Intent, construction**—**Savings**—**Severability**—1980 c 78: See notes following RCW 77.04.010.

Small works roster of public works contractors: RCW 39.04.150.

77.12.220 Acquisition or transfer of property. For purposes of this title, the commission may make agreements to obtain real or personal property or to transfer or convey property held by the state to the United States or its agencies or instrumentalities, political subdivisions of this state, public service companies, or other persons, if in the judgment of the commission and the attorney general the transfer and conveyance is consistent with public interest.

If the commission agrees to a transfer or conveyance under this section or to a sale or return of real property under RCW 77.12.210, the director shall certify, with the attorney general, to the governor that the agreement has been made. The certification shall describe the real property. The governor then may execute and the secretary of state attest and deliver to the appropriate entity or person the instrument necessary to fulfill the agreement. [1987 c 506 § 31; 1980 c 78 § 39; 1955 c 36 § 77.12.220. Prior: 1949 c 205 § 3; 1947 c 275 § 31; Rem. Supp. 1949 § 5992-41.]

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective date—**Intent, construction**—**Savings**—**Severability**—1980 c 78: See notes following RCW 77.04.010.

77.12.230 Local assessments against department property. The director may pay lawful local improvement district assessments for projects that may benefit wildlife or wildlife-oriented recreation made against lands held by the state for department purposes. The payments may be made from money appropriated from the state wildlife fund to the department. [1987 c 506 § 32; 1980 c 78 § 40; 1955 c 36 § 77.12.230. Prior: 1947 c 275 § 32; Rem. Supp. 1947 § 5992-42.]

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective date—**Intent, construction**—**Savings**—**Severability**—1980 c 78: See notes following RCW 77.04.010.

77.12.240 Authority to take wildlife—**Disposition.** The director may authorize the removal or killing of wildlife that is destroying or injuring property, or when it is necessary for wildlife management or research.

The director or other employees of the department shall dispose of wildlife taken or possessed by them under this title in the manner determined by the director to be in the best interest of the state. Proceeds from sales shall be deposited in the state treasury to be credited to the state wildlife fund. [1989 c 197 § 1; 1987 c 506 § 33; 1980 c 78 § 41; 1955 c 36 § 77.12.240. Prior: 1947 c 275 § 33; Rem. Supp. 1947 § 5992-43.]

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective date—**Intent, construction**—**Savings**—**Severability**—1980 c 78: See notes following RCW 77.04.010.

77.12.250 Entry upon property in course of duty. The director, wildlife agents, ex officio wildlife agents, and department employees may enter upon lands or waters and remain there while performing their duties without liability for trespass. [1980 c 78 § 42; 1955 c 36 § 77.12.250. Prior: 1947 c 275 § 34; Rem. Supp. 1947 § 5992-44.]

Effective date—**Intent, construction**—**Savings**—**Severability**—1980 c 78: See notes following RCW 77.04.010.

77.12.260 Agreements to prevent damage to private property. The director may make written agreements to prevent damage to private property by wildlife. The department may furnish money, material, or labor under these agreements. [1987 c 506 § 34; 1980 c 78 § 43; 1955 c 36 § 77.12.260. Prior: 1949 c 238 § 1; 1947 c 275 § 35; Rem. Supp. 1949 § 5992-45.]

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective date—**Intent, construction**—**Savings**—**Severability**—1980 c 78: See notes following RCW 77.04.010.

77.12.265 Trapping or killing wildlife doing damage—**Limitations**—**Procedures.** The owner or tenant of real property may trap or kill on that property wild animals or wild birds, other than an endangered species, that is damaging crops, domestic animals, fowl, or other property. Except in emergency situations, deer, elk, and protected wildlife shall not be killed without a permit issued and conditioned by the director. The director may delegate this authority.

For the purposes of this section, "emergency" means an unforeseen circumstance beyond the control of the landowner or tenant that presents a real and immediate threat to crops, domestic animals, fowl, or other property.

Alternatively, when sufficient time for the issuance of a permit by the director is not available, verbal permission may be given by the appropriate department regional administrator to owners or tenants of real property to trap or kill on that property any deer, elk, or protected wildlife which is damaging crops, domestic animals, fowl, or other property. The regional administrator may delegate, in writing, a member of the regional staff to give the required permission in these emergency situations. Nothing in this section authorizes in any situation the trapping, hunting, or killing of an endangered species.

Wildlife trapped or killed under this section remains the property of the state, and the person trapping or killing the wildlife shall notify the department immediately. The director shall dispose of wildlife so taken within three working days of receiving such a notification.

If the department receives recurring complaints regarding property being damaged as described in this section from the owner or tenant of real property, or receives such complaints from several such owners or tenants in a locale, the commission shall consider conducting a special hunt or special hunts to reduce the potential for such damage.

For purposes of this section, "crop" means an agricultural or horticultural product growing or harvested and includes wild shrubs and range land vegetation on privately owned cattle ranching lands. On such lands, the land owner or lessee may declare an emergency when the department has not responded within forty-eight hours after having been contacted by the land owner or lessee regarding crop damage by wild animals or wild birds. However, the department shall not allow claims for damage to wild shrubs or range land vegetation on such lands.

Deer and elk shall not be killed under the authority of this section on privately owned cattle ranching lands that were closed to public hunting during the previous hunting season, except for land closures which are coordinated with the department to protect property and livestock.

The department shall work closely with landowners and tenants suffering game damage problems to control damage without killing the animals when practical, to increase the harvest of damage-causing animals in hunting seasons, or to kill the animals when no other practical means of damage control is feasible. [1987 c 506 § 35; 1985 c 355 § 1; 1980 c 78 § 91; 1955 c 36 § 77.16.230. Prior: 1949 c 238 § 2; 1947 c 275 § 62; Rem. Supp. 1949 § 5992-71. Formerly RCW 77.16.230.]

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective date—**Intent, construction**—**Savings**—**Severability**—1980 c 78: See notes following RCW 77.04.010.

77.12.270 Claims for damages caused by deer or elk—Payments authorized, limitations. The director may compromise, adjust, settle, and pay claims for damages caused by deer or elk in accordance with RCW 77.12.280 through 77.12.300. Payments for claims shall not exceed two thousand dollars. The payment of a claim by the director constitutes full and final payment for the claim. The director shall advise the commission quarterly of all damage claims paid. [1987 c 506 § 36; 1986 c 126 § 11; 1980 c 78 § 45; 1963 c 177 § 8; 1955 c 36 § 77.12.270. Prior: 1949 c 238 § 3; Rem. Supp. 1949 § 5992-45a.]

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective date—**Intent, construction**—**Savings**—**Severability**—1980 c 78: See notes following RCW 77.04.010.

77.12.280 Claims for damages caused by deer or elk—Procedures—Arbitration—Awards. (1) Claims under RCW 77.12.270 may be filed under RCW 4.92.040(5) if within one year of filing with the director the claim is not settled and paid. The risk management office shall recommend to the legislature whether the claim should be approved. If the legislature approves the claim, the department shall pay it from moneys appropriated for that purpose.

(2) If a claim for damages under RCW 77.12.270 has been refused or has not been settled and paid by the director within one hundred twenty days of the filing of the claim, either the claimant or the director may serve upon the other personally or by registered mail a notice of intent to arbitrate. The notice shall contain the name of an arbitrator. Within ten days of receiving the notice, the person served shall serve the name of an arbitrator personally or by registered mail upon the other party. The two arbitrators, within seven days of the naming of the second arbitrator, shall select a third arbitrator who shall not be an employee of the department or member of the commission. If the two arbitrators cannot agree upon a third arbitrator, either party may petition the superior court in the county in which the claim arose to select the third arbitrator. Upon receiving the petition, the court shall appoint a third arbitrator. Filing fees or court costs arising from the petition shall be shared equally by the claimant and the department.

(3) The award of the arbitrators is advisory only and shall be filed with the department within ninety days following the naming of the third arbitrator. Payment shall not be made by the director until the arbitrators have made their advisory award. [1987 c 506 § 37; 1986 c 126 § 12; 1980 c 78 § 46; 1979 c 151 § 176; 1977 ex.s. c 144 § 8; 1957 c 177 § 1; 1955 c 36 § 77.12.280. Prior: 1949 c 238 § 4; Rem. Supp. 1949 § 5992-45b.]

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective date—**Intent, construction**—**Savings**—**Severability**—1980 c 78: See notes following RCW 77.04.010.

77.12.290 Claims for damages caused by deer or elk—Notice required—Exclusion. Claims for damages under RCW 77.12.270 shall be filed in writing with

the department in its office within ninety days following the discovery of the claimed damage. Failure to file the claim within the ninety-day period shall bar payment of damages. Payments shall not be made for damages occurring on lands leased by the claimant from a public agency. [1987 c 506 § 38; 1980 c 78 § 47; 1963 c 177 § 9; 1957 c 177 § 2; 1955 c 36 § 77.12.290. Prior: 1953 c 127 § 1; 1949 c 238 § 5; Rem. Supp. 1949 § 5992-45c.]

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.12.300 Rules as to claims for damages—Exclusions. The director may adopt rules requiring and prescribing the form of affidavits to be furnished in proof of claims and specifying the time for examining and appraising the damages. The director may refuse to consider and pay claims of persons who have posted the property on which the claimed damages occurred against hunting during the season prior to the occurrence of the damages. [1987 c 506 § 39; 1980 c 78 § 48; 1957 c 177 § 3; 1955 c 36 § 77.12.300. Prior: 1949 c 238 § 6; Rem. Supp. 1949 § 5992-45d.]

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.12.315 Dogs harassing deer and elk—Declaration of emergency—Taking dogs into custody or destroying—Immunity. If the director determines that a severe problem exists in an area of the state because deer and elk are being pursued, harassed, attacked or killed by dogs, the director may declare by emergency rule that an emergency exists and specify the area where it is lawful for wildlife agents to take into custody or destroy the dogs if necessary. Wildlife agents who take into custody or destroy a dog pursuant to this section are immune from civil or criminal liability arising from their actions. [1987 c 506 § 40; 1980 c 78 § 49; 1971 ex.s. c 183 § 1.]

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.12.320 Agreements for purposes related to wildlife—Acceptance of compensation, gifts, grants. (1) The commission may make agreements with persons, political subdivisions of this state, or the United States or its agencies or instrumentalities, regarding wildlife-oriented recreation and the propagation, protection, conservation, and control of wildlife.

(2) The director may make written agreements with the owners or lessees of real or personal property to provide for the use of the property for wildlife-oriented recreation. The director may adopt rules governing the conduct of persons in or on the real property.

(3) The director may accept compensation for wildlife losses or gifts or grants of personal property for use by the department. [1987 c 506 § 41; 1980 c 78 § 50; 1975

1st ex.s. c 207 § 1; 1974 ex.s. c 67 § 1; 1955 c 36 § 77.12.320. Prior: 1947 c 275 § 37; Rem. Supp. 1947 § 5992-47.]

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.12.323 Special wildlife account—Investments. (1) There is established in the state wildlife fund a special wildlife account. Moneys received under RCW 77.12.320 as now or hereafter amended as compensation for wildlife losses shall be deposited in the state treasury to be credited to the special wildlife account.

(2) The director may advise the state treasurer and the state investment board of a surplus in the special wildlife account above the current needs. The state investment board may invest and reinvest the surplus, as the commission deems appropriate, in an investment authorized by RCW 43.84.150 or in securities issued by the United States government as defined by RCW 43.84.080 (1) and (4). Income received from the investments shall be deposited to the credit of the special wildlife account. [1987 c 506 § 42; 1982 c 10 § 15. Prior: 1981 c 3 § 43; 1980 c 78 § 51; 1975 1st ex.s. c 207 § 2.]

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Severability—1982 c 10: See note following RCW 6.13.080.

Effective dates—Severability—1981 c 3: See notes following RCW 43.33A.010.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.12.325 Cooperation with Oregon to assure yields of Columbia river wildlife. The commission may cooperate with the Oregon fish and wildlife commission in the adoption of rules to assure an annual yield of wildlife on the Columbia river and to prevent the taking of wildlife at places or times that might endanger wildlife. [1980 c 78 § 52; 1959 c 315 § 2.]

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.12.330 Exclusive fishing waters for youths. The commission may establish by rule exclusive fishing waters for minors within specified ages. [1980 c 78 § 53; 1955 c 36 § 77.12.330. Prior: 1947 c 275 § 38; Rem. Supp. 1947 § 5992-48.]

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.12.360 Withdrawal of state land from lease—Compensation. Upon written request of the department, the department of natural resources may withdraw from lease state-owned lands described in the request. The request shall bear the endorsement of the county legislative authority if the lands were acquired under RCW 76.12.030 or 76.12.080. Withdrawals shall conform to the state outdoor recreation plan. If the lands are held for the benefit of the common school fund or another fund, the department shall pay compensation equal to

the lease value of the lands to the appropriate fund. [1980 c 78 § 54; 1969 ex.s. c 129 § 3; 1955 c 36 § 77.12.360. Prior: 1947 c 130 § 1; Rem. Supp. 1947 § 8136-10.]

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.12.370 Withdrawal of state land from lease—County procedures, approval, hearing. Prior to the forwarding of a request needing endorsement under RCW 77.12.360, the director shall present the request to the legislative authority of the county in which the lands are located for its approval. The legislative authority, before acting on the request, may call a public hearing. The hearing shall take place within thirty days after presentation of the request to the legislative authority.

The director shall publish notice of the public hearing called by the legislative authority in a newspaper of general circulation within the county at least once a week for two successive weeks prior to the hearing. The notice shall contain a copy of the request and the time and place of the hearing.

The chairman of the county legislative authority shall preside at the public hearing. The proceedings shall be informal and all persons shall have a reasonable opportunity to be heard.

Within ten days after the hearing, the county legislative authority shall endorse its decision on the request for withdrawal. The decision is final and not subject to appeal. [1987 c 506 § 43; 1980 c 78 § 55; 1955 c 36 § 77.12.370. Prior: 1947 c 130 § 2; Rem. Supp. 1947 § 8136-11.]

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.12.380 Withdrawal of state land from lease—Actions by commissioner of public lands. Upon receipt of a request under RCW 77.12.360, the commissioner of public lands shall determine if the withdrawal would benefit the people of the state. If the withdrawal would be beneficial, the commissioner shall have the lands appraised for their lease value. Before withdrawal, the department shall transmit to the commissioner a voucher authorizing payment from the state wildlife fund in favor of the fund for which the lands are held. The payment shall equal the amount of the lease value for the duration of the withdrawal. [1987 c 506 § 44; 1980 c 78 § 56; 1955 c 36 § 77.12.380. Prior: 1947 c 130 § 3; Rem. Supp. 1947 § 8136-12.]

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.12.390 Withdrawal of state land from lease—Payment. Upon receipt of a voucher under RCW 77.12.380, the commissioner of public lands shall withdraw the lands from lease. The commissioner shall forward the voucher to the state treasurer, who shall draw a

warrant against the state wildlife fund in favor of the fund for which the withdrawn lands are held. [1987 c 506 § 45; 1980 c 78 § 57; 1973 c 106 § 35; 1955 c 36 § 77.12.390. Prior: 1947 c 130 § 4; Rem. Supp. 1947 § 8136-13.]

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.12.420 Improvement of conditions for growth of game fish. The director may spend moneys to improve natural growing conditions for fish by constructing fishways, installing screens, and removing obstructions to migratory fish. The eradication of undesirable fish shall be authorized by the commission. The director may enter into cooperative agreements with state, county, municipal, and federal agencies, and with private individuals for these purposes. [1987 c 506 § 46; 1980 c 78 § 59; 1955 c 36 § 77.12.420. Prior: 1947 c 127 § 1; Rem. Supp. 1947 § 5944-1.]

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.12.425 Director may modify inadequate fishways and protective devices. The director may authorize removal, relocation, reconstruction, or other modification of an inadequate fishway or fish protective device required by RCW 77.16.210 and 77.16.220 which device was in existence on September 1, 1963, without cost to the owner for materials and labor. The modification may not materially alter the amount of water flowing through the fishway or fish protective device. Following modification, the fishway or fish protective device shall be maintained at the expense of the person or governmental agency owning the obstruction or water diversion device. [1980 c 78 § 90; 1963 c 152 § 1. Formerly RCW 77.16.221.]

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

Director of fisheries may modify inadequate fishways and fish guards: RCW 75.20.061.

77.12.430 Wildlife restoration—Federal act. The state assents to the act of congress entitled: "An Act to provide that the United States shall aid the states in wildlife restoration projects, and for other purposes," (50 Stat. 917; 16 U.S.C. Sec. 669). The department shall establish and conduct cooperative wildlife restoration projects, as defined in the act, and shall comply with the act and related rules adopted by the secretary of agriculture. [1980 c 78 § 60; 1955 c 36 § 77.12.430. Prior: 1939 c 140 § 1; RRS § 5855-12.]

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.12.440 Fish restoration and management projects—Federal act. The state assents to the act of congress entitled: "An Act to provide that the United

States shall aid the states in fish restoration and management projects, and for other purposes," (64 Stat. 430; 16 U.S.C. Sec. 777). The department of wildlife and the department of fisheries shall establish, conduct, and maintain fish restoration and management projects, as defined in the act, and shall comply with the act and related rules adopted by the secretary of the interior. [1987 c 506 § 47; 1982 c 26 § 2; 1980 c 78 § 61; 1955 c 36 § 77.12.440. Prior: 1951 c 124 § 1.]

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Intent—1982 c 26: "The legislature recognizes that funds from the federal Dingell-Johnson Act (64 Stat. 430; 16 U.S.C. Sec. 777) are derived from a tax imposed on the sale of recreational fishing tackle, and that these funds are granted to the state for fish restoration and management projects. The intent of this 1982 amendment to RCW 77.12.440 is to provide for the allocation of the Dingell-Johnson aid for fish restoration and management projects of the department of game and the department of fisheries. Such funds shall be subject to appropriation by the legislature." [1982 c 26 § 1.]

Effective date—1982 c 26: "This act shall take effect on October 1, 1982." [1982 c 26 § 3.]

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.12.450 Snake river boundary—Cooperation with Idaho for adoption and enforcement of rules regarding wildlife. The commission may cooperate with the Idaho fish and game commission in the adoption and enforcement of rules regarding wildlife on that portion of the Snake river forming the boundary between Washington and Idaho. [1980 c 78 § 62; 1967 c 62 § 1.]

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.12.470 Snake river boundary—Concurrent jurisdiction of Idaho and Washington courts and law enforcement officers. To enforce RCW 77.12.480 and 77.12.490, courts in the counties contiguous to the boundary waters, wildlife agents, and ex officio wildlife agents have jurisdiction over the boundary waters to the furthestmost shoreline. This jurisdiction is concurrent with the courts and law enforcement officers of Idaho. [1980 c 78 § 63; 1967 c 62 § 3.]

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.12.480 Snake river boundary—Honoring licenses to take wildlife of either state. The taking of wildlife from the boundary waters or islands of the Snake river shall be in accordance with the wildlife laws of the respective states. Wildlife agents and ex officio wildlife agents shall honor the license of either state and the right of the holder to take wildlife from the boundary waters and islands in accordance with the laws of the state issuing the license. [1980 c 78 § 64; 1967 c 62 § 4.]

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.12.490 Snake river boundary—Purpose—Restrictions. The purpose of RCW 77.12.450 through

77.12.490 is to avoid the conflict, confusion, and difficulty of locating the state boundary in or on the boundary waters and islands of the Snake river. These sections do not allow the holder of a Washington license to fish or hunt on the shoreline, sloughs, or tributaries on the Idaho side, nor allow the holder of an Idaho license to fish or hunt on the shoreline, sloughs, or tributaries on the Washington side. [1980 c 78 § 65; 1967 c 62 § 5.]

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.12.530 Hunting and fishing contests—Field trials for dogs—Rules—Limitation. The director shall administer rules adopted by the commission governing the time, place, and manner of holding hunting and fishing contests and competitive field trials involving live wildlife for hunting dogs. The department shall prohibit contests and field trials that are not in the best interests of wildlife. [1987 c 506 § 48; 1980 c 78 § 67.]

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

Contests and field trials: RCW 77.16.010.

77.12.540 Public shooting grounds—Effect of filing—Use for booming. Upon filing a certificate with the commissioner of public lands that shows that lands will be used for public shooting grounds by the department, the lands shall be withdrawn from sale or lease and then may be used as public shooting grounds under control of the department. The commissioner of public lands may also use the lands for booming purposes. [1980 c 78 § 128; 1955 c 36 § 77.40.080. Prior: 1945 c 179 § 2; Rem. Supp. 1945 § 7993-5b. Formerly RCW 77.40.080.]

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.12.550 Tidelands used as public shooting grounds—Diversion. Tidelands granted to the department to be used as public shooting grounds shall revert to the state if used for another purpose. The department shall certify the reversion to the commissioner of public lands who shall then supervise and control the lands as provided in Title 79 RCW. [1980 c 78 § 126; 1955 c 36 § 77.40.050. Prior: 1941 c 190 § 3; Rem. Supp. 1941 § 7993-8. Formerly RCW 77.40.050.]

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.12.560 Tidelands used as public shooting grounds—Rules. The commission may adopt rules regarding the use of the tidelands as shooting grounds. [1980 c 78 § 127; 1955 c 36 § 77.40.060. Prior: 1941 c 190 § 4; Rem. Supp. 1941 § 7993-9. Formerly RCW 77.40.060.]

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.12.570 Game farm licenses—Rules—Exemption. The commission shall establish the qualifications and conditions for issuing a game farm license. The director shall adopt rules governing the operation of game farms. Private sector cultured aquatic products as defined in RCW 15.85.020 are exempt from regulation under this section. [1987 c 506 § 49; 1985 c 457 § 22; 1980 c 78 § 98; 1975 1st ex.s. c 15 § 2; 1970 ex.s. c 29 § 14; 1955 c 36 § 77.28.020. Prior: 1947 c 275 § 82; Rem. Supp. 1947 § 5992–91. Formerly RCW 77.28.020.]

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.12.580 Game farms—Authority to dispose of eggs. A licensed game farmer may purchase, sell, give away, or dispose of the eggs of game birds or game fish lawfully possessed as provided by rule of the director. [1987 c 506 § 50; 1980 c 78 § 99; 1955 c 36 § 77.28.070. Prior: 1947 c 275 § 87; Rem. Supp. 1947 § 5992–96. Formerly RCW 77.28.070.]

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.12.590 Game farms—Tagging of products—Exemption. Wildlife given away, sold, or transferred by a licensed game farmer shall have attached to each wildlife member, package, or container, a tag, seal, or invoice as required by rule of the director. Private sector cultured aquatic products as defined in RCW 15.85.020 are exempt from regulation under this section. [1987 c 506 § 51; 1985 c 457 § 23; 1980 c 78 § 100; 1955 c 36 § 77.28.080. Prior: 1947 c 275 § 88; Rem. Supp. 1947 § 5992–97. Formerly RCW 77.28.080.]

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.12.600 Game farms—Shipping of wildlife—Exemption. A common carrier may transport wildlife shipped by a licensed game farmer if the wildlife is tagged, sealed, or invoiced as provided in RCW 77.12.590. Packages containing wildlife shall have affixed to them tags or labels showing the name of the licensee and the consignee. For purposes of this section, wildlife does not include private sector cultured aquatic products as defined in RCW 15.85.020. However, if a means of identifying such products is required by rules adopted under RCW 15.85.060, this exemption from the definition of wildlife applies only if the aquatic products are identified in conformance with those rules. [1985 c 457 § 24; 1980 c 78 § 101; 1955 c 36 § 77.28.090. Prior: 1947 c 275 § 89; Rem. Supp. 1947 § 5992–98. Formerly RCW 77.28.090.]

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.12.610 Wildlife check stations—Purpose. The purposes of RCW 77.12.610 through 77.12.630 and 77.16.610 are to facilitate the department's gathering of biological data for managing wildlife resources of this state and to protect wildlife resources by assuring compliance with Title 77 RCW, and rules adopted thereunder, in a manner designed to minimize inconvenience to the public. [1982 c 155 § 1.]

77.12.620 Wildlife check stations—Stopping for inspection. The department is authorized to require hunters and fishermen occupying a motor vehicle approaching or entering a check station to stop and produce for inspection: (1) Any wildlife in their possession; (2) licenses, permits, tags, stamps, or punchcards required under Title 77 RCW, or rules adopted thereunder. For these purposes, the department is authorized to operate check stations which shall be plainly marked by signs, operated by at least one uniformed wildlife agent, and operated in a safe manner. [1982 c 155 § 2.]

77.12.630 Wildlife check stations—Other inspections, powers. The powers conferred by RCW 77.12.610 through 77.12.630 and 77.16.610 are in addition to all other powers conferred by law upon the department. Nothing in RCW 77.12.610 through 77.12.630 and 77.16.610 shall be construed to prohibit the department from operating wildlife information stations at which persons shall not be required to stop and report, or from executing arrests, searches, or seizures otherwise authorized by law. [1982 c 155 § 4.]

77.12.650 Protection of bald eagles and their habitats—Cooperation required. The department shall cooperate with other local, state, and federal agencies and governments to protect bald eagles and their essential habitats through existing governmental programs, including but not limited to:

(1) The natural heritage program managed by the department of natural resources under chapter 79.70 RCW;

(2) The natural area preserve program managed by the department of natural resources under chapter 79.70 RCW;

(3) The shoreline management master programs adopted by local governments and approved by the department of ecology under chapter 90.58 RCW. [1987 c 506 § 52; 1984 c 239 § 2.]

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Legislative declaration—1984 c 239: "The legislature hereby declares that the protection of the bald eagle is consistent with a societal concern for the perpetuation of natural life cycles, the sensitivity and vulnerability of particular rare and distinguished species, and the quality of life of humans." [1984 c 239 § 1.]

77.12.655 Habitat buffer zones for bald eagles—Rules. The department, in accordance with chapter 34.05 RCW, shall adopt and enforce necessary rules defining the extent and boundaries of habitat buffer zones for bald eagles. Rules shall take into account the need for variation of the extent of the zone from case to case, and

the need for protection of bald eagles. The rules shall also establish guidelines and priorities for purchase or trade and establishment of conservation easements and/or leases to protect such designated properties. The department shall also adopt rules to provide adequate notice to property owners of their options under RCW 77.12.650 through 77.12.660. [1984 c 239 § 3.]

Legislative declaration—1984 c 239: See note following RCW 77.12.650.

77.12.660 Joint select committee on threatened and endangered species—**Report.** There is hereby created the "joint select committee on threatened and endangered species" of the Washington state legislature. The select committee shall consist of twelve members, three each from the majority and minority caucuses of the Senate and the majority and minority caucuses of the House of Representatives, appointed by the president of the Senate and the speaker of the House of Representatives upon the recommendation of the respective caucuses. The select committee shall study and report to the 1987 legislature its findings on matters relating to threatened and endangered species including, but not limited to, the promulgation of a threatened and endangered species list, the protection of the habitat of such species, compensation and incentives to private property owners to protect such species and their habitat and appropriate enforcement provisions. [1984 c 239 § 4.]

Legislative declaration—1984 c 239: See note following RCW 77.12.650.

77.12.670 Migratory waterfowl stamp—**Deposit and use of revenues.** The migratory waterfowl stamp to be produced by the department shall use the design as provided by the migratory waterfowl art committee.

All revenue derived from the sale of the stamps by the department shall be deposited in the state wildlife fund and shall be used only for the cost of printing and production of the stamp and for those migratory waterfowl projects specified by the director of the department for the acquisition and development of migratory waterfowl habitat in the state and for the enhancement, protection, and propagation of migratory waterfowl in the state. Acquisition shall include but not be limited to the acceptance of gifts of real estate or any interest therein or the rental, lease, or purchase of real estate or any interest therein. If the department acquires any fee interest, leasehold, or rental interest in real property under this section, it shall allow the general public reasonable access to that property and shall, if appropriate, insure that the deed or other instrument creating the interest allows such access to the general public. If the department obtains a covenant in real property in its favor or an easement or any other interest in real property under this section, it shall exercise its best efforts to insure that the deed or other instrument creating the interest grants to the general public in the form of a covenant running with the land reasonable access to the property. The private landowner from whom the department obtains such a covenant or easement shall retain the right of granting access to the lands by written permission.

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The department may produce migratory waterfowl stamps in any given year in excess of those necessary for sale in that year. The excess stamps may be sold to the migratory waterfowl art committee for sale to the public. [1987 c 506 § 53; 1985 c 243 § 4.]

Sunset Act application: See note following chapter digest.

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

77.12.680 Migratory waterfowl art committee—**Membership**—**Terms**—**Vacancies**—**Chairman**—**Review of expenditures**—**Compensation.** (1) There is created the migratory waterfowl art committee which shall be composed of nine members.

(2)(a) The committee shall consist of one member appointed by the governor, six members appointed by the director, one member appointed by the chairman of the state arts commission, and one member appointed by the director of the department of agriculture.

(b) The member appointed by the director of the department of agriculture shall represent state-wide farming interests.

(c) The member appointed by the chairman of the state arts commission shall be knowledgeable in the area of fine art reproduction.

(d) The members appointed by the governor and the director shall be knowledgeable about waterfowl and waterfowl management. The six members appointed by the director shall represent, respectively:

- (i) An eastern Washington sports group;
- (ii) A western Washington sports group;
- (iii) A group with a major interest in the conservation and propagation of migratory waterfowl;
- (iv) A state-wide conservation organization;
- (v) A state-wide sports hunting group; and
- (vi) The general public.

The members of the committee shall serve three-year staggered terms and at the expiration of their term shall serve until qualified successors are appointed. Of the nine members, three shall serve initial terms of four years, three shall serve initial terms of three years, and three shall serve initial terms of two years. The appointees of the governor, the chairman of the state arts commission, and the director of agriculture shall serve the initial terms of four years. Vacancies shall be filled for unexpired terms consistent with this section. A chairman shall be elected annually by the committee. The committee shall review the director's expenditures of the previous year of both the stamp money and the prints and related artwork money. Members of the committee shall serve without compensation. [1987 c 506 § 54; 1985 c 243 § 5.]

Sunset Act application: See note following chapter digest.

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

77.12.690 Migratory waterfowl art committee—**Duties**—**Deposit and use of funds**—**Audits.** The migratory waterfowl art committee is responsible for the selection of the annual migratory waterfowl stamp design and shall provide the design to the department. If

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the committee does not perform this duty within the time frame necessary to achieve proper and timely distribution of the stamps to license dealers, the director shall initiate the art work selection for that year. The committee shall create collector art prints and related artwork, utilizing the same design as provided to the department. The administration, sale, distribution, and other matters relating to the prints and sales of stamps with prints and related artwork shall be the responsibility of the migratory waterfowl art committee.

The total amount brought in from the sale of prints and related artwork shall be deposited in the state wildlife fund. The costs of producing and marketing of prints and related artwork, including administrative expenses mutually agreed upon by the committee and the director, shall be paid out of the total amount brought in from sales of those same items. Net funds derived from the sale of prints and related artwork shall be used by the director to contract with one or more appropriate individuals or nonprofit organizations for the development of waterfowl propagation projects within Washington which specifically provide waterfowl for the Pacific flyway. The department shall not contract with any individual or organization that obtains compensation for allowing waterfowl hunting except if the individual or organization does not permit hunting for compensation on the subject property.

The migratory waterfowl art committee shall have an annual audit of its finances conducted by the state auditor and shall furnish a copy of the audit to the commission and to the natural resources committees of the house and senate. [1987 c 506 § 55; 1985 c 243 § 6.]

Sunset Act application: See note following chapter digest.

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

77.12.700 Hunting of post-mature trophy-quality animals—Washington trophy hunt. (1) The commission in consultation with the director may authorize hunting of post-mature male trophy-quality animals from herds in areas not normally open to general public hunting. The director shall establish procedures for the hunt, which shall be called the Washington trophy hunt. The procedures may provide for an organization to contract with the department to sponsor the hunt. The procedures shall require that any permits or tags required for the hunt be sold at auction to raise funds for the department and the organization for wildlife conservation purposes. Representatives of the department may participate in the hunt upon the request of the commission to insure that the animals to be killed are properly identified.

(2) A wildlife conservation organization may request the commission to authorize a special hunt for post-mature trophy-quality male animals upon petition.

(3) In addition to any permit fee established under subsection (1) of this section, participants in the hunt shall obtain any required license, permit, or tag. [1987 c 506 § 56.]

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Sections	
77.16.010	Hunting and fishing contests—Field trials for dogs—Permit—Rules.
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77.16.040	Trafficking in wildlife or articles made from endangered species prohibited—Exception—Common and contract carriers.
77.16.050	Spotlighting big game—Prima facie evidence.
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77.16.150	Releasing wildlife—Planting aquatic plants, seeds.
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77.16.180	Damaging signs.
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77.16.250	Loaded firearms in vehicles.
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77.16.290	Law enforcement officers, exemption.
77.16.310	Unlawful purchase or possession of license, permit, tag, stamp, or punchcard.
77.16.320	Albino animals—Penalties for taking, dealing.
77.16.330	Hunting migratory waterfowl without stamp.
77.16.340	Obstructing the taking of fish or wildlife—Penalty—Defenses.
77.16.350	Obstructing the taking of fish or wildlife—Civil action.
77.16.610	Wildlife check stations—Violations.

77.16.010 Hunting and fishing contests—Field trials for dogs—Permit—Rules. It is unlawful to promote, conduct, hold, or sponsor a contest for the hunting or fishing of wildlife or a competitive field trial involving live wildlife for hunting dogs without first obtaining a hunting or fishing contest permit. Contests and field trials shall be held in accordance with established rules. [1987 c 506 § 58; 1980 c 78 § 69; 1955 c 36 § 77.16.010. Prior: 1947 c 275 § 39; Rem. Supp. 1947 § 5992-49.]

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

Contests and field trials: RCW 77.12.530.

77.16.020 Violations—Closed season, waters, areas—Bag limits—Special licenses, tags, stamps, or punchcards. (1) It is unlawful to hunt, fish, possess, or control a species of game bird, game animal, or game fish during the closed season for that species except as provided in RCW 77.12.105.

(2) It is unlawful to kill, take, catch, possess, or control these species in excess of the number fixed as the bag limit for each species.

(3) It is unlawful to hunt within a game reserve or to fish for game fish within closed waters.

(4) It is unlawful to hunt wild birds or wild animals within a closed area except as authorized by rule of the commission.

(5) It is unlawful to hunt or fish for wildlife, practice taxidermy for profit, deal in raw furs for profit, act as a fishing guide, or operate a game farm, stock game fish, or collect wildlife for research or display, without having in possession the license, permit, tag, stamp, or punch-card required by chapter 77.32 RCW or rule of the department. The activities described in this subsection shall be conducted in accordance with rules adopted pursuant to this title. [1987 c 506 § 59; 1983 c 3 § 196; 1981 c 310 § 3; 1980 c 78 § 70; 1977 c 44 § 1; 1955 c 36 § 77.16.020. Prior: 1947 c 275 § 41; Rem. Supp. 1947 § 5992–50.]

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective dates—Legislative intent—1981 c 310: See notes following RCW 77.12.170.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.16.040 Trafficking in wildlife or articles made from endangered species prohibited—Exception—Common and contract carriers. Except as authorized by law or rule, it is unlawful to bring into this state, offer for sale, sell, possess, exchange, buy, transport, or ship wildlife or articles made from an endangered species. It is unlawful for a common or contract carrier knowingly to ship or receive for shipment wildlife or articles made from an endangered species. [1987 c 506 § 60; 1980 c 78 § 72; 1971 ex.s. c 166 § 4; 1961 c 75 § 1; 1955 c 36 § 77.16.040. Prior: 1947 c 275 § 43; Rem. Supp. 1947 § 5992–52.]

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.16.050 Spotighting big game—Prima facie evidence. It is unlawful to hunt big game with a spotlight or other artificial light. It is prima facie evidence of a violation of this section to be found with a spotlight or other artificial light and with a firearm, bow and arrow, or crossbow, after sunset, in a place where big game may reasonably be expected. [1980 c 78 § 73; 1955 c 36 § 77.16.050. Prior: 1947 c 275 § 44; Rem. Supp. 1947 § 5992–53.]

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.16.060 Using nets, unauthorized devices—Returning game fish—Use of landing nets. It is unlawful to lay, set, or use a net or other device capable of taking game fish in the waters of this state except as authorized by the commission or director of fisheries. Game fish taken incidental to a lawful season established by the

director of fisheries shall be returned immediately to the water.

A landing net may be used to land fish otherwise legally hooked. [1987 c 506 § 61; 1980 c 78 § 74; 1955 c 36 § 77.16.060. Prior: 1947 c 275 § 45; Rem. Supp. 1947 § 5992–54.]

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.16.070 Hunting while intoxicated. It is unlawful to hunt while under the influence of intoxicating liquor or drugs. [1980 c 78 § 75; 1955 c 36 § 77.16.070. Prior: 1947 c 275 § 45a; Rem. Supp. 1947 § 5992–55.]

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.16.080 Laying out poison, etc., endangering wildlife—Exception. It is unlawful to lay, set, or use a drug, explosive, poison, or other deleterious substance that may endanger, injure, or kill wildlife except as authorized by law or rules adopted pursuant to this title. [1987 c 506 § 62; 1980 c 78 § 76; 1955 c 36 § 77.16.080. Prior: 1947 c 275 § 46; Rem. Supp. 1947 § 5992–56.]

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.16.090 Waste of wildlife. It is unlawful for a person who kills or possesses game animals, game birds, or game fish to allow them to needlessly go to waste. [1980 c 78 § 77; 1955 c 36 § 77.16.090. Prior: 1947 c 275 § 47; Rem. Supp. 1947 § 5992–57.]

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.16.095 Mutilation of wildlife, hampering identification. It is unlawful to mutilate wildlife so that the size, species, or sex cannot be determined visually in the field or while being transported. The director may prescribe specific criteria for field identification to satisfy this section. [1987 c 506 § 63; 1980 c 78 § 78.]

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.16.100 Use of dogs—Public nuisance, when. It is unlawful for the owner or a person harboring a dog to directly or negligently permit the dog to pursue or injure deer or elk or to accompany a person who is hunting deer or elk.

During the closed season for a species of game animal or game bird, a dog found pursuing that species, molesting its young, or destroying the nest of a game bird may be declared a public nuisance. [1980 c 78 § 79; 1977 ex.s. c 275 § 1; 1955 c 36 § 77.16.100. Prior: 1947 c 275 § 48; Rem. Supp. 1947 § 5992–58.]

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.16.110 Weapons, traps, and dogs on game reserves. It is unlawful to carry firearms, other hunting weapons, or traps or to allow directly or negligently a dog upon a game reserve, except on public highways or as authorized by rule of the director. [1987 c 506 § 64; 1980 c 78 § 80; 1955 c 36 § 77.16.110. Prior: 1947 c 275 § 50; Rem. Supp. 1947 § 5992–59.]

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.16.120 Taking of protected wildlife—Destruction of nests or eggs. Except as authorized by rule of the commission, it is unlawful to hunt, fish for, possess, or control protected wildlife, or endangered species or to destroy or possess the nests or eggs of game birds or protected wildlife. [1980 c 78 § 81; 1955 c 36 § 77.16.120. Prior: 1947 c 275 § 51; Rem. Supp. 1947 § 5992–60.]

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.16.130 Resisting or obstructing officers. It is unlawful to resist or obstruct wildlife agents or ex officio wildlife agents in the discharge of their duties while enforcing the law or rules adopted pursuant to this title. [1987 c 506 § 65; 1980 c 78 § 82; 1955 c 36 § 77.16.130. Prior: 1947 c 275 § 52; Rem. Supp. 1947 § 5992–61.]

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.16.150 Releasing wildlife—Planting aquatic plants, seeds. Except as authorized by the director, consistent with criteria established by the commission, it is unlawful to release wildlife or to plant aquatic plants or their seeds within the state. [1987 c 506 § 66; 1980 c 78 § 83; 1955 c 36 § 77.16.150. Prior: 1951 c 126 § 1; 1947 c 275 § 54; Rem. Supp. 1947 § 5992–63.]

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.16.160 Damaging or interfering with fish ladders, guards, screens, etc. It is unlawful to damage or interfere with a fish ladder, guard, screen, stop, protective device, bypass, or trap operated by the department. [1980 c 78 § 84; 1955 c 36 § 77.16.160. Prior: 1947 c 275 § 55; Rem. Supp. 1947 § 5992–64.]

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.16.170 Interfering with another person's traps—Identification of traps—Disclosure of identities. It is unlawful to take a wild animal from another

person's trap without permission, or to spring, pull up, damage, possess, or destroy the trap; however, it is not unlawful for a property owner, lessee, or tenant to remove a trap placed on the owner's, lessee's, or tenant's property by a trapper.

Trappers shall attach to the chain of their traps or devices a legible metal tag with either the department of wildlife identification number of the trapper or the name and address of the trapper in English letters not less than one-eighth inch in height.

When an individual presents a trapper identification number to the department of wildlife and requests identification of the trapper, the department of wildlife shall provide the individual with the name and address of the trapper. Prior to disclosure of the trapper's name and address, the department of wildlife shall obtain the name and address of the requesting individual in writing and after disclosing the trapper's name and address to the requesting individual, the requesting individual's name and address shall be disclosed in writing to the trapper whose name and address was disclosed. [1988 c 36 § 51; 1987 c 372 § 1; 1980 c 78 § 85; 1955 c 36 § 77.16.170. Prior: 1947 c 275 § 56; Rem. Supp. 1947 § 5992–65.]

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.16.180 Damaging signs. It is unlawful to remove, possess, or damage printed matter or signs placed by authority of the director. [1987 c 506 § 67; 1980 c 78 § 86; 1955 c 36 § 77.16.180. Prior: 1947 c 275 § 57; Rem. Supp. 1947 § 5992–66.]

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.16.190 Unlawful posting of land. It is unlawful for a person to wilfully post signs or warn against or otherwise prevent hunting or fishing on any land not owned or leased by that person. [1980 c 78 § 87; 1955 c 36 § 77.16.190. Prior: 1947 c 275 § 58; Rem. Supp. 1947 § 5992–67.]

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.16.210 Fishways to be provided and maintained. Persons or government agencies managing, controlling, or owning a dam or other obstruction across a river or stream shall construct, maintain, and repair durable fishways and fish protective devices that allow the free passage of game fish around the obstruction. The fishways and fish protective devices shall be provided with sufficient water to insure the free passage of fish. [1980 c 78 § 88; 1955 c 36 § 77.16.210. Prior: 1947 c 275 § 60; Rem. Supp. 1947 § 5992–69.]

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.16.220 Diversion of water—Screen, bypass required. It is unlawful to divert water from a lake, river,

or stream containing game fish unless the water diversion device is equipped at or near its intake with a fish guard or screen to prevent the passage of game fish into the device and, if necessary, with a means of returning game fish from immediately in front of the fish guard or screen to the waters of origin. A person who is *now otherwise lawfully diverting water from a lake, river or stream shall not be deemed guilty of a violation of this section.

Plans for the fish guard, screen, and bypass shall be approved by the director prior to construction. The installation shall be approved by the director prior to the diversion of water.

The director may close a water diversion device operated in violation of this section and keep it closed until it is properly equipped with a fish guard, screen, or bypass. [1980 c 78 § 89; 1955 c 36 § 77.16.220. Prior: 1947 c 275 § 61; Rem. Supp. 1947 § 5992-70.]

*Reviser's note: The phrase "now otherwise lawfully diverting water" first appears in 1947 c 275 § 61.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.16.250 Loaded firearms in vehicles. Except as provided in RCW 77.16.290 and 77.32.238, it is unlawful to carry, transport, convey, possess, or control in or on a motor vehicle a shotgun or rifle containing shells or cartridges in the magazine or chamber, or a muzzle-loading firearm loaded and capped or primed. [1989 c 297 § 5; 1980 c 78 § 93; 1955 c 36 § 77.16.250. Prior: 1947 c 126 § 1; Rem. Supp. 1947 § 2545-1.]

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.16.260 Shooting firearm from public highway. Except as provided in RCW 77.16.290, it is unlawful to shoot a firearm from, across, or along the maintained portion of a public highway. [1980 c 78 § 94; 1955 c 85 § 1; 1955 c 36 § 77.16.260. Prior: 1947 c 126 § 2; Rem. Supp. 1947 § 2545-2.]

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.16.290 Law enforcement officers, exemption. While on duty within their respective jurisdictions, law enforcement officers authorized to carry firearms are exempt from RCW 77.16.250 and 77.16.260. [1980 c 78 § 95; 1955 c 36 § 77.16.290. Prior: 1947 c 126 § 5; Rem. Supp. 1947 § 2545-5.]

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.16.310 Unlawful purchase or possession of license, permit, tag, stamp, or punchcard. It is unlawful to purchase, obtain, or possess or to attempt to purchase or obtain a license, permit, or tag required by this title:

(1) By using false information; or

(2) After notice of the revocation or forfeiture of an existing license, permit, or tag, except that a person may purchase a license that does not grant the privilege that was revoked; or

(3) In excess of one license, permit, tag, stamp, or punchcard for a license year except as authorized by RCW 77.32.256 or other law or rule of the commission. [1981 c 310 § 4; 1980 c 78 § 125; 1979 ex.s. c 127 § 1. Formerly RCW 77.32.300.]

Effective dates—Legislative intent—1981 c 310: See notes following RCW 77.12.170.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.16.320 Albino animals—Penalties for taking, dealing. Except as authorized by law or rules adopted pursuant to this title, it is unlawful to hunt, offer for sale, sell, possess, exchange, buy, transport, or ship an albino wild animal. [1987 c 506 § 68; 1981 c 310 § 5; 1980 c 44 § 1.]

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective dates—Legislative intent—1981 c 310: See notes following RCW 77.12.170.

77.16.330 Hunting migratory waterfowl without stamp. It is unlawful for any person sixteen years of age or older to hunt any migratory waterfowl without first obtaining a migratory waterfowl stamp as required by RCW 77.32.350. [1987 c 506 § 104; 1985 c 243 § 3.]

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

77.16.340 Obstructing the taking of fish or wildlife—Penalty—Defenses. (1) A person commits the crime of obstructing the taking of fish or wildlife if the person:

(a) Harasses, drives, or disturbs fish or wildlife with the intent of disrupting lawful pursuit or taking thereof; or

(b) Harasses, interferes with, or intimidates an individual engaged in the lawful taking of fish or wildlife or lawful predator control.

(2) Violation of this section is a gross misdemeanor under RCW 77.21.010.

(3) It is a defense to any prosecution under subsection (1) of this section, if the person charged:

(a) Interferes with any person engaged in hunting outside legally established hunting seasons;

(b) Is preventing or attempting to prevent the injury or killing of a protected wildlife species, as defined by this title;

(c) Is preventing or attempting to prevent unauthorized trespass on private property; or

(d) Is defending oneself or another person from bodily harm or property damage by a person attempting to prevent hunting in a legally established hunting season. [1988 c 265 § 1.]

Effective date—1988 c 265: "This act shall take effect July 1, 1988." [1988 c 265 § 5.]

77.16.350 Obstructing the taking of fish or wildlife—Civil action. Any person who is damaged by any act prohibited in RCW 77.16.340 may bring a civil action to enjoin further violations, and recover damages

sustained, including a reasonable attorney's fee. The trial court may increase the award of damages to an amount not to exceed three times the damages sustained. A party seeking civil damages under this section may recover upon proof of a violation of the provisions of RCW 77.16.340 by a preponderance of the evidence. The state of Washington may bring a civil action to enjoin violations of RCW 77.16.340. [1988 c 265 § 2.]

Effective date—1988 c 265: See note following RCW 77.16.340.

77.16.610 Wildlife check stations—Violations. It is unlawful for any hunter or fisherman approaching or entering a check station to fail to:

- (1) Obey check station signs;
- (2) Stop and report at a check station, when directed to do so by a uniformed wildlife agent; or
- (3) Produce for inspection, when requested to do so by a wildlife agent: (a) Wildlife; or (b) licenses, permits, tags, stamps, or punchcards required under Title 77 RCW, or rules adopted thereunder. [1982 c 155 § 3.]

Chapter 77.21

PENALTIES—PROCEEDINGS

Sections

77.21.010	Penalties—Confiscated articles and devices, disposal—Placing traps on private property—Jurisdiction of courts.
77.21.020	Revocation of hunting license for big game violation—Subsequent issuance—Appeal.
77.21.030	Revocation for shooting person or livestock—Subsequent issuance.
77.21.040	Disposition of forfeited wildlife and articles.
77.21.060	License forfeiture—Issuance prohibited.
77.21.070	Illegal possession of wildlife—Reimbursement to state—Amounts—Bail.
77.21.080	Wildlife conservation reward fund.

77.21.010 Penalties—Confiscated articles and devices, disposal—Placing traps on private property—Jurisdiction of courts. (1) A person violating RCW 77.16.040, 77.16.050, 77.16.060, 77.16.080, 77.16.210, 77.16.220, 77.16.310, 77.16.320, or 77.32.211, or committing a violation of RCW 77.16.020 or 77.16.120 involving 77.16.210, 77.16.220, 77.16.310, 77.16.320, 77.16.340, or 77.32.211, or committing a violation of RCW 77.16.020 or 77.16.120 involving big game or an endangered species is guilty of a gross misdemeanor and shall be punished by a fine of not less than two hundred fifty dollars and not more than one thousand dollars or by imprisonment in the county jail for not less than thirty days and not more than one year or by both the fine and imprisonment. Each subsequent violation within a five-year period of RCW 77.16.040, 77.16.050, or 77.16.060, or of RCW 77.16.020 or 77.16.120 involving big game or an endangered species, as defined by the commission under the authority of RCW 77.04.090, shall be prosecuted and punished as a class C felony as defined in RCW 9A.20.020. In connection with each such felony prosecution, the director shall provide the

court with an inventory of all articles or devices seized under this title in connection with the violation. Inventoried articles or devices shall be disposed of pursuant to RCW 77.21.040.

(2) A person violating or failing to comply with this title or rules adopted pursuant to this title for which no penalty is otherwise provided is guilty of a misdemeanor and shall be punished for each offense by a fine of five hundred dollars or by imprisonment for not more than ninety days in the county jail or by both the fine and imprisonment. The commission may provide, when not inconsistent with applicable statutes, that violation of a specific rule is an infraction under chapter 7.84 RCW.

(3) A person placing traps on private property without permission of the owner, lessee, or tenant where the land is improved and apparently used, or where the land is fenced or enclosed in a manner designed to exclude intruders or to indicate a property boundary line, or where notice is given by posting in a conspicuous manner, is guilty of the misdemeanor of trespass as defined and established in RCW 9A.52.010 and 9A.52.080 and shall be punished for each offense by a fine of not less than two hundred fifty dollars.

(4) Persons convicted of a violation shall pay the costs of prosecution and the penalty assessment in addition to the fine or imprisonment.

(5) The unlawful killing, taking, or possession of each wildlife member constitutes a separate offense.

(6) District courts have jurisdiction concurrent with the superior courts of misdemeanors and gross misdemeanors committed in violation of this title or rules adopted pursuant to this title and may impose the punishment provided for these offenses. Superior courts have jurisdiction over felonies committed in violation of this title. [1988 c 265 § 3. Prior: 1987 c 506 § 69; 1987 c 380 § 19; 1987 c 372 § 2; 1982 c 31 § 1; 1981 c 310 § 6; 1980 c 78 § 92; 1955 c 36 § 77.16.240; prior: 1947 c 275 § 63; Rem. Supp. 1947 § 5992-72. Formerly RCW 77.16.240.]

Effective date—1988 c 265: See note following RCW 77.16.340.

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective date—Severability—1987 c 380: See RCW 7.84.900 and 7.84.901.

Effective dates—Legislative intent—1981 c 310: See notes following RCW 77.12.170.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.21.020 Revocation of hunting license for big game violation—Subsequent issuance—Appeal. In addition to other penalties provided by law, the director shall revoke the hunting license of a person who is convicted of a violation of RCW 77.16.020 involving big game or RCW 77.16.050. Forfeiture of bail twice during a five-year period for these violations constitutes the basis for a revocation under this section.

A hunting license shall not be issued to the person for two years from the revocation.

A person who has had a license revoked or has been denied issuance pursuant to this section or RCW 77.21.030, may appeal the decision as provided in chapter 34.05 RCW. [1987 c 506 § 70; 1980 c 78 § 124; 1975 1st ex.s. c 6 § 1. Formerly RCW 77.32.290.]

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.21.030 Revocation for shooting person or livestock—Subsequent issuance. The director shall revoke the hunting license of a person who shoots another person or domestic livestock while hunting. A hunting license shall not be issued to that person unless the director authorizes the issuance of a license, and damages caused by the wrongful shooting have been paid. [1987 c 506 § 71; 1980 c 78 § 123; 1955 c 36 § 77.32.280. Prior: 1949 c 44 § 1; Rem. Supp. 1949 § 5992-124a. Formerly RCW 77.32.280.]

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.21.040 Disposition of forfeited wildlife and articles. (1) Wildlife unlawfully taken or possessed remains the property of the state.

(2) The director may sell articles or devices seized and forfeited under this title by the court at public auction. The time, place, and manner of holding the sale shall be determined by the director. The director shall publish notice of the sale once a week for at least two consecutive weeks prior to the sale in at least one newspaper of general circulation in the county in which the sale is to be held. Proceeds from the sales shall be deposited in the state treasury to be credited to the state wildlife fund. [1989 c 314 § 5; 1987 c 506 § 72; 1980 c 78 § 25; 1955 c 36 § 77.12.110. Prior: 1947 c 275 § 21; Rem. Supp. 1947 § 5992-31. Formerly RCW 77.12.110.]

Finding—1989 c 314: See note following RCW 77.12.101.

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.21.060 License forfeiture—Issuance prohibited.

(1) Upon conviction of a violation of this title or rules adopted pursuant to this title, the court may forfeit a license, in addition to other penalties provided by law. Upon subsequent conviction, the forfeiture of the license is mandatory. The director may prohibit issuance of a license to a person convicted two or more times or prescribe the conditions for subsequent issuance of a license.

(2) It shall be unlawful for a person to conduct an activity requiring a wildlife license, tag, or stamp for which they have had a license forfeiture or for which the director has prohibited the issuance of a license. [1989 c 314 § 6; 1987 c 506 § 73; 1980 c 78 § 122; 1955 c 36 § 77.32.260. Prior: 1947 c 275 § 115; Rem. Supp. 1947 § 5992-124. Formerly RCW 77.32.260.]

Finding—1989 c 314: See note following RCW 77.12.101.

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.21.070 Illegal possession of wildlife—Reimbursement to state—Amounts—Bail. (1) Whenever a person is convicted of illegal killing or possession of wildlife listed in this subsection, the convicting court shall order the person to reimburse the state in the following amounts for each animal killed or possessed:

- (a) Moose, antelope, mountain sheep, mountain goat, and all wildlife species classified as endangered by rule of the commission \$2,000
- (b) Elk, deer, black bear, and cougar \$1,000
- (c) Mountain caribou and grizzly bear \$5,000

(2) For the purpose of this section, the term "convicted" includes a plea of guilty, a finding of guilt regardless of whether the imposition of the sentence is deferred or any part of the penalty is suspended, and the payment of a fine. No court may establish bail for illegal possession of wildlife listed in subsection (1) in an amount less than the bail established for hunting during the closed season plus the reimbursement value of wildlife set forth in subsection (1).

(3) If two or more persons are convicted of illegally possessing wildlife listed in this section, the reimbursement amount shall be imposed upon them jointly and separately.

(4) The reimbursement amount provided in this section shall be imposed in addition to and regardless of any penalty, including fines, or costs, that is provided for violating any provision of Title 77 RCW. The reimbursement required by this section shall be included by the court in any pronouncement of sentence and may not be suspended, waived, modified, or deferred in any respect. Nothing in this section may be construed to abridge or alter alternative rights of action or remedies in equity or under common law or statutory law, criminal or civil.

(5) A defaulted reimbursement or any installment payment thereof may be collected by any means authorized by law for the enforcement of orders of the court or collection of a fine or costs, including vacation of a deferral of sentencing or of a suspension of sentence. [1989 c 11 § 28; 1987 c 506 § 74; 1986 c 318 § 1; 1984 c 258 § 336; 1983 1st ex.s. c 8 § 3.]

Severability—1989 c 11: See note following RCW 9A.56.220.

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective date—1986 c 318: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect June 30, 1986." [1986 c 318 § 2.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

Intent—1984 c 258: See note following RCW 3.46.120.

Findings—1983 1st ex.s. c 8: "The legislature finds that wildlife is of great ecological, recreational, esthetic, and economic value to the people of the state of Washington. It further finds that the illegal taking and possession of certain valuable wildlife species is increasing at

an alarming rate and that the state should be reimbursed for the loss of individual wildlife of these species in the amounts specified in section 3 of this act." [1983 1st ex.s. c 8 § 1.] "Section 3 of this act" consists of the enactment of RCW 77.21.070.

77.21.080 Wildlife conservation reward fund. The state wildlife conservation reward fund is established in the custody of the state treasurer. The director shall deposit in the fund all moneys designated to be placed in the fund by rule of the director. Moneys in the fund shall be spent to provide rewards to persons informing the department about violations of this title or rules adopted pursuant to this title. Disbursements from the fund shall be on the authorization of the director or the director's designee. The fund is subject to the allotment procedure provided under chapter 43.88 RCW, but no appropriation is required for disbursement. [1989 c 11 § 29; 1987 c 506 § 75.]

Severability—1989 c 11: See note following RCW 9A.56.220.

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Chapter 77.32 LICENSES

Sections

77.32.005	"Resident," "nonresident" defined.
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77.32.360	Steelhead and upland bird punchcards—Fees, procedures.
77.32.370	Special hunting season permits—Fee.
77.32.380	License required for persons parking on department lands or using game access facilities—Exceptions—Procedures.
77.32.390	Valid big game permits.

77.32.005 "Resident," "nonresident" defined. For the purposes of this chapter:

A "resident" means a person who has maintained a permanent place of abode within this state for at least ninety days immediately preceding an application for a license, has established by formal evidence an intent to continue residing within this state, and who is not licensed to hunt or fish as a resident in another state.

A "nonresident" means a person who has not fulfilled the qualifications of a resident. [1989 c 305 § 17; 1980 c 78 § 102; 1961 c 94 § 1; 1957 c 176 § 14.]

Effective date—1989 c 305: See RCW 75.25.902.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.32.007 "Special hunting season" defined. For the purposes of this chapter "special hunting season" means a hunting season established by rule of the commission for the purpose of taking specified wildlife under a special hunting permit. [1984 c 240 § 8.]

77.32.010 Licenses or permits required—Exemption. (1) Except as otherwise provided in this chapter, a license issued by the director is required to:

- (a) Hunt for wild animals or wild birds or fish for game fish;
- (b) Practice taxidermy for profit;
- (c) Deal in raw furs for profit;
- (d) Act as a fishing guide;
- (e) Operate a game farm;
- (f) Purchase or sell anadromous game fish; or
- (g) Use department-managed lands or facilities as provided by rules adopted pursuant to this title.

(2) A permit issued by the director is required to:

- (a) Conduct, hold, or sponsor hunting or fishing contests or competitive field trials using live wildlife;
- (b) Collect wild animals, wild birds, game fish, or protected wildlife for research or display; or
- (c) Stock game fish.

(3) Aquaculture as defined in RCW 15.85.020 is exempt from the requirements of this section, except when being stocked in public waters under contract with the department. [1987 c 506 § 76; 1985 c 457 § 25; 1983 c 284 § 2; 1981 c 310 § 7; 1980 c 78 § 103; 1979 ex.s. c 3 § 1; 1959 c 245 § 1; 1955 c 36 § 77.32.010. Prior: 1947 c 275 § 93; Rem. Supp. 1947 § 5992-102.]

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Findings—Intent—1983 c 284: See note following RCW 82.27.020.

Effective dates—Legislative intent—1981 c 310: See notes following RCW 77.12.170.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.32.025 Establishment of times and places for family fishing with no license—Authorized. Notwithstanding RCW 77.32.010, the commission may adopt rules designating times and places for the purposes of family fishing days when licenses are not required to fish for game fish. [1987 c 506 § 103.]

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

77.32.050 Licenses, permits, tags, stamps, and punchcards issued by authorized officials, others—Procedures—Rules. Licenses, permits, tags, stamps, and punchcards required by this chapter shall be issued under the authority of the commission. The director may authorize department personnel, county auditors, or other reputable citizens to issue licenses, permits, tags, stamps, and punchcards and collect the appropriate fees. The authorized persons shall pay on demand or before the tenth day of the following month the fees collected and shall make reports as required by the director. The director may adopt rules for issuing licenses, permits, tags, stamps, and punchcards, collecting and paying fees, and making reports. [1987 c 506 § 77; 1981 c 310 § 16; 1980 c 78 § 106; 1979 ex.s. c 3 § 2; 1955 c 36 § 77.32-.050. Prior: 1953 c 75 § 2; 1947 c 275 § 97; Rem. Supp. 1947 § 5992-106.]

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective dates—Legislative intent—1981 c 310: See notes following RCW 77.12.170.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.32.060 Licenses, permits, tags, stamps, and punchcards—Amount of fees to be retained by license dealers. The director may adopt rules establishing the amount a license dealer may charge and keep for each license, tag, permit, stamp, or punchcard issued. The director shall establish the amount to be retained by dealers to be at least fifty cents for each license issued, and twenty-five cents for each tag, permit, stamp, or punchcard issued. The director shall report to the next regular session of the legislature explaining any increase in the amount retained by license dealers. Fees retained by dealers shall be uniform throughout the state. [1987 c 506 § 78; 1985 c 464 § 1; 1981 c 310 § 17; 1980 c 78 § 107; 1979 ex.s. c 3 § 3; 1970 ex.s. c 29 § 2; 1957 c 176 § 2; 1955 c 36 § 77.32.060. Prior: 1953 c 75 § 3; 1947 c 275 § 98; Rem. Supp. 1947 § 5992-107.]

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective date—1985 c 464: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1985." [1985 c 464 § 13.]

Effective dates—Legislative intent—1981 c 310: See notes following RCW 77.12.170.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

Effective date—1970 ex.s. c 29: "The effective date of this 1970 amendatory act shall be January 1, 1971." [1970 ex.s. c 29 § 16.]

Effective date—1957 c 176: "Sections 2, 3, 4, 5, 6, 7, 8, 9, 10, 12 and 13 above shall become effective on January 1, 1958." [1957 c 176 § 15.]

77.32.070 Information required from license applicants—Reports on taking of wildlife. Applicants for a license, permit, tag, stamp, or punchcard shall furnish the information required by the director. The director may adopt rules requiring licensees or permittees to keep records and make reports concerning the taking of wildlife. [1987 c 506 § 79; 1981 c 310 § 18; 1980 c 78 § 108; 1955 c 36 § 77.32.070. Prior: 1947 c 275 § 99; Rem. Supp. 1947 § 5992-108.]

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective dates—Legislative intent—1981 c 310: See notes following RCW 77.12.170.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.32.090 Licenses, permits, tags, stamps, and punchcards—Rules for form, display, procedures. The director may adopt rules pertaining to the form, period of validity, use, possession, and display of licenses, permits, tags, stamps, and punchcards required by this chapter. [1987 c 506 § 80; 1981 c 310 § 19; 1980 c 78 § 109; 1955 c 36 § 77.32.090. Prior: 1947 c 275 § 101; Rem. Supp. 1947 § 5992-110.]

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective dates—Legislative intent—1981 c 310: See notes following RCW 77.12.170.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.32.101 Hunting and fishing licenses—Fees. (1) A hunting and fishing license allows a resident holder to hunt and fish throughout the state. The fee for this license is twenty-four dollars.

(2) A hunting license allows the holder to hunt throughout the state. The fee for this license is twelve dollars for residents and one hundred twenty-five dollars for nonresidents.

(3) A fishing license allows the holder to fish throughout the state. The fee for this license is fourteen dollars for residents and forty dollars for nonresidents. [1985 c 464 § 2; 1981 c 310 § 20; 1980 c 78 § 110; 1975 1st ex.s. c 15 § 20.]

Effective date—1985 c 464: See note following RCW 77.32.060.

Effective dates—Legislative intent—1981 c 310: See notes following RCW 77.12.170.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

Effective dates—1975 1st ex.s. c 15: "Section 19 of this 1975 amendatory act shall be effective April 1, 1976. Sections 20 through 32 of this 1975 amendatory act shall be effective January 1, 1976." [1975 1st ex.s. c 15 § 34.]

77.32.155 Hunter education training program—Requirement for juveniles—Certificate. When purchasing a hunting license, persons under the age of eighteen shall present certification of completion of a

course of instruction of at least six hours in the safe handling of firearms, safety, conservation, and sportsmanship.

The director may establish a program for training persons in the safe handling of firearms, conservation, and sportsmanship and may cooperate with the National Rifle Association, organized sportsmen's groups, or other public or private organizations.

The director shall prescribe the type of instruction and the qualifications of the instructors.

Upon successful completion of the course, a trainee shall receive a hunter education certificate signed by an authorized instructor. The certificate is evidence of compliance with this section.

The director may accept certificates from other states that persons have successfully completed firearm safety, hunter education, or similar courses as evidence of compliance with this section. [1987 c 506 § 81; 1981 c 310 § 21; 1980 c 78 § 104; 1957 c 17 § 1. Formerly RCW 77.32.015.]

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective dates—Legislative intent—1981 c 310: See notes following RCW 77.12.170.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.32.161 Temporary fishing license. A nonresident or resident may obtain a temporary fishing license, which allows the holder to fish throughout the state for three consecutive days. The fee for this license is seven dollars for residents and fourteen dollars for nonresidents. The resident temporary fishing license is not valid for an eight consecutive day period beginning on the opening day of the lowland lake fishing season. [1985 c 464 § 3; 1981 c 310 § 22; 1980 c 78 § 112; 1975 1st ex.s. c 15 § 27.]

Effective date—1985 c 464: See note following RCW 77.32.060.

Effective dates—Legislative intent—1981 c 310: See notes following RCW 77.12.170.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

Effective dates—1975 1st ex.s. c 15: See note following RCW 77.32.101.

77.32.191 Trapper's license. A state trapping license allows the holder to trap fur-bearing animals throughout the state; however, a trapper may not place traps on private property without permission of the owner, lessee, or tenant where the land is improved and apparently used, or where the land is fenced or enclosed in a manner designed to exclude intruders or to indicate a property boundary line, or where notice is given by posting in a conspicuous manner. A state trapping license is void on April 1st following the date of issuance. The fee for this license is thirty dollars for residents sixteen years of age or older, twelve dollars for residents under sixteen years of age, and one hundred fifty dollars for nonresidents. [1987 c 372 § 3; 1985 c 464 § 4; 1981 c 310 § 23. Prior: 1980 c 78 § 113; 1980 c 24 § 2; 1975 1st ex.s. c 15 § 28.]

Effective date—1985 c 464: See note following RCW 77.32.060.

Effective dates—Legislative intent—1981 c 310: See notes following RCW 77.12.170.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

Effective dates—1975 1st ex.s. c 15: See note following RCW 77.32.101.

Traps placed on private property: RCW 77.16.170, 77.21.010, 77.32.199.

77.32.197 Trapper's license—Training program or examination requisite for issuance to initial licensee. Persons purchasing a state trapping license for the first time shall present certification of completion of a course of instruction in safe, humane, and proper trapping techniques or pass an examination to establish that the applicant has the requisite knowledge.

The director shall establish a program for training persons in trapping techniques and responsibilities, including the use of trapping devices designed to painlessly capture or instantly kill. The director shall cooperate with national and state animal, humane, hunter education, and trapping organizations in the development of a curriculum. Upon successful completion of the course, trainees shall receive a trapper's training certificate signed by an authorized instructor. This certificate is evidence of compliance with this section. [1987 c 506 § 82; 1981 c 310 § 24; 1980 c 78 § 114; 1977 c 43 § 1.]

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective dates—Legislative intent—1981 c 310: See notes following RCW 77.12.170.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.32.199 Revocation of trappers license for and removal of unauthorized traps. The commission may revoke the trapper's license of a person placing unauthorized traps on private property and may remove those traps. [1987 c 372 § 4.]

77.32.211 Taxidermist, fur dealer, fishing guide, game farmer, anadromous game fish buyer—Licenses—Fish stocking and game contest permits. (1) A taxidermy license allows the holder to practice taxidermy for profit. The fee for this license is one hundred fifty dollars.

(2) A fur dealer's license allows the holder to purchase, receive, or resell raw furs for profit. The fee for this license is one hundred fifty dollars.

(3) A fishing guide license allows the holder to offer or perform the services of a professional guide in the taking of game fish. The fee for this license is one hundred fifty dollars for a resident and five hundred dollars for a nonresident.

(4) A game farm license allows the holder to operate a game farm to acquire, breed, grow, keep, and sell wildlife under conditions prescribed by the rules adopted pursuant to this title. The fee for this license is sixty dollars for the first year and forty dollars for each following year.

(5) A game fish stocking permit allows the holder to release game fish into the waters of the state as prescribed by rule of the commission. The fee for this permit is twenty dollars.

(6) A hunting, fishing, or field trial permit allows the holder to promote, conduct, hold, or sponsor a hunting, fishing, or field trial contest in accordance with rules of the commission. The fee for this permit is twenty dollars.

(7) An anadromous game fish buyer's license allows the holder to purchase or sell steelhead trout and other anadromous game fish harvested by Indian fishermen lawfully exercising fishing rights reserved by federal statute, treaty, or executive order, under conditions prescribed by rule of the director. The fee for this license is one hundred fifty dollars. [1987 c 506 § 83; 1985 c 464 § 5; 1983 c 284 § 3; 1981 c 310 § 25; 1980 c 78 § 115; 1975 1st ex.s. c 15 § 30.]

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective date—1985 c 464: See note following RCW 77.32.060.

Findings—Intent—1983 c 284: See note following RCW 82.27.020.

Effective dates—Legislative intent—1981 c 310: See notes following RCW 77.12.170.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

Effective dates—1975 1st ex.s. c 15: See note following RCW 77.32.101.

77.32.220 Reports required from persons with licenses or permits under RCW 77.32.211. Licensed taxidermists, fur dealers, anadromous game fish buyers, fishing guides, game farmers, and persons stocking game fish or conducting a hunting, fishing, or field trial contest shall make reports as required by rules of the director. [1987 c 506 § 84; 1983 c 284 § 4; 1981 c 310 § 26; 1980 c 78 § 116; 1955 c 36 § 77.32.220. Prior: 1947 c 275 § 111; Rem. Supp. 1947 § 5992–120.]

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Findings—Intent—1983 c 284: See note following RCW 82.27.020.

Effective dates—Legislative intent—1981 c 310: See notes following RCW 77.12.170.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.32.230 Free licenses—Certain veterans, blind or old persons, persons with developmental disabilities, physically handicapped persons confined to wheelchair—Use of permanent disability card—Exemption for youths—Purchase of tags, permits, stamps, and punchcards required. (1) A person sixty-five years of age or older who is an honorably discharged veteran of the United States armed forces having a service-connected disability and who has been a resident for five years may receive upon application a state hunting and fishing license free of charge.

(2) A person seventy years of age or older who has been a resident for ten years may receive, upon application, a fishing license free of charge.

(3) A blind person, or a person with a developmental disability as defined in RCW 71A.10.020 with documentation of the disability from the department of social and health services, or a physically handicapped person confined to a wheelchair may receive upon application a fishing license free of charge.

(4) A blind person or a physically handicapped person confined to a wheelchair who has been issued a card for a permanent disability under RCW 46.16.381 may use that card in place of a fishing license unless tags, permits, stamps, or punchcards are required by this chapter.

(5) A fishing license is not required for persons under the age of fifteen.

(6) Tags, permits, stamps, and punchcards required by this chapter shall be purchased separately by persons receiving a free or reduced-fee license. [1988 c 176 § 914; 1987 c 506 § 85; 1985 c 464 § 6; 1985 c 182 § 2; 1983 c 280 § 1; 1981 c 310 § 27; 1980 c 78 § 117; 1973 1st ex.s. c 58 § 1; 1961 c 94 § 2; 1959 c 245 § 2; 1955 c 36 § 77.32.230. Prior: 1947 c 275 § 112; Rem. Supp. 1947 § 5992–121.]

Severability—1988 c 176: See RCW 71A.10.900.

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective date—1985 c 464: See note following RCW 77.32.060.

Effective dates—Legislative intent—1981 c 310: See notes following RCW 77.12.170.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.32.235 Handicapped persons and senior citizens—Exemption from individual license and fee requirement—Conditions—Group permit required. Physically or mentally handicapped persons and senior citizens may fish for game fish during open season without individual licenses or the payment of individual license fees if such fishing activity is occasional, is conducted in a group supervised by staff of a department of social and health services licensed care facility, and the facility holds a group fishing permit issued by the director. The director shall issue such a permit upon application by care facility staff. [1984 c 33 § 1.]

77.32.237 Disabled hunter's permits. The commission shall attempt to enhance the hunting opportunities of persons of disability. The commission shall authorize the director to issue disabled hunter permits to persons of disability. The commission shall adopt rules governing the conduct of disabled hunters and their nondisabled companions. [1989 c 297 § 1.]

77.32.238 Disabled hunter's permits—Shooting from a motor vehicle—Assistance from nondisabled hunter. (1) A disabled hunter who possesses a disabled hunter permit and all appropriate hunting licenses may possess a loaded firearm or other legal hunting device in and may discharge a firearm or other legal hunting device from a nonmoving motor vehicle that has the engine turned off. Disabled hunters shall not be exempt from permit requirements for carrying concealed weapons, or from rules, laws, or ordinances concerning the discharge of these weapons. No hunting shall be permitted from a

motor vehicle that is parked on or beside the maintained portion of a public road.

(2) A person of disability holding a disabled hunter permit may be accompanied by one nondisabled licensed hunter who may assist the disabled hunter by killing game wounded by the disabled hunter, and by tagging and retrieving game killed by the disabled hunter. A nondisabled hunter shall not possess a loaded gun in, or shoot from, a motor vehicle. [1989 c 297 § 2.]

77.32.240 Scientific permit—Procedures—

Penalties—Fee. A scientific permit allows the holder to collect for research or display wildlife or their nests and eggs as required in RCW 77.32.010 under conditions prescribed by the director. Before a permit is issued, the applicant shall demonstrate to the director their qualifications and establish the need for the permit. The director may require a bond of up to one thousand dollars to insure compliance with the permit. Permits are valid for the time specified, unless sooner revoked.

Holders of permits may exchange specimens with the approval of the director.

A permit holder who violates this section shall forfeit the permit and bond and shall not receive a similar permit for one year. The fee for a scientific permit is ten dollars. [1981 c 310 § 28; 1980 c 78 § 119; 1955 c 36 § 77.32.240. Prior: 1947 c 275 § 113; Rem. Supp. 1947 § 5992-122.]

Effective dates—Legislative intent—1981 c 310: See notes following RCW 77.12.170.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.32.250 Licenses nontransferable—Inspection

procedures. Licenses, permits, tags, stamps, and punchcards required by this chapter shall not be transferred and, unless otherwise provided in this chapter, are void on January 1st following the year in which the license, permit, tag, stamp, or punchcard was issued.

Upon request of a wildlife agent or ex officio wildlife agent, persons licensed, operating under a permit, or possessing wildlife under the authority of this chapter shall produce required licenses, permits, tags, stamps, or punchcards for inspection and write their signatures for comparison and in addition display their wildlife. Failure to comply with the request is prima facie evidence that the person has no license or is not the person named. [1981 c 310 § 29; 1980 c 78 § 120; 1955 c 36 § 77.32-250. Prior: 1947 c 275 § 114; Rem. Supp. 1947 § 5992-123.]

Effective dates—Legislative intent—1981 c 310: See notes following RCW 77.12.170.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

77.32.256 Duplicate licenses, permits, tags, etc.—

Rules—Fee. The director shall by rule establish the conditions for issuance of duplicate licenses, permits, tags, stamps, and punchcards required by this chapter. The fee for a duplicate provided under this section is

eight dollars. [1987 c 506 § 86; 1985 c 464 § 7; 1981 c 310 § 30; 1980 c 78 § 121; 1975 1st ex.s. c 15 § 32.]

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective date—1985 c 464: See note following RCW 77.32.060.

Effective dates—Legislative intent—1981 c 310: See notes following RCW 77.12.170.

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

Effective dates—1975 1st ex.s. c 15: See note following RCW 77.32.101.

77.32.320 Transport tags for game. (1) A separate transport tag is required to hunt deer, elk, bear, cougar, sheep, mountain goat, or wild turkey.

(2) A transport tag may only be obtained subsequent to the purchase of a valid hunting license and must have permanently affixed to it the hunting license number and the supplemental stamp appropriate for the species being hunted.

(3) Persons who kill deer, elk, bear, cougar, mountain goat, sheep, moose, or wild turkey shall immediately validate and attach their own transport tag to the carcass as provided by rule of the director.

(4) Transport tags required by this section expire on March 31st following the date of issuance. [1987 c 506 § 87; 1981 c 310 § 8.]

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective dates—Legislative intent—1981 c 310: See notes following RCW 77.12.170.

77.32.340 Game stamps required—Fees, procedures.

A supplemental stamp is required to hunt deer, elk, bear, cougar, sheep, mountain goat, moose, or wild turkey.

(1) The fee for a resident deer stamp is fifteen dollars. The fee for a nonresident deer stamp is fifty dollars.

(2) The fee for a resident elk stamp is twenty dollars. The fee for a nonresident elk stamp is one hundred dollars.

(3) The fee for a resident bear stamp is fifteen dollars. The fee for a nonresident bear stamp is one hundred fifty dollars.

(4) The fee for a resident cougar stamp is twenty dollars. The fee for a nonresident cougar stamp is three hundred dollars.

(5) The fee for a mountain goat stamp is fifty dollars for residents and one hundred fifty dollars for nonresidents. The fee shall be paid at the time of application. Applicants who are not selected for a mountain goat special season permit shall receive a refund of this fee, less five dollars.

(6) The fee for a sheep stamp is seventy-five dollars for residents and three hundred dollars for nonresidents and shall be paid at the time of application. Applicants who are not selected for a sheep special season permit shall receive a refund of this fee, less five dollars.

(7) The fee for a moose stamp is one hundred fifty dollars for residents and three hundred dollars for nonresidents and shall be paid at the time of application.

Applicants who are not selected for a moose special season permit shall receive a refund of this fee, less five dollars.

(8) The fee for a wild turkey stamp is fifteen dollars.

(9) To be valid, supplemental stamps required under this section shall be permanently affixed to the transport tag at the time of purchase and the stamp numbers shall be legibly transferred to the hunting license.

(10) Supplemental stamps required under this section expire on March 31st following the date of issuance. [1985 c 464 § 8; 1984 c 240 § 5; 1981 c 310 § 11.]

Effective date—1985 c 464: See note following RCW 77.32.060.

Effective dates—**Legislative intent**—1981 c 310: See notes following RCW 77.12.170.

77.32.350 Hound stamp, upland game bird stamp, falconry license, and migratory waterfowl stamp—Fees, procedures.

(1) A hound stamp is required to hunt wild animals, except rabbits and hares, with a dog. The fee for this stamp is ten dollars.

(2) An upland game bird stamp is required to hunt for quail, partridge, and pheasant in areas designated by rule of the commission. The fee for this stamp is eight dollars.

(3) A falconry license is required to possess or hunt with a falcon, including seasons established exclusively for hunting in that manner. The fee for this license is thirty dollars.

(4) To be valid, stamps required under this section shall be permanently affixed to the licensee's appropriate hunting or fishing license.

(5) A migratory waterfowl stamp is required for all persons sixteen years of age or older to hunt migratory waterfowl. The fee for the stamp is five dollars.

(6) The migratory waterfowl stamp shall be validated by the signature of the licensee written across the face of the stamp.

(7) Stamps required by this section expire on March 31st following the date of issuance except for hound stamps, which expire December 31st following the date of issuance. [1989 c 365 § 1; 1987 c 506 § 105. Prior: 1985 c 464 § 9; 1985 c 243 § 1; 1984 c 240 § 6; 1981 c 310 § 12.]

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective date—1985 c 464: See note following RCW 77.32.060.

Effective dates—**Legislative intent**—1981 c 310: See notes following RCW 77.12.170.

77.32.360 Steelhead and upland bird punchcards—Fees, procedures.

(1) A steelhead punchcard is required to fish for steelhead trout. The fee for this punchcard is fifteen dollars.

(2) Persons possessing steelhead trout shall immediately validate their punchcard as provided by rule.

(3) Steelhead punchcards required under this section expire April 30th following the date of issuance.

(4) Each person who returns a steelhead punchcard to an authorized license dealer by June 1 following the period for which it was issued shall be given a credit equal

to five dollars towards that day's purchase of any license, permit, transport tag, punchcard, or stamp required by this chapter.

(5) An upland bird punchcard is required to hunt for quail, partridge, and pheasant in areas designated by rule of the commission. The fee for this punchcard is fifteen dollars.

(6) Persons killing quail, partridge, and pheasant shall immediately validate their punchcard as provided by rule of the commission.

(7) Upland bird punchcards required under this section expire March 31st following the date of issuance. [1987 c 506 § 88; 1985 c 464 § 10; 1981 c 310 § 13.]

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective date—1985 c 464: See note following RCW 77.32.060.

Effective dates—**Legislative intent**—1981 c 310: See notes following RCW 77.12.170.

77.32.370 Special hunting season permits—Fee.

(1) A special hunting season permit is required to hunt in each special season established under chapter 77.12 RCW.

(2) Persons may apply for special hunting season permits as provided by rule of the director.

(3) The application fee to participate in a special hunting season is two dollars. [1987 c 506 § 89; 1984 c 240 § 7; 1981 c 310 § 14.]

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective dates—**Legislative intent**—1981 c 310: See notes following RCW 77.12.170.

77.32.380 License required for persons parking on department lands or using game access facilities—Exceptions—Procedures.

Persons sixteen years of age or older who use clearly identified department lands and access facilities are required to possess a conservation license or a hunting, fishing, trapping, or free license on their person while using the facilities. The fee for this license is eight dollars annually.

The spouse, all children under eighteen years of age, and guests under eighteen years of age of the holder of a valid conservation license may use department lands and access facilities when accompanied by the license holder.

Youth groups may use department lands and game access facilities without possessing a conservation license when accompanied by a license holder.

The conservation license is nontransferable and must be validated by the signature of the holder. Upon request of a wildlife agent or ex officio wildlife agent a person using clearly identified department of wildlife lands shall exhibit the required license. [1988 c 36 § 52; 1987 c 506 § 90; 1985 c 464 § 11; 1981 c 310 § 15.]

Legislative findings and intent—1987 c 506: See note following RCW 77.04.020.

Effective date—1985 c 464: See note following RCW 77.32.060.

Effective dates—**Legislative intent**—1981 c 310: See notes following RCW 77.12.170.

77.32.390 Valid big game permits. Hunters who have valid big game permits that may be used after December

31 of the year of issuance, are not required to purchase a new hunting license in order to use the big game permit during the period covered by the permit in the year following issuance of the big game permit. [1989 c 153 § 1.]