

# TITLE 54

## PUBLIC UTILITY DISTRICTS

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### Chapter 54.04 GENERAL PROVISIONS

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*Traffic control at work sites: RCW 47.36.200 through 47.36.230.*

*Utility poles, unlawful to attach object to: RCW 70.54.090 and 70.54.100.*

**54.04.010 Definitions.** As used in this title "revenue obligation" or "revenue obligations" mean and include bonds, notes, warrants, certificates of indebtedness, or any other evidences of indebtedness issued by a district which, by the terms thereof, shall be payable from the revenues of its public utilities. [1959 c 218 § 14.]

*"Wholesale power" defined: RCW 54.04.100.*

**54.04.020 Districts authorized.** Municipal corporations, to be known as public utility districts, are hereby authorized for the purposes of \*this act and may be established within the limits of the state of Washington, as provided herein. [1931 c 1 § 2; RRS § 11606.]

**\*Reviser's note:** "this act" [1931 c 1] is codified as RCW 54.04.020, 54.04.030, 54.04.060 through 54.04.090, 54.08.010, 54.12.010, 54.12.080, 54.12.090, 54.16.010 through 54.16.190, 54.24.010, 54.24.018, and 54.32.010.

**Purpose—1931 c 1:** "The purpose of this act is to authorize the establishment of public utility districts to conserve the water and power resources of the State of Washington for the benefit of the people thereof, and to supply public utility service, including water and electricity for all uses." [1931 c 1 § 1.]

**Severability—Construction—1931 c 1:** "Adjudication of invalidity of any section, clause or part of a section of this act shall not impair or otherwise affect the validity of the act as a whole or any other part thereof.

The rule of strict construction shall have no application to this act, but the same shall be liberally construed, in order to carry out the purposes and objects for which this act is intended.

When this act comes in conflict with any provision, limitation or restriction in any other law, this act shall govern and control." [1931 c 1 § 11.]

**54.04.030 Restrictions on invading other municipalities.** \*This act shall not be deemed or construed to repeal or affect any existing act, or any part thereof, relating to the construction, operation and maintenance of public utilities by irrigation or water districts or other municipal corporations, but shall be supplemental thereto and concurrent therewith. No public utility district created hereunder shall include therein any municipal corporation, or any part thereof, where such municipal corporation already owns or operates all the utilities herein authorized: *Provided*, that in case it does not own or operate all such utilities it may be included within such public utility district for the purpose of establishing or operating therein such utilities as it does not own or operate: *Provided, further*, That no property situated within any irrigation or water districts or other municipal corporations shall ever be taxed or assessed to pay for any utility, or part thereof, of like character to any utility, owned or operated by such irrigation or water districts or other municipal corporations. [1931 c 1 § 12; RRS § 11616.]

\*Reviser's note: "This act", see note following RCW 54.04.020.

*Irrigation districts: Title 87 RCW.*

*Municipal utilities: RCW 80.04.500, 81.04.490 and chapter 35.92 RCW.*

*Water districts: Title 57 RCW.*

**54.04.040 Utilities within a city or town—Restrictions.** A district shall not construct any property to be utilized by it in the operation of a plant or system for the generation, transmission, or distribution of electric energy for sale, on the streets, alleys, or public places within a city or town without the consent of the governing body of the city or town and approval of the plan and location of the construction, which shall be made under such reasonable terms as the city or town may impose. All such properties shall be maintained and operated subject to such regulations as the city or town may prescribe under its police power. [1957 c 278 § 9. Prior: (i) 1941 c 245 § 3a; Rem. Supp. 1941 § 11616-4. (ii) 1941 c 245 § 1, part; Rem. Supp. 1941 § 11616-1.]

**54.04.050 Group employee insurance—Annuities—Retirement income policies.** (1) Any public utility district engaged in the operation of electric or water utilities may enter into contracts of group insurance for the benefit of its employees, and pay all or any part of the premiums for such insurance. Such premiums shall be paid out of the revenues derived from the operation of such properties: *Provided*, That no contract shall be entered into for the benefit of a group of less than ten employees: *And provided further*, That if the premium is to be paid by the district and employees jointly, and the benefits of the policy are offered to all eligible employees, not less than seventy-five percent of such employees may be so insured.

(2) A public utility district whose employees or officials are not members of the state retirement system

engaged in the operation of electric or water utilities may contract for individual annuity contracts, retirement income policies or group annuity contracts, including prior service, to provide a retirement plan, or any one or more of them, and pay all or any part of the premiums therefor out of the revenue derived from the operation of its properties. [1959 c 233 § 1; 1941 c 245 § 8; Rem. Supp. 1941 § 11616-6.]

**Severability—1941 c 245:** "If any section or provision of this act shall be adjudged to be invalid, such adjudication shall not affect the validity of the act as a whole or any section, provision or part thereof not adjudged to be invalid." [1941 c 245 § 11.]

*Group insurance: Chapters 48.21 and 48.24 RCW.*

**54.04.055 Employee benefits—District may continue to pay premiums after employee retires.** Any public utility district which provides for the coverage of any of its employees under any plan for individual annuity contracts, retirement income policies, group annuity contracts, group insurance for the benefit of its employees, or any other contract for the benefit of its employees, and pays all or any part of the premiums or other payments required therefor, is hereby authorized to continue to make such payments for such employees after their retirement from employment. Such payments agreed to by the public utility district shall be considered as deferred compensation. Such payments shall not be retroactive but shall only be available for those employees employed on or after August 6, 1965 provided that such payments for retired employees shall not exceed those being paid for regular employees. [1965 ex.s. c 149 § 1.]

**54.04.060 District elections.** The supervisor of elections or other proper officer of the county shall give notice of all elections held under this title, for the time and in the manner and form provided for city, town, school district, and port district elections. When the supervisor or other officer deems an emergency exists, and is requested so to do by a resolution of the district commission, he may call a special election at any time in the district, and he may combine or divide precincts for the purpose of holding special elections, and special elections shall be conducted and notice thereof given in the manner provided by law.

The supervisor or other officer shall provide polling places, appoint the election officers, provide their compensation, provide ballot boxes, and ballots or voting machines, poll books and tally sheets, and deliver them to the election officers at the polling places, publish and post notices of the elections in the manner provided by law, and apportion to the district its share of the expense of the election.

The manner of conducting and voting at the elections, opening and closing of polls, keeping of poll lists, canvassing the votes, declaring the result, and certifying the returns, shall be the same as for the election of state and county officers, except as otherwise provided herein.

The district commission shall certify to the supervisor a list of offices to be filled at a district election and the commission, if it desires to submit to the voters of the

district a proposition, shall require the secretary of the commission to certify it at the time and in the manner and form provided for certifying propositions by the governing board of cities, towns, and port districts. [1951 c 207 § 1; 1941 c 245 § 5; 1931 c 1 § 5; RRS § 11609.]

*Certification of measures: RCW 29.27.060.*

*Elections: Title 29 RCW.*

*Notice of election: RCW 29.27.080.*

**54.04.070 Contracts for work or materials—Notice—Emergency purchases.** Any item, or items of the same kind of materials, equipment, or supplies purchased, the estimated cost of which is in excess of five thousand dollars, exclusive of sales tax shall be by contract: *Provided*, That a district may make purchases of the same kind of items of materials, equipment and supplies not exceeding five thousand dollars in any calendar month without a contract, purchasing any excess thereof over five thousand dollars by contract. Any work ordered by a district commission, the estimated cost of which is in excess of ten thousand dollars exclusive of sales tax, shall be by contract, except that a district commission may have its own regularly employed personnel perform work which is an accepted industry practice under prudent utility management without a contract. Prudent utility management means performing work with regularly employed personnel utilizing material of a worth not exceeding thirty thousand dollars in value without a contract: *Provided*, That such limit on the value of material being utilized in work being performed by regularly employed personnel shall not include the value of individual items of equipment purchased or acquired and used as one unit of a project. Before awarding such a contract, the commission shall publish a notice once or more in a newspaper of general circulation in the district at least twenty days before the letting of the contract, inviting sealed proposals for the work or materials; plans and specifications of which shall at the time of the publication be on file at the office of the district subject to public inspection: *Provided*, That any published notice ordering work to be performed for the district shall be mailed at the time of publication to any established trade association which files a written request with the district to receive such notices. The commission may at the same time and as part of the same notice, invite tenders for the work or materials upon plans and specifications to be submitted by the bidders.

Whenever equipment or materials required by a district are held by a governmental agency and are available for sale but such agency is unwilling to submit a proposal, the commission may ascertain the price of such items and file a statement of such price supported by the sworn affidavit of one member of the commission and may consider such price as a bid without a deposit or bond: *Provided*, That where an emergency arises endangering the public safety, or threatening property damage, the commission may purchase materials or order work performed by others in addition to regularly employed personnel in any amount necessary without calling for bids after having taken precautions

to secure the lowest price practicable under the circumstances. [1971 ex.s. c 220 § 4; 1955 c 124 § 2. Prior: 1951 c 207 § 2; 1931 c 1 § 8, part; RRS § 11612, part.]

*Contracts with state department of highways: RCW 47.01.210.*

*Emergency public works: Chapter 39.28 RCW.*

*Employment of certain aliens: Chapter 39.20 RCW.*

*Prevailing wages on public works: Chapter 39.12 RCW.*

*Washington commodities to be used: Chapter 39.24 RCW.*

**54.04.080 Bids—Deposit—Contract—Bond—Definitions.** Any notice inviting sealed bids shall state generally the work to be done, or the material to be purchased and shall call for proposals for furnishing it, to be sealed and filed with the commission on or before the time named therein. Each bid shall be accompanied by a certified or cashier's check, payable to the order of the commission, for a sum not less than five percent of the amount of the bid, or accompanied by a bid bond in an amount not less than five percent of the bid with a corporate surety licensed to do business in the state, conditioned that the bidder will pay the district as liquidated damages the amount specified in the bond unless he enters into a contract in accordance with his bid and furnishes the performance bond herein mentioned within ten days from the date on which he is notified that he is the successful bidder. At the time and place named, the bids shall be publicly opened and read, and the commission shall canvass the bids, and may let the contract to the lowest responsible bidder upon the plans and specifications on file, or to the best bidder submitting his own plans or specifications; or if the contract to be let is to construct or improve electrical facilities, the contract may be let to the lowest bidder prequalified according to the provisions of RCW 54.04.085 upon the plans and specifications on file, or to the best bidder submitting his own plans and specifications: *Provided*, That no contract shall be let for more than fifteen percent in excess of the estimated cost of the materials or work. The commission may reject all bids and readvertise, and in such case all checks shall be returned to the bidders. The commission may procure materials in the open market, have its own personnel perform the work or negotiate a contract for such work to be performed by others, in lieu of readvertising, if it receives no bid. If the contract is let, all checks shall be returned to the bidders, except that of the successful bidder, which shall be retained until a contract is entered into and a bond to perform the work furnished, with sureties satisfactory to the commission, in an amount to be fixed by the commission, not less than twenty-five percent of the contract price, in accordance with the bid. If the bidder fails to enter into the contract and furnish the bond within ten days from the date at which he is notified that he is the successful bidder, his check and the amount thereof shall be forfeited to the district.

The commission shall, by resolution, define the term "same kind of materials, equipment, and supplies" with respect to purchase of items under the provisions of RCW 54.04.070.

The term "construction or improvement of any electrical facility" as used in this section and in RCW 54.04.085, shall mean the construction, the moving, maintenance, modification, or enlargement of facilities primarily used or to be used for the transmission or distribution of electricity at voltages above seven hundred fifty volts, including structures directly supporting transmission or distribution conductors but not including site preparation, housing, or protective fencing associated with but not included in a contract for such construction, moving, modification, maintenance, or enlargement of such facilities.

The commission shall be the final authority with regard to whether a bid is responsive to the call for bids and as to whether a bidder is a responsible bidder under the conditions of his bid. No award of contract shall be invalidated solely because of the failure of any prospective bidder to receive an invitation to bid. [1972 ex.s. c 41 § 1; 1971 ex.s. c 220 § 3; 1955 c 124 § 3. Prior: 1951 c 207 § 3; 1931 c 1 § 8, part; RRS § 11612, part.]

**54.04.085 Electrical facility construction or improvement—Bid proposals—Contract proposal forms—Conditions for issuance—Appeals.** A district shall require that bid proposals upon any construction or improvement of any electrical facility shall be made upon contract proposal form supplied by the district commission, and in no other manner. The district commission shall, before furnishing any person, firm or corporation desiring to bid upon any electrical work with a contract proposal form, require from such person, firm or corporation, answers to questions contained in a standard form of questionnaire and financial statement, including a complete statement of the financial ability and experience of such person, firm, or corporation in performing electrical work. Such questionnaire shall be sworn to before a notary public or other person authorized to take acknowledgment of deeds, and shall be submitted once a year and at such other times as the district commission may require. Whenever the district commission is not satisfied with the sufficiency of the answers contained in such questionnaire and financial statement or whenever the district commission determines that such person, firm, or corporation does not meet all of the requirements hereinafter set forth it may refuse to furnish such person, firm or corporation with a contract proposal form and any bid proposal of such person, firm or corporation must be disregarded. In order to obtain a contract proposal form, a person, firm or corporation shall have all of the following requirements:

- (1) Adequate financial resources, or the ability to secure such resources;
- (2) The necessary experience, organization, and technical qualifications to perform the proposed contract;
- (3) The ability to comply with the required performance schedule taking into consideration all of its existing business commitments;
- (4) A satisfactory record of performance, integrity, judgment and skills; and
- (5) Be otherwise qualified and eligible to receive an award under applicable laws and regulations.

Such refusal shall be conclusive unless appeal therefrom to the superior court of the county where the utility district is situated or Thurston county be taken within fifteen days, which appeal shall be heard summarily within ten days after the same is taken and on five days' notice thereof to the district commission. [1971 ex.s. c 220 § 2.]

**54.04.090 Minimum wages.** Each contractor and subcontractor performing work for a public utility district or a local utility district within a public utility district shall pay or cause to be paid to its employees on the work or under the contract or subcontract, not less than the minimum scale fixed by the resolution of the commission prior to the notice and call for bids on the work. The commission, in fixing the minimum scale of wages, shall fix them as nearly as possible to the current prevailing wages within the district for work of like character. [1955 c 124 § 4. Prior: 1931 c 1 § 8, part; RRS § 11612, part.]

*Prevailing wages on public works: Chapter 39.12 RCW.*

**54.04.100 Wholesale power—Procedure as to rate filing—Definition—Duty to furnish to district.** Whenever a decree of public use and necessity heretofore has been or hereafter shall be entered in condemnation proceedings conducted by a public utility district for the acquisition of electrical distribution properties, or whenever it has executed a contract for the purchase of such properties, the district may cause to be filed with the \*department of public service a copy of such contract or a certified copy of the decree, together with a petition requesting that the department cause a rate to be filed with it for the sale of wholesale power to the district. Thereupon the \*department of public service shall order that a rate be filed with the department forthwith for the sale of wholesale power to such district. The term "wholesale power" means electric energy sold for purposes of resale. The department shall have authority to enter such order as to any public service corporation which owns or operates the electrical distribution properties being condemned or purchased or as to any such corporation which owns or operates transmission facilities within a reasonable distance of such distribution properties and which engages in the business of selling wholesale power, pursuant to contract or otherwise. The rate filed shall be for the period of service specified by the district, or if the district does not specify a particular period, such rate shall apply from the commencement of service until the district terminates same by thirty days' written notice.

Upon reasonable notice, any such public service corporation shall furnish wholesale power to any public utility district owning or operating electrical distribution properties. Whenever a public service corporation shall furnish wholesale power to a district and the charge or rate therefor is reviewed by the department, such reasonable rate as the department finally may fix shall apply as to power thereafter furnished and as to that previously furnished under such charge or rate from the time that the complaint concerning the same shall have been filed by the department or the district,



as the case may be. [1945 c 130 § 2; Rem. Supp. 1945 § 10459-12. Formerly RCW 54.04.010, 54.04.100 and 54.04.110.]

**\*Reviser's note:** The powers and duties of the "department of public service" have devolved upon the public service commission through a chain of statutes as follows: (1) 1945 c 267 §§ 1, 3, 6, 7; (2) 1949 c 117 §§ 1, 3, 8.

**Purpose—1945 c 130:** "The legislature has found that the public utility districts of this state, including several which at the present moment are completing the acquisition of electrical properties and the sale of revenue bonds, have immediate need for this act, in order to effectuate timely arrangements for their wholesale power requirements, clarify their condemnation procedure, and plan their operations." [1945 c 130 § 1.]

**Severability—1945 c 130:** "If any section or provision of this act shall be adjudged to be invalid, such adjudication shall not affect the validity of the act as a whole or any section, provision or part thereof not adjudged to be invalid." [1945 c 130 § 5.]

The foregoing annotations apply to RCW 54.04.100, 54.04.120 and 54.20.010.

**54.04.120 Planning powers.** In order that the commissioners of a public utility district may be better able to plan for the marketing of power and for the development of resources pertaining thereto, they shall have the same powers as are vested in a board of county commissioners as provided in chapter 44, Laws of 1935 (sections 9322-2 to 9322-4, both inclusive, and 9322-10 to 9322-11 inclusive, Remington's Revised Statutes, also Pierce's Perpetual Code 776-3 to -7, 776-19 and -21), entitled: "An Act relating to city, town, county and regional planning and the creation, organization, duties and powers of planning commissions." For the purposes of such act, the president of a public utility district shall have the powers of the chairman of the board of county commissioners, and a planning commission created hereunder shall have the same powers, enumerated in the above sections, with reference to a public utility district as a county planning commission has with reference to a county. [1945 c 130 § 4; Rem. Supp. 1945 § 10459-14.]

**Reviser's note:** The portions of chapter 44, Laws of 1935 compiled as RRS §§ 9322-2 to 9322-4 and 9322-10 to 9322-11 are codified in RCW 35.63.020 through 35.63.070.

**54.04.130 Employee benefit plans when private utility acquired—Rights, powers and duties as to existing private employee benefit plans.** Whenever any municipal corporation acquires by condemnation or otherwise any utility which at the time of acquisition is in private ownership and the employees of such private utility have been for at least two years and are at the time of acquisition covered by any plan for individual annuity contracts, retirement income policies, group annuity contracts, group insurance for the benefit of employees, or any other contract for the benefit of employees, such district shall, when the personnel is retained by the district, assume all of the obligations and liabilities of the private utility acquired with relation to such plan and the employees covered thereby at the time of acquisition; or the municipal corporation may by agreement with a majority of the employees affected substitute a plan or contract of the same or like nature. The municipal corporations acquiring such private utility shall

proceed in such manner as is necessary so as not to reduce or impair any benefits or privileges which such employees would have received or be entitled to had such acquisition not been effected. The district may pay all or any part of the premiums or other payments required therefor out of the revenue derived from the operation of its properties. [1961 c 139 § 1.]

**54.04.140 Employee benefit plans when private utility acquired—Admission to district's employee plan—Service credit—Contributions—Benefits.** Any person affected by RCW 54.04.130 who was employed by the private utility at the time of acquisition may, at his option, apply to the district and/or appropriate officers, for admission to any plan available to other employees of the district. Every such person who was covered at the time of acquisition by a plan with the private utility shall have added and accredited to his period of employment his period of immediately preceding continuous service with such private utility if he remains in the service of the municipal corporation until such plan for which he seeks admission becomes applicable to him.

No such person shall have added and accredited to his period of employment his period of service with said private utility unless he or a third party shall pay to the appropriate officer or fund of the plan to which he requests admission his contribution for the period of such service with the private utility at the rate provided in or for such plan to which he desires admission, or if he shall be entitled to any private benefits, as a result of such private service, unless he agrees at the time of his employment with the district to accept a reduction in the payment of any benefits payable under the plan to which he requests entry that are based in whole or in part on such added and accredited service by the amount of benefits received. For the purposes of contributions, the date of entry of service shall be deemed the date of entry into service with the private utility, which service is accredited by this section, and the amount of contributions for the period of accredited service shall be based on the wages or salary of such person during that added and accredited period of service with the private utility.

The district may receive such payments from a third party and shall make from such payments contributions with respect to such prior service as may be necessary to enable it to assume its obligations.

After such contributions have been made and such service added and accredited such employee shall be established in the plan to which he seeks admission with all rights, benefits and privileges that he would have been entitled to had he been a member of the plan from the beginning of his immediately preceding continuous employment with the private utility or of his eligibility. [1961 c 139 § 2.]

**54.04.150 Employee benefit plans when private utility acquired—Agreements and contracts—Prior rights preserved.** The municipal corporation may enter into any agreements and contracts necessary to carry out the powers and duties prescribed by RCW 54.04.130 and

54.04.140, but nothing in RCW 54.04.130 through 54.04.160 shall be so construed as requiring without consent the modification of the obligation of any contract or as requiring any third party to modify the rights, privileges or obligations acquired or incurred under a prior agreement. [1961 c 139 § 3.]

**54.04.160 Assumption of obligations of private pension plan when urban transportation system acquired.** Any municipal corporation which has heretofore or shall hereafter acquire from a private owner any urban transportation system which at the time of such acquisition has or had in effect any pension or retirement system for its employees, shall assume all such obligations with respect to continued contributions to and/or administration of, such retirement system, as the private owner bore or shall bear at such time, insofar as shall be necessary to discharge accrued obligations under such retirement system to beneficiaries who are not thereafter made members of a municipal or state retirement system. [1961 c 139 § 4.]

**54.04.170 Collective bargaining authorized for employees.** Employees of public utility districts are hereby authorized and entitled to enter into collective bargaining relations with their employers with all the rights and privileges incident thereto as are accorded to similar employees in private industry. [1963 c 28 § 1.]

**54.04.180 Collective bargaining authorized for districts.** Any public utility district may enter into collective bargaining relations with its employees in the same manner that a private employer might do and may agree to be bound by the result of such collective bargaining. [1963 c 28 § 2.]

**Chapter 54.08**

**FORMATION—DISSOLUTION—ELECTIONS**

**Sections**

- 54.08.010 Districts including entire county or less—Procedure.
- 54.08.041 Formation election expenses.
- 54.08.050 Validity of district, questioning of.
- 54.08.060 Special election for formation of district.
- 54.08.070 Construction or acquisition of electric facilities for generation, transmission or distribution of power—  
When voter approval required—Election.
- 54.08.080 Dissolution.

**54.08.010 Districts including entire county or less—Procedure.** At any general election the board of county commissioners of any county in this state may, or on petition of ten percent of the qualified electors of such county, based on the total vote cast in the last general county election, shall, by resolution, submit to the voters of such county the proposition of creating a public utility district which shall be coextensive with the limits of such county as now or hereafter established. Such petition shall be filed with the county auditor, who shall within fifteen days examine the signatures thereof and certify to the sufficiency or insufficiency thereof, and for such purpose the county auditor shall have access to all registration books in the possession of election officers within such county. If such petition be

found to be insufficient, it shall be returned to the persons filing the same, who may amend or add names thereto for ten days, when the same shall be returned to the county auditor, who shall have an additional fifteen days to examine the same and attach his certificate thereto. No person having signed such petition shall be allowed to withdraw his name therefrom after the filing of the same with the county auditor. Whenever such petition shall be certified to as sufficient, the county auditor shall forthwith transmit the same, together with his certificate of sufficiency attached thereto, to the board of county commissioners, who shall thereupon immediately transmit such proposition to the election board of such county, and it shall be the duty of such county election board to submit such proposition to the voters at the next general election. The notice of the election shall state the boundaries of the proposed public utility district and the object of such election, and shall in other respects conform to the requirements of the general laws of the state of Washington, governing the time and manner of holding elections. In submitting the said question to the voters for their approval or rejection, the proposition shall be expressed on said ballot substantially in the following terms:

- Public Utility District No. .... YES
- Public Utility District No. .... NO

Any petition for the formation of a public utility district may describe a less area than the entire county in which the petition is filed, the boundaries of which shall follow the then existing precinct boundaries and not divide any voting precinct; and in the event that such a petition is filed the board of county commissioners shall fix a date for a hearing on such petition, and shall publish the petition, without the signatures thereto appended, for two weeks prior to the date of the hearing, together with a notice stating the time of the meeting when such petition will be heard. Such publication, and all other publications required by this act, shall be in a newspaper published in the proposed or established public utility district, or, if there be no such newspaper, then in a newspaper published in the county in which such district is situated, and of general circulation in such county. The hearing on such petition may be adjourned from time to time, not exceeding four weeks in all. If upon the final hearing the board of county commissioners shall find that any lands have been unjustly or improperly included within the proposed public utility district and will not be benefited by inclusion therein, the said board shall change and fix the boundary lines in such manner as it shall deem reasonable and just and conducive to the public welfare and convenience, and make and enter an order establishing and defining the boundary lines of the proposed public utility district: *Provided*, That no lands shall be included within the boundaries so fixed lying outside the boundaries described in the petition, except upon the written request of the owners of such lands. Thereafter the same procedure shall be followed as prescribed in \*this act for the formation of a public utility district including an entire county, except that the petition and election shall be confined solely to the lesser public utility

district. [1931 c 1 § 3; RRS § 11607. Formerly RCW 54.08.010 and 54.08.020.]

\*Reviser's note: "this act", see note following RCW 54.04.020.  
Elections: Title 29 RCW.

**54.08.041 Formation election expenses.** All expenses of elections for the formation of such public utility districts shall be paid by the county holding such election, and such expenditure is hereby declared to be for a county purpose, and the money paid out for such purpose shall be repaid to such county by the public utility district, if formed. [1969 c 106 § 2.]

**Construction—1969 c 106:** "The rule of strict construction shall have no application to this act. The act shall be liberally construed, in order to carry out the purposes and objectives for which this act is intended." [1969 c 106 § 8.]

**Severability—1969 c 106:** "If any provision of this act, or its application to any person or circumstance, is held invalid, the remainder of this act, or the application to other persons or circumstances, is not affected." [1969 c 106 § 9.]

The foregoing annotations apply to RCW 54.08.041, 54.08.070, 54.08.080, 54.12.010, 54.12.080, 54.16.010 and 54.16.090.

**54.08.050 Validity of district, questioning of.** The existence of any public utility district now or hereafter formed under chapter 1, Laws of 1931, cannot hereafter be legally questioned by any person except the state of Washington in an appropriate court action brought within six months from the date that the county election board shall have canvassed the returns of the election held on the proposition of creating such district. If the existence of a district is not challenged within the period above specified, by the filing and service of petition or complaint in the action aforesaid, the state of Washington thereafter shall be barred forever from questioning the legal existence and validity of such district by reason of any defect in the organization thereof, and the same shall be deemed duly and regularly organized under the laws of this state. [1941 c 245 § 10; Rem. Supp. 1941 § 11616-7.]

Reviser's note: For the codification of chapter 1, Laws of 1931 see note following RCW 54.04.020.

**54.08.060 Special election for formation of district.** Whenever a proposition for the formation of a public utility district is to be submitted to voters in any county, the board of county commissioners may by resolution call a special election, and at the request of petitioners for the formation of such district contained in the petition shall do so and shall provide for holding the same at the earliest practicable time. If the boundaries of the proposed district embrace an area less than the entire county, such election shall be confined to the area so included. The notice of such election shall state the boundaries of the proposed district and the object of such election; in other respects, such election shall be held and called in the same manner as provided by law for the holding and calling of general elections: *Provided*, That notice thereof shall be given for not less than ten days nor more than thirty days prior to such special election. In submitting the said proposition to the voters for their approval or rejection, such proposition shall be

expressed on the ballots in substantially the following terms:

Public Utility District No. .... YES  
Public Utility District No. .... NO  
The term "general election" as used herein means biennial general elections at which state and county officers are elected. [1951 c 207 § 5.]

Elections: Title 29 RCW.

**54.08.070 Construction or acquisition of electric facilities for generation, transmission or distribution of power—When voter approval required—Election.** Any district which does not own or operate electric facilities for the generation, transmission or distribution of electric power on March 25, 1969, or any district which hereafter does not construct or acquire such electric facilities within ten years of its creation, shall not construct or acquire any such electric facilities without first submitting such proposal to the voters of such district for their approval: *Provided*, That a district shall have the power to construct or acquire electric facilities within ten years following its creation by action of its commission without submitting such action to voter approval.

The proposal to construct or acquire electric facilities may be submitted at any general election (as defined in \*this act), to the voters of the district by resolution of the commission or in the same manner as provided for the creation of a district under RCW 54.08.010.

The proposal submitted to the voters for their approval or rejection, shall be expressed on the ballot substantially in the following terms:

Shall Public Utility District No. ----- of -----  
County construct or acquire electric facilities for the generation, transmission or distribution of electric power?

Yes   
No

Within ten days after such election, the election board of the county shall canvass the returns, and if at such election a majority of the voters voting on such proposition shall vote in favor of such construction or acquisition of electric facilities, the district shall be authorized to construct or acquire electric facilities. [1969 c 106 § 3.]

\*Reviser's note: "this act" used in the second paragraph apparently refers to chapter 106, Laws of 1969 which is codified as RCW 54.08.041, 54.08.070, 54.08.080, 54.12.010, 54.12.080, 54.16.010 and 54.16.090.

**54.08.080 Dissolution.** Any district now or hereafter created under the laws of this state may be dissolved, as hereinafter provided, by a majority vote of the qualified electors of such district at any general election upon a resolution of the district commission, or upon petition being filed and such proposition for dissolution submitted to said electors in the same manner provided by chapter 54.08 RCW for the creation of public utility districts. The returns of the election on such proposition for dissolution shall be canvassed and the results declared in the same manner as is provided by RCW 54.08.010: *Provided, however*, That any such proposition

to dissolve a district shall not be submitted to the electors if within five years prior to the filing of such petition or resolution such district has undertaken any material studies or material action relating to the construction or acquisition of any utility properties or if such district at the time of the submission of such proposition is actually engaged in the operation of any utility properties.

If a majority of the votes cast at the election favor dissolution, the commission of the district shall petition, without any filing fee, the superior court of the county in which such district is located for an order authorizing the payment of all indebtedness of the district and directing the transfer of any surplus funds or property to the general fund of the county in which such district is organized. [1969 c 106 § 4.]

### Chapter 54.12 COMMISSIONERS

#### Sections

54.12.010	When district formed—Commissioners—Election—Terms—District boundaries change, etc.
54.12.080	Compensation and expenses—Group insurance.
54.12.090	President—Secretary—Rules—Seal—Minutes.
54.12.100	Oath or affirmation.

**54.12.010 When district formed—Commissioners—Election—Terms—District boundaries change, etc.** Within ten days after such election, the election board of the county shall canvass the returns, and if at such election a majority of the voters voting upon such proposition shall vote in favor of the formation of such district, the election board shall so declare in its canvass of the returns of such election and such public utility district shall then be and become a municipal corporation of the state of Washington, and the name of such public utility district shall be Public Utility District No. \_\_\_\_\_ of \_\_\_\_\_ County. The powers of the public utility district shall be exercised through a commission consisting of three members in districts of the second class, and five members in districts of the first class. When the public utility district is coextensive with the limits of such county, then, at the first election of commissioners and until any change shall have been made in the boundaries of public utility district commissioner districts, one public utility district commissioner shall be chosen from each of the three county commissioner districts of the county in which the public utility district is located. When the public utility district comprises only a portion of the county, with boundaries established in accordance with chapter 54.08 RCW, three public utility district commissioner districts, numbered consecutively, having approximately equal population and boundaries, following ward and precinct lines, as far as practicable, shall be described in the petition for the formation of the public utility district, which shall be subject to appropriate change by the county commissioners if and when they change the boundaries of the proposed public utility district, and one commissioner shall be elected from each of said public utility district commissioner districts. In all districts of the first class an additional commissioner at

large shall be chosen from each of the two at large districts. No person shall be eligible to be elected to the office of public utility district commissioner for a particular district commissioner district unless he is a freeholder within the boundaries of such public utility district, and a qualified voter of the public utility district commissioner district or at large district from which he is elected.

Except as otherwise provided, the term of office of each public utility district commissioner other than the commissioners at large shall be six years, and the term of each commissioner at large shall be four years. Each term shall be computed from the first day of December following the commissioner's election. One commissioner at large and one commissioner from a commissioner district shall be elected at each biennial general election for the term of four years and six years respectively. All candidates shall be voted upon by the entire public utility district.

When a public utility district is formed, three public utility district commissioners shall be elected at the same election at which the proposition is submitted to the voters as to whether such public utility district shall be formed. The commissioner residing in commissioner district number one shall hold office for the term of six years; the commissioner residing in commissioner district number two shall hold office for the term of four years; and the commissioner residing in commissioner district number three shall hold office for the term of two years. The commissioners first to be elected as above provided shall hold office from the first day of the month following the commissioners' election. Each term shall be computed from the first day of December following the commissioners' election.

All public utility district commissioners shall hold office until their successors shall have been elected and have qualified. A nomination for public utility district commissioner shall be by a petition signed by one hundred qualified electors of the public utility district to be filed in the office of the county auditor not more than sixty days, and not less than forty-six days prior to the day of such election. At the time of filing such nominating petition, the person so nominated shall execute and file a declaration of candidacy subject to the provisions of RCW 29.21.060, as now or hereafter amended. The petition and each page of the petition shall state whether the nomination is for a commissioner from a particular commissioner district or for a commissioner at large and shall state the districts; otherwise it shall be void. A vacancy in the office of public utility district commissioner shall occur by death, resignation, removal, conviction of a felony, nonattendance at meetings of the public utility district commission for a period of sixty days unless excused by the public utility district commission, by any statutory disqualification, or by any permanent disability preventing the proper discharge of his duty. In the event of a vacancy in said office, such vacancy shall be filled at the next general election, the vacancy in the interim to be filled by appointment by the remaining commissioners. If more than one vacancy exists at the same time in a district of the second class, or more than two in a district of the first class, a special

election shall be called by the county election board upon the request of the remainder, or, that failing, by the county election board, such election to be held not more than forty days after the occurring of such vacancies.

A majority of the persons holding the office of public utility district commissioner at any time shall constitute a quorum of the commission for the transaction of business, and the concurrence of a majority of the persons holding such office at the time shall be necessary and shall be sufficient for the passage of any resolution, but no business shall be transacted, except in usual and ordinary course, unless there are in office at least a majority of the full number of commissioners fixed by law.

The boundaries of the public utility district commissioners' district may be changed only by the public utility district commission, and shall be examined every ten years to determine substantial equality of population, but said boundaries shall not be changed oftener than once in four years, and only when all members of the commission are present. The proposed change of the boundaries of the public utility district commissioners' district must be made by resolution and after public hearing. Notice of the time of a public hearing thereon shall be published for two weeks prior thereto. Upon a referendum petition signed by ten percent of the qualified voters of the public utility district being filed with the county auditor, the board of county commissioners shall submit such proposed change of boundaries to the voters of the public utility district for their approval or rejection. Such petition must be filed within ninety days after the adoption of resolution of the proposed action. The validity of said petition shall be governed by the provisions of chapter 54.08 RCW. [1969 c 106 § 1; 1955 c 265 § 9; 1941 c 245 § 4; 1931 c 1 § 4; Rem. Supp. 1941 § 11608. Formerly RCW 54.08.030, 54.08.040, 54.12.010 through 54.12.070.]

**54.12.080 Compensation and expenses—Group insurance.** Each district commissioner of a district operating utility properties serving more than two thousand customers shall receive a salary of one hundred fifty dollars per month. Commissioners of other districts shall serve without salary unless the district provides by resolution for the payment thereof, which however shall not exceed one hundred fifty dollars per month for each commissioner. In addition to salary, all districts may provide by resolution for the payment of per diem compensation to each commissioner at a rate not exceeding thirty-five dollars for each day or major part thereof devoted to the business of the district, and days upon which he attends meetings of the commission of his district or meetings attended by one or more commissioners of two or more districts called to consider business common to them, but such per diem compensation paid during any one year to a commissioner shall not exceed five thousand dollars. Per diem compensation shall not be paid for services of a ministerial or professional nature.

Each district commissioner shall be reimbursed for reasonable expenses actually incurred in connection

with such business and meetings, including his subsistence and lodging and travel while away from his place of residence.

Any district providing group insurance for its employees, covering them, their immediate family and dependents, may provide insurance for its commissioner with the same coverage. [1969 c 106 § 5; 1967 c 161 § 1; 1957 c 140 § 2; 1955 c 124 § 5; 1951 c 207 § 4. Prior: (i) 1931 c 1 § 8, part; RRS § 11612, part. (ii) 1941 c 245 § 6; Rem. Supp. 1941 § 11616-5.]

**54.12.090 President—Secretary—Rules—Seal—Minutes.** The commission shall elect from its members, a president and secretary, and shall, by resolution, adopt rules governing the transaction of district business, and adopt an official seal. All proceedings of the commission shall be by motion or resolution, recorded in its minute books, which shall be public records.

A majority of the members shall constitute a quorum of the commission for the transaction of business. The concurrence of a majority of the whole commission in office at the time shall be necessary for the passage of any resolution, and no business shall be transacted, except in usual and ordinary course, unless there are in office at least a majority of the full number of commissioners as fixed by law.

The commission may create and fill such positions and fix salaries and bonds thereof as it may provide by resolution. [1955 c 124 § 6. Prior: 1931 c 1 § 8, part; RRS § 11612, part.]

**54.12.100 Oath or affirmation.** Each commissioner before he enters upon the duties of his office shall take and subscribe an oath or affirmation that he will faithfully and impartially discharge the duties of his office to the best of his ability. This oath, or affirmation, shall be administered and certified by an officer of the county in which the district is situated, who is authorized to administer oaths, without charge therefor. [1959 c 265 § 10.]

## Chapter 54.16 POWERS

Sections	
54.16.010	Surveys, plans, investigations or studies.
54.16.020	Acquisition of property and rights—Eminent domain.*
54.16.030	Water and irrigation works.
54.16.040	Electric energy.
54.16.050	Water rights.
54.16.060	Intertie lines.
54.16.070	May borrow money, contract indebtedness, issue bonds or obligations—Guaranty fund.
54.16.080	Levy and collection of taxes—Tax anticipation warrants.
54.16.090	Contracts with other agencies or utilities—Gifts, etc.—Employees and experts—Advancements.
54.16.095	Liability insurance for officials and employees.
54.16.100	Manager—Appointment—Salary—Duties.
54.16.110	May sue and be sued—Claims.
54.16.120	Local utility districts authorized.
54.16.130	Local districts—Procedure—Financing.
54.16.140	Petition or resolution for local district—Hearing—Notice.

- 54.16.150 Procedure when petition is signed by majority of landowners.
- 54.16.160 Assessment roll—Hearing—Appeal—Expenses.
- 54.16.165 Segregation of assessments.
- 54.16.170 Apportionment of cost of improvement.
- 54.16.180 Sale, lease, disposition of properties—Procedure—Acquisition, operation of sewage system by districts in certain counties.
- 54.16.190 General resolutions.
- 54.16.200 Joint exercise of powers and joint acquisition of properties.
- 54.16.210 Joint acquisition, operation, etc., with city of electrical utility properties.
- 54.16.220 Columbia river hydroelectric projects—Grant back of easements to former owners.

*Division of power resources: Chapter 43.21 RCW.*

**54.16.010 Surveys, plans, investigations or studies.** A district may make surveys, plans, investigations or studies for generating electric energy by water power, steam, or other methods, and for systems and facilities for the generation, transmission or distribution thereof, and for domestic and industrial water supply and irrigation, and for matters and purposes reasonably incidental thereto, within or without the district, and compile comprehensive maps and plans showing the territory that can be most economically served by the various resources and utilities, the natural order in which they should be developed, and how they may be joined and coordinated to make a complete and systematic whole. [1969 c 106 § 6; 1955 c 390 § 2. Prior: 1945 c 143 § 1(a); 1931 c 1 § 6(a); Rem. Supp. 1945 § 11610(a).]

*Information from division of power resources: RCW 43.21.220.*

**54.16.020 Acquisition of property and rights—Eminent domain.** A district may construct, condemn and purchase, purchase, acquire, lease, add to, maintain, operate, develop, and regulate all lands, property, property rights, water, water rights, dams, ditches, flumes, aqueducts, pipes and pipe lines, water power, leases, easements, rights of way, franchises, plants, plant facilities, and systems for generating electric energy by water power, steam, or other methods; plants, plant facilities, and systems for developing, conserving, and distributing water for domestic use and irrigation; buildings, structures, poles and pole lines, and cables and conduits and any and all other facilities; and may exercise the right of eminent domain to effectuate the foregoing purposes or for the acquisition and damaging of such property and rights, or property of any kind appurtenant thereto, and for the purpose of acquiring the right to make physical connection with plants and plant facilities of all persons and municipalities. The right of eminent domain shall be exercised pursuant to resolution of the commission and conducted in the same manner and by the same procedure as is provided for the exercise of that power by cities and towns of the state in the acquisition of like property and property rights. It shall be no defense to a condemnation proceeding that a portion of the electric current generated or sold by the district will be applied to private purposes, if the principal uses intended are public: *Provided*, That no public utility owned by a city or town shall be condemned, and none shall be purchased without

submission of the question to the voters of the utility district. In a condemnation proceeding, the court shall submit to the jury the values placed upon the property by the taxing authority for taxation purposes, and in respect to property, plants, and facilities of persons using public highways for furnishing public service without franchises, shall consider in determining the value thereof the fact that the property, plants, and facilities are subject to be removed from the highways by reason of being so operated without a franchise. [1955 c 390 § 3. Prior: 1945 c 143 § 1(b); 1931 c 1 § 6(b); Rem. Supp. 1945 § 11610(b).]

*Eminent domain: State Constitution Art. 1 § 16 (Amendment 9)*

*Eminent domain by cities: Chapter 8.12 RCW.*

**54.16.030 Water and irrigation works.** A district may construct, purchase, condemn and purchase, acquire, add to, maintain, conduct, and operate water works and irrigation plants and systems, within or without its limits, for the purpose of furnishing the district, and the inhabitants thereof, and any other persons including public and private corporations within or without its limits, with an ample supply of water for all purposes, public and private, including water power, domestic use, and irrigation, with full and exclusive authority to sell and regulate and control the use, distribution, and price thereof. [1955 c 390 § 4. Prior: 1945 c 143 § 1(c); 1931 c 1 § 6(c); Rem. Supp. 1945 § 11610(c).]

**54.16.040 Electric energy.** A district may purchase, within or without its limits, electric current for sale and distribution within or without its limits, and construct, condemn and purchase, purchase, acquire, add to, maintain, conduct, and operate works, plants, transmission and distribution lines and facilities for generating electric current, operated either by water power, steam, or other methods, within or without its limits, for the purpose of furnishing the district, and the inhabitants thereof and any other persons, including public and private corporations, within or without its limits, with electric current for all uses, with full and exclusive authority to sell and regulate and control the use, distribution, rates, service, charges, and price thereof, free from the jurisdiction and control of the utilities and transportation commission, in all things, together with the right to purchase, handle, sell, or lease motors, lamps, transformers and all other kinds of equipment and accessories necessary and convenient for the use, distribution, and sale thereof: *Provided*, That the commission shall not supply water to a privately owned utility for the production of electric energy, but may supply, directly or indirectly, to an instrumentality of the United States government or any publicly or privately owned public utilities which sell electric energy or water to the public, any amount of electric energy or water under its control, and contracts therefor shall extend over such period of years and contain such terms and conditions for the sale thereof as the commission of the district shall elect; such contract shall only be made pursuant to a resolution of the commission authorizing such contract, which resolution shall be introduced at a meeting of the commission at least ten days prior to the



date of the adoption of the resolution: *Provided further*, That it shall first make adequate provision for the needs of the district, both actual and prospective. [1955 c 390 § 5. Prior: 1945 c 143 § 1(d); 1931 c 1 § 6(d); Rem. Supp. 1945 § 11610(d).]

*Joint operating agency: RCW 43.52.360.*

*Right of city or town to acquire electrical distribution property from P.U.D.: RCW 35.92.054.*

**54.16.050 Water rights.** A district may take, condemn and purchase, purchase and acquire any public and private property, franchises and property rights, including state, county, and school lands, and property and littoral and water rights, for any of the purposes aforesaid, and for railroads, tunnels, pipe lines, aqueducts, transmission lines, and all other facilities necessary or convenient, and, in connection with the construction, maintenance, or operation of any such utilities, may acquire by purchase or condemnation and purchase the right to divert, take, retain, and impound and use water from or in any lake or watercourse, public or private, navigable or nonnavigable, or held, owned, or used by the state, or any subdivision thereof, or by any person for any public or private use, or any underflowing water within the state; and the district may erect, within or without its limits, dams or other works across any river or watercourse, or across or at the outlet of any lake, up to and above high water mark; and, for the purpose of constructing or laying aqueducts or pipelines, dams, or waterworks or other necessary structures in storing, retaining, and distributing water, or for any other purpose authorized hereunder, the district may occupy and use the beds and shores up to the high water mark of any such lake, river, or watercourse, and acquire by purchase or by condemnation and purchase, or otherwise, any water, water rights, easements, or privileges named herein or necessary for any of such purposes, and a district may acquire by purchase, or condemnation and purchase, or otherwise, any lands, property, or privileges necessary to protect the water supply of the district from pollution: *Provided*, That should private property be necessary for any of its purposes, or for storing water above high water mark, the district may condemn and purchase, or purchase and acquire such private property. [1955 c 390 § 6. Prior: 1945 c 143 § 1(e), part; 1931 c 1 § 6(e), part; Rem. Supp. 1945 § 11610(e), part.]

*Water rights: Title 90 RCW.*

**54.16.060 Intertie lines.** A district may build and maintain intertie lines connecting its power plant and distribution system with the power plant and distribution system owned by any other public utility district, or municipal corporation, or connect with the power plants and distribution systems owned by any municipal corporation in the district, and from any such intertie line, sell electric energy to any person, public utility district, city, town or other corporation, public or private, and, by means of transmission or pole lines, conduct electric energy from the place of production to the point of distribution, and construct and lay aqueducts, pipe or pole lines, and transmission lines along and

upon public highways, roads, and streets, and condemn and purchase, purchase or acquire, lands, franchises, and rights of way necessary therefor. [1955 c 390 § 7. Prior: 1945 c 143 § 1(e), part; 1931 c 1 § 6(e), part; Rem. Supp. 1945 § 11610(e), part.]

**54.16.070 May borrow money, contract indebtedness, issue bonds or obligations—Guaranty fund.** A district may contract indebtedness or borrow money for any corporate purpose on its credit or on the revenues of its public utilities, and to evidence such indebtedness may issue general obligation bonds or revenue obligations, the general obligation bonds not to be sold for less than par and accrued interest; may issue and sell local utility district bonds of districts created by the commission, and may purchase with surplus funds such local utility district bonds, and may create a guaranty fund to insure prompt payment of all local utility district bonds. [1959 c 218 § 1; 1955 c 390 § 8. Prior: 1945 c 143 § 1(f); 1931 c 1 § 6(f); Rem. Supp. 1945 § 11610(f).]

**54.16.080 Levy and collection of taxes—Tax anticipation warrants.** A district may raise revenue by the levy of an annual tax on all taxable property within the district, not exceeding forty-five cents per thousand dollars of assessed value in any one year, exclusive of interest and redemption for general obligation bonds. The commission shall prepare a proposed budget of the contemplated financial transactions for the ensuing year and file it in its records, on or before the first Monday in September. Notice of the filing of the proposed budget and the date and place of hearing thereon shall be published for at least two consecutive weeks in a newspaper printed and of general circulation in the county. On the first Monday in October, the commission shall hold a public hearing on the proposed budget at which any taxpayer may appear and be heard against the whole or any part thereof. Upon the conclusion of the hearing, the commission shall, by resolution, adopt the budget as finally determined, and fix the final amount of expenditures for the ensuing year. Taxes levied by the commission shall be certified to and collected by the proper officer of the county in which the district is located in the same manner as provided for the certification and collection of port district taxes. The commission may, prior to the receipt of taxes raised by levy, borrow money or issue warrants of the district in anticipation of the revenue to be derived from the levy or taxes for district purposes, and the warrants shall be redeemed from the first money available from such taxes. The warrants shall not exceed the anticipated revenue of one year, and shall bear interest at a rate of not to exceed six percent per annum. [1973 1st ex.s. c 195 § 60; 1955 c 390 § 9. Prior: 1945 c 143 § 1(g); 1931 c 1 § 6(g); Rem. Supp. 1945 § 11610(g).]

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

*Collection of taxes by port districts: RCW 53.36.020.*

*Forty mill limit not applicable to power district: RCW 84.52.050.*

*Limitation on levies: State Constitution Art. 7 § 2 (Amendment 59).*



**54.16.090 Contracts with other agencies or utilities—Gifts, etc.—Employees and experts—Advancements.** A district may enter into any contract or agreement with the United States, or any state, municipality, or other utility district, or any department of those entities, or with any cooperative, mutual, consumer-owned utility, or with any investor-owned utility or with an association of any of such utilities, for carrying out any of the powers authorized by this title.

It may acquire by gift, devise, bequest, lease, or purchase, real and personal property necessary or convenient for its purposes, or for any local district therein.

It may make contracts, employ engineers, attorneys, and other technical or professional assistance; print and publish information or literature; advertise or promote the sale and distribution of electricity or water and do all other things necessary to carry out the provisions of this title.

It may advance funds, jointly fund or jointly advance funds for surveys, plans, investigations, or studies as set forth in RCW 54.16.010, including costs of investigations, design and licensing of properties and rights of the type described in RCW 54.16.020, including the cost of technical and professional assistance, and for the advertising and promotion of the sale and distribution of electricity or water. [1969 c 106 § 7; 1955 c 390 § 10. Prior: 1945 c 143 § 1(h), (i), (j), part; 1931 c 1 § 6(h), (i), (j), part; Rem. Supp. 1945 § 11610(h), (i), (j), part.]

**54.16.095 Liability insurance for officials and employees.** The board of commissioners of each public utility district may purchase liability insurance with such limits as they may deem reasonable for the purpose of protecting their officials and employees against liability for personal or bodily injuries and property damage arising from their acts or omissions while performing or in good faith purporting to perform their official duties. [1973 c 125 § 5.]

**54.16.100 Manager—Appointment—Salary—Duties.** The commission, by resolution introduced at a regular meeting and adopted at a subsequent regular meeting, shall appoint and may remove at will a district manager, and shall, by resolution, fix his salary.

The manager shall be the chief administrative officer of the district, in control of all administrative functions and shall be responsible to the commission for the efficient administration of the affairs of the district placed in his charge. He shall be an experienced executive with administrative ability. In the absence or temporary disability of the manager, he shall, with the approval of the president of the commission, designate some competent person as acting manager.

The manager may attend all meetings of the commission and its committees, and take part in the discussion of any matters pertaining to the duties of his department, but shall have no vote.

The manager shall carry out the orders of the commission, and see that the laws pertaining to matters within the functions of his department are enforced; keep the commission fully advised as to the financial condition and needs of the districts; prepare an annual

estimate for the ensuing fiscal year of the probable expenses of his department, and recommend to the commission what development work should be undertaken, and what extensions and additions, if any, should be made during the ensuing fiscal year, with an estimate of the costs of the development work, extensions, and additions; certify to the commission all bills, allowances, and payrolls, including claims due contractors of public works; recommend to the commission salaries of the employees of his office, and a scale of salaries or wages to be paid for the different classes of service required by the district; hire and discharge employees under his direction; and perform such other duties as may be imposed upon him by resolution of the commission. It is unlawful for him to make any contribution of money in aid of or in opposition to the election of any candidate for public utility commissioner or to advocate or oppose any such election. [1955 c 390 § 11. Prior: 1945 c 143 § 1(j), part; 1931 c 1 § 6(j), part; Rem. Supp. 1945 § 11610(j), part.]

**54.16.110 May sue and be sued—Claims.** A district may sue in any court of competent jurisdiction, and may be sued in the county in which it is located. No suit for damages shall be maintained against a district except on a claim filed with the commission complying in all respects with the terms and requirements for claims for damages filed against cities of the second class. [1955 c 390 § 12. Prior: 1945 c 143 § 1(k); 1931 c 1 § 6(k); Rem. Supp. 1945 § 11610(k).]

*Claims against cities of the second class: RCW 35.31.040.*

**54.16.120 Local utility districts authorized.** A district may, by resolution, establish and define the boundaries of local assessment districts to be known as local utility district No. -----, for distribution, under the general supervision and control of the commission, of water for domestic use, irrigation, and electric energy, and for providing street lighting, or any of them, and in like manner provide for the purchasing, or otherwise acquiring, or constructing and equipping of distribution systems for such purposes, and for extensions and betterments thereof, and may levy and collect in accordance with the special benefits conferred thereon, special assessments and reassessments on property specially benefited thereby, for paying the cost and expense thereof, or any portions thereof, as herein provided, and issue local improvement bonds or warrants or both to be repaid wholly or in part by collection of local improvement assessments. [1955 c 390 § 13. Prior: 1951 c 209 § 1; 1945 c 143 § 1(l), part; 1931 c 1 § 6(l), part; Rem. Supp. 1945 § 11610(l), part.]

**54.16.130 Local districts—Procedure—Financing.** The commission shall by resolution establish the method of procedure in all matters relating to local utility districts. A public utility district may determine by resolution what work shall be done or improvements made at the expense, in whole or in part, of the property specially benefited thereby; and adopt and provide the manner, machinery and proceedings in any way relating to the making and collecting of assessments

therefor in pursuance thereof. Except as herein otherwise provided or as may hereafter be set forth by resolution, all matters and proceedings relating to the local utility district, the levying and collection of assessments, the issuance and redemption of local improvement warrants and bonds, and the enforcement of local assessment liens hereunder, shall be governed, as nearly as may be, by the laws relating to local improvements for cities of the first class: *Provided*, That no protest against a local utility district improvement shall be received after twelve o'clock noon of the day set for hearing.

The commission may determine to finance the project by bonds or warrants secured by assessments against the property within the local utility district: Or it may finance the project by revenue bonds, in which case no bonds or warrants shall be issued by the local utility district, but assessments shall be levied upon the taxable property therein on the basis of special benefits up to, but not exceeding the total cost of the improvement and in such cases the entire principal and interest of such assessments shall be paid into a revenue bond fund of the district, to be used for the sole purpose of the payment of revenue bonds. [1955 c 390 § 14. Prior: 1951 c 209 § 2; 1945 c 143 § 1(l), part; 1931 c 1 § 6(l), part; Rem. Supp. 1945 § 11610(l), part.]

*Local improvement, first class cities: Chapters 35.44 through 35.56 RCW.*

*Local improvement guaranty fund: RCW 54.24.200 through 54.24.260.*

**54.16.140 Petition or resolution for local district—Hearing—Notice.** Any such improvement shall be ordered by resolution of the commission either upon petition or resolution therefor. When a petition, signed by ten percent of the owners of land in the district to be therein described, is filed with the commission, asking that the plan or improvement therein set forth be adopted and ordered, and defining the boundaries of a local improvement district to be assessed in whole or in part to pay the cost thereof, the commission shall fix the date of hearing thereon, and give not less than two weeks notice thereof by publication. The commission may deny the petition or order the improvement, unless a majority of the owners of lands in the district file prior to twelve o'clock noon of the day of the hearing, with the secretary a petition protesting against the improvement. If the commission orders the improvement, it may alter the boundaries of the proposed local district and prepare and adopt detail plans of the local improvement, declare the estimated cost thereof, what proportion thereof shall be borne by the local improvement district, and what proportion, if any shall be borne by the entire public utility district. [1955 c 390 § 15. Prior: 1945 c 143 § 1(l), part; 1931 c 1 § 6(l), part; Rem. Supp. 1945 § 11610(l), part.]

**54.16.150 Procedure when petition is signed by majority of landowners.** When a petition signed by a majority of the landowners in a proposed local improvement district is filed with the commission, asking that the improvement therein described be ordered,

the commission shall forthwith fix a date for hearing thereon after which it shall, by resolution, order the improvement, and may alter the boundaries of the proposed district; prepare and adopt the improvement; prepare and adopt detail plans thereof; declare the estimated cost thereof, what proportion of the cost shall be borne by the local district, and what proportion, if any, shall be borne by the entire public utility district, and provide the general funds thereof to be applied thereto, if any; acquire all lands and other properties therefor; pay all damages caused thereby; and commence in the name of the public utility district such eminent domain proceedings and supplemental assessment or reassessment proceedings to pay all eminent domain awards necessary to entitle the district to proceed with the work, and shall thereafter proceed with the work, and shall file with the county treasurer its roll levying special assessments in the amount to be paid by special assessment against the property in the local improvement district in proportion to the special benefits to be derived by the property in the local district from the improvement: *Provided, however*, No such improvement shall be ordered unless the same appears to the commission to be financially and economically feasible: *And provided further*, That the commission may require as a condition to ordering such improvement or to making its determination as to the financial and economic feasibility, that all or a portion of such engineering, legal or other costs incurred or to be incurred by the commission in determining financial and economic feasibility shall be borne or guaranteed by the petitioners of the proposed local improvement district under such rules as the commission may adopt. No person shall withdraw his name from the petition after the same has been filed with the commission. [1959 c 142 § 3; 1955 c 390 § 16. Prior: 1945 c 143 § 1(l), part; 1931 c 1 § 6(l), part; Rem. Supp. 1945 § 11610(l), part.]

**54.16.160 Assessment roll—Hearing—Appeal—Expenses.** Before approval of the roll, a notice shall be published once each week for two successive weeks in a newspaper of general circulation in the county, stating that the roll is on file and open to inspection in the office of the secretary, and fixing a time not less than fifteen nor more than thirty days from the date of the first publication of the notice, within which protests must be filed with the secretary against any assessments shown thereon, and fixing a time when a hearing shall be held by the commission on the protests. After the hearing the commission may alter any and all assessments shown on the roll and may, by resolution, approve it, but if an assessment is raised, a new notice, similar to the first, shall be given, and a hearing had thereon, after which final approval of the roll may be made. Any person aggrieved by the assessments shall perfect an appeal to the superior court of the county within ten days after the approval, in the manner provided for appeals from assessments levied by cities of the first class. In the event such an appeal shall be taken, the judgment of the court shall confirm the assessment insofar as it affects the property of the appellant unless the court shall find from the evidence that

such assessment is founded upon a fundamentally wrong basis and/or the decision of the commission thereon was arbitrary or capricious; in which event the judgment of the court shall correct, change, modify, or annul the assessment insofar as it affects the property of the appellant. In the same manner as provided with reference to cities of the first class an appeal shall lie to the supreme court or the court of appeals from the judgment of the superior court, as in other cases, if taken within fifteen days after the date of the entry of the judgment in the superior court. Engineering, office, and other expenses necessary or incident to the improvement shall be borne by the public utility district: *Provided*, That when a municipal corporation included in the public utility district already owns or operates a utility of a character like that for which the assessments are levied hereunder, all such engineering and other expenses shall be borne by the local assessment district. [1971 c 81 § 123; 1959 c 142 § 4; 1955 c 390 § 17. Prior: 1945 c 143 § 1(l), part; 1931 c 1 § 6(l), part; Rem. Supp. 1945 c 11610(l), part.]

*Procedure on appeal from assessments levied by cities of the first class: RCW 35.44.200 through 35.44.270.*

**54.16.165 Segregation of assessments.** Whenever any land against which there has been levied any special assessment by any public utility district shall have been sold in part or subdivided, the board of commissioners of such public utility district shall have the power to order a segregation of the assessment.

Any person owning any part of the land involved in a special assessment and desiring to have such special assessment against the tracts of land segregated to apply to smaller parts thereof shall apply in writing to the board of commissioners of the public utility district which levied the assessment. If the commissioners determine that a segregation should be made they shall do so as nearly as possible on the same basis as the original assessment was levied and the total of the segregated parts of the assessment shall equal the assessment before segregation.

The commission shall then send notice thereof by mail to the several owners interested in the tract, as shown on the general tax rolls. If no protest is filed within twenty days from date of mailing said notice, the commission shall then by resolution approve said segregation. If a protest is filed, the commission shall have a hearing thereon, after mailing to the several owners at least ten days notice of the time and place thereof. After the hearing, the commission may by resolution approve said segregation, with or without change. Within ten days after the approval, any person aggrieved by the segregation may perfect an appeal to the superior court of the county wherein the property is situated and therefrom to the supreme court or the court of appeals, all as provided for appeals from assessments levied by cities of the first class. The resolution approving said segregation shall describe the original tract, the amount and date of the original assessment, and shall define the boundaries of the divided parts and the amount of the assessment chargeable to each part, and shall order the county treasurer to make segregation on the original

assessment roll as directed in the resolution. A certified copy of the resolution shall be delivered to the county treasurer who shall proceed to make the segregation ordered. The board of commissioners may require as a condition to the order of segregation that the person seeking it pay the public utility district the reasonable engineering and clerical costs incident to making the segregation. Unless otherwise provided in said resolution, the county treasurer shall apportion amounts paid on the original assessment in the same proportion as the segregated assessments bear to the original assessment. Upon segregation being made by the county treasurer, as aforesaid, the lien of the special assessment shall apply to the segregated parcels only to the extent of the segregated part of such assessment. [1971 c 81 § 124; 1959 c 142 § 1.]

**54.16.170 Apportionment of cost of improvement.** When an improvement is ordered hereunder, payment for which shall be made in part from assessments against property specially benefited, not more than fifty percent of the cost thereof shall ever be borne by the entire public utility district, nor shall any sum be contributed by it to any improvement acquired or constructed with or by any other body, exceed such amount, unless a majority of the electors of the district consent to or ratify the making of such expenditure. [1955 c 390 § 18. Prior: 1945 c 143 § 1(l), part; 1931 c 1 § 6(l), part; Rem. Supp. 1945 § 11610(l), part.]

**54.16.180 Sale, lease, disposition of properties—Procedure—Acquisition, operation of sewage system by districts in certain counties.** A district may sell and convey, lease, or otherwise dispose of all or any part of its works, plants, systems, utilities and properties, after proceedings and approval by the voters of the district, as provided for the lease or disposition of like properties and facilities owned by cities and towns: *Provided*, That the affirmative vote of three-fifths of the voters voting at an election on the question of approval of a proposed sale, shall be necessary to authorize such sale: *Provided further*, That a district may sell, convey, lease or otherwise dispose of all or any part of the property owned by it, located outside its boundaries, to another public utility district, city, town or other municipal corporation without the approval of the voters; or may sell, convey, lease, or otherwise dispose of to any person or public body, any part, either within or without its boundaries, which has become unserviceable, inadequate, obsolete, worn out or unfit to be used in the operations of the system and which is no longer necessary, material to, and useful in such operations, without the approval of the voters: *Provided further*, That a public utility district located within a county of the first class may sell and convey to a city of the first class, which owns its own water system, all or any part of a water system owned by said public utility district where a portion of it is located within the boundaries of such city, without approval of the voters upon such terms and conditions as the district shall determine: *Provided further*, That a public utility district located in a fifth class county and bordered by the Columbia river may,

in connection with the operation of a water system, or as part of a plan for acquiring or constructing and operating a water system, or in connection with the creation of another or subsidiary local utility district, may provide for the acquisition or construction, additions or improvements to, or extensions of, and operation of a sewage system within the same service area as in the judgment of the district commission is necessary or advisable in order to eliminate or avoid any existing or potential danger to the public health by reason of the lack of sewerage facilities or by reason of the inadequacy of existing facilities: *And provided further*, That a public utility district located within a county of the first class bordering on Puget Sound may sell and convey to any city of the third class or town all or any part of a water system owned by said public utility district without approval of the voters upon such terms and conditions as the district shall determine. Public utility districts are municipal corporations for the purposes of this section and the commission shall be held to be the legislative body and the president and secretary shall have the same powers and perform the same duties as the mayor and city clerk and the resolutions of the districts shall be held to be ordinances within the meaning of the statutes governing the sale, lease, or other disposal of public utilities owned by cities and towns. [1963 c 196 § 1; 1959 c 275 § 1; 1955 c 390 § 19. Prior: 1945 c 143 § 1(m); 1931 c 1 § 6(m); Rem. Supp. 1945 § 11610(m).]

**54.16.190 General resolutions.** The commission of a district may adopt general resolutions to carry out the purposes, objects, and provisions of this title. [1955 c 390 § 20. Prior: 1945 c 143 § 1(n); 1931 c 1 § 6(n); Rem. Supp. 1945 § 11610(n).]

**54.16.200 Joint exercise of powers and joint acquisition of properties.** Any two or more public utility districts organized under the provisions of the laws of this state shall have the power, by mutual agreement, to exercise jointly all powers granted to each individual district, and in the exercise of such powers shall have the right and power to acquire jointly all or any part of any electric utility properties which, at the time of the passage of this act, constitutes an interconnected and physically integrated electric utility system, whether entirely within or partly within and partly without such districts: *Provided*, That any two or more districts so acting jointly, by mutual agreement, shall not acquire any electric utility distribution properties in any other public utility district without the consent of such district, and shall not exercise jointly the power to condemn any privately owned utility property or any public utility owned by a municipality, to levy taxes or, to create subdistricts. [1949 c 227 § 2; Rem. Supp. 1949 § 10459-15.]

**Reviser's note:** As to "the time of the passage of this act", the legislative history of chapter 227, Laws of 1949 is as follows: Passed the house March 8, 1949; passed the senate March 7, 1949; approved by the governor March 22, 1949.

*Joint operating agency: RCW 43.52.360.*

**54.16.210 Joint acquisition, operation, etc., with city of electrical utility properties.** See chapter 35.92 RCW.

**54.16.220 Columbia river hydroelectric projects—Grant back of easements to former owners.** Notwithstanding any other provision of law, every public utility district acquiring privately owned lands, real estate or property for reservoir purposes of a hydroelectric power project dam on the Columbia river, upon acquisition of title to said lands, whether acquired by purchase or condemnation, shall grant back to the former owners of the lands acquired upon their request therefor, whether prior to conveyance of title to the district or within sixty days thereafter, a perpetual easement appurtenant to the adjoining property for such occupancy and use and improvement of the acquired lands as will not be detrimental to the operation of the hydroelectric project and not be in violation of the required conditions of the district's Federal Power Commission license for the project: *Provided*, That said former owners shall not thereafter erect any structure or make any extensive physical change thereon except under a permit issued by the public utility district: *Provided further*, That said easement shall include a provision that any shorelands thereunder shall be open to the public, and shall be subject to cancellation upon sixty days notice to the owners by the district that such lands are to be conveyed to another public agency for game or game fish purposes or public recreational use, in which event the owners shall remove any structures they may have erected thereon within a reasonable time without cost to the district. The provisions of this section shall not be applicable with respect to: (1) lands acquired from an owner who does not desire an easement for such occupancy and use; (2) lands acquired from an owner where the entire estate has been acquired; (3) lands acquired for, and reasonably necessary for, project structures (including borrow areas) or for relocation of roads, highways, railroads, other utilities or railroad industrial sites; and (4) lands heretofore acquired or disposed of by sale or lease by a public utility district for whatsoever purpose. [1965 ex.s. c 118 § 1.]

**Chapter 54.20**

**CONDEMNATION PROCEEDINGS**

Sections

- 54.20.010 Statement of operations—Decree of appropriation—Retirement of properties—Accounting—Limitation on new proceedings.

**54.20.010 Statement of operations—Decree of appropriation—Retirement of properties—Accounting—Limitation on new proceedings.** In any condemnation proceeding heretofore or hereafter instituted or conducted by a public utility district for the acquisition of properties, the district may serve upon the condemnee's attorneys of record and file with the court a notice of its intention to present a decree of appropriation together with a demand for a verified statement showing in reasonable detail the following information with respect to the operation of the properties since the date of verdict, if the case was tried by

jury, or since the date of the judgment fixing compensation, if the case was tried by the court, namely: the cost of any improvements and betterments to the properties which were reasonably necessary and prudently made; the gross income received from the properties, betterments and improvements; the actual reasonable expense, exclusive of depreciation, incurred in the operation thereof. If the condemnee fails to serve and file the statement within fifteen days after service of the demand therefor, it may be compelled to do so by contempt proceedings, and the time during which such proceedings are pending shall not be considered in computing the time within which the district may exercise its right of appropriation. After the statement is filed, the district may pay the amount of the verdict or judgment plus (1) accrued interest thereon less the net income before allowance for depreciation, and (2) the cost of such improvements and betterments, all as shown by the sworn statement, and concurrently obtain its decree of appropriation. The condemnee may retire from use after the verdict or judgment such items of the properties as may be reasonably necessary in the ordinary and usual course of operation thereof, in which case it shall show in its statement the reasonable value of such items retired, and the district may deduct such value from the sum otherwise payable by it. If the condemnee fails to file the statement within fifteen days after service of the demand therefor, the district at its option may pay the full amount of the judgment or verdict plus accrued interest thereon and concurrently obtain a decree of appropriation.

After payment has been made and the decree of appropriation entered as provided in this section, the district or the condemnee shall be entitled to an accounting in the condemnation proceedings to determine the true amount of each item required to be furnished in the above statement, and to payment of any balance found due in such accounting.

Whenever any such condemnation proceedings have been, or hereafter may be abandoned, no new proceedings for the acquisition of the same or substantially similar properties shall be instituted until the expiration of one year from the date of such abandonment, but such proceedings may be instituted at any time thereafter. [1945 c 130 § 3; Rem. Supp. 1945 § 10459-13. Formerly RCW 54.20.010 through 54.20.050.]

### Chapter 54.24 FINANCES

#### Sections

#### GENERAL PROVISIONS

- 54.24.010 Treasurer—Bond—Duties—Funds—  
Depositaries.  
54.24.012 Destruction of canceled or paid revenue obligations and  
interest coupons.

#### BONDS OR WARRANTS—1931 ACT

- 54.24.018 Acquisition of property—Adoption of plan—Bonds  
or warrants—Special funds.

#### BONDS—REVENUE OBLIGATIONS—1941 ACT

- 54.24.020 General obligation bonds, revenue obligations for cost of  
utilities.

- 54.24.030 Revenue obligations—Special fund—Form, term,  
payment, etc.—Resolution of authority, con-  
tents—Contracts for future sale.  
54.24.040 Considerations in creating special fund—Status of  
claims against fund—When lien attaches.  
54.24.050 Covenants to secure holders of revenue obligations.  
54.24.060 Sale, delivery of revenue obligations.  
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54.24.080 Rates and charges.  
54.24.090 Funding, refunding revenue obligations.  
54.24.100 Execution of revenue obligations—Signatures.  
54.24.110 Laws and resolutions as contract.  
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#### LOCAL IMPROVEMENT GUARANTY FUND

- 54.24.200 Local improvement guaranty fund.  
54.24.210 Local improvement guaranty fund—Duties of the  
district.  
54.24.220 Local improvement guaranty fund—Warrants to meet  
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linquency—Contents, purchase, payment, issuance,  
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54.24.240 Local improvement guaranty fund—Certificates of de-  
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54.24.260 Local improvement guaranty fund—Rights and reme-  
dies of bond or warrant holder which shall be printed  
on bond or warrant—Disposition of balance of  
fund.

#### GENERAL PROVISIONS

**54.24.010 Treasurer—Bond—Duties—  
Funds—Depositaries.** The treasurer of the county in  
which a utility district is located shall be ex officio trea-  
surer of the district: *Provided*, That the commission by  
resolution may designate some other person having ex-  
perience in financial or fiscal matters as treasurer of the  
utility district. The commission may, and if the treasur-  
er is not the county treasurer it shall, require a bond,  
with a surety company authorized to do business in the  
state of Washington, in an amount and under the terms  
and conditions which the commission by resolution  
from time to time finds will protect the district against  
loss. The premium on any such bond shall be paid by  
the district.

All district funds shall be paid to the treasurer and  
shall be disbursed by him only on warrants issued by  
an auditor appointed by the commission, upon orders  
or vouchers approved by it. The treasurer shall establish  
a public utility district fund, into which shall be paid all  
district funds, and he shall maintain such special funds  
as may be created by the commission, into which he  
shall place all money as the commission may, by reso-  
lution, *direct*.

If the treasurer of the district is the treasurer of the  
county all district funds shall be deposited with the  
county depositaries under the same restrictions, con-  
tracts, and security as provided for county depositaries;  
if the treasurer of the district is some other person, all  
funds shall be deposited in such bank or banks author-  
ized to do business in this state as the commission by  
resolution shall designate, and with surety bond to the  
district or securities in lieu thereof of the kind, no less

in amount, as provided in RCW 36.48.020 for deposit of county funds.

Such surety bond or securities in lieu thereof shall be filed or deposited with the treasurer of the district, and approved by resolution of the commission.

All interest collected on district funds shall belong to the district and be deposited to its credit in the proper district funds.

A district may provide and require a reasonable bond of any other person handling moneys or securities of the district: *Provided*, That the district pays the premium thereon. [1959 c 218 § 2; 1957 c 140 § 1; 1955 c 124 § 7. Prior: (i) 1931 c 1 § 9; RRS § 11613. (ii) 1931 c 1 § 8, part; RRS § 11612, part.]

**54.24.012 Destruction of canceled or paid revenue obligations and interest coupons.** After any revenue obligations or interest coupons have been canceled or paid they may be destroyed as directed by the district, any provisions of chapter 40.14 RCW notwithstanding: *Provided*, That a certificate of destruction giving full descriptive reference to the documents destroyed shall be made by the person or persons authorized to perform such destruction and one copy of the certificate shall be filed with the treasurer of the district. [1959 c 218 § 15.]

#### BONDS OR WARRANTS—1931 ACT

**54.24.018 Acquisition of property—Adoption of plan—Bonds or warrants—Special funds.** Whenever the commission shall deem it advisable that the public utility district purchase, purchase and condemn, acquire, or construct any such public utility, or make any additions or betterments thereto, or extensions thereof, the commission shall provide therefor by resolution, which shall specify and adopt the system or plan proposed, and declare the estimated cost thereof, as near as may be, and specify whether general or utility indebtedness is to be incurred, the amount of such indebtedness, the amount of interest and the time in which all general bonds (if any) shall be paid, not to exceed thirty years. In the event the proposed general indebtedness to be incurred will bring the indebtedness of the public utility district to an amount exceeding three-fourths of one percent of the value of the taxable property of the public utility district, as the term "value of the taxable property" is defined in RCW 39.36.015, the proposition of incurring such indebtedness and the proposed plan or system shall be submitted to the qualified electors of said public utility district for their assent at the next general election held in such public utility district.

Whenever the commission (or a majority of the qualified voters of such public utility district, voting at said election, when it is necessary to submit the same to said voters) shall have adopted a system or plan for any such public utility, as aforesaid, and shall have authorized indebtedness therefor by a three-fifths vote of the qualified voters of such district, voting at said election, general or public utility bonds may be used as hereinafter provided. Said general bonds shall be serial in form and maturity and numbered from one upwards

consecutively. The various annual maturities shall commence not later than the tenth year after the date of issue of such bonds. The resolution authorizing the issuance of the bonds shall fix the rate or rates of interest the bonds shall bear and the place and date of the payment of both principal and interest. The bonds shall be signed by the president of the commission, attested by the secretary of the commission, and the seal of the public utility district shall be affixed to each bond but not to the coupon: *Provided, however*, That said coupon, in lieu of being so signed, may have printed thereon a facsimile of the signature of such officers. The principal and interest of such general bonds shall be paid from the revenue of such public utility district after deducting costs of maintenance, operation, and expenses of the public utility district, and any deficit in the payment of principal and interest of said general bonds shall be paid by levying each year a tax upon the taxable property within said district sufficient to pay said interest and principal of said bonds, which tax shall be due and collectible as any other tax. Said bonds shall be sold in such manner as the commission shall deem for the best interest of the district. All bonds and warrants issued under the authority of \*this act shall be legal securities, which may be used by any bank or trust company for deposit with the state treasurer, or any county or city treasurer, as security for deposits, in lieu of a surety bond, under any law relating to deposits of public moneys. When the commission shall not desire to incur a general indebtedness in the purchase, condemnation and purchase, acquisition, or construction of any such public utility, or addition or betterment thereto, or extension thereof, it shall have the power to create a special fund or funds for the sole purpose of defraying the cost of such public utility, or addition or betterment thereto, or extension thereof, into which special fund or funds it may obligate and bind the district to set aside and pay a fixed proportion of the gross revenues of such public utility, or any fixed amount out of, and not exceeding a fixed proportion of, such revenues, or a fixed amount without regard to any fixed proportion, and to issue and sell bonds or warrants bearing interest at such rate or rates, payable semiannually, executed in such manner, and payable at such times and places as the commission shall determine, but such bonds or warrants and the interest thereon, shall be payable only out of such special fund or funds. In creating any such special fund or funds, the commission shall have due regard to the cost of operation and maintenance of the plant or system as constructed or added to, and to any proportion or part of the revenues previously pledged as a fund for the payment of bonds or warrants, and shall not set aside into such special fund or funds a greater amount or proportion of the revenues and proceeds than, in its judgment, will be available over and above such cost of maintenance and operation and the amount or proportion, if any, of the revenues so previously pledged. Any such bonds or warrants, and interest thereon, issued against any such fund, as herein provided, shall be a valid



claim of the holder thereof only as against the said special fund and its fixed proportion or amount of the revenue pledged to such fund, and shall not constitute an indebtedness of such district within the meaning of the constitutional provisions and limitations. Each such bond or warrant shall state on its face that it is payable from a special fund, naming such fund and the resolution creating it. Said bonds and warrants shall be sold in such manner as the commission shall deem for the best interests of the district, and the commission may provide in any contract for the construction and acquisition of a proposed improvement or utility that payment therefor shall be made only in such bonds or warrants at the par value thereof. In all other respects, the issuance of such utility bonds or warrants and payment therefor shall be governed by the public utility laws for cities and towns. [1971 c 12 § 1. Prior: 1970 ex.s. c 56 § 77; 1970 ex.s. c 42 § 33; 1969 ex.s. c 232 § 14; 1931 c 1 § 7; RRS § 11611. Formerly RCW 54.24-.130 through 54.24.160.]

**\*Reviser's note:** "this act", see note following RCW 54.04.020.  
*Municipal utilities: Chapter 35.92 RCW.*

#### BONDS—REVENUE OBLIGATIONS—1941 ACT

**54.24.020 General obligation bonds, revenue obligations for cost of utilities.** Whenever the commission of a public utility district, organized pursuant to \*chapter 1 of the Laws of 1931 (sections 11605 et seq. of Remington's Revised Statutes) shall deem it advisable that the district purchase, purchase and condemn, acquire or construct any public utility, or make any additions or betterments thereto or extensions thereof, the commission shall provide therefor by resolution, which shall specify and adopt the system or plan proposed and declare the estimated cost thereof, as near as may be, including as part of such cost funds necessary for working capital for the operation of such public utility by the district and for the payment of the expenses incurred in the acquisition or construction thereof, and shall specify whether general obligation bonds or revenue obligations are to be issued to defray such cost and the amount of such general obligation bonds or revenue obligations.

The commissioners may provide in such resolution that any additional works, plants, or facilities subsequently acquired or constructed by the district for the same uses, whether or not physically connected therewith, shall be deemed additions or betterments to or extensions of such public utility. [1959 c 218 § 3; 1941 c 182 § 1; Rem. Supp. 1941 § 11611-1.]

**\*Reviser's note:** "chapter 1 of the Laws of 1931", see note following RCW 54.04.020.

**Severability—1941 c 182:** "If any section or provision of this act shall be adjudged to be invalid such adjudication shall not affect the validity of the act as a whole or any section, provision or part thereof not adjudged to be invalid." [1941 c 182 § 12.]

*Revenue obligations defined: RCW 54.04.010.*

**54.24.030 Revenue obligations—Special fund—Form, term, payment, etc.—Resolution of authority, contents—Contracts for future sale.** Whenever the

commission shall deem it advisable to issue revenue obligations for the purpose of defraying the cost or part of the cost of such public utility or any additions or betterments thereto or extensions thereof, it shall have power as a part of such plan and system to create a special fund or funds for the purpose of defraying the cost of such public utility, or additions or betterments thereto or extensions thereof, into which special fund or funds it may obligate and bind the district to set aside and pay a fixed proportion of the gross revenues of such public utility, and all additions or betterments thereto or extensions thereof, or any fixed amount out of, and not exceeding a fixed proportion of such revenues, or a fixed amount without regard to any fixed proportion, or an amount of such revenues equal to a fixed percentage of the aggregate principal amount of revenue obligations at any time issued against the special fund or funds, and to issue and sell revenue obligations payable as to both principal and interest only out of such fund or funds.

Such revenue obligations shall bear such date or dates, mature at such time or times, be in such denominations, be in such form, either coupon or registered, or both, carry such registration privileges, be made transferable, exchangeable, and interchangeable, be payable in such medium of payment, at such place or places, and be subject to such terms of redemption as the commission shall by resolution determine.

Any resolution or resolutions authorizing the issuance of any revenue obligations maturing in not exceeding six years from the date thereof (hereinafter in this section referred to as "short term obligations") may contain, in addition to all other provisions authorized by this title, and as an alternate method for the payment thereof, provisions which shall be a part of the contract with the holders of the short term obligations thereby authorized as to:

(1) Refunding the short term obligations at or prior to maturity and, if so provided, outstanding bonds by the issuance of revenue bonds of the district either by the sale of bonds and application of the proceeds to the payment of the short term obligations and outstanding bonds or by the exchange of bonds for the short term obligations;

(2) Satisfying, paying, or discharging the short term obligations at the election of the district by the tender or delivery of revenue bonds of the district in exchange therefor: *Provided*, That the aggregate principal amount of bonds shall not exceed by more than five percent the aggregate principal amount of the short term obligations, to satisfy, pay, or discharge said short term obligations for which the bonds are tendered or delivered;

(3) Exchanging or converting the short term obligations at the election of the holder thereof for or into the bonds of the district: *Provided*, That the aggregate principal amount of the bonds shall not exceed by more than five percent the aggregate principal amount of the short term obligations to be exchanged for or converted into bonds;

(4) Pledging bonds of the district as collateral to secure payment of the short term obligations and providing for the terms and conditions of the pledge and the



manner of enforcing the pledge, which terms and conditions may provide for the delivery of the bonds in satisfaction of the short term obligations: *Provided*, That the aggregate principal amount of the bonds pledged shall not exceed by more than five percent the aggregate principal amount of the short term obligations to secure said short term obligations for which they are pledged;

(5) Depositing bonds in escrow or in trust with a trustee or fiscal agent or otherwise providing for the issuance and disposition of the bonds as security for carrying out any of the provisions in any resolution adopted pursuant to this section and providing for the powers and duties of the trustee, fiscal agent, or other depository and the terms and conditions upon which the bonds are to be issued, held and disposed of;

(6) Any other matters of like or different character which relate to any provision or provisions of any resolution adopted pursuant to this section.

A district shall have power to make contracts for the future sale from time to time of revenue obligations by which the purchasers shall be committed to purchase such revenue obligations from time to time on the terms and conditions stated in such contract; and a district shall have power to pay such consideration as it shall deem proper for such commitments. [1959 c 218 § 4; 1941 c 182 § 2; Rem. Supp. 1941 § 11611-2.]

**54.24.040 Considerations in creating special fund—Status of claims against fund—When lien attaches.** In creating any special fund for the payment of revenue obligations, the commission shall have due regard to the cost of operation and maintenance of the plant or system constructed or added to, and to any proportion or amount of the revenues previously pledged as a fund for the payment of revenue obligations, and shall not set aside into such special fund or funds a greater amount or proportion of the revenues and proceeds than in its judgment will be available over and above such cost of maintenance and operation and the amount or proportion, if any, of the revenues so previously pledged. Any such revenue obligations and interest thereon issued against any such fund as herein provided shall be a valid claim of the holder thereof only as against such special fund and the proportion or amount of the revenues pledged to such fund, but shall constitute a prior charge over all other charges or claims whatsoever, including the charge or lien of any general obligation bonds against such fund and the proportion or amount of the revenues pledged thereto. Such revenue obligations shall not constitute an indebtedness of such district within the meaning of the constitutional provisions and limitations. Each revenue obligation shall state on its face that it is payable from a special fund, naming such fund and the resolution creating it, or shall describe such alternate method for the payment thereof as shall be provided by the resolution authorizing same.

It is the intention hereof that any pledge of the revenues or other moneys or obligations made by a district shall be valid and binding from the time that the pledge

is made; that the revenues or other moneys or obligations so pledged and thereafter received by a district shall immediately be subject to the lien of such pledge without any physical delivery or further act, and that the lien of any such pledge shall be valid and binding as against any parties having claims of any kind in tort, contract, or otherwise against a district irrespective of whether such parties have notice thereof. Neither the resolution or other instrument by which a pledge is created need be recorded. [1959 c 218 § 5; 1941 c 182 § 5; Rem. Supp. 1941 § 11611-5.]

**54.24.050 Covenants to secure holders of revenue obligations.** Any resolution creating any such special fund or authorizing the issue of revenue obligations payable therefrom, or by such alternate method of payment as may be provided therein, shall specify the title of such revenue obligations as determined by the commission and may contain covenants by the district to protect and safeguard the security and the rights of the holders thereof, including covenants as to, among other things:

(1) The purpose or purposes to which the proceeds of sale of such obligations may be applied and the use and disposition thereof;

(2) The use and disposition of the gross revenues of the public utility, and any additions or betterments thereto or extensions thereof, the cost of which is to be defrayed with such proceeds, including the creation and maintenance of funds for working capital to be used in the operation of the public utility and for renewals and replacements to the public utility;

(3) The amount, if any, of additional revenue obligations payable from such fund which may be issued and the terms and conditions on which such additional revenue obligations may be issued;

(4) The establishment and maintenance of adequate rates and charges for electric energy, water, and other services, facilities, and commodities sold, furnished, or supplied by the public utility;

(5) The operation, maintenance, management, accounting, and auditing of the public utility;

(6) The terms and prices upon which such revenue obligations or any of them may be redeemed at the election of the district;

(7) Limitations upon the right to dispose of such public utility or any part thereof without providing for the payment of the outstanding revenue obligations; and

(8) The appointment of trustees, depositories, and paying agents to receive, hold, disburse, invest, and reinvest all or any part of the income, revenues, receipts, and profits derived by the district from the operation, ownership, and management of its public utility. [1959 c 218 § 6; 1945 c 143 § 2; 1941 c 182 § 3; Rem. Supp. 1945 § 11611-3.]

**54.24.060 Sale, delivery of revenue obligations.** Such utility revenue obligations shall be sold and delivered in such manner, at such rate or rates of interest and for such price or prices and at such time or times as the

commission shall deem for the best interests of the district. The commission may, if it deem it to the best interest of the district, provide in any contract for the construction or acquisition of the public utility, or the additions or betterments thereto or extensions thereof, that payment therefor shall be made only in such revenue obligations at the par value thereof. [1970 ex.s. c 56 § 78; 1969 ex.s. c 232 § 83; 1959 c 218 § 7; 1941 c 182 § 4; Rem. Supp. 1941 § 11611-4.]

**Effective date—Purpose—1970 ex.s. c 56:** See notes following RCW 39.44.030.

**Validation—Saving—Severability—1969 ex.s. c 232:** See notes following RCW 39.44.030.

**54.24.070 Registration of revenue obligations—Prima facie validity.** Prior to the issue and delivery of any revenue obligations, such obligations and a certified copy of the resolution authorizing the issuance thereof shall if the revenue obligation mature in whole in more than six years from date thereof, and may if the revenue obligations mature in whole in not more than six years from date thereof, be forwarded by the commission to the state auditor together with any additional information that he may require, and when such revenue obligations have been examined they shall be registered by the state auditor in books to be kept by him for the purpose and a certificate of such registration shall be endorsed upon each revenue obligation and signed by the state auditor or a deputy appointed by him for the purpose. Such revenue obligations, after having been so registered and bearing such certificate, shall be held in every action, suit, or proceeding in which their validity is or may be brought into question prima facie valid and binding obligations of the districts in accordance with their terms, notwithstanding any defects or irregularities in the proceedings for the organization of the district and the election of the commissioners thereof or for the authorization and issuance of such revenue obligations or in the sale, execution, or delivery thereof. [1959 c 218 § 8; 1941 c 182 § 6; Rem. Supp. 1941 § 11611-6.]

**54.24.080 Rates and charges.** The commission of each district which shall have revenue obligations outstanding shall have the power and shall be required to establish, maintain, and collect rates or charges for electric energy and water and other services, facilities, and commodities sold, furnished, or supplied by the district which shall be fair and nondiscriminatory and adequate to provide revenues sufficient for the payment of the principal of and interest on such revenue obligations for which the payment has not otherwise been provided and all payments which the district is obligated to set aside in any special fund or funds created for such purpose, and for the proper operation and maintenance of the public utility and all necessary repairs, replacements, and renewals thereof. [1959 c 218 § 9; 1941 c 182 § 7; Rem. Supp. 1941 § 11611-7.]

**54.24.090 Funding, refunding revenue obligations.** Whenever any district shall have outstanding any utility revenue obligations, the commission shall have power

by resolution to provide for the issuance of funding or refunding revenue obligations with which to take up and refund such outstanding revenue obligations or any part thereof at the maturity thereof or before maturity if the same be by their terms or by other agreement subject to call for prior redemption, with the right in the commission to include various series and issues of such outstanding revenue obligations in a single issue of funding or refunding revenue obligations, and to issue refunding revenue obligations to pay any redemption premium payable on the outstanding revenue obligations being funded or refunded. Such funding or refunding revenue obligations shall be payable only out of a special fund created out of the gross revenues of such public utility, and shall only be a valid claim as against such special fund and the amount of the revenues of such utility pledged to such fund. Such funding or refunding revenue obligations shall in the discretion of the commission be exchanged at par for the revenue obligations which are being funded or refunded or shall be sold in such manner, at such price and at such rate or rates of interest as the commission shall deem for the best interest of the district. Said funding or refunding [revenue] obligations shall except as specifically provided in this section, be issued in accordance with the provisions with respect to revenue obligations in \*this act set forth. [1970 ex.s. c 56 § 79; 1969 ex.s. c 232 § 84; 1959 c 218 § 10; 1941 c 182 § 8; Rem. Supp. 1941 c 11611-8.]

**\*Reviser's note:** "this act" first appears in 1941 c 182 codified herein, as amended, as RCW 54.24.020 through 54.24.120.

**Effective date—Purpose—1970 ex.s. c 56:** See notes following RCW 39.44.030.

**Validation—Saving—Severability—1969 ex.s. c 232:** See notes following RCW 39.44.030.

**54.24.100 Execution of revenue obligations—Signatures.** All revenue obligations, including funding and refunding revenue obligations, shall be executed in such manner as the commission may determine: *Provided*, That at least one signature on each such revenue obligation shall be a manual signature of a member of the commission: *Provided*, That warrants may be signed as provided in RCW 54.24.010. The interest coupons attached to any revenue obligations may be executed with facsimile or lithographed signatures, or otherwise, as the commission may determine. [1959 c 218 § 11; 1941 c 182 § 9; Rem. Supp. 1941 § 11611-9.]

*Facsimile signatures:* RCW 39.44.100-39.44.102.

**54.24.110 Laws and resolutions as contract.** The provisions of 'this act and the provisions of <sup>2</sup>chapter 1, Laws of 1931, not hereby superseded, and of any resolution or resolutions providing for the issuance of any revenue obligations as herein set forth shall constitute a contract with the holder or holders of such revenue obligations and the agreements and covenants of the district and its commission under said acts and any such resolution or resolutions shall be enforceable by any revenue obligation holder by mandamus or any other

appropriate suit or action in any court of competent jurisdiction. [1959 c 218 § 12; 1941 c 182 § 10; Rem. Supp. 1941 § 11611-10.]

Reviser's note: "this act", see note following RCW 54.24.090.  
 "chapter 1, Laws of 1931", see note following RCW 54.04.020.

Mandamus: RCW 7.16.150 through 7.16.280.

**54.24.120 Obligations as lawful securities and investments.** All bonds, warrants, and revenue obligations issued under the authority of 'chapter 1, Laws of 1931 and <sup>2</sup>this act shall be legal securities, which may be used by any bank or trust company for deposit with the state treasurer, or any county, city, or town treasurer, as security for deposits in lieu of a surety bond under any law relating to deposits of public moneys and shall constitute legal investments for trustees and other fiduciaries other than corporations doing a trust business in this state and for savings and loan associations, banks, and insurance companies doing business in this state. All such bonds, warrants, and revenue obligations and all coupons appertaining thereto shall be negotiable instruments within the meaning of and for all purposes of the negotiable instruments law of this state. [1959 c 218 § 13; 1941 c 182 § 11; Rem. Supp. 1941 § 11611-11.]

Reviser's note: "chapter 1, Laws of 1931", see note following RCW 54.04.020.

<sup>2</sup>"this act", see note following RCW 54.24.090.

Investment securities: Article 62A.8 RCW.

**LOCAL IMPROVEMENT GUARANTY FUND**

**54.24.200 Local improvement guaranty fund.** Every public utility district in the state is hereby authorized, by resolution, to create a fund for the purpose of guaranteeing, to the extent of such fund, and in the manner hereinafter provided, the payment of such of its local improvement bonds and/or warrants as the commission may determine issued to pay for any local improvement within any local utility district established within the boundaries of the public utility district. Such fund shall be designated "local improvement guaranty fund, public utility district No. -----". For the purpose of maintaining such fund the public utility district shall set aside and pay into it such proportion as the commissioners may direct by resolution of the monthly gross revenues of its public utilities for which local improvement bonds and/or warrants have been issued and guaranteed by said fund: *Provided, however,* That any obligation to make payments into said fund as herein provided shall be junior to any pledge of said gross revenues for the payment of any outstanding or future general obligation bonds or revenue bonds of the district. The proportion may be varied from time to time as the commissioners deem expedient: *Provided, further,* That under the existence of the conditions set forth in subdivisions (1) and (2), hereunder, and when consistent with the covenants of a public utility district securing its bonds, the proportion shall be as therein specified, to wit:

(1) When bonds and/or warrants of a local utility district have been guaranteed and are outstanding and the guaranty fund does not have a cash balance equal

to twenty percent of all bonds and/or warrants originally guaranteed hereunder, excluding bonds and/or warrants which have been retired in full, then twenty percent of the gross monthly revenues from each public utility for which such bonds and/or warrants have been issued and are outstanding but not necessarily from users in other parts of the public utility district as a whole, shall be set aside and paid into the guaranty fund: *Provided,* That when, under the requirements of this subdivision, the cash balance accumulates so that it is equal to twenty percent of the total original guaranteed bonds and/or warrants, exclusive of any issue of bonds and/or warrants of a local utility district which issue has been paid and/or redeemed in full, or equal to the full amount of all bonds and/or warrants guaranteed, outstanding and unpaid, which amount might be less than twenty percent of the original total guaranteed, then no further revenue need be set aside and paid into the guaranty fund so long as such condition continues;

(2) When warrants issued against the guaranty fund remain outstanding and uncalled, for lack of funds, for six months from date of issuance, or when coupons, bonds and/or warrants guaranteed hereunder have been matured for six months and have not been redeemed, then twenty percent of the gross monthly revenue, or such portion thereof as the commissioners determine will be sufficient to retire the warrants or redeem the coupons, bonds and/or warrants in the ensuing six months, derived from all the users of the public utilities for which such bonds and/or warrants have been issued and are outstanding in whole or in part, shall be set aside and paid into the guaranty fund: *Provided,* That when under the requirements of this subdivision all warrants, coupons, bonds and/or warrants specified in this subdivision have been redeemed, no further income need be set aside and paid into the guaranty fund under the requirements of this subdivision unless other warrants remain outstanding and unpaid for six months or other coupons, bonds and/or warrants default: *Provided, further, however,* That no more than a total of twenty percent of the gross monthly revenue shall be required to be set aside and paid into the guaranty fund by these subdivisions (1) and (2). [1957 c 150 § 1.]

Local utility districts: RCW 54.16.120.

**54.24.210 Local improvement guaranty fund—Duties of the district.** To comply with the requirements of setting aside and paying into the local improvement guaranty fund a proportion of the monthly gross revenues of the public utilities of a district, for which guaranteed local improvement bonds and/or warrants have been issued and are outstanding, the district shall bind and obligate itself so long as economically feasible to maintain and operate the utilities and establish, maintain and collect such rates for water and/or electric energy, as the case may be, as will produce gross revenues sufficient to maintain and operate the utilities, and make necessary provision for the guaranty fund. The district shall alter its rates for water and/or electric energy, as the case may be, from time to time and shall

vary them in different portions of its territory to comply with such requirements. [1957 c 150 § 2.]

**54.24.220 Local improvement guaranty fund—Warrants to meet liabilities.** When a coupon, bond and/or warrant guaranteed hereby matures and there are not sufficient funds in the local utility district bond redemption fund to pay it, the county treasurer shall pay it from the local improvement guaranty fund of the public utility district; if there are not sufficient funds in the guaranty fund to pay it, it may be paid by issuance and delivery of a warrant upon the local improvement guaranty fund.

When the cash balance in the local improvement guaranty fund is insufficient for the required purposes, warrants drawing interest at a rate not to exceed seven percent per year may be issued by the district auditor, against the fund to meet any liability accrued against it and shall issue them upon demand of the holders of any matured coupons, bonds and/or warrants guaranteed hereby, or to pay for any certificate of delinquency for delinquent installments of assessments as provided hereinafter. Guaranty fund warrants shall be a first lien in their order of issuance upon the guaranty fund. [1957 c 150 § 3.]

**54.24.230 Local improvement guaranty fund—Certificates of delinquency—Contents, purchase, payment, issuance, sale.** Within twenty days after the date of delinquency of any annual installment of assessments levied for the purpose of paying the local improvement bonds and/or warrants of a district guaranteed hereunder, the county treasurer shall compile a statement of all installments delinquent together with the amount of accrued interest and penalty appurtenant to each installment, and shall forthwith purchase, for the district, certificates of delinquency for all such delinquent installments. Payment for the certificates shall be made from the local improvement guaranty fund and if there is not sufficient money in that fund to pay for the certificates, the county treasurer shall accept the local improvement guaranty fund warrants in payment therefor. All certificates shall be issued in the name of the local improvement guaranty fund and all guaranty fund warrants issued in payment therefor shall be issued in the name of the appropriate local utility district fund. When a market is available and the commissioners direct, the county treasurer shall sell any certificates belonging to the local improvement guaranty fund, for not less than face value thereof plus accrued interest from date of issuance to date of sale.

The certificates shall be issued by the county treasurer, shall bear interest at the rate of ten percent per year, shall each be for the face value of the delinquent installment, plus accrued interest to date of issuance, plus a penalty of five percent of the face value, and shall set forth the:

- (1) Description of property assessed;
  - (2) Date the installment of assessment became delinquent; and
  - (3) Name of the owner or reputed owner, if known.
- [1957 c 150 § 4.]

**54.24.240 Local improvement guaranty fund—Certificates of delinquency—Redemption, foreclosure.** The certificates of delinquency may be redeemed by the owner of the property assessed at any time up to two years from the date of foreclosure of the certificate.

If a certificate is not redeemed on the second occurring first day of January, after its issuance, the county treasurer shall foreclose the certificate in the manner specified for the foreclosure of the lien of local improvement assessments in cities, and if no redemption is made within the succeeding two years, from date of the decree of foreclosure, shall execute and deliver unto the public utility district, as trustee for the fund, a deed conveying fee simple title to the property described in the foreclosed certificate. [1957 c 150 § 5.]

**54.24.250 Local improvement guaranty fund—Subrogation of district as trustee of fund, effect on fund, disposition of proceeds.** When there is paid out of a guaranty fund any sum on the principal or interest upon local improvement bonds, and/or warrants, or on the purchase of certificates of delinquency, the public utility district, as trustee, for the fund, shall be subrogated to all rights of the holder of the bonds, and/or warrants, interest coupons, or delinquent assessment installments so paid; and the proceeds thereof, or of the assessment underlying them, shall become a part of the guaranty fund. There shall also be paid into the guaranty fund the interest received from the bank deposits of the fund, as well as any surplus remaining in the local utility district funds guaranteed hereunder, after the payment of all outstanding bonds and/or warrants payable primarily out of such local utility district funds. As among the several issues of bonds and/or warrants guaranteed by the fund, no preference shall exist, but defaulted interest coupons and bonds and/or warrants shall be purchased out of the fund in the order of their presentation.

The commissioners shall prescribe, by resolution, appropriate rules for the guaranty fund consistent herewith. So much of the money of a guaranty fund as is necessary and not required for other purposes hereunder may be used to purchase property at county tax foreclosure sales or from the county after foreclosure in cases where the property is subject to unpaid local improvement assessments securing bonds and/or warrants guaranteed hereunder and such purchase is deemed necessary for the purpose of protecting the guaranty fund. In such cases the funds shall be subrogated to all rights of the district. After so acquiring title to real property, the district may lease or resell and convey it in the same manner that county property may be leased or resold and for such prices and on such terms as may be determined by resolution of the commissioners. All proceeds resulting from such resales shall belong to and be paid into the guaranty fund. [1957 c 150 § 6.]

**54.24.260 Local improvement guaranty fund—Rights and remedies of bond or warrant holder which shall be printed on bond or warrant—Disposition of balance of fund.** Neither the holder nor the owner of local improvement bonds and/or warrants guaranteed

hereunder shall have a claim therefor against the public utility district, except for payment from the special assessment made for the improvement for which the bonds and/or warrants were issued, and except as against the guaranty fund. The district shall not be liable to any holder or owner of such local improvement bonds and/or warrants for any loss to the guaranty fund occurring in the lawful operation thereof by the district. The remedy of the holder of a local improvement bond and/or warrant shall be confined to the enforcement of the assessment and to the guaranty fund. A copy of the foregoing part of this section shall be plainly written, printed, or engraved on each local improvement bond and/or warrant guaranteed hereby. The establishment of a guaranty fund shall not be deemed at variance from any comprehensive plan heretofore adopted by a district.

If a guaranty fund at any time has balance therein in cash, and the obligations guaranteed thereby have all been paid off, the balance may be transferred to such other fund of the district as the commissioners shall, by resolution, direct. [1957 c 150 § 7.]

### Chapter 54.28 PRIVILEGE TAXES

#### Sections

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#### 54.28.010 Definitions. As used in this chapter:

"Tax commission" means the department of revenue of the state of Washington;

"Operating property" means all of the property utilized by a public utility district in the operation of a plant or system for the generation, transmission, or distribution of electric energy for sale;

"Taxing districts" means counties, cities, towns, school districts, and road districts;

"Distributes to consumers" means the sale of electric energy to ultimate consumers thereof, and does not include sales of electric energy for resale by the purchaser;

"Wholesale value" means all costs of a public utility district associated with the generation and transmission of energy from its own generation and transmission system to the point or points of inter-connection with a distribution system owned and used by a district to distribute such energy to consumers, or in the event a distribution system owned by a district is not used to distribute such energy, then the term means the gross

revenues derived by a district from the sale of such energy to consumers. [1967 ex.s. c 26 § 22; 1959 c 274 § 1; 1957 c 278 § 7. Prior: (i) 1941 c 245 § 1, part; Rem. Supp. 1941 § 11616-1, part. (ii) 1949 c 227 § 1(f); Rem. Supp. 1949 § 11616-2(f).]

~~Effective date—Savings—1967 ex.s. c 26: See note following RCW 82.01.050.~~

**54.28.011 "Gross revenue" defined.** "Gross revenue" shall mean the amount received from the sale of electric energy excluding any tax levied by a municipal corporation upon the district pursuant to RCW 54.28.070. [1957 c 278 § 12.]

**54.28.020 Tax imposed—Rates.** There is hereby levied and there shall be collected from every district a tax for the act or privilege of engaging within this state in the business of operating works, plants or facilities for the generation, distribution and sale of electric energy. With respect to each such district, such tax shall be the sum of the following amounts: (1) Two percent of the gross revenues derived by the district from the sale of all electric energy which it distributes to consumers who are served by a distribution system owned by the district; (2) five percent of the first four mills per kilowatt-hour of wholesale value of self-generated energy distributed to consumers by a district; (3) five percent of the first four mills per kilowatt-hour of revenue obtained by the district from the sale of self-generated energy for resale. [1959 c 274 § 2; 1957 c 278 § 2. Prior: 1949 c 227 § 1(a); 1947 c 259 § 1(a); 1941 c 245 § 2(a); Rem. Supp. 1949 § 11616-2(a).]

**Severability—1947 c 259:** "If any section, subsection, clause, sentence or phrase of this act be for any reason adjudged unconstitutional, such adjudication shall not invalidate the remaining portions of this act, and the legislature hereby declares that it would have enacted this act notwithstanding the omission of the portion so adjudicated invalid." [1947 c 259 § 2.]

**54.28.030 Districts' report to tax commission.** On or before the fifteenth day of March of each year, each district subject to this tax shall file with the tax commission a report verified by the affidavit of its manager or secretary on forms prescribed by the tax commission. Such report shall state (1) the gross revenues derived by the district from the sale of all distributed energy to consumers and the respective amounts derived from such sales within each county; (2) the gross revenues derived by the district from the sale of self-generated energy for resale; (3) the amount of all generated energy distributed by a district from its own generating facilities, the wholesale value thereof, and the basis on which the value is computed; (4) the total cost of all generating facilities and the cost of acquisition of land and land rights for reservoir purposes in each county, and (5) such other and further information as the tax commission reasonably may require in order to administer the provisions of this chapter. In case of failure by a district to file such report, the commission may proceed to determine the information, which determination shall be contestable by the district only for actual fraud. [1959 c 274 § 3; 1957 c 278 § 3. Prior: 1949 c 227 §

1(b); 1947 c 259 § 1(b); 1941 c 245 § 2(b); Rem. Supp. 1949 § 11616-2(b).]

**54.28.040 Tax computed—Payment—Disposition.** Prior to May 1st, the tax commission shall compute the tax imposed by this chapter for the last preceding calendar year and notify the district of the amount thereof, which shall be payable on or before the following June 1st. Upon receipt of the amount of each tax imposed the tax commission shall deposit the same with the state treasurer, who shall deposit four percent thereof in the general fund of the state and shall distribute the remainder in the manner hereinafter set forth. The state treasurer shall send a duplicate copy of each such letter of transmittal to the tax commission. [1957 c 278 § 4. Prior: 1949 c 227 § 1(c); 1947 c 259 § 1(c); 1941 c 245 § 2(c); Rem. Supp. 1949 § 11616-2(c).]

**54.28.050 Distribution of tax.** After computing the tax imposed by this chapter, the tax commission shall instruct the state treasurer, after placing four percent in the state general fund, to distribute the balance collected under RCW 54.28.020 subsection (1) to each county in proportion to the gross revenue from sales made within each county; and to distribute the balance collected under RCW 54.28.020 subsections (2) and (3) as follows: If the entire generating facility, including reservoir, if any, is in a single county then all of the balance to the county where such generating facility is located. If any reservoir is in more than one county, then to each county in which the reservoir or any portion thereof is located a percentage equal to the percentage determined by dividing the total cost of the generating facilities, including adjacent switching facilities, into twice the cost of land and land rights acquired for any reservoir within each county, land and land rights to be defined the same as used by the federal power commission. If the powerhouse and dam, if any, in connection with such reservoir are in more than one county, the balance shall be divided sixty percent to the county in which the owning district is located and forty percent to the other county or counties or if said powerhouse and dam, if any, are owned by a joint operating agency organized under chapter 43.52 RCW, or by more than one district or are outside the county of the owning district, then to be divided equally between the counties in which such facilities are located. If all of the powerhouse and dam, if any, are in one county, then the balance shall be distributed to the county in which the facilities are located. [1959 c 274 § 4; 1957 c 278 § 5. Prior: 1949 c 227 § 1(d); 1947 c 259 § 1(d); 1941 c 245 § 2(d); Rem. Supp. 1949 § 11616-2(d).]

**Effective date—1959 c 274:** "The effective date of section 4 of this 1959 amendatory act shall be January 1, 1960." [1959 c 274 § 6.] This applies to RCW 54.28.050.

**54.28.060 Interest.** Interest at the rate of six percent per annum shall be added to the tax hereby imposed after the due date. The tax shall constitute a debt to the state and may be collected as such. [1957 c 278 § 6. Prior: 1949 c 227 § 1(e); 1947 c 259 § 1(e); 1941 c 245 § 2(e); Rem. Supp. 1949 § 11616-2(e).]

**54.28.070 Municipal taxes—May be passed on.** Any city or town in which a public utility district operates works, plants or facilities for the distribution and sale of electricity shall have the power to levy and collect from such district a tax on the gross revenues derived by such district from the sale of electricity within the city or town, exclusive of the revenues derived from the sale of electricity for purposes of resale. Such tax when levied shall be a debt of the district, and may be collected as such. Any such district shall have the power to add the amount of such tax to the rates or charges it makes for electricity so sold within the limits of such city or town. [1941 c 245 § 3; Rem. Supp. 1941 § 11616-3.]

**54.28.080 Additional tax for payment on bonded indebtedness of school districts.** Whenever any district acquires an operating property from any private person, firm, or corporation and a portion of the operating property is situated within the boundaries of any school district and at the time of such acquisition there is an outstanding bonded indebtedness of the school district, then the public utility district shall, in addition to the tax imposed by this chapter, pay directly to the school district a proportion of all subsequent payments by the school district of principal and interest on said bonded indebtedness, said additional payments to be computed and paid as follows: The amount of principal and interest required to be paid by the school district shall be multiplied by the percentage which the assessed value of the property acquired bore to the assessed value of the total property in the school district at the time of such acquisition. Such additional amounts shall be paid by the public utility district to the school district not less than fifteen days prior to the date that such principal and interest payments are required to be paid by the school district. In addition, any public utility district which acquires from any private person, firm, or corporation an operating property situated within a school district, is authorized to make voluntary payments to such school district for the use and benefit of the school district. [1957 c 278 § 8. Prior: 1949 c 227 § 1(g); 1941 c 245 § 2; Rem. Supp. 1949 § 11616-2(g).]

**54.28.090 Deposit of funds to credit of taxing district.** The county commissioners of each county shall direct the county treasurer to deposit funds to the credit of each taxing district in the county according to the manner they deem most equitable; except not less than thirty-five percent of all moneys so received shall be apportioned to the school districts within the county having district properties within their limits, and not less than an amount equal to three-fourths of one percent of the gross revenues obtained by a district from the sale of electric energy within any incorporated city or town shall be remitted to such city or town. Information furnished by the district to the county commissioners shall be the basis for the determination of the amount to be paid to such cities or towns. [1957 c 278 § 10.]



**54.28.100 Use of moneys received by taxing district.**

All moneys received by any taxing district shall be used for purposes for which state taxes may be used under the provisions of the state constitution. [1957 c 278 § 11.]

*Revenue and taxation: State Constitution Art. 7.*

**54.28.110 Voluntary payments by district to taxing entity for removal of property from tax rolls.**

Whenever, hereafter, property is removed from the tax rolls as a result of the acquisition of operating property or the construction of a generating plant by a public utility district, such public utility district may make voluntary payments to any municipal corporation or other entity authorized to levy and collect taxes in an amount not to exceed the amount of tax revenues being received by such municipal corporation or other entity at the time of said acquisition or said construction and which are lost by such municipal corporation or other entity as a result of the acquisition of operating property or the construction of a generating plant by the public utility district: *Provided*, That this section shall not apply to taxing districts as defined in RCW 54.28.010, and: *Provided further*, That in the event any operating property so removed from the tax rolls is dismantled or partially dismantled the payment which may be paid hereunder shall be correspondingly reduced. [1957 c 278 § 13.]

**54.28.120 Amount of tax if district acquires electric utility property from public service company.**

In the event any district hereafter purchases or otherwise acquires electric utility properties comprising all or a portion of an electric generation and/or distribution system from a public service company, as defined in RCW 80.04.010, the total amount of privilege taxes imposed under \*this act to be paid by the district annually on the combined operating property within each county where such utility property is located, irrespective of any other basis of levy contained in this chapter, will be not less than the combined total of the ad valorem taxes, based on regular levies, last levied against the electric utility property constituting the system so purchased or acquired plus the taxes paid by the district for the same year on the revenues of other operating property in the same county under terms of this chapter. If all or any portion of the property so acquired is subsequently sold, or if rates charged to purchasers of electric energy are reduced, the amount of privilege tax required under this section shall be proportionately reduced. [1957 c 278 § 14.]

\*Reviser's note: "this act" (chapter 278, Laws of 1957) is codified as RCW 54.28.010, 54.28.011, 54.28.020-54.28.060, and 54.28.080-54.28.130.

**Chapter 54.32****CONSOLIDATION AND ANNEXATION**

## Sections

- |           |   |
|-----------|---|
| 54.32.010 | Consolidation of districts—Property taxed—Boundaries enlarged.            |
| 54.32.040 | Right of county-wide utility district to acquire distribution properties. |

**54.32.010 Consolidation of districts—Property taxed—Boundaries enlarged.** Two or more contiguous public utility districts may become consolidated into one public utility district after proceedings had as required by sections 8909, 8910 and 8911, of Remington's Compiled Statutes of Washington, *Provided*, That a ten percent petition shall be sufficient; and public utility districts shall be held to be municipal corporations within the meaning of said sections, and the commission shall be held to be the legislative body of the public utility district as the term legislative body is used in said sections: *Provided*, That any such consolidation shall in nowise affect or impair the title to any property owned or held by any such public utility district, or in trust therefor, or any debts, demands, liabilities or obligations existing in favor of or against either of the districts so consolidated, or any proceeding then pending: *Provided, further*, That no property within either of the former public utility districts shall ever be taxed to pay any of the indebtedness of either of the other such former districts.

The boundaries of any public utility district may be enlarged and new territory included therein, after proceedings had as required by section 8894 of Remington's Compiled Statutes of Washington: *Provided*, That a ten percent petition shall be sufficient; and public utility districts shall be held to be municipal corporations within the meaning of said section, and the commission shall be held to be the legislative body of the public utility district: *Provided*, That no property within such territory so annexed shall ever be taxed to pay any portion of any indebtedness of such public utility district contracted prior to or existing at the date of such annexation.

In all cases wherein public utility districts of less area than an entire county desire to be consolidated with a public utility district including an entire county, and in all cases wherein it is desired to enlarge a public utility district including an entire county, by annexing a lesser area than an entire county, no election shall be required to be held in the district including an entire county. [1931 c 1 § 10; RRS § 11614. Formerly RCW 54.32.010 through 54.32.030.]

Reviser's note: Rem. Comp. Stat. §§ 8909, 8910 and 8911 relating to the consolidation of municipal corporations had been repealed and reenacted by 1929 c 64, at the time the above section was enacted. 1929 c 64 was compiled as RRS § 8909-1 through 8909-12; see chapters 35.10 and 35.11 RCW.

<sup>2</sup>Rem. Comp. Stat. § 8894; see chapter 35.12 RCW.

**54.32.040 Right of county-wide utility district to acquire distribution properties.** Upon the formation of a county-wide public utility district in any county such district shall have the right, in addition to any other right provided by law, to acquire by purchase or condemnation any electrical distribution properties in the county from any other public utility district or combination of public utility districts for a period of five years from the time of organization of said public utility district. [1951 c 272 § 2.]

*Any city or town may acquire electrical distribution property from public utility district: RCW 35.92.054.*



## Chapter 54.36

## LIABILITY TO OTHER TAXING DISTRICTS

## Sections

54.36.010	Definitions.
54.36.020	Increased financial burden on school district—Determination of number of construction pupils.
54.36.030	Compensation of school district for construction pupils—Computation.
54.36.040	Compensation of school district for construction pupils—Amount to be paid.
54.36.050	Compensation of school district for construction pupils—How paid when more than one project in the same school district.
54.36.060	Power to make voluntary payments to school district for capital construction.
54.36.070	Increased financial burden on county or other taxing district—Power to make payments.
54.36.080	Funds received by school district—Equalization apportionment.

**54.36.010 Definitions.** As used in this chapter:

"Public utility district" means public utility district or districts or a joint operating agency or agencies.

"Construction project" means the construction of hydroelectric generating facilities by a public utility district. It includes the relocation of highways and railroads, by whomever done, to the extent that it is occasioned by the overflowing of their former locations, or by destruction or burying incident to the construction.

"Base-year enrollment" means the number of pupils enrolled in a school district on the first of May next preceding the date construction was commenced.

"Subsequent-year enrollment" means the number of pupils enrolled in a school district on any first of May after construction was commenced.

"Construction pupils" means pupils who have a parent who is a full-time employee on the construction project and who moved into the school district subsequent to the first day of May next preceding the day the construction was commenced.

"Nonconstruction pupils" means other pupils. [1973 1st ex.s. c 154 § 99; 1957 c 137 § 1.]

**Severability—1973 1st ex.s. c 154:** See note following RCW 2.12.030.

*Operating agencies: Chapter 43.52 RCW.*

**54.36.020 Increased financial burden on school district—Determination of number of construction pupils.** When as the result of a public utility district construction project a school district considers it is suffering an increased financial burden in any year during the construction project, it shall determine the number of construction pupils enrolled in the school district on the first of May of such year. [1957 c 137 § 2.]

**54.36.030 Compensation of school district for construction pupils—Computation.** If the subsequent-year enrollment exceeds one hundred and three percent of the base-year enrollment, the public utility district shall compensate the school district for a number of construction pupils computed as follows:

(1) If the subsequent-year enrollment of nonconstruction pupils is less than the base-year enrollment, compensation shall be paid for the total number of all

pupils minus one hundred and three percent of the base-year enrollment.

(2) If the subsequent-year enrollment of nonconstruction pupils is not less than the base-year enrollment, compensation shall be paid for the total number of construction pupils minus three percent of the base-year enrollment. [1957 c 137 § 3.]

**54.36.040 Compensation of school district for construction pupils—Amount to be paid.** The compensation to be paid per construction pupils as computed in RCW 54.36.030 shall be one-third of the average per-pupil cost of the local school district, for the school year then current. [1957 c 137 § 4.]

**54.36.050 Compensation of school district for construction pupils—How paid when more than one project in the same school district.** If more than one public utility district or joint operating agency is carrying on a construction project in the same school district, the number of construction pupils for whom the school district is to receive compensation shall be computed as if the projects were constructed by a single agency. The public utility districts or joint operating agencies involved shall divide the cost of such compensation between themselves in proportion to the number of construction pupils occasioned by the operations of each. [1957 c 137 § 5.]

**54.36.060 Power to make voluntary payments to school district for capital construction.** Public utility districts are hereby authorized to make voluntary payments to a school district for capital construction if their construction projects cause an increased financial burden for such purpose on the school district. [1957 c 137 § 6.]

**54.36.070 Increased financial burden on county or other taxing district—Power to make payments.** Public utilities are hereby authorized to make payments to a county or other taxing district in existence before the commencement of construction on the construction project which suffers an increased financial burden because of their construction projects, but such amount shall not be more than the amount by which the property taxes levied against the contractors engaged in the work on the construction project failed to meet said increased financial burden. [1957 c 137 § 7.]

**54.36.080 Funds received by school district—Equalization apportionment.** The funds paid by a public utility district to a school district under the provisions of this chapter shall not be considered a school district receipt by the superintendent of public instruction in determining equalization apportionments under \*RCW 28.41.080. [1957 c 137 § 8.]

**\*Reviser's note:** "RCW 28.41.080" was repealed by 1965 ex.s. c 154 § 12; as a part thereof said section concludes with the following proviso ". . . PROVIDED, That the provisions of such statutes herein repealed insofar as they are expressly or impliedly adopted by reference or otherwise referred to in or for the benefit of any other statutes, are hereby preserved for such purposes."

**Chapter 54.40  
FIRST CLASS DISTRICTS**

Sections

- 54.40.010 District of first class—Requirements.
- 54.40.020 Existing districts—Qualifications—Voters' approval.
- 54.40.030 Transmittal of copies of federal hydroelectric license and application to county auditor.
- 54.40.040 Election to reclassify district as a first class district—Ballot form—Vote required.
- 54.40.050 Petition for reclassification—Certificate of sufficiency—Election, date, notice.
- 54.40.060 Division of district into at large districts.
- 54.40.070 Appointment of commissioners from at large districts—Terms.

**54.40.010 District of first class—Requirements.** A public utility district of the first class is a district which shall have a license from the federal power commission to construct a hydroelectric project of an estimated cost of more than three hundred and twenty-five million dollars, including interest during construction, and which shall have received the approval of the voters of the district to become a first class district as provided herein. [1959 c 265 § 2.]

**54.40.020 Existing districts—Qualifications—Voters' approval.** Every public utility district which on the effective date of this chapter shall be in existence and have such a license shall be qualified to become a first class district upon approval of the voters of said district. [1959 c 265 § 3.]

**Effective date—1959 c 265:** The effective date of this chapter was midnight, June 10, 1959, see preface 1959 session laws.

**54.40.030 Transmittal of copies of federal hydroelectric license and application to county auditor.** Within five days after a public utility district shall receive a license from the federal power commission to construct a hydroelectric project of an estimated cost of more than three hundred and twenty-five million dollars, including interest during construction, or, in the case of a district which on the effective date of this chapter is in existence and has such a license within five days of the effective date of this act the district shall forward a true copy of said license accompanied by a true copy of the application for such license, both certified by the secretary of the district, to the county auditor of the county wherein said district is located. [1959 c 265 § 4.]

**54.40.040 Election to reclassify district as a first class district—Ballot form—Vote required.** A public utility district having a license which entitles it to become a first class district shall be so classified only by approval of the qualified voters of the district. Such approval shall be by an election upon petition as hereinafter provided. In submitting the question to the voters for their approval or rejection, the proposition shall be expressed on the ballot in substantially the following terms:

Shall Public Utility District No. -----  
be reclassified a First Class District  
for the purpose of increasing the  
number of commissioners to five ..... YES

Shall Public Utility District No. -----  
be reclassified a First Class District  
for the purpose of increasing the  
number of commissioners to five ..... NO

Should a majority of the voters voting on the question approve the proposition, the district shall be declared a first class district upon the completion of the canvass of the election returns. [1959 c 265 § 5.]

**54.40.050 Petition for reclassification—Certificate of sufficiency—Election, date, notice.** The question of reclassification of a public utility district as a first class public utility district shall be submitted to the voters only upon filing a petition with the county auditor of the county in which said district is located, identifying the district by number and praying that an election be held to determine whether it shall become a first class district. The petition must be signed by a number of qualified voters of the district equal to at least ten percent of the number of voters in the district who voted at the last general election. In addition to the signature of the voter, the petition must indicate each signer's residence address and further indicate whether he is registered in a precinct in an unincorporated area or a precinct in an incorporated area and if the latter, give the name of the city or town wherein he is registered. Said petition shall be presented to the county auditor for verification of the validity of the signatures. Within thirty days after receipt of the petition, the county auditor, in conjunction with the city clerks of the incorporated areas in which any signer is registered, shall determine the sufficiency of the petition. If the petition is found insufficient, the person who filed the same shall be notified by mail and he shall have an additional fifteen days from the date of mailing such notice within which to submit additional signatures, and the county auditor shall have an additional thirty days after the submission of such additional signatures to determine the validity of the entire petition. No signature may be withdrawn after the petition has been filed. If the petition, including these additional signatures if any, is found sufficient, the county auditor shall certify such fact to the public utility district and if the commissioners of the public utility district have theretofore certified to the county auditor the eligibility of the district for reclassification as provided in this chapter, the county auditor shall submit to the voters of the district the question of whether the district shall become a first class district. Such election shall be held on a date fixed by the county auditor which date shall be not more than one hundred twenty days after the date on which he certified the sufficiency of the petition. Notice of any election on the question shall be given in the manner prescribed for notice of an election on the formation of a public utility district. [1959 c 265 § 6.]

**54.40.060 Division of district into at large districts.** If the reclassification to a first class district is approved by the voters, the board of county commissioners within ten days after the results of said election are certified shall divide the public utility district into two districts of as nearly equal population and area as possible, and shall designate such districts as At Large District A and At Large District B. [1959 c 265 § 7.]

**54.40.070 Appointment of commissioners from at large districts—Terms.** Within thirty days after the county commissioners shall divide the district into two at large districts, the commissioners of such public utility district shall appoint one commissioner from each at large district, one to serve until the next general biennial election and one to serve until the next succeeding biennial general election. At the time of said appointments, the commissioners shall designate which new appointee shall hold the longer term. [1959 c 265 § 8.]

### Chapter 54.44

## NUCLEAR, THERMAL POWER FACILITIES— JOINT DEVELOPMENT

#### Sections

- 54.44.010 Declaration of public purpose.
- 54.44.020 Authority to participate in and enter into agreements for operation of common facilities—Percentage of ownership—Expenses—Taxes—Payments.
- 54.44.030 Liability of city, joint operating agency or public utility district—Extent—Limitations.
- 54.44.040 Authority to provide money and/or property, issue revenue bonds—Declaration of public purpose.
- 54.44.050 Depositories—Disbursement of funds.
- 54.44.060 Agreements to conform to applicable laws.
- 54.44.900 Liberal construction—Not to affect existing acts.
- 54.44.901 Severability—1973 1st ex.s. c 7.
- 54.44.910 Severability—1967 c 159.

**54.44.010 Declaration of public purpose.** It is declared to be in the public interest and for a public purpose that cities of the first class, public utility districts, joint operating agencies organized under chapter 43.52 RCW, and regulated electrical companies be permitted to participate together in the development of nuclear and other thermal power facilities and transmission facilities as hereinafter provided as one means of achieving economies of scale and thereby promoting the economic development of the state and its natural resources to meet the future power needs of the state and all its inhabitants. [1973 1st ex.s. c 7 § 1; 1967 c 159 § 1.]

**Legislative finding—Emergency—1973 1st ex.s. c 7:** "The legislature finds that the immediate planning, financing, acquisition and construction of electric generating and transmission facilities as provided in sections 1 through 6 of this 1973 amendatory act is a public necessity to meet the power requirements of the public utility districts, cities, joint operating agencies and regulated utilities referred to in sections 1 through 6 of this 1973 amendatory act and the inhabitants of this state; further that such public utility districts, cities, joint operating agencies and regulated utilities are ready, willing and able to undertake such planning, financing, acquisition and construction of said electric generating and transmission facilities immediately upon the passage of sections 1 through 6 of this 1973 amendatory act. This 1973 amendatory act is necessary for the immediate preservation of

the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect immediately." [1973 1st ex.s. c 7 § 7.] This applies to the amendments to RCW 54.44.010–54.44.060 by 1973 1st ex.s. c 7.

*Thermal nuclear plants, site locations: Chapter 80.50 RCW.*

*Nuclear energy and radiation: Chapter 70.98 RCW.*

*Nuclear energy development: RCW 43.31.280–43.31.330.*

**54.44.020 Authority to participate in and enter into agreements for operation of common facilities—Percentage of ownership—Expenses—Taxes—Payments.** In addition to the powers heretofore conferred upon cities of the first class, public utility districts organized under chapter 54.08 RCW, and joint operating agencies organized under chapter 43.52 RCW, any such cities and public utility districts which operate electric generating facilities or distribution systems and any joint operating agency shall have power and authority to participate and enter into agreements with each other and with electrical companies which are subject to the jurisdiction of the Washington utilities and transportation commission or the public utility commissioner of Oregon, hereinafter called "regulated utilities", for the undivided ownership of nuclear and other thermal power generating plants and facilities, and transmission facilities including, but not limited to, related transmission facilities, hereinafter called "common facilities", and for the planning, financing, acquisition, construction, operation and maintenance thereof. It shall be provided in such agreements that each city, public utility district, or joint operating agency shall own a percentage of any common facility equal to the percentage of the money furnished or the value of property supplied by it for the acquisition and construction thereof and shall own and control a like percentage of the electrical output thereof.

Each participant shall defray its own interest and other payments required to be made or deposited in connection with any financing undertaken by it to pay its percentage of the money furnished or value of property supplied by it for the planning, acquisition and construction of any common facility, or any additions or betterments thereto. The agreement shall provide a uniform method of determining and allocating operation and maintenance expenses of the common facility.

Each city, public utility district, joint operating agency and regulated utility participating in the ownership or operation of a common facility shall pay all taxes chargeable to its share of the common facility and the electric energy generated thereby under applicable statutes as now or hereafter in effect, and may make payments during preliminary work and construction for any increased financial burden suffered by any county or other existing taxing district in the county in which the common facility is located, pursuant to agreement with such county or taxing district. [1974 1st ex.s. c 72 § 1; 1973 1st ex.s. c 7 § 2; 1967 c 159 § 2.]

**54.44.030 Liability of city, joint operating agency or public utility district—Extent—Limitations.** In carrying out the powers granted in this chapter, each such city, public utility district, or joint operating agency shall be severally liable only for its own acts and not

jointly or severally liable for the acts, omissions or obligations of others. No money or property supplied by any such city, public utility district, or joint operating agency for the planning, financing, acquisition, construction, operation or maintenance of any common facility shall be credited or otherwise applied to the account of any other participant therein, nor shall the undivided share of any city, public utility district, or joint operating agency in any common facility be charged, directly or indirectly, with any debt or obligation of any other participant or be subject to any lien as a result thereof. No action in connection with a common facility shall be binding upon any public utility district, city, or joint operating agency unless authorized or approved by resolution or ordinance of its governing body. [1973 1st ex.s. c 7 § 3; 1967 c 159 § 3.]

**54.44.040 Authority to provide money and/or property, issue revenue bonds—Declaration of public purpose.** Any such city, public utility district, or joint operating agency participating in common facilities under this chapter, without an election, may furnish money and provide property, both real and personal, issue and sell revenue bonds pledging revenues of its electric system and its interest or share of the revenues derived from the common facilities and any additions and betterments thereto in order to pay its respective share of the costs of the planning, financing, acquisition and construction thereof. Such bonds shall be issued under the provisions of applicable laws authorizing the issuance of revenue bonds for the acquisition and construction of electric public utility properties by cities, public utility districts, or joint operating agencies as the case may be. All moneys paid or property supplied by any such city, public utility district, or joint operating agency for the purpose of carrying out the powers conferred herein are declared to be for a public purpose. [1973 1st ex.s. c 7 § 4; 1967 c 159 § 4.]

**54.44.050 Depositories—Disbursement of funds.** All moneys belonging to cities, public utility districts, and joint operating agencies in connection with common facilities shall be deposited in such depositories as qualify for the deposit of public funds and shall be accounted for and disbursed in accordance with applicable law. [1973 1st ex.s. c 7 § 5; 1967 c 159 § 5.]

**54.44.060 Agreements to conform to applicable laws.** Any agreement with respect to work to be done or material furnished by any such city, public utility district, or joint operating agency in connection with the construction, maintenance and operation of the common facilities, and any additions and betterments thereto shall be in conformity, as near as may be, with applicable laws now or hereafter in effect relating to public utility districts or cities of the first class. [1973 1st ex.s. c 7 § 6; 1967 c 159 § 6.]

**54.44.900 Liberal construction—Not to affect existing acts.** The provisions of this chapter shall be liberally construed to effectuate the purposes thereof. This chapter shall not be construed to affect any existing act

or part thereof relating to the construction, operation or maintenance of any public utility. [1967 c 159 § 7.]

**54.44.901 Severability—1973 1st ex.s. c 7.** If any provision of this 1973 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1973 1st ex.s. c 7 § 8.]

**54.44.910 Severability—1967 c 159.** If any provisions of this act or its application to any person or circumstance shall be held invalid or unconstitutional, the remainder of this act or its application to other persons or circumstances shall not be affected. [1967 c 159 § 8.]

**Chapter 54.48**  
**AGREEMENTS BETWEEN ELECTRICAL PUBLIC UTILITIES AND COOPERATIVES**

Sections	
54.48.010	Definitions.
54.48.020	Legislative declaration of policy.
54.48.030	Agreements between public utilities and cooperatives authorized—Boundaries—Extension procedures—Purchase or sale—Approval.
54.48.040	Cooperatives not to be classified as public utilities or under authority of utilities and transportation commission.

**54.48.010 Definitions.** When used in this chapter:

(1) "Public utility" means any privately owned public utility company engaged in rendering electric service to the public for hire, any public utility district engaged in rendering service to residential customers and any city or town engaged in the electric business.

(2) "Cooperative" means any cooperative having authority to engage in the electric business. [1969 c 102 § 1.]

**54.48.020 Legislative declaration of policy.** The legislature hereby declares that the duplication of the electric lines and service of public utilities and cooperatives is uneconomical, may create unnecessary hazards to the public safety, discourages investment in permanent underground facilities, and is unattractive, and thus is contrary to the public interest and further declares that it is in the public interest for public utilities and cooperatives to enter into agreements for the purpose of avoiding or eliminating such duplication. [1969 c 102 § 2.]

**54.48.030 Agreements between public utilities and cooperatives authorized—Boundaries—Extension procedures—Purchase or sale—Approval.** In aid of the foregoing declaration of policy, any public utility and any cooperative is hereby authorized to enter into agreements with any one or more other public utility or one or more other cooperative for the designation of the boundaries of adjoining service areas which each such public utility or each such cooperative shall observe, for the establishment of procedures for orderly extension of service in adjoining areas not currently served by any such public utility or any such cooperative and for the

acquisition or disposal by purchase or sale by any such public utility or any such cooperative of duplicating utility facilities, which agreements shall be for a reasonable period of time not in excess of twenty-five years: *Provided*, That the participation in such agreement of any public utility which is an electrical company under RCW 80.04.010, excepting cities and towns, shall be approved by the Washington utilities and transportation commission. [1969 c 102 § 3.]

**54.48.040 Cooperatives not to be classified as public utilities or under authority of utilities and transportation commission.** Nothing herein shall be construed to classify a cooperative having authority to engage in the electric business as a public utility or to include cooperatives under the authority of the Washington utilities and transportation commission. [1969 c 102 § 4.]

# TITLE 55

## SANITARY DISTRICTS

### Chapter

#### **55.04 Formation and dissolution.**

*Conveyance of real property by public bodies—Recording: RCW 65.08.095.*

*Hospitalization and medical aid for public employees and dependents—Premiums, governmental contributions authorized: RCW 41.04.180, 41.04.190.*

*Local governmental organizations, actions affecting boundaries, etc., review by boundary review board: Chapter 36.93 RCW.*

*Municipal corporation may authorize investment of funds which are in custody of county treasurer or other municipal corporation treasurer: RCW 36.29.020.*

#### **Chapter 55.04 FORMATION AND DISSOLUTION**

##### Sections

55.04.050 Dissolution.

55.04.060 Disincorporation of district located in class A or AA county and inactive for five years.

*Elections: Title 29 RCW.*

**55.04.050 Dissolution.** See port districts, chapter 53-.48 RCW.

**55.04.060 Disincorporation of district located in class A or AA county and inactive for five years.** See chapter 57.90 RCW.





# TITLE 56

## SEWER DISTRICTS

### Chapters

- 56.02 General provisions.
- 56.04 Formation and dissolution.
- 56.08 Powers—Comprehensive plan.
- 56.12 Commissioners.
- 56.16 Finances.
- 56.20 Utility local improvement districts.
- 56.24 Annexation of territory.
- 56.28 Withdrawal of territory.
- 56.32 Consolidation of districts—Merger.
- 56.36 Merger of water districts into sewer district—  
Merger of sewer districts into water district.

*Annexation of district territory to cities and towns: Chapter 35.13A RCW.*

*Assumption of jurisdiction over district or territory by city or town: Chapter 35.13A RCW.*

*Boundary review board, extension of permanent sewer service outside corporate boundaries to go before: RCW 36.93.090.*

*City and town sewerage systems, authority, elections: Chapter 35.67 RCW.*

*City sewerage, drainage, and water supply: RCW 35.21.210.*

*Conveyance of real property by public bodies—Recording: RCW 65.08.095.*

*County sewerage systems, authority, procedure: Chapter 36.94 RCW.*

*Hospitalization and medical aid for public employees and dependents—Premiums, governmental contributions authorized: RCW 41.04.180, 41.04.190.*

*Local governmental organizations, actions affecting boundaries, etc., review by boundary review board: Chapter 36.93 RCW.*

*Metropolitan municipal corporations: Chapter 35.58 RCW.*

*Municipal corporation may authorize investment of funds which are in custody of county treasurer or other municipal corporation treasurer: RCW 36.29.020.*

*Port district may provide sewer and water utilities in adjacent areas: RCW 53.08.040.*

*Sewerage improvement districts: Title 85 RCW.*

*Water district may establish and operate sewer systems: RCW 57.08.065.*

### Chapter 56.02 GENERAL PROVISIONS

#### Sections

- 56.02.010 Petition signatures of property owners—Rules governing.
- 56.02.020 Claims against districts.
- 56.02.030 Validation—1959 c 103.
- 56.02.040 Title to be liberally construed.
- 56.02.050 Jurisdiction of elections in joint sewer districts—Filing of declarations of candidacy—Joint sewer district defined.
- 56.02.060 Sewer district activities to be approved—Criteria for approval by county legislative authority.
- 56.02.070 Approval by county legislative authority final, when—  
Boundary review board approval.

**56.02.010 Petition signatures of property owners—Rules governing.** Wherever in Title 56 RCW petitions are required to be signed by the owners of property, the following rules shall govern the sufficiency thereof:

(1) The signature of a record owner, as determined by the records of the county auditor, shall be sufficient without the signature of his or her spouse.

(2) In the case of mortgaged property, the signature of the mortgagor shall be sufficient.

(3) In the case of property purchased on contract, the signature of the contract purchaser, as shown by the records of the county auditor, shall be deemed sufficient.

(4) Any officer of a corporation owning land in the district duly authorized to execute deeds or encumbrances on behalf of the corporation may sign on behalf of such corporation, provided that there shall be attached to the petition a certified excerpt from the by-laws showing such authority.

(5) If any property in the district stands in the name of a deceased person or any person for whom a guardian has been appointed the signature of the executor, administrator or guardian, as the case may be, shall be equivalent to the signature of the owner of the property. [1953 c 250 § 26.]

**56.02.020 Claims against districts.** See chapter 4.96 RCW.

**56.02.030 Validation—1959 c 103.** All debts, contracts and obligations heretofore made or incurred by or in favor of any sewer district, all bonds, warrants, or other obligations issued by such districts, any connection or service charges made by such districts, any and all assessments heretofore levied in any utility local improvement districts of any sewer districts, and all other things and proceedings relating thereto done or taken by such sewer districts or by their respective officers are hereby declared to be legal and valid and of full force and effect from the date thereof: *Provided*, That nothing in this section shall apply to ultra vires acts or acts of fraud committed by the officers or agents of said district. [1959 c 103 § 17.]

**56.02.040 Title to be liberally construed.** The rule of strict construction shall have no application to this title, but the same shall be liberally construed to carry out the purposes and objects for which this title is intended. [1959 c 103 § 18.]

**56.02.050 Jurisdiction of elections in joint sewer districts—Filing of declarations of candidacy—Joint sewer district defined.** (1) Jurisdiction of any general election or special election held on the same date as a general election in a joint sewer district shall rest with the county auditor of each of the counties in which the joint sewer district is located. Election returns of such elections shall be canvassed by the canvassing board of each county and the official results certified to the county auditor of the county in which fifty-one percent or more of the area of the joint sewer district is located. Such county auditor shall then combine the official results from each county in which the joint sewer district is located into a single official result.

(2) Jurisdiction of any special election held on a different date than a general election in a joint sewer district shall rest with the county auditor of the county in which fifty-one percent or more of the area of the joint sewer district is located. Election returns of such elections shall be canvassed by the canvassing board of such county and certified to the county auditor of such county as required by law.

(3) Elections referred to in subsections (1) and (2) of this section shall be conducted as provided by such subsections and by the general election laws not inconsistent therewith.

(4) Candidates for the office of sewer commissioner in a joint sewer district shall file declarations of candidacy with the county auditor of the county in which fifty-one percent or more of the area of the joint sewer district is located and their election shall be conducted as provided by this section and by the general election laws not inconsistent herewith. The candidate receiving the greatest number of votes for each sewer commissioner position shall be declared elected.

For the purposes of this section, "joint sewer district" means any sewer district composed of territory lying in more than one county. [1971 ex.s. c 272 § 12.]

**56.02.060 Sewer district activities to be approved—Criteria for approval by county legislative authority.** Notwithstanding any provision of law to the contrary, no sewer district shall be formed or reorganized under chapter 56.04 RCW, nor shall any sewer district annex territory under chapter 56.24 RCW, nor shall any sewer district withdraw territory under chapter 56.28 RCW, nor shall any sewer district consolidate or be merged under chapter 56.32 RCW, nor shall any water district be merged into a sewer district under chapter 56.36 RCW, unless such proposed action shall be approved as provided for in RCW 56.02.070.

The county legislative authority shall within thirty days after receiving notice of the proposed action, approve such action or hold a hearing on such action. In addition, a copy of such proposed action shall be mailed to the state department of ecology and to the state department of social and health services.

The county legislative authority shall decide within sixty days of a hearing whether to approve or not approve such proposed action. In approving or not approving the proposed action, the county legislative authority shall consider the following criteria:

(1) Whether the proposed action in the area under consideration is in compliance with the development program which is outlined in the county comprehensive plan and its supporting documents; and/or

(2) Whether the proposed action in the area under consideration is in compliance with the basinwide water and/or sewage plan as approved by the state department of ecology and the state department of social and health services; and/or

(3) Whether the proposed action is in compliance with the policies expressed in the county plan for water and/or sewage facilities.

If the proposed action is inconsistent with subsections (1), (2), or (3) of this section, the county legislative authority shall not approve it. If such action is consistent with all such subsections, the county legislative authority shall approve it unless it finds that utility service in the area under consideration will be most appropriately served by the county itself under the provisions of chapter 36.94 RCW, by a city, town, or municipality, or by another existing special purpose district rather than by the proposed action under consideration. If there has not been adopted for the area under consideration a plan under any one of subsections (1), (2) or (3) of this section, the proposed action shall not be found inconsistent with such subsection. [1971 ex.s. c 139 § 1.]

**56.02.070 Approval by county legislative authority final, when—Boundary review board approval.** In any county where a boundary review board, as provided in chapter 36.93 RCW, has not been established, the approval of the proposed action shall be by the county legislative authority pursuant to RCW 56.02.060 and 57.02.040, and shall be final and the procedures required to adopt such proposed action shall be followed as provided by law.

In any county where a boundary review board, as provided in chapter 36.93 RCW, has been established, notice of intention of the proposed action shall be filed with the board as required by RCW 36.93.090 and a copy thereof with the legislative authority. The latter shall transmit to the board a report of its approval or disapproval of the proposed action together with its findings and recommendations thereon under the provisions of RCW 56.02.060 and 57.02.040. If the county legislative authority has approved of the proposed action, such approval shall be final and the procedures required to adopt such proposal shall be followed as provided by law, unless the board reviews the action under the provisions of RCW 36.93.100 through 36.93.180. If the county legislative authority has not approved the proposed action, the board shall review the action under the provisions of RCW 36.93.150 through 36.93.180. Action of the board after review of the proposed action shall supersede approval or disapproval by the county legislative authority. [1971 ex.s. c 139 § 3.]

#### Chapter 56.04 FORMATION AND DISSOLUTION

Sections

56.04.020 Districts authorized—System of sewers defined.

- 56.04.030 Petition or resolution—Notice of hearing.  
 56.04.040 Hearing—Boundaries.  
 56.04.050 Election—Time—Notice—Ballots—Excess tax levy.  
 56.04.060 Canvass—District created—Name.  
 56.04.070 When two or more petitions are filed.  
 56.04.080 County election board to conduct elections—Expenses.  
 56.04.090 Dissolution.  
 56.04.100 Disincorporation of district located in class A or AA county and inactive for five years.  
 56.04.110 Sewer district activities to be approved—Criteria for approval by county legislative authority.

*Elections: Title 29 RCW.*

**56.04.020 Districts authorized—System of sewers defined.** Sewer districts for the acquirement, construction, maintenance, operation, development, reorganization, and regulation of a system of sewers, including treatment and disposal plants and all necessary appurtenances and providing for additions and betterments thereto, are hereby authorized to be established or reorganized in the various counties of this state. A system of sewers means and includes: Sanitary sewage disposal sewers, combined sanitary sewage disposal and storm or surface water sewers, storm or surface water sewers, outfalls for storm or sanitary sewage, and works, plants, and facilities for sanitary sewage treatment and disposal, or any combination of or part of any or all of such facilities. Such districts may include within their boundaries portions or all of one or more counties, incorporated cities, or towns or other political subdivisions: *Provided, however,* No portion or all of any incorporated city or town may be included without the consent by resolution of the city or town legislative authority: *Provided, however,* That such reorganization of any existing sewer district shall not affect the outstanding bonds, warrants or other indebtedness incurred by such district prior to its reorganization. [1974 1st ex.s. c 58 § 1; 1971 ex.s. c 272 § 1; 1945 c 140 § 1; 1943 c 74 § 1; 1941 c 210 § 1; Rem. Supp. 1945 § 9425–10.]

**Severability—1941 c 210:** "If any section or provision of this act shall be adjudged to be invalid or unconstitutional, such adjudication shall not affect the validity of the act as a whole or any section, provision, or part thereof not adjudged invalid or unconstitutional." [1941 c 210 § 49.]

*City sewerage, drainage and water supply: RCW 35.21.210.*

*Power to regulate sanitary conditions: State Constitution Art. 11 § 11.*

*Sewerage system, operation, construction, by municipality: Chapter 35.67 RCW.*

**56.04.030 Petition or resolution—Notice of hearing.** For the purpose of formation or reorganization of such sewer districts, a petition shall be presented to the board of county commissioners of the county in which said proposed sewer district is located, which petition shall set forth the object for the creation or reorganization of the said district, shall designate the boundaries thereof and set forth the further fact that the establishment or reorganization of said district will be conducive to the public health, convenience and welfare and will be of benefit to the property included therein. Said petition shall be signed by at least twenty-five percent of the qualified electors residing within the district described in the said petition: *Provided,* If in the opinion

of the county health officer the existing sewerage disposal facilities are inadequate in the district to be created only, and it is for the public welfare, then the board of county commissioners of such county may declare a sewerage disposal district a necessity, and such district shall be organized under the provisions of this title, and all amendments thereto. The said petition or resolution shall be filed with the county auditor, who shall, within ten days examine the signatures thereof and certify to the sufficiency or insufficiency. For such purpose the county auditor shall have access to all registration books in the possession of the officers of any political subdivision in such proposed district. No person having signed such a petition shall be allowed to withdraw his name therefrom after the filing of the same with the county auditor. If such petition shall be found to contain a sufficient number of signatures, the county auditor shall transmit the same, together with his certificate of sufficiency attached thereto to the board of county commissioners. If such petition or resolution is certified to contain a sufficient number of signatures, or if in the opinion of the county health officer the existing sewerage disposal facilities are a menace to the health and convenience of the public, the board of county commissioners may, by resolution, and not otherwise, declare a sewerage district a necessity, then at a regular or special meeting of the board of county commissioners of such county, the said county commissioners shall cause to be published for at least once a week for two successive weeks in some newspaper printed and published in said county, and in case no such newspaper be printed or published in such county, then at least once a week for two successive weeks in some newspaper of general circulation therein, giving notice that such a petition has been presented, stating the time of the meeting at which the same shall be presented, and setting forth the boundaries of said proposed district. [1945 c 140 § 2; 1941 c 210 § 2; Rem. Supp. 1945 § 9425–11.]

*Rules governing petition signatures of property owners: RCW 56.02.010.*

**56.04.040 Hearing—Boundaries.** When such a petition or resolution is presented for hearing, the board of county commissioners shall hear the same or may adjourn said hearing from time to time not exceeding one month in all. Any person, firm or corporation may appear before the said board of county commissioners and make objections to the establishment or reorganization of the said district or the proposed boundary lines thereof. Upon a final hearing said board of county commissioners shall make such changes in the proposed or reorganized boundary lines as they deem to be proper and shall establish and define such boundaries and shall find whether the proposed sewer district will be conducive to the public health, welfare and convenience and be of special benefit to the land included within the said boundaries of said proposed district so established by the said board of county commissioners. No lands which will not, in the judgment of said board, be benefited by inclusion therein, shall be included within the

boundaries of said district as so established and defined, and no change shall be made by the said board of county commissioners in said boundary lines to include any territory outside of the boundaries described in the said petition, except that the boundaries of any proposed district may be extended by the board of county commissioners at such hearing to include other lands in said county upon a petition signed by the owners of all of the land within the proposed extension. [1945 c 140 § 3; 1941 c 210 § 3; Rem. Supp. 1945 § 9425-12.]

**56.04.050 Election—Time—Notice—Ballots—Excess tax levy.** Upon entry of the findings of the final hearing on the petition, if the commissioners find the proposed sewer system will be conducive to the public health, welfare, and convenience and be of special benefit to the land within the boundaries of the said proposed or reorganized district, they shall by resolution call a special election to be held not less than thirty days and not more than sixty days from the date thereof, and shall cause to be published a notice of such election at least once a week for four successive weeks in a newspaper of general circulation in the county, setting forth the hours during which the polls will be open, the boundaries of the proposed or reorganized district as finally adopted, and the object of the election, and the notice shall also be posted for ten days in ten public places in the proposed or reorganized district. The proposition shall be expressed on the ballots in the following terms:

Sewer District..... YES   
Sewer District ..... NO

or in the reorganization of a district, the proposition shall be expressed on the ballot in the following terms:

Sewer District Reorganization..... YES   
Sewer District Reorganization ..... NO

giving in each instance the name of the district as decided by the board.

At the same election the county commissioners shall submit a proposition to the voters, for their approval or rejection, authorizing the sewer district, if formed, to levy at the earliest time permitted by law on all property located in the district a general tax for one year, in excess of the tax limitations provided by law, of not to exceed one dollar and twenty-five cents per thousand dollars of assessed value, for general preliminary expenses of the district, said proposition to be expressed on the ballots in the following terms:

One year one dollar and twenty-five cents per thousand dollars of assessed value tax ..... YES   
One year one dollar and twenty-five cents per thousand dollars of assessed value tax ..... NO

Such proposition to be effective must be approved by a majority of at least three-fifths of the electors thereof voting on the proposition in the manner set forth in Article VII, section 2 (a) of the Constitution of this

state, as amended by Amendment 59 and as thereafter amended. [1973 1st ex.s. c 195 § 61; 1953 c 250 § 1; 1945 c 140 § 4; 1941 c 210 § 4; Rem. Supp. 1945 § 9425-13.]

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

*Elections: Title 29 RCW.*

*Levy of taxes: Chapter 84.52 RCW.*

**56.04.060 Canvass—District created—Name.** If at such election a majority of the voters in each district voting upon such proposition shall vote in favor of the formation or reorganization of such district and/or districts, the county election board shall so declare in its canvass of the returns of such election, and such sewer district shall then be and become a municipal corporation of the state of Washington and the name of such sewer district shall be "----- Sewer District" (inserting the name appearing on the ballot). [1945 c 140 § 5; 1941 c 210 § 6; Rem. Supp. 1945 § 9425-15.]

**56.04.070 When two or more petitions are filed.** Whenever two or more petitions for the formation of a sewer district shall be filed as herein provided, the petition describing the greater area shall supersede all others, and an election shall first be held thereunder, and no lesser sewer district shall ever be created within the limits in whole or in part of any other sewer district. [1941 c 210 § 5; Rem. Supp. 1941 § 9425-14.]

**56.04.080 County election board to conduct elections—Expenses.** All elections held pursuant to this title, whether general or special, shall be conducted by the county election board of the county in which the district is located. The expense of all such elections shall be paid for out of the funds of such sewer district. [1941 c 210 § 40; Rem. Supp. 1941 § 9425-49.]

*Elections: Title 29 RCW.*

**56.04.090 Dissolution.** Any sewer district organized, or reorganized, under this title may be disincorporated in the same manner (insofar as the same is applicable) as is provided in sections 8914 to 8931, inclusive, of Remington's Revised Statutes, also Pierce's Perpetual Code 395-1 to 395-35 [RCW 35.07.010 through 35.07-.220], for the disincorporation of the third and fourth class cities, except that the petition for disincorporation shall be signed by not less than twenty-five percent of the voters in the sewer district. [1945 c 140 § 16; 1941 c 210 § 47; Rem. Supp. 1945 § 9425-56.]

*Dissolution: Chapter 53.48 RCW.*

**56.04.100 Disincorporation of district located in class A or AA county and inactive for five years.** See chapter 57.90 RCW.

**56.04.110 Sewer district activities to be approved—Criteria for approval by county legislative authority.** See RCW 56.02.060 and 56.02.070.

**Chapter 56.08**  
**POWERS—COMPREHENSIVE PLAN**

Sections	
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56.08.160	Performance bond—Surety—Security in lieu of bond—Additional bond security.

*Lien for labor and materials on public works: Chapter 60.28 RCW.*

**56.08.010 Power to acquire property and rights—Eminent domain—Construction, operation, etc., of system.** A sewer district may acquire by purchase or by condemnation and purchase all lands, property rights, water, and water rights, both within and without the district, necessary for its purposes. A sewer district may lease real or personal property necessary for its purposes for a term of years for which such leased property may reasonably be needed where in the opinion of the board of sewer commissioners such property may not be needed permanently or substantial savings to the district can be effected thereby. The right of eminent domain shall be exercised in the same manner and by the same procedure as provided for cities of the third class, insofar as consistent with the provisions of this title, except that all assessments or reassessment rolls required to be filed by eminent domain commissioners or commissioners appointed by the court shall be prepared and filed by the district, and the duties devolving upon the city treasurer shall be imposed upon the county treasurer for the purposes hereof; it may construct, condemn and purchase, add to, maintain, and operate systems of sewers for the purpose of furnishing the district and inhabitants thereof with an adequate system of sewers for all uses and purposes, public and private, including the drainage of storm or surface waters, public highways, streets, and roads with full authority to regulate the use and operation thereof and the service rates

to be charged. For such purposes a district may conduct sewage throughout the district and throughout other political subdivisions within the district, and construct and lay sewer pipe along and upon public highways, roads, and streets, within and without the district, and condemn and purchase or acquire land and rights of way necessary for such sewer pipe. A district may erect sewage treatment plants, within or without the district, and may acquire by purchase or condemnation, properties or privileges necessary to be had to protect any lakes, rivers, or watercourses and also other areas of land from pollution, from its sewers or its sewage treatment plant. A district may charge property owners seeking to connect to the district system of sewers, as a condition to granting the right to so connect, in addition to the cost of such connection, such reasonable connection charge as the board of commissioners shall determine to be proper in order that such property owners shall bear their equitable share of the cost of such system. A district may compel all property owners within the sewer district located within an area served by the district system of sewers to connect their private drain and sewer systems with the district system under such penalty as the sewer commissioners shall prescribe by resolution. The district may for such purpose enter upon private property and connect the private drains or sewers with the district system and the cost thereof shall be charged against the property owner and shall be a lien upon property served. [1974 1st ex.s. c 58 § 2; 1959 c 103 § 1; 1953 c 250 § 3; 1945 c 140 § 9; 1941 c 210 § 10; Rem. Supp. 1945 § 9425–19.]

**Severability—1959 c 103:** "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1959 c 103 § 19.] This applies to chapter 103, Laws of 1959 codified as RCW 56.08.010, 56.08.020, 56.08.060, 56.12.010, 56.16.020, 56.16.030, 56.16.035, 56.16.060, 56.16.070, 56.16.085, 56.16.090, 56.16.115, 56.16.140, 56.16.150, 56.16.160, 56.16.170, 56.02.030 and 56.02.040.

*Eminent domain, third class cities: RCW 35.24.310.*

*Eminent domain by cities: Chapter 8.12 RCW.*

**56.08.015 Change of name—Authorized—Procedure—Validation.** Any sewer district heretofore or hereafter organized and existing may apply to change its name by filing with the board of county commissioners of the county in which was filed the original petition for the organization of the district, a certified copy of a resolution of its board of commissioners adopted by the majority vote of all the members of said board at a regular meeting thereof providing for such change of name. The new name shall reflect the service offered by the sewer district. After approval of the new name by the county commissioners, all proceedings of such district shall be had under such changed name, but all existing obligations and contracts of the district entered into under its former name shall remain outstanding without change and with the validity thereof unimpaired and unaffected by such change of name, and a change of name heretofore made by any existing sewer district in this state, substantially in the manner above provided is hereby ratified, confirmed and validated. [1969 c 119 § 1.]

**56.08.020 General comprehensive plan—Approval of engineer, director of health, and city, town or county.** The sewer commissioners before ordering any improvements hereunder or submitting to vote any proposition for incurring indebtedness shall adopt a general comprehensive plan for a system of sewers for the district. They shall investigate all portions and sections of the district and select a general plan for a system of sewers for the district suitable and adequate for present and reasonably foreseeable future needs thereof. The general comprehensive plan shall provide for treatment plants and other methods for the disposal of sewage and industrial and other liquid wastes now produced or which may reasonably be expected to be produced within the district and shall, for such portions of the district as may then reasonably be served, provide for the acquisition or construction and installation of laterals, trunk sewers, intercepting sewers, syphons, pumping stations, or other sewage collection facilities. The comprehensive plan shall provide the method of distributing the cost and expense of the sewer system provided therein against the district and against utility local improvement districts within the district, including any utility local improvement district lying wholly or partially within any other political subdivision included in the district; and provide whether the whole or some part of the cost and expenses shall be paid from sewer revenue bonds. The commissioners may employ such engineering and legal services as they deem necessary in carrying out the purposes hereof. The comprehensive plan shall be adopted by resolution and submitted to an engineer designated by the county commissioners of the county in which fifty-one percent or more of the area of the district is located, and to the director of health of the county in which the district or any portion thereof is located, and must be approved in writing by the engineer and director of health.

If the district includes portions or all of one or more cities or towns or counties, the comprehensive plan shall be submitted also to, and approved by resolution of, the legislative authority of cities and towns and counties before becoming effective. This section and RCW 56.08.030, 56.08.040, 56.08.050, 56.16.010, and 56.16.020 shall not apply to reorganized districts, except as specifically referred to in this section. [1971 ex.s. c 272 § 2; 1959 c 103 § 2; 1953 c 250 § 4; 1947 c 212 § 2; 1945 c 140 § 10; 1943 c 74 § 2; 1941 c 210 § 11; Rem. Supp. 1947 § 9425–20.]

*Additions and betterments to original comprehensive plan: RCW 56.16.030.*

*Construction of sewerage system for municipality: Chapter 35.67 RCW.*

**56.08.030 Expenditures before plan adopted and approved.** No expenditure for carrying on any part of such plan shall be made other than the necessary salaries of engineers, clerical, and office expenses of the district, and the cost of engineering, surveying, preparation, and collection of data necessary for making and adopting a general plan of improvements in the district, until the general plan of improvements has been adopted by the

commissioners and approved as provided in RCW 56.08.020. [1953 c 250 § 5; 1941 c 210 § 12; Rem. Supp. 1941 § 9425–21.]

**56.08.040 Additions and betterments to plan, for area annexed.** Whenever an area has been annexed to a district after the adoption of the comprehensive plan, the commissioners shall have the right and duty to adopt by resolution a plan for additions and betterments to the original comprehensive plan to provide for the needs of the area annexed. [1953 c 250 § 6; 1951 c 129 § 1; 1943 c 74 § 3; 1941 c 210 § 13; Rem. Supp. 1943 § 9425–22.]

**56.08.050 Commissioners to carry out plan.** When the electors of a district have authorized the issuance of general obligation bonds or sewer revenue bonds of the district to carry out the comprehensive plan, the commissioners may proceed with the improvement to the extent specified in the proposition or propositions to incur the indebtedness and issue the bonds. [1953 c 250 § 7; 1941 c 210 § 15; Rem. Supp. 1941 § 9425–24.]

**56.08.060 Contracts for acquisition, use, operation, etc., authorized—Service outside district.** A sewer district may enter into contracts with any county, city, town, sewer district, water district, or any other municipal corporation, or with any private person, firm or corporation, for the acquisition, ownership, use and operation of any property, facilities, or services, within or without the sewer district and necessary or desirable to carry out the purposes of the sewer district, and a sewer district may provide sewer service to property owners outside the limits of the sewer district. [1959 c 103 § 3; 1953 c 250 § 8; 1941 c 210 § 48; Rem. Supp. 1941 § 9425–57.]

*Sewer districts and municipalities, joint agreements: RCW 35.67.300.*

**56.08.070 Contracts for labor and materials—Call for bids—Award of contract.** All materials purchased and work ordered, the estimated cost of which is in excess of two thousand five hundred dollars shall be let by contract. Before awarding any such contract the board of sewer commissioners shall cause to be published in some newspaper in general circulation where the district is located at least once, ten days before the letting of such contract, inviting sealed proposals for such work, plans and specifications which must at the time of publication of such notice be on file in the office of the board of sewer commissioners subject to public inspection. Such notice shall state generally the work to be done and shall call for proposals for doing the same to be sealed and filed with the board of sewer commissioners on or before the day and hour named therein. Each bid shall be accompanied by a bid proposal deposit in the form of a certified check, cashier's check, postal money order, or surety bond payable to the order of the county treasurer for a sum not less than five percent of the amount of the bid and no bid shall be considered unless accompanied by such bid proposal deposit. At the time and place named such bids shall be



publicly opened and read and the board of sewer commissioners shall proceed to canvass the bids and may let such contract to the lowest responsible bidder upon plans and specifications: *Provided*, That no contract shall be let in excess of the cost of said materials or work, or if in the opinion of the board of sewer commissioners all bids are unsatisfactory they may reject all of them and readvertise and in such case all checks, cash or bid bonds shall be returned to the bidders. If such contract be let, then and in such case all checks, cash or bid bonds shall be returned to the bidders, except that of the successful bidder, which shall be retained until a contract shall be entered into for the purchase of such materials or doing such work, and a bond to perform such work furnished with sureties satisfactory to the board of sewer commissioners in the full amount of the contract price between the bidder and the commission in accordance with bid. If said bidder fails to enter into said contract in accordance with said bid and furnish such bond within ten days from the date at which he is notified that he is the successful bidder, the said check, cash or bid bonds and the amount thereof shall be forfeited to the sewer district. [1971 ex.s. c 272 § 3; 1965 c 71 § 1; 1941 c 210 § 44; Rem. Supp. 1941 § 9425-53.]

**56.08.080 Sale of unnecessary property authorized—Notice.** The board of commissioners of a sewer district may sell, at public or private sale, property belonging to the district if the board determines by unanimous vote of the elected members of the board that the property is not and will not be needed for district purposes and if the board gives notice of intention to sell as in this section provided.

The notice of intention to sell shall be published once a week for three consecutive weeks in a newspaper of general circulation in the district. The last publication shall be at least twenty days but not more than thirty days before the date of sale. The notice shall describe the property and state the time and place at which it will be sold or offered for sale, the terms of sale, whether the property is to be sold at public or private sale, and if at public sale the notice shall call for bids, fix the conditions thereof and shall reserve the right to reject any and all bids. [1953 c 51 § 1.]

**56.08.090 Sale of unnecessary property authorized—Additional requirements for sale of realty.** No real property of the district shall be sold for less than ninety percent of the value thereof as established by a written appraisal made not more than six months prior to the date of sale by three disinterested real estate brokers licensed under the laws of the state. The appraisal shall be signed by the appraisers and filed with the secretary of the board of commissioners of the district, who shall keep it at the office of the district open to public inspection. Any notice of intention to sell real property of the district shall recite the appraised value thereof: *Provided*, That there shall be no private sale of real property where the appraised value exceeds the sum of five hundred dollars. [1953 c 51 § 2.]

**56.08.100 Health care, group and life insurance contracts for employees' benefit—Joint action with water district.** A sewer district, by a majority vote of its board of commissioners, may enter into contracts to provide health care services and/or group insurance and/or term life insurance, for the benefit of its employees and may pay all or any part of the cost thereof: *Provided*, That term life insurance shall be limited to a five thousand dollar coverage or ten thousand dollars for double indemnity benefits. Any two or more sewer districts or one or more sewer districts and one or more water districts, by a majority vote of their respective boards of commissioners, may, if deemed expedient, join in the procuring of such health care services and/or group insurance and/or term life insurance, and the board of commissioners of each participating sewer and/or water district may by appropriate resolution authorize their respective district to pay all or any portion of the cost thereof. [1973 c 24 § 1; 1961 c 261 § 1.]

*Joint health care, group insurance contracts with sewer districts: RCW 57.08.100.*

**56.08.105 Liability insurance for officials and employees.** The board of commissioners of each sewer district may purchase liability insurance with such limits as they may deem reasonable for the purpose of protecting their officials and employees against liability for personal or bodily injuries and property damage arising from their acts or omissions while performing or in good faith purporting to perform their official duties. [1973 c 125 § 6.]

**56.08.110 Association of district commissioners—Purpose—Expenses—Personnel—Limitation on district's contribution—Audit by state division of municipal corporations.** To improve the organization and operation of sewer districts, the commissioners of two or more such districts may form an association thereof, for the purpose of securing and disseminating information of value to the members of the association and for the purpose of promoting the more economical and efficient operation of the comprehensive plans of sewer systems in their respective districts. The commissioners of sewer districts so associated shall adopt articles of association, select such officers as they may determine, and employ and discharge such agents and employees as shall be deemed convenient to carry out the purposes of the association. Sewer district commissioners and their employees are authorized to attend meetings of the association. The expense of the association may be paid from the maintenance or general funds of the associated districts in such manner as shall be provided in the articles of association: *Provided*, That the aggregate contributions made to the association by the district in any calendar year shall not exceed the amount which would be raised by a levy of two and one-half cents per thousand dollars of assessed value against the taxable property of the district. The financial records of such association shall be subject to audit by the Washington state division of municipal corporations of the state auditor. [1973 1st ex.s. c 195 § 62; 1970 ex.s. c 47 § 4; 1961 c 267 § 1.]



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

**56.08.112 Association of district commissioners—Association to furnish information to legislature and governor.** See RCW 44.04.170.

**56.08.120 Lease of property not necessary for use of district—When.** Within the limitations prescribed by RCW 56.08.130 through 56.08.160, a sewer district may lease out any real property held by it which is not necessary for its immediate use and purposes, and upon such terms and conditions as the board of sewer district commissioners deems proper, when and only after:

In the case of real property, the board has by resolution declared the property, to be property for which there is a future need by the district and for which provision is made in the comprehensive plan of the sewer system of the district as it exists or may from time to time be revised, altered or amended. [1967 c 178 § 1.]

**56.08.130 Proposed lease—Notice, contents, publication—Hearing.** No lease shall be made until the sewer district has first caused notice thereof, with full description by name of the proposed lessees, the purpose for which the property is to be leased, the street address and location of the property, and a full legal description thereof as described in the records of the county auditor of the county wherein the property is located or situated, and the term for which the property is proposed to be leased, twice in a newspaper of general circulation within the sewer district. Such notice shall also include a date and place of hearing on the proposed lease, for the presentation by any and all persons interested therein of any legal objections thereto; and the first notice shall be published at least fifteen days prior to the execution of the lease, and the second at least seven days prior thereto. [1967 c 178 § 2.]

**56.08.140 Performance bond—Conditions and terms—Duration of leases.** No such lease shall be made unless secured by a bond conditioned on the performance of the terms of the lease, with surety satisfactory to the commissioners, in a penalty of not less than one-sixth of the term of the lease or for one year's rental, whichever is greater; and no such lease shall be made for a term longer than twenty-five years. [1967 c 178 § 3.]

**56.08.150 Performance bond—Leases of more than five years.** In cases involving leases of more than five years, the commissioners may in their discretion provide for and stipulate to acceptance of a bond conditioned on the performance of a part of the term for five years or more whenever it is further provided that the lessee must procure and deliver to the board of commissioners renewal bonds with like terms and conditions no more than two years prior nor less than one year prior to the expiration of each such bond during the entire term of the lease: *Provided*, That no such bond shall be construed to secure the furnishing of any other bond by the same surety or indemnity company. [1967 c 178 § 4.]

**56.08.160 Performance bond—Surety—Security in lieu of bond—Additional bond security.** The commissioners may accept as surety on any bond required by RCW 56.08.140 and 56.08.150 an approved surety company, or may accept in lieu thereof a secured interest in property of a value at least twice the amount of the bond required, conditioned further that in the event the commissioners determine that the value of the bond security has become or is about to become impaired, additional security shall be required from the lessee. [1967 c 178 § 5.]

## Chapter 56.12 COMMISSIONERS

### Sections

- 56.12.010 Number—Officers—Compensation—Business, proceedings, etc.  
56.12.020 Elections—Terms of office.  
56.12.030 Nominations—Vacancies—Elections.

*Elections: Title 29 RCW.*

*Jurisdiction of elections in joint sewer districts—Filing of declarations of candidacy—Joint sewer district defined: RCW 56.02.050.*

**56.12.010 Number—Officers—Compensation—Business, proceedings, etc.** The governing body of a sewer district shall be a board of commissioners consisting of three members. The commissioners shall annually elect one of their number as president and another as secretary of the board.

A district shall provide by resolution for the payment of compensation to each of its commissioners at a rate not exceeding twenty-five dollars for each day or major part thereof devoted to the business of the district: *Provided*, That the per diem for each commissioner shall not exceed one thousand two hundred dollars per year. In addition, the secretary may be paid a reasonable sum for his services as secretary and for bookkeeping work and keeping the records of the district. No commissioner shall be employed full time by the district.

The board shall by resolution adopt rules governing the transaction of its business and shall adopt an official seal. All proceedings shall be by resolution recorded in a book kept for that purpose, which shall be a public record. [1969 ex.s. c 148 § 7; 1959 c 103 § 4; 1955 c 373 § 1; 1945 c 140 § 8; 1941 c 210 § 9; Rem. Supp. 1945 § 9425-18.]

**Severability—1969 ex.s. c 148:** See note following RCW 56.36.010.

**56.12.020 Elections—Terms of office.** At the election held to form or reorganize a district, there shall be elected three commissioners to hold office for terms of two, four, and six years respectively, and until their successors are elected and qualified.

The term of each nominee shall be expressed on the ballot and shall be computed from the date of assuming office following the first general election for sewer districts. Thereafter, every two years there shall be elected a commissioner for a term of six years and until his successor is elected and qualified, at an election held on the Tuesday following the first Monday in November in the odd-numbered years and conducted by the county

auditor and the returns shall be canvassed by the county canvassing board of election returns.

All sewer district commissioners elected for a regular six year term on the second Tuesday of March, 1962, shall remain in office until their successors are elected and qualified at the general district election to be held on the Tuesday following the first Monday in November, 1969.

There shall be no general sewer district election held in the year 1964 and those sewer district commissioners whose terms would have expired in 1964, but for the provisions of this amendatory act, shall remain in office until their successors are elected and qualified at the general sewer district election to be held on the Tuesday following the first Monday in November, 1965.

There shall be no general sewer district election held in the year 1966 and those sewer district commissioners whose terms would have expired in 1966, but for the provisions of this amendatory act, shall remain in office until their successors are elected and qualified at the general sewer district election to be held on the Tuesday following the first Monday in November, 1967. [1963 c 200 § 17; 1955 c 55 § 12; 1953 c 110 § 1. Prior: 1945 c 140 § 6; 1941 c 210 § 7; Rem. Supp. 1945 § 9425-16.]

*Terms of district officers: State Constitution Art. 11 § 5 (Amendment 57).*

**56.12.030 Nominations—Vacancies—Elections.** Nominations for the first board of commissioners to be elected at the election for the formation of the sewer district shall be by petition of fifty qualified electors or ten percent of the qualified electors of the district, whichever is the smaller. The petition shall be filed in the auditor's office of the county in which the district is located at least thirty days before the election. Thereafter candidates for the office of sewer commissioner shall file declarations of candidacy and their election shall be conducted as provided by the general elections laws. A vacancy shall be filled by appointment by the remaining commissioners until the next regular election for commissioners: *Provided*, That if there is a vacancy of the entire board a new board may be appointed by the board of county commissioners. Any person residing in the district who is at the time of election a qualified voter may vote at any election held in the sewer district.

All expense of elections for the formation or reorganization of a sewer district shall be paid by the county in which the election is held and the expenditure is hereby declared to be for a county purpose, and the money paid for that purpose shall be repaid to the county by the district if formed or reorganized. [1953 c 250 § 9; 1947 c 212 § 1; 1945 c 140 § 7; 1941 c 210 § 8; Rem. Supp. 1947 § 9425-17.]

**Chapter 56.16  
FINANCES**

Sections	
56.16.010	General indebtedness.
56.16.020	Revenue bonds authorized—Vote.
56.16.030	Additions and betterments.

- 56.16.035 Additional revenue bonds for increased cost of improvements.
- 56.16.040 General bonds—Issuance, form, etc.
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- 56.16.070 Special fund to pay revenue bonds.
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- 56.16.140 Maintenance or general fund and special funds.
- 56.16.150 Maintenance or general fund and special funds—Use of surplus in maintenance or general fund.
- 56.16.160 Maintenance or general fund and special funds—Deposits and investments.
- 56.16.170 Maintenance or general fund and special funds—Loans from maintenance or general funds to construction funds.

*County treasurer's duty to segregate certified assessments and charges in sewer districts: RCW 36.29.160.*

*Levy of taxes: Chapter 84.52 RCW.*

*Limitation on levies: State Constitution Art. 7 § 2 (Amendment 59).*

*Public contracts and indebtedness: Title 39 RCW.*

**56.16.010 General indebtedness.** The sewer commissioners may submit at any general or special election, a proposition that said sewer district incur a general indebtedness payable from annual tax levies to be made in excess of the constitutional and/or statutory tax limitations for the construction of any part or all of the comprehensive plan for the district. If such general indebtedness is to be incurred, the amount of such indebtedness and the terms thereof shall be included in the proposition submitted to the qualified voters as aforesaid, and such proposition, to be effective, shall be adopted and assented to by three-fifths of the qualified voters of the said sewer district voting on said proposition at said election in the manner set forth in Article VII, section 2 (a) of the Constitution of this state, as amended by Amendment 59 and as thereafter amended. [1973 1st ex.s. c 195 § 63; 1953 c 250 § 10; 1951 2nd ex.s. c 26 § 1; 1941 c 210 § 14; Rem. Supp. 1941 § 9425-23.]

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

*Limitations on municipal corporation indebtedness: State Constitution Art. 8 § 6 (Amendment 27); RCW 35.30.040, 35.37.040.*

**56.16.020 Revenue bonds authorized—Vote.** At any general or special election, a proposition that the district issue revenue bonds for the construction costs, interest during the period of construction and six months thereafter, working capital, or other costs of any part or all of the comprehensive plan may be submitted. The amount of the revenue bonds to be issued shall be included in the proposition submitted. The proposition shall be adopted by a majority of the voters of the district voting thereon. When the proposition has been adopted, the commissioners may forthwith carry out the general plan to the extent specified therein. [1959 c 103

§ 5; 1953 c 250 § 11; 1951 c 129 § 2; 1941 c 210 § 16; Rem. Supp. 1941 § 9425-25.]

*Special assessments and taxation for local improvements: State Constitution Art. 7 § 9.*

**56.16.030 Additions and betterments.** In the same manner as herein provided for the adoption of the general comprehensive plan, and after the adoption of the general comprehensive plan, a plan providing for additions and betterments to the general comprehensive plan, or reorganized district may be adopted. Without limiting its generality "additions and betterments" shall include any necessary change in, amendment of, or addition to the comprehensive plan. The sewer district may incur a general indebtedness payable from annual tax levies to be made in excess of the constitutional and/or statutory tax limitations for the construction of the additions and betterments in the same way the general indebtedness may be incurred for the construction of the general comprehensive plan. Upon ratification by the voters of the entire district, of the proposition to incur such indebtedness, the additions and betterments may be carried out by the sewer commissioners to the extent specified in the proposition to incur such general indebtedness. The sewer district may issue revenue bonds to pay for the construction of the additions and betterments by resolution of the board of sewer commissioners without submitting a proposition therefor to the voters. [1973 1st ex.s. c 195 § 64; 1959 c 103 § 6; 1953 c 250 § 12; 1951 2nd ex.s. c 26 § 2; 1951 c 129 § 3; 1945 c 140 § 11; 1941 c 210 § 17; Rem. Supp. 1945 § 9425-26.]

**Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195:** See notes following RCW 84.52.043.  
*Adoption of general comprehensive plan: RCW 56.08.020.*

**56.16.035 Additional revenue bonds for increased cost of improvements.** Whenever a sewer district shall have adopted a general comprehensive plan, and bonds to defray the cost thereof shall have been authorized by the electors of the district, and if before completion of the improvements the board of commissioners shall by resolution find that the authorized bonds are not sufficient to defray the cost of such improvements due to the increase of costs of construction subsequent to the adoption of said plan, the board of commissioners may, by resolution, without submitting the matter to the voters of the district, authorize the issuance and sale of additional sewer revenue bonds for such purpose in excess of those previously authorized: *Provided*, That in no event shall the principal amount of such additional sewer revenue bonds exceed twenty percent of such previously authorized indebtedness. [1959 c 103 § 7.]

**56.16.040 General bonds—Issuance, form, etc.** Whenever any such sewer district shall hereafter adopt a plan for a sewer system as herein provided, or any additions and betterments thereto, or whenever any reorganized sewer district shall hereafter adopt a plan for any additions or betterments thereto, and the qualified voters of any such sewer district or reorganized sewer district shall hereafter authorize a general indebtedness

for all the said plan, or any part thereof, or any additions and betterments thereto or for refunding in whole or in part bonds theretofore issued, general obligation bonds for the payment thereof may be issued as hereinafter provided. The bonds shall be serial in form and maturity and numbered from one up consecutively. The bonds shall bear interest at such rate or rates as authorized by the board of sewer commissioners, payable semiannually from date of said bonds until principal thereof is paid, with interest coupons, evidencing such interest to maturity, attached. The various annual maturities shall commence with the second year after the date of issue of the bonds, and shall as nearly as practicable be in such amounts as will, together with the interest on all outstanding bonds, be met by an equal annual tax levy for the payment of said bonds and interest: *Provided*, That only the bond numbered one of any issue shall be of a denomination other than a multiple of one hundred dollars.

Such bonds shall never be issued to run for a longer period than thirty years from the date of the issue and shall as nearly as practicable be issued for a period which will be equivalent to the life of the improvement to be acquired by the issue of the bonds.

The bonds shall be signed by the presiding officer of the board of sewer commissioners and shall be attested by the secretary of such board under the seal of the sewer district, and the interest coupons shall be signed by the facsimile signature of the presiding officer of the board of sewer commissioners and shall be attested by the facsimile signature of the secretary of such board.

There shall be levied by the officers or governing body now or hereafter charged by law with the duty of levying taxes in the manner provided by law an annual levy in excess of the constitutional and/or statutory tax limitations sufficient to meet the annual or semiannual payments of principal and interest on the said bonds maturing as herein provided upon all taxable property within such sewer district.

Said bonds shall be sold in such manner as the sewer commissioners shall deem for the best interest of the sewer district, and at a price not less than par and accrued interest. [1973 1st ex.s. c 195 § 65; 1970 ex.s. c 56 § 80; 1969 ex.s. c 232 § 85; 1953 c 250 § 13; 1951 2nd ex.s. c 26 § 3; 1945 c 140 § 12; 1941 c 210 § 18; Rem. Supp. 1945 § 9425-27.]

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

**Purpose—Effective date—1970 ex.s. c 56:** See notes following RCW 39.44.030.

**Validation—Saving—Severability—1969 ex.s. c 232:** See notes following RCW 39.44.030.

**56.16.050 Limitation of indebtedness.** Each and every sewer district hereafter to be organized pursuant to this title, or reorganized under \*this amendment [1945 c 140], may contract indebtedness pursuant to the provisions of RCW 56.16.040, but not exceeding in amount, together with existing indebtedness two and one-half percent of the value of the taxable property in said district, as the term "value of the taxable property" is defined in RCW 39.36.015, whenever three-fifths of the

voters voting at said election in such sewer district assent thereto, at an election to be held in said sewer district in the manner provided by this title, which election may either be a special or a general election, and the board of sewer commissioners are hereby authorized and empowered to submit the question of incurring such indebtedness, and issuing negotiable bonds of such sewer district to the qualified voters of such sewer district at any time they may so order. All bonds so to be issued shall be subject to the provisions regarding bonds as set out in RCW 56.16.040. [1970 ex.s. c 42 § 34; 1945 c 140 § 15; 1941 c 210 § 42; Rem. Supp. 1945 § 9425-51.]

**\*Reviser's note:** "this amendment" (1945 c 140) authorizing the reorganization of sewer districts is codified herein as RCW 56.04.020 through 56.04.060, 56.04.090, 56.08.010 through 56.08.040, 56.12.010 through 56.12.030, 56.16.050 and 56.24.010.

**Severability—Effective date—1970 ex.s. c 42:** See notes following RCW 39.36.015.

**56.16.060 Revenue bonds—Issuance, form, payment, etc.** When sewer revenue bonds are issued for authorized purposes, said bonds shall be either registered as to principal only or shall be bearer bonds; shall be in such denominations, shall be numbered, shall bear such date, shall be payable at such time or times up to a maximum period of not to exceed thirty years and at such place or places one of which must be the office of the treasurer of the county in which the district is located, or of the county in which fifty-one percent or more of the area of the district is located such place or places to be determined by the board of commissioners of the district; shall bear interest at such rate or rates as authorized by the board of sewer commissioners payable semiannually and evidenced to maturity by coupons attached to said bonds; shall be executed by the president of the board of commissioners and attested by the secretary thereof and have the seal of the district impressed thereon; and may have facsimile signatures of the president and secretary imprinted on the interest coupons in lieu of original signatures. [1971 ex.s. c 272 § 4; 1970 ex.s. c 56 § 81; 1969 ex.s. c 232 § 86; 1959 c 103 § 8; 1941 c 210 § 19; Rem. Supp. 1941 § 9425-28.]

*Facsimile signature on bonds and coupons:* RCW 39.44.100 through 39.44.102.

**56.16.070 Special fund to pay revenue bonds.** The sewer commissioners shall have power and are required to create a special fund, or funds, for the sole purpose of paying the interest and principal of sewer revenue bonds, as herein provided into which special fund or funds the said sewer commissioners shall obligate and bind the sewer district to set aside and pay a fixed proportion of the gross revenues of the system of sewers, or any fixed amount out of and not exceeding a fixed proportion of such revenues, or a fixed amount or amounts without regard to any fixed proportion, and such bonds and the interest thereof shall be payable only out of such special fund or funds, and shall be a lien and charge against all revenues of the district and payments received from any utility local improvement district or districts pledged to secure such bonds, subject only to

operating and maintenance expenses. [1959 c 103 § 9; 1941 c 210 § 20; Rem. Supp. 1941 § 9425-29.]

**56.16.080 Special fund, considerations in creating—Rights of bondholder.** In creating any special fund or funds the sewer commissioners of such sewer district shall have due regard to the cost of operation and maintenance of the plant or system as constructed or added to, and to any proportion or part of the revenue previously pledged as a fund for the payment of bonds, warrants or other indebtedness, and shall not set aside into such special fund a greater amount or proportion of the revenue and proceeds than in their judgment will be available over and above such cost of maintenance and operation and the amount or proportion, if any, of the revenue so previously pledged. Any such bonds, and the interest thereon, issued against any such fund as herein provided, shall be a valid claim of the holder thereof only as against the said special fund and its fixed proportion or amount of the revenue pledged to such fund, and shall not constitute an indebtedness of such sewer district within the meaning of the constitutional provisions and limitations. Each such bond or warrant shall state upon its face that it is payable from a special fund, naming the said fund and the resolution creating it. Said bonds shall be sold in such manner, at such prices and at such rate or rates of interest as the sewer commissioners shall deem for the best interests of the sewer district, either at public or private sale, and the said commissioners may provide in any contract for the construction and acquirement of the proposed improvement that payment therefor shall be made in such bonds at par value thereof.

When any such special fund shall have been heretofore or shall be created and any such bonds shall have been heretofore or shall hereafter be issued against the same, a fixed proportion or a fixed amount out of and not to exceed such fixed proportion, or a fixed amount without regard to any fixed proportion, of revenue shall be set aside and paid into said special fund as provided in the resolution creating such fund. In case any sewer district shall fail thus to set aside and pay said fixed proportion or amount as aforesaid, the holder of any bond against such special fund may bring suit or action against the sewer district and compel such setting aside and payment. [1970 ex.s. c 56 § 82; 1941 c 210 § 21; Rem. Supp. 1941 § 9425-30.]

**Purpose—Effective date—1970 ex.s. c 56:** See notes following RCW 39.44.030.

**56.16.085 Covenants to guarantee payment of revenue bonds—Bonds payable from same source may be issued on parity.** The board of commissioners may make such covenants as it may deem necessary to secure and guarantee the payment of the principal of and interest on sewer revenue bonds of the district, including but not being limited to covenants for the establishment and maintenance of adequate reserves to secure or guarantee the payment of such principal and interest; the protection and disposition of the proceeds of sale of

such bonds; the use and disposition of the gross revenues of the sewer system of the district and any additions or betterments thereto or extensions thereof; the use and disposition of any utility local improvement district assessments; the creation and maintenance of funds for renewals and replacements of the system; the establishment and maintenance of rates and charges adequate to pay principal and interest of such bonds and to maintain adequate coverage over debt service; the maintenance, operation and management of the system and the accounting, insuring and auditing of the business in connection therewith; the terms upon which such bonds or any of them may be redeemed at the election of the district; limitations upon the right of the district to dispose of its system or any part thereof; the appointment of trustees, depositaries and paying agents to receive, hold, disburse, invest and reinvest all or any part of the proceeds of sale of the bonds and all or any part of the income, revenue and receipts of the district, and the board of commissioners may make such other covenants as it may deem necessary to accomplish the most advantageous sale of such bonds. The board of commissioners may also provide that revenue bonds payable out of the same source or sources may later be issued on a parity with any revenue bonds being issued and sold. [1959 c 103 § 10.]

**56.16.090 Rates and charges—Classification of services.** The sewer commissioners of any sewer district, in the event that such sewer revenue bonds are issued, shall provide for revenues by fixing rates and charges for the furnishing of sewerage disposal service to those to whom such service is available. Such rates and charges may be combined for the furnishing of more than one type of sewer service such as but not limited to storm or surface water and sanitary. Such rates and charges are to be fixed as deemed necessary by such sewer commissioners, so that uniform charges will be made for the same class of customer or service. In classifying customers served or service furnished by such system of sewerage, the board of commissioners may in its discretion consider any or all of the following factors: The difference in cost of service to the various customers; the location of the various customers within and without the district; the difference in cost of maintenance, operation, repair, and replacement of the various parts of the system; the different character of the service furnished various customers; the quantity and quality of the sewage delivered and the time of its delivery; capital contributions made to the system including but not limited to assessments; and any other matters which present a reasonable difference as a ground for distinction. Such rates are to be made on a monthly basis and shall produce revenues sufficient to take care of the costs of maintenance and operation, revenue bond and warrant interest and principal amortization requirements, and all other charges necessary for efficient and proper operation of the system. [1974 1st ex.s. c 58 § 3; 1959 c 103 § 11; 1941 c 210 § 22; Rem. Supp. 1941 § 9425-31.]

**56.16.100 Collection of charges—Lien.** The commissioners shall enforce collection of the sewer connection charges and sewerage disposal service charges against property owners receiving the service, such charges being deemed charges against the property served, by addition of penalties of not more than ten percent thereof in case of failure to pay the charges at times fixed by resolution. The commissioners may provide by resolution that where either sewer connection charges or sewer service charges are delinquent for any specified period of time, the district shall certify the delinquencies to the treasurer of the county in which the real property is located, and the charges and any penalties added thereto and interest thereon at the rate of not more than eight percent per year, shall be a lien against the property upon which the service was received, subject only to the lien for general taxes. [1971 ex.s. c 272 § 5; 1953 c 250 § 14; 1941 c 210 § 23; Rem. Supp. 1941 § 9425-32.]

**56.16.110 Foreclosure of lien for charges.** The district may, at any time after the connection or service charges and penalties are delinquent for a period of sixty days, bring suit in foreclosure by civil action in the superior court of the county in which the real property is situated. The court may allow, in addition to the costs and disbursements provided by statute, such an attorney's fee as it may adjudge reasonable. The action shall be in rem, and may be brought in the name of the district against an individual, or against all of those who are delinquent in one action, and the laws and rules of the court shall control as in other civil actions. [1971 ex.s. c 272 § 6; 1953 c 250 § 15; 1941 c 210 § 24; Rem. Supp. 1941 § 9425-33.]

**56.16.115 Refunding bonds.** The board of sewer commissioners may by resolution, without submitting the matter to the voters of the district, authorize the issuance of refunding general obligation bonds to refund any outstanding general obligation bonds, or any part thereof, at maturity thereof, or before the maturity thereof, if they are subject to call for prior redemption, or if all of the holders thereof consent thereto. The total cost to the district over the life of the refunding bonds shall not exceed the total cost, which the district would have incurred but for such refunding, over the remainder of the life of the bonds being refunded. The provisions of RCW 56.16.040 specifying the form and maturities of general obligation bonds and providing for annual tax levies in excess of the constitutional and/or statutory tax limitations shall apply to the refunding general obligation bonds issued under this title.

The board of sewer commissioners may by resolution, without submitting the matter to the voters of the district, provide for the issuance of refunding revenue bonds to refund outstanding general obligation bonds and/or revenue bonds, or any part thereof, at maturity thereof, or before maturity thereof, if they are subject to call for prior redemption, or if all of the holders thereof consent thereto. The total cost to the district over the life of said refunding revenue bonds shall not exceed the total cost, which the district would have incurred

but for such refunding, over the remainder of the life of the bonds being refunded. Uncollected assessments originally payable into the revenue bond fund of a refunded revenue bond issue shall be paid into the revenue bond fund of the refunding issue. The provisions of RCW 56.16.060 specifying the form and maturities of revenue bonds shall apply to the refunding revenue bonds issued under this title.

Refunding general obligation bonds or refunding revenue bonds may be exchanged for the bonds being refunded or may be sold in such manner as the sewer commissioners shall deem for the best interest of the sewer district. [1973 1st ex.s. c 195 § 66; 1959 c 103 § 12; 1953 c 250 § 16.]

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

**56.16.130 Interest coupons as warrants.** The coupons hereinbefore mentioned for the payment of interest on bonds of any sewer district shall be considered for all purposes as warrants drawn upon the general fund of the said sewer district issuing such bonds, and when presented to the treasurer of the county having custody of the funds of such sewer district at maturity, or thereafter, and when so presented, if there are not funds in the treasury to pay the said coupons, it shall be the duty of the county treasurer to endorse said coupons as presented for payment, in the same manner as county warrants are indorsed, and thereafter said coupons shall bear interest at the same rate as the bonds to which they were attached. [1941 c 210 § 45; Rem. Supp. 1941 § 9425–54.]

**56.16.140 Maintenance or general fund and special funds.** The county treasurer of the county in which the district is located or the county in which fifty-one percent or more of the area of the district is located shall create and maintain a separate fund designated as the maintenance fund or general fund of the sewer district into which shall be paid all money received by him from the collection of taxes levied by such district other than taxes levied for the payment of general obligation bonds thereof, and into which shall be paid all revenues of the district other than assessments levied in utility local improvement districts, and no money shall be disbursed therefrom except upon warrants of the county auditor issued by authority of the commissioners or upon a resolution of the commissioners ordering a transfer to any other fund of the district. The county treasurer of each county in which the district or a portion thereof is located shall also maintain such other special funds as may be prescribed by the sewer district, into which shall be placed such moneys as the board of sewer commissioners may by its resolution direct, and from which disbursements shall be made upon proper warrants of the county auditor issued against the same by authority of the board of sewer commissioners. [1971 ex.s. c 272 § 7; 1959 c 103 § 13; 1941 c 210 § 46; Rem. Supp. 1941 § 9425–55.]

**56.16.150 Maintenance or general fund and special funds—Use of surplus in maintenance or general fund.** Whenever a sewer district has accumulated moneys in the maintenance fund or general fund of the district in excess of the requirements of such fund, the board of commissioners may in its discretion use any of such surplus moneys for any of the following purposes: (1) Redemption or servicing of outstanding obligations of the district; (2) maintenance expenses of the district; (3) construction or acquisition of any facilities necessary to carry out the purpose of the district. [1959 c 103 § 14.]

**56.16.160 Maintenance or general fund and special funds—Deposits and investments.** Whenever there shall have accumulated in any general or special fund of a sewer district moneys, the disbursement of which is not yet due, the board of commissioners may, by resolution, authorize the county treasurer to deposit or invest such moneys in banks, mutual savings banks, or savings and loan associations in an amount in each institution no greater than the amount insured by any department or agency of the United States government, the federal deposit insurance corporation, or the federal savings and loan insurance corporation, or to invest such moneys in direct obligations of the United States government: *Provided*, That the county treasurer may refuse to invest any district moneys for a period shorter than ninety days, or in an amount less than five thousand dollars, or any moneys the disbursement of which will be required during the period of investment to meet outstanding obligations of the district. [1973 1st ex.s. c 140 § 2; 1959 c 103 § 15.]

**56.16.170 Maintenance or general fund and special funds—Loans from maintenance or general funds to construction funds.** The board of commissioners of any sewer district may, by resolution, authorize and direct a loan or loans from maintenance funds or general funds of the district to construction funds of the district: *Provided*, That such loan does not, in the opinion of the board of commissioners, impair the ability of the district to operate and maintain its system of sewers. [1959 c 103 § 16.]

## Chapter 56.20

### UTILITY LOCAL IMPROVEMENT DISTRICTS

Sections	
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56.20.090	Segregation of special assessment—Fee—Costs.
56.20.100	Acquisition of property subject to local improvement as- sessments—Payment.



**56.20.010 Local districts authorized.** Any sewer district shall have the power to establish utility local improvement districts within its territory as hereinafter provided, and to levy special assessments under a mode of annual installments extending over a period not exceeding twenty years on all property specially benefited by any local improvement, on the basis of the special benefits to pay in whole or in part the damages or costs of any improvements ordered in such sewer district. The levying, collection and enforcement of all public assessments hereby authorized shall be in the manner now and hereafter provided by law for the levying, collection and enforcement of local improvement assessments by cities of the first class, insofar as the same shall not be inconsistent with the provisions of this title. The duties devolving upon the city treasurer under said laws are imposed upon the county treasurer of each county in which the real property is located for the purposes of this title. The mode of assessment shall be in the manner to be determined by the sewer commissioners by resolution. It must be specified in any petition for the establishment of a utility local improvement district and in the comprehensive scheme or plan or amendment thereto previously duly ratified at an election, that the assessments shall be for the sole purpose of payment into the revenue bond fund for the payment of revenue bonds. Assessments in any utility local improvement district may be made on the basis of special benefits up to but not in excess of the total cost of any comprehensive scheme or plan payable by issuance of revenue bonds. No warrants or bonds shall be issued in any such utility local improvement district, but the collection of interest and principal on all assessments in such utility local improvement district, when collected, shall be paid into the revenue bond fund. [1971 ex.s. c 272 § 8; 1941 c 210 § 26; Rem. Supp. 1941 § 9425-35.]

*Local improvements, collection of assessments: Chapter 35.49 RCW.*

**56.20.015 Local improvement powers of cities granted to sewer districts.** In addition to all of the powers and authorities set forth in Title 56 RCW, any sewer district shall have all of the powers of cities as set forth in chapter 35.43 RCW and chapter 35.44 RCW. [1974 1st ex.s. c 58 § 4.]

**56.20.020 Petition or resolution to form local district—Procedure.** Utility local improvement districts to carry out all or any portion of the comprehensive plan, or additions and betterments thereof, adopted for the sewer district may be initiated either by resolution of the board of sewer commissioners or by petition signed by the owners according to the records of the office of the county auditor of at least fifty-one percent of the area of the land within the limits of the utility local improvement district to be created.

In case the board of sewer commissioners shall desire to initiate the formation of a utility local improvement district by resolution, it shall first pass a resolution declaring its intention to order such improvement, setting forth the nature and territorial extent of such proposed improvement, designating the number of the proposed utility local improvement district, describing the

boundaries thereof, stating the estimated cost and expense of the improvement and the proportionate amount thereof which will be borne by the property within the proposed district, and fixing a date, time and place for a public hearing on the formation of the proposed local district, which date shall, unless there is an emergency, be no less than thirty days and no more than ninety days from the day the resolution of intention was adopted.

In case any such utility local improvement district shall be initiated by petition, such petition shall set forth the nature and territorial extent of such proposed improvement and the fact that the signers thereof are the owners according to the records of the county auditor of at least fifty-one percent of the area of land within the limits of the utility local improvement district to be created. Upon the filing of such petition with the secretary of the board of sewer commissioners, the board shall determine whether the same shall be sufficient, and the board's determination thereof shall be conclusive upon all persons. No person shall withdraw his name from said petition after the filing thereof with the secretary of the board of sewer commissioners. If the board shall find the petition to be sufficient, it shall proceed to adopt a resolution declaring its intention to order the improvement petitioned for, setting forth the nature and territorial extent of said improvement, designating the number of the proposed local district, describing the boundaries thereof, stating the estimated cost and expense of the improvement and the proportionate amount thereof which will be borne by the property within the proposed local district, and fixing a date, time and place for a public hearing on the formation of the proposed local district.

Notice of the adoption of the resolution of intention, whether the resolution was adopted on the initiative of the board or pursuant to a petition of the property owners, shall be published in at least two consecutive issues of a newspaper of general circulation in the proposed local district, the date of the first publication to be at least fifteen days prior to the date fixed by such resolution for hearing before the board of sewer commissioners. Notice of the adoption of the resolution of intention shall also be given each owner or reputed owner of any lot, tract, parcel of land or other property within the proposed improvement district by mailing said notice at least fifteen days before the date fixed for the public hearing to the owner or reputed owner of the property as shown on the tax rolls of the county treasurer at the address shown thereon. The notices shall refer to the resolution of intention and designate the proposed improvement district by number. Said notices shall also set forth the nature of the proposed improvement, the total estimated cost, the proportion of total cost to be borne by assessments, the date, time and place of the hearing before the board of sewer commissioners; and in the case of improvements initiated by resolution, said notice shall also state that all persons desiring to object to the formation of the proposed district must file their written protests with the secretary of the board of sewer commissioners before the time fixed for said public hearing. In the case of the notice given



each owner or reputed owner by mail, the notice shall set forth the estimated amount of the cost and expense of such improvement to be borne by the particular lot, tract, parcel of land or other property. [1974 1st ex.s. c 58 § 5; 1965 ex.s. c 40 § 1; 1953 c 250 § 17; 1941 c 210 § 27; Rem. Supp. 1941 § 9425-36.]

**56.20.030 Hearing—Improvement ordered—Divestment of power to order—Assessment roll.** Whether the improvement is initiated by petition or resolution, the board shall conduct a public hearing at the time and place designated in the notice to property owners. At this hearing the board shall hear objections from any person affected by the formation of the local district and may make such changes in the boundaries of the district or such modifications in plans for the proposed improvement as shall be deemed necessary: *Provided*, That the board may not change the boundaries of the district to include property not previously included therein without first passing a new resolution of intention and giving a new notice to property owners in the manner and form and within the time herein provided for the original notice.

After said hearing the commissioners shall have jurisdiction to overrule protests and proceed with any such improvement initiated by petition or resolution: *Provided*, That the jurisdiction of the commissioners to proceed with any improvement initiated by resolution shall be divested: (a) by protests filed with the secretary of the board prior to said public hearing signed by the owners, according to the records of the county auditor, of at least forty percent of the area of land within the proposed local district or (b) by the commissioners not adopting a resolution ordering the improvement at a public hearing held not more than ninety days from the day the resolution of intention was adopted, unless the commissioners file with the county auditor a copy of the notice required by RCW 56.20.020, and in no event at a hearing held more than two years from the day the resolution of intention was adopted.

If the commissioners find that the district should be formed, they shall by resolution order the improvement, provide the general funds of the sewer district to be applied thereto, adopt detailed plans of the utility local improvement district and declare the estimated cost thereof, acquire all necessary land therefor, pay all damages caused thereby, and commence in the name of the sewer district such eminent domain proceedings and supplemental assessment or reassessment proceedings to pay all eminent domain awards as may be necessary to entitle the district to proceed with the work. The board of sewer commissioners shall proceed with the work and file with the county treasurer of each county in which the real property is to be assessed its roll levying special assessments in the amount to be paid by special assessment against the property situated within the local improvement district in proportion to the special benefits to be derived by the property therein from the improvement. [1974 1st ex.s. c 58 § 6; 1971 ex.s. c 272 § 9; 1953 c 250 § 18; 1941 c 210 § 28; Rem. Supp. 1941 § 9425-37.]

**56.20.040 Notice of filing roll.** Before the approval of the roll a notice shall be published once a week for two consecutive weeks in a newspaper of general circulation in the local district, stating that the roll is on file and open to inspection in the office of the secretary, and fixing the time, not less than fifteen or more than thirty days from the date of the first publication of the notice, within which protests must be filed with the secretary against any assessments shown thereon, and fixing a time when a hearing will be held by the commission on the protests. The notice shall also be given by mailing at least fifteen days before the hearing, a similar notice to the owners or reputed owners of the land in the local district as they appear on the books of the treasurer of the county in which the sewer district is located. [1953 c 250 § 19; 1941 c 210 § 29; Rem. Supp. 1941 § 9425-38.]

**56.20.050 Hearing on protests—Order.** At such hearing on a protest to an assessment, or any adjournment thereof, the sewer commissioners shall have power to correct, revise, raise, lower, change or modify such roll, or any part thereof, and to set aside such roll, and order that such assessment be made de novo, as to such body shall appear equitable and just and may then by resolution approve the same. In the event of any assessment being raised a new notice similar to such first notice shall be given, after which final approval of such roll may be made by the sewer commissioners. Whenever any property shall have been entered originally upon such roll and the assessment upon any such property shall not be raised, no objection thereto shall be considered by the sewer commissioners or by any court on appeal unless such objection be made in writing at, or prior, to the date fixed for the original hearing upon such roll. [1941 c 210 § 30; Rem. Supp. 1941 § 9425-39.]

**56.20.060 Enlarged local district may be formed.** In the event that any portion of the system after its installation in such utility local improvement district is not adequate for the purpose for which it was intended, or that for any reason changes, alterations or betterments are necessary in any portion of the system after its installation, then such district, with boundaries which may include one or more existing utility local improvement districts, may be created in the sewer district in the same manner as is provided herein for the creation of utility local improvement districts. Upon the organization of such a utility local improvement district as provided for in this section the plan of the improvement and the payment of the cost of the improvement shall be carried out in the same manner as is provided herein for the carrying out of and the paying for the improvement in the utility local improvement districts previously provided for in this title. [1941 c 210 § 31; Rem. Supp. 1941 § 9425-40.]

**56.20.070 Conclusiveness of roll when approved—Exceptions.** Whenever any assessment roll for local improvements shall have been confirmed by the sewer commission of such sewer district as herein provided,

the regularity, validity and correctness of the proceedings relating to such improvement, and to the assessment therefor, including the action of the sewer commission upon such assessment roll and the confirmation thereof, shall be conclusive in all things upon all parties, and cannot in any manner be contested or questioned in any proceeding whatsoever by any person not filing written objections to such roll in the manner and within the time provided in this title, and not appealing from the action of the sewer commission in confirming such assessment roll in the manner and within the time in this title provided. No proceedings of any kind shall be commenced or prosecuted for the purpose of defeating or contesting any such assessment, or the sale of any property to pay such assessment, or any certificate of delinquency issued therefor, or the foreclosure of any lien issued therefor.

This section shall not be construed as prohibiting the bringing of injunction proceedings to prevent the sale of any real estate upon the grounds:

- (1) That the property about to be sold does not appear upon the assessment roll, or
- (2) That said assessment has been paid.

This section also shall not prohibit the correction of clerical errors and errors in the computation of assessments in assessment rolls by the following procedure:

(1) The board of sewer commissioners may file a petition with the superior court of the county wherein the real property is located, asking that the court enter an order correcting such errors and directing that the county treasurer pay a portion or all of the incorrect assessment by the transfer of funds from the district's maintenance fund, if such relief be necessary.

(2) Upon the filing of the petition, the court shall set a date for hearing and upon the hearing may enter an order as provided in subsection (1) of this paragraph: *Provided*, That neither the correcting order or the corrected assessment roll shall result in an increased assessment to the property owner. [1971 ex.s. c 272 § 10; 1969 c 126 § 1; 1941 c 210 § 33; Rem. Supp. 1941 § 9425-42.]

**56.20.080 Review.** The decision of the sewer commission upon any objections made within the time and in the manner herein prescribed, may be reviewed by the superior court upon an appeal thereto taken in the following manner. Such appeal shall be made by filing written notice of appeal with the secretary of said sewer commission and with the clerk of the superior court in the county in which the real property is situated within ten days after publication of a notice that the resolution confirming such assessment roll has been adopted, and such notice of appeal shall describe the property and set forth the objections of such appellant to such assessment. Within ten days from the filing of such notice of appeal with the clerk of the superior court, the appellant shall file with the clerk of said court, a transcript consisting of the assessment roll and his objections thereto, together with the resolution confirming such assessment roll and the record of the sewer district commission with reference to said assessment, which transcript, upon payment of the necessary fees therefor,

shall be furnished by such secretary of said sewer commission and by him certified to contain full, true and correct copies of all matters and proceedings required to be included in such transcript. Such fees shall be the same as the fees payable to the county clerk for the preparation and certification of transcripts on appeal to the supreme court or the court of appeals in civil actions. At the time of the filing of the notice of appeal with the clerk of the superior court a sufficient bond in the penal sum of two hundred dollars, with sureties thereon as provided by law for appeals in civil cases, shall be filed conditioned to prosecute such appeal without delay, and if unsuccessful, to pay all costs to which the sewer district is put by reason of such appeal. The court may order the appellant upon application therefor, to execute and file such additional bond or bonds as the necessity of the case may require. Within three days after such transcript is filed in the superior court, as aforesaid, the appellant shall give written notice to the secretary of such sewer district, that such transcript is filed. Said notice shall state a time, not less than three days from the service thereof, when the appellant will call up the said cause for hearing. The superior court shall, at said time or at such further time as may be fixed by order of the court, hear and determine such appeal without a jury, and such cause shall have preference over all civil causes pending in said court, except proceedings under an act relating to eminent domain in such sewer district and actions of forcible entry and detainer. The judgment of the court shall confirm, correct, modify or annul the assessment insofar as the same affects the property of the appellant. A certified copy of the decision of the court shall be filed with the officer who shall have the custody of the assessment roll, and he shall modify and correct such assessment roll in accordance with such decision. An appeal shall lie to the supreme court or the court of appeals from the judgment of the superior court, as in other cases, however, such appeal must be taken within fifteen days after the date of the entry of the judgment of such superior court, and the record and opening brief of the appellant in said cause shall be filed in the supreme court or the court of appeals within sixty days after the appeal shall have been taken by notice as provided in this title. The time for filing such record and serving and filing of briefs in this section prescribed may be extended by order of the superior court, or by stipulation of the parties concerned. The supreme court or the court of appeals on such appeal may correct, change, modify, confirm or annul the assessment insofar as the same affects the property of the appellant. A certified copy of the order of the supreme court or the court of appeals upon such appeal shall be filed with the officer having custody of such assessment roll, who shall thereupon modify and correct such assessment roll in accordance with such decision. [1971 ex.s. c 272 § 11; 1971 c 81 § 125; 1965 ex.s. c 40 § 2; 1941 c 210 § 32; Rem. Supp. 1941 § 9425-41.]

**56.20.090 Segregation of special assessment—Fee—Costs.** Whenever any land against which there has been levied any special assessment by any sewer

district shall have been sold in part or subdivided, the board of sewer commissioners of such district shall have the power to order a segregation of the assessment.

Any person desiring to have such a special assessment against a tract of land segregated to apply to smaller parts thereof shall apply to the board of commissioners of the sewer district which levied the assessment. If the sewer commissioners determine that a segregation should be made, they shall by resolution order the county treasurer to make segregation on the original assessment roll as directed in the resolution. The segregation shall be made as nearly as possible on the same basis as the original assessment was levied, and the total of the segregated parts of the assessment shall equal the assessment before segregation. The resolution shall describe the original tract, the amount and date of the original assessment, and shall define the boundaries of the divided parts and the amount of the assessment chargeable to each part. A certified copy of the resolution shall be delivered to the county treasurer who shall proceed to make the segregation ordered upon being tendered a fee of three dollars for each tract of land for which a segregation is to be made. In addition to such charge the board of sewer commissioners may require as a condition to the order of segregation that the person seeking it pay the district the reasonable engineering and clerical costs incident to making the segregation. [1953 c 250 § 20.]

*Segregation duties of county treasurer: RCW 36.29.160.*

*Segregation of taxes where part of parcel acquired by public body: RCW 84.60.070.*

**56.20.100 Acquisition of property subject to local improvement assessment—Payment.** See RCW 79.44.190.

## Chapter 56.24

### ANNEXATION OF TERRITORY

#### Sections

- 56.24.070 Annexation authorized—Petition—Filing—Certificate of sufficiency—Notice of hearing.
- 56.24.080 Hearing—Boundaries—Election, notice, judges.
- 56.24.090 Election—Qualification of voters.
- 56.24.100 Conduct, expense of election.
- 56.24.110 Petition method is alternative to election method.
- 56.24.120 Petition method—Petition—Signers—Content.
- 56.24.130 Petition method—Hearing—Notice.
- 56.24.140 Petition method—Resolution—Filing.
- 56.24.150 Petition method—Effective date of annexation—Prior indebtedness.
- 56.24.160 Sewer district activities to be approved—Criteria for approval by county legislative authority.
- 56.24.900 Severability—1967 ex.s. c 11.

*Annexation of district territory to cities and towns: Chapter 35.13A RCW.*

**56.24.070 Annexation authorized—Petition—Filing—Certificate of sufficiency—Notice of hearing.** The territory adjoining or in close proximity to and in the same county with a district may be annexed to and become a part of the district in the following manner: Twenty percent of the number of registered voters residing in the territory proposed to be annexed who voted at the last election may file a petition with the

district commissioners and cause the question to be submitted to the electors of the territory whether such territory will be annexed and become a part of the district. If the commissioners concur in the petition, they shall file it with the county auditor, who shall, within ten days, examine the signatures thereon and certify to the sufficiency or insufficiency thereof; and for such purpose he shall have access to all registration books in the possession of the officers of any city or town in the proposed district. If the petition contains a sufficient number of signatures, the auditor shall transmit it, together with his certificate of sufficiency attached thereto to the sewer commissioners of the district. If there are no electors residing in the territory to be annexed, the petition may be signed by such a number as appear of record to own at least a majority of the acreage in the territory, and the petition shall disclose the total number of acres of land in the territory and the names of all record owners of land therein. If the commissioners are satisfied as to the sufficiency of the petition and concur therein, they shall send it, together with their certificate of concurrence attached thereto to the board of county commissioners.

The county commissioners, upon receipt of a petition certified to contain a sufficient number of signatures of electors, or upon receipt of a petition signed by such a number as own at least a majority of the acreage, together with a certificate of concurrence signed by the sewer commissioners, at a regular or special meeting shall cause to be published for at least two weeks in two successive issues of some weekly newspaper printed in the county, and in general circulation throughout the territory proposed to be annexed, and in case no such newspaper is printed in the county, then in some such newspaper of general circulation therein, a notice that the petition has been filed, stating the time of the meeting at which it shall be presented, and setting forth the boundaries of the territory proposed to be annexed. [1967 ex.s. c 11 § 1.]

**56.24.080 Hearing—Boundaries—Election, notice, judges.** When such petition is presented for hearing, the said board of county commissioners shall hear the same or may adjourn said hearing from time to time not exceeding one month in all, and any person, firm or corporation may appear before the board of county commissioners and make objections to the proposed boundary lines or to the annexation of the territory described in the petition; and upon a final hearing the said board of county commissioners shall make such changes in the proposed boundary lines as they deem to be proper and shall establish and define such boundaries and shall find whether the proposed annexation of the said territory as established by the said board of county commissioners to the said sewer district will be conducive to the public health, welfare and convenience and will be of special benefit to the land included within the boundaries of the territory proposed to be annexed to the said sewer district and so established by the said board of county commissioners: *Provided*, That no lands which will not, in the judgment of said

board, be benefited by inclusion therein, shall be included within the boundaries of said territory as so established and defined: *Provided further*, That no change shall be made by the said board of county commissioners in the said boundary lines, including any territory outside of the boundary lines described in the petition: *And provided further*, That no person having signed such petition as herein provided for shall be allowed to withdraw his name therefrom after the filing of the same with the board of sewer commissioners to said sewer district.

Upon the entry of the findings of the final hearing to the said petition by the said county commissioners of such county, if they find the said proposed annexation of the territory to the said sewer district to be conducive to the public health, welfare and convenience and to be of special benefit to the land proposed to be annexed and included within the boundaries of the district, they shall give notice of a special election to be held within the boundaries of the territory proposed to be annexed to said sewer district for the purpose of determining whether the same shall be annexed to the said sewer district; and such notice shall particularly describe the boundaries established by the board of county commissioners on its final hearing of the said petition, and shall state the name of the sewer district to which the said territory is proposed to be annexed, and the same shall be published for at least two weeks prior to such election in a weekly newspaper printed and published within the county within which said district is located, and in case no such newspaper be printed or published in such county, then in some such newspaper of general circulation therein for two successive issues thereof, and shall be posted for the same period in at least four public places within the boundaries of the district proposed to be annexed, which notice shall designate the places within the territory proposed to be annexed to said sewer district where the said election shall be held, and shall require the voters to cast ballots which shall contain the words:

For Annexation to Sewer District  
or  
Against Annexation to Sewer District

The said county commissioners shall name the persons to act as judges at such election. [1967 ex.s. c 11 § 2.]

**56.24.090 Election—Qualification of voters.** The said election shall be held on the date designated in such notice and shall be conducted in accordance with the general election laws of the state. In the event the original petition for annexation is signed by qualified electors then only qualified electors, at the date of election, residing in the territory proposed to be annexed, shall be permitted to vote at the said election. In the event the original petition for annexation is signed by property owners as provided for in this chapter then no person shall be entitled to vote at such election unless at the time of the filing of the original petition he owned the land in the district of record and in addition

thereto at the date of election shall be a qualified elector of the county in which such district is located. It shall be the duty of the county auditor, upon request of the county commissioners, to certify to the election officers of any such election, the names of all persons owning land in the district at the date of the filing of the original petition as shown by the records of his office; and at any such election the election officers may require any such landowner offering to vote to take an oath that he is a qualified elector of the county before he shall be allowed to vote: *Provided*, That at any election held under the provisions of this chapter an officer or agent of any corporation having its principal place of business in said county and owning land at the date of filing the original petition in the district duly authorized thereto in writing may cast a vote on behalf of such corporation. When so voting he shall file with the election officers such a written instrument of his authority. The judge or judges at such election shall make return thereof to the board of sewer commissioners, who shall canvass such return and cause a statement of the result of such election to be entered on the record of such commissioners. If the majority of the votes cast upon the question of such election shall be for annexation, then such territory shall immediately be and become annexed to such sewer district and the same shall then forthwith be a part of the said sewer district, the same as though originally included in such district. [1967 ex.s. c 11 § 3.]

**56.24.100 Conduct, expense of election.** All elections held pursuant to this chapter, whether general or special, shall be conducted by the county election board of the county in which the district is located.

The expense of all such elections shall be paid for out of the funds of such sewer district. [1967 ex.s. c 11 § 4.]

**56.24.110 Petition method is alternative to election method.** The method of annexation provided for in RCW 56.24.120 through 56.24.150 shall be an alternative method to that specified in RCW 56.24.070 through 56.24.100. [1967 ex.s. c 11 § 5.]

**56.24.120 Petition method—Petition—Signers—Content.** A petition for annexation of an area contiguous to a sewer district may be made in writing, addressed to and filed with the board of commissioners of the district to which annexation is desired. It must be signed by the owners, according to the records of the county auditor, of not less than sixty percent of the area of land for which annexation is petitioned, shall set forth a description of the property according to government legal subdivisions or legal plats, and shall be accompanied by a plat which outlines the boundaries of the property sought to be annexed. [1967 ex.s. c 11 § 6.]

**56.24.130 Petition method—Hearing—Notice.** If the petition for annexation filed with the board of commissioners complies with the requirements of law, as proved to the satisfaction of the board of commissioners, it may entertain the petition, fix the date for public hearing thereon, and cause notice of the hearing to be

published in one issue of a newspaper of general circulation in the area proposed to be annexed and also posted in three public places within the area proposed for annexation. The notice shall specify the time and place of hearing and invite interested persons to appear and voice approval or disapproval of the annexation. The expense of publication and posting of the notice shall be borne by the signers of the petition. [1967 ex.s. c 11 § 7.]

**56.24.140 Petition method—Resolution—Filing.** Following the hearing the board of commissioners shall determine by resolution whether annexation shall be made. It may annex all or any portion of the proposed area but may not include in the annexation any property not described in the petition. Upon passage of the resolution a certified copy shall be filed with the board of county commissioners of the county in which the annexed property is located. [1967 ex.s. c 11 § 8.]

**56.24.150 Petition method—Effective date of annexation—Prior indebtedness.** Upon the date fixed in the resolution the area annexed shall become a part of the district.

No property within the limits of the territory so annexed shall ever be taxed or assessed to pay any portion of the indebtedness of the district to which it is annexed contracted prior to or existing at the date of annexation; nor shall any such property be released from any taxes or assessments levied against it or from liability for payment of outstanding bonds or warrants issued prior to such annexation. [1967 ex.s. c 11 § 9.]

**56.24.160 Sewer district activities to be approved—Criteria for approval by county legislative authority.** See RCW 56.02.060 and 56.02.070.

**56.24.900 Severability—1967 ex.s. c 11.** If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1967 ex.s. c 11 § 11.]

### Chapter 56.28 WITHDRAWAL OF TERRITORY

Sections	
56.28.010	Withdrawal authorized—Methods—Laws applicable.
56.28.100	Sewer district activities to be approved—Criteria for approval by county legislative authority.

**56.28.010 Withdrawal authorized—Methods—Laws applicable.** Territory within a sewer district may be withdrawn therefrom in the same manner provided by law for withdrawal of territory from water districts, and in addition thereto, territory may be withdrawn from a sewer district upon a written petition designating the territory proposed to be withdrawn signed by all of the owners of land within said territory, concurred in by unanimous vote of the sewer commissioners and approved by resolution of the board of county commissioners. The provisions of RCW 57.28.110 shall apply to

territory withdrawn from a sewer district. [1953 c 250 § 27.]

**56.28.100 Sewer district activities to be approved—Criteria for approval by county legislative authority.** See RCW 56.02.060 and 56.02.070.

### Chapter 56.32 CONSOLIDATION OF DISTRICTS—MERGER

Sections	
56.32.010	Consolidation authorized—Methods.
56.32.020	Petition method—Signers—Filing—Certificate of sufficiency.
56.32.030	Agreements by consolidating districts—Contents—Comprehensive plan.
56.32.040	Election—Proposition—Notice.
56.32.050	Consolidation effected—Rights and powers of new district.
56.32.060	Vesting of funds and property in consolidated district—Outstanding indebtedness.
56.32.070	Sewer commissioners—Number.
56.32.080	Merger of districts—Authorized.
56.32.090	Initiation of merger—Methods.
56.32.100	Election on merging of districts.
56.32.110	Return of election—When merger effective—Cessation of merging district.
56.32.120	Vesting of funds and property in merged district—Outstanding indebtedness.
56.32.150	Sewer district activities to be approved—Criteria for approval by county legislative authority.

**56.32.010 Consolidation authorized—Methods.** Two or more sewer districts, adjoining or in close proximity to and in the same county with each other, may be joined into one consolidated sewer district. The consolidation may be initiated in either of the following ways: Ten percent of the legal electors residing within each of the sewer districts proposed to be consolidated may petition the board of sewer commissioners of each of their respective sewer districts to cause the question to be submitted to the legal electors of the sewer districts proposed to be consolidated; or, the boards of sewer commissioners of each of the sewer districts proposed to be consolidated may by resolution determine that the consolidation of such districts shall be conducive to the public health, welfare, and convenience and to be of special benefit to the lands of such districts. [1967 c 197 § 2.]

**56.32.020 Petition method—Signers—Filing—Certificate of sufficiency.** If consolidation proceedings are initiated by petition, upon the filing of such petitions with the boards of sewer commissioners of the sewer districts, the boards of sewer commissioners of all of the districts shall file such petitions with the county auditor who shall within ten days examine the signatures thereon and certify to the sufficiency or insufficiency thereof. If all of the petitions shall be found to contain a sufficient number of signatures, the county auditor shall transmit them, together with his certificate of sufficiency attached thereto, to the boards of sewer commissioners of each of the districts proposed for consolidation. In the event that there are no legal electors residing in one or more of the sewer districts proposed to be consolidated, the petitions may be signed

by such a number as appear of record to own at least a majority of the acreage in the pertinent sewer district, and the petitions shall disclose the total number of acres of land in the sewer district and shall also contain the names of all record owners of land therein. [1967 c 197 § 3.]

**56.32.030 Agreements by consolidating districts—Contents—Comprehensive plan.** Upon the receipt of the county auditor's certificate of sufficiency of the petitions by the boards of sewer commissioners of the districts proposed for consolidation, hereinafter referred to as the "consolidating districts", or upon adoption by the boards of sewer commissioners of the consolidating districts of their resolutions for consolidation, the boards of the consolidating districts shall, within ninety days, enter into an agreement providing for consolidation.

The agreement shall set forth the method and manner of consolidation, a comprehensive plan or scheme of sewer supply for the consolidated district and, if such comprehensive plan or scheme of sewer supply provides that one or more of the consolidating districts or the proposed consolidated district issue revenue bonds for the construction and/or other costs of any part or all of the comprehensive plan, then the details thereof shall be set forth.

The requirement that a comprehensive plan or scheme of sewer supply for the consolidated district be set forth in the agreement for consolidation, shall be satisfied if the existing comprehensive plans or schemes of the consolidating districts are incorporated therein by reference and any changes or additions thereto are set forth in detail. [1967 c 197 § 4.]

**56.32.040 Election—Proposition—Notice.** The respective boards of sewer commissioners of the consolidating districts shall certify such agreement to the county auditor of the county in which the districts are located. Thereupon, the county auditor shall call a special election for the purpose of submitting to the voters of each of the consolidating districts the proposition of whether or not the several districts shall be consolidated into one sewer district. The proposition shall give the title of the proposed consolidated district. Notice of the election shall be given and the election conducted in accordance with the general election laws. [1967 c 197 § 5.]

**56.32.050 Consolidation effected—Rights and powers of new district.** If at the election a majority of the voters in each of the consolidating districts shall vote in favor of the consolidation, the county canvassing board shall so declare in its canvass and the return of the election shall be made within ten days after the date thereof. Upon the return the consolidation shall be effective and the consolidating districts shall cease to exist and shall then be and become a new sewer district and municipal corporation of the state of Washington.

The name of such new sewer district shall be "(name) Sewer District of County", which shall be the name appearing on the ballot.

The district shall have all and every power, right and privilege possessed by other sewer districts of the state of Washington. The district may issue revenue bonds to pay for the construction of any additions and betterments set forth in the comprehensive scheme and plan of sewer supply contained in the agreement for consolidation and any future additions and betterments to the comprehensive scheme and plan of sewer supply, as its board of sewer commissioners shall by resolution adopt, without submitting a proposition therefor to the voters of the district. [1967 c 197 § 6.]

**56.32.060 Vesting of funds and property in consolidated district—Outstanding indebtedness.** Upon the formation of any consolidated sewer district, all funds, rights and property, real and personal, of the former districts, shall vest in and become the property of the consolidated district. Unless the agreement for consolidation provides to the contrary, any outstanding indebtedness of any form, owed by the districts, shall remain the obligation of the area of the original debtor district and the sewer commissioners of the consolidated sewer district shall make such levies, assessments, or charges for service upon that area or the sewer users therein as shall pay off the indebtedness at maturity. [1967 c 197 § 7.]

**56.32.070 Sewer commissioners—Number.** The sewer commissioners of all sewer districts consolidated into any new consolidated sewer district shall become sewer commissioners thereof until their respective terms of office expire. When the terms of expiration reduce the total number of remaining sewer commissioners to less than three then the board of commissioners of the consolidated sewer district shall be maintained at the number of three, in accordance with the provisions of RCW 56.12.020 and 56.12.030. [1967 c 197 § 8.]

**56.32.080 Merger of districts—Authorized.** Whenever there are two sewer districts, the territories of which are adjoining or in close proximity to and in the same county with each other, either district hereinafter referred to as the "merging district", may merge into the other districts, hereinafter referred to as the "merger district", and the merger district will survive under its original number. [1967 c 197 § 9.]

**56.32.090 Initiation of merger—Methods.** A merger of two sewer districts may be initiated in any of the following ways:

(1) Whenever the boards of sewer commissioners of both such districts determine by resolution that the merger of such districts shall be conducive to the public health, welfare and convenience and to be of special benefit to the lands of such districts.

(2) Whenever ten percent of the legal electors residing within the merging district petition the board of sewer commissioners of the merging sewer district for a merger, and the board of sewer commissioners of the merger district determines by resolution that the merger of the districts shall be conducive to the public health, welfare and convenience of the two districts.



(3) Whenever the boards determine that the merger of the districts shall be conducive to the public health, welfare and convenience and to be of special benefit to the lands of the districts, they shall enter into an agreement providing for the merger. [1967 c 197 § 10.]

**56.32.100 Election on merging of districts.** The respective boards of sewer commissioners of the districts shall certify the agreement to the county auditor of the county in which the districts are located. Thereupon, the county auditor shall call a special election for the purpose of submitting to the voters of the merging district the proposition of whether the merging district shall be merged into the merger district. Notice of the election shall be given and the election conducted in accordance with the general election laws. [1967 c 197 § 11.]

**56.32.110 Return of election—When merger effective—Cessation of merging district.** If at the election a majority of the voters of the merging sewer district shall vote in favor of the merger, the county canvassing board shall so declare in its canvass and the return of the election shall be made within ten days after the date thereof. Upon the return the merger shall be effective and the merging sewer district shall cease to exist and shall become a part of the merger sewer district. The sewer commissioners of the merging district shall cease to hold office and the affairs of the merged districts shall be managed by the sewer commissioners of the merger district. [1967 c 197 § 12.]

**56.32.120 Vesting of funds and property in merged district—Outstanding indebtedness.** All funds, rights and property, real and personal, of the merging district, shall vest in and become the property of the merger district. Unless the agreement of merger provides to the contrary, any outstanding indebtedness of any form, owed by the district shall remain the obligation of the area of the original debtor district and the sewer commissioners of the merger sewer district shall make such levies, assessments, or charges for service upon that area or the sewer users therein as shall pay off the indebtedness at maturity. [1967 c 197 § 13.]

**56.32.150 Sewer district activities to be approved—Criteria for approval by county legislative authority.** See RCW 56.02.060 and 56.02.070.

56.36.100 Sewer district activities to be approved—Criteria for approval by county legislative authority.

**56.36.010 Merger authorized.** Any water district, acting alone or in conjunction with any other water district or districts similarly situated as hereafter described, the territory of which lies wholly or partly within, or which is adjoining or in proximity to, and in the same county with, a sewer district, may merge into the sewer district, and the sewer district will survive under its original name. The term "in proximity to" as used herein shall mean within one mile of each other, measured in a straight line between the closest points of approach of the territorial boundaries of the respective districts. [1969 ex.s. c 148 § 1.]

**Severability—1969 ex.s. c 148:** "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1969 ex.s. c 148 § 9.]

This applies to this chapter and RCW 56.12.010.

**56.36.020 Initiation of merger—Resolution—Petition.** A merger of one or more water districts into a sewer district may be initiated in any one of the following ways:

(1) Whenever the board of commissioners of the sewer district, on the one hand, and the board of commissioners of the water district or of the respective water districts seeking to merge into the sewer district, on the other hand, each determine by resolution that the merger of such water district or water districts into the sewer district shall be conducive to the public health, welfare and convenience and to be of special benefit to the lands of such district so desiring to merge.

(2) Whenever ten percent of the qualified electors residing within each of the sewer districts and the water district or districts involved petition the board of commissioners of their respective districts for a merger of such district into the sewer district.

(3) Whenever ten percent of the qualified electors residing within the sewer district petition the board of sewer commissioners for such a merger, and the board of water commissioners of the district or each water district to be merged determines by resolution that the merger of such district into the sewer district will be conducive to the public health, welfare and convenience of the two districts. [1969 ex.s. c 148 § 2.]

**56.36.030 Agreement of merger—Board review of proposed merger—Special election.** Whenever a merger is initiated in any of the three ways provided in RCW 56.36.020, the boards of the sewer and water commissioners of the respective districts involved shall enter into an agreement providing for the merger. The agreement must be entered into within ninety days following completion of the last act required for initiation of the merger by any one of the means above specified, as provided in RCW 56.36.020. Where two or more water districts seek to merge into a sewer district at or about the same time, there need be but one agreement of merger signed by the sewer district and such two or more water districts if the parties so agree.

Chapter 56.36

MERGER OF WATER DISTRICTS INTO SEWER DISTRICT—MERGER OF SEWER DISTRICTS INTO WATER DISTRICT

Sections	
56.36.010	Merger authorized.
56.36.020	Initiation of merger—Resolution—Petition.
56.36.030	Agreement of merger—Board review of proposed merger—Special election.
56.36.040	Election—Results—Effect.
56.36.050	Disposition of funds, rights and property—Indebtedness of merged water districts.
56.36.060	Powers of sewer district.
56.36.090	Merger of sewer districts into water district.



Upon entry of such agreement, the boards of the water and sewer commissioners shall file a notice of intention to merge together with a copy of said agreement with the boundary review board, if any, of the county and the board shall review the proposed merger under the provisions of RCW 36.93.150 through 36.93.180.

The respective boards of sewer and water commissioners of such districts shall certify such agreement to the county auditor of the county in which the districts are located within twenty days from date of execution of such agreement, with a certified copy thereof filed with the clerk of the board of county commissioners of such county. Thereupon, unless the boundary review board has disapproved the proposed merger, the county auditor shall call a special election for the purpose of submitting to the voters of the water district or of each of the two or more water districts involved the proposition of whether the water district shall be merged into the sewer district. Notice of the election shall be given, and the election conducted, in accordance with the general election laws. [1971 ex.s. c 146 § 7; 1969 ex.s. c 148 § 3.]

**56.36.040 Election—Results—Effect.** If at such election a majority of the voters in the water district or all or either of the water districts involved, shall vote in favor of the merger, the county election canvassing board shall so declare in its canvass, and the return of the election shall be made within ten days after the date of such election. Upon completion of the return the merger shall be effective as to the sewer district and each water district in which the majority of voters voted in favor of the merger, and each such water district shall cease to exist and shall become a part of the sewer district. The water commissioners of any water district so merged shall cease to hold office, and the affairs of the merged districts shall be managed and conducted by the board of sewer commissioners of the sewer district. [1969 ex.s. c 148 § 4.]

**56.36.050 Disposition of funds, rights and property—Indebtedness of merged water districts.** All funds, rights and property, real and personal, of any water district merging into a sewer district shall vest in and become the property of the sewer district. Unless the agreement of merger provides to the contrary, any outstanding indebtedness of any form, owed by the water district, shall remain the obligation of and, as applicable, a lien upon the land, assets and/or revenue of the original district. The board of commissioners of the sewer district shall make such levies, assessments or charges upon said land or the water or sewer users therein as are necessary to pay any indebtednesses of the merged water districts as and when the same mature. [1969 ex.s. c 148 § 5.]

**56.36.060 Powers of sewer district.** Following merger, the sewer district and the board of commissioners thereof shall have all powers granted water districts by Title 57 RCW. The sewer district shall have the power to issue revenue bonds to which are pledged water revenue, sewer revenue, or both water and sewer revenue,

as well as the power to levy assessments against property specially benefited in the manner levied by utility local improvement districts, for improvements to the water system or the sewer system or both. [1969 ex.s. c 148 § 6.]

**56.36.090 Merger of sewer districts into water district.** See RCW 57.40.100 through 57.40.150.

**56.36.100 Sewer district activities to be approved—Criteria for approval by county legislative authority.** See RCW 56.02.060 and 56.02.070.

# TITLE 57

## WATER DISTRICTS

### Chapters

- 57.02 General provisions.
- 57.04 Formation and dissolution.
- 57.06 Validation and construction.
- 57.08 Powers.
- 57.12 Officers and elections.
- 57.16 Comprehensive plan—Local improvement districts.
- 57.20 Finances.
- 57.24 Annexation of territory.
- 57.28 Withdrawal of territory.
- 57.32 Consolidation of districts.
- 57.36 Merger of districts.
- 57.40 Merger of water districts into sewer districts—Merger of sewer districts into water districts.
- 57.42 Disposition of property to public utility district.
- 57.90 Disincorporation of water and other districts in class A or AA counties.

*Annexation of district territory to cities and towns: RCW 35.13.220-35.13.270.*

*Assumption of jurisdiction over district or territory to city or town: Chapter 35.13A RCW.*

*Boundary review board, extension of permanent water service outside corporate boundaries to go before: RCW 36.93.090.*

*City sewerage, drainage, and water supply: RCW 35.21.210.*

*City water systems: Title 35 RCW.*

*Conveyances of real property by public bodies—Recording: RCW 65.08.095.*

*County water systems, authority, procedure: Chapter 36.94 RCW.*

*Elections: Title 29 RCW.*

*Furnishing impure water: RCW 70.54.020.*

*Hospitalization and medical aid for public employees and dependents—Premiums, governmental contributions authorized: RCW 41.04.180, 41.04.190.*

*Irrigation districts authorized to acquire water district's water system, authority to convey: RCW 87.03.015.*

*Local governmental organizations, actions affecting boundaries, etc., review by boundary review board: Chapter 36.93 RCW.*

*Municipal corporation may authorize investment of funds which are in custody of county treasurer or other municipal corporation treasurer: RCW 36.29.020.*

*Pollution of watershed or source of drinking water: RCW 70.54.010 and 70.54.030.*

*Port district may provide sewer and water utilities in adjacent areas: RCW 53.08.040.*

*Supervisor of water resources: RCW 43.21.120, 43.21.130, 43.27A.080, chapter 43.21A RCW.*

### Chapter 57.02 GENERAL PROVISIONS

#### Sections

- 57.02.010 Petition signatures of property owners—Rules governing.
- 57.02.020 Claims against district.
- 57.02.030 Title to be liberally construed.
- 57.02.040 Water district activities to be approved—Criteria for approval by county legislative authority.

*Effect when city or town takes over portion of water system: RCW 57.08.035.*

**57.02.010 Petition signatures of property owners—Rules governing.** Wherever in Title 57 RCW petitions are required to be signed by the owners of property, the following rules shall govern the sufficiency thereof:

(1) The signature of a record owner, as determined by the records of the county auditor, shall be sufficient without the signature of his or her spouse.

(2) In the case of mortgaged property, the signature of the mortgagor shall be sufficient.

(3) In the case of property purchased on contract, the signature of the contract purchaser, as shown by the records of the county auditor, shall be deemed sufficient.

(4) Any officer of a corporation owning land in the district duly authorized to execute deeds or encumbrances on behalf of the corporation may sign on behalf of such corporation: *Provided*, That there shall be attached to the petition a certified excerpt from the by-laws showing such authority.

(5) If any property in the district stands in the name of a deceased person or any person for whom a guardian has been appointed, the signature of the executor, administrator or guardian, as the case may be, shall be equivalent to the signature of the owner of the property. [1953 c 251 § 24.]

**57.02.020 Claims against district.** See chapter 53.52 RCW.

**57.02.030 Title to be liberally construed.** The rule of strict construction shall have no application to this title, but the same shall be liberally construed to carry out the purposes and objects for which this title is intended. [1959 c 108 § 19.]

**57.02.040 Water district activities to be approved—Criteria for approval by county legislative authority.** Notwithstanding any provision of law to the contrary, no water district shall be formed or reorganized under chapter 57.04 RCW, nor shall any water district annex territory under chapter 57.24 RCW, nor

shall any water district withdraw territory under chapter 57.28 RCW, nor shall any water district consolidate under chapter 57.32 RCW, nor shall any water district be merged under chapter 57.36 RCW, nor shall any sewer district be merged into a water district under chapter 57.40 RCW, unless such proposed action shall be approved as provided for in RCW 56.02.070.

The county legislative authority shall within thirty days of the date after receiving notice of the proposed action, approve such action or hold a hearing on such action. In addition, a copy of such proposed action shall be mailed to the state department of ecology and to the state department of social and health services.

The county legislative authority shall decide within sixty days of a hearing whether to approve or not approve such proposed action. In approving or not approving the proposed action, the county legislative authority shall consider the following criteria:

- (1) Whether the proposed action in the area under consideration is in compliance with the development program which is outlined in the county comprehensive plan and its supporting documents; and/or
- (2) Whether the proposed action in the area under consideration is in compliance with the basinwide water and/or sewage plan as approved by the state department of ecology and the state department of social and health services; and/or
- (3) Whether the proposed action is in compliance with the policies expressed in the county plan for water and/or sewage facilities.

If the proposed action is inconsistent with subsections (1), (2), or (3) of this section, the county legislative authority shall not approve it. If such action is consistent with all such subsections, the county legislative authority shall approve it unless it finds that utility service in the area under consideration will be most appropriately served by the county itself under the provisions of chapter 36.94 RCW, by a city, town, or municipality, or by another existing special purpose district rather than by the proposed action under consideration. If there has not been adopted for the area under consideration a plan under any one of subsections (1), (2) or (3) of this section, the proposed action shall not be found inconsistent with such subsection. [1971 ex.s. c 139 § 2.]

#### Chapter 57.04 FORMATION AND DISSOLUTION

Sections	
57.04.020	Districts authorized.
57.04.030	Petition procedure—Hearing—Boundaries.
57.04.050	Election—Notice—Ballots—Excess tax levy.
57.04.060	District created—Name.
57.04.070	When two or more petitions filed.
57.04.080	Act cumulative.
57.04.090	Dissolution—Court method.
57.04.100	Dissolution—Election method.
57.04.110	Dissolution when district's boundaries identical with municipality.
57.04.150	Water district activities to be approved—Criteria for approval by county legislative authority.

**57.04.020 Districts authorized.** Water districts for the acquirement, construction, maintenance, operation, development and regulation of a water supply system and providing for additions and betterments thereto within such districts are hereby authorized to be established in the various counties of this state, as in \*this act provided. Such districts may include within their boundaries one or more incorporated cities and towns. [1929 c 114 § 1; RRS § 11579. Cf. 1913 c 161 § 1.]

**\*Reviser's note:** The language "this act" appeared in 1929 c 114, the basic water district law, which is codified as follows: RCW 57.04.020, 57.04.030, 57.04.050–57.04.080, 57.04.100, 57.08.010, 57.08.050, 57.12.010, 57.12.020, 57.12.030, 57.16.010, 57.16.020, 57.16.030, 57.16.040, 57.16.050, 57.16.060, 57.16.070, 57.16.080–57.16.100, 57.20.010, 57.20.100–57.20.140, 57.24.010, 57.24.020, 57.24.040, 57.24.050.

**57.04.030 Petition procedure—Hearing—Boundaries.** For the purpose of formation of such water districts, a petition shall be presented to the board of county commissioners of the county in which said proposed water district is located, which petition shall set forth the object for the creation of the said district, shall designate the boundaries thereof and set forth the further fact that the establishment of said district will be conducive to the public health, convenience and welfare and will be of benefit to the property included therein. Said petition shall be signed by at least twenty-five percent of the qualified electors who shall be qualified electors on the date of filing the petition, residing within the district described in the said petition. The said petition shall be filed with the county auditor, who shall, within ten days examine the signatures thereof and certify to the sufficiency or insufficiency thereof; and for such purpose the county auditor shall have access to all registration books in the possession of the officers of any incorporated city or town in such proposed district. No person having signed such a petition shall be allowed to withdraw his name therefrom after the filing of the same with the county auditor. If such petition shall be found to contain a sufficient number of signatures, the county auditor shall transmit the same, together with his certificate of sufficiency attached thereto to the board of county commissioners. If such petition is certified to contain a sufficient number of signatures, then at a regular or special meeting of the board of county commissioners of such county, the said county commissioners shall cause to be published for at least two weeks in two successive issues of some weekly newspaper printed and published in said county, and in case no such newspaper be printed or published in such county, then in some such newspaper of general circulation therein before the time at which the same is to be printed a notice that such a petition has been presented, stating the time of the meeting at which the same shall be presented, and setting forth the boundaries of said proposed district. When such a petition is presented for hearing, the board of county commissioners shall hear the same or may adjourn said hearing from time to time not exceeding one month in all; and any person, firm or corporation may appear before the said board of county commissioners and make objections to the establishment of the said district or the proposed boundary lines thereof; and upon a final hearing said board of county

commissioners shall make such changes in the proposed boundary lines as they deem to be proper and shall establish and define such boundaries and shall find whether the proposed water district will be conducive to the public health, welfare and convenience and be of special benefit to the land included within the said boundaries of said proposed district so established by the said board of county commissioners: *Provided*, That no lands which will not, in the judgment of said board, be benefited by inclusion therein, shall be included within the boundaries of said district as so established and defined: *And provided further*, That no change shall be made by the said board of county commissioners in the said boundary lines to include any territory outside of the boundaries described in the said petition, except that the boundaries of any proposed district may be extended by the board of county commissioners at such hearing to include other lands in said county upon a petition signed by the owners of all of the land within the proposed extension. [1931 c 72 § 3; 1929 c 114 § 2; RRS § 11580. Cf. 1915 c 24 § 1; 1913 c 161 § 2. Formerly RCW 57.04.030 and 57.04.040.]

**57.04.050 Election—Notice—Ballots—Excess tax levy.** Upon entry of the findings of the final hearing on the petition if the commissioners find the proposed district will be conducive to the public health, welfare, and convenience and be of special benefit to the land therein, they shall by resolution call a special election to be held not less than thirty days from the date of the resolution, and cause to be published a notice of the election for four successive weeks in a newspaper of general circulation in the county in which the proposed district is located, which notice shall state the hours during which the polls will be open, the boundaries of the district as finally adopted and the object of the election, and the notice shall also be posted ten days in ten public places in the proposed district. In submitting the proposition to the voters, it shall be expressed on the ballots in the following terms:

- Water District ..... YES
- Water District ..... NO

giving the name of the district as may be decided by the board.

At the same election the county commissioners shall submit a proposition to the voters, for their approval or rejection, authorizing the water district, if formed, to levy at the earliest time permitted by law on all property located in the district a general tax for one year, in excess of the limitations provided by law, of not to exceed one dollar and twenty-five cents per thousand dollars of assessed value, for general preliminary expenses of the district, said proposition to be expressed on the ballots in the following terms:

- One year one dollar and twenty-five cents per thousand dollars of assessed value tax ..... YES
- One year one dollar and twenty-five cents per thousand dollars of assessed value tax ..... NO

Such proposition to be effective must be approved by a majority of at least three-fifths of the electors thereof voting on the proposition in the manner set forth in Article VII, section 2(a) of the Constitution of this state, as amended by Amendment 59 and as thereafter amended. [1973 1st ex.s. c 195 § 67; 1953 c 251 § 1; 1931 c 72 § 4; 1929 c 114 § 3; RRS § 11581. Cf. 1927 c 230 § 1; 1915 c 24 § 2; 1913 c 161 § 3.]

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

**57.04.060 District created—Name.** If at such election a majority of the voters voting upon such proposition shall vote in favor of the formation of such district the board of county commissioners shall so declare in its canvass of the returns of such election to be made within ten days after the date of the election, and such water district shall then be and become a municipal corporation of the state of Washington, and the name of such water district shall be "----- Water District" (inserting the name appearing on the ballot). [1929 c 114 § 5; RRS § 11583. Cf. 1913 c 161 § 5.]

**57.04.070 When two or more petitions filed.** Whenever two or more petitions for the formation of a water district shall be filed as herein provided, the petition describing the greater area shall supersede all others and an election shall first be held thereunder, and no lesser water district shall ever be created within the limits in whole or in part of any water district. [1929 c 114 § 4; RRS § 11582. Cf. 1913 c 161 § 4.]

**57.04.080 Act cumulative.** \*This act shall not be construed to repeal, amend, or modify any law heretofore enacted providing a method for water supply for any city or town in this state, but shall be held to be an additional and concurrent method providing for such purpose. Nor shall this act be construed to repeal chapter 161 of the Laws of 1913, pages 533 to 552, or amendments thereto. [1929 c 114 § 24; RRS § 11601.]

\*Reviser's note: (1) "This act", see note following RCW 57.04.020.  
(2) As to the reference "chapter 161 of the Laws of 1913", see note following RCW 57.06.010.

**57.04.090 Dissolution—Court method.** Dissolution of district, see port districts, chapter 53.48 RCW.

**57.04.100 Dissolution—Election method.** Any water district organized under this title may be reincorporated in the same manner (insofar as the same is applicable) as is provided in RCW 35.07.110 through 35.07.220 for the disincorporation of the third and fourth class cities, except that the petition for disincorporation shall be signed by not less than twenty-five percent of the voters in the water district. [1929 c 114 § 25; 1917 c 147 § 1; RRS § 11602.]

Reviser's note: This section, formerly uncodified, provides an alternative method of dissolution to that provided by chapter 53.48 RCW, see *State ex rel. Reed v. Spanaway Water District*, 38 Wn. (2d) 393, 229 P. (2d) 532.

**57.04.110 Dissolution when district's boundaries identical with municipality.** A water district whose boundaries are identical with the boundaries of an incorporated town may be dissolved by summary dissolution proceedings if the water district is free from all debts and liabilities except contractual obligations between the district and the town. Summary dissolution shall take place if the board of commissioners of the water district votes unanimously to dissolve the district and to turn all of its property over to the town within which the district lies, and the council of such town unanimously passes an ordinance accepting the conveyance of the property and assets of the district tendered to the town by the water district. [1955 c 358 § 1.]

*Acceptance by town: RCW 35.92.012.*

**57.04.150 Water district activities to be approved—Criteria for approval by county legislative authority.** See RCW 57.02.040 and 56.02.070.

### Chapter 57.06 VALIDATION AND CONSTRUCTION

#### Sections

57.06.010	1927 validation.
57.06.020	1931 validation.
57.06.030	1943 validation.
57.06.040	1943 validation.
57.06.050	1943 validation.
57.06.060	1945 validation.
57.06.070	1945 validation.
57.06.080	1945 validation.
57.06.090	1953 validation.
57.06.100	1953 validation.
57.06.110	1953 validation.
57.06.120	1959 validation.
57.06.130	1959 severability.

**57.06.010 1927 validation.** In case an attempt has been made to organize a water district not containing within its boundaries any incorporated city or town, and either through inadvertence or mistake the election for the organization of the district was held more than thirty days from the date of such certificate of the county auditor but less than sixty days from such date, such proceedings shall not be deemed invalid by reason thereof, and in case all other proceedings in connection with the organization of any such water district were regular, such proceedings are hereby validated and all bonds and warrants issued or to be issued by any such water district are hereby declared to be valid. [1927 c 230 § 2; RRS § 11581-1.]

**Reviser's note:** This section appeared in an act the first section of which amended RRS § 11581 which compiled 1913 c 161 § 3 as amended. 1913 c 161 was declared unconstitutional in *Drum v. University Place Water District*, 144 Wash. 585 (1927). The current basic water district act codified in this title is 1929 c 114.

**57.06.020 1931 validation.** Each and all of the respective areas of land heretofore organized or attempted to be organized or incorporated under chapter 161 of the Laws of 1913, and amendments thereto, are each hereby declared to be and created into duly existing water districts having the respective boundaries set forth in their respective organization proceedings as

shown in the files and records of the office of the board of county commissioners of the county in which said organization, or attempted organization is located. The water districts validated or created by this act shall have the same rights, liabilities, duties and obligations as water districts created under chapter 114 of the Laws of 1929, and amendments thereto: *Provided*, That the provisions of this act shall apply only to those water districts which have maintained their organization as water districts since the date of their attempted incorporation or establishment: *Provided, however*, That nothing herein contained shall be deemed to validate the debts, contracts, bonds or other obligations executed prior to this act in connection with or in pursuance of such attempted organization, and all taxes or assessments shall hereafter be levied in accordance with the act of 1929, chapter 114, approved March 13, 1929. [1931 c 71 § 1; RRS § 11604.]

**Reviser's note:** The language "chapter 161 of the Laws of 1913" appears in 1931 c 71 § 1. See note following RCW 57.06.010.

**57.06.030 1943 validation.** Each and all of the respective areas of land heretofore attempted to be organized into water districts or into local improvement districts or utility local improvement districts under the provisions of chapter 114 of the Laws of 1929 and amendments thereto, are hereby validated and declared to be duly existing water districts, or local improvement districts, or utility local improvement districts, as the case may be, having the respective boundaries set forth in their organization proceedings as shown by the files in the office of the board of county commissioners of the county in question and of such water districts. [1943 c 177 § 1; Rem. Supp. 1943 § 11604-13.]

**57.06.040 1943 validation.** All debts, contracts, and obligations heretofore made or incurred by or in favor of any such water district, local improvement district, or utility local improvement district, and all bonds or other obligations executed by such districts in connection with or in pursuance of such attempted organization, and any and all assessments or levies, and all other things and proceedings done or taken by such districts or by their respective officers acting under or in pursuance of such attempted organization, are hereby declared legal and valid and of full force and effect. [1943 c 177 § 2; Rem. Supp. 1943 § 11604-14.]

**57.06.050 1943 validation.** The provisions of the act shall apply only to such districts attempted to be organized under chapter 114 of the Laws of 1929, and amendments thereto, which have maintained their organization as such since the date of such attempted organization, establishment, or creation. [1943 c 177 § 3; Rem. Supp. 1943 § 11604-15.]

**57.06.060 1945 validation.** Each and all of the respective areas of land heretofore attempted to be organized into water districts or into local improvement districts or utility local improvement districts under the provisions of Pierce's Perpetual Code 994-1 to -53, chapter 114, Laws of 1929, and amendments thereto

(sections 11579 to 11604, Remington's Revised Statutes), are hereby validated and declared to be duly existing water districts, or local improvement districts, or utility local improvement districts, as the case may be, having the respective boundaries set forth in their organization proceedings as shown by the files in the office of the board of county commissioners of the county in question and of such water districts. [1945 c 40 § 1; Rem. Supp. 1945 § 11604–17.]

**57.06.070 1945 validation.** All debts, contracts, and obligations heretofore made or incurred by or in favor of any such water district, local improvement district, or utility local improvement district, and all bonds or other obligations executed by such districts in connection with or in pursuance of such attempted organization, and any and all assessments or levies, and all other things and proceedings done or taken by such districts or by their respective officers acting under or in pursuance of such attempted organization, are hereby declared legal and valid and of full force and effect. [1945 c 40 § 2; Rem. Supp. 1945 § 11604–18.]

**57.06.080 1945 validation.** The provisions of this act shall apply only to such districts attempted to be organized under Pierce's Perpetual Code 994–1 to 53, chapter 114, Laws of 1929, and amendments thereto (sections 11579 to 11604, Remington's Revised Statutes), which have maintained their organization as such since the date of such attempted organization, establishment, or creation. [1945 c 40 § 3; Rem. Supp. 1945 § 11604–19.]

**57.06.090 1953 validation.** Each and all of the respective areas of land heretofore attempted to be organized into water districts, including all areas attempted to be annexed thereto, or into local improvement districts or utility local improvement districts, under the provisions of chapter 114, Laws of 1929, and amendments thereto, are hereby validated and declared to be duly existing water districts, or local improvement districts, or utility local improvement districts, as the case may be, having the respective boundaries set forth in their organization and annexation proceedings as shown by the files in the office of the board of county commissioners of the county in question and of such water districts. [1953 c 251 § 25.]

**57.06.100 1953 validation.** All debts, contracts, and obligations heretofore made or incurred by or in favor of any such water district, local improvement district, or utility local improvement district, and all bonds or other obligations executed by such districts in connection with or in pursuance of such attempted organization, and any and all assessments or levies, and all other things and proceedings done or taken by such districts or by their respective officers acting under or in pursuance of such attempted organization, are hereby declared legal and valid and of full force and effect. [1953 c 251 § 26.]

**57.06.110 1953 validation.** The provisions of this act shall apply only to such districts attempted to be organized under chapter 114, Laws of 1929, and amendments thereto, which have maintained their organization as such since the date of such attempted organization, establishment, or creation. [1953 c 251 § 27.]

**57.06.120 1959 validation.** All debts, contracts and obligations heretofore made or incurred by or in favor of any water district and all bonds, warrants, or other obligations issued by such district, and all charges heretofore made by such districts, and any and all assessments heretofore levied in any local improvement districts or utility local improvement districts of any water district, and all other things and proceedings relating thereto done or taken by such water districts or by their respective officers are hereby declared to be legal and valid and of full force and effect from the date thereof: *Provided*, That nothing in this section shall apply to ultra vires acts or acts of fraud committed by the officers or agents of said district. [1959 c 108 § 18.]

**57.06.130 1959 severability.** If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1959 c 108 § 20.]

## Chapter 57.08 POWERS

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*Lien for labor and materials on public works: Chapter 60.28 RCW.*  
*Public works—Five percent differential in purchase of Washington commodities: Chapter 39.24 RCW.*

**57.08.010 Right to acquire property and rights—Eminent domain—Leases—Rates and charges.** A water district may acquire by purchase or condemnation, or both, all property and property rights and all water and water rights, both within and without the district, necessary for its purposes. A water district may lease real or personal property necessary for its purposes for a term of years for which such leased property may reasonably be needed where in the opinion of the board of water commissioners such property may not be needed permanently or substantial savings to the district can be effected thereby. The right of eminent domain shall be exercised in the same manner and by the same procedure as provided for cities of the third class, insofar as consistent with the provisions of this title, except that all assessment rolls to be prepared and filed by eminent domain commissioners or commissioners appointed by the court shall be prepared and filed by the water district, and the duties devolving upon the city treasurer are hereby imposed upon the county treasurer. A water district may construct, condemn and purchase, purchase, add to, maintain and supply waterworks to furnish the district and inhabitants thereof, and any city or town therein and any other persons, both within and without the district, with an ample supply of water for all uses and purposes public and private with full authority to regulate and control the use, distribution and price thereof. For such purposes, a water district may take, condemn and purchase, purchase, acquire and retain water from any public or navigable lake, river or watercourse, or any underflowing water and, by means of aqueducts or pipe line conduct the same throughout such water district and any city or town therein and carry it along and upon public highways, roads and streets, within and without such district. For the purpose of constructing or laying aqueducts or pipe lines, dams, or waterworks or other necessary structures in storing and retaining water or for any other lawful purpose such water district may occupy the beds and shores up to the high water mark of any such lake, river, or other watercourse, and may acquire by purchase or condemnation such property or property rights or privileges as may be necessary to protect its water supply from pollution.

A water district may purchase and take water from any municipal corporation.

A water district may fix rates and charges for water supplied and may charge property owners seeking to connect to the district's water supply system, as a condition to granting the right to so connect, in addition to the cost of such connection, such reasonable connection charge as the board of commissioners shall determine to be proper in order that such property owners shall bear their equitable share of the cost of such system. [1959 c 108 § 1; 1929 c 114 § 8; RRS § 11586. Cf. 1913 c 161 § 8.]

*Eminent domain: State Constitution Art. I § 16 (Amendment 9).*

*Eminent domain, third class cities: RCW 35.24.310.*

**57.08.015 Sale of unnecessary property authorized—Notice.** The board of commissioners of a water district may sell, at public or private sale, property belonging to the district if the board determines by unanimous vote of the elected members of the board that the property is not and will not be needed for district purposes and if the board gives notice of intention to sell as in this section provided.

The notice of intention to sell shall be published once a week for three consecutive weeks in a newspaper of general circulation in the district. The last publication shall be at least twenty days but not more than thirty days before the date of sale. The notice shall describe the property and state the time and place at which it will be sold or offered for sale, the terms of sale, whether the property is to be sold at public or private sale, and if at public sale the notice shall call for bids, fix the conditions thereof and shall reserve the right to reject any and all bids. [1953 c 50 § 1.]

**57.08.016 Sale of unnecessary property authorized—Additional requirements for sale of realty.** No real property of the district shall be sold for less than ninety percent of the value thereof as established by a written appraisal made not more than six months prior to the date of sale by three disinterested real estate brokers licensed under the laws of the state. The appraisal shall be signed by the appraisers and filed with the secretary of the board of commissioners of the district, who shall keep it at the office of the district open to public inspection. Any notice of intention to sell real property of the district shall recite the appraised value thereof: *Provided*, That there shall be no private sale of real property where the appraised value exceeds the sum of five hundred dollars. [1953 c 50 § 2.]

**57.08.020 Conveyance of water system to city or town.** That water districts duly organized under the laws of the state of Washington shall have the following powers in addition to those conferred by existing statutes. Whenever any water district shall have installed a distributing system of mains and laterals and as a source of supply of water shall be purchasing or intending to purchase water from any city or town, and whenever it shall appear to be advantageous to the water consumers in said water district that such city or town shall take over the water system of the water district and supply water to the said water users, the commissioners of said water district, upon being authorized as provided in RCW 57.08.030, shall have the right to convey such distributing system to any such city or town: *Provided*, Such city or town is willing to accept, maintain and repair the same: *Provided, further*, That all bonded and other indebtedness of said water district except local improvement district bonds shall have been paid. [1933 c 142 § 1; RRS § 11586-1.]

**57.08.030 Election on conveyance—Contract to maintain.** Should the commissioners of any such water district decide that it would be to the advantage of the water consumers of such water district to make the conveyance provided for in RCW 57.08.020, they shall



cause the proposition of making such conveyance to be submitted to the electors of the water district at any general election or at a special election to be called for the purpose of voting on the same. If at any such election a majority of the electors voting at such election shall be in favor of making such conveyance, the water district commissioners shall have the right to convey to such city or town the mains and laterals belonging to the water district upon such city or town entering into a contract satisfactory to the water commissioners to maintain and repair the same. [1933 c 142 § 2; RRS § 11586-2.]

**57.08.035 Effect when city or town takes over portion of water system.** Whenever a city or town located wholly or in part within a water district shall enter into a contract with the commissioners of a water district providing that the city or town shall take over all of the operation of the facilities of the district located within its boundaries, such area of said water district located within said city or town shall upon the execution of said contract cease to be a part of said water district and the inhabitants therein shall no longer be permitted to vote in said water district. The land, however, within such city or town shall remain liable for the payment of all assessments, any lien upon said property at the time of the execution of said agreement and for any lien of all general obligation bonds due at the date of said contract, and the city shall remain liable for its fair prorated share of the debt of the area for any revenue bonds outstanding as of said date of contract. [1971 ex.s. c 272 § 13.]

**57.08.040 City or town may accept and agree to maintain system.** Whenever any city or town is selling or proposes to sell water to a water district organized under the laws of the state of Washington and the provisions of RCW 57.08.020 and 57.08.030 have been complied with, any such city or town may by ordinance accept a conveyance of any such distributing system and enter into a contract with the water district for the maintenance and repair of the system and the supplying of water to the water district consumers. [1933 c 142 § 3; RRS § 11586-3.]

**57.08.045 Contracts for joint use—Service outside district.** A water district may enter into contracts with any county, city, town, sewer district, water district, or any other municipal corporation, or with any private person or corporation, for the acquisition, ownership, use and operation of any property, facilities, or services, within or without the water district and necessary or desirable to carry out the purposes of the water district, and a water district may provide water services to property owners outside the limits of the water district. [1959 c 108 § 4; 1953 c 251 § 3.]

**57.08.050 Board may create positions—Contracts for materials and work—Notice—Bids.** The board of water commissioners shall have authority to create and fill such positions and fix salaries and bonds thereof as it may by resolution provide. All materials purchased

and work ordered, the estimated cost of which is in excess of two thousand five hundred dollars shall be let by contract; but before awarding any such contract the board of water commissioners shall cause to be published in some newspaper in general circulation throughout the county where the district is located at least once ten days before the letting of such contract, inviting sealed proposals for such work, plans and specifications which must at the time of publication of such notice be on file in the office of the board of water commissioners subject to public inspection. Such notice shall state generally the work to be done and shall call for proposals for doing the same to be sealed and filed with the board of water commissioners on or before the day and hour named therein. Each bid shall be accompanied by a certified or cashier's check or postal money order payable to the order of the county treasurer for a sum not less than five percent of the amount of the bid, or accompanied by a bid bond in an amount not less than five percent of the bid with a corporate surety licensed to do business in the state, conditioned that the bidder will pay the district as liquidated damages the amount specified in the bond, unless he enters into a contract in accordance with his bid, and no bid shall be considered unless accompanied by such check, cash or bid bond. At the time and place named such bids shall be publicly opened and read and the board of water commissioners shall proceed to canvass the bids and may let such contract to the lowest responsible bidder upon plans and specifications on file or to the best bidder submitting his own plans and specifications: *Provided*, That no contract shall be let in excess of the cost of said materials or work, or if in the opinion of the board of water commissioners all bids are unsatisfactory they may reject all of them and readvertise and in such case all checks, cash or bid bonds shall be returned to the bidders; but if such contract be let, then and in such case all checks, cash or bid bonds shall be returned to the bidders, except that of the successful bidder, which shall be retained until a contract shall be entered into for the purchase of such materials or doing such work, and a bond to perform such work furnished with sureties satisfactory to the board of water commissioners in the full amount of the contract price between the bidder and the commission in accordance with the bid. If said bidder fails to enter into said contract in accordance with said bid and furnish such bond within ten days from the date at which he is notified that he is the successful bidder, the said check, cash or bid bonds and the amount thereof shall be forfeited to the water district: *Provided*, That if the bidder fails to enter into a contract in accordance with his bid, and the board of water commissioners deems it necessary to take legal action to collect on any bid bond required herein, then, in such event, the water district shall be entitled to collect from said bidder any legal expenses, including reasonable attorneys' fees occasioned thereby. [1965 c 72 § 1; 1947 c 216 § 2; 1929 c 114 § 21; Rem. Supp. 1947 § 11598. Cf. 1913 c 161 § 20.]

**57.08.060 Powers as to street lighting systems.** In addition to the powers now given water districts by law, they shall also have power to acquire, construct, maintain, operate, and develop street lighting systems in the same manner as provided by law for the doing thereof in connection with water supply systems. [1941 c 68 § 1; Rem. Supp. 1941 § 11604–12.]

**57.08.065 Powers as to sewer systems.** In addition to the powers now given water districts by law, they shall also have power to establish, maintain and operate a mutual water and sewer system or a separate sewer system within their water district area in the same manner as provided by law for the doing thereof in connection with water supply systems.

In addition thereto, a water district constructing, maintaining and operating a sanitary sewer system may exercise all the powers permitted to a sewer district under RCW Title 56, including, but not limited to, the right to compel connections to the district's system, liens for delinquent sewer connection charges or sewer service charges, and all other powers presently exercised by or which may be hereafter granted to such sewer districts: *Provided*, That no water district shall proceed to exercise the powers herein granted to establish, maintain, construct and operate any sewer system without first obtaining written approval and certification of necessity so to do from the state of Washington pollution control commission and department of health. Any comprehensive plan for a system of sewers or addition thereto or betterment thereof shall be approved by the same county and state officials as are required to approve such plans adopted by a sewer district. [1967 ex.s. c 135 § 3; 1963 c 111 § 1.]

**57.08.070 Participation in volunteer firemen's relief and pension fund.** See chapter 41.24 RCW.

**57.08.080 Rates and charges.** The commissioners shall enforce collection of the water connection charges and rates and charges for water supplied against property owners connecting with the system and/or receiving such water, such charges being deemed charges against the property served, by addition of penalties of not more than ten percent thereof in case of failure to pay the charges at times fixed by resolution. The commissioners may provide by resolution that where either water connection charges or rates and charges for water supplied are delinquent for any specified period of time, the district shall certify the delinquencies to the treasurer of the county in which the district is situated, and the charges and any penalties added thereto and interest thereon at the rate of not more than eight percent per year shall be a lien against the property upon which the service was received, subject only to the lien for general taxes. [1959 c 108 § 2.]

**57.08.090 Rates and charges—Foreclosure for delinquency—Costs—Fees.** The district may, at any time after the connection charges or rates and charges for water supplied and penalties are delinquent for a period of sixty days, bring suit in foreclosure by civil

action in the superior court of the county in which the district is situated. The court may allow, in addition to the costs and disbursements provided by statute, such an attorney's fee as it adjudges reasonable. The action shall be in rem, and may be brought in the name of the district against an individual, or against all of those who are delinquent in one action, and the laws and rules of the court shall control as in other civil actions. [1959 c 108 § 3.]

**57.08.100 Health care, group and life insurance contracts for employees' benefit—Joint action with sewer district.** A water district, by a majority vote of its board of commissioners, may enter into contracts to provide health care services and/or group insurance and/or term life insurance, for the benefit of its employees and may pay all or any part of the cost thereof: *Provided*, That term life insurance shall be limited to five thousand dollars coverage or ten thousand dollars for a double indemnity death benefit. Any two or more water districts or any one or more water districts and one or more sewer districts, by a majority vote of their respective boards of commissioners, may, if deemed expedient, join in the procuring of such health care services and/or group insurance and/or term life insurance, and the board of commissioners of each participating sewer and/or water district may by appropriate resolution authorize their respective district to pay all or any portion of the cost thereof. [1973 c 24 § 2; 1961 c 261 § 2.]

*Joint health care, group insurance contracts with water district: RCW 56.08.100.*

**57.08.105 Liability insurance for officials and employees.** The board of water commissioners of each water district may purchase liability insurance with such limits as they may deem reasonable for the purpose of protecting their officials and employees against liability for personal or bodily injuries and property damage arising from their acts or omissions while performing or in good faith purporting to perform their official duties. [1973 c 125 § 7.]

**57.08.110 Association of commissioners—Purposes—Powers—Expenses—Records audited by state division of municipal corporations.** To improve the organization and operation of water districts, the commissioners of two or more such districts may form an association thereof, for the purpose of securing and disseminating information of value to the members of the association and for the purpose of promoting the more economical and efficient operation of the comprehensive plans of water supply in their respective districts. The commissioners of water districts so associated shall adopt articles of association, select such officers as they may determine, and employ and discharge such agents and employees as shall be deemed convenient to carry out the purposes of the association. Water district commissioners and employees are authorized to attend meetings of the association. The expense of the association may be paid from the maintenance or general funds of the associated districts in such manner as shall be provided in the articles of association: *Provided*,

That the aggregate contributions made to the association by the district in any calendar year shall not exceed the amount which would be raised by a levy of two and one-half cents per thousand dollars of assessed value against the taxable property of the district. The financial records of such association shall be subject to audit by the Washington state division of municipal corporations of the state auditor. [1973 1st ex.s. c 195 § 68; 1970 ex.s. c 47 § 5; 1961 c 242 § 1.]

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

**57.08.112 Association of commissioners—Association to furnish information to legislature and governor.** See RCW 44.04.170.

**57.08.120 Lease of real property—Notice, contents, publication—Performance bond or security.** A water district may lease out real property which it owns or in which it has an interest and which is not immediately necessary for its purposes upon such terms as the board of water commissioners deems proper: *Provided*, That no such lease shall be made until the water district has first caused notice thereof to be published twice in a newspaper in general circulation in the water district, the first publication to be at least fifteen days and the second at least seven days prior to the making of such lease, which notice shall describe the property proposed to be leased out, to whom, for what purpose, and the rental to be charged therefor. A hearing shall be held pursuant to the terms of the said notice, at which time any and all persons who may be interested shall have the right to appear and to be heard.

No such lease shall be for a period longer than twenty-five years, and each lease of real property shall be secured by a bond conditioned to perform the terms of such lease with surety satisfactory to the commissioners, in a penalty not less than the rental for one-sixth of the term: *Provided*, That the penalty shall not be less than the rental for one year where the term is one year or more. In a lease, the term of which exceeds five years, and when at the option of the commissioners, it is so stipulated in the lease, the commission shall accept, with surety satisfactory to it, a bond conditioned to perform the terms of the lease for some part of the term, in no event less than five years (unless the remainder of the unexpired term is less than five years, in which case for the full remainder) and in every such case the commissioners shall require of the lessee, another or other like bond to be delivered within two years, and not less than one year prior to the expiration of the period covered by the existing bond, covering an additional part of the term in accordance with the foregoing provisions in respect to the original bond, and so on until the end of the term so that there will always be in force a bond securing the performance of the lease, and the penalty in each bond shall be not less than the rental for one-half the period covered thereby, but no bond shall be construed to secure the furnishing of any other bond.

The commissioners may accept as surety on any bond required by this section, either an approved surety

company or one or more persons satisfactory to the commissioners, or in lieu of such bond may accept a deposit as security of such property or collateral or the giving of such other form of security as may be satisfactory to the commissioners. [1967 ex.s. c 135 § 1.]

**57.08.130 Limitation on leasing real property.** The authority granted in RCW 57.08.120 shall not be exercised by the board of water commissioners unless such property is declared by resolution of the board of commissioners to be property for which there is a future need by the district and for the use of which provision is made in the comprehensive plan of the water system of the district as the same may be amended from time to time. [1967 ex.s. c 135 § 2.]

**57.08.140 RCW 39.33.060 to govern on sales by water district for park and recreational purposes.** The provisions of RCW 57.08.015, 57.08.016, 57.08.120 and 57.08.130 shall have no application as to the sale or conveyance of real or personal property or any interest or right therein by a water district to the county or park and recreation district wherein such property is located for park and recreational purposes, but in such cases the provisions of RCW 39.33.060 shall govern. [1971 ex.s. c 243 § 8.]

**Severability—1971 ex.s. c 243:** See RCW 84.34.920.

## Chapter 57.12 OFFICERS AND ELECTIONS

Sections	
57.12.010	Commissioners—President and secretary—Compensation.
57.12.020	Commissioners, nomination, declaration of candidacy, election law, vacancy—Qualification of voters.
57.12.030	Registration of voters—Conduct of elections—Formation election expense—Commissioners, terms.

**57.12.010 Commissioners—President and secretary—Compensation.** The officers of a district shall be a board of water commissioners consisting of three members. The board shall annually elect one of its members as president and another as secretary.

The secretary may be paid a reasonable sum for the clerical services performed by him. The board shall by resolution adopt rules governing the transaction of its business and shall adopt an official seal. All proceedings shall be by resolution recorded in a book kept for that purpose which shall be a public record.

A district shall provide by resolution for the payment of compensation to each of its commissioners at a rate not exceeding twenty-five dollars for each day or major part thereof devoted to the business of the district: *Provided*, That the per diem for each commissioner shall not exceed twelve hundred dollars per year. No commissioner shall be employed full time by the district. Each commissioner shall be reimbursed for reasonable expenses actually incurred in connection with such business, including his subsistence and lodging while away from his place of residence and mileage for use of personal automobile at the rate of ten cents per mile.

The date for holding elections and taking office as herein provided shall be subject to the provisions of any consolidated election laws that may be made applicable thereto although previously enacted. [1969 ex.s. c 148 § 8; 1959 c 108 § 5; 1959 c 18 § 1; 1945 c 50 § 2; 1929 c 114 § 7; Rem. Supp. 1945 § 11585. Cf. 1913 c 161 § 7.]

**57.12.020 Commissioners, nomination, declaration of candidacy, election law, vacancy—Qualification of voters.** Nominations for the first board of commissioners to be elected at the election for the formation of the water district shall be by petition of at least twenty-five of the qualified electors of the district, filed in the auditor's office of the county in which the district is located, at least thirty days prior to the election. Thereafter, candidates for the office of water commissioners shall file declarations of candidacy and their election shall be conducted as provided by the general election laws. A vacancy on the board shall be filled by appointment by the remaining commissioners until the next regular election for commissioners: *Provided*, That if there is a vacancy of the entire board a new board may be appointed by the board of county commissioners.

Any person residing in the district who is a qualified voter under the laws of the state may vote at any district election. [1959 c 18 § 3. Prior: 1953 c 251 § 4; 1947 c 216 § 1, part; 1945 c 50 § 1, part; 1931 c 72 § 1, part; 1929 c 114 § 6, part; Rem. Supp. 1947 § 11584, part. Cf. 1913 c 161 § 7, part.]

*Elections: Title 29 RCW.*

**57.12.030 Registration of voters—Conduct of elections—Formation election expense—Commissioners, terms.** The officers of any city or town, or in any precinct in a water district where registration is required, having charge of the registration shall deliver the same to the water commissioners for the use of the election officers at any election held in a water district formed under and in accordance with the provisions of this act. And the registration of voters for election to be held in such water district shall be conducted by the city or town clerks and officers of registration of the city, town and territory embraced within said water district. And any elector who shall have registered in accordance with the laws of this state, entitling him to vote at a general or special election in the city, town or territory comprised within such water district, within time to constitute same a good registration for any general or special election of said water district, shall be entitled to vote thereat without further or other registration. The city or town clerk or registration officer required to perform the duties enumerated under this act shall receive no additional compensation therefor.

The general laws of the state of Washington governing the registration of voters for a general or a special city or town municipal election, when not inconsistent with the foregoing provision, shall govern the registration of voters for elections held under this chapter, and the registration books of the city, town and territory comprising said water district shall be the books used by said water district, and no separate registration books shall be kept or maintained by it. The manner of

holding any general or special election for said water district shall be in accordance with the laws of this state and the charter provisions of the cities or towns within said water district if any there be, and insofar as the same are not inconsistent with the provisions of this act. All expenses of elections for the formation of such water districts shall be paid by the county in which said election is held and such expenditure is hereby declared to be for a county purpose, and the money paid out for such purpose shall be repaid to such county by the water district if formed.

Except as in this section otherwise provided, the term of office of each water district commissioner shall be six years, such term to be computed from the first day of December following his election, and one such commissioner shall be elected at each biennial general election for the term of six years and until his successor has been elected and has qualified. All candidates shall be voted upon by the entire water district.

In any water district hereafter formed, three water district commissioners shall be elected at the same election at which the proposition is submitted to the voters as to whether such water district shall be formed. The commissioner residing in commissioner district number one shall hold office for the term of six years; the commissioner residing in commissioner district number two shall hold office for the term of four years; and the commissioner residing in commissioner district number three shall hold office for the term of two years. The terms of all commissioners first to be elected as above provided shall include the time intervening between the date that the results of their election are declared in the canvass of returns thereof, and the date from which the length of their terms is computed as above specified.

No election of commissioners in any water district, except to fill vacancies, shall be held until the biennial general election on the first Tuesday following the first Monday in November, 1946, at which time and thereafter such elections shall be held as herein provided. At said general election, there shall be elected two water district commissioners in each water district, one for a term of four years commencing December 1, 1946, in such commissioner district where the water district commissioner resides whose successor, but for the provisions of chapter 50, Laws of 1945, would be elected on the second Saturday in December, 1945, and one for a term commencing on the second Monday in December, 1946, and expiring December 1, 1952, in such commissioner district where the water commissioner resides whose successor, but for the provisions of chapter 50, Laws of 1945, would be elected on the second Saturday in December, 1946, and at the general election to be held on the first Tuesday following the first Monday in November, 1948, there shall be elected one water district commissioner for a term of six years commencing December 1, 1948, in such commissioner district of each such water district where the commissioner resides whose successor, but for the provisions of chapter 50, Laws of 1945, would be elected on the second Saturday in December, 1947.

All commissioners shall hold office until their successors shall have been elected and have qualified. [1959 c

18 § 4. Prior: 1947 c 216 § 1; 1945 c 50 § 1; 1931 c 72 § 1; 1929 c 114 § 6; Rem. Supp. 1947 § 11584. Cf. 1913 c 161 § 7.]

*Terms and compensation of county and district officers: State Constitution Art. 11 § 5 (Amendment 57).*

*Time of holding election for district officers: State Constitution Art. 6 § 8.*

## Chapter 57.16 COMPREHENSIVE PLAN—LOCAL IMPROVEMENT DISTRICTS

### Sections

- 57.16.010 General comprehensive plan of improvements.
- 57.16.020 Vote on general indebtedness.
- 57.16.030 Election to authorize revenue bonds.
- 57.16.035 Additional revenue bonds for increased cost of improvements.
- 57.16.040 Additions and betterments.
- 57.16.050 Districts authorized.
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**57.16.010 General comprehensive plan of improvements.** The water district commissioners before ordering any improvements hereunder or submitting to vote any proposition for incurring any indebtedness shall adopt a general comprehensive plan of water supply for the district. They shall investigate the several portions and sections of the district for the purpose of determining the present and reasonably foreseeable future needs thereof; shall examine and investigate, determine and select a water supply or water supplies for such district suitable and adequate for present and reasonably foreseeable future needs thereof; and shall consider and determine a general system or plan for acquiring such water supply or water supplies; and the lands, waters and water rights and easements necessary therefor, and for retaining and storing any such waters, erecting dams, reservoirs, aqueducts and pipe lines to convey the same throughout such district. There may be included as part of the system the installation of fire hydrants at suitable places throughout the district, and the purchase and maintenance of necessary fire fighting equipment and apparatus, together with facilities for housing same. The water district commissioners shall determine a general plan for distributing such water throughout such portion of the district as may then reasonably be served by means of subsidiary aqueducts and pipe lines, and the method of distributing the cost and expense thereof against such water district and against local improvement districts or utility local improvement districts within such water district for any lawful purpose, and including any such local improvement district or utility local improvement district lying wholly or partially within the limits of any city or town in such district, and shall determine whether the whole or part of the

cost and expenses shall be paid from water revenue bonds as in this act provided. The commissioners may employ such engineering and legal service as in their discretion is necessary in carrying out the objects and purposes of this act. [1959 c 108 § 6; 1959 c 18 § 6. Prior: 1939 c 128 § 2, part; 1937 c 177 § 1; 1929 c 114 § 10, part; RRS § 11588. Cf. 1913 c 161 § 10.]

**57.16.020 Vote on general indebtedness.** The commissioners may submit to the voters of the district at any general or special election, a proposition that the district incur a general indebtedness payable from annual tax levies to be made in excess of the constitutional and/or statutory tax limitations for the construction of any part or all of the general comprehensive plan. The amount of the indebtedness and the terms thereof shall be included in the proposition submitted to the voters, and the proposition shall be adopted by three-fifths of the voters voting thereon in the manner set forth in Article VII, section 2(a) of the Constitution of this state, as amended by Amendment 59 and as thereafter amended. When the general comprehensive plan has been adopted the commissioners shall carry it out to the extent specified in the proposition to incur general indebtedness. [1974 1st ex.s. c 31 § 1. Prior: 1973 1st ex.s. c 195 § 69; 1959 c 108 § 7; 1959 c 18 § 7; prior: 1953 c 251 § 5; 1951 2nd ex.s. c 25 § 1; 1939 c 128 § 2, part; 1937 c 177 § 1, part; 1929 c 114 § 10, part; RRS § 11588, part. Cf. 1913 c 161 § 10, part.]

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

*Limitation on levies: State Constitution Art. 7 § 2 (Amendment 59); RCW 84.52.010, 84.52.050–84.52.056.*

*Limitation on municipal corporation indebtedness: State Constitution Art. 8 § 6 (Amendment 27).*

**57.16.030 Election to authorize revenue bonds.** The commissioners may submit at any general or special election, a proposition that the district issue revenue bonds for the construction costs, interest during the period of construction and six months thereafter, working capital or other costs of any part or all of the general plan. The amount of the bonds to be issued shall be included in the proposition submitted.

The proposition to issue such revenue bonds may include provision for refunding any local improvement district bonds of a district, out of the proceeds of sale of revenue bonds, and a district may pay off any outstanding local improvement bonds with such funds either by purchase in the open market below their par value and accrued interest or by call at par value and accrued interest at the next succeeding coupon maturity date.

No proposition for the issuance of revenue bonds shall be submitted at any election if there are outstanding any district local improvement district bonds issued under the provisions of RCW 57.20.030 to 57.20.090, unless the proposition provides that all such local improvement district bonds shall be paid out of the proceeds of the sale of the revenue bonds.

The proposition for issuance of revenue bonds shall be adopted by a majority of the voters voting thereon.

When a proposition has been adopted the commissioners may forthwith carry out the general plan to the extent specified. [1959 c 108 § 8; 1959 c 18 § 8. Prior: 1953 c 251 § 6; 1951 c 112 § 1; 1939 c 128 § 2, part; 1937 c 177 § 1, part; 1929 c 114 § 10, part; RRS § 11588, part. Cf. 1913 c 161 § 10, part.]

**57.16.035 Additional revenue bonds for increased cost of improvements.** Whenever a water district shall have adopted a general comprehensive plan and bonds to defray the cost thereof shall have been authorized by the electors of the district, and before the completion of the improvements the board of water commissioners shall find by resolution that the authorized bonds are not sufficient to defray the cost of such improvements due to the increase of costs of construction subsequent to the adoption of said plan, the board of water commissioners may by resolution, without submitting the matter to the voters of the district, authorize the issuance and sale of additional water revenue bonds for such purpose in excess of those previously authorized: *Provided*, That in no event shall the principal amount of such additional water revenue bonds exceed twenty percent of such previously authorized bonds. [1959 c 108 § 10.]

**57.16.040 Additions and betterments.** In the same manner as provided for the adoption of the original general comprehensive plan, a plan providing for additions and betterments to the original general plan may be adopted. Without limiting its generality "additions and betterments" shall include any necessary change in, amendment of or addition to the general comprehensive plan.

The district may incur a general indebtedness payable from annual tax levies to be made in excess of the constitutional and/or statutory tax limitations for the construction of the additions and betterments in the same way that general indebtedness may be incurred for the construction of the original general plan after submission to the voters of the entire district in the manner the original proposition to incur indebtedness was submitted. Upon ratification the additions and betterments may be carried out by the commissioners to the extent specified in the proposition to incur the general indebtedness.

The district may issue revenue bonds to pay for the construction of the additions and the betterments pursuant to resolution of the board of water commissioners without submitting a proposition therefor to the voters of the district. [1973 1st ex.s. c 195 § 70; 1959 c 108 § 9; 1959 c 18 § 9. Prior: 1953 c 251 § 7; 1951 2nd ex.s. c 25 § 2; 1951 c 112 § 2; 1939 c 128 § 2, part; 1937 c 177 § 1, part; 1929 c 114 § 10, part; RRS § 11588, part. Cf. 1913 c 161 § 10, part.]

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

**57.16.050 Districts authorized.** A district may establish local improvement districts within its territory; levy special assessments under the mode of annual installments extending over a period not exceeding twenty

years, on all property specially benefited by a local improvement, on the basis of special benefits to pay in whole or in part the damage or costs of any improvements ordered in the district; and issue local improvement bonds in the improvement district to be repaid by the collection of local improvement assessments. The levying, collection and enforcement of such assessments and issuance of bonds shall be as provided for the levying, collection, and enforcement of local improvement assessments and the issuance of local improvement bonds by cities of the first class insofar as consistent herewith. The duties devolving upon the city treasurer are hereby imposed upon the county treasurer for the purposes hereof. The mode of assessment shall be determined by the water commissioners by resolution. When in the petition or resolution for the establishment of a local improvement district, and in the comprehensive plan or amendment thereto or plan providing for additions and betterments to the original plan, previously adopted, it is provided that the assessments shall be for the sole purpose of payment into the revenue bond fund for the payment of revenue bonds, then the local improvement district shall be designated as a "utility local improvement district." No warrants or bonds shall be issued in a utility local improvement district, but the collection of interest and principal on all assessments in the utility local improvement district shall be paid into the revenue bond fund. [1953 c 251 § 13; 1939 c 128 § 1; 1929 c 114 § 9; RRS § 11587. Cf. 1913 c 161 § 9.]

*Local improvement bonds: Chapter 35.45 RCW.*

**57.16.060 Resolution or petition for district—Procedure—Improvement ordered—Divestment of power to order.** Local improvement districts or utility local improvement districts to carry out the whole or any portion of the comprehensive plan of improvements or plan providing for additions and betterments to the original plan previously adopted may be initiated either by resolution of the board of water commissioners or by petition signed by the owners according to the records of the office of the county auditor of at least fifty-one percent of the area of the land within the limits of the local improvement district to be created.

In case the board of water commissioners shall desire to initiate the formation of a local improvement district or a utility local improvement district by resolution, it shall first pass a resolution declaring its intention to order such improvement, setting forth the nature and territorial extent of such proposed improvement, designating the number of the proposed local improvement district or utility local improvement district, and describing the boundaries thereof, stating the estimated cost and expense of the improvement and the proportionate amount thereof which will be borne by the property within the proposed district, and fixing a date, time and place for a public hearing on the formation of the proposed local district.

In case any such local improvement district or utility local improvement district shall be initiated by petition, such petition shall set forth the nature and territorial extent of the proposed improvement requested to be



ordered and the fact that the signers thereof are the owners according to the records of the county auditor of at least fifty-one percent of the area of land within the limits of the local improvement district or utility local improvement district to be created. Upon the filing of such petition the board shall determine whether the same shall be sufficient, and the board's determination thereof shall be conclusive upon all persons. No person shall withdraw his name from the petition after the same has been filed with the board of water commissioners. If the board shall find the petition to be sufficient, it shall proceed to adopt a resolution declaring its intention to order the improvement petitioned for, setting forth the nature and territorial extent of said improvement, designating the number of the proposed local district and describing the boundaries thereof, stating the estimated cost and expense of the improvement and the proportionate amount thereof which will be borne by the property within the proposed local district, and fixing a date, time and place for a public hearing on the formation of the proposed local district.

Notice of the adoption of the resolution of intention, whether the resolution was adopted on the initiative of the board or pursuant to a petition of the property owners, shall be published in at least two consecutive issues of a newspaper of general circulation in the proposed local district, the date of the first publication to be at least fifteen days prior to the date fixed by such resolution for hearing before the board of water commissioners. Notice of the adoption of the resolution of intention shall also be given each owner or reputed owner of any lot, tract, parcel of land or other property within the proposed improvement district by mailing said notice at least fifteen days before the date fixed for the public hearing to the owner or reputed owner of the property as shown on the tax rolls of the county treasurer at the address shown thereon. The notices shall refer to the resolution of intention and designate the proposed improvement district by number. Said notices shall also set forth the nature of the proposed improvement, the total estimated cost, the proportion of total cost to be borne by assessments, the date, time and place of the hearing before the board of water commissioners; and in the case of improvements initiated by resolution, said notice shall also state that all persons desiring to object to the formation of the proposed district must file their written protests with the secretary of the board of water commissioners before the time fixed for said public hearing. In the case of the notice given each owner or reputed owner by mail, the notice shall set forth the estimated amount of the cost and expense of such improvement to be borne by the particular lot, tract, parcel of land or other property.

Whether the improvement is initiated by petition or resolution, the board shall conduct a public hearing at the time and place designated in the notice to property owners. At this hearing the board shall hear objections from any person affected by the formation of the local district and may make such changes in the boundaries of the district or such modifications in the plans for the proposed improvement as shall be deemed necessary:

*Provided*, That the board may not change the boundaries of the district to include property not previously included therein without first passing a new resolution of intention and giving a new notice to property owners in the manner and form and within the time herein provided for the original notice.

After said hearing the commissioners shall have jurisdiction to overrule protests and proceed with any such improvement initiated by petition or resolution: *Provided*, That the jurisdiction of the commissioners to proceed with any improvement initiated by resolution shall be divested by protests filed with the secretary of the board prior to said public hearing signed by the owners, according to the records of the county auditor, of at least forty percent of the area of land within the proposed local district.

If the commissioners find that the district should be formed, they shall by resolution order the improvement, provide the general funds of the water district to be applied thereto, adopt detailed plans of the local improvement district or utility local improvement district and declare the estimated cost thereof, acquire all necessary land therefor, pay all damages caused thereby, and commence in the name of the water district such eminent domain proceedings as may be necessary to entitle the district to proceed with the work. The board shall thereupon proceed with the work and file with the county treasurer its roll levying special assessments in the amount to be paid by special assessment against the property situated within the improvement district in proportion to the special benefits to be derived by the property therein from the improvement. [1965 ex.s. c 39 § 1; 1959 c 18 § 11. Prior: 1953 c 251 § 14; 1929 c 114 § 12, part; RRS § 11590, part. Cf. 1913 c 161 § 12, part.]

**57.16.070 Hearing on assessment roll—Notice.** Before approval of the roll a notice shall be published once a week for two consecutive weeks in a newspaper of general circulation in the local district, stating that the roll is on file and open to inspection in the office of the secretary, and fixing the time, not less than fifteen or more than thirty days from the date of the first publication of the notice within which protests must be filed with the secretary against any assessments shown thereon, and fixing a time when a hearing will be held by the commissioners on the protests. Notice shall also be given by mailing, at least fifteen days before the hearing, a similar notice to the owners or reputed owners of the land in the local district as they appear on the books of the treasurer of the county in which the water district is located. At the hearing, or any adjournment thereof, the commissioners may correct, change or modify the roll, or any part thereof, or set aside the roll and order a new assessment, and may then by resolution approve it. If an assessment is raised a new notice similar to the first shall be given, after which final approval of the roll may be made. When property has been entered originally upon the roll and the assessment thereon is not raised, no objection thereto shall be considered by the commissioners or by any court on appeal unless the objection is made in writing at, or prior, to the date fixed for the original hearing upon the roll. [1959 c 18 §



12. Prior: 1953 c 251 § 15; 1929 c 114 § 12, part; RRS § 11590, part. Cf. 1913 c 161 § 12, part.]

**57.16.080 Enlarged district.** In the event that any portion of the system after its installation is not adequate for the purpose for which it was intended, or that for any reason changes, alterations or betterments are necessary in any portion of the system after its installation then a local improvement district with boundaries which may include one or more existing local improvement districts may be created in the water district in the same manner as is provided herein for the creation of local improvement districts; that upon the organization of such a local improvement district as provided for in this paragraph the plan of the improvement and the payment of the cost of the improvement shall be carried out in the same manner as is provided herein for the carrying out of and the paying for the improvement in the local improvement districts previously provided for in \*this act. [1959 c 18 § 13. Prior: 1929 c 114 § 12, part; RRS § 11590, part. Cf. 1913 c 161 § 12.]

\*Reviser's note: "this act", see note following RCW 57.04.020.

**57.16.090 Review.** The decision of the water district commission upon any objections made within the time and in the manner herein prescribed, may be reviewed by the superior court upon an appeal thereto taken in the following manner. Such appeal shall be made by filing written notice of appeal with the secretary of said water district commission and with the clerk of the superior court in the county in which such water district is situated within ten days after publication of a notice that the resolution confirming such assessment roll has been adopted, and such notice of appeal shall describe the property and set forth the objections of such appellant to such assessment; and within ten days from the filing of such notice of appeal with the clerk of the superior court, the appellant shall file with the clerk of said court, a transcript consisting of the assessment roll and his objections thereto, together with the resolution confirming such assessment roll and the record of the water district commission with reference to said assessment, which transcript, upon payment of the necessary fees therefor, shall be furnished by such secretary of said water district commission and by him certified to contain full, true and correct copies of all matters and proceedings required to be included in such transcript. Such fees shall be the same as the fees payable to the county clerk for the preparation and certification of transcripts on appeal to the supreme court or the court of appeals in civil actions. At the time of the filing of the notice of appeal with the clerk of the superior court a sufficient bond in the penal sum of two hundred dollars, with at least two sureties, to be approved by the judge of said court, conditioned to prosecute such appeal without delay, and if unsuccessful to pay all costs to which the water district is put by reason of such appeal. The court may order the appellant upon application therefor, to execute and file such additional bond or bonds as the necessity of the case may require. Within three days after such transcript is filed in the superior court, as aforesaid, the appellant shall give

written notice to the secretary of such water district, that such transcript is filed. Said notice shall state a time (not less than three days from the service thereof) when the appellant will call up the said cause for hearing; and the superior court shall, at said time or at such further time as may be fixed by order of the court, hear and determine such appeal without a jury; and such cause shall have preference over all civil causes pending in said court, except proceedings under an act relating to eminent domain in such water district and actions of forcible entry and detainer. The judgment of the court shall confirm, correct, modify or annul the assessment insofar as the same affects the property of the appellant. A certified copy of the decision of the court shall be filed with the officer who shall have custody of the assessment roll, and he shall modify and correct such assessment roll in accordance with such decision. An appeal shall lie to the supreme court or the court of appeals from the judgment of the superior court, as in other cases: *Provided, however,* That such appeal must be taken within fifteen days after the date of the entry of the judgment of such superior court; and the record and opening brief of the appellant in said cause shall be filed in the supreme court or the court of appeals within sixty days after the appeal shall have been taken by notice as provided in \*this act. The time for filing such record and serving and filing of briefs in this section prescribed may be extended by order of the superior court, or by stipulation of the parties concerned. And the supreme court or the court of appeals on such appeal may correct, change, modify, confirm or annul the assessment insofar as the same affects the property of the appellant. A certified copy of the order of the supreme court or the court of appeals upon such appeal shall be filed with the officer having custody of such assessment roll, who shall thereupon modify and correct such assessment roll in accordance with such decision. [1971 c 81 § 126; 1965 ex.s. c 39 § 2; 1929 c 114 § 13; RRS § 11591. Cf. 1913 c 161 § 13.]

\*Reviser's note: "this act", see note following RCW 57.04.020.

**57.16.100 Conclusiveness of roll.** Whenever any assessment roll for local improvements shall have been confirmed by the water district commission of such water district as herein provided, the regularity, validity and correctness of the proceedings relating to such improvement, and to the assessment therefor, including the action of the water district commission upon such assessment roll and the confirmation thereof, shall be conclusive in all things upon all parties, and cannot in any manner be contested or questioned in any proceeding whatsoever by any person not filing written objections to such roll in the manner and *within the time* provided in this act, and not appealing from the action of the water district commission in confirming such assessment roll in the manner and *within the time in \*this* act provided. No proceedings of any kind shall be commenced or prosecuted for the purpose of defeating or contesting any such assessment, or the sale of any property to pay such assessment, or any certificate of delinquency issued therefor, or the foreclosure of any lien issued therefor: *Provided,* That this section shall

not be construed as prohibiting the bringing of injunction proceedings to prevent the sale of any real estate upon the grounds (1) that the property about to be sold does not appear upon the assessment roll, or (2) that said assessment had been paid. [1929 c 114 § 14; RRS § 11592. Cf. 1913 c 161 § 14.]

\*Reviser's note: "this act", see note following RCW 57.04.020.

**57.16.110 Segregation of assessment—Procedure—Fee—Charges.** Whenever any land against which there has been levied any special assessment by any water district shall have been sold in part or subdivided, the board of water commissioners of such district shall have the power to order a segregation of the assessment.

Any person desiring to have such a special assessment against a tract of land segregated to apply to smaller parts thereof shall apply to the board of commissioners of the water district which levied the assessment. If the water commissioners determine that a segregation should be made, they shall by resolution order the county treasurer to make segregation on the original assessment roll as directed in the resolution. The segregation shall be made as nearly as possible on the same basis as the original assessment was levied, and the total of the segregated parts of the assessment shall equal the assessment before segregation. The resolution shall describe the original tract, the amount and date of the original assessment, and shall define the boundaries of the divided parts and the amount of the assessment chargeable to each part. A certified copy of the resolution shall be delivered to the county treasurer who shall proceed to make the segregation ordered upon being tendered a fee of three dollars for each tract of land for which a segregation is to be made. In addition to such charge the board of water commissioners may require as a condition to the order of segregation that the person seeking it pay the district the reasonable engineering and clerical costs incident to making the segregation. [1953 c 251 § 23.]

*Segregation duties of county treasurer: RCW 36.29.160.*

**57.16.120 Acquisition of property subject to local improvement assessments—Payment.** See RCW 79.44.190.

**Chapter 57.20  
FINANCES**

Sections

- 57.20.010 General obligation bonds—Form—Issuance, etc.
- 57.20.015 Refunding general obligation bonds.
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*Election to authorize revenue bonds: RCW 57.16.030.*

**57.20.010 General obligation bonds—Form—Issuance, etc.** When general district indebtedness payable from annual tax levies to be made in excess of the constitutional and/or statutory tax limitations has been authorized, the district may issue its general obligation bonds in payment thereof. The bonds shall be serial in form and maturity and numbered from one up consecutively and shall bear interest at such rate or rates as authorized by the board of water commissioners payable semiannually, with interest coupons attached. The various annual maturities shall commence with the second year after the date of the issue, and shall as nearly as practicable be in such amounts as will, together with the interest on all outstanding bonds, be met by an equal annual tax levy for the payment of the bonds and interest. Only the bond numbered one of any issue shall be of a denomination other than a multiple of one hundred dollars.

Bonds shall not be issued to run for a longer period than twenty years from the date of issue and shall as nearly as practicable be issued for a period which will be equivalent to the life of the improvement to be acquired by the issuance of the bonds.

The bonds shall be signed by the president of the board and attested by the secretary, under the seal of the district. The interest coupons shall be signed by the facsimile signature of the president and attested by the facsimile signature of the secretary.

There shall be levied by the officers or governing body charged with the duty of levying taxes, an annual levy in excess of the constitutional and/or statutory tax limitations sufficient to meet the annual or semiannual payments of principal and interest on the bonds upon all taxable property within the district.

The bonds shall be sold in such manner as the commissioners deem for the best interest of the district, and at a price not less than par and accrued interest. [1973 1st ex.s. c 195 § 71; 1970 ex.s. c 56 § 83; 1969 ex.s. c 232 § 87; 1953 c 251 § 12; 1951 2nd ex.s. c 25 § 3; 1931 c 72 § 2; 1929 c 114 § 11; RRS § 11589. Cf. 1913 c 161 § 11.]

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

**Purpose—Effective date—1970 ex.s. c 56:** See notes following RCW 39.44.030.

**Validation—Saving—Severability—1969 ex.s. c 232:** See notes following RCW 39.44.030.

**57.20.015 Refunding general obligation bonds.** The board of water commissioners of any water district may by resolution, without submitting the matter to the voters of the district, provide for the issuance of refunding general obligation bonds to refund any outstanding

general obligation bonds, or any part thereof, at maturity thereof, or before the maturity thereof if they are subject to call for prior redemption or all of the holders thereof consent thereto. The total cost to the district over the life of the refunding bonds shall not exceed the total cost to the district which the district would have incurred but for such refunding over the remainder of the life of the bonds to be refunded thereby. The refunding bonds may be exchanged for the bonds to be refunded thereby, or may be sold in such manner as the board of water commissioners deems to be for the best interest of the district, and the proceeds of such sale used exclusively for the purpose of paying, retiring, and canceling the bonds to be refunded and interest thereon.

The provisions of RCW 57.20.010, specifying the form and maturities of general obligation bonds and providing for annual tax levies in excess of the constitutional and/or statutory tax limitations shall apply to the refunding general obligation bonds issued under this section. [1973 1st ex.s. c 195 § 72; 1953 c 251 § 16.]

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

*Election to authorize revenue bonds: RCW 57.16.030.*

**57.20.020 Revenue bonds—Special fund—Classification of service—Adequate rates and charges to be fixed.** Whenever any issue or issues of water revenue bonds have been authorized in compliance with the provisions of RCW 57.16.010 through 57.16.040, said bonds shall be either registered as to principal only or shall be bearer bonds; shall be in such denominations, shall be numbered, shall bear such date, and shall be payable at such time or times up to a maximum period of not to exceed thirty years as shall be determined by the board of water commissioners of the district; shall bear interest at such rate or rates as authorized by the board payable semiannually and evidenced to maturity by coupons attached to said bonds; shall be payable at the office of the county treasurer of the county in which the water district is located and may also be payable at such other place or places as the board of water commissioners may determine; shall be executed by the president of the board of water commissioners and attested and sealed by the secretary thereof; and may have facsimile signatures of said president and secretary imprinted on the interest coupons in lieu of original signatures.

The water district commissioners shall have power and are required to create a special fund or funds for the sole purpose of paying the interest and principal of such bonds into which special fund or funds the said water district commissioners shall obligate and bind the water district to set aside and pay a fixed proportion of the gross revenues of the water supply system or any fixed amount out of and not exceeding a fixed proportion of such revenues, or a fixed amount or amounts without regard to any fixed proportion and such bonds and the interest thereof shall be payable only out of such special fund or funds, but shall be a lien and charge against all revenues and payments received from any utility local improvement district or districts

pledged to secure such bonds, subject only to operating and maintenance expenses.

In creating any such special fund or funds the water district commissioners of such water district shall have due regard to the cost of operation and maintenance of the plant or system as constructed or added to and to any proportion or part of the revenue previously pledged as a fund for the payment of bonds, warrants or other indebtedness, and shall not set aside into such special fund a greater amount or proportion of the revenue and proceeds than in their judgment will be available over and above such cost of maintenance and operation and the amount or proportion, if any, of the revenue so previously pledged. Any such bonds and interest thereon issued against any such fund as herein provided shall be a valid claim of the holder thereof only as against the said special fund and its fixed proportion or amount of the revenue pledged to such fund, and shall not constitute an indebtedness of such water district within the meaning of the constitutional provisions and limitations. Each such bond or warrant shall state upon its face that it is payable from a special fund, naming the said fund and the resolution creating it. Said bonds shall be sold in such manner, at such price and at such rate or rates of interest as the water district commissioners shall deem for the best interests of the water district, either at public or private sale, and the said commissioners may provide in any contract for the construction and acquirement of the proposed improvement (and for the refunding of outstanding local improvement district obligations, if any) that payment therefor shall be made in such bonds at par value thereof.

When any such special fund shall have been heretofore or shall be hereafter created and any such bonds shall have been heretofore or shall hereafter be issued against the same a fixed proportion or a fixed amount out of and not to exceed such fixed proportion, or a fixed amount or amounts without regard to any fixed proportion, of revenue shall be set aside and paid into said special fund as provided in the resolution creating such fund, and in case any water district shall fail thus to set aside and pay said fixed proportion or amount as aforesaid, the holder of any bond against such special fund may bring suit or action against the water district and compel such setting aside and payment.

The water district commissioners of any water district, in the event that such water revenue bonds are issued, shall provide for revenues by fixing rates and charges for the furnishing of water supply to those receiving such service, such rates and charges to be fixed as deemed necessary by such water district commissioners, so that uniform charges will be made for the same class of customer or service. In classifying customers served or service furnished by such water supply system, the board of water commissioners may in its discretion consider any or all of the following factors: The difference in cost of service to the various customers; the location of the various customers within and without the district; the difference in cost of maintenance, operation, repair and replacement of the various

parts of the system; the different character of the service furnished various customers; the quantity and quality of the water furnished; the time of its use; capital contributions made to the system including but not limited to assessments; and any other matters which present a reasonable difference as a ground for distinction. Such rates shall be made on a monthly basis as may be deemed proper by such commissioners and as fixed by resolution and shall produce revenues sufficient to take care of the costs of maintenance and operation, revenue bond and warrant interest and principal amortization requirements and all other charges necessary for efficient and proper operation of the system. [1970 ex.s. c 56 § 84; 1969 ex.s. c 232 § 88; 1959 c 108 § 11; 1939 c 128 § 3; RRS § 11588-1.]

**Purpose—Effective date—1970 ex.s. c 56:** See notes following RCW 39.44.030.

**Validation—Saving—Severability—1969 ex.s. c 232:** See notes following RCW 39.44.030.

**57.20.023 Covenants to guarantee payment of revenue bonds—Bonds payable from same source may be issued on parity.** The board of water commissioners may make such covenants as it may deem necessary to secure and guarantee the payment of the principal of and interest on water revenue bonds of the district, including but not being limited to covenants for the establishment and maintenance of adequate reserves to secure or guarantee the payment of such principal and interest; the protection and disposition of the proceeds of sale of such bonds; the use and disposition of the gross revenues of the water supply system of the district and any additions or betterments thereto or extensions thereof; the use and disposition of any utility local improvement district assessments; the creation and maintenance of funds for renewals and replacements of the system; the establishment and maintenance of rates and charges adequate to pay principal and interest of such bonds and to maintain adequate coverage over debt service; the maintenance, operation and management of the system and the accounting, insuring and auditing of the business in connection therewith; the terms upon which such bonds or any of them may be redeemed at the election of the district; limitations upon the right of the district to dispose of its system or any part thereof; the appointment of trustees, depositaries and paying agents to receive, hold, disburse, invest and reinvest all or any part of the proceeds of sale of the bonds and all or any part of the income, revenue and receipts of the district, and the board of water commissioners may make such other covenants as it may deem necessary to accomplish the most advantageous sale of such bonds. The board of water commissioners may also provide that revenue bonds payable out of the same source or sources may later be issued on a parity with any revenue bonds being issued and sold. [1959 c 108 § 12.]

**57.20.025 Refunding revenue bonds.** The board of water commissioners of any water district may by resolution, without submitting the matter to the voters of the district, provide for the issuance of refunding revenue bonds to refund outstanding general obligation

bonds and/or revenue bonds, or any part thereof, and/or all outstanding local improvement district bonds, at maturity thereof, or before maturity thereof if they are subject to call for prior redemption or all of the holders thereof consent thereto. The total interest cost to the district over the life of the refunding bonds shall not exceed the total cost to the district which the district would have incurred but for such refunding over the remainder of the life of the bonds to be refunded thereby. The refunding bonds may be exchanged for the bonds to be refunded thereby, or may be sold in such manner as the board of water commissioners deems to be for the best interest of the district, and the proceeds used, except as hereinafter provided, exclusively for the purpose of paying, retiring and canceling the bonds to be refunded and interest thereon.

All unpaid utility local improvement district assessments payable into the revenue bond redemption fund established for payment of the bonds to be refunded shall thereafter when collected be paid into the revenue bond redemption fund established for payment of the refunding revenue bonds.

Whenever local improvement district bonds have been refunded as required by RCW 57.16.030, or pursuant to this section, all local improvement district assessments remaining unpaid shall thereafter when collected be paid into the revenue bond redemption fund established for payment of the refunding revenue bonds, and the cash balance, if any, in the local improvement guaranty fund of the district and the proceeds received from any other assets owned by such fund shall be used in whole or in part as a reserve fund for the refunding revenue bonds or be transferred in whole or in part to any other funds of the district as the board of water commissioners may determine. In the event that any warrants are outstanding against the local improvement guaranty fund of the district at the time of the issuance of such refunding revenue bonds, said bonds shall be issued in an amount sufficient also to fund and pay such outstanding warrants.

The provisions of RCW 57.20.020 shall apply to the refunding revenue bonds issued under this title. [1959 c 108 § 13; 1953 c 251 § 17.]

**57.20.030 Local improvement guaranty fund.** Every water district in the state is hereby authorized to create a fund for the purpose of guaranteeing, to the extent of such fund, and in the manner hereinafter provided, the payment of all of its local improvement bonds issued, subsequent to the effective date of this act, to pay for any local improvement within its confines. Such fund shall be designated "Local Improvement Guaranty Fund, Water District No. -----," and shall be established by resolution of the board of water commissioners. For the purpose of maintaining such fund, every water district, after the establishment thereof, shall at all times set aside and pay into such a fund such proportion of the monthly gross revenues of the water supply system of such water district as the commissioners thereof may direct by resolution. This proportion may be varied from time to time as the commissioners deem expedient or necessary: *Provided, however,* That under

the existence of the conditions set forth in subsections (1) and (2) next hereunder, then the proportion must be as therein specified, to wit:

(1) Whenever any bonds of any local improvement district have been guaranteed under this act and the guaranty fund does not have a cash balance equal to twenty percent of all bonds originally guaranteed under this act, (excluding issues which have been retired in full) then twenty percent of the gross monthly revenues derived from all water users in the territory included in said local improvement district (but not necessarily from users in other parts of the water district as a whole) shall be set aside and paid into the guaranty fund: *Provided, however,* That whenever, under the requirements of this subsection, said cash balance accumulates so that it is equal to twenty percent of all bonds guaranteed, or to the full amount of all bonds guaranteed, outstanding and unpaid (which amount might be less than twenty percent of the original total guaranteed), then no further moneys need be set aside and paid into said guaranty fund so long as said condition shall continue.

(2) Whenever any warrants issued against the guaranty fund, as hereinbelow provided, remain outstanding and uncalled for lack of funds for six months from date of issuance thereof; or whenever any coupons or bonds guaranteed under this act have been matured for six months and have not been redeemed either in cash or by issuance and delivery of warrants upon the guaranty fund, then twenty percent of the gross monthly revenues (or such portion thereof as the commissioners of the water district determine will be sufficient to retire said warrants or redeem said coupons or bonds in the ensuing six months) derived from all water users in the water district shall be set aside and paid into the guaranty fund: *Provided, however,* That whenever under the requirements of this subsection all warrants, coupons, or bonds specified in this subsection above have been redeemed, no further income need be set aside and paid into said guaranty fund under the requirements of this subsection until and unless other warrants remain outstanding and unpaid for six months or other coupons or bonds default.

(3) For the purpose of complying with the requirements of setting aside and paying into the local improvement guaranty fund a proportion of the monthly gross revenues of the water supply system of any water district, as hereinabove provided, said water district shall bind and obligate itself to maintain and operate said system and further bind and obligate itself to establish, maintain and collect such rates for water as will produce gross revenues sufficient to maintain and operate said water supply system and to make necessary provision for the local improvement guaranty fund as specified by this amendment [1937 c 102]. And said water district shall alter its rates for water from time to time and shall vary the same in different portions of its territory to comply with the said requirements.

(4) Whenever any coupon or bond guaranteed by this act shall mature and there shall not be sufficient funds in the appropriate local improvement district bond redemption fund to pay same, then the county treasurer

shall pay same from the local improvement guaranty fund of the water district; if there shall not be sufficient funds in the said guaranty fund to pay same, then the same may be paid by issuance and delivery of a warrant upon the local improvement guaranty fund.

(5) Whenever the cash balance in the local improvement guaranty fund is insufficient for the required purposes, warrants drawing interest at a rate not to exceed seven percent per annum may be issued by the county auditor of the county in which the water district is located, against the said fund to meet any liability accrued against it and must be issued upon demand of the holders of any maturing coupons and/or bonds guaranteed by this act, or to pay for any certificates of delinquency for delinquent installments of assessments as provided in subsection (6) hereunder. Guaranty fund warrants shall be a first lien in their order of issuance upon the gross revenues set aside and paid into said fund.

(6) Within twenty days after the date of delinquency of any annual installment of assessments levied for the purpose of paying the local improvement bonds of any water district guaranteed under the provisions of this act, it shall be mandatory for the county treasurer of the county in which said water district is located to compile a statement of all installments delinquent, together with the amount of accrued interest and penalty appurtenant to each of said installments. Thereupon the county treasurer shall forthwith purchase (for the water district) certificates of delinquency for all such delinquent installments. Payment for all such certificates of delinquency shall be made from the local improvement guaranty fund and if there shall not be sufficient moneys in said fund to pay for such certificates of delinquency, the county treasurer shall accept said local improvement guaranty fund warrants in payment therefor. All such certificates of delinquency shall be issued in the name of the local improvement guaranty fund and all guaranty fund warrants issued in payment therefor shall be issued in the name of the appropriate local improvement district fund. Whenever any market is available and the commissioners of the water district so direct, the county treasurer shall sell any certificates of delinquency belonging to the local improvement guaranty fund: *Provided,* That any such sale must not be for less than face value thereof plus accrued interest from date of issuance to date of sale.

Such certificates of delinquency, as above provided, shall be issued by the county treasurer of the county in which the water district is located, shall bear interest at the rate of ten percent per annum, shall be in each instance for the face value of the delinquent installment, plus accrued interest to date of issuance of certificate of delinquency, plus a penalty of five percent of such face value, and shall set forth:

- (a) Description of property assessed;
- (b) Date installment of assessment became delinquent;
- (c) Name of owner or reputed owner, if known.

Such certificates of delinquency may be redeemed by the owner of the property assessed at any time up to

two years from the date of foreclosure of such certificate of delinquency.

If any such certificate of delinquency be not redeemed on the second occurring first day of January subsequent to its issuance, the county treasurer shall then proceed to foreclose such certificate of delinquency in the manner specified for the foreclosure of the lien of local improvement assessments, pursuant to chapter 9 of the Session Laws of 1933 and amendments thereto; and if no redemption be made within the succeeding two years shall execute and deliver a deed conveying fee simple title to the property described in the foreclosed certificate of delinquency. [1937 c 102 § 1; 1935 c 82 § 1; RRS § 11589-1. Formerly RCW 57.20.030 through 57.20.070.]

**Reviser's note:** (1) The language "this act" and "this amendment" appears in 1937 c 102 codified herein as RCW 57.20.030, 57.20.080 and 57.20.090.

(2) "chapter 9 of the Session Laws of 1933" is codified in RCW 35.50.030 through 35.50.270.

(3) The effective date of this act is midnight June 9, 1937, see preface to 1937 session laws.

**57.20.080 Guaranty fund—Subrogation of district as trustee.** Whenever there shall be paid out of a guaranty fund any sum on account of principal or interest upon a local improvement bond, or on account of purchase of certificates of delinquency, the water district, as trustee for the fund, shall be subrogated to all rights of the holder of the bonds, or interest coupons, or delinquent assessment installments, so paid; and the proceeds thereof, or of the assessment or assessments underlying the same, shall become a part of the guaranty fund. There shall also be paid into each guaranty fund the interest received from the bank deposits of the fund, as well as any surplus remaining in the local improvement funds guaranteed under \*this act, after the payment of all outstanding bonds payable primarily out of such local improvement funds. As among the several issues of bonds guaranteed by the fund, no preference shall exist, but defaulted interest coupons, bonds shall be purchased out of the fund in the order of their presentation.

The commissioners of every water district operating under the provisions of this act shall prescribe, by resolution, appropriate rules and regulations for the guaranty fund, not inconsistent herewith. So much of the money of a guaranty fund as is necessary and is not required for other purposes under the terms of this act may, at the discretion of the commissioners of the water district, be used to purchase property at county tax foreclosure sales or from the county after foreclosure in cases where such property is subject to unpaid local improvement assessments securing bonds guaranteed under \*this act and such purchase is deemed necessary for the purpose of protecting the guaranty fund. In such cases the said fund shall be subrogated to all rights of the water district. After so acquiring title to real property, the water district may lease or resell and convey the same in the same manner that county property is authorized to be leased or resold and for such prices and on such terms as may be determined by resolution of the board of water commissioners. Any provision of

law to the contrary notwithstanding, all proceeds resulting from such resales shall belong to and be paid into the guaranty fund. [1937 c 102 § 2; 1935 c 82 § 2; RRS § 11589-2.]

**\*Reviser's note:** "this act", see note following RCW 57.20.030.

**57.20.090 Rights and remedies of bondholder.** Neither the holder nor the owner of any local improvement bonds guaranteed under the provisions of \*this act shall have any claim therefor against the water district by which the same is issued, except for payment from the special assessments made for the improvement for which said local improvement bonds were issued, and except as against the local improvement guaranty fund of said water district; and the water district shall not be liable to any holder or owner of such local improvement bond for any loss to the guaranty fund occurring in the lawful operation thereof by the water district. The remedy of the holder or owner of a local improvement bond, in case of nonpayment, shall be confined to the enforcement of the assessment and to the guaranty fund. A copy of the foregoing part of this section shall be plainly written, printed or engraved on each local improvement bond guaranteed by \*this act. The establishment of a local improvement guaranty fund by any water district shall not be deemed at variance from any comprehensive plan heretofore adopted by such water district.

In the event any local improvement guaranty fund hereunder authorized at any time has a balance therein in cash, and the obligations guaranteed thereby have all been paid off, then such balance shall be transferred to the maintenance fund of the water district. [1937 c 102 § 3; 1935 c 82 § 3; RRS § 11589-3.]

**\*Reviser's note:** "this act", see note following RCW 57.20.030.

**57.20.100 Annual tax levy.** A district may, in addition to the levies mentioned in RCW 57.16.020, 57.16.040 and 57.20.010, levy a general tax on all property located in the district each year not to exceed fifty cents per thousand dollars of assessed value against the assessed valuation of the property where such water district maintains a fire department as authorized by RCW 57.16.010 to 57.16.040, inclusive, but such levy shall not be made where any property within such water district lies within the boundaries of any fire protection district created under RCW 52.04.010 to 52.04.160, inclusive. The taxes so levied shall be certified for collection as other general taxes, and the proceeds, when collected, shall be placed in such water district funds as the commissioners may direct and paid out on warrants issued for water district purposes. [1973 1st ex.s. c 195 § 73; 1951 2nd ex.s. c 25 § 4; 1951 c 62 § 1; 1929 c 114 § 18; RRS § 11595. Cf. 1913 c 161 § 17.]

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

*Excess tax levies authorized: Chapter 84.52 RCW.*

**57.20.110 Limitation of indebtedness.** Each and every water district that may hereafter be organized pursuant to \*this act is hereby authorized and empowered



by and through its board of water commissioners to contract indebtedness for water purposes, and the maintenance thereof not exceeding one-half of one percent of the value of the taxable property in such water district, as the term "value of the taxable property" is defined in RCW 39.36.015. [1970 ex.s. c 42 § 35; 1929 c 114 § 19; RRS § 11596. Cf. 1913 c 161 § 18.]

**\*Reviser's note:** "this act", see note following RCW 57.04.020.

**Severability and effective date—1970 ex.s. c 42:** See notes following RCW 39.36.015.

*Limitation on municipal corporation indebtedness: State Constitution Art. 8 § 6.*

**57.20.120 Additional indebtedness.** Each and every water district hereafter to be organized pursuant to \*this act, may contract indebtedness in excess of the amount named in RCW 57.20.110, but not exceeding in amount, together with existing indebtedness, two and one-half percent of the value of the taxable property in said district, as the term "value of the taxable property" is defined in RCW 39.36.015, whenever three-fifths of the voters voting at said election in such water district assent thereto, at an election to be held in said water district in the manner provided by \*this act, which election may either be a special or a general election, and the board of water commissioners are hereby authorized and empowered to submit the question of incurring such indebtedness, and issuing negotiable bonds of such water district to the qualified voters of such water district at any time they may so order: *Provided*, That all bonds so to be issued shall be subject to the provisions regarding bonds as set out in RCW 57.20.010. [1970 ex.s. c 42 § 36; 1929 c 114 § 20; RRS § 11597. Cf. 1913 c 161 § 19.]

**\*Reviser's note:** "this act", see note following RCW 57.04.020.

**Severability—Effective date—1970 ex.s. c 42:** See notes following RCW 39.36.015.

**57.20.130 Interest coupons as warrants.** The coupons hereinbefore mentioned for the payment of interest on said bonds shall be considered for all purposes as warrants drawn upon the general fund of the said water district issuing such bonds, and when presented to the treasurer of the county having custody of the funds of such water district at maturity, or thereafter, and when so presented, if there are not funds in the treasury to pay the said coupons, it shall be the duty of the county treasurer to endorse said coupons as presented for payment, in the same manner as county warrants are indorsed, and thereafter said coupons shall bear interest at the same rate as the bond to which it was attached. [1929 c 114 § 22; RRS § 11599. Cf. 1913 c 161 § 21.]

**57.20.140 Maintenance or general fund and special funds.** The county treasurer shall create and maintain a separate fund designated as the maintenance fund or general fund of the district into which shall be paid all money received by him from the collection of taxes other than taxes levied for the payment of general obligation bonds of the district and all revenues of the district other than assessments levied in local improvement districts or utility local improvement districts, and no

money shall be disbursed therefrom except upon warrants of the county auditor issued by authority of the commissioners or upon a resolution of the commissioners ordering a transfer to any other fund of the district. The county treasurer shall also maintain such other special funds as may be prescribed by the water district, into which shall be placed such moneys as the board of water commissioners may by its resolution direct, and from which disbursements shall be made upon proper warrants of the county auditor issued against the same by authority of the board of water commissioners. [1959 c 108 § 14; 1929 c 114 § 23; RRS § 11600. Cf. 1913 c 161 § 22.]

**57.20.150 Maintenance or general fund and special funds—Use of surplus in maintenance or general fund.** Whenever a water district has accumulated moneys in the maintenance fund or general fund of the district in excess of the requirements of such fund, the board of water commissioners may in its discretion use any of such surplus moneys for any of the following purposes: (1) Redemption or servicing of outstanding obligations of the district, (2) maintenance expenses of the district, (3) construction or acquisition of any facilities necessary to carry out the purpose of the district. [1959 c 108 § 15.]

**57.20.160 Maintenance or general fund and special funds—Deposits and investments.** Whenever there shall have accumulated in any general or special fund of a water district moneys, the disbursement of which is not yet due, the board of water commissioners may, by resolution, authorize the county treasurer to deposit or invest such moneys in banks, mutual savings banks, or savings and loan associations in an amount in each institution no greater than the amount insured by any department or agency of the United States government, the federal deposit insurance corporation, or the federal savings and loan insurance corporation, or to invest such moneys in direct obligations of the United States government: *Provided*, That the county treasurer may refuse to invest any district moneys for a period shorter than ninety days, or in an amount less than five thousand dollars, or any moneys, the disbursement of which will be required during the period of investment to meet outstanding obligations of the district. [1973 1st ex.s. c 140 § 3; 1959 c 108 § 16.]

**57.20.170 Maintenance or general fund and special funds—Loans from maintenance or general funds to construction funds.** The board of water commissioners of any water district may, by resolution, authorize and direct a loan or loans from maintenance funds or general funds of the district to construction funds of the district: *Provided*, That such loan does not, in the opinion of the board of water commissioners, impair the ability of the district to operate and maintain its water supply system. [1959 c 108 § 17.]



**Chapter 57.24**  
**ANNEXATION OF TERRITORY**

## Sections

- 57.24.010 Annexation authorized—Petition—Notice of hearing.
- 57.24.020 Hearing procedure—Boundaries—Election, notice, judges.
- 57.24.040 Election—Qualification of voters.
- 57.24.050 Expense of election.
- 57.24.060 Petition method is alternative to election method.
- 57.24.070 Petition method—Petition—Signers—Content.
- 57.24.080 Petition method—Hearing—Notice.
- 57.24.090 Petition method—Resolution providing for annexation.
- 57.24.100 Petition method—Effective date of annexation—Prior indebtedness.
- 57.24.150 Water district activities to be approved—Criteria for approval by county legislative authority.

**57.24.010 Annexation authorized—Petition—Notice of hearing.** The territory adjoining or in close proximity to and in the same county with a district may be annexed to and become a part of the district in the following manner: Twenty percent of the number of registered voters residing in the territory proposed to be annexed who voted at the last election may file a petition with the district commissioners and cause the question to be submitted to the electors of the territory whether such territory will be annexed and become a part of the district. If the commissioners concur in the petition, they shall file it with the county auditor, who shall, within ten days, examine the signatures thereon and certify to the sufficiency or insufficiency thereof; and for such purpose he shall have access to all registration books in the possession of the officers of any city or town in the proposed district. If the petition contains a sufficient number of signatures, the auditor shall transmit it, together with his certificate of sufficiency attached thereto to the water commissioners of the district. If there are no electors residing in the territory to be annexed, the petition may be signed by such a number as appear of record to own at least a majority of the acreage in the territory, and the petition shall disclose the total number of acres of land in the territory and the names of all record owners of land therein. If the commissioners are satisfied as to the sufficiency of the petition and concur therein, they shall send it, together with their certificate of concurrence attached thereto to the board of county commissioners.

The county commissioners, upon receipt of a petition certified to contain a sufficient number of signatures of electors, or upon receipt of a petition signed by such a number as own at least a majority of the acreage, together with a certificate of concurrence signed by the water commissioners, at a regular or special meeting shall cause to be published for at least two weeks in two successive issues of some weekly newspaper printed in the county, and in general circulation throughout the territory proposed to be annexed, and in case no such newspaper is printed in the county, then in some such newspaper of general circulation therein, a notice that the petition has been filed, stating the time of the meeting at which it shall be presented, and setting forth the boundaries of the territory proposed to be annexed. [1959 c 18 § 15. Prior: 1951 2nd ex.s. c 25 § 5; 1931 c 72

§ 5, part; 1929 c 114 § 15, part; RRS § 11593, part. Cf. 1913 c 161 § 15, part.]

**57.24.020 Hearing procedure—Boundaries—Election, notice, judges.** When such petition is presented for hearing, the said board of county commissioners shall hear the same or may adjourn said hearing from time to time not exceeding one month in all, and any person, firm or corporation may appear before the board of county commissioners and make objections to the proposed boundary lines or to the annexation of the territory described in the petition; and upon a final hearing the said board of county commissioners shall make such changes in the proposed boundary lines as they deem to be proper and shall establish and define such boundaries and shall find whether the proposed annexation of the said territory as established by the said board of county commissioners to the said water district will be conducive to the public health, welfare and convenience and will be of special benefit to the land included within the boundaries of the territory proposed to be annexed to the said water district and so established by the said board of county commissioners: *Provided*, That no lands which will not, in the judgment of said board, be benefited by inclusion therein, shall be included within the boundaries of said territory as so established and defined: *And provided further*, That no change shall be made by the said board of county commissioners in the said boundary lines, including any territory outside of the boundary lines described in the petition: *Provided further*, That no person having signed such petition as herein provided for shall be allowed to withdraw his name therefrom after the filing of the same with the board of water commissioners to said water district.

Upon the entry of the findings of the final hearing to the said petition by the said county commissioners of such county, if they find the said proposed annexation of the territory to the said water district to be conducive to the public health, welfare and convenience and to be of special benefit to the land proposed to be annexed and included within the boundaries of the district, they shall give notice of a special election to be held within the boundaries of the territory proposed to be annexed to said water district for the purpose of determining whether the same shall be annexed to the said water district; and such notice shall particularly describe the boundaries established by the board of county commissioners on its final hearing of the said petition, and shall state the name of the water district to which the said territory is proposed to be annexed, and the same shall be published for at least two weeks prior to such election in a weekly newspaper printed and published within the county within which said district is located, and in case no such newspaper be printed or published in such county, then in some such newspaper of general circulation therein for two successive issues thereof, and shall be posted for the same period in at least four public places within the boundaries of the district proposed to be annexed, which notice shall designate the places within the territory proposed to be annexed to said water district where the said election shall be held,

and shall require the voters to cast ballots which shall contain the words:

For Annexation to Water District  
or  
Against Annexation to Water District

The said county commissioners shall name the persons to act as judges at such election. [1959 c 18 § 16. Prior: 1931 c 72 § 5; 1929 c 114 § 15; RRS § 11593. Cf. 1913 c 161 § 15. Formerly RCW 57.24.010, 57.24.020 and 57.24.030.]

**57.24.040 Election—Qualification of voters.** The said election shall be held on the date designated in such notice and shall be conducted in accordance with the general election laws of the state. In the event the original petition for annexation is signed by qualified electors then only qualified electors, at the date of election, residing in the territory proposed to be annexed, shall be permitted to vote at the said election. In the event the original petition for annexation is signed by property owners as provided for in \*this act then no person shall be entitled to vote at such election unless at the time of the filing of the original petition he owned land in the district of record and in addition thereto at the date of election shall be a qualified elector of the county in which such district is located. It shall be the duty of the county auditor, upon request of the county commissioners, to certify to the election officers of any such election, the names of all persons owning land in the district at the date of the filing of the original petition as shown by the records of his office; and at any such election the election officers may require any such landowner offering to vote to take an oath that he is a qualified elector of the county before he shall be allowed to vote; *Provided*, That at any election held under the provisions of \*this act an officer or agent of any corporation having its principal place of business in said county and owning land at the date of filing the original petition in the district duly authorized thereto in writing may cast a vote on behalf of such corporation. When so voting he shall file with the election officers such a written instrument of his authority. The judge or judges at such election shall make return thereof to the board of water commissioners, who shall canvass such return and cause a statement of the result of such election to be entered on the record of such commissioners. If the majority of the votes cast upon the question of such election shall be for annexation, then such territory shall immediately be and become annexed to such water district and the same shall then forthwith be a part of the said water district, the same as though originally included in such district. [1929 c 114 § 16; RRS § 11593-1.]

**\*Reviser's note:** "this act", see note following RCW 57.04.020.

**57.24.050 Expense of election.** All elections held pursuant to \*this act, whether general or special, shall be conducted by the county election board of the county in which the district is located.

The expense of all such elections shall be paid for out of the funds of such water district. [1929 c 114 § 17; RRS § 11594. Cf. 1913 c 161 § 16.]

**\*Reviser's note:** "this act", see note following RCW 57.04.020.

**57.24.060 Petition method is alternative to election method.** The method of annexation provided for in RCW 57.24.070 through 57.24.100 shall be an alternative method to that specified in RCW 57.24.010 through 57.24.050. [1953 c 251 § 22.]

**57.24.070 Petition method—Petition —Signers—Content.** A petition for annexation of an area contiguous to a water district may be made in writing, addressed to and filed with the board of commissioners of the district to which annexation is desired. It must be signed by the owners, according to the records of the county auditor, of not less than sixty percent of the area of land for which annexation is petitioned, shall set forth a description of the property according to government legal subdivisions or legal plats, and shall be accompanied by a plat which outlines the boundaries of the property sought to be annexed. [1953 c 251 § 18.]

**57.24.080 Petition method—Hearing—Notice.** If the petition for annexation filed with the board of commissioners complies with the requirements of law, as proved to the satisfaction of the board of commissioners, it may entertain the petition, fix the date for public hearing thereon, and cause notice of the hearing to be published in one issue of a newspaper of general circulation in the area proposed to be annexed and also posted in three public places within the area proposed for annexation. The notice shall specify the time and place of hearing and invite interested persons to appear and voice approval or disapproval of the annexation. The expense of publication and posting of the notice shall be borne by the signers of the petition. [1953 c 251 § 19.]

**57.24.090 Petition method—Resolution providing for annexation.** Following the hearing the board of commissioners shall determine by resolution whether annexation shall be made. It may annex all or any portion of the proposed area but may not include in the annexation any property not described in the petition. Upon passage of the resolution a certified copy shall be filed with the board of county commissioners of the county in which the annexed property is located. [1953 c 251 § 20.]

**57.24.100 Petition method—Effective date of annexation—Prior indebtedness.** Upon the date fixed in the resolution the area annexed shall become a part of the district.

No property within the limits of the territory so annexed shall ever be taxed or assessed to pay any portion of the indebtedness of the district to which it is annexed contracted prior to or existing at the date of annexation; nor shall any such property be released from any taxes or assessments levied against it or from liability

for payment of outstanding bonds or warrants issued prior to such annexation. [1953 c 251 § 21.]

**57.24.150 Water district activities to be approved—Criteria for approval by county legislative authority.** See RCW 57.02.040 and 56.02.070.

**Chapter 57.28  
WITHDRAWAL OF TERRITORY**

Sections

- 57.28.010 Withdrawal authorized—Petition.
- 57.28.020 Petition of residents.
- 57.28.030 Petition of landowners.
- 57.28.040 Notice of hearing—Bond for costs.
- 57.28.050 Hearing—Findings.
- 57.28.060 Transmission to county commissioners.
- 57.28.070 Notice of hearing before county commissioners.
- 57.28.080 Hearing—Findings.
- 57.28.090 Election on withdrawal.
- 57.28.100 Notice of election—Election—Canvass.
- 57.28.110 Taxes and assessments unaffected.
- 57.28.150 Water district activities to be approved—Criteria for approval by county legislative authority.

**57.28.010 Withdrawal authorized—Petition.** Territory within an established water district for public supply systems may be withdrawn therefrom in the following manner and upon the following conditions: The petition for withdrawal shall be in writing and shall designate the boundaries of the territory proposed to be withdrawn from the district and shall be signed by at least twenty-five percent of the qualified electors residing within the territory so designated who are qualified electors on the date of filing such petition. The petition shall set forth that the territory proposed to be withdrawn is of such location or character that water cannot be furnished to it by such water district at reasonable cost, and shall further set forth that the withdrawal of such territory will be of benefit to such territory and conducive to the general welfare of the balance of the district. [1941 c 55 § 1; Rem. Supp. 1941 § 11604-1.]

**57.28.020 Petition of residents.** The petition for withdrawal shall be filed with the county auditor of the county in which such water district is located, and after such filing no person having signed such petition shall be allowed to withdraw his name therefrom. Within ten days after such filing, the county auditor shall examine the signatures thereon and certify to the sufficiency or insufficiency thereof and for such purpose the county auditor shall have access to all appropriate registration books in the possession of the officers of any incorporated city or town within the water district. If such petition be found by the county auditor to contain sufficient signatures, he shall transmit the same, together with his certificate of sufficiency attached thereto, to the commissioners of the water district. [1941 c 55 § 2; Rem. Supp. 1941 § 11604-2.]

**57.28.030 Petition of landowners.** In the event there are no qualified electors residing within the territory proposed to be withdrawn, then the petition for withdrawal may be signed by such persons as appear of record to own at least a majority of the acreage within

such territory, in which event the petition shall also state the total number of acres and the names of all record owners of the land within such territory. The petition so signed shall be filed with the commissioners of the water district, and after such filing no person having signed the same shall be allowed to withdraw his name. [1941 c 55 § 3; Rem. Supp. 1941 § 11604-3.]

**57.28.040 Notice of hearing—Bond for costs.** Upon receipt by the commissioners of a petition and certificate of sufficiency of the auditor, or if the petition is signed by landowners and the commissioners are satisfied as to the sufficiency of the signatures thereon, they shall at a regular or special meeting fix a date for hearing on the petition and give notice that the petition has been filed, stating the time and place of the meeting of the commissioners at which the petition will be heard and setting forth the boundaries of the territory proposed to be withdrawn. The notice shall be published for at least two weeks in two successive issues of a weekly newspaper printed in the county in which the district is located and of general circulation therein, and if no such newspaper is printed in the county, then in some newspaper of general circulation in the county and district. Any additional notice of the hearing may be given as the commissioners may by resolution direct.

Prior to fixing the time for a hearing on any such petition, the commissioners in their discretion may require the petitioners to furnish a satisfactory bond conditioned that the petitioners shall pay all costs incurred by the water district in connection with such petition, including the cost of an election if one is held pursuant thereto, and should the petitioners fail or refuse to post such a bond, if one is required by the water commissioners, then there shall be no duty on the part of the commissioners to act upon the petition. [1951 c 112 § 3; 1941 c 55 § 4; Rem. Supp. 1941 § 11604-4.]

**57.28.050 Hearing—Findings.** The petition for withdrawal shall be heard at the time and place specified in such notice or the hearing may be adjourned from time to time, not exceeding one month in all, and any person may appear at such hearing and make objections to the withdrawal of such territory or to the proposed boundary lines thereof. Upon final hearing on the petition for withdrawal, the commissioners of the water district shall make such changes in the proposed boundary lines as they deem to be proper, except that no changes in the boundary lines shall be made by the commissioners to include lands not within the boundaries of the territory as described in such petition. In establishing and defining such boundaries the commissioners shall exclude any property which is then being furnished with water by said water district or which is included in any distribution system the construction of which has been duly authorized or which is included within any duly established local improvement district or utility local improvement district, and the territory as finally established and defined must be substantial in area and consist of adjoining or contiguous properties. The said commissioners shall thereupon

make and by resolution adopt findings of fact as to the following questions:

(1) Is the territory as so established and defined of such location or character that water cannot be furnished to it by such water district at reasonable cost?

(2) Would the withdrawal of such territory be of benefit to such territory?

(3) Would such withdrawal be conducive to the general welfare of the balance of the district?

(4) Does it appear that such territory was improvidently included within such water district at the time of the establishment thereof or annexation thereto? Such findings shall be entered in the records of the water district, together with any recommendations the said commissioners may by resolution adopt. [1941 c 55 § 5; Rem. Supp. 1941 § 11604-5.]

**57.28.060 Transmission to county commissioners.** Within ten days after such final hearing the commissioners of such water district shall transmit to the county commissioners of the county in which such water district is located the said petition for withdrawal together with a copy of the findings and recommendations of the commissioners of the water district certified by the secretary of such water district to be a true and correct copy of such findings and recommendations as the same appear on the records of such water district. [1941 c 55 § 6; Rem. Supp. 1941 § 11604-6.]

**57.28.070 Notice of hearing before county commissioners.** Upon receipt of such petition and certified copy the county commissioners at a regular or special meeting shall fix a time and place for hearing thereon and shall cause to be published for at least two weeks in two successive issues of a weekly newspaper printed and published in said county and in general circulation throughout the said water district, and in case no newspaper is printed or published in said county, then in some newspaper of general circulation in said county and water district, a notice that such petition has been presented to the county commissioners stating the time and place of the hearing thereon, setting forth the boundaries of the territory proposed to be withdrawn as such boundaries are established and defined in the findings or recommendations of the commissioners of the water district. [1941 c 55 § 7; Rem. Supp. 1941 § 11604-7.]

**57.28.080 Hearing—Findings.** Such petition shall be heard at the time and place specified in such notice, or the hearing may be adjourned from time to time, not exceeding one month in all, and any person may appear at such hearing and make objections to the withdrawal of such territory. Upon final hearing on such petition the said county commissioners shall thereupon make, enter and by resolution adopt their findings of fact on the questions above set forth. If such findings of fact answer said questions affirmatively, and if they are the same as the findings made by the water district commissioners, then the county commissioners shall by resolution declare that such territory be withdrawn from such water district, and thereupon such territory shall

be withdrawn and excluded from such water district the same as if it had never been included therein except for the lien of taxes as hereinafter set forth, provided, that the boundaries of the territory withdrawn shall be the boundaries established and defined by the said water district commissioners and shall not be altered or changed by the county commissioners unless the unanimous consent of the water district commissioners be given in writing to any such alteration or change. [1941 c 55 § 8; Rem. Supp. 1941 § 11604-8.]

**57.28.090 Election on withdrawal.** If the said findings of the county commissioners answer any of such questions of fact in the negative, or if any of the findings of the county commissioners are not the same as the findings of the water district commissioners upon the same question, then in either of such events, the petition for withdrawal shall be deemed denied. Thereupon, and in such event, the said county commissioners shall by resolution cause a special election to be held not less than thirty days or more than sixty days from the date of the final hearing of the said county commissioners upon the said petition for withdrawal, at which election the proposition expressed on the ballots shall be substantially as follows:

"Shall the territory established and defined by the water district commissioners at their meeting held on the ----- (insert date of final hearing of water district commissioners upon the petition for withdrawal) be withdrawn from water district ----- (naming it).

YES  NO

[1941 c 55 § 9; Rem. Supp. 1941 § 11604-9.]

**57.28.100 Notice of election—Election—Canvass.** The county commissioners shall cause notice of such election to be posted and published in the same manner provided by law for the posting and publication of notice of elections to annex territory to water districts. The territory described in such notice shall be that established and defined by the water district commissioners as above provided. All qualified voters residing within such water district shall have the right to vote at such election. If a majority of the votes cast at such election favor the withdrawal from the water district of such territory, then within ten days after the official canvass of such election the said county commissioners shall by resolution establish that such territory has been withdrawn, and such territory shall thereupon be withdrawn and excluded from such water district the same as if it had never been included therein except for the lien of any taxes as hereinafter set forth. [1941 c 55 § 10; Rem. Supp. 1941 § 11604-10.]

**57.28.110 Taxes and assessments unaffected.** Any and all taxes or assessments levied or assessed against property located in territory withdrawn from a water district shall remain a lien and be collectible as by law provided when such taxes or assessments are levied or assessed prior to such withdrawal or when such levies or assessments are duly made to provide revenue for the

payment of general obligations or general obligation bonds of the water district duly incurred or issued prior to such withdrawal. [1941 c 55 § 11; Rem. Supp. 1941 § 11604-11.]

**57.28.150 Water district activities to be approved—Criteria for approval by county legislative authority.** See RCW 57.02.040 and 56.02.070.

### Chapter 57.32 CONSOLIDATION OF DISTRICTS

#### Sections

- 57.32.010 Consolidation authorized—Petition method—Resolution method.
- 57.32.020 Certificate of sufficiency.
- 57.32.021 Procedure upon receipt of certificate of sufficiency—Agreement, contents—Comprehensive plan.
- 57.32.022 Certification of agreement—Election, notice and conduct.
- 57.32.023 Consolidation effected—Cessation of former districts—Rights and powers of consolidated district.
- 57.32.024 Vesting of funds and property in consolidated district—Outstanding indebtedness.
- 57.32.130 Commissioners—Vacancies.
- 57.32.150 Water district activities to be approved—Criteria for approval by county legislative authority.

*Annexation of district territory to cities and towns: RCW 35.13.247-35.13.270.*

*Assumption of jurisdiction over water or sewer district by city: Chapter 35.13A RCW.*

**57.32.010 Consolidation authorized—Petition method—Resolution method.** Two or more water districts, adjoining or in close proximity to and in the same county with each other, may be joined into one consolidated water district. The consolidation may be initiated in either of the following ways: Ten percent of the legal electors residing within each of the water districts proposed to be consolidated may petition the board of water commissioners of each of their respective water districts to cause the question to be submitted to the legal electors of the water districts proposed to be consolidated; or the boards of water commissioners of each of the water districts proposed to be consolidated may by resolution determine that the consolidation of the districts shall be conducive to the public health, welfare, and convenience and to be of special benefit to the lands of the districts. [1967 ex.s. c 39 § 1; 1943 c 267 § 1; Rem. Supp. 1943 § 11604-20.]

**57.32.020 Certificate of sufficiency.** If the consolidation proceedings are initiated by petition, upon the filing of such petitions with the boards of water commissioners of the water districts, the boards of water commissioners of all of said districts shall file such petitions with the county auditor who shall within ten days examine the signatures thereon and certify to the sufficiency or insufficiency thereof. If all of such petitions shall be found to contain a sufficient number of signatures, the county auditor shall transmit the same, together with his certificate of sufficiency attached thereto, to the boards of water commissioners of each of the districts proposed for consolidation. In the event that there are no legal electors residing in one or more

of the water districts proposed to be consolidated, such petitions may be signed by such a number as appear of record to own at least a majority of the acreage in the pertinent water district, and the petitions shall disclose the total number of acres of land in the said water district and shall also contain the names of all record owners of land therein. [1967 ex.s. c 39 § 2; 1943 c 267 § 2; Rem. Supp. 1943 § 11604-21.]

**57.32.021 Procedure upon receipt of certificate of sufficiency—Agreement, contents—Comprehensive plan.** Upon receipt by the boards of water commissioners of the districts proposed for consolidation, hereinafter referred to as the "consolidating districts", of the county auditor's certificate of sufficiency of the petitions, or upon adoption by the boards of water commissioners of the consolidating districts of their resolutions for consolidation, the boards of water commissioners of the consolidating districts shall, within ninety days, enter into an agreement providing for consolidation. The agreement shall set forth the method and manner of consolidation, a comprehensive plan or scheme of water supply for the consolidated district and, if the comprehensive plan or scheme of water supply provides that one or more of the consolidating districts or the proposed consolidated district issue revenue bonds for the construction and/or other costs of any part or all of said comprehensive plan, then the details thereof shall be set forth. The requirement that a comprehensive plan or scheme of water supply for the consolidated district be set forth in the agreement for consolidation, shall be satisfied if the existing comprehensive plans or schemes of the consolidating districts are incorporated therein by reference and any changes or additions thereto are set forth in detail. [1967 ex.s. c 39 § 8.]

**57.32.022 Certification of agreement—Election, notice and conduct.** The respective boards of water commissioners of the consolidating districts shall certify the agreement to the county auditor of the county in which the districts are located. Thereupon, the county auditor shall call a special election for the purpose of submitting to the voters of each of the consolidating districts the proposition of whether or not the several districts shall be consolidated into one water district. The proposition shall give the title of the proposed consolidated district. Notice of the election shall be given and the election conducted in accordance with the general election laws. [1967 ex.s. c 39 § 9.]

**57.32.023 Consolidation effected—Cessation of former districts—Rights and powers of consolidated district.** If at the election a majority of the voters in each of the consolidating districts shall vote in favor of the consolidation, the county canvassing board shall so declare in its canvass and the return of such election shall be made within ten days after the date thereof. Upon the return the consolidation shall be effective and the consolidating districts shall cease to exist and shall then be and become a new water district and municipal corporation of the state of Washington. The name of

such new water district shall be "Water District No. \_\_\_\_\_, \_\_\_\_\_ County", which shall be the name appearing on the ballot. The district shall have all and every power, right, and privilege possessed by other water districts of the state of Washington. The district may issue revenue bonds to pay for the construction of any additions and betterments set forth in the comprehensive scheme and plan of water supply contained in the agreement for consolidation and any future additions and betterments to the comprehensive scheme and plan of water supply, as its board of water commissioners shall by resolution adopt, without submitting a proposition therefor to the voters of the district. [1967 ex.s. c 39 § 10.]

**57.32.024 Vesting of funds and property in consolidated district—Outstanding indebtedness.** Upon the formation of any consolidated water district, all funds, rights and property, real and personal, of the former districts, shall vest in and become the property of the consolidated district. Unless the agreement for consolidation provides to the contrary, any outstanding indebtedness of any form, owed by the districts, shall remain the obligation of the area of the original debtor district and the water commissioners of the consolidated water district shall make such levies, assessments or charges for service upon that area or the water users therein as shall pay off the indebtedness at maturity. [1967 ex.s. c 39 § 11.]

**57.32.130 Commissioners—Vacancies.** The water commissioners of all water districts consolidated into any new consolidated water district shall become water commissioners thereof until their respective terms of office expire. When the terms of expiration reduce the total number of remaining water commissioners to less than three then the board of commissioners of the consolidated water district shall be maintained at the number of three, in accordance with the provisions of RCW 57.12.020 and 57.12.030. [1943 c 267 § 13; Rem. Supp. 1943 § 11604–32.]

**57.32.150 Water district activities to be approved—Criteria for approval by county legislative authority.** See RCW 57.02.040 and 56.02.070.

### Chapter 57.36 MERGER OF DISTRICTS

Sections	
57.36.010	Merger of districts authorized—Prerequisites.
57.36.020	Initiation of merger—Procedure.
57.36.030	Agreement—Certification to county auditor—Election in merging district, notice, conduct.
57.36.040	Return of election—When merger effective—Cessation of merging district.
57.36.050	Vesting of funds and property in merger district—Outstanding indebtedness.
57.36.100	Water district activities to be approved—Criteria for approval by county legislative authority.

**57.36.010 Merger of districts authorized—Prerequisites.** Whenever there are two water districts, the territories of which are adjoining or in close proximity to

and in the same county with each other, either district, hereinafter referred to as the "merging district", may merge into the other district, hereinafter referred to as the "merger district", and the merger district will survive under its original number. The term "in proximity to" as used hereinabove shall mean within one mile of each other, measured in a straight line between the closest points of approach of the territorial boundaries of the two districts. [1967 ex.s. c 39 § 3; 1961 c 28 § 1.]

**57.36.020 Initiation of merger—Procedure.** A merger of two water districts may be initiated in either of the following ways:

(1) Whenever the boards of water commissioners of both such districts determine by resolution that the merger of such districts shall be conducive to the public health, welfare and convenience and to be of special benefit to the lands of such districts.

(2) Whenever ten percent of the legal electors residing within the merging district petition the board of water commissioners of the merging water district for a merger, and the board of water commissioners of the merger district determines by resolution that the merger of the districts shall be conducive to the public health, welfare and convenience of the two districts. [1967 ex.s. c 39 § 4; 1961 c 28 § 2.]

**57.36.030 Agreement—Certification to county auditor—Election in merging district, notice, conduct.** Whenever a merger is initiated in either of the two ways hereinabove provided, the boards of water commissioners of the two districts shall enter into an agreement providing for the merger. Said agreement must be entered into within ninety days following completion of the last act, as hereinabove provided, in initiation of the merger.

The respective boards of water commissioners of said districts shall certify such agreement to the county auditor of the county in which the districts are located. Thereupon, the said county auditor shall call a special election for the purpose of submitting to the voters of the merging district the proposition of whether the merging district shall be merged into the merger district. Notice of the election shall be given and the election conducted in accordance with the general election laws. [1967 ex.s. c 39 § 5; 1961 c 28 § 3.]

**57.36.040 Return of election—When merger effective—Cessation of merging district.** If at such election a majority of the voters of the merging water district shall vote in favor of the merger, the county canvassing board shall so declare in its canvass and the return of such election shall be made within ten days after the date thereof, and upon such return the merger shall be effective and the merging water district shall cease to exist and shall become a part of the merger water district. The water commissioners of the merging district shall cease to hold office and the affairs of the merged districts shall be managed by the water commissioners of the merger district. [1967 ex.s. c 39 § 6; 1961 c 28 § 4.]

**57.36.050 Vesting of funds and property in merger district—Outstanding indebtedness.** All funds and property, real and personal, of the merging district, shall vest in and become the property of the merger district. Unless the agreement of merger provides to the contrary, any outstanding indebtedness of any form, owed by the districts, shall remain the obligation of the area of the original debtor district; and the water commissioners of the merger water district shall make such levies, assessments or charges for service upon said area or the water users therein as shall pay off such indebtedness at maturity. [1967 ex.s. c 39 § 7; 1961 c 28 § 5.]

**57.36.100 Water district activities to be approved—Criteria for approval by county legislative authority.** See RCW 57.02.040 and 56.02.070.

**Chapter 57.40**

**MERGER OF WATER DISTRICTS INTO SEWER DISTRICTS—MERGER OF SEWER DISTRICTS INTO WATER DISTRICTS**

Sections

- 57.40.010 Merger of water districts into sewer districts.
- 57.40.020 Water district activities to be approved—Criteria for approval by county legislative authority.
- 57.40.100 Merger of sewer districts into water districts—Authorized.
- 57.40.110 Initiating merger—Alternative methods.
- 57.40.120 Agreement of merger—Board review—Special election.
- 57.40.130 Election—Results—Effect.
- 57.40.140 Disposition of funds, rights and property—Indebtedness of merged sewer districts.
- 57.40.150 Powers of water district.

**57.40.010 Merger of water districts into sewer districts.** See chapter 56.36 RCW.

**57.40.020 Water district activities to be approved—Criteria for approval by county legislative authority.** See RCW 57.02.040 and 56.02.070.

**57.40.100 Merger of sewer districts into water districts—Authorized.** Any sewer district, acting alone or in conjunction with any other sewer district or districts similarly situated as hereafter described, the territory of which lies wholly or partly within, or which is adjoining or in proximity to, and in the same county with, a water district, may merge into the water district, and the water district will survive under its original name. The term "in proximity to" as used herein shall mean within one mile of each other, measured in a straight line between the closest points of approach of the territorial boundaries of the respective districts. [1971 ex.s. c 146 § 1.]

**57.40.110 Initiating merger—Alternative methods.** A merger of one or more sewer districts into a water district may be initiated in any one of the following ways:

(1) Whenever the board of commissioners of the water district, on the one hand, and the board of commissioners of the sewer district or of the respective sewer districts seeking to merge into the water district, on the

other hand, each determine by resolution that the merger of such sewer district or sewer districts into the water district shall be conducive to the public health, welfare and convenience and to be of special benefit to the lands of such district so desiring to merge.

(2) Whenever ten percent of the qualified electors residing within each of the water districts and the sewer district or districts involved petition the board of commissioners of their respective districts for a merger of such district into the water district.

(3) Whenever ten percent of the qualified electors residing within the water district petition the board of water commissioners for such a merger, and the board of sewer commissioners of the district or each sewer district to be merged determines by resolution that the merger of such district into the water district will be conducive to the public health, welfare and convenience of the two districts. [1971 ex.s. c 146 § 2.]

**57.40.120 Agreement of merger—Board review—Special election.** Whenever a merger is initiated in any of the three ways provided in RCW 57.40.110, the boards of the water and sewer commissioners of the respective districts involved shall enter into an agreement providing for the merger. The agreement must be entered into within ninety days following completion of the last act required for initiation of the merger by any one of the means above specified, as provided in RCW 57.40.110. Where two or more sewer districts seek to merge into a water district at or about the same time, there need be but one agreement of merger signed by the water district and such two or more sewer districts if the parties so agree.

Upon entry of such agreement, the boards of the water and sewer commissioners shall file a notice of intention to merge together with a copy of said agreement with the boundary review board, if any, of the county and the board shall review the proposed merger under the provisions of RCW 36.93.150 through 36.93.180.

The respective boards of water and sewer commissioners of such districts shall certify such agreement to the county auditor of the county in which the districts are located within twenty days from date of execution of such agreement, with a certified copy thereof filed with the clerk of the board of county commissioners of such county. Thereupon, unless the boundary review board has disapproved the proposed merger the county auditor shall call a special election for the purpose of submitting to the voters of the sewer district or of each of the two or more sewer districts involved the proposition of whether the sewer district shall be merged into the water district. Notice of the election shall be given, and the election conducted, in accordance with the general election laws. [1971 ex.s. c 146 § 3.]

**57.40.130 Election—Results—Effect.** If at such election a majority of the voters in the sewer district or all or either of the sewer districts involved, shall vote in favor of the merger, the county election canvassing board shall so declare in its canvass, and the return of the election shall be made within ten days after the date of such election. Upon completion of the return the



merger shall be effective as to the water district and each sewer district in which the majority of voters voted in favor of the merger, and each such sewer district shall cease to exist and shall become a part of the water district. The sewer commissioners of any sewer district so merged shall cease to hold office, and the affairs of the merged districts shall be managed and conducted by the board of water commissioners of the water district. [1971 ex.s. c 146 § 4.]

**57.40.140 Disposition of funds, rights and property—Indebtedness of merged sewer districts.** All funds, rights and property, real and personal, of any sewer district merging into a water district shall vest in and become the property of the water district. Unless the agreement of merger provides to the contrary, any outstanding indebtedness of any form, owned by the sewer district, shall remain the obligation of and, as applicable, a lien upon the land, assets and/or revenue of the original district. The board of commissioners of the water district shall make such levies, assessments or charges upon said land or the sewer or water users therein as are necessary to pay any indebtedness of the merged sewer districts as and when the same mature. [1971 ex.s. c 146 § 5.]

**57.40.150 Powers of water district.** Following merger, the water district and the board of commissioners thereof shall have all powers granted sewer districts by Title 56 RCW. The water district shall have the power to issue revenue bonds to which are pledged sewer revenue, water revenue, or both sewer and water revenue, as well as the power to levy assessments against property specially benefited in the manner levied by utility local improvement districts, for improvements to the sewer system or the water system or both. [1971 ex.s. c 146 § 6.]

**Chapter 57.42  
DISPOSITION OF PROPERTY TO PUBLIC  
UTILITY DISTRICT**

Sections  
57.42.010 Authorized.  
57.42.020 Disposition must be in public interest—Filings—Indebtedness.  
57.42.030 Hearing—Notice—Decree.

**57.42.010 Authorized.** Subject to the provisions of RCW 57.42.020 and 57.42.030, any water district created under the provisions of this title may sell, transfer, exchange, lease or otherwise dispose of any property, real or personal, or property rights, including but not limited to the title to real property, to a public utility district in the same county on such terms as may be mutually agreed upon by the commissioners of each district. [1973 1st ex.s. c 56 § 1.]

**57.42.020 Disposition must be in public interest—Filings—Indebtedness.** No water district shall dispose of its property to a public utility district unless the respective commissioners of each district shall determine

by resolution that such disposition is in the public interest and conducive to the public health, welfare and convenience. Copies of each resolution together with copies of the proposed disposition agreement shall be filed with the legislative authority of the county in which the water district is located, and with the superior court of that county. Unless the proposed agreement provides otherwise, any outstanding indebtedness of any form, owed by the water district, shall remain the obligation of the area of the water district and the public utility district commissioners shall be empowered to make such levies, assessments or charges upon that area or the water users therein as shall pay off the indebtedness at maturity. [1973 1st ex.s. c 56 § 2.]

**57.42.030 Hearing—Notice—Decree.** Within ninety days after the resolutions and proposed agreement have been filed with the court, the court shall fix a date for a hearing and shall direct that notice of the hearing be given by publication. After reviewing the proposed agreement and considering other evidence presented at the hearing, the court may determine by decree that the proposed disposition is in the public interest and conducive to the public health, welfare and convenience. In addition, the decree shall authorize the payment of all or a portion of the indebtedness of the water district relating to property disposed of under such decree. Pursuant to the court decree, the water district shall dispose of its property under the terms of the disposition agreement with the public utility district. [1973 1st ex.s. c 56 § 3.]

**Chapter 57.90  
DISINCORPORATION OF WATER AND OTHER  
DISTRICTS IN CLASS A OR AA COUNTIES**

Sections  
57.90.010 Disincorporation authorized.  
57.90.020 Proceedings, how commenced—Public hearings.  
57.90.030 Findings—Order—Supervision of liquidation.  
57.90.040 Distribution of assets.  
57.90.050 Assessments to retire indebtedness.  
57.90.100 Disposal of real property on abandonment of irrigation district right of way—Right of adjacent owners.

*Dissolution of port districts: RCW 53.46.060.*

*Dissolution of water districts: Chapter 57.04 RCW.*

**57.90.010 Disincorporation authorized.** Water, sewer, sanitary, park and recreation, metropolitan park, water distribution, county rural library, cemetery, flood control, air pollution, mosquito control, diking and drainage, irrigation or reclamation, weed, health, or fire protection districts, hereinafter referred to as "special districts", which are located wholly or in part within a class AA or A county may be disincorporated when the district has not actively carried out any of the special purposes or functions for which it was formed within the preceding consecutive five year period. [1963 c 55 § 1.]

**57.90.020 Proceedings, how commenced—Public hearings.** Upon the filing with the board of county commissioners of the county in which the district is located of a resolution of any governmental unit calling for the disincorporation of a special district, or upon the filing with the board of county commissioners of the petition of twenty percent of the qualified electors within a special district calling for the disincorporation of a special district the board of county commissioners shall hold public hearings to determine whether or not any services have been provided within a consecutive five year period and whether the best interests of all persons concerned will be served by the proposed dissolution of the special district. [1963 c 55 § 2.]

**57.90.030 Findings—Order—Supervision of liquidation.** If the board of county commissioners finds that no services have been provided within the preceding consecutive five year period and that the best interests of all persons concerned will be served by disincorporating the special district it shall order that such action be taken, specify the manner in which it is to be accomplished and supervise the liquidation of any assets and the satisfaction of any outstanding indebtedness. [1963 c 55 § 3.]

**57.90.040 Distribution of assets.** In the event a special district is disincorporated the proceeds of the sale of any of its assets, together with moneys on hand in the treasury of the special district, shall after payment of all costs and expenses and all outstanding indebtedness be paid to the county treasurer to be placed to the credit of the school district, or districts, in which such special district is situated. [1963 c 55 § 4.]

**57.90.050 Assessments to retire indebtedness.** In the event a special district is disincorporated and the proceeds of the sale of any of its assets, together with moneys on hand in the treasury of the special district are insufficient to retire any outstanding indebtedness together with all costs and expenses of liquidation, the board of county commissioners shall levy assessments in the manner provided by law against the property in the special district in amounts sufficient to retire said indebtedness and pay such costs and expenses. [1963 c 55 § 5.]

**57.90.100 Disposal of real property on abandonment of irrigation district right of way—Right of adjacent owners.** Whenever as the result of abandonment of an irrigation district right of way real property held by an irrigation district is to be sold or otherwise disposed of, notice shall be given to the owners of lands adjoining that real property and such owners shall have a right of first refusal to purchase at the appraised price all or any part of the real property to be sold or otherwise disposed of which adjoins or is adjacent to their land.

Real property to be sold or otherwise disposed of under this section shall have been first appraised by the county assessor or by a person designated by him.

Notice under this section shall be sufficient if sent by registered mail to the owner, and at the address, as

shown in the tax records of the county in which the land is situated. Notice under this section shall be in addition to any other notice required by law.

After sixty days from the date of sending of notice, if no applications for purchase have been received by the irrigation district or other person or entity sending notice, the rights of first refusal of owners of adjoining lands shall be deemed to have been waived, and the real property may be sold or otherwise disposed of.

If two or more owners of adjoining lands apply to purchase the same real property, or apply to purchase overlapping parts of the real property, the respective rights of the applicants may be determined in the superior court of the county in which the real property is situated; and the court may divide the real property in question between some or all of the applicants or award the whole to one applicant, as justice may require. [1971 ex.s. c 125 § 1.]



# TITLE 58

## BOUNDARIES AND PLATS

### Chapters

- 58.04 Boundaries.
- 58.08 Plats—Recording.
- 58.09 Surveys—Recording.
- 58.10 Defective plats legalized.
- 58.11 Plats—Vacation—Code 1881.
- 58.12 Plats—Alteration—Vacation—1903 Act.
- 58.17 Plats—Subdivisions—Dedications.
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*Diking, drainage, and sewerage improvement districts, platting: Chapter 85.08 RCW.*

*Highway plat book: RCW 36.80.050.*

*Levy for continuous benefits, diking districts—Roll of property protected: RCW 85.18.020.*

*Oyster lands—Survey markers: RCW 79.20.035.*

*Parks, bathing beaches, public camps: Chapter 67.20 RCW.*

*Private ditches and drains—Report of viewers—Plat: RCW 85.28.050.*

*Property tax—Listing—Plat of irregular subdivided tracts: RCW 84.40.170.*

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*Public lands—Sales, leases—Maximum area of urban or suburban state land—Platting: RCW 79.01.100.*

*Public lands—Vacation of plat by commissioner: RCW 79.01.104.*

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*Reclamation and irrigation in United States reclamation areas—Farm units authorized—Size—Plats—Excess land: RCW 89.12.040.*

*Reclamation districts of one million acres—General improvement and divisional districts—Survey: Chapter 89.30 RCW.*

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*Tidelands, ownership by state: State Constitution Art. 17.*

### Chapter 58.04 BOUNDARIES

#### Sections

58.04.010 Corners and lines may be established—Procedure—Expense.

58.04.020 Suit to establish lost or uncertain boundaries.

58.04.030 Commissioners—Survey and report.

58.04.040 Proceedings, conduct of—Costs.

*Cities and towns—Jurisdiction over adjacent waters (boundaries adjacent to or fronting thereon): RCW 35.21.160.*

*Cities and towns—Proposed boundaries required on incorporation: Chapters 35.02 and 35.03 RCW.*

*Cities and towns—Proposed boundaries required when annexation to: Chapters 35.11, 35.12 and 35.13 RCW.*

*Commercial waterway districts—Boundaries: Chapter 91.04 RCW.*

*Counties—Actions to establish boundaries: Chapter 36.05 RCW.*

*Counties—Boundaries: Chapter 36.04 RCW.*

*Counties—Roads and bridges—Establishment—Monuments at government survey corners: RCW 36.86.050.*

*Counties—Survey map, field notes and profiles: RCW 36.81.060.*

*Dike or ditch as common boundary: RCW 85.28.140.*

*Diking and drainage districts—Boundaries: Title 85 RCW.*

*Division of county into townships (boundaries): Chapter 45.08 RCW.*

*Fences: Chapter 16.60 RCW.*

*Flood control districts—Boundaries: Title 86 RCW.*

*Harbor line commission: RCW 79.01.044, 79.01.420.*

*Irrigation districts—Change of boundaries: Chapter 87.44 RCW.*

*Oyster lands—Survey and boundary markers: RCW 79.20.035.*

*Public waterway districts—Boundaries: Chapter 91.08 RCW.*

*Reclamation districts of one million acres—Boundaries to be fixed: RCW 89.30.082.*

*Relocation of inner harbor line: RCW 79.01.424.*

*Soil conservation—Annexation of territory—Boundary change: RCW 89.08.180.*

*Survey of county boundaries: RCW 36.04.400.*

*Tidelands, shorelands*—Boundary of shorelands when water lowered: RCW 79.16.380.

#### 58.04.010 Corners and lines may be established—

**Procedure—Expense.** Whenever a majority of the resident owners of any section or part or parts of any section of land in this state, after having given at least ten days' notice to all other persons, or to their agents, holding land in the same section or part or parts of the section, as the case may be, who reside in the township, shall desire to have their corners and lines, or any of them, established, relocated or perpetuated, such surveyor shall proceed to make the required surveys, and the expense thereof shall be borne by all the persons benefited in proportion to the amount of work done for each, to be determined by the surveyor; and if any person thus benefited, whether a nonresident or otherwise, shall refuse or neglect to pay his share of such expense, such surveyor shall certify the same, and to whom due, to the county assessor, who shall assess it upon the land of such person, to be collected in the same manner as other taxes, and held subject to the order of the person named in the surveyor's certificate as being entitled to the same. [1895 c 77 § 9; RRS § 4154.]

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

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

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

*Only one form of action—Civil action:* RCW 4.04.020.

**58.04.030 Commissioners—Survey and report.** Said court may, in its discretion, appoint commissioners, not exceeding three competent and disinterested persons, one or more of whom shall be practical surveyors, residents of the state, which commissioners shall be, before entering upon their duties, duly sworn to perform their said duties faithfully, and the said commissioners shall thereupon, survey, erect, establish and properly mark said boundaries, and return to the court a plat of said survey, and the field notes thereof, together with their report. Said report shall be advisory

and either party may except thereto, in the same manner as to a report of referees. [1886 p 105 § 2; RRS § 948.]

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

### Chapter 58.08 PLATS—RECORDING

#### Sections

58.08.010	Town plat to be recorded—Requisites.
58.08.015	Effect of donation marked on plat.
58.08.020	Additions.
58.08.030	Plats to be acknowledged—Certificate that taxes and assessments are paid.
58.08.035	Platted streets, public highways—Lack of compliance, penalty.
58.08.040	Deposit to cover anticipated taxes.
58.08.050	Official plat—Platted streets as public highways.

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

*Record of platted tide and shore lands:* RCW 79.01.436.

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

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

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

**58.08.030 Plats to be acknowledged—Certificate that taxes and assessments are paid.** Every person whose duty it may be to comply with the foregoing regulations shall at or before the time of offering such plat for record, acknowledge the same before the auditor of the proper county, or any other officer who is authorized by law to take acknowledgment of deeds, a certificate of which acknowledgment shall be indorsed on or annexed to such plat and recorded therewith. In all cases where any person or persons, corporation or corporations shall desire to file a plat, map, subdivision or replat of any property or shall desire to vacate the whole or any portion of any existing plat, map, subdivision or replat, such person or persons, corporation or corporations must, at the time of filing the same for record or of filing a petition for vacation thereof, file therewith a certificate from the proper officer or officers who may be in charge of the collection of taxes for which the property affected may be liable at that date, that all taxes which have been levied and become chargeable against such property at such date have been duly paid, satisfied and discharged and must file therewith a certificate from the proper officer or officers, who may be in charge of the collections, that all delinquent assessments for which the property affected may be liable at that date and that all special assessments assessed against said property, which, under the plat filed, become streets, alleys and other public places, have been paid. [1927 c 188 § 1; 1893 c 129 § 1; Code 1881 § 2331; 1862 p 431 § 4; 1857 p 26 § 4; RRS § 9290.]

*Acknowledgments out of state: RCW 64.08.020.*

*Foreign acknowledgments, who may take: RCW 64.08.040.*

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

*Who may take acknowledgments: RCW 64.08.010.*

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

**\*Reviser's note:** "the foregoing provisions" refer to earlier sections of chapter 178, Code of 1881 codified (as amended) in RCW 58.08-.010-58.08.030.

*Platted streets as public highways: RCW 58.08.050.*

*Regulation of surveys and plats: RCW 58.10.040.*

**58.08.040 Deposit to cover anticipated taxes.** Any person filing a plat subsequent to May 31st in any year and prior to the date of the collection of taxes, shall deposit with the county treasurer a sum equal to the product of the county assessor's latest valuation on the unimproved property in such subdivision multiplied by

the current year's dollar rate increased by twenty-five percent on the property platted. The treasurer's receipt for said amount shall be taken by the auditor as evidence of the payment of the tax. The treasurer shall appropriate so much of said deposit as will pay the taxes on the said property when the tax rolls are placed in his hands for collection, and in case the sum deposited is in excess of the amount necessary for the payment of the said taxes, the treasurer shall return, to the party depositing, the amount of said excess, taking his receipt therefor, which receipt shall be accepted for its face value on the treasurer's quarterly settlement with the county auditor. [1973 1st ex.s. c 195 § 74; 1969 ex.s. c 271 § 34; 1963 c 66 § 1; 1909 c 200 § 1; 1907 c 44 § 1; 1893 c 129 § 2; RRS § 9291.]

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

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

*Assessment date: RCW 84.40.020.*

*Property taxes—Collection of taxes: Chapter 84.56 RCW.*

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

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

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

*Streets over tidelands declared public highways: RCW 35.21.230.*

## Chapter 58.09 SURVEYS—RECORDING

### Sections

58.09.010	Purpose—Short title.
58.09.020	Definitions.
58.09.030	Compliance with chapter required.
58.09.040	Records of survey—Contents—Filing—Replacing corner, filing record.
58.09.050	Records of survey—Processing.
58.09.060	Records of survey, contents—Record of corner, information.
58.09.070	Coordinates—Map showing control scheme required.
58.09.080	Certificates—Required—Forms.
58.09.090	When record of survey not required.
58.09.100	Filing fee.
58.09.110	Duties of county auditor.
58.09.120	Monuments—Requirements.
58.09.130	Monuments disturbed by construction activities—Procedure—Requirements.
58.09.140	Noncompliance grounds for revocation of land surveyor's license.
58.09.900	Severability—1973 c 50.

**58.09.010 Purpose—Short title.** The purpose of this chapter is to provide a method for preserving evidence of land surveys by establishing standards and

procedures for monumenting and for recording a public record of the surveys. Its provisions shall be deemed supplementary to existing laws relating to surveys, subdivisions, platting, and boundaries.

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

**58.09.020 Definitions.** As used in this chapter:

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

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

(3) "Survey" shall mean the locating and monumenting in accordance with sound principles of land surveying by or under the supervision of a licensed land surveyor, of points or lines which define the exterior boundary or boundaries common to two or more ownerships or which reestablish or restore general land office corners. [1973 c 50 § 2.]

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

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

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

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

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

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

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

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

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

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

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

(1) Surveys which qualify under RCW 58.09.040(1) shall be a map, legibly drawn, printed or reproduced by a process guaranteeing a permanent record in black on tracing cloth, or equivalent, eighteen by twenty-four inches, or of a size as required by the county auditor. If ink is used on polyester base film, the ink shall be coated with a suitable substance to assure permanent legibility. A two inch margin shall be provided on the left edge and a one-half inch margin shall be provided at the other edges of the map.

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

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

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

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

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

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

(d) Certificates required by RCW 58.09.080;

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

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

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

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



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

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

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

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

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

**SURVEYOR'S CERTIFICATE**

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

Name of Person  
(Signed and Sealed) \_\_\_\_\_  
Certificate No. \_\_\_\_\_

**AUDITOR'S CERTIFICATE**

Filed for record this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_ at \_\_\_\_\_M. in book \_\_\_\_\_ of \_\_\_\_\_ at page \_\_\_\_\_ at the request of \_\_\_\_\_

(Signed) \_\_\_\_\_  
County Auditor

[1973 c 50 § 8.]

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

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

(b) When it is of a preliminary nature;

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

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

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

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

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

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

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

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

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

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

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

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

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

### Chapter 58.10 DEFECTIVE PLATS LEGALIZED

#### Sections

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

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

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

*Certified copies of instruments, or transcripts of county commissioners' proceedings: RCW 5.44.070.*

*Certified copies of recorded instruments as evidence: RCW 5.44.060.*

*Instruments to be recorded or filed: RCW 65.04.030.*

*Photographic copies of business and public records as evidence: RCW 5.46.010.*

*Photostatic or photographic copies of public or business records admissible in evidence: RCW 40.20.030.*

**58.10.030 Resurvey and corrected plat—Corrected plat as evidence.** Whenever the recorded plat of any city or addition thereto does not definitely show the location or size of lots or blocks, or the location or width of any

street or alley in such city or addition, the city council of the city in which the land so platted is located, is hereby authorized and empowered by ordinance and the action of its proper officers, to cause a new and correct survey and plat of such city or addition to be made, and recorded in the office of the county auditor of the county in which such city or addition is located, which corrected plat shall follow the plan of the original survey and plat, so far as the same can be ascertained and followed, and a certificate of the officer or surveyor making the same shall be endorsed thereon, referring to the original plat corrected thereby, and the deficit existing therein, and corrected by such new survey and plat; and the ordinance authorizing the making of such plat shall be recorded in the office of the county auditor of said county and said certificate shall show where said ordinance is recorded, and such plat when so made and recorded, or a copy thereof certified as provided in RCW 58.10.020 shall be admissible in evidence in all the courts in this state. [Code 1881 § 2340; RRS § 9308. Formerly RCW 58.12.130.]

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

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

### Chapter 58.11 PLATS—VACATION—CODE 1881

#### Sections

- 58.11.010 Vacations in unincorporated towns—Petition—Notice.  
58.11.020 Hearing and order.  
58.11.030 Title to vacated property.  
58.11.040 Vacations in incorporated towns—Petition—Proceedings.  
58.11.050 Vacation of platted lots outside municipalities.

*Cities and towns—Streets—Vacation: Chapter 35.79 RCW.*

**58.11.010 Vacations in unincorporated towns—Petition—Notice.** Any person interested in any town not incorporated, who may desire to vacate any lot, street, alley, common, or any part thereof, or any public square, or part thereof, in any such town, may petition the board of county commissioners for the proper county. The petition shall set forth the facts pertinent thereto, with a description of the property to be vacated, and shall be filed in the office of the county auditor. The auditor shall give notice of the time and place of hearing on the petition before the commissioners, by posting notice thereof, containing a description of the

property to be vacated, in three of the most public places in said town, at least twenty days before the hearing. [1953 c 114 § 1. Prior: Code 1881 § 2333; 1869 p 409 § 1; 1862 p 432 § 1; 1857 p 27 § 1; RRS § 9301. Formerly RCW 58.12.090.]

*Vacation of county roads: Chapter 36.87 RCW.*

**58.11.020 Hearing and order.** Said court [board of county commissioners], if satisfied that the aforesaid notice has been given, may, in their discretion, vacate the same, with such conditions and restrictions as they may deem reasonable, and for the public good. [Code 1881 § 2334; 1869 p 410 § 2; 1862 p 432 § 2; 1857 p 27 § 2; RRS § 9302. Formerly RCW 58.12.100.]

**58.11.030 Title to vacated property.** The part so vacated, if it be a lot or lots, shall vest in the rightful owner, who may have the title thereof according to law; and if the same be a street or alley, the same shall be attached to the lots or ground bordering on such street or alley; and all right or title thereto shall vest in the person or persons owning the property on each side thereof, in equal proportions: *Provided*, The lots or grounds so bordering on such street or alley, have been sold by the original owner or owners of the soil; if, however, said original owner or owners possess such title to the lots or ground bordering said street or alley on one side only, the title to the same shall vest in the said owner or owners if the said court [board of county commissioners] shall judge the same to be just and proper. [Code 1881 § 2335; 1869 p 410 § 3; 1862 p 433 § 3; 1857 p 27 § 3; RRS § 9303. Formerly RCW 58.12.110.]

**58.11.040 Vacations in incorporated towns—Petition—Proceedings.** In cases where any person interested in any incorporated town in this state may desire to vacate any street, alley, lot or common, or any part thereof, it shall be lawful for such person to petition the trustees in like manner as persons interested in towns not incorporated are authorized to petition the board of county commissioners; and the same proceedings shall be had thereon before such trustees, or other body corporate having jurisdiction, as are authorized to be had before the board of county commissioners; and such trustees or other corporate body may determine on such application under the same restrictions and limitations as are contained in the foregoing provisions. [Code 1881 § 2336; RRS § 9304.]

*Cities and towns—Streets—Vacation: Chapter 35.79 RCW.*  
*See Rowe v. James, 71 Wash. 267, 128 Pac. 539.*

**58.11.050 Vacation of platted lots outside municipalities.** In all cases where any person or persons have laid out, or shall hereafter lay out a town, or any addition to any town, and such town or addition does not improve, and such person or persons shall be the legal owner or owners of all the lots contained in such town or addition, such person or persons, or any other party or parties, who shall become the legal owner or owners thereof, may have such town or addition or any part

thereof, vacated in like manner as is hereinbefore provided for the vacation of lots, streets and alleys. [Code 1881 § 2337; 1869 p 411 § 5; 1862 p 433 § 5; 1857 p 28 § 5; RRS § 9305. Formerly RCW 58.12.120.]

## Chapter 58.12

### PLATS—ALTERATION—VACATION—1903 ACT

#### Sections

58.12.010	Petition to change plat—Plat of proposed change.
58.12.020	Time and place of hearing—Notice.
58.12.030	Notice—Service.
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58.12.080	Construction of chapter.

*Cities and towns—Streets—Vacation: Chapter 35.79 RCW.*

*Counties—Roads, bridges—Vacation: Chapter 36.87 RCW.*

*Oyster lands—Vacation of reserve—Sale or lease of lands: RCW 75.24.030 and 79.20.110.*

*Plats: See notes following Title 58 RCW digest.*

*Public lands—Sales, leases—Vacation of plat by commissioner: RCW 79.01.104.*

*Public lands—Sales, leases—Vacation on petition—Preference right to purchase: RCW 79.01.108.*

*Tidelands, shorelands, harbors—Effect of replat: RCW 79.01.476.*

*Tidelands, shorelands, harbors—Vacation by replat—Preference right of tideland owner: RCW 79.01.464.*

*Tidelands, shorelands, harbors—Vacation of waterways—Extension of streets: RCW 79.01.472.*

**58.12.010 Petition to change plat—Plat of proposed change.** That whenever three-fourths in number and area of the owners of any townsite, city plat or plats, addition or additions, or part thereof, shall be desirous of altering the plat or plats, replatting or vacating the same or any part thereof, they may prepare a plat or plats, showing such alterations or replat, drafted upon a copy of the existing plat or plats, or that portion desired to be altered, replatted or vacated, and file the same with the clerk of the board of county commissioners, or city council or other governing body having jurisdiction of the establishment or vacation and control of the streets to be affected, accompanied with a petition for the change desired: *Provided*, That this section shall not be construed as applying to the alteration, replatting or vacation of any plat of state granted, tide, or shore lands. [1927 c 139 § 1; 1903 c 92 § 1; RRS § 9311.]

**58.12.020 Time and place of hearing—Notice.** Thereupon and upon the payment of the cost thereof the said clerk shall fix a time for the hearing of said petition, which time shall not be less than thirty nor more than sixty days after the filing of said petition, and shall cause a notice to be issued under his hand and the seal of said county or city, stating by whom and when said petition was filed, the object thereof and when and where the same will be heard. Said notice shall also describe the property sought to be altered, replatted or vacated. [1903 c 92 § 2; RRS § 9312.]

**58.12.030 Notice—Service.** Said clerk shall cause said notice to be served, as in the manner provided for service of summons in civil actions, upon all the owners of property not joining in said petition, as shown by the records in the auditor's office of the county wherein the townsite, plat or plats, addition or additions may be located. [1903 c 92 § 3; RRS § 9313.]

*Civil procedure—Summons, how served: RCW 4.28.080.*

**58.12.040 Hearing—Determination and order.** Thereafter such board of county commissioners, or city council shall have full and complete jurisdiction to inquire into and determine the merits of the changes or relief prayed for, assess damages or benefits, award the same and make such order in the premises as justice and the public welfare may require. [1903 c 92 § 4; RRS § 9314.]

**58.12.050 Assessment district—Damages and benefits.** The whole of the land embraced in the plat or plats proposed to be altered, replatted or vacated shall be and constitute an assessment district, and damages shall be assessed and benefits awarded as now provided by law for the establishment, alteration or vacation of streets, alleys and roads by said board of county commissioners and city council. [1903 c 92 § 5; RRS § 9315.]

**58.12.060 New plat to be filed—Order of vacation.** Any plat or replat so adjudicated, adjusted and approved, showing the lines of the original and adjudicated plat, shall be filed and recorded with the auditor of the county where the property is situated, and shall thereafter be the lawful plat and substitute for all former plats: *Provided, however,* That should the said townsite, city plat or plats, addition or additions, or parts thereof, be vacated and not otherwise altered or replatted, it shall only be necessary to file with the county auditor the order, resolution or ordinance vacating the same, and the auditor shall thereupon note upon the original plat the part thereof so vacated. [1909 c 136 § 1; 1903 c 92 § 6; RRS § 9316.]

**58.12.065 Appeals to superior court.** Any owners of any portion of the property affected by the actual award or final judgment of such board of county commissioners or city council may appeal to the superior court having jurisdiction of appeals from justice of the peace in the locus in quo. [1903 c 92 § 7; RRS § 9317, part. Formerly RCW 58.12.070, part.]

**58.12.070 Appeals to superior court—Manner and form.** Such appeals shall be taken in the same manner and form as appeals from justices of the peace. [1903 c 92 § 8; RRS § 9317, part. FORMER PART OF SECTION: 1903 c 92 § 7; RRS § 9317, part, now codified as RCW 58.12.065.]

*Appeals, justice courts: Chapter 12.36 RCW.*

**58.12.080 Construction of chapter.** Nothing in this chapter contained shall in any way change, limit or affect the power now vested in a board of county commissioners or city council to vacate streets and alleys and parts of streets and alleys. [1903 c 92 § 9; RRS § 9318.]

*Vacation of city streets or alleys: Chapter 35.79 RCW.*

## Chapter 58.17

### PLATS—SUBDIVISIONS—DEDICATIONS

Sections	
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58.17.910	Severability—1969 ex.s. c 271.
58.17.920	Effective date and application of 1974 1st ex.s. c 134.

**58.17.010 Purpose.** The purpose of this chapter is to regulate the subdivision of land and to promote the public health, safety and general welfare in accordance with standards established by the state to prevent the overcrowding of land; to lessen congestion in the streets and highways; to provide for adequate light and air; to facilitate adequate provision for water, sewerage, parks and recreation areas, sites for schools and school-grounds and other public requirements; to provide for proper ingress and egress; and to require uniform monumenting of land subdivisions and conveyancing by accurate legal description. [1969 ex.s. c 271 § 1.]

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

**58.17.020 Definitions.** As used in this chapter, unless the context or subject matter clearly requires otherwise, the following words or phrases shall have the following meanings:

(1) "Subdivision" is the division of land into five or more lots, tracts, parcels, sites or divisions for the purpose of sale or lease and shall include all resubdivision of land.

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

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

(4) "Preliminary plat" is a neat and approximate drawing of a proposed subdivision showing the general layout of streets and alleys, lots, blocks, and restrictive covenants to be applicable to the subdivision, and other elements of a plat or subdivision which shall furnish a basis for the approval or disapproval of the general layout of a subdivision.

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

(6) "Short subdivision" is the division of land into four or less lots, tracts, parcels, sites or subdivisions for the purpose of sale or lease.

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

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

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

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

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

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

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

(14) "County commissioner" shall be as defined in chapter 36.32 RCW or the body assigned such duties under a county charter. [1969 ex.s. c 271 § 2.]

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

**58.17.040 Provisions inapplicable, when.** The provisions of this chapter shall not apply to:

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

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

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

(5) A division for the purpose of lease when no residential structure other than mobile homes or travel trailers are permitted to be placed upon the land and a local government has approved a binding site plan for the use of the land in accordance with local regulations. The term "site plan" means a drawing to a scale specified by local ordinance and which: (a) Identifies and shows the areas and locations of all streets, roads, improvements, utilities, open spaces, and any other matters specified by local regulations; and (b) contains inscriptions or attachments setting forth such appropriate limitations and conditions for the use of the land as are established by the local government body having authority to approve the site plan. A site plan approved by a local government body shall not be "binding" under this subsection unless development in conformity to

the site plan is enforceable under a local ordinance. [1974 1st ex.s. c 134 § 2; 1969 ex.s. c 271 § 4.]

**Reviser's note:** Subsection (4) of this section was vetoed.

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

**58.17.060 Short plats and short subdivisions—Summary approval—Regulations—Requirements.** The legislative body of a city, town, or county shall adopt regulations and procedures, and appoint administrative personnel for the summary approval of short plats and short subdivisions, or revision thereof. Such regulations shall be adopted by ordinance and may contain wholly different requirements than those governing the approval of preliminary and final plats of subdivisions and may require surveys and monumentations and shall require filing of a short plat for record in the office of the county auditor: *Provided*, That such regulations must contain a requirement that land in short subdivisions may not be further divided in any manner within a period of five years without the filing of a final plat: *Provided further*, That such regulations are not required to contain a penalty clause as provided in RCW 36.32.120 and may provide for wholly injunctive relief. [1974 1st ex.s. c 134 § 3; 1969 ex.s. c 271 § 6.]

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

**58.17.070 Preliminary plat of subdivisions and dedications—Submission for approval.** A preliminary plat of proposed subdivisions and dedications of land shall be submitted for approval to the legislative body of the city, town, or county within which the plat is situated. [1969 ex.s. c 271 § 7.]

**58.17.080 Filing of preliminary plat.** Notice of the filing of a preliminary plat of a proposed subdivision adjacent to or within one mile of the municipal boundaries of a city or town, or which contemplates the use of any city or town utilities shall be given to the appropriate city or town authorities. Any notice required by this chapter shall include the hour and location of the hearing and a description of the property to be platted. Notice of the filing of a preliminary plat of a proposed subdivision located in a city or town and adjoining the municipal boundaries thereof shall be given to appropriate county officials. Notice of the filing of a preliminary plat of a proposed subdivision located adjacent to the right-of-way of a state highway shall be given to the state department of highways. [1969 ex.s. c 271 § 8.]

**58.17.090 Notice of public hearing.** Upon receipt of an application for preliminary plat approval the administrative officer charged by ordinance with responsibility

for administration of regulations pertaining to platting and subdivisions shall set a date for a public hearing. Notice of such hearing shall be given by publication of at least one notice not less than ten days prior to the hearing in a newspaper of general circulation within the county. Additional notice of such hearing shall be given by at least one other method which may include mailing to adjacent landowners, posting on the property, or in any manner local authorities deem necessary to notify adjacent landowners and the public. All hearings shall be public. All hearing notices shall include a legal description of the location of the proposed subdivision and either a vicinity location sketch or a location description in nonlegal language. [1974 1st ex.s. c 134 § 4; 1969 ex.s. c 271 § 9.]

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

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

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

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

**58.17.110 Approval or disapproval of subdivision and dedication—Factors to be considered—Finding—Release from damages.** The city, town, or county legislative body shall inquire into the public use and interest proposed to be served by the establishment of the subdivision and dedication. It shall determine if appropriate provisions are made for, but not limited to, the public health, safety, and general welfare, for open spaces, drainage ways, streets, alleys, other public ways, water supplies, sanitary wastes, parks, playgrounds, sites for schools and schoolgrounds, and shall consider all other relevant facts and determine whether the public interest will be served by the subdivision and dedication. If it finds that the proposed plat makes appropriate provisions for the public health, safety, and general welfare and for such open spaces, drainage ways, streets, alleys, other public ways, water supplies, sanitary wastes, parks, playgrounds, sites for schools and schoolgrounds and that the public use and interest will be served by the platting of such subdivision, then it shall be approved. If it finds that the proposed plat does not make such appropriate provisions or that the public use and interest will not be served, then the legislative body may disapprove the proposed plat. Dedication of land to any public body, may be required as a condition of subdivision approval and shall be clearly shown on the final plat. The legislative body shall not as a condition to the approval of any plat require a release from damages to be procured from other property owners. [1974 1st ex.s. c 134 § 5; 1969 ex.s. c 271 § 11.]

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

No plat shall be approved by any city, town, or county legislative authority covering any land situated in a flood control zone as provided in chapter 86.16 RCW without the prior written approval of the department of ecology of the state of Washington. [1974 1st ex.s. c 134 § 6; 1969 ex.s. c 271 § 12.]

**58.17.130 Bond in lieu of actual construction of improvements prior to approval of final plat—Bond or security to assure successful operation of improvements.** Local regulations shall provide that in lieu of the completion of the actual construction of any required improvements prior to the approval of a final plat, the city, town, or county legislative body may accept a bond, in an amount and with surety and conditions satisfactory to it, or other secure method, providing for and securing to the municipality the actual construction and installation of such improvements within a period specified by the city, town, or county legislative body and expressed in the bonds. In addition, local regulations may provide for methods of security, including the

posting of a bond securing to the municipality the successful operation of improvements for an appropriate period of time up to two years after final approval. The municipality is hereby granted the power to enforce bonds authorized under this section by all appropriate legal and equitable remedies. Such local regulations may provide that the improvements such as structures, sewers, and water systems shall be designed and certified by or under the supervision of a registered civil engineer prior to the acceptance of such improvements. [1974 1st ex.s. c 134 § 7; 1969 ex.s. c 271 § 13.]

**58.17.140 Time limitation for approval or disapproval of plats—Extensions.** Preliminary plats of any proposed subdivision and dedication shall be approved, disapproved, or returned to the applicant for modification or correction within ninety days from date of filing thereof unless the applicant consents to an extension of such time period: *Provided*, That if an environmental impact statement is required as provided in RCW 43.21C.030, the ninety day period shall not include the time spent preparing and circulating the environmental impact statement by the local government agency. Final plats and short plats shall be approved, disapproved, or returned to the applicant within thirty days from the date of filing thereof, unless the applicant consents to an extension of such time period. Ordinances may provide for the expiration of approval given to any preliminary plats. [1974 1st ex.s. c 134 § 8; 1969 ex.s. c 271 § 14.]

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

- (1) Local health department as to the adequacy of the proposed means of sewage disposal and water supply;
- (2) Local planning agency or commission, charged with the responsibility of reviewing plats and subdivisions, as to compliance with all terms of the preliminary approval of the proposed plat subdivision or dedication;
- (3) City, town or county engineer. [1969 ex.s. c 271 § 15.]

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

- (1) Contain a statement of approval from the city, town or county licensed road engineer or by a licensed engineer acting on behalf of the city, town or county as to the survey data, the layout of streets, alleys and other rights of way, design of bridges, sewage and water systems, and other structures;
- (2) Be accompanied by a complete survey of the section or sections in which the plat or replat is located, or as much thereof as may be necessary to properly orient the plat within such section or sections. The plat and section survey shall be submitted with complete field



and computation notes showing the original or reestablished corners with descriptions of the same and the actual traverse showing error of closure and method of balancing. A sketch showing all distances, angles and calculations required to determine corners and distances of the plat shall accompany this data. The allowable error of closure shall not exceed one foot in five thousand feet.

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

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

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

**58.17.165 Certificate giving description and statement of owners must accompany final plat—Dedication, certificate requirements if plat contains—Waiver.** Every final plat or short plat of a subdivision or short subdivision filed for record must contain a certificate giving a full and correct description of the lands divided as they appear on the plat or short plat, including a statement that the subdivision or short subdivision has been made with the free consent and in accordance with the desires of the owner or owners. If the plat or short plat includes a dedication, the certificate shall also contain the dedication of all streets and other areas to the public, and individual or individuals, religious society or societies or to any corporation, public or private as shown on the plat or short plat and a waiver of all claims for damages against any governmental authority which may be occasioned to the adjacent land by the established construction, drainage and maintenance of said road. Said certificate shall be signed and acknowledged before a notary public by all parties having any interest in the lands subdivided.

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

An offer of dedication may include a waiver of right of direct access to any street from any property, and if the dedication is accepted, any such waiver is effective. Such waiver may be required by local authorities as a condition of approval. Roads not dedicated to the public must be clearly marked on the face of the plat. Any dedication, donation or grant as shown on the face of the plat shall be considered to all intents and purposes, as a quitclaim deed to the said donee or donees, grantee

or grantees for his, her or their use for the purpose intended by the donors or grantors as aforesaid. [1969 ex.s. c 271 § 30.]

**58.17.170 Written approval of subdivision—Original of final plat to be filed—Copies.** When the legislative body of the city, town or county finds that the public use and interest will be served by the proposed subdivision, and that said subdivision meets the requirements of this chapter and any local regulations adopted pursuant thereto, it shall suitably inscribe and execute its written approval on the face of the plat. The original of said final plat shall be filed for record with the county auditor. One reproducible copy shall be furnished to the city, town or county engineer. One paper copy shall be filed with the county assessor. Paper copies shall be provided to such other agencies as may be required by ordinance. Any lots in a final plat filed for record shall be a valid land use notwithstanding any change in zoning laws for a period of five years from the date of filing. [1969 ex.s. c 271 § 17.]

**58.17.180 Review of decision.** Any decision approving or disapproving any plat shall be reviewable for unlawful, arbitrary, capricious or corrupt action or nonaction by writ of review before the superior court of the county in which such matter is pending. The action may be brought by any property owner in the city, town or county having jurisdiction, who deems himself aggrieved thereby: *Provided*, That application for a writ of review shall be made to the court within thirty days from any decision so to be reviewed. The cost of transcription of all records ordered certified by the court for such review shall be borne by the appellant. [1969 ex.s. c 271 § 18.]

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

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

the person, firm, corporation or agent selling or transferring the property. [1969 ex.s. c 271 § 20.]

**58.17.210 Building, septic tank or other development permits not to be issued for land divided in violation of chapter or regulations—Exceptions—Damages—Rescission by purchaser.** No building permit, septic tank permit, or other development permit, shall be issued for any lot, tract, or parcel of land divided in violation of this chapter or local regulations adopted pursuant thereto unless the authority authorized to issue such permit finds that the public interest will not be adversely affected thereby. The prohibition contained in this section shall not apply to an innocent purchaser for value without actual notice. All purchasers' or transferees' property shall comply with provisions of this chapter and each purchaser or transferee may recover his damages from any person, firm, corporation, or agent selling or transferring land in violation of this chapter or local regulations adopted pursuant thereto, including any amount reasonably spent as a result of inability to obtain any development permit and spent to conform to the requirements of this chapter as well as cost of investigation, suit, and reasonable attorneys' fees occasioned thereby. Such purchaser or transferee may as an alternative to conforming his property to these requirements, rescind the sale or transfer and recover costs of investigation, suit, and reasonable attorneys' fees occasioned thereby. [1974 1st ex.s. c 134 § 10; 1969 ex.s. c 271 § 21.]

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

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

**58.17.240 Permanent control monuments.** Except for subdivisions excluded under the provisions of RCW 58.17.040, as now or hereafter amended, permanent control monuments shall be established at each and every controlling corner on the boundaries of the parcel of land being subdivided. The local authority shall determine the number and location of permanent control monuments within the plat, if any. [1974 1st ex.s. c 134 § 11; 1969 ex.s. c 271 § 24.]

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

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

**58.17.270 Submission of local subdivision regulations to planning and community affairs agency.** In order that there may be current and readily available information available for the public concerning subdivision regulations, all city, town and county legislative bodies shall submit proposed ordinances and amendments to the state planning and community affairs agency thirty days prior to final adoption for agency review and comparison. [1969 ex.s. c 271 § 28.]

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

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

**58.17.300 Violations—Penalties.** Any person, firm, corporation, or association or any agent of any person, firm, corporation, or association who violates any provision of this chapter or any local regulations adopted pursuant thereto relating to the sale, offer for sale, lease, or transfer of any lot, tract or parcel of land, shall be guilty of a gross misdemeanor and each sale, offer for sale, lease or transfer of each separate lot, tract, or parcel of land in violation of any provision of this chapter or any local regulation adopted pursuant thereto, shall

be deemed a separate and distinct offense. [1969 ex.s. c 271 § 32.]

**58.17.310 Approval of plat within irrigation district without provision for irrigation water right of way prohibited.** In addition to any other requirements imposed by the provisions of this chapter, the legislative authority of any city, town, or county shall not approve a short plat or final plat, as defined in RCW 58.17.020, for any subdivision, short subdivision, lot, tract, parcel, or site which lies in whole or in part in an irrigation district organized pursuant to chapter 87.03 RCW unless there has been provided an irrigation water right of way for each parcel of land in such district and such rights of way shall be evidenced by the respective plats submitted for final approval to the appropriate legislative authority. Compliance with the requirements of this section together with all other applicable provisions of this chapter shall be a prerequisite, within the expressed purpose of this chapter, to any sale, lease, or development of land in this state. [1973 c 150 § 2.]

**58.17.320 Compliance with chapter and local regulations—Enforcement.** Whenever land within a subdivision granted final approval is used in a manner or for a purpose which violates any provision of this chapter, any provision of the local subdivision regulations, or any term or condition of plat approval prescribed for the plat by the local government, then the prosecuting attorney, or the attorney general if the prosecuting attorney shall fail to act, may commence an action to restrain and enjoin such use and compel compliance with the provisions of this chapter or the local regulations, or with such terms or conditions. The costs of such action may be taxed against the violator. [1974 1st ex.s. c 134 § 13.]

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

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

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

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

**\*Reviser's note:** "this 1974 amendatory act" [1974 1st ex.s. c 134] consists of amendments to RCW 58.17.030, 58.17.040, 58.17.060, 58.17.090, 58.17.110–58.17.140, 58.17.210, 58.17.240, and to RCW 58.17.065, 58.17.320 and 58.17.920.

**Chapter 58.18  
ASSESSOR'S PLATS**

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

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

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

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

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

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

(5) Each dedicated plat after \*the effective date of this act shall be submitted to the county assessor of the county wherein the plat is located, for the sole purpose of assignment of parcel, tract, block and or lot numbers and the county auditor shall not accept any such plat for filing unless the said plat carries a signed affidavit from the assessor to this effect, and a statement to the effect that the name of the plat shall be number ----- in the county of ----- [1961 c 262 § 1.]

**\*Reviser's note:** "the effective date of this act" was midnight June 7, 1961, see preface 1961 session laws.

**Chapter 58.19  
LAND DEVELOPMENT ACT**

Sections  
58.19.010 Purpose.  
58.19.020 Definitions.  
58.19.030 Exemptions from chapter.  
58.19.040 Waiver.  
58.19.050 Registration required—Revocation of purchase contract.  
58.19.060 Application for registration—Contents.  
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58.19.080 Requirements enumerated—Examination.  
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- 58.19.130 Public offering statement form—Type and style restriction.
- 58.19.140 Public offering statement—Promotional use, distribution restriction—Holding out that state or employees, etc., approve development prohibited.
- 58.19.150 Public offering statement—False, misleading or deceptive—Suspension—Procedure.
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- 58.19.170 Public offering statement—Copies to be given prospective purchasers.
- 58.19.180 Unlawful to sell lots or parcels subject to blanket encumbrance which does not provide purchaser can obtain clear title—Alternatives.
- 58.19.190 False advertising—Finding—Notice—Order—Hearing.
- 58.19.200 Investigations of violations—Procedure.
- 58.19.210 Violations—Cease and desist orders—Injunctions.
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- 58.19.230 Suits by or against developer—Notice to director.
- 58.19.240 Judicial review.
- 58.19.250 Rules and regulations.
- 58.19.260 Additional powers and duties of director.
- 58.19.270 Violations deemed unfair practice subject to chapter 19.86 RCW.
- 58.19.280 Jurisdiction of superior courts.
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- 58.19.300 Hazardous conditions—Notice.
- 58.19.900 Persons selling land on effective date—Grace period for compliance.
- 58.19.910 Prior developments—Exemptions.
- 58.19.920 Liberal construction.
- 58.19.930 Effective date—1973 1st ex.s. c 12.
- 58.19.940 Short title.
- 58.19.950 Severability—1973 1st ex.s. c 12.

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

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

(1) "Blanket encumbrance" shall mean a trust deed, mortgage, mechanic's lien, or any other lien or encumbrance, securing or evidencing the payment of money and affecting the land to be developed or affecting more than one lot or parcel of developed land, or an agreement affecting more than one such lot or parcel by

which the developer holds said development under option, contract, sale, or trust agreement. The term shall not include taxes and assessments levied by a public authority.

(2) "Director" means the director of the department of motor vehicles or his authorized designee.

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

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

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

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

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

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

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

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

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

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

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

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

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

(e) To any person who acquires such lot, parcel, unit or interest therein for the purpose of engaging in the

business of constructing residential, commercial, or industrial buildings or for the purpose of resale or lease or other disposition of such lots to persons engaged in such business or businesses;

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

(g) Pursuant to court order; or

(h) As cemetery lots or interests.

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

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

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

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

(d) Offers or dispositions of securities currently registered with the division of securities of the department of motor vehicles;

(e) Offers or dispositions of any interest in oil, gas, or other minerals or any royalty interest therein if the offers or dispositions of such interests are regulated as securities by the United States or by the division of securities of the department of motor vehicles. [1973 1st ex.s. c 12 § 3.]

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

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

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

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

**58.19.060 Application for registration—Contents.**

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

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

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

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

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

(5) A statement of the existing provisions for access, sewage disposal, potable water, and other public utilities in the development; a statement of the improvements to be installed, how they are going to be financed, the schedule for their completion; and a statement as to the provision for improvement maintenance. The statements required in this subsection shall include certificates from the appropriate governmental authorities certifying that the applicant has complied with all local health and planning and state and local subdivision requirements;

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

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

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

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

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

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

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

(13) The proposed public offering statement;

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

**58.19.070 Public offering statement—Contents.**

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

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

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

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

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

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

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

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

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

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

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

(3) The advertising material and the general promotional plan are not false, misleading, or deceptive, afford full and fair disclosure, and comply with the

standards prescribed by the director in its rules and regulations;

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

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

**58.19.090 Registration or rejection—Order—**

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

(2) If the director affirmatively determines, upon inquiry and examination that the requirements of RCW 58.19.080 have been met, he shall enter an order registering the development and shall designate the form of the public offering statement.

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

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

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

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

Where a developer satisfies items (a) and (b) above, the federal property report for the development shall

qualify and be accepted as the public offering statement under this chapter.

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

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

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

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

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

**58.19.120 Report of changes required—Amendments.** The developer shall immediately report to the director any material changes in the information contained in his application for registration. No change in the substance of the promotional plan or plan of disposition or completion of the development may be made after registration without notifying the director and without making appropriate amendment of the public offering statement. A public offering statement is not current unless it incorporates all amendments. [1973 1st ex.s. c 12 § 12.]

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

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

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

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

**58.19.160 Public offering statement—Copies available to public.** A copy of the public offering statement issued on land within a development covered by this chapter shall be given by the director, upon oral or written request, to any member of the public. [1973 1st ex.s. c 12 § 16.]

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

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

(1) The developer shall deposit in an escrow depository acceptable to the director: In cases where the blanket encumbrance does not provide for partial release, all or such portions of the money paid or advanced by the purchaser on any such lot or parcel



within said development as the director shall determine to be sufficient to protect the interest of the purchaser; or in cases where the blanket encumbrance provides for partial releases thereof which are not unconditional, the developer shall deposit, at such time as the balance due to the developer from such purchasers is equal to the sum necessary to procure a release of such lots or parcels contracted for from the lien of such blanket encumbrance, all of the sums thereafter received from such purchasers until either:

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

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

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

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

(3) A bond to the state of Washington or such other proof of financial responsibility is furnished to the director for the benefit and protection of purchasers of such lots or parcels in such an amount and subject to such terms, as may be approved by the director, which shall provide for the return of moneys paid or advanced by any purchaser on account of a sale of any such lot or parcel if a proper release from such blanket encumbrance is not obtained: *Provided*, That if it should be determined that such purchaser, by reason of default, or otherwise, is not entitled to the return of such moneys or any portion thereof, such bond or other proof of financial responsibility shall be exonerated to the extent and in the amount thereof. The amount of the bond or other proof of financial responsibility may be increased or decreased or a bond may be waived from time to time as the director shall determine. [1973 1st ex.s. c 12 § 18.]

**58.19.190 False advertising—Finding—Notice—Order—Hearing.** No person shall publish in this state any advertisement concerning a development subject to the registration requirements of this chapter after the director finds that the advertisement contains any statements that are false, misleading, or deceptive and so notifies the person in writing. Such notification may be given summarily without notice or hearing. At any time after the issuance of a notification under this section the person desiring to use the advertisement may in writing request the order be rescinded. Upon receipt of such a written request, the matter shall be set down for hearing to commence within fourteen days after such receipt unless the person making the request consents to a later date. After such hearing, which shall be conducted in accordance with the provisions of the Administrative Procedure Act, chapter 34.04 RCW, the director shall determine whether to affirm and to continue or to rescind such order and shall have all powers granted under such act. [1973 1st ex.s. c 12 § 19.]

**58.19.200 Investigations of violations—Procedure.**

(1) The director may:

(a) Make necessary public or private investigations within or outside of this state to determine whether any person has violated or is about to violate this chapter or any rule, regulation, or order hereunder, or to aid in the enforcement of this chapter or in the prescribing of rules and forms hereunder;

(b) Require or permit any person to file a statement in writing, under oath or otherwise as the director determines, as to all facts and circumstances concerning the matter to be investigated.

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

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

(4) Except as otherwise provided in this chapter, all proceedings under this chapter shall be in accordance with the Administrative Procedure Act, chapter 34.04 RCW. [1973 1st ex.s. c 12 § 20.]

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

(a) Violated any provision of this chapter;

(b) Directly or through an agent or employee engaged in any false, deceptive, or misleading advertising, promotional, or sales methods to offer or dispose of an interest in developed lands;

(c) Made any substantial change in the plan of disposition and completion of the development subsequent to the order of registration without obtaining prior written approval from the director;

(d) Disposed of any interest in a development required to be registered under this chapter which has not been so registered with the director;

(e) Violated any lawful order, rule or regulation of the director; he may issue an order requiring the person to cease and desist from the unlawful practice and to take such affirmative action as in the judgment of the director will carry out the purposes of this chapter.

(2) If the director makes a finding of fact in writing that the public interest will be irreparably harmed by delay in issuing an order, he may issue a temporary cease and desist order. Prior to issuing the temporary cease and desist order, the director whenever possible by telephone or otherwise shall give notice of the proposal to issue a temporary cease and desist order to the person. Every temporary cease and desist order shall

include in its terms a provision that upon request a hearing will be held to determine whether or not the order becomes permanent.

(3) If it appears that a person has engaged or is about to engage in an act or practice constituting a violation of a provision of this chapter, or a rule or order hereunder, the director, with or without prior administrative proceedings, may bring an action in the superior court to enjoin the acts or practices and to enforce compliance with this chapter or any rule, regulation, or order hereunder. Upon proper showing, injunctive relief or temporary restraining orders shall be granted, and a receiver or conservator may be appointed. The director shall not be required to post a bond in any court proceedings. [1973 1st ex.s. c 12 § 21.]

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

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

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

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

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

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

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

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

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

**58.19.240 Judicial review.** Proceedings for judicial review shall be in accordance with the provisions of the Administrative Procedure Act, chapter 34.04 RCW. [1973 1st ex.s. c 12 § 24.]

**58.19.250 Rules and regulations.** The director shall prescribe reasonable rules and regulations in order to implement this chapter and such rules and regulations shall be adopted, amended, or repealed in compliance

with the Administrative Procedure Act, chapter 34.04 RCW. [1973 1st ex.s. c 12 § 25.]

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

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

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

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

(4) Accept grants in aid from any source;

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

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

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

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

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

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

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

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

(1) Except as provided in subsection (3) of this section, the fee which shall accompany each application for registration shall be computed according to the number of units (meaning lots, parcels, or interests) in the development as provided in the following schedule:

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

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

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

**58.19.300 Hazardous conditions—Notice.** If, after disposition of all or any portion of a development which is covered by this chapter, a condition constituting a hazard is discovered on or around the development, the developer or government agency discovering such condition shall notify the director immediately. After receiving such notice, the director shall forthwith

take all steps necessary to notify the owners of the affected lands either by transmitting notice through the appropriate county assessor's office or such other steps as might reasonably give actual notice to the owners. [1973 1st ex.s. c 12 § 30.]

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

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

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

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

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

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

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

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

**Chapter 58.20  
WASHINGTON COORDINATE SYSTEM**

Sections	
58.20.010	United States plane coordinate adopted—Zones.
58.20.020	Designation of system by zones.
58.20.030	X and Y coordinates.

- 58.20.040 Tract in both zones, how described.  
 58.20.050 Zones defined.  
 58.20.060 Recording coordinates—Conditions.  
 58.20.070 Use of term limited.  
 58.20.080 United States survey to prevail.  
 58.20.090 Construction of chapter.  
 58.20.900 Severability—1945 c 168.

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

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

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

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

**58.20.020 Designation of system by zones.** As established for use in the north zone, the Washington coordinate system shall be named, and in any land description in which it is used it shall be designated, the "Washington coordinate system, north zone".

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

**58.20.030 X and Y coordinates.** The plane coordinates of a point on the earth's surface, to be used in expressing the position or location of such point in the appropriate zone of this system, shall consist of two distances, expressed in feet and decimals of a foot. One of these distances, to be known as the "x-coordinate", shall give the position in an east-and-west direction; the other, to be known as the "y-coordinate", shall give the position in a north-and-south direction. These coordinates shall be made to depend upon and conform to the coordinates, on the Washington coordinate system, of the triangulation and traverse stations of the United States coast and geodetic survey within the state of Washington, as those coordinates have been determined by the said survey. [1945 c 168 § 3; Rem. Supp. 1945 § 10726c.]

**58.20.040 Tract in both zones, how described.** When any tract of land to be defined by a single description extends from one into the other of the above coordinate zones, the positions of all points on its boundaries may

be referred to either of said zones, the zone which is used being specifically named in the description. [1945 c 168 § 4; Rem. Supp. 1945 § 10726d.]

**58.20.050 Zones defined.** For purposes of more precisely defining the Washington coordinate system, the following definition by the United States coast and geodetic survey is adopted:

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

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

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

**58.20.060 Recording coordinates—Conditions.** No coordinates based on the Washington coordinate system, purporting to define the position of a point on a land boundary, shall be presented to be recorded in any public land records or deed records unless such point is within one-half mile of a triangulation or traverse station established in conformity with the standards prescribed in RCW 58.20.050: *Provided*, That said one-half mile limitation may be modified by a duly authorized state agency to meet local conditions. [1945 c 168 § 6; Rem. Supp. 1945 § 10726f.]

**58.20.070 Use of term limited.** The use of the term "Washington coordinate system" on any map, report of survey, or other document, shall be limited to coordinates based on the Washington coordinate system as defined in this chapter. [1945 c 168 § 7; Rem. Supp. 1945 § 10726g.]

**58.20.080 United States survey to prevail.** Whenever coordinates based on the Washington coordinate system are used to describe any tract of land which in the same document is also described by reference to any subdivision, line or corner of the United States public land surveys, the description by coordinates shall be construed as supplemental to the basic description of

such subdivision, line, or corner contained in the official plats and field notes filed of record, and in the event of any conflict the description by reference to the subdivision, line, or corner of the United States public land surveys shall prevail over the description by coordinates. [1945 c 168 § 8; Rem. Supp. 1945 § 10726h.]

**58.20.090 Construction of chapter.** Nothing contained in this chapter shall require any purchaser or mortgagee to rely on a description, any part of which depends exclusively upon the Washington coordinate system. [1945 c 168 § 9; Rem. Supp. 1945 § 10726i.]

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

## Chapter 58.22 STATE BASE MAPPING SYSTEM

### Sections

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

**58.22.010 Legislative intent.** It is the intent of the legislature to establish a coordinated system of state base maps to assist all levels of government to more effectively provide the information to meet their responsibilities for resource planning and management.

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

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

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

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

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

All features and symbols added to the quadrangle separates shall meet as nearly as is practical national

map accuracy standards and specifications as defined by the United States geological survey for their fifteen minute and seven and one-half minute quadrangle map separates.

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

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

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

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

The department shall coordinate all requests for the use of United States geological survey quadrangle map separates and shall provide advice on how to best use the system.

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

## Chapter 58.24 STATE AGENCY FOR SURVEYS AND MAPS

### Sections

58.24.010	Declaration of necessity.
58.24.020	Official agency designated—Advisory board.
58.24.030	Official agency designated—Powers—Cooperation and advise—Purposes.
58.24.040	Official agency designated—Powers—Standards, maps, records, report, temporary removal of boundary marks or monuments.
58.24.050	Employees—Licensed engineers or surveyors.

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

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

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

*Flood control districts—1937 act—Boundaries, how defined—Map: RCW 86.09.094, 86.09.097.*

*Flood control zones by state—United States maps as basis of control zones: RCW 86.16.050.*

*Geological survey: Chapter 43.27A RCW.*

*Irrigation districts—Map of district: RCW 87.03.775.*

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

*Public inspection: RCW 79.01.708.*

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

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

*Restoration of United States survey markers: RCW 47.36.010.*

*State highways and toll bridges—Maps, plans, etc.—Filing: RCW 47.28.040.*

*State highways and toll bridges—Copy of map, plans, etc.—Fee: RCW 47.28.060.*

**58.24.010 Declaration of necessity.** It is the responsibility of the state to provide a means for the identification and preservation of survey points for the description of common land boundaries in the interest of the people of the state. There is an immediate necessity for the adoption of a system of permanent reference as to boundary monuments. There is now no recognized agency for the establishment of survey points for the definition of land boundaries and a need for such an agency to coordinate and publish dependable surveys now in existence where the record has been obscured. [1951 c 224 § 2.]

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

**58.24.020 Official agency designated—Advisory board.** The engineering department of the department of public lands is hereby designated as the official agency for surveys and maps. The commissioner of public lands shall appoint an advisory board of five members, the majority of whom shall be registered professional engineers or land surveyors, who shall serve at the pleasure of the commissioner. Members of the board shall serve without salary but are to receive actual expenses not to exceed fifteen dollars per diem while actively engaged in the discharge of their duties. [1951 c 224 § 3.]

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

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

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

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

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

(4) For promotion of the use of the level net as established by the United States coast and geodetic survey. [1951 c 224 § 4.]

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

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

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

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

(4) Supervise the sale of maps and such publications as may come into the possession of the division of surveys and maps. Revenue derived from the sale thereof shall revert to the general fund;

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

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

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

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

**\*Reviser's note:** "this act" (1951 c 224) is codified in this chapter 58.24 RCW and RCW 58.16.100.

**Chapter 58.28**  
**TOWNSITES ON UNITED STATES LAND—**  
**ACQUISITION OF LAND BY INHABITANTS**  
**THEREOF**

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## INCORPORATED TOWNS ON UNITED STATES LAND

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

**58.28.020 Councils' duties when townsites on United States land—Survey and plat.** Said council must cause a survey to be made by some competent person, of the lands which the inhabitants of said city or town may be entitled to claim under the said act of congress, located according to the legal subdivisions of the sections and by the section lines of the United States, and the same must be distinctly marked by suitable monuments; such survey must further particularly designate all streets, roads, lanes and alleys, public squares, churches, school lots, cemeteries, commons and levees as the same exist and have been heretofore dedicated in any manner to public use, and by measurement the precise boundaries and area of each, and every lot or parcel of land and premises claimed by any person, corporations or associations within said city or townsite must, as far as known by the surveyor, be designated on the plat, showing the name or names of the possessor or occupants and claimants, and in case of any disputed claim



as to lots, lands, premises or boundaries the said surveyor, if the same be demanded by any person, shall designate the lines in different color from the body of the plat of such part of any premises so disputed or claimed adversely. [1909 c 231 § 2; RRS § 11486. Prior: 1888 c 124 pp 216–220.]

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

**58.28.040 Councils' duties when townsites on United States land—Survey, notice of—Bids for—Franchises continued.** Before proceeding to make such survey, at least ten days' notice thereof must be given, by posting within the limits of such city or townsite, not less than five written or printed notices of the time when such survey shall commence, or by publication thereof in a newspaper published in the city or town, if one there be. The survey of said city or town lands must be made to the best advantage and at the least expense to the holders, claimants and occupants thereof; and the council is hereby authorized and directed to receive bids for such surveying, and to let the same by contract to the lowest competent bidder: *Provided*, That the possessors, owners and claimants of water works, electric light, telegraph, telephone, pipe or power lines, sewers and like or similar property located in such roads, streets, alleys and other public places in such cities and towns shall be maintained and protected in the same, as the same shall exist at the time of the entry in the United States land office of the land embracing such city or town, and the right to continue to use such property for the purposes for which said property was intended, is hereby acknowledged and confirmed. [1909 c 231 § 4; RRS § 11488. Prior: 1888 c 124 pp 216–220.]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

of said city or townsite as will fully exhibit the particular lot or parcel of land so claimed, and every such claimant, at the time of filing such affidavit, must pay to such clerk such sum of money as said clerk shall certify to be due for the assessment mentioned in RCW 58.28-.090, together with the further sum of four dollars, to be appropriated to the payment of expenses incurred in carrying out the provisions of this chapter, and the said clerk must thereupon give to such claimant a certificate, attested by the corporate seal, containing a description of the lot or parcel of land claimed, and setting forth the amounts paid thereon by such claimant. The council of every such city or town must procure a bound book, wherein the clerk must make proper entries of the substantial matters contained in every such certificate issued by him, numbering the same in consecutive order, setting forth the name of the claimant or claimants in full, date of issue, and description of lot or lands claimed. [1909 c 231 § 10; RRS § 11494. Prior: 1888 c 124 pp 216–220.]

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

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

within six months after such deed shall have been filed for record in the office of the county auditor of the county where such lands are situate; nothing herein shall be construed to extend the time of limitation prescribed by law for the commencement of actions upon the possessory claim or title to real estate, when such action is barred by law at the time of the passage of this chapter. [1909 c 231 § 12; RRS § 11496. Prior: 1888 c 124 pp 216-220.]

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

**58.28.140 Conflicting claims—Procedure.** In all cases of adverse claims or disputes arising out of conflicting claims to lands or concerning boundary lines, the adverse claimants may submit the decision thereof to the council of such city or town by an agreement in writing specifying particularly the subject matter in dispute, and may agree that their decision shall be final. The council must hear the proofs, and shall order a deed to be executed or denied in accordance with the facts; but in all other cases of adverse claims, the party out of possession shall commence his action in a court of competent jurisdiction within six months after the time of filing of the patent from the United States (or a certified copy thereof), in the office of the county auditor. In case such action be commenced, the plaintiff must serve a notice of lis pendens upon the mayor, who must thereupon stay all proceedings in the matter of granting any deed to the land in dispute until the final decision in such suit; and upon presentation of a certified copy of the final judgment of such court in such action, the council must cause to be executed and delivered a deed of such premises, in accordance with the judgment, adjudging the claimant to have been an occupant of any particular lot or lots at the time of the entry of such townsite in the United States land office, or to be the successor in interest of such occupant. If in any action brought under this chapter, or under said acts of congress, the right to the ground in controversy shall not be established by either party, the court or

jury shall so find and judgment shall be entered accordingly. In such case costs shall not be allowed to either party, and neither party shall be entitled to a deed to the ground in controversy, and in such action it shall be incumbent upon each claimant to establish that he, she or it was an occupant of the ground in controversy within the meaning of the said acts of congress at the time of the entry of said townsite in the United States land office, or is the successor in interest of such occupant. [1909 c 231 § 14; RRS § 11498. Prior: 1888 c 124 pp 216-220.]

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

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

**58.28.160 Sale of unoccupied lots—Notice—Minimum price.** All lots in such city or townsite which were unoccupied at the time of the entry of said townsite in the United States land office shall be sold by the corporate authorities of such city or town, or under their direction, at public auction to the highest bidder for cash, each lot to be sold separately, and notice of such sale or sales shall be given by posting five written or printed notices in public places within said townsite, giving the time and particular place of sale, which notices must be posted for at least thirty days prior to the date of said sale, and by publishing a like notice for four consecutive weeks prior to such sale in a newspaper published in such city or town, or, if no such newspaper be published in such city or town, then in some newspaper having general circulation in such city or town, and deeds shall be given therefor to the several purchasers: *Provided*, That no such unoccupied lot shall be sold for less than five dollars in addition to an assessment equivalent to assessment provided in RCW 58.28.090, and all moneys arising from such sale, after deducting the costs and expenses of such sale or sales,

shall be placed in the treasury of such city or town. [1909 c 231 § 16; RRS § 11500. Prior: 1888 c 124 pp 216-220.]

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

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

**58.28.190 Corporate authorities to act promptly.** Such corporate authorities shall promptly execute and perform all duties imposed upon them by the provisions of this chapter. [1909 c 231 § 19; RRS § 11503. Prior: 1888 c 124 pp 216-220.]

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

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

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

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

**58.28.204 Appeals—Procedure.** See RCW 58.28.490.

#### UNINCORPORATED TOWNS ON UNITED STATES LAND

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

**58.28.220 Petition to superior court judge—Contents—Procedure.** The judge of the superior court of any county in this state, whenever he is so requested by a petition signed by not less than five residents, householders in any such unincorporated town, whose names appear upon the assessment roll for the year preceding such application in the county wherein such unincorporated town is situated—which petition shall set forth the existence, name and locality of such town, whether such town is situated on surveyed or unsurveyed lands, and if on surveyed lands an accurate description according to the government survey of the legal subdivisions sought to be entered as a government townsite must be stated; the estimated number of its inhabitants; the approximate number of separate lots or parcels of land within such townsite, and the amount of land to which they are entitled under such acts of congress—must estimate the cost of entering such land, and of the

survey, platting and recording of the same, and must endorse such estimate upon such petition, and upon receiving from any of the parties interested the amount of money mentioned in such estimate, the said judge may cause an enumeration of the inhabitants of such town to be made by some competent person, exhibiting therein the names of all persons residing in said proposed townsite and the names of occupants of lots, lands, or premises within such townsite, alphabetically arranged, verified by his oath, and cause such enumeration to be presented to such judge. [1909 c 231 § 22; RRS § 11506. Prior: 1888 c 124 pp 216–220.]

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

**58.28.240 Plats—Filing.** The plat thereof must be made in triplicate on a scale of not less than eighty feet to an inch, which must be duly certified under oath by the surveyor, one of which must be filed with the county auditor of the county wherein such unincorporated town is situated, one must be deposited in the proper United States land office, and one with such judge. These plats shall constitute public records, and must each be accompanied by a copy of the field notes, and the county auditor must make a record of such plat in a book to be kept by him for that purpose, and such county auditor must file such copy of said field notes in his office. The said surveyor must number and survey the blocks as divided by the roads, and streets opened and generally used and for which a public necessity exists, at the time of making such survey, and must number the several lots consecutively in each block, and all other parcels of land within said unincorporated town as herein provided, which said numbers must be a sufficient description of any parcel of land represented on said plats. Said survey and plat thereof shall conform as

nearly as may be to the existing rights, interest, and claims of the occupants thereof, but no lot in the center or business portion of said unincorporated town shall exceed in area four thousand two hundred feet, and no suburban lot in such unincorporated town shall exceed two acres in area. [1909 c 231 § 24; RRS § 11508. Prior: 1888 c 124 pp 216–220.]

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

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

- (1) All streets, alleys, avenues, roads and highways, and the width thereof.
- (2) All parks, squares and all other ground reserved for public uses, with the boundaries and dimensions thereof.
- (3) All lots and blocks, with their boundaries, designating such lots and blocks by numbers, and giving the dimensions of every lot.
- (4) The angles of intersection of all boundary lines of the lots and block, whenever the angle of intersection is not a right angle.
- (5) The location of all stone or iron monuments set to establish street lines.
- (6) The exterior boundaries of the piece of land so platted, giving such boundaries by true courses and distances.
- (7) The location of all section corners, or legal subdivision corners of sections within the limits of said plat.
- (8) In case no such section or subdivision corners are within the limits of the plat, it must show a connection line to some corner or initial point of the government surveys, or a government mineral monument, if there be any within one mile of such townsite. All distances marked on the plat must be in feet and decimals of a

foot. [1909 c 231 § 26; RRS § 11510. Prior: 1888 c 124 pp 216–220.]

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

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

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

**58.28.300 Assessments—Disposition—Employment of attorney authorized.** Each lot or parcel of said lands having thereon valuable improvements or buildings ordinarily used as dwellings or for business purposes, not exceeding one-tenth of one acre in area, shall be rated and assessed by the said judge at the sum of one dollar; each lot or parcel of such lands exceeding one-tenth, and not exceeding one-eighth of one acre in area, shall be rated and assessed at the sum of one dollar and five [fifty] cents; each lot or parcel of such lands exceeding in area one-eighth of one acre and not exceeding one-quarter of an acre in area, shall be rated and assessed at the sum of two dollars; and each lot or parcel of such lands exceeding one-quarter of an acre and not exceeding one-half of one acre in area, shall be rated and assessed at the sum of two dollars and fifty cents; and each lot or parcel of land so improved, exceeding one-half acre in area, shall be assessed at the rate of two dollars and fifty cents for each half an acre

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

**58.28.310 Notice of possession filed—Assessment and fee—Certificate—Judge's record.** Every person, company, corporation, or association, claimant of any town lot or parcel of land, within the limits of such townsite, must present to such judge within three months after the patent (or a certified copy thereof), from the United States has been filed in the office of the county auditor, his, her, its or their affidavit, (or by guardian or next friend where the claimant is under disability), verified in person, or by duly authorized agent or attorney, guardian or next friend, in which must be concisely stated the facts constituting the possession or right of possession of the claimant and that the claimant is entitled to the possession thereof and to a deed therefor as against all other persons or claimants, to the best of his knowledge and belief, and in which must be stated who was an occupant of such lot or parcel of land at the time of the entry of such townsite at the United States land office, to which must be attached a copy of so much of the plat of said townsite as will fully exhibit the particular lots or parcels of land so claimed; and every such claimant, at the time of presenting and filing such affidavit with said judge, must pay to such judge such sum of money as said judge shall certify to be due for the assessment mentioned in RCW 58.28.300, together with the further sum of four dollars, to be appropriated to the payment of cost and expenses incurred in carrying out the provisions of this chapter, and the said judge must thereupon give to such claimant a certificate, signed by him and attested by the seal of the superior court, containing a description of the lot or parcel of land claimed, and setting forth the amounts paid thereon by such claimant. Such judge must procure a bound book for each



unincorporated government townsite in his county wherein he must make proper entries of the substantial matters contained in such certificate issued by him, numbering the same in consecutive order, setting forth the name of the claimant or claimants in full, date of issue, and description of the lot or lands claimed. [1909 c 231 § 31; RRS § 11515. Prior: 1888 c 124 pp 216–220.]

**58.28.320 Deficiency assessment—When payable.**

If it is found that the amounts hereinbefore specified as assessments and fees for costs and expenses, prove to be insufficient to cover and defray all the necessary expenses, the said judge must estimate the deficiency and assess such deficiency pro rata upon all the lots and parcels of land in such government townsite, and declare the same upon the basis set down in RCW 58.28-.300; which additional amount, if any, may be paid by the claimant at the time when the certificate hereinbefore mentioned, or at the time when the deed of conveyance hereinafter provided for, is issued. [1909 c 231 § 32; RRS § 11516. Prior: 1888 c 124 pp 216–220.]

**58.28.330 Deed to claimants—Actions contesting title, limitations on.** At the expiration of six months after the time of filing such patent, or certified copy thereof, in the office of the county auditor, if there has been no adverse claim filed in the meantime, said judge must execute and deliver to such claimant or to his, her, its or their heirs, executor, administrator, grantee, successor or assigns a good and sufficient deed of the premises described in the application of the claimant originally filed, if proper proof shall have been made, which said deed must be signed and acknowledged by such judge as trustee, and attested by the seal of the superior court. No conveyance of any such lands made as in this chapter provided, concludes the rights of third persons; but such third persons may have their action in the premises, to determine their alleged interest in such lands, and their right to the legal title thereto, against such grantee, his, her, its or their heirs, executors, administrators, successors or assigns, to which they may deem themselves entitled, either in law or in equity; but no action for the recovery or possession of such premises, or any portion thereof, or to establish the right to the legal title thereto, must be maintained in any court against the grantee named therein, or against his, her, its or their heirs, executors, administrators, successors or assigns, unless such action shall be commenced within six months after such deed shall have been filed for record in the office of the county auditor of the county where such lands are situated; nothing herein shall be construed to extend the time of limitation prescribed by law for the commencement of actions upon a possessory claim or title to real estate, when such action is barred by law at the time of the taking effect of this chapter. [1909 c 231 § 33; RRS § 11517. Prior: 1888 c 124 pp 216–220.]

**58.28.340 Entries on mineral lands—Rights of claimants.** Townsite entries may be made by such judge on mineral lands of the United States, but no title shall

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

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

**58.28.360 Proof of right—Costs upon failure of both conflicting parties.** If in any action brought under this chapter, or under said acts of congress, the right to the ground in controversy shall not be established by either party, the court or jury shall so find and judgment shall be entered accordingly. In such case costs shall not be allowed to either party, and neither party shall be entitled to a deed to the ground in controversy, and in such action it shall be incumbent upon each claimant or claimants to establish that he, she, it or they, was or were, an occupant of the ground in controversy within the meaning of said acts of congress at the time of the entry of said townsite in the United



States land office, or is or are the successor, or successors in interest of such occupant. [1909 c 231 § 36; RRS § 11520. Prior: 1888 c 124 pp 216-220.]

*Conflicting claims*—*Procedure*: RCW 58.28.140.

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

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

**58.28.390 Sale of unoccupied lots—Notice—Minimum price.** All lots in such townsite which were unoccupied within the meaning of the said acts of congress at the time of the entry of said townsite in the United States land office shall be sold by such judge or under his direction, at public auction to the highest bidder for cash, each lot to be sold separately, and notice of such sale, or sales, shall be given by posting five written or printed notices in public places within said townsite, giving the time and particular place of sale, which notices must be posted at least thirty days prior to the date of any such sale, and by publishing a like notice for four consecutive weeks prior to any such sale in a newspaper published in such town, or if no newspaper be published in such town, then in some newspaper having general circulation in such town. And deed shall be given therefor to the several purchasers: *Provided*, That no such unoccupied lot shall be sold for less than five dollars in addition to an assessment equivalent to assessment provided for in RCW 58.28.300, and all moneys arising from such sale or sales after deducting the cost and expenses of such sale or sales shall be placed in the fund hereinbefore mentioned. [1909 c 231 § 39; RRS § 11523. Prior: 1888 c 124 pp 216-220.]

**58.28.400 Lands for school and public purposes—Expenses as charge against fund.** All school lots or parcels of land reserved or occupied for school purposes,

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

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

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

**58.28.430 Proof requisite to delivery of deed.** No deed to any lot in such unincorporated town or unincorporated government townsite entry shall be made or delivered to any alleged occupant thereof before proof shall have been made under oath, showing such claimant to have been an occupant of such lot or parcel of land within the meaning of said laws of congress at the time of the entry of such townsite at the proper United States land office, but the grantees, heirs, executors, administrators, successors in interest or assigns of such occupant of any lot, as such, may receive such deed. [1909 c 231 § 43; RRS § 11527. Prior: 1888 c 124 pp 216-220.]

**58.28.440 Platted lands declared dedicated to public use.** All streets, roads, lanes and alleys, public squares, cemeteries, parks, levees, school lots, and commons, surveyed, marked and platted, on the map of any townsite, as prescribed and directed by the provisions of this chapter, are hereby declared to be dedicated to public use, by the filing of such town plat in the office of the county auditor, and are inalienable, unless by special order of the board of commissioners of the county, so long as such town shall remain unincorporated; and if such town at any time thereafter becomes incorporated, the same becomes the property of such

town or city, and must be under the care and subject to the control of the council or other municipal authority of such town or city. [1909 c 231 § 44; RRS § 11528. Prior: 1888 c 124 pp 216–220.]

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

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

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

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

**58.28.490 Appeals—Procedure.** Appeals and writs of review may be prosecuted to the supreme court or the court of appeals from a superior court from the judgment or orders of the superior court in all cases arising under this chapter or said acts of congress as in other cases and the general statutes as to the commencement of actions, bringing the same to trial, making an entry of judgment, the taking and perfecting appeals, and the making up of the records on appeal and relating to writs of review in the superior court, court of appeals, and supreme court, and all other procedure in the superior court, court of appeals, and supreme court shall be applicable to actions under this chapter and under said acts of congress. [1971 c 81 § 127; 1909 c 231 § 49; RRS § 11533. Prior: 1888 c 124 pp 216–220.]

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

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

**58.28.520 Controversies, by whom settled—Review.** Except as hereinbefore specially provided, the city or town council in incorporated cities and towns, and the judge of the superior court, as trustee, in cases of unincorporated government townsites, are hereby expressly given power and jurisdiction to hear and determine all questions arising under this chapter and under said acts of congress and the right to ascertain who were the occupants of lots in such government townsites at the time of the entry thereof in the United States land office, and to determine from sworn testimony who are and who are not entitled to deeds of

conveyance to specific lots in such government townsite, subject to review by courts of competent jurisdiction. [1909 c 231 § 53; RRS § 11536. Prior: 1888 c 124 pp 216-220.]



# TITLE 59

## LANDLORD AND TENANT

### Chapters

- 59.04 Tenancies.
- 59.08 Default in rent of forty dollars or less.
- 59.12 Forcible entry and forcible and unlawful detainer.
- 59.16 Unlawful entry and detainer.
- 59.18 Residential Landlord–Tenant Act.

*Acknowledgments: Chapter 64.08 RCW.*  
*Action to recover real property, jury trial: RCW 4.40.060.*  
*Adverse possession: Chapter 7.28 RCW.*  
*Boundaries and plats: Title 58 RCW.*  
*Community property: Chapter 26.16 RCW.*  
*County property, sales, leases, etc.: Chapter 36.34 RCW.*  
*Crimes, trespass: Chapter 9.83 RCW.*  
*Ejectment and quieting title: Chapter 7.28 RCW.*  
*Executions, sale of short term leasehold absolute: RCW 6.24.030.*  
*Gambling on leased premises, action to recover: RCW 4.24.080 and 4.24.090.*  
*Housing authorities law: Chapter 35.82 RCW.*  
*Landlord liens on farm crops: Chapter 60.12 RCW.*  
*Landlord's lien for rent: Chapter 60.72 RCW.*  
*Mining leases: Chapter 79.01 RCW.*  
*Mortgages and trust receipts: Title 61 RCW.*  
*Nuisances: Chapter 7.48 RCW.*  
*Oil and gas leases: Chapter 79.14 RCW.*  
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*Probate, generally: Title 11 RCW.*  
*Probate, performance of decedent's contracts: Chapter 11.60 RCW.*  
*Property insurance, insurable interest: RCW 48.18.040.*  
*Public lands: Title 79 RCW.*  
*Real property and conveyances: Title 64 RCW.*  
*Recording: Chapter 65.08 RCW.*  
*Registration of land titles: Chapter 65.12 RCW.*  
*Statute of frauds: Chapter 19.36 RCW.*  
*Taxation, property: Title 84 RCW.*  
*Title insurers: Chapter 48.29 RCW.*  
*Waste and trespass: Chapter 64.12 RCW.*

### Chapter 59.04 TENANCIES

#### Sections

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

**59.04.010 Tenancies from year to year abolished except under written contract.** Tenancies from year to year are hereby abolished except when the same are created

by express written contract. Leases may be in writing or print, or partly in writing and partly in print, and shall be legal and valid for any term or period not exceeding one year, without acknowledgment, witnesses or seals. [Code 1881 § 2053; 1867 p 101 § 1; RRS § 10619.]

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

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

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

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

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

**Chapter 59.08**  
**DEFAULT IN RENT OF FORTY DOLLARS OR LESS**

## Sections

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

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

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

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

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

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

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

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

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

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

*County clerk's fees: RCW 36.18.020.*

*Sheriff's fees: RCW 36.18.040.*

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

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

**Chapter 59.12  
FORCIBLE ENTRY AND FORCIBLE AND  
UNLAWFUL DETAINER**

Sections

59.12.010	Forcible entry defined.
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59.12.230	Forcible entry and detainer—Penalty.

*Joint tenancies: Chapter 64.28 RCW.*

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

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

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

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

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

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

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

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

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

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

*Unlawful detainer defined: RCW 59.16.010.*



**59.12.035 Holding over on agricultural land, effect of.**

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

**59.12.040 Service of notice—Proof of service.**

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

the property is situated properly addressed with postage prepaid: *Provided, however*, That when service is made by mail one additional day shall be allowed before the commencement of an action based upon such notice. [1911 c 26 § 1; 1905 c 86 § 2; 1891 c 96 § 5; RRS § 814. Prior: 1890 p 75 § 4.]

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

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

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

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

**59.12.080 Summons—Contents—Service.** The summons must state the names of the parties to the proceeding, the court in which the same is brought, the nature of the action, in concise terms, and the relief sought, and also the return day; and must notify the

defendant to appear and answer within the time designated or that the relief sought will be taken against him. The summons must be directed to the defendant, and in case of summons by publication, be served at least five days before the return day designated therein. The summons must be served and returned in the same manner as summons in other actions is served and returned. [1927 c 123 § 2; 1891 c 96 § 9; RRS § 818. Prior: 1890 p 76 § 8.]

*Summons, generally: RCW 4.28.030–4.28.110.*

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

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

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

be unable to find the defendant, an agent or attorney, or a person in possession of the premises, by affixing a copy of said writ in a conspicuous place upon the premises. [1927 c 123 § 4; 1905 c 86 § 3; 1891 c 96 § 11; RRS § 820. Prior: 1890 p 77 § 10.]

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

**59.12.120 Judgment by default.** If at the time appointed in the summons the defendant do not appear and defend, the court must render judgment in favor of the plaintiff as prayed for in the complaint. [1891 c 96 § 13; RRS § 822. FORMER PART OF SECTION: 1891 c 96 § 14 now codified as RCW 59.12.121.]

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

**59.12.130 Jury—Actions given preference.** Whenever an issue of fact is presented by the pleadings it must be tried by a jury, unless such a jury be waived as in other cases. The jury shall be formed in the same manner as other trial juries in the court in which the action is pending; and in all cases actions under this chapter shall take precedence of all other civil actions. [1891 c 96 § 15; RRS § 824. Prior: 1890 p 79 § 15.]

**59.12.140 Proof in forcible entry and detainer.** On the trial of any proceeding for any forcible entry or forcible detainer the plaintiff shall only be required to show, in addition to a forcible entry complained of, that he was peaceably in the actual possession at the time of the forcible entry; or, in addition to a forcible detainer

complained of, that he was entitled to the possession at the time of the forcible detainer. [1891 c 96 § 16; RRS § 825. Prior: 1890 p 79 § 16.]

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

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

**59.12.170 Judgment—Execution.** If upon the trial the verdict of the jury or, if the case be tried without a jury, the finding of the court be in favor of the plaintiff and against the defendant, judgment shall be entered for the restitution of the premises; and if the proceeding be for unlawful detainer after neglect or failure to perform any condition or covenant of a lease or agreement under which the property is held, or after default in the payment of rent, the judgment shall also declare the forfeiture of the lease, agreement or tenancy. The jury, or the court, if the proceedings be tried without a jury, shall also assess the damages occasioned to the plaintiff by any forcible entry, or by any forcible or unlawful detainer, alleged in the complaint and proved on the trial, and, if the alleged unlawful detainer be after default in the payment of rent, find the amount of any rent due, and the judgment shall be rendered against the defendant guilty of the forcible entry, forcible detainer or unlawful detainer for twice the amount of damages thus assessed and of the rent, if any, found due. When the proceeding is for an unlawful detainer after default in the payment of rent, and the lease or agreement under which the rent is payable has not by its terms expired, execution upon the judgment shall not be issued until the expiration of five days after the entry of the judgment, within which time the tenant or any subtenant, or any mortgagee of the term, or other party interested in its continuance, may pay into court for the landlord the amount of the judgment and costs, and thereupon the judgment shall be satisfied and the tenant restored to his estate; but if payment, as herein provided, be not made within five days the judgment may be enforced for its full amount and for the possession of the premises. In all other cases the judgment may be enforced immediately. If writ of restitution shall have

been executed prior to judgment no further writ or execution for the premises shall be required. [1891 c 96 § 18; RRS § 827. Prior: 1890 p 80 § 18.]

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

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

**59.12.200 Appeal—Stay bond.** If either party feels aggrieved by the judgment he may appeal to the supreme court or the court of appeals, as in other civil actions: *Provided*, That if the defendant appealing desires a stay of proceedings pending such appeal, he shall execute and file a bond, with two or more sufficient sureties to be approved by the judge, conditioned to abide the order of the court on such appeal, and to pay all rents and other damages justly accruing to the plaintiff during the pendency of the appeal. [1971 c 81 § 128; 1891 c 96 § 22; RRS § 831. Prior: 1890 p 80 § 23.]

**59.12.210 Effect of stay bond.** When the defendant shall appeal, and shall file a bond as provided in RCW 59.12.200, all further proceedings in the case shall be stayed until the determination of said appeal and the same has been remanded to the superior court for further proceedings therein. [1891 c 96 § 23; RRS § 832. Prior: 1890 p 80 § 24.]

**59.12.220 Writ of restitution suspended pending appeal.** If a writ of restitution has been issued previous to the taking of an appeal by the defendant, and said defendant shall execute and file a bond as provided in this chapter, the clerk of the court, under the direction of the judge, shall forthwith give the appellant a certificate of the allowance of such appeal; and upon the service

of such certificate upon the officer having such writ of restitution the said officer shall forthwith cease all further proceedings by virtue of such writ; and if such writ has been completely executed the defendant shall be restored to the possession of the premises, and shall remain in possession thereof until the appeal is determined. [1891 c 96 § 24; RRS § 833. Prior: 1890 p 81 § 25.]

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

### Chapter 59.16 UNLAWFUL ENTRY AND DETAINER

#### Sections

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

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

*Unlawful detainer defined: RCW 59.12.030.*

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

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

XLVI of the code of eighteen hundred and eighty-one. [1891 c 115 § 3; RRS § 836.]

**\*Reviser's note:** Chapter XLVI of the Code of 1881 referred to in the above section is codified as RCW 7.28.010, 7.28.110 through 7.28.150 and 7.28.190 through 7.28.270.

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

### Chapter 59.18 RESIDENTIAL LANDLORD-TENANT ACT

#### Sections

- 59.18.010 Short title.  
59.18.020 Rights and remedies—Obligation of good faith imposed.  
59.18.030 Definitions.  
59.18.040 Living arrangements exempted from chapter.  
59.18.050 Jurisdiction of district and superior courts.  
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59.18.070 Landlord—Failure to perform duties—Notice from tenant—Contents—Time limits for landlord's remedial action.  
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59.18.090 Landlord's failure to remedy defective condition—Tenant's choice of actions.  
59.18.100 Landlord's failure to carry out duties—Repairs effected by tenant—Bids—Notice—Deduction of cost from rent—Limitations.  
59.18.110 Failure of landlord to carry out duties—Determination by court or arbitrator—Judgment against landlord for diminished rental value and repair costs—Enforcement of judgment—Reduction in rent under certain conditions.  
59.18.120 Defective condition—Unfeasible to remedy defect—Termination of tenancy.  
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59.18.140 Reasonable obligations or restrictions—Tenant's duty to conform.  
59.18.150 Landlord's right of entry—Purposes—Conditions.  
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59.18.180 Tenant's failure to comply with statutory duties—Landlord to give tenant written notice of noncompliance—Landlord's remedies.  
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- 59.18.260 Moneys paid as deposit or security for performance by tenant—Rental agreement to specify terms and conditions for retention by landlord.
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- 59.18.300 Termination of tenant's utility services—Tenant causing loss of landlord provided utility services.
- 59.18.310 Default in rent—Abandonment—Liability of tenant—Landlord's remedies.
- 59.18.320 Arbitration—Authorized—Exceptions—Notice—Procedure.
- 59.18.330 Arbitration—Application—Hearings—Decisions.
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- 59.18.360 Exemptions.
- 59.18.370 Forcible entry or detainer or unlawful detainer actions—Writ of restitution—Application—Order—Hearing.
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- 59.18.390 Forcible entry or detainer or unlawful detainer actions—Writ of restitution—Service—Defendant's bond.
- 59.18.400 Forcible entry or detainer or unlawful detainer actions—Writ of restitution—Answer of defendant.
- 59.18.410 Forcible entry or detainer or unlawful detainer actions—Writ of restitution—Judgment—Execution.
- 59.18.420 RCW 59.12.090, 59.12.100, 59.12.121 and 59.12.170 inapplicable.
- 59.18.900 Severability—1973 1st ex.s. c 207.

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

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

**59.18.030 Definitions.** As used in this chapter:

- (1) "Dwelling unit" is a structure or that part of a structure which is used as a home, residence, or sleeping place by one person or by two or more persons maintaining a common household, including but not limited to single family residences and units of multiplexes, apartment buildings, and mobile homes.
- (2) "Landlord" means the owner, lessor, or sublessor of the dwelling unit or the property of which it is a part, and in addition means any person designated as representative of the landlord.
- (3) "Person" means an individual, group of individuals, corporation, government, or governmental agency, business trust, estate, trust, partnership, or association, two or more persons having a joint or common interest, or any other legal or commercial entity.

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

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

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

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

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

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

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

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

- (1) Residence at an institution, whether public or private, where residence is merely incidental to detention or the provision of medical, religious, educational, recreational, or similar services, including but not limited to correctional facilities, licensed nursing homes, monasteries and convents, and hospitals;
- (2) Occupancy under a bona fide earnest money agreement to purchase, bona fide option to purchase, or contract of sale of the dwelling unit or the property of which it is a part, where the tenant is, or stands in the place of, the purchaser;
- (3) Residence in a hotel, motel, or other transient lodging whose operation is defined in RCW 19.48.010;
- (4) Rental agreements entered into pursuant to the provisions of chapter 47.12 RCW where occupancy is by an owner-condemnee and where such agreement does not violate the public policy of this state of ensuring decent, safe, and sanitary housing and is so certified by the consumer protection division of the attorney general's office;

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

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

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

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

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

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

(1) Maintain the premises to substantially comply with any applicable code, statute, ordinance, or regulation governing their maintenance or operation, which the legislative body enacting the applicable code, statute, ordinance or regulation could enforce as to the premises rented;

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

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

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

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

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

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

(8) Maintain the dwelling unit in reasonably weathertight condition;

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

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

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

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

**59.18.070 Landlord—Failure to perform duties—Notice from tenant—Contents—Time limits for landlord's remedial action.** If at any time during the tenancy the landlord fails to carry out the duties required by RCW 59.18.060, the tenant may, in addition to pursuit of remedies otherwise provided him by law, deliver written notice to the person designated in subsection (11) of RCW 59.18.060, or to the person who collects the rent, which notice shall specify the premises involved, the name of the owner, if known, and the nature of the defective condition. For the purposes of this chapter, a reasonable time for the landlord to commence remedial action after receipt of such notice by the tenant shall be, except where circumstances are beyond the landlord's control;

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

(2) Not more than forty-eight hours, where the landlord fails to provide hot water or electricity;

(3) Subject to the provisions of subsections (1) and (2) of this section, not more than seven days in the case of a repair under RCW 59.18.100(3);

(4) Not more than thirty days in all other cases.



In each instance the burden shall be on the landlord to see that remedial work under this section is completed with reasonable promptness. [1973 1st ex.s. c 207 § 7.]

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

**59.18.090 Landlord's failure to remedy defective condition—Tenant's choice of actions.** If, after receipt of written notice, and expiration of the applicable period of time, as provided in RCW 59.18.070, the landlord fails to remedy the defective condition within a reasonable time the tenant may:

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

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

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

**59.18.100 Landlord's failure to carry out duties—Repairs effected by tenant—Bids—Notice—Deduction of cost from rent—Limitations.** (1) If at any time during the tenancy, the landlord fails to carry out any of the duties imposed by RCW 59.18.060, and notice of the defect is given to the landlord pursuant to RCW 59.18.070, the tenant may submit to the landlord or his designated agent by certified mail or in person at least two bids to perform the repairs necessary to correct the defective condition from licensed or registered persons, or if no licensing or registration requirement applies to the type of work to be performed, from responsible persons capable of performing such repairs. Such bids may be submitted to the landlord at the same time as notice is given pursuant to RCW 59.18.070: *Provided*, That the remedy provided in this section shall not be available for a landlord's failure to carry out the duties in subsections (6), (9), and (11) of RCW 59.18.060.

(2) If the landlord fails to commence repair of the defective condition within a reasonable time after receipt of notice from the tenant, the tenant may contract with the person submitting the lowest bid to make the repair, and upon the completion of the repair and an

opportunity for inspection by the landlord or his designated agent, the tenant may deduct the cost of repair from the rent in an amount not to exceed the sum expressed in dollars representing one month's rental of the tenant's unit in any twelve-month period: *Provided*, That when the landlord must commence to remedy the defective condition within thirty days as provided in subsection (4) of RCW 59.18.070, the tenant cannot contract for repairs for at least fifteen days following receipt of said bids by the landlord: *Provided further*, That the total costs of repairs deducted in any twelve-month period under this subsection shall not exceed the sum expressed in dollars representing one month's rental of the tenant's unit.

(3) If the landlord fails to carry out the duties imposed by RCW 59.18.060 within a reasonable time, and if the cost of repair does not exceed one-half month's rent, including the cost of materials and labor, which shall be computed at the prevailing rate in the community for the performance of such work, and if repair of the condition need not by law be performed only by licensed or registered persons, the tenant may repair the defective condition in a workmanlike manner and upon completion of the repair and an opportunity for inspection, the tenant may deduct the cost of repair from the rent: *Provided*, That repairs under this subsection are limited to defects within the leased premises: *Provided further*, That the total costs of repairs deducted in any twelve-month period under this subsection shall not exceed one-half month's rent of the unit or seventy-five dollars in any twelve-month period, whichever is the lesser.

(4) The provisions of this section shall not:

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

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

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

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

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

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

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



(b) A reasonable time has passed for the landlord to remedy the defective condition following notice to the landlord in accordance with RCW 59.18.070 or such other time as may be allotted by the court or arbitrator; the court or arbitrator may determine the diminution in rental value of the premises due to the defective condition and shall render judgment against the landlord for the rent paid in excess of such diminished rental value from the time of notice of such defect to the time of decision and any costs of repair done pursuant to RCW 59.18.100 for which no deduction has been previously made. Such decisions may be enforced as other judgments at law and shall be available to the tenant as a set-off against any existing or subsequent claims of the landlord.

The court or arbitrator may also authorize the tenant to make or contract to make further corrective repairs: *Provided*, That the court specifies a time period in which the landlord may make such repairs before the tenant may commence or contract for such repairs.

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

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

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

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

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

(3) Properly use and operate all electrical, gas, heating, plumbing and other fixtures and appliances supplied by the landlord;

(4) Not intentionally or negligently destroy, deface, damage, impair, or remove any part of the structure or dwelling, with the appurtenances thereto, including the facilities, equipment, furniture, furnishings, and appliances, or permit any member of his family, invitee, licensee, or any person acting under his control to do so;

(5) Not permit a nuisance or common waste; and

(6) Upon termination and vacation, restore the premises to their initial condition except for reasonable wear and tear or conditions caused by failure of the landlord to comply with his obligations under this chapter: *Provided*, That the tenant shall not be charged for normal cleaning if he has paid a nonrefundable cleaning fee. [1973 1st ex.s. c 207 § 13.]

**59.18.140 Reasonable obligations or restrictions—Tenant's duty to conform.** The tenant shall conform to all reasonable obligations or restrictions, whether denominated by the landlord as rules, rental agreement, rent, or otherwise, concerning the use, occupation, and maintenance of his dwelling unit, appurtenances thereto, and the property of which the dwelling unit is a part if such obligations and restrictions are not in violation of any of the terms of this chapter and are not otherwise contrary to law, and if such obligations and restrictions are brought to the attention of the tenant at the time of his initial occupancy of the dwelling unit and thus become part of the rental agreement. Except for termination of tenancy, after thirty days written notice to each tenant, a new rule of tenancy may become effective upon completion of the term of the rental agreement or sooner upon mutual consent. [1973 1st ex.s. c 207 § 14.]

**59.18.150 Landlord's right of entry—Purposes—Conditions.** (1) The tenant shall not unreasonably withhold consent to the landlord to enter into the dwelling unit in order to inspect the premises, make necessary or agreed repairs, alterations, or improvements, supply necessary or agreed services, or exhibit the dwelling unit to prospective or actual purchasers, mortgagees, tenants, workmen, or contractors.

(2) The landlord may enter the dwelling unit without consent of the tenant in case of emergency or abandonment.

(3) The landlord shall not abuse the right of access or use it to harass the tenant. Except in the case of emergency or if it is impracticable to do so, the landlord shall give the tenant at least two days' notice of his intent to enter and shall enter only at reasonable times.

(4) The landlord has no other right of access except by court order, arbitrator or by consent of the tenant. [1973 1st ex.s. c 207 § 15.]

**59.18.160 Landlord's remedies if tenant fails to remedy defective condition.** If, after receipt of written notice, as provided in RCW 59.18.170, the tenant fails to remedy the defective condition within a reasonable time, the landlord may:

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

(2) Pursue other remedies available under this chapter. [1973 1st ex.s. c 207 § 16.]

**59.18.170 Landlord to give notice if tenant fails to carry out duties.** If at any time during the tenancy the tenant fails to carry out the duties required by RCW

59.18.130 or 59.18.140, the landlord may, in addition to pursuit of remedies otherwise provided by law, give written notice to the tenant of said failure, which notice shall specify the nature of the failure. [1973 1st ex.s. c 207 § 17.]

**59.18.180 Tenant's failure to comply with statutory duties—Landlord to give tenant written notice of non-compliance—Landlord's remedies.** If the tenant fails to comply with any portion of RCW 59.18.130 or 59.18.140, and such noncompliance can substantially affect the health and safety of the tenant or other tenants, or substantially increase the hazards of fire or accident that can be remedied by repair, replacement of a damaged item, or cleaning, the tenant shall comply within thirty days after written notice by the landlord specifying the noncompliance, or, in the case of emergency as promptly as conditions require. If the tenant fails to remedy the noncompliance within that period the landlord may enter the dwelling unit and cause the work to be done and submit an itemized bill of the actual and reasonable cost of repair, to be payable on the next date when periodic rent is due, or on terms mutually agreed to by the landlord and tenant, or immediately if the rental agreement has terminated. Any substantial noncompliance by the tenant of RCW 59.18.130 or 59.18.140 shall constitute a ground for commencing an action in unlawful detainer in accordance with the provisions of chapter 59.12 RCW, and a landlord may commence such action at any time after written notice pursuant to such chapter. The tenant shall have a defense to an unlawful detainer action filed solely on this ground if it is determined at the hearing authorized under the provisions of chapter 59.12 RCW that the tenant is in substantial compliance with the provisions of this section, or if the tenant remedies the noncomplying condition within the thirty day period provided for above or any shorter period determined at the hearing to have been required because of an emergency: *Provided*, That if the defective condition is remedied after the commencement of an unlawful detainer action, the tenant may be liable to the landlord for statutory costs and reasonable attorney's fees. [1973 1st ex.s. c 207 § 18.]

**59.18.190 Notice to tenant to remedy nonconformance.** Whenever the landlord learns of a breach of RCW 59.18.130, he may immediately give notice to the tenant to remedy the nonconformance. Said notice shall expire after sixty days unless the landlord pursues any remedy under this chapter. [1973 1st ex.s. c 207 § 19.]

**59.18.200 Tenancy from month to month or for rental period—Termination.** When premises are rented for an indefinite time, with monthly or other periodic rent reserved, such tenancy shall be construed to be a tenancy from month to month, or from period to period on which rent is payable, and shall be terminated by written notice of twenty days or more, preceding the end of any of said months or periods, given by either party to the other. [1973 1st ex.s. c 207 § 20.]

**59.18.210 Tenancies from year to year except under written contract.** Tenancies from year to year are hereby abolished except when the same are created by express written contract. Leases may be in writing or print, or partly in writing and partly in print, and shall be legal and valid for any term or period not exceeding one year, without acknowledgment, witnesses or seals. [1973 1st ex.s. c 207 § 21.]

**59.18.220 Termination of tenancy for a specified time.** In all cases where premises are rented for a specified time, by express or implied contract, the tenancy shall be deemed terminated at the end of such specified time. [1973 1st ex.s. c 207 § 22.]

**59.18.230 Waiver of chapter provisions prohibited—Provisions prohibited from rental agreement—Distress for rent abolished—Detention of personal property for rent prohibited—Remedies.** (1) Any provision of a lease or other agreement, whether oral or written, whereby any section or subsection of this chapter is waived except as provided in RCW 59.18.360 and shall be deemed against public policy and shall be unenforceable. Such unenforceability shall not affect other provisions of the agreement which can be given effect without them.

(2) No rental agreement may provide that the tenant:

(a) Agrees to waive or to forego rights or remedies under this chapter; or

(b) Authorizes any person to confess judgment on a claim arising out of the rental agreement; or

(c) Agrees to pay the landlord's attorney's fees, except as authorized in this chapter; or

(d) Agrees to the exculpation or limitation of any liability of the landlord arising under law or to indemnify the landlord for that liability or the costs connected therewith; or

(e) And landlord have agreed to a particular arbitrator at the time the rental agreement is entered into.

(3) A provision prohibited by subsection (2) of this section included in a rental agreement is unenforceable. If a landlord deliberately uses a rental agreement containing provisions known by him to be prohibited, the tenant may recover actual damages sustained by him and reasonable attorney's fees.

(4) The common law right of the landlord of distress for rent is hereby abolished for property covered by this chapter. Any provision in a rental agreement creating a lien upon the personal property of the tenant or authorizing a distress for rent is null and void and of no force and effect. Any landlord who takes or detains the personal property of a tenant, unless the property has been abandoned as described in RCW 59.18.310 shall be liable to the tenant for the value of the property retained, and the prevailing party may recover his costs of suit and a reasonable attorney's fee.

In any action, including actions pursuant to chapters 7.64 or 12.28 RCW, brought by a tenant or other person to recover possession of his personal property taken or detained by a landlord in violation of this section, the court, upon motion and after notice to the opposing parties, may waive or reduce any bond requirements

where it appears to be to the satisfaction of the court that the moving party is proceeding in good faith and has, prima facie, a meritorious claim for immediate delivery or redelivery of said property. [1973 1st ex.s. c 207 § 23.]

**59.18.240 Reprisals or retaliatory actions by landlord—Prohibited.** So long as the tenant is in compliance with this chapter, the landlord shall not take or threaten to take reprisals or retaliatory action against the tenant because of any good faith and lawful:

(1) Complaints or reports by the tenant to a governmental authority concerning the failure of the landlord to substantially comply with any code, statute, ordinance, or regulation governing the maintenance or operation of the premises;

(2) Assertions or enforcement by the tenant of his rights and remedies under this chapter.

"Reprisal or retaliatory action" shall mean and include but not be limited to any of the following actions by the landlord when such actions are intended primarily to retaliate against a tenant because of the tenant's good faith and lawful act:

- (1) Eviction of the tenant;
- (2) Increasing the rent required of the tenant;
- (3) Reduction of services to the tenant;
- (4) Increasing the obligations of the tenant. [1973 1st ex.s. c 207 § 24.]

**59.18.250 Reprisals or retaliatory actions by landlord—Presumptions—Rebuttal—Costs.** Initiation by the landlord of any action listed in RCW 59.18.240 within ninety days after a good faith and lawful act by the tenant as enumerated in RCW 59.18.240, or within ninety days after any inspection or proceeding of a governmental agency resulting from such act, shall create a rebuttable presumption affecting the burden of proof, that the action is a reprisal or retaliatory action against the tenant: *Provided*, That no presumption against the landlord shall arise under this section, with respect to an increase in rent, if the landlord, in a notice to the tenant of increase in rent, specifies reasonable grounds for said increase, which grounds may include a substantial increase in market value due to remedial action under this chapter: *Provided further*, That the presumption of retaliation, with respect to an eviction, may be rebutted by evidence that it is not practical to make necessary repairs while the tenant remains in occupancy. In any action or eviction proceeding where the tenant prevails upon his claim or defense that the landlord has violated this section, the tenant shall be entitled to recover his costs of suit or arbitration, including a reasonable attorney's fee, and where the landlord prevails upon his claim he shall be entitled to recover his costs of suit or arbitration, including a reasonable attorney's fee: *Provided further*, That neither party may recover attorney's fees to the extent that their legal services are provided at no cost to them. [1973 1st ex.s. c 207 § 25.]

**59.18.260 Moneys paid as deposit or security for performance by tenant—Rental agreement to specify terms and conditions for retention by landlord.** If any moneys are paid to the landlord by the tenant as a deposit or as security for performance of the tenant's obligations in a lease or rental agreement, such lease or rental agreement shall include the terms and conditions under which the deposit or portion thereof may be withheld by the landlord upon termination of the lease or rental agreement. If all or part of the deposit may be withheld to indemnify the landlord for damages to the premises for which the tenant is responsible, or if all or part thereof may be retained by the landlord as a non-returnable cleaning fee, the rental agreement shall so specify. No such deposit shall be withheld on account of normal wear and tear resulting from ordinary use of the premises. [1973 1st ex.s. c 207 § 26.]

**59.18.270 Moneys paid as deposit or security for performance by tenant—Deposit by landlord in trust account—Receipt—Claims.** All moneys paid to the landlord by the tenant as a deposit as security for performance of the tenant's obligations in a lease or rental agreement shall promptly be deposited by the landlord in a trust account in a bank, savings and loan association, mutual savings bank, or licensed escrow agent located in Washington. The landlord shall provide the tenant with a written receipt for the deposit and shall provide written notice of the name and address and location of the depository and any subsequent change thereof. The tenant's claim to any moneys paid under this section shall be prior to that of any creditor of the landlord, including a trustee in bankruptcy or receiver, even if such moneys are commingled. [1973 1st ex.s. c 207 § 27.]

**59.18.280 Moneys paid as deposit or security for performance by tenant—Statement and notice of basis for retention—Costs.** Within fourteen days after the termination of the rental agreement and vacation of the premises the landlord shall give a full and specific statement of the basis for retaining any of the deposit together with the payment of any refund due the tenant under the terms and conditions of the rental agreement. No portion of any deposit shall be withheld on account of wear resulting from ordinary use of the premises.

The notice shall be delivered to the tenant personally or by mail to his last known address. If the landlord fails to give such statement together with any refund due the tenant within the time limits specified above he shall be liable to the tenant for the amount of refund due. In any action brought by the tenant to recover the deposit, the prevailing party shall additionally be entitled to the cost of suit or arbitration including a reasonable attorney's fee.

Nothing in this chapter shall preclude the landlord from proceeding against, and the landlord shall have the right to proceed against a tenant to recover sums exceeding the amount of the tenant's damage or security deposit for damage to the property for which the tenant is responsible together with reasonable attorney's fees. [1973 1st ex.s. c 207 § 28.]

**59.18.290 Removal or exclusion of tenant from premises—Holding over or excluding landlord from premises after termination date.** (1) It shall be unlawful for the landlord to remove or exclude from the premises the tenant thereof except under a court order so authorizing. Any tenant so removed or excluded in violation of this section may recover possession of the property or terminate the rental agreement and, in either case, may recover the actual damages sustained. The prevailing party may recover the costs of suit or arbitration and reasonable attorney's fees.

(2) It shall be unlawful for the tenant to hold over in the premises or exclude the landlord therefrom after the termination of the rental agreement except under a valid court order so authorizing. Any landlord so deprived of possession of premises in violation of this section may recover possession of the property and damages sustained by him, and the prevailing party may recover his costs of suit or arbitration and reasonable attorney's fees. [1973 1st ex.s. c 207 § 29.]

**59.18.300 Termination of tenant's utility services—Tenant causing loss of landlord provided utility services.** It shall be unlawful for a landlord to intentionally cause termination of any of his tenant's utility services, including water, heat, electricity, or gas, except for an interruption of utility services for a reasonable time in order to make necessary repairs. Any landlord who violates this section may be liable to such tenant for his actual damages sustained by him, and up to one hundred dollars for each day or part thereof the tenant is thereby deprived of any utility service, and the prevailing party may recover his costs of suit or arbitration and a reasonable attorney's fee. It shall be unlawful for a tenant to intentionally cause the loss of utility services provided by the landlord, including water, heat, electricity or gas, excepting as resulting from the normal occupancy of the premises. [1973 1st ex.s. c 207 § 30.]

**59.18.310 Default in rent—Abandonment—Liability of tenant—Landlord's remedies.** If the tenant defaults in the payment of rent and reasonably indicates by words or actions his intention not to resume tenancy, he shall be liable for the following for such abandonment: *Provided*, That upon learning of such abandonment of the premises the landlord shall make a reasonable effort to mitigate the damages resulting from such abandonment:

(1) When the tenancy is month-to-month, the tenant shall be liable for the rent for the thirty days following either the date the landlord learns of the abandonment, or the date the next regular rental payment would have become due, whichever first occurs.

(2) When the tenancy is for a term greater than month-to-month, the tenant shall be liable for the lesser of the following:

(a) The entire rent due for the remainder of the term; or

(b) All rent accrued during the period reasonably necessary to rerent the premises at a fair rental, plus the difference between such fair rental and the rent agreed to in the prior agreement.

In the event of such abandonment of tenancy and an accompanying default in the payment of rent by the tenant, the landlord may immediately enter and take possession of any property of the tenant found on the premises and may store the same in a secure place. A notice containing the name and address of landlord and the place where the property is stored must be mailed promptly by the landlord to the last known address of the tenant. After sixty days from the date of default in rent, and after prior notice of such sale is mailed to the last known address of the tenant, the landlord may sell such property and may apply any income derived therefrom against moneys due the landlord, including drayage and storage. Any excess income derived from the sale of such property shall be held by the landlord for the benefit of the tenant for a period of one year from the date of sale, and if no claim is made or action commenced by the tenant for the recovery thereof prior to the expiration of that period of time, the balance shall be the property of the landlord. [1973 1st ex.s. c 207 § 31.]

**59.18.320 Arbitration—Authorized—Exceptions—Notice—Procedure.** (1) The landlord and tenant may agree, in writing, except as provided in RCW 59.18.230(2)(e), to submit to arbitration, in conformity with the provisions of this section, any controversy arising under the provisions of this chapter, except the following:

(a) Controversies regarding the existence of defects covered in subsections (1) and (2) of RCW 59.18.070: *Provided*, That this exception shall apply only before the implementation of any remedy by the tenant;

(b) Any situation where court action has been started by either landlord or tenant to enforce rights under this chapter; when the court action substantially affects the controversy, including but not limited to:

(i) Court action pursuant to subsections (2) and (3) of RCW 59.18.090 and subsections (1) and (2) of RCW 59.18.160; and

(ii) Any unlawful detainer action filed by the landlord pursuant to chapter 59.12 RCW.

(2) The party initiating arbitration under subsection (1) of this section shall give reasonable notice to the other party or parties.

(3) Except as otherwise provided in this section, the arbitration process shall be administered by any arbitrator agreed upon by the parties at the time the dispute arises: *Provided*, That the procedures shall comply with the requirements of chapter 7.04 RCW (relating to arbitration) and of this chapter. [1973 1st ex.s. c 207 § 32.]

**59.18.330 Arbitration—Application—Hearings—Decisions.** (1) Unless otherwise mutually agreed to, in the event a controversy arises under RCW 59.18.320 the landlord or tenant, or both, shall complete an application for arbitration and deliver it to the selected arbitrator.

(2) The arbitrator so designated shall schedule a hearing to be held no later than ten days following receipt of notice of the controversy, except as provided in RCW 59.18.350.

(3) The arbitrator shall conduct public or private hearings. Reasonable notice of such hearings shall be given to the parties, who shall appear and be heard either in person or by counsel or other representative. Hearings shall be informal and the rules of evidence prevailing in judicial proceedings shall not be binding. A recording of the proceedings may be taken. Any oral or documentary evidence and other data deemed relevant by the arbitrator may be received in evidence. The arbitrator shall have the power to administer oaths, to issue subpoenas, to require the attendance of witnesses and the production of such books, papers, contracts, agreements, and documents as may be deemed by the arbitrator material to a just determination of the issues in dispute. If any person refuses to obey such subpoena or refuses to be sworn to testify, or any witness, party, or attorney is guilty of any contempt while in attendance at any hearing held hereunder, the arbitrator may invoke the jurisdiction of any superior court, and such court shall have jurisdiction to issue an appropriate order. A failure to obey such order may be punished by the court as a contempt thereof.

(4) Within five days after conclusion of the hearing, the arbitrator shall make a written decision upon the issues presented, a copy of which shall be mailed by certified mail or otherwise delivered to the parties or their designated representatives. The determination of the dispute made by the arbitrator shall be final and binding upon both parties.

(5) If a defective condition exists which affects more than one dwelling unit in a similar manner, the arbitrator may consolidate the issues of fact common to those dwelling units in a single proceeding.

(6) Decisions of the arbitrator shall be enforced or appealed according to the provisions of chapter 7.04 RCW. [1973 1st ex.s. c 207 § 33.]

**59.18.340 Arbitration—Fee.** The administrative fee for this arbitration procedure shall be seventy dollars, and, unless otherwise allocated by the arbitrator, shall be shared equally by the parties: *Provided*, That upon either party signing an affidavit to the effect that he is unable to pay his share of the fee, that portion of the fee may be waived or deferred. [1973 1st ex.s. c 207 § 34.]

**59.18.350 Arbitration—Completion of arbitration after giving notice.** When a party gives notice pursuant to subsection (2) of RCW 59.18.320, he must, at the same time, arrange for arbitration of the grievance in the manner provided for in this chapter. The arbitration shall be completed before the rental due date next occurring after the giving of notice pursuant to RCW 59.18.320: *Provided*, That in no event shall the arbitrator have less than ten days to complete the arbitration process. [1973 1st ex.s. c 207 § 35.]

**59.18.360 Exemptions.** A landlord and tenant may agree, in writing, to exempt themselves from the provisions of RCW 59.18.060, 59.18.100, 59.18.110, 59.18.120, 59.18.130, and 59.18.190 if the following conditions have been met:

(1) The agreement may not appear in a standard form lease or rental agreement;

(2) There is no substantial inequality in the bargaining position of the two parties;

(3) The exemption does not violate the public policy of this state in favor of the ensuring safe, and sanitary housing; and

(4) Either the local county prosecutor's office or the consumer protection division of the attorney general's office or the attorney for the tenant has approved in writing the application for exemption as complying with subsections (1) through (3) of this section. [1973 1st ex.s. c 207 § 36.]

**59.18.370 Forcible entry or detainer or unlawful detainer actions—Writ of restitution—Application—Order—Hearing.** The plaintiff, at the time of commencing an action of forcible entry or detainer or unlawful detainer, or at any time afterwards, upon filing the complaint, may apply to the superior court in which the action is pending for an order directing the defendant to appear and show cause, if any he has, why a writ of restitution should not issue restoring to the plaintiff possession of the property in the complaint described, and the judge shall by order fix a time and place for a hearing of said motion, which shall not be less than six nor more than twelve days from the date of service of said order upon defendant. A copy of said order, together with a copy of the summons and complaint if not previously served upon the defendant, shall be served upon the defendant. Said order shall notify the defendant that if he fails to appear and show cause at the time and place specified by the order the court may order the sheriff to restore possession of the property to the plaintiff and may grant such other relief as may be prayed for in the complaint and provided by this chapter. [1973 1st ex.s. c 207 § 38.]

**59.18.380 Forcible entry or detainer or unlawful detainer actions—Writ of restitution—Answer—Order—Stay—Bond.** At the time and place fixed for the hearing of plaintiff's motion for a writ of restitution, the defendant, or any person in possession or claiming possession of the property, may answer, orally or in writing, and assert any legal or equitable defense or set-off arising out of the tenancy. If the answer is oral the substance thereof shall be endorsed on the complaint by the court. The court shall examine the parties and witnesses orally to ascertain the merits of the complaint and answer, and if it shall appear that the plaintiff has the right to be restored to possession of the property, the court shall enter an order directing the issuance of a writ of restitution, returnable ten days after its date, restoring to the plaintiff possession of the property and if it shall appear to the court that there is no substantial issue of material fact of the right of the plaintiff to be granted other relief as prayed for in the complaint and provided for in this chapter, the court may enter an order and judgment granting so much of such relief as may be sustained by the proof, and the court may grant such other relief as may be prayed for in the plaintiff's complaint and provided for in this chapter, then the

court shall enter an order denying any relief sought by the plaintiff for which the court has determined that the plaintiff has no right as a matter of law: *Provided*, That within three days after the service of the writ of restitution the defendant, or person in possession of the property, may, in any action for the recovery of possession of the property for failure to pay rent, stay the execution of the writ pending final judgment by paying into court or to the plaintiff, as the court directs, all rent found to be due and all the costs of the action, and in addition by paying, on a monthly basis pending final judgment, an amount equal to the monthly rent called for by the lease or rental agreement at the time the complaint was filed: *Provided further*, That before any writ shall issue prior to final judgment the plaintiff shall execute to the defendant and file in the court a bond in such sum as the court may order, with sufficient surety to be approved by the clerk, conditioned that the plaintiff will prosecute his action without delay, and will pay all costs that may be adjudged to the defendant, and all damages which he may sustain by reason of the writ of restitution having been issued, should the same be wrongfully sued out. The court shall also enter an order directing the parties to proceed to trial on the complaint and answer in the usual manner.

If it appears to the court that the plaintiff should not be restored to possession of the property, the court shall deny plaintiff's motion for a writ of restitution and enter an order directing the parties to proceed to trial within thirty days on the complaint and answer. If it appears to the court that there is a substantial issue of material fact as to whether or not the plaintiff is entitled to other relief as is prayed for in plaintiff's complaint and provided for in this chapter, or that there is a genuine issue of a material fact pertaining to a legal or equitable defense or set-off raised in the defendant's answer, the court shall grant or deny so much of plaintiff's other relief sought and so much of defendant's defenses or set-off claimed, as may be proper. [1973 1st ex.s. c 207 § 39.]

**59.18.390 Forcible entry or detainer or unlawful detainer actions—Writ of restitution—Service—Defendant's bond.** The sheriff shall, upon receiving the writ of restitution, forthwith serve a copy thereof upon the defendant, his agent, or attorney, or a person in possession of the premises, and shall not execute the same for three days thereafter, and the defendant, or person in possession of the premises within three days after the service of the writ of restitution may execute to the plaintiff a bond to be filed with and approved by the clerk of the court in such sum as may be fixed by the judge, with sufficient surety to be approved by the clerk of said court, conditioned that they will pay to the plaintiff such sum as the plaintiff may recover for the use and occupation of the said premises, or any rent found due, together with all damages the plaintiff may sustain by reason of the defendant occupying or keeping possession of said premises, together with all damages which the court theretofore has awarded to the plaintiff as provided in this chapter, and also all the costs of the action. The plaintiff, his agent or attorneys,

shall have notice of the time and place where the court or judge thereof shall fix the amount of the defendant's bond, and shall have notice and a reasonable opportunity to examine into the qualification and sufficiency of the sureties upon said bond before said bond shall be approved by the clerk. The writ may be served by the sheriff, in the event he shall be unable to find the defendant, an agent or attorney, or a person in possession of the premises, by affixing a copy of said writ in a conspicuous place upon the premises. [1973 1st ex.s. c 207 § 40.]

**59.18.400 Forcible entry or detainer or unlawful detainer actions—Writ of restitution—Answer of defendant.** On or before the day fixed for his appearance the defendant may appear and answer. The defendant in his answer may assert any legal or equitable defense or set-off arising out of the tenancy. [1973 1st ex.s. c 207 § 41.]

**59.18.410 Forcible entry or detainer or unlawful detainer actions—Writ of restitution—Judgment—Execution.** If upon the trial the verdict of the jury or, if the case be tried without a jury, the finding of the court be in favor of the plaintiff and against the defendant, judgment shall be entered for the restitution of the premises; and if the proceeding be for unlawful detainer after neglect or failure to perform any condition or covenant of a lease or agreement under which the property is held, or after default in the payment of rent, the judgment shall also declare the forfeiture of the lease, agreement or tenancy. The jury, or the court, if the proceedings be tried without a jury, shall also assess the damages arising out of the tenancy occasioned to the plaintiff by any forcible entry, or by any forcible or unlawful detainer, alleged in the complaint and proved on the trial, and, if the alleged unlawful detainer be after default in the payment of rent, find the amount of any rent due, and the judgment shall be rendered against the defendant guilty of the forcible entry, forcible detainer or unlawful detainer for the amount of damages thus assessed and for the rent, if any, found due, and the court may award statutory costs and reasonable attorney's fees. When the proceeding is for an unlawful detainer after default in the payment of rent, and the lease or agreement under which the rent is payable has not by its terms expired, execution upon the judgment shall not be issued until the expiration of five days after the entry of the judgment, within which time the tenant or any subtenant, or any mortgagee of the term, or other party interested in the continuance of the tenancy, may pay into court for the landlord the amount of the judgment and costs, and thereupon the judgment shall be satisfied and the tenant restored to his tenancy; but if payment, as herein provided, be not made within five days the judgment may be enforced for its full amount and for the possession of the premises. In all other cases the judgment may be enforced immediately. If writ of restitution shall have been executed prior to judgment no further writ or execution for the premises shall be required. [1973 1st ex.s. c 207 § 42.]

**59.18.420 RCW 59.12.090, 59.12.100, 59.12.121 and 59.12.170 inapplicable.** The provisions of RCW 59.12-.090, 59.12.100, 59.12.121, and 59.12.170 shall not apply to any rental agreement included under the provisions of chapter 59.18 RCW. [1973 1st ex.s. c 207 § 44.]

**59.18.900 Severability—1973 1st ex.s. c 207.** If any provision of this chapter, or its application to any person or circumstance is held invalid, the remainder of the act, or its application to other persons or circumstances, is not affected. [1973 1st ex.s. c 207 § 37.]





# TITLE 60

## LIENS

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### Chapter 60.04

#### MECHANICS' AND MATERIALMEN'S LIENS

##### Sections

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**60.04.010 Lien authorized—Bond by railroad company.** Every person performing labor upon, furnishing material, or renting, leasing or otherwise supplying equipment, to be used in the construction, alteration or repair of any mining claim, building, wharf, bridge, ditch, dyke, flume, tunnel, well, fence, machinery, railroad, street railway, wagon road, aqueduct to create hydraulic power or any other structure or who performs labor in any mine or mining claim or stone quarry, has a lien upon the same for the labor performed, material furnished, or equipment supplied by each, respectively, whether performed, furnished, or supplied at the instance of the owner of the property subject to the lien or his agent; and every registered or licensed contractor, registered or licensed subcontractor, architect, or person having charge, of the construction, alteration or repair of any property subject to the lien as aforesaid, shall be held to be the agent of the owner for the purposes of the establishment of the lien created by this chapter: *Provided*, That whenever any railroad company shall contract with any person for the construction of its road, or any part thereof, such railroad company shall take from the person with whom such contract is made a good and sufficient bond, conditioned that such person shall pay all laborers, mechanics, materialmen, and equipment suppliers, and persons who supply such contractors with provisions, all just dues to such person or to any person to whom any part of such work is given, incurred in carrying on such work, which bond shall be filed by such railroad company in the office of the county auditor in each county in which any part of such work is situated. And if any such railroad company shall fail to take such bond, such railroad company shall be liable to the persons herein mentioned to the full extent of all such debts so contracted by such contractor. Contractors or subcontractors required to be registered under chapter 18.27 RCW or licensed under chapter 19.28 RCW shall be deemed the agents of the owner for the purposes of establishing the lien created by this chapter only if so registered or licensed. Persons dealing with contractors or subcontractors may rely, for the purposes of this section, upon a certificate of registration issued pursuant to chapter 18.27 RCW or license issued pursuant to chapter 19.28 RCW covering the period when the work or material shall be furnished, and lien rights shall not be lost by suspension or revocation of registration or license without their knowledge. [1971 ex.s. c 94 § 2; 1959 c 279 § 1; 1905 c 116 § 1; 1893 c 24 § 1; RRS § 1129. Prior: Code 1881 § 1957; 1877 p 219 § 19; 1873 p 441 § 2; 1863 p 419 § 1; 1860 p 286 § 1; 1854 p 392 § 1.]

**Effective date**—1971 ex.s. c 94: See note following RCW 60.04.060.

**Construction**—1893 c 24: "The provisions of law relating to liens created by this act, and all proceedings thereunder, shall be liberally construed with a view to effect their objects." [1893 c 24 § 18.]

**Repeal and saving**—1893 c 24: "All rights acquired under any existing law of this state are hereby preserved, and all actions now pending shall be proceeded with under the law as it exists at the time this act shall take effect. All acts or parts of acts in conflict with this act are hereby repealed." [1893 c 24 § 19.]

*The two foregoing annotations apply to RCW 60.04.010, 60.04.030-60.04.180.*

**60.04.020 Notice that materialmen's lien may be claimed.** Every person, firm or corporation furnishing materials or supplies or renting, leasing or otherwise supplying equipment, to be used in the construction, alteration or repair of any mining claim, building, wharf, bridge, ditch, dyke, flume, tunnel, well, fence, machinery, railroad, street railway, wagon road, aqueduct to create hydraulic power, or any other building, or any other structure, or mining claim or stone quarry, shall give to the owner or reputed owner of the property on, upon or about which such materials or supplies or equipment is and/or were used, a notice in writing, which notice shall cover the material, supplies or equipment furnished or leased during the sixty days preceding the giving of such notice as well as all subsequent materials, supplies or equipment furnished or leased, stating in substance and effect that such person, firm or corporation is and/or has furnished materials and supplies, or equipment for use thereon, with the name of the contractor or agent ordering the same, and that a lien may be claimed for all materials and supplies, or equipment furnished by such person, firm or corporation for use thereon, which notice shall be given by mailing the same by registered or certified mail in an envelope addressed to the owner or reputed owner at his place of residence or reputed residence: *Provided, however,* That with respect to materials or supplies or equipment used in construction, alteration or repair of any single family residence or garage such notice must be given not later than ten days after the date of the first delivery of such materials or supplies or equipment. No materialmen's lien shall be enforced unless the provisions of this section have been complied with: *Provided,* That in the event the notice required by this section is not given within the time specified by this section, any lien or claim of lien shall be enforceable only for materials and supplies or equipment delivered subsequent to such notice being given to the owner or reputed owner, and such lien or claim of lien shall be secondary to any lien or claim of lien established where such notice was given within the time limits prescribed by this section. [1969 ex.s. c 84 § 1; 1965 c 98 § 1; 1959 c 279 § 2; 1959 c 278 § 1; 1957 c 214 § 1; 1911 c 77 § 1; 1909 c 45 § 1; RRS § 1133.]

**60.04.030 Property subject to lien.** The lot, tract or parcel of land upon which the improvement is made or the property is situated, subject to the lien created by RCW 60.04.010, or so much thereof as may be necessary to satisfy the lien and the judgment thereon, to be determined by the court on rendering judgment in a

foreclosure of the lien, is also subject to the lien to the extent of the interest of the person or company, who in his or its own behalf, or who, through any of the persons designated in RCW 60.04.010 to be agent of the owner or owners caused the performance of the labor, or the construction, alteration or repair of the property. [1905 c 116 § 2; 1893 c 24 § 2; RRS § 1130. Prior: Code 1881 § 1959; 1877 p 220 § 21.]

**60.04.040 Lien for improving real property.** Any person who, at the request of the owner of any real property, or his agent, clears, grades, fills in or otherwise improves the same, or any street or road in front of, or adjoining the same, and every person who, at the request of the owner of any real property, or his agents, rents, leases, or otherwise supplies equipment, or furnishes materials, including blasting powder, dynamite, caps and fuses, for clearing, grading, filling in, or otherwise improving any real property or any street or road in front of or adjoining the same, has a lien upon such real property for the labor performed, the materials furnished, or the equipment supplied for such purposes. [1971 ex.s. c 94 § 3; 1959 c 279 § 3; 1929 c 230 § 1; 1893 c 24 § 3; RRS § 1131. Prior: Code 1881 § 1958; 1877 p 220 § 20.]

**Effective date**—1971 ex.s. c 94: See note following RCW 60.04.060.

**60.04.050 Priority of lien.** The liens created by this chapter are preferred to any lien, mortgage or other incumbrance which may attach subsequently to the time of the commencement of the performance of the labor, the furnishing of the materials, or the supplying of the equipment for which the right of lien is given by this chapter, and are also preferred to any lien, mortgage or other incumbrance which may have attached previously to that time, and which was not filed or recorded so as to create constructive notice of the same prior to that time, and of which the lien claimant had no notice. [1959 c 279 § 4; 1893 c 24 § 4; RRS § 1132. Prior: Code 1881 § 1960; 1877 p 220 § 22.]

**60.04.060 Claim—Contents—Form—Filing—Joinder.** No lien created by this chapter shall exist, and no action to enforce the same shall be maintained, unless within ninety days from the date of the cessation of the performance of such labor, the furnishing of such materials, or the supplying of such equipment, a claim for such lien shall be filed for record as hereinafter provided, in the office of the county auditor of the county in which the property, or some part thereof to be affected thereby, is situated. Such claim shall state, as nearly as may be, the time of the commencement and cessation of performing the labor, furnishing the material, or supplying the equipment, the name of the person who performed the labor, furnished the material, or supplied the equipment, the name of the person by whom the laborer was employed (if known) or to whom the material was furnished, or equipment supplied, a description of the property to be charged with the lien sufficient for identification, the name of the owner, or reputed owner if known, and if

not known, that fact shall be mentioned, the amount for which the lien is claimed, and shall be signed by the claimant, or by some person in his behalf, and be verified by the oath of the claimant, or some person in his behalf, to the effect that the affiant believes the claim to be just; in case the claim shall have been assigned the name of the assignee shall be stated; and such claim of lien may be amended in case of action brought to foreclose the same, by order of the court, as pleadings may be, insofar as the interests of third parties shall not be affected by such amendment. A claim of lien shall also state the address of the claimant. A claim for lien substantially in the following form shall be sufficient:

-----, claimant, vs. -----

Notice is hereby given that on the ----- day (date of commencement of performing labor or furnishing material or supplying equipment) ----- at the request of ----- commenced to perform labor (or to furnish material or supply equipment to be used) upon ----- (here describe property subject to the lien) of which property the owner, or reputed owner, is ----- (or if the owner or reputed owner is not known, insert the word "unknown"), the performance of which labor (or the furnishing of which material or supply of which equipment) ceased on the ----- day of -----; that said labor performed (or material furnished or equipment supplied) was of the value of ----- dollars, for which labor (or material) (or equipment) the undersigned claims a lien upon the property herein described for the sum of ----- dollars. (In case the claim has been assigned, add the words "and ----- is assignee of said claim", or claims, if several are united.)

-----, Claimant.

-----

(Address, city, and state of claimant)

STATE OF WASHINGTON, COUNTY OF -----, ss.

-----, being sworn, says: I am the claimant (or attorney of the claimant) above named; I have heard the foregoing claim read and know the contents thereof, and believe the same to be just.

Subscribed and sworn to before me this ----- day of -----

Any number of claimants may join in the same claim for the purpose of filing the same and enforcing their liens, but in such case the amount claimed by each original lienor, respectively, shall be stated: *Provided*, It shall not be necessary to insert in the notice of claim of lien provided for by this chapter any itemized statement or bill of particulars of such claim. [1971 ex.s. c 94 § 1; 1959 c 279 § 5; 1949 c 217 § 1(5a); 1893 c 24 § 5; Rem. Supp. 1949 § 1134. FORMER PARTS OF SECTION: (i) 1949 c 217 § 1(5b) now codified as RCW 60.04.064. (ii) 1949 c 217 § 1(5c) now codified as RCW 60.04.067.]

**Effective date**—1971 ex.s. c 94: "This 1971 amendatory act shall take effect on January 1, 1972." [1971 ex.s. c 94 § 4.]

**60.04.064 Owner may record notice to lien claimants.**

The owner may within ten days after there has been a cessation of the performance of such labor, the furnishing of such material, or the supplying of such equipment thereon for a period of thirty days, file for record in the office of the county auditor, in the county where the property is situated, a notice setting forth the date on which cessation of the performance of such labor, the furnishing of such materials, or the supplying of such equipment occurred together with his name, address and the nature of his title, a legal description of the property and a statement that a copy of this notice was delivered or mailed to the general contractor, if any. The notice must be verified by the owner or by some person in his behalf. Where the ownership of the property is in several persons any one or more of the several owners may execute and file such notice, but the notice must state the names, addresses and nature of title of all of such owners. Such notice shall be conclusive evidence of the cessation of the performance of such labor, the furnishing of such materials, or the supplying of such equipment on or before the date of cessation as stated in said notice, unless controverted by claimant's claim of lien which must be recorded within sixty days from the date of recording of such notice by the owner. This provision shall not extend the time for filing lien claims as provided by RCW 60.04.060. [1959 c 279 § 6; 1949 c 217 § 1(5b); Rem. Supp. 1949 § 1134-1. Formerly RCW 60.04.060, part.]

**60.04.067 Separate residential units—When time for filing lien claims commences to run—Definition.**

Where such labor is performed, such materials are furnished, or such equipment is supplied in the construction of two or more separate residential units the time for filing claims of lien against each separate residential unit shall commence to run upon the cessation of the performance of such labor, the furnishing of such materials, or the supplying of such equipment on each such residential unit as provided in this chapter. A separate residential unit is defined as consisting of one residential structure together with any garages or other outbuildings appurtenant thereto. [1959 c 279 § 7; 1949 c 217 § 1(5c); Rem. Supp. 1949 § 1134-2. Formerly RCW 60.04.060, part.]

*Separate properties, claim: RCW 60.04.090.*

**60.04.070 Recording.** The county auditor must record the claims and notices mentioned in this chapter in a book to be kept by him for that purpose, which record must be indexed as deeds and other conveyances are required by law to be indexed. [1949 c 217 § 2; 1893 c 24 § 6; RRS § 1135. Prior: Code 1881 § 1963; 1877 p 21 § 25.]

**60.04.080 Assignability.** Any lien or right of lien created by law and the right of action to recover therefor, shall be assignable so as to vest in the assignee all

rights and remedies of the assignor, subject to all defenses thereto that might be made if such assignment had not been made. [1893 c 24 § 7; RRS § 1136.]

**60.04.090 Claims must designate amount due on property charged.** In every case in which one claim is filed against two or more separate pieces of property owned by the same person, or owned by two or more persons who jointly contracted for the labor, material, or equipment for which the lien is claimed, the person filing such claim must designate in the claim the amount due him on each piece of property, otherwise the lien of such claim is postponed to other liens. The lien of such claim does not extend beyond the amount designated as against other creditors having liens upon either of such pieces of property. [1959 c 279 § 8; 1893 c 24 § 8; RRS § 1137. Prior: Code 1881 § 1962; 1877 p 221 § 24.]

*Filing claim against separate residential units: RCW 60.04.067.*

**60.04.100 Duration of lien—Limitation of action.** No lien created by this chapter binds the property subject to the lien for a longer period than eight calendar months after the claim has been filed unless an action be commenced in the proper court within that time to enforce such lien; or, if credit be given and the terms thereof be stated in the claim of lien, then eight calendar months after the expiration of such credit; and in case such action be not prosecuted to judgment within two years after the commencement thereof, the court, in its discretion, may dismiss the same for want of prosecution, and the dismissal of such action or a judgment rendered therein, that no lien exists, shall constitute a cancellation of the lien. [1943 c 209 § 1; 1893 c 24 § 9; RRS § 1138. Prior: 1881 § 1964; 1877 p 221 § 26; 1873 p 443 § 6; 1863 p 410 § 4; 1860 p 286 § 4; 1854 p 392 § 4.]

**60.04.110 Extent of contractor's right to recover—Settlements—Rights of owner.** The contractor shall be entitled to recover upon the claim filed by him only such amount as may be due him according to the terms of his contract, after deducting all claims of other parties for labor performed, materials furnished, and equipment supplied; and in all cases where a claim shall be filed under this chapter for labor performed, materials furnished, or equipment supplied to any contractor, he shall defend any action brought thereupon at his own expense; and during the pendency of such action, the owner may withhold from the contractor the amount of money for which the claim is filed; and in case of judgment against the owner or his property, upon the lien, the owner shall be entitled to deduct from any amount due or to become due by him to the contractor, the amount of the judgment and costs, and if the amount of such judgment and costs shall exceed the amount due by him to the contractor or if the owner shall have settled with the contractors in full, he shall be entitled to recover back from the contractor the amount, including costs for which the lien is established in excess of any sum that may remain due from him to

the contractor. [1959 c 279 § 9; 1893 c 24 § 10; RRS § 1139. Prior: Code 1881 § 1966; 1877 p 221 § 28.]

**60.04.120 Foreclosure—Parties.** The liens provided by this chapter, for which claims have been filed, may be foreclosed and enforced by a civil action in the court having jurisdiction; in any action brought to foreclose a lien, all persons who, prior to the commencement of such action, have legally filed claims of liens against the same property, or any part thereof shall be joined as parties, either plaintiff or defendant; and no person shall begin an action to foreclose a lien upon any property while a prior action begun to foreclose another lien on the same property is pending, but if not made a party plaintiff or defendant to such prior action, he may apply to the court to be joined as a party thereto, and his lien may be foreclosed in such action; and no action to foreclose a lien shall be dismissed at the instance of a plaintiff therein to the prejudice of another party to the suit who claims a lien. [1893 c 24 § 11; RRS § 1140. Prior: Code 1881 § 1968; 1877 p 222 § 30; 1873 p 443 §§ 6, 7; 1863 pp 410, 411 §§ 4, 5; 1863 p 286 §§ 4, 5; 1854 pp 392, 393 §§ 4, 5.]

**60.04.130 Rank of lien—Application of proceeds—Attorney's fees.** In every case in which different liens are claimed against the same property, the court, in the judgment, must declare the rank of such lien or class of liens, which shall be in the following order:

- (1) All persons performing labor.
- (2) All persons furnishing material or supplying equipment.
- (3) The subcontractors.
- (4) The original contractors.

The proceeds of the sale of the property must be applied to each lien or class of liens in the order of its rank; and personal judgment may be rendered in an action brought to foreclose a lien, against any party personally liable for any debt for which the lien is claimed, and if the lien be established, the judgment shall provide for the enforcement thereof upon the property liable as in case of foreclosure of mortgages; and the amount realized by such enforcement of the lien shall be credited upon the proper personal judgment, and the deficiency, if any remaining unsatisfied, shall stand as a personal judgment, and may be collected by execution against the party liable therefor. The court may allow to the prevailing party in the action, whether plaintiff or defendant, as part of the costs of the action, the moneys paid for filing or recording the claim, and a reasonable attorney's fee in the superior court, court of appeals, and supreme court. [1971 c 81 § 129; 1969 c 38 § 1; 1959 c 279 § 10; 1893 c 24 § 12; RRS § 1141. Prior: Code 1881 § 1967; 1877 p 222 § 29; 1873 p 443 § 8; 1863 p 420 § 6; 1860 p 287 § 6; 1854 p 393 § 6.]

**60.04.140 Lien not discharged by taking note.** The taking of a promissory note or other evidence of indebtedness for any labor performed, material furnished, or equipment supplied for which lien is created by law,

shall not discharge the lien therefor, unless expressly received as payment and so specified therein. [1959 c 279 § 11; 1893 c 24 § 14; RRS § 1143.]

**60.04.150 Material exempt from process—Exception.** Whenever material shall have been furnished for use in the construction, alteration or repair of property subject to a lien created by this chapter, such material shall not be subject to attachment, execution, or other legal process, to enforce any debt due by the purchaser of such material, except a debt due for the purchase money thereof, so long as in good faith the said material is about to be applied in the construction, alteration or repair of such property. [1893 c 24 § 15; RRS § 1144. Prior: Code 1881 § 1969; 1877 p 222 § 31.]

**60.04.160 Effect of filing claim on community interest.** The claim of lien, when filed as required by this chapter, shall be notice to the husband or wife of the person who appears of record to be the owner of the property sought to be charged with the lien, and shall subject all the community interest of both husband and wife to said lien. [1893 c 24 § 16; RRS § 1145.]

**60.04.170 When land not subject to lien—Power of court to order removal and sale of property.** When, for any reason the title or interest in the land, upon which the property subject to the lien is situated cannot be subjected to the lien, the court may order the sale and removal from the land of the property subject to the lien to satisfy the lien. [1893 c 24 § 17; RRS § 1146.]

**60.04.180 Personal action preserved.** Nothing contained in this chapter shall be construed to impair or affect the right of any person to whom any debt may be due for labor performed, material furnished, or equipment supplied to maintain a personal action to recover such debt against the person liable therefor. [1959 c 279 § 12; 1893 p 24 § 13; RRS § 1142. Prior: Code 1881 § 1970; 1877 p 223 § 32.]

**60.04.190 Destruction or concealment of property—Removal from premises—Penalty.** See RCW 61.12.030, 9.45.060.

**60.04.200 Interim or construction financing—Definitions.** As used in this chapter, the following meanings shall apply:

(1) "Lender" means any person or entity regularly providing interim or construction financing.

(2) "Interim or construction financing" means that portion of money secured by mortgage, deed of trust, or other encumbrance to finance construction of improvements on, or development of, real property, but does not include:

- (a) Funds to acquire real property;
- (b) Funds to pay interest, insurance premiums, lease deposits, taxes, assessments, or prior encumbrances;
- (c) Funds to pay loan, commitment, title, legal, closing, recording or appraisal fees;

(d) Funds to pay other customary fees; which pursuant to agreement with the owner or borrower are to be paid by the lender from time to time;

(e) Funds to acquire personal property for which the potential lien claimant may not claim a lien pursuant to chapter 60.04 RCW.

(3) "Owner" means the record holder of the legal or beneficial title to the real property to be improved or developed.

(4) "Potential lien claimant" means any person or entity entitled to assert lien rights pursuant to this chapter and has otherwise complied with the provisions of this chapter and the requirements of chapter 18.27 RCW if required by the provisions thereof.

(5) "Draws" means periodic disbursements of interim or construction financing by a lender. [1973 1st ex.s. c 47 § 1.]

**Severability—1973 1st ex.s. c 47:** "If any provision of this 1973 act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1973 1st ex.s. c 47 § 4.] This applies to RCW 60.04.200–60.04.220.

**60.04.210 Interim or construction financing—Notice of lien—Duty of lender to withhold from disbursements—Liabilities of lender and lien claimant.** Any lender providing interim or construction financing where there is not a payment bond of at least fifty percent of the amount of construction financing shall observe the following procedures:

(1) Draws against construction financing shall be made only after certification of job progress by the general contractor and the owner or his agent in such form as may be prescribed by the lender.

(2) Any potential lien claimant who has not received a payment within twenty days after the date required by his contract or purchase order may within twenty days thereafter file a notice as provided herein of the sums due and to become due, for which a potential lien claimant may claim a lien under chapter 60.04 RCW.

(3) The notice must be filed in writing with the lender at the office administering the interim or construction financing, with a copy furnished to the owner and appropriate general contractor. The notice shall state in substance and effect that such person, firm or corporation has furnished labor, materials and supplies, or supplied equipment for which right of lien is given by this chapter, with the name of the general contractor, agent or person ordering the same, a common or street address of the real property being improved or developed, or if there be none the legal description of said real property, description of the labor, or material furnished, or equipment leased, the name, business address and telephone number of said lien claimant which notice shall be given by mailing the same by registered or certified mail, return receipt requested.

(4) After the receipt of such notice, the lender shall withhold from the next and subsequent draws such percentage thereof as is equal to that percentage of completion as certified in subsection (1) of this section, which is attributable to the potential lien claimant as of the date of the certification of job progress for the draw



in question less contracted retainage. The percentage of completion attributable to the lien claimant shall be calculated from said certification of job progress, and shall be reduced to reflect any sums paid to or withheld for the potential lien claimant. Alternatively, the lender may obtain from the general contractor or borrower a payment bond for the benefit of the potential lien claimant in such sum.

(5) Sums so withheld shall not be disbursed by the lender except by the written agreement of the potential lien claimant, owner and general contractor in such form as may be prescribed by the lender, or the order of a court of competent jurisdiction.

(6) In the event a lender fails to abide by the provisions of subsections (4) or (5) of this section, then the mortgage, deed of trust or other encumbrance securing the lender will be subordinated to the lien of the potential lien claimant to the extent of the interim or construction financing wrongfully disbursed, but in no event in an amount greater than the sums ultimately determined to be due the potential lien claimant by a court of competent jurisdiction, or more than the sum stated in the notice, whichever is less.

(7) Any potential lien claimant shall be liable for any loss, cost or expense, including reasonable attorney fees, to the party injured thereby arising out of any unjust, excessive or premature notice of claim. [1973 1st ex.s. c 47 § 2.]

**60.04.220 Interim or construction financing—Priorities.** Except as provided in RCW 60.04.050 or in RCW 60.04.200 through 60.04.220 any mortgage or deed of trust shall be prior to all liens, mortgages, deeds of trust and other encumbrances which have not been recorded prior to the recording of such mortgage or deed of trust to the extent of all sums secured by such mortgage or deed of trust regardless of when the same are disbursed or whether such disbursements are obligatory. [1973 1st ex.s. c 47 § 3.]

**Chapter 60.08  
CHATTEL LIENS**

Sections  
 60.08.010 Lien authorized.  
 60.08.020 Notice of lien—Contents—Form.  
 60.08.030 Priority of lien.  
 60.08.040 Enforcement of lien—Limitation of action.  
 60.08.050 Rank of lien—Personal judgment—Deficiency—Costs.  
 60.08.060 Filing notice of liens.

**60.08.010 Lien authorized.** Every person, firm or corporation who shall have performed labor or furnished material in the construction or repair of any chattel at the request of its owner, shall have a lien upon such chattel for such labor performed or material furnished, notwithstanding the fact that such chattel be surrendered to the owner thereof: *Provided, however,* That no such lien shall continue, after the delivery of such chattel to its owner, as against the rights of third persons who, prior to the filing of the lien notice as hereinafter provided for, may have acquired the title to

such chattel in good faith, for value and without actual notice of the lien. [1917 c 68 § 1; 1909 c 166 § 1; 1905 c 72 § 1; RRS § 1154.]

**60.08.020 Notice of lien—Contents—Form.** In order to make such lien effectual the lien claimant shall, within sixty days from the date of delivery of such chattel to the owner, file in the office of the auditor of the county in which such chattel is kept, a lien notice, which notice shall state the name of the claimant, the name of the owner, a description of the chattel upon which the claimant has performed labor or furnished material, the amount for which a lien is claimed and the date upon which such expenditure of labor or material was completed, which notice shall be signed by the claimant or someone on his behalf, and may be in substantially the following form:

CHATTEL LIEN NOTICE.

----- Claimant,  
                   against  
 ----- Owner. }

Notice is hereby given that ----- has and claims a lien upon (here insert description of chattel), owned by ----- for the sum of ----- dollars, for and on account of labor, skill and material expended upon said ----- which was completed upon the ----- day of -----, 19--

-----  
 Claimant.

[1917 c 68 § 2; 1905 c 72 § 2; RRS § 1155.]

**60.08.030 Priority of lien.** The liens created by this chapter are preferred to any lien, mortgage or other encumbrance which may attach subsequently to the time of the commencement of the performance of the labor, or the furnishing of the materials for which the right of lien is given by this chapter, and are also preferred to any lien, mortgage or other encumbrance which may have attached previously to that time, and which was not filed or recorded so as to create constructive notice of the same prior to that time, and of which the lien claimant has no notice. [1917 c 68 § 3; 1905 c 72 § 3; RRS § 1156.]

**60.08.040 Enforcement of lien—Limitation of action.** The lien herein provided for may be enforced against all persons having a junior or subsequent interest in any such chattel, by judicial procedure or by summary procedure as set forth in chapter 60.10 RCW and RCW 61.12.162 within nine months after the filing of such lien notice, and if no such action shall be commenced within such time such lien shall cease. [1969 c 82 § 11; 1917 c 68 § 4; 1905 c 72 § 4; RRS § 1157.]

*Chattel mortgages: Chapter 61.04 RCW, Article 62A.9 RCW.*

**60.08.050 Rank of lien—Personal judgment—Deficiency—Costs.** In every case originating in or removed to a court of competent jurisdiction, in which different liens are claimed against the same property, the court, in the judgment, must declare the rank of

such lien or class of liens, which shall be in the following order:

- (1) All persons performing labor;
- (2) All persons furnishing material;

And the proceeds of the sale of the property must be applied to each lien or class of liens in the order of its rank; and personal judgment may be rendered in an action brought to foreclose a lien, against any party personally liable for any debt for which the lien is claimed, and if the lien be established, the judgment shall provide for the enforcement thereof upon the property liable as in case of foreclosure of mortgages; and the amount realized by such enforcement of the lien shall be credited upon the proper personal judgment, and the deficiency, if any, remaining unsatisfied, shall stand as a personal judgment, and may be collected by execution against the party liable therefor. The court may allow, as part of the costs of the action, the moneys paid for filing or recording the claim, and a reasonable attorney's fee in the action. [1917 c 68 § 5; RRS § 1157a.]

**60.08.060 Filing notice of liens.** Upon presentation of such lien notice to the auditor of any county, and the payment to him of fifteen cents, he shall file the same, and endorse thereon the time of the reception, the number thereof, and shall enter the same in a suitable book or file (but need not record the same). Such book or file shall have herewith an alphabetic index, in which the county auditor shall index such notice by noting the name of the owner, name of lien claimant, description of property, date of lien (which shall be the date upon which such expenditure of labor, skill or material was completed), date of filing and when released, the date of release. [1905 c 72 § 5; RRS § 1158.]

### Chapter 60.10 PERSONAL PROPERTY LIENS—SUMMARY FORECLOSURE

Sections	
60.10.010	Definitions.
60.10.020	Methods of foreclosure.
60.10.030	Notice and sale—Priorities—Sale procedure— Surplus—Deficiency.
60.10.040	Rights and interest of purchaser for value.
60.10.050	Redemption.
60.10.060	Noncompliance with chapter—Rights of lien debtor.
60.10.070	"Commercially reasonable".

**60.10.010 Definitions.** As used in this chapter:

(1) The term "lien debtor" means the person who is obligated, owes payment or other performance. Where the lien debtor and the owner of the collateral are not the same person, the term "lien debtor" means the owner of the collateral.

(2) "Collateral" means the property subject to a statutory lien.

(3) "Lien holder" means a person who, by statute, has acquired a lien on the property of the lien debtor, or such person's successor in interest.

(4) "Secured party" has the same meaning as used in Article 9 of the Uniform Commercial Code (Title 62A). [1969 c 82 § 2.]

*Judicial foreclosure of personal property liens: RCW 61.12.162.*

**60.10.020 Methods of foreclosure.** Any lien upon personal property, excluded by RCW 62A.9–104 from the provisions of the Uniform Commercial Code (Title 62A), may be foreclosed by an action in the superior court having jurisdiction in the county in which the property is situated in accordance with RCW 61.12.162, or it may be foreclosed by summary procedure as provided in this chapter. [1969 c 82 § 3.]

**60.10.030 Notice and sale—Priorities—Sale procedure—Surplus—Deficiency.** (1) A lien foreclosure authorized by RCW 60.10.020 may be summarily foreclosed by notice and sale as provided herein. The lien holder may sell, or otherwise dispose of the collateral in its then condition or following any commercially reasonable preparation or processing. The proceeds of disposition shall be applied in the order following to

(a) the reasonable expenses of retaking, holding, preparing for sale, selling and the like and, to the extent provided for in the agreement and not prohibited by law, the reasonable attorneys' fees and legal expenses incurred by the secured party;

(b) the satisfaction of indebtedness secured by the lien under which the disposition is made;

(c) the satisfaction of indebtedness secured by any subordinate security interest in the collateral if written notification of demand therefor is received before distribution of the proceeds is completed. If requested by the lien holder, the holder of a subordinate security interest must seasonably furnish reasonable proof of his interest, and unless he does so, the lien holder need not comply with his demand.

(2) The lien holder must account to the lien debtor for any surplus, and, unless otherwise agreed, the lien debtor is not liable for any deficiency.

(3) Disposition of the collateral may be by public or private proceedings and may be made by way of one or more contracts. Sale or other disposition may be as a unit or in parcels and at any time and place and on any terms but every aspect of the disposition including the method, manner, time, place and terms must be commercially reasonable which shall be construed as provided in RCW 60.10.070. Unless collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, reasonable notification of the time and place of any public sale or reasonable notification of the time after which any private sale or other intended disposition is to be made shall be sent by the lien holder to the lien debtor, and except in the case of consumer goods to any other person who has a security interest in the collateral and who has duly filed a financing statement indexed in the name of the lien debtor in this state or who is known by the lien holder to have a security interest in the collateral. The lien holder may buy at any public sale and if the collateral is of a type customarily sold in a recognized market or is of a type which is the subject of widely distributed standard price quotations he may buy at private sale. [1969 c 82 § 4.]

**60.10.040 Rights and interest of purchaser for value.** When a lien is foreclosed in accordance with the provisions of RCW 61.12.162 and this chapter, the disposition transfers to a purchaser for value all of the lien debtor's rights therein, discharges the lien under which it is made and any security interest or lien subordinate thereto. The purchaser takes free of all such rights and interests even though the lien holder fails to comply with the requirements of this chapter or of any judicial proceedings under RCW 61.12.162:

(1) In the case of a public sale, if the purchaser has no knowledge of any defects in the sale and if he does not buy in collusion with the lien holder, other bidders or the person conducting the sale; or

(2) In any other case, if the purchaser acts in good faith. [1969 c 82 § 5.]

**60.10.050 Redemption.** At any time before the lien holder has disposed of collateral or entered into a contract for its disposition under RCW 61.12.162 and this chapter, the lien debtor or any other secured party may redeem the collateral by tendering fulfillment of all obligations secured by the collateral as well as the expenses reasonably incurred by the lien holder, holding and preparing the collateral for disposition, in arranging for the sale, and his reasonable attorneys' fees and legal expenses. [1969 c 82 § 6.]

**60.10.060 Noncompliance with chapter—Rights of lien debtor.** If it is established that the lien holder is not proceeding in accordance with the provisions of this chapter disposition may be ordered or restrained on appropriate terms and conditions. If the disposition has occurred the lien debtor or any person entitled to notification or whose security interest has been made known to the lien holder prior to the disposition has a right to recover from the lien holder any loss caused by a failure to comply with the provisions of this chapter. The lien debtor has a right to recover in any event an amount not less than ten percent of the original lien claimed. [1969 c 82 § 7.]

**60.10.070 "Commercially reasonable".** As used in this chapter, "commercially reasonable" shall be construed in a manner consistent with the following:

The fact that a better price could have been obtained by a sale at a different time or in a different method from that selected by the lien holder is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. If the lien holder either sells the collateral in the usual manner in any recognized market therefor or if he sells at the price current in such market at the time of his sale or if he has otherwise sold in conformity with reasonable commercial practices among dealers in the type of property sold he has sold in a commercially reasonable manner. A disposition which has been approved in any judicial proceeding or by any bona fide creditors' committee or representative of creditors shall conclusively be deemed to be commercially reasonable, but this sentence does not indicate that any such approval must be obtained in any case nor does it indicate that any disposition not so

approved is not commercially reasonable. [1969 c 82 § 8.]

## Chapter 60.12 LABOR, LANDLORD AND SEED LIENS ON FARM CROPS

Sections	
60.12.010	Labor lien authorized—Exceptions.
60.12.020	Landlord's lien authorized.
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60.12.210	Seed liens—Existing rights preserved.

**60.12.010 Labor lien authorized—Exceptions.** Any person, who, as laborer, contractor or otherwise, shall, at the request of the owner, or the tenant, of any farm or land, do or cause to be done any work or labor upon any such farm or land, in tilling the same, or any part thereof, or in preparing the same or any part thereof for the growing of crops, or in sowing or planting any crop on the same, or in cultivating any crop growing thereon, or in cutting, digging, picking, pulling or otherwise harvesting any crop grown thereon, or in gathering, securing, or housing any crop grown thereon, or in threshing any grain grown thereon, or in hauling to any warehouse any crop or grain grown thereon, shall have a lien upon any and all of the crops grown, during the calendar year in which such work or labor was done, upon all or any of the land belonging to or occupied by the person, firm or corporation at whose request the work or labor was done, for the contract price, or reasonable value, of such work and labor, and any person, who, as laborer, contractor or otherwise, shall, in any calendar year, at the request of the owner or tenant, of any farm or land, do or cause to be done any work or labor upon any such farm or land, in preparing the same, or any part thereof, for the sowing, planting or growing of any crop, or in sowing or planting any crop thereon, to be grown and harvested in the following calendar year, shall have a lien on the crop so grown or harvested, for the contract price, or reasonable value, of such work or labor: *Provided*, That no lien on the crop grown on any orchard shall be allowed, under the provisions of this section, for work or labor done on such orchard or orchard lands, in pruning, spraying, cultivating, picking, gathering, sorting, housing or otherwise caring for, harvesting or securing, preparing for market

or in delivering said crop, and nothing in this chapter shall be construed as repealing, amending or modifying any of the provisions of chapter 60.16 RCW: *And provided further*, That the interest of any lessor in any portion of the crop raised on demised premises leased in consideration of a share of the crop raised, shall not be subject to the lien provided for in this section, where the work or labor is done at the request of the tenant: *And provided further*, That the lien for hauling shall attach only to the crop or grain actually hauled by the claimant. [1933 c 32 § 1; 1927 c 256 § 1; RRS § 1188-1. Prior: 1891 c 75 § 1; 1886 p 114 § 1; Code 1881 § 1975; 1879 p 150 § 1.]

**60.12.020 Landlord's lien authorized.** Every landlord shall have a lien upon the crops growing or grown upon demised premises in any year, for the faithful performance of the terms of the lease, and for the rent accruing or accrued for such year, whether such rent is to be paid wholly, or in part, in money, or in specific articles of property, or in the products of the premises, or in labor. [1927 c 256 § 2; RRS § 1188-2.]

**60.12.030 Rank and priority of lien—Assignment.** The liens provided for in this chapter shall be preferred to any other encumbrance upon the crops to which they attach. The seed lien provided for in this chapter shall be superior to any lien except a labor lien. Such a lien or right of lien and the right of action therefor shall be assignable so as to vest in the assignee all rights and remedies of the assignor, subject to all defenses thereto that might be made if the assignment had not been made. [1955 c 336 § 2; 1927 c 256 § 3; RRS § 1188-3. Prior: Code 1881 § 1976; 1879 p 150 § 2.]

**60.12.040 Notice of labor or landlord's lien—Filing—Requisites—Recorded leases—Damage claim.** Every person claiming a lien, under the provisions of this chapter for work and labor done, must within twenty days, after the cessation of the work or labor for which the lien is claimed, file for record, in the office of the county auditor of the county in which the crop or crops upon which the lien is claimed are growing or were grown, a claim of lien, subscribed and verified under oath by the claimant, or someone in his behalf, to the effect that the affiant believes the claim to be just.

In case the lease under which the landlord claims a lien for rent has been recorded in the office of the county auditor of the county where the demised premises are situated, such recording shall constitute notice of claim of lien for rent during the first three years of the leasehold period, but any claim for damages, by a landlord, for failure of faithful performance of the lease must be recorded within the time, and in the manner hereinabove in this section provided.

Every landlord claiming a lien upon the crop or crops growing or grown upon the demised premises in any year, under the provisions of this chapter, for rent or the faithful performance of an unrecorded lease must, on or before the first day of June in such year, file for record, in the office of the county auditor of the county

in which the crop or crops upon which the lien is to be claimed are growing or were grown, a claim of lien, subscribed and verified under oath by the claimant, or someone in his behalf, to the effect that the affiant believes the claim to be just. [1933 c 119 § 1; 1927 c 256 § 4; RRS § 1188-4. Prior: 1919 c 176 § 1; 1888 p 130 § 1; 1886 p 115 § 2; Code 1881 § 1977; 1879 p 150 § 3. Formerly RCW 60.12.050, part.]

*Seed liens—Filing notice of claim: RCW 60.12.190.*

**60.12.060 Laborer's or landlord's claim—Contents—Amendments.** The verified claim of lien, provided for in RCW 60.12.040, must state the name of the claimant, and in case the claim has been assigned, the name of the assignee, the demand of the claimant and the amount thereof, after deducting all just credits and offsets, the name of the person, firm or corporation, by whom the claimant was employed, and whether the owner or tenant of the land upon which the crop upon which the lien is claimed is growing or was grown, the contract price of employment, if any, or in case there was no express contract, the reasonable worth of the work and labor performed, the kind and amount thereof, and the dates of beginning and completing the same, and must contain a description of the land upon which the work and labor was performed, a description of the crop to be charged with the lien, sufficient for identification with reasonable certainty, giving the kind of crop, a description of the land upon which the crop is growing or was grown, and, if the crop has been harvested, the amount of the crop, as near as may be, and a description of the containers and the number thereof, if any: *Provided*, That if the lien is claimed for preparing the ground for, or planting or sowing a crop to be harvested in the following calendar year, a description of the land upon which the crop is to be, or is planted or sown, and the nature of the crop, shall be sufficient. In case a lien is claimed for rent, or for damages for failure of faithful performance of the lease, the verified claim, if any is filed, shall contain a description of the demised premises, and state the terms and conditions of the lease, and the amount of the rent due or to become due, or, the nature of the failure of performance, and the amount of damages claimed, and a sufficient description of the crop upon which the lien is claimed as above provided. Any such claim of lien may be amended, in case action is brought to foreclose the same, by order of court, as pleadings may be amended: *Provided*, That the interest of third parties shall not be affected by any such amendment. [1927 c 256 § 5; RRS § 1188-5.]

**60.12.070 Filing and indexing claims—Fees.** Every such instrument shall be filed in the office of the county auditor who shall index the same in a book kept for that purpose as chattel mortgages are required by law to be indexed, and for which he shall receive the same fees as are required by law for filing and indexing chattel mortgages. [1933 c 32 § 2; 1927 c 256 § 6; RRS § 1188-6.]

*Filing and indexing chattel mortgages: RCW 62A.9-403(4), (5).*

**60.12.080 Duration of lien—Limitation of action.**

No lien shall bind a crop for a longer period than eight calendar months after the claim was filed, unless an action is commenced within that time to enforce it: *Provided*, That if the claim of lien is upon a crop to be grown and harvested in the following calendar year, after the work of preparing the ground or planting or sowing the crop is done, the lien shall bind the crop for a period of twelve calendar months after the claim was filed, if an action is commenced within that time to enforce it: *Provided further*, That a lien for seed shall not expire until six months after the crop from said seed has been harvested or until after two years from filing, whichever is the shorter time: *Provided further*, That if an action to enforce a lien is nonsuited or dismissed for any cause other than the merits, the lien shall continue for an additional month, to permit the commencement of another action thereon. If action to enforce a lien is not prosecuted to judgment within two years after its commencement, the court may dismiss it for want of prosecution, and the dismissal or judgment that no lien exists, shall constitute a cancellation of the lien. [1955 c 336 § 5; 1927 c 256 § 7; RRS § 1188-7.]

**60.12.090 Foreclosure—Parties.**

Any lien provided by this chapter, for which a claim has been filed, may be foreclosed and enforced by a civil action, in the superior court of the county wherein the lien was filed, and all laws and proceedings to secure property so as to hold it for the satisfaction of any lien which may be against it, shall apply to actions for the foreclosure of liens provided for in this chapter. In any such action brought to foreclose a lien, all persons who, prior to the commencement of such action, have legally filed claims for liens against the same property, or any part thereof, shall be joined as parties, either plaintiff or defendant, and no person shall begin an action to foreclose a lien, upon any property, while a prior action, begun to foreclose another lien on the same property, is pending, but if not made a party plaintiff or defendant in such prior action, he may apply to the court to be joined as a party thereto, and his lien may be foreclosed in such action, and no action to foreclose a lien provided for in this chapter, shall be dismissed at the instance of an applicant therein, to the prejudice of any other party to the suit who claims a lien. [1927 c 256 § 8; RRS § 1188-8.]

**60.12.100 Sheriff as receiver—Notice—**

**Fees—Deposit for possession—Demand before suit.** The sheriff of the county wherein any action is brought under the provisions of this chapter shall be the receiver when any is appointed, and the superior court, upon a sufficient showing made, shall appoint such receiver without notice, who shall be allowed such fees as may seem just to the court, which fees shall be accounted for by such sheriff as other fees are collected by him in his official capacity: *Provided*, That when any property is in the custody of such sheriff, under the provisions of this section, any person claiming any interest therein, may deposit with the clerk of the court wherein such action is pending, a sum of money in an amount equal

to the claim or claims sued upon, together with one hundred dollars, or such sum as may be fixed by the court in which such action is pending, to cover costs and interest, and shall have the right to demand and receive forthwith from such sheriff, the possession and custody of such property: *Provided, further*, That in no action brought under the provisions of this chapter shall costs be allowed to any lien claimant, unless a demand has been made for payment of his claim before the commencement of the suit, unless the court shall find that the claimant at the time of bringing action, had reasonable ground to believe that the owner or person having control of the property upon which such lien is claimed, was attempting to eloin, injure, destroy, or render difficult, uncertain or impossible of identification, the property upon which the lien is claimed, or otherwise prevent the collection of the claim. [1927 c 256 § 9; RRS § 1188-9.]

**60.12.110 Pleadings by defendants—Amendments.**

If the defendant or defendants appear in the suit to enforce any lien provided by this chapter, he or they shall make their answer on the merits of the complaint, and any motion or demurrer against said complaint must be filed with the answer, and no motion shall be allowed to make the complaint more definite and certain, if it appear to the court that the defendant or defendants have or should have knowledge of the facts, or that it can be made more definite and certain by facts which will necessarily appear in the testimony, but the case, unless the court sustains the demurrer to the complaint, shall be heard on the merits as speedily as possible, and amendments to the pleadings and notice of claim of lien, if necessary, shall be liberally allowed. [1927 c 256 § 10; RRS § 1188-10.]

**60.12.120 Errors in claim, effect of.** No mistake or error in the claim of lien filed, shall invalidate the lien, unless the court finds that such mistake or error was made with intent to defraud, or the court shall find that an innocent third party, without notice, direct or constructive, has, since the claim was filed, become a bona fide owner of the property against which the claim of lien was filed, and that the notice of claim of lien was so deficient that it did not put such third party upon further inquiry in any manner. [1927 c 256 § 11; RRS § 1188-11.]

**60.12.130 Purchase of property subject to lien—**

**Presumption of notice.** It shall be conclusively presumed by the court, in any action brought under the provisions of this chapter, that any one purchasing property subject to any lien under the provisions of this chapter, within the period given herein to claimants within which to file their liens, is not an innocent third party, and that he has not become a bona fide owner of the property, so purchased, unless it shall appear that he has paid full value for such property, and has required the purchase money of said property to be applied to the payment of such bona fide claimants as are entitled to liens upon said property under the provisions of this

chapter. [1933 c 119 § 2; 1927 c 256 § 12; RRS § 1188-12.]

**60.12.140 Judgment—Costs—Disposition of proceeds.** In any action brought under the provisions of this chapter, judgment must be rendered in favor of each person establishing a lien for the amount due him with costs, and the court shall allow, as a part of the costs, the moneys paid for making, filing and recording the claim of lien, and a reasonable attorney's fee for each person establishing a lien, and the court shall order any property upon which any lien provided for by this chapter is established, to be sold by the sheriff of the proper county in the same manner that personal property is sold on execution, and the court shall apportion the proceeds of such sale to the payment of the several judgments rendered in the action, pro rata, according to the amounts of such judgments, and if any balance remain of such proceeds after the payment of such judgment, shall direct the payment of the same to the owner of the property sold. [1927 c 256 § 13; RRS § 1188-13.]

**60.12.150 Sale before judgment—Deposit of proceeds.** In any action begun under the provisions of this chapter, the court, upon a sufficient showing being made, may order any property upon which a lien is claimed under the provisions of this chapter, to be sold by the sheriff as personal property is sold on execution, before judgment is rendered, and that the proceeds of such sale shall be paid into court, to be applied as may be provided for by the judgment. [1927 c 256 § 14; RRS § 1188-14.]

**60.12.160 Concealment or injury to crops under lien—Damages.** Any person who shall eloin, injure, or destroy, or who shall render difficult, uncertain or impossible of identification, any crop or crops upon which there is a lien, as provided for in this chapter, without the express consent of the lien holder, shall be liable to the lien holder for damages, to the amount secured by his lien, and the facts being shown to the court in the civil action to enforce said lien, it shall be the duty of the court to enter a personal judgment for the amount of such damages and costs, against said person, if he be a party to said action, or such damages may be recovered in a civil action against such person. [1927 c 256 § 15; RRS § 1188-15.]

*Removal or destruction of property subject to lien, penalty: RCW 61.12.030, 9.45.060.*

**60.12.170 Personal action preserved.** Nothing contained in this chapter shall be construed to impair or affect the right of any person to whom any debt may be due for labor performed, or for rent or damages, under the provisions of this and preceding sections, to maintain a personal action to recover such debt against the person liable therefor. [1927 c 256 § 16; RRS § 1188-16.]

**60.12.180 Seed liens.** Every person who, at the written request of the owner of real property, his agent, or tenant, furnishes seed for growing crops upon such real property shall have a lien for the agreed price or the reasonable value thereof upon any or all crops grown from such seed. [1959 c 226 § 1; 1955 c 336 § 1.]

**60.12.190 Seed liens—Filing notice of claim.** A person claiming a seed lien shall, within sixty days after delivering the seed to the owner purchasing the seed, or his agent, file in the manner required for filing chattel mortgages a claim of lien subscribed and verified by the claimant or someone on his behalf, to the effect that affiant believes the claim to be just. Such filing shall be with the county auditor of the county in which the real property is situated and the crop is to be grown or is growing. The county auditor shall file and index the claims of lien on the crop in a book kept for that purpose and for the same fee as required for chattel mortgages. [1955 c 336 § 3.]

**60.12.200 Seed liens—Contents of claim.** The claim of lien for seed shall state the name of the claimant; if the claim has been filed, the name of the assignee; the demand of the claimant and the amount thereof, after deducting all just credits and offsets; the contract price or reasonable value of the seed sold; the kind and amount thereof; the date of delivery of the seed; the description of the land and the crop to be charged, giving the kind of crop, a description of the land upon which the crop is to be planted or is growing. [1955 c 336 § 4.]

**60.12.210 Seed liens—Existing rights preserved.** Nothing contained in RCW 60.12.030, 60.12.080, and 60.12.180 through 60.12.210 shall affect or lessen any existing rights. [1955 c 336 § 6.]

## Chapter 60.14 LIEN FOR AGRICULTURAL DUSTING OR SPRAYING

### Sections

60.14.010	Liens authorized.
60.14.020	Claim of lien—Filing—Contents—Foreclosure.
60.14.030	Limitation of action to foreclose—Costs.

**60.14.010 Liens authorized.** Any person, firm, corporation or copartnership who shall under contract, perform labor or services, or furnish materials in crop dusting or spraying crops or lands for the purpose of weed, disease, or insect control or for promoting the growth of such crops, shall have a lien upon all such crops so crop dusted or sprayed, for and on account of the labor or services performed and material furnished. [1955 c 217 § 1.]

**60.14.020 Claim of lien—Filing—Contents—Foreclosure.** Such lien claimant must within thirty days after the completion of harvest of crops sprayed or dusted, file for recording with the auditor of the county in which the crops or part thereof are raised, a claim of lien which shall be in substance in accordance with the

provisions governing mechanics' liens in chapter 60.04 RCW, and foreclosed in the same manner as such liens, and such lien shall attach as of the date of such filing. [1955 c 217 § 2.]

**60.14.030 Limitation of action to foreclose—Costs.** An action to foreclose such lien shall be brought within eight calendar months after filing the claim for lien, and the court shall allow as part of the costs, the money paid for making, filing, or recording the claim and reasonable attorney's fee. [1955 c 217 § 3.]

### Chapter 60.16 LABOR LIENS ON ORCHARDS AND ORCHARD LANDS

#### Sections

- 60.16.010 Liens authorized.  
60.16.020 Notice of lien—Filing—Contents—Foreclosure.  
60.16.030 Limitation of action to foreclose—Costs.

**60.16.010 Liens authorized.** Any person or corporation who shall do or cause to be done any labor upon any orchard or orchard lands, in pruning, spraying, cultivating and caring for the same, at the request of the owner thereof, or his agent, shall have a lien upon such orchard and orchard lands for such work and labor so performed. [1917 c 110 § 1; RRS § 1131-1.]

**60.16.020 Notice of lien—Filing—Contents—Foreclosure.** Any person or corporation claiming the benefit of this chapter, must within forty days after the close of such work or labor for each season during which such work and labor is done, file for record with the county auditor of the county in which said work and labor was performed and in which said land or part thereof is situated, a claim of lien which shall be in substance in accordance with the provisions of RCW 60.04.060, so far as the same is applicable, which said claim of lien shall be verified as in said section provided, and such lien may be enforced in a civil action in the same manner as near as may be, as provided in RCW 60.04.120. [1917 c 110 § 2; RRS § 1131-2.]

**60.16.030 Limitation of action to foreclose—Costs.** Any action to foreclose such claim of lien shall be brought within eight calendar months after the filing of such claim for lien as provided in RCW 60.16.020 and in any such action brought to enforce such lien, the court shall allow as part of the costs the money paid for making, filing and recording such claim of lien and a reasonable attorney's fee. [1917 c 110 § 3; RRS § 1131-3.]

### Chapter 60.20 LABOR AND MATERIAL LIENS FOR IMPROVING PROPERTY WITH NURSERY STOCK

#### Sections

- 60.20.010 Liens authorized.  
60.20.020 Priority over encumbrances.  
60.20.030 Claim of lien—Contents—Joint claims.  
60.20.040 Recording and indexing liens.

- 60.20.050 Rank and priority of liens.  
60.20.060 Foreclosure—Costs.

**60.20.010 Liens authorized.** Every person who, at the request of the owner of any real property, or at the request of the duly authorized agent of such owner, performs any labor or furnishes any material, or both, in the planting of trees, vines, shrubs, plants, hedges or lawns for the improvement of such real property, shall have a lien for the agreed price thereof, or if no agreed price, then for the reasonable value of such work and materials, upon the real property upon which such improvements are placed, and such further amount of land belonging to such owner as is necessary to the convenient use and enjoyment of such improvement. [1943 c 18 § 1; Rem. Supp. 1943 § 1148-1.]

**60.20.020 Priority over encumbrances.** The lien created by this chapter shall be preferred to any lien, mortgage or other encumbrance which may attach subsequently to the time of commencement of the performance of the labor, or the furnishing of the materials for which such lien is given, and are also preferred to any lien, mortgage or other encumbrance which may have attached previously to that time, and which was not filed or recorded so as to create constructive notice of the same prior to that time, and of which the lien claimant had no notice. [1943 c 18 § 2; Rem. Supp. 1943 § 1148-2.]

**60.20.030 Claim of lien—Contents—Joint claims.** The person or corporation claiming a lien shall, within ninety days after the completion of the labor or the furnishing of the materials, file for record with the auditor of the county in which the property is situated, a claim of lien, stating as nearly as may be the time of the commencement and cessation of performing the labor or furnishing the materials; the name of the claimant; the name of the person by whom the laborer was employed or to whom the material was furnished; the legal description of the property to be charged with the lien; the name of the owner, or reputed owner of the property; and the amount for which the lien is claimed, and shall be signed and verified by the claimant, or by some person in his behalf, to the effect that the affiant believes it to be just. If the claim has been assigned, the claim shall state the name of the assignee. In foreclosure suits, such claims of lien may be amended by order of the court, insofar as the interests of third parties shall not be affected thereby. Any number of claimants may join in the same claim for the purpose of filing and enforcing their liens, by stating the amount claimed by each lienor. [1955 c 239 § 1; 1943 c 18 § 3; Rem. Supp. 1943 § 1148-3.]

**60.20.040 Recording and indexing liens.** The county auditor of each county shall record all lien claims filed as provided in this chapter, in a book to be kept by him for that purpose, which record must be indexed as deeds and other conveyances are required by law to be indexed. [1943 c 18 § 4; Rem. Supp. 1943 § 1148-4.]



**60.20.050 Rank and priority of liens.** Liens provided for by this chapter shall have the same priority and rank, the one with the other, and as between such lien and other encumbrances, as in the case of mechanics' and materialmen's liens. [1943 c 18 § 5; Rem. Supp. 1943 § 1148-5.]

*Priority and rank of mechanics' and materialmen's liens: RCW 60.04.050, 60.04.130.*

**60.20.060 Foreclosure—Costs.** The liens provided for by this chapter for which claims have been filed may be foreclosed and enforced by a civil action in the court having jurisdiction, in the same manner as mechanics' and materialmen's liens are now foreclosed and enforced. Any such foreclosure action shall be brought within eight calendar months after the filing of such claim of lien as provided herein, and in any such action, the court shall allow as part of the costs therein the money paid for making, filing and recording such claim of lien and a reasonable attorney's fee. [1943 c 18 § 6; Rem. Supp. 1943 § 1148-6.]

*Foreclosure of mechanics' and materialmen's liens: RCW 60.04.120.*

### Chapter 60.22 LIEN FOR FURNISHING FERTILIZERS, PESTICIDES, WEED KILLERS

#### Sections

- 60.22.010 Liens authorized—Tenant farmers—Priority—Sale, commingling, disposal of crop.  
60.22.020 Claim of lien—Filing—Procedure to foreclose—Time of attachment.  
60.22.030 Time for foreclosure—Costs—Attorney's fee.

**60.22.010 Liens authorized—Tenant farmers—Priority—Sale, commingling, disposal of crop.** (1) Any person who furnishes commercial fertilizer, and/or pesticide, and/or weed killer to another for use on the lands owned, contracted to be purchased, used or rented by him, may have a lien upon all the crops on which the fertilizer, and/or pesticide, and/or weed killer are used to secure the payment of the purchase price thereof: *Provided*, That if the commercial fertilizer, and/or pesticide, and/or weed killer is furnished to any tenant farmer, the lien shall apply only to the tenant farmer's interest in the crops unless written consent of the owner of the premises is obtained: *Provided further*, That such lien shall be subordinate to any crop lien or crop mortgage which has been filed for record prior to the furnishing of such materials or products.

(2) If the crop, or any part thereof, is sold subsequent to the filing of the lien, or possession delivered to an agent, broker, cooperative agency or other person to be sold or otherwise disposed of and its identity lost, or the crop commingled with other property so that it cannot be segregated, and if the purchaser, agent, broker, cooperative agency or other person is notified of the filing of the lien by being served with a certified copy thereof, the lien shall attach to the proceeds of the sale of the crop or part thereof remaining in the possession of the purchaser, agent, broker, cooperative agency or other person at the time of the notice and to any proceeds of such sale that may thereafter come into the possession

of any of such persons and the lien shall be as effective against such proceeds as against the crop itself. [1961 c 264 § 1.]

**60.22.020 Claim of lien—Filing—Procedure to foreclose—Time of attachment.** Such lien claimant must within thirty days after the commencement of delivery of such materials and products, file for recording with the auditor of the county in which the crops or part thereof are raised, a claim of lien which shall be in substance in accordance with the provisions governing mechanics' liens in chapter 60.04 RCW, and foreclosed in the same manner as such liens, and such lien shall attach as of the date of such filing. [1961 c 264 § 2.]

**60.22.030 Time for foreclosure—Costs—Attorney's fee.** An action to foreclose such lien shall be brought within twelve calendar months after filing the claim for lien, and the court shall allow as part of the costs, the money paid for making, filing, or recording the claim and reasonable attorney's fee. [1961 c 264 § 3.]

### Chapter 60.24 LIEN FOR LABOR AND SERVICES ON TIMBER AND LUMBER

#### Sections

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**60.24.020 Liens on saw logs, spars, piles, cord wood, shingle bolts or other timber.** Every person performing labor upon or who shall assist in obtaining or securing saw logs, spars, piles, cord wood, shingle bolts or other timber, and the owner or owners of any tugboat or towboat, which shall tow or assist in towing, from one place to another within this state, any saw logs, spars, piles, cord wood, shingle bolts or other timber, and the owner or owners of any team or any logging engine, which shall haul or assist in hauling from one place to another within this state, any saw logs, spars, piles, cord wood, shingle bolts or other timber, and the owner or owners of any logging or other railroad over which saw logs, spars, piles, cord wood, shingle bolts, or other

timber shall be transported and delivered, shall have a lien upon the same for the work or labor done upon, or in obtaining or securing, or for services rendered in towing, transporting, hauling, or driving, the particular saw logs, spars, cord wood, shingle bolts, or other timber in said claim of lien described whether such work, labor or services was done, rendered or performed at the instance of the owner of the same or his agent. Scalers, and bull cooks, and cooks, flunkeys and waiters in lumber camps, shall be regarded as persons who assist in obtaining or securing the timber herein mentioned. [1923 c 10 § 1; 1907 c 9 § 1; 1895 c 88 § 1; 1893 c 132 § 1; RRS § 1162. Prior: Code 1881 § 1941; 1879 p 100 § 2; 1877 p 217 § 3; 1860 p 340 § 1.]

**60.24.030 Lien on lumber—"Lumber" defined.** Every person performing work or labor or assisting in manufacturing saw logs and other timber into lumber and shingles, has a lien upon such lumber while the same remains at the mill where it was manufactured, or in the possession or under the control of the manufacturer, whether such work or labor was done at the instance of the owner of such logs or his agent or any contractor or subcontractor of such owner. The term lumber, as used in this chapter, shall be held and be construed to mean all logs or other timber sawed or split for use, including beams, joists, planks, boards, shingles, laths, staves, hoops, and every article of whatsoever nature or description manufactured from saw logs or other timber. [1893 c 132 § 2; 1893 c 10 § 1; RRS § 1163. Prior: Code 1881 § 1942; 1877 p 217 § 4. Formerly RCW 60.24.010, part.]

**60.24.035 Lien for stumpage.** Any person who shall permit another to go upon his timber land and cut thereon saw logs, spars, piles or other timber, has a lien upon the same for the price agreed to be paid for such privilege, or for the price such privilege would be reasonably worth in case there was no express agreement fixing the price. [1893 c 132 § 3; RRS § 1164. Prior: Code 1881 § 1943; 1877 p 217 § 5. Formerly RCW 60.24.060.]

**60.24.038 Priority of lien.** The liens provided for in this chapter are preferred liens and are prior to any other liens, and no sale or transfer of any saw logs, spars, piles or other timber or manufactured lumber or shingles shall divest the lien thereon as herein provided, and as between liens provided for in this chapter those for work and labor shall be preferred: *Provided*, That as between liens for work and labor claimed by several laborers on the same logs or lot of logs the claim or claims for work or labor done or performed on the identical logs proceeded against to the extent that said logs can be identified, shall be preferred as against the general claim of lien for work and labor recognized and provided for in this chapter. [1893 c 132 § 4; RRS § 1165. Prior: Code 1881 § 1944; 1877 p 217 § 6. Formerly RCW 60.24.090.]

**60.24.040 Period covered by labor liens.** The person rendering the service of [or] doing the work or labor named in RCW 60.24.020 and 60.24.030 is only entitled to the liens as provided herein for services, work or labor for the period of eight calendar months, or any part thereof next preceding the filing of the claim, as provided in section 8 of this act. [1893 c 132 § 5; RRS § 1166. Prior: Code 1881 § 1945; 1877 p 217 § 7.]

*Reviser's note:* "section 8 of this act" is codified as RCW 60.24.080. Section 7 (codified as RCW 60.24.075) was probably intended.

**60.24.070 Period covered by stumpage lien.** The person granting the privilege mentioned in RCW 60.24.035 is only entitled to the lien as provided therein for saw logs, spars, piles and other timber cut during the eight months next preceding the filing of the claim, as herein provided in RCW 60.24.075. [1893 c 132 § 6; RRS § 1167. Prior: Code 1881 § 1946; 1877 p 217 § 8.]

**60.24.075 Claims—Contents—Form.** Every person, within thirty days after the close of the rendition of the services, or after the close of the work or labor mentioned in the preceding sections, claiming the benefit hereof, must file for record with the county auditor of the county in which such saw logs, spars, piles and other timber were cut, or in which such lumber or shingles were manufactured, a claim containing a statement of his demand and the amount thereof, after deducting as nearly as possible all just credits and offsets, with the name of the person by whom he was employed, with a statement of the terms and conditions of his contract, if any, and in case there is no express contract, the claim shall state what such service, work or labor is reasonably worth; and it shall also contain a description of the property to be charged with the lien sufficient for identification with reasonable certainty, which claim must be verified by the oath of himself or some other person to the effect that the affiant believes the same to be true, which claim shall be substantially in the following form:

----- Claimant, vs. -----

Notice is hereby given that ----- of ----- county, state of Washington, claims a lien upon a ----- of -----, being about ----- in quantity, which were cut or manufactured in ----- county, state of Washington, are marked thus -----, and are now lying in -----, for labor performed upon and assistance rendered in ----- said -----; that the name of the owner or reputed owner is -----; that ----- employed said ----- to perform such labor and render such assistance upon the following terms and conditions, to wit:

The said ----- agreed to pay the said ----- for such labor and assistance -----; that said contract has been faithfully performed and fully complied with on the part of said -----, who performed labor upon and assisted in ----- said ----- for the period of -----; that said labor and assistance were so performed and rendered upon said ----- between the ----- day of

..... and the ..... day of .....; and the rendition of said service was closed on the ..... day of ....., and thirty days have not elapsed since that time; that the amount of claimant's demand for said service is .....; that no part thereof has been paid except ....., and there is now due and remaining unpaid thereon, after deducting all just credits and offsets, the sum of ....., in which amount he claims a lien upon said ....., The said ..... also claims a lien on all said ..... now owned by said ..... of said county to secure payment for the work and labor performed in obtaining or securing the said logs, spars, piles or other timber, lumber or shingles herein described.

State of Washington, county of ..... ss.

..... being first duly sworn, on oath says that he is ..... named in the foregoing claim, has heard the same read, knows the contents thereof, and believes the same to be true.

Subscribed and sworn to before me this ..... day of .....

[1893 c 132 § 7; RRS § 1168. Prior: Code 1881 § 1947; 1879 p 100 § 4; 1877 p 217 § 9. Formerly RCW 60.24.050.]

**60.24.080 Filing claim for stumpage lien.** Every person mentioned in RCW 60.24.035 claiming the benefit thereof must file for record with the county auditor of the county in which such saw logs, spars, piles or other timber were cut, a claim in substance the same as provided in RCW 60.24.075, and verified as therein provided. [1893 c 132 § 8; RRS § 1169. Prior: Code 1881 § 1948; 1877 p 218 § 10.]

**60.24.100 Recording claims—Fees.** The county auditor must record any claim filed under this chapter in a book kept by him for that purpose, which record must be indexed, as deeds and other conveyances are required by law to be indexed, and for which he may receive the same fees as are allowed by law for recording deeds and other instruments. [1893 c 132 § 9; RRS § 1170. Prior: Code 1881 § 1949; 1877 p 218 § 11.]

**60.24.110 Limitation of action.** No lien provided for in this chapter binds any saw logs, spars, piles or other timber, or lumber and shingles, for a longer period than eight calendar months after the claim as herein provided has been filed, unless a civil action be commenced in a proper court, within that time, to enforce the same: *Provided, however,* That in case such civil action so commenced should for any cause other than the merits, be nonsuited or dismissed, then the lien shall continue for the term of one calendar month, if the said eight months have expired, to permit the commencement of another action thereon, which shall be as effective in prolonging the lien as if it had been entered during the term of eight months hereinbefore stated. [1893 c 132 § 10; RRS § 1171. Prior: Code 1881 § 1950; 1879 p 100 § 5; 1877 p 218 § 12.]

**60.24.120 Venue—Procedure.** The liens provided for in this chapter shall be enforced by a civil action in the superior court of the county wherein the lien was filed, and shall be governed by the laws regulating the proceedings in civil actions touching the mode and manner of trial, and the proceedings and laws to secure property so as to hold it for the satisfaction of any lien that be against it; except as hereinafter otherwise provided. [1893 c 132 § 11; RRS § 1172. Prior: Code 1881 § 1951; 1877 p 218 § 13.]

**60.24.130 Sheriff as receiver—Deposit to recover possession—Costs.** The sheriff of the county wherein the lien is filed shall be the receiver when one is appointed, and the superior court upon a showing made shall appoint such receiver without notice, who shall be allowed such fees as may seem just to the court, which fees shall be accounted for by such sheriff as other fees collected by him in his official capacity: *Provided,* That at any time when any property is in the custody of such sheriff under the provisions of this chapter, and any person claiming any interest therein, may deposit with the clerk of the court in which such action is pending, a sum of money in an amount equal to the claim sued upon, together with one hundred dollars, to cover costs and interest, (unless the court shall make an order fixing a different amount to cover such costs and interest, then such an amount as the court shall fix to secure such costs and interest, which such action is being prosecuted) and shall have the right to demand and receive forthwith from such sheriff the possession and custody of such property: *Provided,* That in no action brought under the provisions of this chapter shall costs be allowed to lien holders unless a demand has been made for payment of his lien claim before commencement of suit, unless the court shall find the claimants at time of bringing action had reasonable ground to believe that the owner or the person having control of the property upon which such lien is claimed was attempting to defraud such claimant, or prevent the collection of such lien. [1899 c 90 § 1; 1893 c 132 § 12; RRS § 1173.]

**60.24.140 Pleadings by defendant—Amendments—Hearing.** If the defendant or defendants appear in a suit to enforce any lien provided by this chapter he or they shall make their answer on the merits of the complaint, and any motion or demurrer against the said complaint must be filed with the answer; and no motion shall be allowed to make complaint more definite and certain, if it appear to the court that the defendant or defendants have or should have knowledge of the facts, or that it can be made more certain and definite by facts which will appear necessarily in the testimony; but the case, unless the court sustains the demurrer to the complaint, shall be heard on the merits as speedily as possible, and amendments of the pleadings, if necessary, shall be liberally allowed. [1893 c 132 § 13; RRS § 1174.]

**60.24.150 Enforcement against all or part of property.**

Any person who shall bring a civil action to enforce the lien herein provided for, or any person having a lien as herein provided for, who shall be made a party to any such civil action, has the right to demand that such lien be enforced against the whole or any part of the saw logs, spars, piles or other timber or manufactured lumber or shingles upon which he has performed labor or which he has assisted in securing or obtaining, or which he has cut on his timber land during the eight months next preceding the filing of his lien, for all his labor upon or for all his assistance in obtaining or securing said logs, spars, piles or other timber, or in manufacturing said lumber or shingles during the whole or any part of the eight months mentioned in section seven (7) of this act, or for timber cut during the whole or any part of the eight months above mentioned. And where proceedings are commenced against any lot of saw logs, spars, piles or other timber or lumber or shingles as herein provided, and some of the lienors claim liens against the specific logs, spars, piles or other timber or lumber or shingles proceeded against, and others against the same generally, to secure their claims for work and labor, the priority of the liens shall be determined as hereinbefore provided. [1893 c 132 § 14; RRS § 1175. Prior: Code 1881 § 1952; 1877 p 218 § 14.]

**Reviser's note:** "section seven (7) of this act" is codified as RCW 60.24.075. Section 5 (codified as RCW 60.24.040) was probably intended.

**60.24.160 Errors in claim, effect of.** No mistake or error in the statement of the demand, or of the amount of credits and offsets allowed, or of the balance asserted to be due to claimant, nor in the description of the property against which the claim is filed, shall invalidate the lien, unless the court finds that such mistake or error in the statement of the demand, credits and offsets or of the balance due was made with intent to defraud, or the court shall find that an innocent third party without notice, direct or constructive, has, since the claim was filed, become the bona fide owner of the property liened upon, and that the notice of claim was so deficient that it did not put the party upon further inquiry, in any manner. [1893 c 132 § 15; RRS § 1176.]

**60.24.170 Purchase of property subject to lien—Presumption of notice.** It shall be conclusively presumed by the court that a party purchasing the property liened upon within thirty days given herein to claimants wherein to file their liens, is not an innocent third party, nor that he has become a bona fide owner of the property liened upon, unless it shall appear that he has paid full value for the said property, and has seen that the purchase money of the said property has been applied to the payment of such bona fide claims as are entitled to liens upon the said property under the provisions of this chapter, according to the priorities herein established. [1893 c 132 § 16; RRS § 1177.]

**60.24.180 Joinder—Costs.** Any number of persons claiming liens under this chapter may join in the affidavit in RCW 60.24.075 provided, and may join in the

same action, and when separate actions are commenced the court may consolidate them. The court shall also allow as part of the costs the moneys paid for filing, making and recording the claim, and a reasonable attorney's fee for each person claiming a lien. [1901 c 23 § 1; 1893 c 132 § 17; RRS § 1178. Prior: Code 1881 § 1691; 1877 p 219 § 15.]

**60.24.190 Judgment—Sale—Disposition of proceeds.** In each civil action judgment must be rendered in favor of each person having a lien for the amount due to him, and the court or judge thereof shall order any property subject to the lien herein provided for to be sold by the sheriff of the proper county in the same manner that personal property is sold on execution, and the court or judge shall apportion the proceeds of such sale to the payment of each judgment, according to the priorities established in this chapter pro rata in its class according to the amount of such judgment. [1893 c 132 § 18; RRS § 1179. Prior: Code 1881 § 1954; 1877 p 219 § 16. FORMER PART OF SECTION: 1893 c 132 § 19; RRS § 1180 now codified as RCW 60.24.195.]

*Sale of property on execution: Chapter 6.24 RCW.*

**60.24.195 Sale of property subject to lien—When.** The court or judge may order any property subject to a lien as in this chapter provided to be sold by the sheriff as personal property is sold on execution either before or at the time judgment is rendered, as provided in RCW 60.24.190, and the proceeds of such sale must be paid into court to be applied as in RCW 60.24.190 directed. [1893 c 132 § 19; RRS § 1180. Prior: Code 1881 § 1955; 1877 p 219 § 17. Formerly RCW 60.24.190, part.]

*Sale of property on execution: Chapter 6.24 RCW.*

**60.24.200 Damages for eloigning, injuring, destroying or removing marks, etc.—Recovery.** Any person who shall eloign, injure or destroy, or who shall render difficult, uncertain or impossible of identification any saw logs, spars, piles, shingles or other timber upon which there is a lien as herein provided, without the express consent of the person entitled to such lien, shall be liable to the lien holder for the damages to the amount secured by his lien, and it being shown to the court in the civil action to enforce said lien, it shall be the duty of the court to enter a personal judgment for the amount in such action against the said person, provided he be a party to such action, or the damages may be recovered by a civil action against such person. [1893 c 132 § 20; RRS § 1181. Prior: Code 1881 § 1956; 1877 p 219 § 18.]

**Chapter 60.28****LIEN FOR LABOR, MATERIALS, TAXES ON PUBLIC WORKS**

## Sections

- 60.28.010 Retained percentage—Labor and material lien created—Termination before completion—Chapter deemed exclusive.
- 60.28.020 Excess over lien claims to contractor.

- 60.28.030 Foreclosure of lien—Limitation of action—Release of funds.
- 60.28.040 Tax liens—Priority of liens.
- 60.28.050 Duties of disbursing officer upon final acceptance of contract.
- 60.28.060 Duties of disbursing officer upon final acceptance of contract—Payments to department of revenue.
- 60.28.070 Payment of reserved funds by highway commission or cities or counties prior to completion of contract—Unforeseen conditions.
- 60.28.080 Delay due to litigation—Change order or force account directive—Costs—Arbitration—Termination.
- 60.28.900 Severability—1955 c 236.

*Contractor's bond for payment of mechanics, laborers, materialmen, etc., on public works: Chapter 39.08 RCW.*

**60.28.010 Retained percentage—Labor and material lien created—Termination before completion—Chapter deemed exclusive.**

(1) Contracts for public improvements or work, other than for professional services, by the state, or any county, city, town, district, board, or other public body, herein referred to as "public body", shall provide, and there shall be reserved by the public body from the moneys earned by the contractor on estimates during the progress of the improvement or work, a sum equal to ten percent of the first one hundred thousand dollars and five percent for all amounts over one hundred thousand dollars of such estimates, said sum to be retained by the state, county, city, town, district, board, or other public body, as a trust fund for the protection and payment of any person or persons, mechanic, subcontractor or materialman who shall perform any labor upon such contract or the doing of said work, and all persons who shall supply such person or persons or subcontractors with provisions and supplies for the carrying on of such work, and the state with respect to taxes imposed pursuant to Title 82 RCW which may be due from such contractor. Every person performing labor or furnishing supplies toward the completion of said improvement or work shall have a lien upon said moneys so reserved: *Provided*, That such notice of the lien of such claimant shall be given in the manner and within the time provided in RCW 39.08.030 through 39.08.060 as now existing and in accordance with any amendments that may hereafter be made thereto: *Provided further*, That the board, council, commission, trustees, officer or body acting for the state, county or municipality or other public body, at any time after fifty percent of the original contract work has been completed, if it finds that satisfactory progress is being made, may make any of the partial payments subsequently made in full; but in no event shall the amount to be retained be reduced to less than five percent of the amount of the entire contract.

(2) The moneys reserved under the provisions of subsection (1) of this section, at the option of the contractor, shall be:

(a) Retained in a fund by the public body until thirty days following the final acceptance of said improvement or work as completed; or

(b) Placed in escrow with a bank or trust company by the public body until thirty days following the final acceptance of said improvement or work as completed.

When the moneys reserved are to be placed in escrow, the public body shall issue a check representing the sum of the moneys reserved payable to the bank or trust company and the contractor jointly. Such check shall be converted into bonds and securities chosen by the contractor and approved by the public body and such bonds and securities shall be held in escrow. Interest on such bonds and securities shall be paid to the contractor as the said interest accrues.

(3) If the public body administering a contract, other than a contract governed by the provisions of RCW 60.28.070, as amended, after a substantial portion of the work has been completed, finds that an unreasonable delay will occur in the completion of the remaining portion of the contract for any reason not the result of a breach thereof, it may, if the contractor agrees, delete from the contract the remaining work and accept as final the improvement at the stage of completion then attained and make payment in proportion to the amount of the work accomplished and in such case any amounts retained and accumulated under this section shall be held for a period of thirty days following such acceptance. In the event that the work shall have been terminated before final completion as provided in this section, the public body may thereafter enter into a new contract with the same contractor to perform the remaining work or improvement for an amount equal to or less than the cost of the remaining work as was provided for in the original contract without advertisement or bid. The provisions of this chapter 60.28 RCW shall be deemed exclusive and shall supersede all provisions and regulations in conflict herewith. [1970 ex.s. c 38 § 1; 1969 ex.s. c 151 § 1; 1963 c 238 § 1; 1955 c 236 § 1; 1921 c 166 § 1; RRS § 10320.]

**60.28.020 Excess over lien claims to contractor.** After the expiration of the thirty day period, and after receipt of the department of revenue's certificate, and the public body is satisfied that the taxes certified as due or to become due by the department of revenue are discharged, and the claims of materialmen and laborers who have filed their claims, together with a sum sufficient to defray the cost of foreclosing the liens of such claims, and to pay attorneys' fees, have been paid, the public body shall pay to the contractor the fund retained by it or release to the contractor the securities and bonds held in escrow.

If such taxes have not been discharged or the claims, expenses, and fees have not been paid, the public body shall: (1) deduct such taxes and such claims, expenses and fees from the fund retained by it and pay the remainder, if any, to the contractor; or (2) order the securities and bonds held in escrow to be reconverted to money and returned to the public body who shall deduct such taxes and such claims, expenses, and fees from such sum and pay the remainder, if any, to the contractor. [1970 ex.s. c 38 § 2; 1967 ex.s. c 26 § 23; 1955 c 236 § 2; 1921 c 166 § 2; RRS § 10321.]

~~Effective date~~ ~~Purpose~~ ~~Savings~~—1967 ex.s. c 26: See notes following RCW 82.01.050.

**60.28.030 Foreclosure of lien—Limitation of action—Release of funds.** Any person, firm, or corporation filing a claim against the reserve fund shall have four months from the time of the filing thereof in which to bring an action to foreclose the lien. The lien shall be enforced by action in the superior court of the county where filed, and shall be governed by the laws regulating the proceedings in civil actions touching the mode and manner of trial and the proceedings and laws to secure property so as to hold it for the satisfaction of any lien against it: *Provided*, That the public body shall not be required to make any detailed answer to any complaint or other pleading but need only certify to the court the name of the contractor; the work contracted to be done; the date of the contract; the date of completion and final acceptance of the work; the amount retained; the amount of taxes certified due or to become due to the state; and all claims filed with it showing respectively the dates of filing, the names of claimants, and amounts claimed. Such certification shall operate to arrest payment of so much of the funds retained as is required to discharge the taxes certified due or to become due and the claims filed in accordance with this chapter. If a claimant fails to bring action to foreclose his lien within the four months period, the reserve fund shall be discharged from the lien of his claim and the funds shall be paid to the contractor. The four months limitation shall not, however, be construed as a limitation upon the right to sue the contractor or his surety where no right of foreclosure is sought against the fund. [1955 c 236 § 3; 1927 c 241 § 1; 1921 c 166 § 3; RRS § 10322.]

**60.28.040 Tax liens—Priority of liens.** The amount of all taxes, increases and penalties due or to become due under Title 82 RCW, from a contractor or his successors or assignees with respect to a public improvement contract wherein the contract price is twenty thousand dollars or more shall be a lien prior to all other liens upon the amount of the retained percentage withheld by the disbursing officer under such contract, and the amount of all other taxes, increases and penalties due and owing from the contractor shall be a lien upon the balance of such retained percentage remaining in the possession of the disbursing officer after all other statutory lien claims have been paid. [1971 ex.s. c 299 § 1; 1955 c 236 § 4. Prior: 1949 c 228 § 27, part; Rem. Supp. 1949 § 8370-204a, part; RCW 82.32.250, part.]

**Severability—Effective dates—1971 ex.s. c 299:** See notes following RCW 82.04.050.

**60.28.050 Duties of disbursing officer upon final acceptance of contract.** Upon final acceptance of a contract, the state, county or other municipal officer charged with the duty of disbursing or authorizing disbursement or payment of such contracts shall forthwith notify the department of revenue of the completion of said contract. Such officer shall not make any payment from the retained percentage fund or release any retained percentage escrow account to any person, until he has received from the department of revenue a certificate that all taxes, increases and penalties due from

the contractor, and all taxes due and to become due with respect to such contract have been paid in full or that they are, in the department's opinion, readily collectible without recourse to the state's lien on the retained percentage. [1970 ex.s. c 38 § 3; 1967 ex.s. c 26 § 24; 1955 c 236 § 5. Prior: 1949 c 228 § 27, part; Rem. Supp. 1949 § 8370-204a, part; RCW 82.32.250, part.]

**Effective date—Purpose—Savings—1967 ex.s. c 26:** See notes following RCW 82.01.050.

**60.28.060 Duties of disbursing officer upon final acceptance of contract—Payments to department of revenue.** If within thirty days after receipt of notice by the department of revenue of the completion of the contract, the amount of all taxes, increases and penalties due from the contractor or any of his successors or assignees or to become due with respect to such contract have not been paid, the department of revenue may certify to the disbursing officer the amount of all taxes, increases and penalties due from the contractor, together with the amount of all taxes due and to become due with respect to the contract and may request payment thereof to the department of revenue in accordance with the priority provided by this chapter. The disbursing officer shall within ten days after receipt of such certificate and request pay to the department of revenue the amount of all taxes, increases and penalties certified to be due or to become due with respect to the particular contract, and, after payment of all claims which by statute are a lien upon the retained percentage withheld by the disbursing officer, shall pay to the department of revenue the balance, if any, or so much thereof as shall be necessary to satisfy the claim of the department of revenue for the balance of all taxes, increases or penalties shown to be due by the certificate of the department of revenue. If the contractor owes no taxes imposed pursuant to Title 82 RCW, the department of revenue shall so certify to the disbursing officer. [1967 ex.s. c 26 § 25; 1955 c 236 § 6. Prior: 1949 c 228 § 27, part; Rem. Supp. 1949 § 8370-204a, part; RCW 82.32.250, part.]

**Effective date—Purpose—Savings—1967 ex.s. c 26:** See notes following RCW 82.01.050.

**60.28.070 Payment of reserved funds by highway commission or cities or counties prior to completion of contract—Unforeseen conditions.** Where final completion of a contract executed by (1) the Washington state highway commission for the construction of any highway building, road, bridge, street, or any part of a public highway or (2) a city or county for construction of any urban arterial project for which urban arterial trust account moneys are to be expended is delayed by any unforeseen condition beyond the control of the contractor and the reservation of moneys earned as required herein shall work undue hardship on the contractor, then the highway commission, city or county, as appropriate, thirty days after completion of all work required under the contract other than that delayed by such unforeseen condition and no taxes having



been certified as due or to become due by the department of revenue and no claims filed by any materialman or laborer, may at its discretion order funds reserved for the work actually completed paid to the contractor upon the contractor's delivering good and sufficient bond with two or more sureties, or with a surety company, in the amount of the reserved funds then paid to the contractor, to the effect that no taxes shall be certified or claims filed for work done other than that delayed by the unforeseen condition within a period of thirty days following final acceptance of said improvement or work as completed; and if such taxes are certified or claims filed, recovery may be had on such bond by the department of revenue and the materialmen and laborers filing claims. [1969 ex.s. c 151 § 2; 1967 ex.s. c 26 § 26; 1957 c 91 § 1.]

**Effective date—Purpose—Savings—1967 ex.s. c 26:** See notes following RCW 82.01.050.

**60.28.080 Delay due to litigation—Change order or force account directive—Costs—Arbitration—Termination.** (1) If any delay in issuance of notice to proceed or in construction following an award of any public construction contract is primarily caused by acts or omissions of persons or agencies other than the contractor and a preliminary, special or permanent restraining order of a court of competent jurisdiction is issued pursuant to litigation and the appropriate public contracting body does not elect to delete the completion of the contract or order funds reserved paid to the contractor as provided by RCW 60.28.010(3) and 60.28.070 respectively, the appropriate contracting body will issue a change order or force account directive to cover reasonable costs incurred by the contractor as a result of such delay. These costs shall include but not be limited to contractor's costs for wages, labor costs other than wages, wage taxes, materials, equipment rentals, insurance, bonds, professional fees, and subcontracts, attributable to such delay plus a reasonable sum for overhead and profit.

In the event of a dispute between the contracting body and the contractor, arbitration procedures may be commenced under the applicable terms of the construction contract, or, if the contract contains no such provision for arbitration, under the then obtaining rules of the American Arbitration Association.

If the delay caused by litigation exceeds six months, the contractor may then elect to terminate the contract and to delete the completion of the contract and receive payment in proportion to the amount of the work completed plus the cost of the delay. Amounts retained and accumulated under RCW 60.28.010 shall be held for a period of thirty days following the election of the contractor to terminate. Election not to terminate the contract by the contractor shall not affect the accumulation of costs incurred as a result of the delay provided above.

(2) This section shall not apply to any contract awarded pursuant to an invitation for bid issued on or before July 16, 1973. [1973 1st ex.s. c 62 § 3.]

**Severability—1973 1st ex.s. c 62:** See note following RCW 39.04.120.

*Pollution and preservation of natural resources laws to be included in bid invitations, change orders, costs: RCW 39.04.120.*

**60.28.900 Severability—1955 c 236.** If any section, provision or part of this chapter shall be adjudged to be invalid or unconstitutional, such adjudication shall not affect the validity of this chapter as a whole or any section, provision or part hereof not adjudged invalid or unconstitutional. [1955 c 236 § 8.]

### Chapter 60.32

## LABOR LIENS ON FRANCHISES, EARNINGS, AND PROPERTY OF CERTAIN COMPANIES

#### Sections

60.32.010	Liens authorized.
60.32.020	Notice of lien—Contents—Filing and serving.
60.32.030	Manner of serving notice.
60.32.040	Manner of enforcing liens.
60.32.050	Receiver or assignee to pay claims first.

**60.32.010 Liens authorized.** Every person performing labor for any person, company or corporation, in the operation of any railway, canal or transportation company, or any water, mining or manufacturing company, sawmill, lumber or timber company, shall have a prior lien on the franchise, earnings, and on all the real and personal property of said person, company or corporation, which is used in the operation of its business, to the extent of the moneys due him from such person, company or corporation, operating said franchise or business, for labor performed within six months next preceding the filing of his claim therefor, as hereinafter provided; and no mortgage, deed of trust or conveyance shall defeat or take precedence over said lien. [1897 c 43 § 1; RRS § 1149.]

**60.32.020 Notice of lien—Contents—Filing and serving.** No person shall be entitled to the lien given by RCW 60.32.010, unless he shall, within ninety days after he has ceased to perform labor for such person, company or corporation, filed for record with the county auditor of the county in which said labor was performed, or in which is located the principal office of such person, company or corporation in this state, a notice of claim, containing a statement of his demand, after deducting all just credits and offsets, the name of the person, company or corporation, and the name of the person or persons employing claimant, if known, with the statement of the terms and conditions of his contract, if any, and the time he commenced the employment, and the date of his last service, and shall serve a copy thereof on said person, company or corporation within thirty days after the same is so filed for record. [1897 c 43 § 2; RRS § 1150.]

**60.32.030 Manner of serving notice.** Service of notice, as herein required, may be made in the same manner as summons in civil actions. [1897 c 43 § 3; RRS § 1151.]

*Service of summons in civil actions: RCW 4.28.080.*



**60.32.040 Manner of enforcing liens.** Any such lien may be enforced within the same time and in the same manner as mechanics' liens are foreclosed. [1897 c 43 § 4; RRS § 1152.]

*Foreclosure of mechanics' liens: RCW 60.04.120.*

**60.32.050 Receiver or assignee to pay claims first.** Whenever a receiver or assignee is appointed for any person, company or corporation, the court shall require such receiver or assignee to pay all claims for which a lien could be filed under this chapter, before the payment of any other debts or claims, other than operating expenses. [1897 c 43 § 5; RRS § 1153.]

### Chapter 60.34

## LIEN OF RESTAURANT, HOTEL, TAVERN, ETC., EMPLOYEES

#### Sections

60.34.010	Liens authorized.
60.34.020	Notice of lien—Contents—Filing and serving.
60.34.030	Manner of serving notice.
60.34.040	Manner of enforcing liens—Costs.
60.34.050	Priority of lien.

**60.34.010 Liens authorized.** Every person performing labor in the operation of any restaurant, hotel, tavern, or other place of business engaged in the selling of prepared foods or drinks, or any hotel service employee, shall have a lien on the earnings and on all the property of his employer used in the operation of said business to the extent of the moneys due him for labor performed within three months next preceding the filing of his claim therefor. [1953 c 205 § 1.]

**60.34.020 Notice of lien—Contents—Filing and serving.** The lien claimant shall within thirty days after he has ceased to perform such labor, file for record with the auditor of the county in which the labor was performed a notice of claim, containing a statement of his demand, the name of the employer and the name of the person employing him, if known, with a statement of the terms and conditions of his contract, if any, and the time he commenced the employment, and the date of his last service, and shall serve or mail a copy thereof to said employer within said period. [1953 c 205 § 2.]

**60.34.030 Manner of serving notice.** Service of the notice of claim may be made in the same manner as summons in civil actions. [1953 c 205 § 3.]

*Service of summons in civil actions: RCW 4.28.080.*

**60.34.040 Manner of enforcing liens—Costs.** The lien may be enforced within the same time and in the same manner as mechanics' liens are foreclosed, when said lien is upon real property, or in the same manner as provided in chapter 60.10 RCW and RCW 61.12.162 when the lien is upon personal property. The court may allow as part of the costs of the action the money paid for filing or recording the claim and a reasonable attorney fee. [1969 c 82 § 12; 1959 c 173 § 1; 1953 c 205 § 4.]

*Foreclosure of mechanics' liens: RCW 60.04.120.*

**60.34.050 Priority of lien.** The lien created herein shall be preferred to any encumbrance which may attach after the commencement of the labor and is also preferred to any encumbrance which may have attached previously to that time, but which was not filed or recorded so as to create constructive notice thereof prior to that time, and of which the lien claimant had no notice. [1953 c 205 § 5.]

### Chapter 60.36

## LIEN ON VESSELS AND EQUIPMENT FOR LABOR, MATERIAL, DAMAGES, AND HANDLING CARGO

#### Sections

60.36.010	Liens created.
60.36.020	Actions to enforce liens.
60.36.030	Liens for handling cargo.
60.36.040	Liens for handling cargo—Priority.
60.36.050	Liens for handling cargo—Foreclosure.
60.36.060	Lien for breach of contract for towing, dunnaging, stevedoring, etc.

**60.36.010 Liens created.** All steamers, vessels and boats, their tackle, apparel and furniture, are liable—

(1) For service rendered on board at the request of, or under contract with their respective owners, charterers, masters, agents or consignees.

(2) For work done or material furnished in this state for their construction, repair or equipment at the request of their respective owners, charterers, masters, agents, consignees, contractors, subcontractors, or other person or persons having charge in whole or in part of their construction, alteration, repair or equipment; and every contractor, builder or person having charge, either in whole or in part, of the construction, alteration, repair or equipment of any steamer, vessel or boat, shall be held to be the agent of the owner for the purposes of RCW 60.36.010 and 60.36.020, and for supplies furnished in this state for their use, at the request of their respective owners, charterers, masters, agents or consignees, and any person having charge, either in whole or in part, of the purchasing of supplies for the use of any such steamer, vessel or boat, shall be held to be the agent of the owner for the purposes of RCW 60.36.010 and 60.36.020.

(3) For their wharfage and anchorage within this state.

(4) For nonperformance or malperformance of any contract for the transportation of persons or property between places within this state, or to or from places within this state, made by their respective owners, masters, agents or consignees.

(5) For injuries committed by them to persons or property within this state, or while transporting such persons or property to or from this state. Demands for these several causes constitute liens upon all steamers, vessels and boats, and their tackle, apparel and furniture, and have priority in the order of the subdivisions hereinbefore enumerated, and have preference over all other demands; but such liens continue in force only for a period of three years from the time the cause of

action accrued. [1901 c 24 § 1; Code 1881 § 1939; 1877 p 216 § 1; RRS § 1182. Prior: 1858 p 29 § 1.]

*Lien of pilot for pilotage compensation: RCW 88.16.140.*

**60.36.020 Actions to enforce liens.** Such liens may be enforced, in all cases of maritime contracts or service, by a suit in admiralty, in rem, and the law regulating proceedings in admiralty shall govern in all such suits; and in all cases of contracts or service not maritime, by a civil action in any superior court of this state as provided in RCW 61.12.162. [1969 c 82 § 19; Code 1881 § 1940; 1877 p 216 § 2; RRS § 1183.]

**60.36.030 Liens for handling cargo.** All steamers, vessels and boats, their tackle, apparel and furniture shall be held liable at all ports and places within this state or within the jurisdiction of the courts of this state or within the jurisdiction of the courts of the United States in said state for services rendered by stevedores, longshoremen or others engaged in the loading, unloading, stowing or dunnaging of cargo in or from any steamer, vessel or boat in any harbor or at any other place within said state, or within the jurisdiction of the courts thereof as above stated, and said steamers, vessels and boats shall further be liable as per their contracts for all services performed upon wharfs or landing places by stevedores, longshoremen or others: *Provided*, That such services must have been so performed in and about and be connected with the loading, unloading, dunnaging or stowing of said cargo. [1901 c 75 § 1; RRS § 1184.]

**60.36.040 Liens for handling cargo—Priority.** Demands for wages and all sums due under contracts or otherwise for the performance of all or any of the services mentioned in RCW 60.36.030 shall constitute liens upon all steamers, vessels and boats, their tackle, apparel and furniture, and shall have priority over all other demands save and excepting the demands mentioned in RCW 60.36.010(1), (2) and (3), to which said demands the lien hereby provided shall be subordinate: *Provided*, That such liens shall only continue in force for the period of three years from the date when such work was done or the last services performed by such stevedores, longshoremen or others. [1901 c 75 § 2; RRS § 1185.]

**60.36.050 Liens for handling cargo—Foreclosure.** The liens hereby created may be foreclosed as provided in RCW 61.12.162. [1969 c 82 § 13; 1901 c 75 § 3; RRS § 1186.]

**60.36.060 Lien for breach of contract for towing, dunnaging, stevedoring, etc.** Whenever the owner, charterer, or any person or corporation operating, managing or controlling any steamship, vessel or boat shall wilfully fail, neglect or refuse to carry out or perform any express contract or portion thereof for the towing, loading, unloading, dunnaging or stevedoring of such steamship, vessel or boat, any person or persons, firm or corporation sustaining thereby any loss or damage which is capable of definite ascertainment shall have a

lien upon such steamship, vessel or boat for said loss or damage. The rank and priority of the lien hereby created and the manner of its enforcement shall be fixed, controlled and regulated by the provisions of the existing law pertaining to liens for similar services already performed. [1903 c 149 § 1; RRS § 1187.]

### Chapter 60.40 LIEN FOR ATTORNEY'S FEES

#### Sections

60.40.010	Lien created.
60.40.020	Proceedings to compel delivery of money or papers.
60.40.030	Procedure when lien is claimed.

**60.40.010 Lien created.** An attorney has a lien for his compensation, whether specially agreed upon or implied, as hereinafter provided: (1) Upon the papers of his client, which have come into his possession in the course of his professional employment; (2) upon money in his hands belonging to his client; (3) upon money in the hands of the adverse party in an action or proceeding, in which the attorney was employed, from the time of giving notice of the lien to that party; (4) upon a judgment to the extent of the value of any services performed by him in the action, or if the services were rendered under a special agreement, for the sum due under such agreement, from the time of filing notice of such lien or claim with the clerk of the court in which such judgment is entered, which notice must be filed with the papers in the action in which such judgment was rendered, and an entry made in the execution docket, showing name of claimant, amount claimed and date of filing notice. [Code 1881 § 3286; 1863 p 406 § 12; RRS § 136.]

**60.40.020 Proceedings to compel delivery of money or papers.** When an attorney refuses to deliver over money or papers, to a person from or for whom he has received them in the course of professional employment, whether in an action or not, he may be required by an order of the court in which an action, if any, was prosecuted, or if no action was prosecuted, then by order of any judge of a court of record, to do so within a specified time, or show cause why he should not be punished for a contempt. [Code 1881 § 3287; 1863 p 406 § 13; RRS § 137.]

**60.40.030 Procedure when lien is claimed.** If, however, the attorney claim a lien, upon the money or papers, under the provisions of \*this chapter, the court or judge may: (1) Impose as a condition of making the order, that the client give security in a form and amount to be directed, to satisfy the lien, when determined in an action; (2) summarily to inquire into the facts on which the claim of a lien is founded, and determine the same; or (3) to refer it, and upon the report, determine the same as in other cases. [Code 1881 § 3288; 1863 p 406 § 14; RRS § 138.]

\*Reviser's note: "this chapter" appeared in section 3288, chapter 250 of the Code of 1881, the lien sections of which are codified as chapter 60.40 RCW.

**Chapter 60.44****LIEN OF DOCTORS, NURSES, AND HOSPITALS**

## Sections

- 60.44.010 Liens authorized.  
 60.44.020 Notice of lien—Contents—Filing.  
 60.44.030 Record of claims.  
 60.44.040 Taking note—Effect on lien.  
 60.44.050 Settlement of damages—Effect on lien.  
 60.44.060 Enforcement of lien—Payment as evidence.

*Lien of department of public assistance for medical care of injured recipient, payment of tort feisor or insurer does not discharge lien: RCW 74.09.180-74.09.186.*

*Lien on funds withheld by employer from employee's pay: RCW 49.52.030 and 49.52.040.*

**60.44.010 Liens authorized.** Every operator of a hospital and every duly licensed nurse, practitioner, physician and surgeon rendering service for any person who has received a traumatic injury shall have a lien upon any claim, right of action and/or money to which such person is entitled against any tort feisor and/or insurer of such tort feisor for the value of such service, together with costs and such reasonable attorney's fees as the court may allow, incurred in enforcing such lien: *Provided, however,* That nothing in this chapter shall apply to any claim, right or action or money accruing under the workmen's compensation act of the state of Washington, and: *Provided, further,* That all the said liens for service rendered to any one person as a result of any one accident shall not exceed twenty-five percent of the amount of an award, verdict, report, decision, decree, judgment or settlement. [1937 c 69 § 1; RRS § 1209-1.]

**60.44.020 Notice of lien—Contents—Filing.** No person shall be entitled to the lien given by RCW 60.44.010 unless he shall, within twenty days after the date of such injury, or, if settlement has not been affected with and payment made to such injured person, then at any time before such settlement and payment, file for record with the county auditor of the county in which said service was performed, a notice of claim stating the name and address of the person claiming the lien and whether he claims as a practitioner, physician, nurse or hospital, the name and address of the patient and his place of domicile, if other than his actual address, the time when and place where the alleged fault or negligence of the tort feisor occurred, and the nature of the injury, the name and address of the tort feisor, if same or any thereof are known, which claim shall be subscribed by the claimant and verified before a person authorized to administer oaths. [1937 c 69 § 2; RRS § 1209-2.]

**60.44.030 Record of claims.** The county auditor shall record the claims mentioned in this chapter in a book to be kept by him for that purpose, which record must be indexed as deeds and other conveyances are required by law to be indexed. [1937 c 69 § 3; RRS § 1209-4.]

**60.44.040 Taking note—Effect on lien.** The taking of a promissory note or other evidence of indebtedness for any services performed, as provided in this chapter,

shall not discharge the lien therefor unless expressly received as a payment for such services and so specified therein. [1937 c 69 § 4; RRS § 1209-4.]

**60.44.050 Settlement of damages—Effect on lien.** No settlement made by and between the patient and tort feisor and/or insurer shall discharge the lien against any money due or owing by such tort feisor or insurer to the patient or relieve the tort feisor and/or insurer from liability by reason of such lien unless such settlement also provides for the payment and discharge of such lien or unless a written release or waiver of any such claim of lien, signed by the claimant, be filed in the court where any action has been commenced on such claim, or in case no action has been commenced against the tort feisor and/or insurer, then such written release or waiver shall be delivered to the tort feisor and/or insurer. [1937 c 69 § 5; RRS § 1209-5.]

**60.44.060 Enforcement of lien—Payment as evidence.** Such lien may be enforced by a suit at law brought by the claimant or his assignee within one year after the filing of such lien against the said tort feisor and/or insurer. In the event that such tort feisor and/or insurer shall have made payment or settlement on account of such injury, the fact of such payment shall only for the purpose of such suit be prima facie evidence of the negligence of the tort feisor and of the liability of the payer to compensate for such negligence. [1937 c 69 § 6; RRS § 1209-6.]

**Chapter 60.45****LIEN OF DEPARTMENT OF SOCIAL AND HEALTH SERVICES FOR MEDICAL CARE FURNISHED INJURED RECIPIENT**

## Sections

- 60.45.010 Medical care to injured recipient—Recovery of cost against tort feisor or insurer—Lien created, filing—Payment to recipient does not discharge lien.

**60.45.010 Medical care to injured recipient—Recovery of cost against tort feisor or insurer—Lien created, filing—Payment to recipient does not discharge lien.** See RCW 74.09.180-74.09.186.

**Chapter 60.48****LIEN FOR ENGINEERING SERVICES**

## Sections

- 60.48.010 Lien authorized.  
 60.48.020 Notice of lien—Foreclosure.

**60.48.010 Lien authorized.** Any person who at the request of the owner of any real property, or his duly authorized agent, surveys, establishes or marks the boundaries of, or prepares maps, plans or specifications for the improvement of such real property, or does any other engineering work upon such real property, shall have a lien upon such real property for the agreed price or reasonable value of such work so performed. [1931 c 107 § 1; RRS § 1131-4.]

**60.48.020 Notice of lien—Foreclosure.** The liens created by this chapter shall be established by notice filed and shall be foreclosed in the manner as is now provided by law for the establishment and foreclosure of liens upon real estate for clearing, grading or otherwise improving the same. [1931 c 107 § 2; RRS § 1131-5.]

*Liens for improving real property: RCW 60.04.040.*

### Chapter 60.52 LIEN FOR SERVICES OF SIRES

#### Sections

60.52.010	Liens authorized—Filing statement.
60.52.020	Auditor's certificate—Contents—Posting.
60.52.030	Statement of lien—Filing—Duration of lien.
60.52.040	Foreclosure of lien.
60.52.050	Auditor's fees.

**60.52.010 Liens authorized—Filing statement.** In order to secure to the owner or owners of sires payment for service, the following provisions are enacted: That every owner of a sire having a service fee, in order to have a lien upon the female served, and upon the get of any such sire, under the provisions of this chapter, for such service, shall file for record with the county auditor of the county where said sire is kept for service a statement, verified by oath or affirmation, to the best of his knowledge and belief, giving the name, age, description and pedigree, as well as the terms and conditions upon which such sire is advertised for service: *Provided*, That owners of sires who are not in possession of pedigrees for such sires shall not be debarred from the benefits of this chapter. [1890 p 451 § 1; RRS § 3056.]

**60.52.020 Auditor's certificate—Contents—Posting.** The county auditor, upon the receipt of the statement as specified in RCW 60.52.010, duly verified by affidavit, shall issue a certificate to the owner or owners of said sire, which shall be posted by the owner in a conspicuous place where said sire may be stationed, which certificate shall state the name, age, description, pedigree and ownership of such sire, the terms and conditions upon which the said sire is advertised for service, and that the provisions of this chapter, so far as relates to the filing of the statement aforesaid, has been complied with. [1890 p 451 § 2; RRS § 3057.]

**60.52.030 Statement of lien—Filing—Duration of lien.** The owner or owners of any such sire receiving such certificate, by complying with RCW 60.52.010 and 60.52.020, shall obtain and have a lien upon the female served for the period of one year from the date of service, or upon the get of any such sire for the period of one year from the date of birth of such get: *Provided*, Said owner or owners shall file for record a statement of account, verified by affidavit, with the county auditor of the county wherein the service has been rendered, of the amount due such owner or owners for said service, together with a description of the female served, within ten months from the date of service or date of birth, as the case may be: *Provided further*, That the lien upon the get of any such sire shall be a preferred lien: *And*

*provided further*, That no sale or transfer of any female animal served shall defeat the right of such lien holder. [1913 c 53 § 1; 1890 p 451 § 3; RRS § 3058.]

**60.52.040 Foreclosure of lien.** Liens under this chapter may be foreclosed as provided in chapter 60.10 RCW and RCW 61.12.162. [1969 c 82 § 14; 1890 p 452 § 4; RRS § 3059.]

**60.52.050 Auditor's fees.** For filing certificate, making copy of such affidavit, and the certificate of date of such filing, the clerk of record shall be entitled to the same fees as are provided by law for similar service in regard to chattel mortgages. [1890 p 452 § 5; RRS § 3059 1/2.]

*Fees for filing chattel mortgages: RCW 62A.9-403(4), (5).*

### Chapter 60.56 AGISTER AND TRAINER LIENS

#### Sections

#### AGISTER AND TRAINER LIENS—1909 ACT

60.56.010	Liens created.
60.56.020	Enforcement of lien.
60.56.030	Delivery of possession—Effect on lien.

#### AGISTER AND TRAINER LIENS—1891 ACT

60.56.040	Liens created.
60.56.050	Enforcement of lien.

#### AGISTER AND TRAINER LIENS—1909 ACT

**60.56.010 Liens created.** Any farmer, ranchman, herder of cattle, tavern keeper, livery and boarding stable keeper or any other person, to whom any horses, mules, cattle or sheep shall be entrusted for the purpose of feeding, herding, pasturing, and training, caring for or ranching, shall have a lien upon said horses, mules, cattle or sheep for such amount that may be due for said feeding, herding, pasturing, training, caring for, and ranching, and shall be authorized to retain possession of said horses, mules or cattle or sheep, until said amount is paid. [1909 c 176 § 1; RRS § 1197.]

**60.56.020 Enforcement of lien.** Any person having a lien under the provisions of RCW 60.56.010 for feeding, herding, pasturing, training, caring for, or ranching any horses, mules, cattle or sheep, shall retain such animal for a period of ten days, at the expiration of which time, if the owner of such animal does not satisfy such lien, the sheriff or any constable may sell such animal at public auction after giving the owner ten days' notice of the time and place of such sale by delivering a copy of such notice to the owner, or in case personal service cannot be had, by publishing same in a newspaper of general circulation in said county where said feeding, herding, pasturing, training, caring for, and ranching was furnished; if there be no paper of general circulation in said county, then by posting notices of the time and place of such sale in three conspicuous places in said county, and after satisfying the lien and costs that may accrue, any residue remaining shall be paid to the owner of said animal or person who may be lawfully

entitled to the same. [1909 c 176 § 2; RRS § 1199. FORMER PART OF SECTION: 1891 c 80 § 2 now codified as RCW 60.56.050.]

**60.56.030 Delivery of possession—Effect on lien.** Whenever any horses, mules, cattle or sheep shall be entrusted for the purpose of feeding, herding, pasturing, training, caring for, and ranching to any farmer, ranchman, herder of cattle, tavern keeper, livery or boarding stable keeper, continuously for some time, either definite or indefinite, the voluntary delivery of the same to the owner or his agent shall not waive or defeat the lien provided for in RCW 60.56.010, and the person having such lien may enforce his lien against said property in any court of competent jurisdiction at any time within ten days after parting with the possession thereof: *Provided*, That such lien shall not attach to the interest nor affect the rights of a third person who may have acquired an interest in or title to an animal against which a lien is claimed, for value and without knowledge of the claimed lien, while such animal is not in possession of the claimant. [1909 c 176 § 3; RRS § 1200.]

AGISTER AND TRAINER LIENS—1891 ACT

**60.56.040 Liens created.** Any farmer, ranchman, herder of cattle, tavern keeper, livery and boarding stable keeper to whom any horses, mules, cattle or sheep shall be entrusted for the purpose of feeding, herding, pasturing, training, caring for or ranching, shall have a lien upon said horses, mules, cattle or sheep for the amount that may be due for such feeding, herding, pasturing, training, caring for or ranching, and shall be authorized to retain possession of such horses, mules, cattle or sheep until the said amount is paid: *Provided*, That these provisions shall not be construed to apply to stolen stock. [1891 c 80 § 1.]

**60.56.050 Enforcement of lien.** Any person having a lien under the provisions of RCW 60.56.040, may enforce the same by an action in any court of competent jurisdiction; and said property may be sold on execution for the purpose of satisfying the amount of such judgment and costs of sale, together with the proper costs of keeping the same up to the time of said sale. [1891 c 80 § 2; RRS § 1198. Formerly RCW 60.56.020, part.]

**Chapter 60.60  
LIEN FOR TRANSPORTATION, STORAGE,  
ADVANCEMENTS, ETC.**

Sections

60.60.010	Liens created.
60.60.020	Livestock and perishable property—Sale of.
60.60.030	Sale of other property.
60.60.040	Application of proceeds.
60.60.050	Special contract not affected.
60.60.060	Notice, how given.

**60.60.010 Liens created.** Every person, firm or corporation who, as a commission merchant, carrier, wharfinger or storage warehouseman, shall make advances for freight, transportation, wharfage or storage upon the personal property of another, or shall carry or store such personal property, shall have a lien thereon, so long as the same remains in his possession, for the charges for advances, freight, transportation, wharfage or storage, and it shall be lawful for such person, firm or corporation to cause such property to be sold as is herein in this chapter provided. [1927 c 144 § 1; Code 1881 § 1980; 1863 p 421 § 11; 1860 p 288 § 11; RRS § 1191.]

**60.60.020 Livestock and perishable property—Sale of.** If said property consists of livestock, the maintenance of which at the place where kept is wasteful and expensive in proportion to the value of the animals, or consists of perishable property liable, if kept, to destruction, waste or great depreciation, the person, firm or corporation having such lien may sell the same upon giving ten days' notice. [1927 c 144 § 2; Code 1881 § 1981; 1863 p 421 § 13; 1860 p 288 § 13; RRS § 1192.]

**60.60.030 Sale of other property.** All other property upon which such charges may be unpaid, due, and a lien after the same shall have remained in store uncalled for, for a period of thirty days after such charges shall have become due, may be sold by the person or persons having a lien for the payment of such charges upon giving ten days' notice: *Provided*, That where the property can be conveniently divided into separate lots or parcels, no more lots or parcels shall be sold than shall be sufficient to pay the charges due on the day of sale, and the expenses of the sale. [Code 1881 § 1982; 1863 p 421 § 12; 1860 p 288 § 12; RRS § 1193.]

**60.60.040 Application of proceeds.** The moneys arising from sales made under the provisions of this chapter shall first be applied to the payment of the costs and expenses of the sale, and then to the payment of the lawful charges of the person or persons having a lien thereon for advances, freight, transportation, wharfage or storage, for whose benefit the sale shall [have] been made; the surplus, if any, shall be retained subject to the future lawful charge of the person or persons for whose benefit the sale was made, upon the property of the same owner still remaining in store uncalled for, if any there be, and to the demand of the owner of the property, who shall have paid such charges or otherwise satisfied such lien, and all moneys remaining uncalled for, for the period of three months, shall be paid to the county treasurer, and shall remain in his hands a special fund for the benefit of the lawful claimant thereof. [Code 1881 § 1983; 1863 p 421 § 14; 1860 p 288 § 14; RRS § 1194.]

**60.60.050 Special contract not affected.** Nothing in this chapter contained shall be so construed as to alter or affect the terms of any special contract in writing, made by the parties as to the advances, affreightment,

wharfage or storage; but when any such special contract shall have been made, its terms shall govern irrespective of this chapter. [Code 1881 § 1984; RRS § 1195.]

**60.60.060 Notice, how given.** All notices required under this chapter shall be given as is or may be by law provided in cases of sales of personal property upon execution. [Code 1881 § 1985; 1863 p 421 § 15; 1860 p 288 § 15; RRS § 1196.]

*Sale of property on execution: Chapter 6.24 RCW.*

### Chapter 60.62 LIENS FOR TOWING, STORAGE OF MOTOR VEHICLES

#### Section

60.62.011 Lien authorized—Sale of vehicle—Proceeds of sale.

**60.62.011 Lien authorized—Sale of vehicle—Proceeds of sale.** See RCW 46.52.102–46.52.119.

### Chapter 60.64 LIEN OF HOTELS, LODGING AND BOARDING HOUSES—1915 ACT

#### Sections

60.64.003 "Hotel" defined.  
60.64.005 Record of guests—Hotels and trailer camps.  
60.64.007 Liability for loss of valuables, baggage and other property.  
60.64.010 Lien on property of guest—"Guest" defined.  
60.64.040 Sale—Notice—Disposition of funds.  
60.64.050 Obtaining accommodations by fraud—Penalty.

*Lien of hotels, lodging and boarding houses—1890 act: Chapter 60.66 RCW.*

**60.64.003 "Hotel" defined.** See RCW 19.48.010.

**60.64.005 Record of guests—Hotels and trailer camps.** See RCW 19.48.020.

**60.64.007 Liability for loss of valuables, baggage and other property.** See RCW 19.48.030 and 19.48.070.

**60.64.010 Lien on property of guest—"Guest" defined.** The keeper of any hotel, boarding house or lodging house, whether individual, partnership or corporation, has a lien upon, and may retain, all baggage, sample cases, and other property, lawfully in the possession of a guest, boarder, or lodger, brought upon the premises by such guest, boarder, or lodger, for the proper charges due from him or her, on account of his or her food, board, room rent, lodging and accommodation, and for such extras as are furnished at his or her request, and for all money and credit paid for or advanced to him or her; and for the costs of enforcing such lien; and said hotel keeper, inn keeper, lodging house keeper or boarding house keeper, shall have the right to retain and hold possession of such baggage, sample cases and other property until the amount of such charges and moneys be fully paid, and to sell such baggage, sample cases, or other property for the payment of such lien, charges and moneys in the manner

provided in RCW 60.64.040; and such baggage, sample cases and property shall not be subject to attachment or execution until such lien and storage charges and the cost of satisfying such lien are fully satisfied: *Provided, however,* That if any baggage, sample cases, or property becoming subject to the lien herein provided for does not belong to the guest, boarder or lodger who incurred the charges or indebtedness secured thereby at the time when such charges or indebtedness shall be incurred, and if the hotel, inn, boarding house or lodging house keeper entitled to such lien receives actual notice of such fact at any time before the sale of such baggage, sample cases or property hereunder, then and in that event such baggage, sample cases and property which are subject to said lien and do not belong to said guest, boarder or lodger at the time when such charges or indebtedness shall be incurred, shall not be subject to sale in the manner herein provided, but the same may be sold in the manner provided by law for the sale of property under a writ of execution to satisfy a judgment obtained in any action brought to recover the said charges or indebtedness. A guest, within the meaning of this chapter and chapter 19.48 RCW, includes each and every person who is a member of the family of, or dependent upon, a guest, boarder or lodger, in such hotel, inn, boarding house or lodging house, and for whose support such tenant, guest, boarder or lodger is legally liable. [1929 c 216 § 4; 1915 c 190 § 5; RRS § 6864. Formerly RCW 60.64.010 through 60.64.030.]

**Severability—1929 c 216:** See RCW 19.48.900.

**60.64.040 Sale—Notice—Disposition of funds.** If such lien and all such charges and moneys are not fully paid and satisfied within sixty days from the time when such charges and moneys, respectively, become due, the keeper of such hotel, inn, boarding house or lodging house, may then proceed to sell such baggage, sample cases and other property, or any part thereof, at public auction, after giving ten days notice of the time and place of sale by posting said notice in three public places in the city or town wherein such hotel, inn, boarding house or lodging house is located, and by mailing a notice of the time and place of sale to such guest[,] boarder or lodger at the place of residence, if any, registered by him or her on the register, if any, of said hotel, inn, boarding house or lodging house; and after satisfying the lien and paying all legal charges due from such guest, boarder or lodger, including proper charges for storage of the said baggage, sample cases or property, and any expense of selling the same that may accrue, any residue remaining shall, on demand, within one year after such sale, be paid to such guest, boarder or lodger, or his or her legal representatives: *Provided, however,* That should such guest, boarder or lodger fail or refuse to register from any particular town or city, or not register at all, the notice herein required to be mailed shall be addressed to the name of such guest, boarder or lodger at the city or town wherein such hotel, inn, boarding house or lodging house is located; and such sale shall be a perpetual bar to any action against said hotel, inn, boarding house or lodging house keeper for the recovery of such baggage, sample cases,

or property, or of the value thereof, or for any damage arising from the failure of such guest, boarder or lodger to receive such baggage, sample cases, or property. [1929 c 216 § 5; 1915 c 190 § 6; RRS § 6865.]

**60.64.050 Obtaining accommodations by fraud—Penalty.** See RCW 19.48.110.

### Chapter 60.66

## LIEN OF HOTELS, LODGING AND BOARDING HOUSES—1890 ACT

#### Sections

60.66.010 Lien on property of guest.  
60.66.020 Sale to satisfy lien—Notice.

*Lien of hotels, lodging and boarding houses—1915 act: Chapter 60.64 RCW.*

**60.66.010 Lien on property of guest.** Hereafter all hotel keepers, inn keepers, lodging house keepers and boarding house keepers in this state shall have a lien upon the baggage, property, or other valuables of their guests, lodgers or boarders, brought into such hotel, inn, lodging house or boarding house by such guests, lodgers or boarders, for the proper charges due from such guests, lodgers or boarders for their accommodation, board or lodging and such other extras as are furnished at their request, and shall have the right to retain in their possession such baggage, property or other valuables until such charges are fully paid, and to sell such baggage, property or other valuables for the payment of such charges in the manner provided in RCW 60.66-.020. [1890 p 96 § 1; RRS § 1201.]

**60.66.020 Sale to satisfy lien—Notice.** Whenever any baggage, property or other valuables which have been retained by any hotel keeper, inn keeper, lodging house keeper or boarding house keeper, in his possession by virtue of the provision of RCW 60.66.010, shall remain unredeemed for the period of three months after the same shall have been so retained, then it shall be lawful for such hotel keeper, inn keeper, lodging house keeper or boarding house keeper to sell such baggage, property or other valuables at public auction, after giving the owner thereof ten days' notice of the time and place of such sale, through the post office, or by advertising in some newspaper published in the county where such sale is made, or by posting notices in three conspicuous places in such county, and out of the proceeds of such sale to pay all legal charges due from the owner of such baggage, property or valuables, including proper charges for storage of the same, and the overplus, if any, shall be paid to the owner upon demand. [1890 p 96 § 2; RRS § 1202.]

### Chapter 60.68

## LIEN FOR INTERNAL REVENUE TAXES

#### Sections

60.68.010 Notice of lien and of discharge may be filed.  
60.68.020 Notice of lien to be entered.  
60.68.030 Certificate of discharge to be entered.  
60.68.040 Auditor's fees.  
60.68.050 Purpose.

**60.68.010 Notice of lien and of discharge may be filed.** Notices of liens for internal revenue taxes payable to the United States of America and certificates discharging such liens may be filed in the office of the county auditor of any county or counties of the state of Washington within which the property subject to such lien is situated. [1925 c 15 § 1; RRS § 11337-1.]

**60.68.020 Notice of lien to be entered.** When a notice of such tax lien is filed, the county auditor shall forthwith enter the same in an alphabetical federal tax lien index to be provided by the board of county commissioners, showing on one line the name and residence of the taxpayer named in such notice, the collector's serial number of such notice, the date and hour of filing, and the amount of tax and penalty assessed. He shall file and keep all original notices so filed in numerical order in a file or files to be provided by the board of county commissioners and designated federal tax lien notices. [1925 c 15 § 2; RRS § 11337-2.]

**60.68.030 Certificate of discharge to be entered.** When a certificate of discharge of any tax lien, issued by the collector of internal revenue or other proper officer, is filed in the office of the county auditor, where the original notice of lien is filed, said county auditor shall enter the same with date of filing in said tax lien index on a line where the notice of the lien so discharged is entered, and permanently attach the original certificate of discharge to the original notice of lien. [1925 c 15 § 3; RRS § 11337-3.]

**60.68.040 Auditor's fees.** The auditor shall receive one dollar for filing and indexing each notice of lien, and fifty cents for each certificate of discharge. [1955 c 250 § 1; 1925 c 15 § 4; RRS § 11337-4.]

**60.68.050 Purpose—1925 c 15.** This chapter is passed for the purpose of authorizing the filing of notices of liens in accordance with the provisions of \*section 3186 of the Revised Statutes of the United States, as amended by the Act of March 4, 1913, 37 Statutes at Large, page 1016. [1925 c 15 § 5; RRS § 11337-5.]

\*Reviser's note: "section 3186 of the Revised Statutes of the United States" now appears as U. S. C. Title 26, §§ 6321, 6322, and 6323.

### Chapter 60.72

## LANDLORD'S LIEN FOR RENT

#### Sections

60.72.010 Liens created—Priority—Extent—Exceptions.  
60.72.040 Foreclosure of lien.

**60.72.010 Liens created—Priority—Extent—Exceptions.** Any person to whom rent may be due, his executors, administrators, or assigns, shall have a lien for such rent upon personal property which has been used or kept on the rented premises by the tenant, except property of third persons delivered to or left with the tenant for storage, repair, manufacture, or sale, or under conditional bills of sale duly filed, and such property as is exempt from execution by law. Such liens for rent shall be paramount to, and have preference



over, all other liens except liens for taxes, general and special liens of labor, and liens of mortgages duly recorded prior to the tenancy. Such liens shall not be for more than two months' rent due or to become due, nor for any rent or any installment thereof which has been due for more than two months at the time of the commencement of an action to foreclose such liens; no writing or recording shall be necessary to create such lien; and if such property be removed from the rented premises and not returned to the owner, agent, executor, administrator, or assign, said lien shall continue and be a superior lien on the property so removed for ten days from the date of its removal, and said lien may be enforced against the property wherever found. In the event the property contained in the rented premises be destroyed by fire or other elements, the lien shall extend to any money that may be received by the tenant as indemnity for the destruction of said property, nor shall the lien be lost by the sale of the said property, except merchandise sold in the usual course of trade or to purchasers without notice of the tenancy. The provisions of this chapter shall not apply to, nor shall it be enforced against, the property of tenants in dwelling houses or apartments or any other place that is used exclusively as a home or residence of the tenant and his family. [1927 c 108 § 1; 1917 c 165 § 1; RRS § 1203-1. Formerly RCW 60.72.010, 60.72.020, 60.72.030.]

**60.72.040 Foreclosure of lien.** Said lien may be foreclosed as provided in chapter 60.10 RCW and RCW 61.12.162. [1969 c 82 § 15; 1917 c 165 § 2; RRS § 1203-2.]

*Foreclosure of chattel mortgages: Article 62A.9 RCW.*

### Chapter 60.76

#### LIEN OF EMPLOYEES FOR CONTRIBUTIONS TO BENEFIT PLANS

##### Sections

60.76.010	Lien authorized.
60.76.020	Notice of lien—Contents—Filing and serving.
60.76.030	Manner of serving notice.
60.76.040	Manner of enforcing lien—Costs.
60.76.050	Priority of lien.

**60.76.010 Lien authorized.** Every employer who is required to pay contributions, by agreement or otherwise, into a fund of any employee benefit plan in order that his employee may participate therein, shall pay such contributions in the required amounts and at the stipulated time or each employee affected thereby shall have a lien on the earnings and on all property used in the operation of said employer's business to the extent of the moneys, plus any penalties, due to be paid by or on his behalf in order to qualify him for participation therein, and for any moneys expended or obligations incurred for medical, hospital, or other expenses to which he would have been entitled had such required contributions been paid. [1961 c 86 § 1.]

**60.76.020 Notice of lien—Contents—Filing and serving.** The lien claimant, or his representative on his behalf, or the trustee of the fund on the claimant's behalf, within sixty days after such payment becomes due shall file for record with the auditor of the county wherein the claimant is or was employed by such employer a notice of claim, containing a statement of the demand, the name of the employer and the name of the person employing the claimant, if known, with a statement of the pertinent terms and conditions of the employee benefit plan and the time when such contributions are due and were to have been paid, and shall serve or mail a copy thereof to said employer within such time. [1961 c 86 § 2.]

**60.76.030 Manner of serving notice.** Service of the notice of claim may be made in the same manner as summons in civil actions. [1961 c 86 § 3.]

**60.76.040 Manner of enforcing lien—Costs.** The lien may be enforced within the same time and in the same manner as mechanics' liens are foreclosed when said lien is upon real property, or within the same time and in the same manner as chattel liens are enforced when the lien is upon personal property. The court may allow, as part of the costs of the action, the moneys paid for filing or recording the claim, a reasonable attorney's fee in the superior court, court of appeals, and supreme court, and court costs. [1971 c 81 § 130; 1961 c 86 § 4.]

**60.76.050 Priority of lien.** The lien created herein shall be preferred to any encumbrance which may attach after the contribution payments became due and is also preferred to any encumbrance which may have attached previous to that time, but which was not filed or recorded so as to create constructive notice thereof prior to that time, and of which the lien claimant had no notice. [1961 c 86 § 5.]

# TITLE 61

## MORTGAGES, DEEDS OF TRUST, AND TRUST RECEIPTS

### Chapters

- 61.12 Foreclosure of real estate mortgages and personal property liens.**
- 61.16 Assignment and satisfaction of real estate and chattel mortgages.**
- 61.24 Deeds of trust.**

*Banks, real estate holdings: RCW 30.04.210.*  
*Chattel liens: Chapter 60.08 RCW.*  
*Commission merchants: Title 20 RCW.*  
*Corporate powers of banks and trust companies: RCW 30.08.140, 30.08.150.*  
*Credit unions: Chapter 31.12 RCW.*  
*Crop credit associations: Chapter 31.16 RCW.*  
*Excise tax on real estate sales: Chapter 28A.45 RCW.*  
*Frauds and swindles—Encumbered, leased or rented personal property: RCW 9.45.060.*  
*Fraudulent conveyances: Chapter 19.40 RCW.*  
*Insurance companies, investments: Chapter 48.13 RCW.*  
*Interest, usury: Chapter 19.52 RCW.*  
*Joint tenancies: Chapter 64.28 RCW.*  
*Liens: Title 60 RCW.*  
*Motor vehicles, certificates of ownership: Chapter 46.12 RCW.*  
*Mutual savings banks, investments: Chapter 32.20 RCW.*  
*Mutual savings banks, powers and duties: Chapters 32.08, 32.12, 32.16 RCW.*  
*Negotiable instruments: Title 62A RCW.*  
*Possession of real property to collect mortgaged, pledged or assigned rents and profits: RCW 7.28.230.*  
*Property taxes: Title 84 RCW.*  
*Real estate brokers and salesmen: Chapter 18.85 RCW.*  
*Real property and conveyances: Title 64 RCW.*  
*Recording master form instruments and mortgages or deeds of trust incorporating master form provisions: RCW 65.08.160.*  
*Recording mortgages: Title 65 RCW.*  
*Retail installment sales of goods and services: Chapter 63.14 RCW.*  
*Savings and loan associations, investments: Chapter 33.24 RCW.*  
*Savings and loan associations, powers and duties: Chapter 33.12 RCW.*  
*Small loan companies: Chapter 31.08 RCW.*  
*Statute of frauds: Chapter 19.36 RCW.*  
*Suretyship: Chapter 19.72 RCW.*  
*Tax on conveyances: Chapter 82.20 RCW.*  
*Warehousing and deposits: Title 22 RCW.*

### Chapter 61.12

### FORECLOSURE OF REAL ESTATE MORTGAGES AND PERSONAL PROPERTY LIENS

#### Sections

- 61.12.010 Encumbrances shall be by deed.
- 61.12.020 Mortgage—Form—Contents—Effect.
- 61.12.030 Removal of property from mortgaged premises.

- 61.12.031 Removal of property from mortgaged premises—Penalty.
  - 61.12.040 Foreclosure—Venue.
  - 61.12.050 When remedy confined to mortgaged property.
  - 61.12.060 Judgment—Order of sale—Satisfaction—Upset price.
  - 61.12.061 Exception as to mortgages held by the United States.
  - 61.12.070 Decree to direct deficiency—Waiver in complaint.
  - 61.12.080 Deficiency judgment—How enforced.
  - 61.12.090 Execution on decree—Procedure.
  - 61.12.093 Abandoned improved real estate—Purchaser takes free of redemption rights.
  - 61.12.094 Abandoned improved real estate—Deficiency judgment precluded—Complaint, requisites, service.
  - 61.12.095 Abandoned improved real estate—Not applicable to property used primarily for agricultural purposes.
  - 61.12.100 Levy for deficiency under same execution.
  - 61.12.110 Notice of sale on deficiency.
  - 61.12.120 Concurrent actions prohibited.
  - 61.12.130 Payment of sums due—Stay of proceedings.
  - 61.12.140 Sale in parcels to pay installments due.
  - 61.12.150 Sale of whole property—Disposition of proceeds.
  - 61.12.162 Judicial foreclosure of personal property liens.
  - 61.12.164 Judicial foreclosure of personal property liens—Redemption rights.
  - 61.12.165 Judicial foreclosure of personal property liens—Rights and interest of purchaser for value.
  - 61.12.170 Recording.
- Community realty, encumbering: RCW 26.16.040.*  
*Corporate seals, effect of absence from instrument: RCW 64.04.105.*  
*Decedent's estate, liability for mortgage lien: RCW 11.04.270.*  
*Foreclosure by organizations not admitted to transact business in state: Chapter 23A.36 RCW.*  
*Mortgagee cannot maintain action for possession: RCW 7.28.230.*  
*Mortgaging of decedents' estates: Chapter 11.56 RCW.*  
*Notice and sale summary foreclosure of personal property liens: Chapter 60.10 RCW.*  
*Partition, sales on credit: RCW 7.52.290, 7.52.420.*  
*Possession of real estate to collect mortgaged rents and profits: RCW 7.28.230.*  
*Receiver may be appointed to protect mortgagee's interest: RCW 7.60.020.*  
*Sales under execution and redemption: Chapter 6.24 RCW.*

**61.12.010 Encumbrances shall be by deed.** See RCW 64.04.010.

**61.12.020 Mortgage—Form—Contents—Effect.** Mortgages of land may be made in substantially the following form: The mortgagor (here insert name or names) mortgages to (here insert name or names) to secure the payment of (here insert the nature and amount of indebtedness, showing when due, rate of interest, and whether evidenced by note, bond or other instrument or

not) the following described real estate (here insert description) situated in the county of \_\_\_\_\_, state of Washington.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_.

Every such mortgage, when otherwise properly executed, shall be deemed and held a good and sufficient conveyance and mortgage to secure the payment of the money therein specified. The parties may insert in such mortgage any lawful agreement or condition. [1929 c 33 § 12; RRS § 10555. Prior: 1888 c 26 § 1; 1886 p 179 § 6.]

**61.12.030 Removal of property from mortgaged premises.** When any real estate in this state is subject to, or is security for, any mortgage, mortgages, lien or liens, other than general liens arising under personal judgments, it shall be unlawful for any person who is the owner, mortgagor, lessee, or occupant of such real estate to destroy or remove or to cause to be destroyed or removed from said real estate any fixtures, buildings, or permanent improvements, not including crops growing thereon, without having first obtained from the owners or holders of each and all of such mortgages or other liens his or their written consent for such removal or destruction. [1899 c 75 § 1; RRS § 2709, part. FORMER PART OF SECTION: 1899 c 75 § 2 now codified as RCW 61.12.031.]

**61.12.031 Removal of property from mortgaged premises—Penalty.** Any person wilfully violating the provisions of RCW 61.12.030 shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by imprisonment in the county jail for a period not to exceed six months, or by a fine of not more than five hundred dollars, or by both such fine and imprisonment. [1899 c 75 § 2; RRS § 2709, part. Formerly RCW 61.12.030, part.]

**61.12.040 Foreclosure—Venue.** When default is made in the performance of any condition contained in a mortgage, the mortgagee or his assigns may proceed in the superior court of the county where the land, or some part thereof, lies, to foreclose the equity of redemption contained in the mortgage. [Code 1881 § 609; 1877 p 127 § 614; 1869 p 145 § 563; 1854 p 207 § 408; RRS § 1116.]

*Real property, actions concerning to be brought where property is located: RCW 4.12.010.*

**61.12.050 When remedy confined to mortgaged property.** When there is no express agreement in the mortgage nor any separate instrument given for the payment of the sum secured thereby, the remedy of the mortgagee shall be confined to the property mortgaged. [Code 1881 § 610; 1877 p 127 § 615; 1869 p 146 § 564; 1854 p 207 § 409; RRS § 1117.]

**61.12.060 Judgment—Order of sale—Satisfaction—Upset price.** In rendering judgment of foreclosure, the court shall order the mortgaged premises, or so much thereof as may be necessary, to be sold to satisfy the mortgage and costs of the action. The payment of

the mortgage debt, with interest and costs, at any time before sale, shall satisfy the judgment. The court, in ordering the sale, may in its discretion, take judicial notice of economic conditions, and after a proper hearing, fix a minimum or upset price to which the mortgaged premises must be bid or sold before confirmation of the sale.

The court may, upon application for the confirmation of a sale, if it has not theretofore fixed an upset price, conduct a hearing, establish the value of the property, and, as a condition to confirmation, require that the fair value of the property be credited upon the foreclosure judgment. If an upset price has been established, the plaintiff may be required to credit this amount upon the judgment as a condition to confirmation. If the fair value as found by the court, when applied to the mortgage debt, discharges it, no deficiency judgment shall be granted. [1935 c 125 § 1; Code 1881 § 611; 1877 p 127 § 616; 1869 p 146 § 565; 1854 p 207 § 410; RRS § 1118. FORMER PART OF SECTION: 1935 c 125 § 1 1/2 now codified as RCW 61.12.061.]

*Confirmation of sale of land: RCW 6.24.100.*

**61.12.061 Exception as to mortgages held by the United States.** The provisions of \*this act shall not apply to any mortgage while such mortgage is held by the United States or by any agency, department, bureau, board or commission thereof as security or pledge of the maker, its successors or assigns. [1935 c 125 § 1 1/2; RRS § 1118-1. Formerly RCW 61.12.060, part.]

*\*Reviser's note: "this act" appears in 1935 c 125 § 1 1/2; section 1 of the 1935 act amends Code 1881 § 611; the 1935 act is codified as RCW 61.12.060 and 61.12.061.*

**61.12.070 Decree to direct deficiency—Waiver in complaint.** When there is an express agreement for the payment of the sum of money secured contained in the mortgage or any separate instrument, the court shall direct in the decree of foreclosure that the balance due on the mortgage, and costs which may remain unsatisfied after the sale of the mortgaged premises, shall be satisfied from any property of the mortgage debtor: *Provided, however,* That in all cases where the mortgagee or other owner of such mortgage has expressly waived any right to a deficiency judgment in the complaint, as provided by RCW 6.24.140, there shall be no such judgment for deficiency, and the remedy of the mortgagee or other owner of the mortgage shall be confined to the sale of the property mortgaged. [1961 c 196 § 4; Code 1881 § 612; 1877 p 127 § 617; 1869 p 146 § 566; 1854 p 208 § 411; RRS § 1119.]

**61.12.080 Deficiency judgment—How enforced.** Judgments over for any deficiency remaining unsatisfied after application of the proceeds of sale of mortgaged property, either real or personal, shall be similar in all respects to other judgments for the recovery of money, and may be made a lien upon the property of a judgment debtor as other judgments, and the collections thereof enforced in the same manner. [Code 1881 § 622; 1877 p 129 § 625; 1869 p 148 § 575; RRS § 1120.]

*Enforcement of judgments: Title 6 RCW.*

**61.12.090 Execution on decree—Procedure.** A decree of foreclosure of mortgage or other lien may be enforced by execution as an ordinary judgment or decree for the payment of money. The execution shall contain a description of the property described in the decree. The sheriff shall endorse upon the execution the time when he receives it, and he shall thereupon forthwith proceed to sell such property, or so much thereof as may be necessary to satisfy the judgment, interest and costs upon giving the notice prescribed in RCW 6.24.010. [1899 c 53 § 1; RRS § 1121. Cf. Code 1881 § 613; 1869 p 146 § 567; 1854 p 208 § 412.]

*Property exempt from execution and attachment: RCW 6.16.020.*

**61.12.093 Abandoned improved real estate—Purchaser takes free of redemption rights.** In actions to foreclose mortgages on real property improved by structure or structures, if the court finds that the mortgagor or his successor in interest has abandoned said property for six months or more, the purchaser at the sheriff's sale shall take title in and to such property free from all redemption rights as provided for in RCW 6.24.130 et seq. upon confirmation of the sheriff's sale by the court. Lack of occupancy by, or by authority of, the mortgagor or his successor in interest for a continuous period of six months or more prior to the date of the decree of foreclosure, coupled with failure to make payment upon the mortgage obligation within the said six month period, will be prima facie evidence of abandonment. [1965 c 80 § 1; 1963 c 34 § 1.]

*Deed to issue upon request immediately after confirmation of sale: RCW 6.24.220.*

**61.12.094 Abandoned improved real estate—Deficiency judgment precluded—Complaint, requisites, service.** When proceeding under RCW 61.12.093 through 61.12.095 no deficiency judgment shall be allowed. No mortgagee shall deprive any mortgagor, his successors in interest, or any redemptioner of redemption rights by default decree without alleging such intention in the complaint: *Provided, however,* That such complaint need not be served upon any person who acquired the status of such successor in interest or redemptioner after the recording of lis pendens in such foreclosure action. [1965 c 80 § 2; 1963 c 34 § 2.]

**61.12.095 Abandoned improved real estate—Not applicable to property used primarily for agricultural purposes.** RCW 61.12.093 and 61.12.094 shall not apply to property used primarily for agricultural purposes. [1965 c 80 § 3; 1963 c 34 § 3.]

**61.12.100 Levy for deficiency under same execution.** In all actions of foreclosure where there is a decree for the sale of the mortgaged premises or property, and a judgment over for any deficiency remaining unsatisfied after applying the proceeds of the sale of mortgaged property, further levy and sales upon other property of the judgment debtor may be made under the same execution. In such sales it shall only be necessary to advertise notice for two weeks in a newspaper published in the county where the said property is located, and if

there be no newspaper published therein, then in the most convenient newspaper having a circulation in such county. [Code 1881 § 620; 1877 p 129 § 623; 1873 p 151 § 571; 1869 p 148 § 573; RRS § 1123.]

**61.12.110 Notice of sale on deficiency.** When sales of other property not embraced in the mortgage or decree of sale are made under the execution to satisfy any deficiency remaining due upon judgment, two weeks' publication of notice of such sale shall be sufficient. Such notice shall be published in a newspaper printed in the county where the property is situated, and if there be no newspaper published therein, then in the most convenient newspaper having a circulation in said county. [Code 1881 § 621; 1877 p 129 § 624; 1869 p 148 § 574; RRS § 1124.]

*Notice of sales under execution: RCW 6.24.010.*

**61.12.120 Concurrent actions prohibited.** The plaintiff shall not proceed to foreclose his mortgage while he is prosecuting any other action for the same debt or matter which is secured by the mortgage, or while he is seeking to obtain execution of any judgment in such other action; nor shall he prosecute any other action for the same matter while he is foreclosing his mortgage or prosecuting a judgment of foreclosure. [Code 1881 § 614; 1877 p 128 § 619; 1869 p 146 § 568; 1854 p 208 § 413; RRS § 1125.]

**61.12.130 Payment of sums due—Stay of proceedings.** Whenever a complaint is filed for the foreclosure of a mortgage upon which there shall be due any interest or installment of the principal, and there are other installments not due, if the defendant pay into the court the principal and interest due, with costs, at any time before the final judgment, proceedings thereon shall be stayed, subject to be enforced upon a subsequent default in the payment of any installment of the principal or interest thereafter becoming due. In the final judgment, the court shall direct at what time and upon what default any subsequent execution shall issue. [Code 1881 § 615; 1877 p 128 § 620; 1869 p 147 § 569; 1854 p 208 § 414; RRS § 1126.]

**61.12.140 Sale in parcels to pay installments due.** In such cases, after final judgment, the court shall ascertain whether the property can be sold in parcels, and if it can be done without injury to the interests of the parties, the court shall direct so much only of the premises to be sold, as will be sufficient to pay the amount then due on the mortgage with costs, and the judgment shall remain and be enforced upon any subsequent default, unless the amount due shall be paid before execution of the judgment is perfected. [Code 1881 § 616; 1877 p 128 § 620 (2d of 2 sections with same number); 1869 p 147 § 570; 1854 p 208 § 415; RRS § 1127.]

**61.12.150 Sale of whole property—Disposition of proceeds.** If the mortgaged premises cannot be sold in parcels, the court shall order the whole to be sold, and the proceeds of the sale shall be applied first to the

payment of the principal due, interest and costs, and then to the residue secured by the mortgage and not due; and if the residue does not bear interest, a deduction shall be made therefrom by discounting the legal interest; and in all cases where the proceeds of the sale shall be more than sufficient to pay the amount due and costs, the surplus shall be paid to the mortgage debtor, his heirs and assigns. [Code 1881 § 617; 1877 p 128 § 621; 1869 p 147 § 571; 1854 p 208 § 416; RRS § 1128.]

**61.12.162 Judicial foreclosure of personal property liens.** The provisions of chapter 61.12 RCW, as now or hereafter amended, so far as the same shall be applicable, shall govern in actions for the judicial foreclosure of liens on personal property excluded by RCW 62A.9–104 from the provision of the Uniform Commercial Code, Title 62A RCW. The lien holder may proceed upon his lien; and if there be a separate obligation in writing to pay the same, secured by said lien, he may bring suit upon such separate promise. When he proceeds on the promise, if there be a specific agreement therein contained, for the payment of a certain sum, or there is a separate obligation for the said sum in addition to a decree of sale of lien property, judgment shall be rendered for the amount due upon said promise or other instrument, the payment of which is thereby secured; the decree shall direct the sale of the lien property and if the proceeds of said sale be insufficient under the execution, the sheriff is authorized to levy upon and sell other property of the lien debtor, not exempt from execution, for the sum remaining unsatisfied. [1969 c 82 § 1.]

*Notice and sale summary procedure for foreclosure of personal property liens: Chapter 60.10 RCW.*

**61.12.164 Judicial foreclosure of personal property liens—Redemption rights.** See RCW 60.10.050.

**61.12.165 Judicial foreclosure of personal property liens—Rights and interest of purchaser for value.** See RCW 60.10.040.

**61.12.170 Recording.** See chapter 65.08 RCW.

### Chapter 61.16

## ASSIGNMENT AND SATISFACTION OF REAL ESTATE AND CHATTEL MORTGAGES

#### Sections

- 61.16.010 Assignments, how made—Satisfaction by assignee.
- 61.16.020 Mortgages, how satisfied of record.
- 61.16.030 Failure to satisfy—Order—Penalty.
- 61.16.060 Chattel mortgages and conditional sales contracts—Agent may satisfy.

*Effect of recording assignment of mortgage: RCW 65.08.120.*

**61.16.010 Assignments, how made—Satisfaction by assignee.** Any person to whom any real estate or chattel mortgage is given, or the assignee of any such mortgage, may, by an instrument in writing, by him signed and acknowledged in the manner provided by law entitling mortgages to be recorded, assign the same to the person therein named as assignee, and any person to

whom any such mortgage has been so assigned, may, after the assignment has been recorded in the office of the auditor of the county wherein such mortgage is of record, acknowledge satisfaction of the mortgage, and discharge the same of record. [1897 c 23 § 1; RRS § 10616.]

**Validating—1897 c 23:** "All satisfactions of mortgages heretofore made by the assignees thereof, where the assignment was in writing, signed by the mortgagee or assignee, and where the same was recorded in the office of the auditor of the county wherein the mortgage was recorded, are hereby validated, and such satisfactions of mortgages so made shall have the same effect as if made by the mortgagees in such mortgages." [1897 c 23 § 2.]

**61.16.020 Mortgages, how satisfied of record.** Whenever the amount due on any mortgage is paid, the mortgagee, his legal representatives or assigns, shall, at the request of any person interested in the property mortgaged, acknowledge satisfaction of the same on the margin of the page upon which the mortgage is recorded (which marginal satisfaction shall be at the time attested by the auditor or his deputy), or by executing an instrument in writing referring to the mortgage by the volume and page of the record or otherwise sufficiently describing it and acknowledging satisfaction in full thereof. Said instrument shall be duly acknowledged, and upon request shall be recorded in the county wherein the mortgaged property is situated. Every instrument of writing heretofore recorded and purporting to be a satisfaction of mortgage, which sufficiently describes the mortgage which it purports to satisfy so that the same may be readily identified, and which has been duly acknowledged before an officer authorized by law to take acknowledgments or oaths, is hereby declared legal and valid, and a certified copy of the record thereof is hereby constituted prima facie evidence of such satisfaction. [1901 c 52 § 1; 1886 p 116 § 1; RRS § 10614.]

**61.16.030 Failure to satisfy—Order—Penalty.** If the mortgagee shall fail so to do after sixty days from the date of such request or demand, he shall forfeit and pay to the mortgagor the sum of twenty-five dollars, to be recovered in any court having competent jurisdiction, and said court, when convinced that said mortgage has been fully satisfied, shall issue an order in writing, directing the auditor to cancel said mortgage, and the auditor shall immediately record the order and cancel the mortgage as directed by the court, upon the margin of the page upon which the mortgage is recorded, making reference thereupon to the order of the court and to the page where the order is recorded. [1886 p 117 § 2; RRS § 10615.]

**61.16.060 Chattel mortgages and conditional sales contracts—Agent may satisfy.** A mortgagee, vendor, or assignee or his personal representative of record may, by written instrument duly acknowledged, designate an agent to satisfy or release any mortgage or contract of conditional sale; and upon the filing of such instrument with the county auditor, such auditor shall be authorized to treat a satisfaction or release by such named agent as valid. Revocation of the power of an

agent to satisfy or release may be accomplished by written instrument in a like manner. [1937 c 133 § 2 (adding to 1899 c 98 a new section, § 10); RRS § 3787-2.]

### Chapter 61.24 DEEDS OF TRUST

#### Sections

- 61.24.010 "Record", "recorded" defined—Trustee, qualifications—Successor trustee.
- 61.24.020 Deed may be foreclosed as provided in this chapter—Recording and indexing—Trustee and beneficiary, separate entities.
- 61.24.030 Requisites to foreclosure.
- 61.24.040 Foreclosure and sale.
- 61.24.050 Interest conveyed by trustee's deed—Redemption precluded after sale.
- 61.24.060 Rights and remedies of trustee's sale purchaser.
- 61.24.070 Trustee's sale, who may bid at.
- 61.24.080 Disposition of proceeds of sale.
- 61.24.090 Curing defaults before sale—Discontinuance of proceedings—Notice of discontinuance—Execution and acknowledgment.
- 61.24.100 Deficiency decree precluded in foreclosure under this chapter—Enforcement of security and obligation where foreclosure not made under this chapter.
- 61.24.110 Reconveyance by trustee.
- 61.24.120 Other foreclosure provisions preserved.
- 61.24.130 Restraint of threatened sale by trustee.

*Possession of real property by trustee of deed of trust to collect rents and profits: RCW 7.28.230.*

**61.24.010 "Record", "recorded" defined—Trustee, qualifications—Successor trustee.** (1) The terms "record" and "recorded" as used in this chapter, shall include the appropriate registration proceedings, in the instance of registered land.

(2) The trustee of a deed of trust under this chapter shall be:

(a) Any corporation or association authorized to engage in a trust business in this state; or

(b) Any title insurance company authorized to insure title to real property under the laws of this state; or

(c) Any attorney who is an active member of the Washington state bar association at the time he is named trustee.

(3) In the event of the death, incapacity or disability, or resignation of the trustee, the beneficiary may nominate in writing a successor trustee. Upon recording in the mortgage records of the county or counties in which the trust deed is recorded, of the appointment of a successor trustee, the successor trustee shall be vested with all powers of the original trustee. [1965 c 74 § 1.]

**61.24.020 Deed may be foreclosed as provided in this chapter—Recording and indexing—Trustee and beneficiary, separate entities.** A deed conveying real property to a trustee in trust to secure the performance of an obligation of the grantor or another to the beneficiary may be foreclosed as in this chapter provided. The county auditor shall record such deed as a mortgage and shall index the name of the grantor as mortgagor and the names of the trustee and beneficiary as mortgagee. No person, corporation or association may be both trustee and beneficiary under the same deed of

trust nor may the trustee be an employee, agent or subsidiary of a beneficiary of the same deed of trust. [1965 c 74 § 2.]

**61.24.030 Requisites to foreclosure.** It shall be requisite, to foreclosure under this chapter:

(1) That the deed of trust contains a power of sale;

(2) That the deed of trust provides in its terms that the real property conveyed is not used principally for agricultural or farming purposes;

(3) That a default has occurred in the obligation secured or a covenant of the grantor, which by the terms of the deed of trust makes operative the power to sell;

(4) That no action is pending on an obligation secured by the deed of trust; and

(5) That the deed of trust has been recorded in each county in which the land or some part thereof is situated. [1965 c 74 § 3.]

**61.24.040 Foreclosure and sale.** A deed of trust may be foreclosed in the following manner:

(1) At least one hundred and twenty days before sale, notice thereof shall be recorded by the trustee in the office of the auditor in each county in which the deed of trust is recorded. At least one hundred twenty days prior to sale copies of the notice shall be transmitted by first class and by certified mail, return receipt requested, to each person who has an interest in or lien or claim of lien against the property or some part thereof, provided such interest, lien or claim is of record at the time the notice is recorded, and provided the address of such person is stated in the recorded instrument evidencing his interest, lien or claim or is otherwise known to the trustee. If a court action to foreclose a lien or other encumbrance on all or any part of the property is pending and a lis pendens in connection therewith is on file on the date the notice is recorded in the office of the auditor pursuant to subdivision (1) of this section, a copy of the notice shall also be transmitted by first class and by certified mail, return receipt requested, to the plaintiff or his attorney of record. The copy of the notice shall be transmitted to the address to which such person shall have in writing requested the trustee to transmit the notice and if there has been no such request, to the address appearing in the recorded instrument evidencing his interest, lien or claim, and if there be neither such request nor record address, to the address otherwise known to the trustee. In addition, at least one hundred twenty days prior to sale, a copy of the notice shall be posted in a conspicuous place on said premises; or in lieu of posting, a copy of the notice may be served upon any occupant of said real property in the manner in which a summons is served, said service to be at least one hundred twenty days prior to sale.

(2) The notice aforesaid shall indicate the names of the grantor, trustee and beneficiary of the deed of trust, the description of the property which is then subject to the deed of trust, the book and page of the book of record wherein the deed of trust is recorded, the default for which the foreclosure is made and the date by which the default must be cured in order to cause a discontinuance of the sale, the amount or amounts in arrears if a

default is for failure to make payment, the sum owing on the obligation secured by the deed of trust, and the time and place of sale.

(3) A copy of the notice aforesaid shall be published in a legal newspaper in each county in which the property or any part thereof is situated, once weekly during the four weeks preceding the time of sale.

(4) The trustee shall sell the property in gross or in parcels as it shall determine, at the place and during the hours directed by statute for the conduct of sales of real estate at execution, at auction to the highest bidder.

(5) The purchaser shall forthwith pay the price bid and on payment the trustee shall execute to the purchaser its deed; the deed shall recite the facts showing that the sale was conducted in compliance with all of the requirements of this chapter and of the deed of trust, which recital shall be prima facie evidence of such compliance and conclusive evidence thereof in favor of bona fide purchasers and encumbrancers for value.

(6) The sale as authorized under this chapter shall not take place less than six months from the date of default in the obligation secured. [1967 c 30 § 1; 1965 c 74 § 4.]

**61.24.050 Interest conveyed by trustee's deed—Redemption precluded after sale.** The deed of the trustee, executed to the purchaser, shall convey the interest in the property which the grantor had or had the power to convey at the time of the execution by him of the deed of trust, and such as he may have thereafter acquired. After sale, as in this chapter provided, no person shall have any right by statute or otherwise to redeem from the deed of trust or from the sale. [1965 c 74 § 5.]

**61.24.060 Rights and remedies of trustee's sale purchaser.** The purchaser at the trustee's sale shall be entitled to possession of the property on the twentieth day following the sale, as against the grantor under the deed of trust or anyone claiming through him, and shall have a right to the summary proceedings to obtain possession of real property provided in chapter 59.12 RCW. [1967 c 30 § 2; 1965 c 74 § 6.]

**61.24.070 Trustee's sale, who may bid at.** The trustee may not bid at the trustee's sale. Any other person including the beneficiary under the deed of trust may bid at the trustee's sale. [1965 c 74 § 7.]

**61.24.080 Disposition of proceeds of sale.** The trustee shall apply the proceeds of the sale as follows:

(1) To the expense of sale, including a reasonable charge by the trustee and by his attorney: *Provided*, That the aggregate of the charges by the trustee and his attorney, for their services in the sale, shall not exceed the amount which would, by the superior court of the county in which the trustee's sale occurred, have been deemed a reasonable attorney fee, had the trust deed been foreclosed as a mortgage in a noncontested action in the said court;

(2) To the obligation secured by the deed of trust; and

(3) The surplus, if any, less the clerk's filing fee may be deposited together with a copy of the recorded notice of sale with the clerk of the superior court of the county in which the sale took place. The clerk shall index such funds under the name of the grantor as set out in the recorded notice. Upon depositing such surplus, the trustee shall be discharged from all further responsibilities therefor. Interests in, or liens or claims of liens against the property eliminated by sale under this section shall attach to such surplus in the order of priority that it had attached to the property. The clerk shall not disburse such surplus except upon order of the superior court of such county. [1967 c 30 § 3; 1965 c 74 § 8.]

**61.24.090 Curing defaults before sale—Discontinuance of proceedings—Notice of discontinuance—Execution and acknowledgment.** At any time prior to the time set by the trustee for the sale in the recorded notice of sale, the grantor or his successor in interest, any beneficiary under a subordinate deed of trust or any person having a subordinate lien or encumbrance of record on the trust property or any part thereof, shall be entitled to cause a discontinuance of the proceedings by curing the default or defaults set forth in the notice, which in the case of a default by failure to pay, shall be by paying to the trustee a sum sufficient to cure all defaults other than such portion of principal as would not then be due had no default occurred, plus the costs of the trustee incurred and the trustee's fee accrued, which accrued fee shall not exceed fifty dollars. Upon receipt of such payment the proceedings shall be discontinued, the deed of trust shall be reinstated and the obligation shall remain as though no acceleration had taken place. Any person having a subordinate lien of record on the trust property and who has cured the default or defaults pursuant to this section shall thereafter have included in his lien all payments made to cure any defaults, including interest thereon at six percent per annum, payments made for trustees' costs and fees incurred as authorized herein, and his reasonable attorney's fees and costs incurred resulting from any judicial action commenced to enforce his rights to advances under this section.

If the default is cured and the obligation and the deed of trust reinstated in the manner hereinabove provided, the trustee shall properly execute, acknowledge and cause to be recorded a notice of discontinuance of trustee's sale under such deed of trust. A notice of discontinuance of trustee's sale when so executed and acknowledged is entitled to be recorded and shall be sufficient if it sets forth a record of the deed of trust and the book and page upon which the deed of trust is recorded and a reference to the notice of sale and the book and page on which the name is recorded, and a notice that such sale is discontinued. [1967 c 30 § 4; 1965 c 74 § 9.]

**61.24.100 Deficiency decree precluded in foreclosure under this chapter—Enforcement of security and obligation where foreclosure not made under this chapter.** Foreclosure, as in this chapter provided, shall satisfy the



obligation secured by the deed of trust foreclosed, regardless of the sale price or fair value, and no deficiency decree or other judgment shall thereafter be obtained on such obligation. Where foreclosure is not made under this chapter, the beneficiary shall not be precluded from enforcing the security as a mortgage nor from enforcing the obligation by any means provided by law. [1965 c 74 § 10.]

**61.24.110 Reconveyance by trustee.** The trustee shall reconvey all or any part of the property covered by the deed of trust to the person entitled thereto on written request of the grantor and the beneficiary, or upon satisfaction of the obligation secured and written request for reconveyance made by the beneficiary or the person entitled thereto. [1965 c 74 § 11.]

**61.24.120 Other foreclosure provisions preserved.** This chapter shall not supersede nor repeal any other provision now made by law for the foreclosure of security interests in real property. [1965 c 74 § 12.]

**61.24.130 Restraint of threatened sale by trustee.** Nothing contained in this chapter shall prejudice the right of the grantor or his successor in interest to restrain, on any proper ground, a threatened sale by the trustee under a deed of trust. [1965 c 74 § 13.]



# TITLE 62

## NEGOTIABLE INSTRUMENTS

**Reviser's Note:** Repealed and superseded by Title 62A RCW Uniform Commercial Code. A comparative table may be found in the tables section of the Revised Code of Washington.

(b) words of the masculine gender include the feminine and the neuter, and when the sense so indicates words of the neuter gender may refer to any gender. [1965 ex.s. c 157 § 1-102. Cf. former RCW sections: (i) RCW 22.04.580; 1913 c 99 § 57; RRS § 3643. (ii) RCW 23.80.190; 1939 c 100 § 19; RRS § 3803-119. (iii) RCW 63.04.745; 1925 ex.s. c 142 § 74; RRS § 5836-74; formerly RCW 63.04.770. (iv) RCW 81.32.521; 1961 c 14 § 81.32.521; prior: 1915 c 159 § 52; RRS § 3698; formerly RCW 81.32.610.]

*Code to be liberally construed: RCW 1.12.010.*

*Number and gender—Interpretation: RCW 1.12.050.*

**62A.1-103 Supplementary general principles of law applicable.** Unless displaced by the particular provisions of this Title, the principles of law and equity, including the law merchant and the law relative to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, or other validating or invalidating cause shall supplement its provisions. [1965 ex.s. c 157 § 1-103. Cf. former RCW sections: (i) RCW 22.04.570; 1913 c 99 § 56; RRS § 3642. (ii) RCW 23.80.180; 1939 c 100 § 18; RRS § 3803-118; formerly RCW 23.20.190. (iii) RCW 62.01-196; 1955 c 35 § 196; RRS § 3586. (iv) RCW 63.04-030; 1925 ex.s. c 142 § 2; RRS § 5836-2. (v) RCW 81.32.511; 1961 c 14 § 81.32.511; prior: 1915 c 159 § 51; RRS § 3697; formerly RCW 81.32.600.]

*Application of common law: RCW 4.04.010.*

**62A.1-104 Construction against implicit repeal.** This Title being a general act intended as a unified coverage of its subject matter, no part of it shall be deemed to be impliedly repealed by subsequent legislation if such construction can reasonably be avoided. [1965 ex.s. c 157 § 1-104.]

**62A.1-105 Territorial application of the title; parties' power to choose applicable law.** (1) Except as provided hereafter in this section, when a transaction bears a reasonable relation to this state and also to another state or nation the parties may agree that the law either of this state or of such other state or nation shall govern their rights and duties. Failing such agreement this Title applies to transactions bearing an appropriate relation to this state.

(2) Where one of the following provisions of this Title specifies the applicable law, that provision governs and a contrary agreement is effective only to the extent permitted by the law (including the conflict of laws rules) so specified:

Rights of creditors against sold goods. RCW 62A.2-402.

Applicability of the Article on Bank Deposits and Collections. RCW 62A.4-102.

Bulk transfers subject to the Article on Bulk Transfers. RCW 62A.6-102.

Applicability of the Article on Investment Securities. RCW 62A.8-106.

Policy and scope of the Article on Secured Transactions. RCW 62A.9-102 and RCW 62A.9-103. [1965 ex.s. c 157 § 1-105.]

**62A.1-106 Remedies to be liberally administered.** (1) The remedies provided by this Title shall be liberally administered to the end that the aggrieved party may be put in as good a position as if the other party had fully performed but neither consequential or special nor penal damages may be had except as specifically provided in this Title or by other rule of law.

(2) Any right or obligation declared by this Title is enforceable by action unless the provision declaring it specifies a different and limited effect. [1965 ex.s. c 157 § 1-106. Cf. former: RCW 63.04.730; 1925 ex.s. c 142 § 72; RRS § 5836-72.]

**62A.1-107 Waiver or renunciation of claim or right after breach.** Any claim or right arising out of an alleged breach can be discharged in whole or in part without consideration by a written waiver or renunciation signed and delivered by the aggrieved party. [1965 ex.s. c 157 § 1-107. Cf. former RCW sections: (i) RCW 62.01.119(3); 1955 c 35 § 62.01.119; prior: 1899 c 149 § 119; RRS § 3509. (ii) RCW 62.01.120(2); 1955 c 35 § 62.01.120; prior: 1899 c 149 § 120; RRS § 3510. (iii) RCW 62.01.122; 1955 c 35 § 62.01.122; prior: 1899 c 149 § 122; RRS § 3512.]

**62A.1-108 Severability.** If any provision or clause of this Title or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the Title which can be given effect without the invalid provision or application, and to this end the provisions of this Title are declared to be severable. [1965 ex.s. c 157 § 1-108. Cf. former RCW 62.98.030; 1955 c 35 § 62.98.030.]

**62A.1-109 Section captions.** Section captions are parts of this Title. [1965 ex.s. c 157 § 1-109. Cf. former RCW 62.98.020; 1955 c 35 § 62.98.020.]

## PART 2

### GENERAL DEFINITIONS AND PRINCIPLES OF INTERPRETATION

**62A.1-201 General definitions.** Subject to additional definitions contained in the subsequent Articles of this Title which are applicable to specific Articles or Parts thereof, and unless the context otherwise requires, in this Title:

(1) "Action" in the sense of a judicial proceeding includes recoupment, counterclaim, set-off, suit in equity and any other proceedings in which rights are determined.

(2) "Aggrieved party" means a party entitled to resort to a remedy.

(3) "Agreement" means the bargain of the parties in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance as provided in this Title (RCW 62A.1-205 and RCW 62A.2-208). Whether an agreement has legal consequences is determined by the provisions of this Title, if applicable; otherwise by the law of contracts (RCW 62A.1-103). (Compare "Contract".)

(4) "Bank" means any person engaged in the business of banking.

(5) "Bearer" means the person in possession of an instrument, document of title, or security payable to bearer or indorsed in blank.

(6) "Bill of lading" means a document evidencing the receipt of goods for shipment issued by a person engaged in the business of transporting or forwarding goods, and includes an airbill. "Airbill" means a document serving for air transportation as a bill of lading does for marine or rail transportation, and includes an air consignment note or air waybill.

(7) "Branch" includes a separately incorporated foreign branch of a bank.

(8) "Burden of establishing" a fact means the burden of persuading the triers of fact that the existence of the fact is more probable than its non-existence.

(9) "Buyer in ordinary course of business" means a person who in good faith and without knowledge that the sale to him is in violation of the ownership rights or security interest of a third party in the goods buys in ordinary course from a person in the business of selling goods of that kind but does not include a pawnbroker. "Buying" may be for cash or by exchange of other property or on secured or unsecured credit and includes receiving goods or documents of title under a pre-existing contract for sale but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(10) "Conspicuous": A term or clause is conspicuous when it is so written that a reasonable person against whom it is to operate ought to have noticed it. A printed heading in capitals (as: NON-NEGOTIABLE BILL OF LADING) is conspicuous. Language in the body of a form is "conspicuous" if it is in larger or other contrasting type or color. But in a telegram any stated term is "conspicuous". Whether a term or clause is "conspicuous" or not is for decision by the court.

(11) "Contract" means the total legal obligation which results from the parties' agreement as affected by this Title and any other applicable rules of law. (Compare "Agreement".)

(12) "Creditor" includes a general creditor, a secured creditor, a lien creditor and any representative of creditors, including an assignee for the benefit of creditors, a trustee in bankruptcy, a receiver in equity and an executor or administrator of an insolvent debtor's or assignor's estate.

(13) "Defendant" includes a person in the position of defendant in a cross-action or counterclaim.

(14) "Delivery" with respect to instruments, documents of title, chattel paper or securities means voluntary transfer of possession.

(15) "Document of title" includes bill of lading, dock warrant, dock receipt, warehouse receipt or order for the delivery of goods, and also any other document which in the regular course of business or financing is treated as adequately evidencing that the person in possession of it is entitled to receive, hold and dispose of the document and the goods it covers. To be a document of title a document must purport to be issued by or addressed to a bailee and purport to cover goods in

the bailee's possession which are either identified or are fungible portions of an identified mass.

(16) "Fault" means wrongful act, omission or breach.

(17) "Fungible" with respect to goods or securities means goods or securities of which any unit is, by nature or usage of trade, the equivalent of any other like unit. Goods which are not fungible shall be deemed fungible for the purposes of this Title to the extent that under a particular agreement or document unlike units are treated as equivalents.

(18) "Genuine" means free of forgery or counterfeiting.

(19) "Good faith" means honesty in fact in the conduct or transaction concerned.

(20) "Holder" means a person who is in possession of a document of title or an instrument or an investment security drawn, issued or indorsed to him or to his order or to bearer or in blank.

(21) To "honor" is to pay or to accept and pay, or where a credit so engages to purchase or discount a draft complying with the terms of the credit.

(22) "Insolvency proceedings" includes any assignment for the benefit of creditors or other proceedings intended to liquidate or rehabilitate the estate of the person involved.

(23) A person is "insolvent" who either has ceased to pay his debts in the ordinary course of business or cannot pay his debts as they become due or is insolvent within the meaning of the federal bankruptcy law.

(24) "Money" means a medium of exchange authorized or adopted by a domestic or foreign government as a part of its currency.

(25) A person has "notice" of a fact when (a) he has actual knowledge of it; or

(b) he has received a notice or notification of it; or

(c) from all the facts and circumstances known to him at the time in question he has reason to know that it exists.

A person "knows" or has "knowledge" of a fact when he has actual knowledge of it. "Discover" or "learn" or a word or phrase of similar import refers to knowledge rather than to reason to know. The time and circumstances under which a notice or notification may cease to be effective are not determined by this Title.

(26) A person "notifies" or "gives" a notice or notification to another by taking such steps as may be reasonably required to inform the other in ordinary course whether or not such other actually comes to know of it. A person "receives" a notice or notification when

(a) it comes to his attention; or

(b) it is duly delivered at the place of business through which the contract was made or at any other place held out by him as the place for receipt of such communications.

(27) Notice, knowledge or a notice or notification received by an organization is effective for a particular transaction from the time when it is brought to the attention of the individual conducting that transaction, and in any event from the time when it would have been brought to his attention if the organization had exercised due diligence. An organization exercises due

diligence if it maintains reasonable routines for communicating significant information to the person conducting the transaction and there is reasonable compliance with the routines. Due diligence does not require an individual acting for the organization to communicate information unless such communication is part of his regular duties or unless he has reason to know of the transaction and that the transaction would be materially affected by the information.

(28) "Organization" includes a corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, or any other legal or commercial entity.

(29) "Party", as distinct from "third party", means a person who has engaged in a transaction or made an agreement within this Title.

(30) "Person" includes an individual or an organization (See RCW 62A.1-102).

(31) "Presumption" or "presumed" means that the trier of fact must find the existence of the fact presumed unless and until evidence is introduced which would support a finding of its nonexistence.

(32) "Purchase" includes taking by sale, discount, negotiation, mortgage, pledge, lien, issue or re-issue, gift or any other voluntary transaction creating an interest in property.

(33) "Purchaser" means a person who takes by purchase.

(34) "Remedy" means any remedial right to which an aggrieved party is entitled with or without resort to a tribunal.

(35) "Representative" includes an agent, an officer of a corporation or association, and a trustee, executor or administrator of an estate, or any other person empowered to act for another.

(36) "Rights" includes remedies.

(37) "Security interest" means an interest in personal property or fixtures which secures payment or performance of an obligation. The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer (RCW 62A.2-401) is limited in effect to a reservation of a "security interest". The term also includes any interest of a buyer of accounts, chattel paper, or contract rights which is subject to Article 9. The special property interest of a buyer of goods on identification of such goods to a contract for sale under RCW 62A.2-401 is not a "security interest", but a buyer may also acquire a "security interest" by complying with Article 9. Unless a lease or consignment is intended as security, reservation of title thereunder is not a "security interest" but a consignment is in any event subject to the provisions on consignment sales (RCW 62A.2-326). Whether a lease is intended as security is to be determined by the facts of each case; however, (a) the inclusion of an option to purchase does not of itself make the lease one intended for security, and (b) an agreement that upon compliance with the terms of the lease the lessee shall become or has the option to become the owner of the property for no additional consideration or for a nominal consideration does make the lease one intended for security.

(38) "Send" in connection with any writing or notice means to deposit in the mail or deliver for transmission by any other usual means of communication with postage or cost of transmission provided for and properly addressed and in the case of an instrument to an address specified thereon or otherwise agreed, or if there be none to any address reasonable under the circumstances. The receipt of any writing or notice within the time at which it would have arrived if properly sent has the effect of a proper sending.

(39) "Signed" includes any symbol executed or adopted by a party with present intention to authenticate a writing.

(40) "Surety" includes guarantor.

(41) "Telegram" includes a message transmitted by radio, teletype, cable, any mechanical method of transmission, or the like.

(42) "Term" means that portion of an agreement which relates to a particular matter.

(43) "Unauthorized" signature or indorsement means one made without actual, implied or apparent authority and includes a forgery.

(44) "Value". Except as otherwise provided with respect to negotiable instruments and bank collections (RCW 62A.3-303, RCW 62A.4-208 and RCW 62A.4-209) a person gives "value" for rights if he acquires them

(a) in return for a binding commitment to extend credit or for the extension of immediately available credit whether or not drawn upon and whether or not a charge-back is provided for in the event of difficulties in collection; or

(b) as security for or in total or partial satisfaction of a preexisting claim; or

(c) by accepting delivery pursuant to a pre-existing contract for purchase; or

(d) generally, in return for any consideration sufficient to support a simple contract.

(45) "Warehouse receipt" means a receipt issued by a person engaged in the business of storing goods for hire.

(46) "Written" or "writing" includes printing, type-writing or any other intentional reduction to tangible form. [1965 ex.s. c 157 § 1-201.]

**Reviser's note:** This table indicates the latest comparable former Washington sources of the material contained in the various subsections of RCW 62A.1-201. Complete histories of the former sections are carried in the Revised Code of Washington Disposition Tables.

<i>Herein Subd.</i>	<i>Compare Former</i>
(1)	RCW:(i) 22.04.585(1) (ii) 62.01.191 (iii) 63.04.755(1) (iv) 81.32.531(1)
(2)	None
(3)	None
(4)	RCW:(i) 30.52.010 (ii) 62.01.191
(5)	RCW 62.01.191
(6)	RCW 81.32.011
(7)	None
(8)	None
(9)	RCW 61.20.010
(10)	None
(11)	RCW:(i) 63.04.040

Herein Subd.	Compare Former
	(ii) 63.04.720
(12)	None
(13)	RCW 63.04.755(1)
(14)	RCW:(i) 22.04.585(1) (ii) 62.01.191 (iii) 63.04.755(1) (iv) 81.32.531(1)
(15)	RCW 63.04.755(1)
(16)	RCW 63.04.755(1)
(17)	RCW:(i) 22.04.585(1) (ii) 63.04.060 (iii) 63.04.070 (iv) 63.04.755(1)
(18)	None
(19)	RCW:(i) 22.04.585(2) (ii) 23.80.220(2) (iii) 63.04.755(2) (iv) 81.32.531(2)
(20)	RCW:(i) 22.04.585(1) (ii) 62.01.191 (iii) 81.32.531(1)
(21)	None
(22)	None
(23)	RCW 63.04.755(3)
(24)	RCW 62.01.006(5)
(25)	RCW 62.01.056
(26)	None
(27)	None
(28)	RCW:(i) 22.04.585(1) (ii) 23.80.220(1) (iii) 61.20.010 (iv) 62.01.191 (v) 63.04.755(1) (vi) 81.32.531(1)
(29)	None
(30)	RCW:(i) 22.04.585(1) (ii) 23.80.220(1) (iii) 61.20.010 (iv) 62.01.191 (v) 63.04.755(1) (vi) 81.32.531(1)
(31)	None
(32)	RCW:(i) 22.04.585(1) (ii) 23.80.220(1) (iii) 61.20.010 (iv) 63.04.755(1) (v) 81.32.531(1)
(33)	RCW:(i) 22.04.585(1) (ii) 23.80.220(1) (iii) 61.20.010 (iv) 63.04.755(1) (v) 81.32.531(1)
(34)	None
(35)	None
(36)	None
(37)	RCW 61.20.010
(38)	None
(39)	None
(40)	None
(41)	None
(42)	None
(43)	None
(44)	RCW:(i) 22.04.585(1) (ii) 23.80.220(1) (iii) 61.20.010 (iv) 62.01.025 (v) 62.01.026 (vi) 62.01.027 (vii) 62.01.191 (viii) 63.04.755(1) (ix) 81.32.531(1)
(45)	RCW:(i) 22.04.020 (ii) 63.04.755(1)
(46)	RCW 62.01.191

"The repeal of RCW sections 81.32.010 through 81.32.561 " . . . shall not affect the validity of sections 81.29.010 through 81.29.050, chapter 14, Laws of 1961 (RCW 81.29.010 through 81.29.050)." Section 10-102(a)(xvii), c 157, Laws of 1965 ex.s.

*Definitions—Uniform Act for Simplification of Fiduciary Security Transfer: RCW 21.17.010.*

**62A.1-202 Prima facie evidence by third party documents.** A document in due form purporting to be a bill of lading, policy or certificate of insurance, official weigher's or inspector's certificate, consular invoice, or any other document authorized or required by the contract to be issued by a third party shall be prima facie evidence of its own authenticity and genuineness and of the facts stated in the document by the third party. [1965 ex.s. c 157 § 1-202.]

*Official documents as evidence: RCW 5.40.020, 5.40.030, 5.40.040.*

*Uniform Business Records as Evidence Act: Chapter 5.45 RCW.*

**62A.1-203 Obligation of good faith.** Every contract or duty within this Title imposes an obligation of good faith in its performance or enforcement. [1965 ex.s. c 157 § 1-203.]

**62A.1-204 Time; reasonable time; "seasonably".** (1) Whenever this Title requires any action to be taken within a reasonable time, any time which is not manifestly unreasonable may be fixed by agreement.

(2) What is a reasonable time for taking any action depends on the nature, purpose and circumstances of such action.

(3) An action is taken "seasonably" when it is taken at or within the time agreed or if no time is agreed at or within a reasonable time. [1965 ex.s. c 157 § 1-204.]

**62A.1-205 Course of dealing and usage of trade.** (1) A course of dealing is a sequence of previous conduct between the parties to a particular transaction which is fairly to be regarded as establishing a common basis of understanding for interpreting their expressions and other conduct.

(2) A usage of trade is any practice or method of dealing having such regularity of observance in a place, vocation or trade as to justify an expectation that it will be observed with respect to the transaction in question. The existence and scope of such a usage are to be proved as facts. If it is established that such a usage is embodied in a written trade code or similar writing the interpretation of the writing is for the court.

(3) A course of dealing between parties and any usage of trade in the vocation or trade in which they are engaged or of which they are or should be aware give particular meaning to and supplement or qualify terms of an agreement.

(4) The express terms of an agreement and an applicable course of dealing or usage of trade shall be construed wherever reasonable as consistent with each other; but when such construction is unreasonable express terms control both course of dealing and usage of trade and course of dealing controls usage of trade.



(5) An applicable usage of trade in the place where any part of performance is to occur shall be used in interpreting the agreement as to that part of the performance.

(6) Evidence of a relevant usage of trade offered by one party is not admissible unless and until he has given the other party such notice as the court finds sufficient to prevent unfair surprise to the latter. [1965 ex.s. c 157 § 1-205. Cf. former RCW sections: (i) RCW 63.04.100(1); 1925 ex.s. c 142 § 9; RRS § 5836-9. (ii) RCW 63.04.160(5); 1925 ex.s. c 142 § 15; RRS § 5836-15. (iii) RCW 63.04.190(2); 1925 ex.s. c 142 § 18; RRS § 5836-18. (iv) RCW 63.04.720; 1925 ex.s. c 142 § 71; RRS § 5836-71.]

**62A.1-206 Statute of frauds for kinds of personal property not otherwise covered.** (1) Except in the cases described in subsection (2) of this section a contract for the sale of personal property is not enforceable by way of action or defense beyond five thousand dollars in amount or value of remedy unless there is some writing which indicates that a contract for sale has been made between the parties at a defined or stated price, reasonably identifies the subject matter, and is signed by the party against whom enforcement is sought or by his authorized agent.

(2) Subsection (1) of this section does not apply to contracts for the sale of goods (RCW 62A.2-201) nor of securities (RCW 62A.8-319) nor to security agreements (RCW 62A.9-203). [1965 ex.s. c 157 § 1-206. Cf. former RCW 63.04.050; 1925 ex.s. c 142 § 4; RRS § 5836-4; prior: Code 1881 § 2326.]

*Statute of frauds: Chapter 19.36 RCW.*

**62A.1-207 Performance or acceptance under reservation of rights.** A party who with explicit reservation of rights performs or promises performance or assents to performance in a manner demanded or offered by the other party does not thereby prejudice the rights reserved. Such words as "without prejudice", "under protest" or the like are sufficient. [1965 ex.s. c 157 § 1-207.]

**62A.1-208 Option to accelerate at will.** A term providing that one party or his successor in interest may accelerate payment or performance or require collateral or additional collateral "at will" or "when he deems himself insecure" or in words of similar import shall be construed to mean that he shall have power to do so only if he in good faith believes that the prospect of payment or performance is impaired. [1965 ex.s. c 157 § 1-208. Cf. former RCW 61.08.080; Code 1881 § 1998; 1879 p 106 § 13; RRS § 1111.]

## Article 2 SALES

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## ARTICLE 2

## SALES

## PART 1

## SHORT TITLE, GENERAL CONSTRUCTION AND SUBJECT MATTER

**62A.2-101 Short title.** This Article shall be known and may be cited as Uniform Commercial Code—Sales. [1965 ex.s. c 157 § 2-101.]

**62A.2-102 Scope; certain security and other transactions excluded from this Article.** Unless the context otherwise requires, this Article applies to transactions in goods; it does not apply to any transaction which although in the form of an unconditional contract to sell or present sale is intended to operate only as a security transaction nor does this Article impair or repeal any statute regulating sales to consumers, farmers or other specified classes of buyers. [1965 ex.s. c 157 § 2-102. Cf. former RCW 63.04.750; 1925 ex.s. c 142 § 75; RRS § 5836-75.]

**62A.2-103 Definitions and index of definitions.** (1) In this Article unless the context otherwise requires

(a) "Buyer" means a person who buys or contracts to buy goods.

(b) "Good faith" in the case of a merchant means honesty in fact and the observance of reasonable commercial standards of fair dealing in the trade.

(c) "Receipt" of goods means taking physical possession of them.

(d) "Seller" means a person who sells or contracts to sell goods.

(2) Other definitions applying to this Article or to specified Parts thereof, and the sections in which they appear are:

"Acceptance." RCW 62A.2-606.

"Banker's credit." RCW 62A.2-325.

"Between merchants." RCW 62A.2-104.

"Cancellation." RCW 62A.2-106(4).

"Commercial unit." RCW 62A.2-105.

"Confirmed credit." RCW 62A.2-325.

"Conforming to contract." RCW 62A.2-106.

"Contract for sale." RCW 62A.2-106.

"Cover." RCW 62A.2-712.

"Entrusting." RCW 62A.2-403.

"Financing agency." RCW 62A.2-104.

"Future goods." RCW 62A.2-105.

"Goods." RCW 62A.2-105.

"Identification." RCW 62A.2-501.

"Installment contract." RCW 62A.2-612.

"Letter of credit." RCW 62A.2-325.

"Lot." RCW 62A.2-105.

"Merchant." RCW 62A.2-104.

"Overseas." RCW 62A.2-323.

"Person in position of seller." RCW 62A.2-707.

"Present sale." RCW 62A.2-106.

"Sale." RCW 62A.2-106.

"Sale on approval." RCW 62A.2-326.

"Sale or return." RCW 62A.2-326.

"Termination." RCW 62A.2-106.

(3) The following definitions in other Articles apply to this Article:

"Check." RCW 62A.3-104.

"Consignee." RCW 62A.7-102.

"Consignor." RCW 62A.7-102.

"Consumer goods." RCW 62A.9-109.

"Dishonor." RCW 62A.3-507.

"Draft." RCW 62A.3-104.

(4) In addition Article 1 contains general definitions and principles of construction and interpretation applicable throughout this Article. [1965 ex.s. c 157 § 2-103. Cf. former RCW 63.04.755(1); 1925 ex.s. c 142 § 76; RRS § 5836-76; formerly RCW 63.04.010.]

**62A.2-104 Definitions: "Merchant"; "between merchants"; "financing agency".** (1) "Merchant" means a person who deals in goods of the kind or otherwise by his occupation holds himself out as having knowledge or skill peculiar to the practices or goods involved in the transaction or to whom such knowledge or skill may be attributed by his employment of an agent or broker or other intermediary who by his occupation holds himself out as having such knowledge or skill.

(2) "Financing agency" means a bank, finance company or other person who in the ordinary course of business makes advances against goods or documents of title or who by arrangement with either the seller or the buyer intervenes in ordinary course to make or collect payment due or claimed under the contract for sale, as by purchasing or paying the seller's draft or making advances against it or by merely taking it for collection whether or not documents of title accompany the draft. "Financing agency" includes also a bank or other person who similarly intervenes between persons who are in the position of seller and buyer in respect to the goods (RCW 62A.2-707).

(3) "Between merchants" means in any transaction with respect to which both parties are chargeable with the knowledge or skill of merchants. [1965 ex.s. c 157 § 2-104. Cf. former RCW sections: (i) RCW 63.04.160(2), (5); 1925 ex.s. c 142 § 15; RRS § 5836-15. (ii) RCW 63.04.170(c); 1925 ex.s. c 142 § 16; RRS § 5836-16. (iii) RCW 63.04.460(2); 1925 ex.s. c 142 § 45; RRS § 5836-45. (iv) RCW 63.04.720; 1925 ex.s. c 142 § 71; RRS § 5836-71. (v) RCW 81.32.351; 1961 c 14 § 81.32-351; prior: 1915 c 159 § 35; RRS § 3681; formerly RCW 81.32.440. (vi) RCW 81.32.371; 1961 c 14 § 81-32.371; prior: 1915 c 159 § 37; RRS § 3683; formerly RCW 81.32.460.]

**62A.2-105 Definitions: Transferability; "goods"; "future" goods; "lot"; "commercial unit".** (1) "Goods" means all things (including specially manufactured goods) which are movable at the time of identification to the contract for sale other than the money in which the price is to be paid, investment securities (Article 8) and things in action. "Goods" also includes the unborn young of animals and growing crops and other identified things attached to realty as described in the section on goods to be severed from realty (RCW 62A.2-107).

(2) Goods must be both existing and identified before any interest in them can pass. Goods which are not both existing and identified are "future" goods. A purported present sale of future goods or of any interest therein operates as a contract to sell.

(3) There may be a sale of a part interest in existing identified goods.

(4) An undivided share in an identified bulk of fungible goods is sufficiently identified to be sold although

the quantity of the bulk is not determined. Any agreed proportion of such a bulk or any quantity thereof agreed upon by number, weight or other measure may to the extent of the seller's interest in the bulk be sold to the buyer who then becomes an owner in common.

(5) "Lot" means a parcel or a single article which is the subject matter of a separate sale or delivery, whether or not it is sufficient to perform the contract.

(6) "Commercial unit" means such a unit of goods as by commercial usage is a single whole for purposes of sale and division of which materially impairs its character or value on the market or in use. A commercial unit may be a single article (as a machine) or a set of articles (as a suite of furniture or an assortment of sizes) or a quantity (as a bale, gross, or carload) or any other unit treated in use or in the relevant market as a single whole. [1965 ex.s. c 157 § 2-105. Subds. (1), (2), (3), (4), cf. former RCW sections: (i) RCW 63.04.060; 1925 ex.s. c 142 § 5; RRS § 5836-5. (ii) RCW 63.04.070; 1925 ex.s. c 142 § 6; RRS § 5836-6. (iii) RCW 63.04.755; 1925 ex.s. c 142 § 76; RRS § 5836-76; formerly RCW 63.04.010.]

**62A.2-106 Definitions: "Contract"; "agreement"; "contract for sale"; "sale"; "present sale"; "conforming to contract"; "termination"; "cancellation".** (1) In this Article unless the context otherwise requires "contract" and "agreement" are limited to those relating to the present or future sale of goods. "Contract for sale" includes both a present sale of goods and a contract to sell goods at a future time. A "sale" consists in the passing of title from the seller to the buyer for a price (RCW 62A.2-401). A "present sale" means a sale which is accomplished by the making of the contract.

(2) Goods or conduct including any part of a performance are "conforming" or conform to the contract when they are in accordance with the obligations under the contract.

(3) "Termination" occurs when either party pursuant to a power created by agreement or law puts an end to the contract otherwise than for its breach. On "termination" all obligations which are still executory on both sides are discharged but any right based on prior breach or performance survives.

(4) "Cancellation" occurs when either party puts an end to the contract for breach by the other and its effect is the same as that of "termination" except that the cancelling party also retains any remedy for breach of the whole contract or any unperformed balance. [1965 ex.s. c 157 § 2-106. Subd. (1) cf. former RCW 63.04-020; 1925 ex.s. c 142 § 1; RRS § 5836-1. Subd. (2) cf. former RCW sections: (i) RCW 63.04.120; 1925 ex.s. c 142 § 11; RRS § 5836-11. (ii) RCW 63.04.450; 1925 ex.s. c 142 § 44; RRS § 5836-44. (iii) RCW 63.04.700; 1925 ex.s. c 142 § 69; RRS § 5836-69.]

**62A.2-107 Goods to be severed from realty: Recording.** (1) A contract for the sale of timber, minerals or the like or a structure or its materials to be removed from realty is a contract for the sale of goods within this Article if they are to be severed by the seller but until severance a purported present sale thereof which is

not effective as a transfer of an interest in land is effective only as a contract to sell.

(2) A contract for the sale apart from the land of growing crops or other things attached to realty and capable of severance without material harm thereto but not described in subsection (1) is a contract for the sale of goods within this Article whether the subject matter is to be severed by the buyer or by the seller even though it forms part of the realty at the time of contracting, and the parties can by identification effect a present sale before severance.

(3) The provisions of this section are subject to any third party rights provided by the law relating to realty records, and the contract for sale may be executed and recorded as a document transferring an interest in land and shall then constitute notice to third parties of the buyer's rights under the contract for sale. [1965 ex.s. c 157 § 2-107. Cf. former RCW sections: (i) RCW 63.04-.755(1); 1925 ex.s. c 142 § 76; RRS § 5836-76; formerly RCW 63.04.010. (ii) RCW 65.08.040; Code 1881 § 2327; 1863 p 413 § 4; 1854 p 404 § 4; RRS § 5827.]

## PART 2

### FORM, FORMATION AND READJUSTMENT OF CONTRACT

#### **62A.2-201 Formal requirements; statute of frauds.**

(1) Except as otherwise provided in this section a contract for the sale of goods for the price of five hundred dollars or more is not enforceable by way of action or defense unless there is some writing sufficient to indicate that a contract for sale has been made between the parties and signed by the party against whom enforcement is sought or by his authorized agent or broker. A writing is not insufficient because it omits or incorrectly states a term agreed upon but the contract is not enforceable under this paragraph beyond the quantity of goods shown in such writing.

(2) Between merchants if within a reasonable time a writing in confirmation of the contract and sufficient against the sender is received and the party receiving it has reason to know its contents, it satisfies the requirements of subsection (1) against such party unless written notice of objection to its contents is given within ten days after it is received.

(3) A contract which does not satisfy the requirements of subsection (1) but which is valid in other respects is enforceable

(a) if the goods are to be specially manufactured for the buyer and are not suitable for sale to others in the ordinary course of the seller's business and the seller, before notice of repudiation is received and under circumstances which reasonably indicate that the goods are for the buyer, has made either a substantial beginning of their manufacture or commitments for their procurement; or

(b) if the party against whom enforcement is sought admits in his pleading, testimony or otherwise in court that a contract for sale was made, but the contract is not enforceable under this provision beyond the quantity of goods admitted; or

(c) with respect to goods for which payment has been made and accepted or which have been received and accepted (RCW 62A.2-606). [1965 ex.s. c 157 § 2-201. Cf. former RCW 63.04.050; 1925 ex.s. c 142 § 4; RRS § 5836-4; prior: Code 1881 § 2326.]

*Statute of frauds: RCW 19.36.010(1).*

**62A.2-202 Final written expression: Parol or extrinsic evidence.** Terms with respect to which the confirmatory memoranda of the parties agree or which are otherwise set forth in a writing intended by the parties as a final expression of their agreement with respect to such terms as are included therein may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement but may be explained or supplemented

(a) by course of dealing or usage of trade (RCW 62A.1-205) or by course of performance (RCW 62A.2-208); and

(b) by evidence of consistent additional terms unless the court finds the writing to have been intended also as a complete and exclusive statement of the terms of the agreement. [1965 ex.s. c 157 § 2-202.]

**62A.2-203 Seals inoperative.** The affixing of a seal to a writing evidencing a contract for sale or an offer to buy or sell goods does not constitute the writing a sealed instrument and the law with respect to sealed instruments does not apply to such contract or offer. [1965 ex.s. c 157 § 2-203. Cf. former RCW 63.04.040; 1925 ex.s. c 142 § 3; RRS § 5836-3.]

*Corporate seals—Effect of absence from instrument: RCW 64.04.105.*

**62A.2-204 Formation in general.** (1) A contract for sale of goods may be made in any manner sufficient to show agreement, including conduct by both parties which recognizes the existence of such a contract.

(2) An agreement sufficient to constitute a contract for sale may be found even though the moment of its making is undetermined.

(3) Even though one or more terms are left open a contract for sale does not fail for indefiniteness if the parties have intended to make a contract and there is a reasonably certain basis for giving an appropriate remedy. [1965 ex.s. c 157 § 2-204. Cf. former RCW sections: (i) RCW 63.04.020; 1925 ex.s. c 142 § 1; RRS § 5836-1. (ii) RCW 63.04.040; 1925 ex.s. c 142 § 3; RRS § 5836-3.]

**62A.2-205 Firm offers.** An offer by a merchant to buy or sell goods in a signed writing which by its terms gives assurance that it will be held open is not revocable, for lack of consideration, during the time stated or if no time is stated for a reasonable time, but in no event may such period of irrevocability exceed three months; but any such term of assurance on a form supplied by the offeree must be separately signed by the offeror. [1965 ex.s. c 157 § 2-205. Cf. former RCW sections: (i) RCW 63.04.020; 1925 ex.s. c 142 § 1; RRS § 5836-1. (ii) RCW 63.04.040; 1925 ex.s. c 142 § 3; RRS § 5836-3.]

**62A.2-206 Offer and acceptance in formation of contract.** (1) Unless otherwise unambiguously indicated by the language or circumstances

(a) an offer to make a contract shall be construed as inviting acceptance in any manner and by any medium reasonable in the circumstances;

(b) an order or other offer to buy goods for prompt or current shipment shall be construed as inviting acceptance either by a prompt promise to ship or by the prompt or current shipment of conforming or non-conforming goods, but such a shipment of non-conforming goods does not constitute an acceptance if the seller seasonably notifies the buyer that the shipment is offered only as an accommodation to the buyer.

(2) Where the beginning of a requested performance is a reasonable mode of acceptance an offeror who is not notified of acceptance within a reasonable time may treat the offer as having lapsed before acceptance. [1965 ex.s. c 157 § 2-206. Cf. former RCW sections: (i) RCW 63.04.020; 1925 ex.s. c 142 § 1; RRS § 5836-1. (ii) RCW 63.04.040; 1925 ex.s. c 142 § 3; RRS § 5836-3.]

**62A.2-207 Additional terms in acceptance or confirmation.** (1) A definite and seasonable expression of acceptance or a written confirmation which is sent within a reasonable time operates as an acceptance even though it states terms additional to or different from those offered or agreed upon, unless acceptance is expressly made conditional on assent to the additional or different terms.

(2) The additional terms are to be construed as proposals for addition to the contract. Between merchants such terms become part of the contract unless:

(a) the offer expressly limits acceptance to the terms of the offer;

(b) they materially alter it; or

(c) notification of objection to them has already been given or is given within a reasonable time after notice of them is received.

(3) Conduct by both parties which recognizes the existence of a contract is sufficient to establish a contract for sale although the writings of the parties do not otherwise establish a contract. In such case the terms of the particular contract consist of those terms on which the writings of the parties agree, together with any supplementary terms incorporated under any other provisions of this Title. [1965 ex.s. c 157 § 2-207. Cf. former RCW sections: (i) RCW 63.04.020; 1925 ex.s. c 142 § 1; RRS § 5836-1. (ii) RCW 63.04.040; 1925 ex.s. c 142 § 3; RRS § 5836-3.]

**62A.2-208 Course of performance or practical construction.** (1) Where the contract for sale involves repeated occasions for performance by either party with knowledge of the nature of the performance and opportunity for objection to it by the other, any course of performance accepted or acquiesced in without objection shall be relevant to determine the meaning of the agreement.

(2) The express terms of the agreement and any such course of performance, as well as any course of dealing

and usage of trade, shall be construed whenever reasonable as consistent with each other; but when such construction is unreasonable, express terms shall control course of performance and course of performance shall control both course of dealing and usage of trade (RCW 62A.1-205).

(3) Subject to the provisions of the next section on modification and waiver, such course of performance shall be relevant to show a waiver or modification of any term inconsistent with such course of performance. [1965 ex.s. c 157 § 2-208.]

**62A.2-209 Modification, rescission and waiver.** (1) An agreement modifying a contract within this Article needs no consideration to be binding.

(2) A signed agreement which excludes modification or rescission except by a signed writing cannot be otherwise modified or rescinded, but except as between merchants such a requirement on a form supplied by the merchant must be separately signed by the other party.

(3) The requirements of the statute of frauds section of this Article (RCW 62A.2-201) must be satisfied if the contract as modified is within its provisions.

(4) Although an attempt at modification or rescission does not satisfy the requirements of subsection (2) or (3) it can operate as a waiver.

(5) A party who has made a waiver affecting an executory portion of the contract may retract the waiver by reasonable notification received by the other party that strict performance will be required of any term waived, unless the retraction would be unjust in view of a material change of position in reliance on the waiver. [1965 ex.s. c 157 § 2-209.]

**62A.2-210 Delegation of performance; assignment of rights.** (1) A party may perform his duty through a delegate unless otherwise agreed or unless the other party has a substantial interest in having his original promisor perform or control the acts required by the contract. No delegation of performance relieves the party delegating of any duty to perform or any liability for breach.

(2) Unless otherwise agreed all rights of either seller or buyer can be assigned except where the assignment would materially change the duty of the other party, or increase materially the burden or risk imposed on him by his contract, or impair materially his chance of obtaining return performance. A right to damages for breach of the whole contract or a right arising out of the assignor's due performance of his entire obligation can be assigned despite agreement otherwise.

(3) Unless the circumstances indicate the contrary a prohibition of assignment of "the contract" is to be construed as barring only the delegation to the assignee of the assignor's performance.

(4) An assignment of "the contract" or of "all my rights under the contract" or an assignment in similar *general terms* is an assignment of rights and unless the language or the circumstances (as in an assignment for security) indicate the contrary, it is a delegation of performance of the duties of the assignor and its acceptance by the assignee constitutes a promise by him to

perform those duties. This promise is enforceable by either the assignor or the other party to the original contract.

(5) The other party may treat any assignment which delegates performance as creating reasonable grounds for insecurity and may without prejudice to his rights against the assignor demand assurances from the assignee (RCW 62A.2-609). [1965 ex.s. c 157 § 2-210.]

### PART 3

## GENERAL OBLIGATION AND CONSTRUCTION OF CONTRACT

**62A.2-301 General obligations of parties.** The obligation of the seller is to transfer and deliver and that of the buyer is to accept and pay in accordance with the contract. [1965 ex.s. c 157 § 2-301. Cf. former RCW sections: (i) RCW 63.04.120; 1925 ex.s. c 142 § 11; RRS § 5836-11. (ii) RCW 63.04.420; 1925 ex.s. c 142 § 41; RRS § 5836-41.]

**62A.2-302 Unconscionable contract or clause.** (1) If the court as a matter of law finds the contract or any clause of the contract to have been unconscionable at the time it was made the court may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result.

(2) When it is claimed or appears to the court that the contract or any clause thereof may be unconscionable the parties shall be afforded a reasonable opportunity to present evidence as to its commercial setting, purpose and effect to aid the court in making the determination. [1965 ex.s. c 157 § 2-302.]

**62A.2-303 Allocation or division of risks.** Where this Article allocates a risk or a burden as between the parties "unless otherwise agreed", the agreement may not only shift the allocation but may also divide the risk or burden. [1965 ex.s. c 157 § 2-303.]

**62A.2-304 Price payable in money, goods, realty, or otherwise.** (1) The price can be made payable in money or otherwise. If it is payable in whole or in part in goods each party is a seller of the goods which he is to transfer.

(2) Even though all or part of the price is payable in an interest in realty the transfer of the goods and the seller's obligations with reference to them are subject to this Article, but not the transfer of the interest in realty or the transferor's obligations in connection therewith. [1965 ex.s. c 157 § 2-304. Cf. former RCW 63.04.100(2), (3); 1925 ex.s. c 142 § 9; RRS § 5836-9.]

**62A.2-305 Open price term.** (1) The parties if they so intend can conclude a contract for sale even though the price is not settled. In such a case the price is a reasonable price at the time for delivery if

(a) nothing is said as to price; or

(b) the price is left to be agreed by the parties and they fail to agree; or

(c) the price is to be fixed in terms of some agreed market or other standard as set or recorded by a third person or agency and it is not so set or recorded.

(2) A price to be fixed by the seller or by the buyer means a price for him to fix in good faith.

(3) When a price left to be fixed otherwise than by agreement of the parties fails to be fixed through fault of one party the other may at his option treat the contract as cancelled or himself fix a reasonable price.

(4) Where, however, the parties intend not to be bound unless the price be fixed or agreed and it is not fixed or agreed there is no contract. In such a case the buyer must return any goods already received or if unable so to do must pay their reasonable value at the time of delivery and the seller must return any portion of the price paid on account. [1965 ex.s. c 157 § 2-305. Cf. former RCW sections: (i) RCW 63.04.100; 1925 ex.s. c 142 § 9; RRS § 5836-9. (ii) RCW 63.04.110; 1925 ex.s. c 142 § 10; RRS § 5836-10. Subd. (3) cf. former RCW 63.04.120(2); 1925 ex.s. c 142 § 11; RRS § 5836-11.]

**62A.2-306 Output, requirements and exclusive dealings.** (1) A term which measures the quantity by the output of the seller or the requirements of the buyer means such actual output or requirements as may occur in good faith, except that no quantity unreasonably disproportionate to any stated estimate or in the absence of a stated estimate to any normal or otherwise comparable prior output or requirements may be tendered or demanded.

(2) A lawful agreement by either the seller or the buyer for exclusive dealing in the kind of goods concerned imposes unless otherwise agreed an obligation by the seller to use best efforts to supply the goods and by the buyer to use best efforts to promote their sale. [1965 ex.s. c 157 § 2-306.]

**62A.2-307 Delivery in single lot or several lots.** Unless otherwise agreed all goods called for by a contract for sale must be tendered in a single delivery and payment is due only on such tender but where the circumstances give either party the right to make or demand delivery in lots the price if it can be apportioned may be demanded for each lot. [1965 ex.s. c 157 § 2-307. Cf. former RCW 63.04.460(1); 1925 ex.s. c 142 § 45; RRS § 5836-45.]

**62A.2-308 Absence of specified place for delivery.** Unless otherwise agreed

(a) the place for delivery of goods is the seller's place of business or if he has none his residence; but

(b) in a contract for sale of identified goods which to the knowledge of the parties at the time of contracting are in some other place, that place is the place for their delivery; and

(c) documents of title may be delivered through customary banking channels. [1965 ex.s. c 157 § 2-308. Subd. (a), (b) cf. former RCW 63.04.440(1); 1925 ex.s. c 142 § 43; RRS § 5836-43.]



**62A.2-309 Absence of specific time provisions; notice of termination.** (1) The time for shipment or delivery or any other action under a contract if not provided in this Article or agreed upon shall be a reasonable time.

(2) Where the contract provides for successive performances but is indefinite in duration it is valid for a reasonable time but unless otherwise agreed may be terminated at any time by either party.

(3) Termination of a contract by one party except on the happening of an agreed event requires that reasonable notification be received by the other party and an agreement dispensing with notification is invalid if its operation would be unconscionable. [1965 ex.s. c 157 § 2-309. Cf. former RCW sections: (i) RCW 63.04.440(2); 1925 ex.s. c 142 § 43; RRS § 5836-43. (ii) RCW 63.04.460(2); 1925 ex.s. c 142 § 45; RRS § 5836-45. (iii) RCW 63.04.480(1); 1925 ex.s. c 142 § 47; RRS § 5836-47. (iv) RCW 63.04.490; 1925 ex.s. c 142 § 48; RRS § 5836-48.]

**62A.2-310 Open time for payment or running of credit; authority to ship under reservation.** Unless otherwise agreed

(a) payment is due at the time and place at which the buyer is to receive the goods even though the place of shipment is the place of delivery; and

(b) if the seller is authorized to send the goods he may ship them under reservation, and may tender the documents of title, but the buyer may inspect the goods after their arrival before payment is due unless such inspection is inconsistent with the terms of the contract (RCW 62A.2-513); and

(c) if delivery is authorized and made by way of documents of title otherwise than by subsection (b) then payment is due at the time and place at which the buyer is to receive the documents regardless of where the goods are to be received; and

(d) where the seller is required or authorized to ship the goods on credit the credit period runs from the time of shipment but post-dating the invoice or delaying its dispatch will correspondingly delay the starting of the credit period. [1965 ex.s. c 157 § 2-310. Cf. former RCW sections: (i) RCW 63.04.430; 1925 ex.s. c 142 § 42; RRS § 5836-42. (ii) RCW 63.04.470(1); 1925 ex.s. c 142 § 46; RRS § 5836-46. (iii) RCW 63.04.480(2); 1925 ex.s. c 142 § 47; RRS § 5836-47.]

**62A.2-311 Options and cooperation respecting performance.** (1) An agreement for sale which is otherwise sufficiently definite (subsection (3) of RCW 62A.2-204) to be a contract is not made invalid by the fact that it leaves particulars of performance to be specified by one of the parties. Any such specification must be made in good faith and within limits set by commercial reasonableness.

(2) Unless otherwise agreed specifications relating to assortment of the goods are at the buyer's option and except as otherwise provided in subsections (1)(c) and (3) of RCW 62A.2-319 specifications or arrangements relating to shipment are at the seller's option.

(3) Where such specification would materially affect the other party's performance but is not seasonably

made or where one party's cooperation is necessary to the agreed performance of the other but is not seasonably forthcoming, the other party in addition to all other remedies

(a) is excused for any resulting delay in his own performance; and

(b) may also either proceed to perform in any reasonable manner or after the time for a material part of his own performance treat the failure to specify or to cooperate as a breach by failure to deliver or accept the goods. [1965 ex.s. c 157 § 2-311.]

**62A.2-312 Warranty of title and against infringement; buyer's obligation against infringement.** (1) Subject to subsection (2) there is in a contract for sale a warranty by the seller that

(a) the title conveyed shall be good, and its transfer rightful; and

(b) the goods shall be delivered free from any security interest or other lien or encumbrance of which the buyer at the time of contracting has no knowledge.

(2) A warranty under subsection (1) will be excluded or modified only by specific language or by circumstances which give the buyer reason to know that the person selling does not claim title in himself or that he is purporting to sell only such right or title as he or a third person may have.

(3) Unless otherwise agreed a seller who is a merchant regularly dealing in goods of the kind warrants that the goods shall be delivered free of the rightful claim of any third person by way of infringement or the like but a buyer who furnishes specifications to the seller must hold the seller harmless against any such claim which arises out of compliance with the specifications. [1965 ex.s. c 157 § 2-312. Cf. former RCW 63.04.140; 1925 ex.s. c 142 § 13; RRS § 5836-13.]

**62A.2-313 Express warranties by affirmation, promise, description, sample.** (1) Express warranties by the seller are created as follows:

(a) Any affirmation of fact or promise made by the seller to the buyer which relates to the goods and becomes part of the basis of the bargain creates an express warranty that the goods shall conform to the affirmation or promise.

(b) Any description of the goods which is made part of the basis of the bargain creates an express warranty that the goods shall conform to the description.

(c) Any sample or model which is made part of the basis of the bargain creates an express warranty that the whole of the goods shall conform to the sample or model.

(2) It is not necessary to the creation of an express warranty that the seller use formal words such as "warranty" or "guarantee" or that he have a specific intention to make a warranty, but an affirmation merely of the value of the goods or a statement purporting to be merely the seller's opinion or commendation of the goods does not create a warranty. [1965 ex.s. c 157 § 2-313. Cf. former RCW sections: (i) RCW 63.04.130;



1925 ex.s. c 142 § 12; RRS § 5836-12. (ii) RCW 63.04-.150; 1925 ex.s. c 142 § 14; RRS § 5836-14. (iii) RCW 63.04.170; 1925 ex.s. c 142 § 16; RRS § 5836-16.]

**62A.2-314 Implied warranty: Merchantability; usage of trade.** (1) Unless excluded or modified (RCW 62A.2-316), a warranty that the goods shall be merchantable is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind. Under this section the serving for value of food or drink to be consumed either on the premises or elsewhere is a sale.

(2) Goods to be merchantable must be at least such as

(a) pass without objection in the trade under the contract description; and

(b) in the case of fungible goods, are of fair average quality within the description; and

(c) are fit for the ordinary purposes for which such goods are used; and

(d) run, within the variations permitted by the agreement, of even kind, quality and quantity within each unit and among all units involved; and

(e) are adequately contained, packaged, and labeled as the agreement may require; and

(f) conform to the promises or affirmations of fact made on the container or label if any.

(3) Unless excluded or modified (RCW 62A.2-316) other implied warranties may arise from course of dealing or usage of trade. [1965 ex.s. c 157 § 2-314. Cf. former RCW 63.04.160(2); 1925 ex.s. c 142 § 15; RRS § 5836-15.]

**62A.2-315 Implied warranty: Fitness for particular purpose.** Where the seller at the time of contracting has reason to know any particular purpose for which the goods are required and that the buyer is relying on the seller's skill or judgment to select or furnish suitable goods, there is unless excluded or modified under the next section an implied warranty that the goods shall be fit for such purpose. [1965 ex.s. c 157 § 2-315. Cf. former RCW 63.04.160(1), (4), (5); 1925 ex.s. c 142 § 15; RRS § 5836-15.]

**62A.2-316 Exclusion or modification of warranties.**

(1) Words or conduct relevant to the creation of an express warranty and words or conduct tending to negate or limit warranty shall be construed wherever reasonable as consistent with each other; but subject to the provisions of this Article on parol or extrinsic evidence (RCW 62A.2-202) negation or limitation is inoperative to the extent that such construction is unreasonable.

(2) Subject to subsection (3), to exclude or modify the implied warranty of merchantability or any part of it the language must mention merchantability and in case of a writing must be conspicuous, and to exclude or modify any implied warranty of fitness the exclusion must be by a writing and conspicuous. Language to exclude all implied warranties of fitness is sufficient if it states, for example, that "There are no warranties which extend beyond the description on the face hereof."

(3) Notwithstanding subsection (2)

(a) unless the circumstances indicate otherwise, all implied warranties are excluded by expressions like "as is", "with all faults" or other language which in common understanding calls the buyer's attention to the exclusion of warranties and makes plain that there is no implied warranty; and

(b) when the buyer before entering into the contract has examined the goods or the sample or model as fully as he desired or has refused to examine the goods there is no implied warranty with regard to defects which an examination ought in the circumstances to have revealed to him; and

(c) an implied warranty can also be excluded or modified by course of dealing or course of performance or usage of trade.

(4) Notwithstanding the provisions of subsections (2) and (3) of this section and the provisions of RCW 62A.2-719, as now or hereafter amended, in any case where goods are purchased primarily for personal, family or household use and not for commercial or business use, disclaimers of the warranty of merchantability or fitness for particular purpose shall not be effective to limit the liability of merchant sellers except insofar as the disclaimer sets forth with particularity the qualities and characteristics which are not being warranted. Remedies for breach of warranty can be limited in accordance with the provisions of this Article on liquidation or limitation of damages and on contractual modification of remedy (RCW 62A.2-718 and RCW 62A.2-719). [1974 1st ex.s. c 180 § 1; 1974 1st ex.s. c 78 § 1; 1965 ex.s. c 157 § 2-316. Subd. (3)(b) cf. former RCW 63.04-.160(3); 1925 ex.s. c 142 § 15; RRS § 5836-15. Subd. (3)(c) cf. former RCW 63.04.720; 1925 ex.s. c 142 § 71; RRS § 5836-71.]

*Lease or rental of personal property—Disclaimer of warranty of merchantability or fitness: RCW 63.18.010.*

**62A.2-317 Cumulation and conflict of warranties express or implied.** Warranties whether express or implied shall be construed as consistent with each other and as cumulative, but if such construction is unreasonable the intention of the parties shall determine which warranty is dominant. In ascertaining that intention the following rules apply:

(a) Exact or technical specifications displace an inconsistent sample or model or general language of description.

(b) A sample from an existing bulk displaces inconsistent general language of description.

(c) Express warranties displace inconsistent implied warranties other than an implied warranty of fitness for a particular purpose. [1965 ex.s. c 157 § 2-317. Cf. former RCW sections: RCW 63.04.150 through 63.04-.170; 1925 ex.s. c 142 §§ 14 through 16; RRS §§ 5836-14 through 5836-16.]

**62A.2-318 Third party beneficiaries of warranties express or implied.** A seller's warranty whether express or implied extends to any natural person who is in the family or household of his buyer or who is a guest in his home if it is reasonable to expect that such person may use, consume or be affected by the goods and who is

injured in person by breach of the warranty. A seller may not exclude or limit the operation of this section. [1965 ex.s. c 157 § 2-318.]

**62A.2-319 F.O.B. and F.A.S. terms.** (1) Unless otherwise agreed the term F.O.B. (which means "free on board") at a named place, even though used only in connection with the stated price, is a delivery term under which

(a) when the term is F.O.B. the place of shipment, the seller must at that place ship the goods in the manner provided in this Article (RCW 62A.2-504) and bear the expense and risk of putting them into the possession of the carrier; or

(b) when the term is F.O.B. the place of destination, the seller must at his own expense and risk transport the goods to that place and there tender delivery of them in the manner provided in this Article (RCW 62A.2-503);

(c) when under either (a) or (b) the term is also F.O.B. vessel, car or other vehicle, the seller must in addition at his own expense and risk load the goods on board. If the term is F.O.B. vessel the buyer must name the vessel and in an appropriate case the seller must comply with the provisions of this Article on the form of bill of lading (RCW 62A.2-323).

(2) Unless otherwise agreed the term F.A.S. vessel (which means "free alongside") at a named port, even though used only in connection with the stated price, is a delivery term under which the seller must

(a) at his own expense and risk deliver the goods alongside the vessel in the manner usual in that port or on a dock designated and provided by the buyer; and

(b) obtain and tender a receipt for the goods in exchange for which the carrier is under a duty to issue a bill of lading.

(3) Unless otherwise agreed in any case falling within subsection (1)(a) or (c) or subsection (2) the buyer must seasonably give any needed instructions for making delivery, including when the term is F.A.S. or F.O.B. the loading berth of the vessel and in an appropriate case its name and sailing date. The seller may treat the failure of needed instructions as a failure of cooperation under this Article (RCW 62A.2-311). He may also at his option move the goods in any reasonable manner preparatory to delivery or shipment.

(4) Under the term F.O.B. vessel or F.A.S. unless otherwise agreed the buyer must make payment against tender of the required documents and the seller may not tender nor the buyer demand delivery of the goods in substitution for the documents. [1965 ex.s. c 157 § 2-319.]

**62A.2-320 C.I.F. and C.&F. terms.** (1) The term C.I.F. means that the price includes in a lump sum the cost of the goods and the insurance and freight to the named destination. The term C.&F. or C.F. means that the price so includes cost and freight to the named destination.

(2) Unless otherwise agreed and even though used only in connection with the stated price and destination, the term C.I.F. destination or its equivalent requires the seller at his own expense and risk to

(a) put the goods into the possession of a carrier at the port for shipment and obtain a negotiable bill or bills of lading covering the entire transportation to the named destination; and

(b) load the goods and obtain a receipt from the carrier (which may be contained in the bill of lading) showing that the freight has been paid or provided for; and

(c) obtain a policy or certificate of insurance, including any war risk insurance, of a kind and on terms then current at the port of shipment in the usual amount, in the currency of the contract, shown to cover the same goods covered by the bill of lading and providing for payment of loss to the order of the buyer or for the account of whom it may concern; but the seller may add to the price the amount of the premium for any such war risk insurance; and

(d) prepare an invoice of the goods and procure any other documents required to effect shipment or to comply with the contract; and

(e) forward and tender with commercial promptness all the documents in due form and with any indorsement necessary to perfect the buyer's rights.

(3) Unless otherwise agreed the term C.&F. or its equivalent has the same effect and imposes upon the seller the same obligations and risks as a C.I.F. term except the obligation as to insurance.

(4) Under the term C.I.F. or C.&F. unless otherwise agreed the buyer must make payment against tender of the required documents and the seller may not tender nor the buyer demand delivery of the goods in substitution for the documents. [1965 ex.s. c 157 § 2-320.]

**62A.2-321 C.I.F. or C.&F.: "Net landed weights"; "payment on arrival"; warranty of condition on arrival.** Under a contract containing a term C.I.F. or C.&F.

(1) Where the price is based on or is to be adjusted according to "net landed weights", "delivered weights", "out turn" quantity or quality or the like, unless otherwise agreed the seller must reasonably estimate the price. The payment due on tender of the documents called for by the contract is the amount so estimated, but after final adjustment of the price a settlement must be made with commercial promptness.

(2) An agreement described in subsection (1) or any warranty of quality or condition of the goods on arrival places upon the seller the risk of ordinary deterioration, shrinkage and the like in transportation but has no effect on the place or time of identification to the contract for sale or delivery or on the passing of the risk of loss.

(3) Unless otherwise agreed where the contract provides for payment on or after arrival of the goods the seller must before payment allow such preliminary inspection as is feasible; but if the goods are lost delivery of the documents and payment are due when the goods should have arrived. [1965 ex.s. c 157 § 2-321.]

**62A.2-322 Delivery "ex-ship".** (1) Unless otherwise agreed a term for delivery of goods "ex-ship" (which means from the carrying vessel) or in equivalent language is not restricted to a particular ship and requires delivery from a ship which has reached a place at the named port of destination where goods of the kind are usually discharged.

(2) Under such a term unless otherwise agreed

(a) the seller must discharge all liens arising out of the carriage and furnish the buyer with a direction which puts the carrier under a duty to deliver the goods; and

(b) the risk of loss does not pass to the buyer until the goods leave the ship's tackle or are otherwise properly unloaded. [1965 ex.s. c 157 § 2-322.]

**62A.2-323 Form of bill of lading required in overseas shipment; "overseas".** (1) Where the contract contemplates overseas shipment and contains a term C.I.F. or C.&F. or F.O.B. vessel, the seller unless otherwise agreed must obtain a negotiable bill of lading stating that the goods have been loaded on board or, in the case of a term C.I.F. or C.&F., received for shipment.

(2) Where in a case within subsection (1) a bill of lading has been issued in a set of parts, unless otherwise agreed if the documents are not to be sent from abroad the buyer may demand tender of the full set; otherwise only one part of the bill of lading need be tendered. Even if the agreement expressly requires a full set

(a) due tender of a single part is acceptable within the provisions of this Article on cure of improper delivery (subsection (1) of RCW 62A.2-508); and

(b) even though the full set is demanded, if the documents are sent from abroad the person tendering an incomplete set may nevertheless require payment upon furnishing an indemnity which the buyer in good faith deems adequate.

(3) A shipment by water or by air or a contract contemplating such shipment is "overseas" insofar as by usage of trade or agreement it is subject to the commercial, financing or shipping practices characteristic of international deep water commerce. [1965 ex.s. c 157 § 2-323.]

**62A.2-324 "No arrival, no sale" term.** Under a term "no arrival, no sale" or terms of like meaning, unless otherwise agreed,

(a) the seller must properly ship conforming goods and if they arrive by any means he must tender them on arrival but he assumes no obligation that the goods will arrive unless he has caused the non-arrival; and

(b) where without fault of the seller the goods are in part lost or have so deteriorated as no longer to conform to the contract or arrive after the contract time, the buyer may proceed as if there had been casualty to identified goods (RCW 62A.2-613). [1965 ex.s. c 157 § 2-324.]

**62A.2-325 "Letter of credit" term; "confirmed credit".** (1) Failure of the buyer seasonably to furnish an agreed letter of credit is a breach of the contract for sale.

(2) The delivery to seller of a proper letter of credit suspends the buyer's obligation to pay. If the letter of credit is dishonored, the seller may on reasonable notification to the buyer require payment directly from him.

(3) Unless otherwise agreed the term "letter of credit" or "banker's credit" in a contract for sale means an irrevocable credit issued by a financing agency of good repute and, where the shipment is overseas, of good international repute. The term "confirmed credit" means that the credit must also carry the direct obligation of such an agency which does business in the seller's financial market. [1965 ex.s. c 157 § 2-325.]

**62A.2-326 Sale on approval and sale or return; consignment sales and rights of creditors.** (1) Unless otherwise agreed, if delivered goods may be returned by the buyer even though they conform to the contract, the transaction is

(a) a "sale on approval" if the goods are delivered primarily for use, and

(b) a "sale or return" if the goods are delivered primarily for resale.

(2) Except as provided in subsection (3), goods held on approval are not subject to the claims of the buyer's creditors until acceptance; goods held on sale or return are subject to such claims while in the buyer's possession.

(3) Where goods are delivered to a person for sale and such person maintains a place of business at which he deals in goods of the kind involved, under a name other than the name of the person making delivery, then with respect to claims of creditors of the person conducting the business the goods are deemed to be on sale or return. The provisions of this subsection are applicable even though an agreement purports to reserve title to the person making delivery until payment or resale or uses such words as "on consignment" or "on memorandum". However, this subsection is not applicable if the person making delivery

(a) complies with an applicable law providing for a consignor's interest or the like to be evidenced by a sign, or

(b) establishes that the person conducting the business is generally known by his creditors to be substantially engaged in selling the goods of others, or

(c) complies with the filing provisions of the Article on Secured Transactions (Article 9).

(4) Any "or return" term of a contract for sale is to be treated as a separate contract for sale within the statute of frauds section of this Article (RCW 62A.2-201) and as contradicting the sale aspect of the contract within the provisions of this Article on parol or extrinsic evidence (RCW 62A.2-202). [1965 ex.s. c 157 § 2-326. Cf. former RCW 63.04.200(3); 1925 ex.s. c 142 § 19; RRS § 5836-19.]

**62A.2-327 Special incidents of sale on approval and sale or return.** (1) Under a sale on approval unless otherwise agreed

(a) although the goods are identified to the contract the risk of loss and the title do not pass to the buyer until acceptance; and

(b) use of the goods consistent with the purpose of trial is not acceptance but failure seasonably to notify the seller of election to return the goods is acceptance, and if the goods conform to the contract acceptance of any part is acceptance of the whole; and

(c) after due notification of election to return, the return is at the seller's risk and expense but a merchant buyer must follow any reasonable instructions.

(2) Under a sale or return unless otherwise agreed

(a) the option to return extends to the whole or any commercial unit of the goods while in substantially their original condition, but must be exercised seasonably; and

(b) the return is at the buyer's risk and expense. [1965 ex.s. c 157 § 2-327. Cf. former RCW 63.04.200(3); 1925 ex.s. c 142 § 19; RRS § 5836-19.]

**62A.2-328 Sale by auction.** (1) In a sale by auction if goods are put up in lots each lot is the subject of a separate sale.

(2) A sale by auction is complete when the auctioneer so announces by the fall of the hammer or in other customary manner. Where a bid is made while the hammer is falling in acceptance of a prior bid the auctioneer may in his discretion reopen the bidding or declare the goods sold under the bid on which the hammer was falling.

(3) Such a sale is with reserve unless the goods are in explicit terms put up without reserve. In an auction with reserve the auctioneer may withdraw the goods at any time until he announces completion of the sale. In an auction without reserve, after the auctioneer calls for bids on an article or lot, that article or lot cannot be withdrawn unless no bid is made within a reasonable time. In either case a bidder may retract his bid until the auctioneer's announcement of completion of the sale, but a bidder's retraction does not revive any previous bid.

(4) If the auctioneer knowingly receives a bid on the seller's behalf or the seller makes or procures such a bid, and notice has not been given that liberty for such bidding is reserved, the buyer may at his option avoid the sale or take the goods at the price of the last good faith bid prior to the completion of the sale. This subsection shall not apply to any bid at a forced sale. [1965 ex.s. c 157 § 2-328. Cf. former RCW 63.04.220; 1925 ex.s. c 142 § 21; RRS § 5836-21.]

#### PART 4 TITLE, CREDITORS AND GOOD FAITH PURCHASERS

**62A.2-401 Passing of title; reservation for security; limited application of this section.** Each provision of this Article with regard to the rights, obligations and remedies of the seller, the buyer, purchasers or other third parties applies irrespective of title to the goods except where the provision refers to such title. Insofar as situations are not covered by the other provisions of this Article and matters concerning title become material the following rules apply:

(1) Title to goods cannot pass under a contract for sale prior to their identification to the contract (RCW 62A.2-501), and unless otherwise explicitly agreed the buyer acquires by their identification a special property as limited by this Title. Any retention or reservation by the seller of the title (property) in goods shipped or delivered to the buyer is limited in effect to a reservation of a security interest. Subject to these provisions and to the provisions of the Article on Secured Transactions (Article 9), title to goods passes from the seller to the buyer in any manner and on any conditions explicitly agreed on by the parties.

(2) Unless otherwise explicitly agreed title passes to the buyer at the time and place at which the seller completes his performance with reference to the physical delivery of the goods, despite any reservation of a security interest and even though a document of title is to be delivered at a different time or place; and in particular and despite any reservation of a security interest by the bill of lading

(a) if the contract requires or authorizes the seller to send the goods to the buyer but does not require him to deliver them at destination, title passes to the buyer at the time and place of shipment; but

(b) if the contract requires delivery at destination, title passes on tender there.

(3) Unless otherwise explicitly agreed where delivery is to be made without moving the goods,

(a) if the seller is to deliver a document of title, title passes at the time when and the place where he delivers such documents; or

(b) if the goods are at the time of contracting already identified and no documents are to be delivered, title passes at the time and place of contracting.

(4) A rejection or other refusal by the buyer to receive or retain the goods, whether or not justified, or a justified revocation of acceptance reverts title to the goods in the seller. Such reversion occurs by operation of law and is not a "sale". [1965 ex.s. c 157 § 2-401. Cf. former RCW sections: RCW 63.04.180 through 63.04-.210; 1925 ex.s. c 142 §§ 17 through 20; RRS § 5836-17 through 5836-20.]

**62A.2-402 Rights of seller's creditors against sold goods.** (1) Except as provided in subsections (2) and (3), rights of unsecured creditors of the seller with respect to goods which have been identified to a contract for sale are subject to the buyer's rights to recover the goods under this Article (RCW 62A.2-502 and RCW 62A.2-716).

(2) A creditor of the seller may treat a sale or an identification of goods to a contract for sale as void if as against him a retention of possession by the seller is fraudulent under any rule of law of the state where the goods are situated, except that retention of possession in good faith and current course of trade by a merchant-seller for a commercially reasonable time after a sale or identification is not fraudulent.

(3) Nothing in this Article shall be deemed to impair the rights of creditors of the seller

(a) under the provisions of the Article on Secured Transactions (Article 9); or

(b) where identification to the contract or delivery is made not in current course of trade but in satisfaction of or as security for a pre-existing claim for money, security or the like and is made under circumstances which under any rule of law of the state where the goods are situated would apart from this Article constitute the transaction a fraudulent transfer or voidable preference. [1965 ex.s. c 157 § 2-402. Subd. (2) cf. former RCW sections: (i) RCW 63.04.270; 1925 ex.s. c 142 § 26; RRS § 5836-26. (ii) RCW 63.08.040; 1953 c 247 § 3; 1943 c 98 § 1, part; 1939 c 122 § 1, part; 1925 ex.s. c 135 § 2, part; Rem. Supp. 1943 § 5832, part; prior: 1901 c 109 § 1, part.]

**62A.2-403 Power to transfer; good faith purchase of goods; "entrusting".** (1) A purchaser of goods acquires all title which his transferor had or had power to transfer except that a purchaser of a limited interest acquires rights only to the extent of the interest purchased. A person with voidable title has power to transfer a good title to a good faith purchaser for value. When goods have been delivered under a transaction of purchase the purchaser has such power even though

(a) the transferor was deceived as to the identity of the purchaser, or

(b) the delivery was in exchange for a check which is later dishonored, or

(c) it was agreed that the transaction was to be a "cash sale".

(2) Any entrusting of possession of goods to a merchant who deals in goods of that kind gives him power to transfer all rights of the entruster to a buyer in ordinary course of business.

(3) "Entrusting" includes any delivery and any acquiescence in retention of possession regardless of any condition expressed between the parties to the delivery or acquiescence and regardless of whether the procurement of the entrusting or the possessor's disposition of the goods have been such as to be larcenous under the criminal law.

(4) The rights of other purchasers of goods and of lien creditors are governed by the Articles on Secured Transactions (Article 9), Bulk Transfers (Article 6) and Documents of Title (Article 7). [1967 c 114 § 8; 1965 ex.s. c 157 § 2-403. Cf. former RCW sections: (i) RCW 61.20.090; 1943 c 71 § 9; Rem. Supp. 1943 § 11548-38. (ii) RCW 63.04.210(4); 1925 ex.s. c 142 § 20; RRS § 5836-20. (iii) RCW 63.04.240; 1925 ex.s. c 142 § 23; RRS § 5836-23. (iv) RCW 63.04.250; 1925 ex.s. c 142 § 24; RRS § 5836-24. (v) RCW 63.04.260; 1925 ex.s. c 142 § 25; RRS § 5836-25. (vi) RCW 65.08.040; Code 1881 § 2327; 1863 p 413 § 4; 1854 p 404 § 4; RRS § 5827.]

**Reviser's note:** The section caption is the same as that originally enacted in 1965 ex.s. c 157 § 2-403. It was not included in the 1967 amendment to this section.

**Emergency—Effective date—1967 c 114:** See note following RCW 62A.4-406.

*Restoration of stolen property: RCW 10.79.050.*

## PART 5 PERFORMANCE

**62A.2-501 Insurable interest in goods; manner of identification of goods.** (1) The buyer obtains a special property and an insurable interest in goods by identification of existing goods as goods to which the contract refers even though the goods so identified are non-conforming and he has an option to return or reject them. Such identification can be made at any time and in any manner explicitly agreed to by the parties. In the absence of explicit agreement identification occurs

(a) when the contract is made if it is for the sale of goods already existing and identified;

(b) if the contract is for the sale of future goods other than those described in paragraph (c), when goods are shipped, marked or otherwise designated by the seller as goods to which the contract refers;

(c) when the crops are planted or otherwise become growing crops or the young are conceived if the contract is for the sale of unborn young to be born within twelve months after contracting or for the sale of crops to be harvested within twelve months or the next normal harvest season after contracting whichever is longer.

(2) The seller retains an insurable interest in goods so long as title to or any security interest in the goods remains in him and where the identification is by the seller alone he may until default or insolvency or notification to the buyer that the identification is final substitute other goods for those identified.

(3) Nothing in this section impairs any insurable interest recognized under any other statute or rule of law. [1965 ex.s. c 157 § 2-501. Cf. former RCW sections: (i) RCW 63.04.180; 1925 ex.s. c 142 § 17; RRS § 5836-17. (ii) RCW 63.04.200; 1925 ex.s. c 142 § 19; RRS § 5836-19.]

**62A.2-502 Buyer's right to goods on seller's insolvency.** (1) Subject to subsection (2) and even though the goods have not been shipped a buyer who has paid a part or all of the price of goods in which he has a special property under the provisions of the immediately preceding section may on making and keeping good a tender of any unpaid portion of their price recover them from the seller if the seller becomes insolvent within ten days after receipt of the first installment on their price.

(2) If the identification creating his special property has been made by the buyer he acquires the right to recover the goods only if they conform to the contract for sale. [1965 ex.s. c 157 § 2-502. Cf. former RCW sections: RCW 63.04.180 through 63.04.200; 1925 ex.s. c 142 §§ 17 through 19; RRS §§ 5836-17 through 5836-19.]

**62A.2-503 Manner of seller's tender of delivery.** (1) Tender of delivery requires that the seller put and hold conforming goods at the buyer's disposition and give the buyer any notification reasonably necessary to enable him to take delivery. The manner, time and place

for tender are determined by the agreement and this Article, and in particular

(a) tender must be at a reasonable hour, and if it is of goods they must be kept available for the period reasonably necessary to enable the buyer to take possession; but

(b) unless otherwise agreed the buyer must furnish facilities reasonably suited to the receipt of the goods.

(2) Where the case is within the next section respecting shipment tender requires that the seller comply with its provisions.

(3) Where the seller is required to deliver at a particular destination tender requires that he comply with subsection (1) and also in any appropriate case tender documents as described in subsections (4) and (5) of this section.

(4) Where goods are in the possession of a bailee and are to be delivered without being moved

(a) tender requires that the seller either tender a negotiable document of title covering such goods or procure acknowledgment by the bailee of the buyer's right to possession of the goods; but

(b) tender to the buyer of a non-negotiable document of title or of a written direction to the bailee to deliver is sufficient tender unless the buyer seasonably objects, and receipt by the bailee of notification of the buyer's rights fixes those rights as against the bailee and all third persons; but risk of loss of the goods and of any failure by the bailee to honor the non-negotiable document of title or to obey the direction remains on the seller until the buyer has had a reasonable time to present the document or direction, and a refusal by the bailee to honor the document or to obey the direction defeats the tender.

(5) Where the contract requires the seller to deliver documents

(a) he must tender all such documents in correct form, except as provided in this Article with respect to bills of lading in a set (subsection (2) of RCW 62A.2-323); and

(b) tender through customary banking channels is sufficient and dishonor of a draft accompanying the documents constitutes non-acceptance or rejection. [1965 ex.s. c 157 § 2-503. Cf. former RCW sections: RCW 63.04.120, 63.04.200, 63.04.210, 63.04.440, 63.04.470, and 63.04.520; 1925 ex.s. c 142 §§ 11, 19, 20, 43, 46, and 51; RRS §§ 5836-11, 5836-19, 5836-20, 5836-43, 5836-46, and 5836-51.]

**62A.2-504 Shipment by seller.** Where the seller is required or authorized to send the goods to the buyer and the contract does not require him to deliver them at a particular destination, then unless otherwise agreed he must

(a) put the goods in the possession of such a carrier and make such a contract for their transportation as may be reasonable having regard to the nature of the goods and other circumstances of the case; and

(b) obtain and promptly deliver or tender in due form any document necessary to enable the buyer to obtain possession of the goods or otherwise required by the agreement or by usage of trade; and

(c) promptly notify the buyer of the shipment. Failure to notify the buyer under paragraph (c) or to make a proper contract under paragraph (a) is a ground for rejection only if material delay or loss ensues. [1965 ex.s. c 157 § 2-504. Cf. former RCW 63.04.470; 1925 ex.s. c 142 § 46; RRS § 5836-46.]

**62A.2-505 Seller's shipment under reservation.** (1) Where the seller has identified goods to the contract by or before shipment:

(a) his procurement of a negotiable bill of lading to his own order or otherwise reserves in him a security interest in the goods. His procurement of the bill to the order of a financing agency or of the buyer indicates in addition only the seller's expectation of transferring that interest to the person named.

(b) a non-negotiable bill of lading to himself or his nominee reserves possession of the goods as security but except in a case of conditional delivery (subsection (2) of RCW 62A.2-507) a non-negotiable bill of lading naming the buyer as consignee reserves no security interest even though the seller retains possession of the bill of lading.

(2) When shipment by the seller with reservation of a security interest is in violation of the contract for sale it constitutes an improper contract for transportation within the preceding section but impairs neither the rights given to the buyer by shipment and identification of the goods to the contract nor the seller's powers as a holder of a negotiable document. [1965 ex.s. c 157 § 2-505. Cf. former RCW 63.04.210 (2), (3), (4); 1925 ex.s. c 142 § 20; RRS § 5836-20.]

**62A.2-506 Rights of financing agency.** (1) A financing agency by paying or purchasing for value a draft which relates to a shipment of goods acquires to the extent of the payment or purchase and in addition to its own rights under the draft and any document of title securing it any rights of the shipper in the goods including the right to stop delivery and the shipper's right to have the draft honored by the buyer.

(2) The right to reimbursement of a financing agency which has in good faith honored or purchased the draft under commitment to or authority from the buyer is not impaired by subsequent discovery of defects with reference to any relevant document which was apparently regular on its face. [1965 ex.s. c 157 § 2-506.]

**62A.2-507 Effect of seller's tender; delivery on condition.** (1) Tender of delivery is a condition to the buyer's duty to accept the goods and, unless otherwise agreed, to his duty to pay for them. Tender entitles the seller to acceptance of the goods and to payment according to the contract.

(2) Where payment is due and demanded on the delivery to the buyer of goods or documents of title, his right as against the seller to retain or dispose of them is conditional upon his making the payment due. [1965 ex.s. c 157 § 2-507. Cf. former RCW sections: (i) RCW 63.04.120; 1925 ex.s. c 142 § 11; RRS § 5836-11. (ii) RCW 63.04.420; 1925 ex.s. c 142 § 41; RRS § 5836-41. (iii) RCW 63.04.430; 1925 ex.s. c 142 § 42; RRS §

5836-42. (iv) RCW 63.04.700; 1925 ex.s. c 142 § 69; RRS § 5836-69.]

**62A.2-508 Cure by seller of improper tender or delivery; replacement.** (1) Where any tender or delivery by the seller is rejected because non-conforming and the time for performance has not yet expired, the seller may seasonably notify the buyer of his intention to cure and may then within the contract time make a conforming delivery.

(2) Where the buyer rejects a non-conforming tender which the seller had reasonable grounds to believe would be acceptable with or without money allowance the seller may if he seasonably notifies the buyer have a further reasonable time to substitute a conforming tender. [1965 ex.s. c 157 § 2-508.]

**62A.2-509 Risk of loss in the absence of breach.** (1) Where the contract requires or authorizes the seller to ship the goods by carrier

(a) if it does not require him to deliver them at a particular destination, the risk of loss passes to the buyer when the goods are duly delivered to the carrier even though the shipment is under reservation (RCW 62A.2-505); but

(b) if it does require him to deliver them at a particular destination and the goods are there duly tendered while in the possession of the carrier, the risk of loss passes to the buyer when the goods are there duly so tendered as to enable the buyer to take delivery.

(2) Where the goods are held by a bailee to be delivered without being moved, the risk of loss passes to the buyer

(a) on his receipt of a negotiable document of title covering the goods; or

(b) on acknowledgment by the bailee of the buyer's right to possession of the goods; or

(c) after his receipt of a non-negotiable document of title or other written direction to deliver, as provided in subsection (4)(b) of RCW 62A.2-503.

(3) In any case not within subsection (1) or (2), the risk of loss passes to the buyer on his receipt of the goods if the seller is a merchant; otherwise the risk passes to the buyer on tender of delivery.

(4) The provisions of this section are subject to contrary agreement of the parties and to the provisions of this Article on sale on approval (RCW 62A.2-327) and on effect of breach on risk of loss (RCW 62A.2-510). [1965 ex.s. c 157 § 2-509. Cf. former RCW sections: (i) RCW 63.04.200; 1925 ex.s. c 142 § 19; RRS § 5836-19. (ii) RCW 63.04.230; 1925 ex.s. c 142 § 22; RRS § 5836-22.]

**62A.2-510 Effect of breach on risk of loss.** (1) Where a tender or delivery of goods so fails to conform to the contract as to give a right of rejection the risk of their loss remains on the seller until cure or acceptance.

(2) Where the buyer rightfully revokes acceptance he may to the extent of any deficiency in his effective insurance coverage treat the risk of loss as having rested on the seller from the beginning.

(3) Where the buyer as to conforming goods already identified to the contract for sale repudiates or is otherwise in breach before risk of their loss has passed to him, the seller may to the extent of any deficiency in his effective insurance coverage treat the risk of loss as resting on the buyer for a commercially reasonable time. [1965 ex.s. c 157 § 2-510.]

**62A.2-511 Tender of payment by buyer; payment by check.** (1) Unless otherwise agreed tender of payment is a condition to the seller's duty to tender and complete any delivery.

(2) Tender of payment is sufficient when made by any means or in any manner current in the ordinary course of business unless the seller demands payment in legal tender and gives any extension of time reasonably necessary to procure it.

(3) Subject to the provisions of this Title on the effect of an instrument on an obligation (RCW 62A.3-802), payment by check is conditional and is defeated as between the parties by dishonor of the check on due presentment. [1965 ex.s. c 157 § 2-511. Cf. former RCW 63.04.430; 1925 ex.s. c 142 § 42; RRS § 5836-42.]

**62A.2-512 Payment by buyer before inspection.** (1) Where the contract requires payment before inspection non-conformity of the goods does not excuse the buyer from so making payment unless

(a) the non-conformity appears without inspection; or

(b) despite tender of the required documents the circumstances would justify injunction against honor under the provisions of this Title (RCW 62A.5-114).

(2) Payment pursuant to subsection (1) does not constitute an acceptance of goods or impair the buyer's right to inspect or any of his remedies. [1965 ex.s. c 157 § 2-512. Cf. former RCW sections: (i) RCW 63.04.480; 1925 ex.s. c 142 § 47; RRS § 5836-47. (ii) RCW 63.04.500; 1925 ex.s. c 142 § 49; RRS § 5836-49.]

**62A.2-513 Buyer's right to inspection of goods.** (1) Unless otherwise agreed and subject to subsection (3), where goods are tendered or delivered or identified to the contract for sale, the buyer has a right before payment or acceptance to inspect them at any reasonable place and time and in any reasonable manner. When the seller is required or authorized to send the goods to the buyer, the inspection may be after their arrival.

(2) Expenses of inspection must be borne by the buyer but may be recovered from the seller if the goods do not conform and are rejected.

(3) Unless otherwise agreed and subject to the provisions of this Article on C.I.F. contracts (subsection (3) of RCW 62A.2-321), the buyer is not entitled to inspect the goods before payment of the price when the contract provides

(a) for delivery "C.O.D." or on other like terms; or

(b) for payment against documents of title, except where such payment is due only after the goods are to become available for inspection.

(4) A place or method of inspection fixed by the parties is presumed to be exclusive but unless otherwise



expressly agreed it does not postpone identification or shift the place for delivery or for passing the risk of loss. If compliance becomes impossible, inspection shall be as provided in this section unless the place or method fixed was clearly intended as an indispensable condition failure of which avoids the contract. [1965 ex.s. c 157 § 2-513. Cf. former RCW 63.04.480 (2), (3); 1925 ex.s. c 142 § 47; RRS § 5836-47.]

**62A.2-514 When documents deliverable on acceptance; when on payment.** Unless otherwise agreed documents against which a draft is drawn are to be delivered to the drawee on acceptance of the draft if it is payable more than three days after presentment; otherwise, only on payment. [1965 ex.s. c 157 § 2-514. Cf. former RCW 81.32.411; 1961 c 14 § 81.32.411; prior: 1915 c 159 § 41; RRS § 3687; formerly RCW 81.32.500.]

**62A.2-515 Preserving evidence of goods in dispute.** In furtherance of the adjustment of any claim or dispute

(a) either party on reasonable notification to the other and for the purpose of ascertaining the facts and preserving evidence has the right to inspect, test and sample the goods including such of them as may be in the possession or control of the other; and

(b) the parties may agree to a third party inspection or survey to determine the conformity or condition of the goods and may agree that the findings shall be binding upon them in any subsequent litigation or adjustment. [1965 ex.s. c 157 § 2-515.]

## PART 6 BREACH, REPUDIATION AND EXCUSE

**62A.2-601 Buyer's rights on improper delivery.** Subject to the provisions of this Article on breach in installment contracts (RCW 62A.2-612) and unless otherwise agreed under the sections on contractual limitations of remedy (RCW 62A.2-718 and RCW 62A.2-719), if the goods or the tender of delivery fail in any respect to conform to the contract, the buyer may

(a) reject the whole; or

(b) accept the whole; or

(c) accept any commercial unit or units and reject the rest. [1965 ex.s. c 157 § 2-601. Cf. former RCW sections: (i) RCW 63.04.120; 1925 ex.s. c 142 § 11; RRS § 5836-11. (ii) RCW 63.04.480; 1925 ex.s. c 142 § 47; RRS § 5836-47. (iii) RCW 63.04.700(1); 1925 ex.s. c 142 § 69; RRS § 5836-69.]

**62A.2-602 Manner and effect of rightful rejection.**

(1) Rejection of goods must be within a reasonable time after their delivery or tender. It is ineffective unless the buyer seasonably notifies the seller.

(2) Subject to the provisions of the two following sections on rejected goods (RCW 62A.2-603 and RCW 62A.2-604),

(a) after rejection any exercise of ownership by the buyer with respect to any commercial unit is wrongful as against the seller; and

(b) if the buyer has before rejection taken physical possession of goods in which he does not have a security interest under the provisions of this Article (subsection (3) of RCW 62A.2-711), he is under a duty after rejection to hold them with reasonable care at the seller's disposition for a time sufficient to permit the seller to remove them; but

(c) the buyer has no further obligations with regard to goods rightfully rejected.

(3) The seller's rights with respect to goods wrongfully rejected are governed by the provisions of this Article on seller's remedies in general (RCW 62A.2-703). [1965 ex.s. c 157 § 2-602. Cf. former RCW sections: (i) RCW 63.04.090; 1925 ex.s. c 142 § 8; RRS § 5836-8. (ii) RCW 63.04.510; 1925 ex.s. c 142 § 50; RRS § 5836-50.]

**62A.2-603 Merchant buyer's duties as to rightfully rejected goods.** (1) Subject to any security interest in the buyer (subsection (3) of RCW 62A.2-711), when the seller has no agent or place of business at the market of rejection a merchant buyer is under a duty after rejection of goods in his possession or control to follow any reasonable instructions received from the seller with respect to the goods and in the absence of such instructions to make reasonable efforts to sell them for the seller's account if they are perishable or threaten to decline in value speedily. Instructions are not reasonable if on demand indemnity for expenses is not forthcoming.

(2) When the buyer sells goods under subsection (1), he is entitled to reimbursement from the seller or out of the proceeds for reasonable expenses of caring for and selling them, and if the expenses include no selling commission then to such commission as is usual in the trade or if there is none to a reasonable sum not exceeding ten per cent on the gross proceeds.

(3) In complying with this section the buyer is held only to good faith and good faith conduct hereunder is neither acceptance nor conversion nor the basis of an action for damages. [1965 ex.s. c 157 § 2-603.]

**62A.2-604 Buyer's options as to salvage of rightfully rejected goods.** Subject to the provisions of the immediately preceding section on perishables if the seller gives no instructions within a reasonable time after notification of rejection the buyer may store the rejected goods for the seller's account or reshipe them to him or resell them for the seller's account with reimbursement as provided in the preceding section. Such action is not acceptance or conversion. [1965 ex.s. c 157 § 2-604.]

**62A.2-605 Waiver of buyer's objections by failure to particularize.** (1) The buyer's failure to state in connection with rejection a particular defect which is ascertainable by reasonable inspection precludes him from relying on the unstated defect to justify rejection or to establish breach

(a) where the seller could have cured it if stated seasonably; or

(b) between merchants when the seller has after rejection made a request in writing for a full and final

written statement of all defects on which the buyer proposes to rely.

(2) Payment against documents made without reservation of rights precludes recovery of the payment for defects apparent on the face of the documents. [1965 ex.s. c 157 § 2-605.]

**62A.2-606 What constitutes acceptance of goods.** (1) Acceptance of goods occurs when the buyer

(a) after a reasonable opportunity to inspect the goods signifies to the seller that the goods are conforming or that he will take or retain them in spite of their non-conformity; or

(b) fails to make an effective rejection (subsection (1) of RCW 62A.2-602), but such acceptance does not occur until the buyer has had a reasonable opportunity to inspect them; or

(c) does any act inconsistent with the seller's ownership; but if such act is wrongful as against the seller it is an acceptance only if ratified by him.

(2) Acceptance of a part of any commercial unit is acceptance of that entire unit. [1965 ex.s. c 157 § 2-606. Cf. former RCW sections: (i) RCW 63.04.480(1); 1925 ex.s. c 142 § 47; RRS § 5836-47. (ii) RCW 63.04.490; 1925 ex.s. c 142 § 48; RRS § 5836-48.]

**62A.2-607 Effect of acceptance; notice of breach; burden of establishing breach after acceptance; notice of claim or litigation to person answerable over.** (1) The buyer must pay at the contract rate for any goods accepted.

(2) Acceptance of goods by the buyer precludes rejection of the goods accepted and if made with knowledge of a non-conformity cannot be revoked because of it unless the acceptance was on the reasonable assumption that the non-conformity would be seasonably cured but acceptance does not of itself impair any other remedy provided by this Article for non-conformity.

(3) Where a tender has been accepted

(a) the buyer must within a reasonable time after he discovers or should have discovered any breach notify the seller of breach or be barred from any remedy; and

(b) if the claim is one for infringement or the like (subsection (3) of RCW 62A.2-312) and the buyer is sued as a result of such a breach he must so notify the seller within a reasonable time after he receives notice of the litigation or be barred from any remedy over for liability established by the litigation.

(4) The burden is on the buyer to establish any breach with respect to the goods accepted.

(5) Where the buyer is sued for breach of a warranty or other obligation for which his seller is answerable over

(a) he may give his seller written notice of the litigation. If the notice states that the seller may come in and defend and that if the seller does not do so he will be bound in any action against him by his buyer by any determination of fact common to the two litigations, then unless the seller after seasonable receipt of the notice does come in and defend he is so bound.

(b) if the claim is one for infringement or the like (subsection (3) of RCW 62A.2-312) the original seller

may demand in writing that his buyer turn over to him control of the litigation including settlement or else be barred from any remedy over and if he also agrees to bear all expense and to satisfy any adverse judgment, then unless the buyer after seasonable receipt of the demand does turn over control the buyer is so barred.

(6) The provisions of subsections (3), (4) and (5) apply to any obligation of a buyer to hold the seller harmless against infringement or the like (subsection (3) of RCW 62A.2-312). [1965 ex.s. c 157 § 2-607. Subd. (1) cf. former RCW 63.04.420; 1925 ex.s. c 142 § 41; RRS § 5836-41. Subd. (2), (3) cf. former RCW sections: (i) RCW 63.04.500; 1925 ex.s. c 142 § 49; RRS § 5836-49. (ii) RCW 63.04.700; 1925 ex.s. c 142 § 69; RRS § 5836-69.]

**62A.2-608 Revocation of acceptance in whole or in part.** (1) The buyer may revoke his acceptance of a lot or commercial unit whose non-conformity substantially impairs its value to him if he has accepted it

(a) on the reasonable assumption that its non-conformity would be cured and it has not been seasonably cured; or

(b) without discovery of such non-conformity if his acceptance was reasonably induced either by the difficulty of discovery before acceptance or by the seller's assurances.

(2) Revocation of acceptance must occur within a reasonable time after the buyer discovers or should have discovered the ground for it and before any substantial change in condition of the goods which is not caused by their own defects. It is not effective until the buyer notifies the seller of it.

(3) A buyer who so revokes has the same rights and duties with regard to the goods involved as if he had rejected them. [1965 ex.s. c 157 § 2-608. Cf. former RCW 63.04.700 (1)(d), (3), (4), (5); 1925 ex.s. c 142 § 69; RRS § 5836-69.]

**62A.2-609 Right to adequate assurance of performance.** (1) A contract for sale imposes an obligation on each party that the other's expectation of receiving due performance will not be impaired. When reasonable grounds for insecurity arise with respect to the performance of either party the other may in writing demand adequate assurance of due performance and until he receives such assurance may if commercially reasonable suspend any performance for which he has not already received the agreed return.

(2) Between merchants the reasonableness of grounds for insecurity and the adequacy of any assurance offered shall be determined according to commercial standards.

(3) Acceptance of any improper delivery or payment does not prejudice the aggrieved party's right to demand adequate assurance of future performance.

(4) After receipt of a justified demand failure to provide within a reasonable time not exceeding thirty days such assurance of due performance as is adequate under the circumstances of the particular case is a repudiation of the contract. [1965 ex.s. c 157 § 2-609. Cf. former RCW sections: (i) RCW 63.04.540; 1925 ex.s. c

142 § 53; RRS § 5836-53. (ii) RCW 63.04.550(1)(b); 1925 ex.s. c 142 § 54; RRS § 5836-54. (iii) RCW 63.04.560; 1925 ex.s. c 142 § 55; RRS § 5836-55. (iv) RCW 63.04.640(2); 1925 ex.s. c 142 § 63; RRS § 5836-63.]

**62A.2-610 Anticipatory repudiation.** When either party repudiates the contract with respect to a performance not yet due the loss of which will substantially impair the value of the contract to the other, the aggrieved party may

(a) for a commercially reasonable time await performance by the repudiating party; or

(b) resort to any remedy for breach (RCW 62A.2-703 or RCW 62A.2-711), even though he has notified the repudiating party that he would await the latter's performance and has urged retraction; and

(c) in either case suspend his own performance or proceed in accordance with the provisions of this Article on the seller's right to identify goods to the contract notwithstanding breach or to salvage unfinished goods (RCW 62A.2-704). [1965 ex.s. c 157 § 2-610. Cf. former RCW section: (i) RCW 63.04.640(2); 1925 ex.s. c 142 § 63; RRS § 5836-63. (ii) RCW 63.04.660; 1925 ex.s. c 142 § 65; RRS § 5836-65.]

**62A.2-611 Retraction of anticipatory repudiation.** (1) Until the repudiating party's next performance is due he can retract his repudiation unless the aggrieved party has since the repudiation cancelled or materially changed his position or otherwise indicated that he considers the repudiation final.

(2) Retraction may be by any method which clearly indicates to the aggrieved party that the repudiating party intends to perform, but must include any assurance justifiably demanded under the provisions of this Article (RCW 62A.2-609).

(3) Retraction reinstates the repudiating party's rights under the contract with due excuse and allowance to the aggrieved party for any delay occasioned by the repudiation. [1965 ex.s. c 157 § 2-611.]

**62A.2-612 "Installment contract"; breach.** (1) An "installment contract" is one which requires or authorizes the delivery of goods in separate lots to be separately accepted, even though the contract contains a clause "each delivery is a separate contract" or its equivalent.

(2) The buyer may reject any installment which is non-conforming if the non-conformity substantially impairs the value of that installment and cannot be cured or if the non-conformity is a defect in the required documents; but if the non-conformity does not fall within subsection (3) and the seller gives adequate assurance of its cure the buyer must accept that installment.

(3) Whenever non-conformity or default with respect to one or more installments substantially impairs the value of the whole contract there is a breach of the whole. But the aggrieved party reinstates the contract if he accepts a non-conforming installment without seasonably notifying of cancellation or if he brings an action with respect only to past installments or demands

performance as to future installments. [1965 ex.s. c 157 § 2-612. Cf. former RCW 63.04.460(2); 1925 ex.s. c 142 § 45; RRS § 5836-45.]

**62A.2-613 Casualty to identified goods.** Where the contract requires for its performance goods identified when the contract is made, and the goods suffer casualty without fault of either party before the risk of loss passes to the buyer, or in a proper case under a "no arrival, no sale" term (RCW 62A.2-324) then

(a) if the loss is total the contract is avoided; and

(b) if the loss is partial or the goods have so deteriorated as no longer to conform to the contract the buyer may nevertheless demand inspection and at his option either treat the contract as avoided or accept the goods with due allowance from the contract price for the deterioration or the deficiency in quantity but without further right against the seller. [1965 ex.s. c 157 § 2-613. Cf. former RCW sections: (i) RCW 63.04.080; 1925 ex.s. c 142 § 7; RRS § 5836-7. (ii) RCW 63.04.090; 1925 ex.s. c 142 § 8; RRS § 5836-8.]

**62A.2-614 Substituted performance.** (1) Where without fault of either party the agreed berthing, loading, or unloading facilities fail or an agreed type of carrier becomes unavailable or the agreed manner of delivery otherwise becomes commercially impracticable but a commercially reasonable substitute is available, such substitute performance must be tendered and accepted.

(2) If the agreed means or manner of payment fails because of domestic or foreign governmental regulation, the seller may withhold or stop delivery unless the buyer provides a means or manner of payment which is commercially a substantial equivalent. If delivery has already been taken, payment by the means or in the manner provided by the regulation discharges the buyer's obligation unless the regulation is discriminatory, oppressive or predatory. [1965 ex.s. c 157 § 2-614.]

**62A.2-615 Excuse by failure of presupposed conditions.** Except so far as a seller may have assumed a greater obligation and subject to the preceding section on substituted performance:

(a) Delay in delivery or non-delivery in whole or in part by a seller who complies with paragraphs (b) and (c) is not a breach of his duty under a contract for sale if performance as agreed has been made impracticable by the occurrence of a contingency the non-occurrence of which was a basic assumption on which the contract was made or by compliance in good faith with any applicable foreign or domestic governmental regulation or order whether or not it later proves to be invalid.

(b) Where the causes mentioned in paragraph (a) affect only a part of the seller's capacity to perform, he must allocate production and deliveries among his customers but may at his option include regular customers not then under contract as well as his own requirements for further manufacture. He may so allocate in any manner which is fair and reasonable.

(c) The seller must notify the buyer seasonably that there will be delay or non-delivery and, when allocation is required under paragraph (b), of the estimated

quota thus made available for the buyer. [1965 ex.s. c 157 § 2-615.]

**62A.2-616 Procedure on notice claiming excuse.** (1) Where the buyer receives notification of a material or indefinite delay or an allocation justified under the preceding section he may by written notification to the seller as to any delivery concerned, and where the prospective deficiency substantially impairs the value of the whole contract under the provisions of this Article relating to breach of installment contracts (RCW 62A.2-612), then also as to the whole,

(a) terminate and thereby discharge any unexecuted portion of the contract; or

(b) modify the contract by agreeing to take his available quota in substitution.

(2) If after receipt of such notification from the seller the buyer fails so to modify the contract within a reasonable time not exceeding thirty days the contract lapses with respect to any deliveries affected. [1965 ex.s. c 157 § 2-616.]

## PART 7 REMEDIES

**62A.2-701 Remedies for breach of collateral contracts not impaired.** Remedies for breach of any obligation or promise collateral or ancillary to a contract for sale are not impaired by the provisions of this Article. [1965 ex.s. c 157 § 2-701.]

**62A.2-702 Seller's remedies on discovery of buyer's insolvency.** (1) Where the seller discovers the buyer to be insolvent he may refuse delivery except for cash including payment for all goods theretofore delivered under the contract, and stop delivery under this Article (RCW 62A.2-705).

(2) Where the seller discovers that the buyer has received goods on credit while insolvent he may reclaim the goods upon demand made within ten days after the receipt, but if misrepresentation of solvency has been made to the particular seller in writing within three months before delivery the ten day limitation does not apply. Except as provided in this subsection the seller may not base a right to reclaim goods on the buyer's fraudulent or innocent misrepresentation of solvency or of intent to pay.

(3) The seller's right to reclaim under subsection (2) is subject to the rights of a buyer in ordinary course or other good faith purchaser or lien creditor under this Article (RCW 62A.2-403). Successful reclamation of goods excludes all other remedies with respect to them. [1965 ex.s. c 157 § 2-702. Subd. (1) cf. former RCW sections: (i) RCW 63.04.540(1) (b); 1925 ex.s. c 142 § 53; RRS § 5836-53. (ii) RCW 63.04.550(1)(c); 1925 ex.s. c 142 § 54; RRS § 5836-54. (iii) RCW 63.04.560; 1925 ex.s. c 142 § 55; RRS § 5836-55. (iv) RCW 63.04.580; 1925 ex.s. c 142 § 57; RRS § 5836-57. Subd. (3) cf. former RCW 63.04.755(3); 1925 ex.s. c 142 § 76; RRS § 5836-76; formerly RCW 63.04.010.]

**62A.2-703 Seller's remedies in general.** Where the buyer wrongfully rejects or revokes acceptance of goods or fails to make a payment due on or before delivery or repudiates with respect to a part or the whole, then with respect to any goods directly affected and, if the breach is of the whole contract (RCW 62A.2-612), then also with respect to the whole undelivered balance, the aggrieved seller may

(a) withhold delivery of such goods;

(b) stop delivery by any bailee as hereafter provided (RCW 62A.2-705);

(c) proceed under the next section respecting goods still unidentified to the contract;

(d) resell and recover damages as hereafter provided (RCW 62A.2-706);

(e) recover damages for non-acceptance (RCW 62A.2-708) or in a proper case the price (RCW 62A.2-709);

(f) cancel. [1965 ex.s. c 157 § 2-703. Cf. former RCW sections: (i) RCW 63.04.540; 1925 ex.s. c 142 § 53; RRS § 5836-53. (ii) RCW 63.04.620(1); 1925 ex.s. c 142 § 61; RRS § 5836-61.]

**62A.2-704 Seller's right to identify goods to the contract notwithstanding breach or to salvage unfinished goods.** (1) An aggrieved seller under the preceding section may

(a) identify to the contract conforming goods not already identified if at the time he learned of the breach they are in his possession or control;

(b) treat as the subject of resale goods which have demonstrably been intended for the particular contract even though those goods are unfinished.

(2) Where the goods are unfinished an aggrieved seller may in the exercise of reasonable commercial judgment for the purposes of avoiding loss and of effective realization either complete the manufacture and wholly identify the goods to the contract or cease manufacture and resell for scrap or salvage value or proceed in any other reasonable manner. [1965 ex.s. c 157 § 2-704. Cf. former RCW sections: (i) RCW 63.04.640(3); 1925 ex.s. c 142 § 63; RRS § 5836-63. (ii) RCW 63.04.650(4); 1925 ex.s. c 142 § 64; RRS § 5836-64.]

**62A.2-705 Seller's stoppage of delivery in transit or otherwise.** (1) The seller may stop delivery of goods in the possession of a carrier or other bailee when he discovers the buyer to be insolvent (RCW 62A.2-702) and may stop delivery of carload, truckload, planeload or larger shipments of express or freight when the buyer repudiates or fails to make a payment due before delivery or if for any other reason the seller has a right to withhold or reclaim the goods.

(2) As against such buyer the seller may stop delivery until

(a) receipt of the goods by the buyer; or

(b) acknowledgment to the buyer by any bailee of the goods except a carrier that the bailee holds the goods for the buyer; or

(c) such acknowledgment to the buyer by a carrier by reshipment or as warehouseman; or

(d) negotiation to the buyer of any negotiable document of title covering the goods.

(3) (a) To stop delivery the seller must so notify as to enable the bailee by reasonable diligence to prevent delivery of the goods.

(b) After such notification the bailee must hold and deliver the goods according to the directions of the seller but the seller is liable to the bailee for any ensuing charges or damages.

(c) If a negotiable document of title has been issued for goods the bailee is not obliged to obey a notification to stop until surrender of the document.

(d) A carrier who has issued a non-negotiable bill of lading is not obliged to obey a notification to stop received from a person other than the consignor. [1965 ex.s. c 157 § 2-705. Cf. former RCW sections: (i) RCW 22.04.100; 1913 c 99 § 9; RRS § 3595; prior: 1891 c 134 § 7. (ii) RCW 22.04.120; 1913 c 99 § 11; RRS § 3597; prior: 1886 p 121 § 7. (iii) RCW 22.04.500; 1913 c 99 § 49; RRS § 3635. (iv) RCW 63.04.580 through 63.04.600; 1925 ex.s. c 142 §§ 57 through 59; RRS §§ 5836-57 through 5836-59. (v) RCW 81.32.121, 81.32.141, and 81.32.421; 1961 c 14 §§ 81.32.121, 81.32.141, and 81.32.421; prior: 1915 c 159 §§ 12, 14, and 42; RRS §§ 3658, 3660, and 3688; formerly RCW 81.32.130, 81.32.160 and 81.32.510.]

**62A.2-706 Seller's resale including contract for resale.** (1) Under the conditions stated in RCW 62A.2-703 on seller's remedies, the seller may resell the goods concerned or the undelivered balance thereof. Where the resale is made in good faith and in a commercially reasonable manner the seller may recover the difference between the resale price and the contract price together with any incidental damages allowed under the provisions of this Article (RCW 62A.2-710), but less expenses saved in consequence of the buyer's breach.

(2) Except as otherwise provided in subsection (3) or unless otherwise agreed resale may be at public or private sale including sale by way of one or more contracts to sell or of identification to an existing contract of the seller. Sale may be as a unit or in parcels and at any time and place and on any terms but every aspect of the sale including the method, manner, time, place and terms must be commercially reasonable. The resale must be reasonably identified as referring to the broken contract, but it is not necessary that the goods be in existence or that any or all of them have been identified to the contract before the breach.

(3) Where the resale is at private sale the seller must give the buyer reasonable notification of his intention to resell.

(4) Where the resale is at public sale

(a) only identified goods can be sold except where there is a recognized market for a public sale of futures in goods of the kind; and

(b) it must be made at a usual place or market for public sale if one is reasonably available and except in the case of goods which are perishable or threaten to decline in value speedily the seller must give the buyer

reasonable notice of the time and place of the resale; and

(c) if the goods are not to be within the view of those attending the sale the notification of sale must state the place where the goods are located and provide for their reasonable inspection by prospective bidders; and

(d) the seller may buy.

(5) A purchaser who buys in good faith at a resale takes the goods free of any rights of the original buyer even though the seller fails to comply with one or more of the requirements of this section.

(6) The seller is not accountable to the buyer for any profit made on any resale. A person in the position of a seller (RCW 62A.2-707) or a buyer who has rightfully rejected or justifiably revoked acceptance must account for any excess over the amount of his security interest, as hereinafter defined (subsection (3) of RCW 62A.2-711). [1967 c 114 § 13; 1965 ex.s. c 157 § 2-706. Cf. former RCW 63.04.610; 1925 ex.s. c 142 § 60; RRS § 5836-60.]

**Emergency—Effective date—1967 c 114:** See note following RCW 62A.4-406.

**62A.2-707 "Person in the position of a seller".** (1) A "person in the position of a seller" includes as against a principal an agent who has paid or become responsible for the price of goods on behalf of his principal or anyone who otherwise holds a security interest or other right in goods similar to that of a seller.

(2) A person in the position of a seller may as provided in this Article withhold or stop delivery (RCW 62A.2-705) and resell (RCW 62A.2-706) and recover incidental damages (RCW 62A.2-710). [1965 ex.s. c 157 § 2-707. Cf. former RCW 63.04.530(2); 1925 ex.s. c 142 § 52; RRS § 5836-52.]

**62A.2-708 Seller's damages for non-acceptance or repudiation.** (1) Subject to subsection (2) and to the provisions of this Article with respect to proof of market price (RCW 62A.2-723), the measure of damages for non-acceptance or repudiation by the buyer is the difference between the market price at the time and place for tender and the unpaid contract price together with any incidental damages provided in this Article (RCW 62A.2-710), but less expenses saved in consequence of the buyer's breach.

(2) If the measure of damages provided in subsection (1) is inadequate to put the seller in as good a position as performance would have done then the measure of damages is the profit (including reasonable overhead) which the seller would have made from full performance by the buyer, together with any incidental damages provided in this Article (RCW 62A.2-710), due allowance for costs reasonably incurred and due credit for payments or proceeds of resale. [1965 ex.s. c 157 § 2-708. Cf. former RCW 63.04.650; 1925 ex.s. c 142 § 64; RRS § 5836-64.]

**62A.2-709 Action for the price.** (1) When the buyer fails to pay the price as it becomes due the seller may recover, together with any incidental damages under the next section, the price

(a) of goods accepted or of conforming goods lost or damaged within a commercially reasonable time after risk of their loss has passed to the buyer; and

(b) of goods identified to the contract if the seller is unable after reasonable effort to resell them at a reasonable price or the circumstances reasonably indicate that such effort will be unavailing.

(2) Where the seller sues for the price he must hold for the buyer any goods which have been identified to the contract and are still in his control except that if resale becomes possible he may resell them at any time prior to the collection of the judgment. The net proceeds of any such resale must be credited to the buyer and payment of the judgment entitles him to any goods not resold.

(3) After the buyer has wrongfully rejected or revoked acceptance of the goods or has failed to make a payment due or has repudiated (RCW 62A.2-610), a seller who is held not entitled to the price under this section shall nevertheless be awarded damages for non-acceptance under the preceding section. [1965 ex.s. c 157 § 2-709. Cf. former RCW 63.04.640; 1925 ex.s. c 142 § 63; RRS § 5836-63.]

**62A.2-710 Seller's incidental damages.** Incidental damages to an aggrieved seller include any commercially reasonable charges, expenses or commissions incurred in stopping delivery, in the transportation, care and custody of goods after the buyer's breach, in connection with return or resale of the goods or otherwise resulting from the breach. [1965 ex.s. c 157 § 2-710. Cf. former RCW sections: (i) RCW 63.04.650; 1925 ex.s. c 142 § 64; RRS § 5836-64. (ii) RCW 63.04.710; 1925 ex.s. c 142 § 70; RRS § 5836-70.]

**62A.2-711 Buyer's remedies in general; buyer's security interest in rejected goods.** (1) Where the seller fails to make delivery or repudiates or the buyer rightfully rejects or justifiably revokes acceptance then with respect to any goods involved, and with respect to the whole if the breach goes to the whole contract (RCW 62A.2-612), the buyer may cancel and whether or not he has done so may in addition to recovering so much of the price as has been paid

(a) "cover" and have damages under the next section as to all the goods affected whether or not they have been identified to the contract; or

(b) recover damages for non-delivery as provided in this Article (RCW 62A.2-713).

(2) Where the seller fails to deliver or repudiates the buyer may also

(a) if the goods have been identified recover them as provided in this Article (RCW 62A.2-502); or

(b) in a proper case obtain specific performance or replevy the goods as provided in this Article (RCW 62A.2-716).

(3) On rightful rejection or justifiable revocation of acceptance a buyer has a security interest in goods in his possession or control for any payments made on their price and any expenses reasonably incurred in their inspection, receipt, transportation, care and custody and may hold such goods and resell them in like

manner as an aggrieved seller (RCW 62A.2-706). [1965 ex.s. c 157 § 2-711. Subd. (3) cf. former RCW 63.04.700 (5); 1925 ex.s. c 142 § 69; RRS § 5836-69.]

**62A.2-712 "Cover"; buyer's procurement of substitute goods.** (1) After a breach within the preceding section the buyer may "cover" by making in good faith and without unreasonable delay any reasonable purchase of or contract to purchase goods in substitution for those due from the seller.

(2) The buyer may recover from the seller as damages the difference between the cost of cover and the contract price together with any incidental or consequential damages as hereinafter defined (RCW 62A.2-715), but less expenses saved in consequence of the seller's breach.

(3) Failure of the buyer to effect cover within this section does not bar him from any other remedy. [1965 ex.s. c 157 § 2-712.]

**62A.2-713 Buyer's damages for non-delivery or repudiation.** (1) Subject to the provisions of this Article with respect to proof of market price (RCW 62A.2-723), the measure of damages for nondelivery or repudiation by the seller is the difference between the market price at the time when the buyer learned of the breach and the contract price together with any incidental and consequential damages provided in this Article (RCW 62A.2-715), but less expenses saved in consequence of the seller's breach.

(2) Market price is to be determined as of the place for tender or, in cases of rejection after arrival or revocation of acceptance, as of the place of arrival. [1965 ex.s. c 157 § 2-713. Cf. former RCW 63.04.680(3); 1925 ex.s. c 142 § 67; RRS § 5836-67.]

**62A.2-714 Buyer's damages for breach in regard to accepted goods.** (1) Where the buyer has accepted goods and given notification (subsection (3) of RCW 62A.2-607) he may recover as damages for any non-conformity of tender the loss resulting in the ordinary course of events from the seller's breach as determined in any manner which is reasonable.

(2) The measure of damages for breach of warranty is the difference at the time and place of acceptance between the value of the goods accepted and the value they would have had if they had been as warranted, unless special circumstances show proximate damages of a different amount.

(3) In a proper case any incidental and consequential damages under the next section may also be recovered. [1965 ex.s. c 157 § 2-714. Cf. former RCW 63.04.700 (6), (7); 1925 ex.s. c 142 § 69; RRS § 5836-69.]

**62A.2-715 Buyer's incidental and consequential damages.** (1) Incidental damages resulting from the seller's breach include expenses reasonably incurred in inspection, receipt, transportation and care and custody of goods rightfully rejected, any commercially reasonable charges, expenses or commissions in connection with effecting cover and any other reasonable expense incident to the delay or other breach.



(2) Consequential damages resulting from the seller's breach include

(a) any loss resulting from general or particular requirements and needs of which the seller at the time of contracting had reason to know and which could not reasonably be prevented by cover or otherwise; and

(b) injury to person or property proximately resulting from any breach of warranty. [1965 ex.s. c 157 § 2-715. Subd. (2) cf. former RCW sections: (i) RCW 63.04.700(7); 1925 ex.s. c 142 § 69; RRS § 5836-69. (ii) RCW 63.04.710; 1925 ex.s. c 142 § 70; RRS § 5836-70.]

**62A.2-716 Buyer's right to specific performance or replevin.** (1) Specific performance may be decreed where the goods are unique or in other proper circumstances.

(2) The decree for specific performance may include such terms and conditions as to payment of the price, damages, or other relief as the court may deem just.

(3) The buyer has a right of replevin for goods identified to the contract if after reasonable effort he is unable to effect cover for such goods or the circumstances reasonably indicate that such effort will be unavailing or if the goods have been shipped under reservation and satisfaction of the security interest in them has been made or tendered. [1965 ex.s. c 157 § 2-716. Cf. former RCW 63.04.690; 1925 ex.s. c 142 § 68; RRS § 5836-68.]

*Replevin: Chapter 7.64 RCW.*

**62A.2-717 Deduction of damages from the price.** The buyer on notifying the seller of his intention to do so may deduct all or any part of the damages resulting from any breach of the contract from any part of the price still due under the same contract. [1965 ex.s. c 157 § 2-717. Cf. former RCW 63.04.700(1)(a); 1925 ex.s. c 142 § 69; RRS § 5836-69.]

**62A.2-718 Liquidation or limitation of damages; deposits.** (1) Damages for breach by either party may be liquidated in the agreement but only at an amount which is reasonable in the light of the anticipated or actual harm caused by the breach, the difficulties of proof of loss, and the inconvenience or nonfeasibility of otherwise obtaining an adequate remedy. A term fixing unreasonably large liquidated damages is void as a penalty.

(2) Where the seller justifiably withholds delivery of goods because of the buyer's breach, the buyer is entitled to restitution of any amount by which the sum of his payments exceeds

(a) the amount to which the seller is entitled by virtue of terms liquidating the seller's damages in accordance with subsection (1), or

(b) in the absence of such terms, twenty per cent of the value of the total performance for which the buyer is obligated under the contract or five hundred dollars, whichever is smaller.

(3) The buyer's right to restitution under subsection (2) is subject to offset to the extent that the seller establishes

(a) a right to recover damages under the provisions of this Article other than subsection (1), and

(b) the amount or value of any benefits received by the buyer directly or indirectly by reason of the contract.

(4) Where a seller has received payment in goods their reasonable value or the proceeds of their resale shall be treated as payments for the purposes of subsection (2); but if the seller has notice of the buyer's breach before reselling goods received in part performance, his resale is subject to the conditions laid down in this Article on resale by an aggrieved seller (RCW 62A.2-706). [1965 ex.s. c 157 § 2-718.]

**62A.2-719 Contractual modification or limitation of remedy.** (1) Subject to the provisions of subsections (2) and (3) of this section and of the preceding section on liquidation and limitation of damages,

(a) the agreement may provide for remedies in addition to or in substitution for those provided in this Article and may limit or alter the measure of damages recoverable under this Article, as by limiting the buyer's remedies to return of the goods and repayment of the price or to repair and replacement of non-conforming goods or parts; and

(b) resort to a remedy as provided is optional unless the remedy is expressly agreed to be exclusive, in which case it is the sole remedy.

(2) Where circumstances cause an exclusive or limited remedy to fail of its essential purpose, remedy may be had as provided in this Title.

(3) Limitation of consequential damages for injury to the person in the case of goods purchased primarily for personal, family or household use or of any services related thereto is invalid unless it is proved that the limitation is not unconscionable. Limitation of remedy to repair or replacement of defective parts or non-conforming goods is invalid in sales of goods primarily for personal, family or household use unless the manufacturer or seller maintains or provides within this state facilities adequate to provide reasonable and expeditious performance of repair or replacement obligations.

Limitation of other consequential damages is valid unless it is established that the limitation is unconscionable. [1974 1st ex.s. c 180 § 2; 1974 1st ex.s. c 78 § 2; 1965 ex.s. c 157 § 2-719. Subd. (1)(a) cf. former RCW 63.04.720; 1925 ex.s. c 142 § 71; RRS § 5836-71.]

*Lease or rental of personal property—Disclaimer of warranty of merchantability or fitness: RCW 63.18.010.*

**62A.2-720 Effect of "cancellation" or "rescission" on claims for antecedent breach.** Unless the contrary intention clearly appears, expressions of "cancellation" or "rescission" of the contract or the like shall not be construed as a renunciation or discharge of any claim in damages for an antecedent breach. [1965 ex.s. c 157 § 2-720.]

**62A.2-721 Remedies for fraud.** Remedies for material misrepresentation or fraud include all remedies available under this Article for non-fraudulent breach. Neither rescission or a claim for rescission of the contract for sale nor rejection or return of the goods shall



bar or be deemed inconsistent with a claim for damages or other remedy. [1965 ex.s. c 157 § 2-721.]

**62A.2-722 Who can sue third parties for injury to goods.** Where a third party so deals with goods which have been identified to a contract for sale as to cause actionable injury to a party to that contract

(a) a right of action against the third party is in either party to the contract for sale who has title to or a security interest or a special property or an insurable interest in the goods; and if the goods have been destroyed or converted a right of action is also in the party who either bore the risk of loss under the contract for sale or has since the injury assumed that risk as against the other;

(b) if at the time of the injury the party plaintiff did not bear the risk of loss as against the other party to the contract for sale and there is no arrangement between them for disposition of the recovery, his suit or settlement is, subject to his own interest, as a fiduciary for the other party to the contract;

(c) either party may with the consent of the other sue for the benefit of whom it may concern. [1965 ex.s. c 157 § 2-722.]

**62A.2-723 Proof of market price: Time and place.**

(1) If an action based on anticipatory repudiation comes to trial before the time for performance with respect to some or all of the goods, any damages based on market price (RCW 62A.2-708 or RCW 62A.2-713) shall be determined according to the price of such goods prevailing at the time when the aggrieved party learned of the repudiation.

(2) If evidence of a price prevailing at the times or places described in this Article is not readily available the price prevailing within any reasonable time before or after the time described or at any other place which in commercial judgment or under usage of trade would serve as a reasonable substitute for the one described may be used, making any proper allowance for the cost of transporting the goods to or from such other place.

(3) Evidence of a relevant price prevailing at a time or place other than the one described in this Article offered by one party is not admissible unless and until he has given the other party such notice as the court finds sufficient to prevent unfair surprise. [1965 ex.s. c 157 § 2-723.]

**62A.2-724 Admissibility of market quotations.**

Whenever the prevailing price or value of any goods regularly bought and sold in any established commodity market is in issue, reports in official publications or trade journals or in newspapers or periodicals of general circulation published as the reports of such market shall be admissible in evidence. The circumstances of the preparation of such a report may be shown to affect its weight but not its admissibility. [1965 ex.s. c 157 § 2-724.]

**62A.2-725 Statute of limitations in contracts for sale.**

(1) An action for breach of any contract for sale must be commenced within four years after the cause of action has accrued. By the original agreement the parties may reduce the period of limitation to not less than one year but may not extend it.

(2) A cause of action accrues when the breach occurs, regardless of the aggrieved party's lack of knowledge of the breach. A breach of warranty occurs when tender of delivery is made, except that where a warranty explicitly extends to future performance of the goods and discovery of the breach must await the time of such performance the cause of action accrues when the breach is or should have been discovered.

(3) Where an action commenced within the time limited by subsection (1) is so terminated as to leave available a remedy by another action for the same breach such other action may be commenced after the expiration of the time limited and within six months after the termination of the first action unless the termination resulted from voluntary discontinuance or from dismissal for failure or neglect to prosecute.

(4) This section does not alter the law on tolling of the statute of limitations nor does it apply to causes of action which have accrued before this Title becomes effective. [1965 ex.s. c 157 § 2-725.]

*Limitation of actions—Tolling of statute: RCW 4.16.170-4.16.240.*

## Article 3 COMMERCIAL PAPER

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ARTICLE 3  
COMMERCIAL PAPER

PART 1  
SHORT TITLE, FORM AND INTERPRETATION

**62A.3-101 Short title.** This Article shall be known and may be cited as Uniform Commercial Code—Commercial Paper. [1965 ex.s. c 157 § 3-101.]

**62A.3-102 Definitions and index of definitions.** (1) In this Article unless the context otherwise requires

(a) "Issue" means the first delivery of an instrument to a holder or a remitter.

(b) An "order" is a direction to pay and must be more than an authorization or request. It must identify the person to pay with reasonable certainty. It may be addressed to one or more such persons jointly or in the alternative but not in succession.

(c) A "promise" is an undertaking to pay and must be more than an acknowledgment of an obligation.

(d) "Secondary party" means a drawer or endorser.

(e) "Instrument" means a negotiable instrument.

(2) Other definitions applying to this Article and the sections in which they appear are:

"Acceptance." RCW 62A.3-410.

"Accommodation party." RCW 62A.3-415.

"Alteration." RCW 62A.3-407.

"Certificate of deposit." RCW 62A.3-104.

"Certification." RCW 62A.3-411.

"Check." RCW 62A.3-104.

"Definite time." RCW 62A.3-109.

"Dishonor." RCW 62A.3-507.

"Draft." RCW 62A.3-104.

"Holder in due course." RCW 62A.3-302.

"Negotiation." RCW 62A.3-202.

"Note." RCW 62A.3-104.

"Notice of dishonor." RCW 62A.3-508.

"On demand." RCW 62A.3-108.

"Presentment." RCW 62A.3-504.

"Protest." RCW 62A.3-509.

"Restrictive indorsement." RCW 62A.3-205.

"Signature." RCW 62A.3-401.

(3) The following definitions in other Articles apply to this Article:

"Account." RCW 62A.4-104.

"Banking day." RCW 62A.4-104.

"Clearing house." RCW 62A.4-104.

"Collecting bank." RCW 62A.4-105.

"Customer." RCW 62A.4-104.

"Depository bank." RCW 62A.4-105.

"Documentary draft." RCW 62A.4-104.

"Intermediary bank." RCW 62A.4-105.

"Item." RCW 62A.4-104.

"Midnight deadline." RCW 62A.4-104.

"Payor bank." RCW 62A.4-105.

(4) In addition Article 1 contains general definitions and principles of construction and interpretation applicable throughout this Article. [1965 ex.s. c 157 § 3-102. Cf. former RCW sections: (i) RCW 62.01.001(5); 1955 c 35 § 62.01.001; prior: 1899 c 149 § 1; RRS § 3392. (ii) RCW 62.01.128; 1955 c 35 § 62.01.128; prior: 1899 c

149 § 128; RRS § 3518. (iii) RCW 62.01.191; 1955 c 35 § 62.01.191; prior: 1899 c 149 § 191; RRS § 3581.]

**62A.3-103 Limitations on scope of Article.** (1) This Article does not apply to money, documents of title or investment securities.

(2) The provisions of this Article are subject to the provisions of the Article on Bank Deposits and Collections (Article 4) and Secured Transactions (Article 9). [1965 ex.s. c 157 § 3-103.]

**62A.3-104 Form of negotiable instruments; "draft"; "check"; "certificate of deposit"; "note".** (1) Any writing to be a negotiable instrument within this Article must

(a) be signed by the maker or drawer; and  
(b) contain an unconditional promise or order to pay a sum certain in money and no other promise, order, obligation or power given by the maker or drawer except as authorized by this Article; and

(c) be payable on demand or at a definite time; and  
(d) be payable to order or to bearer.

(2) A writing which complies with the requirements of this section is

(a) a "draft" ("bill of exchange") if it is an order;  
(b) a "check" if it is a draft drawn on a bank and payable on demand;

(c) a "certificate of deposit" if it is an acknowledgment by a bank of receipt of money with an engagement to repay it;

(d) a "note" if it is a promise other than a certificate of deposit.

(3) As used in other Articles of this Title, and as the context may require, the terms "draft", "check", "certificate of deposit" and "note" may refer to instruments which are not negotiable within this Article as well as to instruments which are so negotiable. [1965 ex.s. c 157 § 3-104. Cf. former RCW sections: RCW 62.01.001, 62.01.005, 62.01.010, 62.01.126, 62.01.184, and 62.01.185; 1955 c 35 §§ 62.01.001, 62.01.005, 62.01.010, 62.01.126, 62.01.184, and 62.01.185; prior: 1899 c 149 §§ 1, 5, 10, 126, 184, and 185; RRS §§ 3392, 3396, 3401, 3516, 3574, and 3575.]

**62A.3-105 When promise or order unconditional.** (1) A promise or order otherwise unconditional is not made conditional by the fact that the instrument

(a) is subject to implied or constructive conditions; or  
(b) states its consideration, whether performed or promised, or the transaction which gave rise to the instrument, or that the promise or order is made or the instrument matures in accordance with or "as per" such transaction; or

(c) refers to or states that it arises out of a separate agreement or refers to a separate agreement for rights as to prepayment or acceleration; or

(d) states that it is drawn under a letter of credit; or  
(e) states that it is secured, whether by mortgage, reservation of title or otherwise; or

(f) indicates a particular account to be debited or any other fund or source from which reimbursement is expected; or

(g) is limited to payment out of a particular fund or the proceeds of a particular source, if the instrument is issued by a government or governmental agency or unit; or

(h) is limited to payment out of the entire assets of a partnership, unincorporated association, trust or estate by or on behalf of which the instrument is issued.

(2) A promise or order is not unconditional if the instrument

(a) states that it is subject to or governed by any other agreement; or

(b) states that it is to be paid only out of a particular fund or source except as provided in this section. [1965 ex.s. c 157 § 3-105. Cf. former RCW 62.01.003; 1955 c 35 § 62.01.003; prior: 1899 c 149 § 3; RRS § 3394.]

**62A.3-106 Sum certain.** (1) The sum payable is a sum certain even though it is to be paid

(a) with stated interest or by stated installments; or  
(b) with stated different rates of interest before and after default or a specified date; or

(c) with a stated discount or addition if paid before or after the date fixed for payment; or

(d) with exchange or less exchange, whether at a fixed rate or at the current rate; or

(e) with costs of collection or an attorney's fee or both upon default.

(2) Nothing in this section shall validate any term which is otherwise illegal. [1965 ex.s. c 157 § 3-106. Cf. former RCW sections: (i) RCW 62.01.002; 1955 c 35 § 62.01.002; prior: 1899 c 149 § 2; RRS § 3393. (ii) RCW 62.01.006(5); 1955 c 35 § 62.01.006; prior: 1899 c 149 § 6; RRS § 3397.]

**62A.3-107 Money.** (1) An instrument is payable in money if the medium of exchange in which it is payable is money at the time the instrument is made. An instrument payable in "currency" or "current funds" is payable in money.

(2) A promise or order to pay a sum stated in a foreign currency is for a sum certain in money and, unless a different medium of payment is specified in the instrument, may be satisfied by payment of that number of dollars which the stated foreign currency will purchase at the buying sight rate for that currency on the day on which the instrument is payable or, if payable on demand, on the day of demand. If such an instrument specifies a foreign currency as the medium of payment the instrument is payable in that currency. [1965 ex.s. c 157 § 3-107. Cf. former RCW 62.01.006(5); 1955 c 35 § 62.01.006; prior: 1899 c 149 § 6; RRS § 3397.]

**62A.3-108 Payable on demand.** Instruments payable on demand include those payable at sight or on presentation and those in which no time for payment is stated. [1965 ex.s. c 157 § 3-108. Cf. former RCW 62.01.007; 1955 c 35 § 62.01.007; prior: 1899 c 149 § 7; RRS § 3398.]

**62A.3-109 Definite time.** (1) An instrument is payable at a definite time if by its terms it is payable

(a) on or before a stated date or at a fixed period after a stated date; or

(b) at a fixed period after sight; or

(c) at a definite time subject to any acceleration; or

(d) at a definite time subject to extension at the option of the holder, or to extension to a further definite time at the option of the maker or acceptor or automatically upon or after a specified act or event.

(2) An instrument which by its terms is otherwise payable only upon an act or event uncertain as to time of occurrence is not payable at a definite time even though the act or event has occurred. [1965 ex.s. c 157 § 3-109. Cf. former RCW sections: (i) RCW 62.01.002(3); 1955 c 35 § 62.01.002; prior: 1899 c 149 § 2; RRS § 3393. (ii) RCW 62.01.004; 1955 c 35 § 62.01.004; prior: 1899 c 149 § 4; RRS § 3395. (iii) RCW 62.01.017(3); 1955 c 35 § 62.01.017; prior: 1899 c 149 § 17; RRS § 3408.]

**62A.3-110 Payable to order.** (1) An instrument is payable to order when by its terms it is payable to the order or assigns of any person therein specified with reasonable certainty, or to him or his order, or when it is conspicuously designated on its face as "exchange" or the like and names a payee. It may be payable to the order of

(a) the maker or drawer; or

(b) the drawee; or

(c) a payee who is not maker, drawer or drawee; or

(d) two or more payees together or in the alternative; or

(e) an estate, trust or fund, in which case it is payable to the order of the representative of such estate, trust or fund or his successors; or

(f) an office, or an officer by his title as such in which case it is payable to the principal but the incumbent of the office or his successors may act as if he or they were the holder; or

(g) a partnership or unincorporated association, in which case it is payable to the partnership or association and may be indorsed or transferred by any person thereto authorized.

(2) An instrument not payable to order is not made so payable by such words as "payable upon return of this instrument properly indorsed."

(3) An instrument made payable both to order and to bearer is payable to order unless the bearer words are handwritten or typewritten. [1965 ex.s. c 157 § 3-110. Cf. former RCW 62.01.008; 1955 c 35 § 62.01.008; prior: 1899 c 149 § 8; RRS § 3399.]

**62A.3-111 Payable to bearer.** An instrument is payable to bearer when by its terms it is payable to

(a) bearer or the order of bearer; or

(b) a specified person or bearer; or

(c) "cash" or the order of "cash", or any other indication which does not purport to designate a specific payee. [1965 ex.s. c 157 § 3-111. Cf. former RCW 62.01.009; 1955 c 35 § 62.01.009; prior: 1899 c 149 § 9; RRS § 3400.]

**62A.3-112 Terms and omissions not affecting negotiability.** (1) The negotiability of an instrument is not affected by

(a) the omission of a statement of any consideration or of the place where the instrument is drawn or payable; or

(b) a statement that collateral has been given to secure obligations either on the instrument or otherwise of an obligor on the instrument or that in case of default on those obligations the holder may realize on or dispose of the collateral; or

(c) a promise or power to maintain or protect collateral or to give additional collateral; or

(d) a term authorizing a confession of judgment on the instrument if it is not paid when due; or

(e) a term purporting to waive the benefit of any law intended for the advantage or protection of any obligor; or

(f) a term in a draft providing that the payee by indorsing or cashing it acknowledges full satisfaction of an obligation of the drawer; or

(g) a statement in a draft drawn in a set of parts (RCW

62A.3-801) to the effect that the order is effective only if no other part has been honored.

(2) Nothing in this section shall validate any term which is otherwise illegal. [1965 ex.s. c 157 § 3-112. Cf. former RCW sections: (i) 62.01.005; 1955 c 35 § 62.01.005; prior: 1899 c 149 § 5; RRS § 3396. (ii) RCW 62.01.006; 1955 c 35 § 62.01.006; prior: 1899 c 149 § 6; RRS § 3397.]

**62A.3-113 Seal.** An instrument otherwise negotiable is within this Article even though it is under a seal. [1965 ex.s. c 157 § 3-113. Cf. former RCW 62.01.006(4); 1955 c 35 § 62.01.006; prior: 1899 c 149 § 6; RRS § 3397.]

**62A.3-114 Date, antedating, postdating.** (1) The negotiability of an instrument is not affected by the fact that it is undated, antedated or postdated.

(2) Where an instrument is antedated or postdated the time when it is payable is determined by the stated date if the instrument is payable on demand or at a fixed period after date.

(3) Where the instrument or any signature thereon is dated, the date is presumed to be correct. [1965 ex.s. c 157 § 3-114. Cf. former RCW sections: (i) RCW 62.01.006(1); 1955 c 35 § 62.01.006; prior: 1899 c 149 § 6; RRS § 3397. (ii) RCW 62.01.011; 1955 c 35 § 62.01.011; prior: 1899 c 149 § 11; RRS § 3402. (iii) RCW 62.01.012; 1955 c 35 § 62.01.012; prior: 1899 c 149 § 12; RRS § 3403. (iv) RCW 62.01.017(3); 1955 c 35 § 62.01.017; prior: 1899 c 149 § 17; RRS § 3408.]

**62A.3-115 Incomplete instruments.** (1) When a paper whose contents at the time of signing show that it is intended to become an instrument is signed while still incomplete in any necessary respect it cannot be enforced until completed, but when it is completed in accordance with authority given it is effective as completed.

(2) If the completion is unauthorized the rules as to material alteration apply (RCW 62A.3-407), even though the paper was not delivered by the maker or drawer; but the burden of establishing that any completion is unauthorized is on the party so asserting. [1965 ex.s. c 157 § 3-115. Cf. former RCW sections: (i) RCW 62.01.013; 1955 c 35 § 62.01.013; prior: 1899 c 149 § 13; RRS § 3404. (ii) RCW 62.01.014; 1955 c 35 § 62.01.014; prior: 1899 c 149 § 14; RRS § 3405. (iii) RCW 62.01.015; 1955 c 35 § 62.01.015; prior: 1899 c 149 § 15; RRS § 3406.]

**62A.3-116 Instruments payable to two or more persons.** An instrument payable to the order of two or more persons

(a) if in the alternative is payable to any one of them and may be negotiated, discharged or enforced by any of them who has possession of it;

(b) if not in the alternative is payable to all of them and may be negotiated, discharged or enforced only by all of them. [1965 ex.s. c 157 § 3-116. Cf. former RCW 62.01.041; 1955 c 35 § 62.01.041; prior: 1899 c 149 § 41; RRS § 3432.]

**62A.3-117 Instruments payable with words of description.** An instrument made payable to a named person with the addition of words describing him

(a) as agent or officer of a specified person is payable to his principal but the agent or officer may act as if he were the holder;

(b) as any other fiduciary for a specified person or purpose is payable to the payee and may be negotiated, discharged or enforced by him;

(c) in any other manner is payable to the payee unconditionally and the additional words are without effect on subsequent parties. [1965 ex.s. c 157 § 3-117. Cf. former RCW 62.01.042; 1955 c 35 § 62.01.042; prior: 1899 c 149 § 42; RRS § 3433.]

**62A.3-118 Ambiguous terms and rules of construction.** The following rules apply to every instrument:

(a) Where there is doubt whether the instrument is a draft or a note the holder may treat it as either. A draft drawn on the drawer is effective as a note.

(b) Handwritten terms control typewritten and printed terms, and typewritten control printed.

(c) Words control figures except that if the words are ambiguous figures control.

(d) Unless otherwise specified a provision for interest means interest at the judgment rate at the place of payment from the date of the instrument, or if it is undated from the date of issue.

(e) Unless the instrument otherwise specifies two or more persons who sign as maker, acceptor or drawer or indorser and as a part of the same transaction are jointly and severally liable even though the instrument contains such words as "I promise to pay."

(f) Unless otherwise specified consent to extension authorizes a single extension for not longer than the original period. A consent to extension, expressed in the instrument, is binding on secondary parties and accommodation makers. A holder may not exercise his option

to extend an instrument over the objection of a maker or acceptor or other party who in accordance with RCW 62A.3-604 tenders full payment when the instrument is due. [1965 ex.s. c 157 § 3-118. Cf. former RCW sections: (i) RCW 62.01.017; 1955 c 35 § 62.01.017; prior: 1899 c 149 § 17; RRS § 3408. (ii) RCW 62.01.068; 1955 c 35 § 62.01.068; prior: 1899 c 149 § 68; RRS § 3459. (iii) RCW 62.01.130; 1955 c 35 § 62.01.130; prior: 1899 c 149 § 130; RRS § 3520.]

**62A.3-119 Other writings affecting instrument.** (1) As between the obligor and his immediate obligee or any transferee the terms of an instrument may be modified or affected by any other written agreement executed as a part of the same transaction, except that a holder in due course is not affected by any limitation of his rights arising out of the separate written agreement if he had no notice of the limitation when he took the instrument.

(2) A separate agreement does not affect the negotiability of an instrument. [1965 ex.s. c 157 § 3-119.]

**62A.3-120 Instruments "payable through" bank.** An instrument which states that it is "payable through" a bank or the like designates that bank as a collecting bank to make presentment but does not of itself authorize the bank to pay the instrument. [1965 ex.s. c 157 § 3-120.]

**62A.3-121 Instruments payable at bank.** A note or acceptance which states that it is payable at a bank is not of itself an order or authorization to the bank to pay it. [1965 ex.s. c 157 § 3-121. Cf. former RCW 62.01.087; 1955 c 35 § 62.01.087; prior: 1899 c 149 § 87; RRS § 3477.]

**62A.3-122 Accrual of cause of action.** (1) A cause of action against a maker or an acceptor accrues

(a) in the case of a time instrument on the day after maturity;

(b) in the case of a demand instrument upon its date or, if no date is stated, on the date of issue.

(2) A cause of action against the obligor of a demand or time certificate of deposit accrues upon demand, but demand on a time certificate may not be made until on or after the date of maturity.

(3) A cause of action against a drawer of a draft or an indorser of any instrument accrues upon demand following dishonor of the instrument. Notice of dishonor is a demand.

(4) Unless an instrument provides otherwise, interest runs at the rate provided by law for a judgment

(a) in the case of a maker, acceptor or other primary obligor of a demand instrument, from the date of demand;

(b) in all other cases from the date of accrual of the cause of action. [1965 ex.s. c 157 § 3-122.]

PART 2  
TRANSFER AND NEGOTIATION

**62A.3-201 Transfer: Right to indorsement.** (1) Transfer of an instrument vests in the transferee such rights as the transferor has therein, except that a transferee who has himself been a party to any fraud or illegality affecting the instrument or who as a prior holder had notice of a defense or claim against it cannot improve his position by taking from a later holder in due course.

(2) A transfer of a security interest in an instrument vests the foregoing rights in the transferee to the extent of the interest transferred.

(3) Unless otherwise agreed any transfer for value of an instrument not then payable to bearer gives the transferee the specifically enforceable right to have the unqualified indorsement of the transferor. Negotiation takes effect only when the indorsement is made and until that time there is no presumption that the transferee is the owner. [1965 ex.s. c 157 § 3-201. Cf. former RCW sections: (i) RCW 62.01.027; 1955 c 35 § 62.01.027; prior: 1899 c 149 § 27; RRS § 3418. (ii) RCW 62.01.049; 1955 c 35 § 62.01.049; prior: 1899 c 149 § 49; RRS § 3440. (iii) RCW 62.01.058; 1955 c 35 § 62.01.058; prior: 1899 c 149 § 58; RRS § 3449.]

**62A.3-202 Negotiation.** (1) Negotiation is the transfer of an instrument in such form that the transferee becomes a holder. If the instrument is payable to order it is negotiated by delivery with any necessary indorsement; if payable to bearer it is negotiated by delivery.

(2) An indorsement must be written by or on behalf of the holder and on the instrument or on a paper so firmly affixed thereto as to become a part thereof.

(3) An indorsement is effective for negotiation only when it conveys the entire instrument or any unpaid residue. If it purports to be of less it operates only as a partial assignment.

(4) Words of assignment, condition, waiver, guaranty, limitation or disclaimer of liability and the like accompanying an indorsement do not affect its character as an indorsement. [1965 ex.s. c 157 § 3-202. Cf. former RCW sections: (i) RCW 62.01.030; 1955 c 35 § 62.01.030; prior: 1899 c 149 § 30; RRS § 3421. (ii) RCW 62.01.031; 1955 c 35 § 62.01.031; prior: 1899 c 149 § 31; RRS § 3422. (iii) RCW 62.01.032; 1955 c 35 § 62.01.032; prior: 1899 c 149 § 32; RRS § 3423.]

**62A.3-203 Wrong or misspelled name.** Where an instrument is made payable to a person under a misspelled name or one other than his own he may indorse in that name or his own or both; but signature in both names may be required by a person paying or giving value for the instrument. [1965 ex.s. c 157 § 3-203. Cf. former RCW 62.01.043; 1955 c 35 § 62.01.043; prior: 1899 c 149 § 43; RRS § 3434.]

**62A.3-204 Special indorsement; blank indorsement.** (1) A special indorsement specifies the person to whom or to whose order it makes the instrument payable. Any instrument specially indorsed becomes payable to the

order of the special indorsee and may be further negotiated only by his indorsement.

(2) An indorsement in blank specifies no particular indorsee and may consist of a mere signature. An instrument payable to order and indorsed in blank becomes payable to bearer and may be negotiated by delivery alone until specially indorsed.

(3) The holder may convert a blank indorsement into a special indorsement by writing over the signature of the indorser in blank any contract consistent with the character of the indorsement. [1965 ex.s. c 157 § 3-204. Cf. former RCW sections: (i) RCW 62.01.009(5); 1955 c 35 § 62.01.009; prior: 1899 c 149 § 9; RRS § 3400. (ii) RCW 62.01.033 through 62.01.036; 1955 c 35 §§ 62.01.033 through 62.01.036; prior: 1899 c 149 §§ 33 through 36; RRS §§ 3424 through 3427. (iii) RCW 62.01.040; 1955 c 35 § 62.01.040; prior: 1899 c 149 § 40; RRS § 3431.]

**62A.3-205 Restrictive indorsements.** An indorsement is restrictive which either

(a) is conditional; or

(b) purports to prohibit further transfer of the instrument; or

(c) includes the words "for collection", "for deposit", "pay any bank", or like terms signifying a purpose of deposit or collection; or

(d) otherwise states that it is for the benefit or use of the indorser or of another person. [1965 ex.s. c 157 § 3-205. Cf. former RCW sections: (i) RCW 62.01.036; 1955 c 35 § 62.01.036; prior: 1899 c 149 § 36; RRS § 3427. (ii) RCW 62.01.039; 1955 c 35 § 62.01.039; prior: 1899 c 149 § 39; RRS § 3430.]

**62A.3-206 Effect of restrictive indorsement.** (1) No restrictive indorsement prevents further transfer or negotiation of the instrument.

(2) An intermediary bank, or a payor bank which is not the depositary bank, is neither given notice nor otherwise affected by a restrictive indorsement of any person except the bank's immediate transferor or the person presenting for payment.

(3) Except for an intermediary bank, any transferee under an indorsement which is conditional or includes the words "for collection", "for deposit", "pay any bank", or like terms (subparagraphs (a) and (c) of RCW 62A.3-205) must pay or apply any value given by him for or on the security of the instrument consistently with the indorsement and to the extent that he does so he becomes a holder for value. In addition such transferee is a holder in due course if he otherwise complies with the requirements of RCW 62A.3-302 on what constitutes a holder in due course.

(4) The first taker under an indorsement for the benefit of the indorser or another person (subparagraph (d) of RCW 62A.3-205) must pay or apply any value given by him for or on the security of the instrument consistently with the indorsement and to the extent that he does so he becomes a holder for value. In addition such taker is a holder in due course if he otherwise complies with the requirements of RCW 62A.3-302 on what constitutes a holder in due course. A later holder for

value is neither given notice nor otherwise affected by such restrictive indorsement unless he has knowledge that a fiduciary or other person has negotiated the instrument in any transaction for his own benefit or otherwise in breach of duty (subsection (2) of RCW 62A.3-304). [1965 ex.s. c 157 § 3-206. Cf. former RCW sections: (i) RCW 62.01.036; 1955 c 35 § 62.01.036; prior: 1899 c 149 § 36; RRS § 3427. (ii) RCW 62.01.037; 1955 c 35 § 62.01.037; prior: 1899 c 149 § 37; RRS § 3428. (iii) RCW 62.01.039; 1955 c 35 § 62.01.039; prior: 1899 c 149 § 39; RRS § 3430. (iv) RCW 62.01.047; 1955 c 35 § 62.01.047; prior: 1899 c 149 § 47; RRS § 3438.]

**62A.3-207 Negotiation effective although it may be rescinded.** (1) Negotiation is effective to transfer the instrument although the negotiation is

- (a) made by an infant, a corporation exceeding its powers, or any other person without capacity; or
- (b) obtained by fraud, duress or mistake of any kind; or
- (c) part of an illegal transaction; or
- (d) made in breach of duty.

(2) Except as against a subsequent holder in due course such negotiation is in an appropriate case subject to rescission, the declaration of a constructive trust or any other remedy permitted by law. [1965 ex.s. c 157 § 3-207. Cf. former RCW sections: (i) RCW 62.01.022; 1955 c 35 § 62.01.022; prior: 1899 c 149 § 22; RRS § 3413. (ii) RCW 62.01.058; 1955 c 35 § 62.01.058; prior: 1899 c 149 § 58; RRS § 3449. (iii) RCW 62.01.059; 1955 c 35 § 62.01.059; prior: 1899 c 149 § 59; RRS § 3450.]

**62A.3-208 Reacquisition.** Where an instrument is returned to or reacquired by a prior party he may cancel any indorsement which is not necessary to his title and reissue or further negotiate the instrument, but any intervening party is discharged as against the reacquiring party and subsequent holders not in due course and if his indorsement has been cancelled is discharged as against subsequent holders in due course as well. [1965 ex.s. c 157 § 3-208. Cf. former RCW sections: (i) RCW 62.01.048; 1955 c 35 § 62.01.048; prior: 1899 c 149 § 48; RRS § 3439. (ii) RCW 62.01.050; 1955 c 35 § 62.01.050; prior: 1899 c 149 § 50; RRS § 3441. (iii) RCW 62.01.121; 1955 c 35 § 62.01.121; prior: 1899 c 149 § 121; RRS § 3511.]

### PART 3 RIGHTS OF A HOLDER

**62A.3-301 Rights of a holder.** The holder of an instrument whether or not he is the owner may transfer or negotiate it and, except as otherwise provided in RCW 62A.3-603 on payment or satisfaction, discharge it or enforce payment in his own name. [1965 ex.s. c 157 § 3-301. Cf. former RCW 62.01.051; 1955 c 35 § 62.01.051; prior: 1899 c 149 § 51; RRS § 3442.]

**62A.3-302 Holder in due course.** (1) A holder in due course is a holder who takes the instrument

- (a) for value; and

- (b) in good faith; and

- (c) without notice that it is overdue or has been dishonored or of any defense against or claim to it on the part of any person.

- (2) A payee may be a holder in due course.

- (3) A holder does not become a holder in due course of an instrument:

- (a) by purchase of it at judicial sale or by taking it under legal process; or

- (b) by acquiring it in taking over an estate; or

- (c) by purchasing it as part of a bulk transaction not in regular course of business of the transferor.

- (4) A purchaser of a limited interest can be a holder in due course only to the extent of the interest purchased. [1965 ex.s. c 157 § 3-302. Cf. former RCW sections: (i) RCW 62.01.027; 1955 c 35 § 62.01.027; prior: 1899 c 149 § 27; RRS § 3418. (ii) RCW 62.01.052; 1955 c 35 § 62.01.052; prior: 1899 c 149 § 52; RRS § 3443.]

**62A.3-303 Taking for value.** A holder takes the instrument for value

- (a) to the extent that the agreed consideration has been performed or that he acquires a security interest in or a lien on the instrument otherwise than by legal process; or

- (b) when he takes the instrument in payment of or as security for an antecedent claim against any person whether or not the claim is due; or

- (c) when he gives a negotiable instrument for it or makes an irrevocable commitment to a third person. [1965 ex.s. c 157 § 3-303. Cf. former RCW sections: (i) RCW 62.01.025 through 62.01.027; 1955 c 35 §§ 62.01.025 through 62.01.027; prior: 1899 c 149 §§ 25 through 27; RRS §§ 3416 through 3418. (ii) RCW 62.01.054; 1955 c 35 § 62.01.054; prior: 1899 c 149 § 54; RRS § 3445.]

**62A.3-304 Notice to purchaser.** (1) The purchaser has notice of a claim or defense if

- (a) the instrument is so incomplete, bears such visible evidence of forgery or alteration, or is otherwise so irregular as to call into question its validity, terms or ownership or to create an ambiguity as to the party to pay; or

- (b) the purchaser has notice that the obligation of any party is voidable in whole or in part, or that all parties have been discharged.

- (2) The purchaser has notice of a claim against the instrument when he has knowledge that a fiduciary has negotiated the instrument in payment of or as security for his own debt or in any transaction for his own benefit or otherwise in breach of duty.

- (3) The purchaser has notice that an instrument is overdue if he has reason to know

- (a) that any part of the principal amount is overdue or that there is an uncured default in payment of another instrument of the same series; or

- (b) that acceleration of the instrument has been made; or

- (c) that he is taking a demand instrument after demand has been made or more than a reasonable length of time after its issue. A reasonable time for a check



drawn and payable within the states and territories of the United States and the District of Columbia is presumed to be thirty days.

(4) Knowledge of the following facts does not of itself give the purchaser notice of a defense or claim

(a) that the instrument is antedated or postdated;

(b) that it was issued or negotiated in return for an executory promise or accompanied by a separate agreement, unless the purchaser has notice that a defense or claim has arisen from the terms thereof;

(c) that any party has signed for accommodation;

(d) that an incomplete instrument has been completed, unless the purchaser has notice of any improper completion;

(e) that any person negotiating the instrument is or was a fiduciary;

(f) that there has been default in payment of interest on the instrument or in payment of any other instrument, except one of the same series.

(5) The filing or recording of a document does not of itself constitute notice within the provisions of this Article to a person who would otherwise be a holder in due course.

(6) To be effective notice must be received at such time and in such manner as to give a reasonable opportunity to act on it. [1965 ex.s. c 157 § 3-304. Cf. former RCW sections: (i) RCW 62.01.045, 62.01.052, 62.01.053, 62.01.055, and 62.01.056; 1955 c 35 §§ 62.01.045, 62.01.052, 62.01.053, 62.01.055, and 62.01.056; prior: 1899 c 149 §§ 45, 52, 53, 55, and 56; RRS §§ 3436, 3443, 3444, 3446, and 3447. (ii) RCW 62.01.0195; 1955 c 35 § 62.01.0195; prior: 1927 c 296 § 1; 1925 ex.s. c 54 § 1; RRS § 3410-1.]

**62A.3-305 Rights of a holder in due course.** To the extent that a holder is a holder in due course he takes the instrument free from

(1) all claims to it on the part of any person; and

(2) all defenses of any party to the instrument with whom the holder has not dealt except

(a) infancy, to the extent that it is a defense to a simple contract; and

(b) such other incapacity, or duress, or illegality of the transaction, as renders the obligation of the party a nullity; and

(c) such misrepresentation as has induced the party to sign the instrument with neither knowledge nor reasonable opportunity to obtain knowledge of its character or its essential terms; and

(d) discharge in insolvency proceedings; and

(e) any other discharge of which the holder has notice when he takes the instrument. [1965 ex.s. c 157 § 3-305. Cf. former RCW sections: (i) RCW 62.01.015; 1955 c 35 § 62.01.015; prior: 1899 c 149 § 15; RRS § 3406. (ii) RCW 62.01.016; 1955 c 35 § 62.01.016; prior: 1899 c 149 § 16; RRS § 3407. (iii) RCW 62.01.057; 1955 c 35 § 62.01.057; prior: 1899 c 149 § 57; RRS § 3448.]

**62A.3-306 Rights of one not holder in due course.** Unless he has the rights of a holder in due course any person takes the instrument subject to

(a) all valid claims to it on the part of any person; and

(b) all defenses of any party which would be available in an action on a simple contract; and

(c) the defenses of want or failure of consideration, non-performance of any condition precedent, non-delivery, or delivery for a special purpose (RCW 62A.3-408); and

(d) the defense that he or a person through whom he holds the instrument acquired it by theft, or that payment or satisfaction to such holder would be inconsistent with the terms of a restrictive indorsement. The claim of any third person to the instrument is not otherwise available as a defense to any party liable thereon unless the third person himself defends the action for such party. [1965 ex.s. c 157 § 3-306. Cf. former RCW sections: (i) RCW 62.01.016; 1955 c 35 § 62.01.016; prior: 1899 c 149 § 16; RRS § 3407. (ii) RCW 62.01.028; 1955 c 35 § 62.01.028; prior: 1899 c 149 § 28; RRS § 3419. (iii) RCW 62.01.058; 1955 c 35 § 62.01.058; prior: 1899 c 149 § 58; RRS § 3449. (iv) RCW 62.01.059; 1955 c 35 § 62.01.059; prior: 1899 c 149 § 59; RRS § 3450.]

**62A.3-307 Burden of establishing signatures, defenses and due course.** (1) Unless specifically denied in the pleadings each signature on an instrument is admitted. When the effectiveness of a signature is put in issue

(a) the burden of establishing it is on the party claiming under the signature; but

(b) the signature is presumed to be genuine or authorized except where the action is to enforce the obligation of a purported signer who has died or become incompetent before proof is required.

(2) When signatures are admitted or established, production of the instrument entitles a holder to recover on it unless the defendant establishes a defense.

(3) After it is shown that a defense exists a person claiming the rights of a holder in due course has the burden of establishing that he or some person under whom he claims is in all respects a holder in due course. [1965 ex.s. c 157 § 3-307. Cf. former RCW 62.01.059; 1955 c 35 § 62.01.059; prior: 1899 c 149 § 59; RRS § 3450.]

#### PART 4 LIABILITY OF PARTIES

**62A.3-401 Signature.** (1) No person is liable on an instrument unless his signature appears thereon.

(2) A signature is made by use of any name, including any trade or assumed name, upon an instrument, or by any word or mark used in lieu of a written signature. [1965 ex.s. c 157 § 3-401. Cf. former RCW 62.01.018; 1955 c 35 § 62.01.018; prior: 1899 c 149 § 18; RRS § 3409.]

**62A.3-402 Signature in ambiguous capacity.** Unless the instrument clearly indicates that a signature is made in some other capacity it is an indorsement. [1965 ex.s. c 157 § 3-402. Cf. former RCW sections: (i) RCW 62.01.017(6); 1955 c 149 § 62.01.017; prior: 1899 c 149 §

17; RRS § 3408. (ii) RCW 62.01.063; 1955 c 149 § 62-.01.063; prior: 1899 c 149 § 63; RRS 3454.]

**62A.3-403 Signature by authorized representative.**

(1) A signature may be made by an agent or other representative, and his authority to make it may be established as in other cases of representation. No particular form of appointment is necessary to establish such authority.

(2) An authorized representative who signs his own name to an instrument

(a) is personally obligated if the instrument neither names the person represented nor shows that the representative signed in a representative capacity;

(b) except as otherwise established between the immediate parties, is personally obligated if the instrument names the person represented but does not show that the representative signed in a representative capacity, or if the instrument does not name the person represented but does show that the representative signed in a representative capacity.

(3) Except as otherwise established the name of an organization preceded or followed by the name and office of an authorized individual is a signature made in a representative capacity. [1965 ex.s. c 157 § 3-403. Cf. former RCW sections: RCW 62.01.019 through 62.01.021; 1955 c 35 §§ 62.01.019 through 62.01.021; prior: 1899 c 149 §§ 19 through 21; RRS §§ 3410 through 3412.]

**62A.3-404 Unauthorized signatures.** (1) Any unauthorized signature is wholly inoperative as that of the person whose name is signed unless he ratifies it or is precluded from denying it; but it operates as the signature of the unauthorized signer in favor of any person who in good faith pays the instrument or takes it for value.

(2) Any unauthorized signature may be ratified for all purposes of this Article. Such ratification does not of itself affect any rights of the person ratifying against the actual signer. [1965 ex.s. c 157 § 3-404. Cf. former RCW 62.01.023; 1955 c 35 § 62.01.023; prior: 1899 c 149 § 23; RRS § 3414.]

**62A.3-405 Impostors; signature in name of payee.** (1) An indorsement by any person in the name of a named payee is effective if

(a) an impostor by use of the mails or otherwise has induced the maker or drawer to issue the instrument to him or his confederate in the name of the payee; or

(b) a person signing as or on behalf of a maker or drawer intends the payee to have no interest in the instrument; or

(c) an agent or employee of the maker or drawer has supplied him with the name of the payee intending the latter to have no such interest.

(2) Nothing in this section shall affect the criminal or civil liability of the person so indorsing. [1965 ex.s. c 157 § 3-405. Cf. former RCW 62.01.009(3); 1955 c 35 § 62.01.009; prior: 1899 c 149 § 9; RRS § 3400.]

**62A.3-406 Negligence contributing to alteration or unauthorized signature.** Any person who by his negligence substantially contributes to a material alteration of the instrument or to the making of an unauthorized signature is precluded from asserting the alteration or lack of authority against a holder in due course or against a drawee or other payor who pays the instrument in good faith and in accordance with the reasonable commercial standards of the drawee's or payor's business. [1965 ex.s. c 157 § 3-406.]

**62A.3-407 Alteration.** (1) Any alteration of an instrument is material which changes the contract of any party thereto in any respect, including any such change in

(a) the number or relations of the parties; or

(b) an incomplete instrument, by completing it otherwise than as authorized; or

(c) the writing as signed, by adding to it or by removing any part of it.

(2) As against any person other than a subsequent holder in due course

(a) alteration by the holder which is both fraudulent and material discharges any party whose contract is thereby changed unless that party assents or is precluded from asserting the defense;

(b) no other alteration discharges any party and the instrument may be enforced according to its original tenor, or as to incomplete instruments according to the authority given.

(3) A subsequent holder in due course may in all cases enforce the instrument according to its original tenor, and when an incomplete instrument has been completed, he may enforce it as completed. [1965 ex.s. c 157 § 3-407. Cf. former RCW sections: (i) RCW 62.01.014; 1955 c 35 § 62.01.014; prior: 1899 c 149 § 14; RRS § 3405. (ii) RCW 62.01.015; 1955 c 35 § 62.01.015; prior: 1899 c 149 § 15; RRS § 3406. (iii) RCW 62.01.124; 1955 c 35 § 62.01.124; prior: 1899 c 149 § 124; RRS § 3514. (iv) RCW 62.01.125; 1955 c 35 § 62.01.125; prior: 1899 c 149 § 125; RRS § 3515.]

**62A.3-408 Consideration.** Want or failure of consideration is a defense as against any person not having the rights of a holder in due course (RCW 62A.3-305), except that no consideration is necessary for an instrument or obligation thereon given in payment of or as security for an antecedent obligation of any kind. Nothing in this section shall be taken to displace any statute outside this Title under which a promise is enforceable notwithstanding lack or failure of consideration. Partial failure of consideration is a defense pro tanto whether or not the failure is in an ascertained or liquidated amount. [1965 ex.s. c 157 § 3-408. Cf. former RCW sections: (i) RCW 62.01.024; 1955 c 35 § 62.01.024; prior: 1899 c 149 § 24; RRS § 3415. (ii) RCW 62.01.025; 1955 c 35 § 62.01.025; prior: 1899 c 149 § 25; RRS § 3416. (iii) RCW 62.01.028; 1955 c 35 § 62.01.028; prior: 1899 c 149 § 28; RRS § 3419.]

**62A.3-409 Draft not an assignment.** (1) A check or other draft does not of itself operate as an assignment of any funds in the hands of the drawee available for its payment, and the drawee is not liable on the instrument until he accepts it.

(2) Nothing in this section shall affect any liability in contract, tort or otherwise arising from any letter of credit or other obligation or representation which is not an acceptance. [1965 ex.s. c 157 § 3-409. Cf. former RCW sections: (i) RCW 62.01.127; 1955 c 35 § 62.01.127; prior: 1899 c 149 § 127; RRS § 3517. (ii) RCW 62.01.189; 1955 c 35 § 62.01.189; prior: 1899 c 149 § 189; RRS § 3579.]

**62A.3-410 Definition and operation of acceptance.** (1) Acceptance is the drawee's signed engagement to honor the draft as presented. It must be written on the draft, and may consist of his signature alone. It becomes operative when completed by delivery or notification.

(2) A draft may be accepted although it has not been signed by the drawer or is otherwise incomplete or is overdue or has been dishonored.

(3) Where the draft is payable at a fixed period after sight and the acceptor fails to date his acceptance the holder may complete it by supplying a date in good faith. [1965 ex.s. c 157 § 3-410. Cf. former RCW sections: (i) RCW 62.01.013; 1955 c 35 § 62.01.013; prior: 1899 c 149 § 13; RRS § 3404. (ii) RCW 62.01.132 through 62.01.138; 1955 c 35 §§ 62.01.132 through 62.01.138; prior: 1899 c 149 §§ 132 through 138; RRS §§ 3522 through 3528. (iii) RCW 62.01.161 through 62.01.170; 1955 c 35 §§ 62.01.161 through 62.01.170; prior: 1899 c 149 §§ 161 through 170; RRS §§ 3551 through 3560. (iv) RCW 62.01.191; 1955 c 35 § 62.01.191; prior: 1899 c 149 § 191; RRS § 3581.]

**62A.3-411 Certification of a check.** (1) Certification of a check is acceptance. Where a holder procures certification the drawer and all prior indorsers are discharged.

(2) Unless otherwise agreed a bank has no obligation to certify a check.

(3) A bank may certify a check before returning it for lack of proper indorsement. If it does so the drawer is discharged. [1965 ex.s. c 157 § 3-411. Cf. former RCW sections: (i) RCW 62.01.187; 1955 c 35 § 62.01.187; prior: 1899 c 149 § 187; RRS § 3577. (ii) RCW 62.01.188; 1955 c 35 § 62.01.188; prior: 1899 c 149 § 188; RRS § 3578.]

**62A.3-412 Acceptance varying draft.** (1) Where the drawee's proffered acceptance in any manner varies the draft as presented the holder may refuse the acceptance and treat the draft as dishonored in which case the drawee is entitled to have his acceptance cancelled.

(2) The terms of the draft are not varied by an acceptance to pay at any particular bank or place in the United States, unless the acceptance states that the draft is to be paid only at such bank or place.

(3) Where the holder assents to an acceptance varying the terms of the draft each drawer and indorser who

does not affirmatively assent is discharged. [1965 ex.s. c 157 § 3-412. Cf. former RCW sections: RCW 62.01.139 through 62.01.142; 1955 c 35 §§ 62.01.139 through 62.01.142; prior: 1899 c 149 §§ 139 through 142; RRS §§ 3529 through 3532.]

**62A.3-413 Contract of maker, drawer and acceptor.** (1) The maker or acceptor engages that he will pay the instrument according to its tenor at the time of his engagement or as completed pursuant to RCW 62A.3-115 on incomplete instruments.

(2) The drawer engages that upon dishonor of the draft and any necessary notice of dishonor or protest he will pay the amount of the draft to the holder or to any indorser who takes it up. The drawer may disclaim this liability by drawing without recourse.

(3) By making, drawing or accepting the party admits as against all subsequent parties including the drawee the existence of the payee and his then capacity to indorse. [1965 ex.s. c 157 § 3-413. Cf. former RCW sections: RCW 62.01.060 through 62.01.062; 1955 c 35 §§ 62.01.060 through 62.01.062; prior: 1899 c 149 §§ 60 through 62; RRS §§ 3451 through 3453.]

**62A.3-414 Contract of indorser; order of liability.** (1) Unless the indorsement otherwise specifies (as by such words as "without recourse") every indorser engages that upon dishonor and any necessary notice of dishonor and protest he will pay the instrument according to its tenor at the time of his indorsement to the holder or to any subsequent indorser who takes it up, even though the indorser who takes it up was not obligated to do so.

(2) Unless they otherwise agree indorsers are liable to one another in the order in which they indorse, which is presumed to be the order in which their signatures appear on the instrument. [1965 ex.s. c 157 § 3-414. Cf. former RCW sections: (i) RCW 62.01.038; 1955 c 35 § 62.01.038; prior: 1899 c 149 § 38; RRS § 3429. (ii) RCW 62.01.044; 1955 c 35 § 62.01.044; prior: 1899 c 149 § 44; RRS § 3435. (iii) RCW 62.01.066 through 62.01.068; 1955 c 35 §§ 62.01.066 through 62.01.068; prior: 1899 c 149 §§ 66 through 68; RRS §§ 3457 through 3459.]

**62A.3-415 Contract of accommodation party.** (1) An accommodation party is one who signs the instrument in any capacity for the purpose of lending his name to another party to it.

(2) When the instrument has been taken for value before it is due the accommodation party is liable in the capacity in which he has signed even though the taker knows of the accommodation.

(3) As against a holder in due course and without notice of the accommodation oral proof of the accommodation is not admissible to give the accommodation party the benefit of discharges dependent on his character as such. In other cases the accommodation character may be shown by oral proof.

(4) An indorsement which shows that it is not in the chain of title is notice of its accommodation character.

(5) An accommodation party is not liable to the party accommodated, and if he pays the instrument has a right of recourse on the instrument against such party. [1965 ex.s. c 157 § 3-415. Cf. former RCW sections: (i) RCW 62.01.028; 1955 c 35 § 62.01.028; prior: 1899 c 149 § 28; RRS § 3419. (ii) RCW 62.01.029; 1955 c 35 § 62.01.029; prior: 1899 c 149 § 29; RRS § 3420. (iii) RCW 62.01.064; 1955 c 35 § 62.01.064; prior: 1899 c 149 § 64; RRS § 3455.]

**62A.3-416 Contract of guarantor.** (1) "Payment guaranteed" or equivalent words added to a signature mean that the signer engages that if the instrument is not paid when due he will pay it according to its tenor without resort by the holder to any other party.

(2) "Collection guaranteed" or equivalent words added to a signature mean that the signer engages that if the instrument is not paid when due he will pay it according to its tenor, but only after the holder has reduced his claim against the maker or acceptor to judgment and execution has been returned unsatisfied, or after the maker or acceptor has become insolvent or it is otherwise apparent that it is useless to proceed against him.

(3) Words of guaranty which do not otherwise specify guarantee payment.

(4) No words of guaranty added to the signature of a sole maker or acceptor affect his liability on the instrument. Such words added to the signature of one of two or more makers or acceptors create a presumption that the signature is for the accommodation of the others.

(5) When words of guaranty are used presentment, notice of dishonor and protest are not necessary to charge the user.

(6) Any guaranty written on the instrument is enforceable notwithstanding any statute of frauds. [1965 ex.s. c 157 § 3-416.]

**62A.3-417 Warranties on presentment and transfer.**

(1) Any person who obtains payment or acceptance and any prior transferor warrants to a person who in good faith pays or accepts that

(a) he has a good title to the instrument or is authorized to obtain payment or acceptance on behalf of one who has a good title; and

(b) he has no knowledge that the signature of the maker or drawer is unauthorized, except that this warranty is not given by a holder in due course acting in good faith

(i) to a maker with respect to the maker's own signature; or

(ii) to a drawer with respect to the drawer's own signature, whether or not the drawer is also the drawee; or

(iii) to an acceptor of a draft if the holder in due course took the draft after the acceptance or obtained the acceptance without knowledge that the drawer's signature was unauthorized; and

(c) the instrument has not been materially altered, except that this warranty is not given by a holder in due course acting in good faith

(i) to the maker of a note; or

(ii) to the drawer of a draft whether or not the drawer is also the drawee; or

(iii) to the acceptor of a draft with respect to an alteration made prior to the acceptance if the holder in due course took the draft after the acceptance, even though the acceptance provided "payable as originally drawn" or equivalent terms; or

(iv) to the acceptor of a draft with respect to an alteration made after the acceptance.

(2) Any person who transfers an instrument and receives consideration warrants to his transferee and if the transfer is by indorsement to any subsequent holder who takes the instrument in good faith that

(a) he has a good title to the instrument or is authorized to obtain payment or acceptance on behalf of one who has a good title and the transfer is otherwise rightful; and

(b) all signatures are genuine or authorized; and

(c) the instrument has not been materially altered; and

(d) no defense of any party is good against him; and

(e) he has no knowledge of any insolvency proceeding instituted with respect to the maker or acceptor or the drawer of an unaccepted instrument.

(3) By transferring "without recourse" the transferor limits the obligation stated in subsection (2) (d) to a warranty that he has no knowledge of such a defense.

(4) A selling agent or broker who does not disclose the fact that he is acting only as such gives the warranties provided in this section, but if he makes such disclosure warrants only his good faith and authority. [1965 ex.s. c 157 § 3-417. Cf. former RCW sections: (i) RCW 62.01.065; 1955 c 35 § 62.01.065; prior: 1899 c 149 § 65; RRS § 3456. (ii) RCW 62.01.066; 1955 c 35 § 62.01.066; prior: 1899 c 149 § 66; RRS § 3457. (iii) RCW 62.01.069; 1955 c 35 § 62.01.069; prior: 1899 c 149 § 69; RRS § 3460.]

**62A.3-418 Finality of payment or acceptance.** Except for recovery of bank payments as provided in the Article on Bank Deposits and Collections (Article 4) and except for liability for breach of warranty on presentment under the preceding section, payment or acceptance of any instrument is final in favor of a holder in due course, or a person who has in good faith changed his position in reliance on the payment. [1965 ex.s. c 157 § 3-418. Cf. former RCW 62.01.062; 1955 c 35 § 62.01.062; prior: 1899 c 149 § 62; RRS § 3453.]

**62A.3-419 Conversion of instrument; innocent representative.** (1) An instrument is converted when

(a) a drawee to whom it is delivered for acceptance refuses to return it on demand; or

(b) any person to whom it is delivered for payment refuses on demand either to pay or to return it; or

(c) it is paid on a forged indorsement.

(2) In an action against a drawee under subsection (1) the measure of the drawee's liability is the face amount of the instrument. In any other action under subsection (1) the measure of liability is presumed to be the face amount of the instrument.

(3) Subject to the provisions of this Title concerning restrictive indorsements a representative, including a depositary or collecting bank, who has in good faith and in accordance with the reasonable commercial standards applicable to the business of such representative dealt with an instrument or its proceeds on behalf of one who was not the true owner is not liable in conversion or otherwise to the true owner beyond the amount of any proceeds remaining in his hands.

(4) An intermediary bank or payor bank which is not a depositary bank is not liable in conversion solely by reason of the fact that proceeds of an item indorsed restrictively (RCW 62A.3-205 and RCW 62A.3-206) are not paid or applied consistently with the restrictive indorsement of an indorser other than its immediate transferor. [1965 ex.s. c 157 § 3-419. Cf. former RCW 62.01.137; 1955 c 35 § 62.01.137; prior: 1899 c 149 § 137; RRS § 3527.]

## PART 5 PRESENTMENT, NOTICE OF DISHONOR AND PROTEST

**62A.3-501 When presentment, notice of dishonor, and protest necessary or permissible.** (1) Unless excused (RCW 62A.3-511) presentment is necessary to charge secondary parties as follows:

(a) presentment for acceptance is necessary to charge the drawer and indorsers of a draft where the draft so provides, or is payable elsewhere than at the residence or place of business of the drawee, or its date of payment depends upon such presentment. The holder may at his option present for acceptance any other draft payable at a stated date;

(b) presentment for payment is necessary to charge any indorser;

(c) in the case of any drawer, the acceptor of a draft payable at a bank or the maker of a note payable at a bank, presentment for payment is necessary, but failure to make presentment discharges such drawer, acceptor or maker only as stated in RCW 62A.3-502(1)(b).

(2) Unless excused (RCW 62A.3-511)

(a) notice of any dishonor is necessary to charge any indorser;

(b) in the case of any drawer, the acceptor of a draft payable at a bank or the maker of a note payable at a bank, notice of any dishonor is necessary, but failure to give such notice discharges such drawer, acceptor or maker only as stated in RCW 62A.3-502(1)(b).

(3) Unless excused (RCW 62A.3-511) protest of any dishonor is necessary to charge the drawer and indorsers of any draft which on its face appears to be drawn or payable outside of the states and territories of the United States and the District of Columbia. The holder may at his option make protest of any dishonor of any other instrument and in the case of a foreign draft may on insolvency of the acceptor before maturity make protest for better security.

(4) Notwithstanding any provision of this section, neither presentment nor notice of dishonor nor protest is necessary to charge an indorser who has indorsed an instrument after maturity. [1965 ex.s. c 157 § 3-501. Cf.

former RCW sections: RCW 62.01.070, 62.01.089, 62.01.118, 62.01.129, 62.01.143, 62.01.144, 62.01.150, 62.01.151, 62.01.152, 62.01.157, 62.01.158, and 62.01.186; 1955 c 35 §§ 62.01.070, 62.01.089, 62.01.118, 62.01.129, 62.01.143, 62.01.144, 62.01.150, 62.01.151, 62.01.152, 62.01.157, 62.01.158, and 62.01.186; prior: 1899 c 149 §§ 70, 89, 118, 129, 143, 144, 150, 151, 152, 157, 158, and 186; RRS §§ 3461, 3479, 3508, 3519, 3533, 3534, 3540, 3541, 3542, 3547, 3548, and 3576.]

**62A.3-502 Unexcused delay; discharge.** (1) Where without excuse any necessary presentment or notice of dishonor is delayed beyond the time when it is due

(a) any indorser is discharged; and

(b) any drawer or the acceptor of a draft payable at a bank or the maker of a note payable at a bank who because the drawee or payor bank becomes insolvent during the delay is deprived of funds maintained with the drawee or payor bank to cover the instrument may discharge his liability by written assignment to the holder of his rights against the drawee or payor bank in respect of such funds, but such drawer, acceptor or maker is not otherwise discharged.

(2) Where without excuse a necessary protest is delayed beyond the time when it is due any drawer or indorser is discharged. [1965 ex.s. c 157 § 3-502. Cf. former RCW sections: RCW 62.01.007, 62.01.070, 62.01.089, 62.01.144, 62.01.150, 62.01.152, and 62.01.186; 1955 c 35 §§ 62.01.007, 62.01.070, 62.01.089, 62.01.144, 62.01.150, 62.01.152, and 62.01.186; prior: 1899 c 149 §§ 7, 70, 89, 144, 150, 152, and 186; RRS §§ 3398, 3461, 3479, 3534, 3540, 3542, and 3576.]

**62A.3-503 Time of presentment.** (1) Unless a different time is expressed in the instrument the time for any presentment is determined as follows:

(a) where an instrument is payable at or a fixed period after a stated date any presentment for acceptance must be made on or before the date it is payable;

(b) where an instrument is payable after sight it must either be presented for acceptance or negotiated within a reasonable time after date or issue whichever is later;

(c) where an instrument shows the date on which it is payable presentment for payment is due on that date;

(d) where an instrument is accelerated presentment for payment is due within a reasonable time after the acceleration;

(e) with respect to the liability of any secondary party presentment for acceptance or payment of any other instrument is due within a reasonable time after such party becomes liable thereon.

(2) A reasonable time for presentment is determined by the nature of the instrument, any usage of banking or trade and the facts of the particular case. In the case of an uncertified check which is drawn and payable within the United States and which is not a draft drawn by a bank the following are presumed to be reasonable periods within which to present for payment or to initiate bank collection:

(a) with respect to the liability of the drawer, thirty days after date or issue whichever is later; and

(b) with respect to the liability of an endorser, seven days after his indorsement.

(3) Where any presentment is due on a day which is not a full business day for either the person making presentment or the party to pay or accept, presentment is due on the next following day which is a full business day for both parties.

(4) Presentment to be sufficient must be made at a reasonable hour, and if at a bank during its banking day. [1965 ex.s. c 157 § 3-503. Cf. former RCW sections: (i) RCW 62.01.071, 62.01.072, 62.01.075, 62.01.086, 62.01.144, 62.01.145, 62.01.146, 62.01.186, and 62.01.193; 1955 c 35 §§ 62.01.071, 62.01.072, 62.01.075, 62.01.086, 62.01.144, 62.01.145, 62.01.146, 62.01.186, and 62.01.193; prior: 1899 c 149 §§ 71, 72, 75, 86, 144, 145, 146, 186, and 193; RRS §§ 3462, 3463, 3466, 3476, 3534, 3535, 3536, 3576, and 3583. (ii) RCW 62.01.085; 1955 c 35 § 62.01.085; prior: 1915 c 173 § 1; 1899 c 149 § 85; RRS § 3475 1/2.]

**62A.3-504 How presentment made.** (1) Presentment is a demand for acceptance or payment made upon the maker, acceptor, drawee or other payor by or on behalf of the holder.

(2) Presentment may be made

(a) by mail, in which event the time of presentment is determined by the time of receipt of the mail; or

(b) through a clearing house; or

(c) at the place of acceptance or payment specified in the instrument or if there be none at the place of business or residence of the party to accept or pay. If neither the party to accept or pay nor anyone authorized to act for him is present or accessible at such place presentment is excused.

(3) It may be made

(a) to any one of two or more makers, acceptors, drawees or other payors; or

(b) to any person who has authority to make or refuse the acceptance or payment.

(4) A draft accepted or a note made payable at a bank in the United States must be presented at such bank.

(5) In the cases described in RCW 62A.4-210 presentment may be made in the manner and with the result stated in that section. [1965 ex.s. c 157 § 3-504. Cf. former RCW sections: RCW 62.01.072, 62.01.073, 62.01.077, 62.01.078, and 62.01.145; 1955 c 35 §§ 62.01.072, 62.01.073, 62.01.077, 62.01.078, and 62.01.145; prior: 1899 c 149 §§ 72, 73, 77, 78, and 145; RRS §§ 3463, 3464, 3468, 3469, and 3535.]

**62A.3-505 Rights of party to whom presentment is made.** (1) The party to whom presentment is made may without dishonor require

(a) exhibition of the instrument; and

(b) reasonable identification of the person making presentment and evidence of his authority to make it if made for another; and

(c) that the instrument be produced for acceptance or payment at a place specified in it, or if there be none at any place reasonable in the circumstances; and

(d) a signed receipt on the instrument for any partial or full payment and its surrender upon full payment.

(2) Failure to comply with any such requirement invalidates the presentment but the person presenting has a reasonable time in which to comply and the time for acceptance or payment runs from the time of compliance. [1965 ex.s. c 157 § 3-505. Cf. former RCW sections: (i) RCW 62.01.072(3); 1955 c 35 § 62.01.072; prior: 1899 c 149 § 72; RRS § 3463. (ii) RCW 62.01.074; 1955 c 35 § 62.01.074; prior: 1899 c 149 § 74; RRS § 3465. (iii) RCW 62.01.133; 1955 c 35 § 62.01.133; prior: 1899 c 149 § 133; RRS § 3523.]

**62A.3-506 Time allowed for acceptance or payment.**

(1) Acceptance may be deferred without dishonor until the close of the next business day following presentment. The holder may also in a good faith effort to obtain acceptance and without either dishonor of the instrument or discharge of secondary parties allow postponement of acceptance for an additional business day.

(2) Except as a longer time is allowed in the case of documentary drafts drawn under a letter of credit, and unless an earlier time is agreed to by the party to pay, payment of an instrument may be deferred without dishonor pending reasonable examination to determine whether it is properly payable, but payment must be made in any event before the close of business on the day of presentment. [1965 ex.s. c 157 § 3-506. Cf. former RCW 62.01.136; 1955 c 35 § 62.01.136; prior: 1899 c 149 § 136; RRS § 3526.]

**62A.3-507 Dishonor; holder's right of recourse; term allowing re-presentment.** (1) An instrument is dishonored when

(a) a necessary or optional presentment is duly made and due acceptance or payment is refused or cannot be obtained within the prescribed time or in case of bank collections the instrument is seasonably returned by the midnight deadline (RCW 62A.4-301); or

(b) presentment is excused and the instrument is not duly accepted or paid.

(2) Subject to any necessary notice of dishonor and protest, the holder has upon dishonor an immediate right of recourse against the drawers and indorsers.

(3) Return of an instrument for lack of proper indorsement is not dishonor.

(4) A term in a draft or an indorsement thereof allowing a stated time for re-presentment in the event of any dishonor of the draft by nonacceptance if a time draft or by nonpayment if a sight draft gives the holder as against any secondary party bound by the term an option to waive the dishonor without affecting the liability of the secondary party and he may present again up to the end of the stated time. [1965 ex.s. c 157 § 3-507. Cf. former RCW sections: RCW 62.01.083, 62.01.084, 62.01.149, and 62.01.151; 1955 c 35 §§ 62.01.083, 62.01.084, 62.01.149, and 62.01.151; prior: 1899 c 149 §§ 83, 84, 149, and 151; RRS §§ 3474, 3475, 3539, and 3541.]

**62A.3-508 Notice of dishonor.** (1) Notice of dishonor may be given to any person who may be liable on the instrument by or on behalf of the holder or any party who has himself received notice, or any other party who can be compelled to pay the instrument. In addition an agent or bank in whose hands the instrument is dishonored may give notice to his principal or customer or to another agent or bank from which the instrument was received.

(2) Any necessary notice must be given by a bank before its midnight deadline and by any other person before midnight of the third business day after dishonor or receipt of notice of dishonor.

(3) Notice may be given in any reasonable manner. It may be oral or written and in any terms which identify the instrument and state that it has been dishonored. A misdescription which does not mislead the party notified does not vitiate the notice. Sending the instrument bearing a stamp, ticket or writing stating that acceptance or payment has been refused or sending a notice of debit with respect to the instrument is sufficient.

(4) Written notice is given when sent although it is not received.

(5) Notice to one partner is notice to each although the firm has been dissolved.

(6) When any party is in insolvency proceedings instituted after the issue of the instrument notice may be given either to the party or to the representative of his estate.

(7) When any party is dead or incompetent notice may be sent to his last known address or given to his personal representative.

(8) Notice operates for the benefit of all parties who have rights on the instrument against the party notified. [1965 ex.s. c 157 § 3-508. Cf. former RCW sections: RCW 62.01.090 through 62.01.108; 1955 c 35 §§ 62.01-.090 through 62.01.108; prior: 1899 c 149 §§ 90 through 108; RRS §§ 3480 through 3498.]

**62A.3-509 Protest; noting for protest.** (1) A protest is a certificate of dishonor made under the hand and seal of a United States consul or vice consul or a notary public or other person authorized to certify dishonor by the law of the place where dishonor occurs. It may be made upon information satisfactory to such person.

(2) The protest must identify the instrument and certify either that due presentment has been made or the reason why it is excused and that the instrument has been dishonored by nonacceptance or nonpayment.

(3) The protest may also certify that notice of dishonor has been given to all parties or to specified parties.

(4) Subject to subsection (5) any necessary protest is due by the time that notice of dishonor is due.

(5) If, before protest is due, an instrument has been noted for protest by the officer to make protest, the protest may be made at any time thereafter as of the date of the noting. [1965 ex.s. c 157 § 3-509. Cf. former RCW sections: (i) RCW 62.01.153 through 62.01.156; 1955 c 35 §§ 62.01.153 through 62.01.156; prior: 1899 c 149 §§ 153 through 156; RRS §§ 3543 through 3546. (ii) RCW 62.01.158; 1955 c 35 § 62.01.158; prior: 1899 c

149 § 158; RRS § 3548. (iii) RCW 62.01.160; 1955 c 35 § 62.01.160; prior: 1899 c 149 § 160; RRS § 3550.]

**62A.3-510 Evidence of dishonor and notice of dishonor.** The following are admissible as evidence and create a presumption of dishonor and of any notice of dishonor therein shown:

(a) a document regular in form as provided in the preceding section which purports to be a protest;

(b) the purported stamp or writing of the drawee, payor bank or presenting bank on the instrument or accompanying it stating that acceptance or payment has been refused for reasons consistent with dishonor;

(c) any book or record of the drawee, payor bank, or any collecting bank kept in the usual course of business which shows dishonor, even though there is no evidence of who made the entry. [1965 ex.s. c 157 § 3-510.]

**62A.3-511 Waived or excused presentment, protest or notice of dishonor or delay therein.** (1) Delay in presentment, protest or notice of dishonor is excused when the party is without notice that it is due or when the delay is caused by circumstances beyond his control and he exercises reasonable diligence after the cause of the delay ceases to operate.

(2) Presentment or notice or protest as the case may be is entirely excused when

(a) the party to be charged has waived it expressly or by implication either before or after it is due; or

(b) such party has himself dishonored the instrument or has countermanded payment or otherwise has no reason to expect or right to require that the instrument be accepted or paid; or

(c) by reasonable diligence the presentment or protest cannot be made or the notice given.

(3) Presentment is also entirely excused when

(a) the maker, acceptor or drawee of any instrument except a documentary draft is dead or in insolvency proceedings instituted after the issue of the instrument; or

(b) acceptance or payment is refused but not for want of proper presentment.

(4) Where a draft has been dishonored by nonacceptance a later presentment for payment and any notice of dishonor and protest for nonpayment are excused unless in the meantime the instrument has been accepted.

(5) A waiver of protest is also a waiver of presentment and of notice of dishonor even though protest is not required.

(6) Where a waiver of presentment or notice or protest is embodied in the instrument itself it is binding upon all parties; but where it is written above the signature of an indorser it binds him only. [1965 ex.s. c 157 § 3-511. Cf. former RCW sections: (i) RCW 62.01-.076; 1955 c 35 § 62.01.076; prior: 1899 c 149 § 76; RRS § 3467. (ii) RCW 62.01.079 through 62.01.082; 1955 c 35 §§ 62.01.079 through 62.01.082; prior: 1899 c 149 §§ 79 through 82; RRS §§ 3470 through 3473. (iii) RCW 62.01.109 through 62.01.116; 1955 c 35 §§ 62.01-.109 through 62.01.116; prior: 1899 c 149 §§ 109



through 116; RRS §§ 3499 through 3506. (iv) RCW 62.01.130, 62.01.147, 62.01.148, 62.01.150, 62.01.151, and 62.01.159; 1955 c 35 §§ 62.01.130, 62.01.147, 62.01.148, 62.01.150, 62.01.151, and 62.01.159; prior: 1899 c 149 §§ 130, 147, 148, 150, 151, and 159; RRS §§ 3520, 3537, 3538, 3540, 3541, and 3549.]

**62A.3-515 Checks dishonored by nonacceptance or nonpayment; liability for interest; rate; collection costs and attorneys fees.** Whenever a check as defined in RCW 62A.3-104 has been dishonored by nonacceptance or nonpayment and has not been paid within fifteen days and after the holder of such check sends such notice of dishonor as provided by RCW 62A.3-520 to the drawer at his last known address, then if the instrument does not provide for the payment of interest, or collection costs and attorneys fees, the drawer of such instrument shall also be liable for payment of interest at the rate of twelve percent per annum from the date of dishonor and cost of collection not to exceed twenty dollars or the face amount of the check, whichever is the lesser. In addition, in the event of court action on the check the court, after such notice and the expiration of said fifteen days, shall award a reasonable attorneys fee as part of the damages payable to the holder of the check. This section shall not apply to any instrument which has been dishonored by reason of any justifiable stop payment order. [1969 c 62 § 1; 1967 ex.s. c 23 § 1.]

**Savings—Severability—1967 ex.s. c 23:** See note following RCW 19.52.005.

**62A.3-520 Statutory form for notice of dishonor.** The notice of dishonor shall be sent by certified mail to the drawer at his last known address, and said notice shall be substantially in the following form:

#### NOTICE OF DISHONOR OF CHECK

A check drawn by you and made payable by you to \_\_\_\_\_ in the amount of \_\_\_\_\_ has not been accepted for payment by \_\_\_\_\_, which is the drawee bank designated on your check. This check is dated \_\_\_\_\_, and it is numbered, No. \_\_\_\_\_.

You are CAUTIONED that unless you pay the amount of this check within fifteen days after the date this letter is postmarked, you may very well have to pay the following additional amounts:

(1) costs of collecting the amount of the check, including an attorney's fee which will be set by the court; and

(2) interest on the amount of the check which shall accrue at the rate of twelve percent per annum from the date of dishonor.

You are advised to make your payment to \_\_\_\_\_ at the following address: \_\_\_\_\_ [1969 c 62 § 2.]

**62A.3-525 Consequences for failing to comply with requirements.** No interest, collection costs and attorneys' fees shall be recovered on any dishonored check under the provisions of RCW 62A.3-515 where the holder of such check or any agent, employee or assign of the holder has demanded:

(1) interest or collection costs in excess of that provided by RCW 62A.3-515; or

(2) interest or collection costs prior to the expiration of fifteen days after the certified mailing of notice of dishonor, as provided by RCW 62A.3-515 and 62A.3-520; or

(3) attorneys' fees either without having such fees set by the court, or prior to the expiration of fifteen days after the certified mailing of notice of dishonor, as provided by RCW 62A.3-515 and 62A.3-520. [1969 c 62 § 3.]

#### PART 6 DISCHARGE

**62A.3-601 Discharge of parties.** (1) The extent of the discharge of any party from liability on an instrument is governed by the sections on

(a) payment or satisfaction (RCW 62A.3-603); or

(b) tender of payment (RCW 62A.3-604); or

(c) cancellation or renunciation (RCW 62A.3-605); or

(d) impairment of right of recourse or of collateral (RCW 62A.3-606); or

(e) reacquisition of the instrument by a prior party (RCW 62A.3-208); or

(f) fraudulent and material alteration (RCW 62A.3-407); or

(g) certification of a check (RCW 62A.3-411); or

(h) acceptance varying a draft (RCW 62A.3-412); or

(i) unexcused delay in presentment or notice of dishonor or protest (RCW 62A.3-502).

(2) Any party is also discharged from his liability on an instrument to another party by any other act or agreement with such party which would discharge his simple contract for the payment of money.

(3) The liability of all parties is discharged when any party who has himself no right of action or recourse on the instrument

(a) reacquires the instrument in his own right; or

(b) is discharged under any provision of this Article, except as otherwise provided with respect to discharge for impairment of recourse or of collateral (RCW 62A.3-606). [1965 ex.s. c 157 § 3-601. Cf. former RCW sections: RCW 62.01.119 through 62.01.121; 1955 c 35 §§ 62.01.119 through 62.01.121; prior: 1899 c 149 §§ 119 through 121; RRS §§ 3509 through 3511.]

**62A.3-602 Effect of discharge against holder in due course.** No discharge of any party provided by this Article is effective against a subsequent holder in due course unless he has notice thereof when he takes the instrument. [1965 ex.s. c 157 § 3-602. Cf. former RCW 62.01.122; 1955 c 35 § 62.01.122; prior: 1899 c 149 § 122; RRS § 3512.]

**62A.3-603 Payment or satisfaction.** (1) The liability of any party is discharged to the extent of his payment or satisfaction to the holder even though it is made with knowledge of a claim of another person to the instrument unless prior to such payment or satisfaction the person making the claim either supplies indemnity

deemed adequate by the party seeking the discharge or enjoins payment or satisfaction by order of a court of competent jurisdiction in an action in which the adverse claimant and the holder are parties. This subsection does not, however, result in the discharge of the liability

(a) of a party who in bad faith pays or satisfies a holder who acquired the instrument by theft or who (unless having the rights of a holder in due course) holds through one who so acquired it; or

(b) of a party (other than an intermediary bank or a payor bank which is not a depository bank) who pays or satisfies the holder of an instrument which has been restrictively indorsed in a manner not consistent with the terms of such restrictive indorsement.

(2) Payment or satisfaction may be made with the consent of the holder by any person including a stranger to the instrument. Surrender of the instrument to such a person gives him the rights of a transferee (RCW 62A.3-201). [1965 ex.s. c 157 § 3-603. Cf. former RCW sections: (i) RCW 62.01.051, 62.01.088, 62.01.119, and 62.01.121; 1955 c 35 §§ 62.01.051, 62.01.088, 62.01.119, and 62.01.121; prior: 1899 c 149 §§ 51, 88, 119, and 121; RRS §§ 3442, 3478, 3509, and 3511. (ii) RCW 62.01.171 through 62.01.177; 1955 c 35 §§ 62.01.171 through 62.01.177; prior: 1899 c 149 §§ 171 through 177; RRS §§ 3561 through 3567. (iii) Subd. (3) cf. former RCW 30.20.090; 1961 c 280 § 4.]

**62A.3-604 Tender of payment.** (1) Any party making tender of full payment to a holder when or after it is due is discharged to the extent of all subsequent liability for interest, costs and attorney's fees.

(2) The holder's refusal of such tender wholly discharges any party who has a right of recourse against the party making the tender.

(3) Where the maker or acceptor of an instrument payable otherwise than on demand is able and ready to pay at every place of payment specified in the instrument when it is due, it is equivalent to tender. [1965 ex.s. c 157 § 3-604. Cf. former RCW sections: (i) RCW 62.01.070; 1955 c 35 § 62.01.070; prior: 1899 c 149 § 70; RRS § 3461. (ii) RCW 62.01.120; 1955 c 35 § 62.01.120; prior: 1899 c 149 § 120; RRS § 3510.]

**62A.3-605 Cancellation and renunciation.** (1) The holder of an instrument may even without consideration discharge any party

(a) in any manner apparent on the face of the instrument or the indorsement, as by intentionally cancelling the instrument or the party's signature by destruction or mutilation, or by striking out the party's signature; or

(b) by renouncing his rights by a writing signed and delivered or by surrender of the instrument to the party to be discharged.

(2) Neither cancellation nor renunciation without surrender of the instrument affects the title thereto. [1965 ex.s. c 157 § 3-605. Cf. former RCW sections: RCW 62.01.048, 62.01.119(3), 62.01.120(2), 62.01.122, and 62.01.123; 1955 c 35 §§ 62.01.048, 62.01.119, 62.01.120, 62.01.122, and 62.01.123; prior: 1899 c 149 §§ 48, 119, 120, 122, and 123; RRS §§ 3439, 3509, 3510, 3512, and 3513.]

### **62A.3-606 Impairment of recourse or of collateral.**

(1) The holder discharges any party to the instrument to the extent that without such party's consent the holder

(a) without express reservation of rights releases or agrees not to sue any person against whom the party has to the knowledge of the holder a right of recourse or agrees to suspend the right to enforce against such person the instrument or collateral or otherwise discharges such person, except that failure or delay in effecting any required presentment, protest or notice of dishonor with respect to any such person does not discharge any party as to whom presentment, protest or notice of dishonor is effective or unnecessary; or

(b) unjustifiably impairs any collateral for the instrument given by or on behalf of the party or any person against whom he has a right of recourse.

(2) By express reservation of rights against a party with a right of recourse the holder preserves

(a) all his rights against such party as of the time when the instrument was originally due; and

(b) the right of the party to pay the instrument as of that time; and

(c) all rights of such party to recourse against others. [1965 ex.s. c 157 § 3-606. Cf. former RCW sections: (i) RCW 62.01.119; 1955 c 35 § 62.01.119; prior: 1899 c 149 § 119; RRS § 3509. (ii) RCW 62.01.120; 1955 c 35 § 62.01.120; prior: 1899 c 149 § 120; RRS § 3510.]

## PART 7

### ADVICE OF INTERNATIONAL SIGHT DRAFT

**62A.3-701 Letter of advice of international sight draft.** (1) A "letter of advice" is a drawer's communication to the drawee that a described draft has been drawn.

(2) Unless otherwise agreed when a bank receives from another bank a letter of advice of an international sight draft the drawee bank may immediately debit the drawer's account and stop the running of interest pro tanto. Such a debit and any resulting credit to any account covering outstanding drafts leaves in the drawer full power to stop payment or otherwise dispose of the amount and creates no trust or interest in favor of the holder.

(3) Unless otherwise agreed and except where a draft is drawn under a credit issued by the drawee, the drawee of an international sight draft owes the drawer no duty to pay an unadvised draft but if it does so and the draft is genuine, may appropriately debit the drawer's account. [1965 ex.s. c 157 § 3-701.]

## PART 8

### MISCELLANEOUS

**62A.3-801 Drafts in a set.** (1) Where a draft is drawn in a set of parts, each of which is numbered and expressed to be an order only if no other part has been honored, the whole of the parts constitutes one draft but a taker of any part may become a holder in due course of the draft.

(2) Any person who negotiates, indorses or accepts a single part of a draft drawn in a set thereby becomes liable to any holder in due course of that part as if it were the whole set, but as between different holders in due course to whom different parts have been negotiated the holder whose title first accrues has all rights to the draft and its proceeds.

(3) As against the drawee the first presented part of a draft drawn in a set is the part entitled to payment, or if a time draft to acceptance and payment. Acceptance of any subsequently presented part renders the drawee liable thereon under subsection (2). With respect both to a holder and to the drawer payment of a subsequently presented part of a draft payable at sight has the same effect as payment of a check notwithstanding an effective stop order (RCW 62A.4-407).

(4) Except as otherwise provided in this section, where any part of a draft in a set is discharged by payment or otherwise the whole draft is discharged. [1965 ex.s. c 157 § 3-801. Cf. former RCW sections: RCW 62.01.178 through 62.01.183; 1955 c 35 §§ 62.01.178 through 62.01.183; prior: 1899 c 149 §§ 178 through 183; RRS §§ 3568 through 3573.]

**62A.3-802 Effect of instrument on obligation for which it is given.** (1) Unless otherwise agreed where an instrument is taken for an underlying obligation

(a) the obligation is pro tanto discharged if a bank is drawer, maker or acceptor of the instrument and there is no recourse on the instrument against the underlying obligor; and

(b) in any other case the obligation is suspended pro tanto until the instrument is due or if it is payable on demand until its presentment. If the instrument is dishonored action may be maintained on either the instrument or the obligation; discharge of the underlying obligor on the instrument also discharges him on the obligation.

(2) The taking in good faith of a check which is not postdated does not of itself so extend the time on the original obligation as to discharge a surety. [1965 ex.s. c 157 § 3-802.]

**62A.3-803 Notice to third party.** Where a defendant is sued for breach of an obligation for which a third person is answerable over under this Article he may give the third person written notice of the litigation, and the person notified may then give similar notice to any other person who is answerable over to him under this Article. If the notice states that the person notified may come in and defend and that if the person notified does not do so he will in any action against him by the person giving the notice be bound by any determination of fact common to the two litigations, then unless after reasonable receipt of the notice the person notified does come in and defend he is so bound. [1965 ex.s. c 157 § 3-803.]

**62A.3-804 Lost, destroyed or stolen instruments.** The owner of an instrument which is lost, whether by destruction, theft or otherwise, may maintain an action in

his own name and recover from any party liable thereon upon due proof of his ownership, the facts which prevent his production of the instrument and its terms. The court may require security indemnifying the defendant against loss by reason of further claims on the instrument. [1965 ex.s. c 157 § 3-804.]

**62A.3-805 Instruments not payable to order or to bearer.** This Article applies to any instrument whose terms do not preclude transfer and which is otherwise negotiable within this Article but which is not payable to order or to bearer, except that there can be no holder in due course of such an instrument. [1965 ex.s. c 157 § 3-805.]

Article 4

BANK DEPOSITS AND COLLECTIONS

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ARTICLE 4  
BANK DEPOSITS AND COLLECTIONS

PART 1  
GENERAL PROVISIONS AND DEFINITIONS

**62A.4-101 Short title.** This Article shall be known and may be cited as Uniform Commercial Code—Bank Deposits and Collections. [1965 ex.s. c 157 § 4-101.]

**62A.4-102 Applicability.** (1) To the extent that items within this Article are also within the scope of Articles 3 and 8, they are subject to the provisions of those Articles. In the event of conflict the provisions of this Article govern those of Article 3 but the provisions of Article 8 govern those of this Article.

(2) The liability of a bank for action or non-action with respect to any item handled by it for purposes of presentment, payment or collection is governed by the law of the place where the bank is located. In the case of action or non-action by or at a branch or separate office of a bank, its liability is governed by the law of the place where the branch or separate office is located. [1965 ex.s. c 157 § 4-102.]

**62A.4-103 Variation by agreement; measure of damages; certain action constituting ordinary care.** (1) The effect of the provisions of this Article may be varied by agreement except that no agreement can disclaim a bank's responsibility for its own lack of good faith or failure to exercise ordinary care or can limit the measure of damages for such lack or failure; but the parties may by agreement determine the standards by which such responsibility is to be measured if such standards are not manifestly unreasonable.

(2) Federal Reserve regulations and operating letters, clearing house rules, and the like, have the effect of agreements under subsection (1), whether or not specifically assented to by all parties interested in items handled.

(3) Action or non-action approved by this Article or pursuant to Federal Reserve regulations or operating letters constitutes the exercise of ordinary care and, in the absence of special instructions, action or non-action consistent with clearing house rules and the like or with a general banking usage not disapproved by this Article, prima facie constitutes the exercise of ordinary care.

(4) The specification or approval of certain procedures by this Article does not constitute disapproval of other procedures which may be reasonable under the circumstances.

(5) The measure of damages for failure to exercise ordinary care in handling an item is the amount of the item reduced by an amount which could not have been realized by the use of ordinary care, and where there is bad faith it includes other damages, if any, suffered by the party as a proximate consequence. [1965 ex.s. c 157 § 4-103. Cf. former RCW sections: (i) RCW 30.52.050; 1955 c 33 § 30.52.050; prior: 1931 c 10 § 1; 1929 c 203 § 5; RRS § 3292-5. (ii) RCW 30.52.060; 1955 c 33 § 30.52.060; prior: 1929 c 203 § 6; RRS § 3292-6.]

**62A.4-104 Definitions and index of definitions.** (1) In this Article unless the context otherwise requires

(a) "Account" means any account with a bank and includes a checking, time, interest or savings account;

(b) "Afternoon" means the period of a day between noon and midnight;

(c) "Banking day" means that part of any day on which a bank is open to the public for carrying on substantially all of its banking functions;

(d) "Clearing house" means any association of banks or other payors regularly clearing items;

(e) "Customer" means any person having an account with a bank or for whom a bank has agreed to collect items and includes a bank carrying an account with another bank;

(f) "Documentary draft" means any negotiable or non-negotiable draft with accompanying documents, securities or other papers to be delivered against honor of the draft;

(g) "Item" means any instrument for the payment of money even though it is not negotiable but does not include money;

(h) "Midnight deadline" with respect to a bank is midnight on its next banking day following the banking day on which it receives the relevant item or notice or from which the time for taking action commences to run, whichever is later;

(i) "Properly payable" includes the availability of funds for payment at the time of decision to pay or dishonor;

(j) "Settle" means to pay in cash, by clearing house settlement, in a charge or credit or by remittance, or otherwise as instructed. A settlement may be either provisional or final;

(k) "Suspends payments" with respect to a bank means that it has been closed by order of the supervisory authorities, that a public officer has been appointed to take it over or that it ceases or refuses to make payments in the ordinary course of business.

(2) Other definitions applying to this Article and the sections in which they appear are:

"Collecting bank" RCW 62A.4-105.

"Depository bank" RCW 62A.4-105.

"Intermediary bank" RCW 62A.4-105.

"Payor bank" RCW 62A.4-105.

"Presenting bank" RCW 62A.4-105.

"Remitting bank" RCW 62A.4-105.

(3) The following definitions in other Articles apply to this Article:

"Acceptance" RCW 62A.3-410.

"Certificate of deposit" RCW 62A.3-104.

"Certification" RCW 62A.3-411.

"Check" RCW 62A.3-104.

"Draft" RCW 62A.3-104.

"Holder in due course" RCW 62A.3-302.

"Notice of dishonor" RCW 62A.3-508.

"Presentment" RCW 62A.3-504.

"Protest" RCW 62A.3-509.

"Secondary party" RCW 62A.3-102.

(4) In addition Article 1 contains general definitions and principles of construction and interpretation applicable throughout this Article. [1965 ex.s. c 157 § 4-104. Cf. former RCW 30.52.010; 1955 c 33 § 30.52.010; prior: 1929 c 203 § 1; RRS § 3292-1.]

**62A.4-105 "Depository bank"; "intermediary bank"; "collecting bank"; "payor bank"; "presenting bank"; "remitting bank".** In this Article unless the context otherwise requires:

(a) "Depository bank" means the first bank to which an item is transferred for collection even though it is also the payor bank;

(b) "Payor bank" means a bank by which an item is payable as drawn or accepted;

(c) "Intermediary bank" means any bank to which an item is transferred in course of collection except the depository or payor bank;

(d) "Collecting bank" means any bank handling the item for collection except the payor bank;

(e) "Presenting bank" means any bank presenting an item except a payor bank;

(f) "Remitting bank" means any payor or intermediary bank remitting for an item. [1965 ex.s. c 157 § 4-105. Cf. former RCW 30.52.010; 1955 c 33 § 30.52.010; prior: 1929 c 203 § 1.]

**62A.4-106 Separate office of a bank.** A branch or separate office of a bank is a separate bank for the purpose of computing the time within which and determining the place at or to which action may be taken or notices or orders shall be given under this Article and under Article 3. [1965 ex.s. c 157 § 4-106. Cf. former RCW sections: (i) RCW 30.52.010; 1955 c 33 § 30.52.010; prior: 1929 c 203 § 1; RRS § 3292-1. (ii) RCW 30.40.030 through 30.40.050; 1955 c 33 §§ 30.40.030 through 30.40.050; prior: 1939 c 59 §§ 1 through 3; RRS §§ 3252-6 through 3252-8.]

**62A.4-107 Time of receipt of items.** (1) For the purpose of allowing time to process items, prove balances and make the necessary entries on its books to determine its position for the day, a bank may fix an afternoon hour of two P.M. or later as a cut-off hour for the handling of money and items and the making of entries on its books.

(2) Any item or deposit of money received on any day after a cut-off hour so fixed or after the close of the banking day may be treated as being received at the opening of the next banking day. [1965 ex.s. c 157 § 4-107.]

**62A.4-108 Delays.** (1) Unless otherwise instructed, a collecting bank in a good faith effort to secure payment may, in the case of specific items and with or without the approval of any person involved, waive, modify or extend time limits imposed or permitted by this Title for a period not in excess of an additional banking day without discharge of secondary parties and without liability to its transferor or any prior party.

(2) Delay by a collecting bank or payor bank beyond time limits prescribed or permitted by this Title or by instructions is excused if caused by interruption of communication facilities, suspension of payments by another bank, war, emergency conditions or other circumstances beyond the control of the bank provided it exercises such diligence as the circumstances require. [1965 ex.s. c 157 § 4-108.]

**62A.4-109 Process of posting.** The "process of posting" means the usual procedure followed by a payor bank in determining to pay an item and in recording the payment including one or more of the following or other steps as determined by the bank:

(a) verification of any signature;

(b) ascertaining that sufficient funds are available;

(c) affixing a "paid" or other stamp;

(d) entering a charge or entry to a customer's account;

(e) correcting or reversing an entry or erroneous action with respect to the item. [1965 ex.s. c 157 § 4-109.]

## PART 2

### COLLECTION OF ITEMS: DEPOSITORY AND COLLECTING BANKS

**62A.4-201 Presumption and duration of agency status of collecting banks and provisional status of credits; applicability of Article; item indorsed "pay any bank".**

(1) Unless a contrary intent clearly appears and prior to the time that a settlement given by a collecting bank for an item is or becomes final (subsection (3) of RCW 62A.4-211 and RCW 62A.4-212 and RCW 62A.4-213) the bank is an agent or sub-agent of the owner of the item and any settlement given for the item is provisional. This provision applies regardless of the form of indorsement or lack of indorsement and even though credit given for the item is subject to immediate withdrawal as of right or is in fact withdrawn; but the continuance of ownership of an item by its owner and any rights of the owner to proceeds of the item are subject

to rights of a collecting bank such as those resulting from outstanding advances on the item and valid rights of setoff. When an item is handled by banks for purposes of presentment, payment and collection, the relevant provisions of this Article apply even though action of parties clearly establishes that a particular bank has purchased the item and is the owner of it.

(2) After an item has been indorsed with the words "pay any bank" or the like, only a bank may acquire the rights of a holder

(a) until the item has been returned to the customer initiating collection; or

(b) until the item has been specially indorsed by a bank to a person who is not a bank. [1965 ex.s. c 157 § 4-201. Cf. former RCW sections: (i) RCW 30.52.020; 1955 c 33 § 30.52.020; prior: 1929 c 203 § 2; RRS § 3292-2. (ii) RCW 30.52.040; 1955 c 33 § 30.52.040; prior: 1931 c 10 § 1; 1929 c 203 § 4; RRS § 3292-4.]

**62A.4-202 Responsibility for collection; when action seasonable.** (1) A collecting bank must use ordinary care in

(a) presenting an item or sending it for presentment; and

(b) sending notice of dishonor or non-payment or returning an item other than a documentary draft to the bank's transferor or directly to the depository bank under subsection (2) of RCW 62A.4-212 after learning that the item has not been paid or accepted, as the case may be; and

(c) settling for an item when the bank receives final settlement; and

(d) making or providing for any necessary protest; and

(e) notifying its transferor of any loss or delay in transit within a reasonable time after discovery thereof.

(2) A collecting bank taking proper action before its midnight deadline following receipt of an item, notice or payment acts seasonably; taking proper action within a reasonably longer time may be seasonable but the bank has the burden of so establishing.

(3) Subject to subsection (1)(a), a bank is not liable for the insolvency, neglect, misconduct, mistake or default of another bank or person or for loss or destruction of an item in transit or in the possession of others. [1965 ex.s. c 157 § 4-202. Cf. former RCW sections: (i) RCW 30.52.050; 1955 c 33 § 30.52.050; prior: 1929 c 203 § 5; RRS § 3292-5. (ii) RCW 30.52.060; 1955 c 33 § 30.52.060; prior: 1929 c 203 § 6; RRS § 3292-6.]

**62A.4-203 Effect of instructions.** Subject to the provisions of Article 3 concerning conversion of instruments (RCW 62A.3-419) and the provisions of both Article 3 and this Article concerning restrictive indorsements only a collecting bank's transferor can give instructions which affect the bank or constitute notice to it and a collecting bank is not liable to prior parties for any action taken pursuant to such instructions or in accordance with any agreement with its transferor. [1965 ex.s. c 157 § 4-203. Cf. former RCW 30.52.020; 1955 c 33 § 30.52.020; prior: 1929 c 203 § 2; RRS § 3292-2.]

**62A.4-204 Methods of sending and presenting; sending direct to payor bank.** (1) A collecting bank must send items by reasonably prompt method taking into consideration any relevant instructions, the nature of the item, the number of such items on hand, and the cost of collection involved and the method generally used by it or others to present such items.

(2) A collecting bank may send

(a) any item direct to the payor bank;

(b) any item to any non-bank payor if authorized by its transferor; and

(c) any item other than documentary drafts to any non-bank payor, if authorized by Federal Reserve regulation or operating letter, clearing house rule or the like.

(3) Presentment may be made by a presenting bank at a place where the payor bank has requested that presentment be made. [1965 ex.s. c 157 § 4-204. Cf. former RCW 30.52.060; 1955 c 33 § 30.52.060; prior: 1929 c 203 § 6; RRS § 3292-6.]

**62A.4-205 Supplying missing indorsement; no notice from prior indorsement.** (1) A depository bank which has taken an item for collection may supply any indorsement of the customer which is necessary to title unless the item contains the words "payee's indorsement required" or the like. In the absence of such a requirement a statement placed on the item by the depository bank to the effect that the item was deposited by a customer or credited to his account is effective as the customer's indorsement.

(2) An intermediary bank, or payor bank which is not a depository bank, is neither given notice nor otherwise affected by a restrictive indorsement of any person except the bank's immediate transferor. [1965 ex.s. c 157 § 4-205.]

**62A.4-206 Transfer between banks.** Any agreed method which identifies the transferor bank is sufficient for the item's further transfer to another bank. [1965 ex.s. c 157 § 4-206.]

**62A.4-207 Warranties of customer and collecting bank on transfer or presentment of items; time for claims.** (1) Each customer or collecting bank who obtains payment or acceptance of an item and each prior customer and collecting bank warrants to the payor bank or other payor who in good faith pays or accepts the item that

(a) he has a good title to the item or is authorized to obtain payment or acceptance on behalf of one who has a good title; and

(b) he has no knowledge that the signature of the maker or drawer is unauthorized, except that this warranty is not given by any customer or collecting bank that is a holder in due course and acts in good faith

(i) to a maker with respect to the maker's own signature; or

(ii) to a drawer with respect to the drawer's own signature, whether or not the drawer is also the drawee; or

(iii) to an acceptor of an item if the holder in due course took the item after the acceptance or obtained

the acceptance without knowledge that the drawer's signature was unauthorized; and

(c) the item has not been materially altered, except that this warranty is not given by any customer or collecting bank that is a holder in due course and acts in good faith

(i) to the maker of a note; or

(ii) to the drawer of a draft whether or not the drawer is also the drawee; or

(iii) to the acceptor of an item with respect to an alteration made prior to the acceptance if the holder in due course took the item after the acceptance, even though the acceptance provided "payable as originally drawn" or equivalent terms; or

(iv) to the acceptor of an item with respect to an alteration made after the acceptance.

(2) Each customer and collecting bank who transfers an item and receives a settlement or other consideration for it warrants to his transferee and to any subsequent collecting bank who takes the item in good faith that

(a) he has a good title to the item or is authorized to obtain payment or acceptance on behalf of one who has a good title and the transfer is otherwise rightful; and

(b) all signatures are genuine or authorized; and

(c) the item has not been materially altered; and

(d) no defense of any party is good against him; and

(e) he has no knowledge of any insolvency proceeding instituted with respect to the maker or acceptor or the drawer of an unaccepted item.

In addition each customer and collecting bank so transferring an item and receiving a settlement or other consideration engages that upon dishonor and any necessary notice of dishonor and protest he will take up the item.

(3) The warranties and the engagement to honor set forth in the two preceding subsections arise notwithstanding the absence of indorsement or words of guaranty or warranty in the transfer or presentment and a collecting bank remains liable for their breach despite remittance to its transferor. Damages for breach of such warranties or engagement to honor shall not exceed the consideration received by the customer or collecting bank responsible plus finance charges and expenses related to the item, if any.

(4) Unless a claim for breach of warranty under this section is made within a reasonable time after the person claiming learns of the breach, the person liable is discharged to the extent of any loss caused by the delay in making claim. [1965 ex.s. c 157 § 4-207. Cf. former RCW 30.52.040; 1955 c 33 § 30.52.040; prior: 1931 c 10 § 1; 1929 c 203 § 4; RRS § 3292-4.]

**62A.4-208 Security interest of collecting bank in items, accompanying documents and proceeds.** (1) A bank has a security interest in an item and any accompanying documents or the proceeds of either

(a) in case of an item deposited in an account to the extent to which credit given for the item has been withdrawn or applied;

(b) in case of an item for which it has given credit available for withdrawal as of right, to the extent of the

credit given whether or not the credit is drawn upon and whether or not there is a right of charge-back; or

(c) if it makes an advance on or against the item.

(2) When credit which has been given for several items received at one time or pursuant to a single agreement is withdrawn or applied in part the security interest remains upon all the items, any accompanying documents or the proceeds of either. For the purpose of this section, credits first given are first withdrawn.

(3) Receipt by a collecting bank of a final settlement for an item is a realization on its security interest in the item, accompanying documents and proceeds. To the extent and so long as the bank does not receive final settlement for the item or give up possession of the item or accompanying documents for purposes other than collection, the security interest continues and is subject to the provisions of Article 9 except that

(a) no security agreement is necessary to make the security interest enforceable (subsection (1)(b) of RCW 62A.9-203); and

(b) no filing is required to perfect the security interest; and

(c) the security interest has priority over conflicting perfected security interests in the item, accompanying documents or proceeds. [1965 ex.s. c 157 § 4-208. Cf. former RCW 30.52.020; 1955 c 33 § 30.52.020; prior: 1929 c 203 § 2; RRS § 3292-2.]

**62A.4-209 When bank gives value for purposes of holder in due course.** For purposes of determining its status as a holder in due course, the bank has given value to the extent that it has a security interest in an item provided that the bank otherwise complies with the requirements of RCW 62A.3-302 on what constitutes a holder in due course. [1965 ex.s. c 157 § 4-209. Cf. former RCW 62.01.027; 1955 c 35 § 62.01.027; prior: 1899 c 149 § 27; RRS § 3418.]

**62A.4-210 Presentment by notice of item not payable by, through or at a bank; liability of secondary parties.**

(1) Unless otherwise instructed, a collecting bank may present an item not payable by, through or at a bank by sending to the party to accept or pay a written notice that the bank holds the item for acceptance or payment. The notice must be sent in time to be received on or before the day when presentment is due and the bank must meet any requirement of the party to accept or pay under RCW 62A.3-505 by the close of the bank's next banking day after it knows of the requirement.

(2) Where presentment is made by notice and neither honor nor request for compliance with a requirement under RCW 62A.3-505 is received by the close of business on the day after maturity or in the case of demand items by the close of business on the third banking day after notice was sent, the presenting bank may treat the item as dishonored and charge any secondary party by sending him notice of the facts. [1965 ex.s. c 157 § 4-210.]

**62A.4-211 Media of remittance; provisional and final settlement in remittance cases.** (1) A collecting bank may take in settlement of an item



(a) a check of the remitting bank or of another bank on any bank except the remitting bank; or

(b) a cashier's check or similar primary obligation of a remitting bank which is a member of or clears through a member of the same clearing house or group as the collecting bank; or

(c) appropriate authority to charge an account of the remitting bank or of another bank with the collecting bank; or

(d) if the item is drawn upon or payable by a person other than a bank, a cashier's check, certified check or other bank check or obligation.

(2) If before its midnight deadline the collecting bank properly dishonors a remittance check or authorization to charge on itself or presents or forwards for collection a remittance instrument of or on another bank which is of a kind approved by subsection (1) or has not been authorized by it, the collecting bank is not liable to prior parties in the event of the dishonor of such check, instrument or authorization.

(3) A settlement for an item by means of a remittance instrument or authorization to charge is or becomes a final settlement as to both the person making and the person receiving the settlement

(a) if the remittance instrument or authorization to charge is of a kind approved by subsection (1) or has not been authorized by the person receiving the settlement and in either case the person receiving the settlement acts seasonably before its midnight deadline in presenting, forwarding for collection or paying the instrument or authorization,—at the time the remittance instrument or authorization is finally paid by the payor by which it is payable;

(b) if the person receiving the settlement has authorized remittance by a non-bank check or obligation or by a cashier's check or similar primary obligation of or a check upon the payor or other remitting bank which is not of a kind approved by subsection (1)(b),—at the time of the receipt of such remittance check or obligation; or

(c) if in a case not covered by sub-paragraphs (a) or (b) the person receiving the settlement fails to seasonably present, forward for collection, pay or return a remittance instrument or authorization to it to charge before its midnight deadline,—at such midnight deadline. [1965 ex.s. c 157 § 4-211. Cf. former RCW sections: (i) RCW 30.52.090; 1955 c 33 § 30.52.090; prior: 1929 c 203 § 9; RRS § 3292-9. (ii) RCW 30.52.100; 1955 c 33 § 30.52.100; prior: 1929 c 203 § 10; RRS § 3292-10.]

**62A.4-212 Right of charge-back or refund.** (1) If a collecting bank has made provisional settlement with its customer for an item and itself fails by reason of dishonor, suspension of payments by a bank or otherwise to receive a settlement for the item which is or becomes final, the bank may revoke the settlement given by it, charge back the amount of any credit given for the item to its customer's account or obtain refund from its customer whether or not it is able to return the items if by its midnight deadline or within a longer reasonable time

after it learns the facts it returns the item or sends notification of the facts. These rights to revoke, charge-back and obtain refund terminate if and when a settlement for the item received by the bank is or becomes final (subsection (3) of RCW 62A.4-211 and subsections (2) and (3) of RCW 62A.4-213).

(2) Within the time and manner prescribed by this section and RCW 62A.4-301, an intermediary or payor bank, as the case may be, may return an unpaid item directly to the depositary bank and may send for collection a draft on the depositary bank and obtain reimbursement. In such case, if the depositary bank has received provisional settlement for the item, it must reimburse the bank drawing the draft and any provisional credits for the item between banks shall become and remain final.

(3) A depositary bank which is also the payor may charge-back the amount of an item to its customer's account or obtain refund in accordance with the section governing return of an item received by a payor bank for credit on its books (RCW 62A.4-301)

(4) The right to charge-back is not affected by

(a) prior use of the credit given for the item; or

(b) failure by any bank to exercise ordinary care with respect to the item but any bank so failing remains liable.

(5) A failure to charge-back or claim refund does not affect other rights of the bank against the customer or any other party.

(6) If credit is given in dollars as the equivalent of the value of an item payable in a foreign currency the dollar amount of any charge-back or refund shall be calculated on the basis of the buying sight rate for the foreign currency prevailing on the day when the person entitled to the charge-back or refund learns that it will not receive payment in ordinary course. [1965 ex.s. c 157 § 4-212. Cf. former RCW sections: (i) RCW 30.52.020; 1955 c 33 § 30.52.020; prior: 1929 c 203 § 2; RRS § 3292-2. (ii) RCW 30.52.110; 1955 c 33 § 30.52.110; prior: 1929 c 203 § 11; RRS § 3292-11.]

**62A.4-213 Final payment of item by payor bank; when provisional debits and credits become final; when certain credits become available for withdrawal.** (1) An item is finally paid by a payor bank when the bank has done any of the following, whichever happens first:

(a) paid the item in cash; or

(b) settled for the item without reserving a right to revoke the settlement and without having such right under statute, clearing house rule or agreement; or

(c) completed the process of posting the item to the indicated account of the drawer, maker or other person to be charged therewith; or

(d) made a provisional settlement for the item and failed to revoke the settlement in the time and manner permitted by statute, clearing house rule or agreement. Upon a final payment under subparagraphs (b), (c) or (d) the payor bank shall be accountable for the amount of the item.

(2) If provisional settlement for an item between the presenting and payor banks is made through a clearing house or by debits or credits in an account between

them, then to the extent that provisional debits or credits for the item are entered in accounts between the presenting and payor banks or between the presenting and successive prior collecting banks seriatim, they become final upon final payment of the item by the payor bank.

(3) If a collecting bank receives a settlement for an item which is or becomes final (subsection (3) of RCW 62A.4-211, subsection (2) of RCW 62A.4-213) the bank is accountable to its customer for the amount of the item and any provisional credit given for the item in an account with its customer becomes final.

(4) Subject to any right of the bank to apply the credit to an obligation of the customer, credit given by a bank for an item in an account with its customer becomes available for withdrawal as of right

(a) in any case where the bank has received a provisional settlement for the item,——when such settlement becomes final and the bank has had a reasonable time to learn that the settlement is final;

(b) in any case where the bank is both a depository bank and a payor bank and the item is finally paid,——at the opening of the bank's second banking day following receipt of the item.

(5) A deposit of money in a bank is final when made but, subject to any right of the bank to apply the deposit to an obligation of the customer, the deposit becomes available for withdrawal as of right at the opening of the bank's next banking day following receipt of the deposit. [1965 ex.s. c 157 § 4-213. Cf. former RCW 30.52.110; 1955 c 33 § 30.52.110; prior: 1929 c 203 § 11; RRS § 3292-11.]

**62A.4-214 Insolvency and preference.** (1) Any item in or coming into the possession of a payor or collecting bank which suspends payment and which item is not finally paid shall be returned by the receiver, trustee or agent in charge of the closed bank to the presenting bank or the closed bank's customer.

(2) If a payor bank finally pays an item and suspends payments without making a settlement for the item with its customer or the presenting bank which settlement is or becomes final, the owner of the item has a preferred claim against the payor bank.

(3) If a payor bank gives or a collecting bank gives or receives a provisional settlement for an item and thereafter suspends payments, the suspension does not prevent or interfere with the settlement becoming final if such finality occurs automatically upon the lapse of certain time or the happening of certain events (subsection (3) of RCW 62A.4-211, subsections (1)(d), (2) and (3) of RCW 62A.4-213).

(4) If a collecting bank receives from subsequent parties settlement for an item which settlement is or becomes final and suspends payments without making a settlement for the item with its customer which is or becomes final, the owner of the item has a preferred claim against such collecting bank. [1965 ex.s. c 157 § 4-214. Cf. former RCW 30.52.130; 1955 c 33 § 30.52.130; prior: 1929 c 203 § 13; RRS § 3292-13.]

*Insolvency—Preferences prohibited: RCW 30.44.110.*

### PART 3 COLLECTION OF ITEMS: PAYOR BANKS

**62A.4-301 Deferred posting; recovery of payment by return of items; time of dishonor.** (1) Where an authorized settlement for a demand item (other than a documentary draft) received by a payor bank otherwise than for immediate payment over the counter has been made before midnight of the banking day of receipt the payor bank may revoke the settlement and recover any payment if before it has made final payment (subsection (1) of RCW 62A.4-213) and before its midnight deadline it

(a) returns the item; or

(b) sends written notice of dishonor or nonpayment if the item is held for protest or is otherwise unavailable for return.

(2) If a demand item is received by a payor bank for credit on its books it may return such item or send notice of dishonor and may revoke any credit given or recover the amount thereof withdrawn by its customer, if it acts within the time limit and in the manner specified in the preceding subsection.

(3) Unless previous notice of dishonor has been sent an item is dishonored at the time when for purposes of dishonor it is returned or notice sent in accordance with this section.

(4) An item is returned:

(a) as to an item received through a clearing house, when it is delivered to the presenting or last collecting bank or to the clearing house or is sent or delivered in accordance with its rules; or

(b) in all other cases, when it is sent or delivered to the bank's customer or transferor or pursuant to his instructions. [1965 ex.s. c 157 § 4-301. Cf. former RCW 30.52.030; 1955 c 33 § 30.52.030; prior: 1929 c 203 § 3; RRS § 3292-3.]

**62A.4-302 Payor bank's responsibility for late return of item.** In the absence of a valid defense such as breach of a presentment warranty (subsection (1) of RCW 62A.4-207), settlement effected or the like, if an item is presented on and received by a payor bank the bank is accountable for the amount of

(a) a demand item other than a documentary draft whether properly payable or not if the bank, in any case where it is not also the depository bank, retains the item beyond midnight of the banking day of receipt without settling for it or, regardless of whether it is also the depository bank, does not pay or return the item or send notice of dishonor until after its midnight deadline; or

(b) any other properly payable item unless within the time allowed for acceptance or payment of that item the bank either accepts or pays the item or returns it and accompanying documents. [1965 ex.s. c 157 § 4-302. Cf. former RCW 30.52.030; 1955 c 33 § 30.52.030; prior: 1929 c 203 § 3; RRS § 3292-3.]

**62A.4-303 When items subject to notice, stop-order, legal process or setoff; order in which items may be charged or certified.** (1) Any knowledge, notice or stop-order received by, legal process served upon or setoff

exercised by a payor bank, whether or not effective under other rules of law to terminate, suspend or modify the bank's right or duty to pay an item or to charge its customer's account for the item, comes too late to so terminate, suspend or modify such right or duty if the knowledge, notice, stop-order or legal process is received or served and a reasonable time for the bank to act thereon expires or the setoff is exercised after the bank has done any of the following:

- (a) accepted or certified the item;
- (b) paid the item in cash;
- (c) settled for the item without reserving a right to revoke the settlement and without having such right under statute, clearing house rule or agreement;
- (d) completed the process of posting the item to the indicated account of the drawer, maker or other person to be charged therewith or otherwise has evidenced by examination of such indicated account and by action its decision to pay the item; or
- (e) become accountable for the amount of the item under subsection (1)(d) of RCW 62A.4-213 and RCW 62A.4-302 dealing with the payor bank's responsibility for late return of items.

(2) Subject to the provisions of subsection (1) items may be accepted, paid, certified or charged to the indicated account of its customer in any order convenient to the bank. [1965 ex.s. c 157 § 4-303.]

#### PART 4

#### RELATIONSHIP BETWEEN PAYOR BANK AND ITS CUSTOMER

**62A.4-401 When bank may charge customer's account.** (1) As against its customer, a bank may charge against his account any item which is otherwise properly payable from that account even though the charge creates an overdraft.

(2) A bank which in good faith makes payment to a holder may charge the indicated account of its customer according to

- (a) the original tenor of his altered item; or
- (b) the tenor of his completed item, even though the bank knows the item has been completed unless the bank has notice that the completion was improper. [1965 ex.s. c 157 § 4-401.]

**62A.4-402 Bank's liability to customer for wrongful dishonor.** A payor bank is liable to its customer for damages proximately caused by the wrongful dishonor of an item. When the dishonor occurs through mistake liability is limited to actual damages proved. If so proximately caused and proved damages may include damages for an arrest or prosecution of the customer or other consequential damages. Whether any consequential damages are proximately caused by the wrongful dishonor is a question of fact to be determined in each case. [1965 ex.s. c 157 § 4-402.]

**62A.4-403 Customer's right to stop payment; burden of proof of loss.** (1) A customer may by order to his bank stop payment of any item payable for his account but the order must be received at such time and in such

manner as to afford the bank a reasonable opportunity to act on it prior to any action by the bank with respect to the item described in RCW 62A.4-303.

(2) An oral order is binding upon the bank only for fourteen calendar days unless confirmed in writing within that period. A written order is effective for only six months unless renewed in writing.

(3) The burden of establishing the fact and amount of loss resulting from the payment of an item contrary to a binding stop payment order is on the customer. [1965 ex.s c 157 § 4-403. Cf. former RCW sections: (i) RCW 30.16.030; 1959 c 106 § 4; 1955 c 33 § 30.16.030; prior: 1923 c 114 §§ 1, part, and 2; RRS §§ 3252-1, part, and 3252-2. (ii) RCW 30.16.040; 1955 c 33 § 30.16.040; prior: 1923 c 114 §§ 1, part, and 3; RRS §§ 3252-1, part, and 3252-3.]

**62A.4-404 Bank not obligated to pay check more than six months old.** A bank is under no obligation to a customer having a checking account to pay a check, other than a certified check, which is presented more than six months after its date, but it may charge its customer's account for a payment made thereafter in good faith. [1965 ex.s. c 157 § 4-404. Cf. former RCW 30.16.050; 1955 c 33 § 30.16.050; prior: 1923 c 114 §§ 1, part, and 5; RRS §§ 3252-1, part, and 3252-5.]

**62A.4-405 Death or incompetence of customer.** (1) A payor or collecting bank's authority to accept, pay or collect an item or to account for proceeds of its collection if otherwise effective is not rendered ineffective by incompetence of a customer of either bank existing at the time the item is issued or its collection is undertaken if the bank does not know of an adjudication of incompetence. Neither death nor incompetence of a customer revokes such authority to accept, pay, collect or account until the bank knows of the fact of death or of an adjudication of incompetence and has reasonable opportunity to act on it.

(2) Even with knowledge a bank may for ten days after the date of death pay or certify checks drawn on or prior to that date unless ordered to stop payment by a person claiming an interest in the account. [1965 ex.s. c 157 § 4-405. Cf. former RCW 30.20.030; 1955 c 33 § 30.20.030; prior: 1917 c 80 § 43; RRS § 3250.]

**62A.4-406 Customer's duty to discover and report unauthorized signature or alteration.** (1) When a bank sends to its customer a statement of account accompanied by items paid in good faith in support of the debit entries or holds the statement and items pursuant to a request or instructions of its customer or otherwise in a reasonable manner makes the statement and items available to the customer, the customer must exercise reasonable care and promptness to examine the statement and items to discover his unauthorized signature or any alteration on an item and must notify the bank promptly after discovery thereof.

(2) If the bank establishes that the customer failed with respect to an item to comply with the duties imposed on the customer by subsection (1) the customer is precluded from asserting against the bank

(a) his unauthorized signature or any alteration on the item if the bank also establishes that it suffered a loss by reason of such failure; and

(b) an unauthorized signature or alteration by the same wrong-doer on any other item paid in good faith by the bank after the first item and statement was available to the customer for a reasonable period and before the bank receives notification from the customer of any such unauthorized signature or alteration.

(3) The preclusion under subsection (2) does not apply if the customer establishes lack of ordinary care on the part of the bank in paying the item(s).

(4) Without regard to care or lack of care of either the customer or the bank a customer who does not within sixty days from the time the statement and items are made available to the customer (subsection (1)) discover and report his unauthorized signature or any alteration on the face or back of the item or does not within three years from that time discover and report any unauthorized indorsement is precluded from asserting against the bank such unauthorized signature or indorsement or such alteration.

(5) If under this section a payor bank has a valid defense against a claim of a customer upon or resulting from payment of an item and waives or fails upon request to assert the defense the bank may not assert against any collecting bank or other prior party presenting or transferring the item a claim based upon the unauthorized signature or alteration giving rise to the customer's claim. [1967 c 114 § 1; 1965 ex.s. c 157 § 4-406. Cf. former RCW 30.16.020; 1955 c 33 § 30.16-.020; prior: 1917 c 80 § 45; RRS § 3252.]

**Emergency—Effective date—1967 c 114.** "This 1967 amendatory act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and sections 1 through 11 and 13 through 16 shall take effect on June 30, 1967, and section 12 shall take effect immediately." [1967 c 114 § 17.]

**Reviser's note:** Sections 1 through 11 and 13 through 16 are codified as RCW 15.48.270, 15.48.280, 15.48.290, 62A.2-403, 62A.2-706, 62A.4-406, 62A.6-102, 62A.6-109, 62A.9-302, 62A.9-403, 62A.9-404, 62A.9-405, 62A.9-406, 62A.9-407 and 62A.9-408. Section 12 is codified as RCW 62A.9-409.

**62A.4-407 Payor bank's right to subrogation on improper payment.** If a payor bank has paid an item over the stop payment order of the drawer or maker or otherwise under circumstances giving a basis for objection by the drawer or maker, to prevent unjust enrichment and only to the extent necessary to prevent loss to the bank by reason of its payment of the item, the payor bank shall be subrogated to the rights

(a) of any holder in due course on the item against the drawer or maker; and

(b) of the payee or any other holder of the item against the drawer or maker either on the item or under the transaction out of which the item arose; and

(c) of the drawer or maker against the payee or any other holder of the item with respect to the transaction out of which the item arose. [1965 ex.s. c 157 § 4-407.]

## PART 5 COLLECTION OF DOCUMENTARY DRAFTS

**62A.4-501 Handling of documentary drafts; duty to send for presentment and to notify customer of dishonor.** A bank which takes a documentary draft for collection must present or send the draft and accompanying documents for presentment and upon learning that the draft has not been paid or accepted in due course must seasonably notify its customer of such fact even though it may have discounted or brought the draft or extended credit available for withdrawal as of right. [1965 ex.s. c 157 § 4-501.]

**62A.4-502 Presentment of "on arrival" drafts.** When a draft or the relevant instructions require presentment "on arrival", "when goods arrive" or the like, the collecting bank need not present until in its judgment a reasonable time for arrival of the goods has expired. Refusal to pay or accept because the goods have not arrived is not dishonor; the bank must notify its transferor of such refusal but need not present the draft again until it is instructed to do so or learns of the arrival of the goods. [1965 ex.s. c 157 § 4-502.]

**62A.4-503 Responsibility of presenting bank for documents and goods; report of reasons for dishonor; referee in case of need.** Unless otherwise instructed and except as provided in Article 5 a bank presenting a documentary draft

(a) must deliver the documents to the drawee on acceptance of the draft if it is payable more than three days after presentment; otherwise, only on payment; and

(b) upon dishonor, either in the case of presentment for acceptance or presentment for payment, may seek and follow instructions from any referee in case of need designated in the draft or if the presenting bank does not choose to utilize his services it must use diligence and good faith to ascertain the reason for dishonor, must notify its transferor of the dishonor and of the results of its effort to ascertain the reasons therefor and must request instructions.

But the presenting bank is under no obligation with respect to goods represented by the documents except to follow any reasonable instructions seasonably received; it has a right to reimbursement for any expense incurred in following instructions and to prepayment of or indemnity for such expenses. [1965 ex.s. c 157 § 4-503. Cf. former RCW 62.01.131(3); 1955 c 35 § 62-.01.131; prior: 1899 c 149 § 131; RRS § 3521.]

**62A.4-504 Privilege of presenting bank to deal with goods; security interest for expenses.** (1) A presenting bank which, following the dishonor of a documentary draft, has seasonably requested instructions but does not receive them within a reasonable time may store, sell, or otherwise deal with the goods in any reasonable manner.

(2) For its reasonable expenses incurred by action under subsection (1) the presenting bank has a lien

upon the goods or their proceeds, which may be foreclosed in the same manner as an unpaid seller's lien. [1965 ex.s. c 157 § 4-504.]

## Article 5 LETTERS OF CREDIT

### Sections

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## ARTICLE 5 LETTERS OF CREDIT

**62A.5-101 Short title.** This Article shall be known and may be cited as Uniform Commercial Code—Letters of Credit. [1965 ex.s. c 157 § 5-101.]

**62A.5-102 Scope.** (1) This Article applies

(a) to a credit issued by a bank if the credit requires a documentary draft or a documentary demand for payment; and

(b) to a credit issued by a person other than a bank if the credit requires that the draft or demand for payment be accompanied by a document of title; and

(c) to a credit issued by a bank or other person if the credit is not within subparagraphs (a) or (b) but conspicuously states that it is a letter of credit or is conspicuously so entitled.

(2) Unless the engagement meets the requirements of subsection (1), this Article does not apply to engagements to make advances or to honor drafts or demands for payment, to authorities to pay or purchase, to guaranties or to general agreements.

(3) This Article deals with some but not all of the rules and concepts of letters of credit as such rules or concepts have developed prior to this act or may hereafter develop. The fact that this Article states a rule does not by itself require, imply or negate application of the same or a converse rule to a situation not provided for or to a person not specified by this Article. [1965 ex.s. c 157 § 5-102.]

**62A.5-103 Definitions.** (1) In this Article unless the context otherwise requires

(a) "Credit" or "letter of credit" means an engagement by a bank or other person made at the request of a customer and of a kind within the scope of this Article (RCW 62A.5-102) that the issuer will honor drafts or other demands for payment upon compliance with the conditions specified in the credit. A credit may be either revocable or irrevocable. The engagement may be either an agreement to honor or a statement that the bank or other person is authorized to honor.

(b) A "documentary draft" or a "documentary demand for payment" is one honor of which is conditioned upon the presentation of a document or documents. "Document" means any paper including document of title, security, invoice, certificate, notice of default and the like.

(c) An "issuer" is a bank or other person issuing a credit.

(d) A "beneficiary" of a credit is a person who is entitled under its terms to draw or demand payment.

(e) An "advising bank" is a bank which gives notification of the issuance of a credit by another bank.

(f) A "confirming bank" is a bank which engages either that it will itself honor a credit already issued by another bank or that such a credit will be honored by the issuer or a third bank.

(g) A "customer" is a buyer or other person who causes an issuer to issue a credit. The term also includes a bank which procures issuance or confirmation on behalf of that bank's customer.

(2) Other definitions applying to this Article and the sections in which they appear are:

"Notation of credit". RCW 62A.5-108.

"Presenter". RCW 62A.5-112(3).

(3) Definitions in other Articles applying to this Article and the sections in which they appear are:

"Accept" or "Acceptance". RCW 62A.3-410.

"Contract for sale". RCW 62A.2-106.

"Draft". RCW 62A.3-104.

"Holder in due course". RCW 62A.3-302.

"Midnight deadline". RCW 62A.4-104.

"Security". RCW 62A.8-102.

(4) In addition, Article 1 contains general definitions and principles of construction and interpretation applicable throughout this Article. [1965 ex.s. c 157 § 5-103.]

**62A.5-104 Formal requirements; signing.** (1) Except as otherwise required in subsection (1)(c) of RCW 62A.5-102 on scope, no particular form of phrasing is required for a credit. A credit must be in writing and signed by the issuer and a confirmation must be in writing and signed by the confirming bank. A modification of the terms of a credit or confirmation must be signed by the issuer or confirming bank.

(2) A telegram may be a sufficient signed writing if it identifies its sender by an authorized authentication. The authentication may be in code and the authorized naming of the issuer in an advice of credit is a sufficient signing. [1965 ex.s. c 157 § 5-104.]

**62A.5-105 Consideration.** No consideration is necessary to establish a credit or to enlarge or otherwise modify its terms. [1965 ex.s. c 157 § 5-105.]

**62A.5-106 Time and effect of establishment of credit.**

(1) Unless otherwise agreed a credit is established:

(a) as regards the customer as soon as a letter of credit is sent to him or the letter of credit or an authorized written advice of its issuance is sent to the beneficiary; and

(b) as regards the beneficiary when he receives a letter of credit or an authorized written advice of its issuance.

(2) Unless otherwise agreed once an irrevocable credit is established as regards the customer it can be modified or revoked only with the consent of the customer and once it is established as regards the beneficiary it can be modified or revoked only with his consent.

(3) Unless otherwise agreed after a revocable credit is established it may be modified or revoked by the issuer without notice to or consent from the customer or beneficiary.

(4) Notwithstanding any modification or revocation of a revocable credit any person authorized to honor or negotiate under the terms of the original credit is entitled to reimbursement for or honor of any draft or demand for payment duly honored or negotiated before receipt of notice of the modification or revocation and the issuer in turn is entitled to reimbursement from its customer. [1965 ex.s. c 157 § 5-106.]

**62A.5-107 Advice of credit; confirmation; error in statement of terms.** (1) Unless otherwise specified an advising bank by advising a credit issued by another bank does not assume any obligation to honor drafts drawn or demands for payment made under the credit but it does assume obligation for the accuracy of its own statement.

(2) A confirming bank by confirming a credit becomes directly obligated on the credit to the extent of its confirmation as though it were its issuer and acquires the rights of an issuer.

(3) Even though an advising bank incorrectly advises the terms of a credit it has been authorized to advise the credit is established as against the issuer to the extent of its original terms.

(4) Unless otherwise specified the customer bears as against the issuer all risks of transmission and reasonable translation or interpretation of any message relating to a credit. [1965 ex.s. c 157 § 5-107.]

**62A.5-108 "Notation credit"; exhaustion of credit.**

(1) A credit which specifies that any person purchasing or paying drafts drawn or demands for payment made under it must note the amount of the draft or demand on the letter or advice of credit is a "notation credit".

(2) Under a notation credit

(a) a person paying the beneficiary or purchasing a draft or demand for payment from him acquires a right to honor only if the appropriate notation is made and by transferring or forwarding for honor the documents

under the credit such a person warrants to the issuer that the notation has been made; and

(b) unless the credit or a signed statement that an appropriate notation has been made accompanies the draft or demand for payment the issuer may delay honor until evidence of notation has been procured which is satisfactory to it but its obligation and that of its customer continue for a reasonable time not exceeding thirty days to obtain such evidence.

(3) If the credit is not a notation credit

(a) the issuer may honor complying drafts or demands for payment presented to it in the order in which they are presented and is discharged pro tanto by honor of any such draft or demand;

(b) as between competing good faith purchasers of complying drafts or demands the person first purchasing has priority over a subsequent purchaser even though the later purchased draft or demand has been first honored. [1965 ex.s. c 157 § 5-108.]

**62A.5-109 Issuer's obligation to its customer.** (1) An issuer's obligation to its customer includes good faith and observance of any general banking usage but unless otherwise agreed does not include liability or responsibility

(a) for performance of the underlying contract for sale or other transaction between the customer and the beneficiary; or

(b) for any act or omission of any person other than itself or its own branch or for loss or destruction of a draft, demand or document in transit or in the possession of others; or

(c) based on knowledge or lack of knowledge of any usage of any particular trade.

(2) An issuer must examine documents with care so as to ascertain that on their face they appear to comply with the terms of the credit but unless otherwise agreed assumes no liability or responsibility for the genuineness, falsification or effect of any document which appears on such examination to be regular on its face.

(3) A non-bank issuer is not bound by any banking usage of which it has no knowledge. [1965 ex.s. c 157 § 5-109.]

**62A.5-110 Availability of credit in portions; presenter's reservation of lien or claim.** (1) Unless otherwise specified a credit may be used in portions in the discretion of the beneficiary.

(2) Unless otherwise specified a person by presenting a documentary draft or demand for payment under a credit relinquishes upon its honor all claims to the documents and a person by transferring such draft or demand or causing such presentment authorizes such relinquishment. An explicit reservation of claim makes the draft or demand non-complying. [1965 ex.s. c 157 § 5-110.]

**62A.5-111 Warranties on transfer and presentment.**

(1) Unless otherwise agreed the beneficiary by transferring or presenting a documentary draft or demand for payment warrants to all interested parties that the necessary conditions of the credit have been complied with.

This is in addition to any warranties arising under Articles 3, 4, 7 and 8.

(2) Unless otherwise agreed a negotiating, advising, confirming, collecting or issuing bank presenting or transferring a draft or demand for payment under a credit warrants only the matters warranted by a collecting bank under Article 4 and any such bank transferring a document warrants only the matters warranted by an intermediary under Articles 7 and 8. [1965 ex.s. c 157 § 5-111.]

**62A.5-112 Time allowed for honor or rejection; withholding honor or rejection by consent; "presenter".**

(1) A bank to which a documentary draft or demand for payment is presented under a credit may without dishonor of the draft, demand or credit

(a) defer honor until the close of the third banking day following receipt of the documents; and

(b) further defer honor if the presenter has expressly or impliedly consented thereto.

Failure to honor within the time here specified constitutes dishonor of the draft or demand and of the credit except as otherwise provided in subsection (4) of RCW 62A.5-114 on conditional payment.

(2) Upon dishonor the bank may unless otherwise instructed fulfill its duty to return the draft or demand and the documents by holding them at the disposal of the presenter and sending him an advice to that effect.

(3) "Presenter" means any person presenting a draft or demand for payment for honor under a credit even though that person is a confirming bank or other correspondent which is acting under an issuer's authorization. [1965 ex.s. c 157 § 5-112. Cf. former RCW sections: (i) RCW 62.01.136; 1955 c 35 § 62.01.136; prior: 1899 c 149 § 136; RRS § 3526. (ii) RCW 62.01.137; 1955 c 35 § 62.01.137; prior: 1899 c 149 § 137; RRS § 3527. (iii) RCW 62.01.150; 1955 c 35 § 62.01.150; prior: 1899 c 149 § 150; RRS § 3540.]

**62A.5-113 Indemnities.** (1) A bank seeking to obtain (whether for itself or another) honor, negotiation or reimbursement under a credit may give an indemnity to induce such honor, negotiation or reimbursement.

(2) An indemnity agreement inducing honor, negotiation or reimbursement

(a) unless otherwise explicitly agreed applies to defects in the documents but not in the goods; and

(b) unless a longer time is explicitly agreed expires at the end of ten business days following receipt of the documents by the ultimate customer unless notice of objection is sent before such expiration date. The ultimate customer may send notice of objection to the person from whom he received the documents and any bank receiving such notice is under a duty to send notice to its transferor before its midnight deadline. [1965 ex.s. c 157 § 5-113.]

**62A.5-114 Issuer's duty and privilege to honor; right to reimbursement.** (1) An issuer must honor a draft or demand for payment which complies with the terms of the relevant credit regardless of whether the goods or documents conform to the underlying contract for sale

or other contract between the customer and the beneficiary. The issuer is not excused from honor of such a draft or demand by reason of an additional general term that all documents must be satisfactory to the issuer, but an issuer may require that specified documents must be satisfactory to it.

(2) Unless otherwise agreed when documents appear on their face to comply with the terms of a credit but a required document does not in fact conform to the warranties made on negotiation or transfer of a document of title (RCW 62A.7-507) or of a security (RCW 62A.8-306) or is forged or fraudulent or there is fraud in the transaction

(a) the issuer must honor the draft or demand for payment if honor is demanded by a negotiating bank or other holder of the draft or demand which has taken the draft or demand under the credit and under circumstances which would make it a holder in due course (RCW 62A.3-302) and in an appropriate case would make it a person to whom a document of title has been duly negotiated (RCW 62A.7-502) or a bona fide purchaser of a security (RCW 62A.8-302); and

(b) in all other cases as against its customer, an issuer acting in good faith may honor the draft or demand for payment despite notification from the customer of fraud, forgery or other defect not apparent on the face of the documents but a court of appropriate jurisdiction may enjoin such honor.

(3) Unless otherwise agreed an issuer which has duly honored a draft or demand for payment is entitled to immediate reimbursement of any payment made under the credit and to be put in effectively available funds not later than the day before maturity of any acceptance made under the credit.

(4) When a credit provides for payment by the issuer on receipt of notice that the required documents are in the possession of a correspondent or other agent of the issuer

(a) any payment made on receipt of such notice is conditional; and

(b) the issuer may reject documents which do not comply with the credit if it does so within three banking days following its receipt of the documents; and

(c) in the event of such rejection, the issuer is entitled by charge back or otherwise to return of the payment made.

(5) In the case covered by subsection (4) failure to reject documents within the time specified in subparagraph (b) constitutes acceptance of the documents and makes the payment final in favor of the beneficiary. [1965 ex.s. c 157 § 5-114.]

**62A.5-115 Remedy for improper dishonor or anticipatory repudiation.** (1) When an issuer wrongfully dishonors a draft or demand for payment presented under a credit the person entitled to honor has with respect to any documents the rights of a person in the position of a seller (RCW 62A.2-707) and may recover from the issuer the face amount of the draft or demand together with incidental damages under RCW 62A.2-710 on seller's incidental damages and interest but less any amount realized by resale or other use or disposition of



the subject matter of the transaction. In the event no resale or other utilization is made the documents, goods or other subject matter involved in the transaction must be turned over to the issuer on payment of judgment.

(2) When an issuer wrongfully cancels or otherwise repudiates a credit before presentment of a draft or demand for payment drawn under it the beneficiary has the rights of a seller after anticipatory repudiation by the buyer under RCW 62A.2-610 if he learns of the repudiation in time reasonably to avoid procurement of the required documents. Otherwise the beneficiary has an immediate right of action for wrongful dishonor. [1965 ex.s. c 157 § 5-115.]

**62A.5-116 Transfer and assignment.** (1) The right to draw under a credit can be transferred or assigned only when the credit is expressly designated as transferable or assignable.

(2) Even though the credit specifically states that it is nontransferable or nonassignable the beneficiary may before performance of the conditions of the credit assign his right to proceeds. Such an assignment is an assignment of a contract right under Article 9 on Secured Transactions and is governed by that Article except that

(a) the assignment is ineffective until the letter of credit or advice of credit is delivered to the assignee which delivery constitutes perfection of the security interest under Article 9; and

(b) the issuer may honor drafts or demands for payment drawn under the credit until it receives a notification of the assignment signed by the beneficiary which reasonably identifies the credit involved in the assignment and contains a request to pay the assignee; and

(c) after what reasonably appears to be such a notification has been received the issuer may without dishonor refuse to accept or pay even to a person otherwise entitled to honor until the letter of credit or advice of credit is exhibited to the issuer.

(3) Except where the beneficiary has effectively assigned his right to draw or his right to proceeds, nothing in this section limits his right to transfer or negotiate drafts or demands drawn under the credit. [1965 ex.s. c 157 § 5-116. Subd. (2)(b) cf. former RCW 63.16.020; 1947 c 8 § 2; Rem. Supp. 1947 § 2721-2.]

**62A.5-117 Insolvency of bank holding funds for documentary credit.** (1) Where an issuer or an advising or confirming bank or a bank which has for a customer procured issuance of a credit by another bank becomes insolvent before final payment under the credit and the credit is one to which this Article is made applicable by paragraphs (a) or (b) of RCW 62A.5-102(1) on scope, the receipt or allocation of funds or collateral to secure or meet obligations under the credit shall have the following results:

(a) to the extent of any funds or collateral turned over after or before the insolvency as indemnity against or specifically for the purpose of payment of drafts or demands for payment drawn under the designated credit, the drafts or demands are entitled to payment in

preference over depositors or other general creditors of the issuer or bank; and

(b) on expiration of the credit or surrender of the beneficiary's rights under it unused any person who has given such funds or collateral is similarly entitled to return thereof; and

(c) a charge to a general or current account with a bank if specifically consented to for the purpose of indemnity against or payment of drafts or demands for payment drawn under the designated credit falls under the same rules as if the funds had been drawn out in cash and then turned over with specific instructions.

(2) After honor or reimbursement under this section the customer or other person for whose account the insolvent bank has acted is entitled to receive the documents involved. [1965 ex.s. c 157 § 5-117.]

## Article 6 BULK TRANSFERS

### Sections

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## ARTICLE 6 BULK TRANSFERS

**62A.6-101 Short title.** This Article shall be known and may be cited as Uniform Commercial Code—Bulk Transfers. [1965 ex.s. c 157 § 6-101.]

**62A.6-102 "Bulk transfer"; transfers of equipment; enterprises subject to this Article; bulk transfers subject to this Article.** (1) A "bulk transfer" is any transfer in bulk and not in the ordinary course of the transferor's business of a major part of the materials, supplies, merchandise or other inventory (RCW 62A.9-109) of an enterprise subject to this Article.

(2) A transfer of all or substantially all of the equipment (RCW 62A.9-109) of such an enterprise is a bulk transfer whether or not made in connection with a bulk transfer of inventory, merchandise, materials or supplies.

(3) The enterprises subject to this Article are all those of a vendor engaged in the business of buying and selling and dealing in goods, wares or merchandise, of any kind or description, or in the business of operating a restaurant, café, beer parlor, tavern, hotel, club or gasoline service station.

(4) Except as limited by the following section all bulk transfers of goods located within this state are subject to this Article. [1967 c 114 § 2; 1965 ex.s. c 157 § 6-102.]

Cf. former RCW 63.08.010; 1939 c 122 § 4; 1925 ex.s. c 135 § 1; RRS § 5835; prior: 1913 c 175 § 4; 1901 c 109 §§ 4, 5.]

~~Emergency~~—Effective date—1967 c 114: See note following RCW 62A.4-406.

**62A.6-103 Transfers excepted from this Article.** The following transfers are not subject to this Article:

(1) Those made to give security for the performance of an obligation;

(2) General assignments for the benefit of all the creditors of the transferor, and subsequent transfers by the assignee thereunder;

(3) Transfers in settlement or realization of a lien or other security interests;

(4) Sales by executors, administrators, receivers, trustees in bankruptcy, or any public officer under judicial process;

(5) Sales made in the course of judicial or administrative proceedings for the dissolution or reorganization of a corporation and of which notice is sent to the creditors of the corporation pursuant to order of the court or administrative agency;

(6) Transfers to a person maintaining a known place of business in this state who becomes bound to pay the debts of the transferor in full and gives public notice of that fact, and who is solvent after becoming so bound;

(7) A transfer to a new business enterprise organized to take over and continue the business, if public notice of the transaction is given and the new enterprise assumes the debts of the transferor and he receives nothing from the transaction except an interest in the new enterprise junior to the claims of creditors;

(8) Transfers of property which is exempt from execution;

(9) Any sale subject to public auction on lien foreclosures.

Public notice under subsection (6) or subsection (7) may be given by publishing once a week for two consecutive weeks in a newspaper of general circulation where the transferor had its principal place of business in this state an advertisement including the names and addresses of the transferor and transferee and the effective date of the transfer. [1965 ex.s. c 157 § 6-103. Cf. former RCW 63.08.010; 1939 c 122 § 4; 1925 ex.s. c 135 § 1; RRS § 5835; prior: 1913 c 175 § 4; 1901 c 109 §§ 4, 5.]

**62A.6-104 Schedule of property, list of creditors.** (1) Except as provided with respect to auction sales (RCW 62A.6-108), a bulk transfer subject to this Article is ineffective against any creditor of the transferor unless:

(a) The transferee requires the transferor to furnish a list of his existing creditors prepared as stated in this section; and

(b) The parties prepare a schedule of the property transferred sufficient to identify it; and

(c) The transferee preserves the list and schedule for six months next following the transfer and permits inspection of either or both and copying therefrom at all reasonable hours by any creditor of the transferor, and

files the list and schedule in the office of the county auditor of the county in which the property transferred is located and serves it upon the office of the state tax commission; the list and schedule shall be indexed as chattel mortgages are indexed, the name of the vendor being indexed as mortgagor and the name of the intending purchaser as mortgagee.

(2) The list of creditors and the schedule must be signed and sworn to by the transferor or his agent. It must contain the names and business addresses of all creditors of the transferor, with the amounts when known, and also the names of all persons who are known to the transferor to assert claims against him even though such claims are disputed. If the transferor is the obligor of an outstanding issue of bonds, debentures or the like as to which there is an indenture trustee, the list of creditors need include only the name and address of the indenture trustee and the aggregate outstanding principal amount of the issue.

(3) Responsibility for the completeness and accuracy of the list of creditors rests on the transferor, and the transfer is not rendered ineffective by errors or omissions therein unless the transferee is shown to have had knowledge. [1965 ex.s. c 157 § 6-104. Cf. former RCW sections: (i) RCW 63.08.020; 1953 c 247 § 1; 1943 c 98 § 1, part; 1939 c 122 § 1, part; 1925 ex.s. c 135 § 2, part; Rem. Supp. 1943 § 5832, part; prior: 1901 c 109 § 1, part. (ii) RCW 63.08.040; 1953 c 247 § 3; 1943 c 98 § 1, part; 1939 c 122 § 1, part; 1925 ex.s. c 135 § 2, part; Rem. Supp. 1943 § 5832, part; prior: 1901 c 109 § 1, part. (iii) RCW 63.08.050; 1953 c 247 § 4; 1939 c 122 § 2; 1925 ex.s. c 135 § 3; RRS § 5833; prior: 1901 c 109 § 2. (iv) RCW 63.08.060; 1939 c 122 § 3; 1925 ex.s. c 135 § 4; RRS § 5834; prior: 1901 c 109 § 3.]

*Perjury: RCW 9.72.030, 9.72.040, 9.72.060.*

**62A.6-105 Notice to creditors—Exceptions.** In addition to the requirements of the preceding section, any bulk transfer subject to this Article except:

(1) One made by auction sale (RCW 62A.6-108), or

(2) If the sale proceeds are impounded in gross in the hands of a bank or licensed escrow agent or attorney, to be held until directed by the transferee for application under RCW 62A.6-106, and in any event so to be held in escrow for not less than thirty days following the date of giving of notice under RCW 62A.6-107, is ineffective against any creditor of the transferor unless at least ten days before he takes possession of the goods or pays for them, whichever happens first, the transferee gives notice of the transfer in the manner and to the persons hereafter provided (RCW 62A.6-107). [1971 c 23 § 1; 1965 ex.s. c 157 § 6-105. Cf. former RCW 63.08.040; 1953 c 247 § 3; 1943 c 98 § 1, part; 1939 c 122 § 1, part; 1925 ex.s. c 135 § 2, part; Rem. Supp. 1943 § 5832, part; prior: 1901 c 109 § 1, part.]

**62A.6-106 Application of the proceeds.** In addition to the requirements of the two preceding sections:

(1) Upon every bulk transfer subject to this Article for which new consideration becomes payable except those made by sale at auction it is the duty of the transferee to assure that such consideration is applied

so far as necessary to pay those debts of the transferor which are either shown on the list furnished by the transferor (RCW 62A.6-104) or filed in writing in the place stated in the notice (RCW 62A.6-107) within thirty days after the mailing of such notice. This duty of the transferee runs to all the holders of such debts, and may be enforced by any of them for the benefit of all.

(2) If any of said debts are in dispute the necessary sum may be withheld from distribution until the dispute is settled or adjudicated.

(3) If the consideration payable is not enough to pay all of the said debts in full distribution shall be made pro rata.

(4) The transferee may within ten days after he takes possession of the goods pay the consideration into the superior court in the county where the transferor had its principal place of business in this state and thereafter may discharge his duty under this section by giving notice by registered or certified mail to all the persons to whom the duty runs that the consideration has been paid into that court and that they should file their claims there. On motion of any interested party, the court may order the distribution of the consideration to the persons entitled to it. [1965 ex.s. c 157 § 6-106. Cf. former RCW 63.08.050; 1953 c 247 § 4; 1939 c 122 § 2; 1925 ex.s. c 135 § 3; RRS § 5833; prior: 1901 c 109 § 2.]

**62A.6-107 The notice.** (1) The notice to creditors (RCW 62A.6-105) shall state:

(a) that a bulk transfer is about to be made; and

(b) the names and business addresses of the transferor and transferee, and all other business names and addresses used by the transferor within three years last past so far as known to the transferee; and

(c) whether or not all the debts of the transferor are to be paid in full as they fall due as a result of the transaction, and if so, the address to which creditors should send their bills.

(2) If the debts of the transferor are not to be paid in full as they fall due or if the transferee is in doubt on that point then the notice shall state further:

(a) the location and general description of the property to be transferred and the estimated total of the transferor's debts;

(b) the address where the schedule of property and list of creditors (RCW 62A.6-104) may be inspected;

(c) whether the transfer is to pay existing debts and if so the amount of such debts and to whom owing;

(d) whether the transfer is for new consideration and if so the amount of such consideration and the time and place of payment; and

(e) if for new consideration the time and place where creditors of the transferor are to file their claims.

(3) The notice in any case shall be delivered personally or sent by registered or certified mail to all the persons shown on the list of creditors furnished by the transferor (RCW 62A.6-104), to all other persons who are known to the transferee to hold or assert claims against the transferor, and to the office of the state tax commission. A copy of the notice shall be filed in the office of the county auditor of the county in which the property transferred is located and indexed as chattel

mortgages are indexed, the name of the vendor being indexed as mortgagor and the name of the intending purchaser as mortgagee. [1965 ex.s. c 157 § 6-107. Cf. former RCW 63.08.040; 1953 c 247 § 3; 1943 c 98 § 1, part; 1939 c 122 § 1, part; 1925 ex.s. c 135 § 2, part; Rem. Supp. 1943 § 5832, part; prior: 1901 c 109 § 1, part.]

**62A.6-108 Auction sales; "auctioneer".** (1) A bulk transfer is subject to this Article even though it is by sale at auction, but only in the manner and with the results stated in this section.

(2) The transferor shall furnish a list of his creditors and assist in the preparation of a schedule of the property to be sold, both prepared as before stated (RCW 62A.6-104).

(3) The person or persons other than the transferor who direct, control or are responsible for the auction are collectively called the "auctioneer". The auctioneer shall:

(a) receive and retain the list of creditors and prepare and retain the schedule of property for the period stated in this Article (RCW 62A.6-104);

(b) give notice of the auction personally or by registered or certified mail at least ten days before it occurs to all persons shown on the list of creditors and to all other persons who are known to him to hold or assert claims against the transferor; and

(c) assure that the net proceeds of the auction are applied as provided in this Article (RCW 62A.6-106).

(4) Failure of the auctioneer to perform any of these duties does not affect the validity of the sale or the title of the purchasers, but if the auctioneer knows that the auction constitutes a bulk transfer such failure renders the auctioneer liable to the creditors of the transferor as a class for the sums owing to them from the transferor up to but not exceeding the net proceeds of the auction. If the auctioneer consists of several persons their liability is joint and several. [1965 ex.s. c 157 § 6-108.]

*Auctioneers: Chapter 18.11 RCW.*

*Auctions of jewelry or appliances: Chapter 18.12 RCW.*

**62A.6-109 What creditors protected; credit for payment to particular creditors.** (1) The creditors of the transferor (or claimants against the transferor) mentioned in this Article are those to whom the transferor is indebted for or on account of services, commodities, goods, wares, or merchandise, or fixtures and equipment, used in or furnished to the business of the transferor, or for or on account of money borrowed to carry on the business of the transferor or for or on account of labor employed in the course of the business of the transferor, of which the goods, wares and merchandise, or fixtures and equipment, bargained for or purchased are a part. Creditors who become such after notice to creditors is given (RCW 62A.6-105 and RCW 62A.6-107) are not entitled to notice.

(2) Against the aggregate obligation imposed by the provisions of this Article concerning the application of the proceeds (RCW 62A.6-106 and subsection (3)(c) of RCW 62A.6-108) the transferee or auctioneer is entitled to credit for sums paid to particular creditors of the

transferor, not exceeding the sums believed in good faith at the time of the payment to be properly payable to such creditors. [1967 c 114 § 3; 1965 ex.s. c 157 § 6-109. Cf. former RCW sections: (i) RCW 63.08.020; 1953 c 247 § 1; 1943 c 98 § 1, part; 1939 c 122 § 1, part; 1925 ex.s. c 135 § 2, part; Rem. Supp. 1943 § 5832, part; prior: 1901 c 109 § 1, part; (ii) RCW 63.08.050; 1953 c 247 § 4; 1939 c 122 § 2; 1925 ex.s. c 135 § 3; RRS § 5833; prior: 1901 c 109 § 2.]

**Emergency—Effective date—1967 c 114:** See note following RCW 62A.4-406.

**62A.6-110 Subsequent transfers.** When the title of a transferee to property is subject to a defect by reason of his non-compliance with the requirements of this Article, then:

(1) a purchaser of any of such property from such transferee who pays no value or who takes with notice of such non-compliance takes subject to such defect, but

(2) a purchaser for value in good faith and without such notice takes free of such defect. [1965 ex.s. c 157 § 6-110.]

**62A.6-111 Limitation of actions and levies.** No action under this Article shall be brought nor levy made more than six months after the date on which the transferee took possession of the goods unless the transfer has been concealed. If the transfer has been concealed, actions may be brought or levies made within six months after its discovery. [1965 ex.s. c 157 § 6-111.]

### Article 7

## WAREHOUSE RECEIPTS, BILLS OF LADING AND OTHER DOCUMENTS OF TITLE

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## ARTICLE 7 WAREHOUSE RECEIPTS, BILLS OF LADING AND OTHER DOCUMENTS OF TITLE

### PART 1 GENERAL

**62A.7-101 Short title.** This Article shall be known and may be cited as Uniform Commercial Code—Documents of Title. [1965 ex.s. c 157 § 7-101.]

**62A.7-102 Definitions and index of definitions.** (1) In this Article, unless the context otherwise requires:

(a) "Bailee" means the person who by a warehouse receipt, bill of lading or other document of title acknowledges possession of goods and contracts to deliver them.

(b) "Consignee" means the person named in a bill to whom or to whose order the bill promises delivery.

(c) "Consignor" means the person named in a bill as the person from whom the goods have been received for shipment.

(d) "Delivery order" means a written order to deliver goods directed to a warehouseman, carrier or other person who in the ordinary course of business issues warehouse receipts or bills of lading.

(e) "Document" means document of title as defined in the general definitions in Article 1 (RCW 62A.1-201).

(f) "Goods" means all things which are treated as movable for the purposes of a contract of storage or transportation.

(g) "Issuer" means a bailee who issues a document except that in relation to an unaccepted delivery order it means the person who orders the possessor of goods to deliver. Issuer includes any person for whom an agent or employee purports to act in issuing a document if the agent or employee has real or apparent authority to issue documents, notwithstanding that the issuer received no goods or that the goods were misdescribed or that in any other respect the agent or employee violated his instructions.

(h) "Warehouseman" is a person engaged in the business of storing goods for hire.

(2) Other definitions applying to this Article or to specified Parts thereof, and the sections in which they appear are:

"Duly negotiate". RCW 62A.7-501.

"Person entitled under the document". RCW 62A.7-403(4).

(3) Definitions in other Articles applying to this Article and the sections in which they appear are:

"Contract for sale". RCW 62A.2-106.

"Overseas". RCW 62A.2-323.

"Receipt" of goods. RCW 62A.2-103.

(4) In addition Article 1 contains general definitions and principles of construction and interpretation applicable throughout this Article. [1965 ex.s. c 157 § 7-102. Cf. former RCW sections: (i) RCW 22.04.585(1); 1913 c 99 § 58; RRS § 3644; formerly RCW 22.04.010. (ii) RCW 63.04.755(1); 1925 ex.s. c 142 § 76; RRS § 5836-76; formerly RCW 63.04.010. (iii) RCW 81.32-.011; 1961 c 14 § 81.32.011; prior: 1915 c 159 § 1; RRS § 3647; formerly RCW 81.32.020. (iv) RCW 81.32.531 (1); 1961 c 14 § 81.32.531; prior: 1915 c 159 § 53; RRS § 3699; formerly RCW 81.32.010, part.]

**62A.7-103 Relation of Article to treaty, statute, tariff, classification or regulation.** To the extent that any treaty or statute of the United States, regulatory statute of this state or tariff, classification or regulation filed or issued pursuant thereto is applicable, the provisions of this Article are subject thereto. [1965 ex.s. c 157 § 7-103.]

**62A.7-104 Negotiable and non-negotiable warehouse receipt, bill of lading or other document of title.** (1) A warehouse receipt, bill of lading or other document of title is negotiable

(a) if by its terms the goods are to be delivered to bearer or to the order of a named person; or

(b) where recognized in overseas trade, if it runs to a named person or assigns.

(2) Any other document is non-negotiable. A bill of lading in which it is stated that the goods are consigned to a named person is not made negotiable by a provision that the goods are to be delivered only against a written order signed by the same or another named

person. [1965 ex.s. c 157 § 7-104. Cf. former RCW sections: (i) RCW 22.04.030, 22.04.050, and 22.04.060; 1913 c 99 §§ 2, 4, and 5; RRS §§ 3588, 3590, and 3591; prior: 1891 c 134 §§ 5 and 8. (ii) RCW 22.04.040 and 22.04.080; 1913 c 99 §§ 3, 7; RRS §§ 3589, 3593. (iii) RCW 63.04.280 and 63.04.310; 1925 ex.s. c 142 §§ 27 and 30; RRS §§ 5836-27 and 5836-30. (iv) RCW 63.04.755(1); 1925 ex.s. c 142 § 76; RRS § 5836-76; formerly RCW 63.04.010. (v) RCW 81.32.021 through 81.32.051, and 81.32.081; 1961 c 14 §§ 81.32.021 through 81.32.051, and 81.32.081; prior: 1915 c 159 §§ 2 through 5, and 8; RRS §§ 3648 through 3651, and 3654; formerly RCW 81.32.030 through 81.32.060, and 81.32-.090. (vi) RCW 81.32.531; 1961 c 14 § 81.32.531; prior: 1915 c 159 § 53; RRS § 3699; formerly RCW 81.32.010, part.]

**62A.7-105 Construction against negative implication.**

The omission from either Part 2 or Part 3 of this Article of a provision corresponding to a provision made in the other Part does not imply that a corresponding rule of law is not applicable. [1965 ex.s. c 157 § 7-105.]

PART 2

WAREHOUSE RECEIPTS: SPECIAL PROVISIONS

**62A.7-201 Who may issue a warehouse receipt; storage under government bond.** (1) A warehouse receipt may be issued by any warehouseman.

(2) Where goods including distilled spirits and agricultural commodities are stored under a statute requiring a bond against withdrawal or a license for the issuance of receipts in the nature of warehouse receipts, a receipt issued for the goods has like effect as a warehouse receipt even though issued by a person who is the owner of the goods and is not a warehouseman. [1965 ex.s. c 157 § 7-201. Cf. former RCW 22.04.020; 1913 c 99 § 1; RRS § 3587; prior: 1891 c 134 § 1.]

**62A.7-202 Form of warehouse receipt; essential terms; optional terms.** (1) A warehouse receipt need not be in any particular form.

(2) Unless a warehouse receipt embodies within its written or printed terms each of the following, the warehouseman is liable for damages caused by the omission to a person injured thereby:

(a) the location of the warehouse where the goods are stored;

(b) the date of issue of the receipt;

(c) the consecutive number of the receipt;

(d) a statement whether the goods received will be delivered to the bearer, to a specified person, or to a specified person or his order;

(e) the rate of storage and handling charges, except that where goods are stored under a field warehousing arrangement a statement of that fact is sufficient on a non-negotiable receipt;

(f) a description of the goods or of the packages containing them;

(g) the signature of the warehouseman, which may be made by his authorized agent;

(h) if the receipt is issued for goods of which the warehouseman is owner, either solely or jointly or in common with others, the fact of such ownership; and

(i) a statement of the amount of advances made and of liabilities incurred for which the warehouseman claims a lien or security interest (RCW 62A.7-209). If the precise amount of such advances made or of such liabilities incurred is, at the time of the issue of the receipt, unknown to the warehouseman or to his agent who issues it, a statement of the fact that advances have been made or liabilities incurred and the purpose thereof is sufficient.

(3) A warehouseman may insert in his receipt any other terms which are not contrary to the provisions of this Title and do not impair his obligation of delivery (RCW 62A.7-403) or his duty of care (RCW 62A.7-204). Any contrary provisions shall be ineffective. [1965 ex.s. c 157 § 7-202. Cf. former RCW sections: (i) RCW 22.04.030; 1913 c 99 § 2; RRS § 3588; prior: 1891 c 134 § 8. (ii) RCW 22.04.040; 1913 c 99 § 3; RRS § 3589.]

**62A.7-203 Liability for non-receipt or misdescription.** A party to or purchaser for value in good faith of a document of title other than a bill of lading relying in either case upon the description therein of the goods may recover from the issuer damages caused by the non-receipt or misdescription of the goods, except to the extent that the document conspicuously indicates that the issuer does not know whether any part or all of the goods in fact were received or conform to the description, as where the description is in terms of marks or labels or kind, quantity or condition, or the receipt or description is qualified by "contents, condition and quality unknown", "said to contain" or the like, if such indication be true, or the party or purchaser otherwise has notice. [1965 ex.s. c 157 § 7-203. Cf. former RCW 22.04.210; 1913 c 99 § 20; RRS § 3606.]

**62A.7-204 Duty of care; contractual limitation of warehouseman's liability.** (1) A warehouseman is liable for damages for loss of or injury to the goods caused by his failure to exercise such care in regard to them as a reasonably careful man would exercise under like circumstances but unless otherwise agreed he is not liable for damages which could not have been avoided by the exercise of such care.

(2) Damages may be limited by a term in the warehouse receipt or storage agreement limiting the amount of liability in case of loss or damage, and setting forth a specific liability per article or item, or value per unit of weight, beyond which the warehouseman shall not be liable; provided, however, that such liability may on written request of the bailor at the time of signing such storage agreement or within a reasonable time after receipt of the warehouse receipt be increased on part or all of the goods thereunder, in which event increased rates may be charged based on such increased valuation, but that no such increase shall be permitted contrary to a lawful limitation of liability contained in the

warehouseman's tariff, if any. No such limitation is effective with respect to the warehouseman's liability for conversion to his own use.

(3) Reasonable provisions as to the time and manner of presenting claims and instituting actions based on the bailment may be included in the warehouse receipt or tariff.

(4) This section does not impair or repeal the duties of care or liabilities or penalties for breach thereof as provided in chapters 22.09, 22.32, 81.92, and 81.94 RCW. [1965 ex.s. c 157 § 7-204. Cf. former RCW sections: (i) RCW 22.04.040; 1913 c 99 § 3; RRS § 3589. (ii) RCW 22.04.220; 1913 c 99 § 21; RRS § 3607.]

**62A.7-205 Title under warehouse receipt defeated in certain cases.** A buyer in the ordinary course of business of fungible goods sold and delivered by a warehouseman who is also in the business of buying and selling such goods takes free of any claim under a warehouse receipt even though it has been duly negotiated. [1965 ex.s. c 157 § 7-205.]

**62A.7-206 Termination of storage at warehouseman's option.** (1) A warehouseman may on notifying the person on whose account the goods are held and any other person known to claim an interest in the goods require payment of any charges and removal of the goods from the warehouse at the termination of the period of storage fixed by the document, or, if no period is fixed, within a stated period not less than thirty days after the notification. If the goods are not removed before the date specified in the notification, the warehouseman may sell them in accordance with the provisions of the section on enforcement of a warehouseman's lien (RCW 62A.7-210).

(2) If a warehouseman in good faith believes that the goods are about to deteriorate or decline in value to less than the amount of his lien within the time prescribed in subsection (1) for notification, advertisement and sale, the warehouseman may specify in the notification any reasonable shorter time for removal of the goods and in case the goods are not removed, may sell them at public sale held not less than one week after a single advertisement or posting.

(3) If as a result of a quality or condition of the goods of which the warehouseman had no notice at the time of deposit the goods are a hazard to other property or to the warehouse or to persons, the warehouseman may sell the goods at public or private sale without advertisement on reasonable notification to all persons known to claim an interest in the goods. If the warehouseman after a reasonable effort is unable to sell the goods he may dispose of them in any lawful manner and shall incur no liability by reason of such disposition.

(4) The warehouseman must deliver the goods to any person entitled to them under this Article upon due demand made at any time prior to sale or other disposition under this section.

(5) The warehouseman may satisfy his lien from the proceeds of any sale or disposition under this section but must hold the balance for delivery on the demand

of any person to whom he would have been bound to deliver the goods. [1965 ex.s. c 157 § 7-206. Cf. former RCW 22.04.350; 1913 c 99 § 34; RRS § 3620.]

**62A.7-207 Goods must be kept separate; fungible goods.** (1) Unless the warehouse receipt otherwise provides, a warehouseman must keep separate the goods covered by each receipt so as to permit at all times identification and delivery of those goods except that different lots of fungible goods may be commingled.

(2) Fungible goods so commingled are owned in common by the persons entitled thereto and the warehouseman is severally liable to each owner for that owner's share. Where because of over-issue a mass of fungible goods is insufficient to meet all the receipts which the warehouseman has issued against it, the persons entitled include all holders to whom overissued receipts have been duly negotiated. [1965 ex.s. c 157 § 7-207. Cf. former RCW sections: (i) RCW 22.04.230; 1913 c 99 § 22; RRS § 3608; prior: 1891 c 134 § 3. (ii) RCW 22.04.240; 1913 c 99 § 23; RRS § 3609.]

**62A.7-208 Altered warehouse receipts.** Where a blank in a negotiable warehouse receipt has been filled in without authority, a purchaser for value and without notice of the want of authority may treat the insertion as authorized. Any other unauthorized alteration leaves any receipt enforceable against the issuer according to its original tenor. [1965 ex.s. c 157 § 7-208. Cf. former RCW 22.04.140; 1913 c 99 § 13; RRS § 3599.]

**62A.7-209 Lien of warehouseman.** (1) A warehouseman has a lien against the bailor on the goods covered by a warehouse receipt or on the proceeds thereof in his possession for charges for storage or transportation (including demurrage and terminal charges), insurance, labor, or charges present or future in relation to the goods, and for expenses necessary for preservation of the goods or reasonably incurred in their sale pursuant to law. If the person on whose account the goods are held is liable for like charges or expenses in relation to other goods whenever deposited and it is stated in the receipt that a lien is claimed for charges and expenses in relation to other goods, the warehouseman also has a lien against him for such charges and expenses whether or not the other goods have been delivered by the warehouseman. But against a person to whom a negotiable warehouse receipt is duly negotiated a warehouseman's lien is limited to charges in an amount or at a rate specified on the receipt or if no charges are so specified then to a reasonable charge for storage of the goods covered by the receipt subsequent to the date of the receipt.

(2) The warehouseman may also reserve a security interest against the bailor for a maximum amount specified on the receipt for charges other than those specified in subsection (1), such as for money advanced and interest. Such a security interest is governed by the Article on Secured Transactions (Article 9).

(3) A warehouseman's lien for charges and expenses under subsection (1) or a security interest under subsection (2) is also effective against any person who so

entrusted the bailor with possession of the goods that a pledge of them by him to a good faith purchaser for value would have been valid but is not effective against a person as to whom the document confers no right in the goods covered by it under RCW 62A.7-503.

(4) A warehouseman loses his lien on any goods which he voluntarily delivers or which he unjustifiably refuses to deliver. [1965 ex.s. c 157 § 7-209. Cf. former RCW sections: RCW 22.04.280 through 22.04.330; 1913 c 99 §§ 27 through 32; RRS §§ 3613 through 3618.]

**62A.7-210 Enforcement of warehouseman's lien.** (1) Except as provided in subsection (2), a warehouseman's lien may be enforced by public or private sale of the goods in bloc or in parcels, at any time or place and on any terms which are commercially reasonable, after notifying all persons known to claim an interest in the goods. Such notification must include a statement of the amount due, the nature of the proposed sale and the time and place of any public sale. The fact that a better price could have been obtained by a sale at a different time or in a different method from that selected by the warehouseman is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. If the warehouseman either sells the goods in the usual manner in any recognized market therefor, or if he sells at the price current in such market at the time of his sale, or if he has otherwise sold in conformity with commercially reasonable practices among dealers in the type of goods sold, he has sold in a commercially reasonable manner. A sale of more goods than apparently necessary to be offered to insure satisfaction of the obligation is not commercially reasonable except in cases covered by the preceding sentence.

(2) A warehouseman's lien on goods other than goods stored by a merchant in the course of his business may be enforced only as follows:

(a) All persons known to claim an interest in the goods must be notified.

(b) The notification must be delivered in person or sent by registered or certified letter to the last known address of any person to be notified.

(c) The notification must include an itemized statement of the claim, a description of the goods subject to the lien, a demand for payment within a specified time not less than ten days after receipt of the notification, and a conspicuous statement that unless the claim is paid within that time the goods will be advertised for sale and sold by auction at a specified time and place.

(d) The sale must conform to the terms of the notification.

(e) The sale must be held at the nearest suitable place to that where the goods are held or stored.

(f) After the expiration of the time given in the notification, an advertisement of the sale must be published once a week for two weeks consecutively in a newspaper of general circulation where the sale is to be held. The advertisement must include a description of the goods, the name of the person on whose account they are being held, and the time and place of the sale. The sale must take place at least fifteen days after the first



publication. If there is no newspaper of general circulation where the sale is to be held, the advertisement must be posted at least ten days before the sale in not less than six conspicuous places in the neighborhood of the proposed sale.

(3) Before any sale pursuant to this section any person claiming a right in the goods may pay the amount necessary to satisfy the lien and the reasonable expenses incurred under this section. In that event the goods must not be sold, but must be retained by the warehouseman subject to the terms of the receipt and this Article.

(4) The warehouseman may buy at any public sale pursuant to this section.

(5) A purchaser in good faith of goods sold to enforce a warehouseman's lien takes the goods free of any rights of persons against whom the lien was valid, despite noncompliance by the warehouseman with the requirements of this section.

(6) The warehouseman may satisfy his lien from the proceeds of any sale pursuant to this section but must hold the balance, if any, for delivery on demand to any person to whom he would have been bound to deliver the goods.

(7) The rights provided by this section shall be in addition to all other rights allowed by law to a creditor against his debtor.

(8) Where a lien is on goods stored by a merchant in the course of his business the lien may be enforced in accordance with either subsection (1) or (2).

(9) The warehouseman is liable for damages caused by failure to comply with the requirements for sale under this section and in case of willful violation is liable for conversion. [1965 ex.s. c 157 § 7-210. Cf. former RCW sections: RCW 22.04.340, 22.04.360, and 22.04.370; 1913 c 99 §§ 33, 35, and 36; RRS §§ 3619, 3621, and 3622.]

### PART 3

#### BILLS OF LADING: SPECIAL PROVISIONS

**62A.7-301 Liability for non-receipt or misdescription; "said to contain"; "shipper's load and count"; improper handling.** (1) A consignee of a non-negotiable bill who has given value in good faith or a holder to whom a negotiable bill has been duly negotiated relying in either case upon the description therein of the goods, or upon the date therein shown, may recover from the issuer damages caused by the misdating of the bill or the nonreceipt or misdescription of the goods, except to the extent that the document indicates that the issuer does not know whether any part or all of the goods in fact were received or conform to the description, as where the description is in terms of marks or labels or kind, quantity, or condition or the receipt or description is qualified by "contents or condition of contents of packages unknown", "said to contain", "shipper's weight, load and count" or the like, if such indication be true.

(2) When goods are loaded by an issuer who is a common carrier, the issuer must count the packages of goods if package freight and ascertain the kind and

quantity if bulk freight. In such cases "shipper's weight, load and count" or other words indicating that the description was made by the shipper are ineffective except as to freight concealed by packages.

(3) When bulk freight is loaded by a shipper who makes available to the issuer adequate facilities for weighing such freight, an issuer who is a common carrier must ascertain the kind and quantity within a reasonable time after receiving the written request of the shipper to do so. In such cases "shipper's weight" or other words of like purport are ineffective.

(4) The issuer may by inserting in the bill the words "shipper's weight, load and count" or other words of like purport indicate that the goods were loaded by the shipper; and if such statement be true the issuer shall not be liable for damages caused by the improper loading. But their omission does not imply liability for such damages.

(5) The shipper shall be deemed to have guaranteed to the issuer the accuracy at the time of shipment of the description, marks, labels, number, kind, quantity, condition and weight, as furnished by him; and the shipper shall indemnify the issuer against damage caused by inaccuracies in such particulars. The right of the issuer to such indemnity shall in no way limit his responsibility and liability under the contract of carriage to any person other than the shipper. [1965 ex.s. c 157 § 7-301. Cf. former RCW 81.32.231; 1961 c 14 § 81.32.231; prior: 1915 c 159 § 23; RRS § 3669; formerly RCW 81.32.240.]

**62A.7-302 Through bills of lading and similar documents.** (1) The issuer of a through bill of lading or other document embodying an undertaking to be performed in part by persons acting as its agents or by connecting carriers is liable to anyone entitled to recover on the document for any breach by such other persons or by a connecting carrier of its obligation under the document but to the extent that the bill covers an undertaking to be performed overseas or in territory not contiguous to the continental United States or an undertaking including matters other than transportation this liability may be varied by agreement of the parties.

(2) Where goods covered by a through bill of lading or other document embodying an undertaking to be performed in part by persons other than the issuer are received by any such person, he is subject with respect to his own performance while the goods are in his possession to the obligation of the issuer. His obligation is discharged by delivery of the goods to another such person pursuant to the document, and does not include liability for breach by any other such persons or by the issuer.

(3) The issuer of such through bill of lading or other document shall be entitled to recover from the connecting carrier or such other person in possession of the goods when the breach of the obligation under the document occurred, the amount it may be required to pay to anyone entitled to recover on the document therefor, as may be evidenced by any receipt, judgment, or transcript thereof, and the amount of any expense reasonably incurred by it in defending any action brought by

anyone entitled to recover on the document therefor. [1965 ex.s. c 157 § 7-302.]

**62A.7-303 Diversion; reconsignment; change of instructions.** (1) Unless the bill of lading otherwise provides, the carrier may deliver the goods to a person or destination other than that stated in the bill or may otherwise dispose of the goods on instructions from

(a) the holder of a negotiable bill; or

(b) the consignor on a non-negotiable bill notwithstanding contrary instructions from the consignee; or

(c) the consignee on a non-negotiable bill in the absence of contrary instructions from the consignor, if the goods have arrived at the billed destination or if the consignee is in possession of the bill; or

(d) the consignee on a non-negotiable bill if he is entitled as against the consignor to dispose of them.

(2) Unless such instructions are noted on a negotiable bill of lading, a person to whom the bill is duly negotiated can hold the bailee according to the original terms. [1965 ex.s. c 157 § 7-303.]

**62A.7-304 Bills of lading in a set.** (1) Except where customary in overseas transportation, a bill of lading must not be issued in a set of parts. The issuer is liable for damages caused by violation of this subsection.

(2) Where a bill of lading is lawfully drawn in a set of parts, each of which is numbered and expressed to be valid only if the goods have not been delivered against any other part, the whole of the parts constitute one bill.

(3) Where a bill of lading is lawfully issued in a set of parts and different parts are negotiated to different persons, the title of the holder to whom the first due negotiation is made prevails as to both the document and the goods even though any later holder may have received the goods from the carrier in good faith and discharged the carrier's obligation by surrender of his part.

(4) Any person who negotiates or transfers a single part of a bill of lading drawn in a set is liable to holders of that part as if it were the whole set.

(5) The bailee is obliged to deliver in accordance with Part 4 of this Article against the first presented part of a bill of lading lawfully drawn in a set. Such delivery discharges the bailee's obligation on the whole bill. [1965 ex.s. c 157 § 7-304. Cf. former RCW 81.32.061; 1961 c 14 § 81.32.061; prior: 1915 c 159 § 6; RRS § 3652; formerly RCW 81.32.070.]

**62A.7-305 Destination bills.** (1) Instead of issuing a bill of lading to the consignor at the place of shipment a carrier may at the request of the consignor procure the bill to be issued at destination or at any other place designated in the request.

(2) Upon request of anyone entitled as against the carrier to control the goods while in transit and on surrender of any outstanding bill of lading or other receipt covering such goods, the issuer may procure a substitute bill to be issued at any place designated in the request. [1965 ex.s. c 157 § 7-305.]

**62A.7-306 Altered bills of lading.** An unauthorized alteration or filling in of a blank in a bill of lading leaves the bill enforceable according to its original tenor. [1965 ex.s. c 157 § 7-306. Cf. former RCW 81.32.161; 1961 c 14 § 81.32.161; prior: 1915 c 159 § 16; RRS § 3662; formerly RCW 81.32.170.]

**62A.7-307 Lien of carrier.** (1) A carrier has a lien on the goods covered by a bill of lading for charges subsequent to the date of its receipt of the goods for storage or transportation (including demurrage and terminal charges) and for expenses necessary for preservation of the goods incident to their transportation or reasonably incurred in their sale pursuant to law. But against a purchaser for value of a negotiable bill of lading a carrier's lien is limited to charges stated in the bill or the applicable tariffs, or if no charges are stated then to a reasonable charge.

(2) A lien for charges and expenses under subsection (1) on goods which the carrier was required by law to receive for transportation is effective against the consignor or any person entitled to the goods unless the carrier had notice that the consignor lacked authority to subject the goods to such charges and expenses. Any other lien under subsection (1) is effective against the consignor and any person who permitted the bailor to have control or possession of the goods unless the carrier had notice that the bailor lacked such authority.

(3) A carrier loses his lien on any goods which he voluntarily delivers or which he unjustifiably refuses to deliver. [1965 ex.s. c 157 § 7-307. Cf. former RCW sections: RCW 22.04.280 through 22.04.330; 1913 c 99 §§ 27 through 32; RRS §§ 3613 through 3618.]

**62A.7-308 Enforcement of carrier's lien.** (1) A carrier's lien may be enforced by public or private sale of the goods, in bloc or in parcels, at any time or place and on any terms which are commercially reasonable, after notifying all persons known to claim an interest in the goods. Such notification must include a statement of the amount due, the nature of the proposed sale and the time and place of any public sale. The fact that a better price could have been obtained by a sale at a different time or in a different method from that selected by the carrier is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. If the carrier either sells the goods in the usual manner in any recognized market therefor or if he sells at the price current in such market at the time of his sale or if he has otherwise sold in conformity with commercially reasonable practices among dealers in the type of goods sold he has sold in a commercially reasonable manner. A sale of more goods than apparently necessary to be offered to ensure satisfaction of the obligation is not commercially reasonable except in cases covered by the preceding sentence.

(2) Before any sale pursuant to this section any person claiming a right in the goods may pay the amount necessary to satisfy the lien and the reasonable expenses incurred under this section. In that event the goods must not be sold, but must be retained by the carrier subject to the terms of the bill and this Article.

(3) The carrier may buy at any public sale pursuant to this section.

(4) A purchaser in good faith of goods sold to enforce a carrier's lien takes the goods free of any rights of persons against whom the lien was valid, despite noncompliance by the carrier with the requirements of this section.

(5) The carrier may satisfy his lien from the proceeds of any sale pursuant to this section but must hold the balance, if any, for delivery on demand to any person to whom he would have been bound to deliver the goods.

(6) The rights provided by this section shall be in addition to all other rights allowed by law to a creditor against his debtor.

(7) A carrier's lien may be enforced in accordance with either subsection (1) or the procedure set forth in subsection (2) of RCW 62A.7-210.

(8) The carrier is liable for damages caused by failure to comply with the requirements for sale under this section and in case of willful violation is liable for conversion. [1965 ex.s. c 157 § 7-308. Cf. former RCW 22-04.340; 1913 c 99 § 33; RRS § 3619.]

**62A.7-309 Duty of care; contractual limitation of carrier's liability.** Save as otherwise provided in RCW 81.29.010 and 81.29.020

(1) A carrier who issues a bill of lading whether negotiable or non-negotiable must exercise the degree of care in relation to the goods which a reasonably careful man would exercise under like circumstances.

(2) Damages may be limited by a provision that the carrier's liability shall not exceed a value stated in the document if the carrier's rates are dependent upon value and the consignor by the carrier's tariff is afforded an opportunity to declare a higher value or a value as lawfully provided in the tariff, or where no tariff is filed he is otherwise advised of such opportunity; but no such limitation is effective with respect to the carrier's liability for conversion to its own use.

(3) Reasonable provisions as to the time and manner of presenting claims and instituting actions based on the shipment may be included in a bill of lading or tariff. [1965 ex.s. c 157 § 7-309. Cf. former RCW 81.32-.031; 1961 c 14 § 81.32.031; prior: 1915 c 159 § 3; RRS § 3649; formerly RCW 81.32.040.]

*Common carriers—Limitation on liability: Chapter 81.29 RCW.*

#### PART 4 WAREHOUSE RECEIPTS AND BILLS OF LADING: GENERAL OBLIGATIONS

**62A.7-401 Irregularities in issue of receipt or bill or conduct of issuer.** The obligations imposed by this Article on an issuer apply to a document of title regardless of the fact that

(a) the document may not comply with the requirements of this Article or of any other law or regulation regarding its issue, form or content; or

(b) the issuer may have violated laws regulating the conduct of his business; or

(c) the goods covered by the document were owned by the bailee at the time the document was issued; or

(d) the person issuing the document does not come within the definition of warehouseman if it purports to be a warehouse receipt. [1965 ex.s. c 157 § 7-401. Cf. former RCW sections: (i) RCW 22.04.210; 1913 c 99 § 20; RRS § 3606. (ii) RCW 81.32.231; 1961 c 14 § 81.32.231; prior: 1915 c 159 § 23; RRS § 3669; formerly RCW 81.32.240.]

**62A.7-402 Duplicate receipt or bill; overissue.** Neither a duplicate nor any other document of title purporting to cover goods already represented by an outstanding document of the same issuer confers any right in the goods, except as provided in the case of bills in a set, overissue of documents for fungible goods and substitutes for lost, stolen or destroyed documents. But the issuer is liable for damages caused by his overissue or failure to identify a duplicate document as such by conspicuous notation on its face. [1965 ex.s. c 157 § 7-402. Cf. former RCW sections: (i) RCW 22.04.070; 1913 c 99 § 6; RRS § 3592; prior: 1886 p 121 § 5. (ii) RCW 81.32.071; 1961 c 14 § 81.32.071; prior: 1915 c 159 § 7; RRS § 3653; formerly RCW 81.32.080.]

**62A.7-403 Obligation of warehouseman or carrier to deliver; excuse.** (1) The bailee must deliver the goods to a person entitled under the document who complies with subsections (2) and (3), unless and to the extent that the bailee establishes any of the following:

(a) delivery of the goods to a person whose receipt was rightful as against the claimant;

(b) damage to or delay, loss or destruction of the goods for which the bailee is not liable;

(c) previous sale or other disposition of the goods in lawful enforcement of a lien or on warehouseman's lawful termination of storage;

(d) the exercise by a seller of his right to stop delivery pursuant to the provisions of the Article on Sales (RCW 62A.2-705);

(e) a diversion, reconsignment or other disposition pursuant to the provisions of this Article (RCW 62A.7-303) or tariff regulating such right;

(f) release, satisfaction or any other fact affording a personal defense against the claimant;

(g) any other lawful excuse.

(2) A person claiming goods covered by a document of title must satisfy the bailee's lien where the bailee so requests or where the bailee is prohibited by law from delivering the goods until the charges are paid.

(3) Unless the person claiming is one against whom the document confers no right under RCW 62A.7-503(1), he must surrender for cancellation or notation of partial deliveries any outstanding negotiable document covering the goods, and the bailee must cancel the document or conspicuously note the partial delivery thereon or be liable to any person to whom the document is duly negotiated.

(4) "Person entitled under the document" means holder in the case of a negotiable document, or the person to whom delivery is to be made by the terms of

or pursuant to written instructions under a non-negotiable document. [1965 ex.s. c 157 § 7-403. Cf. former RCW sections: (i) RCW 22.04.090, and 22.04.100; 1913 c 99 §§ 8 and 9; RRS §§ 3594, and 3595; prior: 1891 c 134 §§ 6, and 7. (ii) RCW 22.04.110, 22.04.130, 22.04.170, and 22.04.200; 1913 c 99 §§ 10, 12, 16, and 19; RRS §§ 3596, 3598, 3602, and 3605. (iii) RCW 22.04.120; 1913 c 99 § 11; RRS § 3597; prior: 1886 p 121 § 7. (iv) RCW 81.32.111 through 81.32.151, 81.32.191, and 81.32.221; 1961 c 14 §§ 81.32.111 through 81.32.151, 81.32.191, and 81.32.221; 1915 c 159 §§ 11 through 15, 19, and 22; RRS §§ 3657 through 3661, 3665, and 3668; formerly RCW 81.32.120 through 81.32.160, 81.32.200, and 81.32.230.]

**62A.7-404 No liability for good faith delivery pursuant to receipt or bill.** A bailee who in good faith including observance of reasonable commercial standards has received goods and delivered or otherwise disposed of them according to the terms of the document of title or pursuant to this Article is not liable therefor. This rule applies even though the person from whom he received the goods had no authority to procure the document or to dispose of the goods and even though the person to whom he delivered the goods had no authority to receive them. [1965 ex.s. c 157 § 7-404. Cf. former RCW sections: (i) RCW 22.04.110; 1913 c 99 § 10; RRS § 3596. (ii) RCW 81.32.131; 1961 c 14 § 81.32.131; prior: 1915 c 159 § 13; RRS § 3659; formerly RCW 81.32.140.]

## PART 5 WAREHOUSE RECEIPTS AND BILLS OF LADING: NEGOTIATION AND TRANSFER

**62A.7-501 Form of negotiation and requirements of "due negotiation".** (1) A negotiable document of title running to the order of a named person is negotiated by his indorsement and delivery. After his indorsement in blank or to bearer any person can negotiate it by delivery alone.

(2) (a) A negotiable document of title is also negotiated by delivery alone when by its original terms it runs to bearer;

(b) when a document running to the order of a named person is delivered to him the effect is the same as if the document had been negotiated.

(3) Negotiation of a negotiable document of title after it has been indorsed to a specified person requires indorsement by the special indorsee as well as delivery.

(4) A negotiable document of title is "duly negotiated" when it is negotiated in the manner stated in this section to a holder who purchases it in good faith without notice of any defense against or claim to it on the part of any person and for value, unless it is established that the negotiation is not in the regular course of business or financing or involves receiving the document in settlement or payment of a money obligation.

(5) Indorsement of a non-negotiable document neither makes it negotiable nor adds to the transferee's rights.

(6) The naming in a negotiable bill of a person to be notified of the arrival of the goods does not limit the negotiability of the bill nor constitute notice to a purchaser thereof of any interest of such person in the goods. [1965 ex.s. c 157 § 7-501. Cf. former RCW sections: (i) RCW 22.04.380 through 22.04.410, and 22.04.480; 1913 c 99 §§ 37 through 40, and 47; RRS §§ 3623 through 3626, and 3633. (ii) RCW 63.04.290, 63.04.300, 63.04.320, 63.04.330, and 63.04.390; 1925 ex.s. c 142 §§ 28, 29, 31, 32, and 38; RRS §§ 5836-28, 5836-29, 5836-31, 5836-32 and 5836-38. (iii) RCW 81.32.281 through 81.32.311, and 81.32.381; 1961 c 14 §§ 81.32.281 through 81.32.311, and 81.32.381; prior: 1915 c 159 §§ 28 through 31, and 38; RRS §§ 3674 through 3677, and 3684; formerly RCW 81.32.370 through 81.32.400, and 81.32.470.]

**62A.7-502 Rights acquired by due negotiation.** (1) Subject to the following section and to the provisions of RCW 62A.7-205 on fungible goods, a holder to whom a negotiable document of title has been duly negotiated acquires thereby:

(a) title to the document;

(b) title to the goods;

(c) all rights accruing under the law of agency or estoppel, including rights to goods delivered to the bailee after the document was issued; and

(d) the direct obligation of the issuer to hold or deliver the goods according to the terms of the document free of any defense or claim by him except those arising under the terms of the document or under this Article. In the case of a delivery order the bailee's obligation accrues only upon acceptance and the obligation acquired by the holder is that the issuer and any indorser will procure the acceptance of the bailee.

(2) Subject to the following section, title and rights so acquired are not defeated by any stoppage of the goods represented by the document or by surrender of such goods by the bailee, and are not impaired even though the negotiation or any prior negotiation constituted a breach of duty or even though any person has been deprived of possession of the document by misrepresentation, fraud, accident, mistake, duress, loss, theft or conversion, or even though a previous sale or other transfer of the goods or document has been made to a third person. [1965 ex.s. c 157 § 7-502. Cf. former RCW sections: (i) RCW 22.04.420, and 22.04.480 through 22.04.500; 1913 c 99 §§ 41, and 47 through 49; RRS §§ 3627, and 3633 through 3635. (ii) RCW 63.04.210(4), 63.04.260, 63.04.340, 63.04.390, and 63.04.630; 1925 ex.s. c 142 §§ 20, 25, 33, 38, and 62; RRS §§ 5836-20, 5836-25, 5836-33, 5836-38, and 5836-62. (iii) RCW 81.32.321, 81.32.381, 81.32.391, 81.32.401, and 81.32.421; 1961 c 14 §§ 81.32.321, 81.32.381, 81.32.391, 81.32.401, and 81.32.421; prior: 1915 c 159 §§ 32, 38, 39, 40, and 42; RRS §§ 3678, 3684, 3685, 3686, and 3688; formerly RCW 81.32.410, 81.32.470, 81.32.480, 81.32.490, and 81.32.510.]

**62A.7-503 Document of title to goods defeated in certain cases.** (1) A document of title confers no right in goods against a person who before issuance of the document had a legal interest or a perfected security interest in them and who neither

(a) delivered or entrusted them or any document of title covering them to the bailor or his nominee with actual or apparent authority to ship, store or sell or with power to obtain delivery under this Article (RCW 62A.7-403) or with power of disposition under this Title (RCW 62A.2-403 and RCW 62A.9-307) or other statute or rule of law; nor

(b) acquiesced in the procurement by the bailor or his nominee of any document of title.

(2) Title to goods based upon an unaccepted delivery order is subject to the rights of anyone to whom a negotiable warehouse receipt or bill of lading covering the goods has been duly negotiated. Such a title may be defeated under the next section to the same extent as the rights of the issuer or a transferee from the issuer.

(3) Title to goods based upon a bill of lading issued to a freight forwarder is subject to the rights of anyone to whom a bill issued by the freight forwarder is duly negotiated; but delivery by the carrier in accordance with Part 4 of this Article pursuant to its own bill of lading discharges the carrier's obligation to deliver. [1965 ex.s. c 157 § 7-503. Cf. former RCW sections: (i) RCW 22.04.420; 1913 c 99 § 41; RRS § 3627. (ii) RCW 63.04.340; 1925 ex.s. c 142 § 33; RRS § 5836-33. (iii) RCW 81.32.321; 1961 c 14 § 81.32.321; prior: 1915 c 159 § 32; RRS § 3678; formerly RCW 81.32.410.]

**62A.7-504 Rights acquired in the absence of due negotiation; effect of diversion; seller's stoppage of delivery.**

(1) A transferee of a document, whether negotiable or non-negotiable, to whom the document has been delivered but not duly negotiated, acquires the title and rights which his transferor had or had actual authority to convey.

(2) In the case of a non-negotiable document, until but not after the bailee receives notification of the transfer, the rights of the transferee may be defeated

(a) by those creditors of the transferor who could treat the sale as void under RCW 62A.7-402; or

(b) by a buyer from the transferor in ordinary course of business if the bailee has delivered the goods to the buyer or received notification of his rights; or

(c) as against the bailee by good faith dealings of the bailee with the transferor.

(3) A diversion or other change of shipping instructions by the consignor in a non-negotiable bill of lading which causes the bailee not to deliver to the consignee defeats the consignee's title to the goods if they have been delivered to a buyer in ordinary course of business and in any event defeats the consignee's rights against the bailee.

(4) Delivery pursuant to a non-negotiable document may be stopped by a seller under RCW 62A.2-705, and subject to the requirement of due notification there provided. A bailee honoring the seller's instructions is entitled to be indemnified by the seller against any resulting loss or expense. [1965 ex.s. c 157 § 7-504. Cf.

former RCW sections: (i) RCW 22.04.420(2) and 22.04.430; 1913 c 99 §§ 41, and 42; RRS §§ 3627, and 3628. (ii) RCW 63.04.350; 1925 ex.s. c 142 § 34; RRS § 5834-34. (iii) RCW 81.32.321(2) and 81.32.331; 1961 c 14 §§ 81.32.321 and 81.32.331; prior: 1915 c 159 §§ 32 and 33; RRS §§ 3678 and 3679; formerly RCW 81.32.410 and 81.32.420.]

**62A.7-505 Indorser not a guarantor for other parties.**

The indorsement of a document of title issued by a bailee does not make the indorser liable for any default by the bailee or by previous indorsers. [1965 ex.s. c 157 § 7-505. Cf. former RCW sections: (i) RCW 22.04.460; 1913 c 99 § 45; RRS § 3631. (ii) RCW 63.04.380; 1925 ex.s. c 142 § 37; RRS § 5836-37. (iii) RCW 81.32.361; 1961 c 14 § 81.32.361; prior: 1915 c 159 § 36; RRS § 3682; formerly RCW 81.32.450.]

**62A.7-506 Delivery without indorsement: Right to compel indorsement.** The transferee of a negotiable document of title has a specifically enforceable right to have his transferor supply any necessary indorsement but the transfer becomes a negotiation only as of the time the indorsement is supplied. [1965 ex.s. c 157 § 7-506. Cf. former RCW sections: (i) RCW 22.04.440; 1913 c 99 § 43; RRS § 3629. (ii) RCW 63.04.360; 1925 ex.s. c 142 § 35; RRS § 5836-35. (iii) RCW 81.32.341; 1961 c 14 § 81.32.341; prior: 1915 c 159 § 34; RRS § 3680; formerly RCW 81.32.430.]

**62A.7-507 Warranties on negotiation or transfer of receipt or bill.** Where a person negotiates or transfers a document of title for value otherwise than as a mere intermediary under the next following section, then unless otherwise agreed he warrants to his immediate purchaser only in addition to any warranty made in selling the goods

(a) that the document is genuine; and

(b) that he has no knowledge of any fact which would impair its validity or worth; and

(c) that his negotiation or transfer is rightful and fully effective with respect to the title to the document and the goods it represents. [1965 ex.s. c 157 § 7-507. Cf. former RCW sections: (i) RCW 22.04.450; 1913 c 99 § 44; RRS § 3630. (ii) RCW 63.04.370; 1925 ex.s. c 142 § 36; RRS § 5836-36. (iii) RCW 81.32.351; 1961 c 14 § 81.32.351; prior: 1915 c 159 § 35; RRS § 3681; formerly RCW 81.32.440.]

**62A.7-508 Warranties of collecting bank as to documents.** A collecting bank or other intermediary known to be entrusted with documents on behalf of another or with collection of a draft or other claim against delivery of documents warrants by such delivery of the documents only its own good faith and authority. This rule applies even though the intermediary has purchased or made advances against the claim or draft to be collected. [1965 ex.s. c 157 § 7-508. Cf. former RCW sections: (i) RCW 22.04.470; 1913 c 99 § 46; RRS § 3632. (ii) RCW 81.32.371; 1961 c 14 § 81.32.371; prior: 1915 c 159 § 37; RRS § 3683; formerly RCW 81.32.460.]

**62A.7-509 Receipt or bill: When adequate compliance with commercial contract.** The question whether a document is adequate to fulfill the obligations of a contract for sale or the conditions of a credit is governed by the Articles on Sales (Article 2) and on Letters of Credit (Article 5). [1965 ex.s. c 157 § 7-509.]

PART 6  
WAREHOUSE RECEIPTS AND BILLS OF  
LADING: MISCELLANEOUS PROVISIONS

**62A.7-601 Lost and missing documents.** (1) If a document has been lost, stolen or destroyed, a court may order delivery of the goods or issuance of a substitute document and the bailee may without liability to any person comply with such order. If the document was negotiable the claimant must post security approved by the court to indemnify any person who may suffer loss as a result of non-surrender of the document. If the document was not negotiable, such security may be required at the discretion of the court. The court may also in its discretion order payment of the bailee's reasonable costs and counsel fees.

(2) A bailee who without court order delivers goods to a person claiming under a missing negotiable document is liable to any person injured thereby, and if the delivery is not in good faith becomes liable for conversion. Delivery in good faith is not conversion if made in accordance with a filed classification or tariff or, where no classification or tariff is filed, if the claimant posts security with the bailee in an amount at least double the value of the goods at the time of posting to indemnify any person injured by the delivery who files a notice of claim within one year after the delivery. [1965 ex.s. c 157 § 7-601. Cf. former RCW sections: (i) RCW 22.04-.150; 1913 c 99 § 14; RRS § 3600. (ii) RCW 81.32.171; 1961 c 14 § 81.32.171; prior: 1915 c 159 § 17; RRS § 3663; formerly RCW 81.32.180.]

**62A.7-602 Attachment of goods covered by a negotiable document.** Except where the document was originally issued upon delivery of the goods by a person who had no power to dispose of them, no lien attaches by virtue of any judicial process to goods in the possession of a bailee for which a negotiable document of title is outstanding unless the document be first surrendered to the bailee or its negotiation enjoined, and the bailee shall not be compelled to deliver the goods pursuant to process until the document is surrendered to him or impounded by the court. One who purchases the document for value without notice of the process or injunction takes free of the lien imposed by judicial process. [1965 ex.s. c 157 § 7-602. Cf. former RCW sections: (i) RCW 22.04.260; 1913 c 99 § 25; RRS § 3611. (ii) RCW 81.32.241; 1961 c 14 § 81.32.241; prior: 1915 c 159 § 24; RRS § 3670; formerly RCW 81.32.250.]

**62A.7-603 Conflicting claims; interpleader.** If more than one person claims title or possession of the goods, the bailee is excused from delivery until he has had a reasonable time to ascertain the validity of the adverse claims or to bring an action to compel all claimants to

interplead and may compel such interpleader, either in defending an action for non-delivery of the goods, or by original action, whichever is appropriate. [1965 ex.s. c 157 § 7-603. Cf. former RCW sections: (i) RCW 22-.04.170 and 22.04.180; 1913 c 99 §§ 16 and 17; RRS §§ 3602 and 3603. (ii) RCW 81.32.201 and 81.32.211; 1961 c 14 §§ 81.32.201 and 81.32.211; prior: 1915 c 159 §§ 20 and 21; RRS §§ 3666 and 3667; formerly RCW 81.32-.210 and 81.32.220.]

Article 8  
INVESTMENT SECURITIES

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**ARTICLE 8**  
**INVESTMENT SECURITIES**

PART 1  
SHORT TITLE AND GENERAL MATTERS

**62A.8-101 Short title.** This Article shall be known and may be cited as Uniform Commercial Code—Investment Securities. [1965 ex.s. c 157 § 8-101.]

**62A.8-102 Definitions and index of definitions.** (1) In this Article unless the context otherwise requires

- (a) A "security" is an instrument which
  - (i) is issued in bearer or registered form; and
  - (ii) is of a type commonly dealt in upon securities exchanges or markets or commonly recognized in any area in which it is issued or dealt in as a medium for investment; and
  - (iii) is either one of a class or series or by its terms is divisible into a class or series of instruments; and
  - (iv) evidences a share, participation or other interest in property or in an enterprise or evidences an obligation of the issuer.

(b) A writing which is a security is governed by this Article and not by Uniform Commercial Code—Commercial Paper even though it also meets the requirements of that Article. This Article does not apply to money.

(c) A security is in "registered form" when it specifies a person entitled to the security or to the rights it evidences and when its transfer may be registered upon books maintained for that purpose by or on behalf of an issuer or the security so states.

(d) A security is in "bearer form" when it runs to bearer according to its terms and not by reason of any indorsement.

(2) A "subsequent purchaser" is a person who takes other than by original issue.

(3) A "clearing corporation"

(a) At least ninety percent of the capital stock of which is held by or for one or more persons (other than individuals), each of whom

(i) is subject to supervision or regulation pursuant to the provisions of federal or state banking laws or state insurance laws, or

(ii) is a broker or dealer or investment company registered under the Securities Exchange Act of 1934 or the Investment Company Act of 1940, or

(iii) is a national securities exchange or association registered under a statute of the United States such as the Securities Exchange Act of 1934; and none of whom, other than a national securities exchange or association, holds in excess of twenty percent of the capital stock of such corporation; and

(b) Any remaining capital stock of which is held by individuals who have purchased such capital stock at or prior to the time of their taking office as directors of such corporation and who have purchased only so much of such capital stock as may be necessary to permit them to qualify as such directors.

(4) A "custodian bank" is any bank or trust company which is supervised and examined by state or federal

authority having supervision over banks and which is acting as custodian for a clearing corporation.

(5) Other definitions applying to this Article or to specified Parts thereof and the sections in which they appear are:

"Adverse claim". RCW 62A.8-301.

"Bona fide purchaser". RCW 62A.8-302.

"Broker". RCW 62A.8-303.

"Guarantee of the signature". RCW 62A.8-402.

"Intermediary bank". RCW 62A.4-105.

"Issuer". RCW 62A.8-201.

"Overissue". RCW 62A.8-104.

(6) In addition Article 1 contains general definitions and principles of construction and interpretation applicable throughout this Article. [1973 c 98 § 1; 1965 ex.s. c 157 § 8-102. Cf. former RCW 62.01.001; 1955 c 35 § 62.01.001; prior: 1899 c 149 § 1; RRS § 3392.]

**62A.8-103 Issuer's lien.** A lien upon a security in favor of an issuer thereof is valid against a purchaser only if the right of the issuer to such lien is noted conspicuously on the security. [1965 ex.s. c 157 § 8-103. Cf. former RCW 23.80.150; 1939 c 100 § 15; RRS § 3803-115; formerly RCW 23.20.140.]

**62A.8-104 Effect of overissue; "overissue".** (1) The provisions of this Article which validate a security or compel its issue or reissue do not apply to the extent that validation, issue or reissue would result in overissue; but

(a) if an identical security which does not constitute an overissue is reasonably available for purchase, the person entitled to issue or validation may compel the issuer to purchase and deliver such a security to him against surrender of the security, if any, which he holds; or

(b) if a security is not so available for purchase, the person entitled to issue or validation may recover from the issuer the price he or the last purchaser for value paid for it with interest from the date of his demand.

(2) "Overissue" means the issue of securities in excess of the amount which the issuer has corporate power to issue. [1965 ex.s. c 157 § 8-104.]

*Corporations—Purchase of own shares: RCW 23A.08.030.*

**62A.8-105 Securities negotiable; presumptions.** (1) Securities governed by this Article are negotiable instruments.

(2) In any action on a security

(a) unless specifically denied in the pleadings, each signature on the security or in a necessary indorsement is admitted;

(b) when the effectiveness of a signature is put in issue the burden of establishing it is on the party claiming under the signature but the signature is presumed to be genuine or authorized;

(c) when signatures are admitted or established production of the instrument entitles a holder to recover on it unless the defendant establishes a defense or a defect going to the validity of the security; and

(d) after it is shown that a defense or defect exists the plaintiff has the burden of establishing that he or some



person under whom he claims is a person against whom the defense or defect is ineffective (RCW 62A.8-202). [1965 ex.s. c 157 § 8-105. Cf. former RCW 62.01.001; 1955 c 35 § 62.01.001; prior: 1899 c 149 § 1; RRS § 3392.]

**62A.8-106 Applicability.** The validity of a security and the rights and duties of the issuer with respect to registration of transfer are governed by the law (including the conflict of laws rules) of the jurisdiction of organization of the issuer. [1965 ex.s. c 157 § 8-106.]

*Territorial application of Uniform Act for Simplification of Fiduciary Security Transfers: RCW 21.17.080.*

**62A.8-107 Securities deliverable; action for price.** (1) Unless otherwise agreed and subject to any applicable law or regulation respecting short sales, a person obligated to deliver securities may deliver any security of the specified issue in bearer form or registered in the name of the transferee or indorsed to him or in blank.

(2) When the buyer fails to pay the price as it comes due under a contract of sale the seller may recover the price

- (a) of securities accepted by the buyer; and
- (b) of other securities if efforts at their resale would be unduly burdensome or if there is no readily available market for their resale. [1965 ex.s. c 157 § 8-107.]

## PART 2 ISSUE—ISSUER

**62A.8-201 "Issuer".** (1) With respect to obligations on or defenses to a security "issuer" includes a person who

(a) places or authorizes the placing of his name on a security (otherwise than as authenticating trustee, registrar, transfer agent or the like) to evidence that it represents a share, participation or other interest in his property or in an enterprise or to evidence his duty to perform an obligation evidenced by the security; or

(b) directly or indirectly creates fractional interests in his rights or property which fractional interests are evidenced by securities; or

(c) becomes responsible for or in place of any other person described as an issuer in this section.

(2) With respect to obligations on or defenses to a security a guarantor is an issuer to the extent of his guaranty whether or not his obligation is noted on the security.

(3) With respect to registration of transfer (Part 4 of this Article) "issuer" means a person on whose behalf transfer books are maintained. [1965 ex.s. c 157 § 8-201. Cf. former RCW sections: RCW 62.01.029, and 62.01.060 through 62.01.062; 1955 c 35 §§ 62.01.029, and 62.01.060 through 62.01.062; prior: 1899 c 149 §§ 29, and 60 through 62; RRS §§ 3420, and 3451 through 3453.]

*Corporations, effect of merger or consolidation: RCW 23A.20.060.  
Securities Act, issuer: RCW 21.20.005(7).*

**62A.8-202 Issuer's responsibility and defenses; notice of defect or defense.** (1) Even against a purchaser for value and without notice, the terms of a security include those stated on the security and those made part of the security by reference to another instrument, indenture or document or to a constitution, statute, ordinance, rule, regulation, order or the like to the extent that the terms so referred to do not conflict with the stated terms. Such a reference does not of itself charge a purchaser for value with notice of a defect going to the validity of the security even though the security expressly states that a person accepting it admits such notice.

(2) (a) A security other than one issued by a government or governmental agency or unit even though issued with a defect going to its validity is valid in the hands of a purchaser for value and without notice of the particular defect unless the defect involves a violation of constitutional provisions in which case the security is valid in the hands of a subsequent purchaser for value and without notice of the defect.

(b) The rule of subparagraph (a) applies to an issuer which is a government or governmental agency or unit only if either there has been substantial compliance with the legal requirements governing the issue or the issuer has received a substantial consideration for the issue as a whole or for the particular security and a stated purpose of the issue is one for which the issuer has power to borrow money or issue the security.

(3) Except as otherwise provided in the case of certain unauthorized signatures on issue (RCW 62A.8-205), lack of genuineness of a security is a complete defense even against a purchaser for value and without notice.

(4) All other defenses of the issuer including non-delivery and conditional delivery of the security are ineffective against a purchaser for value who has taken without notice of the particular defense.

(5) Nothing in this section shall be construed to affect the right of a party to a "when, as and if issued" or a "when distributed" contract to cancel the contract in the event of a material change in the character of the security which is the subject of the contract or in the plan or arrangement pursuant to which such security is to be issued or distributed. [1965 ex.s. c 157 § 8-202. Cf. former RCW sections: RCW 62.01.016, 62.01.023, 62.01.028, 62.01.056, 62.01.057, and 62.01.060 through 62.01.062; 1955 c 35 §§ 62.01.016, 62.01.023, 62.01.028, 62.01.056, 62.01.057, and 62.01.060 through 62.01.062; prior: 1899 c 149 §§ 16, 23, 28, 56, 57, and 60 through 62; RRS §§ 3407, 3414, 3419, 3447, 3448, and 3451 through 3453.]

**62A.8-203 Staleness as notice of defects or defenses.** (1) After an act or event which creates a right to immediate performance of the principal obligation evidenced by the security or which sets a date on or after which the security is to be presented or surrendered for redemption or exchange, a purchaser is charged with notice of any defect in its issue or defense of the issuer

(a) if the act or event is one requiring the payment of money or the delivery of securities or both on presentation or surrender of the security and such funds or securities are available on the date set for payment or exchange and he takes the security more than one year after that date; and

(b) if the act or event is not covered by paragraph (a) and he takes the security more than two years after the date set for surrender or presentation or the date on which such performance became due.

(2) A call which has been revoked is not within subsection (1). [1965 ex.s. c 157 § 8-203. Cf. former RCW sections: RCW 62.01.052(2) and 62.01.053; 1955 c 35 §§ 62.01.052 and 62.01.053; prior: 1899 c 149 §§ 52 and 53; RRS §§ 3443 and 3444.]

#### 62A.8-204 Effect of issuer's restrictions on transfer.

Unless noted conspicuously on the security a restriction on transfer imposed by the issuer even though otherwise lawful is ineffective except against a person with actual knowledge of it. [1965 ex.s. c 157 § 8-204. Cf. former RCW 23.80.150; 1939 c 100 § 15; RRS § 3803-115; formerly RCW 23.20.160.]

*Corporations—Stock certificates—Limitations: RCW 23A.08.190.*

#### 62A.8-205 Effect of unauthorized signature on issue.

An unauthorized signature placed on a security prior to or in the course of issue is ineffective except that the signature is effective in favor of a purchaser for value and without notice of the lack of authority if the signing has been done by

(a) an authenticating trustee, registrar, transfer agent or other person entrusted by the issuer with the signing of the security or of similar securities or their immediate preparation for signing; or

(b) an employee of the issuer or of any of the foregoing entrusted with responsible handling of the security. [1965 ex.s. c 157 § 8-205. Cf. former RCW 62.01.023; 1955 c 35 § 62.01.023; prior: 1899 c 149 § 23; RRS § 3414.]

#### 62A.8-206 Completion or alteration of instrument.

(1) Where a security contains the signatures necessary to its issue or transfer but is incomplete in any other respect

(a) any person may complete it by filling in the blanks as authorized; and

(b) even though the blanks are incorrectly filled in, the security as completed is enforceable by a purchaser who took it for value and without notice of such incorrectness.

(2) A complete security which has been improperly altered even though fraudulently remains enforceable but only according to its original terms. [1965 ex.s. c 157 § 8-206. Cf. former RCW sections: (i) RCW 23.80.160; 1939 c 100 § 16; RRS § 3803-116; formerly RCW 23.20.170. (ii) RCW 62.01.014, 62.01.015, and 62.01.124; 1955 c 35 §§ 62.01.014, 62.01.015, and 62.01.124; prior: 1899 c 149 §§ 14, 15, and 124; RRS §§ 3405, 3406, and 3514.]

**62A.8-207 Rights of issuer with respect to registered owners.** (1) Prior to due presentment for registration of transfer of a security in registered form the issuer or indenture trustee may treat the registered owner as the person exclusively entitled to vote, to receive notifications and otherwise to exercise all the rights and powers of an owner.

(2) Nothing in this Article shall be construed to affect the liability of the registered owner of a security for calls, assessments or the like. [1965 ex.s. c 157 § 8-207. Cf. former RCW 23.80.020 and 23.80.030; 1939 c 100 §§ 2 and 3; RRS §§ 3803-102, and 3803-103; formerly RCW 23.20.030 and 23.20.040.]

*Corporations—Stock transfers: RCW 23A.08.210.*

#### 62A.8-208 Effect of signature of authenticating trustee, registrar or transfer agent.

(1) A person placing his signature upon a security as authenticating trustee, registrar, transfer agent or the like warrants to a purchaser for value without notice of the particular defect that

(a) the security is genuine; and

(b) his own participation in the issue of the security is within his capacity and within the scope of the authorization received by him from the issuer; and

(c) he has reasonable grounds to believe that the security is in the form and within the amount the issuer is authorized to issue.

(2) Unless otherwise agreed, a person by so placing his signature does not assume responsibility for the validity of the security in other respects. [1965 ex.s. c 157 § 8-208.]

### PART 3 PURCHASE

**62A.8-301 Rights acquired by purchaser; "adverse claim"; title acquired by bona fide purchaser.** (1) Upon delivery of a security the purchaser acquires the rights in the security which his transferor had or had actual authority to convey except that a purchaser who has himself been a party to any fraud or illegality affecting the security or who as a prior holder had notice of an adverse claim cannot improve his position by taking from a later bona fide purchaser. "Adverse claim" includes a claim that a transfer was or would be wrongful or that a particular adverse person is the owner of or has an interest in the security.

(2) A bona fide purchaser in addition to acquiring the rights of a purchaser also acquires the security free of any adverse claim.

(3) A purchaser of a limited interest acquires rights only to the extent of the interest purchased. [1965 ex.s. c 157 § 8-301. Cf. former RCW sections: (i) RCW 23.80.070; 1939 c 100 § 7; RRS § 3803-107; formerly RCW 23.20.080. (ii) RCW 62.01.052; 1955 c 35 § 62.01.052; prior: 1899 c 149 § 52; RRS § 3443. (iii) RCW 62.01.057 through 62.01.059; 1955 c 35 §§ 62.01.057 through 62.01.059; prior: 1899 c 149 §§ 57 through 59; RRS §§ 3448 through 3450.]

**62A.8-302 "Bona fide purchaser".** A "bona fide purchaser" is a purchaser for value in good faith and without notice of any adverse claim who takes delivery of a security in bearer form or of one in registered form issued to him or indorsed to him or in blank. [1965 ex.s. c 157 § 8-302. Cf. former RCW sections: (i) RCW 23.80-.230(2); 1939 c 100 § 23; RRS § 3803-123. (ii) RCW 62.01.052; 1955 c 35 § 62.01.052; prior: 1899 c 149 § 52; RRS § 3443.]

**62A.8-303 "Broker".** "Broker" means a person engaged for all or part of his time in the business of buying and selling securities, who in the transaction concerned acts for, or buys a security from or sells a security to a customer. Nothing in this Article determines the capacity in which a person acts for purposes of any other statute or rule to which such person is subject. [1965 ex.s. c 157 § 8-303.]

**62A.8-304 Notice to purchaser of adverse claims.** (1) A purchaser (including a broker for the seller or buyer but excluding an intermediary bank) of a security is charged with notice of adverse claims if

(a) the security whether in bearer or registered form has been indorsed "for collection" or "for surrender" or for some other purpose not involving transfer; or

(b) the security is in bearer form and has on it an unambiguous statement that it is the property of a person other than the transferor. The mere writing of a name on a security is not such a statement.

(2) The fact that the purchaser (including a broker for the seller or buyer) has notice that the security is held for a third person or is registered in the name of or indorsed by a fiduciary does not create a duty of inquiry into the rightfulness of the transfer or constitute notice of adverse claims. If, however, the purchaser (excluding an intermediary bank) has knowledge that the proceeds are being used or that the transaction is for the individual benefit of the fiduciary or otherwise in breach of duty, the purchaser is charged with notice of adverse claims. [1965 ex.s. c 157 § 8-304. Cf. former RCW sections: RCW 62.01.037 and 62.01.056; 1955 c 35 §§ 62-.01.037 and 62.01.056; prior: 1899 c 149 §§ 37 and 56; RRS §§ 3428 and 3447.]

*Security transfers—Nonliability of third persons: RCW 21.17.070(1).*

**62A.8-305 Staleness as notice of adverse claims.** An act or event which creates a right to immediate performance of the principal obligation evidenced by the security or which sets a date on or after which the security is to be presented or surrendered for redemption or exchange does not of itself constitute any notice of adverse claims except in the case of a purchase

(a) after one year from any date set for such presentment or surrender for redemption or exchange; or

(b) after six months from any date set for payment of money against presentation or surrender of the security if funds are available for payment on that date. [1965 ex.s. c 157 § 8-305. Cf. former RCW sections: RCW 62.01.052(2) and 62.01.053; 1955 c 35 §§ 62.01.052 and

62.01.053; prior: 1899 c 149 §§ 52 and 53; RRS §§ 3443 and 3444.]

**62A.8-306 Warranties on presentment and transfer.**

(1) A person who presents a security for registration of transfer or for payment or exchange warrants to the issuer that he is entitled to the registration, payment or exchange. But a purchaser for value without notice of adverse claims who receives a new, reissued or re-registered security on registration of transfer warrants only that he has no knowledge of any unauthorized signature (RCW 62A.8-311) in a necessary indorsement.

(2) A person by transferring a security to a purchaser for value warrants only that

(a) his transfer is effective and rightful; and

(b) the security is genuine and has not been materially altered; and

(c) he knows no fact which might impair the validity of the security.

(3) Where a security is delivered by an intermediary known to be entrusted with delivery of the security on behalf of another or with collection of a draft or other claim against such delivery, the intermediary by such delivery warrants only his own good faith and authority even though he has purchased or made advances against the claim to be collected against the delivery.

(4) A pledgee or other holder for security who rede-livers the security received, or after payment and on order of the debtor delivers that security to a third person makes only the warranties of an intermediary under subsection (3).

(5) A broker gives to his customer and to the issuer and a purchaser the warranties provided in this section and has the rights and privileges of a purchaser under this section. The warranties of and in favor of the broker acting as an agent are in addition to applicable warranties given by and in favor of his customer. [1965 ex.s. c 157 § 8-306. Cf. former RCW sections: (i) RCW 23.80.110 and 23.80.120; 1939 c 100 §§ 11 and 12; RRS §§ 3803-111 and 3803-112; formerly RCW 23.20.120 and 23.20.130. (ii) RCW 62.01.065 through 62.01.067, and 62.01.069; 1955 c 35 §§ 62.01.065 through 62.01-.067, and 62.01.069; prior: 1899 c 149 §§ 65 through 67, and 69; RRS §§ 3456 through 3458, and 3460.]

**62A.8-307 Effect of delivery without indorsement; right to compel indorsement.** Where a security in registered form has been delivered to a purchaser without a necessary indorsement he may become a bona fide purchaser only as of the time the indorsement is supplied, but against the transferor the transfer is complete upon delivery and the purchaser has a specifically enforceable right to have any necessary indorsement supplied. [1965 ex.s. c 157 § 8-307. Cf. former RCW sections: (i) RCW 23.80.090; 1939 c 100 § 9; RRS § 3803-109; formerly RCW 23.20.100. (ii) RCW 62.01.049; 1955 c 35 § 62.01-.049; prior: 1899 c 149 § 49; RRS § 3440.]

**62A.8-308 Indorsement, how made; special indorsement; indorser not a guarantor; partial assignment.** (1) An indorsement of a security in registered form is made when an appropriate person signs on it or on a separate

document an assignment or transfer of the security or a power to assign or transfer it or when the signature of such person is written without more upon the back of the security.

(2) An indorsement may be in blank or special. An indorsement in blank includes an indorsement to bearer. A special indorsement specifies the person to whom the security is to be transferred, or who has power to transfer it. A holder may convert a blank indorsement into a special indorsement.

(3) "An appropriate person" in subsection (1) means

(a) the person specified by the security or by special indorsement to be entitled to the security; or

(b) where the person so specified is described as a fiduciary but is no longer serving in the described capacity, —either that person or his successor; or

(c) where the security or indorsement so specifies more than one person as fiduciaries and one or more are no longer serving in the described capacity, —the remaining fiduciary or fiduciaries, whether or not a successor has been appointed or qualified; or

(d) where the person so specified is an individual and is without capacity to act by virtue of death, incompetence, infancy or otherwise, —his executor, administrator, guardian or like fiduciary; or

(e) where the security or indorsement so specifies more than one person as tenants by the entirety or with right of survivorship and by reason of death all cannot sign, —the survivor or survivors; or

(f) a person having power to sign under applicable law or controlling instrument; or

(g) to the extent that any of the foregoing persons may act through an agent, —his authorized agent.

(4) Unless otherwise agreed the indorser by his indorsement assumes no obligation that the security will be honored by the issuer.

(5) An indorsement purporting to be only of part of a security representing units intended by the issuer to be separately transferable is effective to the extent of the indorsement.

(6) Whether the person signing is appropriate is determined as of the date of signing and an indorsement by such a person does not become unauthorized for the purposes of this Article by virtue of any subsequent change of circumstances.

(7) Failure of a fiduciary to comply with a controlling instrument or with the law of the state having jurisdiction of the fiduciary relationship, including any law requiring the fiduciary to obtain court approval of the transfer, does not render his indorsement unauthorized for the purposes of this Article. [1965 ex.s. c 157 § 8-308. Cf. former RCW sections: (i) RCW 23.80.200; 1939 c 100 § 20; RRS § 3803-120; formerly RCW 23.20.200. (ii) RCW 62.01.031 through 62.01.037; 1955 c 35 §§ 62.01.031 through 62.01.037; prior: 1899 c 149 §§ 31 through 37; RRS §§ 3422 through 3428. (iii) RCW 62.01.064 through 62.01.069; 1955 c 35 §§ 62.01.064 through 62.01.069; prior: 1899 c 149 §§ 64 through 69; RRS §§ 3455 through 3460.]

#### **62A.8-309 Effect of indorsement without delivery.**

An indorsement of a security whether special or in blank does not constitute a transfer until delivery of the security on which it appears or if the indorsement is on a separate document until delivery of both the document and the security. [1965 ex.s. c 157 § 8-309. Cf. former RCW sections: (i) RCW 23.80.010; 1939 c 100 § 1; RRS § 3803-101; prior: 1927 c 206 § 1; Code 1881 § 2429; 1873 p 401 § 9; 1869 p 333 § 9; 1866 p 59 § 9; formerly RCW 23.20.020. (ii) RCW 23.80.100; 1939 c 100 § 10; RRS § 3803-110; formerly RCW 23.20.110. (iii) RCW 62.01.030; 1955 c 35 § 62.01.030; prior: 1899 c 149 § 30; RRS § 3421.]

#### **62A.8-310 Indorsement of security in bearer form.**

An indorsement of a security in bearer form may give notice of adverse claims (RCW 62A.8-304) but does not otherwise affect any right to registration the holder may possess. [1965 ex.s. c 157 § 8-310. Cf. former RCW 62.01.040; 1955 c 35 § 62.01.040; prior: 1899 c 149 § 40; RRS § 3431.]

**62A.8-311 Effect of unauthorized indorsement.** Unless the owner has ratified an unauthorized indorsement or is otherwise precluded from asserting its ineffectiveness

(a) he may assert its ineffectiveness against the issuer or any purchaser other than a purchaser for value and without notice of adverse claims who has in good faith received a new, reissued or re-registered security on registration of transfer; and

(b) an issuer who registers the transfer of a security upon the unauthorized indorsement is subject to liability for improper registration (RCW 62A.8-404). [1965 ex.s. c 157 § 8-311. Cf. former RCW 62.01.023; 1955 c 35 § 62.01.023; prior: 1899 c 149 § 23; RRS § 3414.]

**62A.8-312 Effect of guaranteeing signature or indorsement.** (1) Any person guaranteeing a signature of an indorser of a security warrants that at the time of signing

(a) the signature was genuine; and

(b) the signer was an appropriate person to indorse (RCW 62A.8-308); and

(c) the signer had legal capacity to sign. But the guarantor does not otherwise warrant the rightfulness of the particular transfer.

(2) Any person may guarantee an indorsement of a security and by so doing warrants not only the signature (subsection 1) but also the rightfulness of the particular transfer in all respects. But no issuer may require a guarantee of indorsement as a condition to registration of transfer.

(3) The foregoing warranties are made to any person taking or dealing with the security in reliance on the guarantee and the guarantor is liable to such person for any loss resulting from breach of the warranties. [1965 ex.s. c 157 § 8-312.]

**62A.8-313 When delivery to the purchaser occurs; purchaser's broker as holder.** (1) Delivery to a purchaser occurs when

(a) he or a person designated by him acquires possession of a security; or

(b) his broker acquires possession of a security specially indorsed to or issued in the name of the purchaser; or

(c) his broker sends him confirmation of the purchase and also by book entry or otherwise identifies a specific security in the broker's possession as belonging to the purchaser; or

(d) with respect to an identified security to be delivered while still in the possession of a third person when that person acknowledges that he holds for the purchaser; or

(e) appropriate entries on the books of a clearing corporation are made under RCW 62A.8-320.

(2) The purchaser is the owner of a security held for him by his broker, but is not the holder except as specified in subparagraphs (b), (c) and (e) of subsection (1). Where a security is part of a fungible bulk the purchaser is the owner of a proportionate property interest in the fungible bulk.

(3) Notice of an adverse claim received by the broker or by the purchaser after the broker takes delivery as a holder for value is not effective either as to the broker or as to the purchaser. However, as between the broker and the purchaser the purchaser may demand delivery of an equivalent security as to which no notice of an adverse claim has been received. [1965 ex.s. c 157 § 8-313. Cf. former RCW sections: (i) RCW 23.80.220; 1939 c 100 § 22; RRS § 3803-122; formerly RCW 23.20.010, part. (ii) RCW 62.01.191; 1955 c 35 § 62.01.191; prior: 1899 c 149 § 191; RRS § 3581.]

**62A.8-314 Duty to deliver, when completed.** (1) Unless otherwise agreed where a sale of a security is made on an exchange or otherwise through brokers

(a) the selling customer fulfills his duty to deliver when he places such a security in the possession of the selling broker or of a person designated by the broker or if requested causes an acknowledgment to be made to the selling broker that it is held for him; and

(b) the selling broker including a correspondent broker acting for a selling customer fulfills his duty to deliver by placing the security or a like security in the possession of the buying broker or a person designated by him or by effecting clearance of the sale in accordance with the rules of the exchange on which the transaction took place.

(2) Except as otherwise provided in this section and unless otherwise agreed, a transferor's duty to deliver a security under a contract of purchase is not fulfilled until he places the security in form to be negotiated by the purchaser in the possession of the purchaser or of a person designated by him or at the purchaser's request causes an acknowledgment to be made to the purchaser that it is held for him. Unless made on an exchange a sale to a broker purchasing for his own account is within this subsection and not within subsection (1). [1965 ex.s. c 157 § 8-314.]

**62A.8-315 Action against purchaser based upon wrongful transfer.** (1) Any person against whom the transfer of a security is wrongful for any reason, including his incapacity, may against anyone except a bona fide purchaser reclaim possession of the security or obtain possession of any new security evidencing all or part of the same rights or have damages.

(2) If the transfer is wrongful because of an unauthorized indorsement, the owner may also reclaim or obtain possession of the security or new security even from a bona fide purchaser if the ineffectiveness of the purported indorsement can be asserted against him under the provisions of this Article on unauthorized indorsements (RCW 62A.8-311).

(3) The right to obtain or reclaim possession of a security may be specifically enforced and its transfer enjoined and the security impounded pending the litigation. [1965 ex.s. c 157 § 8-315. Cf. former RCW 23.80.070; 1939 c 100 § 7; RRS § 3803-107; formerly RCW 23.20.080.]

**62A.8-316 Purchaser's right to requisites for registration of transfer on books.** Unless otherwise agreed the transferor must on due demand supply his purchaser with any proof of his authority to transfer or with any other requisite which may be necessary to obtain registration of the transfer of the security but if the transfer is not for value a transferor need not do so unless the purchaser furnishes the necessary expenses. Failure to comply with a demand made within a reasonable time gives the purchaser the right to reject or rescind the transfer. [1965 ex.s. c 157 § 8-316.]

**62A.8-317 Attachment or levy upon security.** (1) No attachment or levy upon a security or any share or other interest evidenced thereby which is outstanding shall be valid until the security is actually seized by the officer making the attachment or levy but a security which has been surrendered to the issuer may be attached or levied upon at the source.

(2) A creditor whose debtor is the owner of a security shall be entitled to such aid from courts of appropriate jurisdiction, by injunction or otherwise, in reaching such security or in satisfying the claim by means thereof as is allowed at law or in equity in regard to property which cannot readily be attached or levied upon by ordinary legal process. [1965 ex.s. c 157 § 8-317. Cf. former RCW sections: RCW 23.80.130 and 23.80.140; 1939 c 100 §§ 13 and 14; RRS §§ 3803-113 and 3803-114; formerly RCW 23.20.140 and 23.20.150.]

**62A.8-318 No conversion by good faith delivery.** An agent or bailee who in good faith (including observance of reasonable commercial standards if he is in the business of buying, selling or otherwise dealing with securities) has received securities and sold, pledged or delivered them according to the instructions of his principal is not liable for conversion or for participation in breach of fiduciary duty although the principal had no right to dispose of them. [1965 ex.s. c 157 § 8-318.]

*Security transfers—Nonliability of third persons: RCW 21.17.070(1).*

**62A.8-319 Statute of frauds.** A contract for the sale of securities is not enforceable by way of action or defense unless

(a) there is some writing signed by the party against whom enforcement is sought or by his authorized agent or broker sufficient to indicate that a contract has been made for sale of a stated quantity of described securities at a defined or stated price; or

(b) delivery of the security has been accepted or payment has been made but the contract is enforceable under this provision only to the extent of such delivery or payment; or

(c) within a reasonable time a writing in confirmation of the sale or purchase and sufficient against the sender under paragraph (a) has been received by the party against whom enforcement is sought and he has failed to send written objection to its contents within ten days after its receipt; or

(d) the party against whom enforcement is sought admits in his pleading, testimony or otherwise in court that a contract was made for sale of a stated quantity of described securities at a defined or stated price. [1965 ex.s. c 157 § 8-319. Cf. former RCW 63.04.050; 1925 ex.s. c 142 § 4; RRS § 5836-4.]

**62A.8-320 Transfer or pledge within a central depository system.** (1) If a security

(a) is in the custody of a clearing corporation or of a custodian bank or a nominee of either subject to the instructions of the clearing corporation; and

(b) is in bearer form or indorsed in blank by an appropriate person or registered in the name of the clearing corporation or custodian bank or a nominee of either; and

(c) is shown on the account of a transferor or pledgor on the books of the clearing corporation; then, in addition to other methods, a transfer or pledge of the security or any interest therein may be effected by the making of appropriate entries on the books of the clearing corporation reducing the account of the transferor or pledgor and increasing the account of the transferee or pledgee by the amount of the obligation or the number of shares or rights transferred or pledged.

(2) Under this section entries may be with respect to like securities or interests therein as a part of a fungible bulk and may refer merely to a quantity of a particular security without reference to the name of the registered owner, certificate or bond number or the like and, in appropriate cases, may be on a net basis taking into account other transfers or pledges of the same security.

(3) A transfer or pledge under this section has the effect of a delivery of a security in bearer form or duly indorsed in blank (RCW 62A.8-301) representing the amount of the obligation or the number of shares or rights transferred or pledged. If a pledge or the creation of a security interest is intended, the making of entries has the effect of a taking of delivery by the pledgee or a secured party (RCW 62A.9-304 and RCW 62A.9-305). A transferee or pledgee under this section is a holder.

(4) A transfer or pledge under this section does not constitute a registration of transfer under Part 4 of this Article.

(5) That entries made on the books of the clearing corporation as provided in subsection (1) are not appropriate does not affect the validity or effect of the entries nor the liabilities or obligations of the clearing corporation to any person adversely affected thereby. [1965 ex.s. c 157 § 8-320.]

## PART 4 REGISTRATION

**62A.8-401 Duty of issuer to register transfer.** (1) Where a security in registered form is presented to the issuer with a request to register transfer, the issuer is under a duty to register the transfer as requested if

(a) the security is indorsed by the appropriate person or persons (RCW 62A.8-308); and

(b) reasonable assurance is given that those indorsements are genuine and effective (RCW 62A.8-402); ; and

(c) the issuer has no duty to inquire into adverse claims or has discharged any such duty (RCW 62A.8-403); and

(d) any applicable law relating to the collection of taxes has been complied with; and

(e) the transfer is in fact rightful or is to a bona fide purchaser.

(2) Where an issuer is under a duty to register a transfer of a security the issuer is also liable to the person presenting it for registration or his principal for loss resulting from any unreasonable delay in registration or from failure or refusal to register the transfer. [1965 ex.s. c 157 § 8-401.]

*Inheritance tax on corporate stock: RCW 83.44.030.*

**62A.8-402 Assurance that indorsements are effective.** (1) The issuer may require the following assurance that each necessary indorsement (RCW 62A.8-308) is genuine and effective

(a) in all cases, a guarantee of the signature (subsection (1) of RCW 62A.8-312) of the person indorsing; and

(b) where the indorsement is by an agent, appropriate assurance of authority to sign;

(c) where the indorsement is by a fiduciary, appropriate evidence of appointment or incumbency;

(d) where there is more than one fiduciary, reasonable assurance that all who are required to sign have done so;

(e) where the indorsement is by a person not covered by any of the foregoing, assurance appropriate to the case corresponding as nearly as may be to the foregoing.

(2) A "guarantee of the signature" in subsection (1) means a guarantee signed by or on behalf of a person reasonably believed by the issuer to be responsible. The issuer may adopt standards with respect to responsibility provided such standards are not manifestly unreasonable.

(3) "Appropriate evidence of appointment or incumbency" in subsection (1) means

(a) in the case of a fiduciary appointed or qualified by a court, a certificate issued by or under the direction or supervision of that court or an officer thereof and dated within sixty days before the date of presentation for transfer; or

(b) in any other case, a copy of a document showing the appointment or a certificate issued by or on behalf of a person reasonably believed by the issuer to be responsible or, in the absence of such a document or certificate, other evidence reasonably deemed by the issuer to be appropriate. The issuer may adopt standards with respect to such evidence provided such standards are not manifestly unreasonable. The issuer is not charged with notice of the contents of any document obtained pursuant to this paragraph (b) except to the extent that the contents relate directly to the appointment or incumbency.

(4) The issuer may elect to require reasonable assurance beyond that specified in this section but if it does so and for a purpose other than that specified in subsection (3)(b) both requires and obtains a copy of a will, trust, indenture, articles of co-partnership, bylaws or other controlling instrument it is charged with notice of all matters contained therein affecting the transfer. [1965 ex.s. c 157 § 8-402.]

*Fiduciary security transfers—Evidence of appointment or incumbency: RCW 21.17.040.*

**62A.8-403 Limited duty of inquiry.** (1) An issuer to whom a security is presented for registration is under a duty to inquire into adverse claims if

(a) a written notification of an adverse claim is received at a time and in a manner which affords the issuer a reasonable opportunity to act on it prior to the issuance of a new, reissued or re-registered security and the notification identifies the claimant, the registered owner and the issue of which the security is a part and provides an address for communications directed to the claimant; or

(b) the issuer is charged with notice of an adverse claim from a controlling instrument which it has elected to require under subsection (4) of RCW 62A.8-402.

(2) The issuer may discharge any duty of inquiry by any reasonable means, including notifying an adverse claimant by registered or certified mail at the address furnished by him or if there be no such address at his residence or regular place of business that the security has been presented for registration of transfer by a named person, and that the transfer will be registered unless within thirty days from the date of mailing the notification, either

(a) an appropriate restraining order, injunction or other process issues from a court of competent jurisdiction; or

(b) an indemnity bond sufficient in the issuer's judgment to protect the issuer and any transfer agent, registrar or other agent of the issuer involved, from any loss which it or they may suffer by complying with the adverse claim is filed with the issuer.

(3) Unless an issuer is charged with notice of an adverse claim from a controlling instrument which it has elected to require under subsection (4) of RCW

62A.8-402 or receives notification of an adverse claim under subsection (1) of this section, where a security presented for registration is indorsed by the appropriate person or persons the issuer is under no duty to inquire into adverse claims. In particular

(a) an issuer registering a security in the name of a person who is a fiduciary or who is described as a fiduciary is not bound to inquire into the existence, extent, or correct description of the fiduciary relationship and thereafter the issuer may assume without inquiry that the newly registered owner continues to be the fiduciary until the issuer receives written notice that the fiduciary is no longer acting as such with respect to the particular security;

(b) an issuer registering transfer on an indorsement by a fiduciary is not bound to inquire whether the transfer is made in compliance with a controlling instrument or with the law of the state having jurisdiction of the fiduciary relationship, including any law requiring the fiduciary to obtain court approval of the transfer; and

(c) the issuer is not charged with notice of the contents of any court record or file or other recorded or unrecorded document even though the document is in its possession and even though the transfer is made on the indorsement of a fiduciary to the fiduciary himself or to his nominee. [1965 ex.s. c 157 § 8-403.]

*Fiduciary security transfers: Chapter 21.17 RCW.*

**62A.8-404 Liability and non-liability for registration.**

(1) Except as otherwise provided in any law relating to the collection of taxes, the issuer is not liable to the owner or any other person suffering loss as a result of the registration of a transfer of a security if

(a) there were on or with the security the necessary indorsements (RCW 62A.8-308); and

(b) the issuer had no duty to inquire into adverse claims or has discharged any such duty (RCW 62A.8-403).

(2) Where an issuer has registered a transfer of a security to a person not entitled to it the issuer on demand must deliver a like security to the true owner unless

(a) the registration was pursuant to subsection (1); or

(b) the owner is precluded from asserting any claim for registering the transfer under subsection (1) of the following section; or

(c) such delivery would result in overissue, in which case the issuer's liability is governed by RCW 62A.8-104. [1965 ex.s. c 157 § 8-404.]

**62A.8-405 Lost, destroyed and stolen securities.** (1) Where a security has been lost, apparently destroyed or wrongfully taken and the owner fails to notify the issuer of that fact within a reasonable time after he has notice of it and the issuer registers a transfer of the security before receiving such a notification, the owner is precluded from asserting against the issuer any claim for registering the transfer under the preceding section or any claim to a new security under this section.

(2) Where the owner of a security claims that the security has been lost, destroyed or wrongfully taken, the



issuer must issue a new security in place of the original security if the owner

(a) so requests before the issuer has notice that the security has been acquired by a bona fide purchaser; and

(b) files with the issuer a sufficient indemnity bond; and

(c) satisfies any other reasonable requirements imposed by the issuer.

(3) If, after the issue of the new security, a bona fide purchaser of the original security presents it for registration of transfer, the issuer must register the transfer unless registration would result in overissue, in which event the issuer's liability is governed by RCW 62A.8-104. In addition to any rights on the indemnity bond, the issuer may recover the new security from the person to whom it was issued or any person taking under him except a bona fide purchaser. [1965 ex.s. c 157 § 8-405. Cf. former RCW 23.80.170; 1939 c 100 § 17; RRS § 3803-117; formerly RCW 23.20.180.]

**62A.8-406 Duty of authenticating trustee, transfer agent or registrar.** (1) Where a person acts as authenticating trustee, transfer agent, registrar, or other agent for an issuer in the registration of transfers of its securities or in the issue of new securities or in the cancellation of surrendered securities

(a) he is under a duty to the issuer to exercise good faith and due diligence in performing his functions; and

(b) he has with regard to the particular functions he performs the same obligation to the holder or owner of the security and has the same rights and privileges as the issuer has in regard to those functions.

(2) Notice to an authenticating trustee, transfer agent, registrar or other such agent is notice to the issuer with respect to the functions performed by the agent. [1965 ex.s. c 157 § 8-406.]

## Article 9

### SECURED TRANSACTIONS; SALES OF ACCOUNTS, CONTRACT RIGHTS AND CHATTEL PAPER

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## ARTICLE 9

### SECURED TRANSACTIONS; SALES OF ACCOUNTS, CONTRACT RIGHTS AND CHATTEL PAPER

#### PART 1

#### SHORT TITLE, APPLICABILITY AND DEFINITIONS

**62A.9-101 Short title.** This Article shall be known and may be cited as Uniform Commercial Code—Secured Transactions. [1965 ex.s. c 157 § 9-101.]

**62A.9-102 Policy and scope of Article.** (1) Except as otherwise provided in RCW 62A.9-103 on multiple state transactions and in RCW 62A.9-104 on excluded transactions, this Article applies so far as concerns any personal property and fixtures within the jurisdiction of this state

(a) to any transaction (regardless of its form) which is intended to create a security interest in personal property or fixtures including goods, documents, instruments, general intangibles, chattel paper, accounts or contract rights; and also

(b) to any sale of accounts, contract rights or chattel paper.

(2) This Article applies to security interests created by contract including pledge, assignment, chattel mortgage, chattel trust, trust deed, factor's lien, equipment trust, conditional sale, trust receipt, other lien or title retention contract and lease or consignment intended as security. This Article does not apply to statutory liens except as provided in RCW 62A.9-310.

(3) The application of this Article to a security interest in a secured obligation is not affected by the fact that the obligation is itself secured by a transaction or interest to which this Article does not apply. [1965 ex.s. c 157 § 9-102. Cf. former RCW 63.16.010; 1947 c 8 § 1; Rem. Supp. 1947 § 2721-1.]

**62A.9-103 Accounts, contract rights, general intangibles and equipment relating to another jurisdiction; and incoming goods already subject to a security interest.** (1) If the office where the assignor of accounts or contract rights keeps his records concerning them is in this state, the validity and perfection of a security interest therein and the possibility and effect of proper filing is governed by this Article; otherwise by the law (including the conflict of laws rules) of the jurisdiction where such office is located.

(2) If the chief place of business of a debtor is in this state, this Article governs the validity and perfection of a security interest and the possibility and effect of proper filing with regard to general intangibles or with regard to goods of a type which are normally used in

more than one jurisdiction (such as automotive equipment, rolling stock, airplanes, road building equipment, commercial harvesting equipment, construction machinery and the like) if such goods are classified as equipment or classified as inventory by reason of their being leased by the debtor to others. Otherwise, the law (including the conflict of laws rules) of the jurisdiction where such chief place of business is located shall govern. If the chief place of business is located in a jurisdiction which does not provide for perfection of the security interest by filing or recording in that jurisdiction, then the security interest may be perfected by filing in this state. For the purpose of determining the validity and perfection of a security interest in an airplane, the chief place of business of a debtor who is a foreign air carrier under the Federal Aviation Act of 1958, as amended, is the designated office of the agent upon whom service of process may be made on behalf of the debtor.

(3) If personal property other than that governed by subsections (1) and (2) is already subject to a security interest when it is brought into this state, the validity of the security interest in this state is to be determined by the law (including the conflict of laws rules) of the jurisdiction where the property was when the security interest attached. However, if the parties to the transaction understood at the time that the security interest attached that the property would be kept in this state and it was brought into this state within thirty days after the security interest attached for purposes other than transportation through this state, then the validity of the security interest in this state is to be determined by the law of this state. If the security interest was already perfected under the law of the jurisdiction where the property was when the security interest attached and before being brought into this state, the security interest continues perfected in this state for four months and also thereafter if within the four month period it is perfected in this state. The security interest may also be perfected in this state after the expiration of the four month period; in such case perfection dates from the time of perfection in this state. If the security interest was not perfected under the law of the jurisdiction where the property was when the security interest attached and before being brought into this state, it may be perfected in this state; in such case perfection dates from the time of perfection in this state.

(4) Notwithstanding subsections (2) and (3), if personal property is covered by a certificate of title issued under a statute of this state or any other jurisdiction which requires indication on a certificate of title of any security interest in the property as a condition of perfection, then the perfection is governed by the law of the jurisdiction which issued the certificate.

(5) Notwithstanding subsection (1) and RCW 62A.9-302, if the office where the assignor of accounts or contract rights keeps his records concerning them is not located in a jurisdiction which is a part of the United States, its territories or possessions, and the accounts or contract rights are within the jurisdiction of this state or the transaction which creates the security interest otherwise bears an appropriate relation to this

state, this Article governs the validity and perfection of the security interest and the security interest may only be perfected by notification to the account debtor. [1965 ex.s. c 157 § 9-103.]

**62A.9-104 Transactions excluded from Article.** This Article does not apply

(a) to a security interest subject to any statute of the United States such as the Ship Mortgage Act, 1920, to the extent that such statute governs the rights of parties to and third parties affected by transactions in particular types of property; or

(b) to a landlord's lien; or

(c) to a lien given by statute or other rule of law for services or materials except as provided in RCW 62A.9-310 on priority of such liens; or

(d) to a transfer of a claim for wages, salary or other compensation of an employee; or

(e) to an equipment trust covering railway rolling stock or to a security interest on railroad equipment or rolling stock perfected under the provisions of RCW 81.36.140, 81.36.150 and 81.36.160; or

(f) to a sale of accounts, contract rights or chattel paper as part of a sale of the business out of which they arose, or an assignment of accounts, contract rights or chattel paper which is for the purpose of collection only, or a transfer of a contract right to an assignee who is also to do the performance under the contract; or

(g) to a transfer of an interest or claim in or under any policy of insurance; or

(h) to a right represented by a judgment; or

(i) to any right of set-off; or

(j) except to the extent that provision is made for fixtures in RCW 62A.9-313, to the creation or transfer of an interest in or lien on real estate, including a lease or rents thereunder; or

(k) to a transfer in whole or in part of any of the following: any claim arising out of tort; any deposit, savings, passbook or like account maintained with a bank, savings and loan association, credit union or like organization. [1965 ex.s. c 157 § 9-104. Cf. former RCW sections: (i) RCW 61.20.010 and 61.20.140; 1943 c 71 §§ 1 and 14; Rem. Supp. 1943 §§ 11548-30 and 11548-43. (ii) RCW 61.20.020; 1957 c 249 § 1; 1943 c 71 § 2; Rem. Supp. 1943 § 11548-31. (iii) RCW 63.16.010 and 63.16.110(2); 1947 c 8 §§ 1 and 11; Rem. Supp. 1947 §§ 2721-1 and 2721-11.]

**62A.9-105 Definitions and index of definitions.** (1) In this Article unless the context otherwise requires:

(a) "Account debtor" means the person who is obligated on an account, chattel paper, contract right or general intangible;

(b) "Chattel paper" means a writing or writings which evidence both a monetary obligation and a security interest in or a lease of specific goods. When a transaction is evidenced both by such a security agreement or a lease and by an instrument or a series of instruments, the group of writings taken together constitutes chattel paper;

(c) "Collateral" means the property subject to a security interest, and includes accounts, contract rights and chattel paper which have been sold;

(d) "Debtor" means the person who owes payment or other performance of the obligation secured, whether or not he owns or has rights in the collateral, and includes the seller of accounts, contract rights or chattel paper. Where the debtor and the owner of the collateral are not the same person, the term "debtor" means the owner of the collateral in any provision of the Article dealing with the collateral, the obligor in any provision dealing with the obligation, and may include both where the context so requires;

(e) "Document" means document of title as defined in the general definitions of Article 1 (RCW 62A.1-201);

(f) "Goods" includes all things which are movable at the time the security interest attaches or which are fixtures (RCW 62A.9-313), but does not include money, documents, instruments, accounts, chattel paper, general intangibles, contract rights and other things in action. "Goods" also include the unborn young of animals and growing crops;

(g) "Instrument" means a negotiable instrument (defined in RCW 62A.3-104), or a security (defined in RCW 62A.8-102) or any other writing which evidences a right to the payment of money and is not itself a security agreement or lease and is of a type which is in ordinary course of business transferred by delivery with any necessary indorsement or assignment;

(h) "Security agreement" means an agreement which creates or provides for a security interest;

(i) "Secured party" means a lender, seller or other person in whose favor there is a security interest, including a person to whom accounts, contract rights or chattel paper have been sold. When the holders of obligations issued under an indenture of trust, equipment trust agreement or the like are represented by a trustee or other person, the representative is the secured party.

(2) Other definitions applying to this Article and the sections in which they appear are:

"Account". RCW 62A.9-106.

"Consumer goods". RCW 62A.9-109(1).

"Contract right". RCW 62A.9-106.

"Equipment". RCW 62A.9-109(2).

"Farm products". RCW 62A.9-109(3).

"General intangibles". RCW 62A.9-106.

"Inventory". RCW 62A.9-109(4).

"Lien creditor". RCW 62A.9-301(3).

"Proceeds". RCW 62A.9-306(1).

"Purchase money security interest". RCW 62A.9-107.

(3) The following definitions in other Articles apply to this Article:

"Check". RCW 62A.3-104.

"Contract for sale". RCW 62A.2-106.

"Holder in due course". RCW 62A.3-302.

"Note". RCW 62A.3-104.

"Sale" RCW 62A.2-106.

(4) In addition Article 1 contains general definitions and principles of construction and interpretation applicable throughout this Article. [1965 ex.s. c 157 § 9-105. Cf. former RCW sections: (i) RCW 61.20.010; 1943 c

71 § 1; Rem. Supp. 1943 § 11548-30. (ii) RCW 63.16-.010; 1947 c 8 § 1; Rem. Supp. 1947 § 2721-1.]

**62A.9-106 Definitions:** "Account"; "contract right"; "general intangibles". "Account" means any right to payment for goods sold or leased or for services rendered which is not evidenced by an instrument or chattel paper. "Contract right" means any right to payment under a contract not yet earned by performance and not evidenced by an instrument or chattel paper. "General intangibles" means any personal property (including things in action) other than goods, accounts, contract rights, chattel paper, documents and instruments. [1965 ex.s. c 157 § 9-106. Cf. former RCW 63.16.010; 1947 c 8 § 1; Rem. Supp. 1947 § 2721-1.]

**62A.9-107 Definitions:** "Purchase money security interest". A security interest is a "purchase money security interest" to the extent that it is

(a) taken or retained by the seller of the collateral to secure all or part of its price; or

(b) taken by a person who by making advances or incurring an obligation gives value to enable the debtor to acquire rights in or the use of collateral if such value is in fact so used. [1965 ex.s. c 157 § 9-107.]

**62A.9-108 When after-acquired collateral not security for antecedent debt.** Where a secured party makes an advance, incurs an obligation, releases a perfected security interest, or otherwise gives new value which is to be secured in whole or in part by after-acquired property his security interest in the after-acquired collateral shall be deemed to be taken for new value and not as security for an antecedent debt if the debtor acquires his rights in such collateral either in the ordinary course of his business or under a contract of purchase made pursuant to the security agreement within a reasonable time after new value is given. [1965 ex.s. c 157 § 9-108.]

**62A.9-109 Classification of goods; "consumer goods"; "equipment"; "farm products"; "inventory".** Goods are

(1) "consumer goods" if they are used or bought for use primarily for personal, family or household purposes;

(2) "equipment" if they are used or bought for use primarily in business (including farming or a profession) or by a debtor who is a non-profit organization or a governmental subdivision or agency or if the goods are not included in the definitions of inventory, farm products or consumer goods;

(3) "farm products" if they are crops or livestock or supplies used or produced in farming operations or if they are products of crops or livestock in their unmanufactured states (such as ginned cotton, wool-clip, maple syrup, milk and eggs), and if they are in the possession of a debtor engaged in raising, fattening, grazing or other farming operations. If goods are farm products they are neither equipment nor inventory;

(4) "inventory" if they are held by a person who holds them for sale or lease or to be furnished under

contracts of service or if he has so furnished them, or if they are raw materials, work in process or materials used or consumed in a business. Inventory of a person is not to be classified as his equipment. [1965 ex.s. c 157 § 9-109.]

**62A.9-110 Sufficiency of description.** For the purposes of this Article any description of personal property or real estate is sufficient whether or not it is specific if it reasonably identifies what is described. [1965 ex.s. c 157 § 9-110. Cf. former RCW sections: (i) RCW 61.04.040; 1943 c 76 § 1; 1899 c 98 § 3; Rem. Supp. 1943 § 3782. (ii) RCW 63.12.010; 1963 c 236 § 22; 1961 c 196 § 1; 1933 c 129 § 1; 1915 c 95 § 1; 1903 c 6 § 1; 1893 c 106 § 1; RRS § 3790.]

**62A.9-111 Applicability of bulk transfer laws.** The creation of a security interest is not a bulk transfer under Article 6 (RCW 62A.6-103). [1965 ex.s. c 157 § 9-111.]

**62A.9-112 Where collateral is not owned by debtor.** Unless otherwise agreed, when a secured party knows that collateral is owned by a person who is not the debtor, the owner of the collateral is entitled to receive from the secured party any surplus under RCW 62A.9-502(2) or under RCW 62A.9-504(1), and is not liable for the debt or for any deficiency after resale, and he has the same right as the debtor

(a) to receive statements under RCW 62A.9-208;

(b) to receive notice of and to object to a secured party's proposal to retain the collateral in satisfaction of the indebtedness under RCW 62A.9-505;

(c) to redeem the collateral under RCW 62A.9-506;

(d) to obtain injunctive or other relief under RCW 62A.9-507(1); and

(e) to recover losses caused to him under RCW 62A.9-208(2). [1965 ex.s. c 157 § 9-112.]

**62A.9-113 Security interests arising under Article on sales.** A security interest arising solely under the Article on Sales (Article 2) is subject to the provisions of this Article except that to the extent that and so long as the debtor does not have or does not lawfully obtain possession of the goods

(a) no security agreement is necessary to make the security interest enforceable; and

(b) no filing is required to perfect the security interest; and

(c) the rights of the secured party on default by the debtor are governed by the Article on Sales (Article 2). [1965 ex.s. c 157 § 9-113.]

## PART 2

### VALIDITY OF SECURITY AGREEMENT AND RIGHTS OF PARTIES THERETO

**62A.9-201 General validity of security agreement.** Except as otherwise provided by this Title a security agreement is effective according to its terms between the parties, against purchasers of the collateral and against creditors. Nothing in this Article validates any

charge or practice illegal under any statute or regulation thereunder governing usury, small loans, retail installment sales, or the like, or extends the application of any such statute or regulation to any transaction not otherwise subject thereto. [1965 ex.s. c 157 § 9-201. Cf. former RCW sections: (i) RCW 61.20.030 and 61.20.050; 1943 c 71 §§ 3 and 5; Rem. Supp. 1943 §§ 11548-32 and 11548-34. (ii) RCW 63.16.110(1); 1947 c 8 § 11; Rem. Supp. 1947 § 2721-11.]

*Credit unions—Limits and conditions: RCW 31.12.280.*

*Crop credit associations—Loans and security: RCW 31.16.130.*

*Industrial loan companies—Prohibited acts: RCW 31.04.100.*

*Interest—Usury: Chapter 19.52 RCW.*

*Small loan companies—Prohibited acts: RCW 31.08.150.*

**62A.9-202 Title to collateral immaterial.** Each provision of this Article with regard to rights, obligations and remedies applies whether title to collateral is in the secured party or in the debtor. [1965 ex.s. c 157 § 9-202. Cf. former RCW 61.20.010; 1943 c 71 § 1; Rem. Supp. 1943 § 11548-30.]

**62A.9-203 Enforceability of security interest; proceeds, formal requisites.** (1) Subject to the provisions of RCW 62A.4-208 on the security interest of a collecting bank and RCW 62A.9-113 on a security interest arising under the Article on Sales, a security interest is not enforceable against the debtor or third parties unless

(a) the collateral is in the possession of the secured party; or

(b) the debtor has signed a security agreement which contains a description of the collateral and in addition, when the security interest covers crops or oil, gas or minerals to be extracted or timber to be cut, a description of the land concerned. In describing collateral, the word "proceeds" is sufficient without further description to cover proceeds of any character.

(2) A transaction, although subject to this Article, is also subject to chapters 31.04, 31.08, 31.12, 31.16, 31.20, and 31.24 RCW, and in the case of conflict between the provisions of this Article and any such statute, the provisions of such statute control. Failure to comply with any applicable statute has only the effect which is specified therein. [1965 ex.s. c 157 § 9-203. Cf. former RCW sections: (i) RCW 61.04.010; 1929 c 156 § 1; 1899 c 98 § 1; RRS § 3779; cf. 1881 § 1986; 1879 p 104 § 1; 1877 p 286 § 1; 1875 p 43 § 1. (ii) RCW 61.20.020; 1957 c 249 § 1; 1943 c 71 § 2; Rem. Supp. 1943 § 11548-31. (iii) RCW 61.20.040; 1943 c 71 § 4; Rem. Supp. 1943 § 11548-33. (iv) RCW 63.12.010; 1963 c 236 § 22; 1961 c 196 § 1; 1933 c 129 § 1; 1915 c 95 § 1; 1903 c 6 § 1; 1893 c 106 § 1; RRS § 3790. (v) RCW 63.16.020 and 63.16.030; 1947 c 8 §§ 2 and 3; Rem. Supp. 1947 §§ 2721-2 and 2721-3.]

**62A.9-204 When security interest attaches; after-acquired property; future advances.** (1) A security interest cannot attach until there is agreement (subsection (3) of RCW 62A.1-201) that it attach and value is given and the debtor has rights in the collateral. It attaches as soon as all of the events in the preceding sentence have

taken place unless explicit agreement postpones the time of attaching.

(2) For the purposes of this section the debtor has no rights

(a) in crops until they are planted or otherwise become growing crops, in the young of livestock until they are conceived;

(b) in fish until caught, in oil, gas or minerals until they are extracted, in timber until it is cut;

(c) in a contract right until the contract has been made;

(d) in an account until it comes into existence.

(3) Except as provided in subsection (4) a security agreement may provide that collateral, whenever acquired, shall secure all obligations covered by the security agreement.

(4) No security interest attaches under an after-acquired property clause

(a) to crops which become such more than one year after the security agreement is executed except that a security interest in crops which is given in conjunction with a lease or a land purchase or improvement transaction evidenced by a contract, mortgage or deed of trust may if so agreed attach to crops to be grown on the land concerned during the period of such real estate transaction;

(b) to consumer goods other than accessions (RCW 62A.9-314) when given as additional security unless the debtor acquires rights in them within ten days after the secured party gives value.

(5) Obligations covered by a security agreement may include future advances or other value whether or not the advances or value are given pursuant to commitment.

(6) A security interest cannot attach to livestock or to meat or meat products made from such livestock, where (a) the livestock was sold to the debtor by another party, (b) this other party has been paid by draft or check, and (c) the draft or check remains outstanding: *Provided*, That a security interest may attach when the draft or check has been outstanding more than ten days. [1974 1st ex.s. c 102 § 1; 1965 ex.s. c 157 § 9-204. Cf. former RCW sections: (i) RCW 61.04.010; 1929 c 156 § 1; 1899 c 98 § 1; RRS § 3779; cf. 1881 § 1986; 1879 p 104 § 1; 1877 p 286 § 1; 1875 p 43 § 1. (ii) RCW 61.20.020; 1957 c 249 § 1; 1943 c 71 § 2; Rem. Supp. 1943 § 11548-31. (iii) RCW 61.20.040 and 61.20.140; 1943 c 71 §§ 4 and 14; Rem. Supp. 1943 §§ 11548-33 and 11548-43.]

**62A.9-205 Use or disposition of collateral without accounting permissible.** A security interest is not invalid or fraudulent against creditors by reason of liberty in the debtor to use, commingle or dispose of all or part of the collateral (including returned or repossessed goods) or to collect or compromise accounts, contract rights or chattel paper, or to accept the return of goods or make repossessions, or to use, commingle or dispose of proceeds, or by reason of the failure of the secured party to require the debtor to account for proceeds or replace collateral. This section does not relax the requirements

of possession where perfection of a security interest depends upon possession of the collateral by the secured party or by a bailee. [1965 ex.s. c 157 § 9-205. Cf. former RCW sections: (i) RCW 63.12.030; 1937 c 196 § 2; 1925 ex.s. c 120 § 1; RRS § 3791-1. (ii) RCW 63.16-.080; 1947 c 8 § 8; Rem. Supp. 1947 § 2721-8.]

**62A.9-206 Agreement not to assert defenses against assignee; modification of sales warranties where security agreement exists.** (1) Subject to any statute or decision which establishes a different rule for buyers or lessees of consumer goods, an agreement by a buyer or lessee that he will not assert against an assignee any claim or defense which he may have against the seller or lessor is enforceable by an assignee who takes his assignment for value, in good faith and without notice of a claim or defense, except as to defenses of a type which may be asserted against a holder in due course of a negotiable instrument under the Article on Commercial Paper (Article 3).

(2) When a seller retains a purchase money security interest in goods the Article on Sales (Article 2) governs the sale and any disclaimer, limitation or modification of the seller's warranties. [1965 ex.s. c 157 § 9-206.]

**62A.9-207 Rights and duties when collateral is in secured party's possession.** (1) A secured party must use reasonable care in the custody and preservation of collateral in his possession. In the case of an instrument or chattel paper reasonable care includes taking necessary steps to preserve rights against prior parties unless otherwise agreed.

(2) Unless otherwise agreed, when collateral is in the secured party's possession

(a) reasonable expenses (including the cost of any insurance and payment of taxes or other charges) incurred in the custody, preservation, use or operation of the collateral are chargeable to the debtor and are secured by the collateral;

(b) the risk of accidental loss or damage is on the debtor to the extent of any deficiency in any effective insurance coverage;

(c) the secured party may hold as additional security any increase or profits (except money) received from the collateral, but money so received, unless remitted to the debtor, shall be applied in reduction of the secured obligation;

(d) the secured party must keep the collateral identifiable but fungible collateral may be commingled;

(e) the secured party may repledge the collateral upon terms which do not impair the debtor's right to redeem it.

(3) A secured party is liable for any loss caused by his failure to meet any obligation imposed by the preceding subsections but does not lose his security interest.

(4) A secured party may use or operate the collateral (a) for the purpose of preserving the collateral or its value or (b) pursuant to the order of a court of appropriate jurisdiction or, (c) except in the case of consumer goods, in the manner and to the extent provided in the security agreement. [1965 ex.s. c 157 § 9-207.]

**62A.9-208 Request for statement of account or list of collateral.** (1) A debtor may sign a statement indicating what he believes to be the aggregate amount of unpaid indebtedness as of a specified date and may send it to the secured party with a request that the statement be approved or corrected and returned to the debtor, or any other person whom he designates in writing to the secured party. When the security agreement or any other record kept by the secured party identifies the collateral a debtor may similarly request the secured party to approve or correct a list of the collateral.

(2) The secured party must comply with such a request within two weeks after receipt by sending a written correction or approval. If the secured party claims a security interest in all of a particular type of collateral owned by the debtor he may indicate that fact in his reply and need not approve or correct an itemized list of such collateral. If the secured party without reasonable excuse fails to comply he is liable for any loss caused to the debtor or such other person as the debtor has designated as the recipient of such information thereby; and if the debtor has properly included in his request a good faith statement of the obligation or a list of the collateral or both the secured party may claim a security interest only as shown in the statement against persons misled by his failure to comply. If he no longer has an interest in the obligation or collateral at the time the request is received he must disclose the name and address of any successor in interest known to him and he is liable for any loss caused to the debtor or designated recipient of the information as a result of failure to disclose. A successor in interest is not subject to this section until a request is received by him.

(3) A debtor is entitled to such a statement once every six months without charge. The secured party may require payment of a charge not exceeding ten dollars for each additional statement furnished. [1965 ex.s. c 157 § 9-208. Cf. former RCW 63.16.100; 1947 c 8 § 10; Rem. Supp. 1947 § 2721-10.]

### PART 3

#### RIGHTS OF THIRD PARTIES; PERFECTED AND UNPERFECTED SECURITY INTERESTS; RULES OF PRIORITY

*Mortgaged, pledged or assigned rents and profits of realty excluded from Article 62A.9 RCW: RCW 7.28.230.*

**62A.9-301 Persons who take priority over unperfected security interests; "lien creditor".** (1) Except as otherwise provided in subsection (2), an unperfected security interest is subordinate to the rights of

(a) persons entitled to priority under RCW 62A.9-312;

(b) a person who becomes a lien creditor without knowledge of the security interest and before it is perfected;

(c) in the case of goods, instruments, documents, and chattel paper, a person who is not a secured party and who is a transferee in bulk or other buyer not in ordinary course of business to the extent that he gives value



and receives delivery of the collateral without knowledge of the security interest and before it is perfected;

(d) in the case of accounts, contract rights, and general intangibles, a person who is not a secured party and who is a transferee to the extent that he gives value without knowledge of the security interest and before it is perfected.

(2) If the secured party files with respect to a purchase money security interest before or within ten days after the collateral comes into possession of the debtor, he takes priority over the rights of a transferee in bulk or of a lien creditor which arise between the time the security interest attaches and the time of filing.

(3) A "lien creditor" means a creditor who has acquired a lien on the property involved by attachment, levy or the like and includes an assignee for benefit of creditors from the time of assignment, and a trustee in bankruptcy from the date of the filing of the petition or a receiver in equity from the time of appointment. Unless all the creditors represented had knowledge of the security interest such a representative of creditors is a lien creditor without knowledge even though he personally has knowledge of the security interest. [1965 ex.s. c 157 § 9-301. Cf. former RCW sections: (i) RCW 61.04.010; 1929 c 156 § 1; 1899 c 98 § 1; RRS § 3779; cf. 1881 § 1986; 1879 p 104 § 1; 1877 p 286 § 1; 1875 p 43 § 1. (ii) RCW 61.04.020; 1943 c 284 § 1; 1915 c 96 § 1; Code 1881 § 1987; Rem. Supp. 1943 § 3780; prior: 1879 p 105 § 2; 1877 p 286 § 3; 1875 p 44 § 3; 1863 p 426 § 1. (iii) RCW 61.20.010 and 61.20.090(2); 1943 c 71 §§ 1 and 9; Rem. Supp. 1943 §§ 11548-30 and 11548-38. (iv) RCW 61.20.080(1), (2), (3); 1957 c 249 § 2; 1943 c 71 § 8; Rem. Supp. 1943 § 11548-37. (v) RCW 63.12.010; 1963 c 236 § 22; 1961 c 196 § 1; 1933 c 129 § 1; 1915 c 95 § 1; 1903 c 6 § 1; 1893 c 106 § 1; RRS § 3790. (vi) RCW 63.16.020 and 63.16.030; 1947 c 8 §§ 2 and 3; Rem. Supp. 1947 §§ 2721-2 and 2721-3.]

**62A.9-302 When filing is required to perfect security interest; security interests to which filing provisions of this Article do not apply.** (1) A financing statement must be filed to perfect all security interests except the following:

(a) a security interest in collateral in possession of the secured party under RCW 62A.9-305;

(b) a security interest temporarily perfected in instruments or documents without delivery under RCW 62A.9-304 or in proceeds for a ten day period under RCW 62A.9-306;

(c) a purchase money security interest in farm equipment having a purchase price not in excess of two thousand five hundred dollars; but filing is required for a fixture under RCW 62A.9-313 or for a motor vehicle required to be licensed;

(d) a purchase money security interest in consumer goods; but filing is required for a fixture under RCW 62A.9-313 or for a motor vehicle required to be licensed;

(e) an assignment of accounts or contract rights which does not alone or in conjunction with other assignments to the same assignee transfer a significant

part of the outstanding accounts or contract rights of the assignor;

(f) a security interest of a collecting bank (RCW 62A.4-208) or arising under the Article on Sales (RCW 62A.9-113) or covered in subsection (3) of this section.

(2) If a secured party assigns a perfected security interest, no filing under this Article is required in order to continue the perfected status of the security interest against creditors of and transferees from the original debtor.

(3) The filing provisions of this Article do not apply to a security interest in property subject to a statute

(a) of the United States which provides for a national registration or filing of all security interests in such property; or

(b) of this state which provides for central filing of, or which requires indication on a certificate of title of, such security interests in such property.

(4) A security interest in property covered by a statute described in subsection (3) can be perfected only by registration or filing under that statute or by indication of the security interest on a certificate of title or a duplicate thereof by a public official.

(5) Part 4 of this Article does not apply to a security interest in property of any description created by a deed of trust or mortgage made by any corporation primarily engaged in the railroad or street railway business, the furnishing of telephone or telegraph service, the transmission of oil, gas or petroleum products by pipe line, or the production, transmission or distribution of electricity, steam, gas or water, but such security interest may be perfected under this Article by filing such deed of trust or mortgage in the office of the secretary of state. When so filed, such instrument shall remain effective until terminated, without the need for filing a continuation statement. Assignments and releases of such instruments may also be filed in the office of the secretary of state. The secretary of state shall be a filing officer for the foregoing purposes, and the uniform fee for filing, indexing and furnishing filing data pursuant to this subsection shall be five dollars. [1967 c 114 § 4; 1965 ex.s. c 157 § 9-302. Cf. former RCW sections: (i) RCW 61.04.020; 1943 c 284 § 1; 1915 c 96 § 1; Code 1881 § 1987; Rem. Supp. 1943 § 3780; prior: 1879 p 105 § 2; 1877 p 286 § 3; 1875 p 44 § 3; 1863 p 426 § 1. (ii) RCW 61.20.030 and 61.20.090; 1943 c 71 §§ 3 and 9; Rem. Supp. 1943 §§ 11548-32 and 11548-38. (iii) RCW 61.20.080; 1957 c 249 § 2; 1943 c 71 § 8; Rem. Supp. 1943 § 11548-37. (iv) RCW 63.12.010; 1963 c 236 § 22; 1961 c 196 § 1; 1933 c 129 § 1; 1915 c 95 § 1; 1903 c 6 § 1; 1893 c 106 § 1; RRS § 3790. (v) RCW 63.16.030; 1947 c 8 § 3; Rem. Supp. 1947 § 2721-3.]

**Reviser's note:** The section caption is the same as that originally enacted in 1965 ex.s. c 157 § 9-302. It was not included in the 1967 amendment to this section.

**Emergency—Effective date—1967 c 114:** See note following RCW 62A.4-406.

**Motor vehicles—Certificate of ownership and registration:** RCW 46.12.010.

**Seed bailment contracts, filing, recording or notice of contract not required to establish validity of contract or title of bailor:** RCW 15-48.270-15.48.290.



**62A.9-303 When security interest is perfected; continuity of perfection.** (1) A security interest is perfected when it has attached and when all of the applicable steps required for perfection have been taken. Such steps are specified in RCW 62A.9-302, RCW 62A.9-304, RCW 62A.9-305 and RCW 62A.9-306. If such steps are taken before the security interest attaches, it is perfected at the time when it attaches.

(2) If a security interest is originally perfected in any way permitted under this Article and is subsequently perfected in some other way under this Article, without an intermediate period when it was unperfected, the security interest shall be deemed to be perfected continuously for the purposes of this Article. [1965 ex.s. c 157 § 9-303.]

**62A.9-304 Perfection of security interest in instruments, documents, and goods covered by documents; perfection by permissive filing; temporary perfection without filing or transfer of possession.** (1) A security interest in chattel paper or negotiable documents may be perfected by filing. A security interest in instruments (other than instruments which constitute part of chattel paper) can be perfected only by the secured party's taking possession, except as provided in subsections (4) and (5).

(2) During the period that goods are in the possession of the issuer of a negotiable document therefor, a security interest in the goods is perfected by perfecting a security interest in the document, and any security interest in the goods otherwise perfected during such period is subject thereto.

(3) A security interest in goods in the possession of a bailee other than one who has issued a negotiable document therefor is perfected by issuance of a document in the name of the secured party or by the bailee's receipt of notification of the secured party's interest or by filing as to the goods.

(4) A security interest in instruments or negotiable documents is perfected without filing or the taking of possession for a period of twenty-one days from the time it attaches to the extent that it arises for new value given under a written security agreement.

(5) A security interest remains perfected for a period of twenty-one days without filing where a secured party having a perfected security interest in an instrument, a negotiable document or goods in possession of a bailee other than one who has issued a negotiable document therefor

(a) makes available to the debtor the goods or documents representing the goods for the purpose of ultimate sale or exchange or for the purpose of loading, unloading, storing, shipping, transshipping, manufacturing, processing or otherwise dealing with them in a manner preliminary to their sale or exchange; or

(b) delivers the instrument to the debtor for the purpose of ultimate sale or exchange or of presentation, collection, renewal or registration of transfer.

(6) After the twenty-one day period in subsections (4) and (5) perfection depends upon compliance with applicable provisions of this Article. [1965 ex.s. c 157 § 9-304. Cf. former RCW sections: (i) RCW 61.20.030

and 61.20.090; 1943 c 71 §§ 3 and 9; Rem. Supp. 1943 §§ 11548-32 and 11548-38. (ii) RCW 61.20.080; 1957 c 249 § 2; 1943 c 71 § 8; Rem. Supp. 1943 § 11548-37. (iii) RCW 63.16.010; 1947 c 8 § 1; Rem. Supp. 1947 § 2721-1.]

**62A.9-305 When possession by secured party perfects security interest without filing.** A security interest in letters of credit and advices of credit (subsection (2)(a) of RCW 62A.5-116), goods, instruments, negotiable documents or chattel paper may be perfected by the secured party's taking possession of the collateral. If such collateral other than goods covered by a negotiable document is held by a bailee, the secured party is deemed to have possession from the time the bailee receives notification of the secured party's interest. A security interest is perfected by possession from the time possession is taken without relation back and continues only so long as possession is retained, unless otherwise specified in this Article. The security interest may be otherwise perfected as provided in this Article before or after the period of possession by the secured party. [1965 ex.s. c 157 § 9-305.]

**62A.9-306 "Proceeds"; secured party's rights on disposition of collateral.** (1) "Proceeds" includes whatever is received when collateral or proceeds is sold, exchanged, collected or otherwise disposed of. The term also includes the account arising when the right to payment is earned under a contract right. Money, checks and the like are "cash proceeds". All other proceeds are "non-cash proceeds".

(2) Except where this Article otherwise provides, a security interest continues in collateral notwithstanding sale, exchange or other disposition thereof by the debtor unless his action was authorized by the secured party in the security agreement or otherwise, and also continues in any identifiable proceeds including collections received by the debtor.

(3) The security interest in proceeds is a continuously perfected security interest if the interest in the original collateral was perfected but it ceases to be a perfected security interest and becomes unperfected ten days after receipt of the proceeds by the debtor unless

(a) a filed financing statement covering the original collateral also covers proceeds; or

(b) the security interest in the proceeds is perfected before the expiration of the ten day period.

(4) In the event of insolvency proceedings instituted by or against a debtor, a secured party with a perfected security interest in proceeds has a perfected security interest

(a) in identifiable non-cash proceeds;

(b) in identifiable cash proceeds in the form of money which is not commingled with other money or deposited in a bank account prior to the insolvency proceedings;

(c) in identifiable cash proceeds in the form of checks and the like which are not deposited in a bank account prior to the insolvency proceedings; and

(d) in all cash and bank accounts of the debtor, if other cash proceeds have been commingled or deposited in a bank account, but the perfected security interest under this paragraph (d) is

(i) subject to any right of set-off; and

(ii) limited to an amount not greater than the amount of any cash proceeds received by the debtor within ten days before the institution of the insolvency proceedings and commingled or deposited in a bank account prior to the insolvency proceedings less the amount of cash proceeds received by the debtor and paid over to the secured party during the ten day period.

(5) If a sale of goods results in an account or chattel paper which is transferred by the seller to a secured party, and if the goods are returned to or are repossessed by the seller or the secured party, the following rules determine priorities:

(a) If the goods were collateral at the time of sale for an indebtedness of the seller which is still unpaid, the original security interest attaches again to the goods and continues as a perfected security interest if it was perfected at the time when the goods were sold. If the security interest was originally perfected by a filing which is still effective, nothing further is required to continue the perfected status; in any other case, the secured party must take possession of the returned or repossessed goods or must file.

(b) An unpaid transferee of the chattel paper has a security interest in the goods against the transferor. Such security interest is prior to a security interest asserted under paragraph (a) to the extent that the transferee of the chattel paper was entitled to priority under RCW 62A.9-308.

(c) An unpaid transferee of the account has a security interest in the goods against the transferor. Such security interest is subordinate to a security interest asserted under paragraph (a).

(d) A security interest of an unpaid transferee asserted under paragraph (b) or (c) must be perfected for protection against creditors of the transferor and purchasers of the returned or repossessed goods. [1965 ex.s. c 157 § 9-306. Cf. former RCW sections: (i) RCW 61.20.090 and 61.20.100; 1943 c 71 §§ 9 and 10; Rem. Supp. 1943 §§ 11548-38 and 11548-39. (ii) RCW 63.12.030; 1937 c 196 § 2; 1925 ex.s. c 120 § 1; RRS § 3791-1. (iii) RCW 63.16.080; 1947 c 8 § 8; Rem. Supp. 1947 § 2721-8.]

**62A.9-307 Protection of buyers of goods.** (1) A buyer in ordinary course of business (subsection (9) of RCW 62A.1-201) other than a person buying farm products from a person engaged in farming operations takes free of a security interest created by his seller even though the security interest is perfected and even though the buyer knows of its existence.

(2) In the case of consumer goods and in the case of farm equipment having an original purchase price not in excess of two thousand five hundred dollars (other than fixtures, see RCW 62A.9-313), a buyer takes free of a security interest even though perfected if he buys without knowledge of the security interest, for value and for his own personal, family or household purposes

or his own farming operations unless prior to the purchase the secured party has filed a financing statement covering such goods. [1965 ex.s. c 157 § 9-307. Cf. former RCW 61.20.090; 1943 c 71 § 9; Rem. Supp. 1943 § 11548-38.]

**62A.9-308 Purchase of chattel paper and non-negotiable instruments.** A purchaser of chattel paper or a non-negotiable instrument who gives new value and takes possession of it in the ordinary course of his business and without knowledge that the specific paper or instrument is subject to a security interest has priority over a security interest which is perfected under RCW 62A.9-304 (permissive filing and temporary perfection). A purchaser of chattel paper who gives new value and takes possession of it in the ordinary course of his business has priority over a security interest in chattel paper which is claimed merely as proceeds of inventory subject to a security interest (RCW 62A.9-306), even though he knows that the specific paper is subject to the security interest. [1965 ex.s. c 157 § 9-308. Cf. former RCW sections: RCW 61.20.090 and 61.20.100; 1943 c 71 §§ 9 and 10; Rem. Supp. 1943 §§ 11548-38 and 11548-39.]

**62A.9-309 Protection of purchasers of instruments and documents.** Nothing in this Article limits the rights of a holder in due course of a negotiable instrument (RCW 62A.3-302) or a holder to whom a negotiable document of title has been duly negotiated (RCW 62A.7-501) or a bona fide purchaser of a security (RCW 62A.8-301) and such holders or purchasers take priority over an earlier security interest even though perfected. Filing under this Article does not constitute notice of the security interest to such holders or purchasers. [1965 ex.s. c 157 § 9-309. Cf. former RCW 61.20.090(1); 1943 c 71 § 9; Rem. Supp. 1943 § 11548-38.]

**62A.9-310 Priority of certain liens arising by operation of law.** When a person in the ordinary course of his business furnishes services or materials with respect to goods subject to a security interest, a lien upon goods in the possession of such person given by statute or rule of law for such materials or services takes priority over a perfected security interest only if the lien is statutory and the statute expressly provides for such priority. [1965 ex.s. c 157 § 9-310. Cf. former RCW 61.20.110; 1943 c 71 § 11; Rem. Supp. 1943 § 11548-40.]

**62A.9-311 Alienability of debtor's rights: Judicial process.** The debtor's rights in collateral may be voluntarily or involuntarily transferred (by way of sale, creation of a security interest, attachment, levy, garnishment or other judicial process) notwithstanding a provision in the security agreement prohibiting any transfer or making the transfer constitute a default. [1965 ex.s. c 157 § 9-311. Cf. former RCW 61.08.120; Code 1881 § 1990; 1879 p 105 § 5; RRS § 1115.]

**62A.9-312 Priorities among conflicting security interests in the same collateral.** (1) The rules of priority stated in the following sections shall govern where applicable: RCW 62A.4-208 with respect to the security interest of collecting banks in items being collected, accompanying documents and proceeds; RCW 62A.9-301 on certain priorities; RCW 62A.9-304 on goods covered by documents; RCW 62A.9-306 on proceeds and repossessions; RCW 62A.9-307 on buyers of goods; RCW 62A.9-308 on possessory against non-possessory interests in chattel paper or non-negotiable instruments; RCW 62A.9-309 on security interests in negotiable instruments, documents or securities; RCW 62A.9-310 on priorities between perfected security interests and liens by operation of law; RCW 62A.9-313 on security interests in fixtures as against interests in real estate; RCW 62A.9-314 on security interests in accessions as against interest in goods; RCW 62A.9-315 on conflicting security interests where goods lose their identity or become part of a product; and RCW 62A.9-316 on contractual subordination.

(2) A perfected security interest in crops for new value given to enable the debtor to produce the crops during the production season and given not more than three months before the crops become growing crops by planting or otherwise takes priority over an earlier perfected security interest to the extent that such earlier interest secures obligations due more than six months before the crops become growing crops by planting or otherwise, even though the person giving new value had knowledge of the earlier security interest.

(3) A purchase money security interest in inventory collateral has priority over a conflicting security interest in the same collateral if

(a) the purchase money security interest is perfected at the time the debtor receives possession of the collateral; and

(b) any secured party whose security interest is known to the holder of the purchase money security interest or who, prior to the date of the filing made by the holder of the purchase money security interest, had filed a financing statement covering the same items or type of inventory, has received notification of the purchase money security interest before the debtor receives possession of the collateral covered by the purchase money security interest; and

(c) such notification states that the person giving the notice has or expects to acquire a purchase money security interest in inventory of the debtor, describing such inventory by item or type.

(4) A purchase money security interest in collateral other than inventory has priority over a conflicting security interest in the same collateral if the purchase money security interest is perfected at the time the debtor receives possession of the collateral or within ten days thereafter.

(5) In all cases not governed by other rules stated in this section (including cases of purchase money security interests which do not qualify for the special priorities set forth in subsections (3) and (4) of this section), priority between conflicting security interests in the same collateral shall be determined as follows:

(a) in the order of filing if both are perfected by filing, regardless of which security interest attached first under RCW 62A.9-204(1) and whether it attached before or after filing;

(b) in the order of perfection unless both are perfected by filing, regardless of which security interest attached first under RCW 62A.9-204(1) and, in the case of a filed security interest, whether it attached before or after filing; and

(c) in the order of attachment under RCW 62A.9-204(1) so long as neither is perfected.

(6) For the purpose of the priority rules of the immediately preceding subsection, a continuously perfected security interest shall be treated at all times as if perfected by filing if it was originally so perfected and it shall be treated at all times as if perfected otherwise than by filing if it was originally perfected otherwise than by filing. [1965 ex.s. c 157 § 9-312. Cf. former RCW sections: (i) RCW 61.04.020; 1943 c 284 § 1; 1915 c 96 § 1; Code 1881 § 1987; Rem. Supp. 1943 § 3780; prior: 1879 p 105 § 2; 1877 p 286 § 3; 1875 p 44 § 3; 1863 p 426 § 1. (ii) RCW 61.20.010 and 61.20.090; 1943 c 71 §§ 1 and 9; Rem. Supp. 1943 §§ 11548-30 and 11548-38. (iii) RCW 63.12.010; 1963 c 236 § 22; 1961 c 196 § 1; 1933 c 129 § 1; 1915 c 95 § 1; 1903 c 6 § 1; 1893 c 106 § 1; RRS § 3790. (iv) RCW 63.16.030 and 63.16.090; 1947 c 8 §§ 3 and 9; Rem. Supp. 1947 §§ 2721-3 and 2721-9.]

**62A.9-313 Priority of security interests in fixtures.**

(1) The rules of this section do not apply to goods incorporated into a structure in the manner of lumber, bricks, tile, cement, glass, metal work and the like and no security interest in them exists under this Article unless the structure remains personal property under applicable law. The law of this state other than this Title determines whether and when other goods become fixtures. This Title does not prevent creation of an encumbrance upon fixtures or real estate pursuant to the law applicable to real estate.

(2) A security interest which attaches to goods before they become fixtures takes priority as to the goods over the claims of all persons who have an interest in the real estate except as stated in subsection (4).

(3) A security interest which attaches to goods after they become fixtures is valid against all persons subsequently acquiring interests in the real estate except as stated in subsection (4) but is invalid against any person with an interest in the real estate at the time the security interest attaches to the goods who has not in writing consented to the security interest or disclaimed an interest in the goods as fixtures.

(4) The security interests described in subsections (2) and (3) do not take priority over

(a) a subsequent purchaser for value of any interest in the real estate; or

(b) a creditor with a lien on the real estate subsequently obtained by judicial proceedings; or

(c) a creditor with a prior encumbrance of record on the real estate to the extent that he makes subsequent advances

if the subsequent purchase is made, the lien by judicial

proceedings is obtained, or the subsequent advance under the prior encumbrance is made or contracted for without knowledge of the security interest and before it is perfected. A purchaser of the real estate at a foreclosure sale other than an encumbrancer purchasing at his own foreclosure sale is a subsequent purchaser within this section.

(5) When under subsections (2) or (3) and (4) a secured party has priority over the claims of all persons who have interests in the real estate, he may, on default, subject to the provisions of Part 5, remove his collateral from the real estate but he must reimburse any encumbrancer or owner of the real estate who is not the debtor and who has not otherwise agreed for the cost of repair of any physical injury, but not for any diminution in value of the real estate caused by the absence of the goods removed or by any necessity for replacing them. A person entitled to reimbursement may refuse permission to remove until the secured party gives adequate security for the performance of this obligation. [1965 ex.s. c 157 § 9-313. Cf. former RCW sections: (i) RCW 61.04.040; 1943 c 76 § 1; 1899 c 98 § 3; Rem. Supp. 1943 § 3782. (ii) RCW 63.12.020; 1933 c 129 § 2; 1903 c 6 § 2; 1893 c 106 § 2; RRS § 3791.]

**62A.9-314 Accessions.** (1) A security interest in goods which attaches before they are installed in or affixed to other goods takes priority as to the goods installed or affixed (called in this section "accessions") over the claims of all persons to the whole except as stated in subsection (3) and subject to RCW 62A.9-315(1).

(2) A security interest which attaches to goods after they become part of a whole is valid against all persons subsequently acquiring interests in the whole except as stated in subsection (3) but is invalid against any person with an interest in the whole at the time the security interest attaches to the goods who has not in writing consented to the security interest or disclaimed an interest in the goods as part of the whole.

(3) The security interests described in subsections (1) and (2) do not take priority over

(a) a subsequent purchaser for value of any interest in the whole; or

(b) a creditor with a lien on the whole subsequently obtained by judicial proceedings; or

(c) a creditor with a prior perfected security interest in the whole to the extent that he makes subsequent advances

if the subsequent purchase is made, the lien by judicial proceedings obtained or the subsequent advance under the prior perfected security interest is made or contracted for without knowledge of the security interest and before it is perfected. A purchaser of the whole at a foreclosure sale other than the holder of a perfected security interest purchasing at his own foreclosure sale is a subsequent purchaser within this section.

(4) When under subsections (1) or (2) and (3) a secured party has an interest in accessions which has priority over the claims of all persons who have interests in the whole, he may on default subject to the provisions of Part 5 remove his collateral from the whole but

he must reimburse any encumbrancer or owner of the whole who is not the debtor and who has not otherwise agreed for the cost of repair of any physical injury but not for any diminution in value of the whole caused by the absence of the goods removed or by any necessity for replacing them. A person entitled to reimbursement may refuse permission to remove until the secured party gives adequate security for the performance of this obligation. [1965 ex.s. c 157 § 9-314.]

**62A.9-315 Priority when goods are commingled or processed.** (1) If a security interest in goods was perfected and subsequently the goods or a part thereof have become part of a product or mass, the security interest continues in the product or mass if

(a) the goods are so manufactured, processed, assembled or commingled that their identity is lost in the product or mass; or

(b) a financing statement covering the original goods also covers the product into which the goods have been manufactured, processed or assembled.

In a case to which paragraph (b) applies, no separate security interest in that part of the original goods which has been manufactured, processed or assembled into the product may be claimed under RCW 62A.9-314.

(2) When under subsection (1) more than one security interest attaches to the product or mass, they rank equally according to the ratio that the cost of the goods to which each interest originally attached bears to the cost of the total product or mass. [1965 ex.s. c 157 § 9-315.]

**62A.9-316 Priority subject to subordination.** Nothing in this Article prevents subordination by agreement by any person entitled to priority. [1965 ex.s. c 157 § 9-316.]

**62A.9-317 Secured party not obligated on contract of debtor.** The mere existence of a security interest or authority given to the debtor to dispose of or use collateral does not impose contract or tort liability upon the secured party for the debtor's acts or omissions. [1965 ex.s. c 157 § 9-317. Cf. former RCW 61.20.120; 1943 c 71 § 12; Rem. Supp. 1943 § 11548-41.]

**62A.9-318 Defenses against assignee; modification of contract after notification of assignment; term prohibiting assignment ineffective; identification and proof of assignment.** (1) Unless an account debtor has made an enforceable agreement not to assert defenses or claims arising out of a sale as provided in RCW 62A.9-206 the rights of an assignee are subject to

(a) all the terms of the contract between the account debtor and assignor and any defense or claim arising therefrom; and

(b) any other defense or claim of the account debtor against the assignor which accrues before the account debtor receives notification of the assignment.

(2) So far as the right to payment under an assigned contract right has not already become an account, and notwithstanding notification of the assignment, any modification of or substitution for the contract made in

good faith and in accordance with reasonable commercial standards is effective against an assignee unless the account debtor has otherwise agreed but the assignee acquires corresponding rights under the modified or substituted contract. The assignment may provide that such modification or substitution is a breach by the assignor.

(3) The account debtor is authorized to pay the assignor until the account debtor receives notification that the account has been assigned and that payment is to be made to the assignee. A notification which does not reasonably identify the rights assigned is ineffective. If requested by the account debtor, the assignee must seasonably furnish reasonable proof that the assignment has been made and unless he does so the account debtor may pay the assignor.

(4) A term in any contract between an account debtor and an assignor which prohibits assignment of an account or contract right to which they are parties is ineffective. [1965 ex.s. c 157 § 9-318. Cf. former RCW sections: (i) RCW 61.20.090(3); 1943 c 71 § 9; Rem. Supp. 1943 § 11548-38. (ii) RCW 63.16.020; 1947 c 8 § 2; Rem. Supp. 1947 § 2721-2.]

*Actions on assigned choses in action: RCW 4.08.080.  
Setoffs: RCW 4.32.110.*

**PART 4  
FILING**

*Filing of security interests created by deed of trust or mortgage made by corporation engaged in railroad or utility business or services: RCW 62A.9-302(5).*

*Seed bailment contracts, application of Article 62A.9 RCW to: RCW 15.48.270-15.48.290.*

*Seed bailment contracts, security interest not created by contract: RCW 15.48.280.*

**62A.9-401 Place of filing; erroneous filing; removal of collateral.** (1) The proper place to file in order to perfect a security interest is as follows:

(a) when the collateral is equipment used in farming operations, or farm products, or accounts, contract rights or general intangibles arising from or relating to the sale of farm products by a farmer, or consumer goods, then in the office of the auditor in the county of the debtor's residence or if the debtor is not a resident of this state then in the office of the auditor in the county where the goods are kept, and in addition when the collateral is crops in the office of the auditor in the county where the land on which the crops are growing or to be grown is located;

(b) when the collateral is goods which at the time the security interest attaches are or are to become fixtures, then in the office where a mortgage on the real estate concerned would be filed or recorded;

(c) in all other cases, in the office of the secretary of state.

(2) A filing which is made in good faith in an improper place or not in all of the places required by this section is nevertheless effective with regard to any collateral as to which the filing complied with the requirements of this Article and is also effective with regard to collateral covered by the financing statement against

any person who has knowledge of the contents of such financing statement.

(3) A filing which is made in the proper place in this state continues effective even though the debtor's residence or place of business or the location of the collateral or its use, whichever controlled the original filing, is thereafter changed.

(4) If collateral is brought into this state from another jurisdiction, the rules stated in RCW 62A.9-103 determine whether filing is necessary in this state. [1965 ex.s. c 157 § 9-401. Cf. former RCW sections: (i) RCW 61.04.020; 1943 c 284 § 1; 1915 c 96 § 1; Code 1881 § 1987; Rem. Supp. 1943 § 3780; prior: 1879 p 105 § 2; 1877 p 286 § 3; 1875 p 44 § 3; 1863 p 426 § 1. (ii) RCW 61.20.030; 1943 c 71 § 3; Rem. Supp. 1943 § 11548-32. (iii) RCW 61.20.130; 1943 c 71 § 13; Rem. Supp. 1943 § 11548-42. (iv) RCW 63.12.010; 1963 c 236 § 22; 1961 c 196 § 1; 1933 c 129 § 1; 1915 c 95 § 1; 1903 c 6 § 1; 1893 c 106 § 1; RRS § 3790. (v) RCW 63.16.010(6); 1947 c 8 § 1; Rem. Supp. 1947 § 2721-1.]

**62A.9-402 Formal requisites of financing statement; amendments.**

(1) A financing statement is sufficient if it is signed by the debtor and the secured party, gives an address of the secured party from which information concerning the security interest may be obtained, gives a mailing address of the debtor and contains a statement indicating the types, or describing the items, of collateral. A financing statement may be filed before a security agreement is made or a security interest otherwise attaches. When the financing statement covers crops growing or to be grown or goods which are or are to become fixtures, the statement must also contain a description of the real estate concerned. A copy of the security agreement is sufficient as a financing statement if it contains the above information and is signed by both parties.

(2) A financing statement which otherwise complies with subsection (1) is sufficient although it is signed only by the secured party when it is filed to perfect a security interest in

(a) collateral already subject to a security interest in another jurisdiction when it is brought into this state. Such a financing statement must state that the collateral was brought into this state under such circumstances.

(b) proceeds under RCW 62A.9-306 if the security interest in the original collateral was perfected. Such a financing statement must describe the original collateral.

(3) A form substantially as follows is sufficient to comply with subsection (1):

Name of debtor -----  
 Mailing address of debtor -----  
 Name of secured party -----  
 Mailing address of secured party -----  
 1. This financing statement covers the following types  
 (or items) of property:  
 (Description of collateral) -----  
 2. (If collateral is crops) The above described crops  
 are growing or are to be grown on or are standing  
 on:  
 (Description of real property) -----

- 3. (If proceeds or products of collateral are claimed)  
 Proceeds—Products of the collateral are also covered -----  
     Signature of debtor -----  
     Signature of secured party -----  
 (If the transaction consists of the sale of accounts, contract rights or chattel paper, the term "seller" or "assignor" may be substituted for "debtor" and the term "buyer" or "assignee" may be substituted for "secured party") -----

(4) The term "financing statement" as used in this Article means the original financing statement and any amendments but if any amendment adds collateral, it is effective as to the added collateral only from the filing date of the amendment.

(5) A financing statement substantially complying with the requirements of this section is effective even though it contains minor errors which are not seriously misleading. [1965 ex.s. c 157 § 9-402. Cf. former RCW sections: (i) RCW 61.04.020; 1943 c 284 § 1; 1915 c 96 § 1; Code 1881 § 1987; Rem. Supp. 1943 § 3780; prior: 1879 p 105 § 2; 1877 p 286 § 3; 1875 p 44 § 3; 1863 p 426 § 1. (ii) RCW 61.04.040; 1943 c 76 § 1; 1899 c 98 § 3; Rem. Supp. 1943 § 3782. (iii) RCW 61.20.130; 1943 c 71 § 13; Rem. Supp. 1943 § 11548-42. (iv) RCW 63.12-.010; 1963 c 236 § 22; 1961 c 196 § 1; 1933 c 129 § 1; 1915 c 95 § 1; 1903 c 6 § 1; 1893 c 106 § 1; RRS § 3790. (v) RCW 63.16.030; 1947 c 8 § 3; Rem. Supp. 1947 § 2721-3.]

**62A.9-403 What constitutes filing; duration of filing; effect of lapsed filing; duties of filing officer.** (1) Presentation for filing of a financing statement and tender of the filing fee or acceptance of the statement by the filing officer constitutes filing under this Article.

(2) A filed financing statement which states a maturity date of the obligation secured of five years or less is effective until such maturity date and thereafter for a period of sixty days. Any other filed financing statement is effective for a period of five years from the date of filing. The effectiveness of a filed financing statement lapses on the expiration of such sixty day period after a stated maturity date or on the expiration of such five year period, as the case may be, unless a continuation statement is filed prior to the lapse. Upon such lapse the security interest becomes unperfected. A filed financing statement which states that the obligation secured is payable on demand is effective for five years from the date of filing.

(3) A continuation statement may be filed by the secured party (i) within six months before and sixty days after a stated maturity date of five years or less, and (ii) otherwise within six months prior to the expiration of the five year period specified in subsection (2). Any such continuation statement must be signed by the secured party, identify the original statement by file number and state that the original statement is still effective. Upon timely filing of the continuation statement, the effectiveness of the original statement is continued for five years after the last date to which the filing was effective whereupon it lapses in the same manner as provided in subsection (2) unless another continuation

statement is filed prior to such lapse. Succeeding continuation statements may be filed in the same manner to continue the effectiveness of the original statement. Unless a statute on disposition of public records provides otherwise, the filing officer may remove a lapsed statement from the files and destroy it.

(4) A filing officer shall mark each statement with a consecutive file number and with the date and hour of filing and shall hold the statement for public inspection. In addition the filing officer shall index the statements according to the name of the debtor and shall note in the index the file number and the address of the debtor given in the statement.

(5) The uniform fee for filing, indexing and furnishing filing data for an original or a continuation statement on a form conforming to standards prescribed by the secretary of state shall be three dollars, but if the form of the statement does not conform to the standards prescribed by the secretary of state the uniform fee shall be five dollars. [1967 c 114 § 5; 1965 ex.s. c 157 § 9-403. Cf. former RCW sections: (i) RCW 61.04.030; 1959 c 263 § 11; 1953 c 214 § 3; 1943 c 284 § 2; 1899 c 98 § 2; Rem. Supp. 1943 § 3781. (ii) RCW 61.04.040; 1943 c 76 § 1; 1899 c 98 § 3; Rem. Supp. 1943 § 3782. (iii) RCW 61.04.050; 1899 c 98 § 4; RRS § 3783. (iv) RCW 61.20-.130; 1943 c 71 § 13; Rem. Supp. 1943 § 11548-42. (v) RCW 63.12.020; 1933 c 129 § 2; 1903 c 6 § 2; 1893 c 106 § 2; RRS § 3791. (vi) RCW 63.16.040 through 63-.16.060; 1947 c 8 §§ 4 through 6; Rem. Supp. 1947 §§ 2721-4 through 2721-6.]

**Emergency—Effective date—1967 c 114:** See note following RCW 62A.4-406.

**62A.9-404 Termination statement.** (1) Whenever there is no outstanding secured obligation and no commitment to make advances, incur obligations or otherwise give value, the secured party must on written demand by the debtor send the debtor a statement that he no longer claims a security interest under the financing statement, which shall be identified by file number. A termination statement signed by a person other than the secured party of record must include or be accompanied by the assignment or a statement by the secured party of record that he has assigned the security interest to the signer of the termination statement. The uniform fee for filing and indexing such an assignment or statement thereof on a form conforming to standards prescribed by the secretary of state shall be one dollar, but if the form of the statement does not conform to the standards prescribed by the secretary of state the uniform fee shall be two dollars. If the affected secured party fails to send such a termination statement within ten days after proper demand therefor he shall be liable to the debtor for one hundred dollars, and in addition for any loss caused to the debtor by such failure.

(2) On presentation to the filing officer of such a termination statement he must note it in the index. The filing officer shall remove from the files, mark "terminated" and send or deliver to the secured party the financing statement and any continuation statement, statement of assignment or statement of release pertaining thereto.



(3) There shall be no fee for filing and indexing a termination statement including sending or delivering the financing statement. [1967 c 114 § 6; 1965 ex.s. c 157 § 9-404. Cf. former RCW sections: (i) RCW 61.16-.040; 1959 c 263 § 12; 1953 c 214 § 4; 1943 c 284 § 4; 1937 c 133 § 1; 1899 c 98 § 8; Rem. Supp. 1943 § 3787. (ii) RCW 61.16.050; 1937 c 133 § 2 (adding to 1899 c 98 a new section, § 9); RRS § 3787-1. (iii) RCW 61.16-.070; 1937 c 133 § 2 (adding to 1899 c 98 a new section, § 11); RRS § 3787-3. (iv) RCW 63.16.070; 1947 c 8 § 7; Rem. Supp. 1947 § 2721-7.]

**Emergency—Effective date—1967 c 114:** See note following RCW 62A.4-406.

**62A.9-405 Assignment of security interest; duties of filing officer; fees.** (1) A financing statement may disclose an assignment of a security interest in the collateral described in the statement by indication in the statement of the name and address of the assignee or by an assignment itself or a copy thereof on the face or back of the statement. Either the original secured party or the assignee may sign this statement as the secured party. On presentation to the filing officer of such a financing statement, the filing officer shall mark, hold, and index the same as provided in RCW 62A.9-403(4), and shall note the assignment on the index of the financing statement. The uniform fee for filing, indexing, and furnishing filing data for a financing statement so indicating an assignment on a form conforming to standards prescribed by the secretary of state shall be three dollars, but if the form of the financing statement does not conform to the standards prescribed by the secretary of state the uniform fee shall be five dollars.

(2) A secured party may assign of record all or a part of his rights under a financing statement by the filing of a separate written statement of assignment signed by the secured party of record and setting forth the name of the secured party of record and the debtor, the file number and the date of filing of the financing statement and the name and address of the assignee and containing a description of the collateral assigned. A copy of the assignment is sufficient as a separate statement if it complies with the preceding sentence. On presentation to the filing officer of such a separate statement, the filing officer shall mark such separate statement with the date and hour of the filing. He shall note the assignment on the index of the financing statement. The uniform fee for filing, indexing and furnishing filing data about such a separate statement of assignment on a form conforming to standards prescribed by the secretary of state shall be one dollar, but if the form of the financing statement does not conform to the standards prescribed by the secretary of state the uniform fee shall be two dollars.

(3) After the disclosure or filing of an assignment under this section, the assignee is the secured party of record. [1967 c 114 § 7; 1965 ex.s. c 157 § 9-405. Cf. former RCW sections: (i) RCW 61.16.040; 1959 c 263 § 12; 1953 c 214 § 4; 1943 c 284 § 4; 1937 c 133 § 1; 1899 c 98 § 8; Rem. Supp. 1943 § 3787. (ii) RCW 61.16.050; 1937 c 133 § 2 (adding to 1899 c 98 a new section, § 9); RRS § 3787-1.]

**Emergency—Effective date—1967 c 114:** See note following RCW 62A.4-406.

**62A.9-406 Release of collateral; duties of filing officer; fees.** A secured party of record may by his signed statement release all or a part of any collateral described in a filed financing statement. The statement of release is sufficient if it contains a description of the collateral being released, the name and address of the debtor, the name and address of the secured party, and the file number of the financing statement. Upon presentation of such a statement to the filing officer he shall mark the statement with the hour and date of filing and shall note the same upon the margin of the index of the filing of the financing statement. The uniform fee for filing and noting such a statement of release on a form conforming to standards prescribed by the secretary of state shall be one dollar, but if the form of the statement does not conform to the standards prescribed by the secretary of state the uniform fee shall be two dollars. [1967 c 114 § 9; 1965 ex.s. c 157 § 9-406. Cf. former RCW sections: (i) RCW 61.04.010; 1929 c 156 § 1; 1899 c 98 § 1; RRS § 3779; cf. 1881 § 1986; 1879 p 104 § 1; 1877 p 286 § 1; 1875 p 43 § 1. (ii) RCW 61.16-.040; 1959 c 263 § 12; 1953 c 214 § 4; 1943 c 284 § 4; 1937 c 133 § 1; 1899 c 98 § 8; Rem. Supp. 1943 § 3787.]

**Emergency—Effective date—1967 c 114:** See note following RCW 62A.4-406.

**62A.9-407 Information from filing officer.** (1) If the person filing any financing statement, termination statement, statement of assignment, or statement of release, furnishes the filing officer a copy thereof, the filing officer shall upon request note upon the copy the file number and date and hour of the filing of the original and deliver or send the copy to such person.

(2) Upon request of any person, the filing officer shall issue his certificate showing whether there is on file on the date and hour stated therein, any presently effective financing statement naming a particular debtor and any statement of assignment thereof and if there is, giving the date and hour of filing of each such statement and the names and addresses of each secured party therein. The uniform fee for such a certificate shall be two dollars. Upon request the filing officer shall furnish a copy of any filed financing statements or statements of assignment for a uniform fee of four dollars for each particular debtor's statements requested. [1967 c 114 § 10; 1965 ex.s. c 157 § 9-407.]

**Emergency—Effective date—1967 c 114:** See note following RCW 62A.4-406.

*Duty of secretary of state to furnish copies of filed, deposited or recorded instruments: RCW 43.07.030.*

*Effect of recording: RCW 65.04.110.*

**62A.9-408 Presigning of security agreements and financing statements; pre-filing of financing statements.** (1) Although signed prior to midnight June 30, 1967, a security agreement and a financing statement has the same effect as if signed after said time.



(2) The provisions of this Title and of all other laws relating to financing statements and the filing of financing statements apply to financing statements filed prior to midnight June 30, 1967, notwithstanding that this Title had not yet taken effect. Notwithstanding the date and hour of filing marked on the statement, each financing statement so prefiled is deemed to have been filed on the date and hour when this Title became effective. [1967 c 114 § 11.]

**Emergency—Effective date—1967 c 114:** See note following RCW 62A.4-406.

**62A.9-409 Standard filing forms and uniform procedures; acceptance for filing of financial statements on and after June 12, 1967; laws governing; fees.** In relation to Article 62A.9 RCW:

(1) The secretary of state may by rule prescribe standard filing forms and uniform procedures for filing with, and obtaining information from, filing officers.

(2) Unless a filing officer has filed with the secretary of state on or before June 1, 1967, his certificate that financing statements, as defined in RCW 62A.9-402, will not be accepted by him for filing on and after June 12, 1967, such filing officer shall accept such financing statements for filing on and after June 12, 1967. Financing statements so filed shall be received, marked, indexed and filed as provided in chapter 157, Laws of 1965 extraordinary session. The filing fees for filing such statements shall be as provided in chapter 157, Laws of 1965 extraordinary session, as amended. [1967 c 114 § 12.]

**Reviser's note:** (i) "chapter 157, Laws of 1965 extraordinary session" is codified as Title 62A RCW, Uniform Commercial Code.

(ii) The section caption for this section was added by the code reviser.

**Emergency—Effective date—1967 c 114:** See note following RCW 62A.4-406.

## PART 5 DEFAULT

**62A.9-501 Default; procedure when security agreement covers both real and personal property.** (1) When a debtor is in default under a security agreement, a secured party has the rights and remedies provided in this Part and except as limited by subsection (3) those provided in the security agreement. He may reduce his claim to judgment, foreclose or otherwise enforce the security interest by any available judicial procedure. If the collateral is documents the secured party may proceed either as to the documents or as to the goods covered thereby. A secured party in possession has the rights, remedies and duties provided in RCW 62A.9-207. The rights and remedies referred to in this subsection are cumulative.

Notwithstanding any other provision of this Code, in the case of a purchase money security interest in consumer goods taken or retained by the seller of such collateral to secure all or part of its price, the debtor shall not be liable for any deficiency after the secured party has disposed of such collateral under RCW 62A.9-504

or has retained such collateral in satisfaction of the debt under subsection (2) of RCW 62A.9-505.

(2) After default, the debtor has the rights and remedies provided in this Part, those provided in the security agreement and those provided in RCW 62A.9-207.

(3) To the extent that they give rights to the debtor and impose duties on the secured party, the rules stated in the subsections referred to below may not be waived or varied except as provided with respect to compulsory disposition of collateral (subsection (1) of RCW 62A.9-505) and with respect to redemption of collateral (RCW 62A.9-506) but the parties may by agreement determine the standards by which the fulfillment of these rights and duties is to be measured if such standards are not manifestly unreasonable:

(a) subsection (2) of RCW 62A.9-502 and subsection (2) of RCW 62A.9-504 insofar as they require accounting for surplus proceeds of collateral;

(b) subsection (3) of RCW 62A.9-504 and subsection (1) of RCW 62A.9-505 which deal with disposition of collateral;

(c) subsection (2) of RCW 62A.9-505 which deals with acceptance of collateral as discharge of obligation;

(d) RCW 62A.9-506 which deals with redemption of collateral; and

(e) subsection (1) of RCW 62A.9-507 which deals with the secured party's liability for failure to comply with this Part.

(4) If the security agreement covers both real and personal property, the secured party may proceed under this Part as to the personal property or he may proceed as to both the real and the personal property in accordance with his rights and remedies in respect of the real property in which case the provisions of this Part do not apply.

(5) When a secured party has reduced his claim to judgment the lien of any levy which may be made upon his collateral by virtue of any execution based upon the judgment shall relate back to the date of the perfection of the security interest in such collateral. A judicial sale, pursuant to such execution, is a foreclosure of the security interest by judicial procedure within the meaning of this section, and the secured party may purchase at the sale and thereafter hold the collateral free of any other requirements of this Article. [1965 ex.s. c 157 § 9-501. Cf. former RCW sections: (i) RCW 61.08.010-61.08-.090, 61.08.120. (ii) RCW 61.12.160; Code 1881 §§ 618, 619; 1869 p 147 § 572; RRS §§ 1113 and 1114; formerly RCW 61.08.100 and 61.08.110. (iii) RCW 61.20.060; 1943 c 71 § 6; Rem. Supp. 1943 § 11548-35.]

**62A.9-502 Collection rights of secured party.** (1) When so agreed and in any event on default the secured party is entitled to notify an account debtor or the obligor on an instrument to make payment to him whether or not the assignor was theretofore making collections on the collateral, and also to take control of any proceeds to which he is entitled under RCW 62A.9-306.

(2) A secured party who by agreement is entitled to charge back uncollected collateral or otherwise to full

or limited recourse against the debtor and who undertakes to collect from the account debtors or obligors must proceed in a commercially reasonable manner and may deduct his reasonable expenses of realization from the collections. If the security agreement secures an indebtedness, the secured party must account to the debtor for any surplus, and unless otherwise agreed, the debtor is liable for any deficiency. But, if the underlying transaction was a sale of accounts, contract rights, or chattel paper, the debtor is entitled to any surplus or is liable for any deficiency only if the security agreement so provides. [1965 ex.s. c 157 § 9-502.]

**62A.9-503 Secured party's right to take possession after default.** Unless otherwise agreed a secured party has on default the right to take possession of the collateral. In taking possession a secured party may proceed without judicial process if this can be done without breach of the peace or may proceed by action. If the security agreement so provides the secured party may require the debtor to assemble the collateral and make it available to the secured party at a place to be designated by the secured party which is reasonably convenient to both parties. Without removal a secured party may render equipment unusable, and may dispose of collateral on the debtor's premises under RCW 62A.9-504. [1965 ex.s. c 157 § 9-503. Cf. former RCW sections: (i) RCW 61.08.090; Code 1881 § 1989; 1879 p 105 § 4; RRS § 1112. (ii) RCW 61.20.060; 1943 c 71 § 6; Rem. Supp. 1943 § 11548-35.]

**62A.9-504 Secured party's right to dispose of collateral after default; effect of disposition.** (1) A secured party after default may sell, lease or otherwise dispose of any or all of the collateral in its then condition or following any commercially reasonable preparation or processing. Any sale of goods is subject to the Article on Sales (Article 2). The proceeds of disposition shall be applied in the order following to

(a) the reasonable expenses of retaking, holding, preparing for sale, selling and the like and, to the extent provided for in the agreement and not prohibited by law, the reasonable attorneys' fees and legal expenses incurred by the secured party;

(b) the satisfaction of indebtedness secured by the security interest under which the disposition is made;

(c) the satisfaction of indebtedness secured by any subordinate security interest in the collateral if written notification of demand therefor is received before distribution of the proceeds is completed. If requested by the secured party, the holder of a subordinate security interest must seasonably furnish reasonable proof of his interest, and unless he does so, the secured party need not comply with his demand.

(2) If the security interest secures an indebtedness, the secured party must account to the debtor for any surplus, and, unless otherwise agreed, the debtor is liable for any deficiency. But if the underlying transaction was a sale of accounts, contract rights, or chattel paper, the debtor is entitled to any surplus or is liable for any deficiency only if the security agreement so provides.

(3) Disposition of the collateral may be by public or private proceedings and may be made by way of one or more contracts. Sale or other disposition may be as a unit or in parcels and at any time and place and on any terms but every aspect of the disposition including the method, manner, time, place and terms must be commercially reasonable. Unless collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, reasonable notification of the time and place of any public sale or reasonable notification of the time after which any private sale or other intended disposition is to be made shall be sent by the secured party to the debtor, and except in the case of consumer goods to any other person who has a security interest in the collateral and who has duly filed a financing statement indexed in the name of the debtor in this state or who is known by the secured party to have a security interest in the collateral. The secured party may buy at any public sale and if the collateral is of a type customarily sold in a recognized market or is of a type which is the subject of widely distributed standard price quotations he may buy at private sale.

(4) When collateral is disposed of by a secured party after default, the disposition transfers to a purchaser for value all of the debtor's rights therein, discharges the security interest under which it is made and any security interest or lien subordinate thereto. The purchaser takes free of all such rights and interests even though the secured party fails to comply with the requirements of this Part or of any judicial proceedings

(a) in the case of a public sale, if the purchaser has no knowledge of any defects in the sale and if he does not buy in collusion with the secured party, other bidders or the person conducting the sale; or

(b) in any other case, if the purchaser acts in good faith.

(5) A person who is liable to a secured party under a guaranty, indorsement, repurchase agreement or the like and who receives a transfer of collateral from the secured party or is subrogated to his rights has thereafter the rights and duties of the secured party. Such a transfer of collateral is not a sale or disposition of the collateral under this Article. [1965 ex.s. c 157 § 9-504. Cf. former RCW sections: (i) RCW 61.08.010-61.08-.090, 61.08.120. (ii) RCW 61.12.160; Code 1881 §§ 618, 619; 1869 p 147 § 572; RRS §§ 1113 and 1114; formerly RCW 61.08.100 and 61.08.110. (iii) RCW 61.20.060; 1943 c 71 § 6; Rem. Supp. 1943 § 11548-35.]

*Contractual attorneys' fees to be set by court: RCW 4.84.020.*

*Foreclosure: RCW 61.12.070, 61.12.140.*

*Sales under execution: Chapter 6.24 RCW.*

**62A.9-505 Compulsory disposition of collateral; acceptance of the collateral as discharge of obligation.** (1) If the debtor has paid sixty percent of the cash price in the case of a purchase money security interest in consumer goods or sixty percent of the loan in the case of another security interest in consumer goods, and has not signed after default a statement renouncing or modifying his rights under this Part a secured party who has taken possession of collateral must dispose of

it under RCW 62A.9-504 and if he fails to do so within ninety days after he takes possession the debtor at his option may recover in conversion or under RCW 62A.9-507(1) on secured party's liability.

(2) In any other case involving consumer goods or any other collateral a secured party in possession may, after default, propose to retain the collateral in satisfaction of the obligation. Written notice of such proposal shall be sent to the debtor and except in the case of consumer goods to any other secured party who has a security interest in the collateral and who has duly filed a financing statement indexed in the name of the debtor in this state or is known by the secured party in possession to have a security interest in it. If the debtor or other person entitled to receive notification objects in writing within thirty days from the receipt of the notification or if any other secured party objects in writing within thirty days after the secured party obtains possession the secured party must dispose of the collateral under RCW 62A.9-504. In the absence of such written objection the secured party may retain the collateral in satisfaction of the debtor's obligation. [1965 ex.s. c 157 § 9-505. Cf. former RCW 61.20.060; 1943 c 71 § 6; Rem. Supp. 1943 § 11548-35.]

**62A.9-506 Debtor's right to redeem collateral.** At any time before the secured party has disposed of collateral or entered into a contract for its disposition under RCW 62A.9-504 or before the obligation has been discharged under RCW 62A.9-505(2) the debtor or any other secured party may unless otherwise agreed in writing after default redeem the collateral by tendering fulfillment of all obligations secured by the collateral as well as the expenses reasonably incurred by the secured party in retaking, holding and preparing the collateral for disposition, in arranging for the sale, and to the extent provided in the agreement and not prohibited by law, his reasonable attorneys' fees and legal expenses. [1965 ex.s. c 157 § 9-506. Cf. former RCW sections: (i) RCW 61.12.160; Code 1881 §§ 618, 619; 1869 p 147 § 572; RRS §§ 1113 and 1114; formerly RCW 61.08.100 and 61.08.110. (ii) RCW 61.20.060; 1943 c 71 § 6; Rem. Supp. 1943 § 11548-35.]

*Judgments—Order of sale—Satisfaction—Upset price: RCW 61.12.060.*

**62A.9-507 Secured party's liability for failure to comply with this part.** (1) If it is established that the secured party is not proceeding in accordance with the provisions of this Part disposition may be ordered or restrained on appropriate terms and conditions. If the disposition has occurred the debtor or any person entitled to notification or whose security interest has been made known to the secured party prior to the disposition has a right to recover from the secured party any loss caused by a failure to comply with the provisions of this Part. If the collateral is consumer goods, the debtor has a right to recover in any event an amount not less than the credit service charge plus ten percent of the principal amount of the debt or the time price differential plus ten percent of the cash price.

(2) The fact that a better price could have been obtained by a sale at a different time or in a different method from that selected by the secured party is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. If the secured party either sells the collateral in the usual manner in any recognized market therefor or if he sells at the price current in such market at the time of his sale or if he has otherwise sold in conformity with reasonable commercial practices among dealers in the type of property sold he has sold in a commercially reasonable manner. The principles stated in the two preceding sentences with respect to sales also apply as may be appropriate to other types of disposition. A disposition which has been approved in any judicial proceeding or by any bona fide creditors' committee or representative of creditors shall conclusively be deemed to be commercially reasonable, but this sentence does not indicate that any such approval must be obtained in any case nor does it indicate that any disposition not so approved is not commercially reasonable. [1965 ex.s. c 157 § 9-507. Cf. former RCW sections: (i) RCW 61.08.070; Code 1881 § 1997; 1879 p 106 § 12; RRS § 1110; prior: 1875 p 47 § 28. (ii) RCW 61.12.160; Code 1881 §§ 618, 619; 1869 p 147 § 572; RRS §§ 1113 and 1114; formerly RCW 61.08.100 and 61.08.110.]

*Judgments—Order of sale—Satisfaction—Upset price: RCW 61.12.060.*

## Article 10 EFFECTIVE DATE AND REPEALER

### Sections

- 62A.10-101 Effective date.
- 62A.10-102 Specific repealer; provision for transition.
- 62A.10-103 General repealer.
- 62A.10-104 Laws not repealed.

## ARTICLE 10 EFFECTIVE DATE AND REPEALER

**62A.10-101 Effective date.** This Title shall become effective at midnight on June 30, 1967. It applies to transactions entered into and events occurring after that date. [1965 ex.s. c 157 § 10-101.]

**62A.10-102 Specific repealer; provision for transition.** (1) The following acts and all other acts and parts of acts inconsistent herewith are hereby repealed:

- (a) (i) RCW 22.04.010 through 22.04.610;
- (ii) RCW 23.80.010 through 23.80.250;
- (iii) RCW 30.16.020, 30.16.030, 30.16.040 and 30.16.050;
- (iv) RCW 30.40.030, 30.40.040 and 30.40.050;
- (v) RCW 30.52.010 through 30.52.160;
- (vi) RCW 61.04.010 through 61.04.090;
- (vii) RCW 61.08.010 through 61.08.120;
- (viii) RCW 61.12.160;
- (ix) RCW 61.16.040, 61.16.050 and 61.16.070;
- (x) RCW 61.20.010 through 61.20.190;
- (xi) RCW 62.01.001 through 62.01.196 and 62.98.010 through 62.98.050;

(xii) RCW 63.04.010 through 63.04.780;  
 (xiii) RCW 63.08.010 through 63.08.060;  
 (xiv) RCW 63.12.010 through 63.12.030;  
 (xv) RCW 63.16.010 through 63.16.900;  
 (xvi) RCW 65.08.010, 65.08.020 and 65.08.040; and  
 (xvii) RCW 81.32.010 through 81.32.561: *Provided*,  
 That such repeal shall not affect the validity of sections  
 81.29.010 through 81.29.050, chapter 14, Laws of 1961  
 (RCW 81.29.010 through 81.29.050).

(b) (i) Chapter 99, Laws of 1913;  
 (ii) Chapter 100, Laws of 1939;  
 (iii) Section 4, chapter 106, Laws of 1959 and sections  
 30.16.020, 30.16.030, 30.16.040 and 30.16.050, chapter  
 33, Laws of 1955;

(iv) Sections 30.40.030, 30.40.040 and 30.40.050,  
 chapter 33, Laws of 1955;

(v) Section 3, chapter 194, Laws of 1963 and sections  
 30.52.010 through 30.52.160, chapter 33, Laws of 1955;

(vi) Section 11, chapter 263, Laws of 1959, section 3,  
 chapter 214, Laws of 1953, sections 1, 2 and 3, chapter  
 284, Laws of 1943, section 1, chapter 76, Laws of 1943,  
 section 1, chapter 121, Laws of 1939, section 1, chapter  
 156, Laws of 1929, sections 1, 2, 3, 4, 5, 6 and 7, chapter  
 98, Laws of 1899, sections 1986, 1987 and 1988, Code of  
 1881, section 1, page 104, Laws of 1879, section 1, page  
 286, Laws of 1877 and section 1, page 43, Laws of 1875;

(vii) Sections 1989, 1990, 1991, 1992, 1993, 1994,  
 1995, 1996, 1997 and 1998, Code of 1881, sections 4, 5,  
 6, 7, 8, 9, 10, 11 and 12, pages 105 and 106, Laws of  
 1879 and sections 18, 19, 20, 22, 23, 24 and 28, page 47,  
 Laws of 1875;

(viii) Sections 618 and 619, Code of 1881 and section  
 572, page 147, Laws of 1869;

(ix) Section 12, chapter 263, Laws of 1959, section 4,  
 chapter 214, Laws of 1953, section 4, chapter 284, Laws  
 of 1943, sections 1 and 2, chapter 133, Laws of 1937  
 and sections 8, 9 and 11, chapter 98, Laws of 1899;

(x) Sections 1 and 2, chapter 249, Laws of 1957 and  
 chapter 71, Laws of 1943;

(xi) Sections 62.01.001 through 62.01.196 and 62.98-  
 .010 through 62.98.050, chapter 35, Laws of 1955;

(xii) Chapter 142, Laws of 1925 extraordinary  
 session;

(xiii) Sections 1, 2, 3 and 4, chapter 247, Laws of  
 1953, section 1, chapter 98, Laws of 1943, sections 1, 2,  
 3 and 4, chapter 122, Laws of 1939 and sections 1, 2, 3  
 and 4, chapter 135, Laws of 1925 extraordinary session;

(xiv) Section 22, chapter 236, Laws of 1963, section 1,  
 chapter 159, Laws of 1961, sections 1 and 2, chapter  
 196, Laws of 1937, sections 1 and 2, chapter 129, Laws  
 of 1933, section 1, chapter 120, Laws of 1925 extraordi-  
 nary session, section 1, chapter 95, Laws of 1915, sec-  
 tions 1 and 2, chapter 6, Laws of 1903 and sections 1  
 and 2, chapter 106, Laws of 1893;

(xv) Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 and 12,  
 chapter 8, Laws of 1947;

(xvi) Sections 1 and 2, chapter 72, Laws of 1899, sec-  
 tion 2327, Code of 1881, section 4, page 413, Laws of  
 1863 and section 4, page 404, Laws of 1854; and

(xvii) Chapter 159, Laws of 1915 and sections 81.32-  
 .011 through 81.32.561, chapter 14, Laws of 1961.

(2) Transactions validly entered into before the effec-  
 tive date specified in RCW 62A.10-101 and the rights,  
 duties and interests flowing from them remain valid  
 thereafter and may be terminated, completed, consum-  
 mated or enforced as required or permitted by any  
 statute or other law amended or repealed by this Title  
 as though such repeal or amendment had not occurred.  
 [1965 ex.s. c 157 § 10-102.]

**62A.10-103 General repealer.** Except as provided in  
 the following section, all acts and parts of acts incon-  
 sistent with this Title are hereby repealed. [1965 ex.s. c  
 157 § 10-103.]

**62A.10-104 Laws not repealed.** (1) The Article on  
 Documents of Title (Article 7) does not repeal or modi-  
 fy any laws prescribing the form or contents of docu-  
 ments of title or the services or facilities to be afforded  
 by bailees, or otherwise regulating bailees' businesses in  
 respects not specifically dealt with herein; but the fact  
 that such laws are violated does not affect the status of  
 a document of title which otherwise complies with the  
 definition of a document of title (RCW 62A.1-201).

(2) This Title does not repeal chapter 150, Laws of  
 1961 (chapter 21.17 RCW), cited as the Uniform Act  
 for the Simplification of Fiduciary Security Transfers,  
 and if in any respect there is any inconsistency between  
 that Act and the Article of this Title on investment se-  
 curities (Article 8) the provisions of the former Act shall  
 control. [1965 ex.s. c 157 § 10-104.]



# TITLE 63

## PERSONAL PROPERTY

### Chapters

- 63.14** Retail installment sales of goods and services.
- 63.18** Lease or rental of personal property—Disclaimer of warranty of merchantability or fitness.
- 63.20** Lost and found property.
- 63.24** Unclaimed property in hands of bailee.
- 63.28** Uniform disposition of unclaimed property.
- 63.32** Unclaimed property in hands of city police.
- 63.36** Unclaimed property in hands of city or town.
- 63.40** Unclaimed property in hands of sheriff.
- 63.44** Joint tenancies.
- 63.48** Escheat of postal savings system accounts.

*Attachment: Chapter 7.12 RCW.*

*Chattel mortgages: Article 62A.9 RCW.*

*Community property: Chapter 26.16 RCW.*

*Corporate seals, effect of absence from instrument: RCW 64.04.105.*

*Corporate shares issued or transferred in joint tenancy form—Presumption—Transfer pursuant to direction of survivor: RCW 23A.08.320.*

*County property: Chapter 36.34 RCW.*

*Credit life insurance and credit accident and health insurance: Chapter 48.34 RCW.*

*Duration of trusts for employee benefits: Chapter 49.64 RCW.*

*Enforcement of judgments: Title 6 RCW.*

*Fox, mink, marten declared personalty: RCW 16.72.030.*

*Frauds and swindles—Encumbered, leased or rented personal property: RCW 9.45.060.*

*Insurance: Title 48 RCW.*

*Intergovernmental disposition of personal property: Chapter 39.33 RCW.*

*Law against discrimination: Chapter 49.60 RCW.*

*Leases, satisfaction: Chapter 61.16 RCW.*

*Liens: Title 60 RCW.*

*Personal property sales, regulation of, generally: Titles 18 and 19 RCW.*

*Powers of appointment: Chapter 64.24 RCW.*

*Probate: Title 11 RCW.*

*Quieting title to personalty: RCW 7.28.310, 7.28.320.*

*Real property and conveyances: Title 64 RCW.*

*Replevin: Chapters 7.64, 12.28 RCW.*

*Safe deposit companies: Chapter 22.28 RCW.*

*Separate property: Chapter 26.16 RCW.*

*State institutions, property of inmates, residents: RCW 71.02.240, 72.23.230-72.23.250, 72.33.180.*

*Taxation, excise: Title 82 RCW.*

*Taxation, inheritance and gift: Title 83 RCW.*

*Taxation, property: Title 84 RCW.*

*The Washington Principal and Income Act: Chapter 11.104 RCW.*

*Transfers in trust: RCW 19.36.020.*

*Trust receipts: Chapter 61.20 RCW.*

*Uniform gifts to minors act: Chapter 21.24 RCW.*

### Chapter 63.14

### RETAIL INSTALLMENT SALES OF GOODS AND SERVICES

#### Sections

- 63.14.010 Definitions.
- 63.14.020 Retail installment contracts—Number of documents—Promissory notes—Date—Signatures—Completion—Type size.
- 63.14.030 Retail installment contracts—Delivery to buyer of copy—Acknowledgment of delivery.
- 63.14.040 Retail installment contracts—Contents.
- 63.14.050 Retail installment contracts—Multiple documents permissible where original applies to purchases from time to time.
- 63.14.060 Retail installment contracts—Mail orders based on catalog or other printed solicitation.
- 63.14.070 Retail installment contracts—Seller not to obtain buyer's signature when essential blank spaces not filled—Exceptions.
- 63.14.080 Retail installment contracts—Prepayment in full of unpaid time balance—Refund of unearned service charge—"Rule of seventy-eighths".
- 63.14.090 Retail installment contracts, retail charge agreements—Delinquency or collection charges—Attorney's fees, court costs—Other provisions not inconsistent with chapter are permissible.
- 63.14.100 Receipt for cash payment—Retail installment contracts, statement of payment schedule and total amount unpaid.
- 63.14.110 Consolidation of subsequent purchases with previous contract.
- 63.14.120 Retail charge agreements—Information to be furnished by seller.
- 63.14.130 Retail installment contracts and retail charge agreements—Service charge, composition, other fees and charges prohibited—Maximums.
- 63.14.140 Retail installment contracts and retail charge agreements—Insurance.
- 63.14.150 Retail installment contracts and retail charge agreements—Agreements by buyer not to assert claim or defense or to submit to suit in another county invalid.
- 63.14.152 Declaratory judgment action to establish if service charge is excessive.
- 63.14.154 Cancellation of transaction by buyer—Procedure.
- 63.14.156 Extension or deferment of payments—Agreement, charges.
- 63.14.158 Refinancing agreements—Costs—Contents.
- 63.14.159 New payment schedule—When authorized.
- 63.14.160 Conduct or agreement of buyer does not waive remedies.
- 63.14.170 Violations—Penalties.
- 63.14.180 Noncomplying person barred from recovery of service charge, etc.—Remedy of buyer—Extent of recovery.
- 63.14.190 Restraint of violations.
- 63.14.200 Assurance of discontinuance of unlawful practices.
- 63.14.210 Violation of order or injunction—Penalty.
- 63.14.900 Severability—1963 c 236.
- 63.14.901 Severability—1967 c 234.
- 63.14.910 Saving—1963 c 236.
- 63.14.920 Effective date—1963 c 236.
- 63.14.921 Effective date—Saving—1967 c 234.

**63.14.010 Definitions.** In this chapter, unless the context otherwise requires:

(1) "Goods" means all chattels personal when purchased primarily for personal, family or household use and not for commercial or business use, but not including money or, except as provided in the next sentence, things in action. The term includes but is not limited to merchandise certificates or coupons, issued by a retail seller, to be used in their face amount in lieu of cash in exchange for goods or services sold by such a seller and goods which, at the time of sale or subsequently, are to be so affixed to real property as to become a part thereof, whether or not severable therefrom;

(2) "Services" means work, labor or services of any kind when purchased primarily for personal, family or household use and not for commercial or business use whether or not furnished in connection with the delivery, installation, servicing, repair or improvement of goods and includes repairs, alterations or improvements upon or in connection with real property, but does not include services for which the price charged is required by law to be determined or approved by or to be filed, subject to approval or disapproval, with the United States or any state, or any department, division, agency, officer or official of either as in the case of transportation services;

(3) "Retail buyer" or "buyer" means a person who buys or agrees to buy goods or obtain services or agrees to have services rendered or furnished, from a retail seller;

(4) "Retail seller" or "seller" means a person engaged in the business of selling goods or services to retail buyers;

(5) "Retail installment transaction" means any transaction in which a retail buyer purchases goods or services from a retail seller pursuant to a retail installment contract or a retail charge agreement, as defined in this section, which provides for a service charge, as defined in this section, and under which the buyer agrees to pay the unpaid balance in one or more installments or which provides for no service charge and under which the buyer agrees to pay the unpaid balance in more than four installments;

(6) "Retail installment contract" or "contract" means a contract, other than a retail charge agreement or an instrument reflecting a sale made pursuant thereto, entered into or performed in this state for a retail installment transaction. The term "retail installment contract" may include a chattel mortgage, a conditional sale contract and a contract in the form of a bailment or a lease if the bailee or lessee contracts to pay as compensation for their use a sum substantially equivalent to or in excess of the value of the goods sold and if it is agreed that the bailee or lessee is bound to become, or for no other or a merely nominal consideration, has the option of becoming the owner of the goods upon full compliance with the provisions of the bailment or lease;

(7) "Retail charge agreement," "revolving charge agreement" or "charge agreement" means an agreement entered into or performed in this state prescribing the terms of retail installment transactions which may be made thereunder from time to time and under the terms

of which a service charge, as defined in this section, is to be computed in relation to the buyer's unpaid balance from time to time;

(8) "Service charge" however denominated or expressed, means the amount which is paid or payable for the privilege of purchasing goods or services to be paid for by the buyer in installments over a period of time. It does not include the amount, if any, charged for insurance premiums, delinquency charges, attorneys' fees, court costs or official fees;

(9) "Cash sale price" means the price for which the seller would have sold or furnished to the buyer, and the buyer would have bought or obtained from the seller, the goods or services which are the subject matter of a retail installment transaction, if the sale had been a sale for cash. The cash sale price may include any taxes, registration and license fees, and charges for transferring vehicle titles, delivery, installation, servicing, repairs, alterations or improvements;

(10) "Official fees" means the amount of the fees prescribed by law for filing, recording or otherwise perfecting, and releasing or satisfying, a retained title, lien or other security interest created by a retail installment transaction;

(11) "Time balance" means the principal balance plus the service charge;

(12) "Principal balance" means the cash sale price of the goods or services which are the subject matter of a retail installment contract less the amount of the buyer's down payment in money or goods or both, plus the amounts, if any, included therein, if a separate identified charge is made therefor and stated in the contract, for insurance and official fees;

(13) "Person" means an individual, partnership, joint venture, corporation, association or any other group, however organized;

(14) "Rate" means the percentage which, when multiplied times the outstanding balance for each month or other installment period, yields the amount of the service charge for such month or period. [1972 ex.s. c 47 § 1; 1963 c 236 § 1.]

**Effective date—1972 ex.s. c 47:** "This 1972 amendatory act shall take effect on January 1, 1973." [1972 ex.s. c 47 § 5.] This applies to the 1972 ex.s. amendments to RCW 63.14.010, 63.14.040, 63.14.120 and 63.14.154.

**63.14.020 Retail installment contracts—Number of documents—Promissory notes—Date—Signatures—Completion—Type size.** Every retail installment contract shall be contained in a single document which shall contain the entire agreement of the parties including any promissory notes or other evidences of indebtedness between the parties relating to the transaction, except as provided in RCW 63.14.050, 63.14.060 and 63.14.110: *Provided*, That where the buyer's obligation to pay the time balance is represented by a promissory note secured by a chattel mortgage, the promissory note may be a separate instrument if the mortgage recites the amount and terms of payment of such note and the promissory note recites that it is secured by a mortgage: *Provided further*, That any such



promissory note or other evidence of indebtedness executed by the buyer shall not, when assigned or negotiated, cut off as to third parties any right of action or defense which the buyer may have against the seller, and each such promissory note or other evidence of indebtedness shall contain a statement to that effect: *And provided further*, That in a transaction involving the repair, alteration or improvement upon or in connection with real property, the contract may be secured by a mortgage on the real property contained in a separate document. Home improvement retail sales transactions which are financed or insured by the Federal Housing Administration are not subject to this chapter.

The contract shall be dated, signed by the retail buyer and completed as to all essential provisions, except as otherwise provided in RCW 63.14.060 and 63.14.070. The printed or typed portion of the contract, other than instructions for completion, shall be in a size equal to at least eight point type. [1967 c 234 § 1; 1963 c 236 § 2.]

**63.14.030 Retail installment contracts—Delivery to buyer of copy—Acknowledgment of delivery.** The retail seller shall deliver to the retail buyer, at the time the buyer signs the contract a copy of the contract as signed by the buyer, unless the contract is completed by the buyer in situations covered by RCW 63.14.060, and if the contract is accepted at a later date by the seller the seller shall mail to the buyer at his address shown on the retail installment contract a copy of the contract as accepted by the seller or a copy of the memorandum as required in RCW 63.14.060. Until the seller does so, the buyer shall be obligated to pay only the cash sale price. Any acknowledgment by the buyer of delivery of a copy of the contract shall be in a size equal to at least ten point bold type and, if contained in the contract, shall appear directly above the buyer's signature. [1967 c 234 § 2; 1963 c 236 § 3.]

**63.14.040 Retail installment contracts—Contents.** (1) The retail installment contract shall contain the names of the seller and the buyer, the place of business of the seller, the residence or other address of the buyer as specified by the buyer and a description or identification of the goods sold or to be sold, or service furnished or rendered or to be furnished or rendered. The contract also shall contain the following items, which shall be set forth in the sequence appearing below:

- (1) (a) The cash sale price of each item of goods or services;
- (2) (b) The amount of the buyer's down payment, if any, identifying the amounts paid in money and allowed for goods traded in;
- (3) (c) The difference between items (1)(a) and (2)(b);
- (4) (d) The aggregate amount, if any, included for insurance, specifying the type or types of insurance and the terms of coverage;
- (5) (e) The aggregate amount of official fees, if any;
- (6) (f) The principal balance, which is the sum of items (3)(c), (4)(d) and (5)(e);
- (7) (g) The dollar amount or rate of the service charge;

(8) (h) The amount of the time balance owed by the buyer to the seller, which is the sum of items (6)(f) and (7)(g), if (7)(g) is stated in a dollar amount; and

(9) (i) Except as otherwise provided in the next two sentences, the maximum number of installment payments required and the amount of each installment and the due date of each payment necessary to pay such balance. If installment payments other than the final payment are stated as a series of equal scheduled amounts and if the amount of the final installment payment does not substantially exceed the scheduled amount of each preceding installment payment, the maximum number of payments and the amount and due date of each payment need not be separately stated and the amount of the scheduled final installment payment may be stated as the remaining unpaid balance. The due date of the first installment payment may be fixed by a day or date or may be fixed by reference to the date of the contract or to the time of delivery or installation.

Additional items may be included to explain the calculations involved in determining the balance to be paid by the buyer.

(2) Every retail installment contract shall contain the following notice in ten point bold face type or larger directly above the space reserved in the contract for the signature of the buyer: "NOTICE TO BUYER:

(a) Do not sign this contract before you read it or if any spaces intended for the agreed terms, except as to unavailable information, are blank.

(b) You are entitled to a copy of this contract at the time you sign it.

(c) You may at any time pay off the full unpaid balance due under this contract, and in so doing you may receive a partial rebate of the service charge.

(d) The service charge does not exceed \_\_\_\_\_% (must be filled in) per annum computed monthly and may not lawfully exceed twelve percent per annum computed monthly.

(e) You may cancel this contract if it is solicited in person, and you sign it, at a place other than the seller's business address shown on the contract, by sending notice of such cancellation by certified mail return receipt requested to the seller at his address shown on the contract which notice shall be posted not later than midnight of the third day (excluding Sundays and holidays) following your signing this contract. If you choose to cancel this contract, you must return or make available to the seller at the place of delivery any merchandise, in its original condition, received by you under this contract."

Clause (2)(e) needs to be included in the notice only if the contract is solicited in person by the seller or his representative, and the buyer signs it, at a place other than the seller's business address shown on the contract. [1972 ex.s. c 47 § 2; 1969 c 2 § 1 (Initiative Measure No. 245 § 1); 1967 c 234 § 3; 1963 c 236 § 4.]

**Reviser's note:** Chapter 2, Laws of 1969, codified herein as RCW 63.14.040, 63.14.120 and 63.14.130, was Initiative Measure No. 245 which was adopted by the people November 5, 1968. Governor's proclamation declaring approval of measure is dated December 5, 1968. State Constitution Art. 2 § 1(d) provides: " . . . Such measure

[initiatives and referendums] shall be in operation on and after the thirtieth day after the election at which it is approved . "

**63.14.050 Retail installment contracts—Multiple documents permissible where original applies to purchases from time to time.** A retail installment contract may be contained in more than one document, provided that one such document shall be an original document signed by the retail buyer, stated to be applicable to purchases of goods or services to be made by the retail buyer from time to time. In such case such document, together with the sales slip, account book or other written statement relating to each purchase, shall set forth all of the information required by RCW 63.14.040 and shall constitute the retail installment contract for each purchase. On each succeeding purchase pursuant to such original document, the sales slip, account book or other written statement may at the option of the seller constitute the memorandum required by RCW 63.14.110. [1963 c 236 § 5.]

**63.14.060 Retail installment contracts—Mail orders based on catalog or other printed solicitation.** Retail installment contracts negotiated and entered into by mail or telephone without solicitation in person by salesmen or other representatives of the seller and based upon a catalog of the seller, or other printed solicitation of business, if such catalog or other printed solicitation clearly sets forth the cash sale prices and other terms of sales to be made through such medium, may be made as provided in this section. The provisions of this chapter with respect to retail installment contracts shall be applicable to such sales, except that the retail installment contract, when completed by the buyer need not contain the items required by RCW 63.14.040.

When the contract is received from the retail buyer, the seller shall prepare a written memorandum containing all of the information required by RCW 63.14.040 to be included in a retail installment contract. In lieu of delivering a copy of the contract to the retail buyer as provided in RCW 63.14.030, the seller shall deliver to the buyer a copy of such memorandum prior to the due date of the first installment payable under the contract: *Provided*, That if the catalog or other printed solicitation does not set forth all of the other terms of sales in addition to the cash sales prices, such memorandum shall be delivered to the buyer prior to or at the time of delivery of the goods or services. [1967 c 234 § 4; 1963 c 236 § 6.]

**63.14.070 Retail installment contracts—Seller not to obtain buyer's signature when essential blank spaces not filled—Exceptions.** The seller shall not obtain the signature of the buyer to any contract when it contains blank spaces of items which are essential provisions of the transaction except as provided in RCW 63.14.060: *Provided, however*, That if delivery of the goods is not made at the time of the execution of the contract, the identifying numbers or marks of the goods or similar information and the due date of the first installment may be inserted by the seller in the seller's counterpart of the contract after it has been signed by the buyer. [1963 c 236 § 7.]

**63.14.080 Retail installment contracts—Prepayment in full of unpaid time balance—Refund of unearned service charge—"Rule of seventy-eighths".** For the purpose of this section "periodic time balance" means the unpaid portion of the time balance as of the last day of each month, or other uniform time interval established by the regular consecutive payment period scheduled in a retail installment contract.

Notwithstanding the provisions of any retail installment contract to the contrary, and if the rights of the purchaser have not been terminated or forfeited under the terms of the contract, any buyer may prepay in full the unpaid portion of the time balance thereof at any time before its final due date and, if he does so, he shall receive a refund credit of the unearned portion of the service charge for such prepayment. The amount of such refund credit shall be computed according to the "rule of seventy-eighths", that is it shall represent at least as great a portion of the original service charge, as the sum of the periodic time balances not yet due bears to the sum of all the periodic time balances under the schedule of payments in the contract: *Provided*, That where the earned service charge (total service charge minus refund credit) thus computed is less than the following minimum service charge: fifteen dollars where the principal balance is not in excess of two hundred and fifty dollars, twenty-five dollars where the principal balance exceeds two hundred and fifty dollars but is not in excess of five hundred dollars, thirty-seven dollars and fifty cents where the principal balance exceeds five hundred dollars but is not in excess of one thousand dollars, and fifty dollars where the principal balance exceeds one thousand dollars; then such minimum service charge shall be deemed to be the earned service charge: *And provided further*, That where the amount of such refund credit is less than one dollar, no refund credit need be made. [1967 c 234 § 5; 1963 c 236 § 8.]

**63.14.090 Retail installment contracts, retail charge agreements—Delinquency or collection charges—Attorney's fees, court costs—Other provisions not inconsistent with chapter are permissible.** The holder of any retail installment contract or retail charge agreement may not collect any delinquency or collection charges, including any attorney's fee and court costs and disbursements, unless the contract or charge agreement so provides. In such cases, the charges shall be reasonable, and no attorney's fee may be recovered unless the contract or charge agreement is referred for collection to an attorney not a salaried employee of the holder.

The contract or charge agreement may contain other provisions not inconsistent with the purposes of this chapter, including but not limited to provisions relating to refinancing, transfer of the buyer's equity, construction permits and title reports. [1963 c 236 § 9.]

**63.14.100 Receipt for cash payment—Retail installment contracts, statement of payment schedule and total amount unpaid.** A buyer shall be given a written receipt for any payment when made in cash. Upon

written request of the buyer, the holder of a retail installment contract shall give or forward to the buyer a written statement of the dates and amounts of payments and the total amount unpaid under the contract. Such a statement shall be given the buyer once without charge; if any additional statement is requested by the buyer, it shall be supplied by the holder at a charge not in excess of one dollar for each additional statement so supplied. [1963 c 236 § 10.]

**63.14.110 Consolidation of subsequent purchases with previous contract.** (1) If, in a retail installment transaction, a retail buyer makes any subsequent purchases of goods or services from a retail seller from whom he has previously purchased goods or services under one or more retail installment contracts, and the amounts under such previous contract or contracts have not been fully paid, the subsequent purchases may, at the seller's option, be included in and consolidated with one or more of the previous contracts. All the provisions of this chapter with respect to retail installment contracts shall be applicable to such subsequent purchases except as hereinafter stated in this subsection. In the event of such consolidation, in lieu of the buyer's executing a retail installment contract respecting each subsequent purchase, as provided in this section, it shall be sufficient if the seller shall prepare a written memorandum of each such subsequent purchase, in which case the provisions of RCW 63.14.020, 63.14.030 and 63.14.040 shall not be applicable. Unless previously furnished in writing to the buyer by the seller, by sales slip, memorandum or otherwise, such memorandum shall set forth with respect to each subsequent purchase items (a) to (g) inclusive of RCW 63.14.040(1), and in addition, if the service charge is stated as a dollar amount, the amount of the time balance owed by the buyer to the seller for the subsequent purchase, the outstanding balance of the previous contract or contracts, the consolidated time balance, and the revised installments applicable to the consolidated time balance, if any, in accordance with RCW 63.14.040. If the service charge is not stated in a dollar amount, in addition to the items (a) to (g) inclusive of RCW 63.14.040(1), the memorandum shall set forth the outstanding balance of the previous contract or contracts, the consolidated outstanding balance and the revised installments applicable to the consolidated outstanding balance, in accordance with RCW 63.14.040.

The seller shall deliver to the buyer a copy of such memorandum prior to the due date of the first installment of such consolidated contract.

(2) When such subsequent purchases are made, if the seller has retained title or taken a lien or other security interest in any of the goods purchased under any one of the contracts included in the consolidation:

(a) The entire amount of all payments made prior to such subsequent purchases shall be deemed to have been applied on the previous purchases;

(b) The amount of any down payment on the subsequent purchase shall be allocated in its entirety to such subsequent purchase.

(c) Each payment received after the subsequent purchase shall be deemed to be allocated to all of the various time balances in the same proportion or ratio as the original cash sale prices of the various retail installment transactions bear to one another: *Provided*, That the seller may elect, where the amount of each installment payment is increased in connection with the subsequent purchase, to allocate only the increased amount to the time balance of the subsequent retail installment transaction, and to allocate the amount of each installment payment prior to the increase to the time balance(s) existing at the time of the subsequent purchase.

The provisions of this subsection shall not apply to cases where such previous and subsequent purchases involve equipment, parts, or other goods attached or affixed to goods previously purchased and not fully paid, or to services in connection therewith rendered by the seller at the buyer's request. [1967 c 234 § 6; 1963 c 236 § 11.]

**63.14.120 Retail charge agreements—Information to be furnished by seller.** (1) At or prior to the time a retail charge agreement is made the seller shall advise the buyer in writing, on the application form or otherwise, or orally that a service charge will be computed on the outstanding balance for each month (which need not be a calendar month) or other regular period agreed upon, the schedule or rate by which the service charge will be computed, and that the buyer may at any time pay his total unpaid balance: *Provided*, That if this information is given orally, the seller shall, upon approval of the buyer's credit, deliver to the buyer or mail to him at his address, a memorandum setting forth this information.

(2) The seller or holder of a retail charge agreement shall promptly supply the buyer with a statement as of the end of each monthly period (which need not be a calendar month) or other regular period agreed upon, in which there is any unpaid balance thereunder, which statement shall set forth the following:

(a) The unpaid balance under the retail charge agreement at the beginning and at the end of the period;

(b) Unless otherwise furnished by the seller to the buyer by sales slip, memorandum, or otherwise, a description or identification of the goods or services purchased during the period, the cash sale price and the date of each purchase;

(c) The payments made by the buyer to the seller and any other credits to the buyer during the period;

(d) The amount, if any, of any service charge for such period; and

(e) A legend to the effect that the buyer may at any time pay his total unpaid balance.

(3) Every retail charge agreement shall contain the following notice in ten point bold face type or larger directly above the space reserved in the charge agreement for the signature of the buyer: NOTICE TO BUYER:

(a) Do not sign this retail charge agreement before you read it or if any spaces intended for the agreed terms are left blank.

(b) You are entitled to a copy of this charge agreement at the time you sign it.

(c) You may at any time pay off the full unpaid balance under this charge agreement.

(d) The monthly service charge may not lawfully exceed the greater of one percent of the outstanding balance (twelve percent per year computed monthly) or one dollar.

(e) You may cancel any purchases made under this charge agreement if the seller or his representative solicited in person such purchase, and you sign an agreement for such purchase, at a place other than the seller's business address shown on the charge agreement, by sending notice of such cancellation by certified mail return receipt requested to the seller at his address shown on the charge agreement, which notice shall be posted not later than midnight of the third day (excluding Sundays and holidays) following your signing of the purchase agreement. If you choose to cancel this purchase, you must return or make available to seller at the place of delivery any merchandise, in its original condition, received by you under this purchase agreement. [1972 ex.s. c 47 § 3; 1969 c 2 § 2 (Initiative Measure No. 245 § 2); 1967 c 234 § 7; 1963 c 236 § 12.]

**Effective date**—1969 c 2 (Initiative Measure No. 245): See note following RCW 63.14.040.

**63.14.130 Retail installment contracts and retail charge agreements—Service charge, composition, other fees and charges prohibited—Maximums.** The service charge shall be inclusive of all charges incident to investigating and making the retail installment contract or charge agreement and for the privilege of making the installment payments thereunder and no other fee, expense or charge whatsoever shall be taken, received, reserved or contracted therefor from the buyer.

(1) The service charge, in a retail installment contract, shall not exceed the highest of the following:

(a) One percent per month on the outstanding unpaid balances; or

(b) Ten dollars.

(2) The service charge in a retail charge agreement, revolving charge agreement or charge agreement, shall not exceed one percent per month on the outstanding unpaid balances. If the service charge so computed is less than one dollar for any month, then one dollar may be charged.

(3) A service charge may be computed on the median amount within a range which does not exceed ten dollars and which is a part of a published schedule of consecutive ranges applied to an outstanding balance, provided the median amount is used in computing the service charge for all balances within such range.

(4) The service charge in a retail installment contract or charge agreement shall not exceed the rate of twelve percent per annum, computed monthly. A service charge computed by one of the foregoing methods, or within the permitted minimum charges, shall be deemed not to be in excess of twelve percent per annum computed monthly. [1969 c 2 § 3 (Initiative Measure No. 245 § 3); 1967 c 234 § 8; 1963 c 236 § 13.]

**Effective date**—1969 c 2 (Initiative Measure No. 245): See note following RCW 63.14.040.

**63.14.140 Retail installment contracts and retail charge agreements—Insurance.** If the cost of any insurance is included in the retail installment contract or retail charge agreement:

(1) The contract or agreement shall state the nature, purpose, term, and amount of such insurance, and in connection with the sale of a motor vehicle, the contract shall state that the insurance coverage ordered under the terms of this contract does not include "bodily injury liability," "public liability," and "property damage liability" coverage, where such coverage is in fact not included;

(2) The contract or agreement shall state whether the insurance is to be procured by the buyer or the seller;

(3) The amount, included for such insurance, shall not exceed the premiums chargeable in accordance with the rate fixed for such insurance by the insurer, except where the amount is less than one dollar;

(4) If the insurance is to be procured by the seller or holder, he shall, within forty-five days after delivery of the goods or furnishing of the services under the contract, deliver, mail or cause to be mailed to the buyer, at his address as specified in the contract, a notice thereof or a copy of the policy or policies of insurance or a certificate or certificates of the insurance so procured. [1963 c 236 § 14.]

**63.14.150 Retail installment contracts and retail charge agreements—Agreements by buyer not to assert claim or defense or to submit to suit in another county invalid.** No provision of a retail installment contract or retail charge agreement shall be valid by which the buyer agrees not to assert against the seller or against an assignee a claim or defense arising out of the sale, or by which the buyer agrees to submit to suit in a county other than the county where the buyer signed the contract or where the buyer resides or has his principal place of business. [1967 c 234 § 9; 1963 c 236 § 15.]

**63.14.152 Declaratory judgment action to establish if service charge is excessive.** The seller, holder, or buyer may bring an action for declaratory judgment to establish whether service charges contracted for or received in connection with a retail installment transaction are in excess of those allowed by \*this 1967 amendatory act. Such an action shall be brought against the current holder or against the buyer or his successor in interest or, if the entire principal balance has been fully paid, by the buyer or his successor in interest against the holder to whom the final payment was made. No such action shall be commenced after six months following the date the final payment becomes due, whether by acceleration or otherwise, nor after six months following the date the principal balance is fully paid, whichever first occurs. If the buyer commences such an action and fails to establish that the service charge is in excess of that allowed by RCW 63.14.130, and if the court finds the action was frivolously commenced, the defendant or defendants may, in the court's discretion, recover reasonable attorney's fees and costs from the buyer. [1967 c 234 § 11.]

**\*Reviser's note:** "this 1967 amendatory act" refers to 1967 c 234 which is codified as RCW 63.14.152 through 63.14.159, 63.14.901, 63.14.921, and the 1967 amendments to RCW 63.14.020, 63.14.030, 63.14.040, 63.14.060, 63.14.080, 63.14.110, 63.14.120, 63.14.130, 63.14.150 and 63.14.180.

#### **63.14.154 Cancellation of transaction by buyer—**

**Procedure.** (1) In addition to any other rights he may have, the buyer shall have the right to cancel a retail installment transaction for other than the seller's breach:

(a) If the retail installment transaction was entered into by the buyer and solicited in person by the seller or his representative at a place other than the seller's address, which may be his main or branch office, shown on the contract; and

(b) If the buyer returns goods received or makes them available to the seller as provided in clause (b) of subsection (2) of this section.

(c) By sending notice of such cancellation to the seller at his place of business as set forth in the contract or charge agreement by certified mail, return receipt requested, which shall be posted not later than midnight of the third day (excluding Sundays and holidays) following the date the buyer signs the contract or charge agreement.

(2) In the event of cancellation pursuant to this section:

(a) The seller shall, without request, refund to the buyer within ten days after such cancellation all deposits, including any down payment, made under the contract or charge agreement and shall return all goods traded in to the seller on account or in contemplation of the contract less any reasonable costs actually incurred in making ready for sale the goods so traded in;

(b) The seller shall be entitled to reclaim and the buyer shall return or make available to the seller at the place of delivery in its original condition any goods received by the buyer under the contract or charge agreement;

(c) The buyer shall incur no additional liability for such cancellation. [1972 ex.s. c 47 § 4; 1967 c 234 § 12.]

#### **63.14.156 Extension or deferment of payments—**

**Agreement, charges.** The holder of a retail installment contract may, upon agreement with the buyer, extend the scheduled due date or defer a scheduled payment of all or of any part of any installment or installments payable thereunder. No charge shall be made for any such extension or deferment unless a written acknowledgment of such extension or deferment is sent or delivered to the buyer. The holder may charge and contract for the payment of an extension or deferral charge by the buyer and collect and receive the same, but such charge may not exceed those permitted by RCW 63.14.130 (a), (b), or (c) on the amount of the installment or installments, or part thereof, extended or deferred for the period of extension or deferral. Such period shall not exceed the period from the date when such extended or deferred installment or installments, or part thereof, would have been payable in the absence

of such extension or deferral, to the date when such installment or installments, or part thereof, are made payable under the agreement of extension or deferment; except that a minimum charge of one dollar for the period of extension or deferral may be made in any case where the extension or deferral charge, when computed at such rate, amounts to less than one dollar. Such agreement may also provide for the payment by the buyer of the additional cost to the holder of the contract of premiums for continuing in force, until the end of such period of extension or deferral, any insurance coverages provided for in the contract, subject to the provisions of RCW 63.14.140. [1967 c 234 § 13.]

#### **63.14.158 Refinancing agreements—Costs—**

**Contents.** The holder of a retail installment contract or contracts may, upon agreement in writing with the buyer, refinance the payment of the unpaid time balance or balances of the contract or contracts by providing for a new schedule of installment payments.

The holder may charge and contract for the payment of a refinance charge by the buyer and collect and receive the same but such refinance charge (1) shall be based upon the amount refinanced, plus any additional cost of insurance and of official fees incident to such refinancing, after the deduction of a refund credit in an amount equal to that to which the buyer would have been entitled under RCW 63.14.080 if he had prepaid in full his obligations under the contract or contracts, but in computing such refund credit there shall not be allowed the minimum earned service charge as authorized by clause (d) of subsection (1) of such section, and (2) may not exceed the rate of service charge provided under RCW 63.14.130. Such agreement for refinancing may also provide for the payment by the buyer of the additional cost to the holder of the contract or contracts of premiums for continuing in force, until the maturity of the contract or contracts as refinanced, any insurance coverages provided for therein, subject to the provisions of RCW 63.14.140.

The refinancing agreement shall set forth the amount of the unpaid time balance or balances to be refinanced, the amount of any refund credit, the amount to be refinanced after the deduction of the refund credit, the amount or rate of the service charge under the refinancing agreement, any additional cost of insurance and of official fees to the buyer, the new unpaid time balance, if the service charge is stated as a dollar amount, and the new schedule of installment payments. Where there is a consolidation of two or more contracts then the provisions of RCW 63.14.110 shall apply. [1967 c 234 § 14.]

*Minimum earned service charges: RCW 63.14.080.*

#### **63.14.159 New payment schedule—When authorized.**

In the event a contract provides for the payment of any installment which is more than double the amount of the average of the preceding installments the buyer upon default of this installment, shall be given an absolute right to obtain a new payment schedule. Unless agreed to by the buyer, the periodic payments under the new schedule shall not be substantially greater

than the average of the preceding installments. This section shall not apply if the payment schedule is adjusted to the seasonal or irregular income of the buyer or to accommodate the nature of the buyer's employment. [1967 c 234 § 15.]

**63.14.160 Conduct or agreement of buyer does not waive remedies.** No act or agreement of the retail buyer before or at the time of the making of a retail installment contract, retail charge agreement or purchases thereunder shall constitute a valid waiver of any of the provisions of this chapter or of any remedies granted to the buyer by law. [1963 c 236 § 16.]

**63.14.170 Violations—Penalties.** Any person who shall wilfully and intentionally violate any provision of this chapter shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than one thousand dollars or by imprisonment for not more than six months, or both. Violation of any order or injunction issued pursuant to this chapter shall constitute prima facie proof of a violation of this section. [1963 c 236 § 17.]

**63.14.180 Noncomplying person barred from recovery of service charge, etc.—Remedy of buyer—Extent of recovery.** Any person who enters into a retail installment contract or charge agreement which does not comply with the provisions of this chapter or who violates any provision of this chapter except as a result of an accidental or bona fide error shall be barred from the recovery of any service charge, official fees, or any delinquency or collection charge under or in connection with the related retail installment contract or purchases under a retail charge agreement; but such person may nevertheless recover from the buyer an amount equal to the cash price of the goods or services and the cost to such person of any insurance included in the transaction: *Provided*, That if the service charge is in excess of that allowed by RCW 63.14.130, except as the result of an accidental or bona fide error, the buyer shall be entitled to an amount equal to the total of (1) twice the amount of the service charge paid, and (2) the amount of the service charge contracted for and not paid, plus (3) costs and reasonable attorneys' fees. The reduction in the cash price by the application of the above sentence shall be applied to diminish pro rata each future installment of principal amount payable under the terms of the contract or agreement. [1967 c 234 § 10; 1963 c 236 § 18.]

**63.14.190 Restraint of violations.** The attorney general or the prosecuting attorney may bring an action in the name of the state against any person to restrain and prevent any violation of this chapter. [1963 c 236 § 19.]

**63.14.200 Assurance of discontinuance of unlawful practices.** In the enforcement of this chapter, the attorney general may accept an assurance of discontinuance of any act or practice deemed in violation of this chapter, from any person engaging in, or who has engaged in, such act or practice. Any such assurance shall be in

writing and be filed with and subject to the approval of the superior court of the county in which the alleged violator resides or has his principal place of business, or in Thurston county. Failure to perform the terms of any such assurance shall constitute prima facie proof of a violation of this chapter for the purpose of securing any injunction as provided in RCW 63.14.190 and for the purpose of RCW 63.14.180 hereof: *Provided*, That after commencement of any action by a prosecuting attorney, as provided herein, the attorney general may not accept an assurance of discontinuance without the consent of the prosecuting attorney. [1963 c 236 § 20.]

**63.14.210 Violation of order or injunction—Penalty.** Any person who violates any order or injunction issued pursuant to this chapter shall forfeit and pay a civil penalty of not more than one thousand dollars. For the purpose of this section the superior court issuing any injunction shall retain jurisdiction, and the cause shall be continued, and in such cases the attorney general acting in the name of the state may petition for the recovery of civil penalties. [1963 c 236 § 21.]

**63.14.900 Severability—1963 c 236.** If any provision of this chapter is declared unconstitutional, or the applicability thereof to any person or circumstances is held invalid, the constitutionality of the remainder of the chapter and the applicability thereof to other persons and circumstances shall not be affected thereby. [1963 c 236 § 23.]

**63.14.901 Severability—1967 c 234.** If any provision of this chapter is declared unconstitutional, or the applicability thereof to any person or circumstances is held invalid, the constitutionality of the remainder of the act and the applicability thereof to other persons and circumstances shall not be affected thereby. [1967 c 234 § 16.]

**63.14.910 Saving—1963 c 236.** The provisions of this chapter shall not invalidate or make unlawful retail installment contracts or retail charge agreements executed prior to the effective date hereof. [1963 c 236 § 24.]

**63.14.920 Effective date—1963 c 236.** This chapter shall take effect October 1, 1963. [1963 c 236 § 25.]

**63.14.921 Effective date—Saving—1967 c 234.** \*This 1967 amendatory act shall take effect on January 1, 1968. Nothing in \*this 1967 amendatory act shall be construed to affect the validity of any agreement or contractual relationship entered into prior to such date, except that the rate of any service charge computed periodically on the outstanding balance in excess of that allowed by \*this 1967 amendatory act shall be reduced to a permissible rate on or before January 1, 1968. [1967 c 234 § 17.]

\*Reviser's note: "This 1967 amendatory act" and "this 1967 amendatory act" [1967 c 234], see note following RCW 63.14.152.



**Chapter 63.18**  
**LEASE OR RENTAL OF PERSONAL**  
**PROPERTY—DISCLAIMER OF WARRANTY OF**  
**MERCHANTABILITY OR FITNESS**

## Section

63.18.010 Lease or rental agreement for lease of personal property—Disclaimer of warranty of merchantability or fitness—Limitation—Exceptions.

**63.18.010 Lease or rental agreement for lease of personal property—Disclaimer of warranty of merchantability or fitness—Limitation—Exceptions.** In any lease or rental agreement for the lease of movable personal property for use primarily in this state (other than a lease under which the lessee is authorized to use such property at no charge), if the rental or other consideration paid or payable thereunder is at a rate which if computed on an annual basis would be six thousand dollars per year or less, no provision thereof purporting to disclaim any warranty of merchantability or fitness for particular purposes which may be implied by law shall be enforceable unless either (1) the disclaimer sets forth with particularity the qualities and characteristics which are not being warranted, or (2) the lessee is engaged in a public utility business or a public service business subject to regulation by the United States or this state. [1974 1st ex.s. c 180 § 3.]

*Exclusion or modification of warranties: RCW 62A.2-316.*

**Chapter 63.20**  
**LOST AND FOUND PROPERTY**

## Sections

63.20.010 Finder of property of five dollars value—Notice.  
63.20.020 Liability of finder for failure to give notice.  
63.20.030 Finder of property of ten dollars value—Notice—Appraisal.  
63.20.040 Owner may recover within one year.  
63.20.050 Finder to pay half the value to the county—Action to recover.

**63.20.010 Finder of property of five dollars value—Notice.** If any person shall find any money or goods of the value of five dollars or more, and if the owner thereof be unknown, such person shall, within five days after finding such money or goods, give notice thereof in writing, to the clerk of the board of county commissioners of the county in which such property was found, and shall, also, within said five days, cause a notice thereof to be posted up in two public places in said county. [Code 1881 § 3266; RRS § 8430. Prior: 1863 p 440 § 15; 1854 p 382 § 10.]

**63.20.020 Liability of finder for failure to give notice.** If any finder of lost money or goods, of the value of five dollars or upwards, shall neglect to give notice of the same, and otherwise to comply with the provisions of this chapter, he shall be liable for the full value of such money or goods, one-half to the use of the county for school purposes, and the other half to the person who shall sue for the same, and shall also be responsible to the owner for such lost money or goods. [Code 1881 § 3270; RRS § 8434. Prior: 1863 p 440 § 19; 1854 p 383 § 14.]

**63.20.030 Finder of property of ten dollars value—Notice—Appraisal.** Every finder of lost goods of the value of ten dollars or more, shall, in addition to the requirements of RCW 63.20.010, within fifteen days after finding the same, cause notice thereof to be published in a newspaper printed in the county, if there be one published therein, and if there be none, then such notice shall be posted up in three of the most public places in the county; and if no person shall appear to claim the same, who may be entitled thereto, he shall, within two months after finding such goods, and before using the same, to their injury, procure an appraisal thereof, by a justice of the peace of his county which appraisal shall be certified to by such justice, and filed in the office of the clerk of the board of county commissioners of such county. [Code 1881 § 3267; RRS § 8431. Prior: 1863 p 440 § 16; 1854 p 382 § 11.]

**63.20.040 Owner may recover within one year.** If the owner of such lost money or goods appears within one year after notice given to the clerk as aforesaid, and shall make out his right thereto, he shall have restitution of the same, or the value thereof, upon his paying all the costs and charges thereon, including a reasonable compensation to the finder for his trouble. [Code 1881 § 3268; RRS § 8432. Prior: 1863 p 440 § 17; 1854 p 382 § 12.]

**63.20.050 Finder to pay half the value to the county—Action to recover.** If no owner shall appear within one year, then the finder of such lost money or goods shall pay one-half the value thereof, after deducting all legal charges, to the treasurer of the county, for school purposes; and in case such finder shall neglect to pay the same, on demand, after the expiration of the time aforesaid, the same may be sued for and recovered by the said treasurer, in the name of the county, for school purposes. [Code 1881 § 3269; RRS § 8433. Prior: 1863 p 440 § 18; 1854 p 382 § 13.]

**Chapter 63.24**  
**UNCLAIMED PROPERTY IN HANDS OF BAILEE**

## Sections

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**63.24.010 Bailee to keep record of stored property.** Whenever any personal property shall be consigned to or deposited with any forwarding merchant, wharf, warehouse, or tavern keeper, or the keeper of any depot for the reception and storage of trunks, baggage, merchandise or other personal property, such consignee or



bailee shall immediately cause to be entered in a book kept by him, a description of such property, with the date of reception thereof. [Code 1881 § 3252; RRS § 8416. Prior: 1863 p 437 § 1; 1854 p 383 § 1.]

**63.24.020 Notice to owner.** If such property shall not have been left with such consignee or bailee, for the purpose of being forwarded or disposed of according to directions received of [by] such consignee or bailee, at or before the time of the reception thereof, and if the name and residence of the owner of such property be known to the person having such property in his possession, he shall immediately notify the owner, by letter directed to him, and deposited in a post office, of the reception of such property. [Code 1881 § 3253; RRS § 8417. Prior: 1863 p 438 § 2; 1854 p 383 § 2.]

**63.24.030 Property unclaimed—Sale authorized.** If any such property shall not be claimed and taken away within one year after the time it shall have been so received, the person having possession thereof may at any time thereafter proceed to sell the same, in the manner provided in this chapter. [Code 1881 § 3254; RRS § 8418. Prior: 1863 p 438 § 3; 1854 p 384 § 3.]

**63.24.040 Notice of intention to sell.** Before any such property shall be sold, if the name and residence of the owner thereof be known, at least sixty days' notice of such sale shall be given him, either personally or by mail, or by leaving a notice at his residence, or place of doing business; but if the name and residence of the owner be not known, the person having the possession of such property shall cause a notice to be published, containing a description of the property, for the space of six weeks successively, in a newspaper, if there be one published in the same county; if there be no newspaper published in the same county, then said notice shall be published in a newspaper nearest thereto in the state; the last publication of such notice shall be at least eighteen days previous to the time of sale. [Code 1881 § 3255; RRS § 8419. Prior: 1863 p 438 § 4; 1854 p 384 § 4.]

**63.24.050 Affidavit to be filed with justice of the peace.** If the owner or person entitled to such property, shall not take the same away, and pay the charges thereon, after sixty days' notice shall have been given, it shall be the duty of the person having possession thereof, his agent or attorney, to make and deliver to a justice of the peace of the same county an affidavit, setting forth a description of the property remaining unclaimed, the time of its reception, the publication of the notice, and whether the owner of such property be known or unknown. [Code 1881 § 3256; RRS § 8420. Prior: 1863 p 438 § 5; 1854 p 384 § 5.]

**63.24.060 Inventory by justice.** Upon the delivery to him of such affidavit, the justice shall cause such property to be opened and examined in his presence, and a true inventory thereof to be made, and shall annex to such inventory an order, under his hand, that the property therein described be sold by any constable of the

precinct where the same shall be, at public auction. [Code 1881 § 3257; RRS § 8421. Prior: 1863 p 438 § 6; 1854 p 384 § 6.]

**63.24.070 Notice of sale.** It shall be the duty of such constable receiving such inventory and order, to give ten days' notice of the sale, by posting up written notices thereof in three or more places in such precinct, and to sell such property at public auction, to the highest bidder, in the same manner as provided by law for sales under execution from justice's courts. [Code 1881 § 3258; RRS § 8422. Prior: 1863 p 439 § 7; 1854 p 384 § 7.]

*Justice court, execution of judgments: Chapter 12.24 RCW.*

**63.24.080 Return of sale and proceeds.** Upon completing the sale, the constable making the same shall endorse upon the order aforesaid, a return of his proceedings thereon, and return the same to the justice, together with the inventory, and the proceeds of sale, after deducting his fees. [Code 1881 § 3259; RRS § 8429. Prior: 1863 p 439 § 8; 1854 p 384 § 8.]

**63.24.090 Disposition of proceeds—Statement.** From the proceeds of such sale, the justice shall pay all legal charges that have been incurred in relation to such property, or a ratable proportion of each charge, if the proceeds of said sale shall not be sufficient to pay all the charges; and the balance, if any there be, he shall immediately pay over to the treasurer of the county in which the same shall be sold and deliver a statement therewith, containing a description of the property sold, the gross amount of such sale, and the amount of costs, charges, and expenses paid to each person. [Code 1881 § 3260; RRS § 8424. Prior: 1863 p 439 § 9; 1854 p 384 § 9.]

**63.24.100 Duty of county treasurer.** The county treasurer shall make an entry of the amount received by him, and the time when received, and shall file in his office such statement, so delivered to him by the justice. [Code 1881 § 3261; RRS § 8425. Prior: 1863 p 439 § 10; 1854 p 385 § 10.]

**63.24.110 Claim by owner.** If the owner of the property sold, or his legal representatives, shall, at any time within five years after such money shall have been deposited in the county treasury, furnish satisfactory evidence to the treasurer of the ownership of such property, he or they shall be entitled to receive from such treasurer the amount so deposited with him. [Code 1881 § 3262; RRS § 8426. Prior: 1863 p 439 § 11; 1854 p 385 § 11.]

**63.24.120 Unclaimed proceeds to school fund.** If the amount so deposited with any county treasurer shall not be claimed by the owner thereof, or his legal representatives, within the said five years, the same shall belong to the county, and shall be applied to the common school fund of said county. [Code 1881 § 3263; RRS § 8427. Prior: 1863 p 439 § 12; 1854 p 385 § 12.]

**63.24.130 Perishable property, how sold.** Property of a perishable kind, and subject to decay by keeping, consigned or left in manner before mentioned, if not taken away within thirty days after it shall have been left, may be sold by giving ten days' notice thereof, the sale to be conducted, and the proceeds of the same to be applied in the manner before provided in this chapter: *Provided*, That any property in a state of decay, or that is manifestly liable immediately to become decayed, may be summarily sold by order of a justice of the peace, after inspection thereof, as provided in RCW 63.24.060. [Code 1881 § 3264; RRS § 8428. Prior: 1863 p 439 § 13; 1854 p 385 § 13.]

**63.24.140 Fees.** The fees allowed to any justice of the peace, under the provisions of this chapter, shall be three dollars for each day's service; and to any constable the same fees as are allowed by law for sales upon an execution, and ten cents a folio for making an inventory of property. [Code 1881 § 3265; RRS § 8429. Prior: 1863 p 440 § 14; 1854 p 385 § 14.]

## Chapter 63.28 UNIFORM DISPOSITION OF UNCLAIMED PROPERTY

Sections	
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63.28.900	Short title.
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63.28.920	Severability—1955 c 385.

**Reviser's note:** Throughout this chapter "tax commission" has been changed to "department of revenue" by authority of RCW 63.28.070(9).

*Duration of trusts for employee benefits: Chapter 49.64 RCW.*

*Powers of appointment: Chapter 64.24 RCW.*

*Stolen and abandoned vehicles: RCW 46.52.110.*

**63.28.070 Definitions.** As used in this chapter, unless the context otherwise requires:

(1) "Banking organization" means any bank, trust company, savings bank or land bank engaged in business in this state.

(2) "Business association" means any corporation (other than a public corporation), joint stock company, business trust, partnership, or any association for business purposes of two or more individuals.

(3) "Financial organization" means any savings and loan association, building and loan association, industrial loan company, small loan company, credit union or investment company engaged in business in this state.

(4) "Holder" means any person in possession of property subject to this chapter belonging to another, or who is trustee in case of a trust, or is indebted to another on an obligation subject to this chapter.

(5) "Life insurance corporation" means any association or corporation transacting within this state the business of insurance on the lives of persons or insurance appertaining thereto, including, but not by way of limitation, endowments and annuities.

(6) "Owner" means a depositor in case of a deposit, a beneficiary in case of a trust, or creditor, claimant, or payee in case of other choses in action, or any person having a legal or equitable interest in property subject to this chapter, or his legal representative.

(7) "Person" means any individual, business association, government or political subdivision, public corporation, public authority, estate, trust, two or more persons having a joint or common interest, or any other legal or commercial entity.

(8) "Utility" means any person who owns or operates within this state, for public use, any plant, equipment, property, franchise, or license for the transmission of communications or the production, storage, transmission, sale, delivery, or furnishing of electricity, water, steam, or gas.

(9) "Tax commission" means the department of revenue of the state of Washington. [1967 ex.s. c 26 § 27; 1955 c 385 § 1.]

**Effective date—Purpose—Savings—1967 ex.s. c 26:** See notes following RCW 82.01.050.

**63.28.080 Property presumed abandoned—Banking and financial organizations.** The following property held or owing by a banking or financial organization is presumed abandoned:

(1) Any demand, savings, or matured time deposit made in this state with a banking organization, together

with any interest or dividend which has accrued thereon, excluding any charges that may lawfully be withheld, unless the owner has, within twelve years:

(a) Increased or decreased the amount of the deposit, or presented the passbook or other similar evidence of the deposit for the crediting of interest; or

(b) Corresponded in writing with the banking organization concerning the deposit; or

(c) Otherwise indicated an interest in the deposit as evidenced by a memorandum on file with the banking organization.

(2) Any funds paid in this state toward the purchase of shares or other interest in a financial organization or any deposit made therewith in this state, and any interest or dividend which has accrued thereon, excluding any charges that may lawfully be withheld, unless the owner has within twelve years:

(a) Increased or decreased the amount of the funds or deposit, or presented an appropriate record for the crediting of interest or dividends; or

(b) Corresponded in writing with the financial organization concerning the funds or deposit; or

(c) Otherwise indicated an interest in the funds or deposit as evidenced by a memorandum on file with the financial organization.

(3) Any sum payable on checks certified in this state or on written instruments issued in this state on which a banking or financial organization is directly liable, including, by way of illustration but not of limitation, certificates of deposit, drafts, and traveler's checks, that has been outstanding for more than twelve years from the date it was payable, or from the date of its issuance if payable on demand, unless the owner has within twelve years corresponded in writing with the banking or financial organization concerning it, or otherwise indicated an interest as evidenced by a memorandum on file with the banking or financial organization. [1955 c 385 § 2.]

**63.28.090 Property presumed abandoned—Life insurance corporations.** (1) Unclaimed funds, as defined in this section, held and owing by a life insurance corporation shall be presumed abandoned if the last known address, according to the records of the corporation, of the person entitled to the funds is within this state. If a person other than the insured or annuitant is entitled to the funds and no address of such person is known to the corporation or if it is not definite and certain from the records of the corporation what person is entitled to the funds, it is presumed that the last known address of the person entitled to the funds is the same as the last known address of the insured or annuitant according to the records of the corporation.

(2) "Unclaimed funds," as used in this section, means all moneys held and owing by any life insurance corporation unclaimed and unpaid for more than seven years after the moneys became due and payable as established from the records of the corporation under any life or endowment insurance policy or annuity contract which has matured or terminated. A life insurance policy not matured by actual proof of the death of the insured is deemed to be matured and the proceeds thereof

are deemed to be due and payable if such policy was in force when the insured attained the limiting age under the mortality table on which the reserve is based, unless the person appearing entitled thereto has within the preceding seven years, (a) assigned, readjusted, or paid premiums on the policy, or subjected the policy to loan, or (b) corresponded in writing with the life insurance corporation concerning the policy. Moneys otherwise payable according to the records of the corporation are deemed due and payable although the policy or contract has not been surrendered as required. [1955 c 385 § 3.]

**63.28.100 Property presumed abandoned—Utilities.** The following funds held or owing by any utility are presumed abandoned:

(1) Any deposit made by a subscriber with a utility to secure payment for, or any sum paid in advance for, utility services to be furnished in this state, less any lawful deductions, that has remained unclaimed by the person appearing on the records of the utility entitled thereto for more than seven years after the termination of the services for which the deposit or advance payment was made.

(2) Any sum which a utility has been ordered to refund and which was received for utility services rendered in this state, together with any interest thereon, less any lawful deductions, that has remained unclaimed by the person appearing on the records of the utility entitled thereto for more than seven years after the date it became payable in accordance with the final determination or order providing for the refund. [1955 c 385 § 4.]

**63.28.110 Property presumed abandoned—Business associations.** Any stock or other certificate of ownership, or any dividend, profit, distribution, interest, payment on principal, or other sum held or owing by a business association for or to a shareholder, certificate holder, member, bondholder, or other security holder, or a participating patron of a cooperative, who has not claimed it, or corresponded in writing with the business association concerning it, within seven years after the date prescribed for payment or delivery, is presumed abandoned if:

(1) It is held or owing by a business association organized under the laws of or created in this state; or

(2) It is held or owing by a business association doing business in this state, but not organized under the laws of or created in this state, and the records of the business association indicate that the last known address of the person entitled thereto is in this state. [1955 c 385 § 5.]

**63.28.120 Property presumed abandoned—Intangible personalty—Voluntary dissolution of business association, etc.** Except as otherwise provided by the laws of this state, all intangible personal property distributable in the course of a voluntary dissolution of a business association, banking organization, or financial organization organized under the laws of or created in this state, that is unclaimed by the owner within two years

after the date for final distribution, is presumed abandoned. [1955 c 385 § 6.]

**63.28.130 Property presumed abandoned—Intangible personalty held in fiduciary capacity.** All intangible personal property and any income or increment which has accrued thereon, held in fiduciary capacity for the benefit of another person is presumed abandoned unless the owner has, within seven years after it becomes payable or distributable, increased or decreased the principal, accepted payment of principal or income, corresponded in writing concerning the property, or otherwise indicated an interest as evidenced by a memorandum on file with the fiduciary:

(1) If the property is held by a business association, banking organization, or financial organization organized under the laws of or created in this state; or

(2) If it is held by a business association, banking organization, or financial organization doing business in this state, but not organized under the laws of or created in this state, and the records of the business association, banking organization, or financial organization indicate that the last known address of the person entitled thereto is in this state; or

(3) If it is held in this state by any other person. [1955 c 385 § 7.]

**63.28.140 Property presumed abandoned—Intangible personalty held by court, public body or official, etc.** All intangible personal property held for the owner by any court, public corporation, public authority, or public officer of this state, or a political subdivision thereof, that has remained unclaimed by the owner for more than seven years is presumed abandoned. [1955 c 385 § 8.]

**63.28.150 Property presumed abandoned—Intangible personalty not otherwise covered by chapter.** All intangible personal property, not otherwise covered by this chapter, including any income or increment thereon and deducting any lawful charges, that is held or owing in this state in the ordinary course of the holder's business and has remained unclaimed by the owner for more than seven years after it became payable or distributable is presumed abandoned: *Provided, however,* That this section shall not apply to safe deposit companies. [1955 ex.s. c 11 § 1; 1955 c 385 § 9.]

**63.28.160 Property presumed abandoned—Exception when owner out of state—Reciprocity.** If specific property which is subject to the provisions of RCW 63.28.080, 63.28.110, 63.28.120, 63.28.130, and 63.28.150 is held for or owed or distributable to an owner whose last known address is in another state by a holder who is subject to the jurisdiction of that state, the specific property is not presumed abandoned in this state and subject to this chapter if:

(1) It may be claimed as abandoned or escheated under the laws of such other state; and

(2) The laws of such other state make reciprocal provision that similar specific property is not presumed abandoned or escheatable by such other state when

held for or owed or distributable to an owner whose last known address is within this state by a holder who is subject to the jurisdiction of this state. [1955 c 385 § 10.]

**63.28.170 Reports to department of revenue by holder or successor—Notice to owner.** (1) Every person holding funds or other property, tangible or intangible, presumed abandoned under this chapter shall report to the department of revenue with respect to the property as hereinafter provided.

(2) The report shall be in such form as the department of revenue may prescribe, and shall include:

(a) The name, if known, and last known address, if any, of each person appearing from the records of the holder to be the owner of any property of value of ten dollars or more presumed abandoned under this chapter;

(b) In case of unclaimed funds of life insurance corporations, the full name of the insured or annuitant and his last known address according to the life insurance corporation's records;

(c) The nature and identifying number, if any, or description of the property and the amount appearing from the records to be due, except that items of value under ten dollars each may be reported in aggregate;

(d) The date when the property became payable, demandable, or returnable, and the date of the last transaction with the owner with respect to the property; and

(e) Any other information which the department of revenue may prescribe as necessary for the administration of this chapter.

(3) If the person holding property presumed abandoned is a successor to other persons who previously held the property for the owner, or if the holder has changed his name while holding the property, he shall file with his report all prior known names and addresses of each holder of the property.

(4) The report shall be filed before November 1st of each year as of June 30th next preceding, but the report of life insurance corporations shall be filed before May 1st of each year as of December 31st next preceding. The department of revenue may postpone the reporting date upon written request by any person required to file a report.

(5) If the holder of property presumed abandoned under this chapter knows the whereabouts of the owner and if the owner's claim has not been barred by the statute of limitations, the holder shall, before filing the annual report, endeavor to communicate with the owner and take reasonable steps to prevent abandonment from being presumed. The mailing of notice to the last known address of the owner by the holder shall constitute compliance with this paragraph and no further act on the part of the holder shall be necessary.

(6) Verification, if made by a partnership, shall be executed by a partner; if made by an unincorporated association or private corporation, by an officer; and if made by a public corporation, by its chief fiscal officer. [1955 c 385 § 11.]

**63.28.180 Notice by department of revenue—Contents—Publication and mailing.** (1) Within one hundred twenty days from the filing of the report required by RCW 63.28.170, the department of revenue shall cause notice to be published at least once each week for two successive weeks in an English language newspaper of general circulation in the county in this state in which is located the last known address of any person to be named in the notice. If no address is listed or if the address is outside this state, the notice shall be published in the county in which the holder of the abandoned property has his principal place of business within this state.

(2) The published notice shall be entitled "Notice of Names of Persons Appearing to be owners of Abandoned Property" and shall contain:

(a) The names in alphabetical order and last known addresses, if any, of persons listed in the report and entitled to notice within the county as hereinbefore specified.

(b) A statement that information concerning the amount or description of the property and the name and address of the holder may be obtained by any persons possessing an interest in the property by addressing an inquiry to the department of revenue.

(c) A statement that if proof of claim is not presented by the owner to the holder and if the owner's right to receive the property is not established to the holder's satisfaction within sixty-five days from the date of the second published notice, the abandoned property will be placed not later than eighty-five days after such publication date in the custody of the department of revenue.

(3) The department of revenue is not required to publish in such notice any item of less than twenty-five dollars unless it deems such publication to be in the public interest.

(4) Within one hundred twenty days from the receipt of the report required by RCW 63.28.170, the department of revenue shall mail a notice to each person having an address listed therein who appears to be entitled to property of the value of twenty-five dollars or more presumed abandoned under this chapter.

(5) The mailed notice shall contain:

(a) A statement that, according to a report filed with the department of revenue, property is being held to which the addressee appears entitled.

(b) The name and address of the person holding the property and any necessary information regarding changes of name and address of the holder.

(c) A statement that, if satisfactory proof of claim is not presented by the owner to the holder by the date specified in the published notice the property will be placed in the custody of the department of revenue. [1955 c 385 § 12.]

**63.28.190 Delivery by holder to department of revenue—Department of revenue publication.** (1) Every person who has filed a report as provided by RCW 63.28.170 shall within twenty days after the time specified in RCW 63.28.180 for claiming the property from the holder pay or deliver to the department of revenue all

abandoned property specified in the report, except that, if the owner establishes his right to receive the abandoned property to the satisfaction of the holder within the time specified in RCW 63.28.180, or if it appears that for some other reason the presumption of abandonment is erroneous, the holder need not pay or deliver the property, which will no longer be presumed abandoned, to the department of revenue, but in lieu thereof shall file a verified written explanation of the proof of claim or of the error in the presumption of abandonment.

(2) Any person holding property as specified in RCW 63.28.080 through 63.28.150 and who has reason to believe that the same is abandoned and that the true owner thereof cannot be located with reasonable diligence and effort, may make his report and deliver such property to the department of revenue prior to the expiration of the time provided. The department of revenue shall include information relating to such property in the next publication of like property as provided by RCW 63.28.180. [1955 ex.s. c 11 § 2; 1955 c 385 § 13.]

**63.28.200 Delivery by holder to department of revenue—Liability for property.** Upon the payment or delivery of abandoned property to the department of revenue, the state shall assume custody and shall be responsible for the safekeeping thereof. Any person who pays or delivers abandoned property to the department of revenue under this chapter is relieved of all liability to the extent of the value of the property so paid or delivered for any claim which then exists or which thereafter may arise or be made in respect to the property, excepting as to any property which is returned to the owner pursuant to RCW 63.28.250(2). [1955 c 385 § 14.]

**63.28.210 Preservation of records.** (1) Every person who has made a report of property and has delivered such property to the department of revenue shall retain for a period of not less than ten years from the date of such delivery all records which would in any way assist in determining the validity of any claim made against the property pursuant to RCW 63.28.250 and 63.28.260, or may deliver such records to the department of revenue (in original form or as reproduced through microfilm or other suitable process, all as designated by the department of revenue) at the time of such delivery of property or at any time within such ten year period. After the lapse of ten years such records may be disposed of, but only by forwarding them to the department of revenue. Such records may be so retained or forwarded either in original form or as reproduced through microfilm, or as reproduced through other suitable process acceptable to the department of revenue. The department of revenue may destroy any of such records as in its opinion are not necessary for the proper determination of any claim filed against the property, and shall retain all other records for a period of not less than seventy-five years, excepting that they may be disposed of at any time prior to seventy-five years if the likeness thereof is preserved by any process, such as microfilming, which would reduce the bulk thereof.

(2) Any person who is required to retain any records relating to abandoned property as provided in this section and who terminates his business prior to the ten-year period provided, shall deliver such records to his successor, or if there be no successor he may forward the records to the department of revenue.

(3) Any person, or his successor or successors, who is holding any records relating to abandoned property as provided in this section, shall forward such records to the department of revenue upon written request. [1955 c 385 § 15.]

**63.28.220 Increments denied owner, when.** When property is paid or delivered to the department of revenue under this chapter, the owner is not entitled to receive income or other increments accruing thereafter. [1955 c 385 § 16.]

**63.28.230 Sale of abandoned property.** (1) All abandoned property other than money delivered to the department of revenue under this chapter shall be sold by the department of revenue at such time and such place and in such manner as in its judgment will bring the highest return. Neither the department of revenue nor any employee thereof shall in any way be held liable to any person for any claimed loss on the sale of such property. The department of revenue may decline the highest bid and reoffer the property for sale if it considers the price bid insufficient. It need not offer any property for sale if, in its opinion, the probable cost of sale exceeds the value of the property.

(2) Any sale held under this section shall be preceded by a single publication of notice thereof, at least three weeks in advance of sale, in an English language newspaper of general circulation in the county where the property is to be sold.

(3) The purchaser at any sale conducted by the department of revenue pursuant to this chapter shall receive title to the property purchased, free from all claims of the owner or prior holder thereof and of all persons claiming through or under them. The department of revenue shall execute all documents necessary to complete the transfer of title. [1955 c 385 § 17.]

**63.28.240 Disposition of funds—Trust fund.** (1) All funds received under this chapter, including the proceeds from the sale of abandoned property under RCW 63.28.230, shall forthwith be remitted by the department of revenue to the state treasurer for deposit in the general fund of the state, except that the department of revenue shall retain in a separate trust fund the sum of one hundred thousand dollars from which it shall make prompt payment of claims allowed as hereinafter provided. All funds received under this chapter after the initial establishment of the said trust fund shall first be used by the department of revenue for replenishing the trust fund. The department of revenue shall record the name and last known address of each person appearing from the holders' reports to be entitled to the abandoned property and of the name and last known address of each insured person or annuitant, and with respect to each policy or contract listed in the report of

a life insurance corporation, its number, and the name of the corporation. This record shall be available for public inspection at all reasonable business hours.

(2) The department of revenue may pay from the trust fund provided in subsection (1) of this section, any costs of administering this chapter. [1955 c 385 § 18.]

**63.28.250 Claims and appeals to department of revenue.** (1) Any person claiming an interest in any property paid or delivered to the department of revenue under this chapter that was not subsequently adjudged under RCW 63.28.280 to be actually abandoned or escheated may make his claim to such property at any time after it is paid to the department of revenue.

(2) Such claim may be made to the person originally holding the property, or to his successor or successors. If such person is satisfied that the claim is valid and that the claimant is the actual and true owner of the property, he shall so certify to the department of revenue by written statement attested by him under oath, or in case of a corporation, by two principal officers, or one principal officer and an authorized employee thereof. The determination of the holder that the claimant is the actual and true owner shall, in the absence of fraud, be binding upon the department of revenue, and upon receipt of the certificate of the holder to this effect, the department of revenue shall forthwith authorize and make payment of the claim or return of the property, or if the property has been sold by the department of revenue as provided in RCW 63.28.230, the amount received from such sale to the owner, or to the holder in the event the owner has assigned the claim to the holder and the certificate of the holder is accompanied by such assignment. In the event the person originally holding the property rejects the claim made against him, the claimant may appeal to the department of revenue.

(3) Any claim to property as provided in this section may be filed directly with the department of revenue. Such claim, or any appeal as provided in this section, shall be made on forms prescribed by the department of revenue. The department of revenue shall consider each claim or appeal filed as soon as practicable and approve or reject it in writing. If the claim or appeal is rejected the claimant may demand a hearing thereon, at which the department of revenue shall hear evidence and thereafter issue a written decision. Such decision shall state the substance of the evidence heard, if a transcript is not kept, and shall be a matter of public record.

(4) Upon approval of any claim or appeal by the department of revenue it shall authorize payment of the amount thereof or return of the property to the claimant, or if the property has been sold by the department of revenue, the amount received from such sale. [1955 c 385 § 19.]

**63.28.260 Action in superior court.** Any person aggrieved by a decision of the department of revenue or as to whose claim the department of revenue has failed to act within ninety days after the filing of the claim, may commence an action in the superior court of Thurston county to establish his claim. The proceeding shall be brought within ninety days after the decision of

the department of revenue or within one hundred eighty days from the filing of the claim if the department of revenue fails to act. The action shall be tried de novo. [1955 c 385 § 20.]

**63.28.270 Department of revenue may decline to receive property.** The department of revenue, after receiving reports of property deemed abandoned pursuant to this chapter, may decline to receive any property reported which it deems to have a value less than the cost of giving notice and holding sale, or it may if deemed desirable because of the small sum involved, postpone taking possession until a sufficient sum accumulates. [1955 c 385 § 21.]

**63.28.280 Escheat proceedings.** With regard to any property paid or delivered to the department of revenue under this chapter, the department of revenue shall institute escheat proceedings whenever it appears that the owner of such property has died and that no other person is entitled to it: *Provided, however,* That this requirement shall not apply where the amount involved is less than two hundred and fifty dollars, except where in the judgment of the department such action would be to the advantage of the state. [1955 c 385 § 22.]

*Escheats: Chapter 11.08 RCW.*

**63.28.290 Examination of records by department of revenue.** The department of revenue may at reasonable times and upon reasonable notice examine the records of any person if it has reason to believe that such person has failed to report property that should have been reported pursuant to this chapter. [1955 c 385 § 23.]

**63.28.300 Action by department of revenue to compel delivery.** If any person refuses to deliver property to the department of revenue as required under this chapter, it may bring an action in the superior court of the county in which such person resides or has his principal place of business to force payment or delivery of such property. [1955 c 385 § 24.]

**63.28.310 Failure or refusal to deliver or report to department of revenue—Penalty.** (1) Any person who wilfully fails or refuses to make any report required under this chapter may be fined the sum of ten dollars for each day such report is withheld, unless the department of revenue has extended the time for making any such report as provided in RCW 63.28.170(4).

(2) Any person who wilfully refuses to pay or deliver abandoned property to the department of revenue as required under this chapter shall be fined not less than one hundred dollars nor more than one thousand dollars, or imprisoned for not less than five days nor more than six months, or both. [1955 c 385 § 25.]

**63.28.320 Rules and regulations.** The department of revenue is hereby authorized to make necessary rules and regulations to carry out the provisions of this chapter. [1955 c 385 § 26.]

**63.28.330 Limitation on fee for locating reported or delivered property—Penalty.** It shall be unlawful for any person to seek or receive from any person or contract with any person for any fee or compensation for locating or purporting to locate any property which he knows has been reported or paid or delivered to the department of revenue pursuant to this chapter, in excess of five percent of the value thereof returned to such owner. Any person violating this section shall be guilty of a misdemeanor and shall be fined not less than the amount of the fee or charge he has sought or received or contracted for, and not more than ten times such amount, or imprisoned for not more than thirty days, or both. [1955 c 385 § 27.]

**63.28.340 Information and records confidential.** Any information or records required to be furnished to the department of revenue as provided in this chapter shall be confidential and shall not be disclosed to any person excepting the person who furnished the same to the department of revenue, and excepting as provided in RCW 63.28.180 and 63.28.240, or as may be necessary in the proper administration of this chapter. [1955 c 385 § 28.]

**63.28.350 Property abandoned or escheated under laws of another state.** This chapter shall not apply to any property that has been presumed abandoned or escheated under the laws of another state prior to the effective date of this chapter. [1955 c 385 § 29.]

**Reviser's note:** Effective date of this chapter is midnight, June 8, 1955, see preface 1955 session laws.

**63.28.360 Chapter not applicable to city or town.** The provisions of chapter 63.28 RCW shall not apply to unclaimed property or moneys in the possession of any city or town or a department or agency thereof. [1959 c 289 § 1.]

*Unclaimed property in hands of city or town: Chapter 63.36 RCW.*

**63.28.900 Short title.** This chapter may be cited as the uniform disposition of unclaimed property act. [1955 c 385 § 32.]

**63.28.910 Construction to secure uniformity.** This chapter shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it. [1955 c 385 § 31.]

**63.28.920 Severability—1955 c 385.** If any provision of this chapter or if the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable. [1955 c 385 § 30.]



**Chapter 63.32**  
**UNCLAIMED PROPERTY IN HANDS OF CITY**  
**POLICE**

## Sections

63.32.010	Sale authorized.
63.32.020	Notice of sale.
63.32.030	Disposition of proceeds.
63.32.040	Reimbursement to owner.

**63.32.010 Sale authorized.** Whenever any personal property shall come into the possession of the police authorities of any city in connection with the official performance of their duties and said personal property shall remain unclaimed or not taken away for a period of sixty days from date of written notice to the owner thereof, if known, and in all other cases for a period of sixty days from the time said property came into the possession of the police department, unless said property has been held as evidence in any court, then, in that event, after sixty days from date when said case has been finally disposed of and said property released as evidence by order of the court, said city may at any time thereafter sell said personal property at public auction to the highest and best bidder for cash in the manner hereinafter provided. [1973 1st ex.s. c 44 § 1; 1939 c 148 § 1; 1925 ex.s. c 100 § 1; RRS § 8999-1.]

**63.32.020 Notice of sale.** Before said personal property shall be sold, if the name and address of the owner thereof be known, at least ten days' notice of such sale shall be given him either personally or by leaving a written notice at his residence or place of doing business with some person of suitable age and discretion then resident or employed therein; or if the name or residence of the owner be not known, a notice of such sale fixing the time and place thereof which shall be at a suitable place, which will be noted in the advertisement for sale, and containing a description of the property to be sold shall be published at least once in the official newspaper of said city at least ten days prior to the date fixed for said sale. The notice shall be signed by the chief or other head of the police department of such city. If the owner fails to reclaim said property prior to the time fixed for the sale in such notice, the chief or other head of the police department shall conduct said sale and sell the property described in the notice at public auction to the highest and best bidder for cash, and upon payment of the amount of such bid shall deliver the said property to such bidder. [1925 ex.s. c 100 § 2; RRS § 8999-2.]

**63.32.030 Disposition of proceeds.** The moneys arising from sales under the provisions of this chapter shall be first applied to the payment of the costs and expenses of the sale and then to the payment of lawful charges and expenses for the keep of said personal property and the balance, if any, shall be paid into the police pension fund of said city if such fund exists; otherwise into the city current expense fund. [1939 c 148 § 2; 1925 ex.s. c 100 § 3; RRS § 8999-3.]

**63.32.040 Reimbursement to owner.** If the owner of said personal property so sold, or his legal representative, shall, at any time within three years after such money shall have been deposited in said police pension fund or the city current expense fund, furnish satisfactory evidence to the police pension fund board or the city treasurer of said city of the ownership of said personal property he or they shall be entitled to receive from said police pension fund or city current expense fund the amount so deposited therein with interest. [1939 c 148 § 3; 1925 ex.s. c 100 § 4; RRS § 899-4.]

**Chapter 63.36**  
**UNCLAIMED PROPERTY IN HANDS OF CITY**  
**OR TOWN**

## Sections

63.36.010	Publication and contents of notice of unclaimed personal property or moneys.
63.36.020	Sale authorized—Notice.
63.36.030	Disposition of proceeds of sale.
63.36.040	Uniform disposition of unclaimed property act not applicable.

**63.36.010 Publication and contents of notice of unclaimed personal property or moneys.** Whenever any unclaimed personal property or moneys in the possession of the governing authority of any city or town, or department or agency thereof, have not been claimed for a period of sixty days or more from the date the property first came into such possession or from the date the moneys first became payable or returnable, the governing authority shall cause a notice to be published at least once a week for two successive weeks in a newspaper of general circulation in the county in which such city or town is located. The notice shall set forth the name, if known, and the last known address, if any, of each person appearing from the records of the governing authority to be the owner of any such unclaimed money or personal property; a brief statement concerning the amount of money or a description of the personal property; and the name and address of the governing authority, department or agency possessing the money or personal property and the place where it may be claimed. [1973 1st ex.s. c 44 § 2; 1959 c 289 § 2.]

**63.36.020 Sale authorized—Notice.** If the owner of, or other person having a claim to, any such personal property or money does not claim the property or money within ten days after the last date the notice was published, such governing authority shall cause any such personal property to be sold at public auction pursuant to a public notice published in a newspaper of general circulation within the city or town at least ten days prior thereto. The notice shall state the day, time, and place of sale and contain a description of the personal property to be sold. [1973 1st ex.s. c 44 § 3; 1959 c 289 § 3.]

**63.36.030 Disposition of proceeds of sale.** The proceeds from the sale of any such personal property less the expenses of advertising and sale together with any

unclaimed moneys, less the expenses of advertising, shall accrue to the city or town fund pertaining to the department or agency from whose functions the unclaimed personal property or moneys was derived. If there is no such fund or the unclaimed personal property or moneys was not derived from any particular department or agency of a city or town, then the proceeds of any such sale or such moneys shall accrue to the current expense fund of the city or town. [1959 c 289 § 4.]

**63.36.040 Uniform disposition of unclaimed property act not applicable.** See RCW 63.28.360.

#### Chapter 63.40 UNCLAIMED PROPERTY IN HANDS OF SHERIFF

##### Sections

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|-----------|---|
| 63.40.010 | Sale authorized—Exception—Time limitation before sale.        |
| 63.40.020 | Notice of sale, form, contents—Conduct of sale.               |
| 63.40.030 | Disposition of proceeds.                                      |
| 63.40.040 | Reimbursement to owner.                                       |
| 63.40.050 | Uniform disposition of unclaimed property act not applicable. |

**63.40.010 Sale authorized—Exception—Time limitation before sale.** Whenever any personal property, other than vehicles governed by chapter 46.52 RCW, shall come into the possession of the sheriff of any county in connection with the official performance of his duties and said personal property shall remain unclaimed or not taken away for a period of sixty days from date of written notice to the owner thereof, if known, and in all other cases for a period of sixty days from the time said property came into the possession of the sheriff's office, unless said property has been held as evidence in any court, then, in that event, after sixty days from date when said case has been finally disposed of and said property released as evidence by order of the court, said county sheriff may at any time thereafter sell said personal property at public auction to the highest and best bidder for cash in the manner hereinafter provided. [1973 1st ex.s. c 44 § 4; 1961 c 104 § 1.]

**63.40.020 Notice of sale, form, contents—Conduct of sale.** Before said personal property shall be sold, if the name and address of the owner thereof be known, at least ten days' notice of such sale shall be given him either personally or by leaving a written notice at his residence or place of doing business with some person of suitable age and discretion then resident or employed therein; or if the name or residence of the owner be not known, a notice of such sale fixing the time and place thereof which shall be at a suitable place, which will be noted in the advertisement for sale, and containing a description of the property to be sold shall be published at least once in an official newspaper in said county at least ten days prior to the date fixed for said sale. The notice shall be signed by the sheriff or his deputy. If the owner fails to reclaim said property prior to the time fixed for the sale in such notice, the sheriff or his deputy shall conduct said sale and sell the property described

in the notice at public auction to the highest and best bidder for cash, and upon payment of the amount of such bid shall deliver the said property to such bidder. [1961 c 104 § 2.]

**63.40.030 Disposition of proceeds.** The moneys arising from sales under the provisions of this chapter shall be first applied to the payment of the costs and expenses of the sale and then to the payment of lawful charges and expenses for the keeping of said personal property and the balance, if any, shall be paid into the county current expense fund. [1961 c 104 § 3.]

**63.40.040 Reimbursement to owner.** If the owner of said personal property so sold, or his legal representative, shall, at any time within three years after such money shall have been deposited in the county current expense fund, furnish satisfactory evidence to the county treasurer of said county of the ownership of said personal property he or they shall be entitled to receive from said county current expense fund the amount so deposited therein. [1961 c 104 § 4.]

**63.40.050 Uniform disposition of unclaimed property act not applicable.** The provisions of chapter 63.28 RCW shall not apply to personal property in the possession of the office of county sheriff. [1961 c 104 § 5.]

#### Chapter 63.44 JOINT TENANCIES

##### Sections

- 63.44.010 Joint tenancies in property.

*Frauds and swindles—Failure to deliver leased personal property—Requisites for prosecution—Construction: RCW 9.45.062.*

*Safe deposit repository lease agreements ineffective to create joint ownership or transfer property at death: RCW 11.02.090(3).*

**63.44.010 Joint tenancies in property.** See chapter 64.28 RCW.

#### Chapter 63.48 ESCHEAT OF POSTAL SAVINGS SYSTEM ACCOUNTS

##### Sections

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|-----------|---|
| 63.48.010 | Accounts presumed abandoned and to escheat to state.                |
| 63.48.020 | Director to request federal records.                                |
| 63.48.030 | Escheat proceedings brought in Thurston county.                     |
| 63.48.040 | Notice to depositors whose accounts are to be escheated.            |
| 63.48.050 | Copy of judgment presented for payment—Disposition of proceeds.     |
| 63.48.060 | Indemnification for losses as result of escheat proceedings—Source. |

**63.48.010 Accounts presumed abandoned and to escheat to state.** All postal savings system accounts created by the deposits of persons whose last known addresses are in the state which have not been claimed by the persons entitled thereto before May 1, 1971, are presumed to have been abandoned by their owners and are declared to escheat and become the property of this state. [1971 ex.s. c 68 § 1.]

**63.48.020 Director to request federal records.** The director of revenue shall request from the bureau of accounts of the United States treasury department records providing the following information: The names of depositors at the post offices of this state whose accounts are unclaimed, their last addresses as shown by the records of the post office department, and the balance in each account. He shall agree to return to the bureau of accounts promptly all account cards showing last addresses in another state. [1971 ex.s. c 68 § 2.]

**63.48.030 Escheat proceedings brought in Thurston county.** The director of revenue may bring proceedings in the superior court for Thurston county to escheat unclaimed postal savings system accounts held by the United States treasury. A single proceeding may be used to escheat as many accounts as may be available for escheat at one time. [1971 ex.s. c 68 § 3.]

**63.48.040 Notice to depositors whose accounts are to be escheated.** The director of revenue shall notify depositors whose accounts are to be escheated as follows:

(1) A letter advising that a postal savings system account in the name of the addressee is about to be escheated and setting forth the procedure by which a deposit may be claimed shall be mailed by first class mail to the named depositor at the last address shown on the account records for each account to be escheated having an unpaid principal balance of more than twenty-five dollars.

(2) A general notice of intention to escheat postal savings system accounts shall be published once in each of three successive weeks in one or more newspapers which combine to provide general circulation throughout this state.

(3) A special notice of intention to escheat the unclaimed postal savings system accounts originally deposited in each post office must be published once in each of three successive weeks in a newspaper published in the county in which the post office is located or, if there is none, in a newspaper having general circulation in the county. This notice must list the names of the owners of each unclaimed account to be escheated having a principal balance of three dollars or more. [1971 ex.s. c 68 § 4.]

**63.48.050 Copy of judgment presented for payment—Disposition of proceeds.** The director of revenue shall present a copy of each final judgment of escheat to the United States treasury department for payment of the principal due and the interest computed under regulations of the United States treasury department. The payment received shall be deposited in the general fund in the state treasury. [1971 ex.s. c 68 § 5.]

**63.48.060 Indemnification for losses as result of escheat proceedings—Source.** This state shall indemnify the United States for any losses suffered as a result of the escheat of unclaimed postal savings system accounts. The burden of the indemnification falls upon the fund into which the proceeds of the escheated accounts have been paid. [1971 ex.s. c 68 § 6.]



# TITLE 64

## REAL PROPERTY AND CONVEYANCES

### Chapters

- 64.04** Conveyances.
- 64.08** Acknowledgments.
- 64.12** Waste and trespass.
- 64.16** Alien land law.
- 64.20** Alienation of land by Indians.
- 64.24** Powers of appointment.
- 64.28** Joint tenancies.
- 64.32** Horizontal property regimes act (Condominiums).

*Actions, where commenced:* RCW 4.12.010.

*Actions or claims arising from construction, alteration, repair, design, planning, etc., of improvements upon real property:* RCW 4.16-300-4.16.320.

*Adverse possession:* Chapter 7.28 RCW.

*Adverse possession, limitation of actions:* RCW 7.28.050.

*Alien property custodian:* RCW 4.28.330.

*Aliens, ownership of land:* State Constitution Art. 2 § 33 (Amendments 24 and 29).

*Attachment:* Chapter 7.12 RCW.

*Banks and trust companies, joint deposits with right of survivorship:* RCW 30.20.015.

*Boundaries and plats:* Title 58 RCW.

*Cemetery plats, title and right to:* Chapter 68.32 RCW.

*Cemetery property:* Chapter 68.28 RCW.

*Commissioners to convey real estate:* Chapter 6.28 RCW.

*Community property:* Chapter 26.16 RCW.

*Conveyance of real property by public bodies—Recording:* RCW 65.08.095.

*Crimes, property defined:* RCW 9.01.010.

*Crimes, trespass:* Chapter 9.83 RCW.

*Default in rent:* Chapter 59.08 RCW.

*Donation law, conflicting claims:* RCW 7.28.280.

*Ejectment:* Chapter 7.28 RCW.

*Eminent domain:* Title 8 RCW; State Constitution Art. 1 § 16 (Amendment 9).

*Estates of absentees:* Chapter 11.80 RCW.

*Excise tax, real estate sales:* Chapter 28A.45 RCW.

*Execution and redemptions, sales under:* Chapter 6.24 RCW.

*Executions:* Chapter 6.04 RCW.

*Federal areas, acquisition of land by United States:* RCW 37.04.010.

*Federal areas, jurisdiction in special cases:* Chapter 37.08 RCW.

*Federal property, purchase of:* Chapter 39.32 RCW.

*Fences:* Chapter 16.60 RCW.

*Forcible entry:* Chapter 59.12 RCW.

*Forests and forest products:* Title 76 RCW.

*Geological survey, entry on lands:* RCW 43.92.080.

*Homesteads:* Chapter 6.12 RCW.

*Housing authorities law:* Chapter 35.82 RCW.

*Housing cooperation law:* Chapter 35.83 RCW.

*Indians and Indian lands:* Chapter 37.12 RCW.

*Insurance:* Title 48 RCW.

*Intergovernmental disposition of property:* Chapter 39.33 RCW.

*Joinder of causes of action:* RCW 4.36.150.

*Joint tenants, simultaneous death:* RCW 11.05.030.

*Justice courts, proceedings where land title involved:* RCW 12.20.070.

*Landlord and tenant:* Title 59 RCW.

*Larceny, obtaining possession or title to property:* RCW 9.54.010.

*Larceny, sale of mortgaged property:* RCW 9.54.070.

*Law against discrimination:* Chapter 49.60 RCW.

*Legal publications:* Chapter 65.16 RCW.

*Legislative, special legislation prohibited:* State Constitution Art. 2 § 28.

*Liens, improving property with nursery stock:* Chapter 60.20 RCW.

*Liens, landlord's:* Chapter 60.72 RCW.

*Liens, mechanics' and materialmen's:* Chapter 60.04 RCW.

*Liens, orchard lands:* Chapter 60.16 RCW.

*Liens, timber and lumber:* Chapter 60.24 RCW.

*Limitation of actions:* Chapter 4.16 RCW.

*Limitation on liability of landowners for injuries to recreation users:* RCW 4.24.210.

*Lis pendens:* RCW 4.28.160, 4.28.320.

*Malicious mischief, injury to property:* Chapter 9.61 RCW.

*Mortgages and trust receipts:* Title 61 RCW.

*Mutual savings banks, deposits of joint tenants:* RCW 32.12.030.

*Nonadmitted foreign corporations, powers relative to secured interest:* Chapter 23.54 RCW.

*Nuisances:* Chapters 7.48, 9.66 RCW.

*Partition:* Chapter 7.52 RCW.

*Personal exemptions:* Chapter 6.16 RCW.

*Power of attorney, recording of revocation:* RCW 65.08.130.

*Probate law and procedure:* Title 11 RCW.

*Process against unknown heirs:* RCW 4.28.130.

*Property taxes:* Title 84 RCW.

*Public lands:* Title 79 RCW.

*Public lands, trespass:* Chapter 79.40 RCW.

*Quieting title:* Chapter 7.28 RCW.

*Real estate brokers and salesmen:* Chapter 18.85 RCW.

*Real property, false representation concerning title:* RCW 9.38.020.

*Recording:* Chapters 65.04, 65.08 RCW.

*Registration of land titles (Torrens Act):* Chapter 65.12 RCW.

*Rents and profits constitute real property for purposes of mortgages, trust deeds or assignments:* RCW 7.28.230.

*Residential Landlord-Tenant Act:* Chapter 59.18 RCW.

*Retail installment sales of goods and services:* Chapter 63.14 RCW.

*Separate property:* Chapter 26.16 RCW.

*Tenancies:* Chapter 59.04 RCW.

*The Washington Principal and Income Act:* Chapter 11.104 RCW.

*Unlawful entry and detainer:* Chapter 59.16 RCW.

*Validity of agreement to indemnify against liability for negligence relative to construction or improvement of real property:* RCW 4.24.115.

*Water rights:* Title 90 RCW.



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*Lis pendens:* RCW 4.28.160, 4.28.320.

*Malicious mischief, injury to property:* Chapter 9.61 RCW.

*Mortgages and trust receipts:* Title 61 RCW.

*Mutual savings banks, deposits of joint tenants:* RCW 32.12.030.

*Nonadmitted foreign corporations, powers relative to secured interest:* Chapter 23.54 RCW.

*Nuisances:* Chapters 7.48, 9.66 RCW.

*Partition:* Chapter 7.52 RCW.

*Personal exemptions:* Chapter 6.16 RCW.

*Power of attorney, recording of revocation:* RCW 65.08.130.

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*Residential Landlord–Tenant Act:* Chapter 59.18 RCW.

*Retail installment sales of goods and services:* Chapter 63.14 RCW.

*Separate property:* Chapter 26.16 RCW.

*Tenancies:* Chapter 59.04 RCW.

*The Washington Principal and Income Act:* Chapter 11.104 RCW.

*Unlawful entry and detainer:* Chapter 59.16 RCW.

*Validity of agreement to indemnify against liability for negligence relative to construction or improvement of real property:* RCW 4.24.115.

*Water rights:* Title 90 RCW.



**Chapter 64.04  
CONVEYANCES**

## Sections

64.04.010	Conveyances and encumbrances to be by deed.
64.04.020	Requisites of a deed.
64.04.030	Warranty deed—Form and effect.
64.04.040	Bargain and sale deed—Form and effect.
64.04.050	Quitclaim deed—Form and effect.
64.04.055	Deeds for conveyance of apartments under horizontal property regimes act.
64.04.060	Word "heirs" unnecessary.
64.04.070	After acquired title follows deed.
64.04.080	Purchaser of community real property protected by record title.
64.04.090	Private seals abolished.
64.04.100	Private seals abolished—Validation.
64.04.105	Corporate seals—Effect of absence from instrument.
64.04.110	Recording.
64.04.120	Registration of land titles.

**Validating—1929 c 33:** "All instruments in writing purporting to convey or encumber real estate situated in this state, or any interest therein, or other instrument in writing required to be acknowledged, heretofore executed and acknowledged according to the provisions of this act are hereby declared legal and valid." [1929 c 33 § 7; RRS § 10563, part.]

**Validating—1891 p 178:** "In all cases where real estate has been heretofore duly sold by a sheriff in pursuance of law by virtue of an execution or other process, and no deed having been made therefor in the manner required by law to the purchaser therefor [thereof] or other person entitled to the same by the sheriff making the sale, the successor in office of the sheriff making the sale having made a deed of the premises so sold to the purchaser or other person entitled to the same, such deed shall be valid and effectual to convey to the grantee the lands or premises so sold: *Provided*, That this act shall not be construed to affect the equities of third parties in the premises." [1891 p 178 § 1; RRS § 10569.]

**Validating—1890 p 89:** "All deeds, mortgages or other instruments in writing heretofore executed to convey real estate, or any interest therein, and which have no subscribing witness or witnesses thereto, are hereby cured of such defect and made valid, notwithstanding such omission: *Provided*, Nothing in this act shall be construed to affect vested rights or impair contracts made in good faith between parties prior to the passage of this act: *And provided further*, That nothing in this act shall be construed to give validity to, or in any manner affect, the sale or transfer of real estate made by the territory or state of Washington, or any officer, agent or employee thereof prior to the passage of this act." [1890 p 89 § 1; RRS § 10570.]

**Reviser's note:** The two sections below were repealed by 1929 c 33 § 15 but are retained for their historical value.

**Validating—Code 1881:** "All deeds, mortgages, or other instruments in writing, which, prior to the passage of this chapter may have been acknowledged before either of the foregoing named officers, or deputies, or before the clerk of any court, or his deputies, heretofore established by the laws of this territory, are hereby declared legal and valid, in so far as such acknowledgment is concerned." [Code 1881 § 2318; RRS § 10562.]

**Validating—Code 1881:** "That all deeds, mortgages, and other instruments at any time heretofore acknowledged according to the provisions of this chapter are hereby declared legal and valid." [Code 1881 § 2322; RRS § 10568.]

*Recording of deeds and conveyances: Title 65 RCW.*

*Tax on conveyances: Chapter 82.20 RCW.*

*Special acknowledgment where Indian conveys land: RCW 64.20.020.*

**64.04.010 Conveyances and encumbrances to be by deed.** Every conveyance of real estate, or any interest therein, and every contract creating or evidencing any encumbrance upon real estate, shall be by deed: *Provided*, That when real estate, or any interest therein, is held in trust, the terms and conditions of which trust are of record, and the instrument creating such trust

authorizes the issuance of certificates or written evidence of any interest in said real estate under said trust, and authorizes the transfer of such certificates or evidence of interest by assignment by the holder thereof by a simple writing or by endorsement on the back of such certificate or evidence of interest or delivery thereof to the vendee, such transfer shall be valid, and all such assignments or transfers hereby authorized and heretofore made in accordance with the provisions of this section are hereby declared to be legal and valid. [1929 c 33 § 1; RRS § 10550. Prior: 1888 p 50 § 1; 1886 p 177 § 1; Code 1881 § 2311; 1877 p 312 § 1; 1873 p 465 § 1; 1863 p 430 § 1; 1860 p 299 § 1; 1854 p 402 § 1.]

**64.04.020 Requisites of a deed.** Every deed shall be in writing, signed by the party bound thereby, and acknowledged by the party before some person authorized by \*this act to take acknowledgments of deeds. [1929 c 33 § 2; RRS § 10551. Prior: 1915 c 172 § 1; 1888 p 50 § 2; 1886 p 177 § 2; Code 1881 § 2312; 1854 p 402 § 2.]

**\*Reviser's note:** The language "this act" appears in 1929 c 33 which is codified in RCW 64.04.010–64.04.050, 64.08.010–64.08.070, 64.12.020 and 65.08.030.

**64.04.030 Warranty deed—Form and effect.** Warranty deeds for the conveyance of land may be substantially in the following form, without express covenants:

The grantor (here insert the name or names and place or residence) for and in consideration of (here insert consideration) in hand paid, conveys and warrants to (here insert the grantee's name or names) the following described real estate (here insert description), situated in the county of -----, state of Washington. Dated this ----- day of -----, 19---

Every deed in substance in the above form, when otherwise duly executed, shall be deemed and held a conveyance in fee simple to the grantee, his heirs and assigns, with covenants on the part of the grantor: (1) That at the time of the making and delivery of such deed he was lawfully seized of an indefeasible estate in fee simple, in and to the premises therein described, and had good right and full power to convey the same; (2) that the same were then free from all encumbrances; and (3) that he warrants to the grantee, his heirs and assigns, the quiet and peaceable possession of such premises, and will defend the title thereto against all persons who may lawfully claim the same, and such covenants shall be obligatory upon any grantor, his heirs and personal representatives, as fully and with like effect as if written at full length in such deed. [1929 c 33 § 9; RRS § 10552. Prior: 1886 p 177 § 3.]

**64.04.040 Bargain and sale deed—Form and effect.** Bargain and sale deeds for the conveyance of land may be substantially in the following form, without express covenants: The grantor (here insert name or names and place of residence), for and in consideration of (here insert consideration) in hand paid, bargains, sells and conveys to (here insert the grantee's name or names)

the following described real estate (here insert description) situated in the county of \_\_\_\_\_, state of Washington.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_.

Every deed in substance in the above form when otherwise duly executed, shall convey to the grantee, his heirs or assigns an estate of inheritance in fee simple, and shall be adjudged an express covenant to the grantee, his heirs or assigns, to wit: That the grantor was seized of an indefeasible estate in fee simple, free from encumbrances, done or suffered from the grantor, except the rents and services that may be reserved, and also for quiet enjoyment against the grantor, his heirs and assigns, unless limited by express words contained in such deed; and the grantee, his heirs, executors, administrators and assigns may recover in any action for breaches as if such covenants were expressly inserted. [1929 c 33 § 10; RRS § 10553. Prior: 1886 p 178 § 4.]

**64.04.050 Quitclaim deed—Form and effect.** Quitclaim deeds may be in substance in the following form: The grantor (here insert the name or names and place of residence), for and in consideration of (here insert consideration) conveys and quitclaims to (here insert grantee's name or names) all interest in the following described real estate (here insert description), situated in the county of \_\_\_\_\_, state of Washington.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_.

Every deed in substance in the above form, when otherwise duly executed, shall be deemed and held a good and sufficient conveyance, release and quitclaim to the grantee, his heirs and assigns in fee of all the then existing legal and equitable rights of the grantor in the premises therein described, but shall not extend to the after acquired title unless words are added expressing such intention. [1929 c 33 § 11; RRS § 10554. Prior: 1886 p 178 § 5.]

**64.04.055 Deeds for conveyance of apartments under horizontal property regimes act.** All deeds for the conveyance of apartments as provided for in chapter 64.32 RCW shall be substantially in the form required by law for the conveyance of any other land or real property and shall in addition thereto contain the contents described in RCW 64.32.120. [1963 c 156 § 29.]

**64.04.060 Word "heirs" unnecessary.** The term "heirs", or other technical words of inheritance, shall not be necessary to create and convey an estate in fee simple. All conveyances heretofore made omitting the word "heirs", or other technical words of inheritance, but not limiting the estate conveyed, are hereby validated as and are declared to be conveyances of an estate in fee simple. [1931 c 20 § 1; RRS § 10558. Prior: 1888 p 51 § 4.]

**64.04.070 After acquired title follows deed.** Whenever any person or persons having sold and conveyed by deed any lands in this state, and who, at the time of such conveyance, had no title to such land, and any person or persons who may hereafter sell and convey by deed any lands in this state, and who shall not at the

time of such sale and conveyance have the title to such land, shall acquire a title to such lands so sold and conveyed, such title shall inure to the benefit of the purchasers or conveyee or conveyees of such lands to whom such deed was executed and delivered, and to his and their heirs and assigns forever. And the title to such land so sold and conveyed shall pass to and vest in the conveyee or conveyees of such lands and to his or their heirs and assigns, and shall thereafter run with such land. [1871 p 195 § 1; RRS § 10571. Cf. Code 1881 (Supp.) p 25 § 1.]

**64.04.080 Purchaser of community real property protected by record title.** See RCW 26.16.095.

**64.04.090 Private seals abolished.** The use of private seals upon all deeds, mortgages, leases, bonds, and other instruments, and contracts in writing, including deeds from a husband to his wife and from a wife to her husband for their respective community right, title, interest or estate in all or any portion of their community real property, is hereby abolished, and the addition of a private seal to any such instrument or contract in writing hereafter made, shall not affect its validity or legality in any respect. [1923 c 23 § 1; RRS § 10556. Prior: 1888 p 184 § 1; 1888 p 50 § 3; 1886 p 165 § 1; 1871 p 83 §§ 1, 2.]

**64.04.100 Private seals abolished—Validation.** All deeds, mortgages, leases, bonds and other instruments and contracts in writing, including deeds from a husband to his wife and from a wife to her husband for their respective community right, title, interest or estate in all or any portion of their community real property, which have heretofore been executed without the use of a private seal, are, notwithstanding, hereby declared to be legal and valid. [1923 c 23 § 2; RRS § 10557. Prior: 1888 p 184 § 2.]

**64.04.105 Corporate seals—Effect of absence from instrument.** The absence of a corporate seal on any deed, mortgage, lease, bond or other instrument or contract in writing shall not affect its validity, legality or character in any respect. [1957 c 200 § 1.]

**64.04.110 Recording.** See chapter 65.08 RCW.

**64.04.120 Registration of land titles.** See chapter 65.12 RCW.

**Chapter 64.08  
ACKNOWLEDGMENTS**

- Sections
- 64.08.010 Who may take acknowledgments.
- 64.08.020 Acknowledgments out of state—Certificate.
- 64.08.040 Foreign acknowledgments, who may take.
- 64.08.050 Certificate of acknowledgment—Evidence.
- 64.08.060 Form of certificate for individual.
- 64.08.070 Form of certificate for corporation.
- 64.08.090 Authority of superintendents, business managers and officers of correctional institutions to take acknowledgments and administer oaths—Procedure.

**Validating:** See notes following chapter 64.04 RCW digest.

*Acknowledgments, merchant seamen: RCW 73.20.010.*

*Acknowledgments, persons in the armed services: RCW 73.20.010.*

*Acknowledgments, persons outside United States in connection with war: RCW 73.20.010.*

*False acknowledgment: RCW 9.44.030.*

*Special acknowledgment where Indian conveys land: RCW 64.20.020.*

**64.08.010 Who may take acknowledgments.** Acknowledgments of deeds, mortgages and other instruments in writing, required to be acknowledged may be taken in this state before a justice of the supreme court, or the clerk thereof, or the deputy of such clerk, before a judge of the court of appeals, or the clerk thereof, before a judge of the superior court, or qualified court commissioner thereof, or the clerk thereof, or the deputy of such clerk, or a county auditor, or the deputy of such auditor, or a qualified notary public, or a qualified United States commissioner appointed by any district court of the United States for this state, and all said instruments heretofore executed and acknowledged according to the provisions of this section are hereby declared legal and valid. [1971 c 81 § 131; 1931 c 13 § 1; 1929 c 33 § 3; RRS § 10559. Prior: 1913 c 14 § 1; Code 1881 § 2315; 1879 p 110 § 1; 1877 p 317 § 5; 1875 p 107 § 1; 1873 p 466 § 5.]

**64.08.020 Acknowledgments out of state—Certificate.** Acknowledgments of deeds conveying or encumbering real estate situated in this state, or any interest therein, and other instruments in writing, required to be acknowledged, may be taken in any other state or territory of the United States, the District of Columbia, or in any possession of the United States, before any person authorized to take the acknowledgments of deeds by the laws of the state, territory, district or possession wherein the acknowledgment is taken, or before any commissioner appointed by the governor of this state, for that purpose, but unless such acknowledgment is taken before a commissioner so appointed by the governor, or before the clerk of a court of record of such state, territory, district or possession, or before a notary public or other officer having a seal of office, the instrument shall have attached thereto a certificate of the clerk of a court of record of the county, parish, or other political subdivision of such state, territory, district or possession wherein the acknowledgment was taken, under the seal of said court, certifying that the person who took the acknowledgment, and whose name is subscribed to the certificate thereof, was at the date thereof such officer as he represented himself to be, authorized by law to take acknowledgments of deeds, and that the clerk verily believes the signature of the person subscribed to the certificate of acknowledgment to be genuine. [1929 c 33 § 4; RRS §§ 10560, 10561. Prior: Code 1881 §§ 2316, 2317; 1877 p 313 §§ 6, 7; 1873 p 466 §§ 6, 7; 1867 pp 93, 94 §§ 1, 2; 1866 p 89 § 1; 1865 p 25 § 1. Formerly RCW 64.08.020 and 64.08.030.]

**64.08.040 Foreign acknowledgments, who may take.** Acknowledgments of deeds conveying or encumbering real estate situated in this state, or any interest therein

and other instruments in writing, required to be acknowledged, may be taken in any foreign country before any minister, plenipotentiary, secretary of legation, charge d'affaires, consul general, consul, vice consul, consular agent, or commercial agent appointed by the United States government, or before any notary public, or before the judge, clerk, or other proper officer of any court of said country, or before the mayor or other chief magistrate of any city, town or other municipal corporation therein. [1929 c 33 § 5; RRS § 10563, part. Prior: 1901 c 53 § 1; 1888 p 1 § 1; Code 1881 § 2319; 1875 p 108 § 2.]

**64.08.050 Certificate of acknowledgment—Evidence.** The officer, or person, taking an acknowledgment as in \*this act provided, shall certify the same by a certificate written upon or annexed to the instrument acknowledged and signed by him and sealed with his official seal, if any he has, and reciting in substance that the person, or persons, known to him as the person, or persons, whose name, or names, are signed to the instrument as executing the same, acknowledged before him that he or they, executed the same freely and voluntarily, on the date stated in the certificate. Such certificate shall be prima facie evidence of the facts therein recited. [1929 c 33 § 6; RRS §§ 10564, 10565. Prior: Code 1881 §§ 2320, 2321; 1879 p 158 §§ 2, 3.]

\*Reviser's note: "this act", see note following RCW 64.04.020.

**64.08.060 Form of certificate for individual.** A certificate of acknowledgment, substantially in the following form shall be sufficient:

State of ----- }  
County of ----- } ss.

On this day personally appeared before me (here insert the name of grantor or grantors) to me known to be the individual, or individuals described in and who executed the within and foregoing instrument, and acknowledged that he (she or they) signed the same as his (her or their) free and voluntary act and deed, for the uses and purposes therein mentioned. Given under my hand and official seal this ----- day of -----, 19... (Signature of officer and official seal)

If acknowledgment is taken before a notary public of this state the signature shall be followed by substantially the following: Notary Public in and for the state of Washington, residing at -----, (giving place of residence). [1929 c 33 § 13; RRS § 10566. Prior: 1888 p 51 § 2; 1886 p 179 § 7.]

**64.08.070 Form of certificate for corporation.** Certificates of acknowledgment of an instrument acknowledged by a corporation shall be in substantially the following form:

State of ----- }  
County of ----- } ss.

On this ----- day of -----, 19..., before me personally appeared -----, to me known to be the

(president, vice president, secretary, treasurer, or other authorized officer or agent, as the case may be) of the corporation that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument and that the seal affixed is the corporate seal of said corporation.

In Witness Whereof I have hereunto set my hand and affixed my official seal the day and year first above written. (Signature and title of officer with place of residence of notary public.) [1929 c 33 § 14; RRS § 10567. Prior: 1903 c 132 § 1.]

**64.08.090 Authority of superintendents, business managers and officers of correctional institutions to take acknowledgments and administer oaths—Procedure.** The superintendents, associate and assistant superintendents, business managers, records officers and camp superintendents of any correctional institution or facility operated by the state of Washington are hereby authorized and empowered to take acknowledgments on any instruments of writing, and certify the same in the manner required by law, and to administer all oaths required by law to be administered, all of the foregoing acts to have the same effect as if performed by a notary public: *Provided*, That such authority shall only extend to taking acknowledgments for and administering oaths to officers, employees and residents of such institutions and facilities. None of the individuals herein empowered to take acknowledgments and administer oaths shall demand or accept any fee or compensation whatsoever for administering or taking any oath, affirmation, or acknowledgment under the authority conferred by this section.

In certifying any oath or in signing any instrument officially, an individual empowered to do so under this section shall, in addition to his name, state in writing his place of residence, the date of his action, and affix the seal of the institution where he is employed: *Provided*, That in certifying any oath to be used in any of the courts of this state, it shall not be necessary to append an impression of the official seal of the institution. [1972 ex.s. c 58 § 1.]

## Chapter 64.12 WASTE AND TRESPASS

### Sections

- 64.12.010 Waste actionable.
- 64.12.020 Waste by guardian or tenant, action for.
- 64.12.030 Injury to or removing trees, etc.—Damages.
- 64.12.040 Mitigating circumstances—Damages.
- 64.12.045 Cutting, breaking, removing Christmas trees—Compensation.
- 64.12.050 Injunction to prevent waste on public land.
- 64.12.060 Action by occupant of unsurveyed land.

*Actions to be commenced where subject is situated: RCW 4.12.010.*

*Damages for waste after injunction issued: RCW 7.40.200.*

*Injunctions, generally: Chapter 7.40 RCW.*

*Malicious mischief, injury to property: Chapter 9.61 RCW.*

*Property, joinder of causes of actions: RCW 4.36.150.*

*Trespass, animals: Title 16 RCW.*

*Trespass, crimes: Chapters 9.83, 79.40 RCW.*

*Trespass, use of force to prevent: RCW 9.11.040.*

*Trespass, waste, executor or administrator may sue: RCW 11.48.010.*

*Waste, option contracts and coal leases on state lands: RCW 78.24.120.*

*Waste, restraining during redemption period: RCW 6.24.200.*

*Waste, trespass on state lands: Chapter 79.40 RCW.*

**64.12.010 Waste actionable.** Wrongs heretofore remediable by action of waste shall be subjects of actions as other wrongs. [Code 1881 § 600; 1877 p 125 § 605; 1869 p 143 § 554; 1854 p 206 § 403; RRS § 937.]

**64.12.020 Waste by guardian or tenant, action for.** If a guardian, tenant in severalty or in common, for life or for years, or by sufferance, or at will, or a subtenant, of real property commit waste thereon, any person injured thereby may maintain an action at law for damages therefor against such guardian or tenant or subtenant; in which action, if the plaintiff prevails, there shall be judgment for treble damages, or for fifty dollars, whichever is greater, and the court, in addition may decree forfeiture of the estate of the party committing or permitting the waste, and of eviction from the property. The judgment, in any event, shall include as part of the costs of the prevailing party, a reasonable attorney's fee to be fixed by the court. But judgment of forfeiture and eviction shall only be given in favor of the person entitled to the reversion against the tenant in possession, when the injury to the estate in reversion is determined in the action to be equal to the value of the tenant's estate or unexpired term, or to have been done or suffered in malice. [1943 c 22 § 1; Code 1881 § 601; 1877 p 125 § 606; 1869 p 143 § 555; 1854 p 206 § 403; Rem. Supp. 1943 § 938.]

**64.12.030 Injury to or removing trees, etc.—Damages.** Whenever any person shall cut down, girdle or otherwise injure, or carry off any tree, timber or shrub on the land of another person, or on the street or highway in front of any person's house, village, town or city lot, or cultivated grounds, or on the commons or public grounds of any village, town or city, or on the street or highway in front thereof, without lawful authority, in an action by such person, village, town or city against the person committing such trespasses or any of them, if judgment be given for the plaintiff, it shall be given for treble the amount of damages claimed or assessed therefor, as the case may be. [Code 1881 § 602; 1877 p 125 § 607; 1869 p 143 § 556; RRS § 939.]

*Trespass, public lands: Chapter 79.40 RCW.*

**64.12.040 Mitigating circumstances—Damages.** If upon trial of such action it shall appear that the trespass was casual or involuntary, or that the defendant had probable cause to believe that the land on which such trespass was committed was his own, or that of the person in whose service or by whose direction the act was done, or that such tree or timber was taken from uninclosed woodlands, for the purpose of repairing any public highway or bridge upon the land or adjoining it, judgment shall only be given for single damages. [Code

1881 § 603; 1877 p 125 § 608; 1869 p 143 § 557; RRS § 940.]

**64.12.045 Cutting, breaking, removing Christmas trees—Compensation.** See RCW 79.40.070.

**64.12.050 Injunction to prevent waste on public land.** When any two or more persons are opposing claimants under the laws of the United States to any land in this state, and one is threatening to commit upon such land waste which tends materially to lessen the value of the inheritance and which cannot be compensated by damages and there is imminent danger that unless restrained such waste will be committed, the party, on filing his complaint and satisfying the court or judge of the existence of the facts, may have an injunction to restrain the adverse party. In all cases he shall give notice and bond as is provided in other cases where injunction is granted, and the injunction when granted shall be set aside or modified as is provided generally for injunction and restraining orders. [Code 1881 § 604; 1877 p 125 § 609; 1869 p 144 § 558; 1854 p 206 § 404; RRS § 941.]

*Injunction, generally: Chapter 7.40 RCW.*

**64.12.060 Action by occupant of unsurveyed land.** Any person now occupying and settled upon, or who may hereafter occupy or settle upon any of the unsurveyed public lands not to exceed one hundred sixty acres in this territory, for the purpose of holding and cultivating the same, may commence and maintain any action, in any court of competent jurisdiction, for interference with or injuries done to his or her possessions of said lands, against any person or persons so interfering with or injuring such lands or possessions: *Provided, always,* That if any of the aforesaid class of settlers are absent from their claims continuously, for a period of six months in any one year, the said person or persons shall be deemed to have forfeited all rights under this act. [1883 p 70 § 1; RRS § 942.]

**Reviser's note:** The preamble and sections 2 and 3 of the 1883 act, section 1 of which is codified hereinabove as RCW 64.12.060, read as follows:

**Preamble:** "WHEREAS, A great many citizens of the United States are now settling upon and cultivating the unsurveyed government lands in this territory; and, as many years may elapse before the government surveys will be extended over the said lands, so that the settlers upon the same, can take them under the laws of the United States, and defend them against the trespass of others, therefore:"

"**Sec. 2.** Any person or persons, who shall wilfully and maliciously disturb, or in any wise injure, or destroy the dwelling house or other building, or any fence inclosing, or being on the claim of any of the aforesaid class of settlers, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined not less than fifty nor more than one hundred (\$100) dollars, for each and every offense, to which may be added imprisonment in the county jail, not exceeding ninety (90) days." [1883 p 71 § 2.]  
Compare section 2 with RCW 9.61.080.

"**Sec. 3.** Any person or persons, who shall wilfully or maliciously set fire to any dwelling, or other building, of any of the aforesaid class of settlers, shall be deemed guilty of arson, and subject to the penalties of the law in such cases, made and provided." [1883 p 71 § 3.]  
Compare section 3 with chapter 9.09 RCW.

## Chapter 64.16 ALIEN LAND LAW

### Sections

- 64.16.005 Aliens' rights and interests in lands same as native citizens'.  
64.16.140 Certain titles confirmed.

**64.16.005 Aliens' rights and interests in lands same as native citizens'.** Any alien may acquire and hold lands, or any right thereto, or interest therein, by purchase, devise or descent; and he may convey, mortgage and devise the same, and if he shall die intestate, the same shall descend to his heirs, and in all cases such lands shall be held, conveyed, mortgaged or devised, or shall descend in like manner and with like effect as if such alien were a native citizen of this state or of the United States. [1967 c 163 § 2.]

**1967 c 163 adopted to implement Amendment 42:** "This act is adopted by the legislature to implement amendment 42 to the state Constitution approved by the voters of the state on November 8, 1966. Amendment 42 removed constitutional restrictions against alien ownership of land by repealing Article II, section 33 of the state Constitution, as amended and Amendments 24 and 29." [1967 c 163 § 1.]

**Severability—1967 c 163:** "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1967 c 163 § 9.] The foregoing annotations apply to RCW 64.16.005, 64.16.140, the repeal of RCW 64.16.010 through 64.16.130 and 64.16.150, RCW 79.01.088, 79.01.572, 79.14.010 and the repeal of RCW 79.01.614.

**64.16.140 Certain titles confirmed.** All lands and all estates or interests in lands, within the state of Washington, which were conveyed or attempted to be conveyed to, or acquired or attempted to be acquired by, any alien or aliens, prior to the date of the adoption of this act, are hereby confirmed to the respective persons at present owning or claiming to own the title thereto derived by, through or under any such alien ownership or attempted ownership, to the extent that title was vested in or conveyed by said alien or aliens: *Provided,* That nothing in this section shall be construed to affect, adversely or otherwise, any title to any such lands, or to any interest or estate therein, held or claimed by any private person or corporation adversely to the title hereby confirmed. [1967 c 163 § 3; 1895 c 111 § 1; RRS § 10589.]

**Reviser's note:** 1967 c 163 carried an emergency clause and was approved by the governor on March 21, 1967.

## Chapter 64.20 ALIENATION OF LAND BY INDIANS

### Sections

- 64.20.010 Puyallup Indians—Right of alienation.  
64.20.020 Puyallup Indians—Right of alienation—Manner of conveyance.  
64.20.025 Puyallup Indians—Right of alienation—When effective.  
64.20.030 Sale of land or materials authorized.

*Indian graves and records: Chapter 27.44 RCW.*

*Indians and Indian lands, jurisdiction: Chapter 37.12 RCW.*

**64.20.010 Puyallup Indians—Right of alienation.**

The said Indians who now hold, or who may hereafter hold, any of the lands of any reservation, in severalty, located in this state by virtue of treaties made between them and the United States, shall have power to lease, incumber, grant and alien the same in like manner and with like effect as any other person may do under the laws of the United States and of this state, and all restrictions in reference thereto are hereby removed. [1890 p 500 § 1; RRS § 10593.]

**Preamble:** "WHEREAS, It was and is provided by and in the treaty made with and between the chiefs, head men and delegates of the Indian tribes (including the Puyallup tribe) and the United States of America, which treaty is dated on the 26th day of December, 1854, among other things as follows: 'That the president, at his discretion, should cause the whole or any portion of the lands thereby reserved, or such land as might be selected in lieu thereof, to be surveyed into lots and assign the same to such individuals or families as are willing to avail themselves of the privilege and will locate on the same as a permanent home, on the same terms, and subject to the same regulations as are provided in the sixth article of the treaty with the Omahas, so far as the same may be applicable; and

'WHEREAS, It was and is provided by and in the sixth article of the treaty with the Omahas aforesaid, among other things, that said tracts of land shall not be aliened or leased for a longer term than two years, and shall be exempt from levy, sale or forfeiture, which conditions shall continue in force until a state constitution embracing such lands within its boundaries shall have been formed, and the legislature of the state shall remove the restrictions, but providing that no state legislature shall remove the restrictions \* \* \* without the consent of the Congress;'

and

'WHEREAS, The President of the United States, on the 30th day of January, 1866, made and issued patents to the Puyallup Indians, in severalty, for the lands of said reservation, which are now of record in the proper office in Pierce county, in the State of Washington; and

'WHEREAS, All the conditions now exist which said treaties contain, and which make it desirable and proper to remove the restrictions in respect to the alienation and disposition of said lands by the Indians, who now hold them in severalty: now, therefore,"

**64.20.020 Puyallup Indians—Right of alienation—Manner of conveyance.** All deeds, conveyances, encumbrances or transfers of any nature and kind executed by any Indian, or in any manner disposing of any land, or interest therein shall be by deed executed in the same manner as prescribed for the execution of deeds conveying real estate, or any interest therein, except that the same shall in all cases be acknowledged before a judge of a court of record. In taking said acknowledgment, the said judge shall explain to the grantor the contents of said deed or instrument, and the effect of the signing or execution thereof, and so certify the same in the acknowledgment, and before the same shall be admitted to record shall duly examine and approve the said deed or other instrument. [1890 p 500 § 2; RRS § 10594.]

**64.20.025 Puyallup Indians—Right of alienation—When effective.** \*This act shall take effect and be in force from and after the consent to such removal of the restrictions shall have been given by the congress of the United States. [1890 p 501 § 3; no RRS.]

**\*Reviser's note:** (1) The language "This act" appears in 1890 p 501 § 3 which act is codified herein as RCW 64.20.010 through 64.20.025.

(2) An act of congress of March 3, 1893, removed the restriction on transfer (Wilson Act, 27 Stat. p 633) but postponed the right to transfer for ten years, that is, until March 3, 1903.

**64.20.030 Sale of land or materials authorized.** Any Indian who owns within this state any land or real estate allotted to him by the government of the United States may with the consent of congress, either special or general, sell and convey by deed made, executed and acknowledged before any officer authorized to take acknowledgments to deeds within this state, any stone, mineral, petroleum or timber contained on said land or the fee thereof and such conveyance shall have the same effect as a deed of any other person or persons within this state; it being the intention of this section to remove from Indians residing in this state all existing disabilities relating to alienation of their real estate. [1899 c 96 § 1; RRS § 10595.]

## Chapter 64.24 POWERS OF APPOINTMENT

### Sections

64.24.010	Releases.
64.24.020	Releases—Partial releases.
64.24.030	Releases—Form and substance—Delivery.
64.24.040	Releases—Effect on prior releases.
64.24.050	Releases—Filing with secretary of state—Fee.

*Duration of trusts for employee benefits: Chapter 49.64 RCW.*

**64.24.010 Releases.** Any power, which is exercisable by deed, by will, by deed or will, or otherwise, whether general or special, other than a power in trust which is imperative, is releasable, either with or without consideration, by written instrument signed by the holder thereof and delivered as hereinafter provided, unless the instrument creating the power provides otherwise. [1955 c 160 § 1.]

**64.24.020 Releases—Partial releases.** A power which is releasable may be released with respect to the whole or any part of the property subject to such power and may also be released in such manner as to reduce or limit the persons or objects, or classes or [of] persons or objects, in whose favor such powers would otherwise be exercisable. No release of a power shall be deemed to make imperative a power which was not imperative prior to such release, unless the instrument of release expressly so provides. [1955 c 160 § 2.]

**64.24.030 Releases—Form and substance—Delivery.** In order to be effective as a release of a power, the instrument of release must, as to form and substance, comply with the requirements therefor, if any, set forth in the instrument creating the power, and must be delivered to the person or persons designated in any one or more of the following:

(1) Each person specified for such purpose in the instrument creating the power; and

(2) Any trustee or cotrustee of the property to which the power relates; and

(3) The office of the secretary of state, and such delivery shall from the time thereof constitute notice of such release to all persons other than those specified in subdivisions (1) and (2) above. [1955 c 160 § 3.]

**64.24.040 Releases—Effect on prior releases.** The enactment of RCW 64.24.010 through 64.24.050 shall not be construed to impair the validity of any release heretofore made which was otherwise valid when executed. [1955 c 160 § 4.]

**64.24.050 Releases—Filing with secretary of state—Fee.** It shall be the duty of the secretary of state to mark each instrument of release filed in his office with a consecutive file number and with the date and hour of filing, and to note and index the filing in a suitable alphabetical index according to the name or names of the person or persons signing the same and containing a notation of the address or addresses of the signer or signers, if given in the instrument. The fee for filing is one dollar. The secretary of state shall deliver or mail to the person filing the instrument a receipt showing the filing number and date and hour of filing. [1955 c 160 § 5.]

### Chapter 64.28 JOINT TENANCIES

#### Sections

- 64.28.010 Joint tenancies with right of survivorship authorized—Methods of creation—Creditors rights saved.  
64.28.020 Interest in favor of two or more is interest in common—Exceptions for joint tenancies, partnerships, community property, trustees, etc.  
64.28.030 Bank deposits, choses in action, community property agreements not affected.

*Safe deposit repository lease agreements ineffective to create joint ownership or transfer property at death: RCW 11.02.090(3).*

**64.28.010 Joint tenancies with right of survivorship authorized—Methods of creation—Creditors rights saved.** Whereas joint tenancy with right of survivorship permits property to pass to the survivor without the cost or delay of probate proceedings, there shall be a form of co-ownership of property, real and personal, known as joint tenancy. A joint tenancy shall have the incidents of survivorship and severability as at common law. Joint tenancy shall be created only by written instrument, which instrument shall expressly declare the interest created to be a joint tenancy. It may be created by a single agreement, transfer, deed, will, or other instrument of conveyance, or by agreement, transfer, deed or other instrument from a sole owner to himself and others, or from tenants in common or joint tenants to themselves or some of them, or to themselves or any of them and others, or from husband and wife, when holding title as community property, or otherwise, to themselves or to themselves and others, or to one of them and to another or others, or when granted or devised to executors or trustees as joint tenants: *Provided*, That such transfer shall not derogate from the rights of creditors. [1963 ex.s. c 16 § 1; 1961 c 2 § 1.]

**64.28.020 Interest in favor of two or more is interest in common—Exceptions for joint tenancies, partnerships, community property, trustees, etc.** Every interest created in favor of two or more persons in their own right is an interest in common, unless acquired by them

in partnership, for partnership purposes, or unless declared in its creation to be a joint tenancy, as provided in RCW 64.28.010, or unless acquired as community property or unless acquired by executors or trustees. [1961 c 2 § 2.]

**64.28.030 Bank deposits, choses in action, community property agreements not affected.** The provisions of this chapter shall not restrict the creation of a joint tenancy in a bank deposit or in other choses in action as heretofore or hereafter provided by law, nor restrict the power of husband and wife to make agreements as provided in RCW 26.16.120. [1961 c 2 § 3.]

### Chapter 64.32 HORIZONTAL PROPERTY REGIMES ACT (CONDOMINIUMS)

#### Sections

- 64.32.010 Definitions.  
64.32.020 Application of chapter.  
64.32.030 Apartments and common areas declared real property.  
64.32.040 Ownership and possession of apartments and common areas.  
64.32.050 Common areas and facilities.  
64.32.060 Compliance with covenants, bylaws and administrative rules and regulations.  
64.32.070 Liens or encumbrances—Enforcement—Satisfaction.  
64.32.080 Common profits and expenses.  
64.32.090 Contents of declaration.  
64.32.100 Copy of survey map, building plans to be filed—Contents of plans.  
64.32.110 Ordinances, resolutions, or zoning laws—Construction.  
64.32.120 Contents of deeds or other conveyances of apartments.  
64.32.130 Mortgages, liens or encumbrances affecting an apartment at time of first conveyance.  
64.32.140 Recording.  
64.32.150 Removal of property from provisions of chapter.  
64.32.160 Removal of property from provisions of chapter—No bar to subsequent resubmission.  
64.32.170 Records and books—Availability for examination—Audits.  
64.32.180 Exemption from liability for contribution for common expenses prohibited.  
64.32.190 Separate assessments and taxation.  
64.32.200 Assessments for common expenses—Enforcement of collection—Liens and foreclosures—Liability of mortgagee or purchaser.  
64.32.210 Conveyance—Liability of grantor and grantee for unpaid common expenses.  
64.32.220 Insurance.  
64.32.230 Destruction or damage to all or part of property—Disposition.  
64.32.240 Actions.  
64.32.250 Application of chapter, declaration and bylaws.  
64.32.900 Short title.  
64.32.910 Construction of term "this chapter".  
64.32.920 Severability—1963 c 156.

*Mutual savings banks, powers as to condominiums: RCW 32.04.025.*

**64.32.010 Definitions.** As used in this chapter unless the context otherwise requires:

(1) "Apartment" means a part of the property intended for any type of independent use, including one or more rooms or enclosed spaces located on one or more floors (or part or parts thereof) in a building, regardless of whether it is destined for a residence, an office, the operation of any industry or business, or for



any other use not prohibited by law, and which has a direct exit to a public street or highway, or to a common area leading to such street or highway. The boundaries of an apartment are the interior surfaces of the perimeter walls, floors, ceilings, windows and doors thereof, and the apartment includes both the portions of the building so described and the air space so encompassed. In interpreting declarations, deeds, and plans, the existing physical boundaries of the apartment as originally constructed or as reconstructed in substantial accordance with the original plans thereof shall be conclusively presumed to be its boundaries rather than the metes and bounds expressed or depicted in the declaration, deed or plan, regardless of settling or lateral movement of the building and regardless of minor variance between boundaries shown in the declaration, deed, or plan and those of apartments in the building.

(2) "Apartment owner" means the person or persons owning an apartment, as herein defined, in fee simple absolute or qualified, by way of leasehold or by way of a periodic estate, or in any other manner in which real property may be owned, leased or possessed in this state, together with an undivided interest in a like estate of the common areas and facilities in the percentage specified and established in the declaration as duly recorded or as it may be lawfully amended.

(3) "Apartment number" means the number, letter, or combination thereof, designating the apartment in the declaration as duly recorded or as it may be lawfully amended.

(4) "Association of apartment owners" means all of the apartment owners acting as a group in accordance with the bylaws and with the declaration as it is duly recorded or as they may be lawfully amended.

(5) "Building" means a building, containing two or more apartments, or two or more buildings each containing one or more apartments, and comprising a part of the property.

(6) "Common areas and facilities", unless otherwise provided in the declaration as duly recorded or as it may be lawfully amended, includes: (a) The land on which the building is located;

(b) The foundations, columns, girders, beams, supports, main walls, roofs, halls, corridors, lobbys, stairs, stairways, fire escapes, and entrances and exits of the building;

(c) The basements, yards, gardens, parking areas and storage spaces;

(d) The premises for the lodging of janitors or persons in charge of the property;

(e) The installations of central services such as power, light, gas, hot and cold water, heating, refrigeration, air conditioning and incinerating;

(f) The elevators, tanks, pumps, motors, fans, compressors, ducts and in general all apparatus and installations existing for common use;

(g) Such community and commercial facilities as may be provided for in the declaration as duly recorded or as it may be lawfully amended;

(h) All other parts of the property necessary or convenient to its existence, maintenance and safety, or normally in common use.

(7) "Common expenses" include: (a) All sums lawfully assessed against the apartment owners by the association of apartment owners;

(b) Expenses of administration, maintenance, repair, or replacement of the common areas and facilities;

(c) Expenses agreed upon as common expenses by the association of apartment owners;

(d) Expenses declared common expenses by the provisions of this chapter, or by the declaration as it is duly recorded, or by the bylaws, or as they may be lawfully amended.

(8) "Common profits" means the balance of all income, rents, profits and revenues from the common areas and facilities remaining after the deduction of the common expenses.

(9) "Declaration" means the instrument by which the property is submitted to provisions of this chapter, as hereinafter provided, and as it may be, from time to time, lawfully amended.

(10) "Land" means the material of the earth, whatever may be the ingredients of which it is composed, whether soil, rock, or other substance, and includes free or occupied space for an indefinite distance upwards as well as downwards, subject to limitations upon the use of airspace imposed, and rights in the use of the airspace granted, by the laws of this state or of the United States.

(11) "Limited common areas and facilities" includes those common areas and facilities designated in the declaration, as it is duly recorded or as it may be lawfully amended, as reserved for use of certain apartment or apartments to the exclusion of the other apartments.

(12) "Majority" or "majority of apartment owners" means the apartment owners with fifty-one percent or more of the votes in accordance with the percentages assigned in the declaration, as duly recorded or as it may be lawfully amended, to the apartments for voting purposes.

(13) "Person" includes any individual, corporation, partnership, association, trustee, or other legal entity.

(14) "Property" means the land, the building, all improvements and structures thereon, all owned in fee simple absolute or qualified, by way of leasehold or by way of a periodic estate, or in any other manner in which real property may be owned, leased or possessed in this state, and all easements, rights and appurtenances belonging thereto, none of which shall be considered as a security or security interest, and all articles of personalty intended for use in connection therewith, which have been or are intended to be submitted to the provisions of this chapter. [1965 ex.s. c 11 § 1; 1963 c 156 § 1.]

**64.32.020 Application of chapter.** This chapter shall be applicable only to property, the sole owner or all of the owners, lessees or possessors of which submit the same to the provisions hereof by duly executing and recording a declaration as hereinafter provided. [1963 c 156 § 2.]

**64.32.030 Apartments and common areas declared real property.** Each apartment, together with its undivided interest in the common areas and facilities shall not be considered as an intangible or a security or any interest therein but shall for all purposes constitute and be classified as real property. [1963 c 156 § 3.]

**64.32.040 Ownership and possession of apartments and common areas.** Each apartment owner shall be entitled to the exclusive ownership and possession of his apartment but any apartment may be jointly or commonly owned by more than one person. Each apartment owner shall have the common right to a share, with other apartment owners, in the common areas and facilities. [1963 c 156 § 4.]

**64.32.050 Common areas and facilities.** (1) Each apartment owner shall be entitled to an undivided interest in the common areas and facilities in the percentage expressed in the declaration. Such percentage shall be computed by taking as a basis the value of the apartment in relation to the value of the property.

(2) The percentage of the undivided interest of each apartment owner in the common areas and facilities as expressed in the declaration shall not be altered except in accordance with procedures set forth in the bylaws and by amending the declaration. The percentage of the undivided interest in the common areas and facilities shall not be separated from the apartment to which it appertains even though such interest is not expressly mentioned or described in the conveyance or other instrument. Nothing in this section or this chapter shall be construed to detract from or limit the powers and duties of any assessing or taxing unit or official which is otherwise granted or imposed by law, rule, or regulation.

(3) The common areas and facilities shall remain undivided and no apartment owner or any other person shall bring any action for partition or division of any part thereof, unless the property has been removed from the provisions of this chapter as provided in RCW 64.32.150 and 64.32.230. Any covenant to the contrary shall be void. Nothing in this chapter shall be construed as a limitation on the right of partition by joint owners or owners in common of one or more apartments as to the ownership of such apartment or apartments.

(4) Each apartment owner shall have a nonexclusive easement for, and may use the common areas and facilities in accordance with the purpose for which they were intended without hindering or encroaching upon the lawful right of the other apartment owners.

(5) The necessary work of maintenance, repair and replacement of the common areas and facilities and the making of any addition or improvement thereto shall be carried out only as provided in this chapter and in the bylaws.

(6) The association of apartment owners shall have the irrevocable right, to be exercised by the manager or board of directors, to have access to each apartment from time to time during reasonable hours as may be necessary for the maintenance, repair, or replacement

of any of the common areas and facilities therein or accessible therefrom, or for making emergency repairs therein necessary to prevent damage to the common areas and facilities or to another apartment or apartments. [1965 ex.s. c 11 § 2; 1963 c 156 § 5.]

**64.32.060 Compliance with covenants, bylaws and administrative rules and regulations.** Each apartment owner shall comply strictly with the bylaws and with the administrative rules and regulations adopted pursuant thereto, as either may be lawfully amended from time to time, and with the covenants, conditions and restrictions set forth in the declaration or in the deed to his apartment. Failure to comply with any of the foregoing shall be ground for an action to recover sums due, for damages or injunctive relief, or both, maintainable by the manager or board of directors on behalf of the association of apartment owners or by a particularly aggrieved apartment owner. [1963 c 156 § 6.]

**64.32.070 Liens or encumbrances—Enforcement—Satisfaction.** (1) Subsequent to recording the declaration as provided in this chapter, and while the property remains subject to this chapter, no lien shall thereafter arise or be effective against the property. During such period, liens or encumbrances shall arise or be created only against each apartment and the percentage of undivided interest in the common areas and facilities and appurtenant to such apartment in the same manner and under the same conditions in every respect as liens or encumbrances may arise or be created upon or against any other separate parcel of real property subject to individual ownership: *Provided*, That no labor performed or materials furnished with the consent of or at the request of the owner of any apartment, or such owner's agent, contractor, or subcontractor, shall be the basis for the filing of a lien against any other apartment or any other property of any other apartment owner not expressly consenting to or requesting the same, except that such express consent shall be deemed to be given by any apartment owner in the case of emergency repairs. Labor performed or materials furnished for the common areas and facilities, if authorized by the association of apartment owners, the manager or board of directors shall be deemed to be performed or furnished with the express consent of each apartment owner and shall be the basis for the filing of a lien against each of the apartments and shall be subject to the provisions of subsection (2) of this section.

(2) In the event a lien against two or more apartments becomes effective, the apartment owners of the separate apartments may remove their apartment and the percentage of undivided interest in the common areas and facilities appurtenant to such apartment from the lien by payment of the fractional or proportional amounts attributable to each of the apartments affected. Such individual payments shall be computed by reference to the percentages appearing on the declaration. Subsequent to any such payment, discharge, or satisfaction, the apartment and the percentage of undivided interest in the common areas and facilities appurtenant thereto shall thereafter be free and clear of the liens so

paid, satisfied, or discharged. Such partial payment, satisfaction, or discharge shall not prevent the lienor from proceeding to enforce his rights against any apartment and the percentage of undivided interest in the common areas and facilities appurtenant thereto not so paid, satisfied, or discharged. [1963 c 156 § 7.]

**64.32.080 Common profits and expenses.** The common profits of the property shall be distributed among, and the common expenses shall be charged to, the apartment owners according to the percentage of the undivided interest in the common areas and facilities. [1963 c 156 § 8.]

**64.32.090 Contents of declaration.** The declaration shall contain the following:

(1) A description of the land on which the building and improvement are or are to be located;

(2) A description of the building, stating the number of stories and basements, the number of apartments and the principal materials of which it is or is to be constructed;

(3) The apartment number of each apartment, and a statement of its location, approximate area, number of rooms, and immediate common area to which it has access, and any other data necessary for its proper identification;

(4) A description of the common areas and facilities;

(5) A description of the limited common areas and facilities, if any, stating to which apartments their use is reserved;

(6) The value of the property and of each apartment, and the percentage of undivided interest in the common areas and facilities appertaining to each apartment and its owner for all purposes, including voting;

(7) A statement of the purposes for which the building and each of the apartments are intended and restricted as to use;

(8) The name of a person to receive service of process in the cases provided for in this chapter, together with a residence or place of business of such person which shall be within the county in which the building is located;

(9) A provision as to the percentage of votes by the apartment owners which shall be determinative of whether to rebuild, repair, restore, or sell the property in event of damage or destruction of all or part of the property;

(10) A provision authorizing and establishing procedures for the subdividing and/or combining of any apartment or apartments, common areas and facilities or limited common areas and facilities, which procedures may provide for the accomplishment thereof through means of a metes and bounds description;

(11) A provision requiring the adoption of bylaws for the administration of the property or for other purposes not inconsistent with this chapter, which may include whether administration of the property shall be by a board of directors elected from among the apartment owners, by a manager, or managing agent, or otherwise, and the procedures for the adoption thereof and amendments thereto;

(12) Any further details in connection with the property which the person executing the declaration may deem desirable to set forth consistent with this chapter; and

(13) The method by which the declaration may be amended, consistent with this chapter: *Provided*, That not less than sixty percent of the apartment owners shall consent to any amendment except that any amendment altering the value of the property and of each apartment and the percentage of undivided interest in the common areas and facilities shall require the unanimous consent of the apartment owners. [1963 c 156 § 9.]

**64.32.100 Copy of survey map, building plans to be filed—Contents of plans.** Simultaneously with the recording of the declaration there shall be filed in the office of the county auditor of the county in which the property is located a survey map of the surface of the land submitted to the provisions of this chapter showing the location or proposed location of the building or buildings thereon.

There also shall be filed simultaneously, a set of plans of the building or buildings showing as to each apartment:

(a) the vertical and horizontal boundaries, as defined in RCW 64.32.010(1), in sufficient detail to identify and locate such boundaries relative to the survey map of the surface of the land by the use of standard survey methods; and

(b) the number of the apartment and its dimensions.

The set of plans shall bear the verified statement of a registered architect, registered professional engineer, or registered land surveyor certifying that the plans accurately depict the location and dimensions of the apartments as built.

If such plans do not include such verified statement there shall be recorded prior to the first conveyance of any apartment an amendment to the declaration to which shall be attached a verified statement of a registered architect, registered professional engineer, or registered land surveyor, certifying that the plans theretofore filed or being filed simultaneously with such amendment, fully and accurately depict the apartment numbers, dimensions, and locations of the apartments as built.

Such plans shall each contain a reference to the date of recording of the declaration and the volume, page and county auditor's receiving number of the recorded declaration. Correspondingly, the record of the declaration or amendment thereof shall contain a reference to the file number of the plans of the building affected thereby.

All plans filed shall be in such style, size, form and quality as shall be prescribed by the county auditor of the county where filed, and a copy shall be delivered to the county assessor. [1965 ex.s. c 11 § 3; 1963 c 156 § 10.]

**64.32.110 Ordinances, resolutions, or zoning laws—Construction.** Local ordinances, resolutions, or laws relating to zoning shall be construed to treat like

structures, lots, or parcels in like manner regardless of whether the ownership thereof is divided by sale of apartments under this chapter rather than by lease of apartments. [1963 c 156 § 11.]

**64.32.120 Contents of deeds or other conveyances of apartments.** Deeds or other conveyances of apartments shall include the following:

(1) A description of the land as provided in RCW 64.32.090, or the post office address of the property, including in either case the date of recording of the declaration and the volume, page and county auditor's receiving number of the recorded declaration;

(2) The apartment number of the apartment in the declaration and any other data necessary for its proper identification;

(3) A statement of the use for which the apartment is intended;

(4) The percentage of undivided interest appertaining to the apartment, the common areas and facilities and limited common areas and facilities appertaining thereto, if any;

(5) Any further details which the grantor and grantee may deem desirable to set forth consistent with the declaration and with this chapter. [1965 ex.s. c 11 § 4; 1963 c 156 § 12.]

**64.32.130 Mortgages, liens or encumbrances affecting an apartment at time of first conveyance.** At the time of the first conveyance of each apartment, every mortgage, lien, or other encumbrance affecting such apartment, including the percentage of undivided interest of the apartment in the common areas and facilities, shall be paid and satisfied of record, or the apartment being conveyed and its percentage of undivided interest in the common areas and facilities shall be released therefrom by partial release duly recorded. [1963 c 156 § 13.]

**64.32.140 Recording.** The declaration, any amendment thereto, any instrument by which the property may be removed from this chapter and every instrument affecting the property or any apartment shall be entitled to be recorded in the office of the auditor of the county in which the property is located. Neither the declaration nor any amendment thereof shall be valid unless duly recorded [1963 c 156 § 14.]

**64.32.150 Removal of property from provisions of chapter.** (1) All of the apartment owners may remove a property from the provisions of this chapter by an instrument to that effect duly recorded: *Provided*, That the mortgagees and holders of all liens affecting any of the apartments consent thereto or agree, in either case by instrument duly recorded, that their mortgages and liens be transferred to the percentage of the undivided interest of the apartment owner in the property as hereinafter provided;

(2) Upon removal of the property from the provisions of this chapter, the property shall be deemed to be owned in common by the apartment owners. The undivided interest in the property owned in common which shall appertain to each apartment owner shall be the

percentage of the undivided interest previously owned by such owners in the common areas and facilities. [1963 c 156 § 15.]

**64.32.160 Removal of property from provisions of chapter—No bar to subsequent resubmission.** The removal provided for in RCW 64.32.150 shall in no way bar the subsequent resubmission of the property to the provisions of this chapter. [1963 c 156 § 16.]

**64.32.170 Records and books—Availability for examination—Audits.** The manager or board of directors, as the case may be, shall keep complete and accurate books and records of the receipts and expenditures affecting the common areas and facilities, specifying and itemizing the maintenance and repair expenses of the common areas and facilities and any other expenses incurred. Such books and records and the vouchers authorizing payments shall be available for examination by the apartment owners, their agents or attorneys, at any reasonable time or times. All books and records shall be kept in accordance with good accounting procedures and be audited at least once a year by an auditor outside of the organization. [1965 ex.s. c 11 § 5; 1963 c 156 § 17.]

**64.32.180 Exemption from liability for contribution for common expenses prohibited.** No apartment owner may exempt himself from liability for his contribution towards the common expenses by waiver of the use or enjoyment of any of the common areas and facilities or by abandonment of his apartment. [1963 c 156 § 18.]

**64.32.190 Separate assessments and taxation.** Each apartment and its undivided interest in the common areas and facilities shall be deemed to be a parcel and shall be subject to separate assessments and taxation by each assessing unit for all types of taxes authorized by law including but not limited to special ad valorem levies and special assessments. Neither the building, nor the property, nor any of the common areas and facilities shall be deemed to be a security or a parcel for any purpose. [1963 c 156 § 19.]

**64.32.200 Assessments for common expenses—Enforcement of collection—Liens and foreclosures—Liability of mortgagee or purchaser.** (1) The declaration may provide for the collection of all sums assessed by the association of apartment owners for the share of the common expenses chargeable to any apartment and the collection may be enforced in any manner provided in the declaration including but not limited to (a) ten days notice shall be given the delinquent apartment owner to the effect that unless such assessment is paid within ten days any or all utility services will be forthwith severed and shall remain severed until such assessment is paid, or (b) collection of such assessment may be made by such lawful method of enforcement, judicial or extrajudicial, as may be provided in the declaration and/or bylaws.

(2) All sums assessed by the association of apartment owners but unpaid for the share of the common expenses chargeable to any apartment shall constitute a lien on such apartment prior to all other liens except only (a) tax liens on the apartment in favor of any assessing unit and/or special district, and (b) all sums unpaid on all mortgages of record. Such lien may be foreclosed by suit by the manager or board of directors, acting on behalf of the apartment owners, in like manner as a mortgage of real property. In any such foreclosure the apartment owner shall be required to pay a reasonable rental for the apartment, if so provided in the bylaws, and the plaintiff in such foreclosures shall be entitled to the appointment of a receiver to collect the same. The manager or board of directors, acting on behalf of the apartment owners, shall have power, unless prohibited by the declaration, to bid in the apartment at foreclosure sale, and to acquire and hold, lease, mortgage and convey the same. Upon an express waiver in the complaint of any right to a deficiency judgment, the period of redemption shall be eight months after the sale. Suit to recover any judgment for any unpaid common expenses shall be maintainable without foreclosing or waiving the liens securing the same.

(3) Where the mortgagee of a mortgage of record or other purchaser of an apartment obtains possession of the apartment as a result of foreclosure of the mortgage, such possessor, his successors and assigns shall not be liable for the share of the common expenses or assessments by the association of apartment owners chargeable to such apartment which became due prior to such possession. Such unpaid share of common expenses of assessments shall be deemed to be common expenses collectible from all of the apartment owners including such possessor, his successors and assigns. [1965 ex.s. c 11 § 6; 1963 c 156 § 20.]

**64.32.210 Conveyance—Liability of grantor and grantee for unpaid common expenses.** In a voluntary conveyance the grantee of an apartment shall be jointly and severally liable with the grantor for all unpaid assessments against the latter for his share of the common expenses up to the time of the grantor's conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor. Any such grantee shall be entitled to a statement from the manager or board of directors, as the case may be, setting forth the amount of the unpaid assessments against the grantor and such grantee shall not be liable for, nor shall the apartment conveyed be subject to a lien for, any unpaid assessments against the grantor in excess of the amount therein set forth. [1963 c 156 § 21.]

**64.32.220 Insurance.** The manager or board of directors, if required by the declaration, bylaws, or by a majority of the apartment owners, or at the request of a mortgagee having a mortgage of record covering an apartment, shall obtain insurance for the property against loss or damage by fire and such other hazards under such terms and for such amounts as shall be required or requested. Such insurance coverage shall be written on the property in the name of the manager or

of the board of directors of the association of apartment owners, as trustee for each of the apartment owners in the percentages established in the declaration. Premiums shall be common expenses. Provision for such insurance shall be without prejudice to the right of each apartment owner to insure his own apartment and/or the personal contents thereof for his benefit. [1963 c 156 § 22.]

**64.32.230 Destruction or damage to all or part of property—Disposition.** If, within ninety days of the date of damage or destruction to all or part of the property it is not determined by the apartment owners to repair, reconstruct, or rebuild in accordance with the original plan, or by a unanimous vote of all apartment owners to do otherwise, then and in that event:

(1) The property shall be owned in common by the apartment owners;

(2) The undivided interest in the property owned in common which appertains to each apartment owner shall be the percentage of undivided interest previously owned by such owner in the common areas and facilities;

(3) Any mortgages or liens affecting any of the apartments shall be deemed transferred in accordance with the existing priorities to the percentage of the undivided interest of the apartment owner in the property as provided herein; and

(4) The property shall be subject to an action for partition at the suit of any apartment owner, in which event the net proceeds of sale, together with the net proceeds of the insurance of the property, if any, shall be considered as one fund; such fund shall be divided into separate shares one for each apartment owner in a percentage equal to the percentage of undivided interest owned by each such owner in the property; then, after first paying out of the respective share of each apartment owner, to the extent sufficient for the purpose, all mortgages and liens on the undivided interest in the property owned by such apartment owner, the balance remaining in each share shall then be distributed to each apartment owner respectively. [1965 ex.s. c 11 § 7; 1963 c 156 § 23.]

**64.32.240 Actions.** Without limiting the rights of any apartment owner, actions may be brought as provided by law and by the rules of court by the manager or board of directors, in either case in the discretion of the board of directors, on behalf of two or more of the apartment owners, as their respective interests may appear, with respect to any cause of action relating to the common areas and facilities or more than one apartment. Service of process on two or more apartment owners in any action relating to the common areas and facilities or more than one apartment may be made on the person designated in the declaration to receive service of process. Actions relating to the common areas and facilities for damages arising out of tortious conduct shall be maintained only against the association of apartment owners and any judgment lien or other charge resulting therefrom shall be deemed a common expense, which judgment lien or other charge shall be

removed from any apartment and its percentage of undivided interest in the common areas and facilities upon payment by the respective owner of his proportionate share thereof based on the percentage of undivided interest owned by such apartment owner. [1963 c 156 § 24.]

**64.32.250 Application of chapter, declaration and by-laws.** (1) All apartment owners, tenants of such owners, employees of such owners and tenants, and any other person that may in any manner use the property or any part thereof submitted to the provisions of this chapter, shall be subject to this chapter and to the declaration and bylaws of the association of apartment owners adopted pursuant to the provisions of this chapter.

(2) All agreements, decisions and determinations made by the association of apartment owners under the provisions of this chapter, the declaration, or the bylaws and in accordance with the voting percentages established in this chapter, the declaration, or the bylaws, shall be deemed to be binding on all apartment owners. [1963 c 156 § 25.]

**64.32.900 Short title.** This chapter shall be known as the horizontal property regimes act. [1963 c 156 § 26.]

**64.32.910 Construction of term "this chapter".** The term "this chapter" means RCW 64.32.010 through 64.32.250 and 64.32.900 through 64.32.920, and as they may hereafter be amended or supplemented by subsequent legislation. [1963 c 156 § 27.]

**64.32.920 Severability—1963 c 156.** If any provision of this chapter, or its application to any person or circumstance is held invalid, the remainder of the chapter, or the application of the provisions to other persons or circumstances is not affected. [1963 c 156 § 28.]

# TITLE 65

## RECORDING, REGISTRATION, AND LEGAL PUBLICATION.

### Chapters

**65.04 Duties of county auditor.**

**65.08 Recording.**

**65.12 Registration of land titles (Torrens Act).**

**65.16 Legal publications.**

*Assessor's plats: Chapter 58.18 RCW.*

*Assignment, satisfaction of mortgages: Chapter 61.16 RCW.*

*Civil procedure, legal publication generally: Chapter 4.28 RCW.*

*Claim of spouse in community property to be filed: RCW 26.16.100.*

*Community property, purchaser protected by record title: RCW 26.16.095.*

*Copies of recorded instruments as evidence: Chapter 5.44 RCW.*

*Corporate seals, effect of absence from instrument: RCW 64.04.105.*

*County auditor: Chapter 36.22 RCW.*

*Eminent domain by corporations, judgment or decree: RCW 8.20.090.*

*Eminent domain by county, decree: RCW 8.08.060.*

*Eminent domain by school districts, decree: RCW 8.16.110.*

*Eminent domain by state, judgment or decree: RCW 8.04.120.*

*Eminent domain, state lands, decree: RCW 8.28.010.*

*Fees of county officers: Chapter 36.18 RCW.*

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*Lis pendens, effect of filing: RCW 4.28.320.*

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*Powers of appointment: Chapter 64.24 RCW.*

*Railroad contracts, equipment: RCW 81.36.140–81.36.160.*

*RCW 65.08.070 applicable to rents and profits of real property: RCW 7.28.230.*

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*Secretary of state, duties: RCW 43.07.030.*

*Seed liens: RCW 60.12.190.*

65.04.130 Fees to be paid or tendered.

65.04.140 Auditor as custodian of records.

*Corporate seals, effect of absence from instrument: RCW 64.04.105.*

*County auditor: Chapter 36.22 RCW.*

*Fees of county officers, generally: Chapter 36.18 RCW.*

*Powers of appointment: Chapter 64.24 RCW.*

**65.04.020 Duty to provide and keep records.** For the purpose of recording deeds and other instruments of writing, required or permitted by law to be recorded, the county auditor shall procure such books for records as the business of the office requires. He has the custody of and must keep at all times in his office all books, records, maps and papers deposited with him as such officer. [1893 c 119 § 10; Code 1881 § 2726; RRS § 10600.]

**65.04.030 Instruments to be recorded or filed.** He must, upon the payment of his fees for the same, acknowledge receipt therefor in writing or printed form and record in large and well bound books, or by photographic or photomechanical process, the following:

(1) Deeds, grants and transfers of real property, mortgages and releases of mortgages of real estate, instruments or agreements relating to community or separate property, powers of attorney to convey real estate, and leases which have been acknowledged or proved: *Provided*, That deeds, contracts and mortgages of real estate described by lot and block and addition or plat, shall not be filed or recorded until the plat of such addition has been filed and made a matter of record;

(2) Patents to lands and receivers' receipts, whether for mineral, timber, homestead or preemption claims or cash entries;

(3) All such other papers or writing as are required by law to be recorded and such as are required by law to be filed.

He may also, upon the payment of his fees for the same, record or file such other documents or papers as may be requested by the person offering the same for recording or filing. [1967 c 98 § 1; 1919 c 182 § 1; 1893 c 119 § 11; Code 1881 § 2727; 1865 p 26 § 1; RRS § 10601.]

*Claim of spouse in community realty to be filed: RCW 26.16.100.*

*Marriage certificate to county auditor, filing and recording, etc.: RCW 26.04.090, 26.04.100.*

*Purchaser of community realty protected by record title: RCW 26.16.095.*

### Chapter 65.04

#### DUTIES OF COUNTY AUDITOR

##### Sections

- 65.04.020 Duty to provide and keep records.  
65.04.030 Instruments to be recorded or filed.  
65.04.040 Photographic, microfilm, etc., recordation of instruments—Marginal notations—Arrangement of records.  
65.04.050 Record of instruments, how made and kept.  
65.04.060 Record when lien is discharged.  
65.04.070 Recording judgments affecting real property.  
65.04.080 Entries when instruments offered for record.  
65.04.090 Further endorsements—Delivery.  
65.04.100 Data to be furnished upon request.  
65.04.110 Liability of auditor for damages.  
65.04.115 Names on documents, etc., to be printed or typewritten—Indexing.



**65.04.040 Photographic, microfilm, etc., recordation of instruments—Marginal notations—Arrangement of records.** Any state, county, or municipal officer charged with the duty of recording instruments in public records, may, in lieu of transcription, record them by receiving number in the order filed, irrespective of the type of instrument, using a photographic or photomechanical process, which produces a clear, legible, and durable record and which has been tested and approved for the intended purpose by the state archivist.

In addition, the county auditor, in the exercise of his duty of recording instruments in public records, may, in lieu of transcription, record all instruments, which he is charged by law to record, except plats, by any photographic, photostatic, microfilm, microcard, miniature photographic or other process which actually reproduces or forms a durable medium for so reproducing the original, and which has been tested and approved for the intended purpose by the state archivist. If the county auditor, in lieu of transcription, records any instrument by a process herein enumerated which produces a miniature copy of the original it shall not be necessary thereafter to make any notations or marginal notes, which are otherwise required by law, thereon: *Provided*, That in lieu of making said notations thereon, the auditor shall immediately make a note of such in both the direct and inverted indexes and other appropriate indexes, in the column headed "remarks", opposite the appropriate entry.

The county auditor may provide in his office for the use of the public books containing reproductions of instruments and other materials that have been recorded pursuant to the provisions of this section. The contents of such books may be arranged according to date of filing, irrespective of type of instrument, or in such other manner as the county auditor in his discretion shall deem proper. [1967 c 98 § 2; 1959 c 254 § 1; 1919 c 125 § 1; RRS § 10602.]

*State archivist: RCW 40.14.020.*

**65.04.050 Record of instruments, how made and kept.** Every auditor must keep a general index, direct and inverted. The direct index shall be divided into seven columns, and with heads to the respective columns, as follows: Time of reception, grantor, grantee, nature of instrument, volume and page where recorded, remarks, description of property. He shall correctly enter in such index every instrument concerning or affecting real estate which by law is required to be recorded, the names of grantors being in alphabetical order. The inverted index shall also be divided into seven columns, precisely similar, except that "grantee" shall occupy the second column and "grantor" the third, the names of grantees being [in] alphabetical order. For the purposes of \*this act, the term "grantor" shall be construed to mean any person conveying or encumbering the title to any property, or any person against whom any lis pendens, judgment, notice of lien, order of sale, execution, writ of attachment, or claims of separate or community property shall be placed on record. He shall also keep a well bound book in which shall be platted all maps of towns,

villages, or additions to the same within the county, together with the description, legend, acknowledgment or other writing thereon. He shall keep an index to such books of plats, which shall contain the name of the town, village or addition. He shall also enter in the general index above referred to, the name of the party or parties platting such town, village or addition in the column prescribed for "grantors", describing the grantee in such case as "the public": *Provided*, That the auditor shall not receive or record any such plat or map until the same shall have been approved by the mayor and common council of the municipality in which the property so platted be situated, or if such property be not situated within any municipal corporation, then such plat must be first approved by the board of county commissioners of such county: *Provided further*, That the auditor shall not receive for record any plat, map or subdivision of land bearing a name the same or similar to the name of any map or plat already on record in his office. [1893 c 119 § 12; Code 1881 § 2728; 1869 p 314 § 24; RRS § 10603.]

**\*Reviser's note:** The language "this act" appears in 1893 c 119, codified herein as RCW 36.22.010, 36.22.030 through 36.22.080, 65.04.020, 65.04.030 and 65.04.050.

**65.04.060 Record when lien is discharged.** Whenever any mortgage, bond, lien, or instrument incumbering real estate, has been satisfied, released or discharged, whether by written release across the record or upon the margin thereof, or by the recording of an instrument of release, or acknowledgment of satisfaction, the auditor shall immediately note in both the indices, in the column headed remarks, opposite to the appropriate entry, that such instrument, lien or incumbrance has been satisfied. And in all cases of the satisfaction or release of any recorded liens, mortgage, transcript of judgment, mechanic's liens, registered taxes or other incumbrance whatsoever, the auditor shall enter with red ink across the record of the instrument creating or evidencing such lien or incumbrance, the word "satisfied", with the day of the date of such satisfaction or release, and note the same in index of transcripts of judgment. [Code 1881 § 2729; 1869 p 315 § 25; RRS § 10604.]

**65.04.070 Recording judgments affecting real property.** The auditor must file and record with the record of deeds, grants and transfers certified copies of final judgments or decrees partitioning or affecting the title or possession of real property, any part of which is situated in the county of which he is recorder. Every such certified copy or partition, from the time of filing the same with the auditor for record, imparts notice to all persons of the contents thereof, and subsequent purchasers, mortgagees and lien holders purchase and take with like notice and effect as if such copy or decree was a duly recorded deed, grant or transfer. [Code 1881 § 2730; RRS § 10605.]

**65.04.080 Entries when instruments offered for record.** When any instrument, paper, or notice, authorized or required by law to be filed or recorded, is deposited in the county auditor's office for filing or record,

that officer must indorse upon the same the time when it was received, noting the year, month, day, hour and minute of its reception, and must file, or file and record the same without delay, together with the acknowledgments, proofs, and certificates written or printed upon or annexed to the same, with the plats, surveys, schedules and other papers thereto annexed, in the order and as of the time when the same was received for filing or record, and must note on the instrument filed, or at the foot of the record the exact time of its reception, and the name of the person at whose request it was filed or filed and recorded: *Provided*, That the county auditor shall not be required to accept for filing, or filing and recording, any instrument unless there appear upon the face thereof, or be indorsed upon the back or cover thereof, the name and nature of the instrument offered for filing, or filing and recording, as the case may be. [1927 c 187 § 1; Code 1881 § 2731; 1869 p 313 § 19; RRS § 10606.]

**65.04.090 Further endorsements—Delivery.** He must also endorse upon such instrument, paper or notice, the time when and the book and page in which it is recorded, and must thereafter deliver it, upon request, to the party leaving the same for record, or to his order. [Code 1881 § 2732; RRS § 10607.]

**65.04.100 Data to be furnished upon request.** The auditor must, upon the application of any person, and upon the payment or tender of the fees therefor, make searches for conveyances, mortgages and all other instruments, papers or notices recorded or filed in his office, and furnish a certificate thereof, stating the names of the parties to such instruments, papers and notices, the dates thereof, the year, month, day, hour, and minute they were recorded or filed, the extent to which they purport to affect the property to which they relate and the book and pages where they are recorded. [Code 1881 § 2733; RRS § 10608.]

**65.04.110 Liability of auditor for damages.** If any county auditor to whom an instrument, proved or acknowledged according to law, or any paper or notice which may by law be recorded is delivered for record: (1) Neglects or refuses to record such instrument, paper or notice, within a reasonable time after receiving the same; or (2) Records any instruments, papers or notices untruly, or in any other manner than as hereinbefore directed; or, (3) Neglects or refuses to keep in his office such indexes as are required by \*this act, or to make the proper entries therein; or, (4) Neglects or refuses to make the searches and to give the certificate required by \*this act; or if such searches or certificate are incomplete and defective in any important particular affecting the property in respect to which the search is requested; or, (5) Alters, changes or obliterates any records deposited in his office, or inserts any new matter therein; he is liable to the party aggrieved for the amount of damage which may be occasioned thereby: *Provided*, That if the name or names and address hand printed, printed or typewritten on any instrument, proved or acknowledged according to law, or on any

paper or notice which may by law be filed or recorded, is or are incorrect, or misspelled or not the true name or names of the party or parties appearing thereon, the county auditor shall not, by reason of such fact, be liable for any loss or damage resulting therefrom. [1965 c 134 § 1; Code 1881 § 2734; RRS § 10609.]

**\*Reviser's note:** The language "this act" appears in Code 1881 c 211, codified herein as RCW 5.44.070, 36.16.030 through 36.16.050, 36.16.070, 36.16.080, 36.22.110 through 36.22.130, 36.22.150, 65.04-.020, 65.04.030, 65.04.050 through 65.04.110, 65.04.130, 65.04.140.

**65.04.115 Names on documents, etc., to be printed or typewritten—Indexing.** The name or names appearing on all documents or instruments, proved or acknowledged according to law, or on any paper which may by law be filed or recorded shall be hand printed, printed or typewritten so as to be legible and the county auditor shall index said documents and instruments in accordance with the hand printed, printed or typewritten name or names appearing thereon. [1965 c 134 § 2.]

**65.04.130 Fees to be paid or tendered.** Said county auditor is not bound to record any instrument, or file any paper or notice, or furnish any copies, or to render any service connected with his office, until his fees for the same, as prescribed by law, are if demanded paid or tendered. [Code 1881 § 2735; RRS § 10610.]

**65.04.140 Auditor as custodian of records.** The county auditor in his capacity of recorder of deeds is sole custodian of all books in which are recorded deeds, mortgages, judgments, liens, incumbrances and other instruments of writing, indexes thereto, maps, charts, town plats, survey and other books and papers constituting the records and files in said office of recorder of deeds, and all such records and files are, and shall be, matters of public information, free of charge to any and all persons demanding to inspect or to examine the same, or to search the same for titles of property. It is said recorder's duty to arrange in suitable places the indexes of said books of record, and when practicable, the record books themselves, to the end that the same may be accessible to the public and convenient for said public inspection, examination and search, and not interfere with the said auditor's personal control and responsibility for the same, or prevent him from promptly furnishing the said records and files of his said office to persons demanding any information from the same. The said auditor or recorder must and shall, upon demand, and without charge, freely permit any and all persons, during reasonable office hours, to inspect, examine and search any or all of the records and files of his said office, and to gather any information therefrom, and to make any desired notes or memoranda about or concerning the same, and to prepare an abstract or abstracts of title to any and all property therein contained. [1886 p 163 § 1; 1883 p 34 § 1; Code 1881 § 2736; RRS § 10611.]

## Chapter 65.08 RECORDING

### Sections

65.08.030	Recorded irregular instrument imparts notice.
65.08.050	Recording land office receipts.
65.08.060	Terms defined.
65.08.070	Real property conveyances to be recorded.
65.08.080	Executory contracts.
65.08.090	Letters patent.
65.08.095	Conveyances of fee title by public bodies.
65.08.100	Certified copies.
65.08.110	Certified copies—Effect.
65.08.120	Assignment of mortgage—Notice.
65.08.130	Revocation of power of attorney.
65.08.140	No liability for error in recording when properly indexed.
65.08.150	Duty to record.
65.08.160	Recording master form instruments and mortgages or deeds of trust incorporating master form provisions.

*Corporate seals, effect of absence from instrument: RCW 64.04.105.*

*Powers of appointment: Chapter 64.24 RCW.*

**65.08.030 Recorded irregular instrument imparts notice.** An instrument in writing purporting to convey or encumber real estate or any interest therein, which has been recorded in the auditor's office of the county in which the real estate is situated, although the instrument may not have been executed and acknowledged in accordance with the law in force at the time of its execution, shall impart the same notice to third persons, from the date of recording, as if the instrument had been executed, acknowledged, and recorded, in accordance with the laws regulating the execution, acknowledgment, and recording of the instrument then in force. [1953 c 115 § 1. Prior: 1929 c 33 § 8; RRS § 10599.]

**65.08.050 Recording land office receipts.** Every cash or final receipt from any receiver, and every cash or final certificate from any register of the United States land office, evidencing that final payment has been made to the United States as required by law, or that the person named in such certificate is entitled, on presentation thereof, to a patent from the United States for land within the state of Washington, shall be recorded by the county auditor of the county wherein such land lies, on request of any party presenting the same, and any record heretofore made of any such cash or final receipt or certificate shall, from the date when this section becomes a law, and every record hereafter made of any such receipt or certificate shall, from the date of recording, impart to third persons and all the world, full notice of all the rights and equities of the person named in said cash or final receipt or certificate in the land described in such receipt or certificate. [1890 p 92 § 1; RRS § 10613.]

**65.08.060 Terms defined.** (1) The term "real property" as used in RCW 65.08.060 through 65.08.150 includes lands, tenements and hereditaments and chattels real and mortgage liens thereon except a leasehold for a term not exceeding two years.

(2) The term "purchaser" includes every person to whom any estate or interest in real property is conveyed for a valuable consideration and every assignee of a mortgage, lease or other conditional estate.

(3) The term "conveyance" includes every written instrument by which any estate or interest in real property is created, transferred, mortgaged or assigned or by which the title to any real property may be affected, including an instrument in execution of a power, although the power be one of revocation only, and an instrument releasing in whole or in part, postponing or subordinating a mortgage or other lien; except a will, a lease for a term of not exceeding two years, an executory contract for the sale or purchase of lands, and an instrument granting a power to convey real property as the agent or attorney for the owner of the property. "To convey" is to execute a "conveyance" as defined in this subdivision.

(4) The term "recording officer" means the county auditor of the county. [1927 c 278 § 1; RRS § 10596-1.]

### 65.08.070 Real property conveyances to be recorded.

A conveyance of real property, when acknowledged by the person executing the same (the acknowledgment being certified as required by law), may be recorded in the office of the recording officer of the county where the property is situated. Every such conveyance not so recorded is void as against any subsequent purchaser or mortgagee in good faith and for a valuable consideration from the same vendor, his heirs or devisees, of the same real property or any portion thereof whose conveyance is first duly recorded. An instrument is deemed recorded the minute it is filed for record. [1927 c 278 § 2; RRS § 10596-2. Prior: 1897 c 5 § 1; Code 1881 § 2314; 1877 p 312 § 4; 1873 p 465 § 4; 1863 p 430 § 4; 1860 p 299 § 4; 1858 p 28 § 1; 1854 p 403 § 4.]

*RCW 65.08.070 applicable to rents and profits of real property: RCW 7.28.230.*

**65.08.080 Executory contracts.** An executory contract for the sale or purchase of real property or an instrument granting a power to convey real property as the agent or attorney for the owner of the property, when acknowledged (with the acknowledgment certified) in the manner to entitle a conveyance to be recorded, may be recorded in the office of the recording officer of any county in which any of the real property to which it relates is situated, and when so recorded shall be notice to all persons of the rights of the vendee under the contract. [1927 c 278 § 3; RRS § 10596-3.]

**65.08.090 Letters patent.** Letters patent from the United States or the state of Washington granting real property may be recorded in the office of the recording officer of the county where such property is situated in the same manner and with like effect as a conveyance that is entitled to be recorded. [1927 c 278 § 4; RRS § 10596-4.]

**65.08.095 Conveyances of fee title by public bodies.** Every conveyance of fee title to real property hereafter executed by the state or by any political subdivision or municipal corporation thereof shall be recorded by the grantor, after having been reviewed as to form by the

grantee, at the expense of the grantee at the time of delivery to the grantee, and shall constitute legal delivery at the time of filing for record. [1963 c 49 § 1.]

**65.08.100 Certified copies.** A copy of a conveyance of or other instrument affecting real property recorded or filed in the office of the secretary of state or the commissioner of public lands, or of the record thereof, when certified in the manner required to entitle the same to be read in evidence, may be recorded with the certificate in the office of any recording officer of the state. [1927 c 278 § 5; RRS § 10596-5.]

**65.08.110 Certified copies—Effect.** A copy of a record, when certified or authenticated to entitle it to be read in evidence, may be recorded in any office where the original instrument would be entitled to be recorded. Such record has the same effect as if the original were so recorded. A copy of the record of a conveyance of or other instrument affecting separate parcels of real property situated in more than one county, when certified or authenticated to entitle it to be read in evidence may be recorded in the office of the recording officer of any county in which any such parcel is situated with the same effect as though the original instrument were so recorded. [1927 c 278 § 6; RRS § 10596-6.]

**65.08.120 Assignment of mortgage—Notice.** The recording of an assignment of a mortgage is not in itself notice to the mortgagor, his heirs, assigns or personal representatives, to invalidate a payment made by any of them to a prior holder of the mortgage. [1927 c 278 § 7; RRS § 10596-7.]

**65.08.130 Revocation of power of attorney.** A power of attorney or other instrument recorded pursuant to RCW 65.08.060 through 65.08.150 is not deemed revoked by any act of the party by whom it was executed unless the instrument of revocation is also recorded in the same office in which the instrument granting the power was recorded. [1927 c 278 § 8; RRS § 10596-8.]

**65.08.140 No liability for error in recording when properly indexed.** A recording officer is not liable for recording an instrument in a wrong book, volume or set of records if the instrument is properly indexed with a reference to the volume and page where the instrument is actually of record. [1927 c 278 § 9; RRS § 10596-9. Formerly RCW 65.04.120.]

**65.08.150 Duty to record.** A recording officer, upon payment or tender to him of the lawful fees therefor, shall record in his office any instrument authorized or permitted to be so recorded by the laws of this state or by the laws of the United States. [1943 c 23 § 1; 1927 c 278 § 10; RRS § 10596-10. Formerly RCW 65.04.010.]

**65.08.160 Recording master form instruments and mortgages or deeds of trust incorporating master form provisions.** A mortgage or deed of trust of real estate may be recorded and constructive notice of the same and the contents thereof given in the following manner:

(1) An instrument containing a form or forms of covenants, conditions, obligations, powers, and other clauses of a mortgage or deed of trust may be recorded in the office of the county auditor of any county and the auditor of such county, upon the request of any person, on tender of the lawful fees therefor, shall record the same. Every such instrument shall be entitled on the face thereof as a "Master form recorded by . . . (name of person causing the instrument to be recorded)." Such instrument need not be acknowledged to be entitled to record.

(2) When any such instrument is recorded, the county auditor shall index such instrument under the name of the person causing it to be recorded in the manner provided for miscellaneous instruments relating to real estate.

(3) Thereafter any of the provisions of such master form instrument may be incorporated by reference in any mortgage or deed of trust of real estate situated within this state, if such reference in the mortgage or deed of trust states that the master form instrument was recorded in the county in which the mortgage or deed of trust is offered for record, the date when and the book and page or pages where such master form instrument was recorded, and that a copy of such master form instrument was furnished to the person executing the mortgage or deed of trust. The recording of any mortgage or deed of trust which has so incorporated by reference therein any of the provisions of a master form instrument recorded as provided in this section shall have like effect as if such provisions of the master form so incorporated by reference had been set forth fully in the mortgage or deed of trust.

(4) Whenever a mortgage or deed of trust is presented for recording on which is set forth matter purporting to be a copy or reproduction of such master form instrument or of part thereof, identified by its title as provided in subdivision (1) of this section and stating the date when it was recorded and the book and page where it was recorded, preceded by the words "do not record" or "not to be recorded," and plainly separated from the matter to be recorded as a part of the mortgage or deed of trust in such manner that it will not appear upon a photographic reproduction of any page containing any part of the mortgage or deed of trust, such matter shall not be recorded by the county auditor to whom the instrument is presented for recording; in such case the county auditor shall record only the mortgage or deed of trust apart from such matter and shall not be liable for so doing, any other provisions of law to the contrary notwithstanding. [1967 c 148 § 1.]

**Chapter 65.12  
REGISTRATION OF LAND TITLES (TORRENS  
ACT)**

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**Reviser's note:** The lengthy captions set forth in the 1907 session law have been abandoned in favor of the shorter section captions published throughout this chapter.

**65.12.005 Registration authorized—Who may apply.** The owner of any estate or interest in land, whether legal or equitable, except unpatented land, may apply as hereinafter provided to have the title of said land registered. The application may be made by the applicant personally, or by an agent thereunto lawfully authorized in writing, which authority shall be executed and acknowledged in the same manner and form as is now required as to a deed, and shall be recorded in the office of the county auditor in the county in which the land, or the major portion thereof, is situated before the making of the application by such agent. A corporation may apply by its authorized agent, and an infant or any other person under disability by his legal guardian. Joint tenants and tenants in common shall join in the application. The person in whose behalf the application is made shall be named as applicant. [1907 c 250 § 1; RRS § 10622.]

**Construction—1907 c 250:** "This act shall be construed liberally, so far as may be necessary for the purpose of carrying out its general intent, which is, that any owner of land may register his title and bring his land under the provisions of this act, but no one is required so to do." [1907 c 250 § 97.] This applies to RCW 65.12.005–65.12.800.

**65.12.010 Land subject to a lesser estate.** It shall not be an objection to bringing land under this chapter, that the estate or interest of the applicant is subject to any outstanding lesser estate, mortgage, lien or charge; but no mortgage, lien, charge or lesser estate than a fee simple shall be registered unless the estate in fee simple to the same land is registered; and every such lesser estate, mortgage, lien or charge shall be noted upon the certificate of title and the duplicate thereof, and the title or interest certified shall be subject only to such estates, mortgages, liens and charges as are so noted, except as herein provided. [1907 c 250 § 2; RRS § 10623.]

65.12.015 Tax title land—Conditions to registration. No title derived through sale for any tax or assessment, or special assessment, shall be entitled to be registered, unless it shall be made to appear that the title of the applicant, or those through whom he claims title has been adjudicated by a court of competent jurisdiction, and a decree of such court duly made and recorded, decreeing the title of the applicant, or that the applicant or those through whom he claims title have been in the actual and undisputed possession of the land under such title at least seven years, immediately prior to the application, and shall have paid all taxes and assessments legally levied thereon during said times; unless the same is vacant and unoccupied lands or lots, in which case, where title is derived through sale for any tax or assessment or special assessment for any such vacant and unoccupied lands or lots, and the applicant, or those through whom he claims title, shall have paid all taxes and assessments legally levied thereon for eight successive years immediately prior to the application, in which case such lands and lots shall be entitled to be registered as other lands provided for by this section. [1907 c 250 § 3; RRS § 10624.]

65.12.020 Application. The application shall be in writing and shall be signed and verified by the oath of the applicant, or the person acting in his behalf. It shall set forth substantially:

- (1) The name and place of residence of the applicant, and if the application is by one acting in behalf of another, the name and place of residence and capacity of the person so acting.
- (2) Whether the applicant (except in the case of a corporation) is married or not, and, if married, the name and residence of the husband or wife, and the age of the applicant.
- (3) The description of the land and the assessed value thereof, exclusive of improvements, according to the last official assessment, the same to be taken as a basis for the payments required under RCW 65.12.670 and 65.12.790(1).
- (4) The applicant's estate or interest in the same, and whether the same is subject to homestead exemption.
- (5) The names of all persons or parties who appear of record to have any title, claim, estate, lien or interest in the lands described in the application for registration.
- (6) Whether the land is occupied or unoccupied, and if occupied by any other person than the applicant, the name and post office address of each occupant, and what estate he has or claims in the land.
- (7) Whether the land is subject to any lien or incumbrance, and if any, give the nature and amount of the same, and if recorded, the book and page of record; also give the name and post office address of each holder thereof.
- (8) Whether any other person has any estate or claims any interest in the land, in law or equity, in possession, remainder, reversion or expectancy, and if any, set forth the name and post office address of every such person and the nature of his estate or claim.
- (9) In case it is desired to settle or establish boundary lines, the names and post office addresses of all the

owners of the adjoining lands that may be affected thereby, as far as he is able, upon diligent inquiry, to ascertain the same.

(10) If the application is on behalf of a minor, the age of such minor shall be stated.

(11) When the place of residence of any person whose residence is required to be given is unknown, it may be so stated if the applicant will also state that upon diligent inquiry he had been unable to ascertain the same. [1907 c 250 § 4; RRS § 10625.]

65.12.025 Various lands in one application. Any number of contiguous pieces of land in the same county, and owned by the same person, and in the same right, or any number of pieces of property in the same county having the same chain of title and belonging to the same person, may be included in one application. [1907 c 250 § 5; RRS § 10626.]

65.12.030 Amendment of application. The application may be amended only by supplemental statement in writing, signed and sworn to as in the case of the original application. [1907 c 250 § 6; RRS § 10627.]

65.12.035 Form of application. The form of application may, with appropriate changes, be substantially as follows:

FORM OF APPLICATION FOR  
INITIAL REGISTRATION OF TITLE TO LAND

State of Washington, }  
County of -----, } ss.

In the superior court of the state of Washington in and for ----- county.

In the matter of the }  
application of ----- }  
to register the title }  
to the land hereinafter }  
described } PETITION

To the Honorable -----, judge of said court: I hereby make application to have registered the title to the land hereinafter described, and do solemnly swear that the answers to the questions herewith, and the statements herein contained, are true to the best of my knowledge, information and belief.

First. Name of applicant, -----, age, ----- years.  
Residence, ----- (number and street, if any). Married to ----- (name of husband or wife).

Second. Applications made by -----, acting as ----- (owner, agent or attorney). Residence, ----- (number, street).

Third. Description of real estate is as follows:  
-----  
-----  
-----  
-----  
estate or interest therein is ----- and ----- subject to homestead.

Fourth. The land is \_\_\_\_\_ occupied by \_\_\_\_\_ (names of occupants), whose address is \_\_\_\_\_ (number street and town or city). The estate, interest or claim of occupant is \_\_\_\_\_.

Fifth. Liens and incumbrances on the land \_\_\_\_\_ Name of holder or owner thereof is \_\_\_\_\_ Whose post office address is \_\_\_\_\_ Amount of claim, \$\_\_\_\_\_ Recorded, Book \_\_\_\_\_, page \_\_\_\_\_, of the records of said county.

Sixth. Other persons, firm or corporation having or claiming any estate, interest or claim in law or equity, in possession, remainder, reversion or expectancy in said land are \_\_\_\_\_ whose addresses are \_\_\_\_\_ respectively. Character of estate, interest or claim is \_\_\_\_\_.

Seventh. Other facts connected with said land and appropriate to be considered in this registration proceeding are \_\_\_\_\_.

Eighth. Therefore, the applicant prays this honorable court to find or declare the title or interest of the applicant in said land and decree the same, and order the registrar of titles to register the same and to grant such other and further relief as may be proper in the premises.

\_\_\_\_\_  
(Applicant's signature)

By \_\_\_\_\_, agent, attorney, administrator or guardian.

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, A.D. 19\_\_.

\_\_\_\_\_  
Notary Public in and for the state of Washington, residing at \_\_\_\_\_

[1907 c 250 § 7; RRS § 10628.]

**65.12.040 Venue—Power of the court.** The application for registration shall be made to the superior court of the state of Washington in and for the county wherein the land is situated. Said court shall have power to inquire into the condition of the title to and any interest in the land and any lien or encumbrance thereon, and to make all orders, judgments and decrees as may be necessary to determine, establish and declare the title or interest, legal or equitable, as against all persons, known, or unknown, and all liens and incumbrances existing thereon, whether by law, contract, judgment, mortgage, trust deed or otherwise, and to declare the order, priority and preference as between the same, and to remove all clouds from the title. [1907 c 250 § 8; RRS § 10629.]

**65.12.050 Registrars of titles.** The county auditors of the several counties of this state shall be registrars of titles in their respective counties; and their deputies shall be deputy registrars. All acts performed by registrars and deputy registrars under this law shall be performed under rules and instructions established and given by the superior court having jurisdiction of the county in which they act. [1907 c 250 § 9; RRS § 10630.]

**65.12.055 Bond of registrar.** Every county auditor shall, before entering upon his duties as registrar of titles, give a bond with sufficient sureties, to be approved by a judge of the superior court of the state of Washington in and for his county, payable to the state of Washington, in such sum as shall be fixed by the said judge of the superior court, conditioned for the faithful discharge of his duties, and to deliver up all papers, books, records and other property belonging to the county or appertaining to his office as registrar of titles, whole, safe and undefaced, when lawfully required so to do; said bond shall be filed in the office of the secretary of state, and a copy thereof shall be filed and entered upon the records of the superior court in the county wherein the county auditor shall hold office. [1907 c 250 § 10; RRS § 10631.]

**65.12.060 Deputy registrar—Duties—Vacancy.** Deputy registrars shall perform any and all duties of the registrar in the name of the registrar, and the acts of such deputies shall be held to be the acts of the registrar, and in the case of the death of the registrar or his removal from office, the vacancy shall be filled in the same manner as is provided by law for filling such vacancy in the office of the county auditor. The person so appointed to fill such vacancy shall file a bond and be vested with the same powers as the registrar whose office he is appointed to fill. [1907 c 250 § 11; RRS § 10632.]

**65.12.065 Registrar not to practice law—Liability for deputy.** No registrar or deputy registrar shall practice as an attorney or counselor at law, nor prepare any papers in any proceeding herein provided for, nor while in the office be in partnership with any attorney or counselor at law so practicing. The registrar shall be liable for any neglect or omission of the duties of his office when occasioned by a deputy registrar, in the same manner as for his own personal neglect or omission. [1907 c 250 § 12; RRS § 10633.]

**65.12.070 Nonresident to appoint agent.** If the applicant is not a resident of the state of Washington, he shall file with his application a paper, duly acknowledged, appointing an agent residing in this state, giving his name in full and post office address, and shall therein agree that the service of any legal process in proceedings under or growing out of the application shall be of the same legal effect when made on said agent as if made on the applicant within this state. If the agent so appointed dies or removes from the state, the applicant shall at once make another appointment in like manner, and if he fails so to do, the court may dismiss the application. [1907 c 250 § 14; RRS § 10635.]

**65.12.080 Filing application—Docket and record entries.** The application shall be filed in the office of the clerk of the court to which the application is made and in case of personal service a true copy thereof shall be served with the summons, and the clerk shall docket the case in a book to be kept for that purpose, which shall be known as the "land registration docket". The record



entry of the application shall be entitled (name of applicant), plaintiff, against (here insert the names of all persons named in the application as being in possession of the premises, or as having any lien, incumbrance, right, title or interest in the land, and the names of all persons who shall be found by the report of the examiner hereinafter provided for to be in possession or to have any lien, incumbrance, right, title or interest in the land), also all other persons or parties unknown, claiming any right, title, estate, lien or interest in the real estate described in the application herein, defendants.

All orders, judgments and decrees of the court in the case shall be appropriately entered in such docket. All final orders or decrees shall be recorded, and proper reference made thereto in such docket. [1907 c 250 § 15; RRS § 10636.]

**65.12.085 Filing abstract of title.** The applicant shall also file with the said clerk, at the time the application is made, an abstract of title such as is now commonly used, prepared and certified to by the county auditor of the county, or a person, firm or corporation regularly engaged in the abstract business, and having satisfied the said superior court that they have a complete set of abstract books and are in existence and doing business at the time of the filing of the application under this chapter. [1907 c 250 § 15a; RRS § 10637.]

**65.12.090 Examiner of titles—Appointment—Oath—Bond.** The judges of the superior court in and for the state of Washington for the counties for which they were elected or appointed shall appoint a competent attorney in each county to be examiner of titles and legal adviser of the registrar. The examiner of titles in each county shall be paid in each case by the applicant such compensation as the judge of the superior court of the state of Washington in and for that county shall determine. Every examiner of titles shall, before entering upon the duties of his office, take and subscribe an oath of office to faithfully and impartially perform the duties of his office, and shall also give a bond in such amount and with such sureties as shall be approved by the judge of the said superior court, payable in like manner and with like conditions as required of the registrar. A copy of the bond shall be entered upon the records of said court and the original shall be filed with the registrar. [1907 c 250 § 13; RRS § 10634.]

**65.12.100 Copy of application as lis pendens.** At the time of the filing of the application in the office of the clerk of the court, a copy thereof, certified by the clerk, shall be filed (but need not be recorded) in the office of the county auditor, and shall have the force and effect of a lis pendens. [1907 c 250 § 16; RRS § 10638.]

**65.12.110 Examination of title.** Immediately after the filing of the abstract of title, the court shall enter an order referring the application to an examiner of titles, who shall proceed to examine into the title and into the truth of the matters set forth in the application, and particularly whether the land is occupied, the nature of the occupation, if occupied, and by what right, and,

also as to all judgments against the applicant or those through whom he claims title, which may be a lien upon the lands described in the application; he shall search the records and investigate all the facts brought to his notice, and file in the case a report thereon, including a certificate of his opinion upon the title. The clerk of the court shall thereupon give notice to the applicant of the filing of such report. If the opinion of the examiner is adverse to the applicant, he shall be allowed by the court a reasonable time in which to elect to proceed further, or to withdraw his application. The election shall be made in writing, and filed with the clerk of the court. [1907 c 250 § 17; RRS § 10639.]

**65.12.120 Summons to issue.** If, in the opinion of the examiner, the applicant has a title, as alleged, and proper for registration, or if the applicant, after an adverse opinion of the examiner, elects to proceed further, the clerk of the court shall, immediately upon the filing of the examiner's opinion or the applicant's election, as the case may be, issue a summons substantially in the form hereinafter provided. The summons shall be issued by the order of the court and attested by the clerk of the court. [1907 c 250 § 18; RRS § 10640.]

**65.12.125 Summons—Form.** The summons provided for in RCW 65.12.135 shall be in substance in the form following, to wit:

SUMMONS ON APPLICATION FOR  
REGISTRATION OF LAND

State of Washington, }  
County of \_\_\_\_\_, } ss.

In the superior court of the state of Washington in and for the county of \_\_\_\_\_ (name of applicant), plaintiff, \_\_\_\_\_, versus \_\_\_\_\_ (names of all defendants), and all other persons or parties unknown, claiming any right, title, estate, lien or interest in the real estate, described in the application herein \_\_\_\_\_ defendants.

The state of Washington to the above-named defendants, greeting:

You are hereby summoned and required to answer the application of the applicant plaintiff in the above entitled application for registration of the following land situate in \_\_\_\_\_ county, Washington, to wit: (description of land), and to file your answer to the said application in the office of the clerk of said court, in said county, within twenty days after the service of this summons upon you, exclusive of the day of such service; and if you fail to answer the said application within the time aforesaid, the applicant plaintiff in this action will apply to the court for the relief demanded in the application herein.

Witness, \_\_\_\_\_, clerk of said court and the seal thereof, at \_\_\_\_\_, in said county and state, this \_\_\_\_\_ day of \_\_\_\_\_, A.D. 19\_\_

(Seal.) \_\_\_\_\_ Clerk.

[1907 c 250 § 206; RRS § 10644.]

**65.12.130 Parties to action.** The applicant shall be known in the summons as the plaintiff. All persons named in the application or found by the report of the examiner as being in possession of the premises or as having of record any lien, incumbrance, right, title, or interest in the land, and all other persons who shall be designated as follows, viz: "All other persons or parties unknown claiming any right, title, estate, lien or interest in, to, or upon the real estate described in the application herein," shall be and shall be known as defendants. [1907 c 250 § 19; RRS § 10641.]

**65.12.135 Service of summons.** The summons shall be directed to the defendants and require them to appear and answer the application within twenty days after the service of the summons, exclusive of the day of service; and said summons shall be served as is now provided for the service of summons in civil actions in the superior court in this state, except as herein otherwise provided. The summons shall be served upon non-resident defendants and upon "all such unknown persons or parties," defendant, by publishing said summons in a newspaper of general circulation printed and published in the county where the application is filed, once in each week for three consecutive weeks, and such service by publication shall be deemed complete at the end of the twenty-first day from and including the first publication, provided that if any named defendant assents in writing to the registration as prayed for, which assent shall be endorsed upon the application or filed therewith and be duly witnessed and acknowledged, then in all such cases no service of summons upon said defendant shall be necessary. [1907 c 250 § 20; RRS § 10642.]

**65.12.140 Copy mailed to nonresidents—Proof—Expense.** The clerk of the court shall also, on or before twenty days after the first publication, send a copy thereof by mail to such defendants who are not residents of the state whose place of address is known or stated in the application, and whose appearance is not entered and who are not in person served with the summons. The certificate of the clerk that he has sent such notice, in pursuance of this section, shall be conclusive evidence thereof. Other or further notice of the application for registration may be given in such manner and to such persons as the court or any judge thereof may direct. The summons shall be served at the expense of the applicant, and proof of the service thereof shall be made as proof of service is now made in other civil actions. [1907 c 250 § 20a; RRS § 10643.]

**65.12.145 Guardians ad litem.** The court shall appoint a disinterested person to act as guardian ad litem for minors and other persons under disability, and for all other persons not in being who may appear to have an interest in the land. The compensation of the said guardian shall be determined by the court, and paid as a part of the expense of the proceeding. [1907 c 250 § 21; RRS § 10645.]

**65.12.150 Who may appear—Answer.** Any person claiming an interest, whether named in the summons or not, may appear and file an answer within the time named in the summons, or within such further time as may be allowed by the court. The answer shall state all objections to the application, and shall set forth the interests claimed by the party filing the same, and shall be signed and sworn to by him or by some person in his behalf. [1907 c 250 § 22; RRS § 10646.]

**65.12.155 Judgment by default—Proof.** If no person appears and answers within the time named in the summons, or allowed by the court, the court may at once, upon the motion of the applicant, no reason to the contrary appearing, upon satisfactory proof of the applicant's right thereto, make its order and decree confirming the title of the applicant and ordering registration of the same. By the description in the summons, "all other persons unknown, claiming any right, title, lien, or interest in, to, or upon the real estate described in the application herein", all the world are made parties defendant, and shall be concluded by the default, order and decree. The court shall not be bound by the report of the examiners of title, but may require other or further proof. [1907 c 250 § 23; RRS § 10647.]

**65.12.160 Cause set for trial—Default—Referral.** If, in any case an appearance is entered and answer filed, the cause shall be set down for hearing on motion of either party, but a default and order shall first be entered against all persons who do not appear and answer in the manner provided in RCW 65.12.155. The court may refer the cause or any part thereof to one of the examiners of title, as referee, to hear the parties and their evidence, and make report thereon to the court. His report shall have the same force and effect as that of a referee appointed by the said superior court under the laws of this state now in force, and relating to the appointment, duties and powers of referees. [1907 c 250 § 24; RRS § 10648.]

**65.12.165 Court may require further proof.** The court may order such other or further hearing of the cause before the court or before the examiner of titles after the filing of the report of the examiner, referred to in RCW 65.12.160, and require such other and further proof by either of the parties to the cause as to the court shall seem meet and proper. [1907 c 250 § 25; RRS § 10649.]

**65.12.170 Application dismissed or withdrawn.** If, in any case, after hearing, the court finds that the applicant has not title proper for registration, a decree shall be entered dismissing the application, and such decree may be ordered to be without prejudice. The applicant may dismiss his application at any time, before the final decree, upon such terms as may be fixed by the court, and upon motion to dismiss duly made by the court. [1907 c 250 § 26; RRS § 10650.]

**65.12.175 Decree of registration—Effect—Appeal.** If the court, after hearing, finds that the applicant has title, whether as stated in his application or otherwise, proper for registration, a decree of confirmation of title and registration shall be entered. Every decree of registration shall bind the land, and quiet the title thereto, except as herein otherwise provided, and shall be forever binding and conclusive upon all persons, whether mentioned by name in the application, or included in "all other persons or parties unknown claiming any right, title, estate, lien or interest in, to, or upon the real estate described in the application herein", and such decree shall not be opened by reason of the absence, infancy or other disability of any person affected thereby, nor by any proceeding at law, or in equity, for reversing judgments or decrees, except as herein especially provided. An appeal may be taken to the supreme court or the court of appeals of the state of Washington, within the same time, upon like notice, terms and conditions as are now provided for the taking of appeals from the superior court to the supreme court or the court of appeals of the state of Washington in civil actions. [1971 c 81 § 132; 1907 c 250 § 27; RRS § 10651.]

**65.12.180 Rights of persons not served.** Any person having an interest in or lien upon the land who has not been actually served with process or notified of the filing of the application or the pendency thereof, may at any time within ninety days after the entry of such decree, and not afterwards, appear and file his sworn answer to such application in like manner as hereinbefore prescribed for making answer: *Provided, however,* That such person had no actual notice or information of the filing of such application or the pendency of the proceedings during the pendency thereof, or until within three months of the time of the filing of such answer, which facts shall be made to appear before answering by the affidavit of the person answering or the affidavit of some one in his behalf having knowledge of the facts, and *provided, also,* that no innocent purchaser for value has acquired an interest. If there is any such purchaser, the decree of registration shall not be opened, but shall remain in full force and effect forever, subject only to the right of appeal hereinbefore provided; but any person aggrieved by such decree in any case may pursue his remedy by suit in the nature of an action of tort against the applicant or any other person for fraud in procuring the decree; and may also bring his action for indemnity as hereinafter provided. Upon the filing of such answer, and not less than ten days' notice having been given to the applicant, and to such other interested parties as the court may order in such manner as shall be directed by the court, the court shall proceed to review the case, and if the court is satisfied that the order or decree ought to be opened, an order shall be entered to that effect, and the court shall proceed to review the proceedings, and shall make such order in the case as shall be equitable in the premises. An appeal may be allowed in this case, as well as from all other decrees affecting any registered title within a like time,

and in a like manner, as in the case of an original decree under this chapter, and not otherwise. [1907 c 250 § 28; RRS § 10652.]

**65.12.190 Limitation of actions.** No person shall commence any proceeding for the recovery of lands or any interest, right, lien or demand therein or upon the same adverse to the title or interest as found, or decreed in the decree of registration, unless within ninety days after the entry of the order or decree; and this section shall be construed as giving such right of action to such person only as shall not, because of some irregularity, insufficiency, or for some other cause, be bound and concluded by such order or decree. [1907 c 250 § 29; RRS § 10653.]

**65.12.195 Title free from incumbrances—Exceptions.** Every person receiving a certificate of title in pursuance of a decree of registration, and every subsequent purchaser of registered land who takes a certificate of title for value and in good faith, shall hold the same free from all incumbrances except only such estates, mortgages, liens, charges and interests as may be noted in the last certificate of title in the registrar's office, and except any of the following rights or incumbrances subsisting, namely:

(1) Any existing lease for a period not exceeding three years, when there is actual occupation of the premises under the lease.

(2) All public highways embraced in the description of the land included in the certificates shall be deemed to be excluded from the certificate. And any subsisting right of way or other easement, for ditches or water rights, upon, over or in respect to the land.

(3) Any tax or special assessment for which a sale of the land has not been had at the date of the certificate of title.

(4) Such right of appeal, or right to appear and contest the application, as is allowed by this chapter. And,

(5) Liens, claims or rights, if any, arising or existing under the constitution or laws of the United States, and which the statutes of this state cannot or do not require to appear of record in the office of the county clerk and county auditor. [1907 c 250 § 30; RRS § 10654.]

**65.12.200 Decree—Contents—Filing.** Every decree of registration shall bear the date of the year, day, hour and minute of its entry, and shall be signed by the judge of the superior court of the state of Washington in and for the county in which the land is situated; it shall state whether the owner is married or unmarried, and if married, the name of the husband or wife; if the owner is under disability it shall state the nature of the disability, and if a minor, shall state his age. It shall contain a description of the land as finally determined by the court, and shall set forth the estate of the owner, and also in such manner as to show their relative priority, all particular estates, mortgages, easements, liens, attachments, homesteads and other incumbrances, including rights of husband and wife, if any, to which the land or the owner's estate is subject, and shall contain

any other matter or information properly to be determined by the court in pursuance of this chapter. The decree shall be stated in a convenient form for transcription upon the certificate of title, to be made as hereinafter provided by the registrar of titles. Immediately upon the filing of the decree of registration, the clerk shall file a certified copy thereof in the office of the registrar of titles. [1907 c 250 § 31; RRS § 10655.]

**65.12.210 Interest acquired after filing application.** Any person who shall take by conveyance, attachment, judgment, lien or otherwise any right, title or interest in the land, subsequent to the filing of a copy of the application for registration in the office of the county auditor, shall at once appear and answer as a party defendant in the proceeding for registration, and the right, title or interest of such person shall be subject to the order or decree of the court. [1907 c 250 § 32; RRS § 10656.]

**65.12.220 Registration—Effect.** The obtaining of a decree of registration and receiving of a certificate of title shall be deemed an agreement running with the land and binding upon the applicant and the successors in title, that the land shall be and forever remain registered land, subject to the provisions of this chapter and of all acts amendatory thereof, unless the same shall be withdrawn from registration in the manner hereinafter provided. All dealings with the land or any estate or interest therein after the same has been brought under this chapter, and all liens, encumbrances, and charges upon the same shall be made only subject to the terms of this chapter, so long as said land shall remain registered land and until the same shall be withdrawn from registration in the manner hereinafter provided. [1917 c 62 § 1; 1907 c 250 § 33; RRS § 10657.]

**65.12.225 Withdrawal authorized—Effect.** The owner or owners of any lands, the title to which has been or shall hereafter be registered in the manner provided by law, shall have the right to withdraw said lands from registration in the manner hereinafter provided, and after the same have been so withdrawn from registration, shall have the right to contract concerning, convey, encumber or otherwise deal with the title to said lands as freely and to the same extent and in the same manner as though the title had not been registered. [1917 c 62 § 2; RRS § 10658.]

**65.12.230 Application to withdraw.** The owner or owners of registered lands, desiring to withdraw the same from registration, shall make and file with the registrar of titles in the county in which said lands are situated, an application in substantially the following form:

To the registrar of titles in the county of \_\_\_\_\_, state of Washington:

I, (or we), \_\_\_\_\_, the undersigned registered owner\_\_ in fee simple of the following described real property situated in the county of \_\_\_\_\_, state of Washington, to wit: (here insert the description of the

property), hereby make application to have the title to said real property withdrawn from registration.

Witness my (or our) hand\_\_ and seal\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_.

\_\_\_\_\_  
Applicant's signature.

Said application shall be acknowledged in the same manner as is required for the acknowledgment of deeds. [1917 c 62 § 3; RRS § 10659.]

**65.12.235 Certificate of withdrawal.** Upon the filing of such application and the payment of a fee of five dollars, the registrar of titles, if it shall appear that the application is signed and acknowledged by all the registered owners of said land, shall issue to the [applicant] a certificate in substantially the following form:

This is to certify, That \_\_\_\_\_ the owner (or owners) in fee simple of the following described lands situated in the county of \_\_\_\_\_, state of Washington, the title to which has been heretofore registered under the laws of the state of Washington, to wit: (here insert description of the property), having heretofore filed his (or their) application for the withdrawal of the title to said lands from the registry system; *Now, therefore,* The title to said above described lands has been withdrawn from the effect and operation of the title registry system of the state of Washington and the owner (or owners) of said lands is (or are) by law authorized to contract concerning, convey, encumber or otherwise deal with the title to said lands in the same manner and to the same extent as though said title had never been registered.

Witness my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_.

\_\_\_\_\_  
Registrar of Titles for \_\_\_\_\_ county.

[1973 c 121 § 1; 1917 c 62 § 4; RRS § 10660.]

**65.12.240 Effect of recording.** The person receiving such certificate of withdrawal shall record the same in the record of deeds in the office of the county auditor of the county in which the lands are situated and thereafter the title to said lands shall be conveyed or encumbered in the same manner as the title to lands that have not been registered. [1917 c 62 § 5; RRS § 10661.]

**65.12.245 Title prior to withdrawal unaffected.** \*This act shall not be construed to disturb the effect of any proceedings under said registry system, wherein the question of title to said real property has been determined, but all proceedings had in connection with the registering of said title, relating to the settlement or determination of said title, prior to such withdrawal, shall have the same force and effect as if said title still remained under said registry system. [1917 c 62 § 6; RRS § 10662.]

\*Reviser's note: The language "This act" appears in 1917 c 62 codified herein as RCW 65.12.220 through 65.12.245.

**65.12.250 Entry of registration—Records.** Immediately upon the filing of the decree of registration in the office of the registrar of titles, the registrar shall proceed to register the title or interest pursuant to the terms of the decree in the manner herein provided. The registrar shall keep a book known as the "Register of Titles", wherein he shall enter all first and subsequent original certificates of title by binding or recording them therein in the order of their numbers, consecutively, beginning with number one, with appropriate blanks for entry of memorials and notations allowed by this chapter. Each certificate, with such blanks, shall constitute a separate page of such book. All memorials and notations that may be entered upon the register shall be entered upon the page whereon the last certificate of title of the land to which they relate is entered. The term certificate of title used in this chapter shall be deemed to include all memorials and notations thereon. [1907 c 250 § 34; RRS § 10663.]

**65.12.255 Certificate of title.** The certificate of registration shall contain the name of the owner, a description of the land and of the estate of the owner, and shall by memorial or notation contain a description of all incumbrances, liens and interests to which the estate of the owner is subject; it shall state the residence of the owner and, if a minor, give his age; if under disability, it shall state the nature of the disability; it shall state whether married or not, and, if married, the name of the husband or wife; in case of a trust, condition or limitation, it shall state the trust, condition or limitation, as the case may be; and shall contain and conform in respect to all statements to the certified copy of the decree of registration filed with the registrar of titles as hereinbefore provided; and shall be in form substantially as follows:

FIRST CERTIFICATE OF TITLE

Pursuant to order of the superior court of the state of Washington, in and for ----- county.

State of Washington, }  
County of -----, } ss.

This is to certify that A----- B----- of -----, county of -----, state of -----, is now the owner of an estate (describe the estate) of, and in (describe the land), subject to the incumbrances, liens and interests noted by the memorial underwritten or indorsed thereon, subject to the exceptions and qualifications mentioned in the thirtieth section of "An Act relating to the registration and confirmation of titles to land," in the session laws of Washington for the year 1907 [RCW 65.12.195]. (Here note all statements provided herein to appear upon the certificate.)

In witness whereof, I have hereunto set my hand and affixed the official seal of my office this ---- day of -----, A.D. 19---

(Seal) -----  
Registrar of Titles.

[1907 c 250 § 35; RRS § 10664.]

**65.12.260 Owner's certificate—Receipt.** The registrar shall, at the time that he enters his original certificate of title, make an exact duplicate thereof, but putting on it the words "Owner's duplicate certificate of ownership", and deliver the same to the owner or to his attorney duly authorized. For the purpose of preserving evidence of the signature and handwriting of the owner in his office, it shall be the duty of the registrar to take from the owner, in every case where it is practicable so to do, his receipt for the certificate of title which shall be signed by the owner in person. Such receipt, when signed and delivered in the registrar's office, shall be witnessed by the registrar or deputy registrar. If such receipt is signed elsewhere, it shall be witnessed and acknowledged in the same manner as is now provided for the acknowledgment of deeds. When so signed, such receipt shall be prima facie evidence of the genuineness of such signature. [1907 c 250 § 36; RRS § 10665.]

**65.12.265 Tenants in common.** Where two or more persons are registered owners as tenants in common or otherwise, one owner's duplicate certificate can be issued for the entirety, or a separate duplicate owner's certificate may be issued to each owner for his undivided share. [1907 c 250 § 37; RRS § 10666.]

**65.12.270 Subsequent certificates.** All certificates subsequent to the first shall be in like form, except that they shall be entitled: "Transfer from No. -----", (the number of the next previous certificate relating to the same land), and shall also contain the words "Originally registered on the ---- day of -----, 19--, and entered in the book ----- at page ---- of register." [1907 c 250 § 38; RRS § 10667.]

**65.12.275 Exchange of certificates—Platting land.** A registered owner holding one duplicate certificate for several distinct parcels of land may surrender it and take out several certificates for portions thereof. A registered owner holding several duplicate certificates for several distinct parcels of land may surrender them and take out a single duplicate certificate for all of said parcels, or several certificates for different portions thereof. Such exchange of certificates, however, shall only be made by the order of the court upon petition therefor duly made by the owner. An owner of registered land who shall subdivide such land into lots, blocks or acre tracts shall file with the registrar of titles a plat of said land so subdivided, in the same manner and subject to the same rules of law and restrictions as is provided for platting land that is not registered. [1907 c 250 § 39; RRS § 10668.]

**65.12.280 Effective date of certificate.** The certificate of title shall relate back to and take effect as of the date of the decree of registration. [1907 c 250 § 40; RRS § 10669.]

**65.12.290 Certificate of title as evidence.** The original certificate in the registration book, any copy thereof duly certified under the signature of the registrar of titles or his deputy, and authenticated by his seal and

also the owner's duplicate certificate shall be received as evidence in all the courts of this state, and shall be conclusive as to all matters contained therein, except so far as is otherwise provided in this chapter. In case of a variance between the owner's duplicate certificate and the original certificate, the original shall prevail. [1907 c 250 § 41; RRS § 10670.]

**65.12.300 Indexes and files—Forms.** The registrar of titles, under the direction of the court, shall make and keep indexes of all duplication and of all certified copies and decrees of registration and certificates of titles, and shall also index and file in classified order all papers and instruments filed in his office relating to applications and to registered titles. The registrar shall also, under the direction of the court, prepare and keep forms of indexes and entry books. The court shall prepare and adopt convenient forms of certificates of titles, and also general forms of memorials or notations to be used by the registrars of titles in registering the common forms of conveyance and other instruments to express briefly their effect. [1907 c 250 § 42; RRS § 10671.]

**65.12.310 Tract and alphabetical indexes.** The registrar of titles shall keep tract indexes, in which shall be entered the lands registered in the numerical order of the townships, ranges, sections, and in cases of subdivisions, the blocks and lots therein, and the names of the owners, with a reference to the volume and page of the register of titles in which the lands are registered. He shall also keep alphabetical indexes, in which shall be entered, in alphabetical order, the names of all registered owners, and all other persons interested in, or holding charges upon, or any interest in, the registered land, with a reference to the volume and page of the register of titles in which the land is registered. [1907 c 250 § 43; RRS § 10672.]

**65.12.320 Dealings with registered land.** The owner of registered land may convey, mortgage, lease, charge or otherwise incumber, dispose of or deal with the same as fully as if it had not been registered. He may use forms of deeds, trust deeds, mortgages and leases or voluntary instruments, like those now in use, and sufficient in law for the purpose intended. But no voluntary instrument of conveyance, except a will and a lease, for a term not exceeding three years, purporting to convey or affect registered land, shall take effect as a conveyance, or bind the land; but shall operate only as a contract between the parties, and as evidence of the authority to the registrar of titles to make registration. The act of registration shall be the operative act to convey or affect the land. [1907 c 250 § 44; RRS § 10673.]

**65.12.330 Registration has effect of recording.** Every conveyance, lien, attachment, order, decree, judgment of a court of record, or instrument or entry which would, under existing law, if recorded, filed or entered in the office of the county clerk, and county auditor, of the county in which the real estate is situate, affect the

said real estate to which it relates, if the title thereto were not registered, shall, if recorded, filed or entered in the office of the registrar of titles in the county where the real estate to which such instrument relates is situate, affect in like manner the title thereto if registered, and shall be notice to all persons from the time of such recording, filing or entering. [1907 c 250 § 45; RRS § 10674.]

**65.12.340 Filing—Numbering—Indexing—Public records.** The registrar of titles shall number and note in a proper book to be kept for that purpose, the year, month, day, hour and minute of reception and number of all conveyances, orders or decrees, writs or other process, judgments, liens, or all other instruments, or papers or orders affecting the title of land, the title to which is registered. Every instrument so filed shall be retained in the office of the registrar of titles, and shall be regarded as registered from the time so noted, and the memorial of each instrument, when made on the certificate of title to which it refers, shall bear the same date. Every instrument so filed, whether voluntary or involuntary, shall be numbered and indexed, and indorsed with a reference to the proper certificate of title. All records and papers, relating to registered land, in the office of the registrar of titles shall be open to public inspection, in the same manner as are now the papers and records in the office of the county clerk and county auditor. [1907 c 250 § 46; RRS § 10675.]

**65.12.350 Duplicate of instruments certified—Fees.** Duplicates of all instruments, voluntary or involuntary, filed and registered in the office of the registrar of titles, may be presented with the originals, and shall be attested and sealed by the registrar of titles, and indorsed with the file number and other memoranda on the originals, and may be taken away by the person presenting the same. Certified copies of all instruments filed and registered may be obtained from the registrar of titles, on the payment of a fee of the same amount as is now allowed the county clerk and county auditor, for a like certified copy. [1907 c 250 § 47; RRS § 10676.]

**65.12.360 New certificate—Register of less than fee—When form of memorial in doubt.** No new certificate shall be entered or issued upon any transfer of registered land, which does not divest the title in fee simple of said land or some part thereof, from the owner or some one of the registered owners. All interest in the registered land, less than a freehold estate, shall be registered by filing with the registrar of titles, the instruments creating, transferring or claiming such interest, and by a brief memorandum or memorial thereof, made by a registrar of titles upon the certificate of title, and signed by him. A similar memorandum, or memorial, shall also be made on the owner's duplicate.

The cancellation or extinguishment of such interests shall be registered in the same manner. When any party in interest does not agree as to the proper memorial to be made upon the filing of any instrument, (voluntary or involuntary), presented for registration, or where the

registrar of titles is in doubt as to the form of such memorial, the question shall be referred to the court for decision, either on the certificate of the registrar of titles, or upon the demand in writing of any party in interest.

The registrar of titles shall bring before the court all the papers and evidence which may be necessary for the determination of the question by the court. The court, after notice to all parties in interest and a hearing, shall enter an order prescribing the form of the memorial, and the registrar of titles shall make registration in accordance therewith. [1907 c 250 § 48; RRS § 10677.]

**65.12.370 Owner's certificate to be produced when new certificate issued.** No new certificates of titles shall be entered, and no memorial shall be made upon any certificate of title, in pursuance of any deed, or other voluntary instrument, unless the owner's duplicate certificate is presented with such instrument, except in cases provided for in this chapter, or upon the order of the court for cause shown; and whenever such order is made a memorial therefor shall be entered, or a new certificate issued, as directed by said order. The production of the owner's duplicate certificate, whenever any voluntary instrument is presented for registration, shall be conclusive authority from the registered owner to the registrar of titles, to enter a new certificate, or to make a memorial of registration in accordance with such instrument; and a new certificate or memorial shall be binding upon the registered owner and upon all persons claiming under him in favor of every purchaser for value and in good faith. [1907 c 250 § 49; RRS § 10678.]

**65.12.375 Owner's duplicate certificate.** In the event that an owner's duplicate certificate of title shall be lost, mislaid or destroyed, the owner may make affidavit of the fact before any officer authorized to administer oaths, stating, with particularity, the facts relating to such loss, mislaying or destruction, and shall file the same in the office of the registrar of titles.

Any party in interest may thereupon apply to the court, and the court shall, upon proofs of the facts set forth in the affidavits, enter an order directing the registrar of titles to make and issue a new owner's duplicate certificate, such new owner's duplicate certificate shall be printed or marked, "Certified copy of owner's duplicate certificate", and such certified copy shall stand in the place of and have like effect as the owner's duplicate certificate. [1907 c 250 § 50; RRS § 10679.]

**65.12.380 Conveyance of registered land.** An owner of registered land, conveying the same, or any portion thereof, in fee, shall execute a deed of conveyance, which the grantor shall file with the registrar of titles in the county where the land lies. The owner's duplicate certificate shall be surrendered at the same time and shall be by the registrar marked "Canceled". The original certificate of title shall also be marked "Canceled". The registrar of titles shall thereupon entered in the register of titles, a new certificate of title to the grantee,

and shall prepare and deliver to such grantee an owner's duplicate certificate. All incumbrances, claims or interests adverse to the title of the registered owner shall be stated upon the new certificate or certificates, except insofar as they may be simultaneously released or discharged.

When only a part of the land described in a certificate is transferred, or some estate or interest in the land is to remain in the transferor, a new certificate shall be issued to him, for the part, estate or interest remaining in him. [1907 c 250 § 51; RRS § 10680.]

**65.12.390 Certificate of tax payment.** Before any deed, plat or other instrument affecting registered land shall be filed or registered in the office of the registrar of titles, the owner shall present a certificate from the county treasurer showing that all taxes then due thereon have been paid. [1907 c 250 § 52; RRS § 10681.]

**65.12.400 Registered land charged as other land.** Registered land and ownership therein shall in all respects be subject to the same burdens and incidents which attach by law to unregistered land. Nothing contained in this chapter shall in any way be construed to relieve registered land, or the owners thereof, from any rights incident to the relation of husband and wife, or from liability to attachment of mesne process, or levy on execution, or from liability from any lien of any description established by law on land or the improvements thereon, or the interest of the owner in such land or improvements, or to change the laws of descent, or the rights of partition between cotenants, or the right to take the same by eminent domain, or to relieve such land from liability to be recovered by an assignee in insolvency or trustee in bankruptcy, under the provisions of law relating thereto; or to change or affect in any way, any other rights or liabilities, created by law, applicable to unregistered land, except as otherwise expressly provided in this chapter, or any amendments hereof. [1907 c 250 § 53; RRS § 10682.]

**65.12.410 Conveyances by attorney in fact.** Any person may by attorney convey or otherwise deal with registered land, but the letters or power of attorney shall be acknowledged and filed with the registrar of titles, and registered. Any instrument revoking such letters, or power of attorney, shall be acknowledged in like manner. [1907 c 250 § 54; RRS § 10683.]

**65.12.420 Encumbrances by owner.** The owner of registered land may mortgage or encumber the same, by executing a trust deed or other instrument, sufficient in law for that purpose, and such instrument may be assigned, extended, discharged, released, in whole or in part, or otherwise dealt with by the mortgagee, by any form of instrument sufficient in law for the purpose; but such trust deed or other instrument, and all instruments assigning, extending, discharging, releasing or otherwise dealing with the encumbrance, shall be registered, and shall take effect upon the title only from the time of registration. [1907 c 250 § 55; RRS § 10684.]



**65.12.430 Registration of mortgages.** A trust deed shall be deemed to be a mortgage, and be subject to the same rules as a mortgage, excepting as to the manner of the foreclosure thereof. The registration of a mortgage shall be made in the following manner, to wit: The owner's duplicate certificate shall be presented to the registrar of titles with the mortgage deed or instrument to be registered, and the registrar shall enter upon the original certificate of title and also upon the owner's duplicate certificate, a memorial of the purport of the instrument registered, the time of filing, and the file number of the registered instrument. He shall also note upon the instrument registered, the time of filing, and a reference to the volume and page of the register of titles, wherein the same is registered. The registrar of titles shall also, at the request of the mortgagee, make out and deliver to him a duplicate certificate of title, like the owner's duplicate, except that the words, "Mortgagee's duplicate", shall be written or printed upon such certificate in large letters, diagonally across the face. A memorandum of the issuance of the mortgagee's duplicate shall be made upon the certificate of title. [1907 c 250 § 56; RRS § 10685.]

**65.12.435 Dealings with mortgages.** Whenever a mortgage upon which a mortgagee's duplicate has been issued is assigned, extended or otherwise dealt with, the mortgagee's duplicate shall be presented with the instrument assigning, extending, or otherwise dealing with the mortgage, and a memorial of the instrument shall be made upon the mortgagee's duplicate, and upon the original certificate of title. When the mortgage is discharged, or otherwise extinguished, the mortgagee's duplicate shall be surrendered and stamped, "Canceled". In case only a part of the charge or of the land is intended to be released, discharged, or surrendered, the entry shall be made by a memorial according in like manner as before provided for a release or discharge.

The production of the mortgagee's duplicate certificate shall be conclusive authority to register the instrument therewith presented. A mortgage on registered land may be discharged in whole or in part by the mortgagee in person on the register of titles in the same manner as a mortgage on unregistered land may be discharged by an entry on the margin of the record thereof, in the auditor's office, and such discharge shall be attested by the registrar of titles. [1907 c 250 § 57; RRS § 10686.]

**65.12.440 Foreclosures on registered land.** All charges upon registered land, or any estate or interest in the same, and any right thereunder, may be enforced as is now allowed by law, and all laws relating to the foreclosure of mortgages shall apply to mortgages upon registered land, or any estate or interest therein, except as herein otherwise provided, and except that a notice of the pendency of any suit or of any proceeding to enforce or foreclose the mortgage, or any charge, shall be filed in the office of the registrar of titles, and a memorial thereof entered on the register, at the time of, or

prior to, the commencement of such suit, or the beginning of any such proceeding. A notice so filed and registered shall be notice to the registrar of titles and all persons dealing with the land or any part thereof. When a mortgagee's duplicate has been issued, such duplicate shall, at the time of the registering of the notice, be presented, and a memorial of such notice shall be entered upon the mortgagee's duplicate. [1907 c 250 § 58; RRS § 10687.]

**65.12.445 Registration of final decree—New certificate.** In any action affecting registered land a judgment or final decree shall be entitled to registration on the presentation of a certified copy of the entry thereof from the clerk of the court where the action is pending to the registrar of titles. The registrar of titles shall enter a memorial thereof upon the original certificates of title, and upon the owner's duplicate, and also upon the mortgagee's and lessee's duplicate, if any there be outstanding. When the registered owner of such land is, by such judgment or decree, divested of his estate in fee to the land or any part thereof, the plaintiff or defendant shall be entitled to a new certificate of title for the land, or that part thereof, designated in the judgment or decree, and the registrar of titles shall enter such new certificate of title, and issue a new owner's duplicate, in such manner as is provided in the case of voluntary conveyance: *Provided, however,* That no such new certificate of title shall be entered, except upon the order of the superior court of the county in which the land is situated, and upon the filing in the office of the registrar of titles, an order of the court directing the entry of such new certificate. [1907 c 250 § 59; RRS § 10688.]

**65.12.450 Title on foreclosure—Registration.** Any person who has, by any action or proceeding to enforce or foreclose any mortgage, lien or charge upon registered land, become the owner in fee of the land, or any part thereof, shall be entitled to have his title registered, and the registrar of titles shall, upon application therefor, enter a new certificate of title for the land, or that part thereof, of which the applicant is the owner, and issue an owner's duplicate, in such manner as in the case of a voluntary conveyance of registered land: *Provided, however,* No such new certificate of title shall be entered, except after the time to redeem from such foreclosure has expired, and upon the filing in the office of the registrar of titles, an order of the superior court of the county directing the entry of such new certificates. [1907 c 250 § 60; RRS § 10689.]

**65.12.460 Petition for new certificate.** In all cases wherein, by this chapter, it is provided that a new certificate of title to registered land shall be entered by order of the court a person applying for such new certificate shall apply to the court by petition, setting forth the facts; and the court shall, after notice given to all parties in interest, as the court may direct, and upon hearing, make an order or decree for the entry of a new certificate to such person as shall appear to be entitled thereto. [1907 c 250 § 61; RRS § 10690.]

**65.12.470 Registration of leases.** Leases for registered land, for a term of three years or more, shall be registered in like manner as a mortgage, and the provisions herein relating to the registration of mortgages, shall also apply to the registration of leases. The registrar shall, at the request of the lessee, make out and deliver to him a duplicate of the certificate of title like the owner's duplicate, except the words, "Lessee's duplicate", shall be written or printed upon it in large letters diagonally across its face. [1907 c 250 § 62; RRS § 10691.]

**65.12.480 Instruments with conditions.** Whenever a deed, or other instrument, is filed in the office of the registrar of titles, for the purpose of effecting a transfer of or charge upon the registered land, or any estate or interest in the same, and it shall appear that the transfer or charge is to be in trust or upon condition or limitation expressed in such deed or instrument, such deed or instrument shall be registered in the usual manner, except that the particulars of the trust, condition, limitation or other equitable interest shall not be entered upon the certificate of title by memorial, but a memorandum or memorial shall be entered by the words, "in trust", or "upon condition", or other apt words, and by reference by number to the instrument authorizing or creating the same. A similar memorial shall be made upon the owner's duplicate certificate.

No transfer of, or charge upon, or dealing with, the land, estate or interest therein, shall thereafter be registered, except upon an order of the court first filed in the office of the registrar of titles, directing such transfer, charge, or dealing, in accordance with the true intent and meaning of the trust, condition or limitation. Such registration shall be conclusive evidence in favor of the person taking such transfer, charge, or right; and those claiming under him, in good faith, and for a valuable consideration, that such transfer, charge or other dealing is in accordance with the true intent and meaning of the trust, condition, or limitation. [1907 c 250 § 63; RRS § 10692.]

**65.12.490 Transfers between trustees.** When the title to registered land passes from a trustee to a new trustee, a new certificate shall be entered to him, and shall be registered in like manner as upon an original conveyance in trust. [1907 c 250 § 64; RRS § 10693.]

**65.12.500 Trustee may register land.** Any trustee shall have authority to file an application for the registration of any land held in trust by him, unless expressly prohibited by the instrument creating the trust. [1907 c 250 § 65; RRS § 10694.]

**65.12.510 Creation of lien on registered land.** In every case where writing of any description, or copy of any writ, order or decree is required by law to be filed or recorded in order to create or preserve any lien, right, or attachment upon unregistered land, such writing or copy, when intended to affect registered land, in lieu of recording, shall be filed and registered in the office of the registrar of titles, in the county in which

the land lies, and, in addition to any particulars required in such papers, for the filing or recording, shall also contain a reference to the number of the certificate of title of the land to be affected, and also, if the attachment, right or lien is not claimed on all the land in any certificate of title, a description sufficiently accurate for the identification of the land intended to be affected. [1907 c 250 § 66; RRS § 10695.]

**65.12.520 Registration of liens.** All attachments, liens and rights, of every description, shall be enforced, continued, reduced, discharged and dissolved, by any proceeding or method, sufficient and proper in law to enforce, continue, reduce, discharge or dissolve, like liens or unregistered land. All certificates, writing or other instruments, permitted or required by law, to be filed or recorded, to give effect to the enforcement, continuance, reduction, discharge or dissolution of attachments, liens or other rights upon registered land, or to give notice of such enforcement, continuance, reduction, discharge or dissolution, shall in the case of like attachments, liens or other rights upon registered land, be filed with the registrar of titles, and registered in the register of titles, in lieu of filing or recording. [1907 c 250 § 67; RRS § 10696.]

**65.12.530 Entry as to plaintiff's attorney.** The name and address of the attorney for the plaintiff in every action affecting the title to registered land, shall, in all cases, be endorsed upon the writ or other writing filed in the office of the registrar of titles, and he shall be deemed the attorney of the plaintiff until written notice that he has ceased to be such plaintiff's attorney shall be filed for registration by the plaintiff. [1907 c 250 § 68; RRS § 10697.]

**65.12.540 Decree.** A judgment, decree, or order of any court shall be a lien upon, or affect registered land, or any estate or interest therein, only when a certificate under the hand and official seal of the clerk of the court in which the same is of record, stating the date and purport of the judgment, decree, or order, or a certified copy of such judgment, decree, or order, or transcript of the judgment docket, is filed in the office of the registrar, and a memorial of the same is entered upon the register of the last certificate of the title to be affected. [1907 c 250 § 69; RRS § 10698.]

**65.12.550 Title acquired on execution.** Any person who has acquired any right, interest or estate in registered land by virtue of any execution, judgment, order or decree of the court, shall register his title so acquired, by filing in the office of the registrar of titles all writings or instruments permitted or required to be recorded in the case of unregistered land. If the interest or estate so acquired is the fee in the registered land, or any part thereof, the person acquiring such interest shall be entitled to have a new certificate of title, registered in him, in the same manner as is provided in the case of persons acquiring title by an action or proceeding in foreclosure of mortgages. [1907 c 250 § 70; RRS § 10699.]

**65.12.560 Termination of proceedings.** The certificate of the clerk of the court in which any action or proceeding shall be pending, or any judgment or decree is of record, that such action or proceeding has been dismissed or otherwise disposed of, or that the judgment, decree, or order has been satisfied, released, reversed or overruled, or of any sheriff or any other officer that the levy of any execution, attachment, or other process, certified by him, has been released, discharged, or otherwise disposed of, being filed in the office of the registrar of titles and noted upon the register, shall be sufficient to authorize the registrar to cancel or otherwise treat the memorial of such action, proceeding, judgment, decree, order, or levy, according to the purport of such certificate. [1907 c 250 § 71; RRS § 10700.]

**65.12.570 Land registered only after redemption period.** Whenever registered land is sold, and the same is by law subject to redemption by the owner or any other person, the purchaser shall not be entitled to have a new certificate of title entered, until the time within which the land may be redeemed has expired. At any time after the time to redeem shall have expired, the purchaser may petition the court for an order directing the entry of a new certificate of title to him, and the court shall, after such notice as it may order, and hearing, grant and make an order directing the entry of such new certificate of title. [1907 c 250 § 72; RRS § 10701.]

**65.12.580 Registration on inheritance.** The heirs at law and devisees, upon the death of an owner of lands, and any estate or interest therein, registered pursuant to this chapter, on the expiration of thirty days after the entry of the decree of the superior court granting letters testamentary or of administration, or, in case of an appeal from such decree, at any time after the entry of a final decree, may file a certified copy of the final decree, of the superior court having jurisdiction, and of the will, if any, with the clerk of the superior court, in the county in which the land lies, and make application to the court for an order for the entry of a new certificate of title. The court shall issue notice to the executor or administrator and all other persons in interest, and may also give notice by publication in such newspaper or newspapers as it may deem proper, to all whom it may concern; and after hearing, may direct the entry of a new certificate or certificates to the person or persons who appear to be entitled thereto as heirs or devisees. Any new certificate so entered before the final settlement of the estate of the deceased owner, in the superior courts, shall state expressly that it is entered by transfer from the last certificate by descent or devise, and that the estate is in process of settlement. After the final settlement of the estate in the superior court, or after the expiration of the time allowed by law for bringing an action against an executor or administrator by creditors of the deceased, the heirs at law or devisees may petition the court for an order to cancel the memorial upon their certificates, stating that the estate is in the course of settlement, and the court, after such notice as it may order, and a hearing, may grant the

petition: *Provided, however,* That the liability of registered land to be sold for claims against the estate of the deceased, shall not in any way be diminished or changed. [1907 c 250 § 73; RRS § 10702.]

**65.12.590 Probate court may direct sale of registered land.** Nothing contained in this chapter shall include, affect or impair the jurisdiction of the superior court to order an executor, administrator or guardian to sell or mortgage registered land for any purpose for which such order may be granted in the case of unregistered land. The purchaser or mortgagee, taking a deed or mortgage executed in pursuance of such order of the superior court, shall be entitled to register his title, and to the entry of a new certificate of title or memorial of registration, upon application to the superior court, and upon filing in the office of the registrar of titles, an order of said court, directing the entry of such certificates. [1907 c 250 § 74; RRS § 10703.]

**65.12.600 Trustees and receivers.** An assignee for the benefit of creditors, receiver, trustee in bankruptcy, master in chancery, special commissioner, or other person appointed by the court, shall file in the office of the registrar of titles, the instrument or instruments by which he is vested with title, estate, or interest in any registered land, or a certified copy of an order of the court showing that such assignee, receiver, trustee in bankruptcy, master in chancery, special commissioner, or other person, is authorized to deal with such land, estate or interest, and, if it is in the power of such person, he shall, at the same time, present to the registrar of titles, the owner's duplicate certificate of title; thereupon the registrar shall enter upon the register of titles, and the duplicate certificate, if presented, a memorial thereof, with a reference to such order or deed by its file number. Such memorial having been entered, the assignee, receiver, trustee in bankruptcy, master in chancery, special commissioner or other person may, subject to the direction of the court, deal with or transfer such land as if he were a registered owner. [1907 c 250 § 75; RRS § 10704.]

**65.12.610 Eminent domain—Reversion.** Whenever registered land, or any right or interest therein, is taken by eminent domain, the state or body politic, or corporate or other authority exercising such right shall pay all fees on account of any memorial or registration or entry of new certificates, or duplicate thereof, and fees for the filing of instruments required by this chapter to be filed. When, for any reason, by operation of law, land which has been taken for public use reverts to the owner from whom it was taken, or his heirs or assigns, the court, upon petition of the person entitled to the benefit of the reversion, after such notice as it may order, and hearing, may order the entry of a new certificate of title to him. [1907 c 250 § 76; RRS § 10705.]

**65.12.620 Registration when owner's certificate withheld.** In every case where the registrar of titles enters a memorial upon a certificate of title, or enters a new

certificate of title, in pursuance of any instrument executed by the registered owner, or by reason of any instrument or proceeding which affects or devises the title of the registered owner against his consent, if the outstanding owner's duplicate certificate is not presented, the registrar of titles shall not enter a new certificate or make a memorial, but the person claiming to be entitled thereto may apply by petition to the court. The court may order the registered owner, or any person withholding the duplicate certificate, to present or surrender the same, and direct the entry of a memorial or new certificate upon such presentation or surrender. If, in any case, the person withholding the duplicate certificate is not amenable to the process of the court, or cannot be found, or if, for any reason, the outstanding owner's duplicate certificate cannot be presented or surrendered without delay, the court may, by decree, annul the same, and order a new certificate of title to be entered. Such new certificate, and all duplicates thereof, shall contain a memorial of the annulment of the outstanding duplicate. If in any case of an outstanding mortgagee's or lessee's duplicate certificate shall be withheld or otherwise dealt with, like proceedings may be had to obtain registration as in case of the owner's withholding or refusing to deliver the duplicate receipt. [1907 c 250 § 77; RRS § 10706.]

**65.12.630 Reference to examiner of title.** In all cases where, under the provisions of this chapter, application is made to the court for an order or decree, the court may refer the matter to one of the examiners of title for hearing and report, in like manner, as is herein provided for the reference of the application for registration. [1907 c 250 § 78; RRS § 10707.]

**65.12.635 Examiner of titles.** Examiners of titles shall, upon the request of the registrar of titles, advise him upon any act or duty pertaining to the conduct of his office, and shall, upon request, prepare the form of any memorial to be made or entered by the registrar of titles. The examiner of titles shall have full power to administer oaths and examine witnesses involved in his investigation of titles. [1907 c 250 § 79; RRS § 10708.]

**65.12.640 Registered instruments to contain names and addresses—Service of notices.** Every writing and instrument required or permitted by this chapter to be filed for registration, shall contain or have endorsed upon it, the full name, place of residence and post office address of the grantee or other person requiring or claiming any right, title or interest under such instrument. Any change in residence or post office address of such person shall be endorsed by the registrar of titles in the original instrument, on receiving a sworn statement of such change. All names and addresses shall also be entered on all certificates. All notices required by, or given in pursuance of the provisions of this chapter by the registrar of titles or by the court, after original registration, shall be served upon the person to be notified; if a resident of the state of Washington, as summons in civil actions are served; and proof of such service shall be made as on the return of a summons.

All such notices shall be sent by mail, to the person to be notified, if not a resident of the state of Washington, and his residence and post office address, as stated in the certificate of title, or in any registered instrument under which he claims an interest. The certificate of the registrar of titles, or clerk of court, that any notice has been served, by mailing the same, as aforesaid, shall be conclusive proof of such notice: *Provided, however,* That the court may, in any case, order different or further service by publication or otherwise. [1907 c 250 § 80; RRS § 10709.]

**65.12.650 Adverse claims—Procedure.** Any person claiming any right or interest in registered land, adverse to the registered owner, arising subsequent to the date of the original registration, may, if no other provision is made in this chapter for registering the same, make a statement in writing, setting forth fully his alleged right or interest and how or under whom acquired, and a reference to the volume and page of the certificate of title of the registered owner, and a description of the land to which the right or interest is claimed. The statement shall be signed and sworn to, and shall state the adverse claimant's residence, and designate a place at which all notices may be served upon him. This statement shall be entitled to registration, as an adverse claim; and the court, upon the petition of any party in interest, shall grant a speedy hearing upon the question of the validity of such adverse claim, and shall enter such decree thereon as equity and justice may require.

If the claim is adjudged to be invalid, its registration shall be canceled. The court may, in any case, award such costs and damages, including reasonable attorneys' fees, as it may deem just in the premises. [1907 c 250 § 81; RRS § 10710.]

**65.12.660 Assurance fund.** Upon the original registration of land under this chapter, and also upon the entry of the certificate showing title as registered owners in heirs or devisees, there shall be paid to the registrar of titles, one-fortieth of one percent of the assessed value of the real estate on the basis of the last assessment for general taxation, as an assurance fund. [1973 1st ex.s. c 195 § 75; 1907 c 250 § 82; RRS § 10711.]

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

**65.12.670 Investment of fund.** All sums of money received by the registrar as provided for in RCW 65.12.660, shall be forthwith paid by the registrar to the county treasurer of the county in which the land lies, for the purpose of an assurance fund, under the terms of this chapter; it shall be the duty of the county treasurer, whenever the amount on hand in said assurance fund is sufficient, to invest the same, principal and income, and report annually to the superior court of the same county the condition and income thereof; and no investment of the funds, or any part thereof, shall be made without the approval of said court, by order entered of record. Said fund shall be invested only in bonds or securities of the United States, or of one of the states of the United States, or of the counties or other

municipalities of this state. [1907 c 250 § 83; RRS § 10712.]

**65.12.680 Recoveries from fund.** Any person sustaining loss or damage, through any omission, mistake, or misfeasance of the registrar of titles, or of any examiner of titles, or of any deputy, or by the mistake or misfeasance of the clerk of the court, or any deputy, in the performance of their respective duties, under the provisions of this chapter, and any person wrongfully deprived of any land or any interest therein, through the bringing of the same, under the provisions of this chapter, or by the registration of any other person as the owner of such land, or by any mistake, omission, or misdescription in any certificate or entry, or memorial, in the register of titles, or by any cancellation, and who, by the provisions of this chapter, is barred or precluded from bringing any action for the recovery of such land, or interest therein, or claim thereon, may bring an action against the treasurer of the county in which such land is situated, for the recovery of damages to be paid out of the assurance fund. [1907 c 250 § 84; RRS § 10713.]

**65.12.690 Parties defendant—Judgment—Payment—Duties of county attorney.** If such action be for recovery for loss or damage arising only through any omission, mistake or misfeasance of the registrar of titles or his deputies, or of any examiner of titles, or any clerk of court or his deputy, in the performance of their respective duties, under the provisions of this chapter, then the county treasurer shall be the sole defendant to such action; but if such action be brought for loss or damage arising only through the fraud or wrongful act of some person or persons other than the registrar or his deputies, the examiners of title, the clerk of the court or his deputies, or arising jointly through the fraud or wrongful act of such other person or persons, and the omission, mistakes or misfeasance of the registrar of titles or his deputies, the examiners of titles, the clerk of the court or his deputies, then such action shall be brought against both the county treasurer and such persons or persons aforesaid. In all such actions, where there are defendants other than the county treasurer, and damages shall have been recovered, no final judgment shall be entered against the county treasurer, until execution against the other defendants shall be returned unsatisfied in whole or in part, and the officer returning the execution shall certify that the amount still due upon the execution cannot be collected except by application to the indemnity [assurance] fund. Thereupon the court, being satisfied as to the truth of such return, shall order final judgment against the treasurer, for the amount of the execution and costs, or so much thereof as remains unpaid. The county treasurer shall, upon such order of the court and final judgment, pay the amount of such judgment out of the assurance fund. It shall be the duty of the county attorney to appear and defend all such actions. If the funds in the assurance funds at any time are insufficient to pay any judgment in full, the balance unpaid shall draw interest at the legal rate of interest, and be paid with such interest out of

the first funds coming into said fund. [1907 c 250 § 85; RRS § 10714.]

**65.12.700 When fund not liable—Maximum liability.** The assurance fund shall not be liable in any action to pay for any loss, damage or deprivation occasioned by a breach of trust, whether expressed, implied, or constructive, by any registered owner who is a trustee, or by the improper exercise of any power of sale, in a mortgage or a trust deed. Final judgment shall not be entered against the county treasurer in any action against this chapter to recover from the assurance fund for more than a fair market value of the real estate at the time of the last payment to the assurance fund, on account of the same real estate. [1907 c 250 § 86; RRS § 10715.]

**65.12.710 Limitation of actions.** No action or proceeding for compensation for or by reason of any deprivation, loss or damage occasioned or sustained as provided in this chapter, shall be made, brought or taken, except within the period of six years from the time when right to bring or take such action or proceeding first accrued; except that if, at any time, when such right of action first accrues, the person entitled to bring such action, or take such proceeding, is under the age of eighteen years, or insane, imprisoned, or absent from the United States in the service of the United States, or of this state, then such person, or anyone claiming from, by, or under him, may bring the action, or take the proceeding, at any time within two years after such disability is removed, notwithstanding the time before limited in that behalf has expired. [1971 ex.s. c 292 § 49; 1907 c 250 § 87; RRS § 10716.]

**Severability—1971 ex.s. c 292:** See note following RCW 26.28.010.

**65.12.720 Proceeding to change records.** No erasure, alteration or amendment shall be made upon the register of titles after the entry of the certificate of title, or a memorial thereon, and the attestation of the same by the registrar of titles, except by order of the court. Any registered owner, or other person in interest, may at any time apply by petition to the court, on the ground that registered interests of any description, whether vested, contingent, expectant, or inchoate, have determined and ceased; or that new interests have arisen or been created, which do not appear upon the certificate; or that an error, omission or mistake was made in entering the certificate; or any memorial thereon, or any duplicate certificate; or that the name of any person on the certificate has been changed; or that the registered owner has been married, or if registered, has married, that the marriage has been terminated, or that a corporation which owned registered land has been dissolved, and has not conveyed the same within three years after its dissolution; or upon any other reasonable ground; and the court shall have jurisdiction to hear and determine the petition after such notice as it may order, to all parties in interest, and may order the entry of a new certificate, the entry or cancellation of a memorial upon a certificate, or grant any other relief upon such terms

and conditions, requiring security if necessary, as it may deem proper: *Provided, however*, That this section shall not be construed to give the court authority to open the original decree of registration, and that nothing shall be done or ordered by the court which shall impair the title or other interest of the purchaser, holding a certificate for value and in good faith, or his heirs or assigns, without his or their written consent. [1907 c 250 § 88; RRS § 10717.]

**65.12.730 Certificate subject of larceny—Penalty.** Certificates of title or duplicate certificates entered under this chapter, shall be subjects of larceny, and anyone unlawfully stealing or carrying away any such certificate, shall, upon conviction thereof, be deemed guilty of grand larceny, and punished accordingly. [1907 c 250 § 89; RRS § 10718.]

**65.12.740 Perjury—Penalty.** Whoever knowingly swears falsely to any statement required by this chapter to be made under oath shall be guilty of perjury, and shall be liable to the statutory penalties therefor. [1907 c 250 § 90; RRS § 10719.]

**65.12.750 Fraud—False entries—Penalty.** Whoever fraudulently procures, or assists fraudulently procuring, or is privy to the fraudulent procurement of any certificate of title, or other instrument, or of any entry in the register of titles, or other book kept in the registrar's office, or of any erasure or alteration in any entry in any such book, or in any instrument authorized by this chapter, or knowingly defrauds or is privy to defrauding any person by means of a false or fraudulent instrument, certificate, statement, or affidavit affecting registered land, shall be guilty of a felony, and upon conviction, shall be fined in any sum not exceeding five thousand dollars, or imprisoned in the penitentiary not exceeding five years, or both such fine and imprisonment, in the discretion of the court. [1907 c 250 § 91; RRS § 10720.]

**65.12.760 Forgery—Penalty.** Whoever forges or procures to be forged, or assists in forging, the seal of the registrar, or the name, signature or handwriting of any officer of the registry office, in case where such officer is expressly or impliedly authorized to affix his signature; or forges or procures to be forged, or assists in forging, the name, signature or handwriting of any person whomsoever, to any instrument which is expressedly or impliedly authorized to be signed by such person; or uses any document upon which any impression or part of the impression of any seal of said registrar has been forged, knowing the same to have been forged, or any document, the signature to which has been forged, shall be guilty of a felony, and upon conviction shall be imprisoned in the penitentiary not exceeding ten years, or fined not exceeding one thousand dollars, or both fined and imprisoned, in the discretion of the court. [1907 c 250 § 92; RRS § 10721.]

**65.12.770 Civil actions unaffected.** No proceeding or conviction for any act hereby declared to be a felony, shall affect any remedy which any person aggrieved or injured by such act may be entitled to at law, or in equity, against the person who has committed such act, or against his estate. [1907 c 250 § 93; RRS § 10722.]

**65.12.780 Fees of clerk.** On the filing of any application for registration, the applicant shall pay to the clerk of the court, in counties having more than forty thousand population, the sum of three dollars; and in all other counties, the sum of five dollars, which shall be in full of all clerk's fees and charges in such proceeding in behalf of the applicant. Any defendant, on entering his appearance, shall pay to the clerk of the court, the sum of three dollars, which shall be in full of all clerk's fees in behalf of such defendant. When any number of defendants enter their appearance at the same time, before default, but one fee shall be paid. Every publication in a newspaper required by this chapter shall be paid for by the party on whose application the order of publication is made, in addition to the fees above prescribed. The party at whose request any notice is issued, shall pay for the service of the same, except when sent by mail by the clerk of court, or the registrar of titles. [1907 c 250 § 94; RRS § 10723.]

**65.12.790 Fees of registrar.** The fees to be paid to the registrar of titles shall be as follows:

(1) At or before the time of filing of the certified copy of the application with the registrar, the applicant shall pay, to the registrar, on all land having an assessed value, exclusive of improvements, of one thousand dollars or less, thirty-one and one-quarter cents on each one thousand dollars, or major fraction thereof, of the assessed value of said land, additional.

(2) For granting certificates of title, upon each applicant, and registering the same, two dollars.

(3) For registering each transfer, including the filing of all instruments connected therewith, and the issuance and registration of the instruments connected therewith, and the issuance and registration of the new certificate of title, ten dollars.

(4) When the land transferred is held upon any trust, condition, or limitation, an additional fee of three dollars.

(5) For entry of each memorial on the register, including the filing of all instruments and papers connected therewith, and endorsements upon duplicate certificates, three dollars.

(6) For issuing each additional owner's duplicate certificate, mortgagee's duplicate certificate, or lessee's duplicate certificate, three dollars.

(7) For filing copy of will, with letters testamentary, or filing copy of letters of administration, and entering memorial thereof, two dollars and fifty cents.

(8) For the cancellation of each memorial, or charge, one dollar.

(9) For each certificate showing the condition of the register, one dollar.

(10) For any certified copy of any instrument or writing on file in his office, the same fees now allowed

by law to county clerks and county auditors for like service.

(11) For any other service required, or necessary to carry out this chapter, and not hereinbefore itemized, such fee or fees as the court shall determine and establish.

(12) For registration of each mortgage and issuance of duplicate of title a fee of five dollars; for each deed of trust and issuance of duplicate of title a fee of eight dollars. [1973 1st ex.s. c 195 § 76; 1973 c 121 § 2; 1907 c 250 § 95; RRS § 10724.]

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

**65.12.800 Disposition of fees.** One-half of all fees provided for in RCW 65.12.790(1), shall be collected by the registrar, and paid to the county treasurer of the county in which the fees are paid, to be used for the current expenses of the county; and all the remaining fees provided for in said section, and all the subdivisions thereof, shall be collected by the registrar, and applied the same as the other fees of his office; but his salary as county clerk or county auditor, as now provided by law, shall not be increased on account of the additional duties, or by reason of the allowance of additional fees provided for herein; and the said registrar, as such, shall receive no salary. [1907 c 250 § 96; RRS § 10725.]

## Chapter 65.16 LEGAL PUBLICATIONS

### Sections

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*Civil procedure, legal publication generally: Chapter 4.28 RCW.*

*Corporate seals, effect of absence from instrument: RCW 64.04.105.*

*Powers of appointment: Chapter 64.24 RCW.*

**65.16.010 Weekly publication—How made.** The publication of legal notices required by law, or by an order of a judge or court, to be published in a newspaper once in each week for a specified number of weeks, shall be made on the day of each week in which such newspaper is published. [1893 c 127 § 27; RRS § 253.]

**65.16.020 Qualifications of legal newspaper.** The qualifications of a legal newspaper are that such newspaper shall have been published regularly, at least once a week, in the English language, as a newspaper of

general circulation, in the city or town where the same is published at the time of application for approval, for at least six months prior to the date of such application; shall be compiled either in whole or in part in an office maintained at the place of publication; shall contain news of general interest as contrasted with news of interest primarily to an organization, group or class; and shall hold a second class mailing permit: *Provided*, That in case of the consolidation of two or more newspapers, such consolidated newspaper shall be considered as qualified if either or any of the papers so consolidated would be a qualified newspaper at the date of such legal publication, had not such consolidation taken place: *Provided*, That this section shall not disqualify as a legal newspaper any publication which, prior to June 8, 1961, was adjudged a legal newspaper, so long as it continues to meet the requirements under which it qualified. [1961 c 279 § 1; 1941 c 213 § 3; 1921 c 99 § 1; Rem. Supp. 1941 § 253-1. Prior: 1917 c 61 § 1.]

**65.16.030 Affidavit of publication—Presumption.** All legal and other official notices shall be published in a legal newspaper as herein defined, and the affidavit of publication shall state that the newspaper has been approved as a legal newspaper by order of the superior court of the county in which it is published, and shall be prima facie evidence of that fact. Wherever a legal notice, publication, advertisement or other official notice is required to be published by any statute or law of the state of Washington, the proof of such publication shall be the affidavit of the printer, publisher, foreman, principal clerk or business manager of the newspaper which published said notice. [1953 c 233 § 1; 1941 c 213 § 4; 1921 c 99 § 2; Rem. Supp. 1941 § 253-2.]

**65.16.040 Legal publications to be approved—Order of approval.** Sixty days from and after the date \*this act becomes effective, a legal newspaper for the publication of any advertisement, notice, summons, report, proceeding, or other official document now or hereafter required by law to be published, shall be a newspaper which has been approved as a legal newspaper by order of the superior court of the county in which such newspaper is published. Such order may be entered without notice upon presentation of a petition by or on behalf of the publisher, setting forth the qualifications of the newspaper as required by \*this act, and upon evidence satisfactory to the court that such newspaper is so qualified. [1941 c 213 § 1; Rem. Supp. 1941 § 253a.]

**\*Reviser's note:** (1) The language "this act" appears in 1941 c 213 codified as RCW 65.16.020 through 65.16.080.

(2) The effective date of this act is midnight June 11, 1941, see preface 1941 session laws.

**65.16.050 Revocation of approval—Notice.** An order of approval of a newspaper shall remain effective from the time of the entry thereof until the approval be terminated by a subsequent order of the court, which may be done whenever it shall be brought to the attention of the court that the newspaper is no longer qualified as a legal newspaper, and after notice of hearing



issued by the clerk and served upon the publisher, at least ten days prior to the date of hearing, by delivering a copy of such notice to the person in charge of the business office of the publisher, or if the publisher has no business office at the time of service, by mailing a copy of such notice addressed to the publisher at the place of publication alleged in the petition for approval. [1941 c 213 § 2; Rem. Supp. 1941 § 253b.]

**65.16.060 Choice of newspapers.** Any summons, citation, notice of sheriff's sale, or legal advertisement of any description, the publication of which is now or may be hereafter required by law, may be published in any daily or weekly legal newspaper published in the county where the action, suit or other proceeding is pending, or is to be commenced or had, or in which such notice, summons, citation, or other legal advertisement is required to be given: *Provided, however,* That if there be more than one legal newspaper in which any such legal notice, summons, citation or legal advertisement might lawfully be published, then the plaintiff or moving party in the action, suit or proceeding shall have the exclusive right to designate in which of such qualified newspapers such legal notice, summons, citation, notice of sheriff's sale or other legal advertisement shall be published. [1941 c 213 § 6; 1921 c 99 § 5; Rem. Supp. 1941 § 253-5.]

**65.16.070 List posted in clerk's office.** Publications commenced in a legal newspaper, when \*this act takes effect, may be completed in that newspaper notwithstanding any failure to obtain an order of approval under \*this act, and notwithstanding an order of termination of approval prior to completion of publication. The clerk of the superior court of each county shall post and keep posted in a prominent place in his office a list of the newspapers published in that county which are approved as legal newspapers. [1941 c 213 § 7; RRS § 253-5a.]

\*Reviser's note: "this act", "when this act takes effect", see note following RCW 65.16.040.

**65.16.080 Scope of provisions.** The provisions of \*this act shall not apply in counties where no newspaper has been published for a period of one year prior to the publication of such legal or other official notices. [1941 c 213 § 5; 1921 c 99 § 3; Rem. Supp. 1941 § 253-3.]

\*Reviser's note: "this act", see note following RCW 65.16.040.

**65.16.090 Publication fees.** Where publication of legal notices is required or allowed by law, the person or officer desiring the publication shall pay on a basis of four dollars and twenty cents per folio of one hundred words for the first insertion and three dollars and fifteen cents per folio of one hundred words for each subsequent insertion, or its equivalent in number of words: *Provided,* That a newspaper having a circulation of over fifteen thousand copies each issue may charge such additional rate as it deems necessary and just and any person or officer authorizing the publication of a legal notice in such newspaper may legally pay such rate as is

charged by it: *Provided further,* That this section shall not apply to the amount to be charged for the publication of a legal notice or advertisement for a school district, city, town, county, state, municipal, or quasi municipal corporation or the United States government. [1973 1st ex.s. c 28 § 2; 1967 ex.s. c 57 § 1; 1955 c 186 § 1; 1947 c 140 § 1; 1921 c 99 § 4; Rem. Supp. 1947 § 253-4.]

**Severability—1955 c 186:** "If any section of this act shall be found unconstitutional it shall not invalidate the remaining section." [1955 c 186 § 3.] This applies to RCW 65.16.090 and 65.16.095.

**65.16.095 Rates for political candidates.** The rate charged by a newspaper for advertising in relation to candidates for political office shall not exceed the national advertising rate extended to all general advertisers and advertising agencies in its published rate card. [1955 c 186 § 2.]

*Political advertising: RCW 29.85.270, 29.85.280.*

**65.16.100 Omissions for Sundays and holidays.** Where any law or ordinance of any incorporated city or town in this state provides for the publication of any form of notice or advertisement for consecutive days in a daily newspaper, the publication of such notice on legal holidays and Sundays may be omitted without in any manner affecting the legality of such notice or advertisement: *Provided,* That the publication of the required number of notices is complied with. [1921 c 99 § 6; RRS § 253-6.]

**65.16.110 Affidavit to cover payment of fees.** The affidavit of publication of all notices required by law to be published shall state the full amount of the fee charged for such publication and that the fee has been paid in full. [1921 c 99 § 7; RRS § 253-7.]

**65.16.120 Payment of fees in advance, on demand.** When, by law, any publication is required to be made by an officer of any suit, process, notice, order or other papers, the costs of such publication shall, if demanded, be tendered by the party procuring such publication before such officer shall be compelled to make publication thereof. [Code 1881 § 2092; 1869 p 373 § 14; RRS § 504.]

**65.16.130 Publication of official notices by radio or television—Restrictions.** Any official of the state or any of its political subdivisions who is required by law to publish any notice required by law may supplement publication thereof by radio or television broadcast or both when, in his judgment, the public interest will be served thereby: *Provided,* That the time, place and nature of such notice only be read or shown with no reference to any person by name then a candidate for political office, and that such broadcasts shall be made only by duly employed personnel of the station from which such broadcasts emanate, and that notices by political subdivisions may be made only by stations situated within the county of origin of the legal notice. [1961 c 85 § 1; 1951 c 119 § 1.]

**65.16.140 Broadcaster to retain copy or transcription.**

Each radio or television station broadcasting any legal notice or notice of event shall for a period of six months subsequent to such broadcast retain at its office a copy or transcription of the text of the notice as actually broadcast which shall be available for public inspection. [1961 c 85 § 2; 1951 c 119 § 2.]

**65.16.150 Proof of publication by radio or television.**

Proof of publication of legal notice or notice of event by radio or television broadcast shall be by affidavit of the manager, an assistant manager or a program director of the station broadcasting the same. [1961 c 85 § 3; 1951 c 119 § 3.]

# TITLE 66

## ALCOHOLIC BEVERAGE CONTROL

### Chapters

- 66.04 Definitions.
- 66.08 Liquor control board—General provisions.
- 66.12 Exemptions.
- 66.16 State liquor stores.
- 66.20 Liquor permits.
- 66.24 Licenses—Stamp taxes.
- 66.28 Miscellaneous regulatory provisions.
- 66.32 Search and seizure.
- 66.36 Abatement proceedings.
- 66.40 Local option.
- 66.44 Enforcement—Penalties.
- 66.98 Construction.

*Alcoholics, private establishments: Chapter 71.12 RCW.*

*Hospitalization and medical aid for public employees and dependents—Premiums, governmental contributions authorized: RCW 41.04.180, 41.04.190.*

*Uniform alcoholism and intoxication treatment: Chapter 70.96A RCW.*

### Chapter 66.04 DEFINITIONS

#### Sections

- 66.04.010 Definitions.
- 66.04.011 "Public place" not to include certain parks.

**66.04.010 Definitions.** In this title, unless the context otherwise requires:

(1) "Alcohol" is that substance known as ethyl alcohol, hydrated oxide of ethyl, or spirit of wine, which is commonly produced by the fermentation or distillation of grain, starch, molasses, or sugar, or other substances including all dilutions and mixtures of this substance.

(2) "Beer" means any beverage obtained by the alcoholic fermentation of an infusion or decoction of pure hops, or pure extract of hops and pure barley malt or other wholesome grain or cereal in pure water containing not more than four percent of alcohol by weight, and not less than one-half of one percent of alcohol by volume. For the purposes of this title any such beverage, including ale, stout and porter, containing more than four percent of alcohol by weight shall be referred to as "strong beer."

(3) "Brewer" means any person engaged in the business of manufacturing beer and malt liquor.

(4) "Board" means the liquor control board, constituted under this title.

(5) "Club" means an organization of persons, incorporated or unincorporated, operated solely for fraternal,

benevolent, educational, athletic or social purposes, and not for pecuniary gain.

(6) "Consume" includes the putting of liquor to any use, whether by drinking or otherwise.

(7) "Dentist" means a practitioner of dentistry duly and regularly licensed and engaged in the practice of his profession within the state pursuant to sections 10030–10038, Remington's Revised Statutes.

(8) "Distiller" means a person engaged in the business of distilling spirits.

(9) "Druggist" means any person who holds a valid certificate and is a registered pharmacist and is duly and regularly engaged in carrying on the business of pharmaceutical chemistry pursuant to sections 10126–10146, Remington's Revised Statutes.

(10) "Drug store" means a place whose principal business is, the sale of drugs, medicines and pharmaceutical preparations and maintains a regular prescription department and employs a registered pharmacist during all hours the drug store is open.

(11) "Employee" means any person employed by the board, including a vendor, as hereinafter in this section defined.

(12) "Fund" means 'liquor revolving fund.'

(13) "Hotel" means every building or other structure kept, used, maintained, advertised or held out to the public to be a place where food is served and sleeping accommodations are offered for pay to transient guests, in which twenty or more rooms are used for the sleeping accommodation of such transient guests and having one or more dining rooms where meals are served to such transient guests, such sleeping accommodations and dining rooms being conducted in the same building and buildings, in connection therewith, and such structure or structures being provided, in the judgment of the board, with adequate and sanitary kitchen and dining room equipment and capacity, for preparing, cooking and serving suitable food for its guests: *Provided further*, That in cities and towns of less than five thousand population, the board shall have authority to waive the provisions requiring twenty or more rooms.

(14) "Imprisonment" means confinement in the county jail.

(15) "Interdicted person" means a person declared an habitual drunkard pursuant to sections 1708–1715, Remington's Revised Statutes, or a person to whom the sale of liquor is prohibited by an order of interdiction filed with the board pursuant to this title.

(16) "Liquor" includes the four varieties of liquor herein defined (alcohol, spirits, wine and beer), and all

fermented, spirituous, vinous, or malt liquor, or combinations thereof, and mixed liquor, a part of which is fermented, spirituous, vinous or malt liquor, or otherwise intoxicating; and every liquid or solid or semisolid or other substance, patented or not, containing alcohol, spirits, wine or beer, and all drinks or drinkable liquids and all preparations or mixtures capable of human consumption, and any liquid, semisolid, solid, or other substance, which contains more than one percent of alcohol by weight shall be conclusively deemed to be intoxicating.

(17) "Manufacturer" means a person engaged in the preparation of liquor for sale, in any form whatsoever.

(18) "Malt liquor" means beer, strong beer, ale, stout and porter.

(19) "Package" means any container or receptacle used for holding liquor.

(20) "Permit" means a permit for the purchase of liquor under this title.

(21) "Person" means an individual, copartnership, association, or corporation.

(22) "Physician" means a medical practitioner duly and regularly licensed and engaged in the practice of his profession within the state pursuant to sections 10008–10025, Remington's Revised Statutes.

(23) "Prescription" means a memorandum signed by a physician and given by him to a patient for the obtaining of liquor pursuant to this title for medicinal purposes.

(24) "Public place" includes streets and alleys of incorporated cities and towns; state or county or township highways or roads; buildings and grounds used for school purposes; public dance halls and grounds adjacent thereto; those parts of establishments where beer may be sold under this title, soft drink establishments, public buildings, public meeting halls, lobbies, halls and dining rooms of hotels, restaurants, theatres, stores, garages and filling stations which are open to and are generally used by the public and to which the public is permitted to have unrestricted access; railroad trains, stages, and other public conveyances of all kinds and character, and the depots and waiting rooms used in conjunction therewith which are open to unrestricted use and access by the public; publicly owned bathing beaches, parks, and/or playgrounds; and all other places of like or similar nature to which the general public has unrestricted right of access, and which are generally used by the public.

(25) "Regulations" means regulations made by the board under the powers conferred by this title.

(26) "Restaurant" means any establishment provided with special space and accommodations where, in consideration of payment, food, without lodgings, is habitually furnished to the public, not including drug stores and soda fountains.

(27) "Sale" and "sell" include exchange, barter, and traffic; and also include the selling or supplying or distributing, by any means whatsoever, of liquor, or of any liquid known or described as beer or by any name whatever commonly used to describe malt or brewed liquor or of wine, by any person to any person; and also

include a sale or selling within the state to a foreign consignee or his agent in the state.

(28) "Soda fountain" means a place especially equipped with apparatus for the purpose of dispensing soft drinks, whether mixed or otherwise.

(29) "Spirits" means any beverage which contains alcohol obtained by distillation, including wines exceeding seventeen percent of alcohol by weight.

(30) "Store" means a state liquor store established under this title.

(31) "Tavern" means any establishment with special space and accommodation for sale by the glass and for consumption on the premises, of beer, as herein defined.

(32) "Vendor" means a person employed by the board as a store manager under this title.

(33) "Winery" means a business conducted by any person for the manufacture of wine for sale, other than a domestic winery.

(34) "Domestic winery" means a place where wines are manufactured or produced within the state of Washington.

(35) "Wine" means any alcoholic beverage obtained by fermentation of fruits (grapes, berries, apples, et cetera) or other agricultural product containing sugar, to which any saccharine substances may have been added before, during or after fermentation, and containing not more than seventeen percent of alcohol by weight, including sweet wines fortified with wine spirits, such as port, sherry, muscatel and angelica, not exceeding seventeen percent of alcohol by weight.

(36) "Beer wholesaler" means a person who buys beer from a brewer or brewery located either within or beyond the boundaries of the state for the purpose of selling the same pursuant to this title, or who represents such brewer or brewery as agent.

(37) "Wine wholesaler" means a person who buys wine from a vintner or winery located either within or beyond the boundaries of the state for the purpose of selling the same not in violation of this title, or who represents such vintner or winery as agent. [1969 ex.s. c 21 § 13; 1935 c 158 § 1; 1933 ex.s. c 62 § 3; RRS § 7306–3. Formerly RCW 66.04.010 through 66.04.380.]

**Reviser's note:** (1) RRS §§ 10030–10038, referred to in subdivision (7), were repealed by 1923 c 16 § 39. Provisions currently regulating dentistry, see chapter 18.32 RCW.

(2) RRS §§ 10126–10146, referred to in subdivision (9), are codified, as amended, in chapter 18.64 RCW.

(3) RRS §§ 1708–1715, referred to in subdivision (15), were codified, as amended, in RCW 71.08.030 through 71.08.090, which were repealed by 1972 ex.s. c 122 § 26. Provisions currently relating to alcoholism treatment, see chapter 70.96A RCW. RRS § 1714 was repealed by 1929 c 31 § 1.

(4) RRS §§ 10008–10025, referred to in subdivision (22) are codified, as amended, in chapter 18.71 RCW; see also chapter 18.72 RCW.

**Effective date—1969 ex.s. c 21:** "The effective date of this 1969 amendatory act is July 1, 1969." [1969 ex.s. c 21 § 15.] This applies to RCW 66.04.010, 66.24.160, 66.24.200, 66.24.210, 66.24.230, 66.24.310, 66.28.025, 66.28.030, 66.28.040, 66.28.050, 66.24.204, 66.24.206, 82.08-.150, and 82.08.160.

**66.04.011 "Public place" not to include certain parks.** "Public place" as defined in this title shall not include any of those parks under the control of the state parks and recreation commission. [1971 ex.s. c 208 § 3.]

**Chapter 66.08**  
**LIQUOR CONTROL BOARD—GENERAL**  
**PROVISIONS**

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66.08.220	Liquor revolving fund—Separate account of part of gross sales to class H licensees, distribution.

*Hops, standards for baling and tare: RCW 19.92.240.*

**66.08.010 Title liberally construed.** This entire title shall be deemed an exercise of the police power of the state, for the protection of the welfare, health, peace, morals, and safety of the people of the state, and all its provisions shall be liberally construed for the accomplishment of that purpose. [1933 ex.s. c 62 § 2; RRS § 7306-2.]

**66.08.012 Creation of board—Chairman—Quorum—Salary.** There shall be a board, known as the "Washington state liquor control board," consisting of three members, to be appointed by the governor, with the consent of the senate, who shall each be paid an

annual salary to be fixed by the governor in accordance with the provisions of RCW 43.03.040. The governor may, in his discretion, appoint one of the members as chairman of the board, and a majority of the members shall constitute a quorum of the board. [1961 c 307 § 7; 1949 c 5 § 8; 1945 c 208 § 1; 1937 c 225 § 1; 1933 ex.s. c 62 § 63; Rem. Supp. 1949 § 7306-63. Formerly RCW 43.66.010.]

**66.08.014 Terms of members—Vacancies—Principal office—Removal—Devotion of time to duties—Bond—Oath.** (1) The members of the board to be appointed after December 2, 1948 shall be appointed for terms beginning January 15, 1949, and expiring as follows: One member of the board for a term of three years from January 15, 1949; one member of the board for a term of six years from January 15, 1949; and one member of the board for a term of nine years from January 15, 1949. Each of the members of the board appointed hereunder shall hold office until his successor is appointed and qualified. Upon the expiration of the term of any of the three members of the board appointed as aforesaid, each succeeding member of the board shall be appointed and hold office for the term of nine years. In case of a vacancy, it shall be filled by appointment by the governor for the unexpired portion of the term in which said vacancy occurs. No vacancy in the membership of the board shall impair the right of the remaining member or members to act, except as herein otherwise provided.

(2) The principal office of the board shall be at the state capitol, and it may establish such other offices as it may deem necessary.

(3) Any member of the board may be removed for inefficiency, malfeasance or misfeasance in office, upon specific written charges filed by the governor, who shall transmit such written charges to the member accused and to the chief justice of the supreme court. The chief justice shall thereupon designate a tribunal composed of three judges of the superior court to hear and adjudicate the charges. Such tribunal shall fix the time of the hearing, which shall be public, and the procedure for the hearing, and the decision of such tribunal shall be final and not subject to review by the supreme court. Removal of any member of the board by the tribunal shall disqualify such member for reappointment.

(4) Each member of the board shall devote his entire time to the duties of his office and no member of the board shall hold any other public office. Before entering upon the duties of his office, each of said members of the board shall enter into a surety bond executed by a surety company authorized to do business in this state, payable to the state of Washington, to be approved by the governor in the penal sum of fifty thousand dollars conditioned upon the faithful performance of his duties, and shall take and subscribe to the oath of office prescribed for elective state officers, which oath and bond shall be filed with the secretary of state. The premium for said bond shall be paid by the board. [1949 c 5 § 9; 1947 c 113 § 1; 1945 c 208 § 2; 1933 ex.s. c 62 § 64; Rem. Supp. 1949 § 7306-64. Formerly RCW 43.66.020.]

**Severability—1949 c 5:** See note following RCW 66.24.400.

**66.08.016 Employees of the board.** The board may employ such number of employees as in its judgment are required from time to time. [1961 c 1 § 30; 1947 c 113 § 2; 1933 ex.s. c 62 § 65; Rem. Supp. 1947 § 7306-65. Formerly RCW 43.66.030.]

**66.08.020 Liquor control board to administer.** The administration of this title, including the general control, management and supervision of all liquor stores, shall be vested in the liquor control board, constituted under this title. [1933 ex.s. c 62 § 5; RRS § 7306-5.]

*Annual report of liquor law violations by police courts: RCW 35.21.170.*

*Prosecuting attorney to make annual report of liquor law prosecutions: RCW 36.27.020.*

**66.08.022 Attorney general is general counsel of board—Duties—Assistants.** The attorney general shall be the general counsel of the liquor control board and he shall institute and prosecute all actions and proceedings which may be necessary in the enforcement and carrying out of the provisions of this chapter and Title 66 RCW.

He shall assign such assistants as may be necessary to the exclusive duty of assisting the liquor control board in the enforcement of Title 66 RCW. [1961 ex.s. c 6 § 2; 1933 ex.s. c 62 § 66; RRS § 7306-66. Formerly RCW 43.66.140.]

**Effective date—1961 ex.s. c 6:** See note following RCW 66.08.170.

**66.08.024 Annual audit—State auditor's duties—Additional audits—Costs—Public records.** The state auditor shall audit the books, records, and affairs of the board annually: *Provided*, That the total annual cost of such audit shall not exceed the sum of ten thousand dollars. The board shall pay to the state treasurer for the credit of the state auditor, out of the liquor revolving fund, the sum of ten thousand dollars a year, or so much thereof as is necessary, to defray the costs of such audits. The board may provide for additional audits by certified public accountants the total annual cost of which shall not exceed the sum of five thousand dollars. All such audits shall be public records of the state. The payment of the audits provided for in this section shall be paid as provided in RCW 66.08.026 for other administrative expenses. [1961 ex.s. c 6 § 3; 1937 c 138 § 1; 1935 c 174 § 12; 1933 ex.s. c 62 § 71; RRS § 7306-71. Formerly RCW 43.66.150.]

**Effective date—1961 ex.s. c 6:** See note following RCW 66.08.170.

**66.08.026 Appropriation and payment of administrative expenses from liquor revolving fund—"Administrative expenses" defined.** All administrative expenses of the board incurred on and after April 1, 1963 shall be appropriated and paid from the liquor revolving fund. These administrative expenses shall include, but not be limited to: The salaries and expenses of the board and its employees, the cost of establishing, leasing, maintaining, and operating state liquor stores and warehouses, legal services, annual or other audits, and other general costs of conducting the business of the board. The administrative expenses shall

not, however, be deemed to include costs of liquor purchased, the cost of transportation and delivery to the point of distribution, other costs pertaining to the acquisition and receipt of liquor, packaging and repackaging of liquor, sales tax, and those amounts distributed pursuant to RCW 66.08.180, 66.08.190, 66.08.200, 66.08.210 and 66.08.220. [1963 c 239 § 1; 1961 ex.s. c 6 § 4. Formerly RCW 43.66.161.]

**Severability—1963 c 239:** "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1963 c 239 § 2.] This applies to RCW 66.08.026 and 66.08.050.

**66.08.028 Reports by board to governor and legislature.** The board shall, from time to time, make reports to the governor covering such matters in connection with the administration and enforcement of this title as he may require, and the board shall prepare and forward to the governor annually, to be laid before the legislature, a report for the fiscal period ending on the thirtieth day of June of 1955 and annually thereafter on the thirtieth day of June of each year, which report shall be a public document, and contain:

(1) A detailed financial statement and balance sheet showing in general the condition of the business and its operation during the year, and in detail the price paid for all liquor purchased, including the amount of each purchase and the price thereof;

(2) A statement of the nature and amount of the business transacted by each vendor during the year covered by the report;

(3) A summary of all prosecutions for infractions and the results thereof;

(4) General information and remarks; and

(5) Any further information requested by the governor. [1955 c 182 § 1; 1935 c 174 § 13; 1933 ex.s. c 62 § 72; RRS § 7306-72. Formerly RCW 43.66.170.]

**66.08.030 Regulations—Scope.** (1) For the purpose of carrying into effect the provisions of this title according to their true intent or of supplying any deficiency therein, the board may make such regulations not inconsistent with the spirit of this title as are deemed necessary or advisable. All regulations so made shall be a public record and filed in the office of the code reviser, together with a copy of this title, shall forthwith be published in pamphlets, which pamphlets shall be distributed free at all liquor stores and as otherwise directed by the board, and thereupon shall have the same force and effect as if incorporated in this title.

(2) Without thereby limiting the generality of the provisions contained in subsection (1), it is declared that the power of the board to make regulations in the manner set out in that subsection shall extend to

(a) regulating the equipment and management of stores and warehouses in which state liquor is sold or kept, and prescribing the books and records to be kept therein and the reports to be made thereon to the board;

(b) prescribing the duties of the employees of the board, and regulating their conduct in the discharge of their duties;

(c) governing the purchase of liquor by the state and the furnishing of liquor to stores established under this title;

(d) determining the classes, varieties, and brands of liquor to be kept for sale at any store;

(e) prescribing, subject to RCW 66.16.080, the hours during which the state liquor stores shall be kept open for the sale of liquor;

(f) providing for the issuing and distributing of price lists showing the price to be paid by purchasers for each variety of liquor kept for sale under this title;

(g) prescribing an official seal and official labels and stamps and determining the manner in which they shall be attached to every package of liquor sold or sealed under this title, including the prescribing of different official seals or different official labels for different classes of liquor;

(h) providing for the payment by the board in whole or in part of the carrying charges on liquor shipped by freight or express;

(i) prescribing forms to be used for purposes of this title or the regulations, and the terms and conditions to be contained in permits and licenses issued under this title;

(j) prescribing the fees payable in respect of permits and licenses issued under this title for which no fees are prescribed in this title, and prescribing the fees for anything done or permitted to be done under the regulations;

(k) prescribing the kinds and quantities of liquor which may be kept on hand by the holder of a special permit for the purposes named in the permit, regulating the manner in which the same shall be kept and disposed of, and providing for the inspection of the same at any time at the instance of the board;

(l) regulating the sale of liquor kept by the holders of licenses which entitle the holder to purchase and keep liquor for sale;

(m) prescribing the records of purchases or sales of liquor kept by the holders of licenses, and the reports to be made thereon to the board, and providing for inspection of the records so kept;

(n) prescribing the kinds and quantities of liquor for which a prescription may be given, and the number of prescriptions which may be given to the same patient within a stated period;

(o) prescribing the manner of giving and serving notices required by this title or the regulations, where not otherwise provided for in this title;

(p) regulating premises in which liquor is kept for export from the state, or from which liquor is exported, prescribing the books and records to be kept therein and the reports to be made thereon to the board, and providing for the inspection of the premises and the books, records and the liquor so kept;

(q) prescribing the conditions and qualifications requisite for the obtaining of club licenses and the books and records to be kept and the returns to be made by clubs, prescribing the manner of licensing clubs in any municipality or other locality, and providing for the inspection of clubs;

(r) prescribing the conditions, accommodations and qualifications requisite for the obtaining of licenses to sell beer and wines, and regulating the sale of beer and wines thereunder;

(s) specifying and regulating the time and periods when, and the manner, methods and means by which manufacturers shall deliver liquor within the state; and the time and periods when, and the manner, methods and means by which liquor may lawfully be conveyed or carried within the state;

(t) providing for the making of returns by brewers of their sales of beer shipped within the state, or from the state, showing the gross amount of such sales and providing for the inspection of brewers' books and records, and for the checking of the accuracy of any such returns;

(u) providing for the making of returns by the wholesalers of beer whose breweries are located beyond the boundaries of the state;

(v) providing for the making of returns by any other liquor manufacturers, showing the gross amount of liquor produced or purchased, the amount sold within and exported from the state, and to whom so sold or exported, and providing for the inspection of the premises of any such liquor manufacturers, their books and records, and for the checking of any such return;

(w) providing for the giving of fidelity bonds by any or all of the employees of the board: *Provided*, That the premiums therefor shall be paid by the board;

(x) providing for the shipment by mail or common carrier of liquor to any person holding a permit and residing in any unit which has, by election pursuant to this title, prohibited the sale of liquor therein;

(y) prescribing methods of manufacture, conditions of sanitation, standards of ingredients, quality and identity of alcoholic beverages manufactured, sold, bottled, or handled by licensees and the board; and conducting from time to time, in the interest of the public health and general welfare, scientific studies and research relating to alcoholic beverages and the use and effect thereof;

(z) seizing, confiscating and destroying all alcoholic beverages manufactured, sold or offered for sale within this state which do not conform in all respects to the standards prescribed by this title or the regulations of the board: *Provided*, Nothing herein contained shall be construed as authorizing the liquor board to prescribe, alter, limit or in any way change the present law as to the quantity or percentage of alcohol used in the manufacturing of wine or other alcoholic beverages. [1971 c 62 § 1; 1943 c 102 § 1; 1933 ex.s. c 62 § 79; RRS § 7306-79. Formerly RCW 66.08.030 and 66.08.040.]

**66.08.050 Powers of board in general.** The board, subject to the provisions of this title and the regulations, shall

(1) determine the localities within which state liquor stores shall be established throughout the state, and the number and situation of the stores within each locality;

(2) appoint in cities and towns and other communities, in which no state liquor store is located, liquor vendors. Such liquor vendors shall be agents of the



board and be authorized to sell liquor to such persons, firms or corporations as provided for the sale of liquor from a state liquor store, and such vendors shall be subject to such additional rules and regulations consistent with this title as the board may require;

(3) establish all necessary warehouses for the storing and bottling, diluting and rectifying of stocks of liquors for the purposes of this title;

(4) provide for the leasing for periods not to exceed five years of all premises required for the conduct of the business; and for remodeling the same, and the procuring of their furnishings, fixtures, and supplies; and for obtaining options of renewal of such leases by the lessee. The terms of such leases in all other respects shall be subject to the direction of the board;

(5) determine the nature, form and capacity of all packages to be used for containing liquor kept for sale under this title;

(6) execute or cause to be executed, all contracts, papers, and documents in the name of the board, under such regulations as the board may fix;

(7) pay all customs, duties, excises, charges and obligations whatsoever relating to the business of the board;

(8) require bonds from all employees in the discretion of the board, and to determine the amount of fidelity bond of each such employee;

(9) perform all other matters and things, whether similar to the foregoing or not, to carry out the provisions of this title, and shall have full power to do each and every act necessary to the conduct of its business, including all buying, selling, preparation and approval of forms, and every other function of the business whatsoever, subject only to audit by the state auditor. [1969 ex.s. c 178 § 1; 1963 c 239 § 3; 1935 c 174 § 10; 1933 ex.s. c 62 § 69; RRS § 7306-69.]

**66.08.055 Oaths may be administered and affidavits, declarations received.** Every member of the board, and every employee authorized by the board to issue permits under this title may administer any oath and take and receive any affidavit or declaration required under this title or the regulations. [1933 ex.s. c 62 § 80; RRS § 7306-80. Formerly RCW 43.66.050.]

**66.08.060 Board cannot advertise liquor—Advertising regulations.** The board shall not advertise liquor in any form or through any medium whatsoever. The board shall have power to adopt any and all reasonable regulations as to the kind, character and location of advertising of liquor. [1933 ex.s. c 62 § 43; RRS § 7306-43.]

**66.08.070 Purchase of liquor by board—Consignment not prohibited.** (1) Every order for the purchase of liquor shall be authorized by the board, and no order for liquor shall be valid or binding unless it is so authorized and signed by the board or its authorized designee.

(2) A duplicate of every such order shall be kept on file in the office of the board.

(3) All cancellations of such orders made by the board shall be signed in the same manner and duplicates thereof kept on file in the office of the board. Nothing in this title shall be construed as preventing the board from accepting liquor on consignment. [1973 1st ex.s. c 209 § 1; 1933 ex.s. c 62 § 67; RRS § 7306-67.]

**Severability—1973 1st ex.s. c 209:** "If any phrase, clause, subsection or section of this 1973 amendatory act shall be declared unconstitutional or invalid by any court of competent jurisdiction, it shall be conclusively presumed that the legislature would have enacted this 1973 amendatory act without the phrase, clause, subsection or section so held unconstitutional or invalid and the remainder of the act shall not be affected as a result of said part being held unconstitutional or invalid." [1973 1st ex.s. c 209 § 21.]

**Effective date—1973 1st ex.s. c 209:** "This 1973 amendatory act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1973." [1973 1st ex.s. c 209 § 22.]

*The foregoing annotations apply to RCW 66.08.070, 66.16.040, 66.20.160-66.20.210, 66.24.010, 66.24.025, 66.24.120, 66.24.206, 66.24.270, 66.24.330, 66.24.370, 66.24.380, 66.24.500, 66.44.320, and to the repeal of RCW 66.44.230.*

**66.08.075 Officers, employees not to represent manufacturer, wholesaler in sale to board.** No official or employee of the liquor control board of the state of Washington shall, during his term of office or employment, or for a period of two years immediately following the termination thereof, represent directly or indirectly any manufacturer or wholesaler of liquor in the sale of liquor to the board. [1937 c 217 § 5 (adding new section 42-A to 1933 ex.s. c 62); RRS § 7306-42A. Formerly RCW 43.66.040.]

**66.08.080 Interest in manufacture or sale of liquor prohibited.** No member of the board and no employee of the board shall have any interest, directly or indirectly, in the manufacture of liquor or in any liquor sold under this title, or derive any profit or remuneration from the sale of liquor, other than the salary or wages payable to him in respect of his office or position, and shall receive no gratuity from any person in connection with such business. [1933 ex.s. c 62 § 68; RRS § 7306-68.]

**66.08.090 Sale of liquor by employees of board.** No employee shall sell liquor in any other place, nor at any other time, nor otherwise than as authorized by the board under this title and the regulations. [1933 ex.s. c 62 § 31; RRS § 7306-31.]

**66.08.100 Jurisdiction of action against board—Immunity from personal liability of members.** No court of the state of Washington other than the superior court of Thurston county shall have jurisdiction over any action or proceeding against the board or any member thereof for anything done or omitted to be done in or arising out of the performance of his or their duties under this title. Neither the board nor any member or members thereof shall be personally liable in any action at law for damages sustained by any person because of any acts performed or done or omitted to be done by

the board or any employee of the board in the performance of his duties and in the administration of this title. [1935 c 174 § 9 (adding new section 62-A to 1933 ex.s. c 62); RRS § 7306-62A. Formerly RCW 66.08.100 and 66.08.110.]

**66.08.120 Preemption of field by state—Exception.** No municipality or county shall have power to license the sale of, or impose an excise tax upon, liquor as defined in this title, or to license the sale or distribution thereof in any manner; and any power now conferred by law on any municipality or county to license premises which may be licensed under this section, or to impose an excise tax upon liquor, or to license the sale and distribution thereof, as defined in this title, shall be suspended and shall be of no further effect: *Provided*, That municipalities and counties shall have power to adopt police ordinances and regulations not in conflict with this title or with the regulations made by the board. [1933 ex.s. c 62 § 29; RRS § 7306-29.]

**66.08.130 Inspection of books and records—Goods possessed or shipped—Penalty for refusal.** For the purpose of obtaining information concerning any matter relating to the administration or enforcement of this title, the board, or any person appointed by it in writing for the purpose, may inspect the books and records of

- (1) any manufacturer;
- (2) any license holder;
- (3) any drug store holding a permit to sell on prescriptions;
- (4) the freight and express books and records and all waybills, bills of lading, receipts and documents in the possession of any common carrier doing business within the state, containing any information or record relating to any goods shipped or carried, or consigned or received for shipment or carriage within the state. Every common carrier, and every owner or officer or employee of such common carrier, who neglects or refuses to produce and submit for inspection any book, record or document referred to in this section when requested to do so by the board or by a person so appointed by it shall be guilty of a violation of this title. [1933 ex.s. c 62 § 56; RRS § 7306-56.]

**66.08.140 Inspection of books and records—Financial dealings—Penalty for refusal.** For the purpose of obtaining information concerning any matter relating to the administration or enforcement of this title, the board, or any person appointed by it in writing for the purpose, may inspect the books, documents and records of any person lending money to or in any manner financing any license, holder or applicant for license insofar as such books, documents and/or records pertain to the financial transaction involved. Every person who neglects or refuses to produce and submit for inspection any book, record or document as required by this section when requested to do so by the board or by a person duly appointed by it shall be guilty of a violation of this title. [1945 c 48 § 1 (adding new section 56-A to 1933 ex.s. c 62); RRS § 7306-56A.]

**66.08.150 Board's action as to permits and licenses—Administrative procedure act, applicability—Contested case—Opportunity for hearing—Summary suspension.** The action, order or decision of the board as to any denial of an application for the reissuance of a permit or license or as to any revocation, suspension, or modification of any permit or license shall be a contested case and subject to the applicable provisions of chapter 34.04 RCW as amended by \*this 1967 amendatory act.

(1) An opportunity for a hearing may be provided an applicant for the reissuance of a permit or license prior to the disposition of the application, and if no such opportunity for a prior hearing is provided then an opportunity for a hearing to reconsider the application must be provided the applicant.

(2) An opportunity for a hearing must be provided a permittee or licensee prior to a revocation or modification of any permit or license and, except as provided in subsection (4) of this section, prior to the suspension of any permit or license.

(3) No hearing shall be required until demanded by the applicant, permittee, or licensee.

(4) The board may summarily suspend a license or permit for a period of up to thirty days without a prior hearing if it finds that public health, safety or welfare imperatively require emergency action, and incorporates a finding to that effect in its order; and proceedings for revocation or other action must be promptly instituted and determined. [1967 c 237 § 23; 1933 ex.s. c 62 § 62 RRS § 7306-62.]

*\*Reviser's note:* "this 1967 amendatory act" [1967 c 237], see note following RCW 34.04.130.

**66.08.160 Acquisition of warehouse authorized.** The Washington state liquor board and the state finance committee are hereby authorized to lease or purchase or acquire a site and erect a warehouse building in the city of Seattle, and for that purpose may borrow money and may issue bonds in an amount not to exceed one million five hundred thousand dollars to be amortized from liquor revenues over a period of not to exceed ten years. [1947 c 134 § 1; No RRS.]

**66.08.170 Liquor revolving fund—Creation—Composition—State treasurer as custodian—Daily deposits, exceptions—Budget and accounting act applicable.** There shall be a fund, known as the "liquor revolving fund", which shall consist of all license fees, permit fees, penalties, forfeitures, and all other moneys, income, or revenue received by the board. The state treasurer shall be custodian of the fund. All moneys received by the board or any employee thereof, except for change funds and an amount of petty cash as fixed by the board within the authority of law shall be deposited each day in a depository approved by the state treasurer and transferred to the state treasurer to be credited to the liquor revolving fund. Disbursements from the revolving fund shall be on authorization of the board or a duly authorized representative thereof. In order to maintain an effective expenditure and revenue control the liquor revolving fund shall be subject in all respects

to chapter 43.88 RCW but no appropriation shall be required to permit expenditures and payment of obligations from such fund. [1961 ex.s. c 6 § 1; 1933 ex.s. c 62 § 73; RRS § 7306-73. Formerly RCW 43.66.060.]

**Transfer of liquor revolving fund to state treasurer—Outstanding obligations.** "On June 30, 1961, the Washington state liquor control board shall deliver and transfer to the state treasurer, as custodian, all moneys and accounts which comprise the liquor revolving fund, except change funds and petty cash, and the state treasurer shall assume custody thereof. All obligations outstanding as of June 30, 1961 shall be paid out of the liquor revolving fund." [1961 ex.s. c 6 § 5.]

**Effective date—1961 ex.s. c 6:** "This act shall take effect on June 30, 1961." [1961 ex.s. c 6 § 7.] This applies to the foregoing footnote and to the 1961 amendments codified in RCW 66.08.022, 66.08.024, 66.08.026.

**66.08.180 Liquor revolving fund—Distribution—Reserve for administration—Disbursement to universities and department of health.** Moneys in the liquor revolving fund shall be distributed by the board at least once every three months in accordance with RCW 66.08.190, 66.08.200 and 66.08.210: *Provided*, That the board shall reserve from distribution such amount not exceeding five hundred thousand dollars as may be necessary for the proper administration of this title: *And provided further*, That all license fees, penalties and forfeitures derived under this act from class H licenses or class H licensees shall every three months be disbursed by the board to the University of Washington and to Washington State University for medical and biological research only, in such proportions as shall be determined by the board after consultation with the heads of said state institutions: *And provided further*, That when the allocations in any biennium to the University of Washington and Washington State University shall amount to a total of one million dollars, the entire allocation for the remainder of the biennium shall be transferred to the general fund to be used by the department of health solely to carry out the purposes of RCW 70.96.085, as now or hereafter amended: *And provided further*, That twenty percent of the total amount derived from license fees pursuant to RCW 66.24.320, 66.24.330, 66.24.340, 66.24.350, 66.24.360, and 66.24.370, as such sections are now or hereafter amended, shall be transferred to the general fund to be used by the department of health solely to carry out the purposes of RCW 70.96.085, as now or hereafter amended. The budget director shall prescribe suitable accounting procedure to insure that the funds transferred to the general fund to be used by the department of health and appropriated are separately accounted for. [1967 ex.s. c 75 § 1; 1965 ex.s. c 143 § 2; 1949 c 5 § 10; 1935 c 13 § 2; 1933 ex.s. c 62 § 77; Rem. Supp. 1949 § 7306-77. Formerly RCW 43.66.080.]

**Effective date—1967 ex.s. c 75:** "The effective date of this 1967 amendatory act is July 1, 1967." [1967 ex.s. c 75 § 8.] This applies to RCW 66.08.180, 66.24.320-66.24.370.

*Department of health abolished, powers and duties transferred to department of social and health services: RCW 43.20A.500, 43.20A.030, and 43.20A.180.*

*Distribution for state toxicological lab: See note following RCW 68.08.107.*

**66.08.190 Liquor revolving fund—Disbursement of excess funds to state, counties and cities.** When excess funds are distributed, all moneys subject to distribution shall be disbursed as follows:

Fifty percent to the general fund of the state, ten percent to the counties of the state, and forty percent to the incorporated cities and towns of the state. [1957 c 175 § 6. Prior: 1955 c 109 § 2; 1949 c 187 § 1, part; 1939 c 173 § 1, part; 1937 c 62 § 2, part; 1935 c 80 § 1, part; 1933 ex.s. c 62 § 78, part; Rem. Supp. 1949 § 7306-78, part. Formerly RCW 43.66.090.]

**66.08.200 Liquor revolving fund—Computation for distribution to counties—"Unincorporated area" defined.** With respect to the ten percent share coming to the counties, the computations for distribution shall be made by the state agency responsible for collecting the same as follows:

The share coming to each eligible county shall be determined by a division among the eligible counties according to the relation which the population of the unincorporated area of such eligible county, as shown by the last federal or official county census, whichever is the later, bears to the population of the total combined unincorporated areas of all eligible counties, as shown by such census: *Provided*, That no county in which the sale of liquor is forbidden in the unincorporated area thereof as the result of an election shall be entitled to share in such distribution. "Unincorporated area" means all that portion of any county not included within the limits of incorporated cities and towns. [1957 c 175 § 7. Prior: 1955 c 109 § 3; 1949 c 187 § 1, part; 1939 c 173 § 1, part; 1937 c 62 § 2, part; 1935 c 80 § 1, part; 1933 ex.s. c 62 § 78, part; Rem. Supp. 1949 § 7306-78, part. Formerly RCW 43.66.100.]

**66.08.210 Liquor revolving fund—Computation for distribution to cities.** With respect to the forty percent share coming to the incorporated cities and towns, the computations for distribution shall be made by the state agency responsible for collecting the same as follows:

The share coming to each eligible city or town shall be determined by a division among the eligible cities and towns within the state ratably on the basis of population as last determined by the board: *And provided*, That no city or town in which the sale of liquor is forbidden as the result of an election shall be entitled to any share in such distribution. [1957 c 175 § 8. Prior: 1949 c 187 § 1, part; 1939 c 173 § 1, part; 1937 c 62 § 2, part; 1935 c 80 § 1, part; 1933 ex.s. c 62 § 78, part; Rem. Supp. 1949 § 7306-78, part. Formerly RCW 43.66.110.]

*Allocation of state funds on population basis: RCW 43.62.020, 43.62.030.*

*Determining population of territory annexed to city: RCW 35.13.260.*

*Planning and community affairs agency, determination of population: Chapter 43.62 RCW.*

**66.08.220 Liquor revolving fund—Separate account of part of gross sales to class H licensees, distribution.** The board shall set aside in a separate account in

the liquor revolving fund an amount equal to ten percent of its gross sales of liquor to class H licensees; and the moneys in said separate account shall be distributed in accordance with the provisions of RCW 66.08.190, 66.08.200 and 66.08.210: *Provided, however*, That no election unit in which the sale of liquor under class H licenses is unlawful shall be entitled to share in the distribution of moneys from such separate account. [1949 c 5 § 11 (adding new section 78-A to 1933 ex.s. c 62); Rem. Supp. 1949 § 7306-78A. Formerly RCW 43.66.130.]

**Severability—1949 c 5:** See note following RCW 66.24.400.

### Chapter 66.12 EXEMPTIONS

#### Sections

- 66.12.010 Wine or beer manufactured for home use.
- 66.12.020 Sales of liquor to board.
- 66.12.030 Licensed manufacturers not prevented from storing liquor—Transshipment in interstate, foreign commerce—Interstate, foreign transactions protected.
- 66.12.060 Pharmaceutical preparations, patent medicines, denatured alcohol.
- 66.12.070 Medicinal, culinary and toilet preparations not usable as beverages—Sample and analysis.
- 66.12.110 Bringing alcoholic beverages into United States duty free for personal use.

**66.12.010 Wine or beer manufactured for home use.** Nothing in this title shall apply to wine or beer manufactured in any home for consumption therein, and not for sale. [1955 c 39 § 1; 1933 ex.s. c 62 § 32; RRS § 7306-32.]

**66.12.020 Sales of liquor to board.** Nothing in this title shall apply to or prevent the sale of liquor by any person to the board. [1933 ex.s. c 62 § 48; RRS § 7306-48.]

**66.12.030 Licensed manufacturers not prevented from storing liquor—Transshipment in interstate, foreign commerce—Interstate, foreign transactions protected.** (1) Nothing in this title shall prevent any person licensed to manufacture liquor from keeping liquor in his warehouse or place of business.

(2) Nothing in this title shall prevent the transshipment of liquor in interstate and foreign commerce; but no person shall import liquor into the state from any other state or country, except, as herein otherwise provided, for use or sale in the state, except the board.

(3) Every provision of this title which may affect transactions in liquor between a person in this state and a person in another state or in a foreign country shall be construed to affect such transactions so far only as the legislature has power to make laws in relation thereto. [1933 ex.s. c 62 § 49; RRS § 7306-49. Formerly RCW 66.12.030, 66.12.040 and 66.12.050.]

**66.12.060 Pharmaceutical preparations, patent medicines, denatured alcohol.** Nothing in this title shall apply to or prevent the sale, purchase or consumption

(1) of any pharmaceutical preparation containing liquor which is prepared by a druggist according to a

formula of the pharmacopoeia of the United States, or the dispensatory of the United States; or

(2) of any proprietary or patent medicine; or

(3) of wood alcohol or denatured alcohol, except in the case of the sale, purchase, or consumption of wood alcohol or denatured alcohol for beverage purposes, either alone or combined with any other liquid or substance. [1933 ex.s. c 62 § 50; RRS § 7306-50.]

*Sale of liquor by pharmacists: RCW 18.64.243.*

**66.12.070 Medicinal, culinary and toilet preparations not usable as beverages—Sample and analysis.** (1) Where a medicinal preparation contains liquor as one of the necessary ingredients thereof, and also contains sufficient medication to prevent its use as an alcoholic beverage, nothing in this title shall apply to or prevent its composition or sale by a druggist when compounded from liquor purchased by the druggist under a special permit held by him, nor apply to or prevent the purchase or consumption of the preparation by any person for strictly medicinal purposes.

(2) Where a toilet or culinary preparation, that is to say, any perfume, lotion, or flavoring extract or essence, contains liquor and also contains sufficient ingredient or medication to prevent its use as a beverage, nothing in this title shall apply to or prevent the sale or purchase of that preparation by any druggist or other person who manufactures or deals in the preparation, nor apply to or prevent the purchase or consumption of the preparation by any person who purchases or consumes it for any toilet or culinary purpose.

(3) In order to determine whether any particular medicinal, toilet, or culinary preparation referred to in this section contains sufficient ingredient or medication to prevent its use as an alcoholic beverage, the board may cause a sample of the preparation, purchased or obtained from any person whomsoever, to be analyzed by an analyst appointed or designated by the board; and if it appears from a certificate signed by the analyst that he finds the sample so analyzed by him did not contain sufficient ingredient or medication to prevent its use as an alcoholic beverage, the certificate shall be conclusive evidence that the preparation, the sample of which was so analyzed, is not a preparation the sale or purchase of which is permitted by this section. [1933 ex.s. c 62 § 51; RRS § 7306-51. Formerly RCW 66.12.070, 66.12.080 and 66.12.090.]

**66.12.110 Bringing alcoholic beverages into United States duty free for personal use.** A person twenty-one years of age or over may bring into the state from without the United States, free of tax and markup, for his personal or household use such alcoholic beverages as have been declared and permitted to enter the United States duty free under federal law. [1967 c 38 § 1.]

### Chapter 66.16 STATE LIQUOR STORES

#### Sections

- 66.16.010 Board may establish—Standard as to prices—Prices in special instances.

- 66.16.030 Vendor to be in charge.  
 66.16.040 Sales of liquor by employees—Identification cards—Permit holders—Sales for cash.  
 66.16.050 Sale of beer and wine to person licensed to sell.  
 66.16.060 Sealed packages may be required, exception.  
 66.16.070 Liquor cannot be opened or consumed on store premises.  
 66.16.080 Sunday closing.  
 66.16.090 Record of individual purchases confidential—Penalty for disclosure.

**66.16.010 Board may establish—Standard as to prices—Prices in special instances.** (1) There shall be established at such places throughout the state as the liquor control board, constituted under this title, shall deem advisable, stores to be known as "state liquor stores," for the sale of liquor in accordance with the provisions of this title and the regulations: *Provided*, That the prices of all liquor shall be fixed by the board from time to time so that the net annual revenue received by the board therefrom shall not exceed thirty-five percent.

(2) The liquor control board may, from time to time, fix the special price at which pure ethyl alcohol may be sold to physicians and dentists and institutions regularly conducted as hospitals, for use or consumption only in such hospitals; and may also fix the special price at which pure ethyl alcohol may be sold to schools, colleges and universities within the state for use for scientific purposes. Regularly conducted hospitals may have right to purchase pure ethyl alcohol on a federal permit.

(3) The liquor control board may also fix the special price at which pure ethyl alcohol may be sold to any department, branch or institution of the state of Washington, federal government, or to any person engaged in a manufacturing or industrial business or in scientific pursuits requiring alcohol for use therein.

(4) The liquor control board may also fix a special price at which pure ethyl alcohol may be sold to any private individual, and shall make regulations governing such sale of alcohol to private individuals as shall promote, as nearly as may be, the minimum purchase of such alcohol by such persons. [1939 c 172 § 10; 1937 c 62 § 1; 1933 ex.s. c 62 § 4; RRS § 7306-4. Formerly RCW 66.16.010 and 66.16.020.]

**66.16.030 Vendor to be in charge.** The sale of liquor at each state liquor store shall be conducted by a person employed under this title to be known as a "vendor," who shall, together with the employees under his direction, under the regulations of the board, be responsible for the carrying out of this title and the regulations, so far as they relate to the conduct of the store and the sale of liquor thereat. [1933 ex.s. c 62 § 6; RRS § 7306-6.]

**66.16.040 Sales of liquor by employees—Identification cards—Permit holders—Sales for cash.** Except as otherwise provided by law, an employee in a state liquor store or agency may sell liquor to any person of legal age to purchase alcoholic beverages as provided in \*chapter 100, Laws of 1973 and may also sell to holders of permits such liquor as may be purchased under such permits.

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

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

(2) Driver's license of any state or "identocard" issued by the Washington state department of motor vehicles pursuant to RCW 46.20.117.

(3) United States active duty military identification.

(4) Passport.

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

No liquor sold under this section shall be delivered until the purchaser has paid for the liquor in cash. [1973 1st ex.s. c 209 § 3; 1971 ex.s. c 15 § 1; 1959 c 111 § 1; 1933 ex.s. c 62 § 7; RRS § 7306-7.]

**\*Reviser's note:** Chapter 100, Laws of 1973 referred to in the first paragraph was referred to and rejected by the people at the 1973 state general election (Referendum Measure No. 36).

**Severability—Effective date—1973 1st ex.s. c 209:** See notes following RCW 66.08.070.

**Effective date—1971 ex.s. c 15:** "The effective date of this 1971 amendatory act is July 1, 1971." [1971 ex.s. c 15 § 8.] This applies to RCW 66.16.040, 66.20.160, 66.20.170, 66.20.180, 66.20.190, 66.20.200 and 66.20.210.

**66.16.050 Sale of beer and wine to person licensed to sell.** An employee may sell beer and wines to any licensee holding a license to sell under this title in accordance with the terms of said license. [1933 ex.s. c 62 § 8; RRS § 7306-8.]

**66.16.060 Sealed packages may be required, exception.** The board may in its discretion by regulation prescribe that any or all liquors other than malt liquor shall be delivered to any purchaser at a state liquor store only in a package sealed with the official seal. [1943 c 216 § 1; 1933 ex.s. c 62 § 9; RRS § 7306-9.]

**66.16.070 Liquor cannot be opened or consumed on store premises.** No employee in a state liquor store shall open or consume, or allow to be opened or consumed any liquor on the store premises. [1933 ex.s. c 62 § 10; RRS § 7306-10.]

**66.16.080 Sunday closing.** No sale or delivery of liquor shall be made on or from the premises of any state liquor store, nor shall any store be open for the sale of liquor, on Sunday. [1933 ex.s. c 62 § 11; RRS § 7306-11.]

**66.16.090 Record of individual purchases confidential—Penalty for disclosure.** All records whatsoever of the board showing purchases by any individual of liquor shall be deemed confidential, and, except subject to audit by the state auditor, shall not be permitted to be inspected by any person whatsoever, except by employees of the board to the extent permitted by the regulations; and no member of the board and no employee whatsoever shall give out any information concerning

such records and neither such records nor any information relative thereto which shall make known the name of any individual purchaser shall be competent to be admitted as evidence in any court or courts except in prosecutions for illegal possession of and/or sale of liquor. Any person violating the provisions of this section shall be guilty of a misdemeanor. [1933 ex.s. c 62 § 89; RRS § 7306-89.]

### Chapter 66.20 LIQUOR PERMITS

#### Sections

66.20.010	Permits classified—Issuance—Fees.
66.20.020	Permits not transferable—False name or address prohibited—Sacramental liquor, wine.
66.20.040	Applicant must sign permit.
66.20.060	Duration of permits.
66.20.070	Suspension or cancellation of permits.
66.20.080	Surrender of suspended or canceled permit—New permit, when.
66.20.090	Taking up permits wrongfully presented.
66.20.100	Physician may prescribe or administer liquor—Penalty.
66.20.110	Dentist may administer liquor—Penalty.
66.20.120	Hospitals, etc., may administer liquor—Penalty for violation.
66.20.130	Permits denied interdicted persons.
66.20.135	Cancellation of liquor permit—Interdiction by decree.
66.20.137	Revocation of interdiction.
66.20.140	Limitation on application after cancellation or suspension.
66.20.150	Purchases prohibited under canceled, suspended permit or under another's permit.
66.20.160	"Card of identification", "licensee", "store employee" defined for certain purposes.
66.20.170	Card of identification may be accepted as identification card and evidence of legal age.
66.20.180	Card of identification to be presented on request of licensee.
66.20.190	Identification card holder must sign certification card—Contents—Procedure.
66.20.200	Unlawful acts relating to card of identification and certification card—Penalty.
66.20.210	Licensee's immunity to prosecution or suit—Certification card as evidence of good faith.

#### 66.20.010 Permits classified—Issuance—Fees.

Upon application in the prescribed form being made to any employee authorized by the board to issue permits, accompanied by payment of the prescribed fee, and upon the employee being satisfied that the applicant should be granted a permit under this title, the employee shall issue to the applicant under such regulations and at such fee as may be prescribed by the board a permit of the class applied for, as follows:

(1) Where the application is for a special permit by a physician or dentist, or by any person in charge of an institution regularly conducted as a hospital or sanatorium for the care of persons in ill health, or as a home devoted exclusively to the care of aged people, a special liquor purchase permit;

(2) Where the application is for a special permit by a person engaged within the state in mechanical or manufacturing business or in scientific pursuits requiring alcohol for use therein, or by any private individual, a special permit to purchase alcohol for the purpose named in the permit;

(3) Where the application is for a special permit to consume liquor at a banquet, at a specified date and place, a special permit to purchase liquor for consumption at such banquet, to such applicants as may be fixed by the board;

(4) Where the application is for a special permit by a manufacturer to import alcohol, malt, and other materials containing alcohol to be used in the manufacture of liquor, or other products, a special import permit;

(5) Where the application is for a special permit by a person operating a drug store to purchase liquor at retail prices only, to be thereafter sold by such person on the prescription of a physician, a special liquor purchase permit;

(6) Where the application is for a special permit by an authorized representative of a military installation operated by or for any of the armed forces within the geographical boundaries of the state of Washington, a special permit to purchase liquor for use on such military installation at prices to be fixed by the board. [1959 c 111 § 2; 1951 2nd ex.s. c 13 § 1; 1933 ex.s. c 62 § 12; RRS § 7306-12.]

**66.20.020 Permits not transferable—False name or address prohibited—Sacramental liquor, wine.** (1) Every permit shall be issued in the name of the applicant therefor, and no permit shall be transferable, nor shall the holder of any permit allow any other person to use the permit.

(2) No person shall apply in any false or fictitious name for the issuance to him of a permit, and no person shall furnish a false or fictitious address in his application for a permit.

(3) Nothing in this title shall be construed as limiting the right of any minister, priest or rabbi, or religious organization from obtaining wine for sacramental purposes directly from any source whatsoever, whether from within the limits of the state of Washington or from outside the state; nor shall any fee be charged, directly or indirectly, for the exercise of this right. The board shall have the power and authority to make reasonable rules and regulations concerning the importing of any such liquor or wine, for the purpose of preventing any unlawful use of such right. [1933 ex.s. c 62 § 13; RRS § 7306-13. Formerly RCW 66.12.100, 66.20.020 and 66.20.030.]

**66.20.040 Applicant must sign permit.** No permit shall be valid or be accepted or used for the purchase of liquor until the applicant for the permit has written his signature thereon in the prescribed manner, for the purposes of identification as the holder thereof, in the presence of the employee to whom the application is made. [1933 ex.s. c 62 § 14; RRS § 7306-14.]

**66.20.060 Duration of permits.** Every permit issued for use after October 1, 1955, shall expire at midnight on the thirtieth day of June of the fiscal year for which the permit was issued, except special permits for banquets and special permits to physicians, dentists, or persons in charge of an institution regularly conducted as a hospital or sanatorium for the care of persons in ill



health, or as a home devoted exclusively to the care of aged people. [1955 c 180 § 1; 1935 c 174 § 1; 1933 ex.s. c 62 § 16; RRS § 7306-16.]

**66.20.070 Suspension or cancellation of permits.** Where the holder of any permit issued under this title violates any provision of this title or of the regulations, or is an interdicted person, or is otherwise disqualified from holding a permit, the board, upon proof to its satisfaction of the fact or existence of such violation, interdiction, or disqualification, and in its discretion, may with or without any hearing, suspend the permit and all rights of the holder thereunder for such period as the board sees fit, or may cancel the permit. [1933 ex.s. c 62 § 17; RRS § 7306-17.]

*Cancellation of liquor permit—Interdiction by decree: RCW 66.20.135.*

**66.20.080 Surrender of suspended or canceled permit—New permit, when.** Upon receipt of notice of the suspension or cancellation of his permit, the holder of the permit shall forthwith deliver up the permit to the board. Where the permit has been suspended only, the board shall return the permit to the holder at the expiration or termination of the period of suspension. Where the permit has been suspended or canceled, no employee shall knowingly issue to the person whose permit is suspended or canceled a permit under this title until the end of the period of suspension or within the period of one year from the date of cancellation. [1933 ex.s. c 62 § 18; RRS § 7306-18.]

**66.20.090 Taking up permits wrongfully presented.** Where any permit is presented to an employee by a person who is not the holder of the permit, or where any permit which is suspended or canceled is presented to an employee, the employee shall retain the permit in his custody and shall forthwith notify the board of the fact of its retention. [1933 ex.s. c 62 § 19; RRS § 7306-19.]

**66.20.100 Physician may prescribe or administer liquor—Penalty.** Any physician who deems liquor necessary for the health of a patient, whether an interdicted person or not, whom he has seen or visited professionally may give to the patient a prescription therefor, signed by the physician, or the physician may administer the liquor to the patient, for which purpose the physician may administer the liquor purchased by him under special permit and may charge for the liquor so administered; but no prescription shall be given or liquor be administered by a physician except to bona fide patients in cases of actual need, and when in the judgment of the physician the use of liquor as medicine in the quantity prescribed or administered is necessary; and any physician who administers liquor in evasion or violation of this title shall be guilty of a violation of this title. [1933 ex.s. c 62 § 20; RRS § 7306-20.]

**66.20.110 Dentist may administer liquor—Penalty.** Any dentist who deems it necessary that any patient then under treatment by him should be supplied with

liquor as a stimulant or restorative may administer to the patient the liquor so needed, and for that purpose the dentist shall administer liquor obtained by him under special permit pursuant to this title, and may charge for the liquor so administered; but no liquor shall be administered by a dentist except to bona fide patients in cases of actual need; and every dentist who administers liquor in evasion or violation of this title shall be guilty of a violation of this title. [1933 ex.s. c 62 § 21; RRS § 7306-21.]

**66.20.120 Hospitals, etc., may administer liquor—Penalty for violation.** Any person in charge of an institution regularly conducted as a hospital or sanatorium for the care of persons in ill health, or as a home devoted exclusively to the care of aged people, may, if he holds a special permit under this title for that purpose, administer liquor purchased by him under his special permit to any patient or inmate of the institution who is in need of the same, either by way of external application or otherwise for medicinal purposes, and may charge for the liquor so administered; but no liquor shall be administered by any person under this section except to bona fide patients or inmates of the institution of which he is in charge and in cases of actual need and every person in charge of an institution who administers liquor in evasion or violation of this title shall be guilty of a violation of this title. [1933 ex.s. c 62 § 22; RRS § 7306-22.]

**66.20.130 Permits denied interdicted persons.** No permit shall be issued to any interdicted person. [1933 ex.s. c 62 § 39; RRS § 7306-39.]

**66.20.135 Cancellation of liquor permit—Interdiction by decree.** Whenever any person shall have been declared an habitual drunkard by virtue of RCW 71.08.030 through 71.08.090, the court declaring such person an habitual drunkard shall, at the same time, make an order directing the cancellation of any permit held by that person and prohibiting the sale of liquor to him until further order; and the court shall cause a certified copy of the order to be forthwith filed with the board, and the officer making and transmitting such certified copy shall make no charge therefor. Upon receipt of the order of interdiction, the board shall cancel any permit held by the interdicted person. [1933 ex.s. c 62 § 53; RRS § 7306-53. Formerly RCW 71.08.100.]

**66.20.137 Revocation of interdiction.** Whenever any order declaring a person to be an habitual drunkard shall have been annulled and vacated by the court by virtue of RCW 71.08.090, the judge of said court shall also file an order with the board revoking the former order of interdiction; and upon the filing of the order of revocation, the interdicted person shall be restored to all his rights under this title. [1933 ex.s. c 62 § 54; RRS § 7306-54. Formerly RCW 71.08.110.]



**66.20.140 Limitation on application after cancellation or suspension.** No person whose permit has been canceled within the period of twelve months next preceding, or is suspended, shall make application to any employee under this title for another permit. [1933 ex.s. c 62 § 40; RRS § 7306-40.]

**66.20.150 Purchases prohibited under canceled, suspended permit or under another's permit.** No person shall purchase or attempt to purchase liquor under a permit which is suspended, or which has been canceled, or of which he is not the holder. [1933 ex.s. c 62 § 41; RRS § 7306-41.]

**66.20.160 "Card of identification", "licensee", "store employee" defined for certain purposes.** Words and phrases as used in RCW 66.20.160 to 66.20.210, inclusive, shall have the following meaning:

"Card of identification" means any one of those cards described in RCW 66.16.040.

"Licensee" means the holder of a retail liquor license issued by the board, and includes any employee or agent of the licensee.

"Store employee" means a person employed in a state liquor store or agency to sell liquor. [1973 1st ex.s. c 209 § 4; 1971 ex.s. c 15 § 2; 1959 c 111 § 4; 1949 c 67 § 1; Rem. Supp. 1949 § 7306-19A.]

**Severability—Effective date—1973 1st ex.s. c 209:** See notes following RCW 66.08.070.

**Effective date—1971 ex.s. c 15:** See note following RCW 66.16.040.

**66.20.170 Card of identification may be accepted as identification card and evidence of legal age.** A card of identification may for the purpose of this title and for the purpose of procuring liquor, be accepted as an identification card by any licensee or store employee and as evidence of legal age of the person presenting such card, provided the licensee or store employee complies with the conditions and procedures prescribed herein and such regulations as may be made by the board. [1973 1st ex.s. c 209 § 5; 1971 ex.s. c 15 § 3; 1959 c 111 § 5; 1949 c 67 § 2; Rem. Supp. 1949 § 7306-19B.]

**Severability—Effective date—1973 1st ex.s. c 209:** See notes following RCW 66.08.070.

**Effective date—1971 ex.s. c 15:** See note following RCW 66.16.040.

**66.20.180 Card of identification to be presented on request of licensee.** A card of identification shall be presented by the holder thereof upon request of any licensee, store employee, peace officer, or enforcement officer of the board for the purpose of aiding the licensee, store employee, peace officer, or enforcement officer of the board to determine whether or not such person is of legal age to purchase liquor when such person desires to procure liquor from a licensed establishment or state liquor store or agency. [1973 1st ex.s. c 209 § 6; 1971 ex.s. c 15 § 4; 1959 c 111 § 6; 1949 c 67 § 3; Rem. Supp. 1949 § 7306-19C.]

**Severability—Effective date—1973 1st ex.s. c 209:** See notes following RCW 66.08.070.

**Effective date—1971 ex.s. c 15:** See note following RCW 66.16.040.

**66.20.190 Identification card holder must sign certification card—Contents—Procedure.** In addition to the presentation by the holder and verification by the licensee or store employee of such card of identification, the licensee or store employee shall require the person whose age may be in question to sign a certification card and record an accurate description and serial number of his card of identification thereon. Such statement shall be upon a five-inch by eight-inch file card, which card shall be filed alphabetically by the licensee or store employee at or before the close of business on the day on which the statement is executed, in the file box containing a suitable alphabetical index and the card shall be subject to examination by any peace officer or agent or employee of the board at all times. [1973 1st ex.s. c 209 § 7; 1971 ex.s. c 15 § 5; 1959 c 111 § 7; 1949 c 67 § 4; Rem. Supp. 1949 § 7306-19D.]

**Severability—Effective date—1973 1st ex.s. c 209:** See notes following RCW 66.08.070.

**Effective date—1971 ex.s. c 15:** See note following RCW 66.16.040.

**66.20.200 Unlawful acts relating to card of identification and certification card—Penalty.** It shall be unlawful for the owner of a card of identification to transfer the card to any other person for the purpose of aiding such person to procure alcoholic beverages from any licensee or store employee. Any person who shall permit his card of identification to be used by another or transfer such card to another for the purpose of aiding such transferee to obtain alcoholic beverages from a licensee or store employee, shall be guilty of a misdemeanor and upon conviction thereof shall be sentenced to pay a fine of not more than one hundred dollars or imprisonment for not more than thirty days or both. Any person not entitled thereto who unlawfully procures or has issued or transferred to him a card of identification, and any person who possesses a card of identification not issued to him, and any person who makes any false statement on any certification card required by RCW 66.20.190, as now or hereafter amended, to be signed by him, shall be guilty of a misdemeanor and upon conviction thereof shall be sentenced to pay a fine of not more than one hundred dollars or imprisonment for not more than thirty days or both. [1973 1st ex.s. c 209 § 8; 1971 ex.s. c 15 § 6; 1969 ex.s. c 178 § 2; 1959 c 111 § 8; 1949 c 67 § 5; Rem. Supp. 1949 § 7306-19E.]

**Severability—Effective date—1973 1st ex.s. c 209:** See notes following RCW 66.08.070.

**Effective date—1971 ex.s. c 15:** See note following RCW 66.16.040.

*Unlawful transfer to a minor of an identification of age:* RCW 66.44.325.

**66.20.210 Licensee's immunity to prosecution or suit—Certification card as evidence of good faith.** No licensee or the agent or employee of the licensee, or store employee, shall be prosecuted criminally or be sued in any civil action for serving liquor to a person

under legal age to purchase liquor if such person has presented a card of identification in accordance with RCW 66.20.180, and has signed a certification card as provided in RCW 66.20.190.

Such card in the possession of a licensee may be offered as a defense in any hearing held by the board for serving liquor to the person who signed the card and may be considered by the board as evidence that the licensee acted in good faith. [1973 1st ex.s. c 209 § 9; 1971 ex.s. c 15 § 7; 1959 c 111 § 9; 1949 c 67 § 6; Rem. Supp. 1949 § 7306-19F.]

**Severability—Effective date—1973 1st ex.s. c 209:** See notes following RCW 66.08.070.

**Effective date—1971 ex.s. c 15:** See note following RCW 66.16.040.

### Chapter 66.24 LICENSES—STAMP TAXES

#### Sections

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**66.24.010 Issuance, transferability, refusal, suspension, cancellation, hearings, procedure—Duration—Conditions and restrictions—Posting—Notice to local authorities—Proximity to churches, schools, etc.** (1) Every license shall be issued in the name of the applicant and the holder thereof shall not allow any other person to use the license.

(2) For the purpose of considering any application for a license, the board may cause an inspection of the premises to be made, and may inquire into all matters in connection with the construction and operation of the premises. The board may, in its discretion, grant or refuse the license applied for. No retail license of any kind shall be issued to:

(a) A person who is not a citizen of the United States, except when the privilege is granted by treaty;

(b) A person who has not resided in the state for at least one month prior to making application, except in cases of licenses issued to dining places on railroads, boats, or aircraft;

(c) A person who has been convicted of a felony within five years prior to filing his application;

(d) A copartnership, unless all of the members thereof are qualified to obtain a license, as provided in this section;

(e) A person whose place of business is conducted by a manager or agent, unless such manager or agent possesses the same qualifications required of the licensee;

(f) A corporation, unless all of the officers thereof are citizens of the United States.

(3) The board may, in its discretion, subject to the provisions of RCW 66.08.150, suspend or cancel any license; and all rights of the licensee to keep or sell liquor thereunder shall be suspended or terminated, as the case may be. The board may appoint examiners who shall have power to administer oaths, issue subpoenas for the attendance of witnesses and the production of papers, books, accounts, documents, and testimony, examine witnesses, and to receive testimony in any inquiry, investigation, hearing, or proceeding in any part of the state, under such rules and regulations as the board may adopt.

Witnesses shall be allowed fees at the rate of four dollars per day, plus ten cents per mile each way. Fees need not be paid in advance of appearance of witnesses to testify or to produce books, records, or other legal evidence.

In case of disobedience of any person to comply with the order of the board or a subpoena issued by the board, or any of its members, or examiners, or on the refusal of a witness to testify to any matter regarding which he may be lawfully interrogated, the judge of the superior court of the county in which the person resides, on application of any member of the board or

examiner, shall compel obedience by contempt proceedings, as in the case of disobedience of the requirements of a subpoena issued from said court or a refusal to testify therein.

(4) Upon receipt of notice of the suspension or cancellation of a license, the licensee shall forthwith deliver up the license to the board. Where the license has been suspended only, the board shall return the license to the licensee at the expiration or termination of the period of suspension, with a memorandum of the suspension written or stamped upon the face thereof in red ink. The board shall notify all vendors in the city or place where the licensee has its premises of the suspension or cancellation of the license; and no employee shall allow or cause any liquor to be delivered to or for any person at the premises of that licensee.

(5) Unless sooner canceled, every license issued by the board shall expire at midnight of the thirtieth day of June of the fiscal year for which it was issued: *Provided*, That the foregoing expiration date shall not apply to class A, B, C, D, or H licenses issued for premises located on the site of any world exposition approved by the Bureau of International Expositions held in this state, and such licenses shall be valid without renewal for a period of two hundred days from and including the opening day of such exposition, or from and including such earlier date specified by the applicant.

(6) Every license issued under this section shall be subject to all conditions and restrictions imposed by this title or by the regulations in force from time to time.

(7) Every licensee shall post and keep posted its license, or licenses, in a conspicuous place on the premises.

(8) Before the board shall issue a license to an applicant it shall give notice of such application to the chief executive officer of the incorporated city or town, if the application be for a license within an incorporated city or town, or to the board of county commissioners, if the application be for a license outside the boundaries of incorporated cities or towns; and such incorporated city or town, through the official or employee selected by it, or the board of county commissioners or the official or employee, selected by it, shall have the right to file with the board within twenty days after date of transmittal of such notice, written objections against the applicant or against the premises for which the license is asked, and shall include with such objections a statement of all facts upon which such objections are based, and in case written objections are filed, may request and the liquor control board may in its discretion hold a formal hearing subject to the applicable provisions of chapter 34.04 RCW, as now or hereafter amended. Upon the granting of a license under this title the board shall cause a duplicate of the license to be transmitted to the chief executive officer of the incorporated city or town in which the license is granted, or to the board of county commissioners if the license is granted outside the boundaries of incorporated cities or towns.

(9) Before the board issues any license to any applicant, it shall give due consideration to the location of the business to be conducted under such license with

respect to the proximity of churches, schools and public institutions: *Provided*, That the board shall issue no beer retailer license class A, B, or D or wine retailer license class C covering any premises not now licensed, if such premises are within five hundred feet of the premises of any church, parochial, or tax-supported public elementary or secondary school measured along the most direct route over or across established public walks, streets, or other public passageway from the outer property line of the church or school grounds to the nearest public entrance of the premises proposed for license, unless the board shall receive written notice from an official representative or representatives of the schools and/or churches within five hundred feet of said proposed licensed premises, indicating to the board that there is no objection to the issuance of such license because of proximity to a school or church. For the purpose of this section, church shall mean a building erected for and used exclusively for religious worship and schooling or other activity in connection therewith.

(10) The restrictions set forth in the preceding subsection shall not prohibit the board from authorizing the transfer of existing licenses now located within the restricted area to other persons or locations within the restricted area: *Provided*, Such transfer shall in no case result in establishing the licensed premises closer to a church or school than it was before the transfer. [1974 1st ex.s. c 66 § 1; 1973 1st ex.s. c 209 § 10; 1971 c 70 § 1; 1969 ex.s. c 178 § 3; 1947 c 144 § 1; 1955 c 174 § 3; 1933 ex.s. c 62 § 27; Rem. Supp. 1947 § 7306-27. Formerly RCW 66.24.010, part and 66.24.020 through 66.24.100. Former part of section: 1937 c 217 § 1 (23-U) now codified as RCW 66.24.025.]

**Severability—Effective date—1973 1st ex.s. c 209:** See notes following RCW 66.08.070.

**Effective date—1971 c 70:** "The effective date of this 1971 amendatory act is July 1, 1971." [1971 c 70 § 4.] This applies to RCW 66.24.010, 66.24.025 and the repeal of RCW 66.24.110.

**66.24.025 Assignment of license—Fee—Exception.** The holder of one or more licenses may assign and transfer the same to any qualified person under such rules and regulations as the board may prescribe: *Provided, however*, That no such assignment and transfer shall be made which will result in both a change of licensee and change of location; the fee for such assignment and transfer shall be thirty-five dollars: *Provided, further*, That no fee will be charged for transfer to the surviving spouse only of a deceased licensee if the parties were maintaining a marital community and the license was issued in the names of one or both of the parties. [1973 1st ex.s. c 209 § 11; 1971 c 70 § 2; 1937 c 217 § 1 (23-U) (adding new section 23-U to 1933 ex.s. c 62); RRS § 7306-23U.]

**Severability—Effective date—1973 1st ex.s. c 209:** See notes following RCW 66.08.070.

**Effective date—1971 c 70:** See note following RCW 66.24.010.

**66.24.120 Vacation of suspension on payment of penalty.** The board in suspending any license may further provide in the order of suspension that such suspension

shall be vacated upon payment to the board by the licensee of a monetary penalty in an amount then fixed by the board. [1973 1st ex.s. c 209 § 12; 1939 c 172 § 7 (adding new section 27-C to 1933 ex.s. c 62); RRS § 7306-27C.]

**Severability—Effective date—1973 1st ex.s. c 209:** See notes following RCW 66.08.070.

**66.24.140 Distillers' license—Fee.** There shall be a license to distillers, including blending, rectifying and bottling; fee one thousand dollars per annum: *Provided*, That the board shall license stills used and to be used solely and only by a commercial chemist for laboratory purposes, and not for the manufacture of liquor for sale, at a fee of ten dollars per annum: *Provided, further*, That the board shall license stills used and to be used solely and only for laboratory purposes in any school, college or educational institution in the state, without fee: *Provided, further*, That the board shall license stills which shall have been duly licensed as fruit and/or wine distilleries by the federal government, used and to be used solely as fruit and/or wine distilleries in the production of fruit brandy and wine spirits, at a fee of fifty dollars per annum. [1937 c 217 § 1 (23D) (adding new section 23-D to 1933 ex.s. c 62); RRS § 7306-23D.]

**66.24.150 Manufacturers' license—Fee.** There shall be a license to manufacturers of liquor, including all kinds of manufacturers except distillers, brewers, wineries, and domestic wineries; fee two hundred fifty dollars per annum. [1937 c 217 § 1 (23A) (adding new section 23-A to 1933 ex.s. c 62); RRS § 7306-23A.]

**66.24.160 Liquor importer's license—Fee.** A liquor importer's license may be issued to any qualified person, firm or corporation, entitling the holder thereof to import into the state any liquor other than beer or wine; to store the same within the state, and to sell and export the same from the state; fee three hundred dollars per annum. Such liquor importer's license shall be subject to all conditions and restrictions imposed by this title or by the rules and regulations of the board, and shall be issued only upon such terms and conditions as may be imposed by the board. No liquor importer's license shall be required in sales to the Washington state liquor control board. [1970 ex.s. c 13 § 1. Prior: 1969 ex.s. c 275 § 2; 1969 ex.s. c 21 § 1; 1937 c 217 § 1 (23J) (adding new section 23-J to 1933 ex.s. c 62); RRS § 7306 (23J).]

**66.24.170 Domestic winery license—Fee based on gallonage manufactured—Report—Wineries other than domestic.** (1) There shall be a license to domestic wineries; fee to be computed only on the gallonage manufactured: Twenty-five hundred gallons or less per year, fifteen dollars per year; over twenty-five hundred gallons to ten thousand gallons per year, thirty dollars per year; over ten thousand gallons to twenty-five thousand gallons per year, fifty dollars per year; over twenty-five thousand gallons to fifty thousand gallons

per year, seventy-five dollars per year; over fifty thousand gallons to one hundred thousand gallons per year, one hundred and twenty-five dollars per year; over one hundred thousand gallons to two hundred thousand gallons per year, two hundred dollars per year; over two hundred thousand gallons to five hundred thousand gallons per year, two hundred and fifty dollars per year; for each five hundred thousand gallons or fraction thereof over five hundred thousand gallons, an additional one hundred and fifty dollars per year.

Any applicant for a domestic winery license shall, at the time of filing application for license, accompany such application with a license fee based upon a reasonable estimate of the amount of wine gallonage to be manufactured by such applicant. Persons holding domestic winery licenses shall report annually at the end of each fiscal year, at such time and in such manner as the board may prescribe, the amount of wine manufactured by them during the fiscal year. If the total amount of wine manufactured during the year exceeds the amount permitted annually by the license fee already paid the board, the licensee shall pay such additional license fee as may be unpaid in accordance with the schedule provided in this section.

(2) There shall be a license to wineries, other than domestic wineries, fee to be computed and paid upon the same basis and subject to the same requirements as domestic wineries. [1939 c 172 § 1 (23C); 1937 c 217 § 1 (23C) (adding new section 23-C to 1933 ex.s. c 62); RRS § 7306-23C. Formerly RCW 66.24.170, 66.24.180 and 66.24.190.]

**66.24.200 Wine wholesaler's license—Fee.** There shall be a license to wine wholesalers to sell wine, manufactured within or without the state, to licensed wholesalers and/or to holders of wine retailer's licenses and to export the same from the state; fee two hundred fifty dollars per annum for each distributing unit. [1969 ex.s. c 21 § 2; 1937 c 217 § 1 (23K) (adding new section 23-K to 1933 ex.s. c 62); RRS § 7306-23K.]

**Effective date—1969 ex.s. c 21:** The effective date of the 1969 amendment to this section is July 1, 1969, see note following RCW 66.04.010.

**66.24.204 Wine importer's license—Fee.** (1) It shall be unlawful for any person, firm or corporation, to import wine into the state of Washington or to transport or cause the same to be transported into the state of Washington for sale therein, unless such person, firm or corporation, has obtained from the Washington state liquor control board and have in force a wine importer's license. The license fee for such wine importer's license shall be thirty dollars per annum;

(2) The wine importer's license herein provided for shall authorize the holder thereof to sell wine imported, or transported, or caused to be transported thereunder to licensed wine wholesalers within the state and to export the same from the state. Every person, firm or corporation, licensed as a wine importer, shall establish and maintain a principal office within the state, at which shall be kept proper records of all wine imported into the state, under his, their, or its license. No wine

importer's license shall be granted to a nonresident of the state, nor to a corporation whose principal place of business is outside the state, until such applicant has established such principal office within the state as hereinbefore provided, and has designated a statutory agent within the state upon whom service can be made;

(3) Every wine importer's license issued under this title shall be subject to all conditions and restrictions imposed by this title, or by the rules and regulations of the board. [1969 ex.s. c 21 § 9.]

**Effective date—1969 ex.s. c 21:** The effective date of this section is July 1, 1969, see note following RCW 66.04.010.

**66.24.206 Certificate of approval required for out-of-state winery or manufacturer of wine or importer of wine produced outside United States—Reports—Agreement with board—Fee.** No wine wholesaler nor wine importer shall purchase any wine not manufactured within the state of Washington by a winery holding a license as a manufacturer of wine from the state of Washington, and/or transport or cause the same to be transported into the state of Washington for resale therein, unless the winery or manufacturer of such wine, or the licensed importer of wine produced outside the United States, has obtained from the Washington state liquor control board a certificate of approval, as hereinafter provided. The certificate of approval herein provided for shall not be granted unless and until such winery, manufacturer, or licensed importer of wine produced outside the United States, shall have made a written agreement with the board to furnish to the board, on or before the tenth day of each month, a report under oath, on a form to be prescribed by the board, showing the quantity of wine sold or delivered to each licensed wine importer, or imported by the licensed importer of wine produced outside the United States, during the preceding month, and shall further have agreed with the board, that such wineries, manufacturers, or licensed importers of wine produced outside the United States, and all general sales corporations or agencies maintained by them, and all of their trade representatives and agents, shall and will faithfully comply with all laws of the state of Washington pertaining to the sale of intoxicating liquors and all rules and regulations of the Washington state liquor control board. If any such winery, manufacturer, or licensed importer of wine produced outside the United States, shall, after obtaining such certificate, fail to submit such report, or if such winery, manufacturer, or licensed importer of wine produced outside the United States, or general sales corporations or agencies maintained by them, or their trade representatives or agents, shall violate the terms of such agreement, the board shall, in its discretion, suspend or revoke such certificate: *Provided, however,* That such certificates of approval shall be issued only for specifically named designated and identified types of wine. The Washington state liquor control board shall not certify wines labeled with names which may be confused with other nonalcoholic beverages, whether manufactured or produced from a domestic winery or imported, nor

wines which fail to meet quality standards established by the board.

The fee for the certificate of approval, issued pursuant to the provisions of this title, shall be fifty dollars per annum, which sum shall accompany the application for such certificate. [1973 1st ex.s. c 209 § 13; 1969 ex.s. c 21 § 10.]

**Severability—Effective date—1973 1st ex.s. c 209:** See notes following RCW 66.08.070.

**Effective date—1969 ex.s. c 21:** The effective date of this section is July 1, 1969, see note following RCW 66.04.010.

**66.24.210 Imposition of tax on all wines sold to wine wholesalers and liquor control board.** There is hereby imposed upon all wines sold to wine wholesalers and the Washington state liquor control board, within the state a tax of seventy-five cents per wine gallon: *Provided, however,* That wine sold or shipped in bulk from one winery to another winery shall not be subject to such gallonage tax. The tax herein provided for may, if so prescribed by the board, be collected by means of stamps to be furnished by the board, or by direct payments based on gallonage purchased by wine wholesalers. Every person purchasing wine under the provisions of this section shall report all sales to the board in such manner, at such times and upon such forms as may be prescribed by the board, and with such report shall pay the tax due from the purchases covered by such report unless the same has previously been paid. If this tax be collected by means of stamps, every such person shall procure from the board revenue stamps representing the tax in such form as the board shall prescribe and shall affix the same to the package or container in such manner and in such denomination as required by the board and shall cancel the same prior to the delivery of the package or container containing the wine to the purchaser. If the tax is not collected by means of stamps, the board may require that every such person shall execute to and file with the board a bond to be approved by the board, in such amount as the board may fix, securing the payment of the tax. If any such person fails to pay the tax when due, the board may forthwith suspend or cancel his license until all taxes are paid. [1973 1st ex.s. c 204 § 2; 1969 ex.s. c 21 § 3; 1943 c 216 § 2; 1939 c 172 § 3; 1935 c 158 § 3 (adding new section 24A to 1933 ex.s. c 62); Rem. Supp. 1943 § 7306–24A. Formerly RCW 66.04.120, 66.24.210, part, 66.24.220 and 66.24.230, part. FORMER PART OF SECTION: 1933 ex.s. c 62 § 25, part, now codified as RCW 66.24.230.]

**Floor stocks tax:** "There is hereby imposed upon every licensed wine wholesaler who possesses wine for resale upon which the tax has not been paid under section 2 of this 1973 amendatory act, a floor stocks tax of sixty-five cents per wine gallon on wine in his possession or under his control on June 30, 1973. Each such wholesaler shall within twenty days after June 30, 1973, file a report with the Washington State liquor control board in such form as the board may prescribe, showing the wine products on hand July 1, 1973, converted to gallons thereof and the amount of tax due thereon. The tax imposed by this section shall be due and payable within twenty days after July 1, 1973, and thereafter bear interest at the rate of one percent per month." [1973 1st ex.s. c 204 § 3.]

**Effective date—1973 1st ex.s. c 204:** See note following RCW 82.08.150.

**Effective date—1969 ex.s. c 21:** The effective date of the 1969 amendment to this section is July 1, 1969, see note following RCW 66.04.010.

**66.24.230 Monthly reports of winery and wine importer—Prohibited, authorized sales.** Every winery and wine importer licensed under this title shall make monthly reports to the board pursuant to the regulations. Such winery and wine importer shall make no sales of wine within the state of Washington except to the board, or as otherwise provided in this title. [1969 ex.s. c 21 § 4; 1933 ex.s. c 62 § 25; RRS § 7306-25. Formerly RCW 66.24.210 and 66.24.230. FORMER PART OF SECTION: 1943 c 216 § 2, part, now codified in RCW 66.24.210.]

**Effective date—1969 ex.s. c 21:** The effective date of the 1969 amendment to this section is July 1, 1969, see note following RCW 66.04.010.

**66.24.240 Brewers' license—Fee.** There shall be a license to brewers to manufacture malt liquors, fee per annum to be based on current fiscal year's production at the rate of fifty dollars per thousand barrels, with a minimum fee of two hundred fifty dollars, such license fee to be collected and paid under such rules and regulations as the board shall prescribe. [1937 c 217 § 1 (23B) (adding new section 23-B to 1933 ex.s. c 62); RRS § 7306-23B.]

**66.24.250 Beer wholesalers' license—Fee.** There shall be a license to beer wholesalers to sell beer, manufactured within or without the state, to licensed wholesalers and/or to holders of beer retailer's licenses, and to export the same from the state; fee two hundred fifty dollars per annum for each distributing unit. [1937 c 217 § 1 (23E) (adding new section 23-E to 1933 ex.s. c 62); RRS § 7306-23E.]

**66.24.260 Beer importers' license—Fee—Rights of licensee—Principal office and agent.** (1) It shall be unlawful for any person, firm or corporation, to import beer into the state of Washington or to transport or cause the same to be transported into the state of Washington for sale therein, unless such person, firm or corporation, has obtained from the Washington state liquor control board and have in force a beer importer's license. The license fee for such beer importer's license shall be ten dollars per annum;

(2) The beer importer's license herein provided for shall authorize the holder thereof to sell beer imported, or transported, or caused to be transported thereunder to licensed beer wholesalers within the state and to export the same from the state. Every person, firm or corporation, licensed as a beer importer, shall establish and maintain a principal office within the state, at which shall be kept proper records of all beer imported into the state, under his, their, or its license. No beer importer's license shall be granted to a nonresident of the state, nor to a corporation whose principal place of business is outside the state, until such applicant has established such principal office within the state as hereinbefore provided, and has designated a statutory agent within the state upon whom service can be made;

(3) Every beer importer's license issued under this title shall be subject to all conditions and restrictions imposed by this title, or by the rules and regulations of the board. [1937 c 217 § 1 (23G) (adding new section 23-G to 1933 ex.s. c 62); RRS § 7306-23G.]

**66.24.270 Manufacturers' monthly report to board of sales made to beer wholesalers—Certificate of approval and report for out-of-state or imported beer—Fee.** (1) Every person, firm or corporation, holding a license to manufacture malt liquors within the state of Washington, shall, on or before the tenth day of each month, furnish to the Washington state liquor control board, on a form to be prescribed by the board, a statement showing the quantity of malt liquors sold for resale during the preceding calendar month to each beer wholesaler within the state of Washington;

(2) No beer wholesaler nor beer importer shall purchase any beer not manufactured within the state of Washington by a brewer holding a license as a manufacturer of malt liquors from the state of Washington, and/or transport or cause the same to be transported into the state of Washington for resale therein, unless the brewer or manufacturer of such beer or the licensed importer of beer produced outside the United States has obtained from the Washington state liquor control board a certificate of approval, as hereinafter provided. The certificate of approval herein provided for shall not be granted unless and until such brewer or manufacturer of malt liquors or the licensed importer of beer produced outside the United States shall have made a written agreement with the board to furnish to the board, on or before the tenth day of each month, a report under oath, on a form to be prescribed by the board, showing the quantity of beer sold or delivered to each licensed beer importer or imported by the licensed importer of beer produced outside the United States during the preceding month, and shall further have agreed with the board, that such brewer or manufacturer of malt liquors or the licensed importer of beer produced outside the United States and all general sales corporations or agencies maintained by such brewers or manufacturers or importers, and all trade representatives or agents of such brewer or manufacturer of malt liquors or the licensed importer of beer produced outside the United States, and of such general sales corporations and agencies, shall and will faithfully comply with all laws of the state of Washington pertaining to the sale of intoxicating liquors and all rules and regulations of the Washington state liquor control board. If any such brewer or manufacturer of malt liquors or the licensed importer of beer produced outside the United States shall, after obtaining such certificate, fail to submit such report, or if such brewer or manufacturer of malt liquors or the licensed importer of beer produced outside the United States or general sales corporation or agency maintained by such brewers or manufacturers or importers, or any representative or agent thereof, shall violate the terms of such agreement, the board shall, in its discretion, suspend or revoke such certificate;



(3) The fee for the certificate of approval, issued pursuant to the provisions of this title, shall be fifty dollars per annum, which sum shall accompany the application for such certificate. [1973 1st ex.s. c 209 § 14; 1969 ex.s. c 178 § 4; 1937 c 217 § 1 (23F) (adding new section 23-F to 1933 ex.s. c 62); RRS § 7306-23F. Formerly RCW 66.24.270 and 66.24.280.]

**Severability—Effective date—1973 1st ex.s. c 209:** See notes following RCW 66.08.070.

**66.24.290 Authorized, prohibited sales by brewer or wholesaler—Monthly report of sales—Additional tax on gallonage—Revenue stamps.** Any brewer or beer wholesaler licensed under this title may sell and deliver beer to holders of authorized licenses direct, but to no other person, other than the board; and every such brewer or beer wholesaler shall report all sales to the board monthly, pursuant to the regulations, and shall pay to the board as an added tax for the privilege of manufacturing and selling the beer within the state a tax of one dollar per barrel of thirty-one gallons on sales to licensees within the state and on sales to licensees within the state of bottled and canned beer shall pay a tax computed in gallons at the rate of one dollar and fifty cents per barrel of thirty-one gallons. Each such brewer or wholesaler shall procure from the board revenue stamps representing such tax in form prescribed by the board and shall affix the same to the barrel or package in such manner and in such denominations as required by the board, and shall cancel the same prior to commencing delivery from his place of business or warehouse of such barrels or packages. Beer shall be sold by brewers and wholesalers in sealed barrels or packages. The revenue stamps herein provided for need not be affixed and canceled in the making of resales of barrels or packages already taxed by the affixation and cancellation of stamps as provided in this section.

The above tax shall not apply to "strong beer" as defined in this title. [1965 ex.s. c 173 § 30; 1933 ex.s. c 62 § 24; RRS § 7306-24.]

**Severability—1965 ex.s. c 173 § 32:** See note following RCW 82.98.030.

**66.24.300 Refunds for unused, destroyed, exported beer stamps—Waiver of stamps.** (1) The board may make refunds for all stamp taxes paid on beer exported from the state for use outside the state, and also for tax stamps destroyed prior to the consummation of any sale of beer within the state, or for unused stamps returned to the board.

(2) The board may waive the use of revenue stamps in the collection of the tax on beer. If the tax is not collected by means of stamps, the board may require filing with the board of a bond to be approved by it, in such amount as the board may fix, securing the payment of the tax. If any licensee fails to pay the tax when due, the board may forthwith suspend or cancel his license until all taxes are paid. [1951 c 93 § 1; 1937 c 217 § 2 (adding new section 24-B to 1933 ex.s. c 62); RRS § 7306-24B.]

**66.24.310 Agent's license—Fee.** (1) No person shall canvass for, solicit, receive, or take orders for the purchase or sale of beer or wine at wholesale, nor contact any retail licensees of the board in goodwill activities, unless such person shall be the accredited representative of a person, firm, or corporation holding a certificate of approval issued pursuant to RCW 66.24.270, a beer wholesaler's license, a brewer's license, a beer importer's license, a domestic winery license, a wine importer's license, or a wine wholesaler's license within the state of Washington, and shall have applied for and received an agent's license: *Provided, however,* That the provisions of this section shall not apply to drivers who deliver beer or wine;

(2) Every agent's license issued under this title shall be subject to all conditions and restrictions imposed by this title or by the rules and regulations of the board;

(3) Every application for an agent's license must be approved by a holder of a certificate of approval issued pursuant to RCW 66.24.270, a licensed beer wholesaler, a licensed brewer, a licensed beer importer, a licensed domestic winery, a licensed wine importer, or a licensed wine wholesaler, as the rules and regulations of the board shall require;

(4) The fee for an agent's license shall be fifteen dollars per annum;

(5) No holder of an agent's license shall contact any retail licensee of the board in goodwill activities relative to the promotion of any liquor other than beer or wine. [1971 ex.s. c 138 § 1; 1969 ex.s. c 21 § 5; 1939 c 172 § 2; 1937 c 217 § 1 (23I) (adding new section 23-I to 1933 ex.s. c 62); RRS § 7306-23I.]

**66.24.320 Beer retailer's license—Class A.** There shall be a beer retailer's license to be designated as a class A license to sell beer by the individual glass or opened bottle at retail, for consumption on the premises and to sell unpasteurized beer for consumption off the premises: *Provided, however,* That unpasteurized beer so sold must be in original sealed packages of the manufacturer or bottler of not less than seven and three-fourths gallons: *And provided further,* That unpasteurized beer may be sold to a purchaser in a sanitary container brought to the premises by the purchaser and filled at the tap by the retailer at the time of sale; such license to be issued only to hotels, restaurants, drug stores or soda fountains, dining places on boats and aeroplanes, to clubs, and at sports arenas or race tracks during recognized professional athletic events. The annual fee for said license, if issued in cities and towns, shall be graduated according to the population thereof as follows:

Cities and towns of less than 10,000; fee \$62.50;

Cities and towns of 10,000 and less than 100,000; fee \$125.00;

Cities and towns of 100,000 or over; fee \$187.50;

The annual fee for such license, if issued outside of cities and towns, shall be sixty-two dollars and fifty cents: *Provided, however,* That where dancing is permitted on the premises, the fee shall be one hundred eighty-seven dollars and fifty cents; the annual license fee for such license, if issued to dining places on vessels



not exceeding one thousand gross tons, plying on inland waters of the state of Washington on regular schedules, shall be sixty-two dollars and fifty cents. [1969 c 117 § 1; 1967 ex.s. c 75 § 2; 1941 c 220 § 1; 1937 c 217 § 1 (23 M) (adding new section 23-M to 1933 ex.s. c 62); Rem. Supp. 1941 § 7306-23M.]

**66.24.330 Beer retailer's license—Class B.** There shall be a beer retailer's license to be designated as a class B license to sell beer by the individual glass or opened bottle at retail, for consumption on the premises and to sell unpasteurized beer for consumption off the premises: *Provided, however,* That unpasteurized beer so sold must be in original sealed packages of the manufacturer or bottler of not less than seven and three-fourths gallons: *And provided further,* That unpasteurized beer may be sold to a purchaser in a sanitary container brought to the premises by the purchaser and filled at the tap by the retailer at the time of sale; such license to be issued only to a person operating a tavern. The annual fee for said license, if issued in cities and towns, shall be graduated according to the population thereof as follows:

Cities and towns of less than 10,000; fee \$62.50;

Cities and towns of 10,000 and less than 100,000; fee \$125.00;

Cities and towns of 100,000 or over; fee \$187.50;

The annual fee for such license, if issued outside of cities and towns, shall be sixty-two dollars and fifty cents: *Provided, however,* That where dancing is permitted on the premises, the fee shall be one hundred eighty-seven dollars and fifty cents. [1973 1st ex.s. c 209 § 15; 1967 ex.s. c 75 § 3; 1941 c 220 § 2; 1937 c 217 § 1 (23N) (adding new section 23-N to 1933 ex.s. c 62); Rem. Supp. 1941 § 7306-23N.]

**Severability—Effective date—1973 1st ex.s. c 209:** See notes following RCW 66.08.070.

**Effective date—1967 ex.s. c 75:** See note following RCW 66.08.180.

**66.24.340 Wine retailer's license—Class C.** There shall be a wine retailer's license to be designated as a class C license to sell wine by the individual glass or opened bottle at retail, for consumption on the premises only; such license to be issued to hotels, restaurants, dining places on boats and aeroplanes, clubs, and to taverns. The annual fee for said license, when issued in cities and towns, shall be graduated according to the population thereof as follows:

Cities and towns of less than 10,000; fee \$47.00;

Cities and towns of 10,000 and less than 100,000; fee \$93.75;

Cities and towns of 100,000 or over; fee \$140.50;

The annual fee, when issued outside of the limits of cities and towns, shall be forty-seven dollars: *Provided, however,* That where dancing is permitted on the premises, the fee shall be one hundred forty dollars and fifty cents; the annual license fee for such license, if issued to dining places on vessels not exceeding one thousand gross tons plying only on inland waters of the state of Washington on regular schedules, shall be forty-seven dollars. [1967 ex.s. c 75 § 4; 1941 c 220 § 3; 1937 c 217

§ 1 (23-O) (adding new section 23-O to 1933 ex.s. c 62); Rem. Supp. 1941 § 7306-23 O.]

**Effective date—1967 ex.s. c 75:** See note following RCW 66.08.180.

**66.24.350 Beer retailer's license—Class D.** There shall be a beer retailer's license to be designated as class D license to sell pasteurized beer by the opened bottle at retail, for consumption upon the premises only, such license to be issued to hotels, restaurants, dining places on boats and aeroplanes, clubs, drug stores, or soda fountains, and such other places where the sale of beer is not the principal business conducted; fee sixty-two dollars and fifty cents per annum. [1967 ex.s. c 75 § 5; 1937 c 217 § 1 (23 P) (adding new section 23-P to 1933 ex.s. c 62); RRS § 7306-23P.]

**Effective date—1967 ex.s. c 75:** See note following RCW 66.08.180.

**66.24.360 Beer retailer's license—Class E.** There shall be a beer retailer's license to be designated as class E license to sell pasteurized beer at retail in bottles and original packages, not to be consumed upon the premises where sold, at any store other than the state liquor stores; fee thirty-one dollars and twenty-five cents per annum for each store: *Provided,* That a holder of a class A or a class B license shall be entitled to the privileges permitted in this section by paying an annual fee of twelve dollars and fifty cents for each store. [1967 ex.s. c 75 § 6; 1937 c 217 § 1 (23 Q) (adding new section 23-Q to 1933 ex.s. c 62); RRS § 7306-23Q.]

**Effective date—1967 ex.s. c 75.** See note following RCW 66.08.180.

*Employees under eighteen allowed to carry beer or wine:* RCW 66.44.340.

**66.24.370 Wine retailer's license—Class F.** There shall be a wine retailer's license to be designated as class F license to sell wine in bottles and original packages, not to be consumed on the premises where sold, at any store other than the state liquor stores: *Provided,* Such licensee shall pay to the state liquor stores for wines purchased from such stores the current retail price; fee forty-three dollars and seventy-five cents per annum: *Provided, further,* That a holder of a class A or class B license shall be entitled to the privileges permitted in this section by paying an annual fee of twelve dollars and fifty cents for each store. [1973 1st ex.s. c 209 § 16; 1967 ex.s. c 75 § 7; 1937 c 217 § 1 (23R) (adding new section 23-R to 1933 ex.s. c 62); RRS § 7306-23R.]

**Severability—Effective date—1973 1st ex.s. c 209:** See notes following RCW 66.08.070.

**Effective date—1967 ex.s. c 75:** See note following RCW 66.08.180.

*Employees under eighteen allowed to carry beer or wine:* RCW 66.44.340.

**66.24.380 Special beer license—Class G.** There shall be a beer retailer's license to be designated as class G; a special license to a society or organization to sell beer at picnics or other special occasions at a specified

date and place; fee ten dollars per day. Sale, service, and consumption of beer is to be confined to specified premises or designated areas only. [1973 1st ex.s. c 209 § 17; 1969 ex.s. c 178 § 5; 1937 c 217 § 1 (23S) (adding new section 23-S to 1933 ex.s. c 62); RRS § 7306-23S.]

**Severability—Effective date—1973 1st ex.s. c 209:** See notes following RCW 66.08.070.

**66.24.390 Dining, club, buffet car license.** There shall be a license to dining, club, and buffet cars on passenger trains to serve such liquors as may be permitted to be served by the individual glass or opened bottle at retail, for consumption on the premises only, under the provisions of this title, by restaurants, hotels, and others of a similar class; which license shall be issued to any corporation, association or person operating any such car within the state upon payment of a fee of one hundred and fifty dollars per annum which shall be a master license, and shall permit such sale upon one such car; and upon payment of the additional sum of five dollars per car per annum, such license shall extend to additional cars operated by the same licensee within the state, and duplicate licenses for such additional cars shall be issued: *Provided*, That such licensee may make such sales upon cars in emergency for not more than five consecutive days without such license. [1937 c 217 § 1 (23L) (adding new section 23-L to 1933 ex.s. c 62); RRS § 7306-23L.]

**66.24.400 Liquor by the drink, class H licenses.** There shall be a retailer's license, to be known and designated as class H license, to sell beer, wine and spirituous liquor by the individual glass, and beer and wine by the opened bottle, at retail, for consumption on the premises, including mixed drinks and cocktails compounded or mixed on the premises only. Such class H license may be issued only to bona fide restaurants, hotels and clubs, and to dining, club and buffet cars on passenger trains, and to dining places on passenger boats and airplanes, and to dining places at publicly owned civic centers with facilities for sports, entertainment, and conventions, and to such other establishments operated and maintained primarily for the benefit of tourists, vacationers and travelers as the board shall determine are qualified to have, and in the discretion of the board should have, a class H license under the provisions and limitations of this title. [1971 ex.s. c 208 § 1; 1949 c 5 § 1 (adding new section 23-S-1 to 1933 ex.s. c 62); Rem. Supp. 1949 § 7306-23S-1.]

**Severability—1949 c 5:** "If any section or provision of this act shall be adjudged to be invalid, such adjudication shall not affect the validity of the act as a whole or any section, provision, or part thereof not adjudged to be invalid." [1949 c 5 § 17.] This applies to RCW 66.08.012, 66.08.014, 66.08.180, 66.08.220, 66.24.400-66.24.470, 66.28.080, 66.40.010, 66.40.030 and 66.40.130.

**66.24.410 Liquor by the drink, class H licenses—Terms defined.** (1) "Spirituous liquor," as used in RCW 66.24.400 to 66.24.470, inclusive, means "liquor" as defined in RCW 66.04.010(16), except "wine" and "beer" sold as such.

(2) "Restaurant" as used in RCW 66.24.400 to 66.24.470, inclusive, means an establishment provided with

special space and accommodations where, in consideration of payment, food, without lodgings, is habitually furnished to the public, not including drug stores and soda fountains: *Provided*, That such establishments shall be approved by the board and that the board shall be satisfied that such establishment is maintained in a substantial manner as a place for preparing, cooking and serving of complete meals. The service of only fry orders or such food and victuals as sandwiches, hamburgers, or salads shall not be deemed in compliance with this definition.

(3) "Hotel," "clubs," "wine" and "beer" are used in RCW 66.24.400 to 66.24.470, inclusive, with the meaning given in chapter 66.04 RCW. [1969 ex.s. c 112 § 1; 1957 c 263 § 2. Prior: 1949 c 5 § 2, part (adding new section 23-S-2 to 1933 ex.s. c 62); Rem. Supp. 1949 § 7306-23S-2, part.]

**66.24.420 Liquor by the drink, class H licenses—Schedule of fees—Location—Number of licenses.**

(1) The class H license shall be issued in accordance with the following schedule of annual fees:

(a) The annual fee for said license, if issued to a club, whether inside or outside of incorporated cities and towns, shall be three hundred thirty dollars.

(b) The annual fee for said license, if issued to any other class H licensee in incorporated cities and towns, shall be graduated according to the population thereof as follows:

Incorporated cities and towns of less than 10,000 population; fee \$550.00;

Incorporated cities and towns of 10,000 and less than 100,000 population; fee \$825.00;

Incorporated cities and towns of 100,000 population and over; fee \$1,100.00.

(c) The annual fee for said license when issued to any other class H licensee outside of incorporated cities and towns shall be: one thousand one hundred dollars; this fee shall be prorated according to the calendar months, or major portion thereof, during which the licensee is open for business, except in case of suspension or revocation of the license.

(d) The fee for any dining, club or buffet car, or any boat or airplane shall be as provided in subsection (4) of this section.

(e) Where the license shall be issued to any corporation, association or person operating a bona fide restaurant in an airport terminal facility providing service to transient passengers with more than one place where liquor is to be dispensed and sold, such license shall be issued upon the payment of the annual fee, which shall be a master license and shall permit such sale within and from one such place. Such license may be extended to additional places on the premises at the discretion of the board and a duplicate license may be issued for each such additional place: *Provided*, That the holder of a master license for a restaurant in an airport terminal facility shall be required to maintain in a substantial manner at least one place on the premises for preparing, cooking and serving of complete meals, and such food service shall be available on request in other licensed places on the premises: *Provided, further*, That

an additional license fee of twenty-five percent of the annual master license fee shall be required for such duplicate licenses.

(f) Where the license shall be issued to any corporation, association, or person operating dining places at publicly owned civic centers with facilities for sports, entertainment, and conventions, with more than one place where liquor is to be dispensed and sold, such license shall be issued upon the payment of the annual fee, which shall be a master license and shall permit such sale within and from one such place. Such license may be extended to additional places on the premises at the discretion of the board and a duplicate license may be issued for each such additional place: *Provided*, That the holder of a master license for a dining place at such a publicly owned civic center shall be required to maintain in a substantial manner at least one place on the premises for preparing, cooking and serving of complete meals, and food service shall be available on request in other licensed places on the premises: *Provided further*, That an additional license fee of ten dollars shall be required for such duplicate licenses.

(2) The board, so far as in its judgment is reasonably possible, shall confine class H licenses to the business districts of cities and towns and other communities, and not grant such licenses in residential districts, nor within the immediate vicinity of schools, with out being limited in the administration of this subsection to any specific distance requirements.

(3) The board shall have discretion to issue class H licenses outside of cities and towns in the state of Washington. The purpose of this subsection is to enable the board, in its discretion, to license in areas outside of cities and towns and other communities, establishments which are operated and maintained primarily for the benefit of tourists, vacationers and travelers, and also golf and country clubs, and common carriers operating dining, club and buffet cars, or boats.

(4) Where the license shall be issued to any corporation, association or person operating as a common carrier for hire any dining, club and buffet car or any boat or airplane, such license shall be issued upon the payment of a fee of one hundred sixty-five dollars per annum, which shall be a master license and shall permit such sale upon one such car or boat or airplane, and upon payment of an additional sum of five dollars per car or per boat or airplane per annum, such license shall extend to additional cars or boats or airplanes operated by the same licensee within the state, and a duplicate license for each such additional car and boat and airplane shall be issued: *Provided*, That such licensee may make such sales upon cars or boats or airplanes in emergency for not more than five consecutive days without such license: *And provided further*, That such license shall be valid only while such cars or boats or airplanes are actively operated as common carriers for hire and not while they are out of common carrier service.

(5) The total number of class H licenses issued in the state of Washington by the board shall not in the aggregate at any time exceed one license for each fifteen

hundred of population in the state, determined according to the last available federal census.

(6) Notwithstanding the provisions of subsection (5) of this section, the board shall refuse a class H license to any applicant if in the opinion of the board the class H licenses already granted for the particular locality are adequate for the reasonable needs of the community. [1971 ex.s. c 208 § 2; 1970 ex.s. c 13 § 2. Prior: 1969 ex.s. c 178 § 6; 1969 ex.s. c 136 § 1; 1965 ex.s. c 143 § 3; 1949 c 5 § 3 (adding new section 23S-3 to 1933 ex.s. c 62); Rem. Supp. 1949 § 7306-23S-3.]

**66.24.440 Liquor by the drink, class H licenses—Purchase of liquor by licensees—Discount.** Each class H licensee shall be entitled to purchase any spirituous liquor items salable under such class H license from the board at a discount of not less than fifteen percent from the retail price fixed by the board, together with all taxes. [1949 c 5 § 5 (adding new section 23-S-5 to 1933 ex.s. c 62); Rem. Supp. 1949 § 7306-23S-5.]

**Severability—1949 c 5:** See note following RCW 66.24.400.

**66.24.450 Liquor by the drink, class H licenses—Licenses to clubs—Qualifications.** No club shall be entitled to a class H license:

(1) Unless such club had been in operation at least three years prior to December 2, 1948, or, the club, being thereafter formed, had been in continuous operation for at least one year immediately prior to the date of its application for such license;

(2) Unless the club premises be constructed and equipped, conducted, managed, and operated to the satisfaction of the board and in accordance with this title and the regulations made thereunder;

(3) Unless the board shall have determined pursuant to any regulations made by it with respect to clubs, that such club is a bona fide club; it being the intent of this section that license shall not be granted to a club which is, or has been, primarily formed or activated to obtain a license to sell liquor, but solely to a bona fide club, where the sale of liquor is incidental to the main purposes of the club, as defined in RCW 66.04.010(5);

(4) Each club holding a club license under this section prior to its amendment by this act [1949 c 5 § 6] shall have a period of six months, from and after December 2, 1948, to apply for and obtain a class H license. From and after six months after December 2, 1948, each club license granted under this section prior to its amendment by this act [1949 c 5 § 6] shall be null and void. The board shall reserve a sufficient number of class H licenses to license each club which has been in operation for one year prior to December 2, 1948: *Provided*, That such club qualifies therefor under the provisions of this title. [1949 c 5 § 6; 1937 c 217 § 1 (23T) (adding new section 23-T to 1933 ex.s. c 62); Rem. Supp. 1949 § 7306-23T.]

**Severability—1949 c 5:** See note following RCW 66.24.400.

**66.24.455 Bowling establishments—Extension of premises to concourse and lane areas—Class A, C, D or H licensees.** Subject to approval by the board, holders of class A, C, D or H licenses may extend their premises for the sale, service and consumption of liquor authorized under their respective licenses to the concourse or lane areas in a bowling establishment where the concourse or lane areas are adjacent to the food preparation service facility. [1974 1st ex.s. c 65 § 1.]

**66.24.480 Bottle clubs—License required.** "Bottle club" means a club or association operating for profit or otherwise and conducting or maintaining premises in which the members or other persons may resort for the primary or incidental purpose of keeping or consuming liquor on the premises.

Except as permitted under a license issued by the Washington state liquor control board, it is unlawful for any person to conduct or maintain by himself or by associating with others, or to in any manner aid, assist, or abet in conducting or maintaining a bottle club. [1951 c 120 § 2 (adding a new section to Title 66 RCW).]

**Reviser's note:** As to the constitutionality of this section see *Derby Club v. Beckett*, 41 Wn. 2d 869 (1953).

**66.24.481 Public place or club—License or permit required—Penalty.** No public place or club, or agent, servant or employee thereof, shall keep or allow to be kept, either by itself, its agent, servant or employee, or any other person, any liquor in any place maintained or conducted by such public place or club, nor shall it permit the drinking of any liquor in any such place, unless the sale of liquor in said place is authorized by virtue of a valid and subsisting license issued by the Washington state liquor control board, or the consumption of liquor in said place is authorized by a special banquet permit issued by said board. Every person who violates any provision of this section shall be guilty of a gross misdemeanor.

"Public place," for purposes of this section only, shall mean in addition to the definition set forth in RCW 66.04.010(24), any place to which admission is charged or in which any pecuniary gain is realized by the owner or operator of such place in selling or vending food or soft drinks. [1969 ex.s. c 250 § 2; 1953 c 141 § 1 (adding a new section to chapter 66.24 RCW).]

**66.24.490 Special occasion license—Class I—Fee.** There shall be a retailer's license to be designated as a class I license; this shall be a special occasion license to be issued to the holder of a class H license to extend his privilege of selling and serving beer, wine and spirituous liquor by the individual glass, and beer and wine by the opened bottle, at retail, for consumption on the premises, to members and guests of a society or organization on special occasions at a specified date and place when such special occasions of such groups are held on premises other than a class H licensed premises and for consumption on the premises of such outside location. The holder of such special occasion license shall be allowed to remove from his liquor stocks at his licensed class H premises, liquor for

sale and service at such special occasion locations: *Provided*, That such special license shall be issued only when the facilities of class H licensees in the particular city or county are not suitable and adequate to accommodate the number of persons attending such special occasion: *And provided further*, That the Washington state liquor control board may issue banquet permits when such groups prefer to provide their own liquor under such a permit rather than avail themselves of sale and service of liquor by the holder of a class I license. Such special class I license shall be issued for a specified date and place and upon payment of a fee of twenty-five dollars per day. [1969 ex.s. c 178 § 7; 1967 c 55 § 1.]

**66.24.500 Special occasion wine retailer's license—Class J—Fee.** There shall be a wine retailer's license to be designated as class J; a special license to a society or organization to sell wine at special occasions at a specified date and place; fee ten dollars per day. Sale, service, and consumption of wine is to be confined to specified premises or designated areas only. [1973 1st ex.s. c 209 § 18; 1969 ex.s. c 178 § 9.]

**Severability—Effective date—1973 1st ex.s. c 209:** See notes following RCW 66.08.070.

## Chapter 66.28

### MISCELLANEOUS REGULATORY PROVISIONS

Sections	
66.28.010	Manufacturers and wholesalers barred from interest in retail business or location—Advances prohibited—"Financial interest" defined.
66.28.020	Persons interested or dealing in distilled spirits barred from interest in brewery or beer wholesaler's business or location—Advances prohibited—Exception.
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66.28.060	Distillers to make monthly report—No sale except to board.
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66.28.090	Licensed premises open to inspection—Failure to allow.
66.28.100	Spirits to be labeled—Contents.
66.28.110	Wine to be labeled—Contents.
66.28.120	Malt liquor to be labeled—Contents.
66.28.130	Selling or serving of liquor to or consumption by standing or walking person.

*Labels, unlawful refilling, etc., of trademarked containers: Chapter 19.76 RCW.*

**66.28.010 Manufacturers and wholesalers barred from interest in retail business or location—Advances prohibited—"Financial interest" defined.** No manufacturer or wholesaler, or person financially interested, directly or indirectly, in such business, whether resident or nonresident, shall have any financial interest, direct or indirect, in any licensed retail business, nor shall any manufacturer or wholesaler own any of the property

upon which such licensed persons conduct their business, nor shall any such licensed person, under any arrangement whatsoever, conduct his business upon property in which any manufacturer or wholesaler has any interest, nor shall any manufacturer or wholesaler advance moneys or moneys' worth to any such licensed person under any arrangement whatsoever, nor shall any such licensed person receive, under any arrangement whatsoever, any such advance of moneys or moneys' worth. No manufacturer or wholesaler shall be eligible to receive or hold a retail license under this title, nor shall such manufacturer or wholesaler sell at retail any liquor as herein defined.

Financial interest, direct or indirect, as used in this section, shall include any interest, whether by stock ownership, mortgage, lien or through interlocking directors, or otherwise. [1937 c 217 § 6; 1935 c 174 § 14; 1933 ex.s. c 62 § 90; RRS § 7306-90. Prior: 1909 c 84 § 1.]

**66.28.020 Persons interested or dealing in distilled spirits barred from interest in brewery or beer wholesaler's business or location—Advances prohibited—**

**Exception.** No manufacturer or wholesaler of, or person otherwise dealing in, distilled spirits, or person financially interested, directly or indirectly, in such business, whether resident or nonresident, shall have any financial interest, direct or indirect, in the business of any licensed wine importer or wine wholesaler or licensed beer importer or beer wholesaler, nor shall any manufacturer or wholesaler of, or person otherwise dealing in, distilled spirits own any of the property upon which such licensed persons conduct their business, nor shall any such licensed person under any arrangement whatsoever, conduct his business upon property in which any manufacturer or wholesaler of, or person otherwise dealing in, distilled spirits has any interest, nor shall any manufacturer or wholesaler of, or person otherwise dealing in, distilled spirits advance money or moneys' worth to any such licensed person under any arrangement whatsoever, nor shall any such licensed person receive, under any arrangement whatsoever, any such advance of money or moneys' worth. No manufacturer or wholesaler of, or person otherwise dealing in, distilled spirits shall be eligible to receive or hold a license as a wine importer or wine wholesaler or beer importer or beer wholesaler under this title: *Provided*, That this section shall not be construed to require the divesting of any interest held by any person as of April 1, 1945, in the business of any manufacturer or wholesaler of distilled spirits or the business of any licensed brewer or beer wholesaler: *Provided further*, That the provisions of this section shall not apply to any liquor or beer importer, domestic winery or brewery which was licensed as of the date of passage of this act: *Provided further*, That in the event of the sale of such importing business, winery or brewery to a manufacturer or wholesaler of, or person otherwise dealing in, distilled spirits, or person financially interested, directly or indirectly, in such business, the exclusion of the foregoing proviso shall not apply. [1969 ex.s. c 275 § 1; 1969 ex.s. c 178 § 12;

1945 c 48 § 2 (adding new section 90-A to 1933 ex.s. c 62); Rem. Supp. 1945 § 7306-90A.]

**Reviser's note:** The effective date of "this act" [1969 ex.s. c 275] was August 11, 1969.

**66.28.025 Persons interested in business property or location, etc., of wine wholesaler—Advances—**

**Exception.** No manufacturer of wine, or person financially interested, directly, in such business, whether resident or nonresident, shall have any financial interest, direct or indirect, in the business of any licensed wine wholesaler, nor shall any manufacturer of wine own any of the property upon which such licensed persons conduct their business, nor shall any such licensed person under any arrangement whatsoever, conduct his business upon property in which any manufacturer of wine has any interest, nor shall any manufacturer of wine advance money or moneys' worth other than such credit allowances customarily extended in the ordinary course of such business between wholesalers and manufacturers on purchases of inventories to any such licensed person under any arrangement whatsoever, nor shall any such licensed person receive, under any arrangement whatsoever, any such advance of money or moneys' worth other than such credit allowances: *Provided*, That the provisions of this section shall not apply to any domestic winery or domestic brewery which was licensed as of the date of passage of this 1969 amendatory act: *Provided further*, That in the event of the sale of such winery or brewery the exclusion of the foregoing proviso shall not apply. [1969 ex.s. c 275 § 3; 1969 ex.s. c 21 § 14.]

**Reviser's note:** The effective date of "this 1969 amendatory act" [1969 ex.s. c 275] was August 11, 1969.

**66.28.030 Responsibility of brewers, vintners, and importers for conduct of wholesaler—Penalties.**

Every licensed brewer, domestic winery, licensed wine importer and licensed beer importer shall be responsible for the conduct of any licensed beer or wine wholesaler in selling, or contracting to sell, to retail licensees, beer or wine manufactured by such brewer, domestic winery or imported by such beer or wine importer. Where the board finds that any licensed beer or wine wholesaler has violated any of the provisions of this title or of the regulations of the board in selling or contracting to sell beer or wine to retail licensees, the board may, in addition to any punishment inflicted or imposed upon such wholesaler, prohibit the sale of the brand or brands of beer or wine involved in such violation to any or all retail licensees within the trade territory usually served by such wholesaler for such period of time as the board may fix, irrespective of whether the brewer manufacturing such beer or the beer importer importing such beer or the domestic winery manufacturing such wine or the wine importer importing such wine actually participated in such violation. [1969 ex.s. c 21 § 6; 1939 c 172 § 8 (adding new section 27-D to 1933 ex.s. c 62); RRS § 7306-27D.]

**Effective date—1969 ex.s. c 21:** The effective date of the 1969 amendment to this section is July 1, 1969, see note following RCW 66.04.010.

**66.28.040 Giving away of liquor prohibited—Exceptions.** No brewer, wholesaler, distiller, winery, or other manufacturer of liquor shall, within the state, by himself, his clerk, servant, or agent, give to any person any liquor; but nothing in this section shall prevent the furnishing of samples of liquor to the board for the purpose of negotiating the sale of liquor to the state liquor control board, and nothing in this section shall prevent a brewer from serving beer without charge on the brewery premises to employees and casual visitors and nothing in \*this act shall prevent a domestic winery from selling or serving wine of its own production without charge on the winery premises to employees and casual visitors. Such wine so sold shall be subject to the tax imposed by RCW 66.24.210. [1969 ex.s. c 21 § 7; 1935 c 174 § 4; 1933 ex.s. c 62 § 30; RRS § 7306–30.]

**\*Reviser's note:** "this act" [1969 ex.s. c 21] consists of RCW 66.04-.010, 66.24.160, 66.24.200, 66.24.210, 66.24.230, 66.24.310, 66.28.030, 66.28.040, 66.28.050, 66.24.204, 66.24.206, 82.08.150 and 82.08.160.

**Effective date—1969 ex.s. c 21:** The effective date of the 1969 amendment to this section is July 1, 1969, see note following RCW 66.04.010.

**66.28.050 Solicitation of orders prohibited—Exceptions.** No person shall canvass for, solicit, receive, or take orders for the purchase or sale of any liquor, or act as agent for the purchase or sale of liquor: *Provided*, That nothing in this title shall prevent any wholesaler, by his or its authorized licensed agent, from soliciting orders from holders of licenses entitling them to sell beer: *Provided, further*, That nothing in this title contained shall prevent any domestic winery, wine importers or wine wholesalers or their proprietors, agents and employees from soliciting orders of persons holding licenses entitling them to sell wine at retail. Nothing in this section contained shall apply to agents dealing with the board or to the receipt or transmission of a telegram or letter by any telegraph agent or operator or post office employee in the ordinary course of his employment as such agent, operator or employee. [1969 ex.s. c 21 § 8; 1937 c 217 § 4; 1933 ex.s. c 62 § 42; RRS § 7306–42.]

**Effective date—1969 ex.s. c 21:** The effective date of the 1969 amendment to this section is July 1, 1969, see note following RCW 66.04.010.

**66.28.060 Distillers to make monthly report—No sale except to board.** Every distillery licensed under this title shall make monthly reports to the board pursuant to the regulations. No such distillery shall make any sale of spirits within the state of Washington except to the board. [1933 ex.s. c 62 § 26; RRS § 7306–26.]

**66.28.070 Restrictions on purchases of beer by retail licensee, brewer and wholesaler.** It shall be unlawful for any retail beer licensee to purchase beer, except from a duly licensed beer wholesaler, and it shall be unlawful for any brewer or beer wholesaler to purchase beer, except from a duly licensed beer wholesaler or beer importer. [1937 c 217 § 1(23H) (adding new section –H to 1933 ex.s. c 62); RRS § 7306–23H.]

**66.28.080 Permit for music and dancing upon licensed premises.** It shall be unlawful for any person, firm or corporation holding any retailer's license to permit or allow upon the premises licensed any music, dancing, or entertainment whatsoever, unless and until permission thereto is specifically granted by appropriate license or permit of the proper authorities of the city or town in which such licensed premises are situated, or the board of county commissioners, if the same be situated outside an incorporated city or town: *Provided*, That the words "music and entertainment," as herein used, shall not apply to radios or mechanical musical devices. [1969 ex.s. c 178 § 8; 1949 c 5 § 7; 1937 c 217 § 3 (adding new section 27–A to 1933 ex.s. c 62); Rem. Supp. 1949 § 7306–27A.]

**66.28.090 Licensed premises open to inspection—Failure to allow.** (1) All licensed premises used in the manufacture, storage, or sale of liquor, or any premises or parts of premises used or in any way connected, physically or otherwise, with the licensed business, shall at all times be open to inspection by any inspector or peace officer.

(2) Every person, being on any such premises and having charge thereof, who refuses or fails to admit an inspector or peace officer demanding to enter therein in pursuance of this section in the execution of his duty, or who obstructs or attempts to obstruct the entry of such inspector or officer of the peace, or who refuses to allow an inspector to examine the books of the licensee, or who refuses or neglects to make any return required by this title or the regulations, shall be guilty of a violation of this title. [1935 c 174 § 7; 1933 ex.s. c 62 § 52; RRS § 7306–52.]

**66.28.100 Spirits to be labeled—Contents.** Every person manufacturing spirits as defined in this title shall put upon all packages containing spirits so manufactured a distinctive label, showing the nature of the contents, the name of the person by whom the spirits were manufactured, the place where the spirits were manufactured, and showing the alcoholic content of such spirits. For the purpose of this section the contents of packages containing spirits shall be shown by the use of the words "whiskey", "rum", "brandy", and the like, on the outside of such packages. [1933 ex.s. c 62 § 46; RRS § 7306–46.]

**66.28.110 Wine to be labeled—Contents.** Every person producing, manufacturing, bottling or distributing wine shall put upon all packages a distinctive label such as will provide the consumer with adequate information as to the identity and quality of the product, the alcoholic content thereof, the net contents of the package, the name of the producer, manufacturer or bottler thereof and such other information as the board may by regulation prescribe. [1939 c 172 § 4; 1933 ex.s. c 62 § 45; RRS § 7306–45.]

**66.28.120 Malt liquor to be labeled—Contents.** Every person manufacturing or distributing malt liquor for sale within the state shall put upon all packages



containing malt liquor so manufactured or distributed a distinctive label showing the nature of the contents, the name of the person by whom the malt liquor was manufactured, and the place where it was manufactured. For the purpose of this section, the contents of packages containing malt liquor shall be shown by the use of the word "beer," "ale," "stout," or "porter," on the outside of the packages. [1961 c 36 § 1; 1933 ex.s. c 62 § 44; RRS § 7306-44.]

**66.28.130 Selling or serving of liquor to or consumption by standing or walking person.** It shall not be unlawful for a retail licensee whose premises are open to the general public to sell, supply or serve liquor to a person for consumption on the licensed retail premises if said person is standing or walking, nor shall it be unlawful for such licensee to permit any said person so standing or walking to consume liquor on such premises: *Provided however*, That the retail licensee of such a premises may at his discretion, promulgate a house rule that no person shall be served nor allowed to consume liquor unless said person is seated. [1969 ex.s. c 112 § 2.]

### Chapter 66.32 SEARCH AND SEIZURE

#### Sections

66.32.010	Possession of contraband liquor.
66.32.020	Search warrant—Search and seizure.
66.32.030	Service of warrant—Receipt for seized property.
66.32.040	Forfeiture of liquor directed if kept unlawfully.
66.32.050	Hearing.
66.32.060	Claimants may appear.
66.32.070	Judgment of forfeiture—Disposition of proceeds of property sold.
66.32.080	Forfeiture action no bar to criminal prosecution.
66.32.090	Seized liquor to be reported and delivered to board.

**66.32.010 Possession of contraband liquor.** Except as permitted by the board, no liquor shall be kept or had by any person within this state unless the package in which the liquor was contained had, while containing that liquor, been sealed with the official seal adopted by the board, except in the case of:

- (1) Liquor imported by the board; or
- (2) Liquor manufactured in the state for sale to the board or for export; or
- (3) Beer, purchased in accordance with the provisions of law; or
- (4) Wine or beer exempted in RCW 66.12.010. [1955 c 39 § 3. Prior: 1943 c 216 § 3(1); 1933 ex.s. c 62 § 33(1); Rem. Supp. 1943 § 7306-33(1).]

**66.32.020 Search warrant—Search and seizure.** If, upon the sworn complaint of any person, it is made to appear to any judge of the superior court, justice of the peace, or magistrate, that there is probable cause to believe that intoxicating liquor is being manufactured, sold, bartered, exchanged, given away, furnished, or otherwise disposed of or kept in violation of the provisions of this title, such judge, justice of the peace, or magistrate shall, with or without the approval of the prosecuting attorney, issue a warrant directed to a civil officer of the state duly authorized to enforce or assist

in enforcing any law thereof, or to an inspector of the board, commanding him to search the premises, room, house, building, boat, vehicle, structure or place designated and described in the complaint and warrant, and to seize all intoxicating liquor there found, together with the vessels in which it is contained, and all implements, furniture, and fixtures used or kept for the illegal manufacture, sale, barter, exchange, giving away, furnishing, or otherwise disposing of the liquor, and to safely keep the same, and to make a return of the warrant within ten days, showing all acts and things done thereunder, with a particular statement of all articles seized and the name of the person or persons in whose possession they were found, if any, and if no person is found in the possession of the articles, the return shall so state. [1955 c 288 § 1; 1955 c 39 § 4. Prior: 1943 c 216 § 3(2), part; 1933 ex.s. c 62 § 33(2), part; Rem. Supp. 1943 § 7306-33(2), part.]

**66.32.030 Service of warrant—Receipt for seized property.** A copy of the warrant, together with a detailed receipt for the property taken shall be served upon the person found in possession of any intoxicating liquor, furniture, or fixtures so seized, and if no person is found in possession thereof, a copy of the warrant and receipt shall be left in a conspicuous place upon the premises wherein they are found. [1955 c 39 § 5. Prior: 1943 c 216 § 3(2), part; 1933 ex.s. c 62 § 33(2), part; Rem. Supp. 1943 § 7306-33(2), part.]

**66.32.040 Forfeiture of liquor directed if kept unlawfully.** All liquor seized pursuant to the authority of the warrant shall, upon adjudication that it was kept in violation of this title, be forfeited and upon forfeiture be delivered to the board. [1955 c 39 § 6. Prior: 1943 c 216 § 3(2), part; 1933 ex.s. c 62 § 23(2), part; Rem. Supp. 1943 § 7306-33(2), part.]

**66.32.050 Hearing.** Upon the return of the warrant as provided herein, the judge, justice of the peace, or magistrate shall fix a time, not less than ten days, and not more than thirty days thereafter, for the hearing of the return, when he shall proceed to hear and determine whether or not the articles seized, or any part thereof, were used or in any manner kept or possessed by any person with the intention of violating any of the provisions of this title. [1955 c 39 § 7. Prior: 1943 c 216 § 3(3), part; 1933 ex.s. c 62 § 33(2), part; Rem. Supp. 1943 § 7306-33(3), part.]

**66.32.060 Claimants may appear.** At the hearing, any person claiming any interest in any of the articles seized may appear and be heard upon filing a written claim setting forth particularly the character and extent of his interest, and the burden shall rest upon the claimant to show, by competent evidence, his property right or interest in the articles claimed, and that they were not used in violation of any of the provisions of this title, and were not in any manner kept or possessed with the intention of violating any of its provisions. [1955 c 39 § 8. Prior: 1943 c 216 § 3(3), part; 1933 ex.s. c 62 § 33(2), part; Rem. Supp. 1943 § 7306-33(3), part.]



**66.32.070 Judgment of forfeiture—Disposition of proceeds of property sold.** If, upon the hearing, the evidence warrants, or, if no person appears as claimant, the judge, justice of the peace, or magistrate shall thereupon enter a judgment of forfeiture, and order such articles destroyed forthwith: *Provided*, That if, in the opinion of the judge, justice of the peace, or magistrate, any of the forfeited articles other than intoxicating liquors are of value and adapted to any lawful use, the judge, justice of the peace, or magistrate shall, as a part of the order and judgment, direct that the articles other than intoxicating liquor be sold as upon execution by the officer having them in custody, and the proceeds of the sale after payment of all costs of the proceedings shall be paid into the liquor revolving fund. [1955 c 39 § 9. Prior: 1943 c 216 § 3(3), part; 1933 ex.s. c 62 § 33(2), part; Rem. Supp. 1943 § 7306–33(3), part.]

**66.32.080 Forfeiture action no bar to criminal prosecution.** Action under RCW 66.32.010 through 66.32.080 and the forfeiture, destruction, or sale of any articles thereunder shall not bar prosecution under any other provision. [1955 c 39 § 10. Prior: 1943 c 216 § 3(3), part; 1933 ex.s. c 62 § 33(2), part; Rem. Supp. 1943 § 7306–33(3), part.]

**66.32.090 Seized liquor to be reported and delivered to board.** In every case in which liquor is seized by a sheriff or constable of any county or by a police officer of any municipality or by a member of the Washington state patrol, or any other authorized peace officer or inspector, it shall be the duty of the sheriff or constable of any county, or chief of police of the municipality, or the chief of the Washington state patrol, as the case may be, to forthwith report in writing to the board of particulars of such seizure, and to immediately deliver over such liquor to the board, or its duly authorized representative, at such place as may be designated by it. [1935 c 174 § 8; 1933 ex.s. c 62 § 55; RRS § 7306–55.]

### Chapter 66.36

#### ABATEMENT PROCEEDINGS

##### Sections

66.36.010 Places where liquor unlawfully kept declared a nuisance—Abatement of activity and realty—Judgment—Bond to reopen.

**66.36.010 Places where liquor unlawfully kept declared a nuisance—Abatement of activity and realty—Judgment—Bond to reopen.** Any room, house, building, boat, vehicle, structure or place, except premises licensed under this title, where liquor, as defined in this title, is manufactured, kept, sold, bartered, exchanged, given away, furnished or otherwise disposed of in violation of the provisions of this title or of the laws of this state relating to the manufacture, importation, transportation, possession, distribution and sale of liquor, and all property kept in and used in maintaining such a place, are hereby declared to be a common nuisance. The prosecuting attorney of the county in which such nuisance is situated shall institute and maintain an action in the superior court of such county in the name

of the state of Washington to abate and perpetually enjoin such nuisance. The plaintiff shall not be required to give bond in such action, and restraining orders, temporary injunctions and permanent injunctions may be granted in said cause as in other injunction proceedings, and upon final judgment against the defendant, such court may also order that said room, house, building, boat, vehicle, structure or place, shall be closed for a period of one year; or until the owner, lessee, tenant or occupant thereof shall give bond with sufficient surety, to be approved by the court making the order, in the penal sum of not less than one thousand dollars payable to the state of Washington, and conditioned that liquor will not thereafter be manufactured, kept, sold, bartered, exchanged, given away, furnished or otherwise disposed of thereon or therein in violation of the provisions of this title or of the laws of this state relating to the manufacture, importation, transportation, possession, distribution and sale of liquor, and that he will pay all fines, costs and damages assessed against him for any violation of this title or of the laws of this state relating to the manufacture, importation, transportation, possession, distribution and sale of liquor. If any condition of such bond be violated, the whole amount may be recovered as a penalty for the use of the county wherein the premises are situated.

In all cases where any person has been convicted of a violation of this title or the laws of this state relating to the manufacture, importation, transportation, possession, distribution and sale of liquor an action may be brought in the superior court of the county in which the premises are situated, to abate as a nuisance any real estate or other property involved in the commission of said offense, and in any such action a certified copy of the record of such conviction shall be admissible in evidence and prima facie evidence that the room, house, building, boat, vehicle, structure or place against which such action is brought is a public nuisance. [1939 c 172 § 9 (adding new section 33–A to 1933 ex.s. c 62); RRS § 7306–33A. Formerly RCW 66.36.010 through 66.36.040.]

### Chapter 66.40

#### LOCAL OPTION

##### Sections

66.40.010 Local option units.  
 66.40.020 Election may be held.  
 66.40.030 Class H license election.  
 66.40.040 Petition for election—Contents—Procedure—Signatures, filing, form, copies, fees, etc.—Public inspection.  
 66.40.100 Check of petitions.  
 66.40.110 Form of ballot.  
 66.40.120 Canvass of votes—Effect.  
 66.40.130 Effect of election as to class H licenses.  
 66.40.140 Certificate of result to board—Grace period—Permitted activities.  
 66.40.150 Concurrent liquor elections in same election unit prohibited.

**66.40.010 Local option units.** For the purpose of an election upon the question of whether the sale of liquors shall be permitted, the election unit shall be any incorporated city or town, or all that portion of any county

not included within the limits of incorporated cities and towns. [1957 c 263 § 3. Prior: (i) 1933 ex.s. c 62 § 82; RRS § 7306-82. (ii) 1949 c 5 § 2, part (adding new section 23-S-2 to 1933 ex.s. c 62); Rem. Supp. 1949 § 7306-23S-2, part.]

**66.40.020 Election may be held.** Within any unit referred to in RCW 66.40.010, upon compliance with the conditions hereinafter prescribed, there may be held, at the time and as a part of any general election, an election upon the question of whether the sale of liquor shall be permitted within such unit; and in the event that any such election is held in any such unit, no other election under this section shall be held prior to the next succeeding general election. [1933 ex.s. c 62 § 83; RRS § 7306-83.]

**66.40.030 Class H license election.** Within any unit referred to in RCW 66.40.010, there may be held a separate election upon the question of whether the sale of liquor under class H licenses, shall be permitted within such unit. The conditions and procedure for holding such election shall be those prescribed by RCW 66.40.020, 66.40.040, 66.40.100, 66.40.110 and 66.40.120. Whenever a majority of qualified voters voting upon said question in any such unit shall have voted "against the sale of liquor under class H licenses", the county auditor shall file with the liquor control board a certificate showing the result of the canvass at such election; and after ninety days from and after the date of the canvass, it shall not be lawful for licensees to maintain and operate premises therein licensed under class H licenses. Elections held under RCW 66.40.010, 66.40.020, 66.40.040, 66.40.100, 66.40.110, 66.40.120 and 66.40.140, shall be limited to the question of whether the sale of liquor by means other than under class H licenses shall be permitted within such election unit. [1949 c 5 § 12 (adding new section 83-A to 1933 ex.s. c 62); Rem. Supp. 1949 § 7306-83A.]

**Severability—1949 c 5:** See note following RCW 66.24.400.

**66.40.040 Petition for election—Contents—Procedure—Signatures, filing, form, copies, fees, etc.—Public inspection.** Any unit referred to in RCW 66.40.010 may hold such election upon the question of whether the sale of liquor shall be permitted within the boundaries of such unit, upon the filing with the county auditor of the county within which such unit is located, of a petition subscribed by qualified electors of the unit equal in number to at least thirty percent of the electors voting at the last general election within such unit. Such petition shall designate the unit in which the election is desired to be had, the date upon which the election is desired to be held, and the question that is desired to be submitted. The persons signing such a petition shall state their post office address, the name or number of the precinct in which they reside, and in case the subscriber be a resident of a city, the street and house number, if any, of his residence, and the date of signature. Said petition shall be filed not less than sixty days nor more than ninety days prior to the date upon which the election is to be held. No signature shall be valid

unless the above requirements are complied with, and unless the date of signing the same is less than ninety days preceding the date of filing. No signature shall be withdrawn after the filing of such petition. Such petition may consist of one or more sheets and shall be fastened together as one document, filed as a whole, and when filed shall not be withdrawn or added to. Such petition shall be a public document and shall be subject to the inspection of the public. Upon the request of anyone filing such a petition and paying, or tendering to the county auditor one dollar for each hundred names, or fraction thereof, signed thereto, together with a copy thereof, said county auditor shall immediately compare the original and copy and attach to such copy and deliver to such person his official certificate that such copy is a true copy of the original, stating the date when such original was filed in his office; and said officer shall furnish, upon the demand of any person, a copy of said petition, upon payment of the same fee required for the filing of original petitions. [1933 ex.s. c 62 § 84; RRS § 7306-84. Formerly RCW 66.40.040 through 66.40.090.]

**66.40.100 Check of petitions.** Upon the filing of a petition as hereinbefore provided, the county auditor with whom it is filed shall cause the names on said petition to be compared with the names on the voters' official registration records provided for by law with respect to such unit. The officer or deputy making the comparison shall place his initials in ink opposite the signatures of those persons who are shown by such registration records to be legal voters and shall certify that the signatures so initialed are the signatures of legal voters of the state of Washington and of said unit, and shall sign such certificate. In the event that said petition, after such comparison, shall be found to have been signed by the percentage of legal voters of said unit referred to in RCW 66.40.040, the question shall be placed upon the ballot at the next general election. [1933 ex.s. c 62 § 85; RRS § 7306-85.]

**66.40.110 Form of ballot.** Upon the ballot to be used at such general election the question shall be submitted in the following form:

"Shall the sale of liquor be permitted within ----- (here specify the unit in which election is to be held)." Immediately below said question shall be placed the alternative answers, as follows:

"For sale of liquor ..... ( )  
Against sale of liquor ..... ( )."

Each person desiring to vote in favor of permitting the sale of liquor within the unit in which the election is to be held shall designate his choice beside the words "For sale of liquor", and those desiring to vote against the permitting of the sale of liquor within such unit shall designate their choice beside the words "Against sale of liquor", and the ballot shall be counted accordingly. [1933 ex.s. c 62 § 86; RRS § 7306-86.]

**66.40.120 Canvass of votes—Effect.** The returns of any such election shall be canvassed in the manner provided by law. If the majority of qualified electors voting upon said question at said election shall have

voted "For sale of liquor" within the unit in which the election is held, the sale of liquor may be continued in accordance with the provisions of this title. If the majority of the qualified electors voting on such question at any such election shall vote "Against sale of liquor", then, within thirty days after such canvass no sale or purchase of liquor, save as herein provided, shall be made within such unit until such permission so to do be subsequently granted at an election held for that purpose under the provisions of this title. [1933 ex.s. c 62 § 87; RRS § 7306-87.]

**66.40.130 Effect of election as to class H licenses.** Ninety days after December 2, 1948, class H licenses may be issued in any election unit in which the sale of liquor is then lawful. No class H license shall be issued in any election unit in which the sale of liquor is forbidden as the result of an election held under RCW 66.40.010, 66.40.020, 66.40.040, 66.40.100, 66.40.110, 66.40.120 and 66.40.140, unless a majority of the qualified electors in such election unit voting upon this initiative at the general election in November, 1948, vote in favor of this initiative, or unless at a subsequent general election in which the question of whether the sale of liquor under class H licenses shall be permitted within such unit is submitted to the electorate, as provided in RCW 66.40.030, a majority of the qualified electors voting upon such question vote "for the sale of liquor under class H licenses." [1949 c 5 § 13 (adding new section 87-A to 1933 ex.s. c 62); Rem. Supp. 1949 § 7306-87A.]

**Severability—1949 c 5:** See note following RCW 66.24.400.

**66.40.140 Certificate of result to board—Grace period—Permitted activities.** Whenever a majority of qualified voters voting upon said question in any such unit shall have voted "Against sale of liquor", the county auditor shall file with the liquor control board a certificate showing the result of the canvass at such election; and thereafter, except as hereinafter provided, it shall not be lawful for a liquor store to be operated therein nor for licensees to maintain and operate licensed premises therein except as hereinafter provided:

(1) As to any stores maintained by the board within any such unit at the time of such licensing, the board shall have a period of thirty days from and after the date of the canvass of the vote upon such election to continue operation of its store or stores therein.

(2) As to any premises licensed hereunder within any such unit at the time of such election, such licensee shall have a period of sixty days from and after the date of the canvass of the vote upon such election in which to discontinue operation of its store or stores therein.

(3) Nothing herein contained shall prevent any distillery, brewery, rectifying plant or winery or the licensed operators thereof from selling its manufactured product, manufactured within such unit, outside the boundaries thereof.

(4) Nothing herein contained shall prevent any person residing in any unit in which the sale of liquor shall have been forbidden by popular vote as herein provided, who is otherwise qualified to receive and hold a

permit under this title, from lawfully purchasing without the unit and transporting into or receiving within the unit, liquor lawfully purchased by him outside the boundaries of such unit. [1933 ex.s. c 62 § 88; RRS § 7306-88.]

**66.40.150 Concurrent liquor elections in same election unit prohibited.** No election in any unit referred to in RCW 66.40.010, 66.40.020, 66.40.040, 66.40.100, 66.40.110, 66.40.120 and 66.40.140, upon the question of whether the sale of liquor shall be permitted within the boundaries of such unit shall be held at the same time as an election is held in the same unit upon the question of whether the sale of liquor under the provisions of RCW 66.40.030 shall be permitted. In the event valid and sufficient petitions are filed which would otherwise place both questions on the same ballot that question upon which the petition was filed with the county auditor first shall be placed on the ballot to the exclusion of the other. [1949 c 93 § 1 (adding new section 88-A to 1933 ex.s. c 62); Rem. Supp. 1949 § 7306-88A.]

**Chapter 66.44  
ENFORCEMENT—PENALTIES**

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*Annual report of cities and towns as to liquor law violations: RCW 35.21.170.*

*Minors prohibited to enter bars or taverns: RCW 26.28.080.*

*Sale or gift of tobacco or intoxicating liquor to persons under certain age is gross misdemeanor: RCW 26.28.080.*

*State institutions, bringing in liquor prohibited: RCW 72.23.300.*

**66.44.010 Local officers to enforce law—Authority of board—Liquor enforcement officers.** (1) All county and municipal peace officers are hereby charged with the duty of investigating and prosecuting all violations of this title, and the penal laws of this state relating to the manufacture, importation, transportation, possession, distribution and sale of liquor, and all fines imposed for violations of this title and the penal laws of this state relating to the manufacture, importation, transportation, possession, distribution and sale of liquor shall belong to the county, city or town wherein the court imposing the fine is located, and shall be placed in the general fund for payment of the salaries of those engaged in the enforcement of the provisions of this title and the penal laws of this state relating to the manufacture, importation, transportation, possession, distribution and sale of liquor: *Provided*, That all fees, fines, forfeitures and penalties collected or assessed by a justice court because of the violation of a state law shall be remitted as provided in chapter 3.62 RCW as now exists or is later amended.

(2) In addition to any and all other powers granted, the board shall have the power to enforce the penal provisions of this title and the penal laws of this state relating to the manufacture, importation, transportation, possession, distribution and sale of liquor. The board may appoint and employ, assign to duty and fix the compensation of, officers to be designated as liquor enforcement officers. Such liquor enforcement officers shall have the power, under the supervision of the board, to enforce the penal provisions of this title and the penal laws of this state relating to the manufacture, importation, transportation, possession, distribution and sale of liquor. They shall have the power and authority to serve and execute all warrants and process of law issued by the courts in enforcing the penal provisions of this title or of any penal law of this state relating to the manufacture, importation, transportation, possession, distribution and sale of liquor. They shall have the power to arrest without a warrant any person or persons found in the act of violating any of the penal provisions of this title or of any penal law of this state

relating to the manufacture, importation, transportation, possession, distribution and sale of liquor. [1969 ex.s. c 199 § 28; 1939 c 172 § 5; 1935 c 174 § 11; 1933 ex.s. c 62 § 70; RRS § 7306–70. Formerly RCW 66.44-.010 through 66.44.030.]

**66.44.040 Sufficiency of description of offenses in complaints, informations, process, etc.** In describing the offense respecting the sale, or keeping for sale or other disposal, of liquor, or the having, keeping, giving, purchasing or consumption of liquor in any information, summons, conviction, warrant, or proceeding under this title, it shall be sufficient to simply state the sale, or keeping for sale or disposal, having, keeping, giving, purchasing, or consumption of liquor, without stating the name or kind of such liquor or the price thereof, or to whom it was sold or disposed of, or by whom consumed, or from whom it was purchased or received; and it shall not be necessary to state the quantity of liquor so sold, kept for sale, disposed of, had, kept, given, purchased, or consumed, except in the case of offenses where the quantity is essential, and then it shall be sufficient to allege the sale or disposal of more or less than such quantity. [1933 ex.s. c 62 § 57; RRS § 7306–57.]

**66.44.050 Description of offense in words of statutes—Proof required.** The description of any offense under this title, in the words of this title, or in any words of like effect, shall be sufficient in law; and any exception, exemption, provision, excuse, or qualification, whether it occurs by way of proviso or in the description of the offense in this title, may be proved by the defendant, but need not be specified or negated in the information; but if it is so specified or negated, no proof in relation to the matter so specified or negated shall be required on the part of the informant or complainant. [1933 ex.s. c 62 § 58; RRS § 7306–58.]

**66.44.060 Proof of unlawful sale establishes prima facie intent.** In any proceeding under this title, proof of one unlawful sale of liquor shall suffice to establish prima facie the intent or purpose of unlawfully keeping liquor for sale in violation of this title. [1933 ex.s. c 62 § 59; RRS § 7306–59.]

**66.44.070 Certified analysis is prima facie evidence of alcoholic content.** A certificate, signed by any person appointed or designated by the board in writing as an analyst, as to the percentage of alcohol contained in any liquid, drink, liquor, or combination of liquors, when produced in any court or before any court shall be prima facie evidence of the percentage of alcohol contained therein. [1933 ex.s. c 62 § 60; RRS § 7306–60.]

**66.44.080 Service of process on corporation.** In all prosecutions, actions, or proceedings under the provisions of this title against a corporation, every summons, warrant, order, writ or other proceeding may be served on the corporation in the same manner as is now provided by law for service of civil process. [1933 ex.s. c 62 § 61; RRS § 7306–61.]

**66.44.090 Acting without license.** Any person doing any act required to be licensed under this title without having in force a license issued to him shall be guilty of a gross misdemeanor. [1955 c 289 § 2. Prior: (i) 1933 ex.s. c 62 § 28; RRS § 7306–28. (ii) 1939 c 172 § 6(1); 1935 c 174 § 6(1); 1933 ex.s. c 62 § 92(1); RRS § 7306–92(1).]

**66.44.100 Opening or consuming liquor in public place.** Except as permitted by this title, no person shall open the package containing liquor or consume liquor in a public place. Every person who violates any provision of this section shall be guilty of a misdemeanor, and on conviction therefor shall be fined not more than ten dollars. [1933 ex.s. c 62 § 34; RRS § 7306–34.]

**66.44.110 Intoxication in public place.** No person who is intoxicated shall be or remain in any public place, and every person who violates any provision of this section shall be liable, on conviction for a first offense to a penalty of not more than ten dollars; for a second offense to a penalty of not more than twenty-five dollars; and for a third or subsequent offense to imprisonment for not more than thirty days, with or without hard labor, without the option of a fine. [1933 ex.s. c 62 § 35; RRS § 7306–35.]

**66.44.120 Unlawful use of seal.** No person other than an employee of the board shall keep or have in his possession any official seal prescribed under this title, unless the same is attached to a package which has been purchased from a vendor or store employee; nor shall any person keep or have in his possession any design in imitation of any official seal prescribed under this title, or calculated to deceive by its resemblance thereto, or any paper upon which any design in imitation thereof, or calculated to deceive as aforesaid, is stamped, engraved, lithographed, printed or otherwise marked.

Every person who wilfully violates any provision of this section shall be guilty of a gross misdemeanor and shall be liable on conviction thereof for a first offense to imprisonment in the county jail for a period of not less than three months nor more than six months, without the option of the payment of a fine; for a second offense, to imprisonment in the county jail for not less than six months nor more than one year, without the option of the payment of a fine; for a third offense or subsequent offenses to imprisonment in the state penitentiary for not less than one year nor more than two years. [1933 ex.s. c 62 § 47; RRS § 7306–47.]

**66.44.130 Sales of liquor by drink or bottle.** Except as otherwise provided in this title, every person who sells by the drink or bottle, any liquor shall be guilty of a violation of this title. [1955 c 289 § 3. Prior: 1939 c 172 § 6(2); 1935 c 174 § 15(2); 1933 ex.s. c 62 § 92(2); RRS § 7306–92(2).]

**66.44.140 Unlawful sale, transportation of spirituous liquor without stamp or seal—Unlawful operation, possession of still or mash.** Every person who shall sell or

offer for sale, or transport in any manner, any spirituous liquor, without government stamp or seal attached thereto, or who shall operate or shall have in his possession without a license, any still or other device for the production of spirituous liquor, or shall have in his possession or under his control any mash capable of being distilled into spirituous liquor, shall be guilty of a gross misdemeanor and upon conviction thereof shall upon his first conviction be fined not less than five hundred dollars and confined in the county jail not less than six months, and upon second and subsequent conviction shall be fined not less than one thousand dollars and confined in the county jail not less than one year. [1955 c 289 § 4. Prior: 1939 c 172 § 6(3); 1935 c 174 § 15(3); 1933 ex.s. c 62 § 92(3); RRS § 7306–92(3).]

**66.44.150 Buying liquor illegally.** If any person in this state buys alcoholic beverages from any person other than the board, a state liquor store, or some person authorized by the board to sell them, he shall be guilty of a misdemeanor. [1955 c 289 § 5. Prior: 1939 c 172 § 6(4); 1935 c 174 § 15(4); 1933 ex.s. c 62 § 92(4); RRS § 7306–92(4).]

**66.44.160 Illegal possession, transportation of alcoholic beverages.** Except as otherwise provided in this title, any person who has or keeps or transports alcoholic beverages other than those purchased from the board, a state liquor store, or some person authorized by the board to sell them, shall be guilty of a violation of this title. [1955 c 289 § 6. Prior: 1939 c 172 § 6(5); 1935 c 174 § 15(5); 1933 ex.s. c 62 § 92(5); RRS § 7306–92(5).]

**66.44.170 Illegal possession of liquor with intent to sell—Prima facie evidence, what is.** Any person who keeps or possesses liquor upon his person or in any place, or on premises conducted or maintained by him as principal or agent with the intent to sell it contrary to provisions of this title, shall be guilty of a violation of this title. The possession of liquor by the principal or agent on premises conducted or maintained, under federal authority, as a retail dealer in liquors, shall be prima facie evidence of the intent to sell liquor. [1955 c 289 § 7. Prior: 1937 c 144 § 1 (adding new section 92A to 1933 ex.s. c 62); RRS § 7306–92A.]

**66.44.175 Violations of law.** Every person who violates any provision of this title or the regulations shall be guilty of a violation of this title, whether otherwise declared or not. [1933 ex.s. c 62 § 91; RRS § 7306–91.]

**66.44.180 General penalties—Jurisdiction for violations.** Every person guilty of a violation of this title for which no penalty has been specifically provided shall be liable, on conviction, for a first offense to a penalty of not more than three hundred dollars, or to imprisonment for not more than two months, with or without hard labor, or both; for a second offense to imprisonment for not more than six months, with or without hard labor; and for a third or subsequent offense to imprisonment for not more than one year, with or

without hard labor. If the offender convicted of an offense referred to in this section is a corporation, it shall for a first offense be liable to a penalty of not more than two thousand dollars, and for a second or subsequent offense to a penalty of not more than three thousand dollars, or to forfeiture of its corporate license, or both.

Every justice of the peace and magistrate shall have concurrent jurisdiction with superior court judges of the state of Washington of all violations of the provisions of this title and may impose any punishment provided therefor. [1935 c 174 § 16; 1933 ex.s. c 62 § 93; RRS § 7306–93.]

**66.44.190 Sales on university grounds prohibited.** It shall be unlawful to sell any intoxicating liquors, with or without a license on the grounds of the University of Washington, otherwise known and described as follows: Fractional section 16, township 25 north, range 4 east of Willamette Meridian. [1967 c 21 § 1; 1951 c 120 § 1; 1933 ex.s. c 49 § 1; 1895 c 75 § 1; RRS § 5100.]

**Application of Title 66 RCW to deleted territory:** "All of the provisions of Title 66 RCW and the rules and regulations promulgated thereunder shall fully apply to the territory deleted from RCW 66.44.190 by section 1 of this 1967 amendatory act." [1967 c 21 § 2.]

**66.44.191 Sales on university grounds prohibited—Penalty.** Any person or persons violating the provisions of RCW 66.44.190 shall be deemed guilty of a misdemeanor, and upon conviction thereof in any court of competent jurisdiction shall be punished by a fine of not less than one hundred nor more than one thousand dollars, or by imprisonment in the county jail for a term not less than six months nor more than one year, or by both such fine and imprisonment. [1895 c 75 § 2; RRS § 5101.]

**66.44.200 Sales to persons apparently under the influence of liquor.** No person shall sell any liquor to any person apparently under the influence of liquor. [1933 ex.s. c 62 § 36; RRS § 7306–36.]

**66.44.210 Obtaining liquor for ineligible person.** Except in the case of liquor administered by a physician or dentist or sold upon a prescription in accordance with the provisions of this title, no person shall procure or supply, or assist directly or indirectly in procuring or supplying, liquor for or to anyone whose permit is suspended or has been canceled. [1933 ex.s. c 62 § 38; RRS § 7306–38.]

**66.44.240 Drinking in public conveyance—Penalty against carrier.** Every person engaged wholly or in part in the business of carrying passengers for hire, and every agent, servant, or employee of such person, who shall knowingly permit any person to drink any intoxicating liquor in any public conveyance, except in the compartment where such liquor is sold or served under the authority of a license lawfully issued, shall be guilty of a misdemeanor. [1909 c 249 § 442; RRS § 2694.]

**Reviser's note:** Caption for 1909 c 249 § 442 reads as follows: "Sec. 442. Common Carrier Not to Permit Drinking in Public Conveyance."

**66.44.250 Drinking in public conveyance—Penalty against individual.** Every person who shall drink any intoxicating liquor in any public conveyance, except in a compartment or place where sold or served under the authority of a license lawfully issued, shall be guilty of a misdemeanor. [1909 c 249 § 441; RRS § 2693.]

**Reviser's note:** Caption for 1909 c 249 § 441 reads as follows: "Sec. 441. Prohibiting Drinking in Public Conveyances."

**66.44.265 Candidates giving or purchasing liquor on election day prohibited.** It shall be unlawful for a candidate for office or for nomination thereto whose name appears upon the ballot at any election to give to or purchase for another person, not a member of his or her family, any liquor in or upon any premises licensed by the state for the sale of any such liquor by the drink during the hours that the polls are open on the day of such election. [1971 ex.s. c 112 § 2.]

**66.44.270 Furnishing liquor to minors—Possession, use.** Except in the case of liquor given or permitted to be given to a person under the age of twenty-one years by his parent or guardian for beverage or medicinal purposes, or administered to him by his physician or dentist for medicinal purposes, no person shall give, or otherwise supply liquor to any person under the age of twenty-one years, or permit any person under that age to consume liquor on his premises or on any premises under his control. It is unlawful for any person under the age of twenty-one years to acquire or have in his possession or consume any liquor except as in this section provided and except when such liquor is being used in connection with religious services.

Conviction or forfeiture of bail for a violation of this section by a person under the age of twenty-one years at the time of such conviction or forfeiture, shall not be a disqualification of such person to acquire a license to sell or dispense any liquor after such person shall have attained the age of twenty-one years. [1955 c 70 § 2. Prior: 1935 c 174 § 6(1); 1933 ex.s. c 62 § 37(1); RRS § 7306–37(1). Prior: Code 1881 § 939; 1877 p 205 § 5.]

**66.44.280 Minor applying for permit.** Every person under the age of twenty-one years who makes application for a permit shall be guilty of an offense against this title. [1955 c 70 § 3. Prior: 1935 c 174 § 6(2); 1933 ex.s. c 62 § 37(2); RRS § 7306–37(2).]

**66.44.290 Minor purchasing or attempting to purchase liquor.** Every person under the age of twenty-one years who purchases or attempts to purchase liquor shall be guilty of a violation of this title. [1965 c 49 § 1; 1955 c 70 § 4. Prior: 1935 c 174 § 6(1); 1933 ex.s. c 62 § 37(1); RRS § 7306–37(1).]

**66.44.291 Minor purchasing or attempting to purchase liquor—Penalty against persons between ages of eighteen and twenty, inclusive.** Every person between the ages of eighteen and twenty, inclusive, who is convicted of a violation of RCW 66.44.290 shall be punished by a fine of not less than twenty-five dollars nor more than one hundred dollars, or by imprisonment in the county



jail for a term of not more than thirty days, or both. [1965 c 49 § 2.]

**66.44.292 Sales to minors by licensee or employee—Board transcript to prosecuting attorney—Charges against minors.** The Washington state liquor control board shall furnish a certified transcript of any hearing or hearings held, wherein any licensee or his employee is found to have sold liquor to a minor, to the prosecuting attorney of the county in which the sale took place, upon which the prosecuting attorney may formulate charges against said minor or minors for such violation of \*this act as may appear. The transcript shall not be admissible in evidence at the trial upon any such charges, except to impeach or contradict the testimony of a witness. [1965 c 49 § 3.]

**\*Reviser's note:** "this act" [1965 c 49] consists of the 1965 amendment to RCW 66.44.290, and RCW 66.44.291 and 66.44.292.

**66.44.300 Treating minor, etc., in public place where liquor sold.** Any person who invites a minor into a public place where liquor is sold and treats, gives or purchases liquor for such minor, or permits a minor to treat, give or purchase liquor for him; or holds out such minor to be over the age of twenty-one years to the owner of the liquor establishment shall be guilty of a misdemeanor. [1941 c 78 § 1; Rem. Supp. 1941 § 7306-37A.]

**66.44.310 Minors frequenting taverns—Misrepresentation of age—Classification of licensees.** (1) It shall be a misdemeanor,

(a) To serve or allow to remain on the premises of any tavern any person under the age of twenty-one years;

(b) For any person under the age of twenty-one years to enter or remain on the premises of any tavern;

(c) For any person under the age of twenty-one years to represent his age as being twenty-one or more years for the purpose of securing admission to or remaining on the premises of any tavern.

(2) The Washington state liquor control board shall have the power and it shall be its duty to classify the various licensees, as taverns or otherwise, within the meaning of this title, except bona fide restaurants, dining rooms and cafes serving commercial food to the public shall not be classified as taverns during the hours such food service is made available to the public. [1943 c 245 § 1 (adding new section 36-A to 1933 ex.s. c 62); Rem. Supp. 1943 § 7306-36A. Formerly RCW 66.24-.130 and 66.44.310.]

**66.44.315 Musicians eighteen years and older permitted to enter and remain upon licensed premises during employment.** Notwithstanding the provisions of RCW 26.28.080 as now or hereafter amended, it is lawful for professional musicians, eighteen years of age and older, to enter and to remain in any premises licensed under the provisions of Title 66 RCW, but only during and in the course of their employment as musicians.

This section shall not be construed as permitting the sale or distribution of any alcoholic beverages to any

person under the age of twenty-one years. [1969 ex.s. c 250 § 1.]

**66.44.316 Musicians eighteen years and over permitted to enter and remain upon licensed premises during employment.** Notwithstanding the provisions of RCW 26.28.080 as now or hereafter amended, it is lawful for professional musicians, eighteen years of age and older, to enter and to remain in any premises licensed under the provisions of Title 66 RCW, but only during and in the course of their employment as musicians.

This section shall not be construed as permitting the sale or distribution of any alcoholic beverages to any person under the age of nineteen years. [1973 1st ex.s. c 96 § 1.]

**66.44.320 Sales of liquor to minors a violation.** Every person who shall sell any intoxicating liquor to any minor shall be guilty of a violation of Title 66 RCW. [1973 1st ex.s. c 209 § 19; 1933 c 2 § 1; 1929 c 200 § 1; RRS § 7328-1.]

**Severability—Effective date—1973 1st ex.s. c 209:** See notes following RCW 66.08.070.

**66.44.325 Unlawful transfer to a minor of an identification of age.** Any person who transfers in any manner an identification of age to a minor for the purpose of permitting such minor to obtain alcoholic beverages shall be guilty of a misdemeanor: *Provided*, That corroborative testimony of a witness other than the minor shall be a condition precedent to conviction. [1961 c 147 § 1.]

*Cards of identification: RCW 66.20.160-66.20.210.*

**66.44.330 Prosecutions to be reported by prosecuting attorney and police court.** See RCW 35.21.170 and 36-.27.020(13).

**66.44.340 Employees eighteen years and over allowed to sell and carry beer and wine for class E and/or F licensed employers.** Employers holding class E and/or F licenses exclusively are permitted to allow their employees, between the ages of eighteen and twenty-one years, to sell beer or wine in, on or about any establishment holding a class E and/or class F license exclusively: *Provided*, That there is direct supervision by an adult twenty-one years of age or older in an adjacent check stand: *Provided*, That minor employees may make deliveries of beer and/or wine purchased from licensees holding class E and/or class F licenses exclusively, when delivery is made to cars of customers adjacent to such licensed premises but only, however, when the minor employee is accompanied by the purchaser. [1969 ex.s. c 38 § 1.]

## Chapter 66.98 CONSTRUCTION

### Sections

66.98.010	Short title.
66.98.020	Severability and construction—1933 ex.s. c 62.
66.98.030	Effect of act on certain laws—1933 ex.s. c 62.
66.98.040	Effective date and application—1937 c 217.



- 66.98.050 Effective date and application—1939 c 172.  
 66.98.060 Rights of class H licensees—1949 c 5.  
 66.98.070 Regulations by board—1949 c 5.  
 66.98.080 Severability—1949 c 5.

**66.98.010 Short title.** This act may be cited as the "Washington State Liquor Act." [1933 ex.s. c 62 § 1; RRS § 7306-1.]

**66.98.020 Severability and construction—1933 ex.s. c 62.** If any clause, part or section of this act shall be adjudged invalid, such judgment shall not affect nor invalidate the remainder of the act, but shall be confined in its operation to the clause, part or section directly involved in the controversy in which such judgment was rendered. If the operation of any clause, part or section of this act shall be held to impair the obligation of contract, or to deny to any person any right or protection secured to him by the Constitution of the United States of America, or by the Constitution of the state of Washington, it is hereby declared that, had the invalidity of such clause, part or section been considered at the time of the enactment of this act, the remainder of the act would nevertheless have been adopted without such and any and all such invalid clauses, parts or sections. [1933 ex.s. c 62 § 94; RRS § 7306-94.]

**66.98.030 Effect of act on certain laws—1933 ex.s. c 62.** Nothing in this act shall be construed to amend or repeal chapter 2 of the Laws of 1933, or any portion thereof. [1933 ex.s. c 62 § 95; RRS § 7306-95.]

**Reviser's note:** 1933 c 2 referred to herein was a two section act section 1 of which is codified as RCW 66.44.320 and section 2 was a repeal of earlier liquor laws.

**66.98.040 Effective date and application—1937 c 217.** This act is necessary for the support of the state government and its existing public institutions and shall take effect immediately: *Provided, however,* That any person, who shall at the time this act takes effect be the bona fide holder of a license duly issued under chapter 62, Laws of 1933, extraordinary session, as amended by chapters 13, 80, 158 and 174, Laws of 1935, shall be entitled to exercise the rights and privileges granted by such license until the 30th day of September, 1937: *And provided further,* That all persons lawfully engaged in activities not required to be licensed prior to the taking effect of this act but which are required to be licensed under the provisions of this act shall have thirty days from and after the taking effect of this act in which to comply with the same. [1937 c 217 § 8; RRS § 7306-97.]

**Reviser's note:** 1933 ex.s. c 62 referred to herein is the basic liquor act codified in this title; the 1937 act in which it appears was amendatory thereof.

**66.98.050 Effective date and application—1939 c 172.** This act is necessary for the support of the state government and its existing public institutions and shall take effect immediately: *Provided, however,* That any person, who shall at the time this act takes effect be the bona fide holder of a license duly issued under chapter 62, Laws of 1933, extraordinary session, as amended by

chapters 13, 80, 158 and 174, Laws of 1935 and chapters 62 and 217, Laws of 1937, shall be entitled to exercise the rights and privileges granted by such license until the 30th day of September, 1939: *And provided further,* That all persons lawfully engaged in activities not required to be licensed prior to the taking effect of this act but which are required to be licensed under the provisions of this act shall have thirty days from and after the taking effect of this act in which to comply with the same. [1939 c 172 § 11; RRS § 7306-97a.]

**Reviser's note:** 1933 ex.s. c 62 referred to herein is the basic liquor act codified in this title; the 1939 act in which it appears was amendatory thereof.

**66.98.060 Rights of class H licensees—1949 c 5.** Notwithstanding any provisions of chapter 62 of the Laws of 1933, extraordinary session, as last amended, or of any provisions of any other law which may otherwise be applicable, it shall be lawful for the holder of a class H license to sell beer, wine and spirituous liquor in this state in accordance with the terms of this act. [1949 c 5 § 14; No RRS. Formerly: RCW 66.24.460.]

**Reviser's note:** 1933 ex.s. c 62, referred to in section 14 of the liquor by the drink initiative of 1949, is the basic liquor act codified in this title.

**66.98.070 Regulations by board—1949 c 5.** For the purpose of carrying into effect the provisions of this act, the board shall have the same power to make regulations not inconsistent with the spirit of this act as is provided by section 79 of chapter 62 of the Laws of 1933, extraordinary session. [1949 c 5 § 15; No RRS. Formerly: RCW 66.24.270.]

**Reviser's note:** "section 79 of chapter 62 of the Laws of 1933, extraordinary session", referred to in section 15 of the liquor by the drink initiative of 1949, is codified as amended in RCW 66.08.030.

**66.98.080 Severability—1949 c 5.** If any section or provision of this act shall be adjudged to be invalid, such adjudication shall not affect the validity of the act as whole or any section, provision, or part thereof not adjudged to be invalid. [1949 c 5 § 17; No RRS.]

# TITLE 67

## ATHLETICS, SPORTS AND ENTERTAINMENT

### Chapters

- 67.04 Baseball.
- 67.08 Boxing and wrestling.
- 67.12 Dancing and dance halls—Billiards, pool and bowling.
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admissions tax: RCW 35.21.280.

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#### Counties

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#### Excise taxes

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motor vehicle fuel tax—Exemptions—Tourist: RCW 82.36.230.

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#### First class cities

additional powers—Auditoriums, art museums: RCW 35.22.290.

leasing of land for auditoriums, etc.: RCW 35.22.300.

powers enumerated (relating to recreation or entertainment): RCW 35.22.280(11), (30), (31), (32), (33) and (34).

Food fish and shellfish

department of fisheries: Chapter 75.08 RCW.

taking fish, shellfish: Chapter 75.12 RCW.

Game and game fish: Title 77 RCW.

Horse racing commission: Chapter 67.16 RCW.

Intoxication and drunkards: Chapter 71.08 RCW.

Law against discrimination (public meeting places): Chapter 49.60 RCW.

Limitation on liability of landowners for injuries to recreation users: RCW 4.24.210.

Marine recreation land act: Chapter 43.99 RCW.

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#### Militia

armories and rifle ranges: Chapter 38.20 RCW.

membership in clubs, etc.: RCW 38.40.110.

social corporations may be formed: RCW 38.40.130.

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Narcotic drugs: Chapter 69.32 RCW.

Parks and recreation commission: Chapter 43.51 RCW.

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Physical education in schools and higher institutions: RCW 28A.05-030, 28A.05.040.

#### Public lands

director of conservation and development to assist city parks: RCW 79.08.100.

exchange of lands to secure city parks and playgrounds: RCW 79.08.090.

grant of lands for city park or playground purposes: RCW 79.08.080.

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Public schools—Division of recreation: Chapter 28A.14 RCW.

Real property beneath air space dedicated to public body for stadium facilities—Exemption from property taxes: RCW 84.36.270-84.36.290.

Regulation of motor boats: Chapter 88.12 RCW.

Second class cities—Powers enumerated (relating to recreation or entertainment): RCW 35.23.440(2), (6), (16), (39), (46), (53) and (54).

State agency for surveys and maps: Chapter 58.24 RCW.

Streets—Bicycles—Paths: Chapter 35.75 RCW.

Swimming pools: Chapter 70.90 RCW.

#### Third class cities

additional powers—Acquisition of property for municipal purposes: RCW 35.24.300.

powers enumerated (relating to recreation or entertainment): RCW 35.24.290(7) and (17).

Tidelands, shorelands and harbor areas granted for park purposes: Chapter 79.16 RCW.

#### Towns

parks: RCW 35.27.400.

powers enumerated (relating to recreation or entertainment): RCW 35.27.370(9) and (13).

Training animals to fight—Attending exhibitions: RCW 16.52.130.

Unclassified cities—Additional powers (relating to recreation or entertainment): RCW 35.30.010(4).

Uniform narcotic drug act: Chapter 69.33 RCW.

*Use of playgrounds for other than school purposes: RCW 28A.58.048.*

*Vacation of streets or alleys abutting on bodies of water, prohibited unless to be used for recreational purposes, etc.: RCW 35.79.030.*

*Watercraft adrift: Chapter 88.20 RCW.*

*Wharves and landings—Right of riparian owner to construct: RCW 88.24.010.*

## Chapter 67.04 BASEBALL

### Sections

67.04.010	Penalty for bribery in relation to baseball game.
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67.04.030	Elements of offense outlined.
67.04.040	"Bribe" defined.
67.04.050	Corrupt baseball playing—Penalty.
67.04.060	Venue of action.
67.04.070	Bonus or extra compensation.
67.04.080	Scope of provisions as to bribes.
67.04.090	Baseball contracts with minors—Definitions.
67.04.100	Contract with minor void unless approved.
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67.04.120	Basis of approval.
67.04.130	Effect of disapproval.
67.04.140	Negotiations with minor prohibited.
67.04.150	Penalty for violation of provisions as to contracts with minors.

*Infants: Chapter 26.28 RCW.*

**67.04.010 Penalty for bribery in relation to baseball game.** Any person who shall bribe or offer to bribe, any baseball player with intent to influence his play, action or conduct in any baseball game, or any person who shall bribe or offer to bribe any umpire of a baseball game, with intent to influence him to make a wrong decision or to bias his opinion or judgment in relation to any baseball game or any play occurring therein, or any person who shall bribe or offer to bribe any manager, or other official of a baseball club, league or association, by whatsoever name called, conducting said game of baseball to throw or lose a game of baseball, shall be guilty of a gross misdemeanor. [1921 c 181 § 1; RRS § 2321-1.]

**67.04.020 Penalty for acceptance of bribe.** Any baseball player who shall accept or agree to accept, a bribe offered for the purpose of wrongfully influencing his play, action or conduct in any baseball game, or any umpire of a baseball game who shall accept or agree to accept a bribe offered for the purpose of influencing him to make a wrong decision, or biasing his opinions, rulings or judgment with regard to any play, or any manager of a baseball club, or club or league official, who shall accept, or agree to accept, any bribe offered for the purpose of inducing him to lose or cause to be lost any baseball game, as set forth in RCW 67.04.010, shall be guilty of a gross misdemeanor. [1921 c 181 § 2; RRS § 2321-2.]

**67.04.030 Elements of offense outlined.** To complete the offenses mentioned in RCW 67.04.010 and 67.04.020, it shall not be necessary that the baseball player, manager, umpire or official, shall, at the time, have been actually employed, selected or appointed to perform their respective duties; it shall be sufficient if the bribe be offered, accepted or agreed to with the view of

probable employment, selection or appointment of the person to whom the bribe is offered, or by whom it is accepted. Neither shall it be necessary that such baseball player, umpire or manager actually play or participate in a game or games concerning which said bribe is offered or accepted; it shall be sufficient if the bribe be given, offered or accepted in view of his or their possibly participating therein. [1921 c 181 § 3; RRS § 2321-3.]

**67.04.040 "Bribe" defined.** By a "bribe" as used in RCW 67.04.010 through 67.04.080, is meant any gift, emolument, money or thing of value, testimonial, privilege, appointment or personal advantage, or the promise of either, bestowed or promised for the purpose of influencing, directly or indirectly, any baseball player, manager, umpire, club or league official, to see which game an admission fee may be charged, or in which game of baseball any player, manager or umpire is paid any compensation for his services. Said bribe as defined in RCW 67.04.010 through 67.04.080 need not be direct; it may be such as is hidden under the semblance of a sale, bet, wager, payment of a debt, or in any other manner designed to cover the true intention of the parties. [1921 c 181 § 4; RRS § 2321-4.]

**67.04.050 Corrupt baseball playing—Penalty.** Any baseball player, manager or club or league official who shall commit any wilful act of omission or commission in playing, or directing the playing, of a baseball game, with intent to cause the ball club, with which he is affiliated, to lose a baseball game; or any umpire officiating in a baseball game, or any club or league official who shall commit any wilful act connected with his official duties for the purpose and with the intent to cause a baseball club to win or lose a baseball game, which it would not otherwise have won or lost under the rules governing the playing of said game, shall be guilty of a gross misdemeanor. [1921 c 181 § 5; RRS § 2321-5.]

**67.04.060 Venue of action.** In all prosecutions under RCW 67.04.010 through 67.04.080 the venue may be laid in any county where the bribe herein referred to was given, offered or accepted, or in which the baseball game was played in relation to which the bribe was offered, given or accepted, or the acts referred to in RCW 67.04.050 committed. [1921 c 181 § 6; RRS § 2321-6.]

**67.04.070 Bonus or extra compensation.** Nothing in RCW 67.04.010 through 67.04.080 shall be construed to prohibit the giving or offering of any bonus or extra compensation to any manager or baseball player by any person to encourage such manager or player to a higher degree of skill, ability or diligence in the performance of his duties. [1921 c 181 § 7; RRS § 2321-7.]

**67.04.080 Scope of provisions as to bribes.** RCW 67.04.010 through 67.04.080 shall apply only to baseball league and club officials, umpires, managers and players who act in such capacity in games where the public is generally invited to attend and a general admission fee is charged. [1921 c 181 § 8; RRS § 2321-8.]

**67.04.090 Baseball contracts with minors—Definitions.** As used in RCW 67.04.090 through 67.04.150 the following terms shall have the following meanings:

(1) "Minor" shall mean any person under the age of eighteen years, and who has not graduated from high school: *Provided*, That should he become eighteen during his senior year he shall be a minor until the end of the school year;

(2) "Contract" shall mean any contract, agreement, bonus or gratuity arrangement, whether oral or written;

(3) "Organized professional baseball" shall mean and include all persons, firms, corporations, associations, or teams or clubs, or agents thereof, engaged in professional baseball, or in promoting the interest of professional baseball, or sponsoring or managing other persons, firms, corporations, associations, teams, or clubs who play baseball in any of the major or minor professional baseball leagues, or any such league hereafter organized;

(4) "Agent" shall, in addition to its generally accepted legal meaning, mean and include those persons commonly known as "baseball scouts";

(5) "Prosecuting attorney" shall mean the prosecuting attorney, or his regular deputy, of the county in which the minor's parent is domiciled;

(6) "Parent" shall mean parent, parents or guardian. [1951 c 78 § 2.]

**Purpose—1951 c 78:** "The welfare of the children of this state is of paramount interest to the people of the state. It is the purpose of this act to foster the education of minors and to protect their moral and physical well-being. Organized professional baseball has in numerous cases induced minors to enter into contracts and agreements which have been unfair and injurious to them." [1951 c 78 § 1.]

**Severability—1951 c 78:** "If any portion, section, or clause of this act, shall be declared or found invalid by any court of competent jurisdiction, such adjudication shall not affect the remainder of this act." [1951 c 78 § 9.] The foregoing annotations apply to RCW 67.04.090-67.04.150.

**67.04.100 Contract with minor void unless approved.** Any contract between organized professional baseball and a minor shall be null and void and contrary to the public policy of the state, unless and until such contract be approved as hereinafter provided. [1951 c 78 § 3.]

**67.04.110 Approval by prosecuting attorney.** No contract within RCW 67.04.090 through 67.04.150 shall be null and void, nor shall any of the prohibitions or penalties provided in RCW 67.04.090 through 67.04.150 be applicable if such contract be first approved in writing by the prosecuting attorney. Such approval may be sought jointly, or at the request of either party seeking a contract. [1951 c 78 § 4.]

**67.04.120 Basis of approval.** The prosecuting attorney shall have the authority to examine all the parties to the proposed contract and any other interested person and shall approve such contract if the following facts and circumstances are found to exist:

(1) That the minor has not been signed, approached, or contacted, directly or indirectly, pertaining to a professional baseball contract except as herein permitted by approval of the prosecuting attorney;

(2) That the minor has been apprised of the fact that approval of the contract may deprive him of his amateur status;

(3) That the parent of the minor and the minor have consented to the contract;

(4) That the prosecuting attorney has concluded that the contract conforms to the provisions of RCW 67.04.090 through 67.04.150, and is a valid and binding contract;

(5) That the contract permits the minor to have at least five months available each year to continue his high school education. [1951 c 78 § 5.]

*Employment permits: RCW 28A.27.090.*

**67.04.130 Effect of disapproval.** Should the prosecuting attorney not approve the contract as above provided, then such contract shall be void, and the status of the minor shall remain as if no contract had been made, unless the prosecuting attorney's determination be the result of arbitrary or capricious action. [1951 c 78 § 6.]

**67.04.140 Negotiations with minor prohibited.** No representative of organized professional baseball nor agent, nor person purporting to be able to represent any institution in organized baseball, whether so authorized to represent such institution or not, shall initiate or participate in any negotiations which would induce an evasion of this law in any way, including the removal of any minor to another state, or violate the minor's high school athletic eligibility. [1951 c 78 § 7.]

**67.04.150 Penalty for violation of provisions as to contracts with minors.** Any person, firm, corporation, association, or agent thereof, who enters into a contract with a minor, or gives a bonus or any gratuity to any minor to secure the minor's promise to enter into a contract in violation of the provisions of RCW 67.04.090 through 67.04.150, or shall otherwise violate any provisions of RCW 67.04.090 through 67.04.150, shall be guilty of a gross misdemeanor. [1951 c 78 § 8.]

## Chapter 67.08 BOXING AND WRESTLING

Sections	
67.08.001	State athletic commission—Creation—Terms—Vacancies.
67.08.003	Official bonds—Expenses.
67.08.005	Meetings—Officers—Quorum—Office.
67.08.007	Officers, employees, inspectors.
67.08.009	Records—Seal—Oaths—Compulsory process.
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67.08.015	Duties of commission—Licensing—Exemption as to scholastic organizations—Compliance required.
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67.08.060	Inspectors—Duties—Fee for attending contests—Expenses.
67.08.070	Contests barred on Sundays, certain holidays—Betting prohibited.
67.08.080	Rounds and bouts limited—Weight of gloves.

- 67.08.090 Physical examination of contestants.  
 67.08.100 Annual licenses to participants—Fees—Revocation.  
 67.08.110 Participation in purse—Conducting sham contests—  
 Forfeiture of license.  
 67.08.120 Participation in sham contest—Penalty against  
 contestant.  
 67.08.130 Failure to make reports—Additional tax—No-  
 tice—Penalty for delinquency.  
 67.08.140 Penalty for conducting contests or exhibitions without li-  
 cense—Injunctions.  
 67.08.150 General penalty.  
 67.08.900 Severability—1933 c 184.

**67.08.001 State athletic commission—Cre-  
 ation—Terms—Vacancies.** There is hereby created  
 and established a state commission to be known and  
 designated as the "state athletic commission" and in  
 this chapter referred to as the commission. The com-  
 mission shall be composed of three members who shall  
 be appointed by the governor and shall be subject to  
 removal at the pleasure of the governor. The members  
 of the first commission to be appointed after June 7,  
 1933 shall be appointed for the terms beginning July 1,  
 1933, and expiring as follows: One commissioner for  
 the term expiring January 31, 1934, one commissioner  
 for the term expiring January 31, 1935, and one com-  
 missioner for the term expiring January 31, 1936. Each  
 of the first commissioners appointed shall hold office  
 until his successor is appointed and qualified. Upon the  
 expiration of the terms of the three commissioners first  
 appointed, each succeeding commissioner shall be ap-  
 pointed to hold office for a term of four years and until  
 his successor shall have been appointed and qualified.  
 In case of a vacancy, it shall be filled by the appoint-  
 ment by the governor for the unexpired portion of the  
 term in which such vacancy occurs. [1933 c 184 § 1;  
 RRS § 8276-1. Formerly RCW 43.48.010.]

**67.08.003 Official bonds—Expenses.** Before enter-  
 ing upon the duties of his office, each commissioner  
 shall enter into a surety bond, executed by a surety  
 company authorized to do business in this state, pay-  
 able to the state, and approved by the attorney general,  
 in the penal sum of two thousand dollars conditioned  
 upon the faithful performance of his duties, which bond  
 shall be filed with the secretary of state. Each member  
 of the commission shall be reimbursed for the cost of  
 his bond and receive twenty-five dollars per day and  
 reimbursable travel expenses while in the performance  
 of his duties. [1959 c 305 § 1; 1933 c 184 § 2; RRS §  
 8276-2. Formerly RCW 43.48.020.]

**67.08.005 Meetings—Officers—Quorum—Of-  
 fice.** The first members of the commission shall meet at  
 such time and place, not more than thirty days after  
 their appointment as shall be designated by the gover-  
 nor and shall organize by electing a chairman and an  
 executive secretary and adopt rules and regulations for  
 the conduct of their meetings. A majority of the mem-  
 bers of the commission shall constitute a quorum for  
 the transaction of business. A general office for the  
 transaction of business of the commission shall be de-  
 signated. The commission may hold meetings and con-  
 duct business at such places as they may deem

necessary. [1933 c 184 § 3; RRS § 8276-3. Formerly  
 RCW 43.48.030.]

**67.08.007 Officers, employees, inspectors.** The com-  
 mission may employ and fix the compensation of such  
 officers, employees, and inspectors as may be necessary  
 to administer the provisions of this chapter as amended.  
 [1959 c 305 § 2; 1933 c 184 § 4; RRS § 8276-4. For-  
 merly RCW 43.48.040.]

**67.08.009 Records—Seal—Oaths—Compul-  
 sory process.** The commission shall keep full and correct  
 minutes of its transactions and proceedings, which shall  
 at all times be open to the public inspection. The com-  
 mission shall adopt and procure a seal and all process  
 or certificates issued by it shall be attested under such  
 seal. Copies of the record of said commission shall be  
 certified by the secretary and attested with the seal of  
 said commission. Any member of the commission, or  
 any employee thereof, officially designated by said  
 commission shall have the power to administer oaths in  
 all matters pertaining to or concerning the proceedings  
 or the official duties of the commission. The commis-  
 sion shall have power to summon witnesses to appear  
 and testify on any matter deemed material to the proper  
 discharge of its duties, such summons shall be served in  
 like manner as a subpoena issued out of the superior  
 court and shall be served by the sheriff of the proper  
 county, and such service returned by him to said com-  
 mission, without compensation therefor. [1933 c 184 §  
 5; RRS § 8276-5. Formerly RCW 43.48.050.]

**67.08.010 Licenses for boxing and wrestling match-  
 es—Revocation.** The commission shall have power to  
 issue and for cause to revoke a license to conduct box-  
 ing contests or sparring or wrestling matches or exhibi-  
 tions as herein provided under such terms and  
 conditions and at such times and places as the commis-  
 sion may determine. Such licenses shall entitle the  
 holder thereof to conduct boxing contests and sparring  
 and/or wrestling matches and exhibitions under such  
 terms and conditions and at such times and places as  
 the commission may determine. In case the commission  
 shall refuse to grant a license to any applicant, or shall  
 cancel any license, such applicant, or the holder of such  
 canceled license shall be entitled, upon application, to a  
 hearing to be held not less than sixty days after the fil-  
 ing of such order at such place as the commission may  
 designate: *Provided, however,* That if it has been found  
 by a valid finding and such finding is fully set forth in  
 such order, that the applicant or licensee has been  
 guilty of disobeying any provision of this chapter, such  
 hearing shall be denied. [1933 c 184 § 7; RRS § 8276-7.  
 Prior: 1909 c 249 § 304; 1890 p 109 § 1; 1886 p 82 § 1.]

**67.08.015 Duties of commission—Licensing—  
 Exemption as to scholastic organizations—Compliance  
 required.** The commission shall have power and it shall  
 be its duty to direct, supervise, and control all boxing  
 contests or sparring and wrestling matches or exhibi-  
 tions conducted within the state and no such boxing  
 contest, sparring or wrestling match or exhibition shall

be held or given within this state except in accordance with the provisions of this chapter. The commission may, in its discretion, issue and for cause revoke a license to conduct, hold or give boxing, sparring and/or wrestling contests, matches, and exhibitions where an admission fee is charged by any club, corporation, organization, association, or fraternal society: *Provided, however,* That all boxing contests, sparring or wrestling matches or exhibitions which:

(1) Are conducted by any high school, college, or university, whether public or private, or by the official student association thereof, whether on or off the school, college, or university grounds, where all the participating contestants are bona fide students enrolled in any high school, college, or university, within or without this state; or

(2) Are entirely amateur events promoted on a non-profit basis or for charitable purposes and where the gross admissions receipts are five hundred dollars or less;

shall not be subject to the provisions of this chapter: *Provided, further,* That every contestant in any boxing contest, sparring or wrestling match not conducted under the provisions of this chapter shall be examined within eight hours prior to the contest by a practicing physician and that the organizations exempted by this section from the provisions of this chapter shall be governed by RCW 67.08.080 as said section applies to boxing contests, sparring or wrestling matches or exhibitions conducted by organizations exempted by this section from the general provisions of this chapter. No boxing contest or sparring or wrestling match or exhibition shall be conducted within the state except pursuant to a license issued in accordance with the provisions of this chapter and the rules and regulations of the commission except as hereinabove provided. [1973 c 53 § 1; 1951 c 48 § 2.]

**67.08.020 Application for license—Fee—Verification.** Any club, corporation, organization, association, fraternal society, or person affected by this chapter may apply to the commission for a license. Such application shall be in writing and upon forms prescribed by said commission and shall be verified in such manner as the commission may require and shall be accompanied by an annual license fee of twenty-five dollars. [1959 c 305 § 3; 1933 c 184 § 8; RRS § 8276-8. FORMER PART OF SECTION: 1933 c 184 § 20, part; RRS § 8276-20, part; now codified as RCW 67.08.025.]

**67.08.025 Duration of license—Expiration dates.** The licenses provided for in RCW 67.08.020 and in RCW 67.08.100 shall be issued for a six months or twelve months period and shall expire on July 1st and January 1st of each year. [1933 c 184 § 20; RRS § 8276-20. Formerly RCW 67.08.020, part and 67.08.100, part.]

**67.08.030 Licensee's bond.** Every licensee receiving a license as herein provided for shall file a good and sufficient bond in the sum of one thousand dollars with the commission in cities of less than one hundred fifty

thousand inhabitants and of two thousand five hundred dollars in cities of more than one hundred fifty thousand inhabitants condition [conditioned] for the faithful performance by such licensee of the provisions of this chapter, the payment of the taxes provided for herein and the obedience [observance] of all rules and regulations of the commission, which bond shall be subject to the approval of the attorney general. [1933 c 184 § 9; RRS § 8276-9.]

**67.08.040 Issuance of license.** Upon the approval by the commission of any application for a license, as hereinabove provided, and the filing of the bond the commission shall certify such fact to the state department of licenses which shall forthwith issue such license. [1933 c 184 § 10; RRS § 8276-10.]

**67.08.050 Statement and report of contest—Tax on gross receipts.** Any licensee as herein provided shall within three days prior to the holding of any boxing contest or sparring and/or wrestling match or exhibition file with the commission a statement setting forth the name of each contestant, his manager or managers and such other information as the commission may require, and shall, within seventy-two hours after the termination of any contest file with the commission a written report, duly verified as the commission may require showing the number of tickets sold for such contest, the price charged for such tickets and the gross proceeds thereof, and such other and further information as the commission may require. Such licensee shall pay to the commission at the time of filing the above report a tax equal to five percent of such gross receipts and said five percent of such gross receipts shall be immediately paid by the commission into the state athletic fund of the state of Washington which is hereby created. [1933 c 184 § 11; RRS § 8276-11. FORMER PART OF SECTION: 1939 c 54 § 1; RRS § 8276-11a, now footnoted below.]

**Transfer of athletic fund moneys to general fund.** "That all moneys in the state treasury to the credit of the state athletic fund on the first day of May, 1939, and all moneys thereafter paid into the state treasury for, or to the credit of, the state athletic fund, shall be and are hereby transferred to, and placed in, the general fund." [1939 c 54 § 1; RRS § 8276-11a. Formerly RCW 67.08.050, part.]

**Appropriations payable from general fund.** "That from and after the first day of April, 1939, all appropriations made by the twenty-sixth legislature from the state athletic fund shall be paid out of moneys in the general fund." [1939 c 54 § 2; RRS § 8276-11b.]

**State athletic fund abolished.** "That from and after the first day of May, 1939, the state athletic fund in the state treasury shall be and is hereby abolished." [1939 c 54 § 3; RRS § 8276-11c.]

**Payment of warrants on state athletic fund.** "That from and after the first day of May, 1939, all warrants drawn on the state athletic fund and not presented for payment, shall be paid from the general fund, and it shall be the duty of the State Treasurer, and he is hereby directed, to pay such warrants, when presented, from the general fund." [1939 c 54 § 4; RRS § 8276-11d.]

**Emergency—Effective date—1939 c 54.** "That this act is necessary for the immediate support of the state government and its existing public institutions and shall take effect April 1, 1939." [1939 c 54 § 6; no RRS.]

**67.08.060 Inspectors—Duties—Fee for attending contests—Expenses.** The commission may appoint official inspectors at least one of which, in the absence

of a member of the commission, shall be present at any boxing contest or sparring and/or wrestling match or exhibition held under the provisions of this chapter. Such inspectors shall carry a card signed by the chairman of the commission evidencing their authority. It shall be their duty to see that all rules and regulations of the commission and the provisions of this chapter are strictly complied with and to be present at the accounting of the gross receipts of any contest, and such inspector is authorized to receive from the licensee conducting the contest the statement of receipts herein provided for and to immediately transmit such reports to the commission. Each inspector shall receive a fee from the licensee to be set by the athletic commission for each contest officially attended. Each inspector shall also receive from the state reimbursable travel expenses. [1959 c 305 § 4; 1933 c 184 § 12; RRS § 8276-12.]

**67.08.070 Contests barred on Sundays, certain holidays—Betting prohibited.** It shall be unlawful to hold any boxing contest, sparring or wrestling match on Sunday, decoration day, or armistice day; or to bet or wager on any contest held under the provisions of this chapter. Violation of this section shall be a misdemeanor. [1933 c 184 § 13; RRS § 8276-13.]

*Official holidays: RCW 1.16.050.*

**67.08.080 Rounds and bouts limited—Weight of gloves.** No boxing contest or sparring exhibition held in this state whether under the provisions of this chapter or otherwise shall be for more than ten rounds and no one round of any such contest or exhibition shall be for a longer period than three minutes and there shall be not less than one minute intermission between each round. In the event of bouts involving state or regional championships the commission may grant an extension of no more than two additional rounds to allow total bouts of twelve rounds, and in bouts involving national championships the commission may grant an extension of no more than five additional rounds to allow total bouts of fifteen rounds. No contestant in any boxing contest or sparring match or exhibition whether under this chapter or otherwise shall be permitted to wear gloves weighing less than six ounces. The length and duration for wrestling matches whether held under the provisions of this chapter or otherwise shall be regulated by order of the commission. The commission shall promulgate rules and regulations to assure clean and sportsmanlike conduct on the part of all contestants and officials, and the orderly and proper conduct of the contest in all respects, and to otherwise make rules and regulations consistent with this chapter, but such rules and regulations shall apply only to contests held under the provisions of this chapter. [1974 1st ex.s. c 45 § 1; 1959 c 305 § 5; 1933 c 184 § 14; RRS § 8276-14.]

**67.08.090 Physical examination of contestants.** Each contestant for boxing, sparring or wrestling shall be examined within eight hours prior to the contest by a competent physician appointed by the commission. The physician shall forthwith and before such contest report in writing and over his signature the physical condition

of each and every contestant to the commissioner or inspector present at such contest. No contestant whose physical condition is not approved by the examining physician shall be permitted to participate in any contest. Blank forms of physicians' report shall be provided by the commission and all questions upon such blanks shall be answered in full. The examining physician shall be paid a fee designated by the commission by the licensee conducting such match or exhibition. No boxing contest or sparring or wrestling match or exhibition shall be held unless a licensed physician of the commission or his duly appointed representative, shall be present throughout the contest.

Any practicing physician and surgeon may be selected by the board as the examining physician. Such physician present at such contest shall have authority to stop any contest when in his opinion it would be dangerous to a contestant to continue, and in such event it shall be his duty to stop such contest. If he has acted as examining physician he shall receive no fee for being present at such contest. [1933 c 184 § 15; RRS § 8276-15.]

**67.08.100 Annual licenses to participants—Fees—Revocation.** The commission may grant annual licenses upon application in compliance with the rules and regulations prescribed by the commission, and the payment of the fees, the amount of which is to be determined by the commission, prescribed to managers, referees, boxers, wrestlers, seconds and trainers: *Provided*, That the provisions of this section shall not apply to contestants or participants in strictly amateur contests and/or fraternal organizations and/or veterans' organizations chartered by congress or the war department or any bona fide athletic club which is a member of the Pacific northwest association of the amateur athletic union of the United States, holding and promoting athletic contests or smokers and where all funds are used primarily for the benefit of their members. Any such license may be revoked by the commission for any cause which it shall deem sufficient. No person shall participate or serve in any of the above capacities unless licensed as herein provided. The referee for any contest shall be designated by the commission from among such licensed referees. [1959 c 305 § 6; 1933 c 184 § 16; RRS § 8276-16. FORMER PART OF SECTION: 1933 c 184 § 20, part; RRS § 8276-20, part, now codified in RCW 67.08.025.]

*Duration of license—Expiration dates: RCW 67.08.025.*

**67.08.110 Participation in purse—Conducting sham contests—Forfeiture of license.** Any person or any member of any group of persons or corporation promoting wrestling or boxing exhibitions or contests who shall participate directly or indirectly in the purse or fee of any manager of any boxers or wrestlers or any boxer or any wrestler and any licensee who shall conduct or participate in any sham or fake boxing contest or sparring or wrestling match or exhibition shall thereby forfeit its license and the commission shall declare such licensee [license] canceled and void and such licensee shall not thereafter be entitled to receive another



such, or any license issued pursuant to the provisions of this chapter. [1933 c 184 § 17; RRS § 8276-17.]

**67.08.120 Participation in sham contest—Penalty against contestant.** Any contestant who shall participate in any sham or fake boxing contest or sparring or wrestling match or exhibition or violate any rule or regulation of the commission shall be penalized in the following manner: For the first offense he shall be restrained by order of the commission for a period of not less than three months from participating in any contest held under the provisions of this chapter, such suspension to take effect immediately after the occurrence of the offense; for any second offense such contestant shall be forever suspended from participation in any contest held under the provisions of this chapter. [1933 c 184 § 18; RRS § 8276-18.]

**67.08.130 Failure to make reports—Additional tax—Notice—Penalty for delinquency.** Whenever any licensee shall fail to make a report of any contest within the time prescribed by this chapter or when such report is unsatisfactory to the commission, the secretary shall examine the books and records of such licensee; he may subpoena and examine under oath any officer of such licensee and such other person or persons as he may deem necessary to a determination of the total gross receipts from any contest and the amount of tax thereon. If, upon the completion of such examination it shall be determined that an additional tax is due, notice thereof shall be served upon the licensee, and if such licensee shall fail to pay such additional tax within twenty days after service of such notice such delinquent licensee shall forfeit its license and shall forever be disqualified from receiving any new license and in addition thereto such licensee and the members thereof shall be jointly and severally liable to this state in the penal sum of one thousand dollars to be collected by the attorney general by civil action in the name of the state in the manner provided by law. [1933 c 184 § 19; RRS § 8276-19.]

**67.08.140 Penalty for conducting contests or exhibitions without license—Injunctions.** Any person, club, corporation, organization, association, or fraternal society conducting within this state boxing, sparring, or wrestling contests or exhibitions without having first obtained a license therefor in the manner provided by this chapter shall be guilty of a misdemeanor excepting such contests excluded from the operation of this chapter by RCW 67.08.015. The attorney general, each prosecuting attorney, the athletic commission, or any citizen of any county where any person, club, corporation, organization, association, or fraternal society shall threaten to hold, or appears likely to hold athletic contests or exhibitions in violation of this chapter, may in accordance with the laws of this state governing injunctions, enjoin such person, club, corporation, organization, association, or fraternal society from holding such contest or exhibition. [1959 c 305 § 7; 1951 c 48 § 1; 1933 c 184 § 22; RRS § 8276-22.]

**67.08.150 General penalty.** Any person, firm or corporation violating any of the provisions of this chapter for which no penalty is herein provided shall be guilty of a misdemeanor. [1933 c 184 § 24; RRS § 8276-24.]

**67.08.900 Severability—1933 c 184.** If any section or provision of this chapter shall be adjudged to be invalid or unconstitutional, such adjudication shall not affect the validity of this chapter as a whole, or any section, provision or part thereof not adjudged invalid or unconstitutional. [1933 c 184 § 25; RRS § 8276-25.]

## Chapter 67.12 DANCING AND DANCE HALLS—BILLIARDS, POOL AND BOWLING

### Sections

67.12.010	Definitions.
67.12.020	License required to hold dance or conduct dance hall.
67.12.030	License fees.
67.12.040	Restrictions on operation and location of dance halls.
67.12.050	Issuance of licenses—Posting.
67.12.060	Revocation—Transfer.
67.12.070	Penalties.
67.12.075	Marathon dances—"Person" defined.
67.12.080	Marathon dances—Prohibited.
67.12.090	Marathon dances—Certain contests excepted.
67.12.100	Marathon dances—Penalty—Continuing offense.
67.12.110	License required for rural pool halls, billiard halls, and bowling alleys.

*Regulations of dance halls and other places of amusement by cities and towns, see under applicable class of city or town: Title 35 RCW, and RCW 35A.11.020.*

*Unlawful to admit minors into dance halls, pool rooms and certain other places of amusement: RCW 26.28.080.*

**67.12.010 Definitions.** As used in RCW 67.12.010 through 67.12.070, the term "public dance" shall be construed to mean any dance or ball to which the public generally may gain admission with or without the payment of an admission fee. The term "dance hall" shall be construed to mean any room, hall, pavilion, boat, float, building or other structure kept for the purpose of conducting therein public dances or dancing. [1923 c 111 § 1; RRS § 8303-1.]

**67.12.020 License required to hold dance or conduct dance hall.** No person, copartnership or corporation shall hold any public dance or conduct or maintain any dance hall without the limits of incorporated cities or towns without having first procured from the board of county commissioners of the county in which it is proposed to conduct such dance or dance hall a license so to do. Licenses for dance halls shall be issued by the year or by the quarter, as requested by the applicant. A license for a single public dance shall entitle the holder thereof to conduct such dance only on the day and at the place specified in the license. No license to conduct a public dance or dance hall shall be granted unless the applicant therefor be of good moral character. No license shall be granted to any corporation, but if any dance hall be conducted by a corporation the license shall issue to the manager or other directing head thereof. [1923 c 111 § 2; RRS § 8303-2.]

**67.12.030 License fees.** The board of county commissioners of each county shall, by a general order, from time to time, fix the fees to be charged for licenses granted hereunder, such fees, however, not to be less than twenty-five dollars nor more than two hundred and fifty dollars for an annual dance hall license, nor less than ten dollars nor more than seventy-five dollars for a quarterly license, nor less than one dollar nor more than ten dollars for a license for a single dance. The county commissioners may issue a permit without charge for grange, patriotic, fraternal or community dances. [1923 c 111 § 3; RRS § 8303-3.]

**67.12.040 Restrictions on operation and location of dance halls.** No immoral, indecent, suggestive or obscene dance shall be given or carried on in any dance hall or at any dance licensed hereunder. All buildings, halls, rooms, pavilions or other places in which public dances are carried on, as well as all halls, corridors and rooms leading thereto or connected therewith shall at all times while open to the public, be well lighted.

No public dance shall be conducted nor dance hall kept open between the hours of one o'clock a. m. and six o'clock a. m., unless a special permit is obtained from the board of county commissioners.

No person under the age of eighteen years shall be permitted to attend any public dance without the escort of his or her parent or guardian. Any person under the age of eighteen years who shall by affirmative misrepresentation of age obtain admission to or permission to remain in any public dance shall be guilty of a misdemeanor.

The board of county commissioners shall have authority to make all proper and necessary administrative rules and regulations for the purpose of carrying into effect the provision[s] of RCW 67.12.010 through 67.12.070 with respect to the conduct of public dances, and may in its discretion refuse to grant licenses for dance halls to be located at such places or to be conducted at such times as will in their judgment interfere with the comfort and happiness of the community in which such proposed dance hall is to be located.

All peace officers of the state of Washington shall have free access to public dances and dance halls for the purpose of inspection and to enforce compliance with the provisions of RCW 67.12.010 through 67.12.070. [1923 c 111 § 4; RRS § 8303-4.]

**67.12.050 Issuance of licenses—Posting.** Applications for licenses hereunder shall be filed with the clerk of the board of county commissioners and be accompanied with a receipt showing the payment to the county treasurer of a license fee. After determining to grant a license to the applicant, the board shall notify the county auditor, who shall issue the license to the applicant. All licenses granted hereunder shall be kept posted in a conspicuous place on the licensed premises. [1923 c 111 § 5; RRS § 8303-5.]

**67.12.060 Revocation—Transfer.** Any license granted hereunder to conduct a dance hall may be revoked by the board of county commissioners after a

hearing held upon not less than ten days written notice to the licensee, and the action of said board in revoking any such license shall be final and conclusive. Every licensee accepting a license hereunder shall be deemed to have consented to the provision of this section with respect to the cancellation of licenses. No license granted hereunder shall be transferable except by a formal order of the board of county commissioners, nor shall any dance hall or public dance be conducted at any place other than that specified in the license therefor. [1923 c 111 § 6; RRS § 8303-6.]

**67.12.070 Penalties.** Any person violating any of the provisions of RCW 67.12.010 through 67.12.060 shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine in any sum not exceeding two hundred and fifty dollars or by imprisonment for a term not exceeding ninety days or by both such fine and imprisonment. [1923 c 111 § 7; RRS § 8303-7.]

**67.12.075 Marathon dances—"Person" defined.** The word "person" as used in RCW 67.12.075 through 67.12.100 shall include any firm, copartnership, corporation, association, society, club or individual. [1937 c 103 § 1; RRS § 8303-11.]

**Construction—1937 c 103:** "Words used in this act in the singular shall include the plural, and words used in the neuter shall include the masculine and feminine." [1937 c 103 § 5.]

**Severability—1937 c 103:** "If any section, sentence, clause, or phrase of this act is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this act." [1937 c 103 § 6.]

The foregoing annotations apply to RCW 67.12.075-67.12.100.

**67.12.080 Marathon dances—Prohibited.** It shall be unlawful for any person, firm, corporation, or association of persons to conduct, carry on, manage or maintain, or to cause or permit to be conducted, carried on, managed or maintained, or for any person to participate in, or to cause or permit to be participated in, or to aid or assist in the conducting or maintenance of, any public so-called "marathon dance", "walkathon", "endurathon", "speedathon", or any public endurance dancing, walking, running, skipping, jumping, sliding, gliding, rolling or crawling contest or exhibition under any other designation or name, or any similar exhibition or contest of human endurance in dancing, walking, running, skipping, jumping, sliding, gliding, rolling or crawling within this state. [1937 c 103 § 2; RRS § 8303-12.]

**67.12.090 Marathon dances—Certain contests excepted.** Nothing contained in RCW 67.12.075 through 67.12.100 shall be construed to apply to amateur or professional athletic events or contests, or to high school, college, or intercollegiate athletic contests or sports, or to any events or contests licensed by the state or by any board, commission, or officer thereof. [1937 c 103 § 3; RRS § 8303-13.]

**67.12.100 Marathon dances—Penalty—Continuing offense.** Any person, firm, corporation, or association of persons violating any of the provisions of RCW 67.12.075 through 67.12.090 shall be deemed guilty of a misdemeanor. Each separate day or any portion thereof during which any violation of RCW 67.12.075 through 67.12.090 occurs or continues shall be deemed to constitute a separate offense. [1937 c 103 § 4; RRS § 8303-14.]

**67.12.110 License required for rural pool halls, billiard halls, and bowling alleys.** The board of county commissioners of each county in the state of Washington shall have sole and exclusive authority and power to regulate, restrain, license, or prohibit the maintenance or running of pool halls, billiard halls, and bowling alleys outside of the incorporated limits of each incorporated city, town, or village in their respective counties: *Provided*, That the annual license fee for maintenance or running such pool halls, billiard halls, and bowling alleys shall in no instance be less than twenty-five dollars nor more than two hundred and fifty dollars; which said license fee shall be paid annually in advance to the county treasurer: *And provided further*, That nothing herein or elsewhere shall be so construed as to prevent the boards of county commissioners of the respective counties from revoking any license at any time prior to the expiration thereof for any cause by such board of county commissioners deemed proper. And if said county commissioners revoke said license they shall refund the unearned portion of such license. [1909 c 112 § 1; RRS § 8289.]

*Licensing under 1873 act: Chapter 67.14 RCW.*

#### Chapter 67.14 BILLIARD TABLES, BOWLING ALLEYS AND MISCELLANEOUS GAMES—1873 ACT

Sections	
67.14.010	Hawkers and auctioneers must procure license— Exceptions.
67.14.020	Sale or other disposition of liquor—County li- cense—Penalty.
67.14.030	Hawkers and auctioneers—Issuance of license.
67.14.040	Retail liquor license.
67.14.050	Wholesale liquor license—Billiard table, bowling alley licenses.
67.14.060	Liquor sales, keeping games, without license—Penalty.
67.14.070	Purchase of license—Bond.
67.14.080	Duration of license.
67.14.090	Issuance of license.
67.14.100	When contrivance deemed kept for hire.
67.14.110	Druggists excepted.
67.14.120	Disposition of fees, fines and forfeitures.

**Reviser's note:** The territorial act codified herein, though for the most part obsolete has never been expressly repealed. "An Act relating to licenses", it empowers the county commissioners to license hawkers and auctioneers, persons dealing in intoxicating liquors, and persons conducting bowling alleys, billiard tables and other games. The auctioneer sections have been codified as RCW 36.71.070 and 36.71.080. As to the sections relating to intoxicating liquors, it seems clear that this field has been preempted by the state, see RCW 66.08-.120. For a later enactment concerning the licensing of rural pool halls, billiard halls and bowling alleys, see RCW 67.12.110.

*Alcoholic beverage control: Title 66 RCW.*

**67.14.010 Hawkets and auctioneers must procure li-  
cense—Exceptions.** See RCW 36.71.070.

**67.14.020 Sale or other disposition of liquor—  
County license—Penalty.** If any person shall sell or dispose of any spirituous, malt, or fermented liquors or wines, in any quantity less than one gallon, without first obtaining a license therefor as hereinafter provided, such person shall, for each and every such offense, be liable to a fine of not less than five nor more than fifty dollars, with costs of prosecution. [1873 p 437 § 2; Code 1881, Bagley's Supp. p 26 § 2.]

**67.14.030 Hawkets and auctioneers—Issuance of  
license.** See RCW 36.71.080.

**67.14.040 Retail liquor license.** The legislative au-  
thorities of each county, in their respective counties, shall have the power to grant license to persons to keep drinking houses or saloons therein, at which spirituous, malt, or fermented liquors and wines may be sold in less quantities than one gallon; and such license shall be called a retail license upon the payment, by the per-  
son applying for such license, of the sum of three hun-  
dred dollars a year into the county treasury, and the execution of a good and sufficient bond, executed to such county in the sum of one thousand dollars, to be approved by such legislative authority or the county auditor of the county in which such license is granted, conditioned that he will keep such drinking saloon or house in a quiet, peaceable, and orderly manner: *Pro-  
vided*, The foregoing shall not be so construed as to prevent the legislative authority of any county from granting licenses to drinking saloons or houses therein, when there is but little business doing, for less than three hundred dollars, but in no case for less than one hundred dollars per annum: *And provided further*, That such license shall be used only in the precinct to which it shall be granted; *Provided further*, that no li-  
cense shall be used in more than one place at the same time. *And further provided*, That no license shall be granted to any person to retail spirituous liquors until he shall furnish to the legislative authority satisfactory proof that he is a person of good moral character. [1973 1st ex.s. c 154 § 100; 1875 p 124 § 1; 1873 p 438 § 4; Code 1881, Bagley's Supp. p 26 § 4.]

**Severability—1973 1st ex.s. c 154:** See note following RCW 2.12.030.

**67.14.050 Wholesale liquor license—Billiard table,  
bowling alley licenses.** Said county commissioners in their respective counties shall also have power to grant licenses to sell spirituous liquors and wines therein in greater quantities than one gallon, to be called a whole-  
sale license upon payment of the sum of not to exceed one hundred dollars per annum into the county trea-  
sury by such person so desiring such license; also, upon payment of not to exceed a like sum into the county treasury by any person desiring a grocery license to sell lager beer to grant such person such license to sell for the period of one year. Also, upon the payment of such sum as the county commissioners may establish and fix,

by order duly entered in the record of their proceedings, not exceeding twenty-five dollars per annum for each billiard table, pigeon-hole table, or bowling alley, grant a license to any person applying for the same and giving such bond not exceeding two hundred dollars, as such commissioners may require: *Provided*, No person shall be required to take out any license to sell any wine made from fruit produced by such person's own labor, in this territory. [1873 p 438 § 5; Code 1881, Bagley's Supp. p 27 § 5.]

*License required for rural pool halls, billiard halls and bowling alleys: RCW 67.12.110.*

**67.14.060 Liquor sales, keeping games, without license—Penalty.** Any person who shall sell spirituous liquors or wines in greater quantities than one gallon, or shall retail lager beer, or keep a billiard table or tables, or bowling alley or alleys for hire, in any county in this territory, without first taking out a license therefor, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not exceeding fifty dollars nor less than five dollars, and shall be committed to the county jail of the county where such offense may be committed, and be placed at hard labor until such fine and cost shall be paid or they may otherwise be discharged by due course of law. [1873 p 439 § 6; Code 1881, Bagley's Supp. p 27 § 6; RRS § 8290. Formerly RCW 67.12.120.]

**67.14.070 Purchase of license—Bond.** Any person desiring a license to do any business provided by this chapter that a license shall be taken out for doing, shall have the same granted by paying to the county treasurer of the county where he wishes to carry on such business the maximum sum that the county commissioners are by this chapter authorized to fix therefor, and executing such bond, to be approved by the county auditor, as is provided in this chapter, shall be given before license shall issue for carrying on such business. [1873 p 439 § 7; Code 1881, Bagley's Supp. p 27 § 7.]

**67.14.080 Duration of license.** The licenses authorized to be granted by this chapter shall at the option of the person applying for the same, be granted for six, nine, or twelve months, and the person holding such license may transact the business thereby authorized at any place in the county where such license is granted: *Provided*, That such business shall not be transacted in but one place in the county at a time. [1873 p 439 § 8; Code 1881, Bagley's Supp. p 27 § 8.]

**67.14.090 Issuance of license.** Upon presentation to the county auditor of any county of the certificate of the county treasurer that any person has paid into the county treasury the amount provided by this chapter, to be paid for the transaction of any business that a license may be granted to transact, and for the time provided in this chapter, and upon the execution and delivery to such auditor of the bond hereinbefore required, it shall be the duty of such county auditor to issue such license to such person so presenting such certificate, executing and delivering such bond and

making application therefor, for the period of time that the money as shown by the treasurer's certificate would entitle the person so presenting the same to have a license issued for. [1873 p 439 § 9; Code 1881, Bagley's Supp. p 27 § 9.]

**67.14.100 When contrivance deemed kept for hire.** Any person who shall keep a billiard table or tables, pigeon-hole, Jenny Lind, and all other gaming tables, or bowling alley or bowling alleys in a drinking saloon or house or in a room or building adjoining or attached thereto, and shall allow the same to be used by two or more persons to determine by play thereon which of the persons so playing shall pay for drinks, cigars, or other articles for sale in such saloon or drinking house, shall, within the meaning of this chapter, be deemed to be keeping the same for hire. [1873 p 440 § 10; Code 1881, Bagley's Supp. p 28 § 10; RRS § 8291. Formerly RCW 67.12.130.]

**67.14.110 Druggists excepted.** None of the provisions of this chapter shall be held to apply to the sale by apothecaries or druggists of spirituous, malt, or fermented liquors or wines for medicinal purposes, upon the prescription of a practicing physician. [1873 p 440 § 11; Code 1881, Bagley's Supp. p 28 § 11.]

**67.14.120 Disposition of fees, fines and forfeitures.** All fines and forfeitures collected under this chapter, and all moneys paid into the treasury of any county for licenses as aforesaid, shall be applied to school or county purposes as the local laws of such county may direct: *Provided*, That this chapter shall not affect or apply to any private or local laws upon the subject of license in any county in this territory except King county, and no license shall be construed to mean more than the house or saloon kept by the same party or parties: *Provided, further*, That no part of this chapter shall in any way apply to the county of Island: *And provided, further*, That all moneys for licenses within the corporate limits of the town of Olympia shall be paid directly into the town treasury of said town as a municipal fund for the use of said town: *And provided further*, That all fees, fines, forfeitures and penalties collected or assessed by a justice court because of the violation of a state law shall be remitted as provided in chapter 3.62 RCW as now exists or is later amended. [1969 ex.s. c 199 § 29; 1873 p 440 § 12; Code 1881, Bagley's Supp. p 28 § 12.]

*Collection and disposition of fines and costs: Chapter 10.82 RCW.*

## Chapter 67.16 HORSE RACING

Sections	
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67.16.015	Washington horse racing commission—Organization—Secretary—Records—Biennial reports.
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- 67.16.040 Commission to regulate and license meets—  
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- 67.16.900 Severability—General repealer—1933 c 55.

*Agister and trainer liens: Chapter 60.56 RCW.*

*Crimes and punishments—Gambling: Chapter 9.47 RCW.*

**67.16.010 Definitions.** Unless the context otherwise requires, words and phrases as used herein shall mean:

"Commission" shall mean the Washington horse racing commission, hereinafter created.

"Person" shall mean and include individuals, firms, corporations and associations.

"Race meet" shall mean and include any exhibition of thoroughbred, quarter horse, and appaloosa horse racing, or standard bred harness horse racing, where the parimutuel system is used.

Singular shall include the plural, and the plural shall include the singular; and words importing one gender shall be regarded as including all other genders. [1969 c 22 § 1; 1949 c 236 § 1; 1933 c 55 § 1; Rem. Supp. 1949 § 8312-1.]

**67.16.012 Washington horse racing commission—  
Creation—Terms—Vacancies—Bonds—Oaths.**

There is hereby created the Washington horse racing commission, to consist of three commissioners, who shall be citizens, residents, and qualified electors of the state of Washington, and one of whom shall be a breeder of race horses and he shall be of at least one year's standing. The first members of said commission shall be appointed by the governor within thirty days after March 3, 1933, one for a term to expire on the Thursday following the second Monday in January of 1935, one for a term to expire on the Thursday following the second Monday in January of 1937, and one for a term to expire on the Thursday following the second Monday in January of 1939, upon which expiration of the term of any member, the governor shall appoint a successor for a term of six years. Each member shall hold office until his successor is appointed and qualified. Vacancies in the office of commissioner shall be filled by appointment to be made by the governor for the unexpired term. Any commissioner may be removed at any time at the pleasure of the governor: *Provided*, That any member or successor that is appointed or re-appointed by the governor after August 11, 1969, shall be confirmed by the senate. Before entering upon the

duties of his office, each commissioner shall enter into a surety company bond, to be approved by the governor and attorney general, payable to the state of Washington, in the penal sum of five thousand dollars, conditioned upon the faithful performance of his duties and the correct accounting and payment of all sums received and coming within his control under this chapter, and in addition thereto each commissioner shall take and subscribe to an oath of office of the same form as that prescribed by law for elective state officers. [1973 1st ex.s. c 216 § 1; 1969 ex.s. c 233 § 1; 1933 c 55 § 2; RRS § 8312-2. Formerly RCW 43.50.010.]

**Severability—1933 c 55:** "In case any part or portion of this act shall be held unconstitutional, such holding shall not affect the validity of this act as a whole or any other part or portion of this act not adjudged unconstitutional. All acts in conflict herewith are hereby repealed." [1933 c 55 § 10.]

**67.16.015 Washington horse racing commission—  
Organization—Secretary—Records—Biennial re-  
ports.**

The commission shall organize by electing one of its members chairman, and shall appoint and employ a secretary, and such other clerical, office, and other help as is necessary in the performance of the duties imposed upon it by this chapter. The commission shall keep detailed records of all meetings and of the business transacted therein, and of all the collections and disbursements, reports of which shall be embodied in a biennial report which the commission shall prepare and submit to the governor on or before the thirty-first day of December preceding the date of the expiration of the term of office of any member of the commission, and it shall cover the activities of the commission for the preceding biennial period, or portion thereof as to the first report, to the first day of December. All records of the commission shall be public records and as such, subject to public inspection. The director of general administration shall provide office accommodations for the commission at the state capitol, unless the commission deems it more advantageous to have its office established elsewhere. [1933 c 55 § 3; RRS § 8312-3. Formerly RCW 43.50.020.]

**67.16.017 Washington horse racing commission—  
Expenses and per diem.**

Each member of the Washington horse racing commission shall receive forty dollars per diem for each day actually spent in the performance of his duties and his actual necessary traveling and other expenses in going to, attending and returning from meetings of the commission, and his actual and necessary traveling and other expenses incurred in the discharge of such duties as may be requested of him by a majority vote of the commission, but in no event shall a commissioner be paid per diem in any one year in excess of one hundred twenty days, except the chairman of the commission who may be paid per diem for not more than one hundred fifty days. [1969 ex.s. c 233 § 2.]

**67.16.020 Commission to fix time, place, duration of  
race meets—Race meet license—Participant's li-  
cense.** It shall be the duty of the commission, as soon as

it is possible after its organization, to prepare and promulgate a complete set of rules and regulations to govern the race meets in this state. It shall determine and announce the place, time and duration of race meets for which license fees are exacted; and it shall be the duty of each person holding a license under the authority of this chapter, and every owner, trainer, jockey, and attendant at any race course in this state, to comply with all rules and regulations promulgated and all orders issued by the commission. It shall be unlawful for any person to hold any race meet without having first obtained and having in force and effect a license issued by the commission as in this chapter provided; and it shall be unlawful for any owner, trainer or jockey to participate in race meets in this state without first securing an annual license therefor from the state racing commission, the fee for which shall be one dollar. [1933 c 55 § 4; RRS § 8312-4. Formerly RCW 67.16.020 and 67.16.030.]

**67.16.040 Commission to regulate and license meets—Inspection.** The commission created by this chapter is hereby authorized, and it shall be its duty, to license, regulate and supervise all race meets held in this state under the terms of this chapter, and to cause the various race courses of the state to be visited and inspected at least once a year. [1933 c 55 § 5; RRS § 8312-5.]

**67.16.050 Application for meet—Issuance of license—Fee—Cancellation.** Every person making application for license to hold a race meet, under the provisions of this chapter shall file an application with the commission which shall set forth the time, the place, the number of days such meet will continue, and such other information as the commission may require. The commission shall be the sole judge of whether or not the race meet shall be licensed and the number of days the meet shall continue. No person who has been convicted of any crime involving moral turpitude shall be issued a license, nor shall any license be issued to any person who has violated the terms or provisions of this chapter, or any of the rules and regulations of the commission made pursuant thereto, or who has failed to pay to the commission any or all sums required under the provisions of this chapter. The license shall specify the number of days the race meet shall continue and the number of races per day, which shall be not less than six nor more than ten, and for which a fee shall be paid in advance of one hundred dollars for each day: *Provided*, That if unforeseen obstacles arise, which prevent the holding, or completion of any race meet, the license fee for the meet, or for a portion which cannot be held may be refunded the licensee, if the commission deems the reasons for failure to hold or complete the race meet sufficient. Any unexpired license held by any person who violates any of the provisions of this chapter, or any of the rules or regulations of the commission made pursuant thereto, or who fails to pay to the commission any and all sums required under the provisions of this chapter, shall be subject to cancellation and revocation by the commission. Such cancellation shall be

made only after a summary hearing before the commission, of which three days' notice, in writing, shall be given the licensee, specifying the grounds for the proposed cancellation, and at which hearing the licensee shall be given an opportunity to be heard in opposition to the proposed cancellation. [1973 1st ex.s. c 39 § 1; 1933 c 55 § 6; RRS § 8312-6.]

**67.16.060 Prohibited practices—Parimutuel system permitted—Race meet as public nuisance.** It shall be unlawful to conduct pool selling, bookmaking, or to circulate hand books, or to bet or wager on any horse race other than by the parimutuel method, or for any licensee to take more than ten percent of the gross receipts of any parimutuel machine; or for any licensee to compute breaks in the parimutuel system otherwise than at five cents. Any wilful violation of the terms of this chapter, or of any rule, regulation or order of the commission shall constitute a gross misdemeanor and when such violation is by a person holding a license under this chapter, the commission may cancel the license held by the offender, and such cancellation shall operate as a forfeiture of all rights and privileges granted by the commission and of all sums of money paid to the commission by the offender; and the action of the commission in that respect shall be final. The commission shall have power to exclude from any and all race courses of the state of Washington any person whom the commission deems detrimental to the best interests of racing or any person who wilfully violates any of the provisions of this chapter or of any rule, regulation or order issued by the commission. Every race meet held in this state contrary to the provisions of this chapter is hereby declared to be a public nuisance. [1933 c 55 § 7; RRS § 8312-7.]

*Gambling: Chapter 9.47 RCW.*

**67.16.070 Races for local breeders.** For the purpose of encouraging the breeding, within this state, of valuable thoroughbred, quarter and/or standard bred race horses, at least one race of each day's meet shall consist exclusively of Washington bred horses. [1949 c 236 § 2; 1933 c 55 § 8; Rem. Supp. 1949 § 8312-8.]

**67.16.080 Horses to be registered.** A quarter horse to be eligible for a race meet herein shall be duly registered with the American Quarter Horse Association. An appaloosa horse to be eligible for a race meet herein shall be duly registered with the National Appaloosa Horse Club or any successor thereto. [1969 c 22 § 2; 1949 c 236 § 3; Rem. Supp. 1949 § 8312-13.]

**67.16.090 Races limited to horses of same breed.** In any race meet in which quarter horses, thoroughbred horses and appaloosa horses participate, only horses of the same breed shall be allowed to compete in any individual race. [1969 c 22 § 3; 1949 c 236 § 4; Rem. Supp. 1949 § 8312-14.]

**67.16.100 Gross receipts and fees—Commission's percentage—Disposition—"Fair fund" and "state trade fair fund".** In addition to the license fees required



by this chapter the licensee shall pay to the commission five percent of the gross receipts of all parimutuel machines at each race meet, which sums shall be paid daily to the commission.

All sums paid to the commission, together with all sums collected for license fees under the provisions of this chapter, shall be disposed of by the commission as follows: Twenty percent thereof shall be retained by the commission for the payment of the salaries of its members, secretary, clerical, office, and other help and all expenses incurred in carrying out the provisions of this chapter. No salary, wages, expenses, or compensation of any kind shall be paid by the state in connection with the work of the commission. Of the remaining eighty percent, forty-seven percent shall, on the next business day following the receipt thereof, be paid to the state treasurer to be deposited in the general fund, and three percent shall, on the next business day following the receipt thereof, be paid to the state treasurer, who is hereby made ex officio treasurer of a fund to be known as the "state trade fair fund" which shall be maintained as a separate and independent fund, and made available to the director of commerce and economic development for the sole purpose of assisting state trade fairs. The remaining thirty percent shall be paid to the state treasurer, who is hereby made ex officio treasurer of a fund to be known as the "fair fund," which shall be maintained as a separate and independent fund outside of the state treasury, and made available to the director of agriculture for the sole purpose of assisting fairs in the manner provided in Title 15 RCW. Any moneys collected or paid to the commission under the terms of this chapter and not expended at the time of making its report to the legislature, shall be paid to the state treasurer and be placed in the general fund. [1965 c 148 § 7; 1955 c 106 § 5; 1947 c 34 § 2; 1941 c 48 § 4; 1935 c 182 § 30; 1933 c 55 § 9; Rem. Supp. 1947 § 8312-9.]

*State trade fairs: RCW 43.31.790-43.31.860.*

*Transfer of surplus funds in state trade fair fund to general fund: RCW 43.31.831-43.31.834.*

**67.16.102 Additional one percent of gross receipts to be withheld—Payment to owners.** Notwithstanding any other provision of chapter 67.16 RCW to the contrary the licensee shall withhold and shall pay daily to the commission, in addition to the fifteen percent authorized by this chapter, one percent of the gross receipts of all parimutuel machines at each race meet which sums shall, at the end of each meet, be paid by the commission to the licensed owners of those horses finishing first, second, third and fourth Washington bred only at each meet from which the additional one percent is derived in accordance with an equitable distribution formula to be promulgated by the commission prior to the commencement of each race meet: *Provided*, That nothing in this section shall apply to race meets which are nonprofit in nature, or of six days or less or which have a total annual handle of less than two hundred thousand dollars. The commission shall not permit the licensees to take into consideration the benefits derived from this section in establishing purses. [1969 ex.s. c 233 § 3.]

**67.16.110 Broadcasting and motion picture rights reserved.** All radio broadcasting rights, and motion picture rights in connection with meets licensed hereunder are reserved to the state and the commission shall lease or license same only to the highest bidder. The exercise of such rights shall at all times be under the supervision of the commission. All income therefrom shall be paid into the state treasury and credited to the old age pension fund. [1933 c 55 § 11; RRS § 8312-11.]

**Reviser's note:** The 1933 horse racing act (1933 c 55 § 9) created the old age pension fund in support of the pensions authorized by 1933 c 29, and required the deposit therein of a percentage of parimutuel receipts. 1935 c 182, relating to old age assistance, repealed the 1933 pension act (1933 c 29), abolished the old age pension fund, and amended 1933 c 55 § 9 to require the payment of such receipts into the general fund. 1933 c 55 § 9 (as subsequently amended) is codified as RCW 67.16.100.

**67.16.130 Nonprofit race meets—Licensing authorized—Fees.** (1) Notwithstanding any other provision of law or of chapter 67.16 RCW, the commission may license race meets which are nonprofit in nature, of six days or less, and which have a total annual handle of two hundred thousand dollars or less, at a daily licensing fee of ten dollars and a payment to the commission of one percent of the gross receipts of all parimutuel pools during such race meet, and the sponsoring nonprofit association shall be exempt from any other fees as provided for in chapter 67.16 RCW or by rule or regulation of the commission: *Provided*, That the commission on or after January 1, 1971 may deny the application for a license to conduct a racing meet by a nonprofit association, if same shall be determined not to be a nonprofit association by the Washington state racing commission.

(2) Notwithstanding any other provision of law or of chapter 67.16 RCW the licensees of race meets which are nonprofit in nature, of six days or less, and which have a total annual handle of two hundred thousand dollars or less, shall be permitted to retain fourteen percent of the gross receipts of all parimutuel pools during such race meet.

(3) Notwithstanding any other provision of law or of chapter 67.16 RCW or any rule promulgated by the commission, no license for a race meet which is nonprofit in nature, of six days or less, and which has a total annual handle of two hundred thousand dollars or less, shall be denied for the reason that the applicant has not installed an electric parimutuel tote board.

(4) As a condition to the reduction in fees as provided for in subsection (1) hereof, all fees charged to horse owners, trainers, or jockeys, or any other fee charged for a permit incident to the running of such race meet shall be retained by the commission as reimbursement for its expenses incurred in connection with the particular race meet. [1969 ex.s. c 94 § 2.]

**Effective date—1969 ex.s. c 94:** "This 1969 amendatory act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect May 1, 1969." [1969 ex.s. c 94 § 3.]



**67.16.140 Employees of commission—Employment restriction.** No employee of the horse racing commission shall serve as an employee of any track at which that individual will also serve as an employee of the commission. [1973 1st ex.s. c 216 § 3.]

**67.16.150 Employees of commission—Commissioners—Financial interest restrictions.** No employee nor any commissioner of the horse racing commission shall have any financial interest whatsoever, other than an ownership interest in a community venture, in any track at which said employee serves as an agent or employee of the commission or at any track with respect to a commissioner. [1973 1st ex.s. c 216 § 4.]

**67.16.160 Rules and regulations implementing conflict of interest laws.** No later than ninety days after July 16, 1973 the horse racing commission shall promulgate, pursuant to chapter 34.04 RCW, reasonable rules and regulations implementing to the extent applicable to the circumstances of the horse racing commission the conflict of interest laws of the state of Washington as set forth in chapters 42.18, 42.21 and 42.22 RCW. [1973 1st ex.s. c 216 § 5.]

**67.16.900 Severability—General repealer—1933 c 55.** In case any part or portion of this chapter shall be held unconstitutional, such holding shall not affect the validity of this chapter as a whole or any other part or portion of this chapter not adjudged unconstitutional. All acts in conflict herewith are hereby repealed. [1933 c 55 § 10; RRS § 8312-10.]

### Chapter 67.20

#### PARKS, BATHING BEACHES, PUBLIC CAMPS

##### Sections

- 67.20.010 Authority to acquire and operate certain recreational facilities—Charges—Eminent domain.  
 67.20.015 Authority to establish and operate public camps—Charges.  
 67.20.020 Contracts for cooperation.  
 67.20.030 Scope of chapter.

*County parks and recreational facilities: Chapter 36.68 RCW.*

*Eminent domain: Title 8 RCW.*

*Metropolitan park districts: Chapter 35.61 RCW.*

*Recreation districts act for counties: Chapter 36.69 RCW.*

*State parks and recreation commission: Chapter 43.51 RCW.*

**67.20.010 Authority to acquire and operate certain recreational facilities—Charges—Eminent domain.** Any city in this state acting through its city council, or its board of park commissioners when authorized by charter or ordinance, any separately organized park district acting through its board of park commissioners or other governing officers, any school district acting through its board of school directors, any county acting through its board of county commissioners, and any town acting through its city council shall have power, acting independently or in conjunction with the United States, the state of Washington, any county, city, park district, school district or town or any number of such public organizations to acquire any land within this state for park, playground, gymnasiums, swimming

pools, field houses and other recreational facilities, bathing beach or public camp purposes and roads leading from said parks, playgrounds, gymnasiums, swimming pools, field houses and other recreational facilities, bathing beaches, or public camps to nearby highways by donation, purchase or condemnation, and to build, construct, care for, control, supervise, improve, operate and maintain parks, playgrounds, gymnasiums, swimming pools, field houses and other recreational facilities, bathing beaches, roads and public camps upon any such land, including the power to enact and enforce such police regulations not inconsistent with the constitution and laws of the state of Washington, as are deemed necessary for the government and control of the same. The power of eminent domain herein granted shall not extend to any land outside the territorial limits of the governmental unit or units exercising said power. [1949 c 97 § 1; 1921 c 107 § 1; Rem. Supp. 1949 § 9319. FORMER PART OF SECTION: 1949 c 97 § 3; 1921 c 107 § 3; Rem. Supp. 1949 § 9321 now codified as RCW 67.20.015.]

**67.20.015 Authority to establish and operate public camps—Charges.** Any city, town, county, separately organized park district, or school district shall have power to establish, care for, control, supervise, improve, operate and maintain a public camp, or camps anywhere within the state, and to that end may make, promulgate and enforce any reasonable rules and regulations in reference to such camps and make such charges for the use thereof as may be deemed expedient. [1949 c 97 § 3; 1921 c 107 § 3; Rem. Supp. 1949 § 9321. Formerly RCW 67.20.010, part.]

**67.20.020 Contracts for cooperation.** Any city, park district, school district, county or town shall have power to enter into any contract in writing with any organization or organizations referred to in this chapter for the purpose of conducting a recreation program or exercising any other power granted by this chapter. In the conduct of such recreation program property or facilities owned by any individual, group or organization, whether public or private, may be utilized by consent of the owner. [1949 c 97 § 2; 1921 c 107 § 2; Rem. Supp. 1949 § 9320.]

**67.20.030 Scope of chapter.** This chapter shall not be construed to repeal or limit any existing power of any city or park district, but to grant powers in addition thereto. [1949 c 97 § 4; 1921 c 107 § 4; Rem. Supp. 1949 § 9319 note.]

### Chapter 67.24

#### FRAUD IN SPORTING CONTEST

##### Sections

- 67.24.010 Commission of, declared felony—1945 c 107.  
 67.24.020 Scope of 1945 c 107.

**67.24.010 Commission of, declared felony—1945 c 107.** Every person who shall give, offer, receive or promise, directly or indirectly, any compensation, gratuity or reward, or make any promise thereof, or who

shall fraudulently commit any act by trick, device or bunco, or any means whatsoever with intent to influence or change the outcome of any sporting contest between men or between animals, shall be guilty of a felony and shall be punished by imprisonment in the state penitentiary for not less than five years. [1945 c 107 § 1; 1941 c 181 § 1; Rem. Supp. 1945 § 2499-1.]

**67.24.020 Scope of 1945 c 107.** All of the acts and statutes in conflict herewith are hereby repealed except chapter 55, Laws of 1933 [chapters 43.50 and 67.16 RCW] and amendments thereto. [1945 c 107 § 2; Rem. Supp. 1945 § 2499-1 note.]

## Chapter 67.28 PUBLIC STADIUM AND CONVENTION FACILITIES

Sections	
67.28.080	Definitions.
67.28.090	Stadium commission created—Appointment and selection of members—Expenses and per diem.
67.28.100	Duties of commission—Report and recommendations of feasibility studies.
67.28.110	Authorization to engage professional help.
67.28.120	Authorization to acquire, maintain, operate, etc. public stadium and convention facilities.
67.28.130	Conveyance or lease of lands, properties or facilities authorized—Joint participation, use of facilities.
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67.28.150	Issuance of general obligation bonds—Maturity—Methods of payment.
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67.28.170	Power to lease all or part of facilities—Disposition of proceeds.
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67.28.190	Special excise tax authorized—Payment of tax to municipality—Deduction from sales tax required to be paid to department of revenue.
67.28.200	Special excise tax authorized—Exemptions, rules and regulations may be established—Collection.
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67.28.220	Powers additional and supplemental to other laws.
67.28.350	Real property beneath air space dedicated to public body for stadium facilities—Exemption from property taxes.
67.28.900	Severability—1965 c 15.
67.28.910	Severability—1967 c 236.
67.28.911	Severability—1973 2nd ex.s. c 34.

*Multi-purpose community centers: Chapter 35.59 RCW.*

*Stadiums, coliseums, powers to counties to build and operate: RCW 36.68.090.*

**67.28.080 Definitions.** "Municipality" as used in this chapter means any county, city or town of the state of Washington.

"Person" as used in this chapter means the federal government or any agency thereof, the state or any agency, subdivision, taxing district or municipal corporation thereof other than county, city or town, any private corporation, partnership, association, or individual. [1967 c 236 § 1.]

**Reviser's note:** Throughout this chapter "this act" has been changed to "this chapter". This act, 1967 c 236, is codified as this chapter and also RCW 82.02.020.

**67.28.090 Stadium commission created—Appointment and selection of members—Expenses and per diem.** There is created a stadium commission to consist of six members to be selected as follows:

The governor shall appoint a chairman and one other member of the commission.

Any class AA county, class A county, or first class county may within ninety days following June 8, 1967 submit to the governor a request that the commission conduct a study and investigation as provided in RCW 67.28.100 relative to the construction of a stadium within such county. Such request shall be supported by plans and other relevant information.

Within two weeks of the end of the ninety-day period, the governor and/or the two members of the commission appointed by him shall meet and consider any such requests, and shall accept that request which in their sole discretion appears to present the most feasible plan.

Thereupon, the board of county commissioners of the county whose request is accepted shall select two members from its body as members of the commission, and the mayor of the city having the largest population in such county shall appoint two members from such city's legislative body to the commission.

The commission shall meet at such time or times as may be designated either by the governor or by the chairman of the board, and shall serve without compensation. They shall receive, for time spent on the commission, per diem and mileage allowances in conformity with the amounts allowed for legislators under the provisions of RCW 44.04.120. [1967 c 236 § 2.]

**67.28.100 Duties of commission—Report and recommendations of feasibility studies.** The commission is charged with and shall have the duty of making a complete study and investigation into the acquisition of a site for public stadium facilities, including feasibility studies in connection therewith, and shall report its findings and recommendations to the governing body of the county whose request is accepted as provided in RCW 67.28.090. [1967 c 236 § 3.]

**67.28.110 Authorization to engage professional help.** The commission is authorized to engage professional help including, but not limited to, (1) research and motivational study analysts, (2) cost analysis accountants, (3) professional engineers, architects and designers, professional urban planners, and such other staff as may be necessary to carry out its duties under this chapter. [1967 c 236 § 4.]

**67.28.120 Authorization to acquire, maintain, operate, etc. public stadium and convention facilities.** Any municipality is authorized either individually or jointly with any other municipality, or person, or any combination thereof, to acquire by purchase, gift or grant, to lease as lessee, and to construct, install, add to, improve, replace, repair, maintain, operate and regulate the use of public stadium facilities and/or convention center facilities whether located within or without such municipality, including but not limited to buildings,

structures, concession and service facilities, roads, bridges, walks, ramps and other access facilities, terminal and parking facilities for private vehicles and public transportation vehicles and systems, together with all lands, properties, property rights, equipment, utilities, accessories and appurtenances necessary for such public stadium facilities and/or convention center facilities, and to pay for any engineering, planning, financial, legal and professional services incident to the development and operation of such public stadium facilities and/or convention center facilities. [1973 2nd ex.s. c 34 § 1; 1967 c 236 § 5.]

**67.28.130 Conveyance or lease of lands, properties or facilities authorized—Joint participation, use of facilities.** Any municipality, taxing district, or municipal corporation is authorized to convey or lease any lands, properties or facilities to any other municipality for the development by such other municipality of public stadium facilities and/or convention center facilities or to provide for the joint use of such lands, properties or facilities, or to participate in the financing of all or any part of the public stadium facilities and/or convention center facilities on such terms as may be fixed by agreement between the respective legislative bodies without submitting the matter to the voters of such municipalities, unless the provisions of general law applicable to the incurring of municipal indebtedness shall require such submission. [1973 2nd ex.s. c 34 § 2; 1967 c 236 § 6.]

**67.28.140 Declaration of public purpose—Right of eminent domain.** The acts authorized herein are declared to be strictly for the public purposes of the municipalities authorized to perform same. Any municipality as defined in RCW 67.28.080 shall have the power to acquire by condemnation and purchase any lands and property rights, both within and without its boundaries, which are necessary to carry out the purposes of this chapter. Such right of eminent domain shall be exercised by the legislative body of each such municipality in the manner provided by applicable general law or under chapter 8.12 RCW. [1967 c 236 § 7.]

**67.28.150 Issuance of general obligation bonds—Maturity—Methods of payment.** To carry out the purposes of this chapter any municipality shall have the power to issue general obligation bonds within the limitations now or hereafter prescribed by the laws of this state. Such general obligation bonds shall be authorized, executed, issued and made payable as other general obligation bonds of such municipality: *Provided*, That the governing body of such municipality may provide that such bonds mature in not to exceed forty years from the date of their issue, may provide that such bonds also be made payable from any special taxes provided for in RCW 67.28.180, and may provide that such bonds also be made payable from any otherwise unpledged revenue which may be derived from the ownership or operation of any properties or to establish a guaranty fund for revenue bonds issued solely for stadium facility capital purposes. [1967 c 236 § 8.]

**67.28.160 Revenue bonds—Issuance, sale, form, term, payment, reserves, actions.** To carry out the purposes of this chapter the legislative body of any municipality shall have the power to issue revenue bonds without submitting the matter to the voters of the municipality: *Provided*, That the legislative body shall create a special fund or funds for the sole purpose of paying the principal of and interest on the bonds of each such issue, into which fund or funds the legislative body may obligate the municipality to pay all or part of amounts collected from the special taxes provided for in RCW 67.28.180, and/or to pay such amounts of the gross revenue of all or any part of the facilities constructed, acquired, improved, added to, repaired or replaced pursuant to this chapter, as the legislative body shall determine: *Provided, further*, That the principal of and interest on such bonds shall be payable only out of such special fund or funds, and the owners and holders of such bonds shall have a lien and charge against the gross revenue pledged to such fund.

Such revenue bonds and the interest thereon issued against such fund or funds shall constitute a claim of the holders thereof only as against such fund or funds and the revenue pledged therefor, and shall not constitute a general indebtedness of the municipality.

Each such revenue bond shall state upon its face that it is payable from such special fund or funds, and all revenue bonds issued under this chapter shall be negotiable securities within the provisions of the law of this state. Such revenue bonds may be registered either as to principal only or as to principal and interest, or may be bearer bonds; shall be in such denominations as the legislative body shall deem proper; shall be payable at such time or times and at such places as shall be determined by the legislative body; shall be executed in such manner and bear interest at such rate or rates as shall be determined by the legislative body.

Such revenue bonds shall be sold in such manner as the legislative body shall deem to be for the best interests of the municipality, either at public or private sale.

The legislative body may at the time of the issuance of such revenue bonds make such covenants with the purchasers and holders of said bonds as it may deem necessary to secure and guaranty the payment of the principal thereof and the interest thereon, including but not being limited to covenants to set aside adequate reserves to secure or guaranty the payment of such principal and interest, to pledge and apply thereto part or all of any lawfully authorized special taxes provided for in RCW 67.28.180, to maintain rates, charges or rentals sufficient with other available moneys to pay such principal and interest and to maintain adequate coverage over debt service, to appoint a trustee or trustees for the bondholders, to safeguard the expenditure of the proceeds of sale of such bonds and to fix the powers and duties of such trustee or trustees and to make such other covenants as the legislative body may deem necessary to accomplish the most advantageous sale of such bonds. The legislative body may also provide that revenue bonds payable out of the same source may later be issued on a parity with revenue bonds being issued and sold.

The legislative body may include in the principal amount of any such revenue bond issue an amount for engineering, architectural, planning, financial, legal, and other services and charges incident to the acquisition or construction of public stadium facilities and/or convention center facilities, an amount to establish necessary reserves, an amount for working capital and an amount necessary for interest during the period of construction of any facilities to be financed from the proceeds of such issue plus six months. The legislative body may, if it deems it in the best interest of the municipality, provide in any contract for the construction or acquisition of any facilities or additions or improvements thereto or replacements or extensions thereof that payment therefor shall be made only in such revenue bonds.

If the municipality shall fail to carry out or perform any of its obligations or covenants made in the authorization, issuance and sale of such bonds, the holder of any such bond may bring action against the municipality and compel the performance of any or all of such covenants. [1973 2nd ex.s. c 34 § 3; 1967 c 236 § 9.]

**67.28.170 Power to lease all or part of facilities—Disposition of proceeds.** The legislative body of any municipality owning or operating public stadium facilities and/or convention center facilities acquired or developed pursuant to this chapter shall have power to lease to any municipality or person, or to contract for the use or operation by any municipality or person, of all or any part of the stadium facilities and/or convention center facilities authorized by this chapter, including but not limited to parking facilities, concession facilities of all kinds and any property or property rights appurtenant to such stadium facilities and/or convention center facilities, for such period and under such terms and conditions and upon such rentals, fees and charges as such legislative body may determine, and may pledge all or any portion of such rentals, fees and charges and all other revenue derived from the ownership and/or operation of stadium facilities and/or convention center facilities to pay and to secure the payment of general obligation bonds and/or revenue bonds of such municipality issued for authorized public stadium and/or convention center facilities purposes. [1973 2nd ex.s. c 34 § 4; 1967 c 236 § 10.]

**67.28.180 Special excise tax authorized—Hotel, motel, rooming house, trailer camp, etc. charges.** The legislative body of any county, and of any city, is authorized to levy and collect, a special excise tax of not to exceed two percent on the sale of or charge made for the furnishing of lodging by a hotel, rooming house, tourist court, motel, trailer camp, and the granting of any similar license to use real property, as distinguished from the renting or leasing of real property: *Provided*, That it shall be presumed that the occupancy of real property for a continuous period of one month or more constitutes a rental or lease of real property and not a mere license to use or to enjoy the same. [1973 2nd ex.s. c 34 § 5; 1970 ex.s. c 89 § 1; 1967 c 236 § 11.]

**67.28.190 Special excise tax authorized—Payment of tax to municipality—Deduction from sales tax required to be paid to department of revenue.** Any seller, as defined in RCW 82.08.010, who is required to collect any tax under RCW 67.28.180 for any municipality shall pay over such tax to such municipality as provided in RCW 67.28.200 and such tax shall be deducted from the amount of tax such seller would otherwise be required to collect and to pay over to the department of revenue under chapter 82.08 RCW. [1967 c 236 § 12.]

**67.28.200 Special excise tax authorized—Exemptions, rules and regulations may be established—Collection.** The legislative body of any county or city may establish reasonable exemptions and may adopt such reasonable rules and regulations as may be necessary for the levy and collection of the taxes authorized by RCW 67.28.180. The department of revenue shall perform the collection of such taxes on behalf of such county or city at no cost to such county or city. [1970 ex.s. c 89 § 2; 1967 c 236 § 13.]

**67.28.210 Special excise tax authorized—Proceeds credited to special fund—Limitation on use—Investment.** All taxes levied and collected under RCW 67.28.180 shall be credited to a special fund in the treasury of the county or city imposing such tax. Such taxes shall be levied only for the purpose of paying all or any part of the cost of acquisition, construction, or operating of stadium facilities and/or convention center facilities or to pay or secure the payment of all or any portion of general obligation bonds or revenue bonds issued for such purpose or purposes under this chapter, and until withdrawn for use, the moneys accumulated in such fund or funds may be invested in interest bearing securities by the county or city treasurer in any manner authorized by law. [1973 2nd ex.s. c 34 § 6; 1970 ex.s. c 89 § 3; 1967 c 236 § 14.]

**67.28.220 Powers additional and supplemental to other laws.** The powers and authority conferred upon municipalities under the provisions of this chapter shall be construed as in addition and supplemental to powers or authority conferred by any other law, and nothing contained herein shall be construed as limiting any other powers or authority of such municipalities. [1967 c 236 § 15.]

**67.28.350 Real property beneath air space dedicated to public body for stadium facilities—Exemption from property taxes.** See RCW 84.36.270–84.36.290.

**67.28.900 Severability—1965 c 15.** If any provision of this chapter, or its application to any person or circumstance is held invalid, the remainder of the chapter, or the application of the provision to other persons or circumstances is not affected. [1965 c 15 § 8.]

**67.28.910 Severability—1967 c 236.** If any provision of this act, or its application to any municipality, person or circumstance is held invalid, the remainder of

this act or the application of the provision to other municipalities, persons or circumstances is not affected. [1967 c 236 § 19.]

**67.28.911 Severability—1973 2nd ex.s. c 34.** If any provision of this 1973 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1973 2nd ex.s. c 34 § 7.]

### Chapter 67.30

#### MULTI-PURPOSE SPORTS STADIA

##### Sections

- 67.30.010 Declaration of public purpose and necessity.
- 67.30.020 Participation by cities and counties—Powers—Costs, how paid.
- 67.30.030 Issuance of revenue bonds—Limitations—Retirement.
- 67.30.040 Power to appropriate and raise moneys.
- 67.30.050 Powers additional and supplemental to other laws.
- 67.30.900 Severability—1967 c 166.

*Multi-purpose community centers: Chapter 35.59 RCW.*

*Stadiums, coliseums, powers to counties to build and operate: RCW 36.68.090.*

**67.30.010 Declaration of public purpose and necessity.** The participation of counties and cities in multi-purpose sports stadia which may be used for football, baseball, soccer, conventions, home shows or any and all similar activities; the purchase, lease, condemnation, or other acquisition of necessary real property therefor; the acquisition by condemnation or otherwise, lease, construction, improvement, maintenance, and equipping of buildings or other structures upon such real property or other real property; the operation and maintenance necessary for such participation, and the exercise of any other powers herein granted to counties and cities, are hereby declared to be public, governmental, and municipal functions, exercised for a public purpose, and matters of public necessity, and such real property and other property acquired, constructed, improved, maintained, equipped, and used by counties and cities in the manner and for the purposes enumerated in this chapter shall and are hereby declared to be acquired, constructed, improved, maintained, equipped and used for public, governmental, and municipal purposes and as a matter of public necessity. [1967 c 166 § 2.]

**67.30.020 Participation by cities and counties—Powers—Costs, how paid.** The counties and cities are authorized, upon passage of an ordinance in the prescribed manner, to participate in the financing, construction, acquisition, operation, and maintenance of multi-purpose sports stadia within their boundaries. Counties and cities are also authorized, through their governing authorities, to purchase, lease, condemn, or otherwise acquire property, real or personal; to construct, improve, maintain and equip buildings or other structures; and expend moneys for investigations, planning, operations, and maintenance necessary for such participation.

The cost of any such acquisition, condemnation, construction, improvement, maintenance, equipping, investigations, planning, operation, or maintenance necessary for such participation may be paid for by appropriation of moneys available therefor, gifts, or wholly or partly from the proceeds of revenue bonds as the governing authority may determine. [1967 c 166 § 3.]

**67.30.030 Issuance of revenue bonds—Limitations—Retirement.** Any revenue bonds to be issued by any county or city pursuant to the provisions of this chapter, shall be authorized and issued in the manner prescribed by the laws of this state for the issuance and authorization of bonds thereof for public purposes generally: *Provided*, That the bonds shall not be issued for a period beyond the life of the improvement to be acquired by the use of the bonds.

The bonding authority authorized for the purposes of this chapter shall be limited to the issuance of revenue bonds payable from a special fund or funds created solely from revenues derived from the facility. The owners and holders of such bonds shall have a lien and charge against the gross revenue of the facility. Such revenue bonds and the interest thereon against such fund or funds shall be a valid claim of the holders thereof only as against such fund or funds and the revenue pledged therefor, and shall not constitute a general indebtedness of the municipality. The governing authority of any county or city may by ordinance take such action as may be necessary and incidental to the issuance of such bonds and the retirement thereof. The provisions of chapter 36.67 RCW not inconsistent with this chapter shall apply to the issuance and retirement of any such revenue bonds. [1967 c 166 § 4.]

**67.30.040 Power to appropriate and raise moneys.** The governing body having power to appropriate moneys within any county or city for the purpose of purchasing, condemning, leasing or otherwise acquiring property, constructing, improving, maintaining, and equipping buildings or other structures, and the investigations, planning, operation or maintenance necessary to participation in any such all-purpose or multi-purpose sports stadium, is hereby authorized to appropriate and cause to be raised by taxation or otherwise moneys sufficient to carry out such purpose. [1967 c 166 § 5.]

**67.30.050 Powers additional and supplemental to other laws.** The powers and authority conferred upon counties and cities under the provisions of this chapter, shall be construed as in addition and supplemental to powers or authority conferred by any other law, and nothing contained herein shall be construed as limiting any other such powers or authority. [1967 c 166 § 6.]

**67.30.900 Severability—1967 c 166.** If any provision of this chapter, or its application to any person or circumstance is held invalid, the remainder of the chapter, or the application of the provision to other persons or circumstances is not affected. [1967 c 166 § 7.]

**Chapter 67.32**  
**WASHINGTON STATE RECREATION TRAILS SYSTEM**

Sections	
67.32.010	Short title.
67.32.020	Definitions.
67.32.030	Purpose.
67.32.040	Trails to be designated by IAC—Inclusion of other trails—Procedure.
67.32.050	State trails plan.
67.32.060	Proposals for designation of existing or proposed trails as state recreational trails.
67.32.070	Coordination by IAC.
67.32.080	Categories of trails or areas—Policy statement as to certain state lands.
67.32.090	General types of use.
67.32.100	Guidelines.
67.32.110	Consultation and cooperation with state, federal and local agencies.
67.32.120	Reports to governor and legislature.
67.32.130	Participation by volunteer organizations—Liability of public agencies therefor limited.
67.32.140	State highways department participation.
<i>Disposition of ATV registration fees: RCW 46.09.110.</i>	
<i>Severance or destruction of trails by highway construction, alternative or reconstruction: RCW 47.30.010.</i>	
<i>Trails or paths along highways: RCW 47.30.020.</i>	

**67.32.010 Short title.** This chapter may be cited as the Washington State Recreation Trails System Act. [1970 ex.s. c 76 § 1.]

**67.32.020 Definitions.** As used in this chapter, "IAC" means the Washington state interagency committee for outdoor recreation, and "system" means the Washington state recreation trails system. [1970 ex.s. c 76 § 2.]

**67.32.030 Purpose.** (1) In order to provide for the ever increasing outdoor recreation needs of an expanding resident and tourist population and to promote public access to, travel within, and the enjoyment and appreciation of outdoor areas of Washington, it is declared to be in the public interest to plan a system of trails throughout the state to enable and encourage the public to engage in outdoor recreation activities.

(2) The purpose of this chapter is to provide the means for attaining these objectives by instituting a method for establishing a system of state recreation trails, and by prescribing the manner by which a proposed trail may be included in the system. [1970 ex.s. c 76 § 3.]

**67.32.040 Trails to be designated by IAC—Inclusion of other trails—Procedure.** (1) The system shall be composed of trails as designated by the IAC. Such trails shall meet the conditions established in this chapter and such supplementary criteria as the IAC may prescribe.

(2) The IAC shall establish a procedure whereby federal, state, and local governmental agencies and/or public and private organizations may propose trails for inclusion within the system. Such proposals will comply with the proposal requirements contained in RCW 67.32.060.

(3) In consultation with appropriate federal, state, and local governmental agencies and public and private organizations, the IAC shall establish a procedure for public review of the proposals considered appropriate for inclusion in the state-wide trails system. [1970 ex.s. c 76 § 4.]

**67.32.050 State trails plan.** The IAC shall prepare a state trails plan as part of the state-wide outdoor recreation and open space plan. Included in this plan shall be an inventory of existing trails and potential trail routes on all lands within the state presently being used or with potential for use by all types of trail users. Such trails plan may include general routes or corridors within which specific trails or segments thereof may be considered for designation as state recreation trails. [1971 ex.s. c 47 § 1; 1970 ex.s. c 76 § 5.]

**Severability—1971 ex.s. c 47:** See RCW 46.09.900.

*Application of chapter—Permission necessary to enter upon private lands: RCW 46.09.010.*

**67.32.060 Proposals for designation of existing or proposed trails as state recreational trails.** Before any specific existing or proposed trail is considered for designation as a state recreational trail, a proposal must be submitted to the IAC showing the following:

(1) For existing trails:

(a) The route of such trail, including maps and illustrations, and the recommended mode or modes of travel to be permitted thereon;

(b) The characteristics that, in the judgment of the agency or organization proposing the trail, make it worthy of designation as a component of a state recreation trail or trail system;

(c) A map showing the current status of land ownership and use along the designated route;

(d) The name of the agency or combination of agencies that would be responsible for acquiring additional trail rights-of-way or easements, trail improvement, operation and maintenance, and a statement from those agencies indicating the conditions under which they would be willing to accept those responsibilities;

(e) Any anticipated problems of maintaining and supervising the use of such trail and any anticipated hazards to the use of any land or resource adjacent to such trail;

(f) And such others as deemed necessary by the IAC.

(2) In addition, for proposed trails or for existing trails which require additional right-of-way acquisition, easements, and/or development:

(a) The method of acquiring trail rights-of-way or easements;

(b) The estimated cost of acquisition of lands, or interest in land, if any is required;

(c) The plans for developing the trail and the estimated cost thereof;

(d) Proposed sources of funds to accomplish (2)(a) and (2)(b) of this section. [1970 ex.s. c 76 § 6.]



**67.32.070 Coordination by IAC.** Following designation of a state recreation trail, the IAC may coordinate:

- (1) The agency or agencies that will acquire (where appropriate), develop and/or maintain the trail;
- (2) The most appropriate location for the trail;
- (3) Modes of travel to be permitted;
- (4) And other functions as appropriate. [1970 ex.s. c 76 § 7.]

**67.32.080 Categories of trails or areas—Policy statement as to certain state lands.** The following seven categories of trails or areas are hereby established for purposes of this chapter:

- (1) Cross-state trails which connect scenic, historical, geological, geographical, or other significant features which are characteristic of the state;
- (2) Water-oriented trails which provide a designated path to, on, or along fresh and/or salt water in which the water is the primary point of interest;
- (3) Scenic-access trails which give access to quality recreation, scenic, historic or cultural areas of state-wide or national significance;
- (4) Urban trails which provide opportunities within an urban setting for walking, bicycling, horseback riding, or other compatible activities. Where appropriate, they will connect parks, scenic areas, historical points, and neighboring communities;
- (5) Historical trails which identify and interpret routes which were significant in the historical settlement and development of the state;
- (6) All-terrain vehicle trails which are suitable for use by both four-wheel drive vehicles and two-wheel vehicles. Such trails may be included as a part of the trail systems enumerated in subsections (1) through (5) of this section or may be separately designated;
- (7) Off-road and off-trail areas which are suitable for use by both four-wheel drive vehicles and two-wheel vehicles. IAC shall coordinate an inventory and classification of such areas giving consideration to the type of use such areas will receive from persons operating four-wheel drive vehicles and two-wheel vehicles.

The planning and designation of trails shall take into account and give due regard to the interests of federal agencies, state agencies and bodies, counties, municipalities, private landowners and individuals, and interested recreation organizations. It is not required that the above categories be used to designate specific trails, but the IAC will assure that full consideration is given to including trails from all categories within the system. As it relates to all classes of trails and to all types of trail users, it is herein declared as state policy to increase recreational trail access to and within state and federally owned lands and private lands where access may be obtained. It is the intent of the legislature that public recreation facilities be developed as fully as possible to provide greater recreation opportunities for the citizens of the state. The purpose of \*this 1972 amendatory act is to increase the availability of trails and areas for all-terrain vehicles by granting authority to state and local governments to maintain a system of ATV trails and areas, and to fund the program to provide for such development. State lands should be used as fully

as possible for all public recreation which is compatible with the income-producing requirements of the various trusts. [1972 ex.s. c 153 § 1; 1971 ex.s. c 47 § 2; 1970 ex.s. c 76 § 8.]

**\*Reviser's note:** "this 1972 amendatory act" [1972 ex.s. c 153] consists of the 1972 ex.s. amendments to RCW 4.24.210, 46.09.010-46.09.120, 46.09.150-46.09.170, 46.09.190, 46.10.040, 46.10.070, 46.10.080, 46.10.110, 46.10.120 and 67.32.080, to RCW 46.09.220, 46.09.230, 46.10.185, and to the repeal of RCW 46.09.100.

**Severability—1971 ex.s. c 47:** See RCW 46.09.900.

**Application of chapter—Permission necessary to enter upon private lands:** RCW 46.09.010.

**67.32.090 General types of use.** All trails designated as state recreational trails will be constructed, maintained, and operated to provide for one or more of the following general types of use: Foot, foot powered bicycle, horse, motor vehicular or watercraft travel as appropriate to the terrain and location, or to legal, administrative or other necessary restraints. It is further provided that the same trail shall not be designated for use by foot and vehicular travel at the same time. [1970 ex.s. c 76 § 9.]

**67.32.100 Guidelines.** With the concurrence of any federal or state agency administering lands through which a state recreation trail may pass, and after consultation with local governments, private organizations and landowners which the IAC knows or believes to be concerned, the IAC may issue guidelines including, but not limited to: Encouraging the permissive use of volunteer organizations for planning, maintenance or trail construction assistance; trail construction and maintenance standards, a trail use reporting procedure, and a uniform trail mapping system. [1971 ex.s. c 47 § 3; 1970 ex.s. c 76 § 10.]

**Severability—1971 ex.s. c 47:** See RCW 46.09.900.

**Application of chapter—Permission necessary to enter upon private lands:** RCW 46.09.010.

**67.32.110 Consultation and cooperation with state, federal and local agencies.** The IAC is authorized and encouraged to consult and to cooperate with any state, federal or local governmental agency or body, with private landowners, and with any privately owned utility having jurisdiction or control over or information concerning the use, abandonment or disposition of roadways, utility rights-of-way, or other properties suitable for the purpose of improving or expanding the system in order to assure, to the extent practicable, that any such properties having value for state recreation trail purposes may be made available for such use. [1970 ex.s. c 76 § 11.]

**67.32.120 Reports to governor and legislature.** From time to time, the IAC shall report to the governor and the legislature on the status of the state recreational trails system. [1970 ex.s. c 76 § 12.]

**67.32.130 Participation by volunteer organizations—Liability of public agencies therefor limited.** Volunteer organizations may assist public agencies, with



the agency's approval, in the construction and maintenance of recreational trails in accordance with the guidelines issued by the interagency committee. In carrying out such volunteer activities the members of the organizations shall not be considered employees or agents of the public agency administering the trails, and such public agencies shall not be subject to any liability whatsoever arising out of volunteer activities. The liability of public agencies to members of such volunteer organizations shall be limited in the same manner as provided for in RCW 4.24.210. [1971 ex.s. c 47 § 4.]

**Severability**—1971 ex.s. c 47: See RCW 46.09.900.

*Application of chapter*—Permission necessary to enter upon private lands: RCW 46.09.010.

**67.32.140 State highways department participation.** The state highways department shall consider plans for trails along and across all new construction projects, improvement projects, and along or across any existing highways in the state system as deemed desirable by the IAC. [1971 ex.s. c 47 § 5.]

**Severability**—1971 ex.s. c 47: See RCW 46.09.900.

*Application of chapter*—Permission necessary to enter upon private lands: RCW 46.09.010.

**Chapter 67.67  
STATE LOTTERY**

Sections	
67.67.010	Definitions.
67.67.020	Office, administrative and legal services—Director, appointment, duties, salary.
67.67.030	Commission—Powers and duties, limitations on—Rules and regulations—Reports—Determining type, characteristics of, lottery.
67.67.040	Director—Powers and duties, limitations on—Appointment of deputy directors, employees and agents—Reports—Contracts.
67.67.050	Commission—Hearings, rights relative thereto, authorized.
67.67.060	Licenses for lottery sales agents—"Person" defined for purposes of.
67.67.070	Licenses for lottery sales agents—License as authority.
67.67.080	Licenses for lottery sales agents—Suspension or revocation, grounds.
67.67.090	Prizes—Right to not assignable—Payment of.
67.67.100	Tickets or shares—Sale of regulated—Penalty.
67.67.110	Tickets or shares—Sale to minors prohibited—Gift as exception—Penalty.
67.67.120	Tickets or shares—Persons prohibited from purchasing or receiving prizes.
67.67.130	Unclaimed prize money, disposition of—Effect.
67.67.140	Tickets and shares—Disposition of moneys received from sale of—Reports of receipts.
67.67.150	Tickets or shares—Other law inapplicable to sale of.
67.67.160	Prizes—Payment if to a minor—Effect.
67.67.170	State lottery fund—Created and established—Maintenance—Source of moneys in.
67.67.180	State lottery fund—Disposition of moneys in.
67.67.190	Prizes—Installment payments, permissible method—Reserve account.
67.67.200	Revolving fund—Created—Purpose—Source of and limitation on moneys in—Maintenance.
67.67.210	Administrative procedure act, applicability.
67.67.220	Post-audits by state auditor.
67.67.230	Severability—Chapter to prevail over other law.
67.67.240	1974 Appropriation—Repayment of from revenues.
67.67.900	Referral to electorate—1974 act.

**67.67.010 Definitions.** For the purposes of this chapter:

(1) "Commission" shall mean the state gambling commission established by RCW 9.46.040.

(2) "Lottery" or "state lottery" shall mean the lottery established and operated pursuant to this chapter.

(3) "Director" shall mean the director of the state lottery. [1974 1st ex.s. c 152 § 1.]

*Definitions relative to payment of prizes to a minor: RCW 67.67.160.  
"Person" defined for purposes of lottery sales agent: RCW 67.67.060.*

**67.67.020 Office, administrative and legal services—Director, appointment, duties, salary.** The department of motor vehicles shall provide such office, administrative, and legal services as are required by the commission and the director of the state lottery to carry out the provisions of this chapter. However, the costs of such services shall be paid for by the director of the state lottery from moneys placed within the revolving fund created by RCW 67.67.200.

Any vacancy occurring in the office of the director of the state lottery shall be filled in the same manner as the original appointment.

The director of the state lottery shall be appointed by the commission and shall devote his entire time and attention to the duties of his office and shall not be engaged in any other profession or occupation. He shall receive such salary as shall be determined by the commission and the provisions of the state civil service law, chapter 41.06 RCW, shall not apply to his employment. [1974 1st ex.s. c 152 § 2.]

**67.67.030 Commission—Powers and duties, limitations on—Rules and regulations—Reports—Determining type, characteristics of, lottery.** In addition to the powers and duties enumerated in RCW 9.46.070 as now or hereafter amended, the commission shall have the power, and it shall be its duty:

(1) To promulgate such rules and regulations governing the establishment and operation of a state lottery as it deems necessary and desirable in order that such a lottery be initiated at the earliest feasible and practicable time, and in order that such lottery produce the maximum amount of net revenues for the state consonant with the dignity of the state and the general welfare of the people. Such rules and regulations may include, but shall not be limited to, the following:

- (a) The type of lottery to be conducted;
- (b) The price, or prices, of tickets or shares in the lottery;
- (c) The numbers and sizes of the prizes on the winning tickets or shares;
- (d) The manner of selecting the winning tickets or shares;
- (e) The manner and time of payment of prizes to the holders of winning tickets or shares which, at the commission's option, may be paid in lump sum amounts or installments over a period of years;
- (f) The frequency of the drawings or selections of winning tickets or shares, without limitation;
- (g) Without limit as to number, the type or types of locations at which tickets or shares may be sold;

(h) The method to be used in selling tickets or shares;

(i) The licensing of agents to sell tickets or shares, except that no person under the age of eighteen shall be licensed as an agent;

(j) The manner and amount of compensation, if any, to be paid licensed sales agents necessary to provide for the adequate availability of tickets or shares to prospective buyers and for the convenience of the public;

(k) The apportionment of the total revenues accruing from the sale of lottery tickets or shares and from all other sources among (i) the payment of prizes to the holders of winning tickets or shares shall not be less than forty-five percent of the gross income from such lottery, (ii) the payment of costs incurred in the operation and administration of the lottery, including the expenses of the lottery and the costs resulting from any contract or contracts entered into for promotional, advertising, or operational services or for the purchase or lease of lottery equipment and materials, but the payment of such costs shall not exceed fifteen percent of the gross income from such lottery (iii) for the repayment of the moneys appropriated to the state lottery fund pursuant to RCW 67.67.240, and (iv) for transfer to the general fund: *Provided*, That no less than forty percent of the total revenues accruing from the sale of lottery tickets or shares shall be transferred to the state general fund;

(1) Such other matters necessary or desirable for the efficient and economical operation and administration of the lottery and for the convenience of the purchasers of tickets or shares and the holders of winning tickets or shares.

(2) To amend, repeal, or supplement any such rules and regulations from time to time as it deems necessary or desirable.

(3) To advise and make recommendations to the director of the state lottery regarding the operation and administration of the lottery.

(4) To publish monthly reports showing the total lottery revenues, prize disbursements, and other expenses for the preceding month, and to make an annual report, which shall include a full and complete statement of lottery revenues, prize disbursements, and other expenses, to the governor and the legislature, and including such recommendations for changes in this chapter as it deems necessary or desirable.

(5) To report immediately to the governor and the legislature any matters which shall require immediate changes in the laws of this state in order to prevent abuses and evasions of this chapter or rules and regulations promulgated thereunder or to rectify undesirable conditions in connection with the administration or operation of the lottery.

(6) To carry on a continuous study and investigation of the lottery throughout the state (a) for the purpose of ascertaining any defects in this chapter or in the rules and regulations issued thereunder by reason whereof any abuses in the administration and operation of the lottery or any evasion of this chapter or the rules and regulations may arise or be practiced, (b) for the purpose of formulating recommendations for changes in this chapter and the rules and regulations promulgated

thereunder to prevent such abuses and evasions, (c) to guard against the use of this chapter and the rules and regulations issued thereunder as a cloak for the carrying on of professional gambling and crime, and (d) to insure that said law and rules and regulations shall be in such form and be so administered as to serve the true purposes of this chapter.

(7) To make a continuous study and investigation of (a) the operation and the administration of similar laws which may be in effect in other states or countries, (b) any literature on the subject which from time to time may be published or available, (c) any federal laws which may affect the operation of the lottery, and (d) the reaction of the citizens of this state to existing and potential features of the lottery with a view to recommending or effecting changes that will tend to serve the purposes of this chapter. [1974 1st ex.s. c 152 § 3.]

**67.67.040 Director—Powers and duties, limitations on—Appointment of deputy directors, employees and agents—Reports—Contracts.** The director of the state lottery shall have the power, and it shall be his duty to:

(1) Supervise and administer the operation of the lottery in accordance with the provisions of this chapter and with the rules and regulations of the commission;

(2) Subject to the approval of the commission, appoint such deputy directors as may be required to carry out the functions and duties of his office: *Provided*, That the provisions of the state civil service law, chapter 41.06 RCW, shall not apply to such deputy directors;

(3) Subject to the approval of the commission, appoint such professional, technical, and clerical assistants and employees as may be necessary to perform the duties imposed upon the director of the state lottery by this chapter: *Provided*, That the provisions of the state civil service law, chapter 41.06 RCW, shall not apply to such employees as are engaged in undercover investigative work but shall apply to other employees appointed by the director, except as provided for in subsection (2) of this section.

(4) In accordance with the provisions of this chapter and the rules and regulations of the commission, to license as agents to sell lottery tickets such persons as in his opinion will best serve the public convenience and promote the sale of tickets or shares. The director of the state lottery may require a bond from every licensed agent, in such amount as provided in the rules and regulations of the commission. Every licensed agent shall prominently display his license, or a copy thereof, as provided in the rules and regulations of the commission;

(5) Shall confer regularly as necessary or desirable and not less than once every month with the commission on the operation and administration of the lottery; shall make available for inspection by the commission, upon request, all books, records, files, and other information and documents of the lottery; shall advise the commission and recommend such matters as he deems necessary and advisable to improve the operation and administration of the lottery;

(6) Subject to the approval of the commission and the applicable laws relating to public contracts, to enter into contracts for the operation of the lottery, or any part thereof, and into contracts for the promotion of the lottery. No contract awarded or entered into by the director of the state lottery may be assigned by the holder thereof except by specific approval of the commission: *Provided*, That nothing in this chapter shall authorize the commission to enter into public contracts for the regular and permanent operation of the lottery after the initial development and implementation. Public contracts authorized under this chapter are to be performed for a flat fee and not on a percentage of the lottery receipts; and

(7) To certify monthly to the state treasurer and the commission a full and complete statement of lottery revenues, prize disbursements, and other expenses for the preceding month. [1974 1st ex.s. c 152 § 4.]

**67.67.050 Commission—Hearings, rights relative thereto, authorized.** For the purpose of obtaining information concerning any matter relating to the administration or enforcement of this chapter, the commission, or any person appointed by it in writing for the purpose may conduct hearings, administer oaths, take depositions, compel the attendance of witnesses and issue subpoenas pursuant to RCW 34.04.105. [1974 1st ex.s. c 152 § 5.]

**67.67.060 Licenses for lottery sales agents—"Person" defined for purposes of.** No license as an agent to sell lottery tickets or shares shall be issued to any person to engage in business exclusively as a lottery sales agent. Before issuing such license the director of the state lottery shall consider such factors as (1) the financial responsibility and security of the person and his business or activity, (2) the accessibility of his place of business or activity to the public, (3) the sufficiency of existing licenses to serve the public convenience, and (4) the volume of expected sales.

For the purposes of this section, the term "person" shall be construed to mean and include an individual, association, corporation, club, trust, estate, society, company, joint stock company, receiver, trustee, assignee, referee, or any other person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, and any combination of individuals. "Person" shall not be construed to mean or include any department, commission, agency, or instrumentality of the state, or any county and municipality or any agency or instrumentality thereof. [1974 1st ex.s. c 152 § 6.]

**67.67.070 Licenses for lottery sales agents—License as authority.** Notwithstanding any other provision of law, any person licensed as provided in this chapter is hereby authorized and empowered to act as a lottery sales agent. [1974 1st ex.s. c 152 § 7.]

**67.67.080 Licenses for lottery sales agents—Suspension or revocation, grounds.** The director of the state lottery may suspend or revoke, after notice and hearing, any license issued pursuant to this chapter. Such license

may, however, be temporarily suspended by the director of the state lottery without prior notice, pending any prosecution, investigation, or hearing. A license may be suspended or revoked by the director for one or more of the following reasons:

(1) Failure to account for lottery tickets received or the proceeds of the sale of lottery tickets or to file a bond if required by the director of the state lottery or to comply with the instructions of the director concerning the licensed activity;

(2) Conviction of any crime as defined by RCW 9.01.020;

(3) Failure to file any return or report or to keep records or to pay any tax required by this chapter;

(4) Fraud, deceit, misrepresentation, or conduct prejudicial to public confidence in the state lottery;

(5) That the number of lottery tickets sold by the lottery sales agent is insufficient to meet administrative costs and that public convenience is adequately served by other licensees;

(6) A material change, since issuance of the license with respect to any matters required to be considered by the director under RCW 67.67.060. [1974 1st ex.s. c 152 § 8.]

**67.67.090 Prizes—Right to not assignable—Payment of.** No right of any person to a prize drawn shall be assignable, except that payment of any prize drawn may be paid to the estate of a deceased prize winner, and except that any person pursuant to an appropriate judicial order may be paid the prize to which the winner is entitled. The director shall be discharged of all further liability upon payment of a prize pursuant to this section. [1974 1st ex.s. c 152 § 9.]

**67.67.100 Tickets or shares—Sale of regulated—Penalty.** No person shall sell a ticket or share at a price greater than that fixed by rule or regulation of the commission. No person other than a licensed lottery sales agent shall sell lottery tickets, except that nothing in this section shall be construed to prevent any person from giving lottery tickets or shares to another as a gift.

Any person convicted of violating this section shall be guilty of a misdemeanor. [1974 1st ex.s. c 152 § 10.]

**67.67.110 Tickets or shares—Sale to minors prohibited—Gift as exception—Penalty.** No ticket or share shall be sold to any person under the age of eighteen, but this shall not be deemed to prohibit the purchase of a ticket or share for the purpose of making a gift by a person eighteen years of age or older to a person less than that age. Any licensee who knowingly sells or offers to sell a lottery ticket or share to any person under the age of eighteen, and is convicted of such, shall be guilty of a misdemeanor. [1974 1st ex.s. c 152 § 11.]

**67.67.120 Tickets or shares—Persons prohibited from purchasing or receiving prizes.** No ticket or share shall be purchased by, and no prize shall be paid to any of the following persons: Any officer or employee of the lottery or to any spouse, child, brother, sister, or parent

residing as a member of the same household in the principal place of abode of any officer or employee of the lottery. [1974 1st ex.s. c 152 § 12.]

**67.67.130 Unclaimed prize money, disposition of—**  
**Effect.** Unclaimed prize money for the prize on a winning ticket or share shall be retained in the state lottery fund by the director of the state lottery for the person entitled thereto for one year after the drawing in which the prize was won. If no claim is made for said money within such year, the prize money shall then be transferred to the state general fund and all rights to the prize existing prior to such transfer shall be extinguished as of the day of the transfer. [1974 1st ex.s. c 152 § 13.]

**67.67.140 Tickets and shares—Disposition of moneys received from sale of—Reports of receipts.** The director of the state lottery may, in his discretion, require any or all lottery sales agents to deposit to the credit of the state lottery fund in banks designated by the state treasurer, all moneys received by such agents from the sale of lottery tickets or shares, less the amount, if any, retained as compensation for the sale of the tickets or shares, and to file with the director of the state lottery or his designated agents reports of their receipts and transactions in the sale of lottery tickets in such form and containing such information as he may require. The director of the state lottery may make such arrangements for any person, including a bank, to perform such functions, activities, or services in connection with the operation of the lottery as he may deem advisable pursuant to this chapter and the rules and regulations of the commission, and such functions, activities, or services shall constitute lawful functions, activities, and services of such person. [1974 1st ex.s. c 152 § 14.]

**67.67.150 Tickets or shares—Other law inapplicable to sale of.** No other law providing any penalty or disability for the sale of lottery tickets or any acts done in connection with a lottery shall apply to the sale of tickets or shares performed pursuant to this chapter. [1974 1st ex.s. c 152 § 15.]

**67.67.160 Prizes—Payment if to a minor—Effect.** If the person entitled to a prize or any winning ticket is under the age of eighteen years, and such prize is less than five thousand dollars, the director of the state lottery may direct payment of the prize by delivery to an adult member of the minor's family or a guardian of the minor of a check or draft payable to the order of such minor. If the person entitled to a prize or any winning ticket is under the age of eighteen years, and such prize is five thousand dollars or more, the director of the state lottery may direct payment to such minor by depositing the amount of the prize in any bank to the credit of an adult member of the minor's family or a guardian of the minor as custodian for such minor. The person so named as custodian shall have the same duties and powers as a person designated as a custodian in a manner prescribed by the Washington Uniform Gifts

to Minors Act, chapter 21.24 RCW, and for the purposes of this section the terms "adult member of a minor's family", "guardian of a minor" and "bank" shall have the same meaning as in said act. The director of the state lottery shall be discharged of all further liability upon payment of a prize to a minor pursuant to this section. [1974 1st ex.s. c 152 § 16.]

**67.67.170 State lottery fund—Created and established—Maintenance—Source of moneys in.** There is hereby created and established a separate fund, to be known as the state lottery fund. Such fund shall be maintained and controlled by the commission and shall consist of all revenues received from the sale of lottery tickets or shares, and all other moneys credited or transferred thereto from any other fund or source pursuant to law. [1974 1st ex.s. c 152 § 17.]

*1974 Appropriation—Repayment of from revenues: RCW 67.67.240.*

*Rules and regulations respecting apportionment of revenues: RCW 67.67.030(1)(k).*

*Unclaimed prize money, disposition of—Effect: RCW 67.67.130.*

**67.67.180 State lottery fund—Disposition of moneys in.** The moneys in said state lottery fund shall be used only: (1) For the payment of prizes to the holders of winning lottery tickets or shares; (2) for purposes of making deposits into the reserve account created by RCW 67.67.190 and into the revolving fund created by RCW 67.67.200; (3) for purposes of making deposits into the general fund; and (4) for the repayment to the general fund of the amount appropriated to the fund pursuant to RCW 67.67.240. [1974 1st ex.s. c 152 § 18.]

*1974 Appropriation—Repayment of from revenues: RCW 67.67.240.*

*Rules and regulations respecting apportionment of revenue: RCW 67.67.030(1)(k).*

*Unclaimed prize money, disposition of—Effect: RCW 67.67.130.*

**67.67.190 Prizes—Installment payments, permissible method—Reserve account.** In the event the commission decides to pay any portion of or all of the prizes in the form of installments over a period of years, it shall provide for the payment of all such installments by one, but not both, of the following methods:

(1) It may enter into contracts with any financially responsible person or firm providing for the payment of such installments; or

(2) It may establish and maintain a reserve account into which shall be placed sufficient moneys for the director of the lottery to pay such installments as they become due. Such reserve account shall be maintained as a separate and independent fund outside the state treasury. [1974 1st ex.s. c 152 § 19.]

*State lottery fund—Disposition of moneys in: RCW 67.67.180.*

**67.67.200 Revolving fund—Created—Purpose—Source of and limitation on moneys in—Maintenance.** There is hereby created a revolving fund into which the commission shall deposit sufficient money to provide for the payment of the costs incurred in

the operation and administration of the lottery: *Provided*, That the amount deposited in such revolving fund shall never exceed fifteen percent of the total revenues accruing from the sale of lottery tickets or shares. Such revolving fund shall be managed, controlled and maintained by the commission and shall be a separate and independent fund outside the state treasury. [1974 1st ex.s. c 152 § 20.]

*Office, administrative and legal services—Director, appointment, duties, salary: RCW 67.67.010.*

*Rules and regulations respecting apportionment of revenue: RCW 67.67.030(1)(k).*

*State lottery fund—Disposition of moneys in: RCW 67.67.180.*

**67.67.210 Administrative procedure act, applicability.**

The provisions of the administrative procedure act, chapter 34.04 RCW, as now law or hereafter amended, shall apply to administrative actions taken by the commission or the director pursuant to this chapter. [1974 1st ex.s. c 152 § 21.]

**67.67.220 Post-audits by state auditor.** The state auditor, in addition to the duties assigned to him by RCW 9.46.060 shall conduct an annual post-audit of all accounts and transactions of the lottery and such other special post-audits as he may be directed to conduct pursuant to chapter 43.09 RCW. [1974 1st ex.s. c 152 § 22.]

**67.67.230 Severability—Chapter to prevail over other law.** If any clause, sentence, paragraph, subdivision, section, provision, or other portion of RCW 67.67.010 through 67.67.190 or the application thereof to any person or circumstances is held to be invalid, such holding shall not affect, impair, or invalidate the remainder of this chapter or the application of such portion held invalid to any other person or circumstances, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, provision, or other portion thereof directly involved in such holding or to the person and circumstances therein involved. If any provision of this chapter is inconsistent with, in conflict with, or contrary to any other provision of law, such provision of this chapter shall prevail over such other provision and such other provision shall be deemed to have been amended, superseded, or repealed to the extent of such inconsistency, conflict, and contrariety. [1974 1st ex.s. c 152 § 23.]

**67.67.240 1974 Appropriation—Repayment of from revenues.** There is hereby appropriated to the state lottery fund from the general fund the sum of one million five hundred thousand dollars, or so much thereof as may be necessary, for the purposes of the lottery in carrying out its functions and duties pursuant to RCW 67.67.010 through 67.67.230. Such appropriation shall be repaid to the general fund as soon as practicable from the net revenues accruing in the state lottery fund after the payment of prizes to holders of winning tickets or shares and expenses of the lottery. [1974 1st ex.s. c 152 § 24.]

*Rules and regulations respecting apportionment of revenues: RCW 67.67.030(1)(k).*

**67.67.900 Referral to electorate—1974 act.** This chapter and RCW 9.46.040 (as amended by section 28, chapter 152, Laws of 1974 1st ex. sess.) and 9.46.290 shall be submitted to the people for their adoption and ratification, or rejection, at a special election hereby ordered by the legislature, which election shall be held in conjunction with the general election to be held in this state on the Tuesday next succeeding the first Monday in November, 1974, all in accordance with the provisions of section 1, Article II of the Constitution of the state of Washington, as amended, and the laws adopted to facilitate the operation thereof. [1974 1st ex.s. c 152 § 28.]



## **CERTIFICATE**

This volume, published officially by the Statute Law Committee, is, in accordance with the provisions of RCW 1.08.037, certified to comply with the current specifications of the committee.

(signed)

ROBERT L. CHARETTE, *Chairman*,  
STATUTE LAW COMMITTEE.



## NOTES